



Federation of the European  
Sporting Goods Industry

## FESI COMMENTS ON BREXIT

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FEDERATION OF THE EUROPEAN  
SPORTING GOODS INDUSTRY

House of Sport

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### KEY POINTS

This paper aims to outline the potential impacts of UK leaving the EU on the sporting goods industry, as well as to suggest possible ways to overcome these challenges. Below are the key recommendations of the sporting goods industry to the EU to ensure a transition as swift and smooth as possible:

- FESI supports the extension to the UK of territorial application of **EU trade agreements** ;
- **PPE certified in the UK should remain valid** in the EU and *vice versa*; The UK should remain involved in the work of the **PPE working group**;
- Citizens working abroad should be protected by the principles of **free movement of workers and reciprocal rights**;
- Existing European **IP rights must be protected** in the UK and *vice versa*;

On 29 March 2017 the United Kingdom officially triggered Article 50 of the Treaty of the European Union, notifying the EU of its intention to leave the Union. The decision paved the way for Brexit's negotiations which are expected to last no more than two years. During that period, negotiators will address a wide range of topics to ensure a transition as swift and smooth as possible for administrations, citizens and businesses.

The Federation of the European Sporting Goods Industry (FESI) accepts the decision taken by the British electorate, and is committed to contributing to a pragmatic solution that takes into account the interests of the EU, the UK, the business community as well as consumers. FESI would welcome a transparent and predictable solution that is founded on mutual interests, rather than on political bargaining. In that sense, FESI recommends both the EU and the UK to acknowledge the necessity of robust transitional arrangements, and to work towards such arrangements in a constructive manner.

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#### **MARKET ACCESS CONCESSIONS IN EXISTING AND FUTURE EU FTAS**

The right of the UK, and thus of the businesses importing to the UK, to utilise the market access concessions made in the trade agreements negotiated by the European Union is at risk. The sporting goods industry is especially concerned by the potential loss of market access concessions agreed in the EU-Vietnam FTA. The FTA does not, in its current form published in February 2016, include provisions on third party accession rights, and states that only EU Member States and Vietnam are party to the agreement. To ensure predictability, this issue needs to be addressed, and replicated in the ongoing negotiations between the EU and Indonesia.

#### **Possible solution:**

During the legal scrubbing, which is currently ongoing, the Parties could ask for an amendment of Chapter 17 "Institutional, General and Final Provisions", and more specifically to Article 23 "Territorial Application", to include those EU Member States that were part of the EU whilst the agreement was negotiated and ratified. This option would allow the sporting goods industry to benefit from all the market access concessions.

This potential solution could also be applied to other trade agreements negotiated by the European Union.

#### **CONTINUED MARKET ACCESS CONCESSIONS BETWEEN THE EU AND UK**

Avoiding new tariffs on footwear and apparel between the EU and the UK is a key factor for a future EU-UK relationship. Whilst most production is done outside of the EU, a substantial amount of sporting goods is produced in the EU. Regardless of the form of the new relationship, avoiding facing additional tariffs is crucial for the sporting goods industry.

## RULES OF ORIGIN

The sporting goods industry supports clear, transparent and easy applicable EU-UK rules of origin for footwear and apparel. It is important not to impose additional burden on the sporting goods industry's European and global value chains. To avoid unnecessary disruptions, the sporting goods industry urges the EU and the UK to adopt simple and flexible rules of origin for footwear and apparel, based on the Change in Tariff Heading rule (CTH).

## DIVERGING SHIPMENT REQUIREMENTS

As the sporting goods industry's distribution models for Europe and beyond is based on having one or a few logistic centers in the EU, it is paramount for the sporting goods industry to continue to be able to use the investments made in the EU also when serving the UK market, as well as the Irish and Northern Irish markets which are served through the UK shipments.

The EU and many other countries allow trans-shipment under the non-manipulation rule, stating that as long as the product is not altered or manipulated, the shipment can go through another territory before entering into free circulation in the final destination.

However, some economies, whilst being advanced, have adopted direct shipment requirements, or very cumbersome trans-shipment requirements, for a perceived need for simplicity or to promote domestic logistic jobs. Instead, this puts consumer choice and the sporting goods industry's flexibility at risk.

Most Ireland-destined volumes are co-loaded and shipped with UK volumes. Both islands are often serviced through one logistics solution with a hub in the UK, since the Irish volumes by themselves do not allow for a separate logistic solution. However, this could become cumbersome, costly and negatively affecting the ability to serve the customer, as companies would be shipping goods to an EU destination through a hub in a non-EU member state. Additionally, serving Northern Ireland, a constituent unit of the UK but located on the Irish peninsula, is another piece of the logistical puzzle that has to be addressed.

### Possible solution:

The sporting goods industry encourages the EU and the UK, in their new relationship, to adopt a simple, clear-cut non-manipulation requirement.

## DIVERGING STANDARDS FOR FOOTWEAR AND APPAREL

If the UK decides to leave the single market, the UK may decide to adopt different standards and testing requirements. These divergences will, however, increase costs for doing business in the UK.

### Possible solutions:

1. FESI encourages the UK to keep divergent standards and testing requirements to a minimum and keep the standards commonly agreed on in the EU.

2. FESI encourages the UK to maintain membership in CEN to ensure that future standards continue to be aligned.
3. FESI encourages the UK to consider that CEN standards which currently provide a presumption of conformity to EU Directives and Regulations, would continue to provide a presumption of conformity to UK product safety laws.
4. FESI encourages the EU and the UK to continue to align on the labeling requirement for footwear and apparel to avoid the need for special labeling which might impact efficient centralised distribution models.
5. FESI encourages the EU and the UK to continue to align and cooperate on risk assessment and corrective action via the EU RAPEX system.

## LICENSING OF PERSONAL PROTECTIVE EQUIPMENT

Personal Protective Equipment are regulated under a specific EU Regulation (2016/425) to ensure that safe personal protective equipment can be marketed in all EU Member States.

Several products currently sold on the EU market have been certified by Notified Bodies based in the UK. Concerns have been raised about the validity of these certificates after the UK officially leaves the EU, as by definition an EU Notified Body lab must have an EU address.

### Possible solutions:

1. To avoid burdensome re-certification procedures, personal protective equipment certified by a UK Notified Body under the requirements of Directive 89/686 or Regulation 2016/425 should remain valid in all EU Member States.
2. FESI would propose that the UK remain involved in the work of the PPE working group on the same terms as other third countries (e.g. Norway).
3. FESI encourages the UK and the EU to conclude an Agreement on Conformity Assessment and Acceptance (ACAA). This mutual recognition of equivalence in technical regulation, standardisation, and conformity assessment on which an ACAA is based, operates on the basis of the EU acquis that has been transposed by the partner country, i.e. the UK, in the same way as it would apply to products placed on the market of an EU Member State. It allows industrial products covered by the ACAA and attested as compliant with the procedures in the EU to be placed on the UK market without having to undergo any further approval procedures, and vice versa. An ACAA requires the prior full alignment of the partner country's legal framework with EU legislation and standards and the upgrading of the implementing infrastructure in line with the model of the EU system, in relation to standardisation, accreditation, conformity assessment, metrology, and market surveillance. ACAAs consist of a framework agreement and one or more annexes, setting out the products covered, and the means adopted to extend the benefit of trade in that sector.
4. FESI encourages the UK and the EU to conclude a Mutual Recognition Agreement (MRA) on the basis of Article 207 and 218 TFEU. MRAs are agreements established between the

Union and third countries for the purpose of mutual recognition of conformity assessment of regulated products. MRAs are designed so that each party accepts the reports, certificates and marks that are delivered in the partner country in accordance with its own legislation. These are drawn up and issued by bodies that the other party has designated under the MRA for assessing conformity in the field(s) covered by the MRA. This can be achieved, because MRAs include all the conformity assessment requirements of the parties necessary to obtain full market access, and the products are evaluated in the country of production against the regulatory requirements of the other party.

#### STATUS OF BRITISH / EU CITIZENS WORKING ABROAD

Concerns have emerged about the status of EU Nationals working in the UK and UK Nationals working in other EU Member States.

FESI members employ many highly qualified workers – regardless of their nationality – in their headquarters, distribution centers and other facilities located in the EU and in the UK. It is thus of paramount importance to ensure that foreigners working in another country will have the right to remain there.

#### Possible solution:

FESI would support an ambitious agreement on the rights of EU citizens living and working in the UK and of UK citizens living in the EU, based on the principles of free movements of workers and of reciprocal rights.

#### INTELLECTUAL PROPERTY RIGHTS

The sporting goods industry is among the key IPR-intensive industries. IPRs facilitate strong brand recognition and protection and they promote continued innovation, which is essential to progress in the global economy. Consumers rely on the reputation of our members to buy high-quality products. In addition, for safety reasons, it is of paramount importance to ensure that our products are efficiently protected worldwide. Collaboration amongst national customs authorities and specific EU agencies (Europol, EUIPO) remains a key element of the fight against counterfeiting.

The main IP rights which might be affected by Brexit should be trademarks and designs, as copyrights generally do not require registration and European Patent rights are governed by the EPO which is not an EU institution. In that context, FESI welcomes the decision of the UK government to ratify the Unified Patent Court Agreement which will significantly increase the protection of UK patent rights across Europe.

**Possible solutions:**

1. FESI encourages the UK to continue protecting existing European rights, without additional cost to existing registrants and *vice versa*.
2. European rights owned by UK businesses must remain valid and protected in all EU Member States, without additional cost to existing registrants.
3. FESI encourages national authorities, EUIPO and Europol to continue their cooperation with the UK customs authority, to identify, seize and destroy counterfeiting products entering the EU/UK.
4. FESI encourages the UK to work closely with the Preparatory Committee to bring the Unified Patent Court into operation in a timely and efficient manner.

**ENVIRONMENT, HEALTH AND SAFETY (EHS) REGULATIONS**

REACH and the other major European Chemical legislation such as the Biocidal products regulation and the Toy Safety Directive or the CLP Regulation are the cornerstone of EU chemicals legislation with global recognition, setting harmonised rules for the registration, evaluation, authorisation and restriction of chemicals in the EU. It is fundamental that countries adopt an approach regarding chemicals as harmonised as possible.

Most of the UK's environmental legislation is based on EU directives. It would represent significant resources from the UK side to disentangle EU legislation from national legislation and would create major disruptions for producers who wish to place products on UK markets.

**Possible solutions:**

1. EU current legislative framework for chemicals: the sporting goods industry encourages the UK to continue to look to REACH on chemistry bans and limits, and other relevant EU chemicals legislation, in a manner similar to what other non-EU countries have implemented (e.g. Turkey).
2. Environment: the sporting goods industry encourages the UK to maintain the environmental acquis to avoid market access disruption.
3. A possible solution would be a system equal or similar to the EU REACH EFTA agreement whereby once incorporated into the European Economic Area Agreement and implemented in the EEA-EFTA states, REACH will also apply to EFTA-EEA States, that is Iceland, Liechtenstein and Norway. This, for example, means that imports from Norway, Iceland and Liechtenstein will be considered as intra-Community trade for the purposes of REACH. After the incorporation of REACH into the EEA Agreement, the terms 'EU' or 'Community' used in this Guidance will also cover the EFTA-EEA States.

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***Founded in 1960 FESI - the Federation of the European Sporting Goods Industry represents the interests of approximately 1,800 sporting goods manufacturers (85% of the European market) through its 12 National Sporting Goods Industry Federations and its directly affiliated member companies. 70-75% of FESI's membership is made up of Small and Medium Sized Enterprises. In total, the European Sporting Goods Industry employs over 650,000 EU citizens and has an annual turnover of some 66 billion euro.***