

POLICY NOTE

THE SPECIFIED PRODUCTS FROM CHINA (RESTRICTION ON FIRST PLACING ON THE MARKET) (SCOTLAND) AMENDMENT REGULATIONS 2013

SSI 2013/221

1. The above instrument was made by the Scottish Ministers in exercise of the powers conferred by Section 2(2) of the European Communities Act 1972 and all other powers enabling them to do so.

Policy Objectives

2. This instrument will implement, in Scotland, Commission Implementing Decision 2013/287/EU¹ ('the 2013 Decision'), amending Implementing Decision 2011/884/EU ('the 2011 Decision') on emergency measures regarding unauthorised genetically modified (GM) rice in rice products originating from China.

3. The 2011 Decision set out import restrictions and conditions for the importation of rice and rice products from China due to contamination with unauthorised genetically modified organisms (GMOs). This Decision has now been amended and strengthened by the 2013 Decision.

4. The 2011 Decision was implemented in Scotland by The Specified Products from China (Restriction on First Placing on the Market) (Scotland) Amendment Regulations 2012 (SSI 2012/3) which themselves amended The Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008 (SSI 2008/148). The 2013 Decision will be implemented by means of a second amendment to the 2008 Regulations.

Policy Background

5. In 2006, EU Member States began detecting unauthorised GM rice (Bt63) in consignments of rice and rice products imported from China. The EU Commission subsequently published emergency Commission Decision 2008/289/EC requiring additional import controls for such consignments imported from China ("the Bt63 Decision").

6. In 2010, two new GM rices (Kefeng 6 and KMD1), which are not authorised in the EU or China, were detected in imported food and notified via the EU Rapid Alert System for Food and Feed (RASFF). Subsequent inspection missions to China by the Commission's Food and Veterinary Office (FVO) in 2011 indicated there was a high risk of unauthorised GMOs in rice and rice products from China.

7. The Commission subsequently published a proposal for emergency import restrictions to replace the Bt63 Decision - Commission Implementing Decision 2011/884/EU. The 2011 Decision strengthened the import controls of the 2008 'Bt63 Decision' and provided for a review of the emergency measures therein to assess whether they were still necessary and appropriate.

8. Since the 2011 Decision, there have been 56 notifications from Member States to the RASFF system. Continuation of 2011 Decision emergency measures are therefore needed to

¹ OJ L 162, 13.6.2013, p.10

prevent the placing on the market of GM food and feed not authorised in line with Regulation (EC) 1829/2003 (the GM food and feed regulations).

9. From the experience gained by Member States following the 2011 Decision and from information collected from stakeholders by the Commission, it is again necessary to adjust some of the requirements set out in that Decision. In particular, Member States' official controls have shown that other products, which may contain rice, should be covered by the emergency measures and that the Competent Authority should have the ability to carry out physical checks on such products if necessary.

10. Some Member States have also highlighted the 2011 Decision requirement for *prior notification* of consignments was not fully aligned with particular official control requirements. To avoid future misunderstanding it should therefore be detailed that prior notifications should be addressed to the Competent Authority at the Border Inspection Post or at the Designated Point of Entry.

11. The 2011 Decision defined a common protocol for sampling and analysis to control the absence of GM rice. Experience to date has shown the majority of imports caught by that Decision are processed products, where the presence of unauthorised GM rice is likely distributed homogeneously throughout the lot. In light of this, it is necessary to add an additional sampling protocol more appropriate for such products.

12. The 2013 Decision allows a transitional period until 5 October 2013 in order to give food and feed businesses time to adapt to the measures applying to additional products. The effectiveness of the measures will continue to be reviewed.

Requirements of the 2013 Decision

13. Articles 1, 3, 4, 5, 9 and 10 of the 2011 Decision are replaced with new text. In summary:

- Member States *may* carry out random physical checks in order to ensure compliance with Articles 4(3) and 16(3) of Regulation (EC) 1829/2003 (new Article 1)
- the Decision does *not* apply to consignments destined to a private person for personal consumption and use only (new Article 1)
- Food Business Operators (FBOs) must give adequate prior notification of the estimated date and time of the physical arrival of the consignment and of the nature of the consignment to the competent authorities at the Border Inspection Post or at the Designated Point of Entry as appropriate. FBOs must also indicate the designation of the product i.e. whether it is food or feed (new Article 3)
- FBOs must complete a common entry document (CED) or a common veterinary entry document (CVED) and transmit that document to the competent authority at the Border Inspection Post or at the Designated Point of Entry as appropriate, at least one working day prior to the physical arrival of the consignment (new Article 3)
- Analytical reports, health certificates and statements must be drawn up in an official language of the Member State of import, or in another language that the competent authorities of that Member State have decided to accept (new Article 4)

- New checks and requirements (official controls) for the Competent Authority (new Article 5)

Legislative Context

14. Regulation (EC) 1829/2003 stipulates that food and feed containing GM material cannot be placed on the market in the EU unless the associated GMO has been authorised under the Regulation, following a rigorous safety assessment.

15. The emergency Decision is made under Article 53 of Regulation (EC) 178/2002 (emergency measures for food and feed). It lays down additional controls for the import of such products containing unauthorised GM rice.

Consultation

16. The 2013 Decision was published in the Official Journal 14 June 2013 and entered into force across all EU Member States 20 days later on 4 July 2013. The amending Scottish Statutory Instrument (SSI), which came into force on 4 July 2013 and which implements the 2013 Decision, was presented for the Cabinet Secretary's signature 27 June 2013 and laid before Parliament 28 June 2013, as soon as was practicable. Due to the tight timescales it was necessary that the SSI (negative procedure) came into force without complying with the 28-day scrutiny period. This avoided a gap in import controls and any associated risk of food and animal feed containing unauthorised GMOs entering the UK or being released into free circulation within the EU. Any gap in import controls would not be viewed favourably by the Commission or other Member States and the risk of challenge or infraction by the Commission would be high if this were to happen.

Impact Assessment

17. Due to tight timescales, the Food Standards Agency (FSA) – which has policy responsibility for GM food and animal feed - was unable to finalise a Business and Regulatory Impact Assessment (BRIA) or conduct a formal 12-week public consultation before the SSI was made by the Cabinet Secretary. The FSA will complete the necessary consultation and BRIA work as soon as possible.

Impact

18. Food and feed business operators that import rice or rice products originating in, or consigned from, China will be affected by the 2013 Decision and this instrument, as will wholesalers and retailers (including SMEs). Operators will need to be aware of the differences between the requirements of the 2011 Decision and those of the 2013 Decision. As such, there will be one-off costs associated with operators reading and familiarising themselves with the 2013 Decision and the amendments this instrument makes to the 2008 Scottish Regulations.

19. The actual costs incurred by Enforcement Authorities in undertaking the official controls required by the 2013 Decision must be borne by food and feed business operators. As such, operators will bear the additional impact arising from the import restrictions set down by the 2013 Decision.

20. Impact on the public sector will fall chiefly on Enforcement Authorities with regard to submitting results of analytical tests carried out to the FSA for onward transmission to the

Commission on a quarterly basis. A small additional impact on the FSA will also arise in this regard.

21. A more accurate picture of cost implications will emerge during the consultation process and the preparation of the BRIA.

Monitoring

22. The FSA will work with Enforcement Authorities where problems or suspected infringements of the legislation arise. The effectiveness of the instrument will be also be monitored via general feedback from industry and Enforcement Authorities on the number of consignments that fail to comply with the 2013 Decision.

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