

14<sup>th</sup> February 2020

Rt Hon Michael Gove MP  
Chancellor of Duchy of Lancaster  
The Cabinet Office  
1 Horse Guards Road  
Westminster  
LONDON, SW1A 2HQ

Dear Secretary of State,

**Border Inspection for Sanitary and Phyto-Sanitary Checks on Goods Imported from the European Union after 31<sup>st</sup> December 2020**

I was grateful to be in the audience for your speech this week at the Institute of Directors. We welcome the commitment you made to working in partnership to find solutions to the challenges ahead. In that spirit, I felt it appropriate to write to you setting out our concerns about the implications of new border requirements on EU to UK food imports; and to offer our support for urgent action to develop a new, and workable, process of sanitary and phyto-sanitary controls for food imports.

In your remarks you set out clearly the new framework for post-Brexit customs, regulation and border inspection policy. We understand the Government position that, notwithstanding the details of a potential UK EU free trade agreement, goods imported from the EU should be treated no differently to goods imported from anywhere else in the world. This is a very significant change in policy and cause for significant alarm for businesses reliant on imports from the EU.

The working assumption of no deal planning was that the risk to UK consumers of food imported from the EU was no different on day one after Brexit than it was on day minus one. No deal plans were therefore developed without any significant preparations for the UK to undertake systematic sanitary and phytosanitary (SPS) checks on food imported from the EU. This longstanding position means the UK has made none of the preparations for undertaking SPS inspections that the EU has. As you know the French authorities have built dedicated border inspection infrastructure and undertaken extensive testing of notification and routing processes to manage the new friction imposed on UK food exports into the EU.

We have 11 months to catch up with the types of preparations already made by the EU, and our systems have to cope with significantly higher goods volumes than theirs. Our lack of preparedness is compounded by the fact that the volume of goods imported from the EU to the UK is significantly higher than that exported.

As it stands the UK has 35 Border Control Posts (BCP) designated at seaports or airport terminals to control different combinations of plant, food and feed stuffs. However, the location and capacity of our existing BCPs are not well matched to the likely volumes of inbound EU trade flows. Most notably there is a major capacity problem for inspection facilities to control goods arriving via the short straits ports that together handle the highest volume, and most time critical, food and pharmaceutical imports.

If you are intent on addressing this problem in the conventional way, Ministers must make an urgent decision to authorise the construction of one or more dedicated BCP facilities within easy, and controlled, access from the key ports of Dover and Folkestone (like has been done in Calais). If this is the only option, then there is no time for delay or wide-ranging consultation. Work must start immediately to find the site, design a facility, find a contractor and get construction underway in time for completion by 31<sup>st</sup> December 2020.

We are not convinced that building such a facility (or facilities) is a realistic solution at this stage. Nor do we believe that such a system is the right long-term approach consistent with the Government's ambition of having the smartest border infrastructure in the world within 5-10 years.

We believe that there is scope for innovation if Government is willing to fundamentally rethink how a safe control system could work. The principle we propose is the same 'Place of First Arrival' principle the Government put in place last year to control 'importing plants from third countries via the EU'. <https://www.gov.uk/guidance/importing-and-exporting-plants-and-plant-products-if-theres-no-withdrawal-deal>

This approach would involve any goods requiring SPS checks via roll on roll off (RoRo) ports to be subject to inspection at the Place of First Arrival (PoFA), rather than at a legally mandated BCP. The facilities that could register as PoFA, could be drawn from the same list of approved premises managed by the Food Standards Agency (FSA) as part of meeting EU third country importer rules.

The immediate benefit of this approach is that subject to the correct data entry and certifications being in place vehicles could travel through UK RoRo ports and on to their pre-existing inland destination without interruption and the consequent knock on implications for delays and disruption at the port of entry.

We understand that under this process there would be a bio-security risk to manage. A 'not yet controlled' consignment of food stuffs could be lost in transit once it has entered the UK and then find its way into the food chain. However, we believe that this is a low risk, that could be mitigated by:

- The fact that the consignment is fully traceable. It would have had to be pre-notified before departure, and in the case of Products of Animal Origin (POAO), for example, have a registered Export Health Certificate. As a result, it would be relatively simple to trace whether goods that passed through the RoRo port did arrive at the PoFA it was designated to arrive at. If there is reason to suspect it didn't this could be investigated, and penalties imposed on the parties involved in the product movement.

- In order to add a further layer of reassurance and provide for an important element of control at the border itself, the UK could require that all food goods entering the UK be sealed with an approved and registered physical seal:
  - If at the port no seal is visually present on the vehicle – then a ‘flag’ could be applied to the vehicle on the relevant notification system, and this would trigger a requirement that the vehicle and its load must be inspected once it arrives at the designated PoFA.
  - A ‘seal check’ at the border could also constitute a check at the Border, potentially addressing the main legal challenge to this approach that current practice, and EU law, requires that an inspection has to happen at the Port.
  - If a vehicle presents without a seal then the port authorities can take the following actions:
    - refuse UK entry to the vehicle
    - undertake a short visual inspection (to check for evidence of tampering such as clandestine migrant incursion)
    - place a ‘flag’ on the relevant systems to register that the vehicle had presented at Port ‘unsealed’ and so must be inspected by a qualified food safety inspector at the designated PoFA before onward distribution or processing
    - re-seal the vehicle with a dedicated ‘inspection required’ seal that would be a visual cue to the driver and the receiving facility that the load on the vehicle should not be onward processed until the required inspection had occurred.

We recognise that there are aspects of this plan which must be carefully considered Not least that it is a significant departure from current practice, which would likely require changes to legislation. We also recognise that it could also have implications for the negotiation of the UK-EU trade deal.

However, we believe that this is the type of innovation you challenged us to propose and is the type of process change made possible because of our ability to diverge from EU law. We hope that you agree that a data-led approach, of the kind we set out here, is consistent with your ambition to provide innovative and secure solutions that harness the technology and systems available and utilise the resources and facilities we already have within the UK.

We would welcome a chance to meet with you, or relevant ministers and officials that you suggest, to discuss this further as soon as possible.

Yours sincerely



Shane Brennan  
Chief Executive

**Copies:**

**Rt Hon George Eustice MP – Secretary of State for Environment Food and Rural Affairs**

**Emma Churchill – Director General Border Delivery Group**

**Emma Bourne – Director Constitution and Borders Directorate**