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**Meeting of the Panel on Food Safety and Environmental Hygiene
on 14 November 2006**

Background brief prepared by the Legislative Council Secretariat

Regulation of fishery products

Purpose

This paper summarises the main discussions by the Panel on Food Safety and Environmental Hygiene (the Panel) in the current term on the regulation of fishery products.

Background

Legislative framework

2. According to the Administration, there is currently no legislation regulating the import of aquatic products including shellfish.
3. Under the Public Health and Municipal Services Ordinance (Cap. 132), food sold and intended for human consumption should be fit for human consumption. Live fish, however, is not defined as food under Cap. 132 and is not regulated as such under the current food safety legislation.
4. In addition to the compliance requirements under Cap. 132, fresh or chilled marine fish is also regulated by the Agriculture, Fisheries and Conservation Department (AFCD) under the Marine Fish (Marketing) Ordinance (Cap. 291), which provides for the control of landing, wholesaling and transportation of fresh marine fish. The Ordinance covers fresh, chilled and frozen marine fish but excludes live marine fish, all shellfish and freshwater fish.
5. As live fish is not considered as food under Cap. 132 and excluded from regulatory control under Cap. 291, there is at present no legal control over live fish to ensure that it is fit for human consumption. The Harmful Substances in Food (Amendment) Regulation has commenced operation since 26 August

2005 to the effect that importing, consigning, delivering, manufacturing or selling any food (including live fish, live reptiles and live poultry) for human consumption which contains malachite green becomes an offence punishable by a fine at level 5 (\$50,000) and imprisonment for six months. Live fish is brought under control as a result of the Amendment Regulation to the extent that the Food and Environmental Hygiene Department (FEHD) can legally regulate live freshwater fish as far as malachite green is concerned.

Administrative measures

6. In Hong Kong, any person who intends to sell live, fresh or frozen fish at any premises must obtain a Fresh Provision Shop (FPS) licence issued by FEHD before commencement of such business.

7. According to the Administration, there are at present seven wholesale markets located in different parts of Hong Kong. Only registered traders are allowed to trade in the markets under the management of the Fishing Marketing Organization (FMO). Although there is no food safety legislation controlling the importation of live marine fish, all live marine fish wholesalers are required to operate under licence issued by FEHD. While about half of the live fish wholesalers in Hong Kong are operating in the three wholesale fish markets managed by FMO, the other half are operating in private premises located in various parts of Hong Kong such as Lei Yue Mun, Lau Fau Shan and Lo Shue Chau.

8. FEHD has developed a voluntary Code of Practice (CoP) in consultation with the trade on the import and sale of live marine fish in December 2004.

9. Hong Kong has reached an agreement with the Mainland authorities since August 2005 which stipulates that only registered farms approved by the Mainland authorities could export freshwater fishes to Hong Kong, and that every consignment of fishery products must bear a health certificate issued by the authorities concerned to certify that the products do not contain malachite green or any other harmful substances.

10. According to the Administration, FEHD will inspect live freshwater fishes and takes samples for tests at all levels, from import, wholesale to retail level, to ensure that these live fishes are safe for consumption. Moreover, the Customs and Excise Department (CED) also inspects imported fishes at borders on sea, land and air to intercept fishery products that are not accompanied by manifests. Even for fishery products that have manifests, the Customs officers may notify the FEHD to follow up in case of doubts about their origins.

Main discussions by the Panel on Food Safety and Environmental Hygiene

Incidents of ciguatera fish poisoning

11. Following some reported incidents of ciguatera fish poisoning, the Panel discussed with the Administration on 26 October 2004 further measures to regulate coral fish and to prevent ciguatera poisoning cases. The Panel noted that many of these ciguatera poisoning cases were caused by some ciguatoxic fish coming from new fishing grounds. Some members were of the view that the progress of improving the regulatory framework for coral fish to safeguard public health was too slow. They urged the Administration to prohibit the importation of certain coral fish from high-risk areas, and step up the surveillance and sample check of coral fish.

12. The Administration informed the Panel that, pending a review on the legislation to regulate live fish, a voluntary CoP was being developed requiring fish traders to report to FEHD information on the source and distribution of coral fish collected/imported.

13. While members generally supported the introduction of the voluntary CoP, they urged the Administration to take enforcement actions against the supply of problematic coral fish. Some members also requested the Administration to review its effectiveness after the promulgation of CoP.

14. The Administration subsequently reported to the Panel that, as the voluntary CoP had been less than satisfactory, there was a need to introduce additional measures to strengthen control on the import and sale of live coral reef fish which included introducing import permits and designating landing points for live coral reef fish. Members in general expressed support for the proposed measures so as to reduce the occurrence of ciguatera fish poisoning cases.

Use of malachite green in eels and freshwater fishes

15. Following the discovery of the presence of malachite green in eels and freshwater fish supplied to Hong Kong, the Panel held a series of meetings in August and September 2005 to discuss with the Administration and freshwater fish traders the regulatory measures for live fish and aquatic products.

16. Members expressed concern about the effectiveness of the notification and communication system between the Mainland and Hong Kong about food safety matters. Some members also queried the Administration for not taking action earlier against the presence of malachite green in eels and live fish imported into Hong Kong, since the Mainland had prohibited the use of malachite green in aquaculture in as early as 2002. They further pointed out that a tracking system in respect of fish had been put in place in most overseas countries.

17. The Administration advised the Panel that, in respect of food incidents and control of fishery products imported from the Mainland, the communication and cooperation between Hong Kong and the Mainland had been strengthened. Consensus was reached on, among other things, the arrangement for exporting fishery products to Hong Kong, and the notification mechanisms in respect of food incidents between the two places. To further strengthen the safety of live freshwater fish supply to Hong Kong, both sides agreed that only registered and approved fish farms could export freshwater fishes to Hong Kong, and the export must be accompanied by health certificates when entering Hong Kong to certify that they were free from malachite green or any other harmful agricultural pesticides and chemical substances. In addition, FEHD would send staff to inspect the registered and approved freshwater fish and aquaculture farms in the Mainland.

18. The Administration also explained that the regulation of freshwater fish and cultured marine fish would be less complicated than that of marine fish. Consideration might be given to introducing different regulatory measures for different types of fishery products.

19. When the Administration briefed the Panel in August 2005 on the proposal to amend the Harmful Substances in Food Regulations to prohibit the presence of malachite green in all fish sold in Hong Kong, members generally supported the proposal. Some members, however, expressed concern about the implementation of the regulatory framework for live fishes and the enforcement of the proposed prohibition. They were concerned with whether prosecution would be taken against fish traders if malachite green was found in freshwater fishes supplied from registered aquaculture fish farms, even though such fish had health certificates issued by the authorities. Some members held the view that tightening control at source and at border control points would be more effective.

20. The Administration explained that, after the coming into force of the proposed prohibition, if malachite green was still found in freshwater fish samples collected from registered farms in the Mainland, the Administration would take appropriate actions in accordance with the law after taking due consideration of various factors, such as whether the fish trader concerned had taken adequate measures to ensure the safety of such food. The Administration agreed that the most effective measure was to regulate the freshwater fishes supplied to Hong Kong at their sources. The Administration would send FEHD staff to inspect registered and approved farms in the Mainland for supplying freshwater fishes and aquatic products to Hong Kong. The Administration would also take samples for testing at the Man Kam To Control Point and the two fish wholesale markets.

21. Members expressed concern about the loopholes in legislation as live fish was not regulated as food, and there was "smuggling" of fish from unregistered fish farms and unknown sources. Members were of the view that the Administration should introduce legislation to regulate the importation, wholesaling and distribution of fishery products including live fish, to ensure that such food was fit for human consumption.

22. To address these concerns, the Administration agreed to introduce legislation providing for a registration system for all fishery product traders, requiring landing of live fish at designated landing points, and keeping of records relating to the import, sale and purchase of fish and fishery products. The relevant authorities would also be empowered to inspect, test and recall fishery products on public health grounds. The Administration would revert to the Panel when the proposed legislation was to be introduced.

The Administration's plan to enhance the regulation of importation of fishery products

23. The Panel received a briefing on the Administration's plan to enhance the regulation of importation of fishery products, including live fish, at its meeting on 13 December 2005.

24. According to the Administration, a local regulatory regime for fishery products including live fish would be formulated which might include the following components -

- (a) all traders in the fishery products business, including producers, transporters, sellers, etc. would need to be registered;
- (b) imports would have to land at designated landing points;
- (c) documentation would be required for the import, sale and purchase of fishery products;
- (d) health certificate requirements for cultured products; and
- (e) power for the relevant authorities to inspect, test and recall fishery products on public health grounds.

25. Members were dissatisfied with the slow progress of improving the regulatory framework for fishery products, including live fish and shellfish. They urged the Administration to introduce the legislation on regulatory control as soon as possible. Some members suggested that the Administration should consider bringing the wholesaling of fish under regulatory control. They also considered that the Administration should regulate at source and require all fishery products to be imported from approved sources.

26. The Administration explained that it planned to introduce the relevant legislation on the regulatory framework for fishery products into Legislative Council by the end of 2006 under which imported aquatic and fishery products would be required to land at designated points, i.e. fish wholesale markets. The Administration had also reached consensus with the Mainland authorities to ensure food safety at source.

27. The Panel received a progress report from the Administration on the regulation of freshwater fishes from the Mainland at its meeting on 20 April 2006. The Administration informed the Panel that it would study ways to safeguard the safety of fishery products after the establishment of a Food Safety Centre as part of its long-term policy on food safety. The Administration would also actively consider amending the legislation concerned to further strengthen regulation on fishery products. The Administration hoped to submit the plan for a regulatory mechanism to the Panel and consult the trade at the end of 2006.

28. Some members reiterated their dissatisfaction at the slow progress made. They pointed out that while the Administration had kept informing the public that the import of freshwater fish was subject to a stringent monitoring mechanism, the recurrent discovery of harmful substances in food had weakened public confidence in food safety. The Administration explained that it had to consider carefully the scope of the regulatory framework and the impact on the affected trade.

29. In response to the suggestion for the Administration to devise a comprehensive system for taking samples for testing at various levels of the supply chain, the Administration explained that, as Hong Kong practised free trade and 90% of the food were imported, it was impossible to conduct food tests for all imported food. A risk-based approach was adopted for food surveillance in that food which posed high risk were inspected and tested before entering Hong Kong, while samples of low-risk food would be taken at retail outlets for testing. The Administration considered that the most effective way to ensure food safety was management at source.

Relevant papers

30. A list of relevant papers and documents is in the **Appendix** for members' easy reference. The papers and documents are available on the Council's website at <http://www.legco.gov.hk/english/index.htm>.

Relevant Papers/Documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion Passed/Council Question</u>
Panel on Food Safety and Environmental Hygiene	26 October 2004	Administration's paper - LC Paper No. CB(2)75/04-05(06) Background brief prepared by the Legislative Council Secretariat - LC Paper No. CB(2)75/04-05(07) Minutes of meeting LC Paper No. CB(2) 289/04-05
	14 December 2004	Administration's paper - Paper No. CB(2)362/04-05(07) Minutes of meeting LC Paper No. CB(2)564/04-05
	12 July 2005	Administration's paper - Paper No. CB(2)2205/04-05(01) Background brief prepared by the Legislative Council Secretariat - LC Paper No. CB(2)2205/04-05(02) Minutes of meeting LC Paper No. CB(2)2597/04-05
	19 August 2005	Administration's paper - Paper No. CB(2) 2464/04-05(01) Minutes of meeting LC Paper No. CB(2)1544/05-06
	26 August 2005	Administration's paper - Paper No. CB(2) 2492/04-05(01) Minutes of meeting LC Paper No. CB(2)1473/05-06

	30 August 2005	<p>Paper prepared by the Legal Service Division on Harmful Substances in Food (Amendment) Regulation 2005 - LC Paper No. LS108/04-05</p> <p>Legislative Council Brief provided by the Health, Welfare and Food Bureau on Harmful Substances in Food (Amendment) Regulation 2005 - HWF(F) CR/2/3231/05</p> <p>Minutes of meeting LC Paper No. CB(2)1660/05-06</p>
	2 September 2005	<p>Administration's papers - Paper Nos. CB(2)2523/04-05(01)&(02)</p> <p>Minutes of meeting LC Paper No. CB(2)1735/05-06</p>
	8 November 2005	<p>Background brief for the Subcommittee on Harmful Substances in Food (Amendment) Regulation 2005 prepared by LegCo Secretariat CB(2) 129/05-06(02)</p> <p>Minutes of meeting LC Paper No. CB(2)624/05-06</p>
	13 December 2005	<p>Administration's paper - Paper No. CB(2)625/05-06(05)</p> <p>Background brief prepared by the Legislative Council Secretariat - LC Paper No. CB(2)625/05-06(06)</p> <p>Minutes of meeting LC Paper No. CB(2) 849/05-06</p>
	20 April 2006	<p>Administration's paper - Paper No. CB(2)1789/05-06(01)</p> <p>Minutes of meeting LC Paper No. CB(2)2983/05-06</p>