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the Administration)

Panel on Food Safety and Environmental Hygiene

Minutes of Special Meeting
held on Friday, 26 August 2005 at 2:30 pm
in the Chamber of the Legislative Council Building

Members Present : Hon Fred LI Wah-ming, JP (Chairman)
Hon WONG Yung-kan, JP (Deputy Chairman)
Hon Bernard CHAN, JP
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Dr Hon KWOK Ka-ki

Members Attending : Hon Margaret NG
Hon CHAN Yuen-han, JP
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat

Members Absent : Hon Andrew CHENG Kar-foo
Dr Hon Joseph LEE Kok-long

Public Officers Attending : Dr York CHOW
Secretary for Health, Welfare and Food

Mrs Carrie YAU
Permanent Secretary for Health, Welfare and Food

Miss Vivian KO
Principal Assistant Secretary (Food & Environmental Hygiene) 1
Health, Welfare and Food Bureau

Mr Gregory LEUNG
Director of Food and Environmental Hygiene

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

Mr Thomas CHAN
Director of Agriculture, Fisheries and Conservation

Dr LEUNG Siu-fai
Assistant Director (Fisheries)
Agriculture, Fisheries and Conservation Department

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

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Miss Betty MA
Senior Council Secretary (2)1

Ms Anna CHEUNG
Legislative Assistant (2)5

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I Monitoring system for freshwater fish

[LC Paper Nos. CB(2) 2492/04-05(01), CB(2) 2485/04-05(01), CB(2) 2483/04-05(01) and CB(2) 2470/04-05(01)]

The Chairman said that this special meeting was to continue discussion of the presence of malachite green in sample tests for freshwater fish, other than eels, as the issue had caused great concern among the public and the freshwater fish traders. The Chairman further said that the Secretary for Health, Welfare and Food (SHWF) would also brief members on the outcome of his recent visit to Beijing on 23 August 2005 concerning the communication system with the Mainland on food safety matters. The Chairman added that he had written to SHWF on 24 August 2005 seeking clarifications on certain points about regulation of freshwater fish [LC Paper No. CB(2)2485/04-05(01)], and a response from the Administration was still awaited. He said that members might wish to make reference to those points raised in his letter.

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2. SHWF said that the Administration's consolidated response provided for this meeting had incorporated the response to issues raised in the Chairman's letter. SHWF highlighted the following salient points in the Administration's response –

- (a) according to the data obtained from the recent tests, the level of malachite green detected in the freshwater fish samples was unlikely to cause adverse health effects;
- (b) the Administration had not delayed the release of test results of imported freshwater fish on 20 August 2005, because it was necessary to collect more samples for further evaluation;
- (c) consensus was reached between Hong Kong and the Mainland regarding the arrangements for the import and export of aquatic products to Hong Kong and the notification mechanism in respect of food incidents between the two places;
- (d) the Administration had maintained communication with freshwater fish operators over the incident and briefed them on the measures to be introduced; and
- (e) the Administration would consider drawing up appropriate measures to ensure the food safety of freshwater fish.

Control and supply of freshwater fish from the Mainland

3. On the supply of freshwater fish from the Mainland, SHWF informed members that the quantity and types of freshwater fish supplied to Hong Kong in the past few days had decreased because of the strengthened inspection and quarantine work performed by the Mainland authorities to enhance the safety of food supplied to Hong Kong. SHWF said that he was aware of the grave concern of local fish traders over the reduced supply of freshwater fish from the Mainland. To his knowledge, the Shenzhen authority could inspect up to 10 tonnes of freshwater fish daily, and that the fish supply from Guangdong Province was increasing. According to the Shenzhen authority, there were presently over 100 tonnes inspected freshwater fish ready for export to Hong Kong, awaiting orders to be placed by fish traders from Hong Kong. SHWF further said that following the strengthened arrangements on inspection and quarantine in the Mainland and the introduction of the Harmful Substances in Food (Amendment) Regulations, imported freshwater fish was much safer for consumption than those sold at the market a few months ago.

4. SHWF further informed members that Hong Kong and the Mainland authorities would implement the agreed measures to control at source those freshwater fish destined for Hong Kong. Only those freshwater fish from fish farms registered in the Mainland and approved by the Food and Environmental Hygiene Department

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(FEHD) could be supplied to Hong Kong. To work out the details of the regulatory measures, the Director of Food and Environmental Hygiene (DFEH) visited Shenzhen on 25 August 2005 and would visit Guangdong on 29 August 2005. SHWF said that he hoped that the registration system for freshwater fish farms for supplying fish to Hong Kong would be implemented as soon as possible, as a measure to ensure that all freshwater fish supplied to Hong Kong would be free from malachite green and residues of other prohibited pesticides and chemical substances. SHWF added that FEHD would step up inspection of those fish where the sources were uncertain.

5. Ms Emily LAU asked whether the Administration could now assure the public that it was safe to consume freshwater fish, since the various measures had been put in place. Ms LAU further asked whether the Administration considered the existing regulatory arrangement satisfactory and whether the Administration had complete information on the sources of imported fish.

6. SHWF said that as a responsible Government, it should alert the public of the risk of consuming freshwater fish when there were test results indicating presence of malachite green in the freshwater fish samples and the extent of the problem was to be ascertained. SHWF further said fish from registered fish farms and local farms were now safe for human consumption, and those fish without health certificates would not be allowed to be sold at market until the fish concerned was tested free from malachite green.

7. Mr LEE Wing-tat asked about the number of registered fish farms in the Mainland and whether the Administration would assure the public that fish sourced from registered fish farms and accompanied with health certificates were safe for consumption. Mr LEE said that the European Union (EU) had detected the use of malachite green in some animal foods and related products since early July 2005. He asked whether the delay in taking appropriate actions in Hong Kong was the result of lack of surveillance, or shortage of professional staff and experts within Government to monitor international developments in the field of biochemistry technology. Mr LEE asked what course of actions would be taken by the Administration to enhance timely control of use of prohibited chemicals in food products, pending the establishment of the proposed food safety centre.

8. SHWF informed members that according to the Mainland, there were currently over 80 fish farms in the Mainland supplying freshwater fish to Hong Kong, and more than 10 of them were in Shenzhen. However, not all these farms were on the list of registered fish farms. The Administration and the Mainland authorities shared the view that the arrangements for registered fish farms should be worked out as soon as possible. SHWF said that the State General Administration of the Quality Supervision, Inspection and Quarantine (AQSIQ) had agreed that FEHD would send staff to inspect the registered and approved freshwater fish and aquaculture farms in the Mainland.

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9. DFEH said that a professional team comprising medical doctors, veterinarians, dietitians and chemists was responsible for food safety related matters. Prior to the food incidents, the Administration had reviewed the manpower of the team, and an additional professional recruited from overseas would report for duty in September 2005. DFEH further said that the Administration had learned about the detection of malachite green in food by EU in late July 2005. FEHD had immediately collected more information on the adverse health effects caused by malachite green, and discussed with the Government Laboratory the development of rapid tests of malachite green. The latter had made it possible for test results on malachite green in fish samples to be available within a short period. DFEH agreed that the Administration should strengthen its professional support for inspection and food sampling/laboratory work. SHWF said that the Administration proposed to establish a food safety centre to strengthen the surveillance and enforcement support services, inspection and food sampling/laboratory work.

10. Miss CHAN Yuen-han said that Hong Kong relied heavily on food supply from the Mainland. In the absence of an effective monitoring mechanism on food imported from the Mainland, there were problematic foods from over the border being sold at local markets. Miss CHAN considered that improving the communication between Hong Kong and the Mainland alone could not effectively ensure the quality of food from the Mainland. It was necessary to apply the same food safety standards for local produce to food imported from the Mainland, and the Administration should share its experience with the Mainland counterparts.

11. SHWF advised that inspections and laboratory tests would continue to be conducted on freshwater fish, even if such fish was accompanied with health certificates. Food sampling tests would be conducted based on risk assessment. SHWF said that freshwater fish supplied to Hong Kong by registered fish farms must comply with the Mainland's export standards. The Administration was discussing with the Mainland arrangements for supply of freshwater fish from registered fish farms to Hong Kong. He believed that inspections at retail level could be less stringent if regulation of freshwater fish was exercised at source. SHWF added that the Agriculture, Fisheries and Conservation Department (AFCD) maintained close contact and shared experience with its Mainland counterparts on the development of agriculture and fisheries practices.

12. Mr WONG Yung-kan said that since January 2005, fish farms in the Mainland supplying fish to Hong Kong were required to meet six major standards. As the daily fish supply from registered fish farms in the Mainland was less than 80 tonnes, it was possible that those fish containing malachite green came from unregistered fish farms. Mr WONG considered that in view of the food incidents relating to imported food, the Administration should actively consider promoting local agriculture and fisheries produce and making improvements to the existing food regulatory framework. Instead of taking fish samples at the retail level which would cause unnecessary panic to the public, the Administration should increase sample tests on malachite green in

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fish at control points. Mr WONG further said that the fish traders expressed grave concern about the drastic drop in business after SHWF had advised the public not to eat freshwater fish. He strongly urged the Administration to take actions to restore public confidence in consuming freshwater fish.

13. SHWF stressed that he had not advised the public not to eat freshwater fish. As a few samples of freshwater fish were tested positive for malachite green in the last week, the Administration had the responsibility of informing the public that more tests were being conducted, and it would be for the public to consider whether they would eat freshwater fish pending availability of further test results. SHWF said that now that more than 60 samples had been tested and a more reliable risk assessment was available, the public could be assured that freshwater fish in the market were safe to eat. SHWF agreed that while the most effective measure to ensure food safety was regulation at source, it was also necessary to conduct random inspections at wholesale and retail levels. In the longer term, the Administration would establish a tracking system for rapid tracing of the source of any problematic aquatic products and taking prompt follow-up actions.

14. Mr TAM Yiu-chung considered that the recent food incidents involving pork and fish had revealed that the Administration was slow in tackling food safety problems, and the communication between Hong Kong and the Mainland, particularly with the Guangdong Province, was also not effective. He hoped that the establishment of the proposed Food Safety Centre could improve the communication mechanism, and that the Administration would adopt interim measures pending setting up of the Centre. Mr TAM said that SHWF's remarks on the safety of fish following the discovery of the presence of malachite green in eels and freshwater fish had given rise to much public concern and caused adverse impact on the freshwater fish trade.

15. Mr TAM Yiu-chung further said that while he agreed to regulation at source, inspection at border control points and during transportation should not be relaxed. He was concerned about mixing fish from other sources with those from the authorised sources and the possibility of adding harmful substances to fishes during transportation. He considered that the recent food incidents revealed that it was worthwhile to develop local agriculture and fisheries industries, and AFCD should play a more active role in ensuring the safety of food throughout the food chain.

16. SHWF responded that the Administration and the Mainland authorities had agreed to set up a liaison and notification mechanism under which Hong Kong would be promptly informed of any food safety incidents whenever similar food products were supplied to Hong Kong. Regarding his recent remarks on the safety of freshwater fish for consumption, SHWF reiterated that it was a risk management principle to let the public know about the problematic food samples tested so that the public could make informed choices on food.

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17. SHWF acknowledged the need to monitor safety of fish during transportation. FEHD staff would inspect the fish farms in the Mainland and also the delivery processes. SHWF further said that with the setting up of the proposed Food Safety Centre, the professionals and experts in different disciplines responsible for food safety and public health in FEHD and AFCD would be pooled together.

18. Ms Emily LAU said that SHWF represented the Government and he should have conveyed a clearer message to the public whether it was safe to consume freshwater fish after malachite green was found in some samples. However, SHWF had only advised the public to make their own judgement in deciding whether to eat freshwater fish. She believed that most people would tend not to consume freshwater fish after listening to SHWF's advice.

19. SHWF stressed that his advice on 18 and 20 August 2005 had already conveyed a clear message to the public that they should decide for themselves whether to consume freshwater fish based on risk assessment. With the availability of more sample test results, he was now in the position to advise that it was safe to consume freshwater fish.

20. Mr Vincent FANG expressed appreciation of the Administration's quick response in dealing with the discovery of presence of malachite green in freshwater fish, and the cooperation of the fish traders in tackling the problem. Mr FANG said that he was happy to learn that freshwater fish was now safe for consumption. He considered that the most pressing task for the Administration was to restore public confidence in consuming freshwater fish. In this connection, he urged SHWF to make it clear to the public that a person would suffer from adverse health effects only if he or she consumed more than 290 kg of freshwater fish each day over a prolonged period. Therefore, the risk of causing adverse health effects by the presence of malachite green in freshwater fish was extremely low. The Administration should also explain to the public that freshwater fish from local farms, which represented 20% of freshwater fish consumption, was safe to eat.

21. Mr FANG further said that the Administration should provide a complete list showing details of the 88 registered and approved fish farms in the Mainland, so that the traders in Hong Kong could place order for supply of freshwater fish and resume operation at a normal level as early as possible.

22. SHWF agreed that it was important to restore public confidence in consuming freshwater fish. To this end, the Administration had explained clearly that the levels of malachite green detected in the freshwater fish samples would unlikely cause adverse health effects. SHWF said that the Administration would strive to resolve the problem at the earliest possible time.

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23. SHWF undertook that the Administration would ask the Mainland authorities to provide a complete list of the registered fish farms for supplying freshwater fish to Hong Kong as soon as possible.

24. Ms Margaret NG considered that the Administration had not made sufficient efforts to safeguard public health. Ms NG said that while she agreed that the Administration should continue to improve communication with the Mainland authorities to step up control at source, it was the Administration's responsibility to ensure that food sold at local market was fit for consumption. She supported the establishment of the Food Safety Centre in a bid to ensure food safety at the import level, which was a common practice adopted in many overseas countries. However, she considered the progress of setting up the proposed Food Safety Centre too slow. Moreover, the establishment of the Government Laboratory was too small to cope with the enormous workload for food sample testing.

25. SHWF said that with reference to the experience of setting up the Centre for Health Protection, it would take about one and a half years to set up the Food Safety Centre. SHWF stressed that the objective of establishing the Food Safety Centre was to pool together existing resources for food safety control. While the Centre was still under preparation, the Administration would continue to safeguard public health under the existing mechanism.

26. Dr KWOK Ka-ki expressed concern about the effectiveness of the notification mechanism between the Administration and Mainland authorities about food safety matters. He said that the presence of malachite green in freshwater fish was revealed only after other countries had banned the import of eels and eel products from the Mainland. He asked whether the Administration had its own intelligence network in respect of food incidents affecting Hong Kong, instead of relying on the notification by ASQIQ only.

27. Dr KWOK further said that while he appreciated that it was often difficult for the Administration to advise the public on whether it was safe to consume freshwater fish when little information on test results was available, he considered that the Administration should appoint a spokesman to disseminate information and answer media enquiries relating to food incidents, pending the establishment of the Food Safety Centre.

28. SHWF responded that the Administration and the Mainland authorities had reached consensus on, among other things, the arrangement to notify each other in case of major human and animal infection and food incidents between the two places. On the suggestion of assigning a spokesman for food incidents, SHWF said that he would assume the overall responsibility for food safety matters. He stressed that his advice to the public was based on the professional advice available at that time. It was difficult, if not impossible, for him to advise on the risk level for consuming freshwater fish in the past few days when only a few sample test results were

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available. Now that over 60 sample test results were available, he could advise the public that it was safe to eat freshwater fish.

29. The Chairman said that according to the Mainland officials, the problematic freshwater fish were smuggled into Hong Kong. However, as aquatic products were presently not subject to import control, he had doubts about the saying of “smuggling” of freshwater fish. The Chairman further said that it was reported in the media that the relevant Mainland authorities had informed the authorities in Macau, but not Hong Kong, of the recent eel incidents. He expressed concern about the effectiveness of the notification system between the Administration and the Mainland.

30. SHWF clarified that there was no problem in communication between the Mainland authorities and the Administration in respect of the recent food incidents. SHWF said that as a result of the agreement between the Administration and the Mainland authorities, cooperation on food safety matters between the two sides had been strengthened. In the past couple of days when malachite green was found in freshwater fish supply from the Mainland, the Administration and its Mainland counterparts maintained daily dialogue on the developments. As there was already a communication system on food safety matters between Hong Kong and the Mainland, it was not necessary for the Mainland to inform Hong Kong of the occurrence of individual food incidents. As regards the “smuggling” of freshwater fish, SHWF explained that under the Mainland law, any person who sold aquatic products without obtaining prior approval from the relevant authorities was regarded as engaging in illegal activities. However, as Hong Kong did not regulate the importation of live fish and aquatic products, such imports were not regarded as illegal activities.

31. Regarding the safety of freshwater fish, the Chairman asked whether legislation would be necessary to implement the new arrangements on inspection and quarantine of freshwater fish supply to Hong Kong as stated in paragraph 16 of the Administration’s paper. The Chairman further asked whether freshwater fish supplied by the 88 registered fish farms in the Mainland and from local farms would be accompanied with health certificates when being sold at local markets.

32. SHWF said that if importation of live fish was to be regulated by requiring such fish to be landed at designated points and establishing a tracking system, legislation would be necessary to spell out the import requirements and the legal responsibilities of each level throughout the supply chain. However, measures concerning regulation at source and sending FEHD staff to inspect fish farms in the Mainland would be effected by administrative arrangements, and these would be worked out with the Mainland authorities. SHWF further said that it was the Administration’s intention to require all food fish products to be accompanied with health certificates irrespective of their places of origin. In this connection, local fish farms might also need to be registered in Hong Kong. However, as the focus was presently on the food safety of freshwater fish from the Mainland, the Administration would, as the first step, deal with those freshwater fish imported from the Mainland.

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33. Mr WONG Kwok-hing pointed out that freshwater fish were not only imported from the Mainland, but were sourced from different places. He asked whether the Administration would also regulate the safety of fish imported from overseas countries at source. Mr WONG further asked whether the Administration had put in place any measures to tackle the problem of import of live fish through improper channels, which was the major source of problematic fish.

34. SHWF said that it was Government's responsibility to ensure the safety of food for human consumption. As regards whether the arrangements to control supply of freshwater fish from the Mainland would be extended to those from other countries/places, it would depend on risk assessment which would be based on the quantities of fish involved and the proportion of samples found to contain malachite green. SHWF further said that the Administration planned to take samples from aquatic products supplied by other countries/places for testing of malachite green at a later stage.

35. SHWF pointed out that as Hong Kong presently has no legislation on regulating live fish, import of fish from unauthorised channels would be regarded as parallel imports, although such imports would be regarded as smuggling activities in the Mainland. To ensure that freshwater fish supply to Hong Kong were provided by registered fish farms in the Mainland, local fish traders were encouraged to acquire fish only from registered fish farms in the Mainland.

36. Miss CHAN Yuen-han said that as freshwater fish was one of the main dishes for ordinary households, it was very important that the Administration should work out with the Mainland authorities arrangements to prohibit the presence of harmful substances in such fish. Miss CHAN asked whether the Administration would put in place measures other than drawing up a list of 88 registered fish farms in the Mainland, to ensure the food safety of fish imported from the Mainland. She was concerned that fish from unregistered fish farms could be mixed with those from the approved source during transportation. If that could happen, a health certificate was no guarantee of the safety of the imported fish. Miss CHAN suggested that the Administration should make reference to the regulatory control for live poultry, in that live poultry was transported under sealed containers after inspection. Miss CHAN considered that the freshwater fish wholesalers and retailers were innocent of the safety problem of the fish sourced from registered suppliers. The Administration should expedite implementation of the tracking system for rapid tracing of the origin of any problematic aquatic products and taking prompt follow-up actions. She considered that Hong Kong was far behind EU countries and Japan in this respect.

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37. SHWF said that apart from regulation at source, the Administration would continue to take samples from fish at all levels of food supply chain for testing. SHWF further said that as there was presently no regulatory mechanism for live fish and importers and wholesalers were not required to keep their sales records, the origin of fish sold at markets could not be traced. As the proposed requirement for all importers and wholesalers to keep records of the origin of all imported aquatic food products and their distribution would have impact on the trade, the Administration would need to further discuss with the traders.

38. Miss CHAN Yuen-han commented that the Administration should not use the impact on the fish traders as an excuse to delay the implementation of the tracking system. She suggested that the Panel should consider inviting the trade representatives to give views on the proposed regulatory and tracking mechanism. Miss CHAN further said that local fish farms were subject to stringent control for participating in the accredited fish farm scheme. She asked whether there was any disparity in the food safety standards for the fish supplied by local fish farms and those from registered fish farms in the Mainland.

39. SHWF said that all fish for sale in local market, irrespective of their sources, were subject to the same food safety standards in Hong Kong. DAFC added that the standards for participating in the accredited fish farm scheme were worked out by AFCD and the fish farmers together.

40. Mr WONG Yung-kan said that the recent malachite green incidents had exposed the inadequacies of the present food regulatory mechanism. Mr WONG pointed out while the Mainland authorities had introduced standards and health certificates for food products since 2002, the Administration had not taken notice of these arrangements and had not required food products imported from the Mainland be accompanied with health certificates. Mr WONG further said that the fish traders would cooperate with the Government in implementing measures to safeguard public health, as their business would also be affected if malachite green was found in freshwater fish again. However, it would be more effective to regulate at source than at the retail level, because the fish traders would not know whether malachite green had been added to the fish. Mr WONG suggested that samples should be taken from imported fish for testing of malachite green at the Man Kam To Control Point and at the fish wholesale markets.

41. SHWF said that the suggestion of inspecting fish at border control points had to be studied in detail as it would have impact on border traffic. DFEH said that the Shenzhen authorities had agreed to exercise control of food safety of fish at source. The Administration was discussing with the Mainland authorities ways to prevent fish from unregistered fish farms mixing with those from approved and registered farms after inspection. DFEH further said that the Mainland authorities had agreed that all freshwater fish supplied by registered farms should be accompanied with health certificates to certify that they were free from malachite green or any other harmful

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pesticides and chemical substances. Health certificates would not be issued if malachite green was found in the fish.

42. Mr Vincent FANG considered that the proposal to inspect fish at border control points would delay the delivery of live fish to markets. He believed that the most effective measure was to regulate at source. He also had doubts about the reliability of health certificates, as there were cases where malachite green was found in freshwater fish which were accompanied with health certificates. The Chairman asked whether those fish samples, which were tested positive for malachite green, were accompanied with health certificates.

43. DFEH said that there were cases where samples, which were taken from fish accompanied with health certificates, were tested positive for malachite green two weeks ago. DFEH explained that there were two types of health certificates for aquatic food products in the Mainland, viz. health certificates issued by the relevant authorities and those issued by private laboratories. DFEH pointed out that until the recent agreement, there had been no requirement to certify in the health certificates that the food products concerned were free from malachite green.

44. The Chairman asked about the time required for conducting inspection of fish at the border control points and for the test results for malachite green to be available.

45. SHWF said that the Administration had examined the feasibility of inspecting imported fish at designated landing points. The major consideration was the time factor, as holding up the live fish might cause substantial loss to live fish traders. Consultant/FEHD added that if samples were taken in the morning, the test results would be available in the late afternoon of the same day.

Enforcement of the Harmful Substances in Food (Amendment) Regulation

46. DFEH said that the gazettal of the Amendment Regulation would remove the grey areas in the legislation in respect of the control of live fish as food with regard to the use of malachite green. After the coming into force of the Amendment Regulation, selling live fish which contained malachite green would become an offence. DFEH further said that the Administration would take prosecution actions in accordance with the law only after taking due consideration of various factors, such as whether the fish traders concerned had exercised due diligence to comply with the Regulation.

47. In response to the Chairman, DFEH said that the health certificates referred to those issued by the relevant authorities in the exporting countries/places. If no health certificates were issued by the authorities of the place of export, laboratory test results produced by the food suppliers would be acceptable.

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48. Mr Tommy CHEUNG said that to his knowledge, malachite green was added to fish ponds for curing fish diseases. The presence of malachite green would not be detected in the fish after 10 days. Mr CHEUNG asked which part of a fish would be tested for presence of malachite green, and whether the Administration would consider taking water samples from fish ponds for testing of malachite green instead.

49. DFEH said that a scientific method had been adopted for testing of malachite green and samples would be taken from fish meat for testing. Consultant (Community Medicine) (Risk Assessment and Communication)/FEHD (Consultant/FEHD) explained that malachite green had a rather long half life, and the presence of malachite green or its metabolites would still be found in the fish which was kept in the problematic water for many days. SHWF pointed out that as malachite green was prohibited from use in food fish in the Mainland, no malachite green should be found in the water used for keeping live fish in Mainland fish ponds. Nevertheless, when FEHD staff inspected these fish farms, they would also examine the farming methods. SHWF stressed that the Administration would strive to ensure the food safety of freshwater fish at source, even though this would not be easy.

50. Referring to Annex 1 to the Administration's paper, Mr WONG Kwok-hing asked whether harmful substances other than malachite green should be added to the list of restricted chemicals in accordance with international standards.

51. SHWF said that the Administration would take into consideration the international standards and whether the food products were sold in Hong Kong when drawing up or reviewing the list of restricted chemicals in the Harmful Substances in Food Regulations. Consultant/FEHD added that making reference to standards adopted by overseas food authorities and views expressed by Codex Alimentarius Commission (Codex) on the use of specified chemicals in food animals and related products, some more chemicals might have to be added to the list of restricted chemicals in the Regulations.

52. Mr WONG Kwok-hing asked about the timetable for adding these chemicals to the list of restricted chemicals in the Regulations. Dr KWOK Ka-ki also asked whether the Administration had any plan to add to the list of restricted chemicals those harmful substances which were prohibited for use in food in EU.

53. SHWF responded that priority would be given to adding chemicals to the list of restricted chemicals if such chemicals were commonly used in those food animals and related products that were exported to Hong Kong. SHWF added that as the list would have to be updated as and when necessary, a dedicated team of officials should be appointed to carry out the task. Consultant/FEHD supplemented that AFCD was being consulted on whether new chemicals should be added to the list, and would provide the timetable for adding substances to the list of restricted chemicals in the Regulations when available.

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54. Responding to Mr WONG Kwok-hing's enquiry about the timetable for establishing the proposed Food Safety Centre, SHWF said that the Administration planned to provide the details to the Panel at the beginning of the 2005-06 session.

55. In response to Mr Vincent FANG, Assistant Director of Agriculture, Fisheries and Conservation (AD/AFCD) advised that veterinary drugs and chemicals other than malachite green were available for curing fish diseases and such drugs would not have adverse effect on human health, if they were used according to advice from veterinarians. However, it would not be necessary to use veterinary drugs if the fish farms were not overcrowded. Fish farms could consult AFCD veterinarians for advice and assistance on the use of veterinary drugs.

56. Ms Margaret NG said that under the Amendment Regulation, the maximum concentration of malachite green in any food was 0 microgram per kilogram. This meant that once the fish or food products were found to contain malachite green, the person who sold such food had committed an offence. Ms NG considered the legislation too stringent. She asked about the guidelines or criteria for instituting prosecution against the traders.

57. SHWF explained that the setting of zero tolerance was consistent with the international practice that animal carcinogen should not be added to food. However, according to EU, only concentration of more than 2 microgram per kilogram of malachite green could presently be detected due to limitation of scientific method used for testing. SHWF said that the Administration had discussed with the Mainland authorities and both sides agreed that the EU practice would be adopted for testing of malachite green.

58. On the enforcement of the Amendment Regulation, DFEH said that if the fish trader could prove that he had exercised due diligence to comply with the legislation, FEHD would consult the Department of Justice as to whether prosecution should be taken against the fish trader concerned.

59. Mr Tommy CHEUNG questioned the need for introducing the Amendment Regulation if a person would suffer from adverse health effects only if he or she consumed more than 290 kg of freshwater fish each day over a prolonged period. Mr CHEUNG said that as the Amendment Regulation would only be tabled in the Council in October 2005, FEHD should not take enforcement actions until Members had the opportunity to scrutinise the Amendment Regulation. Mr CHEUNG considered that it was unfair to prosecute the traders or food business operators if malachite green was found in the fish or food products sold by them. Mr CHEUNG suggested that the regulatory control for live fish should model on that for live pigs, and there should be a designated wholesaler responsible for distributing live fish for retail sale.

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60. SHWF explained that malachite green was not allowed to be used in aquaculture in various major agriculture economies, and local fish farmers also had not used malachite green for more than a decade. However, since there was now increasing concern over the use of malachite green in imported freshwater fish and malachite green would have adverse health effects, the Administration considered it necessary to introduce the Amendment Regulation for better protection of public health.

61. Regarding the enforcement of the Amendment Regulation, DFEH said that the Administration would examine the circumstances in each individual case, for example, whether the trader had exercised due diligence to ensure the safety of the food concerned. Prosecution would be taken only when there was sufficient evidence of contravention of the Regulation.

62. Mr WONG Kwok-hing suggested that the Administration should accept the records of supply invoices from authorised sources as evidence that the trader concerned had complied with the Amendment Regulation.

63. In response to Ms Emily LAU, the Clerk advised that the Amendment Regulation was gazetted on 26 August 2005 and would be tabled at the Council meeting on 12 October 2005. The expiry date of the scrutiny period of the Amendment Regulation would be 9 November 2005, or 30 November 2005 if extended by resolution.

64. Ms Emily LAU commented that while the Amendment Regulation had come into operation on the day of gazettal, it had not been scrutinised by the Legislative Council (LegCo). She expressed concern about the enforcement aspects of the Amendment Regulation. Mr Tommy CHEUNG expressed a similar concern. Mr CHEUNG reiterated that it was unfair to prosecute the traders or food business operators if the fish found to have malachite green were actually supplied by approved sources. Mr CHEUNG suggested that the Panel should invite the affected fish traders to give views on the proposed regulatory system, pending a decision by the House Committee on whether a subcommittee should be formed to study the Amendment Regulation.

65. Mr WONG Kwok-hing said that the public was concerned whether freshwater fish was safe for consumption. If the Administration could restore the public confidence in this respect, there was no imminent need for the Administration to enforce the Amendment Regulation before LegCo had the opportunity to scrutinise the legislative proposal. Mr Vincent FANG concurred.

66. Ms Emily LAU supported the suggestion of inviting deputations to give views to the Panel on the proposed regulatory system of freshwater fish. However, she expressed reservation about the proposal of deferring the coming into operation of the

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Amendment Regulation, as this would convey confusing messages to the public and put public health at risk.

67. Mr WONG Yung-kan shared the views expressed by Ms Emily LAU. Mr WONG said that freshwater fish from Guangdong and Shenzhen were subject to very stringent surveillance, and there should be no problem about the safety of such fish. Mr WONG supported inviting the live fish traders to attend a meeting of the Panel to give views on the regulatory system proposed for freshwater fish as some 100 000 people in the trade would be affected.

68. Mr Tommy CHEUNG clarified that he did not request for non-enforcement or deferment of the Amendment Regulation, and he only requested the Administration to give more time for the traders to comply with the Amendment Regulation.

69. The Chairman said that the Amendment Regulation had already been gazetted and come into operation. However, the Panel could further discuss the proposed regulatory system for freshwater fish and the enforcement aspects of the Amendment Regulation, including the penalty and defence provisions in the existing legislation.

70. Senior Assistant Legal Adviser 1 (SALA1) said that the Amendment Regulation sought to add malachite green into the list of substances in the First Schedule to the Regulations. The penalty and defence for contravening the Amendment Regulations were stipulated in the existing provisions in the principal Ordinance and the Regulations. SALA1 further said that the Legal Service Division would prepare a report on the Amendment Regulation.

71. SHWF said that after the gazettal of the Amendment Regulation, the Administration would continue to take samples for testing of malachite green. The effect of the Amendment Regulation was that any person who sold any food for human consumption which contained malachite green would commit an offence. SHWF assured members that the Administration would take into account all available evidence before taking prosecution.

Impact on the freshwater fish trades

72. Ms Emily LAU said that the recent malachite green fish incidents had dealt a heavy blow to the freshwater fish trades. Ms LAU asked whether the Administration had any plan to assist the trades to tide over the crisis and whether the trades had made any requests for compensation or financial assistance.

73. SHWF explained that the Administration would not provide compensation and had not received such requests from the trade. The most important task at the moment was to resume the normal supply of freshwater fish.

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74. Mr Vincent FANG said that the business of freshwater fish trade had been seriously affected in the past two weeks. He urged the Administration to consider granting rent reduction/waiver and interest-free loans to the affected freshwater fish wholesalers and retailers to assist them to tide over the crisis. Mr Tommy CHEUNG expressed a similar view. Mr CHEUNG said that the Administration should grant rent reduction to those retailers operating in markets managed by FEHD and the Housing Department.

75. SHWF reiterated that the Administration would provide assistance to the trade for compliance with the Amendment Regulation. However, the Administration would need to study carefully whether there was sufficient justification to use public money to grant rent reduction/waiver to the traders.

76. Ms Emily LAU said that the Administration should discuss with the trade and work out specific measures to assist the affected traders.

77. In concluding the discussion, the Chairman said that the Panel would hold another special meeting on 30 August 2005 to study the enforcement aspects of the Amendment Regulation. Representatives of the live freshwater fish traders would be invited to attend the meeting to give views on the proposed freshwater regulatory framework. Members agreed.

78. The meeting ended at 5:00 pm.

Council Business Division 2
Legislative Council Secretariat
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