COMMISSION REGULATION (EC) No 408/2003

of 5 March 2003

amending Regulation (EC) No 1148/2001 on checks on conformity to the marketing standards applicable to fresh fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [1], as last amended by Commission Regulation (EC) No 47/2003 [2], and in particular Article 10 thereof,

Whereas:

(1) Commission Regulation (EC) No 1148/2001 [3], amended by Regulation (EC) No 2379/2001 [4], lays down rules for the application of checks on marketing conformity to standards both for products for consumption on the internal market and for exported products.

(2) It is necessary to clearly establish that traders offering sufficient guarantees of conformity and therefore benefiting from special provisions at the export stage are not necessarily only those who packaged the products at the stage of dispatch. Indeed, some traders, offering such guarantees, for example wholesalers practising re-export or re-shipping after self-checking conformity do not have packing facilities. In addition, for clarification purposes, the mention 'Self-check' shall be added in the certificate issued at the stage of export when the inspection body did not itself carry out the physical check of the goods.

(3) It is opportune to concentrate the checks carried out by Member States at the import stage on lots and consignments presenting the higher risks of non-conformity with marketing standards. It is desirable to that effect that Member States establish criteria on which such risks are to be assessed, together with rules on how checks may be relaxed where the risks of non-conformity are low. For the purpose of harmonisation of checking practices among the Member States, it is opportune that the Commission establish common guidelines.

(4) Lots accompanied by conformity certificates issued by third countries the checks of which are approved according to Regulation (EC) No 1148/2001 present less of a risk of non-conformity than lots and consignments which are not accompanied by such certificates. The proportion of checks on such lots and consignments should therefore be substantially lower than for goods not accompanied by such certificate. It should also be ensured in this case, given the lower proportion of checks and the checking costs already generated in the exporting third countries, that possible fees perceived by Member States to that effect are lower than fees perceived under the general import checks scheme and are proportionate to the checks realised.

(5) Additional provisions should be laid down concerning cases where traders wish to bring goods into conformity in a Member State other than that in which the goods in question have been found not to conform and cases where it is not longer possible to bring goods into conformity.

(6) Numerous packages, pre-printed before 1 January 2002 and still showing the mentions established by Commission Regulation (EEC) No 2251/92 [5], as last amended by Regulation (EC) No 766/97 [6], are still available in the stocks of certain traders. It is opportune to prolong by six months the period during which these packages can still be used.

(7) The inspection methods laid down in Annex IV should be updated, in particular to take account of practices specific to nuts and of ways of testing the degree of ripeness of fruit and vegetables.

(8) Regulation (EC) No 1148/2001 shall therefore be amended accordingly.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1148/2001 is hereby amended as follows:

1. Article 5 is amended as follows:

   (a) in paragraph 1, the third subparagraph is deleted;

   (b) the following paragraph 1a is inserted:

   '1 bis. Member States may apply the provisions mentioned in the second subparagraph to traders fulfilling the following conditions:

   (a) they offer sufficient guarantees of a consistent and high rate of conformity for the fruit and vegetables which they market;

   (b) they have inspection staff who have received training approved by the Member State;

[1] OJ L 297, 21.11.1996, p. 1.
[2] OJ L 7, 11.1.2003, p. 64.
[3] OJ L 156, 13.6.2001, p. 9.
[4] OJ L 321, 6.12.2001, p. 15.
[5] OJ L 219, 4.8.1992, p. 9.
[6] OJ L 112, 29.4.1997, p. 10.

(c) they undertake to check the conformity of the goods they market;

(d) they undertake to keep a register recording all the checks they have carried out.

For these traders, Member States may specify, for each category of trader concerned and based on a risk analysis, the minimum proportion of consignments and quantities subject to conformity checks by the competent inspection body at the export stage. This proportion must be sufficient to ensure compliance with Community rules. Where these checks reveal significant irregularities, the inspection bodies shall increase the proportion of consignments checked in the case of the traders concerned.'

(c) in paragraph 2, the following subparagraph is added:

'Where, according to paragraph 1a, lots concerned by the certificate of conformity have not been checked by the competent inspection body at the export stage, the mention "self-check (Art 5(1a) of Regulation (EC) No 1148/2001" shall be reported in box 13 (Comments) of the certificate.'

2. Article 6(4) is replaced by the following:

'4. Notwithstanding paragraphs 1, 2 and 3, where the competent inspection body at the point of import considers that there is a low risk of certain lots not conforming to the marketing standards, it may choose not to check those lots. It shall send the customs authority a stamped declaration to that effect or inform that authority in another manner that it may carry out clearance procedures.

For the purposes of applying the first subparagraph, the inspection body shall lay down in advance the criteria for assessing the risk of lots not conforming and, on the basis of a risk analysis, for each type of import it has defined, the minimum proportions of consignments and quantities which will be subject to a conformity check by the competent inspection body at the import stage. Any proportion specified pursuant to this paragraph must in any case be substantially higher than the ones applied according to Article 7(5).

4 bis. In order to improve the uniformity of application of paragraph 4 in the Member States, the Commission elaborates common guidelines for its application. The coordinating authority shall inform the Commission forthwith of the rules for the application of paragraph 4, including the criteria and minimum proportions referred to in paragraph 4, second subparagraph and any subsequent amendment to those rules.'

3. The following subparagraph is added to Article 7(5):

'If a Member State perceives a fee to cover the costs of the checks referred to in this paragraph, the level of this fee shall be such as to reflect the lower proportion of consignments and quantities checked for these checks than for those mentioned in Article 6.'

4. The following subparagraphs are added to Article 9(3):

'If an inspection body accepts a trader's wish to bring the goods into conformity in a Member State other than that where the check leading to a finding of non-conformity has been carried out, the Member States shall take any measures which they deem appropriate, in particular with regard to cooperation between them, to check that the goods have been brought into conformity.

Where the goods can neither be brought into conformity nor sent to animal feed, industrial processing or any other non-food use, the inspection body may, if necessary, request traders to take adequate measures in order to ensure that the products concerned are not marketed.

Traders shall be obliged to supply all information deemed necessary by the Member States for the application of this paragraph.'

5. In Article 11(2), the date '31 December 2002' is replaced by the date '30 June 2003'.

6. Annex IV is replaced by the text of the Annex to the present Regulation.

Article 2

This Regulation shall enter into force on the third day following 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 March 2003.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

'ANNEX IV

Methods of inspection mentioned in Article 9(1)

Remark: the following methods of inspection are based on the provisions of the guide for the implementation of quality control of fresh fruit and vegetables adopted by the UN/ECE (United Nations Economic Commission for Europe) Working Party for standardisation of perishable goods and improvement of quality.

1. DEFINITIONS

(a) **Conformity check**

Inspection carried out by an inspector in accordance with this Regulation to check that fruit and vegetables conform to the marketing standards laid down in Regulation (EC) No 2200/96.

This inspection includes:

— where appropriate, an identity and documentary inspection: an inspection of the documents or certificates accompanying the lot and/or the registers referred to in the third indent of the second subparagraph of Article 4(3) and in Article 5(1a) (d) of Regulation (EC) No 1148/2001, and an inspection of the goods and the particulars in these documents, to check that they match,

— a physical inspection, by means of sampling, of the goods in the lot to ensure that it satisfies all the conditions laid down by the marketing standard, including the provisions on the presentation and marking of packages and packaging.

(b) **Inspector**

Person authorised by the competent inspection body who has an appropriate and regular training enabling them to undertake conformity inspection.

(c) **Consignment**

Quantity of produce to be sold by a given trader found at the time of control and defined by a document. The consignment may consist of one or several types of produce: it may contain one or several lots of fresh fruit and vegetables.

(d) **Lot**

Quantity of produce which, at the time of control at one place, has similar characteristics with regard to:

— packer and/or dispatcher,

— country of origin,

— nature of produce,

— class of produce,

— size (if the produce is graded according to size),

— variety or commercial type (according to the relevant provisions of the standard),

— type of packaging and presentation.

However, if during the inspection of consignments, it is not possible to distinguish between different lots and/or presentation of individual lots is not possible, all lots of a specific consignment may be treated as one lot if they are similar in regard to type of produce, dispatcher, country of origin, class and variety or commercial type, if this is provided for in the standard.

(e) **Sampling**

Collective sample taken temporarily from a lot during conformity check inspection.

(f) **Primary sample**

Package taken from the lot, or in the case of bulk produce, a quantity taken from a point in the lot.