

<b>Title: Plastic Kitchenware (Conditions on Imports from China) Regulations 2011</b>  <b>IA/PIR No:</b>  <b>Lead department or agency:</b> Food Standards Agency  <b>Contact for enquiries:</b> 0207 276 8702 <a href="mailto:rusty.odihiri@foodstandards.gsi.gov.uk">rusty.odihiri@foodstandards.gsi.gov.uk</a>	<b>Post Implementation Review</b>
	<b>Source of intervention:</b> EU
	<b>Type of regulation:</b> Secondary Legislation
	<b>Type of review:</b> Statutory
	<b>Date of implementation:</b> 1 July 2011
	<b>Date review due (if applicable):</b> 1 July 2016
	<b>RPC Opinion:</b> Green

## Summary

This is a light touch Post Implementation Review (PIR) for the [Plastic Kitchenware \(Conditions on Imports from China\) \(England\) Regulations 2011](#) ('the Kitchenware Regulations'). A full report of the PIR is attached. For ease of reference, key pieces of information within the report have been signposted in this document.

The Kitchenware Regulations were introduced in 2011. They provide for the execution and enforcement of [Commission Regulation \(EU\) No. 284/2011](#) ('the EU Kitchenware Regulations') which lays down specific conditions and procedures for the import of polyamide (nylon) and melamine kitchenware products originating from the People's Republic of China and the Hong Kong Special Administrative Region, China ('China').

The EU Regulations are temporary official control measures which will be undergoing a wider review at EU level later this year. The finding of this PIR will help inform and shape the UK position during the wider EU review.

An [impact assessment](#) for the Kitchenware Regulations was submitted to the Regulatory Policy Committee in 2011 and received amber fit for purpose validation.

## **1. What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).**

The policy objective of the Kitchenware Regulations was to reduce levels of non-compliant melamine and polyamide kitchenware products, which were being imported from China, and thereby minimise any associated risk to consumers.

The Kitchenware Regulations implement the EU Kitchenware Regulations, which were introduced as a result of large quantities of polyamide and melamine plastic kitchenware originating from China, which breached the requirements of the Plastic Regulations which controls the level of migration allowed from polyamide and melamine products.

The main aim of the EU Regulations is to provide additional official control measures on Chinese imports of melamine and polyamide kitchenware; thereby reducing concerning levels of non-compliant melamine and polyamide kitchenware products that were being imported from China.

## **2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality. (The PIR guidance states that the strength of evidence sought for PIRs should be proportionate to the scale of the regulation and its expected impact).**

The EU Regulations are temporary official control measures which are in the process of undergoing a review at EU level which might culminate in their amendment or renewal. The level of evidence sought for this PIR is categorised as low and is considered proportionate to the scope of the Regulation. This PIR is therefore a light-touch, low resource piece of work, which establishes whether the Regulation has: broadly achieved its objectives; has satisfied its success criteria and whether there have been any unintended effects.

This PIR was put together following targeted discussions and a FSA website public consultation with stakeholders. These included: importers, retailers; Port Health Authorities and Her Majesty's Customs and Excise (see page paragraph 5 of the report).

The main source of evidence for this PIR was the monitoring data consisting of levels of non-compliant melamine and polyamide food contact plastic products which was submitted by Member States and collated by the Commission. The European Union's Rapid Alert System for Food and Feed database (RASFF)<sup>1</sup> was also interrogated for non-compliant data.

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<sup>1</sup> [Rapid Alert System for Food and Feed](#) – non-compliance notification and alert system.

### **3. Describe the principal data collection approaches that have been used to gathering evidence for this PIR.**

- *What forms of monitoring data were collected?*
  - *What evaluation approaches were used? (e.g. impact, process, economic)*
  - *How have stakeholder views been collected? (e.g. feedback mechanisms, consultations, research)*
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- The monitoring data collected for this review are detailed in *paragraph 4.2* of the report. It includes quarterly EU monitoring data as well as data from the RASFF notification database.
  - This is a light - touch review with the level of evidence collected commensurate to the scale of the Regulation and its anticipated impact. The evaluation approach used was an impact approach, which sought to ascertain the impact (both positive and negative) of the Regulation. This evaluation identified differences between the key outcomes expected and those realised after the intervention.
  - The FSA contacted key stakeholders to invite views and collate information on how the Kitchenware Regulations work in practice. Representatives of Port Health Authorities, importers, retailers and HM Revenue and Customs were contacted informally following which the draft report of the PIR was published for comment on the FSA website. Feedback received provided supporting information to assist in evaluating the Kitchenware Regulations. This is recorded in the attached report (paragraph 5)

#### **4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?**

The policy objective of the Kitchenware Regulations was to reduce levels of non-compliant melamine and polyamide kitchenware products, which were being imported from China thereby minimising any potential risk to consumers.

In the UK, the data suggests a drop in reported levels of non-compliance, especially in relation to polyamide products. Also, Port Health Authorities (PHAs) consulted, informed us of a noticeable reduction in the level of non-compliant imports attributable to the existence of the Regulations. However, it is not possible to deduce whether any decrease in levels of reported non-compliant imports was as a direct result of the kitchenware measure - Please see paragraph 7 of the attached report for more detail.

The transparent monitoring approach together with discussions with Member States, such as Germany and the Netherlands at Food Contact Materials Expert Working Group meetings in Brussels, suggests the implementation and enforcement within Member States is aligned, with all Member States carrying out the required analytical and documentary checks. Some Member States exceed the mandatory 10% documentary and physical check requirement.

This uniformity in the implementation and enforcement of the Regulations across Member States strongly suggests that British businesses are not being put at a competitive disadvantage.

This review has not revealed any major unintended effects (other than those mentioned in paragraph 5.10, 5.11 and 5.12 of the report). The evidence suggests that whilst there is a financial burden to both the HMRC and the importers of these products, as highlighted in the [impact assessment](#) in 2011, overall, the actual costs associated with enforcement activities are significantly lower than estimated. (See Table on page 6)

**5 (a). Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).**

The main costs and assumptions were set out in the Kitchenware Regulation [Impact assessment](#) in 2011. *Please see paragraph 3.5 of the report for full details and explanation of the calculation of these assumptions.*

**Port Health Authorities (PHA):** The cost to Port Health Authorities for analysis was estimated at £1,975,400 per annum. Documentary and onward transportation costs were estimated at £1,459,167 per annum. It was expected that both costs would be recovered from importers. A further administrative cost to PHAs of £149,600 per annum was also estimated. This cost was deemed not recoverable.

**Importers:** As alluded to above, it was envisaged that the costs to PHAs for documentary checks and analytical tests would be recovered from the importers. The FSA impact assessment in 2011 suggested that for the most part, importers would not be able to recover these costs from identified Chinese exporters, particularly where the goods were sampled and found to be compliant with the legal requirements. Importers are also expected to incur storage costs when their consignments are stored at the ports, pending the release of analytical results. The cost of storage to importers was estimated at between £573,240 and £1,146,480 per annum. This was estimated by multiplying the cost of a two- week storage period (from £168.60 to £337.20) by the number of consignments expected to be sampled per annum (3,400).

**HM Revenue and Customs (HMRC):** The baseline cost to HMRC was estimated at £300,560 per annum.

**Consumers:** The benefit to consumer health was considered to be unquantifiable, as it is not possible to isolate the benefits of this Regulation directly to a reduction in ill health from chemical contamination.

**5(b). What have been the actual costs and benefits of the regulation and its effects on business?**

**Please highlight how these differed from the original assumptions and any reasons which explain these differences.**

In the 2011 Impact Assessment, there was an overestimation of the anticipated cost (to different sectors) of enforcing these Regulations. (See estimates to different sectors in 5 (a)). This over-estimation was based on the assumption that HMRC would be processing **34,000** consignments per annum of plastic kitchenware imported into the UK; most of which would fall under the scope of the EU Kitchenware Regulations. However, monitoring data collected after the introduction of the Kitchenware Regulations suggest that the number of annual melamine and polyamide kitchenware consignments that HMRC process is more accurately in the region of 1,372.

**Actual cost to affected sectors**

**Port Health Authorities (PHA):** The actual recoverable cost to PHA for analysis, based on 137 analytical tests, is in the region of £80,000. The actual non-recoverable administrative cost to PHAs is in the region of £6,036.

**Importers:** The actual cost of storage to import businesses is between £23,131.92 and £46,263.84 per annum.

**HMRC:** The actual cost to HMRC for checks to kitchenware documentation is approximately £13,176 per annum. HMRC makes an average of 1,372 interventions at a cost of £9.60 each. The table below compares the estimated cost against the actual cost

IA costs v PIR cost

Sector	IA costs estimated in 2011	Actual costs in 2016
<b>PHAs</b>		
sampling and analysis	£1,975,400	£76,111
Documentary and onward transportation costs	£1,459,167	58,868.50
Administrative costs	£149,600	£6,036
<b>Importers</b>		
Storage costs	£573,240 and 1,146,480	£23,131.92 and 46,263.84
<b>HMRC</b>		
HMRC Clearance costs	£300,560	£13,176

## 6. Assessment of risks or uncertainties in evidence base / Other issues to note

- What are the main limitations to the evidence base for the PIR?

The low numbers (10%) of products sampled and tested for non-compliant imports has made it difficult to identify clear statistical trends from which to draw meaningful conclusions on which to rely upon.

## 7. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

Please summarise rationale and provide evidence below.

The Plastic Kitchenware (Conditions on Imports from China) Regulations 2011 are EU-derived; and under the current regulatory framework, options for renewal, removal or replacement are not directly actionable. Nevertheless, the findings of this PIR will be used to inform the UK's position at EU-wide discussions.

The UK wrote to the European Commission on 22<sup>nd</sup> October 2015 inviting discussions and a full review of the EU Kitchenware Regulations at European-level. The UK has asked the Commission to consider:

- whether the percentage of samples subject to laboratory testing is adequate to assess whether the Regulation has met its intended objectives;
- what level of non-compliance should be deemed necessary to suspend or amend the current measures; and
- whether other measures such as risk-based controls, could protect consumers whilst imposing less regulatory burden on industry and enforcement authorities.

The Commission has given Member States an undertaking to review these Regulations later in the year.

**Sign-off** For Post Implementation Review:

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.***

Signed:

Date:

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Post Implementation Review of  
the Plastic Kitchenware  
(Condition on Import from China)  
Regulations 2011

## *Executive Summary*

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1. The Plastic Kitchenware (Conditions on Imports from China) Regulations were introduced in 2011, to provide for the execution and enforcement of the Commission Regulations 284/2011. The main aim of the EU Regulations is to provide additional official control measures on Chinese imports of melamine and polyamide kitchenware; thereby reducing concerning levels of non-compliant melamine and polyamide kitchenware products that were being imported from China.
2. The EU Regulations are temporary official control measures which, following a request from the UK, are in the process of undergoing a wider review at EU level later this year.
3. Despite the low-impact approach determined to be appropriate for this PIR, it was felt that a small-scale survey of affected stakeholders would help to understand the effect of the legislation, and in particular, to ascertain whether any significant unintended consequences or unforeseen burdens had been created as a result of their introduction. The exercise took the form of dialogue with Port Health Authorities, importers and HM Revenue and Customs. Compliance monitoring data was also used as part of the evidence base to determine any drop in levels of non-compliance for imported polyamide and melamine plastic kitchenware products.
4. This PIR has not revealed any major unintended consequences or evidence that UK businesses are being put at a competitive disadvantage. While the evidence suggests that there is a financial burden to both the HMRC and the importers of these products, overall, the actual costs are significantly lower than estimates made in the impact assessment in 2011.
5. There appears to be some evidence of a reduction in reported levels of non-compliance since the introduction of the Regulations in 2011 (especially in relation to polyamide kitchenware), the low numbers of products that undergo laboratory testing (10%) are deemed insufficient to draw firm conclusions.
6. The Plastic Kitchenware (Conditions on Imports from China) Regulations 2011 are EU-derived; and under the current regulatory framework, options for renewal, removal or replacement are not directly actionable. Nevertheless, the findings of this PIR will help to inform the UK's position during an EU- wide review planned for later this year.

## 1. *Introduction and Background*

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- 1.1 The Kitchenware (Conditions on Imports from China) Regulations<sup>2</sup> ('the Kitchenware Regulations') were introduced in 2011. They provide for the execution and enforcement of Commission Regulation (EU) No. 284/2011<sup>3</sup> ('the EU Kitchenware Regulations') which lays down specific conditions and procedures for the import of polyamide (nylon) and melamine kitchenware products originating from the People's Republic of China and the Hong Kong Special Administrative Region, China ('China').
- 1.2. Commission Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food ('the Plastics Regulations')<sup>4</sup> regulates migration of substances from food contact plastics including melamine and polyamide products. Following a concerning number of non-compliant polyamide and melamine kitchenware products originating from China, the European Commission introduced the EU Kitchenware Regulations.
- 1.3 Polyamide and melamine plastic kitchenware are plastic kitchenware articles which consist completely of polyamide or melamine, or have parts of polyamide or melamine that are intended to come into contact with food.
- 1.4 **Polyamide plastic** may contain primary aromatic amines (PAA), which occur as a result of impurities or degradation products formed during the production process. Many PAAs are considered toxic and some are considered to be possible carcinogens. All polyamide kitchenware products must comply with the Plastic Regulations and not release PAAs into food in a detectable quantity. The detection limit for PAAs is set at 0.01 milligrams per kilogram (mg/kg) food or food simulants.
- 1.5 **Melamine plastic** uses formaldehyde in its manufacture. Exposure to formaldehyde has the potential to cause adverse health effects, including immune effects such as hypersensitivity and contact dermatitis in sensitive individuals. The Plastics Regulations establish a migration limit of 15 mg/kg of formaldehyde into food.
- 1.6 The EU Kitchenware Regulations lay down specific requirements and detailed procedures for the import of polyamide and melamine plastic kitchenware products originating or consigned from China.

The specific requirements include:

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<sup>2</sup> [Statutory Instrument 2011 No. 1517 and 2011 No. 1605 \(W.186\)](#)

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R0284&from=EN>

<sup>4</sup> Regulation 10/2011 on Plastic Materials and Articles intended to come into Contact with Food

- Importers/food businesses must pre-notify the competent authority at the First Points of Introduction (FPI)<sup>5</sup> in the European Union at least two working days in advance of the estimated date and time of physical arrival of their consignments.
- The importer must submit to the competent authority a declaration and a laboratory report for each consignment, confirming that the products meet the requirements concerning the release of PAA or formaldehyde (as appropriate) as laid down in the Plastics Regulations.
- At the FPI there is a documentary check of each consignment, with identity and physical checks, including laboratory analysis, carried out on 10% of such consignments.

## 2. *Aim and Purpose of the Report*

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2.1 As part of the UK Government's commitment<sup>6</sup> to review provisions in secondary legislation that regulate businesses, the Kitchenware Regulations<sup>7</sup> require the Food Standards Agency to undertake a review of the Kitchenware Regulations and set out the conclusions in a report. This report:

- restates the objectives intended to be achieved by the Kitchenware Regulations when they were introduced in 2011 including the baseline costs identified in the associated Impact Assessment:<sup>8</sup>
- provides an evidence-based evaluation of the extent to which those objectives are being achieved;
- assesses whether the objectives remain appropriate and, if they are, the extent to which they may be achieved within a framework that imposes less regulation; and
- examines how the legislation is executed and enforced in other Member States.

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<sup>5</sup> Designated ports of entry

<sup>6</sup> [Small Business, Enterprise and Employment Act 2015](#)

<sup>7</sup> [England](#), [Scotland](#), [Wales](#) and [Northern Ireland](#) have separate but similar Kitchenware Regulations, however only England and Wales have a statutory review requirement within their respective Regulations

<sup>8</sup> [http://www.legislation.gov.uk/ukia/2011/542/pdfs/ukia\\_20110542\\_en.pdf](http://www.legislation.gov.uk/ukia/2011/542/pdfs/ukia_20110542_en.pdf)

### 3. *Objectives of the Kitchenware Regulation*

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3.1 In 2009, the EU Food and Veterinary Office (FVO) reported<sup>9</sup> shortcomings in the Chinese system that control plastic kitchenware exports to the European Union.

3.2 The FVO noted:

- deficiencies related to laboratory performance; the laboratory method for testing migration from plastic food contact materials in the Chinese national standard differed from that described in the Plastic Regulations with the consequence that tests by EU and Chinese laboratories could produce different results;
- incomplete official investigation by the Chinese authorities into the non-compliant companies notified under the European Union's Rapid Alert System for Food and Feed (RASFF);<sup>10</sup>
- a potential risk of non-compliant plastic food contact materials exported to the EU via Hong Kong: some food contact material exporters declared that these products were going to be exported only to Hong Kong but were then exported to Europe. Therefore, these products (e.g. nylon kitchenware) were only tested on the basis of Chinese national standards, which in some cases meant that the products were not tested for full compliance with EU requirements.

3.3 Large quantities of polyamide and melamine plastic kitchenware originating from China continued to breach the requirements of the Plastic Regulations (85 RASFF notifications and alerts in the EU between 2009/10). Therefore, in order to reduce the number of these non-compliant products, the Commission introduced these specific control measures.

3.4 The objective of the EU Regulations is to provide additional official control measures on Chinese imports of melamine and polyamide kitchenware; thereby reducing concerning levels of non-compliant melamine and polyamide kitchenware products that were being imported from China.

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<sup>9</sup>[FVO final report of a mission carried out in China from 14 to 19 September 2009](#)

<sup>10</sup>[Rapid Alert System for Food and Feed](#) – non-compliance notification and alert system.

## **Baseline costs**

3.5 The baseline costs anticipated from the enforcement of the Regulations were set out in 2011, in the FSA Impact Assessment<sup>11</sup> of the Kitchenware Regulations.

The key costs identified were:

- **Port Health Authorities (PHA):** The cost to Port Health Authorities for sampling and analysis was estimated at £1,975,400 per annum. This cost (which was recoverable from the importers) was based on the best estimate of 3,400 annual analytical tests carried out at a cost of £581 for both melamine and polyamide kitchenware imports.

Documentary and onward transportation costs were estimated at £1,459,167 per annum. This was calculated by adding the estimated administrative cost of document and receipt checks (£1,161,667) to the estimated cost of examining products for sampling and analysis (£212,500) and the estimated onward transportation costs (£85,000). It was expected that both the £1,975,400 and £1,459,167 costs would be recovered from importers of these kitchenware products.

A further administrative cost to PHAs of £149,600 per annum was also estimated by multiplying the administrative cost of reporting each consignment (£4.40) by the estimated number of consignments of plastic kitchenware entering the UK per annum (34,000). This cost was not deemed recoverable.

- **Importers:** As mentioned above, it was envisaged that the costs to PHAs for documentary checks and analytical tests would be recovered from the importers. The FSA Impact Assessment in 2011 suggested that for the most part, importers would not be able to recover these costs from specific Chinese exporters, particularly where the goods were sampled and found to be compliant with the legal requirements.

Importers incur storage costs when their consignments are kept at the ports, pending the release of analytical results. The cost of storage to importers was estimated at between £573,240 and £1,146,480 per annum. This was estimated by multiplying the cost of a two-week storage period (from £168.60 to £337.20) by the number of consignments expected to be sampled per annum (3,400).

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<sup>11</sup> [http://www.legislation.gov.uk/ukia/2011/542/pdfs/ukia\\_20110542\\_en.pdf](http://www.legislation.gov.uk/ukia/2011/542/pdfs/ukia_20110542_en.pdf)

- **HM Revenue and Customs (HMRC):** The baseline cost to HMRC was estimated at £300,560 per annum. This was calculated by multiplying the £8.84 charge for checking each import declaration (sent before the arrival of a consignment) by the estimated annual number of declarations that would accompany a consignment of plastics kitchenware from China (estimated to be 34,000).
- **Consumer:** The benefit to consumer health was considered to be unquantifiable, as it is not possible to isolate the benefits of this Regulation to a reduction in ill health from chemical contamination.

#### 4. *Assessment of the extent to which the objectives of the Regulations are being achieved*

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4.1 In order to evaluate the effectiveness of the Kitchenware Regulations, this report examines the EU monitoring data and RASFF notifications; as well as feedback from key stakeholders such as importers, retailers and Port Health Authorities, on how the Kitchenware Regulations have been working, and whether there have been any unforeseen consequences resulting from their introduction.

##### Monitoring data

4.2 The EU Kitchenware Regulations require Member States to collate monitoring data, in order to verify the rates of non-compliance for melamine and polyamide kitchenware products imported into Member States from China. These data, which includes the number of imported consignments as well as the results of controls (documentary and physical<sup>12</sup> checks), enable the Commission and Member States to monitor levels of compliance with the legislation.

4.3 Ten percent of all consignments are subject to physical checks. However, some Member States with a low number of consignments have undertaken 100% documentary and physical checks.

4.4 The RASFF system can be used as a data monitoring tool, as all Member States record non-compliant melamine and polyamine kitchenware results on that system.

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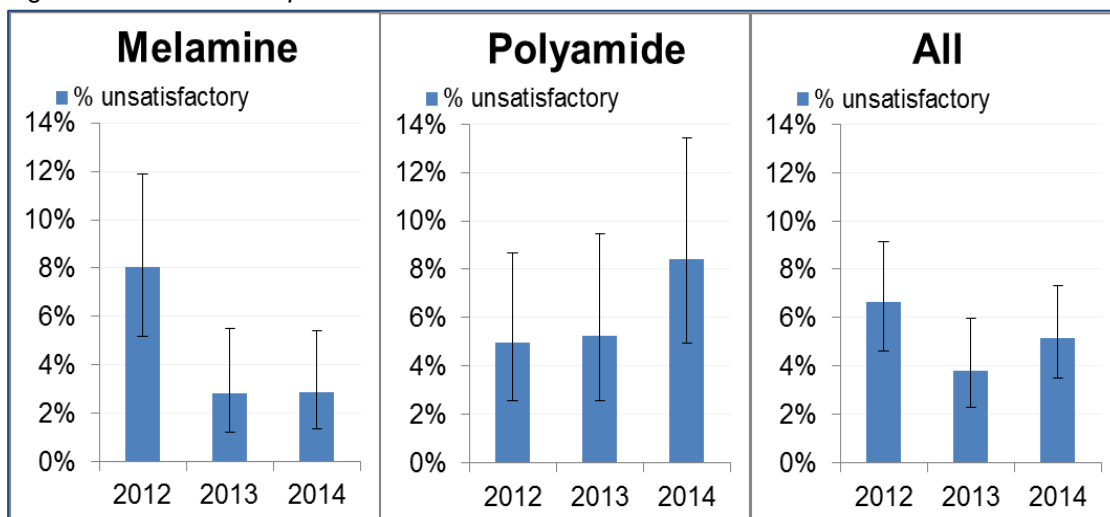
<sup>12</sup> Sampling for analysis and laboratory testing and any other checks necessary to verify compliance with the requirements concerning the release of PAA and formaldehyde.

4.5 However, it is important to note that the number of non-compliant products on the RASFF system does not always tally with the EU monitoring data. This could be because the data are recorded on each system at different times or because some of the RASFF results include inland surveillance data. Nevertheless, the data has been used to compare the number of non-complaint melamine and polyamide products that were recorded on the system in the EU and UK between 2009 and 2015.

### *EU imports from China*

4.6 The EU percentage data on non-compliance for melamine and polyamide kitchenware imports for the period 2012-2014 are represented in *figure 1*. These data are accompanied by their confidence intervals. The true proportion is unlikely to be outside these ranges. The intervals are disproportionately wide because the estimates are not precise.

Figure 1 – EU non-compliance data from 2012 - 2014



4.7 This lack of precision is due to the small number of samples that are physically checked. The estimates for 2015 have been excluded from *figure 1* as results from just a quarter of a year were available at the time of compiling this report. However, they are consistent with values observed in previous years.

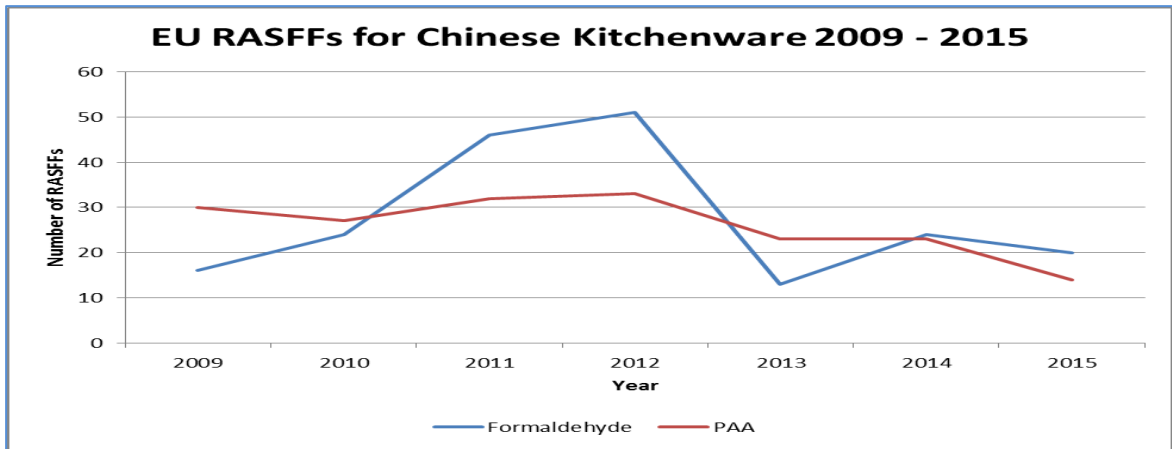
4.8 Melamine kitchenware non-compliant imports to the EU show some evidence for change over time. The proportion of non-compliant imports in 2012 was significantly higher (at the 5% level) than in 2013 and 2014. This means that the probability of a change this large occurring randomly would be less than 5%. Hence, we have strong evidence that the underlying proportion of non-compliant consignments did decrease over time.



4.9 For polyamide kitchenware imports, the proportion of non-compliant (unsatisfactory) imports was higher in 2014. However, the difference over time was not large enough to be statistically significant (at the 5% level). Therefore there is insufficient evidence to determine if the number of non-compliant imports increased, remained level or decreased over this period.

4.10 *Figure 2* shows the number of non-compliant products in the EU (including the UK) which were reported through RASFF between 2009 and 2015. These data suggests a drop in reported levels of non-compliance, especially in relation to polyamide imports, from thirty non-compliant cases in 2009 to fifteen cases in 2015.

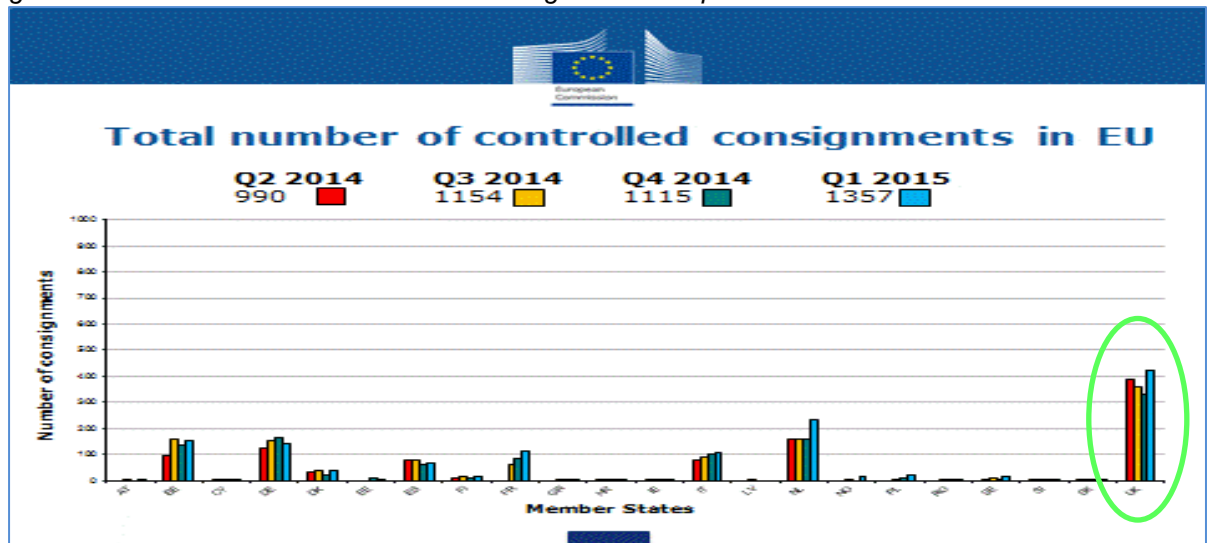
*Figure 2 – EU RASFF recorded number of non-compliant products*



### *UK Imports from China*

4.11 The UK is by far the largest importer of polyamide and melamine kitchenware imports from China into the EU. *Figure 3* shows Member States' import data for 2014. The graph is largely representative of years 2011 to 2015, with

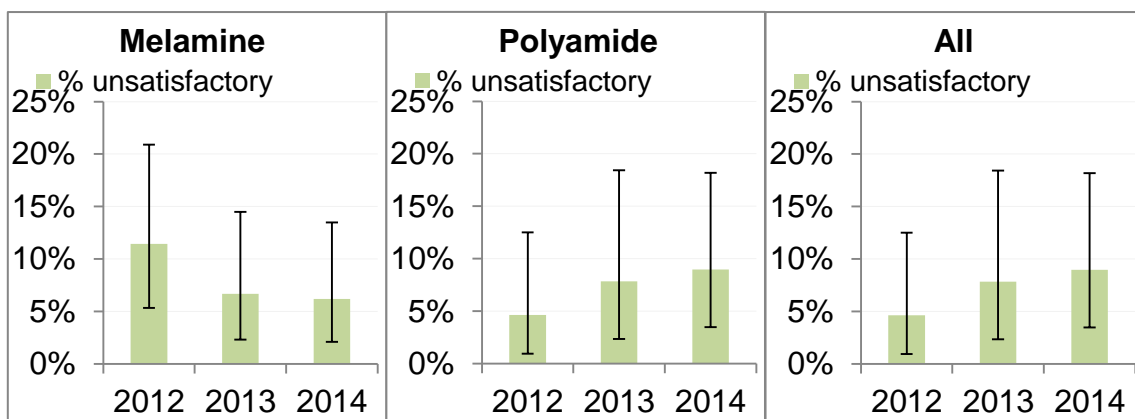
*Figure 3 - The total number of consignments imported into the EU in 2014*



the UK (circled) importing some 35-40% of the total annual imports into the EU.

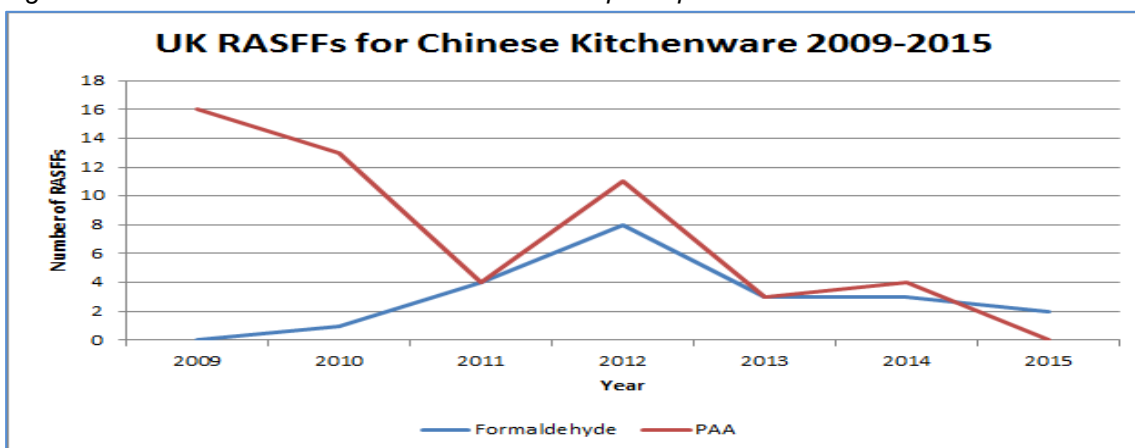
4.12 The UK percentage data on non-compliance for melamine and polyamide kitchenware imports for the period 2012-2014 are represented in figure 4. As with the EU data in figure 1, these data are accompanied by the relevant confidence intervals. The true proportion is unlikely to be outside these ranges. The confidence intervals are wider for the UK data than the EU data because of the smaller number of samples tested in the UK compared with the total tested in the EU. The estimates are not precise which makes it difficult to identify any statistical trends over time.

Figure 4 - UK non-compliance data between 2012 and 2014



4.13 Figure 5 compares the UK recorded number of non-compliant products which were reported through RASFF between 2009 and 2015. These data suggest

Figure 5-UK RASFF recorded number of non-compliant products



a drop in reported levels of non-compliance, especially in relation to polyamide products, from sixteen non-compliant cases in 2009 to no cases in 2015.

4.14 Due to the low numbers of products sampled and analysed for compliance every quarter (10% of consignments) it is not possible to deduce whether any

noticeable decrease in levels of reported non-compliant imports (either from the number of RASFF or percentage of non-compliant imports) is a direct result of the kitchenware measure.

4.15 Overall, the sampling data shows some reasonable evidence of decline across the EU, although we are not able to prove that the change was due specifically to the kitchenware measure.

**5. *Assess whether the objectives remain appropriate and, if they are, the extent to which they can be achieved within a framework that imposes less regulation***

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5.1 The FSA contacted key stakeholders to invite views and gather information on how the Kitchenware Regulations are working in practice. Representatives of Port Health Authorities, importers, retailers and HM Revenue and Customs were contacted informally and then the draft of report of the PIR was published for comment on the FSA website. The feedback received provides supporting information to assist in evaluating the Kitchenware Regulations.

*Port Health Authorities*

5.2 Port Health Authorities (PHAs) are responsible for enforcing the Kitchenware Regulations at the designated points of entry into the UK, known as the *First Points of Introduction* (FPI). They are responsible for performing documentary checks on all consignments within two days from time of arrival. They are also required to carry out random identity and physical checks, including the laboratory analysis of ten percent of consignments.

5.3 The respective PHAs charge fees on a cost recovery basis to cover the costs of documentary and analytical checks. Fees can also be charged for any additional controls required in relation to any non-compliant consignments found. The fees payable only cover the cost borne by the PHA in the discharge of their duties.

5.4 The actual cost to PHAs for analysis and sampling is in the region of £76,111 per annum. This is based on the 137 analytical tests on sampled kitchenware products. The non-recoverable administrative cost to PHAs also is in the region of £6,036.

5.5 The table below provides a comparison of fees payable to three Port Health Authorities for analysis of formaldehyde and PAAs in melamine and polyamide kitchenware respectively.

Figure 6 - Port Health Authority fees

Port Health Authority	Formaldehyde analysis	PAA analysis	Documentary checks
<b>Suffolk Coastal</b>	£415	£415	£44.60
<b>Southampton</b>	£360	£360	£50.00
<b>London</b>	£259	£215	£44.60

5.6 Suffolk and Southampton Port Health Authorities process the largest proportion of kitchenware consignments in the UK. In 2015, they accounted for over 90% of 1,148 consignments of polyamide and melamine kitchenware imported from China into the UK.

5.7 Discussions with officials at Suffolk and Southampton PHAs did not reveal any issues with enforcement of the Kitchenware Regulations. Although the checking and identification process is occasionally onerous, all costs have been successfully recouped from the importers. Port Health Authorities (PHAs) consulted, informed us of a noticeable reduction in the level of non-compliant imports attributable to the existence of the Regulations

5.8 One of the PHAs suggested a risk-based approach as an alternative to legislation, given the low levels of non-compliant products being recorded. They envisaged that this would target only food contact articles identified as being primarily for vulnerable groups such as young children.

### Importers

5.9 Discussions with importers revealed a cost burden to them as a result of the documentary checks and analytical tests, which they are unable to recoup from the Chinese manufacturers. This was envisaged in the original impact assessment. The actual cost of sampling and analysis to importers based on the revised number consignments is estimated at £76,111.

5.10 Most of the importers we contacted felt that the quality of the products on the market had improved as a result of the enforcement of the Kitchenware Regulations, and that the costs associated with sampling and analysis are being absorbed by them. They informed us that are unlikely to pass on the

cost to consumers as they are likely to react by moving on to similar kitchenware products made of steel or wood rather than nylon or melamine.

- 5.11 One importer explained that it undertakes additional random testing on the products it imports in order to ensure compliance. Although this proves burdensome and costly, the importer considered it necessary so as to avoid delay and the disposal costs for non-compliant products.
- 5.12 Importers mentioned to us the storage costs they incur as a result of the holding time pending release of analytical results. This can sometimes take anything up to six weeks, although the baseline cost (paragraph 3.5) was estimated on the basis of a two-week storage period. They reported that, in some cases they are unable to retrieve other non-kitchenware products contained in the consignment during the storage period. The actual cost of storage to import businesses is estimated at £23,131.92 and £46,263.84 per annum.

### Retailers

- 5.13 The British Retail Consortium, which represents the interest of some key retailers, has informed us that they are not aware of any significant cost increases for melamine and polyamide kitchenware products as a result of these Regulations.
- 5.14 Discussions with a representative of a variety of small businesses revealed that they are unaware of any additional costs to products as a result of these Regulations. However, it is important to note that some retailers import melamine and polyamide kitchenware products directly. Their comments have been noted above.

### HM Revenue and Customs (HMRC)

- 5.15 HMRC is responsible for the customs clearance requirements (interventions) associated with the final release of polyamide and melamine kitchenware consignments into free circulation.
- 5.16 HMRC makes an average of 1,372 interventions at £9.60, costing approximately £13,176 per annum for checks to kitchenware documentation.

## **6. *Examination as to how the legislation is executed and enforced in other Member States***

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- 6.1 To provide a common approach to sampling and testing the European Commission issued two sets of guidance:
- Technical guidelines on testing the migration of primary aromatic amines from polyamide kitchenware and of formaldehyde from melamine kitchenware, and;
  - EU guidelines on conditions and procedures for the import of polyamide and melamine kitchenware originating from China.
- 6.2 Member States provide the Commission with quarterly statistical reports detailing the numbers of documentary, identity and physical checks undertaken at the FPIs.
- 6.3 This transparent monitoring approach together with discussions with Member States such as Germany and the Netherlands at Food Contact Materials Expert Working Group meetings in Brussels suggests the implementation and enforcement within Member States is aligned, with all Member States carrying out the required analytical and documentary checks. Some Member States exceed the mandatory 10% documentary and physical check requirement.
- 6.4 This uniformity in the implementation and enforcement of the Regulations across Member States strongly suggests that British businesses are not being put at a competitive disadvantage.

## **7. *Conclusions***

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- 7.1 There appears to be some evidence of a reduction in reported levels of non-compliance in the EU and UK since the introduction of the Regulations in 2011 (especially in relation to polyamide kitchenware). However, the low numbers of products that undergo laboratory testing (10%) are insufficient to draw any firm conclusions.
- 7.2 However, it is not evident whether the current regulatory framework provides the best means of reducing the number of non-compliant plastic kitchenware and thus minimising the risks to consumers. There have been suggestions from stakeholders for alternatives to the current regulatory regime, such as introducing a risk-based approach. Irrespective of the import controls, once

the products enter into the EU market they are subject to normal compliance checks undertaken by enforcement authorities.

7.3 This review has not revealed any major unintended consequences. The evidence suggests that whilst there is a financial burden to both the HMRC and the importers of these products, overall, the costs of enforcement are significantly lower than expected.

7.4 The 2011 Impact Assessment overestimated the anticipated cost (to different sectors) of enforcing these Regulations. See figure 7. This over-estimation was based on the assumption that HMRC would process 34,000 plastic kitchenware consignments per annum; most of which would fall under the scope of the EU Kitchenware Regulations. However, monitoring data collected after the introduction of the Kitchenware Regulation suggest that the number of annual melamine and polyamide kitchenware consignments that HMRC process is more realistically in the region of 1,372.

**Figure 7 - IA costs v PIR cost**

Sector	IA costs estimated in 2011	Actual costs in 2016
<b>PHAs</b>		
sampling and analysis	£1,975,400	£76,111
Documentary and onward transportation costs	£1,459,167	58,868.50
Administrative costs	£149,600	£6,036
<b>Importers</b>		
Storage costs	£573,240 and 1,146,480	£23,131.92 and 46,263.84
<b>HMRC</b>		
HMRC Clearance costs	£300,560	£13,176

7.5 The Plastic Kitchenware (Conditions on Imports from China) Regulations 2011 are EU-derived; and while the options for renewal; removal or replacements are not directly actionable the UK wrote to the Commission on 22<sup>nd</sup> October 2015 inviting discussion and a full review of the EU Kitchenware Regulations at European-level.

The UK has asked the Commission to consider:

- whether the percentage of samples subject to laboratory testing is adequate to assess whether the Regulation has met its intended objectives;

- what level of non-compliance should be necessary to suspend or amend the current measures; and
- whether other measures, such as risk- based controls, could protect consumers while imposing less regulation on industry and enforcement authorities.

The Commission has given Member States an undertaking to discuss the UK paper requesting an EU-wide review later in the year.

## ***8. Recommendation***

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We recommend that the Regulations are retained while discussion for a wider review at EU- level are still ongoing.