

To: hmrc.balance-of-competences@hmrc.gsi.gov.uk

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Contact: Philip Bicknell

Tel: 024 7685 8544

Email: Philip.bicknell@nfu.org.uk

The NFU represents more than 55,000 farming and growing members in England and Wales. In addition it represents some 40,000 'Countryside' members with an interest in the countryside and rural affairs.

## Government review of the balance of competences between the United Kingdom and the European Union

### Review of the Internal Market: Free Movement of Goods

1. *What do you see as the advantages and disadvantages of EU action on the free movement of goods? 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?*

The NFU has significant interest in the free movement of goods within the EU. Although farmers themselves are rarely directly involved in trade, international markets are vital for both agricultural inputs and outputs. As part of the wider agri-food sector, the free movement of goods is critical. The UK has more than doubled its food exports in the last decade, with exports in 2012 reaching £12.1 billion. Approximately 75% of exports were to other European member states.

From an agri-food sector perspective, the free movement of goods within the EU is also integral to ensuring consumer demand for food is met. The reality is that the UK is only 62% self-sufficient and relies on other countries to supply a proportion of our food requirements. In 2012, more than two thirds of the £37bn spent on food and drink imports was from within the EU.

The Government's review should recognise that farmers and growers operate in a single market with the principles of equal access at its heart. This is especially important for the UK's primary food producers as the European single market in food is the bedrock of the European Union and the location for the bulk of our trade in goods that compete directly with domestic production. There is a persuasive logic to establishing common rules that remove barriers to the free movement of goods and services within this single market and facilitate fair competition. However these common rules should apply the principles of better regulation.

The NFU objective is to ensure that the right framework is in place to allow our members' businesses to grow and remain competitive; thereby ensuring that UK farmers can continue to make a meaningful contribution towards addressing the global challenges that society face. For this to happen, we firstly believe that the operating conditions under which our members operates must be fair. Whilst we operate on the EU common market, we seek a common, level playing field where UK farmers are able to compete on an equal footing with our European competitors, respond to market signals and increase farm competitiveness in a sustainable way. In conjunction with the rules to deliver an Internal Market, rules to establish the free movement of goods in the EU facilitates that level playing field for our agri-food sector and enables UK farmers to benefit from trading opportunities. For an agri-food industry that is reliant on trade, particularly with our near neighbours, this is the key advantage of EU action on the free movement of goods.

The free movement of goods is also relevant when it comes to international treaties and trade negotiations. Given that such free trade agreements are negotiated at a European level rather than a member state level, the EU as a whole has a greater power of negotiation than individual countries.

Of course, there are opportunities to take action at a different level. The WTO already facilitates trade at a global level on a range of policy issues relevant to agriculture including market access, domestic support and export subsidies. Whilst it is important that WTO continues to provide a framework for trade liberalisation, progress of WTO on trade issues at the global level has been slow. Indeed, agriculture has historically been something of a sticking point when it comes to world trade talks. However, it is the rules that the WTO provides with regard to food safety and animal and plant health measures that underpins the global trading framework. Continued progress on setting rules for international trade, particularly around allowing access to the agri-technologies that could improve farming productivity and competitiveness, remains essential if global agriculture is to meet the supply challenge that lies ahead.

At the other end of the scale, there is scope for national decision making on trade. However, the concern is that a unilateral approach by Government would place UK businesses at a disadvantage, adding cost and burden to the trade of goods. Whilst such competence at the national level could facilitate immediate accountability and swift decision making, the risk is that decisions effectively stifle competitiveness. There are some previous experiences that shape this view (see answer to Q5), whilst devolution has added further complexities when it comes to the future free movement of goods from an agricultural perspective e.g. the anti-GM decisions taken by Wales.

2. *To what extent do you think EU action on the free movement of goods helps UK businesses?*
3. *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? To what extent has EU action on the free movement of goods brought additional costs and /or benefits to you as a consumer of goods?*

As outlined in Q1, actions to facilitate the free movement of goods ultimately benefit businesses. The elimination of tariffs, border controls, common rules and standards are all factors that reduce the administrative burden on trading businesses in the long term and simplify trade. Even though the UK is a net importer of food, the free movement of goods has been positive for UK farmers. For example, free access to French markets has been a valuable revenue source for UK lamb, accounting for much of the £350m export trade. Similarly, the EU was the main destination for the £550m of grains and oilseeds exported last year. In some respects, the free movement of goods has also facilitated investment in the UK food manufacturing sector. For example, the economics of food production means that several multinational food manufacturers have consolidated their UK and Ireland processing base. In practice, this has meant closing Irish sites, which tended to be relatively small in scale, serving a market of circa 4 million consumers. Instead, they have invested in their UK manufacturing base, gaining further economies of scale in the process, and serving Ireland through their UK operations.

Without free movement of goods, we would see additional costs faced by trading companies, through greater inspections and an increased administrative burden. For food products, there is also the added risk of damage to shipments from any delays at the points of exit/entry. This is particularly relevant for perishable, chilled and frozen product. On top of this, there is perhaps a heightened perception barrier to overcome – increased ‘hassle factor’ may also act as a deterrent to trade opportunities

4. *What types of EU action would be helpful or unhelpful for your activities as a business and/or as a consumer in the Internal Market?*

The NFU believes that the essential elements of an internal market are encompassed in the following principles: 1) fairness 2) transparency 3) effectiveness and relevance and 4) coherence.

- 1) Fairness – We believe that the foundation of the internal market must consist of a set of harmonised rules aimed ultimately at creating a level playing field and prevent market distortions. In short, if UK farmers are required to face regulatory conditions to access the common market then our competitors should be required to take commensurate actions.
- 2) Transparency – There must be a minimum level of standard to operate on the common market. For agricultural products these should consist of minimum food safety and plant and animal health regulations (SPS) rules, processing methods, product labelling and marketing standards. EU marketing standards inform the producers about the expected product quality; they also enable buyers to agree prices on paper or electronically without having to inspect every lot of the goods in question. Without common standards, trading in commodities would become more complex and costly.
- 3) Effectiveness and relevance – We believe that rules to operate on the common market must be effective in terms of their stated objectives. We support science based rules which have periodic review and sunset clauses.
- 4) Coherence - It is essential that the rules agreed across the market are coherent with each other as well as the objectives of the European Treaties. When considering the impact of action, legislators should consider coherence and the cumulative impact of legislation.

Anything that supports these principles helps UK businesses. For example, the NFU believes that the CMO regulation has been an effective way of ensuring a fair and transparent functioning of the EU Internal Market for agricultural products. Further EU legislation relating to sanitary and phytosanitary (SPS) rules for example, banning the use of hormones in livestock, rules on the control of salmonella and other specified food-borne zoonotic agents and the marketing of plant protection products have further added to the integrity of the common market.

5. *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.*

The NFU has responded to a number of Government and independent inquiries into “red-tape.” The full NFU submissions are available on request. We believe that there are many examples of where the UK Government’s interpretation and enforcement of EU rules has placed UK farmers at a competitive disadvantage. Several examples are summarised below:

#### Tether and Sow Stall Ban

In 1999, the UK Government introduced legislation that banned tethers and close-confinement stalls for breeding sows to improve pig welfare. The UK bans were introduced ahead of EU wide bans on tethers in 2006 and sow stalls in 2013, set by Council Directives 91/630/EEC and 2001/88/EC and Commission Directive 2001/93/EC. The UK went from being around 70% self-sufficient in pig meat down to 40%, losing just under half of the UK breeding sow herd.

In 2008, an EFRA committee inquiry found that “there can be no doubt that the early introduction of a ban on stalls and tethers ahead of most of the EU, and without assistance from the Government, placed a heavy financial burden on the industry. Many farmers are still recovering from the capital cost of the outlay necessary to comply with the welfare standards. It appears that the analysis of the cost on businesses likely to be imposed by the animal welfare measures introduced in 1999 significantly underestimated the capital costs to the pig industry. The Government must accept that its decision to introduce welfare legislation many years ahead of most of the EU was a significant factor in driving many farms out of business. The decision has placed English producers at a serious disadvantage to their EU counterparts, as our predecessor the Agriculture Committee predicted in 1999.”

#### Cross Compliance

The Good Agricultural and Environmental conditions within Cross Compliance is another example of where over implementation has occurred. Defra has defined 19 required standards to fulfil the common EU requirement to prescribe GAEC – the highest number when compared to other member states. These sit alongside 15 common EU-defined Statutory Management Standards. Examples of over-implementation are the GAEC standards that duplicate pre-existing legislative requirements (e.g. tree felling, hedgerow removal and straw burning).

#### The Welfare of Meat Chickens.

This Directive gave member states the option to allow producers to stock up to 42kg/m<sup>2</sup> providing certain high welfare standards can be demonstrated over a sustained period. Defra chose to gold plate the directive and allow English producers only to stock up to 39kg/m<sup>2</sup> meaning that European counterparts, for instance those in the Irish Republic and even within the UK in Northern Ireland will have the potential to get an additional 8% productivity from their farm capital investment.

#### The Environmental Liability Directive

This Directive allows member states to decide whether to extend the scope of the definition of damage to biodiversity to nationally protected habitats and species (as well as those protected under EU designations). 14 MS, including the UK, extended the scope of their nationally designated sites and in England undesignated sites of local importance are also considered in the legislation.

#### *6. Do you think that the EU strikes the right balance between regulating imports and exports and facilitating international trade?*

Much debate could be had about the balance between trade and regulation. However, the reality is that the UK is an active trade partner with many different nations, and this would suggest the right balance is struck. It could be argued that the two are interlinked – that you need regulation to ensure that you can support trade developments.

There are global examples in agri-food where trade policy has arguably been implemented as a tool to control market access. This damages trade, undermines long-term planning and can have knock-on consequences for others. The NFU believes that the EU must continually ensure a consistent and risk-based approach is taken to trade policy development/implementation.

#### *7. Do you think the UK's ability to effectively regulate cross-border movements of goods would be better, worse or broadly the same as the result of more or less EU action? Please provide evidence or examples to illustrate your point.*

Given the variables in the above question, it is difficult to provide a definitive answer. It would depend on where specifically the EU took action, the ability of the UK to respond, the nature of that Government response, the resources available, and could be impacted by the actions of others in the EU. In particular, would a scaling back of EU action trigger the UK to take greater action? Is it feasible that traders could shift their point of entry/exit for goods to another MS, should one MS review how it implements regulations? Arguably, this is why a consistent approach to the internal market is integral to supporting the free movement of goods.

### **Intellectual Property Rights**

*Questions to help guide responses from stakeholders with a particular interest in Intellectual Property Rights:*

- 8. To what extent are specific national rights provided through EU legislation (e.g. Supplementary Protection Certificates) helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market?*

9. *To what extent are specific Community-wide rights provided through EU legislation (e.g. Community Trade Mark, Community Design, Geographic Indicators and Community Plant Variety Rights) helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market?*
10. *To what extent do wider EU rules (e.g. on free movement of goods or services) impact helpfully or unhelpfully on the conduct of your business or your experiences as a consumer in relation to intellectual property rights?*

In relation to IPR issues, the question on the Geographic Indicators is of relevance to the UK food industry. However, compared to other Member States, the UK has made relatively little use so far of. Just 49 products have PDO or PGI status at present, compared to 254 in Italy, 164 in Spain and 200 in France. This may be related to Defra's decision not to support applications for such status through its Rural Development Programme (unlike other MS). Of course, in relation to the thousands of food and drink products stocked by the average UK supermarket, this is a tiny proportion.

In practice, the decision to pursue protected status for food stuffs is a commercial decision, usually taken by a group of producers and/or food manufacturers in a particular region. Given there continues to be interest from the UK to build on the current level of products with PDO/PGI status, businesses undoubtedly view such activity as helpful to underpinning strategic marketing in the EU and even further afield.

An example of where EU activity has not been helpful, and perhaps indicates a waste of resources, has been in its promotion of organic foods. Developing a logo, supporting with marketing material, and even undertaking events in MS have all been funded by the EU. This ignores the fact that organic organisations across MS had already developed their own approaches to supporting the organic sector, reflecting the evolution of the sector, and the business and consumer needs in each region. Of course, there are common European standards that underpin organic certification and therefore free movement of organic goods in the EU. However, there appears to be little rationale for the EU to become involved in promoting organics, particularly given that there are not proven benefits over and above other farming systems (e.g. Integrated Crop Management). For instance, in the Eurobarometer on Europeans' attitudes towards food security, food quality and the countryside, when shown some of the most popular EU/international logos on food packaging, UK consumers admitted to be well aware of the fair trade logo (81%). The EU organic logo scored 22%. Based on this experience, it appears reasonable to support EU efforts to develop a framework for marketing opportunities for businesses based on IPR, but not to actively get involved in promoting specific products.

Community Plant Variety Rights (CPVR) offer support for commercial plant breeders within the EU, providing the opportunity to register varieties and collect royalties from farmers and growers. CPVR provide much of the necessary income for the sector, incentivises investment in R&D and ultimately helps to deliver the much needed increase in productivity that can be delivered through improvements in plant breeding. The legislation offers consistency of production to farmers with regards to quality of seeds, ensuring consistency throughout Europe. However, the application and necessary flexibility of the rights must be viewed in the context of supporting legislation, which can determine the practical implications for trade and product availability within the agricultural industry.

### Future Challenges

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

The internal market and rules surrounding the free movement of goods are firmly established. This facilitates trade discussions with potential partners, offering opportunity to UK based producers in other export markets. There is potential opportunity from the future expansion of the EU, with the existing

rules on free movement of goods already able to give clarity to any new members to help transition, whilst also facilitating trade of existing EU members with any new member states.

Analysts already point to the EU approach to biotechnology effectively isolating the EU from some global trade flows for agricultural products. With agriculture set to face key challenges from climate change, this policy on biotechnology, and particularly the different approaches taken by member states, may prove unsustainable. Similarly, they could prove a future barrier to new agricultural production methods and investment in agricultural R&D. Indeed, the 2013 World Trade Report states that one of the most significant drivers of change is technology and non-tariff measures will gain in prominence and regulatory convergence will likely constitute the greatest challenge to the trading system of the future. In addition, social and environmental concerns are set to increasingly shape trade policies.

### **General**

*12. Do you have any other general comments that have not been addressed above?*

No further comments to add

If you would like to discuss anything in our response, please contact Philip Bicknell, NFU Chief Economist.