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Restraining Order on Bayer's Liberty Link Rice 62 Lifted

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Biotechnology

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Report Highlights:

An injunction issued by a Philippine Regional Trial Court prohibiting action by the Philippine Bureau of Plant Industry on the application of Bayer Crop Science Inc.'s to have its Liberty Link Rice 62 deregulated has been overturned by the Court of Appeals.

General Information:

The local Court of Appeals (CA) recently reversed a lower court order restraining the Philippine government from taking action on Bayer Crop Science Inc.'s (Bayer) application to use Liberty Link Rice 62 (LLRice 62) in the country for food and feed purposes. The CA decision granted the joint petitions filed by the Philippine Bureau of Plant Industry (BPI) and Bayer to nullify the September 18, 2007 order by Quezon City Regional Trial Court (RTC).

The RTC had earlier issued an injunction barring the BPI from the processing of Bayer's application to use LLRice 62 in the country. It granted the petition filed by anti-biotech activists who reportedly insist that the use of LLRice 62 will result to an increased use of toxic herbicides, putting farmers and consumers at risk.

The CA, however, reportedly pointed out that the Quezon City RTC "merely parroted" the allegations made by the activists when it issued the injunction. According to press reports, the CA stressed that the activists failed to establish a clear and positive right which should be juridically protected through the writ of injunction.

Author Defined:

The Philippines is the only country in SE Asia with a functioning regulatory framework for biotechnology. In 2002, the Philippine Department of Agriculture (DA) issued *The Rules and Regulations for the Importation and Release into the Environment of Plants and Plant Products Derived from the Use of Modern Biotechnology* (AO8) in 2002, and became effective on July 1, 2003.

Under the DA's AO8, all imported genetically enhanced (GE) plant varieties ("regulated articles") must be assessed for food, feed and environmental safety by a third party panel of Philippine scientists. These "regulated articles" form an approval registry upon successfully undergoing the safety assessment which "deregulated" them.

Sometime early 2006, the Philippines signed the FY06 PL480 Title I Agreement covering \$20 million worth of rice. Shortly thereafter, in the United States, traces of Bayer Crop Science Inc.'s (Bayer) GE Liberty Link rice strains were discovered in commercial long grain rice stocks. Unfortunately, under existing rules, there were no approved rice TE's for use in the Philippines. This resulted in delays in the successful tender for the PL480 rice.

In an attempt to rectify the situation, the appropriate application for deregulation was filed by Bayer. In August 2007, however, Greenpeace South East Asia (GPSEA), the Southeast Asia Regional Initiatives for Community Empowerment (Searice) and other individuals/activists filed before the Regional Trial Court of Quezon City an injunction petition questioning the constitutionality of DA's AO8. The petition likewise sought a temporary restraining order (TRO) to prevent the DA and the Bureau of Plant Industry (BPI) from taking further action on the application of Bayer's LLRice. It cited the inadequacy of public consultations as required by the Philippine Constitution. The TRO was subsequently granted on September 18, 2007.

Although the FY06 Title I rice arrived in the country early 2008, it had to be certified and tested to be GE-free. At a time of surging world market rice prices, the unnecessary delays resulted in the procurement and delivery of a much lesser volume (44,000 MT) than originally projected (69,000 MT).

The CA decision overturning the RTC injunction is significant as it recognizes the importance of science in decision-making by local biotechnology regulators. The use of non-scientific arguments in

modern agricultural biotechnology debates is a popular method employed by anti-biotech activists and supporters. Oftentimes, it is waste of time resulting in unnecessary opportunity and material losses. In its ruling, the CA declares that Bayer's application is discretionary upon BPI and that approval is not automatic. The CA further adds that "the courts do not have the competence or the expertise of the public respondents particularly on the subject of genetically modified rice as food feed or processes(ing)."

Attached is the full text of the CA ruling.