Mr Hefin Davies,
Division/Branch Regulatory and Legal
Strategy Directorate,
Food Standards Agency,
Aviation House,
125 Kingsway,
London WC2B 6NH

8th January 2014

Subject: Consultation: Proposal for a Commission regulation on official controls and other official activities

Dear Mr Davies,

Gafta represents the trade in grains and agricultural commodities and is representing importers of raw materials into the UK in the case of this consultation. We thank you for the opportunity to take part in this consultation. Please find below our comments on a number of questions within the consultation.

Q1 Scope
Do you think that extending the scope of the proposal to plant health, plant reproductive material, and animal by-products will impact on the coherence of the official controls framework?
Gafta does not see the benefit of extending the scope to cover GMO, Plant Protection Products etc The scope is too wide to cover all the different aspects of each area. Plant health, reproductive materials including forestry etc. are very different in criteria and assessment of controls compared to the agri food chain and in their view should be dealt with in specific areas of EU law. The legislation will lack structure and will be more open to interpretation.

The proposed new rules are designed to simplify and clarify the system and create a single framework, however the legislative requirements for all these sectors are very detailed and the likelihood is the regulation will become unnecessarily complex to cover all aspects of each area.

Gafta feels it would be more appropriate that each area remains ring-fenced specifically the animal feed sector. This will ensure that the legislation remains coherent for each sector.

Q2 Definitions
a) How clearly does the language and definitions used in the proposal reflect the broader scope?
b) Are definitions sufficiently clear and easy to understand?
There is a very general usage of the term operator and goods which means the grain trade is included in areas never considered previously. Gafta would seek a clear definition of “operator” and “Goods” in relation to animal feed as opposed to other included sectors.

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Additionally under 2.2 Impact assessment it states: “Mandatory fees are extended to cover all controls performed on feed and food businesses registered and or approved in accordance with food and feed hygiene Regulations as well as operators defined in plant health and PRM law.” This would suggest that the term operator is different for plant health operators – can this be clarified?

The word “regularly “ is also used frequently throughout the document for example Chapter II – official controls “ CA’s shall perform official controls on all operators regularly” - however the definition of regularly is not defined – could this also be clarified?

c) In particular, do you have any comments on the new definition of “other official activities” and what this covers?
Gafta would like to seek further clarification on what is considered to be covered by "other official activities" and how this is likely to be applied in practice.

Q4: Official controls (Chapter II)
a) Do you think the new requirements in relation to identifying possible intentional violations of food and feed law (Article 8(2)) will impact on the enforcement community, industry and/or consumers? Please give reasons.
The article needs to distinguish between intentional acts of fraud or violations and this should form part of the definitions so that it is not left to interpretation by other member states. It is possible for accidental contaminations to occur which could be minor in nature, how would this be differentiated in practice?

b) Has the issue of transparency of official controls (Article 10) been adequately addressed?
Gafta does not agree with the provision of a legal basis in article 10 to allow the publication of individual official control results. This provision is not included in 882/2004 and we do not support its extension to the revised document. The proposal should only consider publishing information which has an impact on public health across the EU. There may be a need to publish general summaries to monitor trends and developments across the member states or EU. Unless the public understands the framework, the reason behind any negative result the mere publication of results is pointless. This information has very often in the past been misused by the media and will negatively impact consumer confidence. This needs clarification in the text not in 28 different guidance documents. We would insist that all commercial interests are not undermined and professional secrecy respected unless there is final proof that there has been a breach of rules or in the case of public health issue.
We see no reference to clear specifications in terms of timing of publication of reports etc Final reports can differ substantially from the initial assessment which should never be published. These issues need to be tackled at EU level as a basic principle as our members operate in all EU 28 countries.

Similarly, Gafta does not welcome the provision to grant a legal basis to allow member states to publish ratings of individual operators. We are not satisfied with the explanation that the intention is not to "name and shame" as per the definition but to classify operators based on competent authorities assessment against certain criteria. The end result will be the same.

Gafta members are also concerned about the provision of "access to information" in article 14.1 b as the potential scope of this article is too broad. We understood that the CA will only access the computer systems of operators for the purpose of carrying out the official controls and must respect the company data protection act and sensitive market information.

We would appreciate if FSA could examine further this provision for clarification purposes. We question in what circumstances this provision would apply, what is the scope to allow CA

access to company information systems within investigations and supported by what evidence for CA to act.

d) Existing EU requirements in food and feed law require business operators to inform competent authorities where they have reason to believe that food or feed is unsafe. Do you think that this should be expanded:

- **to cover all intentional non-compliances with the rules referred to in the proposal, and**
- **include all operators within the scope of the proposal?**

No we do not think it needs to be expanded. The majority of the feed scares that have occurred have been down to intentional fraud which cannot be legislated against. These occurrences have been notified in majority of cases by company's own records and notified to RASFF and Competent Authorities. Feed business operators will inform competent authorities in the event that feed is unsafe. Can we ask them to define a "intentional non-compliance?"

Gafta members have stated that no member of Gafta would have an intentional non compliance and feel this term assumes that Feed Business operators are not working within the legislative framework.

Q6: Sampling, Analysis and Testing (Chapter IV)
a) Do you support the proposed rules, including the temporary and permanent derogation from mandatory accreditation requirements for official control laboratories? Please provide information to support your answer
b) Are the provisions relating to sampling of goods offered for sale by means of distance communication (Article 35) appropriate?

Article 34 - Non compliance: Gafta does not support the idea of laboratories reporting results of non compliances which we consider very disproportionate and would not like to see trade stoppages. Feed Business Operators undertake a large amount of analysis over and above any legislative requirements to insure the safety and quality of the goods. If Labs were asked to report any non compliance to the Competent Authorities this could act as a deterrent to any additional analysis undertaken by FBO's.

We would ask FSA to seek clarification that this obligation for official control laboratories to report non-compliances to the CAs relates to official control samples and other activity samples only and not to the sampling by operators or accreditation schemes.

Gafta members have raised the issue of data protection and request clarification as to whether this would breach the Data protection Act. Additionally, on a practical level would a commercial lab be accepted or another member state or just nationally approved labs?

article 34: 2nd expert opinion - Gafta would like ask to specify a specific timeframe to have results from second sample which is imperative to our business and mentioned in article 34.

Q7: Import provisions (Chapter V)
a) Do you agree with the Commission's approach to streamline border official controls?
b) Would that approach improve the efficiency of import controls? Do you think that control authorities and importers would benefit from such changes? Please give reasons.

Gafta believe this encompasses a great deal of different legislation that need to be reviewed in detail to give a coherent answer on this. There are different legal requirements for each sector; for example importing plants, animal by-products, GMOs etc compared to animal feeds. By attempting to collate all the different rules and requirements for such a diverse range of products the complexities of each sector will act as a barrier to efficiency. Again we would promote the ring fencing of each sector.

Q8: Financing of official controls (Chapter VI)
a) Official controls are required to be adequately financed by member states. The FSA believes that member states should determine how best to achieve this for themselves unless there is clear evidence for a particular control or sector, that a failure to act at the EU level on charging will result in market distortion. Do you agree with the FSA position on this?

Gafta members operate in an EU 28 countries and would be concerned that if each member state sets up a system at national or regional level. We do not see this approach as helping to guarantee a more level playing field but create more distortions

A harmonised system should be established which should be proportionate across all EU countries.

If you disagree with the FSA position that Member States should have discretion on how they finance official controls;
b) Do you agree with the Commission's proposed changes to significantly increase the number of official controls for which Member States are obliged to collect fees by including sectors not currently charged and expanding the scope of the proposal? Please give reasons.
No we do not agree with the extension of mandatory fees to all sectors. The trade has already invested heavily in quality assurance systems, good hygiene practices and regular own controls which work. This has been demonstrated numerous times via the rapid alert system. Official controls are a key responsibility of the CA and should be financed by public funds thus improving the efficiency and effectiveness of the system.

c) Do you think that there are particular sectors or controls that do require charging to be set at the EU level in order to ensure coherence and consistency in the application of fees for official controls, and prevent UK businesses from being disadvantaged?
Yes where charges already apply.

d) Do you agree with the proposed requirement that Member States recover the full cost of controls where mandatory fees apply? Please give reasons.
No, controls should be financed from public funds for food and feed safety law. The trade has already invested heavily in quality assurance systems, good hygiene practices and regular own controls which work and this has been demonstrated via the rapid alert system on many occasions.

e) Do you agree with the option given to Member States to reduce or exempt from fees micro-enterprises? Would the option, as formulated, create significant administrative burdens? Please give reasons.
No we do not agree with any exemptions for micro enterprises.

f) Do you agree with the rules that set out the costs that can be recovered via fees? Please give reasons.
No we do not agree with this and as previously stated all costs should be harmonised and be proportionate.

g) Do you think that the incorporation of the bonus/malus principles in the fee system will encourage business compliance and risk- minimising behaviour? Please give reasons.
Gafta members believe this would not be the case as FBOs are doing undertaking all the Feed safety legislative requirements and more to ensure the safety of the goods.

h) Do you think that requirements for Member States to provide to the public and the Commission information regarding fees will have a positive impact on transparency and contribute to a fairer system? Please give reasons.
If Fees are to be charged then this should be made available in the Public domain for all member states. If charges are then imposed on FBO's these can be viewed for all member states and if the approach undertaken is not on a uniform basis it will be transparent.

We look forward to further consultation on these points as these matters crystallise and would be grateful to be kept fully informed on all matters in this regard.

Yours sincerely,

June Arnold
Head of Policy

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