

CBI response to the Balance of Competences Review Trade and Investment

August 2013

About the CBI

The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi, the CBI communicates the British business voice around the world.

The CBI welcomes the opportunity to provide evidence to the Government review of the Balance of Competences between the United Kingdom and the European Union on Trade and Investment. Our response focuses solely on the call for evidence questions.

Executive Summary

The UK and EU's interests are well aligned on most external trade and investment issues, negating arguments that the UK would more effectively represent its global trading interests as an outsider to the EU. The EU, its 25% share of global GDP (bigger than the US), and the enticement of the Internal Market to key non-EU trading partners provide a launch-pad for the UK to advance its economic interests at the multilateral level in Geneva and at the bilateral level through the external FTA agenda.

Looking ahead, the EU must ensure that no stone is left unturned in pushing for new liberalisation commitments by all WTO members at the global level, while also delivering on the bilateral FTA agenda, redistributing resources if necessary, to ensure that opportunities to open up third country markets are fulfilled. To fully maximise its potential, the EU's Internal Market must be effectively used as a springboard to break down conventional and regulatory barriers to trade and bring us closer to growth markets across the rest of the world as part of a coherent policy agenda that can be delivered without any additional public expenditure. In addition to the EU's Common Commercial Policy, there is still a huge amount that the UK can achieve at the national level to help UK exporters and put the UK on the map as the best place to invest in the EU.



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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?

In international trade and investment negotiations at both the multilateral level and bilateral level, the UK benefits from the negotiating capital that comes with being a member of the largest trading bloc in the world.

Multilateral level

When the UK joined the EEC in 1973, it became part of a customs bloc with a common external tariff and commercial policy. Since that date, the EEC/EC/EU has driven forward negotiations at the GATT and subsequently the WTO that have helped to bring down worldwide barriers to trade in goods and services, and create a binding rulebook for global trade backed up by robust enforcement mechanisms. This has helped UK businesses to import and export more profitably to non-EU markets.

In the current context, the failure to deliver on the Doha Round since its launch in 2001 has been a constant source of frustration for the CBI. However, even though deliverables from Geneva have been scarce over the last decade, the EU has been a significant pro-free trade voice at the WTO, currently pushing to salvage results from the Doha Round such as a potential agreement on trade facilitation, supporting expanded coverage of international 'plurilateral' agreements like the Agreement on Government Procurement (GPA) and Information Technology Agreement (ITA) and the creation of new 'plurilateral' agreements like the Trade in Services Agreement (TISA), promoting Russia's accession into the WTO in 2012 following a comprehensive bilateral negotiation, and defending industry on those occasions when UK and other European business interests are negatively affected by non-WTO compliant trading practices through dispute settlement proceedings at the WTO. Given that the UK and EU have been able to advance a predominantly shared agenda on multilateral trade issues at the WTO in recent years, the added clout that the EU provides has advanced the UK's global trade ambitions and acted as a counterweight to rising protectionist policies in some countries around the world.

Bilateral level

In the wake of slow progress at the WTO, the trade policy focus of the Barroso II Commission has been to advance the negotiation of bilateral free trade agreements with strategic economic partners, a sensible move that has been strongly welcomed by the CBI. Again, UK and EU interests on the negotiation of bilateral FTAs have been well-aligned. Of particular note is the ability for the EU to negotiate more far-reaching agreements than would be practicable or indeed possible for the UK. For example, it is difficult to envisage how the UK could succeed in breaking down regulatory barriers to trade with a major third country in its own separate trade negotiation without there being recriminations in our terms of access to the Internal Market (e.g. in a simple example, the UK could not negotiate mutual recognition of standards with the US without compromising trade links with the EU over the long term).

Furthermore, the current wave of on-going EU FTA negotiations and recently concluded EU FTAs are 'WTO consistent' and negotiated at a very high level of ambition by the EU, getting beyond standard trade barriers incurred at borders, and dealing with very difficult but important issues such as

opening up trade in services, access to public procurement markets, TRIPS+ rules on intellectual property rights, and breaking down non-tariff barriers. The draw of greater access to the Internal Market provides an incentive for other trade partners to negotiate with the EU on these topics. Given that trade negotiations are full of trade-offs, both at the technical and political level, there is a powerful argument that the EU would have more to ‘trade-off’ than the UK in the event that the UK were to carry out its own trade and investment negotiations. In addition, bilateral negotiations create opportunities to achieve results to reduce regulatory and standards divergence that may not be realistically achieved within WTO negotiations, but which can eventually feed into regulatory frameworks at the global level, in very much the same way that many EU regulations in the past have subsequently fed into the creation of key global rules and standards.

There are some drawbacks to the EU’s competence on UK trade and investment that have been identified with respect to bilateral negotiations, but these should not be exaggerated. There are some constraints to the process, because even with the possession of a veto in Council (unanimity still applies in practice post-Lisbon given the content of negotiated agreements), the UK does not have exclusive ownership over the negotiating strategy to be pursued, does not draft or vote on any relevant Resolutions that are adopted by the European Parliament, and cannot control the speed at which negotiations are conducted and at which agreements are ratified in the event that negotiations are successfully concluded. There are important policy implications that should be derived from all these points – namely that the UK should be very active in Europe to ensure that its interests are fully reflected at all stages of the negotiating process. With all the above points, the CBI considers that the UK has generally been effective in getting its key interests represented on the priority external trade and investment policy issues of most relevance for UK growth and jobs.

Overall, on the basis of evidence accumulated from our broad membership, the CBI considers there to be an overall net benefit to the UK economy from the EU’s competence on trade and investment, the full potential of which is yet to be felt. Currently, nearly 30% of EU external trade is covered by a free trade agreement, but this figure would more than double to 68% if the EU successfully concluded all on-going negotiations, all of which can be expected to be negotiated at a high level of ambition. The growth and jobs boost to the UK if the EU successfully delivers on this agenda will be very significant, and is estimated to give a 2% boost to annual GDP for the EU as a whole, and support an increase of 2 million jobs related to trade across the EU. While independent UK impact assessments have not been carried out for every EU FTA under negotiation, this is a useful reference point to the potential benefit to be accrued to the UK economy as well. In many cases, the decision for a CBI member to export in a particular market or invest in a foreign business fully depends on the provisions that can be negotiated in a free trade agreement by the EU.

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?

The current division of competences allows the EU to set the parameters for market access and rules through the Common Commercial Policy and trade agreements such as FTAs, and for the UK to compete with other Member States on trade and investment promotion to win business in overseas markets. The CBI considers this to be an optimal approach, allowing the UK to focus its trade promotion activities according to our sectoral strengths and weaknesses in accordance with a long-term international strategy, whereby the Government and relevant stakeholder associations can

target geographic locations where the UK has a particularly strong foothold, or fast-growing economies where the UK is currently underperforming.

We feel there is still much work for the UK to do at a national level to reduce the risk perception associated with exporting overseas and to increase the presence of UK business in new markets. The CBI's April 2013 report *'The Only Way is Exports'* delivers key recommendations on how to increase exports, including on access to export finance, tax incentives for SME exporters and embedding plans to boost export performance in all government sector strategies.

We feel the UK is better placed than the EU to achieve further progress on the trade and investment promotion agenda, given that it is very difficult to see how an adequate level of focus and emphasis on practical and meaningful business links for UK businesses, particularly for UK SMEs, could be established at EU level. Although there have been various forays into trade promotion activities by the European Commission such as EU trade missions, we have yet to receive any positive reactions from these. Furthermore, while a prosperous Europe is in the UK's interests and we need to support and facilitate inward investment into the EU as a whole, the UK also needs to make sure that the UK is the most attractive destination within the EU for foreign direct investment, and this can only be done if the UK sells itself as the best place to invest and carries out the required mix of policies to back this up (e.g. see 2011 CBI report *Making the UK the Best Place to Invest*).

The CBI therefore argues that the UK should be pushing the EU to focus on breaking down de facto market access barriers of third markets at both the multilateral and bilateral level, and at the same time should focus on delivering on the trade and investment promotion agenda, utilising the vast range of resources at its disposal to stimulate exporting activities by UK-based companies overseas and help them to establish a foothold in key markets, as well as to attract overseas investment in the UK.

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

Export restrictions imposed as sanctions that are applied by all Member States towards a specific third country create a level playing field across the EU, and a global approach on sanctions at UN level is optimal when achievable. Ensuring close alignment with other major trading partners on export controls for dual-use items like the US is also in the interests of UK business. Some concerns have been raised by CBI members on dual-use goods in relation to procedural problems and delays with the granting of license procedures within the UK.

On the EU competence of import controls, sanctions applied by the EU as a whole again creates a level playing field and as with export restrictions, co-operation and alignment with other major trading partners to ensure a global approach is the optimal outcome. The CBI is against import licensing measures with the exception of those that are strictly necessary (i.e. as per current practice, e.g. firearms) and is concerned that these are systematically being used by some trading partners as tools of protectionism.

The CBI supports the current system whereby each Member State has their own Export Credit Agency. In the survey conducted for the CBI's April 2013 report *The Only Way is Exports*, CBI

members identified access to finance as the top government priority for business action to boost exports, and the report contains a number of recommendations in relation to export finance.

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

The UK must protect the high levels of protection present in existing UK bilateral investment treaties when the EU negotiates stand-alone bilateral investment agreements (e.g. China) or integrates new bilateral investment protection provisions into FTA negotiations (e.g. Singapore, India). A failure to do this would create a clear disadvantage to the move to EU competence post-Lisbon Treaty, and it was important that the UK emphasised this point in the EU negotiations on the ‘Grandfathering Regulation’. If new EU BITs can re-enforce existing commitments taken by countries where the UK already has a BIT in force, then there is potential for renewed legal certainty to businesses that wish to expand their operations overseas.

An interesting part of the move to EU competence on investment protection concerns the possibility to extract new commitments at the pre-establishment phase, which has fallen outside the scope of standard UK bilateral investment treaties. In this regard, the Commission’s recent proposal to launch negotiations for a stand-alone investment with China could provide new opportunities to formally break down investment barriers. However, development of a clear UK strategy on how to engage with EU stand-alone investment agreement negotiations is required to ensure success.

Investment protection agreements at EU level also have the potential to support overall inward investment into the EU, and as a result, the UK. A simplified EU legal framework for investment protection theoretically provides greater clarity for inward investors compared to the multitude of BITs currently in force, and could therefore potentially support long-term investment in Europe. This could be beneficial for European competitiveness in the long term, and could be supportive for UK business, however the essential pre-condition is that negotiated agreements are consistent with UK best practice and the UK is fully engaged in negotiations to ensure that investor certainty is not compromised.

5. How well are 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?

EU competence on the complex subject of trade defence is necessary in order for the Common Commercial Policy to function effectively. The EU has a good track record of defending its cases against other trading partners at the WTO. However, presenting a united EU policy on trade defence is clearly challenging for many reasons, including the divergent positions taken by Member States as well as a broad spectrum of interests within the business community.

As a representative pan-industry business organisation, the CBI sees three major challenges regarding the effectiveness of trade defence instruments (TDIs) that the UK should advance in Brussels in order to ensure that UK interests are taken into account and to introduce greater confidence and credibility into the EU’s TDIs.

The first concerns transparency with the use and application of TDIs, including decisions as to whether investigations are launched and what level of duties are applied. Given that key decisions

are made on the basis of protected confidential data, as much clarification as possible is required from the Commission to Member States and other interested parties in order to justify decisions that are made. This is necessary to instil confidence in the robustness and evidence-based nature of EU trade defence policy. The evidence base must be as clear and transparent as possible, and greater clarity is required about elements of the TDI process that contain grey areas and for some stakeholders, an element of subjectivity (e.g. calculation of duty level accounting for Union Interest Test).

Second, there is currently an absence in long-term strategic thinking at EU level and a lack of global co-operation with other trading partners in relation to the use of TDIs against third countries, particularly when it comes to complex issues such as raw material distortions and subsidies. As previously stated, the object of extensive, thorough trade defence investigations should be to ensure that decisions are made on a basis of solid, factual, and indisputable data – i.e. investigations should be transparent and fully detached from political influence. Following the investigation, particularly when the economic stakes are high, there will inevitably be wider additional political considerations to account for, including both within the EU due to agendas pushed by certain Member States, or outside the EU due to the alternative viewpoints of third countries and the potential for retaliatory measures to be taken. While understandably difficult to achieve, a more consensual approach within the EU aligned with that taken by other key trade partners on the use and application of TDIs would help to deal with global challenges against WTO non-compliant dumped and subsidised trade.

Third, following on from the previous point, it is clear that some Member States will continue to push a very defensive agenda on trade defence at EU level, potentially even going as far as calling for the full non-application of the lesser duty rule for all trade defence cases. The CBI stresses that balance needs to be maintained within the TDI system for industrial producers, users, retailers and consumers, and the CBI stresses that under no circumstances should TDIs be used as tools for protectionism as a result of weak competitiveness, as this will lead not only to a spiral of tit-for-tat TDI investigations and measures, but also a spiral of declining competitiveness within the EU and ultimately the UK.

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

Some key challenges on external trade and investment policy include:

- The UK Government needs to ensure that other Member States and the EU institutions themselves continue to support UK and European business interests by continuing to drive forward an open trade agenda, being fully supportive of significant FTA negotiations such as those currently under discussion with the US, Japan and other key markets in Asia and Latin America, while also retaining the EU's market openness. In some circumstances, more creativity to unlock longstanding negotiations may be needed, though the principle of only signing off deep, comprehensive agreements with a very high level of ambition is a principle that the CBI fully supports. Focus needs to be on securing results from trade negotiations with strategic markets that make a practical difference to businesses, including measures to reduce the application of divergent rules, standards and regulations across the world.

- Following European elections in 2014 and the formation of a new College of Commissioners, the UK must ensure that open trade policy, boosting competitiveness, and increasing productivity remain at the forefront of the EU's long-term growth strategy. Closed markets, and in particular, any EU proposals that reduce the existing level of openness of the EU's market are not substitutes for weak competitiveness. It should be noted that there are some proposals of this nature at various stages of the Ordinary Legislative Procedure.
- The WTO faces a major challenge to stay globally relevant in the wake of a very long round of negotiations that has yet to deliver on its agenda. The 'single undertaking' approach and lack of political compromise and engagement at crucial times has so far blocked progress. However, it is important to stress that the WTO and its rules-based mechanisms remain a key force against protectionism, and the credibility of the multilateral trading system is essential to maintain. WTO members need to urgently demonstrate how the organisation is going to move forward in order to preserve the reliability and treaty-based disciplines of the organisation.

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.