The Scotch Whisky Association Brexit Working Paper
Scotland Europa Papers

The Scotland Europa Papers are a series of occasional papers which have been published since 1992. The papers have two objectives:

- To make a Scottish contribution to key issues that will affect the development of the European Union
- To promote a wider understanding of European issues in Scotland

To mark our 25th anniversary of networking Scotland in Europe, we are proud to re-introduce the Scotland Europa Papers with an additional objective of sharing and developing ideas for ongoing Scottish engagement with the EU and internationally in the context of Brexit. The series goes hand-in-hand with the Scotland House Discussion Series, which is designed to share views, expertise, and experience from Scotland with our European partners.

The Scotland Europa Papers are intended to provide a forum for interested parties in Scotland and other European countries and regions to promote ideas and perspectives on issues that are of importance to the development of Scotland and the EU. The papers are available on our website to give them wide circulation. We welcome contributions to the series.

Our original papers, which were released periodically for 13 years, sought to make a unique Scottish contribution to European policy debates and in doing so raise understanding of Scottish issues at EU level.

Scotland values its cooperation and ongoing collaboration in European affairs, and continues to be an active and engaged partner. With this in mind, we hope these papers support ongoing engagement through Scotland’s expertise and knowledge, and the valuable contribution of our European partners.

The views expressed in the Scotland Europa Papers are those of the authors and do not necessarily represent the views of Scotland Europa or its members and partners.

We would be pleased to have your views on any of the ideas raised in the papers or for you to arrange to receive further papers in the series.

Scotland Europa
Scotland House
Rond-Point Schuman 6
1040 Brussels
T +32 (0)2 282 83 04
E information.desk@scotent.co.uk
W www.scotlandeuropa.com
Contents

Introduction ...................................................................................................................................................... 4
About the author ............................................................................................................................................... 5
Trade Policy: Stakeholder Engagement ........................................................................................................ 6
Introduction

As part of the Scotland House Discussion Series, Scotland Europa was proud to host Martin Bell, Deputy Director for Trade for the Scotch Whisky Association (SWA), in November 2017. This paper, released by SWA last year, formed the basis for Martin’s discussion on how the UK’s trade policy might be affected by its decision to leave the European Union.

Martin introduced the complexities of global trade policy, highlighting the importance of the EU market to Scotch whisky exports (by far the largest market at £1.198m per year). He gave a detailed explanation of the World Trade Organisation rules, including some of the international disputes that SWA has been involved in as a result of these complexities.

On the subject of the UK’s departure from the EU, Martin outlined some of the possible challenges and opportunities to arise for the Scotch Whisky Association and trade in general. In the short term, he highlighted the issues that could be encountered at borders. Moving to the medium term, he outlined both challenges and opportunities that could stem from divergence from EU regulations and rules. The long-term perspective focussed on the potential brought about by future Free Trade Agreements.

This paper sets out the SWA recommendations for the UK Government when faced with these complexities during Brexit negotiations, based on the knowledge and experience of this particular sector. The recommendations are those of SWA and do not necessarily reflect those of Scotland Europa or the Scottish Government.

Edited by Stephanie Abrahams for the Scotland Europa Papers series
About the author

Martin Bell is Deputy Director of Global Affairs for the Scotch Whisky Association, as well as External Trade Committee Chairman and Rapporteur on Korea for SpiritsEUROPE. He is an expert on trade, and has written extensively on the potential implications and opportunities of Brexit on the whisky industry.
Trade Policy: Stakeholder Engagement

**Recommendations:**
The UK should introduce a structured stakeholder engagement mechanism, based on the well-established US trade policy consultative system.

Trade policy engagement should be led by the Department for International Trade, based on the following key principles: transparency, inclusiveness, and an all-Government and all-UK approach.

It should enable Government to access the best possible expertise and advice, while building broad-based support for the UK trade policy that emerges.

A UK Trade Policy Advisory Network, underpinned by statute, should include a range of sectoral and horizontal committees.

It should have certain statutory advisory functions in relation to trade negotiations and international trade disputes.

Individuals nominated to serve should be appointed on the basis of their personal expertise in trade policy and should be subject to strict obligations of confidentiality.

**Introduction**

Scotch Whisky is an international spirit. Over 90% of production is exported to 200 markets worldwide, making the industry the biggest contributor to the UK’s balance of trade in goods. Scotch Whisky exports in 2016 were worth £4.0 billion in shipment value alone.¹

Given the industry’s reliance on trade liberalisation for its success, The Scotch Whisky Association (the Association) has many years of experience of engaging in trade policy matters. As the leading EU distilled spirits export,² the Association has played a leading role in prosecuting the EU spirits industry’s trade agenda in the three key areas of multilateral and bilateral trade negotiations, tackling market access barriers and WTO disputes.³

The Government’s Brexit White paper has the ambition for the UK to become an independent player in the global trading system. Stepping outside the EU’s Common Commercial Policy requires the UK to leave the EU Customs Union. While this represents an opportunity to tailor an approach to trade policy to specific UK needs, policy must be developed collaboratively with those who have a stake in its outcomes. The Association strongly believes that UK trade policy will only be effective if it is founded on a robust industry engagement structure.

This paper sets out the Association’s views on how that architecture should look.

---


² 43% by value of EU spirits exports. Source - Eurostat 2015 data

³ Over the years, the EU, acting on behalf of the industry, has secured successful outcomes in eight WTO disputes, one GATT Panel and the resolution of a further Association complaint under the EU Trade Barriers Regulation.
Principles

The Association believes that UK engagement with industry on trade policy should be based on the following key principles:

Transparency. While ensuring confidentiality is vital in any negotiation, trade policy mechanisms should be as transparent as possible.

Inclusiveness. Trade policy should be developed with input from those who have a sectoral interest, significant expertise and a demonstrable stake in positive trade outcomes, be they private, public or third sector.

All-UK approach. As trade policy will affect a number of devolved policy areas, the devolved administrations and English regions should have a voice in policy development, as well as responsibilities in implementation.

Whole of government approach. Trade policy is only one key strand in the UK’s relationship with a partner country. All Government departments should be involved in policy formulation and delivery to ensure comprehensive coverage of State-to-State economic relations, led and co-ordinated by the Department for International Trade (DIT).

Building expertise in Government and industry. Over the years, trade policy expertise has migrated from the UK to Brussels. An independent UK trade policy depends on both Government and industry rebuilding that expertise and learning from experience.

Objectives

UK trade policy as a whole should maximise the benefits of trade for the UK economy. As industry is best-placed to know what the significant barriers to trade are in their sectors, effective industry input will support government in deciding its trade policy priorities and then tackling them, delivering economic gains as a result. The Association sees the following as key objectives for any engagement structure that the UK Government puts in place. It should:

- Secure expert input from industry and other stakeholders to inform and guide policy making and trade negotiations at multilateral and bilateral level.
- Provide the UK Government with an overview of the trade barriers affecting UK industry worldwide.
- Make the best use of resources through co-ordinating and aligning UK Government and devolved administrations; aligning trade policy with UK trade promotion goals; and ensuring that posts and other UK/devolved representations overseas are pressing the UK case ‘on the ground’.
- Enable the UK to play a leading role in the World Trade Organisation (WTO) and other international organisations with trade relevance, including global standard-setting bodies.
- Support the embedding of trade policy across government, ensuring that policies are developed consistent with the UK’s international trade obligations.
• Guide industrial strategy and adjustment measures for sectors or communities that may lose competitiveness as a result of trade liberalisation.
• Support making the positive case for trade for the UK economy.

Comparators

The Association has most experience of the European Union (EU) system and has a long track record of input to EU thinking on engagement structures. However, over the years, the Association has also engaged with trade ministries worldwide, as well as international organisations, such as the WTO. This experience offers helpful insights as the UK develops its trade policy capacity.


The EU’s ‘Market Access Strategy’ (MAS) has been in place for some years. One key challenge underpinning the MAS was to improve co-ordination between DG TRADE, Member States and industry, both in Europe and in-market. This was driven to some extent by the feeling that the EU was not making the most of its substantial diplomatic resource in the form of posts in-market, while policymaking was not joining up stakeholders in Europe as systematically as was desirable.

A ‘Market Access Advisory Committee’ (MAAC), comprising representatives of the Commission, Member States and industry groups, meets monthly in Brussels. This group is consulted on particular market access issues, for example through approving lists of key barriers for specific markets and reporting back, preparing for meetings of the WTO Committee on Technical Barriers to Trade, and offering views on ongoing negotiations. Common lines to take on key barriers in a market (or ‘hymn sheets’) are agreed to facilitate consistent messaging to the government in question.

The MAAC is supported by a number of sectoral Working Groups at EU level (the Association is represented on the Beverage Alcohol Working Group) and Local Market Access Teams (MATs), which are intended to bring together the EU Delegation, Member State posts and EU business representatives. In some markets, these MATs are themselves supported by sectoral working groups (for example, in India, the Scotch Whisky industry participates in the Beverage Alcohol MAT).

The Association’s experience of this mechanism is that it has worked particularly well in co-ordinating input and action at European level. This depends to some extent on the country in question; clearly, the approach works best in larger economies, such as China, where posts are better staffed. It has also provided a structure within which sectors that lack trade policy expertise can nonetheless have their voices heard by the Commission, which in turn has resulted in action being taken to open up new market opportunities for them. This has been achieved without affecting the more detailed ongoing bilateral discussions at technical level between industry and DG TRADE on specific trade barriers.

---

4 See, for example, http://trade.ec.europa.eu/doclib/docs/2005/october/tradoc_125451.pdf
An industry perspective: The strengths of this approach are improved co-ordination with posts; prioritisation of trade barriers to be tackled in specific markets; involvement of industry expertise, bringing in all relevant sectors; and better alignment on common EU positions. UK officials have been particularly active in the system. While it is true that Member State/Commission co-ordination – a key benefit of the MAS – is not required in the UK context, there are nonetheless also lessons to be learned in terms of involving devolved administrations and other Government Departments in trade policymaking, under the leadership of the DIT. Impact in-market will continue to be the measure of success. The UK will need to join forces with other nations with similar interests if it is outside the formal EU structures it used to work with and draw strength from.

Case study 2 - United States – ITACs/ATACs, ‘Cleared Adviser’, National Trade Estimate

The Industry Trade Advisory Committees (ITACs) are a unique public-private partnership jointly managed by the U.S. Department of Commerce and The Office of the United States Trade Representative (USTR) that engage trade policy specialists from industry and elsewhere in formulating US trade policy.\(^5\)

The Department of Commerce and USTR rely on Congressionally approved ‘Cleared Advisers’ to provide detailed policy and technical advice and recommendations to the Secretary of Commerce and the USTR regarding trade barriers, trade negotiations and implementation of existing trade agreements affecting industry sectors. Cleared Adviser status imposes strict obligations of confidentiality. They must undergo security clearance and there are restrictions on how they participate in committee work – not using mobile telephones for conference calls, accessing negotiating texts only through a secure system, for example. In return, they have privileged access to negotiating texts and involvement in government delegations. ITACs need Congressional reauthorisation periodically, ensuring democratic oversight.

To give one example of the system in practice, ITAC 16, dealing with Technical Barriers to Trade (TBT) issues, meets three times per year. It will meet more often when there is a live trade negotiation (as with the US/EU TTIP negotiation). It includes industry representatives (company and trade association), trade lawyers and – an innovation introduced by the Obama administration– trades unions if they wish. All members are Cleared Advisers. ITACs enable industry and Government to share information both ways.

ITAC 16 provides a more formal screening of Specific Trade Concerns for the WTO TBT Committee than happens in the EU system. Industry also offers views on the US negotiating line in bilateral negotiations through it. Members have significant expertise – there are real trade policy experts on the industry side. As a result, it leads to informal ‘sounding board discussions’ between USTR officials and Cleared Advisers on issues of interest, separate from the formal mechanisms.

The agendas for the meetings are developed by the members themselves, with the officials servicing the meetings, securing speakers and so on. Increasingly, the ITACs are issuing statements on issues that are horizontal in nature and sometimes affect only one sector, but which have broader systemic implications.

---

\(^5\) http://trade.gov/itac/ Given the importance of agricultural trade to the US economy, the US Department for Agriculture leads the management of a similar network of Agriculture Trade Advisory Committees (ATACs).
In the context of trade negotiations, ITACs are required to prepare a report on the agreement in question and approve it (or not).

Beyond the ITACs, USTR regularly solicits formal external input on trade policy, notably for each new trade negotiation, the National Trade Estimate report and the Special 301 report (on intellectual property). There is a call for evidence from any interested party (i.e. not only business) and all input is published online. The National Trade Estimate report is a particularly useful tool for government in building up a compendium of trade issues facing US exporters.

**An industry perspective:** The formalised ITAC mechanism is the most effective that the Association has encountered internationally, enabling USTR to have access to the best trade policy expertise in a confidential setting where required. The economic priorities of US exporters are fed directly in to US policymaking at technical level, with the range of interests ensuring that a consensus view emerges. We believe that it would be well worth the UK emulating this approach, with appropriate adjustments to fit with the UK’s different constitutional arrangements.

**Case study 3 - Canada – Stakeholder input**

‘Global Affairs Canada’ is the Canadian Department of Foreign Affairs and Trade. Similar to the emerging structure in the Department for International Trade’s Trade Policy Group, there are various trade policy divisions in GA Canada, organised on horizontal lines to match the WTO disciplines (TBT, SPS, Disputes and so on). This approach works well and means that officials develop significant levels of expertise in their fields.

Commercial staff in post tend to focus on ‘execution’, using their local networks, at the direction of the horizontal divisions in Ottawa and the regional geographic desks. That said, there will be trade policy specialists in the key overseas posts, obviously including Geneva, Brussels and Washington DC. While in the past, there were trade policy officials located in a number of Canadian ministries, there is now only a trade division in Agriculture and Agri-Food Canada. However, these officials are particularly attuned to the commercial importance of the Canadian agriculture industry. While this can lead to a risk of duplication, it is manageable with appropriate co-ordination.

Government issues a ‘Global Trade Priorities’ paper every three to five years with a formal process for input. When Government is considering a closer economic relationship with a particular country, it will undertake a public consultation to solicit views from stakeholders on the economic impact and what the key issues might be. This can take from several months to five years.

If the answer to this exercise is yes, then a further, more detailed, public consultation takes place. Consultation responses are not currently published as a matter of routine but they can already be published online.

---

6 See, for example, a recent example on the Philippines: http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/philippines/index.aspx?lang=eng

obtained under Canadian Freedom of Information legislation. The same goes for Parliamentary hearings. These exercises tend to support the economic case for the agreement.

Canadian negotiating teams comprise a Chief Negotiator, supported by ‘Chapter Leads’, who will be particular experts with responsibility for individual chapters in the agreement – SPS, GI, market access and so on. That is very similar to the EU approach. During negotiations, Canadian industry is often consulted informally for specific textual proposals on issues such as Rules of Origin. While Canada has the equivalent of the Confederation of British Industry (CBI) and other business organisations, there is no formal structure of industry advisory bodies, as in the US. The nearest equivalent to that have been business-led ad hoc groupings that have been set up to support particular negotiations, notably CETA. Having said that, we understand that there is currently a debate about the merits of returning to a more formalised structure.

**An industry perspective:** The strength of the Canadian system is its approach to formal stakeholder input on trade policy and to the Canadian Government’s priorities for specific trade negotiations. The previous approach of locating trade policy specialists in other Ministries may also be worth the UK exploring in more detail. However, Canada lacks a structure within which ongoing dialogue and joint working on trade policy development can take place beyond informal bilateral contacts between officials and industries. In that respect, the Association believes that a statutory basis, setting clarity of consultation roles and responsibilities, would be a better approach, delivering improved co-ordination and, ultimately, more rounded policy.

**Structure and Legislation**

It will be apparent from the foregoing that the Association believes that a UK approach to industry engagement on trade policy should draw heavily on the US ITAC model. This would provide a robust consultative mechanism to support the UK’s trade policy agenda. The mechanism should enable industry input to be sought both on ongoing trade policy issues and particular trade negotiations, both bilateral and multilateral.

A UK Trade Policy Advisory Network (TPAN) should have the following elements:

It should have a statutory foundation. This should set out:

- The formal structure, including the sectoral and cross-cutting committees, their roles and the appointment process, with provision for Ministerial and parliamentary approval.
- Confidentiality agreements along similar lines to those applying in the US to Cleared Advisers. These roles should complement, rather than preclude, appropriate engagement with the wider trade policy community. Care should be taken to ensure that Cleared Advisers are drawn from a balanced range of sectors, geographies and business sizes and that the individuals have demonstrable personal expertise in trade policy.
- Consultative mechanisms for civil society, which again should have a degree of statutory underpinning.
There should be sectoral committees. To take one example, the Scotch Whisky industry would fit best grouped with other FMCG sectors in a consumer goods committee, as is the case with ITAC 4 in the US.

To complement the sectoral committees, there should be cross-cutting committees (for example, on technical barriers to trade, WTO disputes and international standards). There might be a specific mechanism for EU trade relations.

The structure should involve posts for delivery on the ground and feedback to policymakers and the committees. It is particularly important that this includes close involvement of UK industry in-market and co-ordination with the diplomatic representatives of other countries with similar market access concerns.

The TPAN should include a means of consulting and co-operating with third country allies, such as the EU, US, Japan, Canada, Australia and New Zealand.

**Processes**

Turning to the working practices of the various groups set up under the TPAN, individuals who serve should do so voluntarily and on the basis of having significant expertise in their field. They should be nominated by umbrella bodies, such as the CBI, and sectoral associations, while there should also be the possibility of Ministers appointing academics/practitioners. Appointments should be made on a strictly personal basis; in other words, substitutes should not be permissible. It will be important to ensure that there is a good balance of representation of sectors and geographies. One key objective of the TPAN approach should be to build up expertise and trust over time. The Association therefore does not support the concept of term limits on these appointments. While it should be for Ministers to take all decisions as to the membership of groups under the TPAN, this should be subject to appropriate Parliamentary oversight.

Committees should have the power to issue advisory reports to Ministers, which might also be laid before Parliament. These should include an annual report on their activities, including the priority issues for the coming year; own initiative reports on trade policy issues they have identified; and a statutory requirement to produce a report on whether a concluded UK trade agreement will deliver significant new market opportunities for UK exporters.

The default Secretariat function for groups set up under the TPAN should be the DIT, with the involvement of the ‘Board of Trade’, should such a body be created. However, consideration should be given to other Government Departments participating and, on occasion, taking the lead, notably where they have a ‘sponsor’ role, such as Defra for agriculture. This should be done in a co-ordinated manner, led by the DIT, to ensure that the outputs are consistent with UK trade policy as a whole.

As under the US approach, Committees should have access to negotiating texts and full involvement in the development of the UK negotiating line in multilateral and bilateral trade negotiations. This should be undertaken in the context of appropriate confidentiality arrangements being put in place. Broader stakeholder groups should also be briefed regularly on developments in ongoing negotiations.

The relevant Committees should be consulted for input into WTO Trade Policy Reviews, as well as on the agendas for forthcoming WTO Committee meetings, notably on Technical Barriers to Trade, Sanitary and Phytosanitary Measures and Customs Valuation.
DIT should publish an annual global trade barriers report, on the basis of evidence submitted by stakeholders in response to a formal call for input, as well as the committees set up under the TPAN. This should be modelled on the US National Trade Estimate report. As in the US and Canadian systems, there should also be a mechanism put in place to require public calls for stakeholder input into the UK’s WTO and FTA priorities.

**Conclusion**

The Association strongly believes that UK trade policy will only be effective if it is informed by expert stakeholder input. This must be structured. Experience in other jurisdictions suggests that informal, *ad hoc* mechanisms will not work. As a stakeholder with extensive practical experience of trade policy development and implementation over some decades, the Association hopes that an approach based on that set out in this paper can be adopted by the UK as it becomes an independent player in the world trading system.

The Scotch Whisky Association, June 2017

---