

Supplementary written evidence submitted by the Scotch Whisky Association (TB20)

Written evidence on the Trade Bill: Public Bills Committee:

The Scotch Whisky Association has 68 member companies. Scotch Whisky is the UK's biggest food and drink exporter - £4billion in 2016 - and the largest contributor to the balance in trade in goods of any sector in the economy.

Our industry is Export dependent - over 90% of production to around 180 markets.

Our industry has significant trade policy experience - negotiations (multilateral and bilateral), market access and trade disputes.

Executive Summary

1. For future trade policy our strong view is that inclusive and transparent processes are vital. This applies equally for the legitimacy of the Trade Remedies Authority as it does to UK trade policy more widely.
2. The UK must have a formal mechanism for government to consult stakeholders - Ad hoc will not work. It is disappointing that this is not covered in the Bill. We look forward to further legislation in this area.
3. For current EU agreements we support continuity in the simplest way possible. 10 % of our exports go to countries covered by EU agreements. These include Colombia, Korea, Morocco and the Dominican Republic. They give tariff elimination, removal of non-tariff barriers and GI protection worth millions to our member companies. Any gaps in those benefits should be avoided to support jobs in the UK.
4. Overall we are supportive of an open and ambitious approach to global trade and look forward to properly consulted, scrutinised and implemented trade agreements with major markets such as India and China when the UK has an independent trade policy.

Detailed Evidence

General comments

5. It is difficult to see the full connection between the Bill and the Trade White paper. The Bill issued the day after the Trade White paper consultation closed so won't include the comments submitted. The Bill is much more limited in scope than in the White Paper. This leads to the assumption that there will be further legislation on many of these topics in early course. We understand that

not all issues need primary legislation, but we would welcome the inclusion of structured stakeholder consultation in this Bill to give a firm footing to that concept.

6. The Committee asked about Geographical Indications. Scotch Whisky is a Geographical Indication. The WTO TRIPS agreement requires all WTO Members to provide GI right holders the means to protect their GI rights. Many countries do so by providing a GI register which allows interested parties to apply for recognition and protection. The Scotch Whisky industry has taken advantage of that in 30 countries outside the EU, with several applications pending.
7. Another route is through recognition as a GI in bilateral agreements. Recognition of Scotch Whisky as a GI in EU FTAs makes it easier for the SWA to enforce its GI rights in the country in question. However, in no market is it the only tool available and in no market is Scotch Whisky a generic term thanks to the industry's long standing efforts. The SWA is taking the necessary action to safeguard the position in markets where Scotch Whisky is currently recognised under an EU FTA, should any FTA not be rolled over post-Brexit (for example, in Korea we have applied to register Scotch Whisky as a certification trade mark), to ensure there will be no material impact on the protection of Scotch Whisky in those markets.
8. The following analysis comments on the Trade Bill's provisions in more detail:

Part 1

2. Implementation of International trade agreements

- i. Continuity of current EU trade agreements is vitally important to us. 10% of all our exports go to markets covered by EU trade agreements. To a diverse range of countries such as Colombia, South Korea, Dominican Republic and Morocco.
- ii. We believe the wording in the Trade Bill represents the basics required to allow the UK to maintain those agreements for the UK once we leave the EU. For existing FTAs only, there will not be time for the detailed consultation we would want to see for new UK trade negotiations and UK trade policy generally. We can understand a limited parliamentary process to maintain immediate continuity. But only if there is a commitment to review the balance of these agreements post-Brexit by a specific date, say five years.
- iii. We look forward to separate legislation, in due course, setting out a much more inclusive and extensive consultation and ratification process for future UK trade agreements.
- iv. Our experience of trade agreements is that the correct implementation is vital. Failure to implement and enforce agreements correctly can lead to costly and time consuming disputes.
- v. We assume from the Trade White Paper that dispute resolution will be covered without legislation and government already has the powers it needs in the short term. In medium term, expect to see UK equivalent of the EU

- Trade Barriers Regulation, perhaps routed through the TRA, which is envisaged to have an advisory role in trade disputes
- vi. Outside of this Bill we would urge HMG to work with stakeholders to help deliver the continuity of the agreements. We are concerned that reaching agreement with more than 60 countries is time consuming and complex.

3. Regulations: Devolved authorities and general provisions

- i. We have strong working relationships with the UK and Scottish governments who support us in promoting Scotch overseas markets and we expect that to continue as the UK moves to an independent trade policy.
- ii. Our overall approach is that consultation with stakeholders will lead to more successful trade policies. That is why we have argued for systematic engagement with a wide range of relevant parties - Business, Devolved administrations, parliamentarians and NGOs - in developing and implementing policy.
- iii. Clearly a structured stakeholder engagement mechanism has to fully involve the devolved administrations, and we will be monitoring the Clause 11 provisions as the EU Withdrawal Bill progresses through the Lords. As with any transfer of powers, it is important that business is consulted and the Scotch Whisky industry will work with the UK and Scottish administrations to ensure that powers sit with the most appropriate level of government
- iv. It is important that industry's regulatory/policy environment is one that supports the industry to thrive and become competitive at home and abroad. That is why we aim for the Industrial Strategy to have a specific component for the spirits sector. This would also be one way to mitigate the downside risk of an EU/UK "no-deal" for the industry.

Part 2

The Trade Remedies Authority (TRA)

- i. Overall we fully support the international rules based system and would want the UK to have a system compliant with those rules. Transparency and independence is important for legitimacy of the TRA's investigations. We are supportive of section 6 (3) (b) in that regard.
- ii. As free traders and exporters it is hard to envisage a situation where we would need to apply for defensive trade remedies. Therefore we would like to ensure that the consequences of the decision are equally analysed as per 6 (2) b. We would not want to see restrictions on Scotch Whisky and other UK spirits used in retaliation by other countries and we would want such analysis to form part of decision making processes.
- iii. We note that 6 (1) (a) gives the TRA an advisory role in trade disputes. This is an important area for us. We have experience in successfully using the WTO dispute resolution mechanism in solving problems of discrimination in markets around the world. For sectors such as ours, that process has been led for decades by the EU Commission. As the UK becomes an independent

litigator in the WTO system, we would welcome clarity in how government decision making will work on trade disputes and the TRA's role in that process.

- iv. Given this frequent WTO litigation experience, we strongly believe that a formal statutory process, modelled on the EU Trade Barriers Regulation, would be beneficial in the UK. This ensures that industry shares the load with government, it encourages early resolution prior to taking a dispute and, should a dispute be initiated, it builds the evidence base and legal analysis for the case.¹
- v. We note that the TRA would provide "advice, support and assistance" for the Secretary of State to take the final decision. Would there be any recourse to challenge that decision if it varied from the TRA's recommendation?

26 January 2018
