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C.2. Olive oil, Horticultural products

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FREQUENTLY ASKED QUESTIONS

as regards the new rules for marketing standards in the fruit and vegetables sector

Regulation (EC) No 1580/2007 laying down implementing rules for the fruit and vegetable sector, including as regards marketing standards, has been amended by Regulation (EC) 1221/2008, which applies from 1 July 2009 onwards.

Regulation (EC) No 1221/2008 has introduced the new implementing rules regarding marketing standards and associated checks, following the reform of the common market organization for the fruit and vegetables sector.

This "Frequently Asked Questions" (hereafter "FAQ") aims at explaining the changes brought by Regulation (EC) No 1221/2008 and to provide answers to frequently returning questions in this respect. As a result, this FAQ should facilitate the implementation of the new Regulation by the Member States.

However, this FAQ should not be considered as a legal instrument, as it is not within the competence of the European Commission's Directorate General for Agriculture and Rural Development to give final interpretations of Community law. Only the Court of Justice is competent to hand down legally binding rulings on the validity and interpretation of acts adopted by the Community institutions.

Regulation (EC) No 1221/2008 inserted Article 2a of Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector¹:

Marketing standards; holders

1. The requirements of Article 113a(1) of Regulation (EC) No 1234/2007 shall be known as the general marketing standard. The details of the general marketing standard are set out in Part A of Annex I to this Regulation.

Fruit and vegetables not covered by a specific marketing standard shall conform to the general marketing standard. However, where the holder is able to show they are in conformity with any applicable standards adopted by the United Nations Economic Commission for Europe (UNECE), the product shall be considered as conforming to the general marketing standard.

¹ OJ L 350, 31.12.2007, p. 1–98.

Q - Fruit and vegetables that are not covered by a specific marketing standard (hereafter "SMS") shall conform to the general marketing standards (hereafter "GMS"). Are bananas covered by the GMS?

R - *Bananas do not belong to Part IX of Annex I of Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products² ("single CMO Regulation") nor are they covered by Regulations (EC) No 2200/96 and 2201/96. Therefore they are not covered by the GMS. In addition, bananas have their own SMS (Regulation (EC) No 2257/94 of 16 September 1994 laying down quality standards for bananas³ (OJ L 245, 20.9.1994).*

Q - Does the GMS cover only "the 26" products (which were previously covered by a specific marketing standard, now repealed) or does it now cover all fruits and vegetables? (e.g. onions, figs, avocados...)

R - *The GMS covers all fruit and vegetables listed in Part IX, of Annex I to the single CMO Regulation with the exception of the 10 products covered by the specific marketing standards (SMS) and the 8 products exempted to comply with the GMS (bitter almonds, capers, saffron, etc...see paragraph 3b of Article 3 of Regulation (EC) No 1580/2007).*

Q - Concerning the minimum quality requirements of the GMS the criteria "intact and clean, practically free of any visible foreign matter" cause significant practical interpretation difficulties. Will the EC Commission help with an interpretation note in this case?

R - *Such criteria are already foreseen in some SMSs which may be of use. Further, interpretative brochures from OECD can be a tool.*

Q - For produce without a SMS where a UNECE Standard exists should the produce comply with that UNECE standard or can the trader simply comply with the GMS?

R - *It would be the trader's choice to apply the UNECE standards. The governmental inspectors would always have to inspect the conformity with the GMS first. If the product fails the GMS standard and the trader refers to the UNECE standard, the conformity with this UNECE standard has to be checked. If the product is in conformity with the UNECE standard, the product is considered as conforming to the GMS.*

This provision is foreseen because in some (few) cases, such as carrots, the GMS is on some issues stricter than the UNECE standard.

Q – Where fruits and vegetables are not covered by a SMS and are labelled by classes, does this mean that the product has to comply with UNECE standard?

R -

i) *A product not covered by a specific EC standard and meeting the UNECE standard shall be presumed to meet the GMS (Art. 2a of Regulation (EC) No. 1580/2007);*

² OJ L 299, 16.11.2007, p. 1–149.

³ OJ L 245, 20.9.1994.

(ii) *If an operator pretends to meet the UNECE standard or any other standard, he must indeed respect that standard, i.e. the entire standard. Where an operator invokes compliance with the UNECE standard, all provisions must be followed, except where not relevant. For instance, class 1 product does not have to comply with class 2 provisions. This should not add any regulatory burden to the operator that relies on a UNECE standard to pretend that it meets the GMS.*

(iii) *An operator should abstain from labelling which could mislead the purchaser as to the characteristics or properties of fruit and vegetables (see Article 2 of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs⁴). Saying that a product is a "category 1 product", "extra-class product" while it in fact does not comply with the requirements established in the UNECE standard for such class, goes against EC consumer law.*

Q - Is it possible to label a product of the GMS with a national existing class specification?

R - *A class labelling with a national existing class specification is not foreseen (there is no legal basis for that). The class labelling can be done on the basis of a UNECE standard or of a private standard. Private classification/private standards are not forbidden by Regulation (EC) No 1580/2007.*

Q - In case of marketing the product according to the UNECE norms, should the labelling of the class be with the words "according to UNECE norm"?

R - *It is not foreseen under Regulation 1580/2007 and therefore not compulsory. In the past it was not foreseen to mention "according to the EU Regulation" or "according to the UNECE norm".*

Q - Are the UNECE standards obligatory? Do Member States have to perform conformity checks on the basis of around 50 UNECE standards?

R - *As regards UNECE standards, Article 2a, paragraph 1 of Regulation 1580/2007 provides that fruit and vegetables not covered by a SMS shall conform to the general marketing standard. However, in order to avoid unnecessary barriers to trade, where the holder is able to show they are in conformity with the applicable standard adopted by UNECE, the product shall be considered as conforming to the GMS. This should not be interpreted as a legal obligation for operators to use UNECE standards but as a possibility, thus providing for flexibility for operators to choose to comply either with the GMS or UNECE standards.*

Regulation (EC) No 1221/2008 inserted Article 2a of Regulation (EC) No 1580/2007:

Marketing standards; holders

⁴ OJ L 109, 6.5.2000.

2. The specific marketing standards referred to in Article 113(1)(b) and (c) of Regulation (EC) No 1234/2007 are set out in Part B of Annex I to this Regulation as regards the following products:

- (a) apples,
- (b) citrus fruit,
- (c) kiwifruit,
- (d) lettuces, curled leaved and broad-leaved endives,
- (e) peaches and nectarines,
- (f) pears,
- (g) strawberries,
- (h) sweet peppers,
- (i) table grapes,
- (j) tomatoes.

3. For the purposes of Article 113a(3) of Regulation (EC) No 1234/2007, a holder shall be any natural or legal person physically in possession of the products concerned.

Q - In case of discrepancies between EU SMSs and corresponding UNECE Standards - which will prevail for the '10' products?

R - *The EU SMSs. UNECE standards can only be used for products covered by the GMS not by the SMS.*

Regulation (EC) No 1221/2008 amended Article 3 of Regulation EC No 1580/2007 as follows:

(a) Paragraph 1 is amended as follows:

(i) the introductory phrase and the point (a) are replaced by the following:

"By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007, the following shall not be required to conform to the marketing standards:

(a) provided they are clearly marked with the words "intended for processing" or "for animal feed" or any other equivalent wording, products:

- (i) intended for industrial processing, or
- (ii) intended for animal feed or other non-food use;"

(ii) the following point is added:

"(d) products having undergone a trimming or cutting making them "ready to eat" or "kitchen ready".";

(b) In paragraph 2, the introductory words are replaced by the following:

"By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007, the following shall not be required to conform to the marketing standards within a given production area:"

(c) Paragraph 3 is replaced by the following:

"3. By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007, Member States may exempt from the specific marketing standards products presented for retail sale to consumers for their personal use and labelled "product intended for processing" or with any other equivalent wording and intended for processing other than those referred to in point (a)(i) of paragraph 1.";

Q - In connection with the derogation from the SMSs referred to in paragraph 3 of Article 3 of Regulation EC No 1580/2007, as amended, should the Member State issue a special national regulation for such kind of products which are classified for processing?

R - *It is up to Member State to decide whether or not it will provide for such exemption in its national legislation.*

Regulation (EC) No 1221/2008 inserted Article 3 of Regulation EC No 1580/2007 as follows:

(d) The following paragraph 3a is inserted:

"3a. By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007 as regards the specific marketing standards, fresh fruit and vegetables not in Extra Class, at stages following dispatch, may show a slight lack of freshness and turgidity and slight deterioration due to their development and their tendency to perish.

The following paragraph 3b is inserted:

3b. By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007, the following products shall not be required to conform to the general marketing standard:

- (a) mushrooms other than cultivated mushrooms of CN code 070959,
- (b) capers of CN code 07099040,
- (c) bitter almonds of CN code 08021110,
- (d) shelled almonds of CN code 080212,
- (e) shelled hazelnuts of CN code 080222,
- (f) shelled walnuts of CN code 080232,
- (g) pine nuts of CN code 08029050, and
- (h) saffron of CN code 091020.";

Q - Are the eight products listed in Article 3(3b) also exempted from the requirement to mark with country of origin as this is part of the GMS?

R - *Yes, because there are not covered by the GMS, the specification of the country of origin is not compulsory. However, based on point 8 of Article 3(1) of the "Labelling Directive" (Directive 2000/13/EC) particulars of the place of origin or provenance have to be specified if their absence could mislead the consumer.*

Q - Are bananas, sweet corn, and potatoes for human consumption also exempted from the rules?

R – Pursuant to newly added paragraph 3b of Article 3 of Regulation (EC) No 1580/2007, the 8 fruit and vegetables listed in that paragraph are exempted from compliance with the GSM. All other F&V under Part IX of Annex I of Council Regulation (EC) No 1234/2007 have to comply either with the GSM or, a SMS.

For the time being, Bananas have their own marketing standard, see point (d) of Article 113(1) of the single CMO Regulation and Commission Regulation (EC) No 2257/94 of 16 September 1994 laying down quality standards for bananas and Commission Regulation (EC) No 2898/95 of 15 December 1995 concerning verification of compliance with quality standards for bananas.

Potatoes are not covered by any marketing standard, because this product is not listed in Part IX of Annex I of Council Regulation (EC) No 1234/2007. However, UNECE standards for early and ware potatoes do exist.

Sweet corn is listed in Part I of Annex I of Council Regulation (EC) No 1234/2007, under Cereals (fresh and chilled sweet corn are covered under CN Code 0709 90 60). As a result, they are not governed by a Community marketing standard.

Regulation (EC) No 1221/2008 amended the first paragraph of Article 4 of Regulation (EC) No 1580/2007 as follows:

"1. The information particulars required by this Chapter shall be shown legibly and obviously on one side of the packaging, either indelibly printed directly onto the package or on a label which is an integral part of the package or affixed to it."

The following paragraphs were added:

"3. In the case of distance contracts within the meaning of Article 2(1) of Directive 97/7/EC of the European Parliament and of the Council⁵, conformity with the marketing standards shall require that the information particulars shall be available before the purchase is concluded.

"4. Invoices and accompanying documents, excluding receipts for the consumer, shall indicate the name and the country of origin of the products and, where appropriate, the class, the variety or commercial type if required in a specific marketing standard, or the fact that it is intended for processing."

Regulation (EC) No 1221/2008 amended Article 5 of Regulation (EC) No 1580/2007

Information particulars at the retail stage

At retail stage, the information particulars required by this Chapter shall be legible and conspicuous. Products may be presented for sale provided the retailer displays prominently, adjacent to and legibly the information particulars relating to country of origin and, where appropriate, class and variety or commercial type in such a way as not to mislead the consumer.

For pre-packaged products as referred to in Directive 2000/13/EC of the European Parliament and of the Council⁶, the net weight shall be indicated, in addition to all the information provided for in the marketing standards. However, in the case of

⁵ OJ L 144, 4.6.1997, p 19.

⁶ OJ L 109, 6.5.2000, p 29.

products sold by number, the requirement to indicate the net weight shall not apply if the number of items may be clearly seen and easily counted from the outside or, if the number is indicated on the label.

Regulation (EC) No 1221/2008 amended Article 6 of Regulation (EC) No 1580/2007

Mixes

1. The marketing of packages of a net weight of 5 kg or less containing mixes of different types of fruit and vegetables shall be allowed, provided that:

(a) the products are of uniform quality and each product concerned complies with the relevant specific marketing standard or, where no specific marketing standard exists for a particular product, the general marketing standard,

(b) the package is appropriately labelled, in accordance with this Chapter, and

(c) the mix is not such as to mislead the consumer.

2. The requirements of point (a) of paragraph 1 shall not apply to products included in a mix which are not products of the fruit and vegetables sector as defined in Article 1 of Regulation (EC) No 1234/2007.

3. If the fruit and vegetables in a mix originate in more than one Member State or third country, the full names of the countries of origin may be replaced with one of the following, as appropriate:

(a) "mix of EC fruit and vegetables",

(b) "mix of non-EC fruit and vegetables",

(c) "mix of EC and non-EC fruit and vegetables".

Q - Are information particulars such as those provided for in Article 4 required at a retail stage?

R - *Yes, see Article 5 of Regulation (EC) No 1580/2007. In case of distance contracts, information particulars as regards conformity with marketing standards should be made available before the purchase is concluded.*

Q - Pursuant to Article 6 of Commission Regulation (EC) No 1580/2007, the marketing of packages of F&V of a net weight of 5 kg or less containing mixes of different types of F&V shall be allowed. If the F&V in the mix originates in more than one Member State or a third country, the full names of the countries of origin may be replaced by certain designated expressions ("mix of EC fruit and vegetables"; "mix of non-EC fruit and vegetables" or "mix of EC and non-EC fruit and vegetables". What does this entail for the invoices? If the same expressions can be used, is there no risk of inconsistency with the traceability requirements laid down in General Food Law?

R - *The country of origin has to be mentioned on invoices and accompanying documents (see Article 4(4) of Regulation (EC) No 1580/2007). For the labelling requirements, see Article 6(3).*

Q – Are mixes in pre-packages with the number of items clearly seen and easily counted from the outside exempt from net weight on the label?

R – The second subparagraph of Article 5 of Regulation (EC) No 1580/2007 requires that for pre-packaged products as referred to in Directive 2000/13/EC, the net weight shall be indicated. However, it also provides that this obligation does not apply for products sold by number, if the number of items may be clearly seen and easily counted from the outside or, if the number is indicated on the label. This exemption from the obligation to indicate the net weight on the label of pre-packaged products also applies for pre-packaged mixes.

Q – Would it be possible to require that the name of the product shall be indicated on the label of F&V, despite the fact that this is not prescribed by the provisions of the GMS or Article 5 of Regulation (EC) No 1580/2007?

R – *Contrary to what is provided as regards SMS, providing the name for fruit and vegetables products is not required under the GMS. However, Article 3 of Directive 2000/13/EC requires that the name under which the product is sold shall be indicated on the labelling of the product. Pursuant to Article 14 of the same Directive, where foodstuffs are offered for sale to the ultimate consumer or to mass caterers without pre-packaging, or where foodstuffs are packaged on the sales premises at the consumer's request or pre-packaged for direct sale, Member States have to adopt detailed rules concerning the manner in which the particulars specified in Article 3, including the name of the product, are shown. Member States may decide not to require the provision of all or some of these particulars, provided that the purchaser still receives sufficient information. As a result, Member States may oblige operators to indicate the name of the product on the label of fruit and vegetables, but are not required to do so.*

Q - Is it possible to allow packs of mixed fruit or vegetables or distinctly different types in a mix, i.e. a red pepper and a green pepper or a mix of standard cucumbers from 2 different countries in the same box?

R - *For products covered by a SMS, a mix of varieties is possible if it is foreseen by the SMS (e.g.: possible for apples but not for citrus fruit or tomatoes). For other products covered by the GMS, there is no provision regarding mixed fruit and vegetables. Therefore, it is possible to have a mix of different types of fruit and vegetables. For cucumbers it is possible to mix two different types of cucumbers. Mixes of F&V originating in different EU member States or third countries are perfectly possible. The full names of the countries of origin may be replaced, in accordance with the third paragraph of Article 6.*

Q - Shall any products covered by SMSs be of the same quality class, whilst other products need only meet the GMS?

R – *Products in mixes must be of uniform quality, whether they are subject to a SMS or the GMS. This implies that products covered by a SMS shall be of the same class. No classes are provided for products covered by the GMS.*

Q - Would products covered by a SMS have to be labelled with class, variety, packer/dispatcher identification and size?

R - *Yes, if foreseen in the relevant SMS.*

Regulation (EC) No 1221/2008 amended Article 10 of Regulation (EC) No 1580/2007

Conformity checks

1. Member States shall ensure that conformity checks are carried out selectively, based on a risk analysis, and with appropriate frequency, so as ensure appropriate compliance with the marketing standards and other provisions of this Title and of Articles 113 and 113a of Regulation (EC) No 1234/2007.

The criteria to assess the risk shall include the existence of a conformity certificate referred in Article 12a issued by a competent authority of a third country whose checks on conformity have been approved according Article 13. The existence of such certificate shall be considered as a factor reducing the risk of non-conformity.

The criteria to assess the risk may also include:

(a) the nature of the product, the period of production, the price of the product, the weather, the packing and handling operations, the storage conditions, the country of origin, the means of transport or the volume of the lot;

(b) the size of the traders, their position in the marketing chain, the volume or value marketed by them, their product range, the delivery area or the type of business carried out such as storage, sorting, packing or sale;

(c) findings made during previous checks including the number and type of defects found, the usual quality of products marketed, the level of technical equipment used;

(d) the reliability of traders' quality assurance systems or self-checking systems related to the conformity to marketing standards;

(e) the place where the check is carried out in particular if it is the point of first entry into the Community, or the place where the products are being packed or loaded;

(f) any other information that might indicate a risk of non-compliance.

2. The risk analysis shall be based on the information contained in the traders' database referred to in Article 9 and shall classify traders in risk categories.

Member States shall lay down in advance:

(a) the criteria for assessing the risk of non-conformity of lots;

(b) on the basis of a risk analysis for each risk category, the minimum proportions of traders or lots and/or quantities which will be subject to a conformity check.

Member States may choose not to carry out selective checks on products not subject to specific marketing standards, based on a risk analysis.

3. Where checks reveal significant irregularities, Member States shall increase the frequency of checks in relation to traders, products, origins, or other parameters.

4. Traders shall provide inspection bodies with all the information those bodies judge necessary for organising and carrying out conformity checks.

Q – What is the meaning of sound, fair and marketable quality?

R – *With the exception of the products that do not have to comply with the GMS, all F&V have to be marketed sound, fair and of marketable quality.*

Minimum requirements which ensure that fresh fruit and vegetables are sound, fair and of marketable quality are listed in Annex I to Regulation (EC) No 1580/2007 (on the GMS). These requirements are identical to the requirements found in the SMS maintained for 10 products and are frequently used in conformity checks.

Q – Do all products listed in Part IX of Annex I to Regulation (EC) No 12234/2007 need to pass through conformity checks?

R - *Conformity checks cover all marketing standards, specific and general but MS have to be selective and carry out a risk analysis.*

Q - In accordance with the harmonization of the common market will the EC Commission establish standard guidelines (fees/effort) to guarantee comparable conformity checks in the Member States?

Otherwise the conformity checks will be carried out differently in each Member State, which might lead to arbitrary controls by the national control bodies.

R – *Member States' obligations and responsibilities under Community legislation on marketing standards are clear. Conformity checks have still to be based on EU or UNECE standards and may not be carried out differently in each Member State. If much non-conformity would be reported under Article 20a of Regulation (EC) No 1580/2007, the Commission may consider it appropriate to adopt guidelines if those would be useful to remedy misapplication Community legislation on marketing standards.*

Q - As a marketing instrument the traders would like to make use of the UNECE norms. Does the Commission have a conception of uniformly preformed controls?

R - *UNECE standards are identical to the 10 SMS provided for under Community legislation. Therefore there is no change in the controls performed. They are the same as the controls performed in the past.*

Q - Is there any kind of existing arrangement ensuring consumers as well as traders that there will not be any fraud in the process of marketing fresh fruit and vegetables (e.g. class labelling just in case of existing UNECE norms)?

R - *Controls are incumbent on the Member States and it is first and foremost their responsibility to ensure that fraud or unfair commercial practices are prevented and, if such practices do occur, are not left unpunished. Conformity checks should ensure that fruit and vegetables do, where relevant, comply with the classification provisions of the corresponding standard.*

Q - Does the possibility to carry out selective checks on products not subject to SMSs apply to all products, which have no SMSs and does Member States may decide not to control all products, but only individual products?

R - *According to Article 10 of Regulation (EC) 1580/2007, Member States may choose not to carry out selective checks on products not subject to SMSs, based on a risk analysis. This provision applies to all products listed in Part IX of Annex I of Regulation (EC) No 1234/2007 that are not subject to SMS.*

Q – Does the introduction of the GMS entail additional controls and consequently additional administrative and financial burdens for operators?

R - *According to Article 10 of Regulation (EC) No 1580/2007, Member States shall ensure that conformity checks are carried out selectively, based on a risk analysis, and with appropriate frequency, so as to ensure appropriate compliance with the marketing standards and other provisions of this Title and of Articles 113 and 113a of Regulation (EC) No 1234/2007. In addition, Member States may choose not to carry out selective checks on products not subject to SMSs, based on a risk analysis.*

Consequently, based on the risk analysis, the number of conformity checks should not be significantly increased and there should be no additional administrative and/or financial burdens for operators. Even more, we expect that the checks are concentrated on the products and origins where the risks exist. This should represent a significant burden decrease for the huge majority of operators.

Q – On which basis should the inspector check if for example a product is labelled class I according to the UNECE standard but does not respect its requirements? Should the inspector check on the GMS standard and not allow the labelling of class I?

R - *Products not covered by a SMS under Regulation (EC) No 1580/2007 fall under the GMS which does not foresee classes. Consequently, MS cannot set a class requirement under national rules.*

However, for these products, an operator may use the UNECE standard as an alternative to the GMS and thus label according to the UNECE classification as class I, if he meets the corresponding UNECE requirements. If the operator does not meet UNECE requirements but nevertheless uses a class label the operator may be in breach of Directive 2000/13.

Regulation (EC) No 1221/2008 amended Article 12 of Regulation (EC) No 1580/2007

Acceptance of declarations by customs

1. Customs may only accept export declarations and/or declarations for the release for free circulation for the products subject to specific marketing standards if:

(a) the goods are accompanied by a conformity certificate, or

(b) the competent inspection body has informed the customs authority that the lots concerned have been issued a conformity certificate, or

(c) the competent inspection body has informed the customs authority that it has not issued a conformity certificate for the lots concerned because they do not need to be checked in the light of the risk assessment referred to in Article 10(1).

This shall be without prejudice to any conformity checks the Member State may carry out pursuant to Article 10

2. Paragraph 1 shall also apply to products subject to the general marketing standard set out in Annex I and products referred to in Article 3(1)(a) if the Member State concerned considers it necessary in the light of the risk analysis referred to in Article 10(1).

Regulation (EC) No 1221/2008 introduced Article 12a of Regulation (EC) No 1580/2007

Conformity certificates

1. Certificates may be issued by a competent authority to confirm that the products concerned conform to the relevant marketing standard. The certificate for use by competent authorities in the Community is set out in Annex III.

The third countries referred to in Article 13(4) may use instead their own certificate provided the Commission considers that it contains at least equivalent information to the Community certificate. The Commission shall make available, by the means it considers appropriate, specimens of such third country certificates.

2. These certificates may be issued either in paper format with original signature or in verified electronic format with electronic signature.
3. Each certificate shall be stamped by the competent authority and signed by the person or persons empowered to do so.
4. The certificate shall be issued in at least one of the official languages of the Community.
5. Each certificate shall bear a serial number, by which it can be identified, and a copy of each issued certificate will be retained by the competent authority.
6. Notwithstanding the first subparagraph of paragraph 1, Member States may continue to use conformity certificates which conformed to this Regulation on 30 June 2009 until stocks are exhausted."

Q - Could you confirm there is no requirement for Member States to check products covered by the GMS at the point of import?

R – *Yes, except if pursuant to Article 12(2), the Member State concerned considers it is necessary.*

Q - Do products covered by the GMS require a certificate of conformity?

R - *No, an accompanying document is sufficient except if pursuant to Article 12(2) the Member States concerned considers a conformity certificate is necessary.*

Q - What would be an appropriate "accompanying document"? Do you have a template?

R - *There is no template in Community legislation for such document.*

Q – What kind of document certifying the conformity of a product from third country can be issued for products not covered by a SMS?

R – *Except in the cases provided for in Article 12(2), just an accompanying document as referred to in Article 4(4) has to be issued for products not covered by a SMS. A certificate of conformity is not required anymore for these products.*

Q - What will be the status of a consignment arriving without any conformity certificate/"accompanying document"? For example: Passion fruit did not require a certificate of conformity under the old regulations. As they will now be covered by the new GMS they will now require "an accompanying document".

R - *Article 4(4) of Regulation (EC) No 1580/2007 foresees that "Invoices and accompanying documents excluding receipts for the consumer, shall indicate the name and the country of origin of the products and where appropriate, the class, the variety or commercial type...or the fact that it is intended for processing". Since Passion fruit is covered by the scope of Regulation (EC) No 1580/2007, it requires such an accompanying document referred to in Article 4(4).*

In case of non respect of a requirement, Article 146 (national sanctions) of Regulation (EC) No 1580/2007) requires the Member States to provide for the application of sanctions at national level in relation to irregularities committed in respect of requirements set out in that Regulation. Such sanctions must be effective, proportionate and dissuasive.

Q - What will happen should an exporter from a third country choose not to use a certificate of conformity or "an accompanying document"?

R - *Customs services could be entitled by a Member State not to accept declarations for the release for free circulation of this product (if provided for by national legislation, see article 146 of Regulation (EC) No 1580/2007).*

Q - What type of conformity checks will Member States be carrying out for products covered by the GMS?

R - *According to the GMS, any fruit and vegetable marketed shall be sound, fair and of marketable quality and the country of origin has to be indicated. The conformity checks are carried out according to these provisions (which are given in detail in Part A of Annex I of Regulation (EC) No 1580/2007).*

Q - Can we continue to use the previous Inspection Certificates) or do we have to change to the new version certificates, which have been introduced by Annex III of Regulation (EC) No 1221/2008?

R - *The certificate of conformity (EC) No 1580/2007 should to be used as from 1 July 2009. It has been revised according to OECD guidelines.*

Regulation (EC) No 1221/2008 amended Article 13 of Regulation (EC) No 1580/2007

(a) Paragraph 1 is replaced by the following:

"1. At the request of a third country, the Commission may approve, in accordance with the procedure laid down in Article 195(2) of Regulation (EC) No 1234/2007, checks on conformity to specific marketing standards performed by this third country prior to import into the Community."

(b) Paragraph 4 is replaced by the following:

"4. The list of countries whose checks on conformity have been approved under this Article, and the products concerned, are set out in Annex IV.

The Commission shall make available, by the means it considers appropriate, details of the official authorities and inspection bodies concerned."

Q - Where is it possible to find detailed information on the official inspection of the recognized authorities of third countries, as it was in Part B of Annex IV of Regulation 1580/2007?

R - *Detailed information related to the official inspection of the approved third countries has been updated. They were published in the Official Journal in July⁷.*

Regulation (EC) No 1221/2008 amended Article 19 of Regulation (EC) No 1580/2007

Products intended for processing

1. For the purpose of the application of this Regulation, products intended for processing are fresh fruit and vegetables subject to marketing standards that are shipped to processing

⁷ OJ C 154, 7-7-09, p 21

plants where they are processed into products classified in a CN position different from that of the initial fresh product.

2. The competent inspection bodies shall issue certificates of industrial use set out in Annex V for products intended for export to third countries and products imported into the Community where such products are intended for processing and are, therefore, in accordance with Article 3(1)(a), not subject to conformity with the marketing standards. They shall ensure that the special labelling provisions laid down in paragraph 4 of this Article are complied with.

3. In the case of imports, after having issued any certificate referred to in paragraph 2, the competent inspection body shall immediately send to the coordinating authority of the Member State where processing is to take place a copy of the certificate and any forth information needed for a possible check of the processing operations. After processing, the processing enterprise shall return the certificate to the competent inspection body, which shall ensure that the products have actually been processed.

4. The packaging of products intended for processing must be clearly marked by the pack with the words "intended for processing" or other equivalent wording. In the case of goods shipped in bulk, directly loaded onto a means of transport, this indication shall be given in a document accompanying the goods or shown on a notice placed in an obvious position inside the means of transport.

5. Members States shall take all the appropriate measures, in particular those related to cooperation with the other Member States concerned, to avoid any goods intended for the fresh market being shipped outside the region of production as goods intended for processing.

Q – Regarding the products covered by this Article, it is mentioned in paragraph 2 that a certificate of industrial use is issued by the competent inspection body. What kind of certificate will be used from 1 July 2009?

R - *Products intended for processing are exempted from the GMS and may be exempted by the MS from specific standards. Article 19 does no longer apply and there is no provision requiring the use of certificates for products for industrial use.*

Regulation (EC) No 1221/2008 introduced Article 20a of Regulation (EC) No 1580/2007

Communications

1. A Member State on whose territory a consignment from another Member State is found not to conform with the marketing standards because of defects or deterioration which could have been detected at the time of packaging shall notify forthwith the Commission and the Member States likely to be concerned.

2. A Member State on whose territory a lot of goods from a third country has been rejected from release into free circulation because of non-compliance with the marketing standards shall notify forthwith the Commission, the Member States likely to be concerned and the third country concerned and listed in Annex IV.

3. Member States shall communicate to the Commission the provisions of their inspection and risk analysis systems. They shall inform the Commission of any subsequent amendments to that systems.

4. The Member States shall communicate to the Commission and the Member States the summarised results of the inspections at all marketing stages in a given year by 30 June of the following year.

5. Communications shall be made by the means specified by the Commission

Q - Will it be possible, from the 1st of July 2009 to notify non conformities for fruit and vegetables with a GMS (e.g. pineapples) and will bananas (specific Regulation) also be added to the list?

R - The non-conformity notifications from 1 July 2009 will be made as regards the fruit and vegetables covered by the GMS or a SMS. As pineapples are covered by the GMS, it will be possible to report any non-conformity of this product. The SMS on bananas is not covered by Regulation (EC) No 1580/2007. Non-conformity as regards banana standards are not notified.

Q – How to notify in case of non-conformity observed on a product from the Community or from a third country?

R – There is no template foreseen under Community legislation, *Member States may choose the appropriate communication channel, such as a grihort, fax etc...*

Q – What are the penalties applied by the Commission if Member States do not respect article 20a?

R – Paragraph 3 of Article 148 of Regulation (EC) No 1580/2007 applies. If a Member State fails to make a communication as required under Regulation or if the communication appears incorrect in the light of objective facts in the Commission's possession, the Commission may reduce or temporarily suspend the monthly payments referred to in Article 14 of Council Regulation (EC) No 1290/2005 until the communication is correctly made.

Q - Regarding the communication to the Commission of the summarised results of the inspections in a given year, would it be possible to specify which data the Commission expects (for inspections on internal market, import and/or export)?

R - This topic is being discussed with the Member States.

Q - Do Member States have to communicate to the Commission provisions of their inspection and risk analysis systems and the results of the inspections at all marketing stages for products covered by GMS and SMS?

R – Member States shall communicate to the Commission the provisions of their inspection and risk analysis systems. They shall inform the Commission of any subsequent amendments to those systems. Member States shall communicate to the Commission and the Member States the summarized results of the inspections at all marketing stages in a given year by 30 June of the following year.

Other Questions

Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs

Q – Is the Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 *on the approximation of the laws of the Member States relating to the concerning labeling, presentation and advertising of foodstuffs* applied to all fruits and vegetables covered by Regulation EC nr 1234/2007 or only to prepackaged foodstuffs, as indicated in art. 5 of Regulation (EC) No 1580/2007?

R - *Directive 2000/13/EC has a general character and applies to all foodstuff put on the market, except when derogated from. Directive 2000/13/EC does itself provide for specific exceptions for the F& V sector as regards the ingredients to be listed and the durability date. The other provisions of Directive 2000/13/EC do apply, unless when derogated from by specific F&V legislation. Pre-packaged F&V needs to satisfy the general or SMS for the F&V sector AND the provisions of Directive 2000/13/EC that do apply to the F&V sector, e.g. the obligation to indicate the name or business name and address of the manufacturer or packager, or of a seller established within the Community, provided for by Article 3 (1) (7) of Directive 2000/13/EC.*