

Kent County Council

Import Controls Post-Brexit and their Impact on Kent

Kent County Council Trading Standards Response to the Governments "Future Customs Arrangements, A Future Partnership Paper"



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12/14/2017

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Part 1 – The impact on Trading Standards

1. Introduction

In this response we are looking to address the issues with the borders as we see it from Kent's unique position rather than specifically focusing on the options, as for us, if these issues are addressed in either proposal we would be supportive of it.

As already stated the County of Kent is in a fairly unique position in the UK as we have one of the busiest Ports in the country, but as the majority of traffic is roll on roll off (Ro-Ro) vehicles, mainly from EU countries, there is relatively free unhindered movement of goods.

In addition we also have Eurotunnel in Cheriton which again has an extremely busy throughput of goods and passenger vehicles, but relatively unhindered passage to and from the continent at the current time.

The implications of leaving the customs union and stopping the free movement of goods would therefore have a significant impact on the movement of goods through these two ports, which I will explain further.

2. Kent County Council Trading Standards

Kent Trading Standards is a Statutory Service provided by Kent County Council. We employ 40 staff with a budget of £1.8 million, and are responsible for enforcing over 250 pieces of criminal legislation in areas as diverse such as animal health and weights and measures, all of which carry a duty to enforce. Office hours are 8.30 – 17.00 5 days a week, with an out of hour's service for animal health issues and UKBF unsafe goods enquiries.

We operate in the UK market place, including the intra-EU supplies of goods, where we would ensure that counterfeit and/or unsafe goods are not placed on the UK market using our powers under domestic legislation (Consumer Rights Act, General Product Safety Regulations and Consumer Protection Act).

In addition Trading Standards operates as the Market Surveillance Authority for the EU, and in this capacity prevent unsafe goods from being imported into the EU. Here we make use of EU Regulation 765/2008 for Accreditation and Market Surveillance (RAMS), which provides power to prevent their entry into the UK (see Appendix 1).

3. Dover Port – Dealing with Imports

As stated above Dover's Ro-Ro operation is completely different from the large container ports (Felixstowe, Southampton, and Tilbury).

EU Goods (imported on the ferries) enter the UK through the Eastern Docks. As they are mainly EU in origin or have cleared customs in another EU member state, they benefit from free movement and are free to leave the port.

The exception to this is where there is intelligence to suggest to UK Border Force (UKBF) that vehicles contain smuggled goods or illegal items such as firearms, tobacco and drugs. These vehicles will be stopped for anti-smuggling checks.

Non-EU goods are dealt with at the Western Docks and are subject to customs clearance of some type. These actually arrive at the Eastern Docks, but the vehicles have to drive to the Western Docks to be cleared.

As the goods are shipped from the EU, the lead time for manifest information (detailing the goods being shipped from the EU to the UK) is very short.

Container ships from the rest of the world (and in particular China) destined for ports such as Felixstowe, will have the manifest information a number of weeks before the shipment arrives. This provides sufficient time to assess it, identify the goods of interest and plan for their detention for inspection.

UKBF at Dover are able to deal with the current situation and have systems and staffing in place to review the data within an hour.

Where the goods imported are suspected to be of interest to Trading Standards they will notify us for us to intervene as we see fit.

If goods are intra-EU, UKBF are generally unable to deal with them (unless they are smuggled) as they would be interfering with the free movement of goods.

The Consumer Protection Act does provide UKBF with the ability to seize goods on behalf of Trading Standards where there is a safety issue or where the goods have not been previously supplied in the UK. They rely on Trading Standards to use its powers to take further action, which usually involves seizing these detained goods.

No similar provision exists for counterfeit items.

4. Eurotunnel – Dealing with Imports

Eurotunnel is unique as a port being the only land entry into mainland Britain. In addition the border for Eurotunnel is not in the UK but located (under the Treaty of Canterbury) at Coquelles in France. The Canterbury Treaty set out frontiers and jurisdiction between Cheriton, Folkestone, in Kent and Fréthun in the Pas de Calais.

Most of the goods coming through Eurotunnel are of EU origin, or have been cleared within the EU. These goods are processed and inspected (where necessary) by UKBF at Coquelles who will notify Trading Standards if they find goods that may be relevant.

Any non-EU goods are sent through the tunnel to “Stop 24” which is located at J11 M20 at Folkestone, where they are inspected by UKBF.

5. Trading Standards role at Dover

As stated previously Trading Standards operates as both –

- a. the UK enforcement body for goods imported into the UK, originating or cleared in the EU and therefore subject to free movement
- b. as the Market Surveillance Body for goods imported into the UK, originating outside the EU, but destined for the UK or another Member State

a. Goods Imported into the UK from the EU

These goods are subject to free movement, but may be detected by UKBF during anti-smuggling inspections, or identified using other intelligence sources.

Where goods breach EU or UK Law, Trading Standards will take action using their domestic powers.

If the goods are destined for the UK, and there is the potential to rectify the non-compliance (e.g. labelling product in English) they may be suspended from being supplied but allowed to travel to their UK destination for reworking or re-labelling under the supervision of the local Trading Standards Service.

If the goods are illegal (e.g. counterfeit or dangerous) they may be seized by the Trading Standards Officer. If there is a large quantity of goods, they will have to be transported and stored at a secure site, pending further testing and examination. All of this is done at the expense of the Trading Standards Service. It can only be reclaimed following either a successful criminal investigation and prosecution, or forfeiture through the courts.

b. Goods Imported Into the UK, Originating Outside the EU – Destined for the UK/EU

Trading Standards Operate as the Market Surveillance Authority under RAMS. Here the UKBF suspecting that product (which has not been cleared for free movement) poses a serious risk, does not comply with EU legislation or is incorrectly “CE” marked will not release the goods for free circulation but notify the MS Authority.

Trading Standards has 72 hours (3 working days) to take steps to determine if the goods pose a serious risk or are in breach of EU Regulations, and advise UKBF that they do not comply. The goods are then prevented from entering the UK/EU on this direct instruction from Trading Standards. This period of time means that we do not have to provide 24 hour cover and provides time for effective checks to be carried out.

RAMS also provides for Trading Standards to destroy or otherwise render inoperable products presenting a serious risk where it is both necessary and proportionate to do so.

The result of using these powers is that large containers of goods from a non-EU source that are unsafe or non-compliant can be stopped from entering the UK (and subsequently the EU).

The goods remain at the port, at the cost of the importer, until such time as they –

- provide the appropriate documentation to Trading Standards to show the goods comply and are safe
- re-export them, if they are non-compliant rather than dangerous
- re-work them to make them comply
- re-label them – if they are shown to be compliant in all other aspects
- scrap them – under supervision

Here the cost of the storage of the goods during this time (which at the port is considerable) as they have not been cleared, is borne by the importer. They continue to pay this until such time as the goods are made compliant or re-exported.

For Trading Standards this is a cost effective method of ensuring that the unsafe items do not enter the UK/EU market.

With counterfeit goods, UKBF can intervene themselves and operate on behalf of the Brand Representatives and Trade Mark Holders as the goods are not in free circulation. Trading Standards does not generally become involved unless there is a safety implication, in which case RAMS would apply.

6. Trading Standards role at Eurotunnel

a. Goods Imported into the UK from the EU

As stated above, due to the Treaty of Canterbury, intra-EU inspections by UKBF on Eurotunnel freight takes place in Coquelles, France.

Trading Standards have no jurisdiction in France (as we are not able to be authorised by the County Council to this effect) and therefore we rely on UKBF to notify us of issues found.

There are however, issues around our ability to take effective action following changes to powers under the Consumer Rights Act and its interaction with the Consumer Protection Act.

Goods can be detained by the UKBF for 48 hours under the Consumer Protection Act where they breach safety provisions, for Trading Standards to respond. This is a day shorter than under RAMS.

Trading Standards have powers to inspect documentation under the Consumer Rights Act, but the officer is required to be present to do so. As the goods are in France, where we have no jurisdiction, this creates difficulties as we are reliant on UKBF to be able to detain the goods and return them to the UK for us to take effective action.

b. Goods Imported Into the UK, Originating Outside the EU – Destined for the UK/EU

As with Dover (above) here Trading Standards Operates as the Market Surveillance Authority under RAMS.

The goods are inspected at Stop 24 by UKBF. If they suspect products pose a serious risk, do not comply with EU legislation or are incorrectly “CE” marked, they notify Trading Standards who will go to the area and inspect the goods.

If the goods are unsafe or do not comply they will be prohibited from entering the UK/EU under the provisions of RAMS exactly the same way that they are dealt with in Dover. The goods remain at Stop 24, until the agent/importer has –

- provided the appropriate documentation to Trading Standards to show the goods comply and are safe
- re-exports them, if they are non-compliant rather than dangerous
- re-works them to make them comply
- re-labels them – if they are shown to be compliant in all other aspects
- scraps them – under supervision

7. Brexit Implications – Free Movement

If the free movement of goods is removed by leaving the single market and the customs union, without any alternative in place, the goods entering the UK through Dover and Eurotunnel will become “imported goods” and subject to inspection by UKBF.

To put this in perspective at the moment there are around 100,000 vehicles per annum through Dover and Eurotunnel that are subject to UKBF inspection as they are 3rd country vehicles.

After Brexit, without adequate steps in place, all vehicles would be subject to inspection which would see and increase to 2 Million vehicles. The impact of such an increase would be significant, in particular -

- increased pressure on Kent’s Infrastructure and the free flow of traffic through it
- the need for modernisation and expansion of the inspection facilities at Dover or elsewhere. The last inspections of this type took place in 1992
- the creation of an inspection area for Eurotunnel at Cheriton, the expansion of Stop 24, or development of an areas elsewhere
- increased resources needed for Trading Standards to cope with UKBF inspection of vehicles

8. Brexit Implications – Legislative Changes

While Trading Standards has domestic powers to deal with unsafe and counterfeit items in circulation (EU sourced and cleared items), we use the powers provided under RAMS to deal with Non-EU imports.

There are significant cost and resource implications to UK Trading Standards Services if the powers granted under RAMS which includes the official interaction we have with UKBF in this respect is not maintained under the new customs arrangements.

If the duties on UKBF to prevent entry and notify Trading Standards are not maintained, Trading Standards will not be able to effectively prevent unsafe goods from entering the UK (and EU).

Furthermore if the ability to prevent entry is also not maintained, the only method available of stopping unsafe and non-compliant goods entering the market will be by Trading Standards exercising its powers of seizure.

This pushes the responsibility for the costs of storage to Trading Standards, instead of the Agent/Importer. It also removes the pressure resulting from stopping entry to for the Agent/Importer to take action to make the goods compliant, have them destroyed, or re-export them to minimise cost.

Without an equivalent RAMS system in place, non-compliant or unsafe goods will need to be dealt with using domestic legislation, with Trading Standards having to either prosecute or apply for forfeiture to have the goods destroyed. Both of these options impose costs and risks on Trading Standards.

Kent Trading Standards has experience of dealing with this situation without the benefit of RAMS. Prior to Poland joining the EU, unsafe (under UK upholstered furniture requirements) fake leather upholstered furniture was being imported, with multiple lorries landing every week.

Each consignment was initially seized, but eventually, due to the volume, they had to be sent back to Poland with the risk of being presented again via a different haulier. Within a financial quarter this activity cost Kent Trading Standards £75,000 (storage, testing, and staff).

9. Brexit Implications – Border Changes

The unique position of Eurotunnel and the Treaties permit UK authorities to work in France under UK jurisdiction. The infrastructure of the Channel Tunnel is based on this and the facilities for the inspection and detention of goods are at Coquelles.

Whilst these treaties are separate from the UK's membership of the EU, there has been some press coverage of this being changed.

If the tunnel border is not affected by Brexit and UK Authorities are still permitted to operate in France then any increase in surveillance work will be carried out in France. This will cause Trading Standards issues as we have no jurisdiction in France. If all imports into the UK become subject to inspection in France, without addressing this lack of authority, there is the potential for an increase in the risk that unsafe and non-compliant goods enter the UK.

If the border does move from France to the UK, there will be huge pressure on the logistics of carrying out any inspections at Eurotunnel, Cheriton as there are no facilities to do this and limited facilities at Stop 24.

One positive aspect for Trading Standards will be a reduction in counterfeit goods. As stated above UKBF cannot deal with counterfeit issues where the goods are in free circulation, these are passed to Trading Standards to respond. If all goods were seen again as imports,

then UKBF would be able to act directly at the border, which would reduce the impact on Trading Standards.

This would of course have to be offset against the increase in inspections of goods for safety purposes. If UKBF are inspecting more vehicles, the amount of potentially unsafe goods identified for Trading Standards inspection is likely to increase dramatically.

10. Brexit Implications – Intelligence

Trading Standards, as a Market Surveillance Authority, is a participant in the Rapid Alert System for dangerous non-food products (RAPEX) notification system.

This System allows for quick exchange of information between 31 European countries and the European Commission about dangerous non-food products posing a risk to health and safety of consumers.

Manufacturers or distributors are obliged to report to the competent national authority if one of their products on sale is dangerous. There is also an obligation for national authorities to report when they have taken action against a dangerous product.

Our current participation in this system, allows us to

- inform other EU member states of the action we have taken and the issues found with product alerting them to similar issues with like product and allowing them to take action reducing the risk of product of the same type entering the UK
- receive vital intelligence on product, their source and the risk to allow for is to be informed and take action with reasonable suspicion to both prevent and remove the same or similar product from the market

If we lose access to this information and do not contribute to the intelligence going into this system we risk losing the ability to be effective and remove unsafe products from the UK market place.

A further market surveillance system is the internet-supported information and communication system for the pan-European market surveillance (ICSMS). As with RAPEX this provides the same exchange of information between member states. In addition this also provides access to the various Market Surveillance bodies in the Member States and the ability to pass on information and issues regarding importers or products located in that members Country for action by the local Market Surveillance Authority.

A loss of access to this system would also have an effect on the ability to deal effectively with issues originating in Europe or affecting Europe from the UK.

11. Brexit Implication – Demands on Trading Standards Border Work

As stated above, we foresee that if there is no single market and free movement of goods, then the numbers of vehicle subject to inspection will increase dramatically.

Without RAMS (or a similar set of powers) the 72 hour inspection period between stopping and releasing by UKBF for Trading Standards would be unavailable. Instead we would have to rely on the 48 hour timeframe provided by the Consumer Protection Act.

This decreases the time that goods can be detained by UKBF and increases the demand on Trading Standards resources to respond.

In addition, unlike RAMS, at the end of the 48 hour period, if the goods are unsafe or non-compliant, they cannot be prevented from entry but instead have to be seized using TS powers, incurring handling and storage costs.

As there is currently limited expensive storage at Dover Docks and none at Eurotunnel, any seized goods would have to be moved and stored at external facilities, all at the expense of Trading Standards. Currently this cost can only be recovered through legal action, which is not always possible with foreign importers or unidentified owners (particularly where the goods are counterfeit).

If the imports through Dover and Eurotunnel are not subject to free movement and are seen as “imports” subject to inspection, then overnight the Port of Dover will become as busy as Felixstowe and Southampton container ports, especially if traffic remains at 2 million vehicles per annum.

The impact on Kent Trading Standards of this traffic would be to look to establish a Port inspection team, much the same as that permanently operating at Felixstowe who have such a team.

Imports through Felixstowe are currently 2.4 million containers a year, of which the team examines approximately 10 -15 containers a week (which equates to 0.0003% of total traffic) taking action to prohibit (under RAMS), seize, sample and suspend unsafe and non-compliant goods. The funding for the team currently stands at approximately £170,000 a year.

If Kent were to adopt a similar position and cover the same proportion of inspection, 2 million vehicles would require funding of £318,750 to run a similar team to carry out this level of inspection under RAMS. This is the cost of staff, testing, and storage of the goods.

To put it in perspective, if 1% of all vehicles were subject to inspection through Dover this would equate to 865 vehicles a week. If only 1% of these were relevant to Trading Standards there would be a significant impact on the Service.

To give a practical example, Kent Trading Standards recently inspected 2 groupage (mixed goods) loads which were located in 2 x 40ft lorries. The goods were imported by multiple importers with multiple goods from 150 lines. As the goods were non-EU in origin, the inspection was carried out under RAMS, and took 49 hours to complete. None of the goods were released into the EU or the UK as they were all non-compliant and/or dangerous.

If a similar provision to RAMS is not available after Brexit then the cost would increase to cover further storage and legal costs, which is currently unknown at this time.

12. Conclusion

The main issues identified in this response are summarised as follows –

- **Single Market** – if there is no continuation of the single market or free movement of goods by other means, there will be a huge increase in vehicles subject to inspection with the implications to the transport infrastructure, not having a customs union or free movement will have implications
- **Border Clarity** – we would be seeking clear clarification as to whether the border will remain in France or move back to the UK as this will have serious logistical implications to Kent
- **Legislation** – we would ask for the legislation to be adequate to enable Trading Standards to work more effectively, reducing the delay in dealing with businesses at the ports
- **UKBF/Market Surveillance Authority Liaison** – the legal gateway for goods to be detained provided by RAMS must continue so that potentially unsafe/non-complying goods can be identified by UKBF, communicated to Trading Standards, and where appropriate be prevented from entry
- **Powers** – the powers available should place the burden of non-compliance on the importer for non-complying or dangerous goods, and not require Trading Standards to take the financial burden of paying for storage automatically
- **Resources** - if there is no continuation of the single market or free movement of goods, adequate funding must be available to provide the resources needed to address the increase in inspections by UKBF and consequently Trading Standards

- **Inspection Areas** – if there is no continuation of the single market or free movement of goods, inspection areas will be needed at Dover, Eurotunnel and/or elsewhere to cover increased inspection and to avoid delays
- **Continued Intelligence** – as resources are limited any intelligence that provides for effective targeting is beneficial. We would urge that we retain access to and contribute towards the market surveillance systems to ensure we are able to identify, prevent and remove unsafe goods from the UK marketplace

We would therefore be in support of any proposal addressing these issues.

Part 2 – The Impact on Food Imports

1. Introduction

The Kent ports, predominantly Dover and the Channel Tunnel, form a significant transport route for food and animal feed products from the EU to enter the UK.

At present, very little of this traffic is subject to any kind of food or feed safety control and flows freely through the ports.

Following exit from the EU it is likely that some degree of food and feed import controls will need to be exercised at these ports. The worst case scenario is that there is “no deal” at this point and that current controls, which are based in EU law, have been enacted into UK law via the EU withdrawal bill. This would mean that a significant number of controls would need to be exercised at the ports by Port Health Authorities, supported by scientific testing and, possibly, veterinary examination.

Currently Dover is listed as a designated point of entry (DPE) for food (but not feed) and the Channel Tunnel is not listed as a DPE. The implications of this are unclear until there is some certainty in relation to how controls will be implemented. DPE designation emanates from EU law.

2. Port Health Authorities

Dover District Council is the Port Health Authority for the Port of Dover. According to Shepway District Council there is no Port Health Authority for the Channel Tunnel but responsibility for food controls falls to Dover District Council. This is supported by the terms of the Channel Tunnel Act which sets out that the tunnel, as it was being constructed, formed part of the District of Dover even though the terminal is in Shepway.

Port Health Authorities, who are generally District Councils and are staffed by specialist Environmental Health Officers, are responsible for implementation of food import controls.

Food import controls are currently divided into controls over products of animal origin and those not of animal origin. Various, detailed requirements are set out in EU law covering a wide variety of foods and feeds. Currently neither Dover nor the Tunnel have the facilities to carry out checks on foods of animal origin.

Various forms of scientific testing and analysis are required to support the delivery of these controls including testing for toxins, pesticides, veterinary drug residues and to detect potential food fraud.

Currently some food is imported through Dover from non EU countries. Dover District Council exercise appropriate controls over these imports and, therefore, has experience of provision of this service.

Kent Scientific Services is appointed as Public Analyst to both Dover District Council and Shepway District Council.

3. The scale of the issue

The Department for the Environment, Food and Rural Affairs commissioned a report, in 2012, relating to the resilience of food supply in the event of port disruption. This is the latest report which has been traceable which attempted to quantify the amount of food passing through Dover and the Channel Tunnel.

That report estimated that 351,000 tonnes of food from non EU countries came through Dover whereas 5.481,000 tonnes of food from other EU countries came through Dover and the Tunnel. The report estimated that this represented in the region of 25% of all EU food imports into the UK.

If controls needed to be exercised over the EU and non-EU imports then that workload would increase, potentially, by over 1600%.

The report suggests that 27% of trailers coming into Dover and the Tunnel are carrying food.

If the 27% figure is accurate then, based on Dover port vehicle figures for 2016 (not including the Tunnel) 337,500 vehicles could be liable for inspection, nearly 1000 per day.

It is fair to say that only a proportion of these vehicles will be carrying foods which are subject to controls.

The risk of the system not having the capacity for the scale of increased checks is clear.

A report published by “The Economist” in April 2017 estimated that clearance checks for non-EU vehicles at Dover currently take between 20 minutes and an hour. If this is replicated over EU imports then the risk of gridlock at the ports is clear.

4. What Kent needs to support its preparation for these potential changes

The following would be helpful in supporting the required preparation to ensure that, the day after the UK exits the EU, food and feed can continue to flow through the Channel Ports:-

- a. Certainty, as soon as it is possible, in relation to the scale and nature of food and feed safety checks which will be required.**

It is recognised that certainty may be some time away. In the meantime frequent and detailed engagement with those designating the controls would be helpful.

b. Short term investment in the local authorities who will need to provide the border controls.

Once the controls are operational, assuming they follow a similar pattern to current controls, then there is provision for the costs to be met by those carrying out the importation. In the short term, however, and before any funding from this can be received, those authorities will need to train and develop their staff and, in all likelihood, recruit new members of staff.

c. Short term investment in the Public Analyst laboratory

In a similar vein to the authorities carrying out the border controls, the Public Analyst laboratories will need to ensure that there is sufficient capacity to meet the need.

In addition, it is recognised that, currently, not all of the scientific analysis required for border controls can be performed in the UK with some of it being carried out in laboratories in Europe. Development of the appropriate test methods to perform these analyses will be required.

d. Commitment to develop the required infrastructure to permit the efficient performance of the required border controls so as to minimise delay and disruption.

e. Engagement with all relevant working groups involved in the preparation of border controls.

This aspect is important so that the needs of those carrying out controls at the Channel Ports can be fully considered. At present most food and feed border controls are carried out at sea ports and air ports. For both of these types of port the Port Health Authority have access, in advance, to details of what cargoes are arriving which allows them to exercise the necessary controls in a planned and efficient manner.

The Channel Ports, by the very nature of “roll on roll off” traffic, do not have advance notification of the cargoes which are arriving. If serious delays are to be avoided this issue needs to be addressed.

REGULATION (EC) No 765/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 July 2008 - setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93

Controls of products entering the Community market

Article 27

Controls of products entering the Community market

1. The authorities of the Member States in charge of the control of products entering the Community market shall have the powers and resources necessary for the proper performance of their tasks. They shall carry out appropriate checks on the characteristics of products on an adequate scale, in accordance with the principles set out in Article 19(1), before those products are released for free circulation.
2. Where in a Member State more than one authority is responsible for market surveillance or external border controls, those authorities shall cooperate with each other, by sharing information relevant to their functions and otherwise as appropriate.
3. The authorities in charge of external border controls shall suspend release of a product for free circulation on the Community market when any of the following findings are made in the course of the checks referred to in paragraph 1:
 - (a) the product displays characteristics which give cause to believe that the product, when properly installed, maintained and used, presents a serious risk to health, safety, the environment or any other public interest referred to in Article 1;
 - (b) the product is not accompanied by the written or electronic documentation required by the relevant Community harmonisation legislation or is not marked in accordance with that legislation;
 - (c) the CE marking has been affixed to the product in a false or misleading manner.

The authorities in charge of external border controls shall immediately notify the market surveillance authorities of any such suspension.

4. In the case of perishable products, the authorities in charge of external border controls shall, as far as possible, seek to ensure that any requirements they may impose with regard to the storage of products or the parking of vehicles used for transport are not incompatible with the preservation of those products.
5. For the purposes of this Section, Article 24 shall apply in respect of authorities in charge of external border controls, without prejudice to the application of Community law providing for more specific systems of cooperation between those authorities.

Article 28

Release of products

1. A product the release of which has been suspended by the authorities in charge of external border controls pursuant to Article 27 shall be released if, within three working days of the suspension of release, those authorities have not been notified of any action taken by the market surveillance authorities, and provided that all the other requirements and formalities pertaining to such release have been fulfilled.
2. Where the market surveillance authorities find that the product in question does not present a serious risk to health and safety or cannot be regarded as being in breach of Community harmonisation legislation,

that product shall be released, provided that all the other requirements and formalities pertaining to such release have been fulfilled.

Article 29

National measures

1. Where the market surveillance authorities find that a product presents a serious risk, they shall take measures to prohibit that product from being placed on the market and shall require the authorities in charge of external border controls to include the following endorsement on the commercial invoice accompanying the product and on any other relevant accompanying document or, where data processing is carried out electronically, in the data-processing system itself:

'Dangerous product — release for free circulation not authorised — Regulation (EC) No 765/2008'.

2. Where the market surveillance authorities find that a product does not comply with Community harmonisation legislation, they shall take appropriate action, which may, if necessary, include prohibiting the product's being placed on the market.

Where placing on the market is prohibited pursuant to the first subparagraph, the market surveillance authorities shall require the authorities in charge of external border controls not to release the product for free circulation and to include the following endorsement on the commercial invoice accompanying the product and on any other relevant accompanying document or, where data processing is carried out electronically, in the data-processing system itself:

'Product not in conformity — release for free circulation not authorised — Regulation (EC) No 765/2008'.

3. Where that product is subsequently declared for a customs procedure other than release for free circulation and provided that the market surveillance authorities do not object, the endorsements set out in paragraphs 1 and 2 shall also be included, under the same conditions, on the documents used in connection with that procedure.

4. Member States' authorities may destroy or otherwise render inoperable products presenting a serious risk where they deem it necessary and proportionate.

5. Market surveillance authorities shall provide authorities in charge of external border controls with information on product categories in which a serious risk or non-compliance within the meaning of paragraphs 1 and 2 has been identified