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COMMISSION STAFF WORKING DOCUMENT

on the enforcement by national customs authorities of 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

1. Background

As a result of the application of Commission Regulation (EC) No 669/2009¹, since 25 January 2010 imports of certain feed and food of non-animal origin for which a known or emerging risk (such as the presence of pesticide residues or the contamination with aflatoxins) has been identified are subject to an increased level of official controls. The above-mentioned Regulation is based on Article 15(5) of Regulation (EC) No 882/2004² and the Commission updates regularly its Annex I, which lists high risk products subject to an increased level of official controls. This means that these commodities, if intended for import³, can only enter the EU territory through specific designated points of entry (DPEs), where the sanitary authorities will carry out 100% documentary checks; identity and physical checks, including laboratory analysis, will be performed at the frequencies set out in Annex I to Commission Regulation (EC) No 669/2009. Further information on the Regulation, including the list of feed and food of non-animal origin subject to an increased level of border surveillance, is available at the following link: http://ec.europa.eu/food/food/controls/increased_checks/index_en.htm

Despite the fact that Commission Regulation (EC) No 669/2009 has been very well implemented in the Member States, a series of audits carried out in 2010 and 2011 by DG SANCO's audit service, the Food and Veterinary Office, identified some heterogeneous practices between Member States as regards the contribution of customs to the control of these commodities. One of the practices observed was that in the case of customs declarations made using a data-processing technique, the release for free circulation was based on the mere reference to the Common Entry Document (CED) number in box 44 of the customs declaration. Neither the physical existence of the CED nor the presence of a favorable decision for release for free circulation in the CED was checked.

The objective of this Commission Staff Working Document is to set out a comprehensive summary of the procedure that must be applied by customs authorities in order to ensure the enforcement of Regulation (EC) No 669/2009 correctly and consistently throughout the EU.

N.B. This Commission Staff Working Document is also applicable to the enforcement by national customs authorities of EU legislation adopted on the

¹ 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.

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.

³ In Regulation (EC) No 882/2004 'import' means the release for free circulation of feed or food or the intension to release feed or food for free circulation within the meaning of Article 79 of Regulation (EEC) No 2913/92 in one of the territories referred to in Annex I.

basis of Article 53 of Regulation (EC) No 178/2002⁴ which requires the presentation to the customs authorities of a Common Entry Document.

⁴ 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.

2. Principles for the enforcement of Regulation (EC) No 669/2009 by customs authorities

2.1 Enforcement of Article 10

Article 62(1) of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (“the Community Customs Code”) states that: *“Declarations in writing shall be made on a form corresponding to the official specimen prescribed for that purpose. They shall be signed and contain **all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared**”.*

Article 10 of Regulation (EC) No 669/2009 states that the presentation of a duly completed CED (with indications that all necessary controls have been carried out with favourable results) is a necessary condition for the release for free circulation: *“The release for free circulation of consignments **shall be subject to the presentation by the feed and food business operator or their representative to the custom authorities of a common entry document or its electronic equivalent duly completed by the competent authority once all controls required in accordance with Article 8(1) have been carried out and favourable results from physical checks, where such checks are required, are known.**”*

It follows that:

- after completion of all checks required on the consignments, the competent sanitary authority shall complete the relevant sections of Part II of the CED;
- customs authorities shall only release the consignments for free circulation if Part II of the CED indicates a favourable decision for release by the competent authority. Therefore, customs authorities shall not only check that a CED number is indicated in box 44 of the customs declaration, but also systematically check that :
 - **Box II.14 of the CED indicates that the consignment is acceptable for release for free circulation, and**
 - **Box II.21 has been signed.**

2.2 Enforcement of Article 8

Article 8 of Regulation (EC) No 669/2009 states that: *“The competent authority at the DPE may authorize **onward transportation of the consignment** pending the results of the physical checks. Where authorization is given, the competent authority at the DPE shall notify the competent authority at the point of destination and appropriate arrangements shall be put in place to ensure that the consignment remains under the continuous control of the competent authorities and cannot be tampered with in any manner pending the results of the physical checks.*

In cases where the consignment is transported pending the availability of results from the physical checks, a certified copy of the original CED shall be issued for that purpose".

- Under Article 8(2), competent authorities may authorize the transportation of the consignment pending the results of the physical checks, in which case they tick Box II.5 of the CED and issue a certified copy of the original CED. The presentation of that certified copy of the original CED by the importer to customs authorities **is not sufficient** for goods to be released for free circulation, as the results of the required controls are not yet known, i.e. Box II.14 of the CED does not yet indicate that the consignment is acceptable for release for free circulation and Box II.21 has not yet been signed.
- Goods accompanied by a certified copy of the original CED may only be placed under customs procedures which are compatible with the conditions established by Article 8, i.e. under customs procedures that enable the goods to remain under the continuous control of the competent sanitary authorities. For example, the goods may be placed under the transit or customs warehousing procedure (Article 4(16)(b) or (c) of the Community Customs Code).

2.3 Declaration made by data-processing techniques

Article 77 of the Community Customs Code states that: "*Where the customs declaration is made by means of a data-processing technique, the customs authorities may allow accompanying documents not to be lodged with the declaration (...)*".

However, **Article 1** of the Community Customs Code states that: "*The Code shall apply, without prejudice to special rules laid down in other fields*⁵".

- Regulation (EC) No 669/2009 on the increased level of official controls on imports of certain feed and food of non-animal origin **should in so far as it relates to document requirements be considered a "special rule" within the meaning of Article 1 of the Community Customs Code. The possibility to allow the non-submission of documents, as foreseen in Article 77 of the Community Customs Code, is therefore not applicable to the goods covered by Regulation (EC) No 669/2009.**

2.3.1 Case of incomplete customs declarations

Article 255(1) of the Implementing provisions of the Community Customs Code⁶ states that:

⁵ Regulation (EU) No 952/2013 establishing the Union Customs Code (that will be applicable from 1 May 2016) is even clearer in this respect. Its Article 1 states that: "*Without prejudice to international law and conventions and **Union legislation** in other fields, the code shall apply uniformly throughout the customs territory of the Union*".

⁶ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

*"Declarations for release for free circulation which the customs authorities may accept at the declarant's request without their being accompanied by certain of the necessary supporting documents **shall be accompanied at least by those documents which must be produced before the goods declared can be released for free circulation.**"*

- The CED is an example of such documents which must be produced before the goods listed in Annex I to Regulation (EC) No 699/2009 can be released for free circulation and for this reason the declarations for release for free circulation referred to in Article 255(1) of the Implementing provisions of the Community Customs Code cannot be accepted if they are not accompanied by the duly completed CED.

2.3.2 Case of simplified declaration procedure

Furthermore, in case of simplified procedure, Article 260(4) of the Implementing provisions of the Community Customs Code states that: *"The simplified declaration shall be accompanied **by all documents** the production of which may be required to secure the release of the goods for free circulation."*

- The duly completed CED is a document the production of which is required to secure the release for free circulation of the goods listed in Annex I to Regulation (EC) No 699/2009.

3. Conclusion

Customs authorities can release for free circulation (Article 4(16)(a) of the Community Customs Code) consignments of commodities falling under the scope of Commission Regulation (EC) No 669/2009 **only after they have checked that the CED exists, that in Box II.14 it is indicated that the consignment is acceptable for release for free circulation and that Box II.21 has been signed.** In any of the following cases customs authorities should verify those entries in the CED :

- paper-based declaration
- declaration made by means of data-processing technique
- incomplete declaration
- simplified declaration.

When onward transportation of the consignment has been authorised under Article 8 of Regulation (EC) No 669/2009 and Box II.5 of Part II of the CED has been ticked accordingly, the consignment **cannot be released for free circulation.** Goods accompanied by a certified copy of the original CED may only be placed under customs procedures that enable the goods to remain under the continuous control of the competent sanitary authorities.

Goods can only be released for free circulation once the favourable results of physical checks are known, i.e. **Box II.14 has been ticked accordingly and Box II.21 has been signed.**