



Review of the Balance of Competences between the UK and the EU: free movement of goods

British Chambers of Commerce response

The British Chambers of Commerce (BCC) is a dynamic, high-profile and independent business network of 53 Accredited Chambers across the UK, representing thousands of businesses of all sizes and sectors. Local Chambers sit at the heart of the community, working with businesses of all sizes, and representing all sectors. Our mission is to make the Chamber network an essential part of growing business; we do this by sharing opportunities, knowledge and expertise.

We've been growing British business for more than 150 years, providing companies with practical support, useful connections and valuable access to new ideas and innovations. Even though we're not for profit, we're powerfully placed to help those who are.

Introduction

The BCC welcomes the chance to submit evidence to the Balance of Competences review on the free movement of goods. The BCC continue to lead the EU debate within the business community through our quarterly EU Business Barometer and as the organisation that delivers both extensive trade support to British firms as well as representing the interests of British business.

However, we are concerned that the unnecessarily complex questions included in the call for evidence could be preventing some key stakeholders from engaging in this process. We hope that this is taken into consideration for the remaining semesters.

The free movement of goods is an important aspect of EU membership as it provides our members with access to a market of 500 million people with the real ability to move goods. However, attempts to improve the goods internal market must go alongside improving the internal market for services which has barely got off the ground. It is important to remember that the UK is the second-biggest exporter of services in the world and services account for over three-quarters of UK economic output. Consequently, the lack of an internal market for services has created a major gap in the internal market, much to the UK's economic disadvantage.

As things stand, the EU has competency in virtually all Customs Union legislation, with the implementation of customs laws and procedures devolved to national level. We believe that while the balance of competences between the EU and members states in this area is broadly appropriate, more must be done to ensure that Member States take a significantly more consistent approach to implementing and enforcing EU rules.

What do you see as the advantages and disadvantages of EU action on the free movement of goods? To what extent do you think EU action on the free movement of goods helps UK businesses?

The free movement of goods is one of the most advanced and successful areas of activity of the EU. For our members, it provides access to all European markets and to 500 million people with no tariffs and in the context of a single set of legislation. It also eliminates most of the technical barriers to trade within Europe. Around three quarters of the UK's food exports (76%) and half (51%) of the UK's car and commercial vehicle exports went tariff-free to the rest of the EU last year. If the UK were outside the EU and only benefiting from 'most favoured nation' status, UK car exports would be hit by a 10% tariff and van exports by a 20% tariff.

The Internal Market in goods provides our members with a substantial marketplace and the opportunity to source more cost effective and efficient suppliers. For example, a Chamber member who manufactures radiators in the North East of England, has been winning work internally within a global business group because they are more competitive on costs. One of the reasons behind this has been the ability to source cheaper raw material from mainland Europe, including a third of their steel from Belgium.

Some Internal Market rules have also led to greater opportunities for UK business to compete and trade in new markets across the Internal Market. For example, EU procurement rules have allowed businesses to compete for public-sector contracts across the internal market on the basis of value for money rather than where a company is based – at least in theory. The proposed Classic and Utilities Public Procurement Directives would give greater flexibility to contracting bodies to make strategic choices when procuring works, goods or services to achieve 'societal goals'. As they stand, the EU rules are 'grey' enough to permit local content requirements and other non-standard criteria to enter procurement processes. This is a clear impediment to British business doing business across the EU.

Implementation of EU legislation by certain member states is in some cases very poor and the UK – by and large considered as a fair player in terms of implementation of EU rules – is often confronted with less diligent EU partners. A business member, a clothing company, has found that despite product testing to European standards and a large number of different translations for their labelling, they are increasingly coming up against local requirements, such as the French 'Toubon' law proving to be an obstacle to the free movement of goods¹. There are plenty of instances of UK businesses and Chamber members fighting for years to sell their wares across borders; or having to comply with stricter rules than their competitors. For example, one business has been fighting for the past four years to gain access to EU member states that are illegally preventing Hills number plates from being sold in their market. With the help of the European Commission he has broken into one market, but there are many more to go.

The vetting of new technical legislation ahead of adoption by national governments in an attempt to prevent discrimination against operators from other member states needs to be tightened up. Currently, the Commission is only authorised to give an opinion on protectionist national plans, not

¹ The 'Toubon' law in France mandates the use of the French language in all advertisements, workplaces and commercial contracts and some other commercial communication contexts.

ban them outright before adoption. Consequently, the Commission's only weapon if a government ignores its opinion is to apply the infringement procedure, which can take several years to complete.

Many of the regulations that govern the Internal Market in goods are too complex and overly burdensome for SMEs. For example, reporting requirements for Intrastat are so onerous that one business member, a small shoe manufacturer, has one employee spending a day a month filling in forms. Our members also feel that EU commodity codes for export and import are far too detailed. Businesses struggle to complete them accurately, and that it requires one person a day a month of work to complete.

How might the national interest be served by action being taken in this field at a different level (for example, at the WTO), either in addition to or as an alternative to EU action?

Action via multilateral bodies, such as the WTO, do not seem a viable alternative at present, especially given the difficulties faced by the Doha round and the current global rush to bilateral free trade agreements. For our members, the EU customs union is supposed to largely remove border controls within the EU to allow firms to freely trade goods across all Member States. However, in reality businesses are often faced with the adverse consequences of non-implementation of EU customs legislation by member states. British businesses are often at a disadvantage because although the UK is considered to be a consistent performer in the implementation of EU customs law, other member states are much less proactive in this area, leaving British firms at a disadvantage.

At the very least, the EU should consider more effective enforcement of customs union legislation, including providing SOLVIT (the on-line problem solving network for EU Member States) with more resources to deal with customs infringements.

To what extent has EU action on the free movement of goods brought additional costs and /or benefits to you when trading with countries inside and outside the EU?

The EU with its huge market is a global rule maker. Should the UK no longer be a member of the EU it would only partially escape EU red tape. It would probably not be bound to EU labour rules, but it would still have to stick to all EU goods standards in order to be able to sell products to the continent. Indeed, some companies may choose to abide by the EU norms in all their production, even that which is not destined for Europe, simply because of the scale effect of the EU market. Thus the EU rule-set does not necessarily bring additional costs with its product-related rules.

However, many of the rules governing the Internal Market are overly burdensome. This was underlined by a poll of our members which found that it was almost as easy to trade with a range of non-EU countries as it was with the EU itself with 9% of businesses reported regulatory barriers for some non-EU countries, compared to 12% of businesses reporting similar barriers in the EU.

To what extent do you think the harmonisation of national laws through EU legislation (as opposed to international treaties) is helpful or unhelpful to your activities as a business and/or as

a consumer in the Internal Market? In your experience do Member States take a consistent approach to implementing and enforcing EU rules? Please give examples.

From our members' perspective, harmonisation has created instances where member states create an uneven playing field by exceeding a minimum standard set by EU rules, with a disproportionate impact on smaller businesses. A business member, a company selling hygienic clothing and protective equipment to the catering industry, has found problems with French derogations on the use of specific alcohols in hygienic wipes and are very concerned about the Biocides Directive. They have found that even if they meet EU standards in the UK, they must change their formulas to meet French and other standards, thus proving to be an obstacle to trade.

EU rules on state aid are supposed to help ensure that competition in the Internal Market is not distorted. However, in reality, a level playing field does not exist with EU Member States having varying approaches when transferring EU State aid policy into their national systems. The experience of British businesses trading in other EU markets is that their local conventions are routinely assisted, in contravention of EU state aid rules. In contrast, the UK rigorously enforces EU state aid rules and operate in detriment to our own companies.

Effective implementation and even enforcement and redress are key to the effectiveness of the free movement of goods and the Internal Market in general. It would be highly beneficial for the business community if there was a more regular use of mutual recognition schemes or Regulations, rather than Directives. Our members' believe that mutual recognition is the key to better trade in goods across the EU as it allows goods lawfully produced in Britain to be sold in other member states without needing to comply with additional legislation from other member states. The Commission and member states must also speed up the use of mutual evaluation and the Commission should systematically publish correlation tables so that differences in implementation are exposed. There needs to be a more robust complaint system or process of accountability within the EU.

What future challenges/opportunities do you think will affect the free movement of goods and what impact do you think these might have?

To fully unleash the potential benefits of the free movement of goods, a greater focus on further developing the European digital single market would be crucial. The creation of a digital single market is a significant opportunity for the internal market. Though the rapid growth in e-commerce is opening important new opportunities for the internal market in goods, consumers and businesses continue to encounter practical difficulties making cross-border transactions. The EU needs to reform the structure and perhaps even the policy incentives to encourage the use both of technology and cross-border procurement.

There needs to be a move towards a stronger and more effective intellectual property protection that balances the rights of creators and users with reasonable exceptions and limitations on intellectual property rights. Companies in all sectors benefits from a business environment characterised by free information flows, easy entry for new online businesses and a stable predictable legal environment.

The BCC remain keen to engage further as this review progresses. The BCC will continue to poll our members on issues relevant to this review and we will communicate our findings as soon as they are available.