

COMMISSION DECISION

of 29 April 2008

imposing special conditions governing guar gum originating in or consigned from India due to contamination risks of those products by pentachlorophenol and dioxins*(notified under document number C(2008) 1641)***(Text with EEA relevance)**

(2008/352/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Member States. It is therefore appropriate to adopt special measures at Community level.

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)(b)(ii) thereof,

Whereas:

- (1) High levels of pentachlorophenol and dioxins have been found in certain batches of guar gum originating in or consigned from India. Such contamination constitutes a threat to public health within the Community if no measures are taken to avoid the presence of pentachlorophenol (PCP) and dioxins in guar gum.
- (2) In response to this finding of elevated levels of PCP and dioxins, the Commission carried out an urgent inspection visit to India from 5 to 11 October 2007. The objective was to gather information on the possible source of the contamination and to assess the control measures put in place by the Indian authorities to avoid the re-occurrence of this contamination. The inspection team concluded that there is to date insufficient evidence of the cause of the contamination incident, and the investigation carried out by the Indian authorities has been inadequate to provide any conclusions. With availability of sodium pentachlorophenolate and its use in the guar gum industry, and with a largely self regulated industry, there are inadequate controls in place to ensure that this contamination does not occur again.
- (3) Without prejudice to the control obligations of the Member States, the measures to be adopted further to the likely imports of contaminated products should form a comprehensive and common approach allowing rapid and effective action to be taken and avoiding disparities between the treatment of the situation by the various

- (4) To prevent fraudulent practice with the aim of evading from the application of special conditions provided for in this Decision to protect animal and public health, it is important that compound foodstuffs and feedingstuffs containing to a significant amount guar gum originating in or consigned from India are also within the scope of this Decision. A threshold of 10 % is established.
- (5) The Community Reference Laboratory for Dioxins and PCBs in Feed and Food has carried out a study on the correlation between PCP and dioxins in contaminated guar gum from India. From this study it can be concluded that guar gum containing a level of PCP below the level of 0,01 mg/kg does not contain unacceptable levels of dioxins.
- (6) The Vimta Laboratory in Hyderabad, which was visited by the inspection team, is an accredited, well staffed and well equipped laboratory. Analytical performance for PCP in this laboratory was found to be adequate. The analytical performance in the other visited laboratories was assessed to be inadequate.
- (7) It is appropriate to require that all consignments of guar gum or products containing guar gum at significant amounts originating in or consigned from India and imported into the Community intended for human or animal consumption, should be accompanied by an analytical report issued by a laboratory accredited according to EN ISO/IEC 17025 for the analysis of PCP in food and feed or by a laboratory that is pursuing the necessary accreditation procedures and which has adequate quality control schemes in place and this analytical report is endorsed by the competent authority from the country where the laboratory is located.
- (8) 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 last amended by Commission Regulation (EC) No 202/2008 (OJ L 60, 5.3.2008, p. 17).

HAS ADOPTED THIS DECISION:

Article 1

Scope

This Decision shall apply to:

- (a) guar gum, falling within CN code 1302 32 90, originating in or consigned from India, and intended for animal or human consumption;
- (b) compound feedingstuffs and foodstuffs containing at least 10 % guar gum originating in or consigned from India.

Article 2

Conditions for first placing on the market

1. Member States shall prohibit the first placing on the market of the products referred to in Article 1 unless an original analytical report, issued by a laboratory accredited according to EN ISO/IEC 17025 for the analysis of PCP in food and feed or by a laboratory that is pursuing the necessary accreditation procedures and which has adequate quality control schemes in place⁽¹⁾ accompanying the consignment demonstrates that the product does not contain more than 0,01 mg/kg pentachlorophenol (PCP). The analytical result must be reported with the expanded measurement uncertainty.

2. The analytical report shall be endorsed by a representative of the competent authority from the country where the laboratory is located.

3. Before the physical arrival of consignments of products referred to in Article 1, the feed or food business operator responsible for the consignment or his representative shall provide prior notification to the competent authority of the Member State of arrival.

4. The competent authorities in the Member States shall check that each consignment of the products referred to in Article 1 presented for first placing on the market is accompanied by an analytical report as provided for in paragraph 1. Each consignment of products referred to in Article 1, shall be identified with a code which corresponds to the code mentioned on the abovementioned analytical report containing

the results of sampling and analysis. Each individual bag or other packaging form of the consignment shall be identified with that code.

5. In the absence of such an analytical report as provided for in paragraph 1, the feed or food business operator established in the Community shall have the product tested by an accredited laboratory accredited according to EN ISO/IEC 17025 for the analysis of PCP in food and feed or by a laboratory that is pursuing the necessary accreditation procedures and which has adequate quality control schemes in place to demonstrate that it does not contain more than 0,01 mg/kg PCP. Pending availability of the analytical report endorsed by a representative of the competent authority from the country where the laboratory is located, the product shall be detained under official supervision for a period of no more than 60 days, after which the competent authority shall take measures as regards this product in accordance with Article 19(1)(a) of the Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules⁽²⁾.

6. For the purposes of the test referred to in paragraphs 1 and 5, the analysis must be performed on a sample, taken representatively from the consignment in accordance with the provisions of Commission Directive 2002/63/EC of 11 July 2002 establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin and repealing Directive 79/700/EEC⁽³⁾. The extraction before analysis shall be performed with an acidified solvent. The analysis shall be carried out according to the modified version of the QuEChERS method as set out on the website of the Community Reference Laboratories for Residues of Pesticides⁽⁴⁾ or according to an equally reliable method.

Article 3

Sampling and analysis

1. Member States shall take the appropriate measures, including random sampling and analysis of products referred to in Article 1 with a frequency of 5 % of the consignments of products referred to in Article 1, presented for first placing on the market, in order to verify that the level of 0,01 mg/kg PCP is not exceeded.

Member States shall inform the Commission through the Rapid Alert System for food and feed of all consignments which are found to contain PCP above 0,01 mg/kg taking into account the measurement uncertainty.

⁽¹⁾ Following the findings of the FVO, the Vimta Labs, Hyderabad, Andhra Pradesh is the only laboratory in India which fulfils this requirement.

⁽²⁾ OJ L 165, 30.4.2004; corrected by OJ L 191, 28.5.2004, p. 1. Regulation as last amended by Council Regulation (EC) No 301/2008 (OJ L 97, 9.4.2008, p. 85).

⁽³⁾ OJ L 187, 16.7.2002, p. 30.

⁽⁴⁾ <http://www.crl-pesticides.eu/library/docs/srm/QuechersForGuarGum.pdf>

Member States shall submit to the Commission every three months a report of all analytical results of official controls on consignments of products referred to in Article 1. This report shall be submitted during the month following each quarter (April, July, October, and January).

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) and 2(5) shall accompany each part of the split consignment up to and including the wholesale stage. Certified copies of the analytical report can also be provided by the competent authority at the moment of the release for free circulation in case the feed or food business operator indicates to have the intention to split the consignment.

Article 5

Fate of non-compliant consignments

Measures in respect of consignments of products referred to in Article 1, which are found to contain more than 0,01 mg/kg PCP, taking into account the measurement uncertainty, shall be taken in accordance with Article 19(1)(a) of Regulation (EC) No 882/2004.

Article 6

Recovery of the costs

All costs resulting from sampling, analysis, storage or measures following non-compliance shall be borne by the feed or food business operators concerned in accordance with Article 22 and Annex VI of Regulation (EC) No 882/2004.

Article 7

Transitional measures

By derogation from Article 2(1) and 2(5), consignments of products referred to in Article 1, which left the country of origin or consignment before the date of application of this Decision, shall be accepted by the Member States even if they are not accompanied by an analytical report as provided for in that Article.

Article 8

Review of the measures

This Decision shall be reviewed at the latest one year after the date of application.

Article 9

Date of application

This Decision shall apply from 5 May 2008.

Article 10

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 29 April 2008.

For the Commission

Androulla VASSILIOU

Member of the Commission