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**COMMISSION DECISION**

**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**

*(notified under document number C(2008) 6086)*

**(Text with EEA relevance)**

(2008/798/EC)

(OJ L 273, 15.10.2008, p. 18)

Amended by:

► **M1**

Commission Decision 2008/921/EC of 9 December 2008

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**COMMISSION DECISION****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***(notified under document number C(2008) 6086)***(Text with EEA relevance)****(2008/798/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 <sup>(1)</sup>, and in particular Article 53(2), second subparagraph, 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 human 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 European Commission was recently made aware that high levels of melamine were found in infant milk and other milk products in China. Melamine is a chemical intermediate used in the manufacture of amino resins and plastics and is used as a monomer and as an additive for plastics. High levels of melamine in food can result in very severe health effects.
- (3) Imports of milk and milk products, including milk powder, originating from China are not allowed into the Community; however, certain composite products (i.e. products which contain at the same time a processed product of animal origin and a product of non-animal origin) containing processed milk components might have reached the European Union's markets.
- (4) Although factual information available indicates that no composite products are imported which are intended for the particular nutritional uses of infants or young children, certain such composite products, depending of their specific formulation and in particular on the proportion of milk product content, could have been presented for import without undergoing systematic border checks pursuant to Commission Decision 2007/275/EC of 17 April 2007 concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC <sup>(2)</sup>. Taking into account that such products represent the primary, and in some cases sole, source of nourishment for infants and young children, it is appropriate to prohibit the import into the Community of any such products originating from China. Member States should ensure that any such products which were to be found on the market should be destroyed without delay.

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

<sup>(2)</sup> OJ L 116, 4.5.2007, p. 9.

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- (5) As regards other composite products (such as biscuits and chocolate), which are only a minor part of a varied diet, after a request from the European Commission for an assessment of the risks related to the presence of melamine in composite product, the European Food Safety Authority (EFSA) issued a statement in which it concludes that the highest risk would be represented by a worst case scenario according to which children with high daily consumption of biscuits and chocolate containing the highest proportion of milk powder (which varies between 16 % and more than 20 %), with a contamination equal to the highest level found in milk powder from China, could potentially exceed the tolerable daily intake (TDI) of melamine (0,5 mg/kg body weight).
- (6) In order to counter the risk for health that may result from exposure to the melamine content of such composite products, Member States are required under Commission Decision 2008/757/EC <sup>(1)</sup> to ensure that all composite products containing at least 15 % of milk product, originating from China, are systematically tested before import into the Community and that all such products which are shown to contain melamine in excess of 2,5 mg/kg are immediately destroyed. Melamine from different sources, such as migration from food contact materials, pesticide use, etc. can be present in feed and food. Taking into account the available occurrence data, the level of 2,5 mg/kg is the appropriate level to distinguish between the unavoidable background presence of melamine and unacceptable adulteration. This level responds also to the need to ensure a large margin of safety. Member States have reported significant difficulties in establishing the exact milk or milk product content of composite products. As a consequence, the value of 15 % above is largely devoid of relevance for deciding whether a consignment is subject to control requirements prior to import. In order to streamline and simplify import controls procedures, it is therefore appropriate to establish the requirement of controls irrespective of the exact amount of milk or milk products in the composite products.
- (7) Member States should also ensure that composite products which are already present in the Community are appropriately tested and withdrawn from the market if necessary. The costs of tests at import and of official measures taken as regards products found to be non-compliant with the maximum level in question should be borne by the feed and food business operator responsible for the products.
- (8) In order for the Commission to be able to reassess appropriateness of these measures in due time, Member States should inform the Commission of unfavourable results through the Rapid Alert System for Food and Feed and should report favourable results on a two weeks basis.
- (9) The measure provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

*Article 1*

For the purposes of this Decision, references to China shall be intended to the People's Republic of China.

<sup>(1)</sup> OJ L 259, 27.9.2008, p. 10.

**▼B***Article 2***Control measures**

1. ►**M1** Member States shall prohibit 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 Council Directive 89/398/EEC on foods for particular nutritional uses, originating or consigned from China. Member States shall also ensure that any such product found after the entry into force of this Decision on the market shall be immediately withdrawn and destroyed. ◀

2. ►**M1** Member States shall carry out documentary, identity and physical checks, including laboratory analysis, on 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.

Member States may carry out random checks prior to importing other feed and food products with a high protein content originating from China.

Such checks shall in particular aim at ascertaining that the level of melamine, if any, does not exceed 2,5 mg/kg product. Consignments shall be detained pending the availability of the results of the laboratory analysis. ◀

3. The checks referred to in paragraph 2, first subparagraph, shall be carried out at points of control specifically designated by the Member States for that purpose. Member States shall make the list of points of control available to the public and communicate it to the Commission.

4. Member States shall report any unfavourable result of the laboratory analysis referred to in paragraph 2 through the Rapid Alert System for Food and Feed. They shall report to the Commission on favourable results on a two weeks basis.

5. Member States shall take the necessary measures to ensure that products referred to in paragraph 2, and feed and food products with a high protein content, as appropriate, which are already placed on the market are subject to an appropriate level of controls aimed at ascertaining the level of melamine.

6. Any product found to contain melamine in excess of 2,5 mg/kg product, following controls performed in accordance with paragraphs 2 and 5, shall be destroyed without delay.

7. Member States shall ensure that the costs incurred in the implementation of paragraph 2 are borne by the operators responsible for the import, and that the cost of official measures taken as regards products found not to be in compliance with this Decision are borne by the feed and food business operator responsible for that product.

*Article 3***Prior notification****▼M1**

Feed and food business operators or their representatives shall give prior notification to the point of control referred to in Article 2(3) of the estimated date and time of arrival of all consignments originating in or consigned from China of feed and food containing milk, milk products, soya or soya products.

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*Article 4*

**Review of the measures**

The measures laid down in this Decision shall be regularly reassessed in the light of the results of the controls carried out by the Member States.

*Article 5*

Decision 2008/757/EC is repealed.

*Article 6*

This Decision is addressed to the Member States.