

DRAFT EC REGULATION - AFLATOXIN CONTROL

Submission by Malaysia

The following communication was received from Malaysia on 13 February 1998.

Malaysia's Response to the European Commission

1. Malaysia has reviewed the World Trade Organization document G/SPS/N/EEC/51 dated 8 January 1998 wherein the European Commission (EC) has notified its intention to amend its existing regulation No. 194/97 dated 31 January 1997. The purpose of the amendment is to establish new maximum limits for aflatoxins in certain foodstuffs with effect from March 1998.
2. Having also reviewed the draft EC regulation, Malaysia considers the proposed maximum limits for aflatoxins in groundnuts, nuts and dried fruit and processed products thereof; cereal and processed products thereof, and for milk and milk products to be unjustifiably low in relation to aflatoxin exposure of consumers of such products in the European Communities. The proposed maximum limits are so extremely low that they would negatively impact upon the trade of exporting countries, without any substantial increase in consumer protection. In addition, the increased handling costs associated with the proposed multiple sampling and analysis would be an additional burden on exporters, without any substantial reduction in the level of aflatoxin contamination in the said products.
3. Article 3.1 of the Agreement on the Application of Sanitary and Phytosanitary Measures (henceforth referred to as "the Agreement") stipulates that "Members shall base their sanitary and phytosanitary measures on international standards, guidelines and recommendations". However, Malaysia understands that currently there are no international standards on the permissible levels of aflatoxin contamination in foodstuffs, but that nevertheless, the Codex Committee on Food Additives and Contaminants is considering the establishment of such levels.
4. Notwithstanding this, even if the European Commission considers it as extremely urgent to establish such levels on a unilateral basis, the Agreement stipulates that it shall be based upon an assessment, as appropriate to the circumstances, of the risks to human, animal and plant life or health. The recent Appellate Body (of the World Trade Organization) report on the hormone case is relevant here. The draft EC regulation does not give indication of any such a risk assessment having been undertaken. Article 5.4 of the Agreement further stipulates that "Members should, when determining the appropriate level of sanitary and phytosanitary protection, take into account the objective of minimising negative trade effects".

5. Based on these considerations alone, Malaysia considers the proposal to unilaterally establish new maximum permissible levels for aflatoxin in foodstuffs as inappropriate. If established, the new regulations would have serious consequences on the trade of exporting countries of the said foodstuffs. Malaysia therefore urges the European Commission to reconsider its proposed amendment of regulation No. 194/97 of 31 January 1997, as notified via the World Trade Organization document G/SPS/N/EEC/51 dated 8 January 1998.

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