



## **FPC RESPONSE TO CONSULTATION ON THE IMPLEMENTATION AND ENFORCEMENT OF THE EC MARKETING STANDARDS IN FRESH FRUIT AND VEGETABLES AS REVISED BY COMMISSION REGULATION (EC) NO. 1221/2008**

### **Introduction**

The Fresh Produce Consortium (FPC) is the UK's trade association representing the complete spectrum of the fresh fruit and vegetable produce industry: from growers, importers, wholesalers, industry customers, distributors, packers, food service organisations and other allied organisations.

The total quantity of fruit and vegetables marketed in the UK in 2007 was 7.9 million tonnes. Since 1997 the market volume has grown by 13.8 per cent. Around 60% of fruit and vegetables are imported into the UK, providing us with produce outside the UK season as well as varieties which simply cannot be grown in the UK. Imports of fruit in 2007 were 3.5 million tonnes, and vegetable imports were 1.8 million tonnes.

The consultation has not provided sufficient clarity or detail, in particular with regard to areas where Defra has asked for feedback: strengthening the role of risk assessment in selecting products for checks, the introduction of an approved trader scheme and the use of a retail sale exemption to the Specific Marketing Standards for product sold to the consumer for their personal use and labelled as 'intended for processing'. In addition, there is a lack of an appropriate and clear interpretation of the General Marketing Standard (GMS).

The fresh produce industry already incurs significant costs to meet existing legislative requirements, as identified in a report by SITPRO ('The cost of paper in the supply chain' 2008). This report found that the current documentary systems cost the perishable food supply chain more than £1 billion annually. The fresh produce industry represents about 25% of the chilled food industry, and therefore could save around £175 million according to SITPRO's estimates of savings through improved sharing of data, transfer of documentation and better integration of Government departments and agencies.

We are concerned that the new EU Marketing Standards are being put forward as a simplification of regulation when in effect under the current proposals they will introduce additional layers of bureaucracy, complexity and cost to the fresh produce industry. Instead of delivering a clear simplified set of regulations, these proposals will lead to even greater proliferation of diverse requirements being set for the majority of produce not included among the Specific Marketing Standards.

The FPC supports 'Option 1' of the consultation – 'to implement the Regulation taking account of derogation from the specific marketing standards for products presented for retail sale to consumers for their personal use and specifically labelled as intended for processing and extending the Approved Trader Scheme'. FPC seeks assurance that the Marketing Standards legislation will be implemented in a manner which ensures and provides quantifiable reduced bureaucracy and costs to the industry.

FPC wishes to ensure that consistent standards allow businesses to trade effectively in the UK and across Europe and the rest of the world. The fresh produce industry would welcome further support to remove unnecessary burdens imposed within the UK which put the UK on an unequal footing with regard to other EU member states which may apply and interpret the same legislation in a less bureaucratic manner.

### **Use of risk based systems**

We agree that the methodology utilised within the PEACH system should be used to apportion risk status to consignments; however we have outstanding concerns regarding repeated problems with outages and failure of the PEACH system. The problems have been exacerbated by poor communication with users when the system goes down, and a lack of a robust contingency plan to cover these periods.

The ALV pilot currently underway to align PEACH and CHIEF systems is experiencing some teething problems, leading to the delay in implanting subsequent phases of the pilot. It is essential that the pilot has been completed smoothly and ALV proved to be fully functional before it is rolled out in order to ease the additional workload for the industry.

We would reject the proposal to utilise PEACH for the notification of GMS products when information is already being provided by the industry to other Government agencies and departments. It is unreasonable to expect the industry to shoulder the burden of additional resource and costs to duplicate information across different sections of government. We welcome the assurance that GMS consignments will not be held for inspection at the port of entry as authorities will have been informed of their arrival through CHIEF.

A number of changes could be made to the current PEACH system to assist importers, such as raising the limit on consignments which can be entered on a single PEACH application. In addition, importers would benefit from receiving feedback on the times of inspections etc. for produce selected for examination.

Defra states that it intends the Marketing Standards to be enforced on a risk based approach, and the RPAI states that GMS will 'not be subject to red or amber selection' under the PEACH system. We would request clarification on how the RPAI will identify and assess the potential risk of individual types of produce, and assurance that the RPAI will have sufficient resources to carry out conformity checks.

### **ICRAS - greater transparency to stakeholders**

The fresh produce industry would welcome greater feedback to individual traders regarding the application of ICRAS, in particular individual companies receiving feedback on their company's 'risk status' and advice/guidance to improve their position.

### **Introduction of the General Marketing Standard**

We agree with the proposed approach to require import notification of all produce by utilising Peach for Specific Marketing Standard (SMS) produce and CHIEF for GMS to avoid duplication. We welcome the assurance that GMS produce will be available for immediate clearance and of enforcing the GMS at the point

of import; however, more guidance is required for the industry on the GMS and its consistent application across different types of produce.

There is a lack of clarity regarding the definition of the GMS, as being 'sound, fair and marketable'. This was further evidenced by examples of produce given at the consultation workshops and appears to leave the GMS standard open to widely subjective interpretation.

The UK fresh produce industry asks the UK Government to ensure that standards are applied consistently across all EU member states and that the UK industry is not placed at a competitive disadvantage owing to differing interpretations of the General Marketing Standard.

It is estimated that around 400 products will come under the Marketing Standards with the introduction of the GMS. Defra must provide a definitive list of produce coming under the GMS, and what products are excluded as this will impact on duty payments and customs clearance.

In the event of the proposed use of PEACH the introduction of the GMS will bring significant increases in resourcing and costs to the fresh produce industry with the need to notify on PEACH practically all fresh produce. The UK Government should seek to retrieve information, already provided by the industry, through the CHIEF system rather than place the burden on the industry.

Given the lack of clarity the fresh produce industry will require more guidance from the Rural Payments Agency regarding how the Agency will implement the Standard. Under the GMS a tolerance of 10% of broken root would be acceptable for produce, eg. carrots. This in effect would mean that the GMS is a higher standard than the United Nations Economic Commission for Europe's (UN-ECE) standard which allows 35% of broken root. We would seek confirmation that the UN-ECE standard will be accepted, and that this is being applied consistently across all EU member states. It is understood that the UN is looking to introduce a voluntary general marketing standard and that this may be used by some EU member states as a mandatory standard in their countries. In addition, some member states are considering implementing their own 'domestic standard'.

Further guidance on what is acceptable for products under the GMS is required for the industry and for RPAI inspectors to ensure consistent application of the standard. It has been proposed that current Class II standards may be used as a minimum for the GMS, for example in the case of skin condition for onions. However, other conditions, such as staining and doubling, may not meet Class II standard. Squashes, which currently do not come under a marketing standard, can be accepted by some industry customers with 70% scarring at present – would this be the case under the GMS?

Guidance needs to be provided to the industry in the lead-up to the implementation of the new regulations on 1 July 2009. Industry customers require a lead-in time of 2/3 months to change specifications, and without this, industry customers will have already set their own standards, leading to a plethora of requirements to be met by their suppliers. RPAI has indicated that there are difficulties in providing such information prior to 1 July 2009, and that it will endeavour to prioritise the 26 products which will no longer have a SMS. At the very least an intention to provide this guidance needs to be communicated widely to the industry, and specifically to the industry customers.

It is not clear whether GMS products can still carry class labels. It is understood that this might be possible for products having UN-ECE standards, but there are implications regarding what part of the standards have to be fulfilled and how the RPAI will consider these class labels. It is understood that some industry customers may seek to continue to use Class I or Class II on their produce although this is not a classification recognised

under the new EU Marketing Standards. Further advice would be useful regarding whether industry customers will be required to clarify to which standard this classification refers in order to meet the requirements of Food Labelling Regulations. If there is an enforceable contravention of the Food labelling Regulations likely to arise where the use of a Class statement is not supported by a recognised specification this needs to be highlighted and communicated to all sectors of the food supply chain where labelling may take place. It is unlikely that industry customers will label produce as meeting the GMS as the term is not defined clearly and there is the potential for consumers to confuse GMS 'genetically modified'.

The RPAI has indicated that for GMS produce which could be required to be registered via PEACH it may be sufficient to enter the DUCR number; type of commodity; country of origin and number of packages. Given that many consignments are small, the industry would seek further advice as to whether the RPAI will establish a minimum weight for notification of GMS.

### **Commodity (CN) codes**

Commodity codes have been assigned to indicate the class of certain products to identify duties on produce imported into the UK/EU. With the potential requirement to register GMS produce through the PEACH system, there is an urgent need to clarify these codes with the HM Revenue & Customs Integrated Tariff to ensure that the correct duty rates are recognised and applied through CHIEF. This needs to be advised to the industry well before 1 July 2009.

### **Requirement for country of origin for distance selling**

There is an urgent need to clarify the requirement for internet sales to advise consumer regarding the country of origin of produce prior to online purchase. There are significant difficulties in specifying the country of origin when a consumer makes online purchase due to the sourcing of one type of produce from 4-5 different sources whose origin may differ from time to time. We would suggest that either the statement 'produce from more than one country of origin' could be used or a list of typically used countries be provided for customers on the internet selling pages and the delivery note, allowing customers to accept or return product if the country of origin is not to their liking.

### **Extension of the Approved Trader Scheme**

We believe that the Approved Trader Scheme should be extended to allow applications from both importers and agents. To facilitate wider participation in the scheme, it should be accepted that QC checks can be carried out at the point of dispatch as many consignments go direct to the customer on arrival in the UK and importers would have to bear additional administrative and transportation costs.

We understand that it is proposed to base the criteria for the ATS on the established criteria for growers. However, there are some areas of difference and to date there has been little information to clarify these differences, in particular, appropriate quality controls and record keeping. It has been proposed that a self-issued import certificate would auto-generate clearance via PEACH which would be a welcome facility.

## **Costs and benefits to the fresh produce industry**

According to the Partial Impact Assessment Defra's policy objective is 'reducing costs of the marketing standards imposed on the fruit and vegetable industry'. These proposals will fail to achieve this objective.

The removal of prescriptive standards for 26 types of produce is put forward as benefit to the industry; however the introduction of GMS for up to 400 products negates any benefit and saving to the industry. In Defra's impact assessment the costs quoted to the industry of making a PEACH application are underestimated. The cost of inputting to PEACH is £15-20 per individual entry, and a conservative estimate suggests that with the introduction of the GMS the additional costs to the industry could be at least £100,000 per annum.

Owing to long lead-in times, some suppliers have incurred significant costs in the preparation of retail packaging for changes to new product ranges which will be in place post 1 July 2009, and which use existing Class I standard labelling. One company has incurred costs of £60,000 for re-printed films for one industry customer. The estimated cost to replace packaging on one product line alone would be £5,000. We seek assurance that the RPAI will apply a period of grace for a minimum period of July-October whilst the industry adjusts to the new requirements of the EU Regulation.

## **Retail sale exemption to the Specific Marketing Standards for product sold to the consumer for their personal use and labelled as 'intended for processing'**

A clear definition is essential for 'product intended for processing' and advice whether this precise wording is required to be used. There is the potential for widespread use of this definition to avoid the need to apply the SMS, or indeed as part of a marketing promotion. The lack of existing clarity could lead to its application being distorted which will ultimately run counter to the objectives of the Marketing Standards to benefit consumers by providing produce not currently available to the consumer. More clarification is needed about any potential wider applications for produce intended for 'home processing', for example, produce sold by wholesalers for subsequent use by the consumer.

We do not agree with Defra's view that there are significant commercial benefits for the industry with the derogation to allow 'home processing'. In addition, this derogation is unlikely to have a significant impact on waste reduction, both within the food supply chain where alternative outlets are already in place for produce not meeting the existing Marketing Standards, or within the home.

## **Third Country Approved Inspection Services (AIS)**

We welcome the continuation of the AIS which allows for produce which adheres to EU marketing standards prior to its actual importation to be monitored by approved inspection bodies within a third country which has a special status conferred by the EC Commission. We would encourage more widespread adoption for GMS products.

## **Enforcement**

The fresh produce industry would welcome measures available within the new Marketing Standards for the Rural Payments Agency to take action against 'rogue traders' and we seek assurance that 'rogue traders' will be dealt with appropriately under the new regulations.

## **Entry Price System and Valuation of Imported Goods**

The removal of SMS on 26 products and the introduction of GMS will have an impact on the calculation of Standard Import Values, currently based on the communication of prices of first class products across the EU member states. There is concern that without an internationally recognised standard there will be no benchmark to which traders can refer, leading to potentially significant impacts on the valuation of products within the Entry Price System. It is essential that the Entry Price System is retained for all produce it currently covers.

It has been suggested that the use of the UN-ECE standards could provide a universally understood standard for trading and contract purposes. It is essential that the UK Government works with the European Commission to set an agreed standard between EU member states in order to collect prices for GMS produce and ensure fair competition across individual member states.

## **Future amendments and developments**

There is an indication that the EU may take steps towards the further removal of marketing standards on fresh produce, dependent upon the outcome of the implementation of the new regulation and the review process in three years' time. The fresh produce industry believes that consistent application across the EU of the regulation and a thorough review in consultation with the industry will be essential to evaluate the impact of the regulations on consumers and across the food supply chain before any further significant changes are put in place.

There are concerns regarding the likelihood that this is the first step towards imposing further charges on the industry in the future.

## **Conclusion**

Given the increasing volumes and types of produce which will be required to be entered on PEACH by a range of Government agencies and departments we are calling for assurance that the system will be far more robust and reliable prior to the implementation of the Marketing Standards on 1 July 2009. Any potential benefits to the industry, which are subject to the final interpretation and methods of implementation of the new EU Marketing Standards, are likely to be negated by on-going issues. Effective synchronisation and clear communications from all agencies and departments is required, particularly when system failures occur. Without this, the fresh produce industry will be seeking compensation for failures which are beyond the industry's control.

This consultation amplifies previous calls for better integration between different departments which requires urgent attention in relation to the fresh produce sector where it is already causing some businesses

to move their importation activities away from the UK. These issues must be addressed prior to 1 July 2009 after which the implementation of the EU Marketing Standards is likely to exacerbate this situation.

FPC welcomes further dialogue with Defra and RPAI to clarify the proposals before their implementation on 1 July 2009.

