



Public Affairs Commission

Balance of Competences Review

Trade and Investment – Response to Consultation

A. Preliminary Remarks

Founded in 1973, COBCOE is an independent non-profit association with a network that links over 80 British overseas chambers of commerce and business groups across the world. COBCOE represents a core membership of 40 British bilateral chambers of commerce and over 10,000 businesses across 38 countries in Europe, working together to advance international trade and business with the United Kingdom. Through the founding of the global British business network, British Business Worldwide and its Affiliate membership programme, COBCOE links its members and their business members to a further 50 partner chambers of commerce and other like-minded business organisations across the world. We also have a working links with the CBI, the IOD and the British Chambers of Commerce in the UK.

COBCOE's main office is situated in London but its Public Affairs Commission, which is tasked with collating responses to this consultation, is based in Brussels.

We welcome the Balance of Competences review established by the British government . we believe that it can make a serious contribution to the on-going debate as to how the EU operates and how it should work in the future. Unlike most of the respondents to this consultation, since most of its members are located outside of the UK, COBCOE's response is from the perspective of businesses based outside of the UK and trading bilaterally with affiliates or independent companies in the UK and in other parts of the EU.

In taking opinions from our members, we have circulated to all of our member chambers the report and questionnaire provided to us as part of this consultation. The number of written responses back to us have been limited because, in the current economic climate, few businesses can spare the time to answer these detailed questions. We also know that consultations by email have a very limited response rate and that it is preferable to consult through discussions in person. With our assistance and encouragement, some of our member chambers have participated in local workshops and have fed back comments directly to HMG. Notes of these meetings have been sent back directly to HMG and we do not replicate these here.

## B. Introduction

Before answering the specific questions, we should like to make some preliminary remarks:

About 50% of British external trade is with member states of the EU. What goes on in the EU matters, as has been clearly demonstrated by the knock-on effect in the UK from the Eurozone crisis and from the subsequent economic contraction within many parts of continental Europe. This comes at a time when it is vitally important for Britain to increase its export performance.

The internal market for goods and services within the EU is not only a key achievement of the European Union, but also its perfection is of vital interest to the UK. COBCOE fully supports the development and deepening of the internal market and shares HMG's concern that close integration in some parts of the EU, particularly the Eurozone, should not impact adversely the operation and development of the internal market.

It is also important to recognise that an efficient and seamless internal market within the EU, and Britain's unrestricted access to this market, is a highly significant factor in attracting inward investment into the UK from outside of the EU, as Britain is often regarded as a friendly business gateway into this market of 500 million citizens.

There are two other important points to make at the outset:

Firstly, the rules of the internal market cannot be viewed in isolation. For example, the operation of taxation, both direct and indirect, across the EU has an impact on the internal market. The ability to enforce commercial contracts in an efficient way and even on rules on insolvency also have an impact on intra-EU trade.

Secondly, it is difficult to analyse the operation of the internal market without at least addressing in outline some of the institutional issues which need to be considered in the context of how the EU works (and should work in future). New rules, intended to simplify, may sometimes result in more bureaucratic burdens for businesses.

The tendency of the EU to operate through Directives rather than Regulations, aside from complaints of local "gold plating", can result in uneven application of the rules intended to create a level playing field. We recognise that Regulations are more difficult to agree on at an EU level than Directives since, as a matter of EU law, they become directly applicable in each member state, and that there could be arguments for member states to have the freedom to implement EU decisions taking into account local legal structures and local circumstances. But we fear that much of the time member states use Directives since it is a way to disguise genuine disagreements between member states. If that is the case, then resorting to Directives can be counter-productive in the context of establishing a level playing field by actually creating opportunities for individual states to exacerbate and arbitrage differences in applicable rules.

At the same time, we consider that sunset clauses should be incorporated more frequently in new legislation so that policymakers and businesses have an opportunity to review the operation of particular legislation on a regular basis.

Lastly, any comment on the operation of the internal market cannot ignore the clear choice that has to be made within the EU between mutual recognition and harmonisation. In practice, it can be very difficult to ascertain which is the best solution. To the extent that the EU is visualised as a seamless internal market, this would argue for harmonisation with common rules applying across the entire economic area but then only where these implemented predominantly through Regulations and not Directives as otherwise business has to bear a significant compliance cost without any certainty of the objective of a common standard being achieved. If this is not realistic, we would strongly argue for a system of mutual recognition of national standards.

With these preliminary remarks, we now turn to the individual questions raised in the consultation.

### C. Responding to the Consultation

1. What are the advantages and disadvantages of the EU's competence over trade and investment, particularly in relation to international trade and investment negotiations?

*We have no doubt that there are significant advantages in the EU negotiating on Trade and Investment matters with other countries on behalf of the EU as a whole. Britain's interests are best served in this case by being part of a 500 million plus bloc of consumers rather than negotiating such agreements on its own. The strong negotiating power of the EU acting as one entity also affords protection to European business where non-European companies have been brought to book, either at a national or an EU level for anti-competitive behaviour as well as other states seeking to enforce their laws extraterritorially.*

*The disadvantage of such pooled representation is the obvious one, namely that although Britain will play its part in ensuring, as much as possible, a free trade, open market negotiating mandate, other member states may have a different approach. This was shown recently in the determination of the French government to carve out from the EU/US negotiations in relation to the Transatlantic Trade and Investment Partnership, a protection for the French domestic film industry. The inevitable compromises that will be reached on the EU negotiating mandate (even before the real discussions begin) will cause British industry problems and we believe that the British government should take a robust approach in these situations. Even if a degree of protectionism is reserved, it should still be open for individual member states to waive such protection. Therefore, even if France wishes to exempt some of its film industry from foreign ownership or create restrictions on US films being distributed in France or US companies from taking control of French film companies,*

*this should not be imposed as a similar restriction on the British film industry if it wishes to keep its market open, provided only that there are reciprocal rights.*

*Nonetheless, we accept that negotiating as a bloc obviously will result in Britain having to compromise some of its free trade principles. But the compromises have to be as minimal as possible, facilitative and not prescriptive, and this should rarely arise when there is a clear engagement, both in London and in Brussels, to work with the business communities across Europe to put the British position.*

2. What are the advantages and disadvantages of having trade and investment promotion largely at the national level? How well has this delivered on UK objectives?

*Whilst from a distance, we understand that “Europe” can just be seen as one investment location, we are strongly against the EU taking a role in promotion of trade with, and investment into, the EU other than a supportive one. On the one side, it is generally beneficial to create a degree of competition between different regions in Europe for inward investment and for exports and, on the other, the EU will be in a hopelessly conflicted position where it has to adjudicate between representing the interests of different regions across the EU.*

*Where we see a more specific role for the EU is to provide general support for the promotion of Europe as a whole, for example, providing financial and other support to European bi-lateral chambers of commerce outside of the EU and ensuring strong links between the EU representation in major capitals across the world outside of the EU and those local European chambers of commerce. There is much ignorance outside of the EU as to how the EU actually works, both politically and economically, and it would be very helpful, particularly in terms of attracting investment into the UK, to be able to educate the non-EU business community on the areas of commonality within the UK (for example, principles of company law, enforcement and recognition of judgements within the EU, etc.).*

3. What are the advantages and disadvantages of the current division of competence over export and import controls and export credits?

*For reasons given above, we have no objection to the EU taking common positions on behalf of all member states in international trade negotiations at various fora including the WTO and the OECD. But this can only be on the basis that it is not restrictive and is focused primarily on blocking discrimination against companies based in EU-member states when trading outside of the EU. We do not support the EU promoting a protectionist agenda.*

*ECAs generally are national competences and should remain so. Moreover, generally, export credits have limited value to SMEs. Oftentimes, the conditions imposed by ECAs make it easier for companies simply to request an irrevocable Letter of Credit from their customer.*

*There is a proper role for EU agencies, such as the European Investment Bank, to support trade and investment in certain circumstances outside of the EU. We hope that this can continue and be publicised better even to British and other businesses across the EU as additional trade support opportunities. On the other hand, we are firmly opposed to the creation of a European “EXIM” Bank in place of national ECAs. This potentially will create conflict for allocation of credits and resources within the EU where still the bulk of the resources are being held in member states rather than at the EU level, as well as potentially a new level of bureaucracy, in turn requiring more resources to be made available to the EU from taxpayers and businesses.*

*We have no objection to import and export controls being driven from Brussels rather than from individual member states as long as these are not used to create artificial protections for businesses within the EU and subject to the usual public policy constraints at a local level. Individual countries should also retain their ability to block imports and exports on public policy grounds.*

4. What are the likely advantages and disadvantages of moving from national to EU competence in relation to investment protection?

*We do not support the expansion of the EU competence in terms of foreign direct investment into the EU. We believe that this is handled perfectly correctly at a national level.*

5. How well are the UK objectives met and interests taken into account through a) EU trade defence investigations, and b) the EU representing the UK in trade defence cases against the EU and more generally in trade disputes with other WTO members?

*We generally favour EU competence on trade defence matters, particularly in relation to relationships with countries outside of the EU. Again, however, the challenge will be the mandate given to the European Commission which, in our view, should still be biased towards free trade. It is generally very difficult to determine at what point very cheap supplies of goods into the EU become “dumping”. We should not lose sight of the fact that as a trading bloc, heavily engaged in global trade, where many resources have to be imported into the EU, low costs of these resources actually also make businesses which are utilising those resources much more competitive and are also beneficial for local consumers. So it is important that the EU mandate of trade defence does not become protectionist.*

6. What future challenges/opportunities might we face on trade and investment policy and what impact might these have on the UK national interest?

*We see one of the great challenges is reconciling what can become a two-speed Europe (countries within the Eurozone and countries outside) with a free and open market within the EU as a whole. On the one hand, there may well be rules imposed within the Eurozone which can have a negative effect outside but within the EU. A good example of this has been*



*the proposed application of a Financial Transactions Tax within some or all Eurozone countries.*

*Cash transfers within the Eurozone, to support its weaker members, also represent potentially unfair support of some economies against others. This, in turn, distorts not just the economic conditions locally, but also the view that foreign investors have of the various states within the EU as locations for investment. On the other side, the recent insistence of governments that private investors in individual Eurozone countries and their banks take heavier write-downs than member states or EU institutions also represents unfair discrimination against businesses.*

*The Eurozone crises have also demonstrated that there remains a significant lack of convergence between the various Eurozone economies in turn causing tremendous strains, both within the Eurozone and for businesses in countries dealing with businesses in that zone. The recent move, prompted by the stronger EU states, to impose more diligently a fiscal discipline on member states, is generally to be welcomed, but it has been done so late that the stable door is being closed long after “the horse has bolted”. These are mistakes which countries (and taxpayers) outside of the Eurozone should not be required to pay for, directly or indirectly.*

*In terms of institutional changes, we are not so far impressed with the increased powers given to the European Parliament, creating even more bureaucracy and cost for the European taxpayer, a tendency of the EU to become involved in areas where involvement is not really necessary. It also slows any necessary reforms. For example, we are appalled that about 3,000 amendments have been put down in the European Parliament to the proposed revision of the 1995 EU Data Protection Directive (which should have been revised years ago). This also continues the fallacy that the only way to solve problems is to create “more Europe”. On the contrary, we believe that there should be much more emphasis on looking more radically at areas where implementation of the principle of subsidiarity would be beneficial, pushing down decision making away from the Council of Ministers and the European Parliament back to member states where this is not inconsistent with the internal market. Why, for example, should data protection be regulated at all at an EU level? What we would argue for, therefore, is a more focused Europe, rather than the European institutions becoming involved in every aspect of society and business.*

*We have no doubt that there are highly dedicated and capable members of both the European Commission and the European Parliament and there is no doubt that both have a poor reputation in the UK and in other parts of the EU. Specifically, when it comes to looking at the additional powers now given to the European Parliament, it remains clear that many MEPs are not able to “connect” in any meaningful way with their constituents. This may be to do with proportional representation systems imposed as part of the electoral system, resulting from multi-member constituencies and this, in turn, creates a significant and undesirable distance between both the business community and the electorate generally and legislators and administrators in Brussels. This is more fundamental than a general “democratic deficit” and we fear that if this lack of connectivity is not addressed in future*

*institutional reform, it could actually lead to a degree of disintegration of the EU at some point in the future. The challenge, therefore, will be to create a mechanism to defend European trade and investment interests without overwhelming national strengths and local diversities.*

*Moreover, the “elephant in the room” is to what extent EU institutions can be utilised to support Eurozone legislation or rules (and why should businesses outside of the Eurozone be required to pay for this additional role?).*

*In terms of EU representation outside of the EU, we also have some misgivings. Whilst we agree that the EU should clearly have representation, particularly in relation to trade matters, we doubt if this can achieve much in terms of foreign relations or defence without there being common policies in both of these areas, which clearly, at the moment, there are not.*

7. Are there any general points you wish to make which are not captured above? We would welcome any specific examples and quantitative evidence where possible.

*Generally, we would very much argue for more transparency at the EU level, more consistency in application of EU law and at the same time a greater focus of EU activities in particular areas rather than, as it sometimes appears, in all areas. There also has to be a recognition at the European institution level that increased regulation is actually anti-competitive, and the bureaucracy and overbearing legislation creates potentially major costs for the business community, in turn stifling competitiveness and innovation.*

*In our view, the involvement of the EU in trade and investment should always be calibrated against a test of proportionality and subsidiarity. Where will the engagement of the EU make a real positive difference for the community as a whole. And if that cannot be demonstrated, then it should not be engaged in that specific area.*

*The points in our response to question 6 raise some real dangers for the UK. The problems of the Eurozone, the continuing tendency of the European institutions to try and seize more areas of competence with the inevitable growing cost and bureaucracy at the EU level, at a difficult economic time, can create some serious negative points for the EU, whereas we have little doubt that British departure from the EU, as a result of this impression within the UK, would have a significant negative impact on the British economy and British business generally.*

*Finally, whilst many of our members may well be personally committed to the concept of a European Union, and indeed an “ever closer union”, business generally is quite dispassionate about how the EU should work. If it is, net, a drain on the business community across Europe rather than delivering some significant benefits to the community, then it represents a drag on the creators of wealth and threatens to stifle the re-development of a dynamic, innovative and competitive business sector with additional costs and*



*administrative burdens. Both existing and planned EU legislation should always, in our view, be measured against this yardstick.*

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