

POLICY SUBMISSION

DEPARTMENT FOR BUSINESS, INNOVATION & SKILLS

UK GOVERNMENT'S REVIEW OF THE BALANCE OF
COMPETENCES BETWEEN THE UK AND THE EU

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SCDI is an independent and inclusive economic development network which seeks to influence and inspire government and key stakeholders with our ambitious vision to create shared sustainable economic prosperity for Scotland.

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Review of the Balance of Competences Between the UK and the EU

1. SCDI is an independent membership network that strengthens Scotland's competitiveness by influencing Government policies to encourage sustainable economic prosperity. SCDI's membership includes businesses, trades unions, local authorities, educational institutions, the voluntary sector and faith groups.
2. SCDI welcomes this opportunity to contribute to the UK Government Review of the Balance of Competences between the United Kingdom and the European Union, which is on the subject areas of trade and investment, the free movement of goods, and research and development and how this impacts the UK.
3. To inform the current debate about Scotland's future constitutional options, SCDI recently published reports of three work-streams on the economic issues across the *Macroeconomic and Fiscal*, *Europe and International*, and *Energy* spheres. Led by members of SCDI's Board and steering groups of SCDI members, these summarised the evidence available and developed key questions for both sides of the debate. These reports were informed by extensive research of members' views - including interviews, discussions at policy-making committees and SCDI's annual Forum, and an online survey - and these views were summarised in a further report on *Discussions and Priorities*. EU membership and its benefits and disbenefits for the Scottish economy were a major area of the discussion. In this submission, SCDI therefore, draws extensively on this source of information.

Question 1: What are the advantages and disadvantages of the EU's competence over trade and investment, particularly in relation to the international trade and investment negotiations?

4. The importance to the Scottish economy of membership of the EU was stated by a clear majority of businesses in SCDI's discussions. The significance of the EU single market and the EU's role in international trade negotiations was valued especially by larger businesses and exporters, including inward investors.
5. Some businesses operating exclusively in the domestic market and SMEs were less aware or supportive the influences that the EU brings to their business in terms of trade and investment. This was particularly evidence from the online survey in which almost a third considered the EU's impact in this area as 'none'.
6. An overall assessment indicated that a large majority of respondents endorsed the necessity of belonging to a larger sphere of influence, such as the EU, in world trade terms and the benefit this brings. Discussions also highlighted the importance of Member States and their nations and regions, sectors and businesses, seeking to maximise the opportunities in the EU's global influence.
7. There were some dissenting voices that were unsure about the direction of travel of the EU towards greater integration and harmonisation, and asked whether a looser arrangement (such as membership of the European Economic Area) could be an advantage. However, there is generally low awareness of what this means

in practical terms, and businesses generally view Scotland's and the UK's economies as embedded in the EU's architecture after 40 years of membership.

8. The role of the EU in negotiating and upholding global free trade agreements is paramount for some significant sectors of the Scottish economy – this was cited by the Scotch whisky sector, for example. The need to ensure an influential and not marginalised voice in the EU was a commonly held view by SCDI members. In the main, the EU has shown that it is able to negotiate more favourable and / or earlier trade agreements which European Economic Area countries try to match. However, other sectors are concerned that they are a low priority for the EU in some trade negotiations – for instance, the salmon industry pointed to a less favourable deal for exports to South Africa than for their competitors in Norway.

Question 2: What are the advantages and disadvantages of having trade and investment promotion largely at the national level? How well has this delivered on UK objectives?

9. Discussions with SCDI members showed that, for some businesses and sectors, the reach and influence of UK Trade and Investment and British embassies in trade and investment policy and promotion is highly-valued. An example would be in the Scotch whisky sector, operating in over 200 markets, where companies can call on UK embassies to assist in resolution of local trade disputes with the governments and authorities of those countries. These instances may include moves to protectionist practices or customs delays in ports due to red tape or inefficiencies. As one of the most valuable contributors to the UK Exchequer from global revenues, the industry is taken seriously and supported accordingly.
10. The role of the British Council in supporting arts, education and cultural diplomacy was also highlighted. Commercial opportunities can arise through cultural diplomacy, such as links between the arts and food/drink sectors.
11. However, some other respondents felt that the existence of the UK Government overseas network had little tangible impact for them, and that they may benefit from more proactive support from Scottish representation. The UK's relative performance compared, for example to Germany, in emerging markets was also questioned. Comparisons between UKTI and Norwegian approaches were noted. In Brazil, Norway has an 'incubator park' to support its companies wishing to set up a new business in the market, providing on-going support and assistance. Some businesses believe that there are potential opportunities through Scottish trade and investment promotion to give deeper support to particular sectoral strengths and competitive advantages that Scotland possesses, and which may not always be at the forefront of UKTI or British Council operations. Scotland's creative industries and arts sector were examples cited that may be promoted more vigorously in international markets by a distinctly Scottish network.
12. SCDI believes that there is a continuing need to join-up international activity by the Scottish Government, Scottish Development International (SDI), and the

wider Scottish public sector, and work with UK embassies and trade agencies, to ensure optimal results. It must be ensured that trade and investment promotion at the national UK level and at the Scottish level complement each other.

13. SCDI recognises the European Commission's trade promotion activities and their desire to expand their role in this respect. Providing that any additional activity by the European Commission would not negatively impact or duplicate national initiatives, SCDI would not be against further promotion of trade and investment opportunities which could benefit Scotland and its economy. SCDI acknowledges that for certain sectors which are particularly significant to the EU economy and where there are common interests across Member States, EU trade and investment promotion could be beneficial. However, in sectors where these conditions do not exist, it should be left at national and sub-national levels.

Question 3: What are the advantages and disadvantages of the current division of competence over export and import controls and export credits?

14. Discussions with SCDI members showed that larger corporations tend to operate in global markets where growth in the large emerging markets is higher, and questions on membership of the EU single market is part of a larger dynamic for them. For some global inward investors which have located export-orientated businesses in Scotland, it would not make particular sense to remain here if Scotland was not part of the EU.

Question 4: What are the likely advantages and disadvantages of moving from national to EU competence in relation to investment protection?

15. The EU, even in the current economic climate, remains the largest global investor and the largest destination for investment. SCDI recognises that the international investment system is undergoing profound changes with two main trends. Firstly that emergent economies are taking up a larger share of global outflows (23%) including investments in Europe, in a reverse of the traditional flow; and secondly that the system of international dispute resolution is increasingly being challenged or disregarded by a number of countries, most notably emerging economies, with a number of high profile cases in recent years, and this seems likely to continue if not increase in the coming years. These factors, and whether national or supranational activity is best placed to deal with them, need to be taken into consideration when assessing the balance of competencies in relation to investment protection.
16. Although the Treaty of Lisbon has afforded the EU exclusive competence for protecting the investments of member states and their companies, an area of concern is that the various EU institutions do not currently share a common approach. Whilst the Commission stresses the importance of strengthening investment protection and prioritising it above considerations, the European Parliament supports a more balanced investment policy that would take into account other principles that it considers to be as important as investment protection. Furthermore, divergence is also evident in regards to future Bilateral

Investment Treaties (BITs) and how they are negotiated. The Commission has ruled out the possibility of creating a model BIT for all future investment agreements, advocating a case by case approach, in contrast with the European Parliament's preference for a template approach, variable according to level of development of a partner country. Clarity on the EU's approach to investment policy and the negotiation of future BITs would be welcomed.

17. Although BIT regulation was approved by the Treaty of Lisbon, which established that new investment treaties negotiated by the Commission would replace pre-existing BITs, member states may still conclude bilateral agreements in the future under limited conditions. This has resulted in the rise of 'commercial diplomacy' on occasions, in the race for investment, creating a risk that bilateralism may prevail over multilateralism and undermine the benefits of a united front at the EU level in regards to investments. It is questionable whether the EU has been successful in its attempts to adequately convey the need for and benefits of a united front in regards to investments.
18. The lack of clarity that exists between the division of the national and supranational can create uncertainty for the business community. SCDI would support a framework which could harness the benefits of a common approach whilst also optimising the skills and expertise of member state officials as well as involving the private sector and learning from their experiences, both good and bad.

Question 5: How well are UK objectives met and interests taken into account through a) EU trade defence investigations, and b) the EU representing the UK in trade defence cases against the EU and more generally in trade disputes with other WTO members?

19. The European Commission's annual report on trade defence actions¹, published in April, taken by non-EU countries against EU exports shows that the EU has been successful in the face of a high number of cases brought against them. The EU's trading partners have launched 138 cases against European exports. It is important to note that emerging economies account for three out of the top four states using trade defence against the EU or its member states.
20. The EU has been as successful as the US over the past five years in defending its interests before the World Trade Organisation (WTO), with a slightly lower number of cases initiated but with a higher rate of success².
21. The Commission has notably stepped up its monitoring of trade defence actions taken by non-EU countries in response to the growing complexity of cases and the appearance of new users of trade defence instruments, ranging from technical interventions in on-going investigations to WTO dispute settlement proceedings.

¹ http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151066.pdf

² http://europa.eu/rapid/press-release_MEMO-12-587_en.htm

Question 6: What future challenges / opportunities might we face on trade and investment policy and what impact might these have on the UK national interest?

22. SCDI's 2013 forum brought together 300 senior influencers and thought leaders to discuss Scotland's future economic direction in the context of unprecedented global change. It discussed that, as emerging markets will continue to grow in the next 10 – 20 years at 2 – 5 times the rate of developed OECD economies, the combined GDP of the seven largest emerging economies (E7) is forecast to overtake that of the G7 of large, developed economies in the next five years and the gap is then projected to grow at an increasing rate to 2050 and beyond. Thus as the centre of gravity of the global economy moves east and south towards developing countries, south-south trade is likely to become increasingly significant, especially in the absence of a global trade agreement.
23. Some thought unlikely that global agreements on trade and climate change could be achieved over the next ten years and bilateral agreements would, therefore, increasingly be the norm. As such, the prospect of a G2 of the United States and China would increasingly determine major global decisions, with the prospect of a G3, if the European Union and member states resolve their internal challenges and contradictions to maintain sufficient strength and influence to merit inclusion.
24. The UK has been relatively unsuccessful in exporting to emerging markets. According to BIS figures in 2012, the UK's share of exports to key markets was: Brazil 1.8%; Russia 2.9%; India 2.7%; and China 0.9%³. Given these relatively low shares and the geopolitical and global trade contexts, a strong, responsive and effective EU, which is aligned with opportunities to maximise the UK's economic interests, is the best vehicle through which to exert influence on global trade and investment.

Question 7: Are there any general points you wish to make which are not captured above?

25. The issues highlighted in this submission are vital considerations for sectors and businesses in Scotland. However, all the evidence sessions appear to be taking place in London. SCDI would strongly encourage BIS, and others, to hold discussions in Scotland.

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³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32475/12-579-uk-trade-performance-markets-and-sectors.pdf