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**COUNCIL DECISION
of 22 June 1995
on the conditions for drawing up, for an interim period, provisional lists of third country
establishments from which Member States are authorized to import certain products of animal
origin, fishery products or live bivalve molluscs
(95/408/EC)**

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(95/408/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas products of animal origin, fishery products and live bivalve molluscs are included in the list of products set out in Annex II to the Treaty; whereas health rules applying to production and marketing have been laid down at Community level;

⁽¹⁾ OJ No C 208, 28. 7. 1994, p. 9.

⁽²⁾ OJ No C 276, 3. 10. 1994, p. 13.

Whereas Community arrangements have been defined in respect of imports from third countries; whereas these arrangements require the drawing up of lists of third country establishments from which imports of certain products are permitted in accordance with Article 14.B (2) (a) of Council Directive 71/118/EEC of 15 February 1971 on health problems affecting the production and placing on the market of fresh poultrymeat ⁽¹⁾, Article 4 (1) of Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽²⁾, Article 9 (3) (c) of Council Directive 91/492/EEC of 15 July 1991 laying down the health conditions for the production and placing on the market of live bivalve molluscs ⁽³⁾, Article 11 (4) (c) of Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and placing on the market of fishery products ⁽⁴⁾, Article 16 (3) (a) of Council Directive 92/45/EEC of 16 June 1992 on public health and animal health problems relating to the killing of wild game and the placing on the market of wild game meat ⁽⁵⁾, Article 23 (3) (a) of Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products ⁽⁶⁾ and Article 10 (3) (b) of Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC, and, as regards pathogens, to Directive 90/425/EEC ⁽⁷⁾;

(1) OJ No L 55, 8. 3. 1971, p. 23. Directive as last amended by Directive 92/116/EEC (OJ No L 62, 15. 3. 1993, p. 1).

(2) OJ No L 302, 31. 12. 1972, p. 28. Directive as last amended by Regulation (EEC) No 1601/92 (OJ No L 173, 27. 6. 1992, p. 13).

(3) OJ No L 268, 24. 9. 1991, p. 1. Directive as last amended by the EEA Agreement.

(4) OJ No L 268, 24. 9. 1991, p. 15. Directive as last amended by the EEA Agreement.

(5) OJ No L 268, 14. 9. 1992, p. 35. Directive as last amended by Directive 92/116/EEC (OJ No L 62, 15. 3. 1993, p. 1).

(6) OJ No L 268, 14. 9. 1992, p. 1. Directive as last amended by Commission Decision 94/330/EC (OJ No L 146, 11. 6. 1994, p. 23).

(7) OJ No L 62, 15. 3. 1993, p. 49. Directive as last amended by Commission Decision 94/723/EC (OJ No L 288, 9. 11. 1994, p. 48).

Whereas, in order to allow the time necessary to carry out Community inspections in third countries to verify that their establishments comply with Community provisions and to avoid a disruption in trade from third countries, a simplified approval system should be applied for an interim period;

Whereas during the interim period the guarantee of conformity with Community provisions for the protection of public and animal health should be undertaken by the competent authority of the third country concerned; whereas establishments may only be entered on the lists where the third country concerned has provided the necessary assurances on compliance with Community rules;

Whereas, it is appropriate to make provisions for a procedure establishing close and effective cooperation between the Commission and the Member States within the Standing Veterinary Committee;

Whereas provision should be made for the possibility for the Council to extend the current provisional measures in order to avoid any interruption in traditional flows of trade,

HAS ADOPTED THIS DECISION:

Article 1

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1. This Decision shall apply to the drawing up of provisional lists of third country establishments from which Member States are authorized to import the products defined in Article 2 (2) (a) of Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organization of veterinary checks on products entering the Community from third countries ⁽¹⁾. These lists of establishments shall be valid pending the drawing up of definitive lists of establishments in accordance with the provisions of the various directives governing the health rules applicable to each of the products concerned.
2. However, Article 2 of this Decision shall not apply to the drawing up of lists of third country establishments from which Member States are authorized to import fresh meat as defined in Article 1, third paragraph of Directive 72/462/EEC.

Article 2

1. The Commission may, in accordance with the procedure provided for in Article 4, draw up provisional lists of third country establishments from which imports are authorized for each of the products covered by Article 1 where the following conditions are met:
 - (a) the establishments must be situated in a third country or part of a third country appearing on the list of third countries from which imports of the products concerned are authorized;
 - (b) the establishment must be situated in a third country or part of a third country for which the relevant import conditions and certification requirements for the products concerned have been established in accordance with the provisions of the specific directives;
 - (c) the competent authority of the third country concerned has provided the Commission with satisfactory guarantees that the establishments appearing on the list or lists meet the relevant Community health requirements and has officially approved the establishment appearing on the lists for exportation to the Community;
 - (d) the competent authority of the third country must have a real power to suspend the activities for exportation to the Community of an establishment for which that authority has provided guarantees, in the event of non-compliance with the said guarantees;

⁽¹⁾ OJ No L 373, 31. 12. 1990, p. 1. Directive as last amended by Regulation (EEC) No 1601/92 (OJ No L 173, 27. 6. 1992, p. 13).

- (e) a Community or Member State inspection mission has checked the structure and organization of the competent authority responsible for the approval of the establishment as well as the powers available to that competent authority and the guarantees that it can provide in regard to the implementation of Community rules. These checks must include on the spot inspection of a certain number of establishments appearing on the list or lists provided by the third country.
2. For fishery products as defined in Article 2 (1) of Directive 91/493/ECC, the Commission shall, in accordance with the procedure provided for in Article 4, draw up a list of third countries or parts of third countries from which the import of fishery products is authorized where the competent authority of the third country has provided the Commission with guarantees at least equivalent to those provided for by Directive 91/493/EEC.
3. The Commission may, in accordance with the procedure laid down in Article 5, modify or complete the lists provided for in paragraphs 1 and 2 to take account of new information received.
4. Where the conditions set out in paragraph 1 (e) have not been fulfilled, the Commission may, provided that all the other conditions are met, draw up provisional lists of establishments from which imports are authorized in accordance with the procedure laid down in Article 4. However, imports from establishments on such lists will not be eligible for reduced physical checks provided for under Article 8 (3) of Directive 90/675/EEC pending the results of the information furnished under Article 8 (3) of that Directive on imports from those establishments of that third country.

Article 3

1. The procedure laid down in Article 5 may also be used:
- (i) to amend the lists of approved establishments drawn up in accordance with Article 4 of Directive 72/462/EEC in accordance with information provided by the third country concerned;
 - (ii) to amend the lists of establishments and/or lists of factory vessels drawn up in accordance with Article 11 (5) of Directive 91/493/ECC in accordance with information provided by the third country concerned;
 - (iii) to amend the lists of establishments drawn up in accordance with Article 9 (3) (c) and the lists of the production areas demarcated in accordance with Article 9 (3) (b) (ii) of Directive 91/492/EEC in accordance with information provided by the third country concerned;

(iv) to amend the lists of establishments drawn up in accordance with Article 10 (3) (b) of Directive 92/118/EEC.

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2. Where it seems necessary, the Commission shall carry out an on-the-spot inspection prior to amending a list.

Article 4

1. Where the procedure laid down in this Article is to be followed, matters shall, without delay, be referred to the Standing Veterinary Committee set up by Decision 68/361/EEC ⁽¹⁾ hereafter referred to as the 'Committee', by its chairman, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on such measures within a time limit which the chairman shall lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

(b) If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, within three months from the date of referral to the Council, the Council has not acted, the Commission shall adopt the proposed measures save where the Council has rejected the said measures by a simple majority.

Article 5

1. The Commission shall inform the Member States of the modifications proposed by the third country concerned to the lists of establishments within five working days of the receipt of the proposed modifications.

2. The Member States shall have seven working days, from receipt of the modifications to the lists of establishments referred to in paragraph 1, to send any written comments to the Commission.

⁽¹⁾ OJ No L 255, 18. 10. 1968, p. 23.

3. (i) Where written comments are made by at least one Member State, the Commission shall inform the Member States within five working days and include the point on the next meeting of the Standing Veterinary Committee for decision in accordance with the procedure laid down in Article 4.
- (ii) Where no comments are received from the Member States within the time limit laid down in paragraph 2, the modifications to the list shall be considered to have been accepted by the Member States. The Commission shall inform the Member States within five working days, and imports shall be authorized from such establishments five working days after receipt of this information by the Member States.
4. The Commission shall regularly, and at intervals of not less than six months, adopt the decisions necessary to update the lists of establishments, and shall publish them in the *Official Journal of the European Communities*.

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Article 6

Decision 94/941/EEC (SIC! 94/941/EC ⁽¹⁾) is hereby repealed.

Article 7

Acting in accordance with the procedure provided for in Article 4, the Commission may adopt the transitional measures necessary to facilitate the creation and orderly application of provisional establishment lists in accordance with this Decision.

Article 8

For the purpose of this Decision, Article 19 of Directive 90/675/EEC relating to safeguard measures shall apply. In case of repeated breaches, the Commission will withdraw the establishment in question from the provisional list.

Article 9

This Decision shall apply until 31 December 1998, unless the Council acting by a qualified majority on a proposal from the Commission decides to extend its validity.

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Article 10

This Decision is addressed to the Member States.

⁽¹⁾ OJ No L 366, 31. 12. 1994, p. 34.