

**For Discussion
On 2 February 2007**

Legco Panel on Food Safety and Environmental Hygiene

Food Safety Incident Relating to the Sale of Oil Fish as Cod Fish

Purpose

This paper briefs members on the measures and future legislative plan for tackling the incident of selling oilfish.

Background

2. Since the middle of last year, the Centre for Food Safety (CFS) has received over 10 complaints from the public about oily diarrhea conditions after consuming food labelled as “cod fish” or “cod fish steak”. The CFS has followed up and investigated into each complaint case, including taking food samples for testing, and getting in touch with the concerned shops. At the initial stage of investigation, the CFS could not identify the cause for oily diarrhea and the connection amongst the cases. It began to focus on the relationship between a product called “cod fish” and oily diarrhea in November. At the request of CFS, the PARKnSHOP furnished a health certificate issued by Indonesian Government that listed the product as “Frozen Cod Fish Steaks” and identified the fish species as *Ruvettus pretiosus*, which was the scientific name of oilfish. In the meantime, the CFS was informed that PARKnSHOP had posted notices at its retail outlets to inform customers that consuming the concerned products might cause oily diarrhea in some people. The CFS considered at the time the initiative to be useful in providing more information to consumers.

3. The investigation continued early this year when the CFS received four more similar food complaints. After a further review of these 14 food incidents, the CFS concluded that the products sold in the complaint cases were “oilfish” instead of “cod fish”. At the same time, the CFS found that the so-called “cod fish” was still on sale, so it requested the retailers concerned

to stop selling the product. Subsequently, PARKnSHOP provided the names of three importers and a copy of health certificate from another jurisdiction which listed the product as “Frozen Oilfish Steak”. On being informed of the matter, the CFS management decided to hold a press conference immediately to make public the incident and urge the trade to ascertain the fish species they are importing and selling / to be imported or sold, for instance to check whether the fish was oilfish or its related species; provide accurate and clearly identifiable marks and labels for the product after verifying the real name of the fish; and to stop using oilfish for catering purpose. The CFS also recommended the public to be cautious in purchasing food and consider the symptoms that might present after consuming oilfish and its related species. If they have any doubts about the species of a particular fish, they should enquire and seek clarification from the seller before purchase.

International Practices on Controlling Oilfish

4. Current information shows that oilfish is only banned in Japan and Italy. Many other countries, including the United States, Canada, Australia, the United Kingdom and Singapore, do not ban the sale of oilfish but only caution the trade and consumers about the risks of the food and recommend the trade to label oilfish correctly. The following table sets out the different practices in the international community:

Country/Area	Practices
United States	No ban. The trade is recommended to avoid import or interstate sale.
Canada	No ban.
Australia	No ban. The trade is reminded to provide correct labels to facilitate identification by consumers. (Provincial Government of Queensland recommends the catering business to avoid using oilfish in catering.)
European Food Safety Authority	There is an advisory on the potential health risks of oilfish.
Sweden	No ban. The trade is informed about the risks in

	mishandling oilfish. There is an advisory on preparation of oilfish for food.
Denmark	No ban. The trade is informed about the risks in mishandling oilfish. There is an advisory on preparation of oilfish for food.
United Kingdom	No ban. The public is notified of the potential health risks of consuming oilfish and mislabeling.
Germany	No ban. The public is notified of the potential risks of consuming oilfish.
Singapore	No ban. The public is notified of the potential risks in consuming oilfish and the trade is required to put accurate labels on them.
Macao	No ban.
Japan	Bans sale and import.
Italy	Bans sale and import.

Follow-up Measures

5. Having made public the incident, the Administration immediately took follow-up measures, including:

(a) Taking concerted action with the trade

The CFS met with fish importers, wholesalers, retailers and representatives of catering business and reached a consensus with the trade to suspend import and sale of oilfish and to stop using oilfish for catering purpose. The trade also undertook to verify that their inventory were cod fish before offering them for sale and to destroy their remaining oilfish stock so as to restore the public confidence.

(b) Reviewing the labels for cod fish and oilfish

The CFS and the trade will review the labels and names for cod fish and oilfish products to prevent recurrence of such confusion.

(c) *Collecting complaints and following up cases*

From 23 to 31 January, the CFS has received about 700 complaints and enquiries from public about the purchase and consumption of the products concerned. The CFS will follow up each and every case. The CFS is studying whether the retailers have breached food-related provisions under the *Public Health and Municipal Services Ordinance* (Cap.132). Any person who contravenes the provisions is liable for fines up to \$50,000 and imprisonment for six months.

(d) *Action relating to Trade Descriptions Ordinance*

The Customs and Excise Department (C&ED) has taken the initiative to ascertain if enforcement action can be taken under the *Trade Descriptions Ordinance* (the Ordinance). The C&ED has forwarded the information collected to Department of Justice to seek legal advice on whether the trade descriptions on the oilfish labels constitute false trade description under the Ordinance. If affirmative, the C&ED will immediately initiate investigation and, subject to sufficient evidence, prosecute any business or individuals for breach of the Ordinance. The C&ED has also conducted inspections at major supermarkets and shops selling chilled/frozen meat recently but did not find any oilfish labelled and sold as cod fish.

(e) *Reviewing the way the cases were handled*

The oilfish incident has highlighted a number of issues concerning food labelling, regulation, communication and internal communication. We will conduct a review and investigate into how the CFS handled the food complaints and whether it could have uncovered earlier the connections amongst these cases, communicated the risks and took enforcement action. We will also look into ways to enhance future handling of similar cases and staff issues.

Legislation to Prohibit Sale of Problem Food

6. We consulted the Panel on food recall at the end of 2004 but could not reach a consensus on its implementation. At a special meeting held last November, we informed the Panel that we would enact legislation to empower the Administration to make order to prohibit sale of unsafe food. The recent oilfish incident highlights the public concern on the issue of prohibiting the sale of unsafe food. In this regard, we now put forward a detailed legislative proposal with a view to seeking the Panel's support and to commence drafting of the legislation as soon as possible.

7. By virtue of sections 55 and 56 of the *Public Health and Municipal Services Ordinance*, the Authority may make regulations for prohibiting, restricting or regulating the sale, or storage, possession or exposure for sale of any food. It is therefore proposed that a new regulation, which can be called "*Public Health (Prohibition of Sale) Regulation*", should stipulate that, subject to reasonable evidence indicating or showing that certain food item may affect public health, the Government may make an order to prohibit the sale of the food item to protect public health. The trade shall be responsible for undertaking all the tasks specified in the order, such as removal of the products from market shelves, recall, disposal or destruction of the food concerned, etc. The scope of the new regulation will include –

- Circumstances under which an order of mandatory prohibition of sale may be made;
- Recipient to whom an order is to be directed and delivered;
- Directives to be included in an order;
- Enforcement and penalties; and
- Appeal mechanism.

Circumstances under which a Mandatory Sale Prohibition Order may be Made

8. The Authority will consider mandating a prohibition of sale if the distribution and sale of a particular food product in the local market is

prejudicial or pose a potential risk to public health. Events triggering consideration of prohibition of sale may involve but not limited to reports on confirmed or suspected contamination at source; defects in manufacturing, packaging, storage or transportation; results of food surveillance programmes; and occurrence of human cases.

Recipient to whom an order is to be directed and delivered

9. The recipients of a prohibition order may include but not limited to manufacturers, importers, distributors, retailers and restaurants selling the food concerned. A prohibition of sale order should take immediate effect once the Government officially announces it on CFS website and other public channels such as the media. Once this due process is completed, all those involved must comply with the order, regardless of whether they have separately received a copy of the order or not.

Directives to be included in an order

10. For effective execution of a prohibition of sale, the Government may require the recipients to comply with any or all of the following directives –

(a) Directives in relation to the food in question

A recipient must ensure that all food in his possession is held and kept separate until it is –

- (i) destroyed or otherwise used or disposed in such a way that it cannot be used for human consumption;
- (ii) returned to its supplier;
- (iii) disposed in a way that is safe and appropriate (subject to the Government's approval); or
- (iv) ascertained by the Government to be safe and suitable for sale (such as by rescinding the order).

(b) Directives in relation to information provision

A recipient may be ordered to:

- (i) provide information regarding the food concerned in his possession to the Government;
- (ii) notify any person as he knows who may still have in his possession the food concerned to stop selling it;
- (iii) notify all parties concerned of the information specified in the order;
- (iv) notify all persons to whom the food has been distributed, transported or sold to immediately cease the distribution and/or selling of the food; and
- (v) provide records that can identify his immediate supplier and recipient of the food concerned.

11. The Government may, depending on the circumstances of each case, stipulate any optional directives it deems fit for the purpose of protecting public health. Examples of optional directives may include the duration of order, etc.

Enforcement and penalties

12. The Government may request the recipients to keep a record of the parties that they have notified in accordance with the directives and to provide a progress report on this matter in addition to a report on their implementation of the prohibition of sale. We propose to stipulate that any person who fails or refuses to comply with any directives as set out in a prohibition of sale order shall be guilty of an offence and is liable to the penalty as appropriate for non-compliance of any individual directives.

Appeal mechanism

13. We propose to set up an appeal mechanism under which any person who feels aggrieved by the prohibition of sale order may lodge an appeal. To

protect public health, however, we consider that a mandatory prohibition of sale order against which an appeal has been lodged shall remain in force until the completion of the appeal proceedings.

Advice Sought

14. Members are invited to note the measures taken by the Administration to tackle the incident of oilfish and comment on the legislative proposals on prohibiting sale of problem food.

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