COMMISSION DECISION

of 12 January 1998

authorising certain Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of seed potatoes originating in Canada

(Only the Spanish, Greek, Italian and Portuguese texts are authentic)

(98/92/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [1], as last amended by Directive 97/14/EC [2], and in particular Article 14(1) thereof,

Having regard to the request made by Italy and Portugal,

Whereas, pursuant to the provisions of Directive 77/93/EEC, seed potato tubers originating in the American continent may not, in principle, be introduced into the Community;

Whereas, however, Directive 77/93/EEC permits derogations from that rule, provided that it is established that there is no risk of spreading harmful organisms;

Whereas in Italy and Portugal the planting and growing of seed potatoes of certain North American varieties for ware potato production has been an established practice; whereas part of the supply of seed potatoes of these varieties has been ensured by imports from Canada;

Whereas, by Decisions 96/6/EC [3] and 97/89/EC [4], the Commission approved derogations based on the concept of 'area freedom', subject to certain technical conditions to prevent the risk of harmful organisms spreading; whereas that approval expired on 31 March 1997; whereas the Commission also provided that those derogations would provide for the opportunity to seek confirmation of the proper functioning of the concept of 'area freedom';

Whereas it is known that Canada is still not completely free from potato spindle tuber viroid or from *Clavibacter michiganensis* (Smith) Davis *et al.* ssp. *sepedonicus* (Spieckermann et Kotthoff) Davis *et al.*;

Whereas information supplied by Canada has shown that Canada has further developed its programme to eradicate these harmful organisms in the provinces of New Brunswick and Prince Edward Island; whereas there are good reasons to believe that the programme to eradicate potato spindle tuber viroid has become fully effective in those provinces, and that the programme to eradicate *Clavibacter michiganensis* ssp. *sepedonicus* has become largely effective in certain areas of Prince Edward Island; whereas there had been no confirmed findings of the disease on samples drawn from seed potatoes originating in Prince Edward Island and introduced pursuant to Decision 97/89/EC; whereas therefore it has not been established that there are sufficient elements which would militate against the proper functioning of the aforementioned concept of 'area freedom' in Prince Edward Island and therefore against the recognition of the provisions implemented there as equivalent to the Community provisions on combating *Clavibacter michiganensis* spp. *sepedonicus*;

Whereas, however, Italy informed the Commission on 14 March 1996 that a sample drawn from seed potatoes imported pursuant to Decision 96/6/EC and originating in New Brunswick was identified as infected by *Clavibacter michiganensis* ssp. *sepedonicus;* whereas, as the source of infection could not be identified, and as a precaution, the recognition of the 'area freedom' concept in the province of New Brunswick was temporarily suspended, resulting in a temporary prohibition of the import of seed potatoes from this province, in order to enable the Canadian authorities to complete their investigation in respect of the source of the said infection;

Whereas, the Canadian authorities officially informed the Commission that *Clavibacter michiganensis* ssp. *sepedonicus* had not been found in potatoes in an extensive traceback and testing procedure linked to the farm which had been placed under suspicion as a result of the finding of *Clavibacter michiganensis* ssp. *sepedonicus* in the said

[1] OJ L 26, 31. 1. 1977, p. 20.
[2] OJ L 87, 2. 4. 1997, p. 17.
[3] OJ L 2, 4. 1. 1996, p. 24.
[4] OJ L 27, 30. 1. 1997, p. 45.

sample on an imported lot; moreover Canada confirmed that administrative measures had been strengthened to control sampling, labelling and sealing procedures for all seed potato lots destined for the EU; whereas therefore the recognition of the 'area freedom' concept in the province of New Brunswick has been reinstated;

Whereas, moreover, as a result of inspections carried out in 1997 by the Food and Veterinary Office in the importing Member State, it became apparent that the technical conditions imposed on the importing Member State should not be modified;

Whereas it can therefore be established that there is no risk of the harmful organisms in question spreading, provided that the seed potatoes originate in areas declared, on scientific evidence, free from both potato spindle tuber viroid and from *Clavibacter michiganensis* ssp. *sepedonicus,* and that certain special technical conditions are complied with;

Whereas the Commission will ensure that Canada makes all technical information available which is necessary to monitor the functioning of the protective measures required under the aforementioned technical conditions and to assess the functioning of the aforementioned concept of 'area freedom';

Whereas, the risk of establishing and spreading *Clavibacter michiganensis* ssp. *sepedonicus* is high in wet and cold regions; consequently the derogation should not apply to Member States which are particularly exposed to such risks, i.e. Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Luxembourg, the Netherlands, Sweden and the United Kingdom; whereas, therefore, the authorisation should not apply to the abovementioned Member States, taking into account the differences in agricultural and ecological conditions;

Whereas, therefore, derogations should be authorised for the next seed-potato marketing season, provided that they include the aforementioned conditions and without prejudice to Council Directive 66/403/EEC [1], as last amended by Directive 97/90/EC [2], and to Council Directive 70/457/EEC [3], as last amended by the Act of Accession of Austria, Finland and Sweden;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

1. The Hellenic Republic, the Kingdom of Spain, the Italian Republic and the Portuguese Republic are hereby authorised to provide, under the conditions laid down in paragraph 2, for derogations from Article 4(1) of Directive 77/93/EEC, with regard to Annex III(A)(10) and from Article 5(1) and the third indent of Article 12(1)(a) of that Directive as regards the requirements referred to in part A, Section I, points 25.2 and 25.3 of Annex IV thereto, for seed potatoes of the varieties 'Atlantic', 'Donna', 'Kennebec', 'Russet Burbank', 'Sebago' and 'Shepody' originating in Canada.

2. In addition to the requirements laid down in Annexes I, II and IV to Directive 77/93/EEC in relation to potatoes the following conditions shall be satisfied:

(a) the seed potatoes shall have been produced in fields located in areas of Prince Edward Island or New Brunswick which have been officially declared, by the Canadian Food Inspection Agency, free from both potato spindle tuber viroid and from *Clavibacter michiganensis* ssp. *sepedonicus* and which satisfy the following conditions, irrespective of whether the fields are operated by producers inside or outside the area:

(i) the areas either,

— consist of fields owned or rented by at least three distinct potato producers, or

— cover an area of at least four km^2, surrounded entirely by water or by fields where the organisms concerned have not been found within the previous three years, and

(ii) all potatoes produced in the area are the first direct progeny of seed potatoes of the category 'Pre-elite', 'Elite I', 'Elite II' or 'Elite III' which were produced in establishments qualified to produce seed potatoes of the 'Pre-elite' or 'Elite I' categories and which are either official establishments or officially designated and controlled for that purpose, and

(iii) the surface used for the production of potatoes which are not finally certified as seed potatoes does not exceed one-fifth of that used for the production of potatoes certified as seed potatoes, and

(iv) systematic and representative annual surveys which have been carried out over at least the previous five years under appropriate conditions for the detection of the organisms concerned, on all potato fields located in the area and on potatoes harvested there, including appropriate laboratory testing, did not show any positive finding, or any other element which could militate against the recognition as disease-free, and

(v) legislative, administrative or other arrangements have been made to ensure that:

[1] OJ 125, 11. 7. 1966, p. 2320/66.
[2] OJ L 27, 30. 1. 1997, p. 49.
[3] OJ L 225, 12. 10. 1970, p. 1.

— no potatoes originating in areas of Canada other than those declared disease-free, or in countries where the organisms concerned are known to occur, can be introduced into such areas, and

— neither potatoes originating in such areas nor any containers, packaging material, vehicles and handling, grading and preparation equipment used there can be brought into contact with potatoes originating, or material or equipment as specified used, in areas other than those declared disease-free.

This provision shall also apply to cases where fields located inside the areas declared disease-free are operated by establishments outside such areas or where establishments inside such areas operate fields located outside them,

(vi) the Canadian Food Inspection Agency shall provide the Commission with a complete list of the areas declared as free, supported by a map updated each year of the provinces concerned, showing through appropriate marks the geographical distribution of the areas;

(b) the seed potatoes shall be certified officially as seed potatoes meeting at least the conditions laid down for the 'Foundation' category;

(c) samples shall be taken officially in respect of each lot intended for export to the Community; a lot shall consist only of tubers of one single variety and class which have been produced on one single farm and with the same reference number. The samples shall be examined by official laboratories in order to detect any presence of potato spindle tuber viroid or *Clavibacter michiganensis* ssp. *sepedonicus;* the samples for the detection of potato spindle tuber viroid shall be tubers, or leaves taken from the crop which produced the lot; for the detection of *Clavibacter michiganensis* ssp. *sepedonicus* a sample of at least 200 tubers per lot of 25 tonnes or less shall be taken; examinations shall be carried out on the entire sample, using the following methods:

— as regards potato spindle tuber viroid: the 'reverse-page' method, or c-DNA hybridisation procedure, and

— as regards *Clavibacter michiganensis* ssp. *sepedonicus:* at least that set out in the method for the detection and diagnosis of the ring rot bacterium in batches of potato tubers as laid down in Council Directive 93/85/EEC [1];

(d) legislative, administrative or other arrangements shall have been made to ensure:

— a direct supervision and control by the certification authority (i.e. the Canadian Food Inspection Agency) of the sampling process, i.e. collection, tagging and sealing, and in the labelling system through appropriate label accountability procedures, to ensure that for each seed lot within each consignment shipped to the Community a numbered label is used and stitched on the bags separately from the certification labels, as well as the relevant colour code corresponding to a specified importer in the importing Member State, and

— that at the time of loading the vessel, two sealed bags of potatoes of each lot shipped to the Community are kept aside and stored under the jurisdiction of the Canadian Food Inspection Agency, at least until the results of the examinations referred to in (i) are completed,

— that the lots shall be kept separate in all operations including transport, at least until delivery to the premises of the importers referred to in (f);

(e) the phytosanitary certificate required shall be made out separately for each consignment and only if it has been established by the scientists involved that the examinations referred to in (c) did not give rise to suspicions or to the detection of the presence of potato spindle tuber viroid or *Clavibacter michiganensis* ssp. *sepedonicus* in the consignment and that, in particular, the IF-testing was shown to be negative.

It shall state, under 'Additional declaration', that the conditions laid down in (a), (b) and (c) have been complied with, and shall give the name of the establishment or establishments which have produced the seed potato lots and the relevant seed potato certification lot numbers, as well as the name of the area referred to in (a), of the establishment referred to in (a) (ii) and the number of bags. It shall give under 'Distinguishing marks', the colour code corresponding to a specified importer in the importing Member State as well as the details of the numbered label used for each seed lot within each consignment. Documents attached to the said phytosanitary certificate as an integral part of the certificate shall relate precisely to that certificate in both description and quantity of commodity;

(f) prior to introduction into the Community, the importer shall notify each introduction sufficiently in advance to the responsible official bodies in the Member State concerned, and that Member State shall then, without delay, convey the details of the notification to the Commission, indicating:

[1] OJ L 259, 18. 10. 1993, p. 1.

— the variety,

— the quantity,

— the declared date of import,

— the names and addresses of the premises of the importers of the potatoes, and those listed in accordance with the provisions of Commission Directive 93/50/EEC (1).

Modifications in respect of the above details which occur after the said advance notification shall be, without delay, conveyed by the relevant Member State to the Commission.

At the moment of import the importer shall provide confirmation of the details of the aforementioned advance notification to the responsible official bodies in the Member State concerned;

(g) the potatoes may be introduced into the Community only via the following ports of unloading:

— Genova
— La Spezia
— Livorno
— Napoli
— Ravenna
— Salerno
— Savona
— Aveiro
— Lisbon
— Porto;

(h) the inspections required pursuant to Article 12 of Directive 77/93/EEC shall be made by responsible official bodies referred to in the said Directive. Without prejudice to the monitoring referred to in Article 19a(3) second indent, first possibility, the Commission shall determine to which extent the inspections referred to in Article 19a(3) second indent, second possibility of the said Directive shall be integrated into the inspection programme in accordance with Article 19a(5)(c) of that Directive. The said official bodies and, as appropriate, the experts referred to in Article 19a(3) shall check the importers' premises to confirm details of the quantities of potatoes imported from Canada, the colour coding, the numbered labels and those destinations for planting at premises listed under Directive 93/50/EEC;

(i) the responsible official bodies of the importing Member States shall take a sample of at least 200 tubers per lot of 25 tonnes or less from each of the non-bulk lots intended to be imported pursuant to this Decision for official examination in respect of *Clavibacter michiganensis* ssp. *sepedonicus* in accordance with the Community established method for the detection and diagnosis of *Clavibacter michiganensis* ssp. *sepedonicus;* the lots shall remain separate under official control and may not be marketed or used until it has been established that the presence of *Clavibacter michiganensis* ssp. *sepedonicus* was not suspected or detected in those examinations; the total lots imported shall not exceed an amount which is adequate for the abovementioned examinations, taking into account the facilities available for that purpose; sub-samples shall be kept available for subsequent examination by other Member States and the responsible official bodies referred to in the said Directive of the importing Member State shall by 15 April 1998 inform the Commission, with a view to organising that examination and the recording thereof;

(j) the potatoes shall be planted only at premises in the Member State of import, for which it is possible to trace the names and addresses; this provision shall not apply in the case of final users planting the imported seed potatoes or for users who will sell only onto the local market;

(k) in the growing period following introduction, a suitable proportion of the plants shall be inspected by the said responsible official bodies, at appropriate times, at the premises listed in accordance with the provisions of Directive 93/50/EEC or referred to in (j);

(l) potatoes grown from seed potatoes introduced pursuant to this Decision shall not be certified as seed potatoes, and shall be used only as potatoes for consumption.

For the premises referred to in under (j) the potatoes grown from such seed potatoes shall be packaged and labelled accordingly and shall bear the number of the premises listed in accordance with the provisions of Directive 93/50/EEC, as well as the Canadian origin of the seed potatoes used. Such potatoes may be moved within the Member States, only after approval by the said responsible official bodies taking into account the results of the inspection referred to in (k).

Article 2

Member States shall inform the other Member States and the Commission by means of the notification referred to in Article 1(2)(f), first sentence of any use of the authorisation. The importing Member States shall provide the Commission and the other Member States, before 1 June 1998, with information on the amounts imported pursuant to this Decision and with a detailed technical report on the official examination referred to in Article 1(2)(i); in those cases where Member States have made official examinations on sub-samples as referred to in

(1) OJ L 205, 17. 8. 1993, p. 22.

Article 1(2)(i), the detailed technical reports thereof shall also be submitted to the Commission before 1 June 1998; copies of each phytosanitary certificate shall be transmitted to the Commission.

Article 3

The authorisation granted in Article 1 shall apply from 15 January 1998 until 31 March 1998. It shall be revoked prior to 31 March 1998 if it is found that the conditions laid down in Article 1(2) have been insufficient to prevent the introduction of the harmful organisms in question or have not been complied with. It may be revoked prior to that date if it is found that there are elements which would militate against the proper functioning of the 'area freedom' concept in Canada.

Article 4

This Decision is addressed to the Hellenic Republic, the Kingdom of Spain, the Italian Republic and the Portuguese Republic.

Done at Brussels, 12 January 1998.

For the Commission

Franz FISCHLER

Member of the Commission