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14 April 2008

Mrs Angelina Cheung
Principal Assistant Secretary
Food and Health Bureau
20/F, Murray Building
Garden Road
Hong Kong

BY FAX
Fax No. 2136 3282

Dear Mrs Cheung,

**Food and Drugs (Composition and Labelling)
(Amendment: Requirements for Nutrition Labelling and
Nutrition Claim) Regulation 2008 (L.N. 69 of 2008)**

Thank you for your letter of 10 April 2008. Having considered the Administration's response, I have further comments on the above Regulation which are set out in the Annex for your consideration.

I would appreciate it if you would let me have the Administration's reply in both languages at your earliest convenience.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

Encl.

cc: DoJ (Attention: Miss Emma WONG, GC) Fax No. 2536 8178
LA
SALA1

**Further Comments on Food and Drugs
(Composition and Labelling) (Amendment: Requirements for
Nutrition Labelling and Nutrition Claim) Regulation 2008
(L.N. 69 of 2008)**

1. Meaning of “food of the same version” for the purposes of the small volume exemption scheme under Part 2 of Schedule 6

The examples given in paragraph 2(b) of the note attached to the Administration’s letter dated 10 April 2008 (the Administration’s Note) relate to what are to be considered as different food products. Please give examples on what is food of the same version. Is it suggested that products of the same flavour, same packing size or same bar code will be considered as food of the same version for the purpose of the small volume exemption scheme? To enable food traders to have a better understanding of how the Authority is to exercise his power relating to the scheme, please consider stipulating in the Regulation the factors that the Authority will take into account when considering an application for exemption.

2. Section 1(4)(b) of Part 2 of Schedule 6

The effect of section 1(4)(b) of Part 2 of Schedule 6 is that the Authority is empowered to impose conditions during the period of validity of the exemption. If the Authority decides to exercise this power, this would have the effect of varying the existing conditions to which the exemption is subject or imposing additional conditions on the person to whom the exemption is granted (the grantee). As the rights and obligations of the grantee may be affected by the change of conditions or imposition of additional conditions, will the grantee be given an opportunity to be heard before the Authority exercises his power, having regard to the principles of natural justice?

3. Renewal of exemption under section 2 of Part 2 of Schedule 6

The answer given in paragraph 2(c) of Administration's Note suggests that when the Authority grants approval of the application for exemption, it will be specified in the conditions that the conditions apply to the same exemption, whether it is a new or renewed exemption. As the exemption has a period of validity, it is apparent that the conditions imposed on the grant of exemption would only apply during that period of validity. Please therefore explain how it is within the scope of the Authority's power to specify that the conditions apply to a renewed exemption even before the exemption is renewed. If it is intended that the Authority should have the power to impose conditions on renewal of the exemption, please reflect this intention clearly in the Regulation.

4. Appeal against the Authority's decision

- (a) Under section 3(4) of Part 2 of Schedule 6, the grantee is permitted to make representations to the Authority before the Authority revokes the exemption. This seems to be different from what is stated in paragraph 2(e) of the Administration's Note. If it is intended that a person aggrieved by the Authority's decision to revoke the exemption may make representations to the Authority within a specified period, please include a provision to reflect this intention.
- (b) As there is no provision under the Regulation that provides for appeal against the Authority's decision of refusing an application for grant of exemption, refusing an application for renewal of the exemption or revoking the exemption, please clarify the legal basis on which the aggrieved person may appeal against the Authority's decision in court as mentioned in paragraph 2(e) of the Administration's Note.