

COMMISSION REGULATION (EC) No 1635/2006

of 6 November 2006

laying down detailed rules for the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 737/90 of 22 March 1990 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station ⁽¹⁾, and in particular Article 6 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1661/1999 of 27 July 1999 laying down detailed rules for the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station ⁽²⁾ has been amended several times. Since further amendments are to be made, it should be recast in the interests of clarity, as provided for in the simplification rolling programme annexed to the Communication of the Commission on a strategy for the simplification of the regulatory environment ⁽³⁾.
- (2) The fallout of radiocaesium from the accident at the Chernobyl power station on 26 April 1986 has affected a wide range of third countries. Repeated cases of non compliance with the maximum permitted levels of radioactive contamination have been recorded in consignments of certain types of mushrooms imported from a number of third countries.
- (3) Similar fallout has affected certain parts of the territories of some Member States.
- (4) Forest and wooded areas generally are the natural habitat of uncultivated mushrooms and such ecosystems tend to retain radiocaesium in a cyclic exchange between soil and vegetation.
- (5) As a result, the continuous radiocaesium contamination of uncultivated mushrooms has, in the period since the Chernobyl accident, hardly declined and may well have increased in the case of certain species.
- (6) In 1986, the Commission carried out an assessment, subsequently updated, of possible risks on human health from foodstuffs contaminated by radioactive caesium. That assessment of possible risks is still valid today, taking into account the physical radioactive period of the substance in question, and, in addition, the maximum permitted level conforms in essence to the level recommended by the Codex Alimentarius Commission.
- (7) In accordance with Article 4 of Regulation (EEC) No 737/90, the Member States must carry out checks on products originating in third countries.
- (8) 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 ⁽⁴⁾ set up a rapid alert system for information on a direct or indirect risk to human health deriving from food or feed. That system should apply by analogy to the notification of recorded cases of non-compliance with the provisions on maximum permitted levels under this Regulation.
- (9) The measures *in situ* in the territories of the Member States flow from the legal obligations of those States pursuant to Articles 35 and 36 of the Euratom Treaty, the Community measures already referred to and national measures and controls which, taken together, are, in terms of equivalence of result, equal to those enacted in this Regulation. The Commission is taking all the necessary measures to ensure that the Member States comply effectively with their legal obligations in this respect. In particular, the Commission made a recommendation to the Member States on 14 April 2003 on the protection and information of the public with regard to exposure resulting from the continued radioactive caesium contamination of certain wild food products as a consequence of the accident at the Chernobyl nuclear power station ⁽⁵⁾.

⁽¹⁾ OJ L 82, 29.3.1990, p. 1. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1.)

⁽²⁾ OJ L 197, 29.7.1999, p. 17. Regulation as last amended by the 2003 Act of Accession.

⁽³⁾ COM(2005) 535 final.

⁽⁴⁾ OJ L 31, 1.2.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 575/2006 (OJ L 100, 8.4.2006, p. 3).

⁽⁵⁾ OJ L 99, 17.4.2003, p. 55.

- (10) Even if the provisions for sampling and analysis of various agricultural products merit future consideration, the immediate requirement is to strengthen those provisions with respect to mushrooms.
- (11) In order to allow more efficient controls, it is, as a consequence, necessary to identify a restricted number of customs offices where certain products may be declared for free circulation in the Community.
- (12) The lists of customs offices and of third countries can be reviewed as appropriate, taking into account, *inter alia*, future compliance with the maximum permitted levels and other information allowing the Commission to judge whether there is a need to maintain a third country on the list.
- (13) For the same reason it is appropriate that export certificates, as referred to in Article 4 of Regulation (EEC) No 737/90, be provided for each consignment of such products.
- (14) It is appropriate that the competent authorities of the Member States be authorised, at their discretion, to levy charges for sampling and analysis and for destruction of the product or its return provided that the principle of proportionality is observed in exercising the option of destruction or return and provided also that, in any event, the charges so levied do not exceed the costs incurred.
- (15) The provisions of this Regulation are in accordance with the international obligations of the Community, in particular those resulting from the agreements establishing the World Trade Organisation, taking into account the right of the Community to adopt and apply measures that are necessary to achieve the level of health protection chosen in the territory of its Member States.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the committee referred to in Article 7 of Regulation (EEC) No 737/90,
- Article 1 of the same Regulation, to ensure that the maximum permitted levels laid down by the said Regulation are observed, shall be carried out by the Member States in which the products are released for free circulation and at the latest at that time.
2. Checks shall be carried out by sampling in accordance with the following minimum standards:
- (a) without prejudice to paragraph 3(b), the choice of the Member State as to the intensity of controls to be carried out shall be made taking account in particular of the degree of contamination of the country of origin, the characteristics of the products in question, the results of the previous checks and the export certificates referred to in Article 3;
- (b) without prejudice to the further measures provided for in Articles 5 and 6 of Regulation (EEC) No 737/90, where a product originating in a third country is recorded as exceeding the maximum permitted levels, checks shall be intensified for all products of the same type originating in the third country in question.
3. Checks on specific products shall be carried out in accordance with the following rules:
- (a) for animals for slaughter, the checks shall be carried out without prejudice to the customs rules laid down in Council Regulation (EEC) No 2913/92 ⁽¹⁾ and Commission Regulation (EEC) No 2454/93 ⁽²⁾ and to animal health requirements. Clearance of release for free circulation shall be subject to the presentation of a certificate issued by the competent authorities responsible for controls to the effect that the meat in question has undergone the system of checks and that those checks have shown that the maximum permitted levels have not been exceeded;
- (b) for products listed in Annex I, originating in third countries listed in Annex II, documentary checks shall be performed on the basis of the duly completed export certificates referred to in Article 3 accompanying each consignment. Each consignment exceeding 10 kg of fresh product or the equivalent thereof shall be subject to systematic sampling and analysis, taking appropriate account of the information contained in the export certificate. These products may only be declared for free circulation in the Member State of destination in a restricted number of customs offices. The list of customs offices shall be published in the *Official Journal of the European Union*, following notification by the Member States.

HAS ADOPTED THIS REGULATION:

Article 1

1. Checks on the radiocaesium content referred to in Article 3 of Regulation (EEC) No 737/90 of products referred to in

⁽¹⁾ OJ L 302, 13.10.1992, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

4. Where failure to comply with the maximum permitted levels is observed in respect of a given product, the competent authorities of the Member State may require the imported product to be destroyed or returned to the country of origin. In the latter case, written evidence that the product has left the territory of the Community will be forwarded to the customs authority which refused the release for free circulation.

5. For the products referred to in paragraph 1 of this Article, the competent authorities may levy charges on the importer for the sampling and analysis of products for compliance with Regulation (EEC) No 737/90. For consignments which exceed the maximum permitted levels, the competent authorities may also recover from their intended importer costs associated with either the destruction of the consignment or its return to the country of origin.

Article 2

1. Each Member State shall by analogy apply Article 50 of Regulation (EC) No 178/2002 to notify the Commission without delay of recorded cases of non-compliance with the provisions on maximum permitted levels, set out in Regulation (EEC) No 737/90, stating the country of origin, the description and degree of contamination of the goods, the means of transport, the exporter and the decision taken in respect of the lots in question.

2. Member States shall inform the Commission of the bodies assigned to implement checks.

3. The Commission shall inform the Member States without delay of recorded cases of non-compliance with the maximum permitted levels through the Community rapid alert system established pursuant to Regulation (EC) No 178/2002.

Article 3

1. The Member States shall ensure that the export certificates issued by the competent authorities of third countries listed in Annex II attest that the products that they accompany comply with the maximum permitted levels laid down in Article 3 of Regulation (EEC) No 737/90. The export certificates shall be compiled using a form printed on white paper in accordance with the specimen in Annex III.

2. The Commission shall communicate to the Member States the details received concerning the authorities authorised in the third countries in question to issue export certificates.

Article 4

Regulation (EC) No 1661/1999 is repealed.

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

Article 5

This Regulation shall enter into force on the day 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, 6 November 2006.

For the Commission

Andris PIEBALGS

Member of the Commission

ANNEX I

List of products for which the provisions of Article 1(3)(b) shall be fulfilled

CN codes:

ex 0709 59	mushrooms, fresh or chilled, other than cultivated mushrooms
ex 0710 80 69	mushrooms (uncooked or cooked by steaming or boiling in water), frozen, other than cultivated mushrooms
ex 0711 59 00	mushrooms provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption, other than cultivated mushrooms
ex 0712 39 00	dried mushrooms, whole, cut, sliced, broken or in powder, but not further prepared, other than cultivated mushrooms
ex 2001 90 50	mushrooms prepared or preserved by vinegar or acetic acid other than cultivated mushrooms
ex 2003 90 00	mushrooms, prepared or preserved otherwise than by vinegar or acetic acid, other than cultivated mushrooms

ANNEX II

List of third countries referred to in Article 3

Albania
Belarus
Bosnia and Herzegovina
Bulgaria
Croatia
Liechtenstein
Former Yugoslav Republic of Macedonia
Moldova
Montenegro
Norway
Romania
Russia
Serbia
Switzerland
Turkey
Ukraine

ANNEX III

EXPORT CERTIFICATE FOR AGRICULTURAL PRODUCTS (ONE CERTIFICATE PER SPECIES)**This certificate must be lodged in triplicate with the entry for free circulation and be kept by the customs****Statement by the exporter**

1. Exporter (name, full address, country)	5. Country of origin	6. Country of destination
2. Consignee (name, full address, country)	7. Invoice No(s)	
3. Identity of means of transport	8. Number and kind of packages	9. Marks and batch numbers
4. Description of products	10. Gross mass (kg)	11. Net mass (kg)
12. I, the undersigned, responsible for these exports, certify the above information: Date: Place: Name (in block letters): Signature (1):		

(1) Signatures and stamps must be in a different colour to that of the text.

Certification by the laboratory

13. Number of analysed samples from the above products representatively taken by a person authorised by the competent authorities	15. Identity of the laboratory (name, full address, country)
14. Recorded radioactivity levels for each sample (Bq/kg) (specify the batch No for each sample) Report No: Date: This report must be presented immediately on the demand of the control authorities	16. Accredited by (name and address of the body) 17. Date, name (in block letters), signature and stamp of the laboratory ⁽¹⁾

Certification by the competent authority

18. I, the undersigned, certify that the accumulated radioactivity level in terms of caesium 134 and 137 for the products described above does not exceed: 370 Bq/kg for milk and milk products and for foodstuffs intended for the special feeding of infants, and 600 Bq/kg for all other products listed in the current Commission Regulation relating to Council Regulation (EEC) No 737/90 ⁽²⁾ Place: Date: Name (in capital letters): Signature ⁽¹⁾ : Stamp ⁽¹⁾ :

⁽¹⁾ Signatures and stamps must be in a different colour to that of the text.⁽²⁾ Delete as appropriate.