Thank you for your note and for your invitation to submit further comments as a follow-up on the very interesting Brussels workshop with MEP Harbour. We really appreciate this opportunity to clarify some issues and confirm officially the views I expressed during the meeting.

The essence of our contribution regarding the Internal Market is that we believe it has been extremely beneficial to UK business across-the-board. From our Company's viewpoint, one of the most important benefits is the harmonisation of intellectual property legislation, together with the highly successful creation of the Community Trademark and other unitary IP titles. As far as the free movement of goods is concerned, the situation of our sector is, as you know, different from most others since tobacco products do not actually move freely due to both national excise regimes and strict labelling language requirements. Let me be clear: these obstacles do not however alter in any way our view that the Internal Market is "A Good Thing".

In the context of your Government's very thorough review of the balance of competences between the UK and the EU - in particular regarding the Internal Market - I expressed the view that, while the balance as defined by the Treaty is probably the right one, its implementation occasionally raises concerns. This is what I referred to as "competence creep" on the part of the EU, and I reminded participants that it is precisely this constant attempt to extend the EU's competence that prompted Member States meeting in Birmingham in 1992 to adopt the concept of "subsidiarity" - which actually resulted in the Commission having to withdraw some legislative proposals.

Sadly, the principle of subsidiarity is often disregarded and the Internal Market competence has become the most convenient tool to seek to extend the EU's competence beyond the balance achieved in the Treaty.

I was prompted to respond to your invitation to comment further on this topic when reading some of the statements in the Department of Health's report on the balance of competences.

- I feel compelled to take issue with the statements in paragraphs 3.7.1. and 3.7.5 that tobacco control is "*a shared competence*" with an "*internal market Treaty base*". This is blatantly incorrect legally: tobacco control, as part of the public health area, remains squarely a competence of the Member States and harmonisation of their tobacco laws is even expressly and unambiguously excluded by the Treaty.

While the Internal Market legal base has been used - though not always successfully - to justify EU action on tobacco, this does not mean that tobacco control has become a shared, internal market competence. The reality is that the Court has placed very strict conditions on using the internal market legal base in the public health area. Indeed it has clearly stated that for this Treaty provision to be used there needed to be a genuine internal market justification and it should not be used as a means of circumventing the express ban on harmonisation of tobacco laws clearly spelt out in the Treaty.

Significantly, these limitations on using an internal market legal base to regulate the public health area have just been strongly reiterated by the European Parliament's own Legal Affairs Committee in its opinion on the proposed revision of the Tobacco Products Directive 2002 - to which the DoH report refers.

- With this in mind, I feel I must also react to the statement in the DoH report according to which "*Tobacco manufacturers [....] would prefer tobacco regulated at Member State rather than at EU level, and would prefer less strict tobacco control legislation in general. Tobacco manufacturers [....] would prefer the single market treaty base not to be used for tobacco control measures. They noted the series of legal challenges to tobacco control directives and expressed disappointment at the CJEU's interpretation of the single market treaty base.*

It is a clear misinterpretation of tobacco manufacturers' position to state that they would *prefer* the single market Treaty base not to be used for tobacco control measures: our position is that of the

Treaty and of the Court of Justice, i.e. that there is a ban on harmonising Member States' tobacco laws except where there is a genuine internal market rationale as defined in detail by the Court of Justice. It is not a matter of preference, it is a matter of respect for the rule of law.

It is therefore incorrect - to say the least - to state that tobacco manufacturers express "*disappointment at the CJEU's interpretation of the single market treaty base*". This is far from the truth: as an industry, we are extremely disappointed to note that the EU continues to seek to extend its power by disregarding both Treaty provisions and those Court decisions that criticise abusive use of the internal market Treaty base.

Finally, we would also challenge the point that tobacco manufacturers "*would prefer less strict tobacco control legislation in general*". In reality, British American Tobacco - and the industry in general - supports regulation that is based on sound evidence and developed with all stakeholders involved, including the tobacco industry, and we seek clear communication on everyone's views to encourage debate and improve transparency.

The report in question would deserve further comments regarding other legally incorrect statements or conclusions. This was however not the the purpose of my note and I have chosen to focus on internal market-related issues since this was the subject of our workshop.

I would like to conclude by stating that it is precisely behaviours such as those mentioned above - misrepresentations of reality and disregard for the law - that upset the otherwise appropriate balance of competences between the UK and the EU.