

LEAVE ALLIANCE

Brexit Monograph 17

Food exports to the EU

12 April 2017

Introduction

When the UK leaves the EU, it will automatically acquire the status in EU law of "third country". No longer part of the Single Market, it will find that it has to conform with a much more rigorous regime for exports of food of animal and vegetable origin, with serious constraints that could cause serious damage to the sector, and in particular to trade between Ireland and Northern Ireland.

In this Monograph, we look at the implications of this development and assess how the UK as a whole will be affected.

Post-Brexit exports

As long as the UK intends to continue exporting animal and plant-related products to the EU, post-Brexit, it will automatically fall within the framework set for "third countries" by Regulation (EU) 2016/429 on transmissible animal diseases, and Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.^{1,2}

Regulation (EU) 2016/429 sets out five hurdles which an exporting country must surmount in before products of animal origin can be sold in EU Member States. Firstly, the country itself must be officially listed as one permitted to export, having satisfied the Commission that its systems and organisation meet EU requirements.³ It must be specifically listed for each group of products. There is no single, overall listing.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0429&qid=1486817283161&from=EN>

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0625&from=EN>

³ See Article 125 of Regulation (EU) 2017/625.

Then, each establishment from which products originate (whether farm, slaughterhouse or processing plant) must be approved and listed on the EU's official database. Each consignment must then fulfil the regulatory requirements for entry into the Union and they must be accompanied by relevant certificates, declarations and other documents. Finally, at the port of destination, the consignments must be presented to official inspection points to permit the implementation of what are termed "official controls".

In respect of products of animal origin, the inspection points were known as Border Inspection Posts (BIPs). Products of plant origin were processed through Community Entry Points (CEPs). In practice, these were usually combined in single locations.^{4,5} Now, with the implementation of the 2017 Regulation, they are to be known as Border Control Posts (BCPs).

In terms of assessing how this affects the UK, the current position is that foodstuffs are inspected as required at the point of origin. There are no border controls on intra-community trade. The establishments in which they are produced are approved by UK authorities under the supervision of the EU's Food and Veterinary Office (FVO) under the aegis of DG Sanco.

With the imposition of border inspection, three factors emerge. Firstly, there is a routing issue. Goods have to be directed to entry points where there are inspection facilities, which may require significant detours. For cross-Channel movements to France, there are no inspection facilities at Calais. The only posts on the French Channel coast are Dunkirk and Le Havre. Traffic will have to be routed via these points. For Ireland, there are BIPs at Dublin Airport and Port, and at Shannon Airport. There are no facilities serving traffic between Ireland and Northern Ireland. Traffic from Northern Ireland would have to be routed via these ports before goods could be released for circulation in Ireland.

The second issue is the potential for delay. At the basic level, there will be a full documentation check, to ensure the loads are accompanied by the necessary documents. Then there will be verification checks – physical inspections to determine whether the load is as described on the documents. There will be in-situ inspection of loads, including the opening of packs to assess safety or quality. Vehicle contents may also have to be transferred to inspection areas for detailed examination. The, samples may be taken for off-site analyses, either for microbiological examination, or to determine such things as pesticide residues or the presence of non-permitted preservatives and colours.

As to the effects of these procedures, the Freight Transport Association (FTA) observed that there had been repeated delays to Dover – Calais trade, for reasons such as bad weather, operational problems, industrial action and demonstrations and, in recent instances, migrant action at Calais (Coquelles). In cases of severe

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009D0821&from=EN>

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:169:0001:0112:EN:PDF>

disruption, Operation Stack is put in force. This involves the emergency use of large stretches of the M20 motorway (in south-east Kent) to park freight traffic bound for the Channel Tunnel or the Port of Dover.

Between January and November 2015 Operation Stack was implemented on a record 32 days, three implementations each lasting five days. Further disruption arose in July 2016 when France increased its security checks following the Nice attacks. This led to delays of 14 hours due in part to staff shortages. The estimated the cost the UK international road freight industry at £750,000 per day.

The UK Chamber of Shipping then cited a trial conducted in November 2014, in which the University of Kent showed that the exit checks would almost double the average check-in time for most tourist cars and increase them by a third for freight traffic. The model showed that with tourist and freight check-in transactions extended by exit checks, the queue for traffic heading for the port of Dover would extend at least 8.5km, blocking the A20 almost as far as Folkestone.

Veterinary and other checks, however, are far more rigorous than customs checks, although they affect only a fraction of the traffic flows through ports. Individual vehicles may be delayed up to five days if off-site analyses are conducted, but the overall effect may depend on how far it is possible to segregate and handle separately vehicles that will require intensive inspection.

Thirdly, there is a capacity problem. For exports via France, of the £9 billion food & drink exports to the EU each year, probably about £4 billion is routed via that country.⁶ There appears to be no accurate, published information on many lorry-loads that amounts to but value-to-weight ratios can be used as a basis for estimation.⁷ Assuming this at about £1.50/kilo, against an average load of 10 tonnes, that gives us about 260,000 truck loads per annum entering the mainland via France.⁸ Legislation has set the minimum permissible rate of inspection at 20 percent, but it can be 50 percent – or 100 percent for live animals. The lower rate of inspection amounts to over 50,000 inspections per annum.⁹

In France, these inspections are carried out by the *Service d'inspection vétérinaire et phytosanitaire aux frontières* (SIVEP), a national services established in 2009.¹⁰ French terminology for BIPs is *postes d'inspection frontaliers* (PIF). Plants and vegetables go through *points d'entrée communautaires* (PEC).

⁶ <https://www.fdf.org.uk/publicgeneral/fdf-exports-2016-snapshot-full-year-2016.pdf>

⁷ https://transborder.bts.gov/programs/international/transborder/TBDR_VWR.html

⁸ href="http://ec.europa.eu/eurostat/documents/3433488/5579892/KS-SF-11-063-EN.PDF/4f5844ca-39a9-4403-b662-2fc5cf53ff4a

⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31994D0360&from=EN>

¹⁰

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021573586&dateTexte=20160908>

The entire national service in 2015 inspected 41,137 consignments of products of animal origin, and 38,719 of products of plant origin – about 80,000 in total.¹¹ UK exports would absorb over 60 percent of the entire annual throughput. Even then, this national figure possibly under-estimates the problems. Of the two BIP/CEP facilities on the northern French coast, Dunkirk can handle 5,000 consignments a year.¹² Le Havre can handle 16-17,000.¹³ The UK's requirements would be well in excess of twice the available capacity.

Effectively, to cope with imports of British foods, the French authorities would have to build additional capacity equivalent to three times the size of their largest unit, at an approximate cost of £20 million – something along the lines of the Algeciras facility, the largest in Spain.¹⁴ Meanwhile SIVEP would have to recruit and train the 60 additional personnel it would need to run the operation.¹⁵

As it stands, we are entirely in the hands of the French, who would no doubt assess whether there was anything to gain politically from doing nothing. That stance could be popular with French farmers who, a few years ago, were picketing the le Havre BIP, ironically described as "inspections".^{16,17} For the moment, that seems to be what they intend to do. When asked about the issue by a journalist from a UK national newspaper, the French department of agriculture gave a somewhat insouciant response that "as Article 50 hasn't been invoked we have plenty of time to adapt the facilities as needs be". This was thought "not entirely reassuring".¹⁸

Furthermore, these data only apply to France. As much produce is exported throughout the EU, where a similar level of facilities will have to be found, or new-builds costing up to £20 million will have to be constructed and staffed. This will not only apply to the mainland. Exports to Ireland will also have to be inspected in the appropriate facilities.

However, with the UK Government failing to offer clarity as to its intentions, it is difficult to see how the continental authorities could do anything other than wait. The extent of the investment will depend entirely on the deal negotiated with the EU, so there would be little sense in making what would amount to a speculative provision.

¹¹ <http://agriculture.gouv.fr/sites/minagri/files/160254.pdf>

¹² <http://www.dunkerque-port.fr/en/press/news/2015-10-08-port-of-dunkirk-inauguration-of-new-border-inspection-post-en-40946.html>

¹³ <http://www.paris-normandie.fr/region/les-jeudis-de-port-center-au-havre-permettent-au-public-de-decouvrir-le-port-XI7468000>

¹⁴ <http://www.apba.es/fr/poste-dinspection-frontalier>

¹⁵ <http://agriculture.gouv.fr/infographie-securite-sanitaire-les-controles-aux-frontieres>

¹⁶ <https://servicesveterinaires.info/2015/07/30/sur-la-zone-portuaire-du-havre-les-agriculteurs-en-colere-inspectent-camions-et-entrepots/amp/>

¹⁷ <http://www.paris-normandie.fr/breves/normandie/des-agriculteurs-poursuivent-leurs-inspections-aux-services-veterinaires-au-havre-KY3735491>

¹⁸ Personal communication. Unpublished.

Should negotiations fail, and the UK reverts to WTO rules with no agreement on customs and other cross-border issues, this could catapult UK produce into the "high risk" capacity, decided by formal risk assessment procedures which would load the process because of the lack of any information exchange. The inspections would soar to 120,000 or more – amounting to 50 percent above the current throughput. Even theoretical capacity could be exceeded.¹⁹

Should the authorities wait until agreement has been reached, that could leave a long gap before sufficient capacity became available. It is hard to see how a new-build installation could be completed inside two years. Planning and official approvals could increase the time to as long as four years. Then there is the matter of funding: the French might be very reluctant to commit large sums simply to facilitate UK imports.

One possible alternative is for the UK Government to build a BIP facility this side of the Channel, securing European Commission permission for advance inspection. The facility would have to come under EU supervision, and operate to EU rules, possibly with some professional staff from EU Member States.²⁰ Some of the existing capacity within the EU might be used.

Capital costs would be significant – possibly up to £20 million, including infrastructure. Ongoing operational costs would also be significant. They are normally financed from inspection charges, levied at between £50 and £350 per inspection – plus any laboratory costs – adding millions to the cost of exporting.²¹

For this to work, a decision on a new development would have to be made soon, and there is no indication that this issue has even been recognised for what it is. But there can be no doubt whatsoever that border inspection will become a permanent feature of our relation with the EU.

The effect of a Free Trade Agreement

It is often argued that we can adopt the Canadian Comprehensive Economic and Trade Agreement (CETA) model for trade with the EU because it allows us abandon the damaging regime of regulatory harmonisation which is a feature of the Single Market. Instead, it is suggested that we can rely on mutual recognition of each other's standards, as long as there is rough equivalence between them.²²

However, even before CETA was agreed, a Swedish economist warned that the EU had not in any way conceded equivalence in its technical regulation and was boasting that no regulations had been changed as a consequence of the agreement.²³ Now, the agreement coming into force, the Canadians are learning

¹⁹ https://www.actu-environnement.com/ae/news/controles_sanitaires_sivep_9597.php4

²⁰ See Articles 73 and 120 of Regulation (EU) 2017/625: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0625&from=EN>

²¹ <http://www.porthhealth.eu/fees.htm>

²² <https://ciaranmcgonagle.com/2016/08/31/the-politics-of-equivalence/>

²³ <https://capx.co/the-canada-eu-trade-deal-is-no-model-for-brexit/>

that this is exactly the case.²⁴ The agreement has failed to remove many of the barriers to shipping red meat to Europe. According to Ron Davidson, head of international trade for the Canadian Meat Council, "We do not have what we would call commercially viable access to the European market".

Under the (CETA), Canada is allowed duty-free exports of 81,011 metric tons of pork, but three obstacles stand in the way. Firstly, the EU wants trichinella-free product and Canada is not officially recognised as free of the parasite. It is hoped a trichinella-free standard could be developed according to guidelines set out by the World Organisation for Animal Health (OIE). But that would be expensive and there is no certainty the EU would accept it.

Secondly, the EU requires its own health mark on boxes of meat over a tamper proof belt, placed at the time it is packed. The boxes go into a refrigerator and the serial numbers on the health mark must be kept in sequence. That would create significant handling problems for Canadian companies which ship to many other markets outside of Europe.

Thirdly, Canadian meat processors are concerned about the equivalence of inspection. "We supposedly do have equivalence in the meat inspection systems. If it is a real equivalence, the Canadian Food Inspection Agency stamp should be sufficient", Davidson says.

Nor are these issues the full extent of the problems. On the beef side, Canada was granted duty-free exports of 64,950 tonnes of beef and veal. Here, there is the stumbling block on the use of antimicrobial treatments to remove pathogens such as *E. coli* O157. Because the EU would not be buying entire carcasses, Canada would be left with items like trim used for minced meat. This is often exported to the United States where there is a zero-tolerance policy for *E. coli*. That means the entire carcass has to be treated with antimicrobials in Canadian packing plants to avoid the risk of losing the US market.

"If we turn off interventions, the risk of having an incident at the US border goes up", Davidson says. Canada plans to submit applications to the EU for the addition of two antimicrobial products, based on vinegar and citric acid. The EU has approved lactic acid for washing carcasses, halves and quarters, but not the other products.

Meanwhile, European meat suppliers have open access to Canadian markets. "The day that CETA goes into effect, the 26.5 percent tariff comes off so the European Union is going to have a huge opening of the Canadian market for beef and veal", Davison added. "The agreement is not balanced. We would just like to be able to take advantage of the quota we've got", he said.

²⁴ <http://www.producer.com/2017/03/canadian-export-officials-miffed-over-ceta-import-regulations/>

And there lies another important issue. According to the *Irish Examiner*, although Canada gets an extra 50,000 tonnes of tariff-free quota for its beef, it must be high-quality and hormone-free.²⁵ Currently, the US and Canada only take up three percent of their combined 11,500 tonnes annual quota. Canada may, therefore, be unable to avail itself of the additional quota. Furthermore, it is unlikely any of their larger processors will have much interest in trade with the EU as long as the ban remains on antimicrobial washes.

In this is the Canadian dilemma. In seeking to service two markets with conflicting regulatory regimes, the incompatibilities are such that producers must choose one or the other. They cannot do both and maintain profitability.

Had they looked at the small-print in CETA, they would have seen this coming.²⁶ The chart on page 302, for instance, shows that the EU is not in the least interested in regulatory equivalence – only obedience. At the time that the agreement came into force, exporters had to comply with Regulation (EC) No 852/2004 on the hygiene of foodstuffs;²⁷ Regulation (EC) No 853/2004 laying down specific hygiene rules on the hygiene of foodstuffs;²⁸ Regulation (EC) No 854/2004, laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (now replaced by Regulation (EU) 2017/625);²⁹ Commission Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs;³⁰ and Commission Implementing Regulation (EU) 2015/1375, laying down specific rules on official controls for *Trichinella* in meat.³¹

That meant, as the Canadian Meat Inspection Agency concedes, that every Canadian meat establishment must be approved by the EU and listed on the official schedule, before it can export to the EU.³²

The meat must be stamped with the official EU-approved health mark (thereby making it unmarketable in the US) and on arrival at its EU port of entry, the meat must be presented to a Border Inspection Post. There, it must be subjected to special checks (for a fee) before it can be passed to customs for clearance.³³ In other words, the free trade agreement does not give Canadian meat processors a free pass into the EU. They are treated just like any other "third country" – as will be the UK when it leaves the EU.

²⁵ <http://www.irishexaminer.com/farming/news/qa-little-canadian-interest-in-50000t-eu-beef-trade-443611.html>

²⁶ http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf

²⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:139:0001:0054:en:PDF>

²⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:139:0055:0205:en:PDF>

²⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:226:0083:0127:EN:PDF>

³⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:338:0001:0026:EN:PDF>

³¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1375&from=EN>

³² <http://www.inspection.gc.ca/food/meat-and-poultry-products/manual-of-procedures/chapter-11/european-union/eng/1367938786477/1367938835254>

³³ <http://www.thepigsite.com/swinenews/43098/unresolved-technical-issues-could-delay-canadian-beef-pork-access-to-europe-under-ceta/>

Nevertheless, it could be argued that the EU law only applies to establishments which choose to export to the EU. That much is true. Canadian plants which do not export adopt the local, equally rigorous but different Canadian regulations, or the US federal regulations if they wish to trade with their closest neighbour.

However, if the Canadian plants do elect to trade with the EU, they cannot switch conformity on and off. In order to export, they must operate from approved establishments, which means they must go through the laborious processes of demonstrating full conformity with EU law. This conformity must then be maintained if they wish to stay on the approved list.

For UK establishments, this means that most establishments will have to conform with EU law. Even if just ten percent of the product is exported, the business must comply all of the time. Nor do there have to be direct exports - most plants feed into the wholesale market, produce from which is exported. Meat is also sold to food manufacturers which export (or may want to export) a portion of their output to the continent. They will demand from their suppliers EU-compliant product, irrespective of its eventual destination.

Those meat plants which restrict themselves only to the domestic market, therefore, will tend to find their market very restricted indeed, often becoming part of a second-tier low-price market, shunned by supermarkets and chain outlets. Thus, as was the case before the EU fresh meat hygiene standards became compulsory in this country with the advent of Directive 91/497/EEC, most plants complied "voluntarily". In practice, they had no choice. It was either that, or exclusion from the volume trade.

In the Canadian instance, the bigger, more attractive and more profitable export market is the US. Producers there will continue to service this market. CETA does them no favours. The deal was "unbalanced" against Canadian meat.³⁴ For the UK, as long as the EU remains its biggest export customer, the EU will require *de facto* conformity with the entire EU animal health *acquis* just as it does now.

Live animals and the Irish trade

Every week in Ireland, around 10,000 pigs, and 1,000 bovines move back and forth across the border as part of the normal slaughtering and processing activity. This unhindered movement, says an RTE report, can happen "because operators on both sides of the border comply with EU rules on animal safety, animal health and welfare, disease control and traceability".³⁵

After Brexit, Northern Ireland farmers and producers would not be covered by those rules. Therefore, the Irish co-operative movement (ICOS) was to propose

³⁴ <http://www.cbc.ca/news/politics/canada-eu-trade-meat-wallonia-1.3824972>

³⁵ <https://www.rte.ie/news/analysis-and-comment/2017/0207/850683-tony-connelly-brexite>

to the European Commission, for example, that milk from Northern Ireland be designated as "Irish" milk, to get around these issues.

However, the free movement of goods arises not because of regulatory conformity but because Northern Ireland, as part of the UK, and Ireland itself, are both in the Single Market. They both enjoy the free movement of goods which is an inherent part of the Single Market. Once the UK leaves the EU (and the Single Market), free movement of goods will no longer be enjoyed – even if regulatory conformity is maintained.

Thus, it is not sufficient merely for Britain to continue binding itself to the relevant regulations. It will still be a "third country" and must go through all the hoops before it is allowed to export to the EU. This means, amongst other things, that animals and products of animal origin must be routed via a Border Inspection Post.

As to the idea that milk from Northern Ireland be designated as "Irish" milk (and thereby milk of EU origin), to get around these issues, it seems unlikely that this would be tolerated. It would, in effect, create a back door into the Single Market, something against which the EU is on its guard. Nevertheless, this idea was extended further by the Irish parliament Joint Committee on Jobs, Enterprise and Innovation.³⁶ It argued for Northern Ireland to be given "designated special status" within the EU, allowing it to access to the EU single market and all EU funding.

Much of this is wishful thinking. On Brexit, the border between Ireland and Northern Ireland becomes the external border to the EU, the only land border that the UK will have with the EU. The EU will do its utmost to maintain the integrity of that border.

Conclusions

Come what may, after Brexit, the UK will become a "third country" in relation to the EU. This is not a derogatory term, and should not be confused with "third world country". It is simply a technical description applied to countries which are outside the EEA/Single Market.

With that new relationship comes the imposition of a series of controls, of which the most prominent and potentially most damaging will be the inspection regime carried out at Border Control Posts. These involve significant delays, which primarily affect roll-on, roll-off (ro-ro) shippers. What are also termed driver accompanied loads are particularly vulnerable to delays: not only is the load held up, the vehicle and driver are kept out of play as well, adding to the expense.

That said, it would appear that delays are only part of the problem and the smaller part of it. If there are significant capacity shortfalls in inspection facilities, there

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http://www.thenational.scot/news/15146353.Dublin_wants_special_deal_for_Northern_Ireland_to_ease_Brexit_impact/

will have to be restrictions on the on the level of exports. Shippers may be limited either on a first-come, first served basis, or the situation may be managed by using a quota system. Failing that, we see the prospect of loads being delayed so long that perishable contents will be spoiled and become unusable. On top of this, the extra shipping time, and the extra costs involved, may render the transport of low value goods uneconomic.

The worst of it though is that the ultimate solution is out of the hands of the UK authorities. Shippers will depend entirely on the goodwill of the French and other national authorities (such as the Irish). These authorities must be prepared to invest in facilities which are convenient to British shippers, with sufficient capacity to handle the throughput, including the peak periods.

Then there is the routing problem, which will have particularly severe effects on Northern Ireland traffic – unless there is that investment in new Border Control Points. Without them, much of the food traffic from the North will have to be routed via Dublin or Shannon. This is clearly impracticable, which means that cross-border trade will be severely curtailed.

A possible mitigation is the adoption by the Commission of the Article 73 procedure (under the 2017 Regulations) permitting pre-export controls to be performed by third countries. However, these do not affect the right of Member States to carry out official controls on imported feed and food to verify that the pre-export checks carried out in the non-EU country remain effective. Furthermore, only two approvals have been given, one to the United States relating to "peanuts and derived products thereof as regards the presence of aflatoxins" and the other to Canada relating to "wheat and wheat flour as regards the presence of ochratoxin A".³⁷

Thus, even at best, the prospects for many food exports to the EU, post-Brexit, are poor. There will be considerable delays, increased costs and difficulty in committing to reliable delivery timing. At worst, delays and/or capacity limitations may make it impossible to continue the export of highly perishable products of animal or plant origin. In the longer-term, ro-ro shipping may prove impracticable or uneconomic and we may to a shift to containerised transport, with redistribution away from the Channel ports, and a change in the nature of the goods exported to the EU market.

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³⁷ http://ec.europa.eu/food/safety/official_controls/legislation/imports/approval_en