

**International Chamber of Commerce UK response to the Home Office  
consultation on delivering the Government's policies to cut alcohol  
fuelled crime and anti-social behaviour**

1. The International Chamber of Commerce ("ICC") is a cross-sectoral business organisation which works to promote international trade, proportionate regulation and the rule of law. Our members in the UK include 17 of the top 20 FTSE companies, many other multinational firms, business associations and SMEs.
2. Our response to the consultation focuses on the Government's proposal to introduce a minimum unit price ("MUP") for alcohol products. This proposal raises a number of trade, investment and "better regulation" issues that are of significant concern to international businesses in the UK. Our responses to consultation questions are limited to addressing these issues. As such, we have not provided comment on a number of the questions in the document—such those related to retail issues—which we consider to be outside the remit of ICC.
3. From an ICC perspective, the key issues raised by the consultation are:
  - a. possible inconsistencies with the EU Treaty ("TFEU") as regards the free movement of goods in the Single Market;
  - b. a clear risk of "stressing" the Single Market system and (inadvertently) reinforcing the growing trend for governments to apply health-related measures in a manner that unnecessarily restricts trade;
  - c. the importance of a full and robust impact assessment in line with the Government's Better Regulation principles—and in accordance with the recommendations outlined by the Health Select Committee Report on the Government's Alcohol Strategy.
  - d. the need to ensure consistency between alcohol minimum pricing legislation and the Government's broader strategy to boost the attractiveness of the UK economy as a centre for international business.

***The Government wants to ensure that the chosen minimum unit price level is targeted and proportionate, whilst achieving a significant reduction of harm.***

**Consultation Question 1:**

**Do you agree that this MUP level would achieve these aims?**

4. We remain unconvinced by the evidence provided supporting the introduction of a minimum unit price for alcohol. In particular, we are concerned by the Government's reliance on a single study<sup>1</sup> as basis for its proposals. The flaws in

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<sup>1</sup> University of Sheffield: Model-Based appraisal of alcohol minimum pricings and off-licensed trade discount bans in Scotland using the Sheffield Alcohol Policy Model (v2): - Second update based on Newly available date.

([http://www.shef.ac.uk/polopoly\\_fs/1.156503!/file/scotlandjan.pdf](http://www.shef.ac.uk/polopoly_fs/1.156503!/file/scotlandjan.pdf))

this study have been illustrated by a number of sources<sup>2</sup>; and we note the Health Select Committee's conclusion that it was "struck by how little evidence has been presented about the specific effects anticipated from different levels of minimum unit price".<sup>3</sup>

5. On this basis, it is our view that a stronger evidence base is required to underpin the proposed introduction of a minimum unit price for alcohol products. We consider this to be particularly important given the trade distorting nature of minimum pricing regimes (see paragraphs 9 - 18 below)—and therefore the need to ensure that the policy, if introduced, is justifiable under public policy exemptions to Single Market rules.
6. By extension, it is disappointing to note that the Impact Assessment does not assess any potential impact of the proposal on trade; as well as consistency with the UK's Single Market obligations—and any potential costs arising from this.

**Consultation Question 2:**

**Should other factors or evidence be considered when setting a minimum unit price for alcohol?**

7. There are a number of other factors which we consider important for the Government to consider when deciding whether to set a MUP for alcohol products.
8. Our concerns are set out below:

Trade – consistency with Single Market rules

9. ICC UK has particular concerns that the introduction of a minimum unit price for alcohol may have a significant impact on the free flow of goods within the Single Market. We therefore welcome the Government's decision to consult on other factors to be considered of any possible legislation in this area.
10. Given the importance of international trade to the UK economy—as well as the Government's stated support for enhancing the Single Market—we would ask that trade-related issues are afforded a high priority by the Home Office in considering the workability (and indeed appropriateness) of introducing a minimum unit price for alcohol.
11. Of particular note, there is a fundamental question as to whether a minimum unit price for alcohol—which would result in a price rise of all alcohol products by a minimum of 45p per alcohol unit—would represent a trade distorting measure within the Single Market; and specifically one which might place imports of

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<sup>2</sup> E.g. John C. Duffy and Christopher Snowdon, Adam Smith Institute, ([http://www.adamsmith.org/sites/default/files/research/files/ASI\\_SAPM.pdf](http://www.adamsmith.org/sites/default/files/research/files/ASI_SAPM.pdf))

<sup>3</sup> House of Commons, Health Committee, Government's Alcohol Strategy, Third Report of Session 2012-13, Volume I: Report, together with formal minutes and oral and written evidence, 10 July 2012 (<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhealth/132/132.pdf>).

alcohol at a disadvantage in relation to identical domestic products by cancelling out the competitive advantage conferred by lower prices.

12. Our internal legal analysis suggests that a minimum unit price for alcohol would likely be inconsistent with the UK's obligations under the EU Treaty; in particular it will be in conflict with Article 34 – 36 TFEU.
13. Our concerns are supported by the detailed opinion from the European Commission which was issued following the notification procedure regarding Scotland's initiative to introduce a minimum price for alcohol. In the detailed opinion, the Commission confirms that according to case law of the Court of Justice of the European Union, national legislation imposing minimum pricing in respect of particular products falls within the ambit of the Article 34 TFEU (prohibition on measures having the equivalent effect of impeding imports of products).
14. The Commission explicitly expresses the concern that a MUP would distort markets and place imports at a disadvantage in relation to identical domestic products by cancelling out the competitive advantage conferred by lower cost prices. (See detailed opinion "Communication from the Commission - SG(2012) D/52513 Directive 98/34/EC Notification: 2012/0394/UK" for further detail).

#### Trade – the international context

15. In addition to the questions around consistency of the proposal with UK's obligations under the Single Market, there is a fundamental question as to whether MUP for alcohol products would represent a breach of the UK's international obligations under WTO law.
16. In particular, we consider it essential (at a very minimum) for the UK Government to establish whether the introduction of MUP for alcohol products would be consistent with WTO provisions, especially Article III:4 on the grounds that imports would receive less favorable treatment than competing domestic products.
17. Further, we are particularly concerned by the risk that MUP legislation—if adopted by a major trading nation such as the UK—might set a precedent that could be employed by other states for protectionist purposes. There is, for example, a danger that some states may use MUP to restrict international competition in key sectors (i.e. outside the alcohol sector).
18. Regulatory measures—such as technical barriers to trade and sanitary/phytosanitary measures—are increasingly viewed as a significant obstacle to international commerce. Over the past 18 months we have seen an increased use of public-health and national security grounds to justify ostensibly protectionist policies in a number of emerging economies.<sup>4</sup> It would be worrying

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<sup>4</sup> The 11th Global Trade Alert notes that traditional forms of protectionism—tariff increases and trade defence instruments—account for less than 37% of the worldwide total of discriminatory measures implemented since November 2008. See: Global Trade Alert (2012) *Débâcle: 11th GTA*



if the UK was to inadvertently reinforce or legitimise this trend—either by setting a precedent on the use of MUP which might be employed in a discriminatory fashion by other states; or by testing the limits of Single Market law on the permissibility of trade-restrictive domestic measures.

Impact on the perception of the UK as a location for international business

19. We are concerned about the potential impact of highly interventionist policies—such as MUP—on the perception of the UK as a centre for international business. A number of relatively recent empirical studies have demonstrated a linkage between regulatory uncertainty and low levels of business investment. For example, aggressive antitrust enforcement (and related initiatives interpretable as “anti-business”) have been linked to significant investment fluctuations in the United States in the late-1950 and 1960s.<sup>5</sup>
20. We believe that this issue underscores the importance of a highly robust evidence base and a thorough impact assessment.

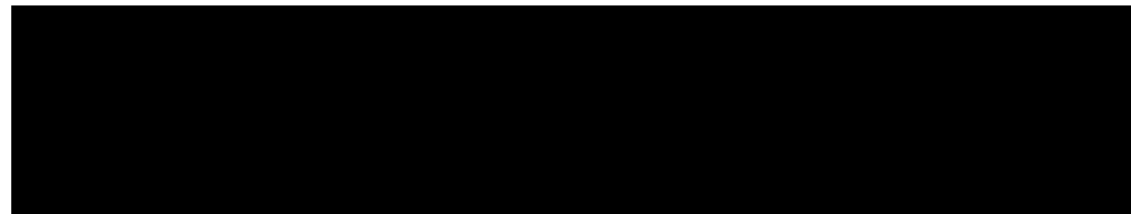
Risk of setting a precedent for other sectors

21. With the proposal to introduce MUP for alcohol products, the Government is seeking to intervene in a competitive market by controlling prices. It is our view that Government should be cognisant about the potential impact of this intervention on the Government’s ability to manage demands for similar measures in other areas of the retail sector. We note that this issue has been explored previously by the Office of Fair Trading.

**Consultation Question 3:**

**How do you think the level of minimum unit price set by the Government should be adjusted over time?**

22. It is our view that further consideration should be given to the appropriateness of introducing a minimum unit price, before addressing possible design options.



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*Report on protectionism*, p. 25 [available at:

[http://www.globaltradealert.org/sites/default/files/GTA11\\_section1.pdf](http://www.globaltradealert.org/sites/default/files/GTA11_section1.pdf)]

For a detailed study of the discriminatory application of TBTs see e.g.: BSA (2012) *How a new wave of trade protectionism is spreading through IT Markets* [available at:

[http://www.bsa.org/~media/Files/Policy/Trade/BSA\\_Market%20Access\\_Report\\_FINAL\\_WEB\\_062012.as hx](http://www.bsa.org/~media/Files/Policy/Trade/BSA_Market%20Access_Report_FINAL_WEB_062012.as%20hx)]

<sup>5</sup> G Bittlingmayer (2001) *Regulatory Uncertainty and Investment: Evidence from Antitrust Enforcement* [available at: <http://www.cato.org/pubs/journal/cj20n3/cj20n3-1.pdf>]