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WORKING PAPER

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From:	UK delegation
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	UK comments (following the WP meeting on 21 January)

UK comments on articles 4, 12, 12b, 14, 14a, 20, 21, 22, 22a, 23, 24, 26, 27, 61, 62a

Art. 4 (WK/859 2019 INIT)

100, 103, 104, 106A: We agree with Presidency approach of defending the Council mandate.

110A: We can be flexible on the Presidency suggestion. It is significantly less burdensome on EO than the EP text.

111: We can be flexible on the Presidency suggestion. We recognise that by removing the word 'including' line 110A is not superfluous when read alongside line 111. The Presidency suggestion makes it the responsibility of the manufacturer or importer to take corrective action. The manufacturer or importer are the best placed actors in the chain to ensure this action takes place. Considering this we agree with removing "at its own initiative" so the responsibility is not with the Person Responsible (e.g. fulfilment service provider) to actively monitor compliance

111A: We support the Presidency proposal to hold to the General Approach – the EP suggestion of a written mandate is overly prescriptive and increases the burden for businesses and MSA's without aiding compliance.

Art 12 (WK 861/2019 INIT)

154: We can accept the Presidency proposal.

159: We prefer the General Approach which is less prescriptive on duties MSAs must perform but acknowledge the Presidency suggestion is an improvement by removing reference to counterfeit.

163: We prefer the General Approach which is less prescriptive on the duties MSAs must perform.

164A, 164B: We prefer the General Approach. Through the EU's operational working groups harmonised guidance documents can be produced offer best practice for assessing risks, criteria etc. MS should be free to assess risks in a way that is appropriate for their national markets. We would suggest pushing for optional guidelines as a concession to the Parliament. If this is truly a red line for the Parliament at very least 'shall' should become 'may.'

168A: We prefer the General Approach and believe it is unnecessary to harmonise uniform conditions for checks. The time taken for implementing acts to take effect would also make it likely this provision would never be used as an identifiable serious breach would have been remedied. We can however show flexibility here .

168B: We can accept the Presidency deletion. We already have a high level of operational cooperation between market surveillance and customs authorities.

Customs Authorities share intelligence with MSAs to enable targeted product checks and customs can already suspend and action counterfeit products.

168C: We can accept the Presidency proposed text.

Art 12b (WK 862/2019 INIT)

Our preference is to keep the General Approach. The Presidency suggestion is an improvement over the EP proposal which is very restrictive. However, we still question how this will work in practice; the diversity of arrangements for MSAs means the carrying out of activities will vary widely across the Union. MSA resource would be better targeted towards market surveillance, with national arrangements in place to provide support and ensure market surveillance is effective, combined with the EU's operational working groups to foster sharing of best practice between member states. We also do not feel this is a productive use of union resource. If this is an important article to the EP a possible compromise is to remove compulsory participation or incorporate voluntary co-operative measures into Article 31.

Art 14 (WK 864/2019 INIT)

187B: We are flexible on the compromise suggestion.

195: We prefer the General Approach as the provisions are overly prescriptive and burdensome for Economic Operators and may be difficult to enforce.

201: We are flexible on the Presidency compromise suggestion.

203: We are flexible on the Presidency compromise suggestion.

205: We are flexible on the Presidency compromise suggestion. This appears to follow on from Article 4 line 111. Art. 14a

211E: We can be flexible on this proposal.

211F, 254A: We support the General Approach, member states should be free to decide how to use fees accrued.

Art 14a (WK 69/2019 INIT)

211E: We can be flexible on this proposal.

211F, 254A: We support the General Approach, member states should be free to decide how to use fees accrued.

Art. 20 (ST/5129 2019)

236A: We support the Presidency proposal.

237: We support the Presidency proposal which limits the formalisation of testing facilities to only those areas appropriately identified where there are gaps in testing provision and the building of testing facilities where they are most needed.

237A – 242: We support maintain the General Approach

243: We support maintaining the Presidency proposal

244: We support maintaining the General Approach

244A, 244B, 245, 246: We support the Presidency proposal.

247: We support maintaining the General Approach

248: We support the Presidency proposal as it makes it clear that the designated laboratories are not above other commercial laboratories. The network, the Member States and the Commission are free to seek advice from any laboratory of their choosing.

250 – We strongly prefer the General Approach as EP text raises concerns of creating a two-tier system.

250A – We support maintaining the General Approach.

250B – We support retaining the General Approach as it helps prevent a two-tier structure. Not undermining the business models of existing private labs is a key issue for the UK.

250C – We support the Presidency proposal as it makes reference to identifying specific gaps.

251 – We support the Presidency proposal as the implementing act gives power to introduce robust requirements in identifying a laboratory to be designated as a Union testing facility.

Art. 21 (WK 201/2019 INIT)

254: We support retaining the General Approach. It is the member states' matter to decide how administrative fees charged by market surveillance authorities are used.

Art. 22 (WK 201/2019 INIT)

256: We prefer the General Approach of deleting article 22 and 23 and replacing with article 22a. Article 22a is more proportionate on its requirements on requested authorities.

Art. 22a (WK 201/2019 INIT)

258: We can show flexibility but prefer to use of the word 'enforcement' in General Approach and to not have the prescriptive '30 day' requirement as in the EP proposal.

259: We support the General Approach which makes it explicitly clear when the requested authority takes over responsibility. The EP proposal is more burdensome on the requested authority in its requirement to keep applicant authority informed – does every step taken needed to be reported back?

260: We prefer the General Approach as this is again an extra onerous measure on the requested authority. If they have agreed to take over responsibility it should be left to them to carry it out.

260A, 262E: We support the General Approach as believe it adds important extra detail next to that of Article 16.

Art. 23 (WK 201/2019 INIT)

263, 264, 265: We prefer the General Approach of deleting articles 22 and 23 and replacing with article 22a. Article 22a is more proportionate on its requirements on requested authorities.

Art. 24 (WK 201/2019 INIT)

275, 276B: We prefer the General Approach

277: We prefer the General Approach with regards to the SLO.

277A, 278, 279, 280 – We prefer the General Approach.

Art. 26 (WK 68/2019 INIT)

296A: We support retaining the General Approach.

298: We prefer the General Approach is which is less burdensome on MSAs. The Presidency and EP both refer to "detailed statistical data" however it is not clear what constitutes "detailed".

299 – We prefer the General Approach that the number of interventions should be with regards safety products as this more risk based.

300, 301, 302 – We prefer the General Approach.

304A – We prefer the General Approach. We do not want the addition of implementing acts to determine the common approach to controls as it will impact on member state competency and put new obligations on customs authorities.

Art. 27 (WK 68/2019 INIT)

311: We can show flexibility on the wording as the General Approach, Presidency proposal and EP proposal are very similar.

311A: We support the General Approach our view is that all horizontal references to counterfeit should be removed from this regulation and restricted to the recitals if necessary. It is a duplication of powers already held elsewhere, customs have the power to suspend and action counterfeit products without reference to 608/2013.

Art. 61 (WK 70/2019 INIT)

539A: We prefer the General Approach.

539B: We are neutral on the text but would prefer a less prescriptive timescale.

543, 544, 545, 545A, 546, 547, 548: We prefer the General Approach which is less prescriptive when considering imposing a penalty, there should be greater national competence when deciding. However, we can be flexible with Presidency proposal as this is more proportionate than the EP.

548A: We can support the Presidency to retain the General Approach. The EP requirement on the compulsory allocation of administrative fees is an unnecessary encroachment onto national competence and should be removed.

Art. 62a (WK 15832/2018 INIT)

551B: We support the General Approach. The EP proposal of delegated acts would leave little room for member states to make independent rationale and limit their competency.