



The Rt Hon George Eustice MP
Secretary of State for Environment, Food and Rural Affairs
UK Government

Copy: Minister for Agriculture, Environment and Rural Affairs, Gordon Lyon MLA
The Northern Ireland Executive

8 February 2021

Dear George,

WHISKY TRADE ISSUES: POST-BREXIT

I recently met with the Scotch Whisky Association who raised several issues that their members are experiencing with trade post-Brexit.

It is vital that such issues can be resolved as soon as possible. I would like to lend my support to this. I would be grateful if you could give this priority.

The key issues can be grouped into three areas:

- 1) Certification issues for exports to certain European Union countries (requests for additional certification)
- 2) Delays to exports – groupage shipments (delayed groupage orders or suspension of groupage services, due to increased complexity and paperwork problems)
- 3) Complications for UK labels given the implementation of the Northern Ireland Protocol

The Scotch Whisky Association has provided more information and this can be found in the Annex.

Yours sincerely,

FERGUS EWING



ANNEX: POST-BREXIT CHALLENGES, INFORMATION FROM THE SCOTCH WHISKY ASSOCIATION

1) Certification issues

Scotch Whisky exporters are being asked by EU importers to provide additional certification – of analysis, health, conformity, origin or combinations thereof – in at least 13 EU countries that we are aware of so far. The justification is usually that this certification is needed to ensure smooth customs clearance given national (not EU) food safety requirements that apply to imports from outside the EU. This is even though Scotch Whisky is not a risk product from an animal or plant health perspective, and is not typically subject to such onerous certification requirements around the world.

Certification requests from importers have been inconsistent, even from within the same EU country, and our immediate priority is to pin down what documents are strictly required with a view to keeping any additional burden on the industry as small as possible. We have been in touch with DIT/Scottish Government/Embassy teams in Italy, Spain, Cyprus, Greece, Romania and Bulgaria to flag particular problems that have arisen there and will likely need to reach out to others. Italy and Spain are of particular concern because of the size of the markets and the fact that some companies have been asked to provide photographic evidence of labels with lot codes prior to shipping in addition to certificates of analysis (per brand, per shipment) which explicitly refer to those same lot codes. This is in many cases not possible for exporters to provide.

Certificates of analysis are not easy documents to source and can be expensive, running into hundreds of pounds for a single certificate depending on the detail required. Dealing with some of the importer requests for certificates of health or sanitation has also been tricky as these are not typically required for Scotch Whisky. In addition to monetary costs, there is the significant time and resource involved in pulling documents together on a case-by-case basis and having to track individual shipments. The situation is particularly challenging for small businesses.

Our first objective is to clarify with the relevant Governments across the EU precisely what certification and documentation strictly needs to be provided for Scotch Whisky (a protected GI in the EU) according to their national regulations, with a view to keeping any additional burden on exporters as small as possible. The Scottish Government's network may be able to assist us with that exercise, for example an SDI contact in Italy (Claudio Sinibaldi) has already been helpful in investigating the issues we have experienced there.

Furthermore, it could be that the UK-EU TCA provides us with a route to push back on those documentation requests that are particularly onerous, particularly the SPS chapter. For example, at this early stage, we would argue that all the certificates our member companies have been asked to provide count as “unnecessary, scientifically and technically unjustified or unduly burdensome information requests that might delay access to each other's markets”.

2) Delays to exports – groupage shipments

Many of our companies have by now experienced significant issues with groupage shipments – this refers to cases where a container or trailer contains different loads from multiple companies. Groupage is used when a company is not able to fill a full container, typically because of the size of the order or the market being served. It's worth stressing that this is not a method of export unique to any sector – many companies in the Scotch Whisky sector (and

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

not just small companies) also make use of groupage services in order to send products to their customers in different parts of the EU.

The issues being experienced are either seriously delayed groupage orders or groupage services being suspended. In terms of the causes, we are hearing a lot of quite general feedback that the issues are caused by increased complexity and paperwork problems, particularly in relation to transit procedures, which have led to major delays with customs clearance in the EU. As an industry we are a regular user of groupage services, so if it continues to be the case that Scotch Whisky producers cannot get orders out because haulage companies are not able or willing to ship UK products to destinations across the EU, this will become a major problem. We will continue to monitor the situation over the coming weeks and update you if any specific causes for bottlenecks in our sector are identified. We are in regular touch with HMRC as well.

3) Complications for UK labels given implementation of the Northern Ireland Protocol

Finally, our member companies continue to be very concerned with how the Northern Ireland Protocol is being interpreted by the UK and EU when it comes to food business operator (or importer) contact details on labels.

Our basic request is that GB FBO details (and not NI or EU FBO details) should be considered sufficient for spirits products sold in Northern Ireland that cannot be sold in the EU. This is a position supported by both UK and EU industry.

Otherwise, given the fact that a UK duty stamp is required on all spirits labels for the UK market including Northern Ireland, all Scotch Whisky producers will effectively be forced to set up a physical presence in Northern Ireland or the EU in addition to Great Britain, and put two sets of contact details on UK labels (one GB, one NI/EU) in case the retailer places a UK-labelled product on sale in Northern Ireland.

The only alternative if a company does not have a physical presence in the EU or Northern Ireland is to list the importer into Northern Ireland on the label. However, that is not possible to do when companies are supplying a product to multiple UK customers without knowing whether the product will be sold in Great Britain or Northern Ireland, and if the latter, who the importer into Northern Ireland will be.

We and other UK and EU spirits industry bodies wrote a letter on this issue to Michael Gove and Maroš Šefčovič last November but have not received a response from either as yet. Official Defra guidance refers to a pragmatic and risk-based approach to enforcement and contains explicit recognition that companies will need time to adapt. However, without a clearer adjustment period (we have called for 12 months), this flexibility will not take us very far, and companies are now in a very difficult position regarding future labelling. We believe that some companies could be forced to avoid supplying to Northern Ireland until this is resolved, and there are serious question marks over GB labels as well.