COMMISSION DECISION

of 23 May 2005

on emergency measures regarding chilli, chilli products, curcuma and palm oil

(notified under document number C(2005) 1454)

(Text with EEA relevance)

(2005/402/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(1) thereof,

Whereas:

(1) Under Regulation (EC) No 178/2002 the Commission is to suspend the placing on the market or use of a food or feed that is likely to constitute a serious risk to human health, or take any other appropriate interim measure when such risk cannot be contained satisfactorily by means of measures taken by the Member States concerned.

(2) Under Commission Decision 2004/92/EC of 21 January 2004 on emergency measures regarding chilli and chilli products [2], Member States have carried out checks for the presence of the chemical substances Sudan I, Sudan II, Sudan III and Scarlet Red (Sudan IV). Those substances have been found in chilli and chilli products as well as curcuma or palm oil. All findings were notified through the Rapid Alert System for food and feed pursuant to Article 50 of Regulation (EC) No 178/2002.

(3) Sudan I, Sudan II, Sudan III and Scarlet red (Sudan IV) have been classified as category 3 carcinogens by the International Agency for Research on Cancer (IARC).

(4) The extent of the findings points to an adulteration constituting a serious health risk.

(5) Given the seriousness of the health threat, it is necessary to maintain the measures provided for in Decision 2004/92/EC and to extend them to curcuma and palm oil. Moreover, account should be taken of the possibility of triangular trade, especially for food products for which there is no official certification of origin. In order to protect public health, it is appropriate to require that consignments of chilli, chilli products, curcuma and palm oil imported into the Community in whatever form, intended for human consumption, should be accompanied by an analytical report provided by the importer or food business operator concerned demonstrating that the consignment does not contain Sudan I, Sudan II, Sudan III or Scarlet red (Sudan IV).

(6) The analytical report accompanying the consignments of chilli, chilli products, curcuma and palm oil should be an original document endorsed by the competent authorities from the country emitting the document. These measures aim to improve the guarantees offered by the document.

(7) Member States should also be required to carry out random sampling and analysis of chilli, chilli products, curcuma and palm oil presented for importation or already on the market.

(8) It is appropriate to order the destruction of adulterated chilli, chilli products, curcuma and palm oil to avoid their introduction into the food chain.

(9) Since the measures provided for in this Decision have an impact on the control resources of the Member States, the results of these measures should be reviewed within 12 months in order to assess whether they are still necessary for the protection of public health.

(10) That review should take account of the results of all analyses carried out by the competent authorities.

(11) Transitional measures are necessary for consignments of chilli, chilli products, curcuma and palm oil imported before the date of publication of this Decision.

(12) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

[1] OJ L 31, 1.2.2002, p. 1. Regulation as amended by Regulation (EC) No 1642/2003 (OJ L 245, 29.9.2004, p. 4).
[2] OJ L 27, 30.1.2004, p. 52.

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision the following definitions shall apply:

(a) 'chilli', fruits of the genus *Capsicum*, dried and crushed or ground within CN Code 0904 20 90, in whatever form, intended for human consumption and

(b) 'chilli products', curry powder within CN Code 0910 50, in whatever form, intended for human consumption and

(c) 'curcuma', curcuma dried and crushed or ground within CN Code 0910 30, in whatever form, intended for human consumption and

(d) 'palm oil', palm oil within CN Code 1511 10 90, intended for direct human consumption.

Article 2

Imports conditions

1. Member States shall prohibit the import of chilli, chilli products, curcuma and palm oil unless an original analytical report accompanying the consignment demonstrates that the product does not contain any of the following chemical substances:

(a) Sudan I (CAS Number 842-07-9),

(b) Sudan II (CAS Number 3118-97-6),

(c) Sudan III (CAS Number 85-86-9),

(d) Scarlet Red or Sudan IV (CAS Number 85-83-6).

2. The analytical report shall be endorsed by a representative of the relevant competent authority.

3. The competent authorities in the Member States shall check that each consignment of chilli, chilli products, curcuma and palm oil presented for importation is accompanied by an analytical report as provided for in paragraph 1.

4. In the absence of such an analytical report as provided for in paragraph 1, the importer established in the Community shall have the product tested to demonstrate that it does not contain one or more of the chemical substances referred to in paragraph 1. Pending availability of the analytical report, the product shall be detained under official supervision.

Article 3

Sampling and analysis

1. Member States shall take appropriate measures, including random sampling and analysis of chilli, chilli products, curcuma and palm oil presented for importation or already on the market in order to verify the absence of the chemical substances referred to in Article 2(1).

Member States shall inform the Commission through the Rapid Alert System for food and feed of all consignments which are found to contain those substances.

Member States shall report to the Commission on a quarterly basis on the consignments which were found not to contain those substances. These reports shall be submitted before the end of the month following that quarter.

2. Any consignment subjected to official sampling and analysis may be detained before release onto the market for a maximum period of 15 working days.

Article 4

Splitting of a consignment

If a consignment is split, a certified copy of the analytical report provided for in Article 2(1) shall accompany each part of the split consignment.

Article 5

Adulterated consignments

Chilli, chilli products, curcuma and palm oil that are found to contain one or more of the chemical substances referred to in Article 2(1) shall be destroyed.

Article 6

Recovery of costs

All costs resulting from analysis, storage or destruction pursuant to Article 2(1) or (4) and Article 5 shall be borne by the importers or food business operators concerned.

Article 7

Transitional measures

1. By derogation from Article 2(2), for consignments which left the country of origin before the date of publication of this Decision, Member States shall accept the analytical report for the products listed in Article 1(a) and 1(b) without the official endorsement referred to in that provision.

2. By derogation from Article 2(1), for consignments which left the country of origin before the date of publication of this Decision, Member States shall accept the imports for the products listed in Article 1(c) and 1(d) without the analytical report referred to in that provision.

Article 8

Review of the measures

This Decision shall be reviewed by 22 May 2006 at the latest.

Article 9

Repealing

Decision 2004/92/EC is repealed.

Article 10

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 23 May 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission