

## **Review of Internal Market:-Free Movement of Goods.**

### General comments

Within the EU our Members' trading activities tend to be focussed on the road mode and customs management (as opposed to frontier clearance). In recent months an increasing trend has been noted where BIFA is being contacted by UK hauliers, who are being asked if they undertake EU trucking activities. From many of our Members' perspective, in strictly transport terms there is little difference between moving free circulation goods from London to Manchester than moving the same goods to Berlin.

At a recent meeting it was noted by Members that the EU project is at a half way stage. The UK initially joined the EEC to benefit from free trade, this process has developed further towards closer integration in other areas, but variances in national legislation and application of EU legislation do exist. There are certain regimes where there are sufficient differences to create confusion and delay. Within the scope of this Review, we would draw attention to differences within excise regimes and variances between national prohibitions and restrictions.

There are also cultural differences, between those nations which are facilitators relying on targeted risk based analysis and interventionists who prefer to undertake more physical checks.

Within the EU forwarding sector there are also significant differences regarding the requirements to act as a customs broker. In some countries, for instance Spain and Greece, there is a strict qualification and licencing system and in others such as the UK it is unregulated beyond the need to be legally compliant.

We have limited our responses to those areas where we have direct knowledge.

**Question 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 encouragement of the free movement of goods has been one of the most significant advantages of the EU. However, there are clearly occasions when national industry and specific sectors have been disadvantaged-such as for instance when joining the EEC, customs clearance agents found that they had fewer frontier customs declarations to make. This particularly impacted negatively on those agents located at Channel ports. Negative impacts may stem not just from purely economic policies but also from employment law and wider social policies including sick pay, maternity benefits etc. which allow traders based in other EU MS to undercut British based companies.

## Advantages

- Due to fewer frontier barriers this has led to greater predictability in the movement of goods leading to better planning of production schedules, lower inventory levels and also maximisation of economies of scale. It is felt that this has helped large pan European manufacturers and traders maximise their economies of scale
- As goods in free circulation are not subject to customs duties when crossing intra EU borders cost is reduced because the goods are either duty free due to being manufactured in the EU or having duty paid when entering free circulation. Duties are not due every time goods cross national frontiers
- Rules of origin are simplified with goods being in free circulation if manufactured in the EU or duty has been paid
- As customs formalities are minimised for free circulation goods this reduces administrative and transport costs. Documentary requirements and delays are kept to a minimum.
- The overall impact of these advantages is to drive out cost

## Disadvantages

- There are concerns that the lack of internal frontier controls means that it is more difficult to control trade to prevent fraud, the movement of prohibited and restricted goods-evidenced by VAT and Excise fraud
- In effect this means that it is more difficult for the government to keep a track on goods that they should be concerned with. One of our Members operating trucking operations to and from Poland and beyond has commented that long sections of the frontier were unguarded-increasing the likelihood of smuggling. Once in the EU this would be virtually impossible to detect. Similar comments have been made in the wake of "Horsemeat gate" and the spread of disease in trees and plants.
- Free trade also makes security more difficult to achieve largely due to the reasons detailed above
- Intrastat is still required post departure-this is regarded as an unnecessary administrative burden, accounting techniques and commercial evidence of the movement should be sufficient.

Whilst the UK is a member of the EU, in order to prevent confusion and duplication it is not appropriate to look outside the EU to bodies such as the WTO or WCO. Unfortunately the EU does not always incorporate into legislation these organisations policies as they intended. Security would be a good instance of this where the main thrust of responsibility in the EU is placed on the carrier and in the USA on the importer.

Due to the larger membership and even greater economic divergences with the WTO and WCO there are serious concerns that agreement would be more difficult to achieve and take longer than within the EU.

### **Question 2: To what extent do you think EU action on the free movement of goods helps UK businesses?**

The general perception is that the free movement of goods has benefitted UK business, particularly larger ones who have derived the greatest benefits. It is not so clear as to the benefits for smaller companies and those who do not trade across international frontiers.

Theoretically all businesses should be able to benefit from EU trade, but the official statistics indicate that only 15% of UK businesses are engaged in any form of international trade this is a significant but not decisive percentage. For those not directly engaged in trade, they will have purchased items from third party suppliers including wholesale suppliers and retailers.

Choice, availability and supply have been boosted, but in many cases the same or similar goods are available from outside the EU.

Some UK businesses are adversely affected by the free movement of EU goods because fraud is probably more difficult to detect. We are aware for instance that alcohol fraud is adversely affecting the brewing industry, large quantities of beer on which duty has not been paid is undercutting legitimate trade. We have been led to believe that similar problems exist within the cigarette industry because once the product has been smuggled into the EU then it is easy to distribute the product because of a lack of inspection.

We do not have the precise statistics on legitimate versus illegitimate trade-all we can do is highlight potential problems.

**Question 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?**

Our perception of the main advantages of intra EU trade has been highlighted in our response to Question 1. For goods originating from outside the EU, once imported to being in free circulation the benefits are that duty is not payable again when crossing MS frontiers and also the origin rules have been satisfied. This overcomes complications such as when trading with Switzerland, when goods need to have undergone significant processing to change their nature in order to meet their rules of origin.

A feeling is emerging in the freight forwarding sector that the benefits that have accrued under the current Customs Code will be reduced for the UK to a certain extent when the Union Customs Code (UCC) is implemented. The UK has benefitted from Customs facilitations such as liberal transit rules and not requiring guarantees to underpin certain customs regimes, particularly those with economic impact. These benefits will cease when the UCC is introduced.

Outside the fiscal environment, membership of the EU does provide the mechanism to challenge non-fiscal barriers such as when the UK successfully challenged the French ban on UK beef exports.

Membership of the EU has increased the ability of UK companies to trade freely within the EU thus widening markets. The reverse side is that companies in other countries with lower cost bases have access to the UK market and can undercut domestic based companies. These lower costs may be for fiscal reasons such as the variations in VAT and Excise duty or social costs such as variations between maternity and other social benefits.

Statistics from BIS demonstrate that EU MS trade twice as much with each other as a result of the single market. The impact of this is that per capita income is estimated to be 6% higher than if the UK had not benefitted from this increase in trade.

For private individuals the single greatest benefit is that they can buy goods for their own personal use without the need to pay tax when returned to the UK.

**Question 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?**

From our perspective looking at purely fiscal measures, all taxes and prohibitions and restrictions should be harmonised. We accept that politically this would be difficult to

achieve but from trades perspective there should be commonality of all taxes and regulations that impact on the movement of goods across internal EU frontiers. The reverse side of this would be that individual EU customs authorities would have to act in the same way in individual MS.

We would like to illustrate this argument using a specific example that we have been made aware of recently. This involved a consignment of coffee being transported by a UK haulier from Poland to Germany. In the UK, as far as we have been able to ascertain coffee is not subject to excise duty-in Germany it is and needs to be pre-declared to German customs. The UK haulier when entering Germany had their truck seized and a heavy fine was imposed.

We are also aware of problems stemming from variations in national regulations as diverse as adult literature, replica guns and foodstuffs.

This then brings us onto the very thorny subject of variations in VAT rates between individual MS and how this creates significant problems for companies trading across EU frontiers and seeking to maximise the benefits of such concepts such as centralised customs clearance.

**Question 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.**

Previous responses give a clear indication that harmonisation would be beneficial for EU trade-providing a level playing field. The reality may be somewhat different because so often our perception is that "harmonisation" equates to "dumbing down".

We would like to illustrate this point with the following example. The UK has a fairly old but working customs entry system called CHIEF, which links to trade via Community Service Providers (CSP)s. This gives the UK a significant advantage over some of its EU rivals with regard to processing import and export cargo declarations and controlling the inventory location of that cargo. This system gives government control and allows targeted risk based interventions.

Other EU countries rely rather more on physical checks and interventions by customs officers. In this particular case if harmonisation meant bringing the rest of the EU up to UK standards then we would be in favour. If it meant that our system was "dumbed down" which would increase intervention and slow the supply chain down then the answer would be no.

From our Members representing large pan global forwarders, there are anecdotal comments that there are variations in the enforcement of customs legislation. For instance, there have been comments that there are variations between MS when conducting risk assessments within the Import Control System. These may be because customs in certain MS do not work 24/7 or that there are variances between prohibitions and restrictions.

One of the most significant examples that we have come across in recent months is the interpretation of Temporary Storage regulations between the UK. HMRC are moving towards a stricter regulatory system closer to the German model, which involves transit and withholding entries until goods have been moved from the frontier to the Temporary Storage Facility. In Holland they have established a trial under which the goods move within Temporary Storage obviating the need to use Transit thus speeding the movement of goods.

Also we would draw attention to our previous comments regarding problems relating to variances in different Excise regimes. This indicates how bad the situation could be if the free circulation for other goods did not operate.

Whilst the UK appears to be adopting more rigid processes which it has to be accepted other EU countries also follow, the Dutch are clearly moving towards liberal policies relying on IT systems to control the inventory and cargoes release.

Our final point is that the EU does not always follow international agreements. For instance it has not adopted all the principles of the revised Kyoto Convention on trade facilitation and does not allow a system of duty drawback on Exports. It is even abolishing the current Inward Processing Drawback scheme which will be an additional cost burden to UK exporters.

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

There is a general view that in particular for SME enterprises that it is extremely difficult for them to have their voices heard in Brussels. Our perception is that the EU legislative process is not as structured and transparent as for instance in the UK. Too many processes appear to take place in ill publicised committee meetings and contact is too often via Trade Contact Groups.

From our experience raising complaints and issues via MEPs is not considered effective. MEPs seem to have specific interests and excluding notable exceptions such as Malcolm Harbour it is difficult to find one with specific trade interests, and due to their workload and geographical remoteness to be able to adequately understand complex issues.

It is believed that the EU is very doctrinaire regarding collecting and safeguarding import duty, and there seems to be a movement towards less flexibility-which will increase costs and harm trade. There are particular concerns within the UCC regarding the need to provide guarantees (unless you qualify as an AEO for exemption).

There is also a move towards punishing minor clerical errors with a severity which is disproportionate to the offence. Where it suits the EU they focus that paperwork is in order rather than checking that the goods were correctly processed and exported

For example, the recent European Court of Justice ruling (Case 262-10 Dohler Neuenkirchen GmbH) ruled that the failure to supply a Bill of Discharge within the specified time limit incurs a customs debt under Article 204 (1) (a) of the Customs Code for all goods covered by the Bill of Discharge even if some of the goods had been correctly re-exported and evidence of re-export subsequently provided.

Rather inconsistently there are times when the EU is more concerned with the physical movement of cargo. For instance the EU seems to have an obsession with regard to the physical arrival of goods relative to their "presentation" during the import process and does not seem to comprehend that inventory systems can provide the necessary control and visibility (and now we regret HMRC seems to be stepping back from this position).

The main failing of the EU is that due to its size and diversity is that the law making process simply takes too long. The ideal example of this is the Union Customs Code (UCC) which has taken at least 10 years to pass and due to the impact of the Lisbon Treaty was renamed. Worse still is that there will be now Delegated Provisions and Implementing Provisions to underpin the functioning of the UCC.

This inability to act quickly can put EU businesses at a commercial disadvantage, particularly regarding sensitive dual use goods. For example, the EU dual use export control list still

places a control over cryptography which has been de-controlled at international level via the Wassenaar Arrangement. This means that such goods originating from the EU remain subject to licencing arrangements and controls and the inevitable additional delays and costs, whilst the same goods purchased from the USA are not so encumbered.

**Question 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.**

Ever since the Twin Towers attack, security has become an increasingly important aspect of customs activity. There is a tension between trade which seeks the most liberal trade policies and the minimum of intervention and those parties who seek increased checks to ensure national security and to prevent the smuggling of items such as cigarettes and alcohol.

HMRC figures estimate that alcohol fraud in beer alone costs the Treasury up to £700 million per annum. EU statistics estimate that between 10% and 12% of all global trade involves some form of criminal activity, including shipping stolen goods, smuggling and sending goods that infringed intellectual property rights. It has not been possible to discover the impact on intra EU movements of similar illegal activity-although it has to be accepted that it does exist and the presumption that they are in free circulation diminishes the likelihood of detection.

#### Concluding comments.

BIFA's responses are as objective as possible based on the information available to the Association. Our Members facilitate both intra EU trade and trade with third countries. Our perception is that membership of the EU does allow goods to move more freely than would otherwise be the case, which is a significant benefit. This has to be set against an increasingly bureaucratic EU mind-set, which has to accommodate from the 1<sup>st</sup> July 2013 the views of 28 Member States.

One trade related subject that needs to be highlighted is the benefit of trade treaties. The EU negotiates free trade treaties such as the recent one being currently negotiated with the USA. It has been widely reported this will generate many billions of pounds in increased trade. As part of a large trading block, the EU, it is probable that the UK enjoys greater influence than would be the case if it is was negotiating as an individual nation. From the perspective of countries outside the EU, it is probably more attractive to negotiate with the EU because it is economically a large block and also one treaty can be negotiated rather than individual ones.