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6 August 2013

Dear Sir/Madam

FSB response to the Public Consultation on the Free Movement of Goods

Please find below the response of the Federation of Small Businesses (FSB) to the Balance of Competences Review of the Internal Market: Free Movement of Goods.

The FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party-political and, with 200,000 members, it is also the largest organisation representing small and medium-sized businesses in the UK. Small businesses make up 99.3 per cent of all businesses in the UK, and make a huge contribution to the UK economy. They contribute up to 50 per cent of GDP and employ over 59 per cent of the private-sector workforce.

There are more than four million people in the UK that are either self-employed or run their own business. Although the single European market gives them access to more than 500 million customers and 20 million businesses, the burden of EU regulation falls too heavily on the smallest firms.

The FSB has a diverse membership across a range of sectors, and there are a range of views about the advantages and disadvantages of our relationship with the EU. However, the European market remains the main destination for our exporting members. Our latest research shows that they are also starting to look to countries outside the EU.¹ The EU trade agreements with third countries which open up markets further afield are therefore of major importance to them. However, for most members Europe is easier to access than emerging economies. Furthermore, inward investment enables businesses in the supply chain to benefit from companies from outside the EU that base themselves in the UK to deliver to the European market.

The Government and the EU must do everything they can to further free up barriers to trade, ensuring small businesses have the best support and environment in which they can create growth and jobs. This requires strict adherence to smart regulation principles to create legislation that is proportionate, evidence-based and suitable for all sizes of businesses.

We trust that you will find our comments helpful and that they will be taken into consideration.

Yours faithfully

David Caro

Chairman for EU and International Affairs
Federation of Small Businesses

¹ *Enabling small businesses in the drive for more UK exports*, FSB, June 2013.



**FSB
response to
the
Government
Balance of
Competences
Review:
consultation
on the Free
Movement of
Goods**

August 2013



Introduction

Small businesses are the lifeblood of the European economy, providing more than two thirds of private sector employment. SMEs make up 99 per cent of all businesses in the EU, of which 92 per cent are micro enterprises. The FSB's membership falls firmly into the latter category. The average headcount of an FSB member's business is seven members of staff.² Just over one fifth of FSB members export and the European market is their main destination (88 per cent trade within the EEA).³ Two-thirds of our exporting members export goods, mostly to the EEA, while one third export services.⁴

The internal market offers easy access for first-time exporters with a market of over 500 million customers and over 20 million businesses on their doorstep. The internal market creates legal certainty and attempts to level the playing field through competition rules and harmonised rules. This means that businesses can save considerable cost when selling to EU countries. In theory, 28 sets of domestic regulation are merged into one.

We support the continuous development of the internal market and the liberalisation of trade, including digital entrepreneurship. However, rules should be developed according to the highest standard of smart regulation. Small and micro-businesses have more difficulty complying with regulation than big businesses and suffer more from the cumulative effect of legislation. Almost a third (31 per cent) of FSB members find regulation and enforcement (EU and UK legislation) a barrier to success.⁵ One particular law may not appear so burdensome, but it is the accumulation of burdens that discourages a business from taking on staff or venturing into new markets. Therefore, we believe quality legislation, implemented to the same standard by all the member states, is essential for the common market in goods to thrive and grow.

² FSB 'Voice of Small Business' Member Survey, February 2012.

³ *Enabling small businesses in the drive for more UK exports*, FSB, June 2013.

⁴ Id.

⁵ FSB 'Voice of Small Business Member Survey', February 2012.



Questions

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?

1.1

The advantage of EU action on the free movement of goods for small businesses is that:

- 1) there are no physical or customs barriers;
- 2) legislation around goods is mostly harmonised throughout the EEA (much more than in any other region in the world);
- 3) European product standards guarantee you can sell in every EU/EEA country.

Therefore, the free movement of goods allows small firms to buy and sell their products in 31 countries (EU and EEA) with well over 500 million consumers and over 20 million businesses. Furthermore, the freedom of movement of goods:

- 4) allows small firms to benefit from supply-chain activity from bigger companies that choose the UK as a hub to distribute their products;
- 5) allows small firms to benefit from European (manufacturing) companies that open a branch in the UK;
- 6) means the EU is the world's biggest market, giving leverage in negotiating trade agreements with other countries or regions in the world.

1.2

One of the disadvantages of EU action on the free movement of goods that some of our members tell us about, is the use of standards. They can restrict the activities of small business and increase their costs. While standards help open up the European market by acting as a quality mark as mentioned in paragraph 1.1, it is also very difficult for small businesses to keep up with frequently changing standards. The small-business view on standards differs and depends on how much a small firm is using them. Some businesses see them as a valuable tool to securing public procurement contracts and demonstrating quality, whilst other smaller businesses think the requirements of some standards are too onerous and require inappropriate processes and procedures for their business.

1.3

We would like to highlight that standards should be voluntary and not automatically made mandatory through legislation. They cost money and can be complex. We would like every standard to be created with the small business perspective in mind, so that it is easier to use for those that wish to. Standards should not be agreed for the sake of it and should be simple and cheap to implement, thus encouraging more small businesses to participate in turn, hopefully creating more trade.

1.5

Some small exporters have mentioned bureaucracy around EUR1, EC Sales List and Intrastat. This is the paperwork around certificates of origin and EU preferential rates agreements with certain countries.⁶

⁶ Literals from the FSB 'Voice of Small Business Survey Panel', September 2012.



1.6

EU action on the free movement of goods also allows firms to source outside the UK, often disadvantaging smaller firms. However, in our view, the advantages of EU action in the free movement of goods overwhelmingly outweigh the disadvantages. The free movement of goods is the most essential element of the single market and provides the benefits mentioned under 1.1. We cannot see how the national interest is served by action being taken in this field at a level other than the European Union with its 28 member states.

1.7

The WTO is working to lower or eliminate tariff barriers, increase customs efficiency, improve revenue collection processes and reduce corruption. The FSB supports these efforts, as this will indeed reduce the time and cost of cross-border trade, in particular with third countries. However, the WTO has so far not been able to establish the level of market integration of the European Union, which is way beyond a free trade area.

1.8

The single market requires common (competition) rules with minimum regulatory diversity. Common rules allow products, capital, people, and (ancillary) services to move freely between countries in that market. In addition, a common court and law-making institutions are needed to enforce the rules and ensure fair competition in the market. The European single market provides this, although it is far from perfect. There is no other mechanism that can create this intensity of economic integration and subsequent trade.

1.9

Given our geographical location and the fact that the vast majority of small exporters trade with EU countries, it is clearly in our economic interest to support the European single market, including the free movement of goods, services, capital and persons, and a level playing field to allow small and large businesses to compete fairly. We don't believe the UK's national interest is served by actions from a body that is not able to achieve current levels of economic integration and that has no real enforcement capabilities. Therefore, a body such as the WTO could not be seen as an addition or as an alternative to the EU for regulating *intra-EU trade* in goods. However, in addition to UK and EU action, a body such as the WTO can be helpful in promoting free trade and the free movement of goods worldwide.

2. To what extent do you think EU action on the free movement of goods helps UK businesses?

2.1

We cannot compare business output with a hypothetical situation where there was no EU involvement, nor a single market in goods. However, it is generally acknowledged that the common market, of which the free movement of goods is the most essential element, helps businesses selling their goods and services throughout the EU. It saves them money and administrative burden in the absence of customs duties and with a considerable body of harmonised rules. Our own figures show that the EEA is export destination



number one for our exporting members (nine out of ten).⁷ We think there would have been fewer exporting small firms had customs duties not been abolished and rules not been harmonised.

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?

3.1

We do not have evidence of additional costs from trading with other countries in the EU caused by EU action on the free movement of goods. Obviously, there are costs from complying with EU regulation. However, the counterfactual of what actions the UK Government would have taken had the UK been outside the EU cannot be established. Whatever the source of legislation, whether the UK or the EU, the FSB always insists that regulation must be of the highest standards according to smart regulation principles, based on a full economic cost benefit analysis, in order to limit the administrative and compliance burdens on business, especially small and micro businesses, who find them hardest to bear.

3.2

We refer to paragraph 1.1 for the benefits of EU action on the free movement of goods when trading with countries inside the EU.

3.3

Also, EU action on the free movement of goods translates into trade agreements with an increasing number of countries. This is good for businesses that trade with countries outside the EU.

3.4

We have no real evidence that EU action on the free movement of goods brought additional costs to business when trading with countries outside the EU. However, some small exporters have mentioned bureaucracy around EUR1, EC Sales List and Intrastat. This is the paperwork around certificates of origin and EU preferential rates agreements with certain countries.⁸

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?

4.1

It would be helpful for the activities of our (would-be) exporters and online traders to harmonise rules where they are not harmonised, or to simplify where rules are complicated. The minimum harmonisation clauses in the Consumer Rights Directive is a pertinent example, as well as packaging and posting rules. VAT rules are notoriously complicated in cross-border sales, and we are eagerly awaiting proposals from the Commission to simplify them.

⁷ Id.

⁸ Literals from the FSB 'Voice of Small Business Survey Panel', September 2012.



4.2

Some FSB members have said conflicting requirements between UK and other jurisdictions and complying with various rules and regulations are preventing them from trading within the EU, or are a reason that they don't export. In addition, problems related to VAT in cross-border trade (e.g. threshold, rates) prevent them from trading online.⁹

4.3

Products can move freely throughout the EU but the rules around them can be badly drafted, not fit for purpose, or 'one-size fits all'. We therefore welcome the Commission's efforts to reduce burdens on small businesses through their smart regulation agenda, which insists that its legislative proposals are subject to an impact assessment and that consideration is always given as to whether tailored measures, or even exemptions, are suitable for micro businesses.

4.4

Common rules are needed for the functioning of the Single Market. However, the regulatory burden this places on small businesses must be minimised as far as possible. Therefore the costs and benefits of all actions must be fully thought through according to the 'Think Small First' principles. On all levels policy makers should assess whether legislation is proportionate, evidence-based and fit for all sizes of businesses.

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.

5.1

We refer to question 1 on the level of integration. We have progressed from a free trade area, via a customs union, to a single market with harmonised laws. International treaties take time to negotiate, may not reach that level of economic integration and will be difficult to enforce. Therefore, we think that harmonisation of laws is helpful for the functioning of the single market. However, we insist that these harmonised rules always take small and micro businesses into account when drafted.

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

We have no particular evidence or comments to feed in here.

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.

⁹ *Small Businesses and Online Trading* FSB 2011.



7.1

A situation whereby the UK regulates the cross-border movements of goods is all quite hypothetical. The FSB supports the single market and asks policy makers to do all they can to make it easier for small businesses to access the 500 million customers and 20 million businesses it offers.

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?

We have no particular evidence or comments to feed in here.

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?

We have no particular evidence or comments to feed in here.

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?

We have no particular evidence or comments to feed in here.

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

We have no particular evidence or comments to feed in here.

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

12.1

There are no specific questions on the Digital Single Market in this consultation. However, web-based exporting of goods (and services) is a huge growth area. It is often the first step to exporting for small businesses. Rates of growth of ecommerce are positive amongst the FSB membership, currently 37 per cent of members trade online in comparison with 33 per cent in 2011. In addition to this, around 20 per cent of members are considering or intend to trade online in the future. Initiatives to further encourage the growth of online trading such as improving payment security and reducing costs, are very welcome.

12.2

The Digital Single Market is borderless by definition but not in practice. Goods sold online still attract national requirements, e.g. packaging, delivery, language and information requirements. Therefore, the FSB supports the optional Common European Sales Law (also called the '29th' or 'second' regime), which can be used by small retailers who want to sell their goods online throughout Europe. We see this



European initiative as an alternative to failed harmonisation in other areas of law, for example consumer law.¹⁰

For further information

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¹⁰ Unfortunately, our view on this issue was wrongly quoted in the Single Market Report published on 22 July 2013, note 31.