BALANCE OF COMPETENCES BETWEEN THE UK AND THE EU

CONSULTATION ON COMPETITION AND CONSUMER POLICY REVIEW

SCOTCH WHISKY ASSOCIATION COMMENTS

Overview

The Scotch Whisky Association (SWA) welcomes the opportunity to provide input to the UK government's Balance of Competences review.

The SWA is the industry's officially recognised representative body, responsible for protecting and promoting Scotch Whisky both at home and abroad. The Association's members export to over 200 markets worldwide; in 2012 industry exports were worth £4.27 billion, representing nearly 25% of all UK food and drink exports. (With member companies also owning the import and sales teams in many overseas markets, the real value to the industry and UK plc is far higher.)

In 2012, sales of Scotch Whisky within the then 27 EU Member States totalled more than half a billion bottles, or about 40% of the industry's volumes. The EU is vital to the industry's long term sustainability, both as an internal market and as a strong voice in international trade negotiations.

The trade environment within the EU internal market, in which one set of common rules applies, is immeasurably simpler than the alternative in which 28 different regulatory regimes would operate. The EU rules, agreed with considerable and very helpful input from UK officials and MEPs, impact on almost every facet of trade in Scotch Whisky. These include: spirits definitions; protection of 'geographical indications' (such as Scotch Whisky); labelling; taxation; a standardised range of bottle sizes; holding and movement of excisable products; and environmental issues.

While the internal market is not perfect, the existing arrangements permit the UK Government to help shape the rules which govern it; they also greatly facilitate the resolution of problems arising from the inappropriate application of EU rules. Securing and maintaining an optimal trading environment requires a strong UK presence when legislation is being prepared or amended.

The influence of the EU extends well beyond the single market. The Commission, again with considerable input from UK officials, has been a strong and effective supporter of the industry's wider interests in international trade negotiations whether at the multilateral, regional or bilateral level. It has also successfully secured the removal of tax and other discrimination against Scotch Whisky in third countries using the World Trade Organisation's dispute settlement mechanism. As the world's foremost internationally traded spirit drink, Scotch Whisky derives enormous benefit from the EU's expertise and negotiating muscle in the areas of trade policy and market access globally.

Consequently, the SWA is a strong supporter of maintaining the UK's active involvement within the EU. In the fields of internal market regulatory harmonisation and international trade policy, we see no issues which require subsidiarity or to be repatriated to national level.

In the specific area of competition and consumer policy, there are a number of issues of relevance, as set out below.

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Impact on the national interest

- EU action against tax discrimination within the EU and in third countries has been extremely effective and has enabled the Scotch Whisky industry to compete on level terms with other spirits. Regrettably, however, many EU Member States (at least 15) are still allowed derogations from the broad principle that competing products should be taxed identically. The protection given to national spirits distorts competition and consumer choice and undermines the Single Market.

- Among others, French Overseas Department (FOD) rum benefits from a significantly lower excise tax rate compared to Scotch Whisky. The financial (and competitive) advantage to FOD rum producers (excluding VAT) was worth at least €105 million in 2012, nearly double its 2006 level.

- The tax preferences for FOD rum run counter to EU and WTO tax principles and would doubtless be challenged by the EU if applied by a third country. Disappointingly, it appears that agreement has been reached to renew the derogation for a further 7 years.

- The rum sector in France has grown by over 40% in the last decade (while the total spirits market has declined). The tax preference for the FOD rum sector is worth a further €1 billion. Having unilaterally decided no longer to apply excise preferences in the UK for certain spirits (from the Caribbean), it was regrettable that the UK government was not ready to challenge the far greater preferences for French rum.

- Similarly, albeit it is not sanctioned under EU state aid rules, Greece grants preferential tax treatment to over 80% of its domestic spirits producers, thereby distorting the market for spirits and foregoing significant revenue.

- Numerous EU Member States are permitted to apply lower rates of excise tax on small commercial distillers when the raw materials are supplied by households. These derogations are very poorly enforced, however, and low- or no-tax distillates leak into commercial sales channels.

- The absence of controls and the culture which allows tax-unpaid spirits to be part of the norm has resulted in consumers in many EU countries dying from illegal and/or home-distilled alcohol. In the interests of consumer safety, and fair competition (also with one eye on revenues), we believe any tax derogations should be properly enforced.

Future options

- The Commission is due to review some of the excise tax derogations in 2014 and 2015. We hope this will result in the removal of the preferential regimes, notably reduced tax facilities in countries in the east of the EU.

Conclusion

The SWA firmly believes the UK's EU membership provides significant benefits in improving trading conditions for Scotch Whisky. Scotch Whisky is the EU's most important Geographical Indication spirit, and the UK government has a vital role in ensuring the trade environment is appropriate for our sector and other UK businesses through the EU mechanisms. The Association therefore sees no advantages in altering the current balance of competences in this area, but would advocate stronger action by the Commission and Member States against tax derogations that undermine the Single Market.

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