COMMISSION IMPLEMENTING REGULATION (EU) No 284/2012

of 29 March 2012

imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) No 961/2011

(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 [1], and in particular Article 53(1)(b)(ii) thereof,

Whereas:

(1) Article 53 of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Union 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) Following the accident at the Fukushima nuclear power station on 11 March 2011, the Commission was informed that radionuclide levels in certain food products originating in Japan exceeded the action levels in food applicable in Japan. Such contamination may constitute a threat to public and animal health in the Union and therefore Commission Implementing Regulation (EU) No 297/2011 of 25 March 2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station [2] was adopted. That Regulation was later replaced by Commission Implementing Regulation (EU) No 961/2011 [3].

(3) The Japanese authorities have provided information to the Commission that in the many samples taken of sake and other spirit drinks (whiskey and shochu) no radioactivity was detected in all samples. The process of polishing, fermentation and distillation removes the radioactivity nearly completely from the spirit drink itself. The issue will be followed-up based on the continued monitoring of sake, whiskey and shochu by the Japanese authorities. It is therefore appropriate to exclude sake, whiskey and shochu from the scope of this Regulation in order to reduce the administrative burden for the Japanese authorities and the competent authorities of the importing Member States.

(4) The Japanese authorities have adopted on 24 February 2012 new maximum levels for the sum of caesium-134 and caesium-137, to be applied as from 1 April 2012, with transitional measures foreseen for rice, beef and soybean and processed products thereof, which are lower than the maximum levels established by Council Regulation (Euratom) No 3954/87 of 22 December 1987 laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency [4]. The transitional measures for beef have no relevance for the import into the Union as the import of beef from Japan into the Union is not allowed for animal and public health reasons other than radioactivity. The Japanese authorities also informed the Commission that products that are not allowed to be placed on the Japanese market are also not allowed to be exported. It is therefore appropriate, although there is no need for safety reasons, in order to provide consistency between the pre-export controls performed by the Japanese authorities and the controls on the level of radionuclides performed on feed and food originating in or consigned from Japan at the entry into the Union, to apply the same maximum levels in the Union for radionuclides in feed and food from Japan as the maximum levels applicable in Japan as long as these are lower than the values established in Regulation (Euratom) No 3954/87.

(5) Shortly after the nuclear accident, controls were required for the presence of iodine-131 and the sum of caesium-134 and caesium-137 in feed and food originating from Japan, as there was evidence that the release of radioactivity into the environment was related to a very large part to iodine-131, caesium-134 and caesium-137, and there was only very limited or no emission of the radionuclides strontium (Sr-90), plutonium (Pu-239) and americium (Am-241). Iodine-131 has a short half-life of 8 days and because there were no releases of radioactivity from the affected nuclear power plant into the environment in recent months and the affected nuclear reactor is now in a stable situation and no further releases to the environment are expected, iodine-131 is no longer present in the environment and consequently also not in feed and food from Japan. Therefore the control for the presence of iodine-131 was no longer required by Commission Implementing Regulation (EU) No 1371/2011 of 21 December 2011 amending Implementing Regulation (EU) No 961/2011 imposing special

[1] OJ L 31, 1.2.2002, p. 1.
[2] OJ L 80, 26.3.2011, p. 5.
[3] OJ L 252, 28.9.2011, p. 10.
[4] OJ L 371, 30.12.1987, p. 11.

conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station [1]. Therefore there is no need to maintain maximum levels for iodine-131 in this Regulation.

(6) Implementing Regulation (EU) No 961/2011 provided also maximum levels for strontium, plutonium and americium in case there would have been new releases to the environment of radioactivity including these radionuclides. Given that the affected nuclear reactor is now in a stable situation, the possibility of new releases of radioactivity to the environment is excluded or very minimal and there have been no significant releases to the environment of strontium, plutonium and americium following the nuclear power plant accident, it is evident that the control for the presence of these radionuclides in food or feed from Japan is not necessary. As a consequence there is no need to maintain maximum levels for these radionuclides in this Regulation.

(7) Implementing Regulation (EU) No 961/2011 has been amended at two occasions to take into account the development of the situation. Given that this Regulation provides for further amendments requiring changes to several provisions of that Regulation, it is appropriate to replace Implementing Regulation (EU) No 961/2011 by a new Regulation.

(8) 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

Scope

This Regulation shall apply to feed and food within the meaning of Article 1(2) of Regulation (Euratom) No 3954/87 originating in or consigned from Japan, with the exclusion of:

(a) products which left Japan before 28 March 2011;

(b) products which have been harvested and/or processed before 11 March 2011;

(c) sake falling within CN codes ex 2206 00 39 (sparkling), ex 2206 00 59 (still, in containers holding 2 litres or less) or ex 2206 00 89 (still, in containers holding more than 2 litres);

(d) whiskey falling within CN code 2208 30;

(e) shochu falling within CN code ex 2208 90 56, ex 2208 90 69, ex 2208 90 77 or ex 2208 90 78.

Article 2

Definitions

For the purposes of this Regulation, 'transitional measures provided in the Japanese legislation' means the transitional measures adopted by the Japanese authorities on 24 February 2012 as regards the maximum levels for the sum of caesium-134 and caesium-137 as set out in Annex III.

Article 3

Import into the Union

Feed and food (hereinafter: 'the products') referred to in Article 1 may only be imported into the European Union if they comply with this Regulation.

Article 4

Maximum levels of caesium-134 and caesium-137

1. The products referred to in Article 1, except rice, soybean and processed products thereof, shall comply with the maximum level for the sum of caesium-134 and caesium-137 as set out in Annex II.

2. Rice and soybean and processed products thereof shall comply with the maximum level for the sum of caesium-134 and caesium-137 as set out in Annex III.

Article 5

Declaration

1. Each consignment of products referred to in Article 1 shall be accompanied by a valid declaration drawn up and signed in accordance with Article 6.

2. The declaration referred to in paragraph 1 shall:

(a) attest that the products comply with the legislation in force in Japan; and

(b) specify whether the products are falling or not under the transitional measures provided for in the Japanese legislation.

3. The declaration referred to in paragraph 1 shall furthermore certify that:

(a) the products have been harvested and/or processed before 11 March 2011; or

(b) the products originate in and are consigned from a prefecture other than Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa and Shizuoka; or

(c) the products are consigned from Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa and Shizuoka prefectures, but do not originate in one of those prefectures and have not been exposed to radioactivity during transiting; or

(d) where the products originate in Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa and Shizuoka prefectures, the products are accompanied by an analytical report containing the results of sampling and analysis.

[1] OJ L 341, 22.12.2011, p. 41.

4. Point (d) of paragraph 3 shall apply also to products caught or harvested in the coastal waters of the prefectures referred to therein, irrespective of where such products are landed.

Article 6

Drawing up and signing of the declaration

1. The declaration referred to in Article 5 shall be drawn up in accordance with the model set out in Annex I.

2. For the products referred to in the points (a), (b) or (c) of Article 5(3), the declaration shall be signed by an authorised representative of the competent Japanese authority or by an authorised representative of an instance authorised by the competent Japanese authority under the authority and supervision of the competent Japanese authority.

3. For the products referred to in the point (d) of Article 5(3), the declaration shall be signed by an authorised representative of the competent Japanese authority and shall be accompanied by an analytical report containing the results of sampling and analysis.

Article 7

Identification

Each consignment of products referred to in Article 1 shall be identified by means of a code which shall be indicated on the declaration referred to in Article 5(1), on the analytical report referred to in Article 6(3), on the sanitary certificate and on any commercial documents accompanying the consignment.

Article 8

Border inspection posts and designated point of entry

Consignments of products referred to in Article 1, except those falling within the scope of Council Directive 97/78/EC ([1]), shall be introduced into the Union through a designated point of entry within the meaning of Article 3(b) of Commission Regulation (EC) No 669/2009 ([2]) (hereinafter 'designated point of entry').

Article 9

Prior notification

Feed and food business operators or their representatives shall give prior notification of the arrival of each consignment of the products referred to in Article 1, at least two working days prior to the physical arrival of the consignment, to the competent authorities at the border inspection post or at the designated point of entry.

Article 10

Official controls

1. The competent authorities of the border inspection post or designated point of entry shall carry out:

(a) documentary checks on all consignments of products referred to in Article 1;

(b) physical checks and identity checks, including laboratory analysis on the presence of caesium-134 and caesium-137, on at least:

(i) 5 % of the consignments of products referred to in Article 5(3)(d); and

(ii) 10 % of the consignments of products referred to in Article 5(3)(b) and (c).

2. Consignments shall be kept under official control, for a maximum of five working days, pending the availability of the results of the laboratory analysis.

3. In case the result of the laboratory analysis provides evidence that the guarantees provided in the declaration are false, the declaration is considered not to be valid and the consignment of feed and food does not comply with the provisions of this Regulation.

Article 11

Costs

All costs resulting from the official controls referred to in Article 10 and any measures taken following non-compliance, shall be borne by the feed and food business operators.

Article 12

Release for free circulation

The consignments may only be released for free circulation if the feed and food business operators or their representative submit to the customs authorities a declaration, as referred to in Article 5(1), which:

(a) has been duly endorsed by the competent authority at the border inspection post or designated point of entry; and

(b) gives evidence that the official controls referred to in Article 10 have been carried out and that the results of those controls have been favourable.

Article 13

Non-compliant products

Products which do not comply with the provisions of this Regulation shall not be placed on the market. Such products shall be safely disposed of or returned to the country of origin.

Article 14

Reports

Member States shall inform the Commission monthly through the Rapid Alert System for Food and Feed (RASFF) of all analytical results obtained.

([1]) OJ L 24, 30.1.1998, p. 9.
([2]) OJ L 194, 25.7.2009, p. 11.

Article 15

Repeal

Implementing Regulation (EU) No 961/2011 is repealed.

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

Article 16

Transitional measure

By way of derogation from Article 3, products referred to in Article 1 may be imported into the Union if they comply with Implementing Regulation (EU) No 961/2011 where:

(a) the products left Japan before the entry into force of this Regulation; or

(b) the products are accompanied by a declaration in accordance with that Regulation which was issued before 1 April 2012 and the products have left Japan before 15 April 2012.

Article 17

Entry into force and period of application

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

It shall apply from the date of entry into force until 31 October 2012. The Regulation will be reviewed regularly taking into account the development of the contamination situation.

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

Done at Brussels, 29 March 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Declaration for the import into the Union of

..... (Product and country of origin)

Batch identification Code ..... Declaration Number .....

According to the provisions of the Commission Implementing Regulation (EU) No 284/2012 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station the

.....

..... authorised representative referred to in Article 3(5))

DECLARES that the .....

..... (products referred to in Article 1)

of this consignment composed of: .....

.....

..... (description of consignment, product, number and type of packages, gross or net weight)

embarked at ..... (embarkation place)

on ..... (date of embarkation)

by ..... (identification of transporter)

going to ..... (place and country of destination)

which comes from the establishment .....

..... (name and address of establishment)

is compliant with the legislation in force in Japan as regards the maximum levels for the sum of caesium-134 and caesium-137.

DECLARES that the consignment concerns feed or food

☐ **not falling under the transitional measures** provided in the Japanese legislation (see Annex III to Implementing Regulation (EU) No 284/2012) as regards the maximum level for the sum of caesium-134 and caesium-137

☐ **falling under the transitional measures** provided in the Japanese legislation (see Annex III to Implementing Regulation (EU) No 284/2012) as regards the maximum level for the sum of caesium-134 and caesium-137

DECLARES that the consignment concerns feed or food that

☐ has been harvested and/or processed before 11 March 2011.

☐ is originating in and consigned from a prefecture other than Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa and Shizuoka.

☐ is consigned from the prefectures Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa and Shizuoka, but not originating in one of these prefectures and has not been exposed to radioactivity during transiting.

☐ is originating in the prefectures Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamanashi, Saitama, Tokyo, Chiba, Kanagawa and Shizuoka and has been sampled on ..... (date), subjected to laboratory analysis on .....

(date) in the .....

(name of laboratory), to determine the level of the radionuclides, caesium-134 and caesium-137. The analytical report is attached.

Done at ..... on .....

Stamp and signature of
authorised representative referred to in Articles 6(2) and 6(3)

Part to be completed by the competent authority at the border inspection post (BIP) or designated point of entry (DPE)

☐ The consignment has been accepted to be presented to the custom authorities for release for free circulation in the Union

☐ The consignment has NOT been accepted to be presented to the custom authorities for release for free circulation in the Union

.....

(Competent authority, Member State)

.....

Date Stamp Signature

ANNEX II

Maximum levels for food [1] (Bq/kg) as provided in the Japanese legislation

	Foods for infants and young children	Milk and dairy products	Other food, with the exception of — mineral water and similar drinks — tea brewed from unfermented leaves — soybean and soybean products [4]	Mineral water and similar drinks and tea brewed from unfermented leaves
Sum of caesium-134 and caesium-137	50 [2]	50 [2]	100 [2] [3]	10 [2]

[1] For dried products that are intended to be consumed in a reconstituted state, the maximum level applies to the reconstituted product as ready for consumption.
For dried mushrooms a reconstitution factor of 5 is of application.
For tea, the maximum level applies to the infusion brewed from tea leaves. The processing factor for dried tea is 50, and therefore a maximum level of 500 Bq/kg on dried tea leaves ensures that the level in the brewed tea does not exceed the maximum level of 10 Bq/kg.
[2] In order to ensure consistency with maximum levels currently applied in Japan, these values replace on a provisional basis the values laid down in Council Regulation (Euratom) No 3954/87.
[3] For rice and rice products, the maximum level applies as from 1 October 2012. Before that date, the maximum level of 500 Bq/kg applies.
[4] For soybean and soybean products, the maximum level of 500 Bq/kg applies.

Maximum levels for feed [1] (Bq/kg) as provided in the Japanese legislation

	Feed intended for cows and horses	Feed intended for pigs	Feed intended for poultry	Feed for fish [3]
Sum of caesium-134 and caesium-137	100 [2]	80 [2]	160 [2]	40 [2]

[1] Maximum level is relative to a feed with a moisture content of 12 %.
[2] In order to ensure consistency with maximum levels currently applied in Japan, this value replaces on a provisional basis the value laid down in Commission Regulation (Euratom) No 770/90 (OJ L 83, 30.3.1990, p. 78).
[3] With the exemption of feed for ornamental fish.

ANNEX III

Transitional measures provided in Japanese legislation and of application for this Regulation

(a) Milk and dairy products, mineral water and similar drinks that are manufactured and/or processed before 31 March 2012 shall not contain radioactive caesium more than 200 Bq/kg. Other foods, except for rice, soybean and processed products thereof that are manufactured, and/or processed before 31 March 2012 shall not contain radioactive caesium more than 500 Bq/kg.

(b) Rice harvested before 30 September 2012 shall not contain radioactive caesium more than 500 Bq/kg.

(c) Products made from rice that are manufactured, and/or processed before 30 September 2012 shall not contain radioactive caesium more than 500 Bq/kg.

(d) Soybean shall not contain radioactive caesium more than 500 Bq/kg.

(e) Products made from soybean shall not contain radioactive caesium more than 500 Bq/kg.