

# The Importation of Goods Subject to Animal or Plant Health Regimes

A study to identify, document  
and evaluate trade concerns about  
cross-border trade procedures and  
documentation that have an animal or  
plant health element



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# SITPRO Research Study Report

## Importation of Goods Subject to Animal and Plant Health Regimes

### 1. Introduction

This report is of a research study, commissioned by SITPRO (Simplifying International Trade) to identify, document and evaluate trade concerns about cross-border trade procedures and documentation that have an animal or plant health element.

The study involved gathering evidence from members of port communities through interview and written submission, and gathering evidence from other sources.

The study set out to investigate claims that:

- ◆ Checks on imported goods of animal and plant origin have increased significantly over the last five years, and now account for at least 70% of all examinations at a major seaports;
- ◆ Trade is hindered by poorly drafted legislation that places unnecessary burdens and costs on the parties involved in importing goods;
- ◆ New checks are introduced without effective consultation or planning with the trade in general and stakeholders at UK ports (sea, air, rail and inland) in particular;
- ◆ Enforcement authorities are poorly co-ordinated, and tend to enforce legislation more rigorously than their counterparts in mainland Europe;
- ◆ These issues increase costs to UK business and cause traffic to be diverted ports in other Member States.

The primary objective of the study is to make recommendations that will set the initial agenda of a Joint Defra (Department for the Environment, Food and Rural Affairs) and Trade Consultative Committee.

### 2. General Observations

Those who expressed an opinion tended to agree that controls are generally imposed for justifiable reasons, but they expected controls and control systems:

- ◆ To be fully integrated and accessed through a “single window”;

- ◆ To be rigorously scrutinised by stakeholders before introduction;
- ◆ To be proportionate;
- ◆ To be efficient and cost-effective;
- ◆ To Dovetail with trade practice;
- ◆ Wherever public, animal and plant health considerations permit, to be enforced elsewhere than within the port itself;
- ◆ To take account of a trader's own checks and historic reliability;
- ◆ To be based on best effective practice.

### 3. Trade Concerns

#### 3.1 Frequency of checks

Reductions in levels of routine checks by Customs within ports as a result of the move to a risk-based, intelligence-led service has increased the relative proportion of checks carried out by non-Customs agencies. It is widely believed that non-Customs checks now make up between 70 and 80% of all official checks on imports that take place within the port environment.

This increasing proportion is compounded by the increasing scope and level of routine checks by non-Customs agencies on products of plant and animal origin, the frequency of which are specified in EC legislation rather than being risk or intelligence-based.

EC (European Commission) food sampling programmes have added to the number of checks in ports, those resulting from Commission Decisions often requiring consignments to be detained in-port pending results.

Some PHAs (Port Health Authorities) have also required consignments to be detained in-port pending the receipt of results when conducting routine food surveillance and monitoring programmes.

#### 3.2 Poorly drafted legislation

Legislation has not kept pace with advances in technology, e.g. requiring the production of physical documentation, even though the relevant data is, or could be, made available in a secure electronic format, e.g. electronic certificates that

have been introduced by the RPA (Rural Payments Agency) for high quality beef. Even then, the electronic certificate of authenticity that is issued by the RPA still has to be produced in hard copy to comply with Customs requirements.

Non-Customs legislation includes requirements that no longer match the working methods of the Customs service, e.g. requirements in POAO (Products of Animal Origin) legislation that invoke Customs "T5" procedures.

Data requirements for different products or purposes are not aligned one with another, resulting in the need to duplicate the same information in different formats for a number of agencies.

EC requirements are occasionally drafted in haste, resulting in unclear requirements that enable Member States to carry out checks at differing levels of frequency, e.g. does the term "chicken meat" include compound products? Some Member States decided it did, others decided it did not.

POAO legislation that relates to the disposal of non-conforming consignments is perceived to be inflexible. It is widely understood to require all consignments to be presented at the BIP, and importers believe this means that they cannot act proactively, e.g. by arranging destruction or re-export, if they become aware of non-conformities through their own controls and checks.

On strict interpretation, POAO legislation requires documentation to match a consignment precisely. It does not allow an importer to correct or to produce new documentation when the documentation that accompanies a particular consignment is deficient; e.g. 1000 items of boxed frozen beef instead of 100.

Some PHAs / LAs (Local Authorities) have, nonetheless been prepared to adopt a more pragmatic approach and allow the correct documentation to be produced where there has obviously been a typographical or similar error, providing the consignment is otherwise in order. This does, however, put them at risk of censure by the EC's Food and Veterinary Office (FVO).

It was also stated that PHAs / LAs are not consistent in the documentation that they require in order to conduct their checks, and may reject consignments because markings that are not legally required, e.g. barcodes, do not match other documentation.

EC legislation is not generally accompanied by guidance to Member States on intended scope or intent resulting in inconsistent interpretation in Member States, e.g. the scope of peanut and veterinary residue testing.

Defra was perceived as having been less effective in promoting the update and amendment of EC legislation in Brussels than the FSA. The FSA was perceived as willing to listen to trade concerns and to raise them in Brussels at the appropriate time, if the case had been made. The FSA was also perceived as

being more effective than Defra at keeping stakeholders informed about progress.

### 3.3 Lack of effective consultation

Port users and enforcement agencies said that they frequently do not know about new or changed requirements until the last minute, leaving little time to plan, or for enforcement agencies to resource the additional checks. An example was produced of a notice concerning new checks on organic produce that were due to come into force on 31 March 2003 that were notified to port users by Defra in a notice dated 10 March 2003. The Products of Animal (Third Country Imports) (England) Regulations 2002, which should have brought EC provisions into effect in 1999, are said to have been issued for consultation with a two-week deadline.

Port operators and port users said they were not consulted on the new specification for BIPs (Border Inspection Posts) before Directive 2001/812 was published. The new specification is causing port operators to take commercial decisions to cease providing BIP facilities because of the cost of meeting the new requirements. This in turn means that POAO can no longer be imported through those ports (it was understood at the time of writing this report that Defra was about to issue a new, shorter, list of approved BIPs).

The new certification requirements for organic produce were seen as having been drawn-up without effective consultation with port operators, users and other stakeholder, resulting in a system that took little account of trade and port procedures.

There was perceived to be a marked contrast in the approaches of Defra and the Food Standards Agency (FSA) to consultation with stakeholders on proposals for EC directives and Regulations, and national implementing legislation.

The FSA was perceived as being relatively proactive in seeking to inform itself about stakeholder views on proposals for European and national legislation, and in using those views to inform and formulate its negotiating position in Brussels.

Defra was perceived as being less open and transparent in this respect. It was noted that Defra's lists of current and completed consultations<sup>1</sup> do not appear to include any relating to import controls on POAO or POPO (Products of Plant Origin) in the period March 2001 to May 2003.

Benefits accruing from Customs becoming a more risk-based, intelligence-led service, with controls focussed away from ports, are perceived to have been eroded by new port-based checks by other agencies. These checks appear to

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<sup>1</sup> <http://www.defra.gov.uk/corporate/consult/default.asp>

have little animal, plant, or public health relevance, e.g. organic produce and marketing standards, and could therefore be conducted away from ports without risk.

### 3.4 Poorly co-ordinated enforcement agencies

Some PHAs / LAs provide information on their Internet web sites, although the scope, quality and usefulness of the information is varied. It can also be difficult to find, because local authority Internet web sites are not primarily focussed on port health activities.

Arrangements for the collection of fees are inconsistent between PHAs / LAs. Whilst some accept payments in advance, and some issue invoices, others require separate payments for every consignment. PHAs / LAs that do not issue invoices, and those that require separate payments, were perceived as failing to understand the requirements of business accounting systems.

Interpretations of requirements have differed between PHAs / LAs on the shared use of BIP facilities, although Defra has recently circulated EC guidance that resolves this particular issue (4 months after receiving it). The guidance now officially permits the shared-use of low-throughput BIP's, subject to certain conditions.

Port communities do not always have effective arrangements for the co-ordination of, and liaison between, port operators, port users, and enforcement agencies.

Heathrow airport does not have a single PHA / LA, resulting in the port community having to deal with several local authorities, each of which has its own procedures. This has been recognised by the FSA and included in its 10-point plan for improving imported food controls.

PHAs / LAs have reported difficulties in checking new certification requirements for organic produce because the reference database maintained by UKROFS (the UK Register of Organic Food Standards) was not up to date.

Enforcement agencies are not all port-based, and do not all have access to port data systems.

### 3.5 Increased costs and diversion of trade

Government air route distribution rules mean that third country to third country shipments transiting through London may have to be moved by road between Heathrow and Gatwick airports. Interpretation of POAO rules in the UK is said to differ from other Member States, in that such trans-shipments

are treated as POAO imports and exports in the UK but not in other Member States.

The inspection of air-freight imports and trans-shipments of live fish and lobsters, where speed is of the essence, were also mentioned in the context of increased costs and diversion of trade. It is said that such inspections used to take place in the airline's customs warehouse, but now have to take place in the BIP facility following a decision of an FVO inspector. Some of this trade is now said to have moved to Paris where the rules are interpreted as they had been previously in the UK.

The UK has imposed a £45 stamping fee for organic produce certificates that is out of line with charges in other Member States, e.g. no charge in Germany.

UK laboratories have been unable to cope with requirements to test certain consignments before release into free circulation. Following recent requirements to test 100% of chicken imports from certain countries, the UK upgraded 2 laboratories, which was still not enough to cope with demand. Consignments built up in the ports, with delays reaching 14 – 16 weeks. Governments of other Member States are said to have invested in upgrading national laboratories to cope with demand, e.g. 7 laboratories upgraded in The Netherlands.

It was also stated that although samples are sent daily, UK laboratories have been producing results in weekly batches rather than releasing them as soon as results are known, adding up to a further 7 days' port storage charges on some consignments.

When POAO has been sampled under a specific EC Decision, e.g. for veterinary residues, PHAs / LAs cannot issue a CVC (Certificate of Veterinary Checks / Clearance) until the sample result has been received, resulting in consignments incurring port storage charges. Other commodities can be released to the importer's premises under customs procedures pending clearance.

Port and airport facilities, including their associated BIPs, are believed to be provided and operated as a national resource by some Member State governments, which maintain and improve the facilities at no direct cost to port users. In the UK, BIP facilities are provided by independent port operators, who are subject to commercial pressures, and therefore have to cost maintenance and improvement work against the potential for trade through the facility.

PHAs / LAs are funded locally, and have to compete, along with other services such as Education and Social Services, for limited resources, and can only recover the cost of some of the checks they perform.

## 4. Evaluation of Trade Concerns

### 4.1 Frequency of checks

The move by Customs to a risk-based, intelligence led service has undoubtedly led to a dramatic reduction in the number of checks performed by the Customs service within the port environment. This was confirmed by port operators, port users and enforcement agencies alike.

Other enforcement agencies that are still required by legislation carry out checks using rigid criteria that are not risk-based, or intelligence-led, such as those that apply to POAO, have not been able to match this reduction. Indeed, evidence was produced that routine in-port checks by non-Customs enforcement agencies have actually increased after the introduction of new legislation that has been implemented throughout the EU.

PHAs / LAs and other enforcement agencies are able to adopt a risk-based approach when the legislation permits, but are generally constrained by the terms of the legislation and by the expectations of their respective national and EC supervising bodies.

Samples that are taken as part of co-ordinated food sampling programmes were not viewed by port operators or users as being taken for enforcement purposes. The purpose of such programmes was generally understood to be surveillance or intelligence gathering, and the justification for invoking formal detention procedures in such circumstances was difficult to understand.

However, if potential public health risks of new products or previously unrecognised hazards are unknown, it may be more understandable for such products to be detained, although a transparent and consistent approach is essential.

### 4.2 Poorly drafted legislation

Much of the evidence about poorly drafted legislation focussed more on legislation that had not kept pace with technology and other developments than about the drafting of the legislation itself.

The continuing need for physical documentation was widely questioned, particularly where data was already, or could be, made available in a secure electronic environment. It was frequently indicated that such an environment would eliminate current requirements to provide the same or similar information to a number of enforcement agencies separately. The use of secure electronic systems was seen to be an essential part of a more efficient import clearance system.

It was also seen as an efficient and cost-effective means of addressing the needs of the various enforcement agencies, whilst at the same time, providing the "single window" for the port community.

Port users who are able to identify non-conforming consignments through their own checks are nonetheless not necessarily permitted by the relevant legislative framework to take action proactively to re-export or destroy the offending product without it having to be presented to the relevant enforcement agency.

Port users who identify non-conformances through their own checks felt that they should not be liable to pay inspection charges if they voluntarily re-exported or destroyed offending consignments.

Some import control legislation, for example that relating to organic produce, allows errors in documentation to be corrected and certified without consignments becoming technically "illegal" simply because of the documentary error.

POAO legislation, however, specifically disallows corrections. This means that documentation accompanying an otherwise properly health-marked and identified consignment of 1000 x 50kg boxes of frozen beef from an approved establishment that is wrongly documented as comprising 100 x 500kg boxes could not lawfully be corrected. The consignment would therefore have to be rejected in order to avoid the possibility of censure by the FVO.

Legislation that permits certain recognised traders to remove consignments from the port to their own premises pending resolution of a problem were identified as good effective practice.

Traders whose premises are recognised by Customs for Customs clearance purposes and who can demonstrate that consignments could be kept securely pending the result of sampling or the resolution of other issues are permitted by some legislation to remove consignments from the port environment.

The own checks that the importer has in place, together with their Customs status and historical reliability, were seen as elements of a more permissive regime that would enable consignments to be removed from the port environment pending clearance or otherwise.

Plain English guidance from the EC on the scope and intention of new and amended measures would help ensure that Member States implement and enforce measures consistently, and avoid the possibility of diversion of trade.

Guidance to and by Port Health Authorities would also help ensure consistency, and provide a more level playing field for port operators and users.

### 4.3 Lack of effective consultation

Lack of effective consultation can result in the introduction of unworkable legislation that fails to take account of trade practices. This creates additional costs and other burdens to business that could be avoided or reduced if consultation is undertaken effectively.

Evidence was produced that central government agencies, and the divisions and departments within them, have access to a large number of different consultation mailing lists of varying comprehensiveness, explaining why some consultations are well-conducted and others are not.

Effective consultation is an essential element in the formulation and introduction of enforceable legislation.

### 4.4 Poorly co-ordinated enforcement agencies

The quality of information that is provided for the benefit of importers and other stakeholders by the centralised enforcement agencies that have documented their procedures is generally good. The information is also made widely available in order to facilitate trade, often on Internet web sites, including those of Defra's PHSI<sup>2</sup> and HMI<sup>3</sup>.

Individual PHAs / LAs should, ideally, be able to provide information of a similar quality and consistency, but this is difficult if they in turn do not have adequate guidance from the central competent authorities, namely the FSA and Defra.

PHAs and LAs are also autonomous organisations, each with its own local pressures and priorities. APHA (the Association of Port Health Authorities), or LACORS (Local Authorities Co-ordinators of Regulatory Services) therefore seem the most appropriate organisations to provide consistent information of the required quality.

Enforcement agencies that have an interest in checks on the importation of products of plant and animal origin include Customs, Port Health Authorities, the Plant Health and Seeds Inspectorate, the Rural Payments Agency, the State Veterinary Service, the Horticultural Marketing Inspectorate and the Forestry Commission.

Evidence was provided that liaison and co-ordination between enforcement agencies, port users and port operators takes place with varying degrees of effectiveness within individual port communities, but that liaison and co-

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<sup>2</sup> <http://www.defra.gov.uk/planth/ph.htm>

<sup>3</sup> <http://www.defra.gov.uk/hort/hmi.htm>

ordination between individual enforcement agencies at strategic and policy levels does not seem to operate in any formal sense. There seems to be a need for enforcement agencies themselves to liaise with one another, amongst other things to ensure the efficiency of port procedures and to eliminate duplication.

PHAs / LAs were frequently mentioned in the context of poor co-ordination and inconsistency, particularly as they operate under locally devised policies and procedures, and are subject to local pressures and priorities, rather than as a coherent national enforcement service. Again, APHA or LACORS seem best placed to provide the required degree of co-ordination and consistency.

The "single window" approach favoured by port operators and port users was seen as requiring enforcement agencies to liaise and co-operate with one another much more closely, although retaining local authority control was seen by some as potentially problematic in this respect. However, providing APHA or LACORS can provide the single voice and a consistent set of port procedures for PHAs / LAs, current arrangements should not compromise the achievement of the "single window".

The unsatisfactory situation at Heathrow airport, where a number of LAs are responsible for the enforcement of certain controls in and around the airport, has already been recognised by the FSA. The obvious solution would be to extend the responsibility of one of those authorities to cover the whole of the airport. Another option would be to extend the remit of another enforcement agency that already has London-wide enforcement responsibilities, such as London PHA, to include port health controls at Heathrow.

#### 4.5 Increased costs and diversion of trade

The cost to port users of meeting the requirements of enforcement agencies was frequently mentioned as a cause of trade diverting from UK to Continental ports.

Evidence was produced that the cost of storing a refrigerated container within the port environment in a UK port for 14 to 16 weeks pending receipt of results of residue tests was in the order of £100 per day, after the first 7 to 10 days. Compared to the value of the consignment, this represented a very significant additional cost to the importer.

This additional cost far outweighed the cost of diverting the container to a continental port where staff resources were greater, procedures were more efficient, and investment in laboratory testing facilities had been made, and then transporting the container by road and ferry to the UK. This was accepted as being environmentally unfriendly and a loss to the UK port economy, but commercial considerations are the over-riding priority for importers in a fiercely competitive environment.

The ability and readiness of UK central competent authorities, namely the FSA and Defra, to invest in the provision of adequate laboratory facilities in order to process large volumes of samples efficiently is an issue that was highlighted by a number of port users and by enforcement agencies. It was suggested that the apparently superior resourcing and flexibility of laboratory services in other Member States was at least partly due to those Member States investing in the development of comprehensive State scientific and laboratory services.

Official food samples must, by law, be sent to official food control laboratories that have been notified to the EC by the UK Government. Unlike other Member States, however, official food control laboratories in the UK are not part of a National Scientific and Laboratory Service. They are a mix of local authority and commercial laboratories that have seen a serious decline in food sampling activity over recent years, and investment which is frequently poor.

The current Public Analyst laboratory system in the UK is also under other pressures that are seriously threatening its future viability. The effect of an apparent lack of investment and consequent decline in the service on trade is a serious issue that requires urgent consideration by the FSA and Defra.

Some enforcement agencies, e.g. the Forestry Commission, and entire port communities, e.g. Felixstowe, were singled out by port users for their understanding of the practicalities of trade. Their pragmatic approach to overcoming difficulties and potential costs, whenever possible, that importers face when consignments are delayed for any length of time was recognised.

Conversely, however, the inflexibility of procedures that are applied in some port situations, principally due to the enforcement of the letter of the law rather than its spirit, were also highlighted as having a significant impact on importers' readiness to import consignments through certain UK ports.

However, PHAs / LAs face very real difficulties in seeking to adopt a more flexible, pragmatic approach, because they are audited by Defra, the FSA and the FVO against the letter of the law, not its spirit, and criticised if they are found to have deviated.

The continued imposition of rigid controls that are not risk or intelligence based, restricts the ability of enforcement agencies to interpret the law and enforce controls sensibly.

## 5. Recommendations

The following recommendations are addressed to SI TPRO as the representative agency of a wide range of trade interests. Initial discussions and any ongoing forums will be open to any relevant trade delegate with an interest in pursuing these recommendations.

1. SI TPRO should seek to establish a formal consultative relationship with Defra, the FSA, the Forestry Commission, HM Customs and Excise, APHA, and LACORS, to share experience and good practice, and to resolve the issues raised in this report;
2. SI TPRO should seek to provide informed trade input into the work that is currently underway in the FSA to achieve a "step change" in imported food control;
3. SI TPRO should consider its position in relation to a single enforcement port health agency at Heathrow, and in particular, whether to explore options for London PHA or another pan-London agency to be given enforcement responsibility;
4. SI TPRO should explore Defra's consultation policies and procedures for new and amended EC and national legislation with a view to improving the ability of SI TPRO to provide informed trade input at the earliest opportunity;
5. SI TPRO should initiate discussions with the FSA and Defra on the urgent need to improve the capacity and capability of the UK's official food control laboratories;
6. SI TPRO should seek to reverse the trend for inappropriate, non risk-based, non intelligence-led controls to be conducted in-port;
7. SI TPRO should seek to initiate a debate with stakeholders, including Defra, the FSA, APHA and LACORS, on the scope for enforcement agencies to adopt risk-based enforcement strategies where out-dated EC legislation has failed to keep pace with such approaches in other areas;
8. SI TPRO should promote the concept that enforcement agencies should be able to take an officially recognised importer's own checks into consideration when determining the scope of official checks and controls on a particular consignment;
9. SI TPRO should seek Defra and FSA support for a comprehensive, EU-wide peer-review of the checks discussed in this report with a view to identifying and disseminating good practice within Member States;

10. Pursue the following recommendations made in the associated Legislative Review<sup>4</sup>:
- ◆ That the organisations concerned with enforcement of the legislation covered by the review should agree consistent definitions for key terms;
  - ◆ That a single electronic, internet-based application should be considered as a model for a more uniform inter-agency approach to the provision of data for import control authorities;
  - ◆ That SI TPRO facilitates liaison between all the organisations concerned with official import controls with a view to achieving the necessary general improvements.
11. Although not discussed in the body of this report, SI TPRO should seek to be closely involved in discussions on the implementation of the proposed EC Regulation on Official Feed and Food Controls that was published on 5 February 2003. The draft Regulation appears to address many of the concerns that were expressed during the study, including risk-based and intelligence-led controls, and the “single window” concept.

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<sup>4</sup> Third Country Imports Subject to Community Plant Health or Veterinary Checks Regimes, SITPRO, June 2003.

## 6. Glossary of Abbreviations and Acronyms

BIP	Border Inspection Post
CVC	Certificate of Veterinary Checks
Defra	Department for the Environment, Food, and Rural Affairs
EC	European Commission
HMI	Horticultural Marketing Inspectorate
LA	Local Authority
OVS	Official Veterinary Surgeon
PHA	Port Health Authority
PHS	Forestry Commission Plant Health Service
PHSI	Defra Plant Health and Seeds Inspectorate
POAO	Products of Animal Origin
POPO	Products of Plant Origin
RPA	Rural Payments Agency
SITPRO	Simplifying International Trade
UKROFS	United Kingdom Register of Organic Food Standards