COMMISSION REGULATION (EC) No 1135/2009

of 25 November 2009

imposing special conditions governing the import of certain products originating in or consigned from China, and repealing Commission Decision 2008/798/EC

(Text with EEA relevance)

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) thereof,

Whereas:

(1) Article 53 of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Community emergency measures for food and feed imported from a third country in order to protect public health, animal health or the environment, where the risk cannot be contained satisfactorily by means of measures taken by the Member States individually.

(2) The Commission was made aware in September 2008 that high levels of melamine were found in infant milk and other milk products in China. To counter the health risk that may result from exposure to a high melamine content in feed and food products, Commission Decision 2008/798/EC of 14 October 2008 imposing special conditions governing the import of products containing milk or milk products originating in or consigned from China, and repealing Commission Decision 2008/757/EC [2], provides for a prohibition on the importation into the Community of products containing milk or milk products, soya or soya products intended for the particular nutritional use of infants and young children, and requires Member States to perform systematic checks on all consignments originating in or consigned from China of feed and food containing milk, milk products, soya or soya products and of ammonium bicarbonate intended for food and feed. In that Decision the level of 2,5 mg/kg was considered to be the appropriate level to distinguish between the unavoidable background presence of melamine and unacceptable adulteration.

(3) The number of Rapid Alert System for Food and Feed (RASFF) notifications, as provided for in Article 2(4) of Decision 2008/798/EC, as regards unacceptable levels of melamine in those food and feed products from China has significantly decreased since January 2009, and the Chinese authorities have provided guarantees as regards the controls on melamine in such products exported to the Community. It is therefore appropriate to review the measures laid down in Decision 2008/798/EC.

(4) Taking into account that products containing milk or milk products, soya or soya products that are intended for the particular nutritional use of infants and young children represent the primary, and in some cases sole, source of nourishment for infants and young children, it is appropriate to maintain the prohibition on importation into the Community of any such products originating from China. Member States should ensure that any such products found on the market are destroyed without delay.

(5) At the same time, systematic checks on all consignments originating in or consigned from China of feed and food containing milk, milk products, soya or soya products and of ammonium bicarbonate intended for food and feed are no longer necessary given the significant decrease in RASFF notifications, so the intensity of physical checks should be reduced. Since the level of 2,5 mg/kg continues to remain appropriate to distinguish between unavoidable background presence of melamine and unacceptable adulteration, products that contain a higher level of melamine should not enter the feed and food chain and should be safely disposed of.

(6) Therefore, Decision 2008/798/EC should be amended accordingly. However, taking into account the nature of the amending provisions, it is appropriate to replace that Decision with a regulation, which could be reviewed at a later stage on the basis of the results of the controls carried out by the Member States.

(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

For the purposes of this Regulation, references to China are to be understood as references to the People's Republic of China.

[1] OJ L 31, 1.2.2002, p. 1.
[2] OJ L 273, 15.10.2008, p. 18.

Article 2

Import prohibition

1. The import into the Community of products containing milk, milk products, soya or soya products intended for the particular nutritional use of infants and young children within the meaning of Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses [1], originating or consigned from the People's Republic of China shall be prohibited.

2. Member States shall ensure that any such product found on the market shall be immediately withdrawn and destroyed.

Article 3

Prior notification

Feed and food business operators or their representatives shall give prior notification to the control point referred to in Article 4(3) of the estimated date and time of arrival of all consignments originating in or consigned from China of ammonium bicarbonate intended for food and feed and of feed and food containing milk, milk products, soya or soya products.

Article 4

Control measures

1. The competent authorities of the Member States shall carry out documentary, identity and physical checks, including laboratory analysis on the consignments originating in or consigned from China, which are to be imported into the Community, of ammonium bicarbonate intended for food and feed and of feed and food containing milk, milk products, soya or soya products other than those referred to in Article 2(1).

Identity and physical checks, including sampling and analysis to control the presence of melamine, shall be carried out on approximately 20 % of such consignments.

Member States may carry out random physical checks on other feed and food products with a high protein content originating from China, which are to be imported into the Community.

The physical checks referred to in this paragraph shall in particular aim at ascertaining the level of melamine, if any, in the product. Consignments shall be kept under official control pending the availability of the results of the laboratory analysis.

2. Any product found to contain more than 2,5 mg/kg melamine, following controls performed in accordance with paragraph 1, shall not enter the feed and food chain and shall be safely disposed of.

3. The checks referred to in paragraph 1 shall be carried out at control points specifically designated by the Member States for that purpose.

Member States shall make the list of control points available to the public and communicate it to the Commission.

4. The release for free circulation of consignments shall be subject to the presentation by the feed and food business operator or their representative to the custom authorities of the evidence that the official controls referred to in paragraph 1 have been carried out and favourable results from physical checks, where such checks are required, are known.

Article 5

Reports

Member States shall submit to the Commission every three months a report of all analytical results of the controls referred to in Article 4(1). Those reports shall be submitted during the month following each quarter.

Article 6

Costs

All costs resulting from the official controls referred to in Article 4(1), including sampling, analysis, storage and any measures taken following non-compliance, shall be borne by the feed and food business operator.

Article 7

Repeal

Commission Decision 2008/798/EC is repealed.

References to the repealed Decision shall be construed as references to this Regulation.

[1] OJ L 124, 20.5.2009, p. 21.

Article 8

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from the date of entry into force.

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

Done at Brussels, 25 November 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission