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Paper for the House Committee meeting on 20 October 2006

**Report of the Subcommittee on
Food Business (Amendment) Regulation 2006**

Purpose

This paper reports on the deliberations of the Subcommittee on Food Business (Amendment) Regulation 2006.

Background

2. Hong Kong currently adopts a monitoring system for imported game, meat and poultry based on international standards and practices. For importation of chilled pork, the places of origin must submit information to certify that the hygiene standard of its chilled pork meets the inspection and quarantine requirements of Hong Kong. In the past, chilled and frozen pork were imported from Thailand, Australia and the United States only. Importation of chilled pork from the Mainland has commenced since 23 August 2006.

3. Fresh provision shops (FPSs) (including supermarkets) and stalls in public markets had all along been allowed to sell both fresh beef, mutton or pork and imported chilled beef, mutton or pork on compliance of a set of licensing requirements and conditions/tenancy clauses. These requirements and conditions/tenancy clauses basically control the source of supply, handling, display and storage of chilled meat. In particular, operators are not allowed to display and sell chilled beef, mutton or pork as fresh beef, mutton or pork. Operators are also required to display a legible notice at a conspicuous location and on the refrigerator stating that imported chilled meat is available for sale on the premises for information of consumers. However, there have been cases where FPS licensees/public market tenants display or sell chilled beef, mutton or pork as fresh beef, mutton or pork.

4. When discussing the proposed arrangements for importation of chilled pork from the Mainland, members of the Panel on Food Safety and Environmental Hygiene had expressed concern about retailers selling chilled pork as fresh pork to customers. Some Panel members pointed out that it was difficult for consumers to differentiate

chilled pork from fresh pork. They considered that separate licences should be issued for selling fresh pork and chilled/frozen pork in order to safeguard consumers' health and to facilitate enforcement of the licensing conditions for the sale of chilled pork.

The Food Business (Amendment) Regulation 2006

5. The Regulation amends the Food Business Regulation (the Regulation) (Cap. 132 sub. leg. X) for the following purposes —

- (a) to prohibit the sale, or offer or exposure for sale, or possession for sale fresh beef, mutton or pork and chilled beef, mutton or pork at the same market stall or premises on which the business of a fresh provision shop is carried on unless the chilled beef, mutton or pork is pre-packaged and the package is marked and labelled in the prescribed manner (new section 30D and new Schedule 6);
- (b) to make it an offence for a person to open or in any other way tamper with the package (new section 30F);
- (c) to provide that the Director of Food and Environmental Hygiene (the Director) may grant permission under section 30 to sell, or offer or expose for sale, or possess for sale at the same premises either fresh meat or chilled meat that is not pre-packaged but not both (new section 31A); and
- (d) to impose penalty on any person who contravenes new section 30D or 30F (a fine at level 5 (\$50,000), imprisonment for 6 months and \$900 for each day for a continuing offence).

6. The Amendment Regulation has come into operation on 18 August 2006. The scrutiny period of the Amendment Regulation has been extended from 18 October 2006 to 8 November 2006 by a resolution of the Council.

The Subcommittee

7. At the House Committee meeting on 21 July 2006, members formed a subcommittee to study the Amendment Regulation. The membership list of the Subcommittee is in **Appendix I**.

8. Under the chairmanship of Hon Tommy CHEUNG, the Subcommittee has held three meetings with the Administration and met with the Consumer Council and the affected trades at one of these meetings. A list of the organisations which have given views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

Justifications for the Amendment Regulation

9. According to the Administration, fresh and chilled meat have different shelf life and should be subject to different storage conditions. There is also a contamination risk if fresh meat and chilled meat are mishandled or mixed during retail stage. Although the Amendment Regulation which seeks to prohibit the sale of fresh beef, mutton or pork and chilled beef, mutton or pork in the same FPS or market stall could not eradicate the problem of unscrupulous meat traders mixing chilled beef, mutton or pork with fresh beef, mutton or pork in the same premises, it could reduce such chance and facilitate enforcement action by the Food and Environmental Hygiene Department (FEHD).

10. Members in general support the Amendment Regulation as it would enhance food safety and better protect consumers' interests. Some members, however, have expressed concern about the granting of exception to the restriction on sale and the application of the new pre-packaging and labelling requirements. Members have also raised some points regarding the legal and drafting aspects of the Amendment Regulation.

Exception to the restriction on sale

11. Members note that the sale of fresh beef, mutton or pork and chilled beef, mutton or pork at the same premises/market stall is allowed under new section 30E, provided that the chilled beef, mutton or pork is pre-packaged and labelled in the prescribed manner before distribution to retail outlets. The label on the package should contain information on the food name, the "slaughtering date", the "use by" date, the name and address of the slaughtering plant and the net weight in English or Chinese or in both languages.

12. Hon WONG Yung-kan is of the view that granting exception to the restriction on sale to allow the concurrent sale of fresh beef, mutton or pork and chilled beef, mutton or pork at the same premises/market stall would defeat the policy objective of safeguarding public's health and protecting consumers' interest. He considers that complete segregation of the sale of fresh and chilled meat is in the best interests of consumers from food hygiene perspective and could effectively address the problem of the malpractice of selling chilled meat as fresh meat by unscrupulous meat traders.

13. The Administration has responded that granting exception to the restriction on sale has balanced the interests of the consumers and the trade, while maintaining the same level of convenience to consumers. To complement the Amendment Regulation, FEHD has implemented enhanced control measures for the sale of chilled meat at retail level, including requirements for the supply, handling, display and storage of chilled meat. FPS licensees/market tenants selling meat are required to

put up a legible notice concerning the type of meat items being sold for easy identification by consumers. For FPSs and market stalls selling pre-packaged chilled beef, mutton or pork, display refrigerator maintained at a temperature below 4°C should be provided. FPS licensees and market tenants are required to keep invoices showing the supply of their chilled and pre-packaged chilled beef, mutton or pork for not less than 60 days to facilitate verification by FEHD staff.

Application of the pre-packaging and labelling requirements

14. Some members including Hon Fred LI, Hon WONG Yung-kan and Hon WONG Kwok-hing have expressed concern about the safety of chilled meat at FPSs or stalls selling chilled meat solely, given that the pre-packaging and labelling requirements would not apply to these FPSs or stalls. Hon WONG Yung-kan is of the view that consumers should have the right to the information about the meat they are buying and the requirements for pre-packaging and labelling should also be applied to all chilled beef, mutton or pork on sale at retail outlets irrespective of whether fresh beef, mutton or pork are sold at the same premises/market stall.

15. The Administration has responded that it is not necessary to apply the pre-packaging and labelling requirements to FPSs or stalls selling chilled meat solely because the Amendment Regulation primarily seeks to lower the contamination risk of mishandling or mixing of fresh and chilled meat during retail stage and to enable consumers to distinguish between fresh and chilled meat. In addition, meat traders would have to keep invoices for not less than 60 days to facilitate verification by FEHD staff and these invoices would show the name and address of the slaughtering plant as well as the "slaughtering date", in addition to the description and amount of meat to facilitate source tracing when necessary.

16. Hon WONG Kwok-hing has asked whether the Administration would consider prescribing the minimum size of the words on the labels of the packages of chilled beef, mutton or pork for the convenience of senior citizens. The Administration has explained that reference is made to the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W) regarding the marking and labelling of food and drugs. The words should be clearly and legibly marked in English lettering and Chinese characters but the size of the words is not prescribed.

17. Hon Tommy CHEUNG has queried the need for including information on the name and address of the slaughtering plant as well as the "slaughtering date" on the label of the pre-packaged chilled beef, mutton or pork, given that FPS licensees and market tenants would have to keep invoices showing the supply of their chilled and pre-packaged chilled beef, mutton or pork for not less than 60 days which could serve as a means of source tracing. He points out that the labelling requirements would impose extra burden on the trade and the size of the words to be printed on the labels could be larger for the consumers' convenience if less information is required.

18. The Administration has emphasised that the invoices kept by the FPS licensees and market tenants are to facilitate tracing by FEHD when necessary. The information as shown on the label including the name and address of the slaughtering plant as well as the "slaughtering date" is necessary for easy identification by consumers when problematic chilled meat is recalled.

Legal and drafting aspects of the Amendment Regulation

Definition of "meat"

19. Members note that "meat" under section 3(1) of the Regulation means the flesh of (a) cattle (including buffaloes), goats, sheep and swine; and (b) horses, mules, hinnies and donkeys, if intended for human consumption. The legal adviser to the Subcommittee has advised that the term is defined in an exhaustive manner as the word "means" instead of "include" is used. As such, there is not much flexibility in extending the scope of the term to include the flesh of deer, ostrich and other types of meat for human consumption.

20. Some members including Hon Tommy CHEUNG, Hon WONG Yung-kan and WONG Kwok-hing are of the view that the Administration should consider re-defining "meat", having regard to the availability of other types of meat for human consumption in Hong Kong. They have asked the Administration to consider either replacing the phrase "horses, mules, hinnies and donkeys, if intended for human consumption" with "other kinds of animals intended for human consumption"; or adding the phrase "other types of meat for human consumption, e.g. deer and ostrich etc." in the definition.

21. The Administration has responded that the Director is empowered under relevant provisions of the Regulation to issue permit for the sale of other types of meat such as game or reptile for human consumption in Hong Kong. On the suggestion of extending the coverage of the definition of "meat" in section 3 of the Regulation, the Administration has pointed out that over 50 references have been made to the term in the Regulation and the term is also used in other pieces of legislation. Any amendment to the definition would involve substantive changes and need to be dealt with in a separate legislative exercise. As any change would have far-reaching implications on the trade, it should be considered in a prudent manner and thorough consultation with the trade is necessary.

22. Hon Alan LEONG has expressed concern on whether the meaning of "meat" in the new item 1(b) of Schedule 2 to the Amendment Regulation dovetails with "meat" as defined under section 3(1) of the Regulation. He has stressed that, as the new section 30D carries a criminal offence, prosecution work might be impaired if the meaning of the term is unclear. Mr LEONG has requested that the Administration should review whether the definition of "meat" under section 3(1) of the Regulation covers various types of chilled meat referred to in the new item 1(b) of Schedule 2 to the Amendment Regulation.

23. The Administration has confirmed that the types of meat in the new item 1(b) of Schedule 2 is the same as those types of meat under the definition of "meat" under section 3(1) of the Regulation, with the exception of pre-packaged chilled beef, mutton or pork. The Administration has also explained that the purpose of amending Schedule 2 is to distinguish pre-packaged chilled beef, mutton or pork from non pre-packaged chilled beef, mutton or pork, and there is no intention to change the definition of "meat" in the current legislative exercise.

Definition of "chilled" meat

24. The legal adviser to the Subcommittee has pointed out that "fresh" in relation to beef, mutton or pork is defined under section 3(1) of the Regulation. However, "chilled" in relation to beef, mutton and pork is not defined. Members have asked the Administration to consider providing such a definition in the Amendment Regulation.

25. The Administration has explained that "chilled meat" has all along been used in the Regulation and no difficulties have been encountered regarding the meaning of the term in any enforcement actions. At present, meat on sale in Hong Kong can be classified into three categories:

- (i) fresh meat normally refers to meat slaughtered locally without being subjected to any chilling process or other form of preservation;
- (ii) frozen meat is normally imported and has been subjected to a freezing procedure to lower its temperature to around minus 18 °C; and
- (iii) chilled meat means meat which has been preserved by chilling at a temperature between 0 to four °C from the point of slaughter, storage and transportation to the point of sale.

26. The Administration has further pointed out that information about "chilled meat" and the proper way of meat handling have been published and disseminated in the Food Hygiene Code (2003) for free distribution to the food business trade. The Food Hygiene Code has also been uploaded on the FEHD's website. For application for permission to sell chilled meat in a FPS and a market stall, FEHD would impose requirements and conditions on all applicants for compliance. The information of "chilled meat" is also set out in the requirements and conditions. Compliance with such requirements and conditions is a prerequisite for the granting/renewal of the licence/tenancy.

27. In the light of members' views, the Administration has consulted the Prosecutions Division of the Department of Justice on the implications on enforcement action for providing a definition of "chilled" in the Regulation. According to the Administration, it is much more desirable to rely on the dictionary meaning of "chilled", i.e. "to preserve at a low temperature without freezing", rather than to provide for a legal definition. The Administration has further explained that it has explored the option of defining "chilled" on the basis of the temperature of the meat. However, to do so would create serious enforcement difficulties as anything falling outside that temperature range would not be enforceable. In practice, when taking enforcement actions under section 30D(1) or (2) of the Amendment Regulation, FEHD staff would not rely solely on the temperature (whether it is within the range of 0 to four °C) of the suspected chilled meat to determine if the meat is chilled or not, as temperature could be easily manipulated. Instead, in addition to making reference to the temperature of the meat, FEHD staff would prove the status of the meat by collecting circumstantial evidence to establish its source, e.g. ascertaining whether the meat is delivered to the shop from a local slaughterhouse or a boundary control point and matching information specified in the health certificate, etc. It is however not practicable to list out all these circumstantial evidence to define "chilled" in the Regulation.

28. Although members have not raised further queries about the Administration's explanation, they have reiterated their concern that the absence of a legal definition for "chilled" would cause difficulties in future prosecution actions.

29. Members also note that the Chinese rendition of "chilled" is "冷凍" in the legislation whereas the Chinese rendition for that term is "冰鮮" in the licensing requirements/conditions for FPSs/market stalls that are endorsed/permited to sell chilled meat, including in the notice put up by the FPS licensees/market tenants selling chilled beef, mutton or pork. Members have suggested that, as the Chinese rendition "冰鮮" is more commonly used by the trade and the public, the Administration should consider using that Chinese rendition in the Regulation or adding "冰鮮" in addition to "冷凍" where the Chinese rendition "chilled" is referred to in the licensing requirements/conditions for FPS/market stalls that are endorsed/permited to sell chilled meat.

30. The Administration has responded that "冷凍" has long existed in the Regulation. It is also used in other pieces of legislation to refer to "chilled" food items. On the other hand, "冰鮮" is more commonly used by the general public and the trade in day-to-day expressions. Changing "冷凍" to "冰鮮" in the existing legislation would require a substantial exercise and the Administration would need to fully assess any implications involved. While the parallel use of two different Chinese expressions to refer to the same English term may not be the best arrangement, there is so far no confusion in the community in understanding both terms. In addition, since the introduction of the Amendment Regulation on 18 August 2006, many members of the meat trade have installed signs in accordance with

the revised requirements and conditions to show that "冰鮮肉" is available at their premises/stalls. It would create confusion to the trade and the public and there would also be cost implications, if the terminology is to be changed within such a short space of time.

31. Members remain of the view that it is not desirable for two different Chinese renditions to be used for the same term in the legislation and the relevant licensing requirements/conditions for FPSs/market stalls respectively. Members have expressed concern that such inconsistency might cause difficulties in prosecution and enforcement actions might be subject to legal challenge. Hon WONG Yung-kan has pointed out that the issue about the inconsistency of the Chinese rendition of "chilled" in the legislation and the licensing requirements/conditions for FPSs/market stalls that are endorsed/permitted to sell chilled meat has been raised many years ago and the Administration has not taken any action. He considers that using Chinese rendition "冰鮮" for "chilled" would be misleading to the consumers.

32. Members have suggested that, in order to dispel any confusion to the public and avoid any adverse impact on the trade, "(冰鮮)" should be added in addition to "冷凍" where the Chinese rendition "chilled" is used in any future renewal of licences or tenancies for FPS/market stalls that are endorsed/permitted to sell chilled meat. They have also suggested that the Administration should consider allowing for a grace period for the trade to comply with the revised requirements and conditions and subsidising the trade for any additional cost for the installation of new signs.

33. At the Subcommittee's request, the Administration has undertaken to, unless there is strong objection from the trade, amend the licensing requirements and conditions for FPS/market stalls that are endorsed/permitted to sell chilled meat so that both the term "冰鮮" and "冷凍" would be used for "chilled" upon renewal of existing licences or tenancies as well as granting of new licences and tenancies. If there is strong objection from the trade, the Administration would revert to the Panel on Food Safety and Environmental Hygiene.

Definition of "premises"

34. In response to an enquiry raised by the legal adviser to the Subcommittee, the Administration has advised that "premises" is defined in the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance) to cover a wide range of places including land, buildings, structures, and the internal parts of buildings, etc. As far as the new section 30D(1) of the Amendment Regulation is concerned, the objective is to confine its application to the premises of a FPS only. The definition of "premises" given by the Ordinance is considered too broad for that purpose. The Administration has therefore decided to make it clear in section 30D(3) that, for the purpose of subsection (1), "premises" should mean "the premises on which the business of a FPS is carried on".

35. The Administration has further explained that it intends to adopt a stringent standard in determining whether a building structure constitutes a separate premises for the purpose of issuing a FPS licence. The structural and other main requirements for the issue of an FPS licence could be found in the FEHD's pamphlet "A Guide to Application for Fresh Provision Shop Licence". As a general rule, premises on solid ground floor having direct access to a street (as means of escape in case of emergency) are normally suitable. However, the Administration would consider each case on its own merits.

36. Some members including Hon Tommy CHEUNG, Hon TAM Yiu-chung and Hon WONG Yung-kan are of the view that it is not desirable for the relevant requirements to be set out by means of administrative measures only and the meaning of "premises" is subject to the complete discretion of the Director. These members have expressed concern that an unclear meaning of "premises" in the Amendment Regulation might cause confusion to the trade and the policy objective might be circumvented. They have requested the Administration to consider whether it is possible to define "premises" more clearly for the purpose of the Amendment Regulation.

37. After consideration of members' concern, the Administration has responded that it is not appropriate to define "premises" in the Amendment Regulation for the following reasons -

- (a) although "premises", "food premises" and "food room" are defined in a generic manner in the Ordinance and the Regulation respectively, no enforcement difficulties have been encountered; and
- (b) in processing an application for a FPS licence on a particular premises, irrespective of whether it is inside a supermarket or in a corner shop, there is at present no restriction that the premises have to be fully segregated from the remaining part of the premises which may be doing other businesses. It is therefore operationally not viable to set down the design of the premises as basic requirements of a FPS, such as it is being segregated by wall from the adjoining premises; and
- (c) the licensee must meet the requirements as set out under sections 32 and 33 of the Regulation and the licensing requirements and conditions as imposed by the Director in order to operate a FPS. The Director would specify the boundary of the licensed premises on the layout plans submitted by the licensee in the first place in granting the FPS licence. There are also adequate provisions in the Regulation for the Director to impose stringent requirements to fully segregate two premises (e.g. by full-height brick/concrete walls from the front to the back with no openings thereupon and separate independent entrance) in the event that an application is submitted for a FPS licence to sell chilled meat in the premises adjacent to a licensed FPS with endorsement to sell fresh meat.

38. The Administration has stressed that, through the existing licensing policy and legal backing in the Regulation, the Administration could effectively bring the licensing of FPS selling meat under control.

Legal responsibility for various offences under the Regulation

39. Hon Tommy CHEUNG has expressed concern on the enforcement actions taking against persons contravening the provisions in the Regulation, in particular new section 30D(1) or (2). He has enquired if the Administration would consider making it clear that the scope of legal responsibility for contravention of various provisions, particularly new section 30D(1) or (2), of the Regulation is limited to certain categories of persons, i.e. the licensee, nominated manager, the tenant of a market stall etc.

40. The Administration has explained that, subject to sufficient evidence being collected, its target is always to hold the person in charge of the business responsible for any contraventions detected. If the new section 30D(1) or (2) of the Amendment Regulation is revised to the effect that only the licensee/nominated manager/market stall tenant would be liable to prosecution, an enforcement problem might arise in the event that the licensee/nominated manager/market stall tenant is not in fact the person in charge of the business at the material time when the contravention is detected. It is possible that the licensee/nominated manager/market stall tenant is genuinely not responsible for the contraventions detected, and it would be unfair to hold that person responsible. With section 30D(1) and (2) of the Amendment Regulation as presently worded, the Administration should be able to take enforcement actions against any person, including but not limited to the licensee/nominated manager/market stall tenant or any employee, having regard to the actual circumstances of the case or available evidence.

41. The Administration has also informed the Subcommittee that, according to prosecution statistics for the past six months, prosecutions were initiated against the person responsible for the business, namely the licensee/nominated manager/market stall tenant, instead of the employees of the FPS/market stalls concerned in over 74% of the prosecution cases for offences which have references to "any person/every person". In response to Hon WONG Kwok-hing's concern that employees of the FPS/market stalls might be unfairly prosecuted for the other cases, the Administration has explained that some employees of the FPS/market stalls who have committed the offences by acting against the clear instructions of their employers should be held legally liable. In any event, prosecution would only be initiated if there is sufficient evidence in the actual circumstances of each case.

Recommendation

42. The Subcommittee supports the Food Business (Amendment) Regulation 2006. The Subcommittee will not move any amendments to the Amendment Regulation.

Advice sought

43. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
19 October 2006

**Subcommittee on
Food Business (Amendment) Regulation 2006**

Membership list

Chairman Hon Tommy CHEUNG Yu-yan, JP

Members Hon Fred LI Wah-ming, JP
Hon WONG Yung-kan, JP
Hon TAM Yiu-chung, GBS, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC

(Total : 7 Members)

Clerk Miss Flora TAI

Legal adviser Mr Stephen LAM

Date 2 August 2006

**Organisations that have given views to the
Subcommittee on
Food Business (Amendment) Regulation 2006**

1. Consumer Council
2. Hong Kong Retail Management Association
3. A S Watson Group – Retail Hong Kong
4. The Dairy Farm Co Ltd
5. US Meat Export Federation
6. Hong Kong Chilled Meat and Poultry Association
7. 港九新界鮮肉商、運輸、屠宰、生豬業從業員聯席會議
8. Pork Traders General Association of Hong Kong Limited
9. Hong Kong Livestock Industry Association
10. Hong Kong Pig Raising Development Federation
- * 11. Agricultural Trade Office, US Consulate General, Hong Kong

(* written submissions only)