

立法會
Legislative Council

Ref : CB2/SS/5/04

LC Paper No. CB(2) 481/05-06
(These minutes have been seen by
the Administration)

**Subcommittee on
Harmful Substances in Food (Amendment) Regulation 2005**

**Minutes of meeting
held on Tuesday, 8 November 2005 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Fred LI Wah-ming, JP (Chairman)
Hon WONG Yung-kan, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon Alan LEONG Kah-kit, SC

Member absent : Hon CHAN Yuen-han, JP

Public Officers Attending : Mr Eddy CHAN
Deputy Secretary (Food & Environmental Hygiene)
Health, Welfare and Food Bureau

Mr Johnson TANG
Assistant Secretary (Food & Environmental Hygiene) 1
Health, Welfare and Food Bureau

Dr Thomas CHUNG
Assistant Director (Food Surveillance and Control)
Food and Environmental Hygiene Department

Dr HO Yuk-yin, Philip
Consultant (Community Medicine)
(Risk Assessment and Communication)
Food and Environmental Hygiene Department

Mr W S YIP
Senior Assistant Law Officer (Civil Law)
Department of Justice

Ms Grace LEUNG
Government Counsel
Department of Justice

Clerk in attendance : Mrs Constance LI
Chief Council Secretary (2)5

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Betty MA
Senior Council Secretary (2)1

Action

I. Confirmation of minutes of meeting

[LC Paper No. CB(2) 288/05-06]

The minutes of meeting on 25 October 2005 were confirmed.

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

II. Meeting with the Administration

[LC Paper Nos. CB(2) 305/05-06(01) and CB(2)315/05-06(01) & (02)]

3. Members noted the Administration's response regarding prosecutions in respect of compliance with the Harmful Substances in Food Regulations [LC Paper No. CB(2) 305/05-6(01)].

4. Members noted the advice from the Assistant Legal Adviser 4 that the amendment proposed by Mr Tommy CHEUNG was technically in order. The Administration, however, considered that the proposed amendment was contradictory to and defeating the purpose of introducing the Amendment Regulation in a number of contexts, and the amendment would render the law ineffective in protecting health by crippling enforcement actions at the most relevant level. The proposed amendment also contravened the principle of due diligence requirement for retailers, and would convey a confusing message to the trade as to whether the ban on using malachite green in food was still in force. The Administration's response was detailed in LC Paper No. CB(2) 315/05-06(02).

Action

5. Mr WONG Yung-kan said that after seeking legal advice on the effect and impact of the amendment proposed by Mr Tommy CHEUNG, Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong would not support the proposed amendment.

6. Mr Alan LEONG agreed that the proposed amendment would render the law ineffective in taking enforcement actions and he would not support the proposed amendment. However, Mr LEONG said that the Administration should address the concerns of the fish trade and review/revise the regulatory mechanism for live fish to strengthen the control at source.

7. Mr Tommy CHEUNG stressed that the live fish retailers were worried about the strict liability offence. He considered it unfair for the Administration to put the onus of proof on retailers. He urged the Administration to advise the food business trade and fish retailers on how to prove that they had exercised “due diligence” to ensure the safety of fish.

8. Members of the Subcommittee agreed that the Administration should address the concerns of the live fish traders. At the request of members, the Administration agreed to consider issuing guidelines and advice to the fish traders on how to comply with the Amendment Regulation and on the possible measures to prove that they had exercised due diligence (e.g. keeping records of supplies for a period) as a defence.

9. Members noted that while freshwater fish supplied by registered and approved fish farms in the Mainland should be accompanied with health certificates certifying that they were free from malachite green, similar arrangements were not made with fish exporters from other countries and places. Members considered that the same requirements should be applied to fish imported from other countries and places. The Subcommittee agreed that the Panel on Food Safety and Environmental Hygiene should follow up the matter.

10. Members agreed that the Subcommittee would not move the amendment as proposed by Mr Tommy CHEUNG.

11. Mr Tommy CHEUNG said that in the light of members’ comments, he would further consider whether he would move the proposed amendment.

12. The Chairman said that subject to the extension of the scrutiny period to 30 November 2005 by resolution of the Council, the deadline for giving notice of amendments would be 23 November 2005. He added that the Subcommittee would provide a report for the House Committee meeting on 18 November 2005.

13. There being no other business, the meeting ended at 10:40 am.

**Proceedings of the meeting of the Subcommittee on
Harmful Substances in Food (Amendment) Regulation 2005**

**on Tuesday, 8 November 2005 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000105-000221	Chairman	Confirmation of minutes of meeting	
000222-000333	Admin	Administration's response regarding prosecutions in respect of compliance with the Harmful Substances in Food Regulations (the Regulations) [LC Paper No. CB(2) 305/05-6(01)]	
000334-002644	Chairman Admin ALA4 WONG Yung-kan	Effect and impact of the amendment proposed by Mr Tommy CHEUNG	
002645-003207	Vincent FANG Chairman Admin	Enforcement of the Regulations	
003208-003541	Vincent FANG Chairman Admin	Food samples tested in respect of compliance with the Regulations	
003542-010701	Tommy CHEUNG Chairman Admin Alan LEONG	Levels of penalty appeared too stringent to fish retailers Exemption of retailers from the Amendment Regulation Defence provisions Communications with the fish traders regarding documents to be kept by fish traders	
010702-011222	WONG Yung-kan	Overhaul of the food safety regulatory framework	

Time Marker	Speaker(s)	Subject(s)	Action required
011223-012342	Chairman Admin WONG Yung-kan	Regulation of live fish imported by air	
012343-020409	Tommy CHEUNG Chairman Admin Vincent FANG WONG Yung-kan Audrey EU	Defence provisions Regulation of food safety of fish at source Guidelines and advice to the fish traders on how to comply with the Amendment Regulation and possible measures to prove that they had exercised due diligence Requirements of imported live fish to be accompanied with health certificates	Admin to follow up The Panel on Food Safety and Environmental Hygiene to follow up
020410-020714	Chairman Tommy CHEUNG	Way forward The Subcommittee to provide a report for the House Committee meeting on 18 November 2005	