

COMMISSION IMPLEMENTING REGULATION (EU) 2015/175**of 5 February 2015****laying down special conditions applicable to the import of guar gum originating in or consigned from India due to contamination risks by pentachlorophenol and dioxins****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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) Article 53(1) of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Union emergency measures for feed and food imported from a third country in order to protect human health, animal health and the environment, where the risk cannot be contained satisfactorily by means of measures taken by the Member States individually.
- (2) In July 2007, high levels of pentachlorophenol (PCP) and dioxins have been found in the Union in certain batches of guar gum originating in or consigned from India. Such contamination constitutes a threat to public health within the Union if no measures are taken to avoid the presence of pentachlorophenol and dioxins in guar gum.
- (3) Therefore special conditions on the imports of guar gum originating in or consigned from India were established by Commission Decision 2008/352/EC ⁽²⁾, later replaced by Commission Regulation (EU) No 258/2010 ⁽³⁾, due to contamination risks by pentachlorophenol and dioxins.
- (4) As follow-up to the audits of the Food and Veterinary Office of the European Commission (FVO) in 2007 and 2009, another audit took place in October 2011 in order to assess the systems in place to control PCP and dioxin contamination in guar gum originating in or consigned from India and intended for export to the Union.
- (5) During the audit of October 2011 the FVO observed that the competent authority of India has put in place a procedure to ensure that sampling is undertaken by one of two designated sampling bodies, in line with Union sampling provisions provided for in Commission Directive 2002/63/EC ⁽⁴⁾ and that all exported lots are accompanied by a certificate and by an analytical report from a laboratory accredited in accordance with EN ISO/IEC 17025 for the analysis of PCP in feed and food. The FVO noted that due to that procedure contaminated lots are not exported to the Union.
- (6) The European Union 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 Maximum Residue Limit (MRL) of 0,01 mg/kg does not contain unacceptable levels of dioxins. Therefore compliance with the MRL on PCP, ensures in this specific case also a high level of human health protection as regards dioxins
- (7) The laboratory is still finding high levels of PCP in guar gum powder for export for use in food. As the legal status of PCP for industrial use remains unclear in India and as there is no evidence of the source of contamination, and no investigations on the source of contamination of non-compliant lots are undertaken, the potential for contaminated lots remains.

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ Commission Decision 2008/352/EC 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 (OJ L 117, 1.5.2008, p. 42).

⁽³⁾ Commission Regulation (EU) No 258/2010 of 25 March 2010 imposing special conditions on the imports of guar gum originating in or consigned from India due to contamination risks of those products by pentachlorophenol and dioxins and repealing Decision 2008/352/EC (OJ L 80, 26.3.2010, p. 28).

⁽⁴⁾ Commission Directive 2002/63/EC of 11 July 2002 establishing Community methods of sampling for the official control of pesticides residues in and on products of plant and animal origin and repealing Directive 79/700/EEC (OJ L 187, 16.7.2002, p. 30).

- (8) Those findings indicate that the contamination of guar gum with PCP cannot be regarded as an isolated incident and that only the effective analysis by the approved laboratory has prevented contaminated product from being further exported to the Union.
- (9) As the source of contamination is not yet eliminated it is appropriate to maintain special conditions for import. However, it is appropriate to bring the control measures at import in line with existing control measures at import applicable to certain food and feed of non-animal origin. Given that such alignment entails several changes, it is appropriate to repeal Regulation (EU) No 258/2010 and replace it by a new Implementing Regulation.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation shall apply to consignments of guar gum falling within CN code ex 1302 32 90, TARIC subdivision 10 and 19, originating in or consigned from India and intended for animal or human consumption.
2. This Regulation shall also apply to consignments of compound feed and food containing guar gum referred to in paragraph 1 in a quantity above 20 %.
3. This Regulation shall not apply to consignments referred to in paragraphs 1 and 2 which are destined to a private person for personal consumption and use only. In case of doubt on the destination of the consignment, the burden of proof lies with the recipient of the consignment.
4. This Regulation shall be without prejudice to the provisions of Council Regulation (EEC) No 2913/92 ⁽¹⁾.

Article 2

Definitions

For the purposes of this Regulation, the definitions laid down in Articles 2 and 3 of Regulation (EC) No 178/2002, Article 2 of Regulation (EC) No 882/2004 of the European Parliament and of the Council ⁽²⁾ and Article 3 of Commission Regulation (EC) No 669/2009 ⁽³⁾ shall apply.

For the purpose of this Regulation, a consignment corresponds to a lot as referred to in Commission Directive 2002/63/EC.

Article 3

Import into the Union

1. Consignments referred to in Article 1(1) and (2) may only be imported into the Union in accordance with the procedures laid down in this Regulation.
2. Consignments referred to in Article 1(1) and (2) may only enter the Union through a Designated Point of Entry (DPE) as defined in Regulation (EC) No 669/2009.

⁽¹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

⁽²⁾ 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 (OJ L 165, 30.4.2004, p. 1).

⁽³⁾ Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC (OJ L 194, 25.7.2009, p. 11).

*Article 4***Analytical report**

1. Consignments referred to in Article 1(1) and (2) shall be accompanied by an analytical report issued by a laboratory accredited in accordance with EN ISO/IEC 17025 for the analysis of PCP in feed and food, demonstrating that the product imported does not contain more than 0,01 mg/kg pentachlorophenol (PCP).
2. The analytical report shall indicate:
 - (a) the results of sampling and analysis for the presence of PCP, performed by the competent authorities of the country of origin, or of the country where the consignment is consigned from if that country is different from the country of origin;
 - (b) the measurement uncertainty of the analytical result;
 - (c) the limit of detection (LOD) of the analytical method; and
 - (d) the limit of quantification (LOQ) of the analytical method.
3. The sampling referred to in paragraph 2 shall be performed in accordance with Directive 2002/63/EC.
4. 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 European Union Reference Laboratories for Residues of Pesticides ⁽¹⁾ or according to an equally reliable method.

*Article 5***Health certificate**

1. The consignments referred to in Article 1(1) and (2) shall be accompanied by a health certificate corresponding to the model set out in the Annex.
2. The health certificate shall be completed, signed and verified by an authorised representative of the competent authority of the country of origin, the Ministry of Commerce and Industry of India, or of the country where the consignment is consigned from if that country is different from the country of origin.
3. The health certificate shall be drawn up in one of the official languages of the Member State where the designated point of entry is located. However, a Member State may consent that health certificates be drawn up in another official language of the Union.
4. The health certificate shall be valid for four months from the date of its issue.

*Article 6***Identification**

Each consignment referred to in Article 1(1) and (2) shall be identified with an identification code. That code shall be identical to the identification code appearing on the analytical report referred to in Article 4 and on the health certificate referred to in Article 5.

Each individual bag or package of the consignment shall be identified with that identification code.

*Article 7***Prior notification of consignments**

1. Feed and food business operators shall give prior notification to the competent authorities at the DPE of:
 - (a) the estimated date and time of physical arrival of the consignment; and
 - (b) the nature of the consignment.

⁽¹⁾ <http://www.eurl-pesticides.eu/library/docs/srm/QuechersForGuarGum.pdf>

2. For the purpose of prior notification, feed and food business operators shall complete Part I of the common entry document (CED) provided for in Regulation (EC) No 669/2009. They shall transmit that document to the competent authority at the DPE at least one working day prior to the arrival of the consignment.

3. For the completion of the CED, feed and food business operators shall take into account the notes for guidance for the CED laid down in Annex II to Regulation (EC) No 669/2009.

Article 8

Official controls

1. The competent authority at the DPE shall carry out documentary checks of each consignment referred to in Article 1(1) and (2) to ensure compliance with the requirements laid down in Articles 4 and 5.

2. The identity and physical checks of consignments referred to in Article 1(1) and (2) of this Regulation shall be carried out in accordance with Articles 8, 9 and 19 of Regulation (EC) No 669/2009 at a frequency of 5 %.

3. After completion of the checks, the competent authorities shall:

- (a) complete the relevant entries in Part II of the CED;
- (b) attach the results of the checks carried out in accordance with paragraph 2 of this Article;
- (c) provide and fill the CED reference number on the CED;
- (d) stamp and sign the original of the CED;
- (e) make and retain a copy of the signed and stamped CED.

4. The original of the CED, of the health certificate referred to in Article 5 and of the analytical report referred to in Article 4 shall accompany the consignment during its transport until it is released into free circulation.

In case of authorisation of onward transportation of the consignment pending the results of the physical checks, as provided for in the third subparagraph of Article 8(2) of Regulation (EC) No 669/2009, an authenticated copy of the original CED shall accompany the consignment in place of the original.

Article 9

Splitting of a consignment

1. Consignments shall not be split until all official controls have been completed, and the CED has been fully completed by the competent authorities as provided for in Article 8.

2. In the case of subsequent splitting of the consignment, an authenticated copy of the CED shall accompany each part of the consignment during its transport until it is released for free circulation.

Article 10

Release into free circulation

1. The release of consignments into free circulation shall be subject to the presentation by the feed or food business operator to the custom authorities of a CED duly completed by the competent authority once all official controls have been carried out. The CED may be presented physically or electronically.

2. The custom authorities shall only release the consignment into free circulation if a favourable decision by the competent authority is indicated in box II.14 of the CED and box II.21 thereof is signed.

Article 11

Non-compliance

If the official controls establish non-compliance with the relevant Union legislation, the competent authority shall complete Part III of the CED and action shall be taken pursuant to Articles 19, 20 and 21 of Regulation (EC) No 882/2004.

*Article 12***Reports**

1. Member States shall submit to the Commission every three months a report summarising the analytical reports of official controls of consignments referred to in Article 1(1) and (2) pursuant to this Regulation. That report shall be submitted during the month following each quarter.
2. The report shall include the following information:
 - (a) the number of consignments imported;
 - (b) the number of consignments subjected to sampling for analysis;
 - (c) the results of the checks as provided for in Article 8(2).

*Article 13***Costs**

All costs resulting from the official controls and any measures taken following non-compliance shall be borne by the feed and food business operators.

*Article 14***Repeal**

Regulation (EU) No 258/2010 is repealed.

*Article 15***Transitional provisions**

By way of derogation from Article 5(1), Member States shall authorise the imports of consignments referred to in Article 1(1) and (2) which left the country of origin before the date of entry into force of this Regulation accompanied by a health certificate as provided for by Regulation (EU) No 258/2010.

*Article 16***Entry into force**

This Regulation shall enter into force on the twentieth day following that 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, 5 February 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Health Certificate for the importation into the European Union of

..... (1)

Consignment Code Certificate Number

According to the provisions of Commission Implementing Regulation (EU) 2015/175 laying down special conditions applicable to the import of guar gum originating in or consigned from India due to contamination risks by pentachlorophenol and dioxins, the

.....

.....(competent authority referred to in Article 5(2) of Regulation (EU) 2015/175)

CERTIFIES that the

.....(insert feed or food referred to in Article 1 of Regulation (EU) 2015/175)

of this consignment composed of:

.....

.....(description of consignment, product, number and type of packages, gross or net weight)

embarked at (embarkation place)

by(identification of transporter)

going to(place and country of destination)

which comes from the establishment

.....(name and address of establishment)

have been produced, sorted, handled, processed, packaged and transported in line with good hygiene practices.

From this consignment, samples were taken in accordance with Commission Directive 2002/63/EC on(date), subjected to laboratory analysis on

(date) in the.....

(name of laboratory). The details of sampling, methods of analysis used and all results are attached.

This certificate is valid until.....

Done at on

Stamp and signature of authorised representative of competent authority referred to in Article 5(2)

(1) Product and country of origin.