



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B. Quality, Research & Innovation, Outreach
The Director

Brussels,
MP/nb(2019)7032267

Subject: Questions regarding import and TRACES

Dear [REDACTED]

Thank you for your letter registered on 3 June 2019 (Ares(2019)3561387), in which you request our view on several questions. Please note that your question concerning Monaco will be dealt with in a separate letter.

Your 1st question (Q1) refers to a specific situation where products from third countries are placed in warehouse in the EU for a certain time until the final buyer/destination is known. You would like to know more details on who should be mentioned in Box 11 of the CoI and if the company (temporarily) storing the product can be mentioned in this box.

According to Annex V to Regulation (EC) No 1235/2008, the Importer should be included in Box 11 of the CoI. As laid down in Article 2 of Regulation (EC) No 889/2008 and in the Notes related to the CoI in Annex V as regards the Box 11, the importer means the natural or legal person within the European Union who presents the consignment for release for free circulation into the Union, either on its own, or through a representative. This definition of importer should be used in the context of the organic regulation and in particular for the issuance of the CoI. Therefore, it is not permissible to include the reference to company storing imported goods prior the release into free circulation in the Box 11 of the CoI.

Your 2nd question (Q2) is related to EU-based storage facility where it is possible to store goods for months and even years before they are released for free circulation. You would like to know if those facilities fall within the scope of Regulation (EC) No 834/2007 and in particular under the provisions laid down in Article 28 of that Regulation.

According to Article 1(3) of Regulation (EC) No 834/2007, the organic legislation applies to “any operator involved in activities, at any stage of production, preparation and distribution¹, relating to products set out in paragraph 2”. This paragraph 2 refers to

¹ According to Article 2(b) ‘stages of production, preparation and distribution’ means any stage from and including the primary production of an organic product up to and including its **storage**, processing, transport, sale or supply to the final consumer, and where relevant labelling, advertising, import, export and subcontracting activities.



“products originating from agriculture, including aquaculture, where such products are placed on the market or are intended to be placed on the market as: live or unprocessed agricultural products; processed agricultural products for use as food; feed; vegetative propagating material and seeds for cultivation”.

Therefore, the requirements of the control system apply also to organic goods stored but not yet placed on the market. Consequently, the importer of the goods must ensure that the storage facilities are certified according to Article 28 Regulation (EC) No 834/2007.

Your 3rd question (Q3) refers to Box 19 of the CoI which refers to customs warehouses. You would like to have clarifications on how to fill in Box 19 of the CoI.

Box 19 should be filled in every time organic products are stored in a customs warehouse independently if in addition there is inward processing. As explained under question Q2, all storage facilities dealing with organic products should be certified and controlled according to the provisions laid down in Regulation (EC) No 834/2007.

As regards, the operators to be included in Box 19, I would like to inform you that if organic products are stored in more than one “customs warehousing”, the different warehouses should in principle be included in the CoI. However, at this stage, for technical reasons it is only possible to insert the details of one warehouse in the box 19. Therefore, I would like to suggest you to include in the CoI the first warehouse and to ensure that the movements between different warehouses are certified by accompanying documents. I would like to underline that we will work to ensure that this is included in future developments of TRACES.

Your 4th question concerns Article 14 of Regulation (EC) No 1235/2008 on special customs procedures, in particular inward processing, and on the certification of the operator carrying out the inward processing.

As you rightly mention, the operator carrying out the preparation operations in inward processing should be certified and its undertakings should be submitted to the control system.

You have also a specific question regarding the possibility to carry out under inward processing the ripening of bananas with Ethylene. According to Article 14 of Regulation (EC) 1235/2008, the preparation operations allowed under inward processing are limited to packaging, repackaging or labelling. Thus, the ripening of bananas using Ethylene is not a preparation allowed under inward processing.

Your 5th question (Q5) is related to Switzerland and you would like to know if Swiss operators can be considered as importers and first consignee in the context of the issuance and endorsement of the CoI. The case you refer to concerns products produced in a third country, different from Switzerland, and imported directly to the EU by a Swiss importer.

In the context of Agreement between the EU and Swiss Confederation on trade in agricultural products, organic products that originate from Switzerland or that have been released for free circulation in Switzerland can be imported as organic into the EU without a CoI (Article 3(3) of Annex 9 to the referred Agreement,).

Moreover, in the context of the referred Agreement, Switzerland has been granted access to use the tool E-COI TRACES for the issuance and endorsement of the “certificate of

imports” required by Switzerland for the import of organic products from non-EU third countries to Switzerland.

The case you refers to concerning products produced in third countries imported directly to the EU by a Swiss importer without prior release of the product in free circulation in Switzerland are not covered by the scope if the EU and Switzerland Agreement.

In addition, in accordance with Article 2 of Regulation (EC) 889/2008 and the Notes related to the CoI in Annex V as regards the Box 11, importer means the natural or legal person within the European Union who presents the consignment for release for free circulation into the Union, either on its own, or through a representative. Taking into account the legal provisions, as described overhead, it is not allowed to include in Box 11 of the CoI the reference to importer who is not based in the EU.

Consequently, it is not admissible to endorse a CoI where the importer is based in Switzerland.

The present opinion is provided on the basis of the facts as set out in your letter of 3 June 2019 and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Yours sincerely,

