

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 1 August 2007

amending Decision 2006/504/EC on special conditions governing certain foodstuffs imported from certain third countries due to contamination risks of these products by aflatoxins as regards almonds and derived products originating in or consigned from the United States of America

(notified under document number C(2007) 3613)

(Text with EEA relevance)

(2007/563/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾, and in particular Article 53 (1)(b)(ii) thereof,

Whereas:

- (1) Commission Decision 2006/504/EC⁽²⁾ establishes special conditions governing certain foodstuffs imported from certain third countries due to contamination risks of these products by aflatoxins.
- (2) The Scientific Committee for Food has noted that aflatoxin B1 is a potent genotoxic carcinogen and, even at extremely low levels, contributes to the risk of liver cancer. Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain

contaminants in foodstuffs⁽³⁾ lays down permitted maximum levels of aflatoxins in foodstuffs. However, in 2005 and 2006 an increasing number of notifications through the Rapid Alert System for Feed and Food (RASFF) indicated that those maximum levels have been regularly exceeded in almonds and derived products from the United States of America.

- (3) Such contamination constitutes a threat to public health in the Community. It is therefore appropriate to adopt special measures at Community level.
- (4) The Commission Food and Veterinary Office (FVO) carried out a mission in the United States of America from 11 to 15 September 2006 to assess the control systems in place to prevent aflatoxin contamination levels in almonds intended for export to the Community⁽⁴⁾. That mission revealed the absence of any compulsory legal requirements to control aflatoxin levels in almond production and processing and the inadequacy of the current control system to offer guarantees concerning the compliance of exported products with Community standards. Furthermore, it showed the inadequacy of the laboratories visited to provide any guarantees for exports and demonstrated failures to comply with almost all aspects of EN ISO/IEC 17025 on 'General requirements for the competence of testing and calibration laboratories'.

⁽¹⁾ OJ L 31, 1.2.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 575/2006 (OJ L 100, 8.4.2006, p. 3).

⁽²⁾ OJ L 199, 21.7.2006, p. 21. Decision as amended by Decision 2007/459/EC (OJ L 174, 4.7.2007, p. 8).

⁽³⁾ OJ L 364, 20.12.2006, p. 5.

⁽⁴⁾ Report of a mission carried out in the United States of America from 11 to 15 September 2006 in order to assess the control systems in place to control aflatoxin contamination in almonds intended for export to the European Union (DG (SANCO)/8300/2006 — MR).

- (5) In response to that FVO report, the United States of America announced its intention to undertake action to address those shortcomings. However, the proposed action is insufficient to provide guarantees for compliance of future shipments of almonds with Community legislation on aflatoxins, in particular due to the voluntary nature of the aflatoxin control system. It is therefore appropriate to subject almonds and derived products originating in or consigned from the United States of America to strict conditions in order to provide a high level of protection to public health.
- (6) In the interest of public health, all consignments of almonds and derived products imported into the Community from the United States of America should be subjected to sampling and analysis for aflatoxin levels by the competent authority of the importing Member State, prior to release onto the market insofar as they are not covered by the Voluntary Aflatoxin Sampling Plan set up by the Almond Board of California in May 2006 (VASP). The consignments covered by the VASP should be accompanied by a health certificate and made subject to random sampling and analysis at the point of import into the Community. The measures will be reviewed within one year on the basis of the reports by the Member States and additional guarantees provided by the competent authorities of the United States of America.
- (7) Decision 2006/504/EC should therefore be amended accordingly.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,
- points (b) to (g), where they are present therein in a quantity of at least 10 %;
- the following points (f) and (g) are added:
- ‘(f) The following foodstuffs originating in or consigned from the United States of America, which are covered by the Voluntary Aflatoxin Sampling Plan set up by the Almond Board of California in May 2006 (the Voluntary Aflatoxin Sampling Plan):
- (i) almonds in shell or shelled falling within CN code 0802 11 or 0802 12;
- (ii) roasted almonds falling within CN codes 2008 19 13 (in immediate packings of a net content exceeding 1 kg) and 2008 19 93 (in immediate packings of a net content not exceeding 1 kg);
- (iii) mixtures of nuts or dried fruits falling within CN code 0813 50 and containing almonds;
- (g) The following foodstuffs imported from the United States of America, which are not covered by the Voluntary Aflatoxin Sampling Plan:
- (i) almonds in shell or shelled falling within CN code 0802 11 or 0802 12;
- (ii) roasted almonds falling within CN codes 2008 19 13 (in immediate packings of a net content exceeding 1 kg) and 2008 19 93 (in immediate packings of a net content not exceeding 1 kg);
- (iii) mixtures of nuts or dried fruits falling within CN code 0813 50 and containing almonds.’;

HAS ADOPTED THIS DECISION:

Article 1

Decision 2006/504/EC is amended as follows:

1. in Article 1:

(a) the first paragraph is replaced by the following:

‘This Decision shall apply to the foodstuffs referred to in points (a) to (g) and to processed and compound foodstuffs derived from or containing a significant amount of the foodstuffs referred to in points (b) to (g). However, it shall not apply to consignments of foodstuffs with a gross weight not exceeding 5 kg.’;

(b) in the second paragraph:

— the first sentence is replaced by the following:

‘Foodstuffs shall be considered as containing a significant amount of the foodstuffs referred to in

2. in Article 3:

(a) in the first paragraph, the following point (f) is added:

‘(f) the United States Department of Agriculture (USDA) for foodstuffs from the United States of America.’;

(b) the following paragraph 8 is added:

‘8. By way of derogation from paragraphs 1 to 6, consignments of foodstuffs referred to in point (g) of the second paragraph of Article 1 may be imported into the Community without being accompanied by the results of sampling and analysis and a health certificate.’;

3. in Article 5, paragraph 2, the following points (f) and (g) are added:

(f) approximately 5 % of the consignments of foodstuffs from the United States of America, referred to in point (f) of the second paragraph of Article 1;

(g) each consignment of foodstuffs from the United States of America, referred to in point (g) of the second paragraph of Article 1.;

4. the following Article 7a is inserted:

'Article 7a

Additional conditions as regards imports of foodstuffs from the United States of America

1. As regards imports from the United States of America, the analysis provided for in Article 3(1) must be performed by an USDA approved laboratory for aflatoxin analysis or a laboratory undergoing the USDA approval process, which has been accredited in accordance with EN ISO/IEC 17025.

However, where the laboratory has not yet been so accredited, it must:

(a) have initiated and be pursuing the necessary accreditation procedures; and

(b) provide sufficient guarantees that quality control schemes for the aflatoxin analyses it conducts are in place.

2. The health certificate provided for in Article 3(1) accompanying consignments of foodstuffs referred to in point (f) of the second paragraph of Article 1 shall make a reference to the Voluntary Aflatoxin Sampling Plan.;

5. Article 8 is replaced by the following:

'Article 8

Costs related to imports of foodstuffs from Brazil, Iran and the United States of America

1. All costs resulting from sampling, analysis, storage and issuing of accompanying official documents and of copies of the health certificate and accompanying documents pursuant to Articles 3(1) and 5(3) for foodstuffs from Brazil, Iran and the United States of America as referred to in points (a), (d) and (g) of the second paragraph of Article 1 and to processed and compound foodstuffs derived from or containing the foodstuffs referred to in those points shall be borne by the food business operator responsible for the consignment or its representative.

2. All costs related to official measures taken by the competent authorities as regards non-compliance of consignments of foodstuffs referred to in points (a) to (g) of the second paragraph of Article 1 and to processed and compound foodstuffs derived from or containing the foodstuffs referred to in these points shall be borne by the food business operator responsible for the consignment or its representative.'

Article 2

This Decision shall apply from 1 September 2007.

This Decision is not applicable to consignments of almonds and derived products which left the United States of America before 1 September 2007.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 1 August 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission