

本函檔號 Our ref.:
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7 November 2005

Mr Stephen LAM
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Lam,

**Harmful Substances in Food (Amendment) Regulation 2005
(L.N. 137 of 2005)**

Your letter of 3 November 2005 on the captioned subject refers.

While the proposed amendment put forward by the Hon CHEUNG Yu-yan is technically in order, by virtue of the amendment power provided under section 34 (2) of Cap. 1, the Administration considers the proposed amendment contradictory to and defeating the purpose of introducing the amendment to the First Schedule to the Harmful Substances in Food Regulations (Cap. 132 sub. leg AF) in a number of contexts set out below.

Enforcement

By excluding the retailers from legal liability under Cap. 132 AF, the amendment will render the law ineffective in protecting health by crippling enforcement actions at the most relevant level. The purpose of Cap. 132 and its subsidiary legislations is to protect public health by requiring all vendors, including importers, wholesalers and retailers, to be responsible in ensuring that the food supplied for sale is fit for human consumption and complies with the legal requirements. During an investigation, source tracing of problematic

food products needs to be done at all levels of the supply chain. It can begin with any party where a food incident investigation leads, be they retailers, wholesalers or importers. If a particular group of vendors within the supply chain are exempted from the law, source tracing would be quashed should a particular retailer refuse to provide information on the source of his products. The Government will then be left with no tools to enforce the law, or to ensure food safety.

Due Diligence Requirement for Retailers

The Administration is of the view that the responsibility to protect our food safety regime must be shared among the Administration, traders and consumers. Under this principle, we see no convincing reason as to why live fish retailers, from which most ordinary people buy their fish, should be exempted from this requirement. If the proposed amendment were adopted, it would send a wrong message to the trade that live fish retailers would have no legal liability even if they fail to exercise due diligence in sourcing fish. As any mishaps occurring at the retail level will adversely affect consumers the most, it is unacceptable to exempt the retailers from abiding by the law which should apply to all food vendors.

Legal

The amendment proposed in the resolution paper has promulgated that the sale by the retailer to the public of any live fish, which may contain Malachite green, will not be sanctioned under the public health legislation. This means that the retailers of live fish owe no duty of care to the public under the legislation. Moreover, the authority cannot seize any live fish containing Malachite green at the retail outlets because Malachite green is not regarded as a harmful substance in the live fish when it is sold by the retailer. Malachite green can only be regarded as a harmful substance in the live fish when it is imported into Hong Kong for sale or when it is sold by the wholesaler. The proposed amendment intends to determine the harmfulness of Malachite green according to the sale method but not based upon the scientific finding of its chemical nature.

The proposed amendment is also inappropriate in terms of law drafting. It is confusing to include a specification of how the food is sold in Column D of the First Schedule, which is to provide a description of the kind of food to be regulated. Confusion also arises because section 3 (to which the First Schedule relates) of Cap. 132AF regulates the sale of food at all levels but does not exclude retail sale. In short, the proposed amendment will seriously undermine the policy not to exempt any category of persons from food safety laws.

The Trade

As stated in our paper tabled to the Subcommittee at its meeting on 25 October 2005, we consider that removing this food safety control regulation from any sectors of the trade will send a confusing message as to whether the ban on using malachite green in food, including live fish, is still in force. This will erode consumer's confidence in consuming the relevant products and, as a result, cause negative impact to the entire live fish trade.

Yours sincerely,

(Johnson TANG)

for Secretary for Health, Welfare and Food

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