AMDEA Consultation Response Form

Regarding the “Call for Evidence”

On the review of the Internal Market:
Free Movement of Goods;
including the EU Customs Union
and Intellectual Property Rights

Q1	What do you see as the advantages and disadvantages of EU action on the free movement of goods? How might the national interest be served by action being taken in this field at a different level (for example, at the WTO), either in addition to or as an alternative to EU action?
A1	The domestic appliance industry has benefited from the near elimination of technical barriers to trade within the EU following on from single market measures stemming from the Low Voltage Directive in 1973 and the various New Approach measures pre and post 1993. The same is also true of harmonized European requirements for energy labelling. This has enabled the same basic design of product to be sold throughout the EU (excepting for national differences due to language, mains plugs and product marketing etc.) with commensurate benefits for industry and consumer alike. Potential disadvantages occur when the EU introduces pan-European requirements in areas where there is no technical barrier to trade within Member States. For example, there are many new requirements being currently introduced under the Ecodesign Directive and its associated Implementing Measures. While these measures are to protect the environment, which is of course a very worthwhile goal, it is not clear that the various measures are being considered in a holistic manner. Already in other areas there is evidence that, for example, rain forests are being dug up so that farmers can plant crops to benefit from subsidies in oil produced from agro-chemicals, which would seem to imply insufficient forethought was given to the dash for agro-oil. In the domestic appliance sector we are asked on the one hand to make appliances that are increasingly energy efficient year-on-year while also being asked to prioritise re-use, product longevity and repairability – which results in older, less energy efficient, products being used for longer: nowhere in the EU policy for Ecodesign does there seem to be research to define where the cross-over is between increased energy efficiency and increased product lifetime. The EU has negotiated a number of trade agreements with various third countries, with discussions with the USA re-started. To a significant extent this is possible because the EU is such a large trading bloc. It seems very doubtful that the UK alone would be able to interest many of the countries with which EU has agreements to enter into bi-lateral agreements with the UK, or that the agreements would be as favourable to the UK as they would be to the wider EU (due to the latter's larger bargaining power). Moreover, devolution would seem to make the UK's bargaining position weaker still, particularly if Scotland were to break away and ultimately join the EU in its own right. It may be that bi-lateral agreements could be reached between the UK and third countries in areas not subject to EU-wide legislation. However, this does not apply to the domestic appliance sector. We cannot expect to benefit from being in a free-trade area in the EU and then agree trade practices with third countries that do not fulfil these EU measures. In many parts of the world products meeting EU requirements are considered adequate for the local market. As an example, the material restrictions in the RoHS Directive have been adopted in many countries. The same was often true 30 - 40 years ago with UK goods being accepted in developing countries, but this was at a time when the geo-political landscape was very different from what it is today.

Q2	To what extent do you think EU action on the free movement of goods helps UK businesses?
A2	As has been said in our response to Q1, the free movement of goods within the EU – and due to the EU's global significance - outside the EU has enabled UK industry to widen its potential customer base for goods. Before the focus on eliminating technical barriers to trade in the "1992 push" it was necessary for electrical goods to be third party certified, often to different safety national standards, before they could be offered for sale, either for legal or market-driven reasons. Not only did this result in complexity, delays and costs for UK manufacturers it also meant that (particularly) small start-up companies faced the challenge of finding out what these differing requirements were before designing their products. If a particular country had significantly different technical requirements or the cost of gaining the necessary approvals was too great it was then a commercial decision as to whether these hurdles were too high given the expected sales in that country.
Q3	To what extent has EU action on the free movement of goods brought additional costs and /or benefits to you when trading with countries inside and outside the EU? To what extent has EU action on the free movement of goods brought additional costs and /or benefits to you as a consumer of goods?
A3	As has been said in our response to Q1, because the EU represents such a significant percentage market presence within the world its requirements are often applied or accepted in third countries. This benefits manufacturers by potentially expanding their markets. As mentioned elsewhere, an apparent drive to finalise and publish EU laws in a short time-frame is of concern to industry. A specific example of this is energy labelling where, post Lisbon, there is no member state vote on the final legal text (whereas Ecodesign measures, which are often taken forward at the same time is pre Lisbon and therefore there is a Regulatory Committee where member states vote.) We now regularly have to try to introduce changes at the Regulatory Committee, since issues that are particular to one Member State market are ignored in earlier consultations or become a problem at the last stage. Below are some examples where this has produced problems for our industry: • The draft energy labelling Regulation for vacuum cleaners had text relating to tumble dyers and air conditions in it, the lack of a formal consultation process made it extremely difficult for industry to feed their concerns into the Commission; • Also relating to vacuum cleaners, requirements were added at a late stage and without consultation that would have required manufacturers to tell consumers how to carry out repairs involving access to parts operating at hazardous voltages, which would then be in contravention of EU safety legislation; • The oven and hob Ecodesign Regulation was circulated with limits which would remove every product from the market. This was because the formula for the calculations had been changed but the limits had not. The

comments had to focus on the most serious problem and therefore could not address other less time could be spent on other serious concerns;

- The timing of consultations relating to Ecodesign and energy labelling regulations often requires feedback to be provided by Member States in as little as 3 weeks. As a Member State the UK at least asks industry for their opinion, but this period does not allow anybody to consider in detail draft legislation.

The above results in legislation that is often flawed and so requires revision and in the mean time creates uncertainty and introduces costs for industry.

Mass-produced goods are generally of lower cost than bespoke goods having a comparable level of performance and quality. Therefore the opportunity to purchase goods that are made for a wider market benefits consumers by lowering the price they pay.

Q4	What types of EU action would be helpful or unhelpful for your activities as a business and/or as a consumer in the Internal Market?
A4	Increasingly we see EU Directives and Regulations being introduced with built-in review dates only three or four years into the future. Industry needs regulatory stability and very seldom does a review result in zero change to the law under review. We would therefore like to see an end to this in-built review period and replace it with a mind-set of "if it ain't broke, don't fix it". We have in mind that the Low Voltage Directive, 73/23/EEC, has been substantially unchanged since it was first introduced (albeit revised to bring it into line with CE marking requirements), so it certainly is possible to create long-lived European law. There is also a concern that having a built-in review date can also result in sloppy law making: firstly by imposing an arbitrary deadline by which the law must be finalized (irrespective of whether it is actually fit for purpose) and secondly by providing the excuse "well, if we do have any issues we can always fix them in the next revision". The quantity and breath of EU legislation seems to be far greater than that which existed in the UK before we joined the EEC and also greater than trading blocs outside the EU. For example, for decades now we have had a Directive on electromagnetic compatibility, namely limits on the emissions from products that could interfere with reception of TV & radio signals plus limits on the immunity to signals produced by other equipment. By comparison the USA only has legal requirements on emissions; it does not have limits on susceptibility. We are not requesting that this Directive be repealed or revised but we provide it as an example where the EU seems to go beyond what other governments require in order to protect their citizens. Therefore we would welcome a mind-set of considering what the minimum set of regulations should be, rather than apparently seeking to regulate everything that can be regulated. We believe that, correctly implemented, this could also benefit world trade within a WTIO context.
Q5	To what extent do you think the harmonisation of national laws through EU legislation (as opposed to international treaties) is helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market? In your experience do Member States take a consistent approach to implementing and enforcing EU rules? Please give examples.

A6	The by-lateral agreements that the EU has concluded with other countries are nowhere near as comprehensive as that which exists between members of the EU. Even the NAFTA agreement between Canada, USA and Mexico is not as comprehensive as that which exists within the EU. Therefore it would seem to be very rare to have international treaties that are as comprehensive and far reaching and bind national laws as those which result from the treaties that bind members of the EU. This statement is not intended to decry the benefits of having bi- and multi-lateral agreements; it's just that these are not substitutes for the treaties governing the EU internal market. We are seeing a shift from the Commission proposing Directives to proposing Regulations when considering single market measures. By this route they would seem to be wishing to eliminate, as far as possible, national differences in terms of requirements to be met. However, market surveillance remains a national competence and here we see a wide range of approaches between Member States. Sometimes the market surveillance authority is staffed by individuals who understand the technicalities behind the legislative measure, and sometimes this isn't the case. Often one market surveillance authority has responsibility for enforcing a number of different legal instruments and, given that these bodies do not have infinite resources, they may choose to prioritise one measure over another. The extent to which a market surveillance authority in one Member State may choose to share information on its activities, e.g. through ICSMS, with its counterparts in other Member States will also vary. Ultimately enforcement of single market measures has to be within a national context as penalties, which could be criminal or civil, are imposed by national courts. We do however support discussions on best practice between market surveillance authorities (e.g. in administrative cooperation groups (ADCOs) provided that these operate within a transparent framework which is overseen by a body responsible for defining policy within a particular area of regulation, and this oversight body is open to relevant stakeholders including industry. An example of this would be the ADCO that exists for the LVD which is overseen by the LVD Working party, similar arrangements exist for EMC and Ecodesign but do not exist for e.g. RoHS.
Q6	Do you think that the EU strikes the right balance between regulating imports and exports and facilitating international trade?
A7	Given that the EU has concluded a number of bi-lateral agreements with specific third countries it is unclear to industry why the measures on market access do not make reference to them. While the legislation itself may need to apply uniformly between the EU and all third countries there should at least be guidance for industry to explain if these general provisions are modified by specific agreements.
Q7	Do you think the UK's ability to effectively regulate cross-border movements of goods would be better, worse or broadly the same as the result of more or less EU action? Please provide evidence or examples to illustrate your point.
A7	We do not find the question to be clear.

Q8	To what extent are specific national rights provided through EU legislation (e.g. Supplementary Protection Certificates) helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market?
A8	???
Q9	To what extent are specific Community-wide rights provided through EU legislation (e.g. Community Trade Mark, Community Design, Geographic Indicators and Community Plant Variety Rights) helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market?
A9	???
Q10	To what extent do wider EU rules (e.g. on free movement of goods or services) impact helpfully or unhelpfully on the conduct of your business or your experiences as a consumer in relation to intellectual property rights?
A10	???
Q11	What future challenges/opportunities do you think will affect the free movement of goods and what impact do you think these might have?
A11	The Waste Framework Directive (WFD) and the Waste Electrical and Electronic Equipment Directives (WEEED) both prioritise re-use of whole equipment that has been discarded as waste over recovery of raw materials. As stated previously, new products are usually more energy efficient than older products and they will also meet standards for safety, performance and EMC etc that are 'state of today's art' as opposed to products that were first placed on the market a decade or more previously. While there is a considerable quantity of legislation applying to products newly placed on the market the same is not true for second-user goods. If consumers are to be offered a reasonable degree of protection when they purchase second-user goods offered for sale in order to meet the requirements of the WFD & WEEED then there will need to be appropriate measures developed. In order to ensure that all EU citizens are protected equally these measures will need to be developed as EU Directives/Regulations. It is clear that the Commission are considering non-energy related aspects to be regulated under the Ecodesign Directive. Currently the particular measures proposed seem to depend on serendipity (i.e. the Ecodesign Regulation on vacuum cleaners has a durability requirement, seemingly because a test method existed in an IEC standard) rather than because there is a well thought-out, scientifically justified, basis for doing so. As stated previously, we believe that this is not the best way to construct EU law.
Q12	Do you have any other general comments that have not been addressed above?
A12	In 1985 the New Approach was formulated. Fundamental to this was that legislation should define only 'essential requirements' with the technical details left to Harmonised Standards. However, over the years it seems that legislation is becoming more prescriptive and is moving away from this principle. Recently we have had EU Regulation No 1025/2012 on European Standardisation which has

	given Member States and the Commission more power over the technical content of Harmonised Standards while encouraging market surveillance authorities to play a more active role in their development. We therefore propose that it is time to go back to the above principle of the original New Approach. Standards are required themselves to be 'state of the art' and are typically revised on a three-to five year cycle, so relying more on them should eliminate the need to incorporate 'this Directive will be revised in three years (etc.) provisions.