

## COMMISSION IMPLEMENTING REGULATION (EU) No 274/2012

of 27 March 2012

## amending Regulation (EC) No 1152/2009 imposing special conditions governing the import of certain foodstuffs from certain third countries due to contamination risk by aflatoxins

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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<sup>(1)</sup>, and in particular Article 53(1)(b)(ii) thereof,

Whereas:

- (1) Article 53 of Regulation (EC) No 178/2002 provides the Commission with the possibility to adopt emergency measures, where it is evident that food and feed imported from a third country is likely to constitute a serious risk to human health, animal health or the environment, and that such risk cannot be contained satisfactorily by means of measures taken by the Member States individually.
- (2) By Commission Regulation (EC) No 1152/2009<sup>(2)</sup> the Commission has imposed special conditions on the import from certain third countries of certain foodstuffs in which the maximum levels of aflatoxins set by Commission Regulation (EC) No 1881/2006<sup>(3)</sup> appeared to be frequently exceeded.
- (3) Since the Combined Nomenclature (CN) code has changed for certain food categories covered by Regulation (EC) No 1152/2009, it is appropriate to change the CN codes in that Regulation accordingly.
- (4) It is appropriate to repeal the transitional provision for foodstuffs imported from the United States of America, which are not covered by the Voluntary Aflatoxin Sampling Plan, as sufficient time has been provided to operators in the United States of America to implement the Voluntary Aflatoxin Sampling Plan.
- (5) In the light of the number and nature of notifications in the Rapid Alert System for Food and Feed, trade volumes, the outcome of inspections of the Food and Veterinary Office and the outcome of controls, the frequency of sampling for analysis should be reduced in some cases. For hazelnuts from Turkey and Brazil nuts from Brazil only a very low number of non-compliance has been observed at import. It is therefore appropriate to

reduce the frequency of controls for these foodstuffs. For reasons of clarity and to ensure consistency with other EU legislation, it is appropriate to explicitly mention that the identity checks are to be performed at the same frequency as the physical control (sampling and analysis).

- (6) Therefore, Regulation (EC) No 1152/2009 should be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

*Article 1***Amending provisions**

Regulation (EC) No 1152/2009 is amended as follows:

- (1) Article 1 is replaced by the following:

*'Article 1***Scope**

1. This Regulation shall apply to the import of the following foodstuffs and of the foodstuffs processed and compound thereof:

- (a) the following foodstuffs originating in or consigned from Brazil:
  - (i) Brazil nuts in shell falling within category CN code 0801 21 00;
  - (ii) mixtures of nuts or dried fruits falling within CN code 0813 50 and containing Brazil nuts in shell;
- (b) the following foodstuffs originating in or consigned from China:
  - (i) groundnuts falling within CN code 1202 41 00 or 1202 42 00;
  - (ii) groundnuts falling within CN code 2008 11 91 (in immediate packings of a net content exceeding 1 kg) or 2008 11 98 (in immediate packings of a net content not exceeding 1 kg);
  - (iii) roasted groundnuts falling within CN code 2008 11 96 (in immediate packings of a net content not exceeding 1 kg);

<sup>(1)</sup> OJ L 31, 1.2.2002, p. 1.

<sup>(2)</sup> OJ L 313, 28.11.2009, p. 40.

<sup>(3)</sup> OJ L 364, 20.12.2006, p. 5.

- (c) the following foodstuffs originating in or consigned from Egypt:
- (i) groundnuts falling within CN code 1202 41 00 or 1202 42 00;
  - (ii) groundnuts falling within CN code 2008 11 91 (in immediate packings of a net content exceeding 1 kg) or 2008 11 98 (in immediate packings of a net content not exceeding 1 kg);
  - (iii) roasted groundnuts falling within CN code 2008 11 96 (in immediate packings of a net content not exceeding 1 kg);
- (d) the following foodstuffs originating in or consigned from Iran:
- (i) pistachios falling within CN code 0802 51 00 or 0802 52 00;
  - (ii) roasted pistachios 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);
- (e) the following foodstuffs originating in or consigned from Turkey:
- (i) dried figs falling within CN code 0804 20 90;
  - (ii) hazelnuts (*Corylus* spp.) in shell or shelled falling within CN code 0802 21 00 or 0802 22 00;
  - (iii) pistachios falling within CN code 0802 51 00 or 0802 52 00;
  - (iv) mixtures of nuts or dried fruits falling within CN code 0813 50 and containing figs, hazelnuts or pistachios;
  - (v) fig paste, pistachio paste and hazelnut paste falling within CN codes 2007 10 or 2007 99;
  - (vi) hazelnuts and pistachios, prepared or preserved, including mixtures falling within CN code 2008 19 and figs, prepared or preserved, falling within CN code 2008 99, including mixtures falling within CN code 2008 97;
  - (vii) flour, meal and powder of hazelnuts, figs and pistachios falling within CN code 1106 30 90;
  - (viii) cut, sliced and broken hazelnuts falling within CN 0802 22 00 and 2008 19;
- (f) the following foodstuffs originating in or consigned from the United States of America:
- (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.
2. Paragraph 1 shall not apply to consignments of foodstuffs of a gross weight not exceeding 20 kg, or to processed or compound foodstuffs containing the foodstuffs referred to in points (b) to (f) of paragraph 1 in a quantity below 20 %;
- (2) in Article 4, paragraph 6 is deleted;
- (3) in Article 7, paragraphs 4 and 5 are replaced by the following:
- ‘4. The competent authority at the designated point of import shall carry out an identity check and shall take a sample for analysis of aflatoxin B1 and total aflatoxin contamination on certain consignments with a frequency indicated in paragraph 5 and in accordance with Annex I to Regulation (EC) No 401/2006 before release for free circulation into the Union.
5. The identity check and the sampling for analysis referred to in paragraph 4 shall be carried out on:
- (a) approximately 50 % of the consignments of foodstuffs from Brazil;
  - (b) approximately 20 % of the consignments of foodstuffs from China;
  - (c) approximately 20 % of the consignments of foodstuffs from Egypt;
  - (d) approximately 50 % of the consignments of foodstuffs from Iran;
  - (e) approximately 5 % of the consignments for each category of hazelnuts and derived products from Turkey referred to in Article 1(1)(e)(ii) and (iv) to (viii), approximately 20 % of the consignments for each category of dried figs and derived products from Turkey referred to in Article 1(1)(e)(i) and (iv) to (vii) and approximately 50 % of the consignments for each category of pistachios and derived products from Turkey referred to in Article 1(1)(e)(iii) to (vii);
  - (f) a random basis for consignments of foodstuffs from the United States of America, referred to in Article 1(1)(f).

#### Article 2

#### Transitional measures

By derogation to Articles 4(1) and 7(2), foodstuffs originating in or consigned from the United States referred to in Article 1(1)(f) which have left the United States before the entry into force of this Regulation and which are not accompanied by the Voluntary Aflatoxin Sampling Plan certificate, can be imported into the EU on the condition that they are subject to a physical check, including sampling and analysis.

*Article 3***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 March 2012.

*For the Commission*  
*The President*  
José Manuel BARROSO

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