

Vade mecum
Questions from the Member States, answers from DG Agri
Regarding the interpretation of Commission Regulation (EC) 1549/2004
on Basmati rice

A. Questions related to the validity of the certificate and the licence

Q 1: The paying agency should obtain the original of the certificate of authenticity issued by the bodies authorized in India or Pakistan, prior to issuing the import licence. Does the validity of the certificate of authenticity (90 days) start by the date of issue in India or Pakistan or by the date of the actual delivery to the paying agency? The concern is that the certificate will expire earlier than the licence, especially if the original is to be sent by post only.

A: The validity of the certificate of authenticity starts with the issuance date by the Pakistani or Indian authorities. The certificate has to be submitted for an import licence within 90 days from the issuance date that is within its validity period. For example, if the certificate has been issued on the 1 September, it has to be submitted for an import licence latest by the 29 November. The validity period of the certificate does not play any role after its submission. After that the import licence will have an actual month + 2 month long validity, dated from the issuance of the import licence.

Q 2: Is it permitted to export Basmati rice to the EU with an authenticity certificate which has been issued in August and has been valid for 90 days, if the certificate has been submitted for an import licence in September?

A: According to Regulation 1549/2004 there is a new form for authenticity certificates as from the 1 of September 2004 (Article 3). It means that all certificates issued earlier than 1 of September and not submitted for import licence application prior the 1 of September 2004 have ceased to be valid. Commission Regulation (EC) No 1503/96 is repealed, that is certificates based on that Regulation cease to be valid from 1 September 2004. (See Point 6 of the preambulum part of the regulation and Article 9). However import licences applied for prior to 1 September 2004 shall remain valid (see Article 9).

Q 3: Is the interpretation according to which the authenticity certificates issued before 31 August cannot be used after 1 September correct?

A: An authenticity certificate issued on 31 May 2004 remains valid up to 28 August 2004 that is 90 days after its emission. If the certificate have been submitted for the issuance of an import licence, import is possible during the period from the day of the issuance of the import licence until the end of the second following month (see Annex I/B in Regulation (EC) No 1342/2003). It means that if an authenticity certificate was valid up to 28 August and has been accepted for an import licence application during August, rice import is possible up to 31 October (see Article 9 of Regulation 1549/2004). The exporters of Basmati should request a new authenticity certificate if their old certificate has not been submitted for an import licence before 1 September.

B. Questions related to the securities and the customs duty

Q 4: What has to be done with the security if the shipment arrives in time but the sample is not acceptable? What is the good procedure to be followed for the security and the shipment?

A: All depends on whether the shipment is a suspect or not. If there is suspicion at the time of the physical checks, the import operation is to be suspended and in this case the security is not to be released. It would be released only in the event of appropriate result of the DNA variety test. In the contrary case, such as absence of suspicion, the shipment is subject only to random test and the security is to be released.

Q 5: A security of 70 EUR/ton has to be lodged when applying for import licence. A customs security is also to be lodged, that is 65 EUR/tons. If the shipment proves to be not a Basmati variety, the importer will be penalised twice, up to 135 EUR/tons. He will lose the import licence security and has to pay the full customs duty as well. It is a double penalty, not mentioning that the 70 EURO/ton security is higher than the maximum customs duty. Why is it necessary to have double security and double penalty instead of having one and withholding that one if the import proves to be not a Basmati variety?

A: The result of the tests will be known only after the release of the shipment for free circulation. The import licence security cannot be withheld if the shipment arrived to the port of destination, the application for import licence have been submitted in time and the attached certificate of authenticity is considered to be original and valid. In that case the licence security has to be released and the goods have to be cleared for free circulation. Although the result of the DNA test can prove later on that the released goods were not Basmati. In that case the penalty equivalent to the import security and the customs duty has to be paid. The double sanctioning is necessary to avoid the disturbance of the market and to discourage import fraud. In case of one single penalty, the payment of full customs duty alone would not have any restraining impact at all.

Q 6: Is the 70 EUR import licence security mentioned in Point 3 of Article 4 valid only for husked rice or is it also applicable for husked and milled rice (CN code 1006 20 and 1006 30)? How much is the security for husked rice (CN 1006 20) and for milled rice (CN 1006 30)? Article 4(3) is fixing the security only for Basmati rice (70 EUR).

A: It is only for husked rice (see paragraph 2 in Article 1). The security for import licence for husked Basmati rice is 70 EUR/ton (see paragraph 3 in Article 4).

C. Other questions

Q 7: Which exporting countries are eligible to export Basmati rice to the EU under Regulation 1549/2004?

A: The new Regulation deals with import of Basmati rice in general. However Article 8 says that the Commission shall keep Annexes III and VI updated that is the list of authorised bodies for issuance of certificates and the list of bodies authorised to conduct variety tests. The two lists include at present Indian and Pakistani authorities only.

Q 8: Paragraph 1 in Article 1 is dealing with rice in general, while paragraph 2 in the same article refers to Article 2-8 to be related to Basmati. Does it mean that Article 2-8 is relevant exclusively for Basmati rice?

A: Yes. The Regulation is dealing with Basmati rice import, from Article 2 to 8. Paragraph 1 of Article 1 refers to the import duty of all rice varieties.

Q 9: Are the new authenticity certificates acceptable if the footnotes are missing?

A: In principal the footnotes have to appear on the certificates. It is true for footnotes with detailed information and also for the footnote declaring conformity with the national legislation. However new certificates submitted until now without footnotes can be accepted on a temporary basis provided all other parts of the certificate are filled in conformity with the new regulation, without errors. In case of non conformity the certificate is not acceptable.

D. Questions related to mixing, impurity and blending

Q 10: Is the mixture of various varieties in the same consignment permitted or not?

A: The mixture is not permitted between Basmati rice and non Basmati rice or between the various varieties of Basmati rice. Explanation: import under preferential treatment is based on the forwarding of a variety of Basmati, which has to be one of the varieties listed in the annex. It is notorious that some farmers produce in Pakistan and in India various varieties on the same plot. The consignment of mixtures of various Basmati rice, either, is not allowed. If farmers want to export to the EU, they should deliver the various eligible varieties separately

Q 11: What is the maximum level of acceptable impurity (presence of other varieties) in forwarding?

A: At the present time, no tolerance is provided for. In the future, one could envisage legislating and deciding on a maximum impurity level. Three situations could be envisaged:

a/ Accept the presence of another variety of eligible Basmati rice up to a certain % (otherwise it is a mixture)

b/ Accept the presence of varieties of rice which are not eligible as Basmati within the limit of a certain percentage which could in any case never exceed 5% of the shipment (as the rule of Article 2 of Regulation 708/98 foresees in the case of intervention). These impurities would be regarded as the result of the normal treatment and of storage.

c/ Leave it without particular provision.

E. Questions related to the testing methodology and its costs

Q 12: According to Art 6 of the above mentioned regulation, the DNA-based variety tests should be carried out by random or targeted checks. Is there any time frame in which the tests should be completed? In case of targeted checks, should the tests be done for each batch? If so, what is the definition of batch? Would it be a one sample per one delivery?

A: There is currently no methodology for the DNA random and targeted tests in Regulation 1549/2004. The manner of samples and the sample taking is based on the rules and practice of customs, although we can envisage new legislation on the subject. We will precise the methodology in the final Regulation after discussion with DG TAXUD. There is no legal deadline for the response to the producing countries of Basmati rice. However, in a gentleman's agreement the period envisaged was of 3 weeks.

Q 13: Who or which body is responsible for all the expenses of the DNA-based variety tests? Would it be acceptable if a Member State orders the importer to pay the postage expenses resulting from sending the samples to Pakistan or India?

A: Postal expenses are the responsibility of the authorities of the Member State which send the sample to the producing country. Analysis expenses and delivery expenses of the results are the responsibility of the producing country. The importer has nothing to pay, but one could envisage legislating and making the importers to pay the expenses in the event of negative result of the DNA test.

Q 14: Can the result of the DNA-based variety tests be addressed directly to the importing company?

A: No. Results have to be communicated to the relevant bodies of that Member State which has requested the analysis (customs, control, anti-fraud services, etc), which acts as an agent thereafter to inform the importer.

Q 15: Under which conditions exactly can the security for import of Basmati rice be released? Is the result of the DNA test one of the conditions?

A: The security has to be released if the import is carried out within the deadline and if products are released for free circulation and if there is no suspicion during the physical check of the consignment. The result of the DNA tests is not a precondition to the release of the guarantee. If there is no suspicion, the security has to be released. In fact the result will be known much later than the release. However, if the shipment proved not to be of the Basmati in consequence to the DNA tests, the importer should pay the full duty for import and the penalties.

Q 16: With regard to the test carried out by the Member State: what is the test method for the deliveries of Basmati? What is the nature of the samples to be taken for example? Who will determine the test methods and when? (for example how many samples are to be taken, what is the procedure for sample testing, exchange of information on tests, request for testing between the Member States, what about representative samples from the countries of origin, etc).

A: The ordinary customs rules apply for sampling. We cannot answer the other question at the present stage. In general the reference samples should be kept centrally.

Samplings and methodology are a key question. It is therefore necessary to ask India and Pakistan to provide reference samples and to determine later on the method applicable to import. The Member States can contact the relevant UK laboratory which has the methodology and the experience in DNA controls.

Q 17: What is to be done if the test made by a Member State shows that the shipment is not Basmati? Who has to be informed, the importer, the exporter or the competent authority in the country of origin?

A: When forwarding a sample which is not appropriate by the result of the tests of a Member State, the authority of the Member State has to inform 1.) the importer, 2.) the competent authority in the country of origin. The importer will inform the exporter.

Q 18: For the tests to be carried out by the Member State a reference sample is necessary for the calibration of Basmati rice of Pakistan and of India. Who will provide the reference samples to the Member States and when?

A: We cannot yet answer this question. (In theory the reference samples should be centralised, for example in the Joint Research Centre. See also answer to the questions No 12 and 16.