To:
Business operators and importers
of foods of plant origin

Import controls on foods of plant origin at Frankfurt Airport

Dear Sir or Madam,

According to Article 15 of Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules (ABI L 191/1 of 28th May 2004), import controls for foods of plant origin are mandatory. Therefore, depending on both the type of good and its frequency of inspection, risk-oriented official samples are drawn at Frankfurt Airport. These samples are tested at the Hessen State Laboratory (LHL) for various elements (e.g., residues of pesticides, genetically modified organisms, radioactive contaminants, contaminants such as nitrate and aflatoxins) that may represent a risk to safety, and then evaluated for compliance with food law.

Procedures in the event of non-compliance

If the official inspection returns a positive test result and the competent authority establishes that the food does not comply with food law, the importer will be informed of this through his importing company (representative). Additionally, customs at Frankfurt Airport and the responsible food inspection authority at the location where the importing company is registered will be notified. All other food importers as well as the German Fruit Trade Association will be informed about the type of food found to be non-compliant with food law and its country of origin/third country through the LHL/Veterinary Border Inspection Post (TGSH)’s up-to-date email distribution list. Food non-compliance and measures taken will be communicated to the EU Rapid Alert System, e.g., in case a contaminant exceeds the acute reference dose (ARfD).

In these cases, I would like to point out that, in accordance with Article 18 of the Regulation (EC) No. 882/2004, all subsequent consignments of the same nature (type of good, country of origin, producer and consignor in a third country) from the concerned importer as well as of all other importers will be stopped for sampling, laboratory testing, and evaluation of compliance with food law. Import procedures are resumed only when negative test results are presented (by an accredited expert or LHL). Additionally, we may ask you to report the arrival of subsequent consignments (§ 39, (2), 1. b) of the German Food and Feed Code (LFGB)).

In exceptional cases, retained consignments can be approved for transport to another destination/warehouse upon request. It is a precondition that the competent authority on-site communicates their readiness to take over necessary control measures to LHL—no placement on the market until the good’s marketability is confirmed (Article 24, (3) of Regulation (EC) No. 882/2004—ensuring the traceability of food consignments).
At the same time, LHL will increasingly draw food samples (of the same type of good and country of origin/third country) from other producers/consignors, and evaluate compliance with food law.

In practice, this means that if goods you imported were flagged by the competent authorities for non-conformity with food law, you shall conduct your own inspections and controls of subsequent consignments. Presenting analysis certificates issued by accredited, independent experts on counter samples, and confirming the marketability of the food to be imported, may promptly allow and facilitate its release and onward processing. Furthermore, presenting GLOBALGAP certificates, testing results (potentially from laboratories in third countries) as well as other documents that prove regular self-monitoring and controls, can substantially contribute to a high confidence rating, and thus to a reduced frequency of control inspections.

However, determining whether foods contain suspicious agent(s) or not is insufficient to verify their marketability. In their reports, experts on counter samples need to list each parameter examined as well as its detection/determination limit.

A return to random sampling controls can only be reconsidered if three subsequent consignments with to the same type of good, country of origin and producer or consignor, are found to be compliant with food law. LHL reserves the right to draw samples also from subsequent consignments to evaluate compliance to food law.

**Enforcement measures**

If a product is found by the competent authorities to be non-compliant with food law after it has been placed on the market, it is the responsibility of the importer to order its recall or withdrawal. I will immediately inform the importer as well as the food inspection authority responsible for the location where the importer is registered.

Reference is made to Article 18 (“traceability”) of Regulation (EC) No. 178/2002 on laying down the general principles and requirements of food law, establishing the European Food Safety Authority and defining procedures in matters of food safety (ABl. L31/1 of 1<sup>st</sup> February 2002).

It will be decided on a case-by-case basis whether an official recall of a product already in circulation is necessary or not (Article 19 of Regulation (EC) No. 178/2002).

Please refer to Article 19-21 of Regulation (EC) No. 882/2004 in the event food is found to be non-compliant with food law. Non-compliance and measures taken will be communicated to the EU Rapid Alert System, e.g. in case a contaminant exceeds the acute reference dose (ARfd).

**Costs and fees**

No costs/fees for the food inspection occur if the routine sample tested and evaluated is found to adhere to regulations in force.

Procedures are different if routine samples show that the food does not comply with food law.

In this case, food business operators are charged for expenses arising from additional official controls, e.g. costs for double determination or second testing, or for the necessity of a second independent method for safeguarding or expert opinion (Article 28 of Regulation (EC) No. 882/2004).
Notification prior to arrival of consignments

You can support a smooth implementation of official import controls if you notify LHL prior to or shortly after the arrival of consignments and you present meaningful and proper documents of delivery.

Duty of care of the food business operator

According to the rules laid down in Article 17-19 of Regulation (EC) No. 178/2002, food operators like you have the duty to conduct or commission in your own appraisal and authority examinations and controls of goods prior or parallel to official controls.

You may commission either accredited laboratories or certified experts on food counter samples to carry out food tests and controls. The latter may also evaluate whether the examined good complies with food law or not and give an expert opinion on the good’s marketability for both the German and the EU market.

The Federal Office of Consumer Protection and Food Safety (BVL) has published lists of experts on counter samples certified by the German federal states according to § 43 of the German Food and Feed Code (LFGB):

http://www.bvl.bund.de/cln_027/nn_491394/DE/01__Lebensmittel/01__Sicherheit__Kontrollen/091__Gegenprobensachverst/gegenprobensachverst__node.html__nnn=true

A directory of experts of food chemistry may be found in the brochure “Directory of Members 1995” of the German Chemical Society (GDCh) – technical group of “Freelance Chemists and Owners of Independent Laboratories.” You can also order the information leaflet „Who We Are, What We Do."

GDCh’s address is as follows:

Gesellschaft Deutscher Chemiker
German Chemical Society
Abt. Fachgruppen
Postfach 90 04 40
60444 Frankfurt am Main
Tel: +49 (0) 69/79 17 - 58 0
Fax: +49 (0) 69/79 17 - 3 22
Email: fg@gdch.de

Further directories are available in the brochures “Food Analytics” (ISBN 3-89947-136-9) and “Address Book - Food Testing and Control” (ISBN 3-86022-057-8), published by Behr’s.

Private food experts are listed in the brochure “Foods: Sampled and Tested – Experts at a Glance” of the German Chamber of Industry and Commerce (DIHK). The brochure is available in the online shop at http://verlag.dihk.de.

The chambers of industry and commerce are responsible for issuing certificates of origin and other certificates benefiting trade, insofar as no legal provisions allocate these tasks to other institutions (act on the preliminary regulation of the law concerning Chambers of Industry and Commerce of 18th December 1956 (Federal Law Gazette I p. 920), published in revised version in the Federal Law Gazette III, No. 701-1, amended by Article 130 of the law of 31st October 2006 (Federal Law Gazette I, p. 2407)).
Further information and useful tips can be obtained at:

www.verbraucherfenster.hessen.de

Legal regulations of BMELV are available at:

http://www.bmelv.de

The novel food catalogue can be found at:

http://ec.europa.eu/food/food/biotechnology/novelfood/nfnetweb/index.cfm

Further information can be accessed at:

www.bvl.bund.de,
www.bfr.bund.de (foods, food supplements) and
www.bll-online.de

as well as in the documents attached to this letter.

Sincerely

Prof. Dr. Brunn

Attachments
Primary responsibilities of the food and feed operator

**Food safety**
Food and feed business operators must not place unsafe food or feed on the market.

**Responsibility**
Food and feed business operators are responsible for the safety of food or feed they produce, transport, store or sell.

**Traceability**
Food and feed business operators shall be able to rapidly identify any person from whom they have been supplied with and any person to whom they have delivered food or feed.

**Transparency**
If a food or feed business operator considers or has reason to believe that a food or feed is not in compliance with the food safety requirements, it shall immediately inform the competent authority.

**Immediate measures**
If food and feed business operators consider or have reason to believe that a food or feed is not in compliance with food or feed safety requirements, they shall immediately initiate procedures to withdraw the food or feed in question from the market.

**Prevention**
Food and feed business operators shall identify and regularly monitor the critical points in the process and ensure that controls are carried out at these critical points.

**Collaboration**
Food and feed business operators shall collaborate with the competent authority on action taken to avoid or reduce risks posed by the food or feed.

The duties mentioned above are laid down in EU food safety regulations.

Further information can be accessed at:

http://ec.europa.eu/food/food/index_en.htm
Distribution and import of foods including food supplements

BfR updated Information* Leaflet No. 025/2009 (30th June 2009)

Responsibility of the Federal Institute of Risk Assessment (BfR)

According to the statutory provisions in the Federal Republic of Germany, it is the competent authorities of the federal states, not BfR, that decide on the marketability of food, i.e. on the legality of the distribution and import of food. As, however, BfR is approached again and again by companies about this, this document contains some important information on this topic.

Application for an exemption or general order

Food, which is to be distributed in the Federal Republic of Germany, must comply with food legislation, more particularly, the provisions of the Food and Feed Code (LFGB) of 1st September 2005 (BGBl 2005 I p. 2618 et seqq.) and ordinances enacted pursuant to that Act.

In the case of food whose ingredients do not comply with the food law provisions of the Federal Republic of Germany, an application for exemption pursuant to § 68 of LFGB or an application for a general order pursuant to § 54 of LFGB has to be submitted for products that have been properly placed on the market in other EU Member States and are to be imported into the Federal Republic of Germany. The applications are to be submitted to the Federal Office of Consumer Protection and Food Safety (BVL) (http://www.bvl.bund.de). BfR is involved in the application procedure.

Food supplements

Food supplements are foods and must, therefore, comply with food law provisions. In principle, they may be placed on the market without marketing authorisation. They are governed, amongst other things, by the provisions of LFGB and the Ordinance on Food Supplements (NemV). NemV specifies an obligation for notification to BVL.

Different rules apply to medicinal products. In the case of proprietary medicinal products, they require marketing authorisation pursuant to medicines legislation.

Notification procedure for food supplements pursuant to § 5 of the Ordinance on Food Supplements (NemV)

Every manufacturer or importer who wishes to place a food supplement on the market, must notify this to BVL at the latest in conjunction with the first placing on the market and submit a sample of the label to be used on the product.

Notification procedure for dietetic foods pursuant to § 4a Dietetic Food Ordinance (DiätV)

Some dietetic foods must comply with a notification procedure pursuant to § 4a of Dietetic Food Ordinance for which BVL is also responsible.

Approval procedure pursuant to the Novel Foods Ordinance (NFV)

Approval from BVL is required for the distribution of “novel foods” within the intendment of NFV. Approval applications pursuant to § 4 of NFV and applications for the elaboration of an expert opinion on essential equivalence pursuant to Article 3, § 4 of NFV may be submitted to BVL.
Food control of the federal states

Within the federal system of the Federal Republic of Germany, food control is the responsibility of the competent authorities in the federal states. The competent authorities of a federal state in which the product is distributed, more particularly the federal state in which the registered office of the manufacturer, importer, supplier or distribution company is located, decides whether a product is a food or medicinal product requiring marketing authorisation.

A list of senior regional authorities can be accessed on http://www.bfr.bund.de/cd/1095.

Advice from the Chamber of Commerce and Industry or professional associations

For importers, it often makes sense to seek advice from a Chamber of Commerce and Industry (IHK), an industry association or a food chemist on the spot.

Please refer to the EU document:

"Guidance Document –Key questions related to import requirements and the new rules on food hygiene and official food controls"