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Dear Sir

**Response by GM Freeze to the FSA consultation on the Draft Chinese Rice Products  
(Restriction on First Placing on the Market) (England) Regulations 2008**

I am writing on behalf of GM Freeze in response to the above consultation.

GM Freeze is an alliance of 55 organisations *calling for a moratorium on GM foods, the growing of GM crops for any purpose and on patents on genetic resources in agriculture, food production and forestry until the need for and safety of GM technology has been established and alternative approaches have been fully evaluated.*

Our members include consumer groups, farming organisations, environmental groups, development agencies, religious groups, animal welfare groups and food companies.

**General Comments**

The contamination of Chinese rice and rice products with the GM trait Bt63 is the third incident of this type to hit the UK and EU in three years. In common with the previous two incidents involving Bt10 maize and LL601 rice (both from the USA), the Bt63 contamination has been from an unexpected source and has not involved the commercial cultivation of an approved GM crop in the country of origin.

GM Freeze believes that such incidents will occur regularly unless there are strategic moves made to prevent them occurring in the countries of origin and to monitor imports more effectively thus preventing contaminated cargoes entering the food and feed chains.

Over 170 different crops have been genetically engineered around the world and most of these remain experimental and are a long way from commercial development or being approved for import into the EU. In addition, to the number of different GM crops, the number of GM traits is also considerable and include genes to produce pharmaceuticals and industrial chemicals in food crop plants. If such traits were to contaminate the food

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chain, public health could be at serious risk. The costs of quickly removing them from public sale, destroying them and subsequent legal actions would be huge.

The Bt63 rice contamination incident further underlines the difficulties of cultivating GM crops without contaminating non GM crops (the “coexistence” problem). Bt63 rice, Bt10 maize and LL601 rice are all at the experimental stage of their development and yet by process of cross pollination, human error or deliberate act their GM traits have contaminated commercial crops. In all the cases, there is no clear idea of how the contamination actually occurred or how long it had been present before it was detected. In all three cases, the initial detection was by parties other than the GMO regulatory or food safety authorities in the country of origin or in the countries where contamination was first found.

This suggests to us that the regulatory systems around the world and in the UK are not working when it comes to preventing unauthorised GMOs entering the food and feed chain.

We believe that it time that the FSA took a lead in the EU to find long term solutions to GM contamination. There needs to be:

- An international on-line searchable register of GM crops being grown commercially and experimentally listing all the traits involved to establish which imports are at risk of contamination.
- The establishment of a monitoring unit to ensure that the register of GM crops is up to date.
- Reference materials for all GM traits (whether commercial or experimental) should be automatically be made available to accredited laboratories through the EU.
- Negotiate an international liability regime that automatically makes the company or institution which releases the GMO causing the contamination strictly liable for any economic, health or environmental harm arising

### **Specific Comments on the Bt63 Emergency Measure**

#### **Delays in Implementation**

We do not understand why the EC Emergency Measure on Bt63 has not been implemented immediately. The use of “Emergency” in the title implies some urgency is required. The contamination has been known about since September 2006 and therefore Member States have been in a position to identify what products are at risk of contamination for some time. It has not been possible to carry out any sort of safety assessment due to lack of data on Bt63. In addition the products in question are likely to be consumed in larger quantities by some sectors of the EU population than others. We would, therefore, urge the FSA to commence monitoring of the supply chain as soon as possible and to remove unauthorized products from the market under general Food Law rather than waiting until 15<sup>th</sup> April for the Emergency Measure to come into force.

### **Issuing of a Food Alert**

In line with the comments in the section above, we do not believe there is any justification for delaying the issuing of a Food Alert on Bt63 GM rice. This is needed to inform companies of the risk of contamination and of the legal position regarding the sale of unauthorised GMOs. Every effort should be made to ensure the Food Alert reaches all sectors likely to be using the listed products including catering companies and manufacturers using rice by products. The draft Emergency Measure lists peptones as potentially contaminated products. The FSA needs to inform companies handling and using peptones (over 60 tonnes were imported into the UK from China in 2007) of the potential risk and their legal position.

### **Liability and Re-dress**

Article 5 of the Emergency Measures states that “*Member States shall ensure that the costs incurred in the implementation of Article 2 and 4 are borne by the operators responsible for first placing on the market*”. GM Freeze believes that the organisation responsible for introducing Bt63 (by whatever means) should be strictly liable for any harm arising from an illegal release of a GMO. As the responsibility for Bt63 entering the market in the EU lies with unknown parties in China, GM Freeze believes compensation should be paid to parties who have incurred losses by the EU which would then seek redress from the Chinese authorities. Ministers in England should make representations to the European Commission (EC) immediately so there is no delay in companies receiving payments. In the absence of an immediate response from the EC, compensation payments should be made by the competent authority in England so that affected businesses suffer minimal economic harm. Assistance should also be provided to companies to source equivalent replacement productions if the Bt63 contamination continues in China which seems likely.

### **Monitoring and Enforcement**

GM Freeze is concerned that companies affected by the Bt63 contamination will not be able to remove contaminated stock from the supply chain unless there are a sufficient number of accredited laboratories capable of providing a reliable and quick analytical service.

In previous contamination incidents (both Bt11 maize and LL601 rice), the reliability and availability of reference materials took several weeks to sort out and therefore companies were unable to check batches of vulnerable products for contamination and thus take appropriate action when they first became aware of the problem. GM Freeze believes that the FSA should ensure that all of the UK’s accredited laboratories should be issued with reference material as soon as possible to enable companies and regulators to get results back as quickly as possible.

It is vital that analytical certificates accompanying rice imports from China can be relied upon to be accurate and reliable. The FSA should work closely with the European Commission to ensure the laboratory methods used to produce analytical reports in China are fully compatible with those being used to monitor the supply chain in the EU. It will be important, as the draft Emergency Measure mentions, that the correct language should be used in China and Europe and to ensure that translation is accurate.

Every effort should be made through the European Commission to obtain a verifiable test for the Bt63 gene from the Chinese authorities instead of relying on the construct specific test. Whilst The “Mäde “ test may serve for the present it is possible that it may

take some time for the Chinese authorities to clean up the contamination and provide guarantees that exports are clean. During this time GM rice containing the same generic components as the Bt63 construct may be approved and the “Mäde “ test could become less unreliable for detecting Bt63 rice.

The nature of the Bt63 contamination in China is not at all clear. Therefore we believe that sampling methods must assume that there could be “hot spots” within each consignment of products that are contaminated and other parts within the same batch which are free of Bt63. Advice on sampling to enforcement authorities and companies should reflect on the possibility that Bt63 presence may be non-random in nature.

It is important that rice cargoes remain on board ship until the Bt63 presence or absence has been verified. It would therefore be in the importers own interests that testing for Bt63 presence in china is reliable. This will enable appropriate disposal options to be carried out if contamination is detected and avoid contaminated cargoes accidentally entering the supply web.

### **Chinese Rice Imports from Third Countries**

The draft Emergency Measure assumes that the contaminated products will all come from China. However, there are at least two ways contamination could occur from third countries:

- If Chinese rice is exported to processors in third countries and then exports to the EU and UK.
- If China were to export contaminated rice seed to third countries and the subsequent crops were then used to produce products exported to the UK and EU

The FSA should work with the EC in assessing if either event is likely to happen and adapt the Emergency Measure accordingly if either is possible. There may be other routes for contaminated rice to reach the EU and these also need to be considered.

### **Trans-shipments of Chinese rice and rice products within the EU**

The FSA must seek guarantees from the authorities of Member States are implementing the Emergency Measure with the same level of commitment as the UK. If no such assurance is forthcoming based on evidence provided then trans-shipments of the rice products listed in the Emergency Measure from other member states should be treated in the same way as exports from China direct and be accompanied with a certificate of analysis from an accredited laboratory.

### **Disposal of Contaminated Products**

The FSA should issue guidance to enforcement authorities and companies as to how stocks of contaminated rice should be safely disposed of to ensure that there is minimal environmental impact.

I confirm that GM Freeze is happy for this response to be made public.

Yours sincerely,

A handwritten signature in black ink that reads "Pete Riley". The signature is written in a cursive style with a long horizontal stroke extending to the left.

Pete Riley  
Campaign Director