

COMMISSION

COMMISSION DECISION

of 26 September 2008

imposing special conditions governing the import of products containing milk or milk products originating in or consigned from China

(notified under document number C(2008) 5599)

(Text with EEA relevance)

(2008/757/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(2), first 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 Decision 2007/275/EC 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. 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.

(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 should 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. This maximum level responds to the need to ensure a large margin of safety. Precaution suggests that composite products, whose milk product content cannot be established, should also be tested. Member States should also

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

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 food business operator responsible for the products.

- (7) In order for the Commission to be able to reassess appropriateness of these measures, 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-week basis.
- (8) Given the urgency, pending the meeting of the Standing Committee on the Food Chain and Animal Health, and after having informed the Chinese authorities, it is appropriate to adopt these interim protection measures in accordance with the procedure laid down in Article 53(2), first subparagraph of Regulation (EC) No 178/2002.
- (9) This Decision shall be reviewed in accordance with the procedure laid down in Article 53(2), second subparagraph of Regulation (EC) No 178/2002,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall prohibit the import into the Community of composite products containing milk or milk 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.

2. Member States shall carry out documentary, identity and physical checks, including laboratory analysis, on all consignments originating in or consigned from China of

composite products containing more than 15 % of milk products, and on all consignments of such composite products whose amount of milk product content cannot be established. 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. 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-week basis.

4. Member States shall take the necessary measures to ensure that products referred to in paragraph 2 which are already placed on the market are subject to an appropriate level of controls aimed at ascertaining the level of melamine.

5. Any product found to contain melamine in excess of 2,5 mg/kg product, following controls performed in accordance with paragraphs 2 and 4, shall be destroyed without delay.

6. 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 to be in excess of 2,5 mg/kg product are borne by the food business operator responsible for that product.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 26 September 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission