



AmCham

**The American Chamber
of Commerce in Hong Kong**
1904 Bank of America Tower
12 Harcourt Road, Hong Kong

**Testimony by Dr. Richard R. Vuylsteke
President, American Chamber of Commerce in Hong Kong
to the
Legislative Council Subcommittee on Food and Drugs (Composition and
Labeling)
concerning
Amendment: Requirements for Nutrition Labeling and Nutrition Claim
Regulation 2008**

05 May 2008

[Text prepared for oral delivery; this presentation has attachments with further details]

Good afternoon, and thank you for giving the American Chamber of Commerce in Hong Kong an opportunity to address government's unique mandatory nutrition labeling scheme currently under review. This is an issue of importance both to AmCham members and the larger Hong Kong community.

The proposed labeling scheme covers 95 percent of pre-packaged food that is eaten in Hong Kong and – as you have heard – offers some flexibility by providing small-volume exemptions for products that sell less than 30,000 units per year. This exemption is sensible. By granting it, the government recognizes that it just isn't economically viable for small volume products not specifically packaged for the Hong Kong market to comply with its proposed nutritional labeling regulations.

Unfortunately – at least at the current state of discussion – this exemption will not apply to small-volume products that make nutritional claims. That is why I am here before you today. By not allowing this exemption, it means that thousands of healthier products, organic products, product choices especially useful for diabetics and dieters, and products favored by various ethnic and national minority groups resident in Hong Kong will disappear from sale by the end of this month.

[Details about the specific labeling required can be found in the attachments to this presentation.]

Why is AmCham concerned – and why does the Chamber think the members of the Legislative Council should be concerned? I will mention two areas:

First, there is a huge negative impact on consumer choice. The growing range of “nutritional claim” products produced by the United States, for example, will disappear from Hong Kong market shelves because of the high costs of complying with “Hong Kong is unique” labeling regulations. This will substantially narrow the large spectrum of products already available in Hong Kong – and it will also prevent the introduction of new healthy product lines. There is no health gain at all when the full fats and junk foods of the world can enter this market unimpeded because they make no “nutrition claim,” but the low-fat, low-sodium, low-calorie foods aimed for health-conscious niche markets are effectively driven off the shelves by well-meaning regulators.

Hong Kong shoppers are well educated and very savvy about labeling and the United States has the world’s most stringent labeling laws. Yet hundreds, if not thousands, of U.S. products will disappear from Hong Kong. To achieve what end?

If there are products from the United States (or elsewhere) that make misleading claims, Hong Kong law already in place offers a mechanism to take these off the market. Existing law just needs vigorous enforcement. And such products are a small fraction of the total in all the world’s markets. If attacking misleading claims is this draft regulation’s purpose, it is an overreaction with serious negative consequences.

Second, the chamber is concerned about the overall impact on Hong Kong’s cherished image as a vigorous free trade port. Hong Kong has built its enviable “brand” as a uniquely open World City. But “Hong Kong is unique” regulatory changes, such as those discussed today, can only cloud its historical record for openness and good sense, and is a step backward from the behavior of a World City.

The consequences of this regulatory change will especially affect the quality of life for the international community in Hong Kong. In a place where the focus on food is legendary, it just doesn’t seem right that the government needs to limit the choices of Hong Kong’s well-educated and super-smart shoppers simply because it can. There is no competitive advantage in Hong Kong coming to be accused of being a “nanny state.”

So what action would AmCham like to see next?

Please include nutritional-claim products as part of the small volume exemptions in the new regulations. By doing so, you will –

- Act in the public interest by continuing to satisfy the huge diversity of food preferences (old and new) among Hong Kong’s ethnic and national groups. Food choice does make a difference to quality of life!
- Keep variety in local food markets, especially for diabetics, weight-watchers, and others concerned with healthy food alternatives.
- Keep “Hong Kong is unique” a positive World City image.

Thank you.

**AmCham Testimony
Attachment 1**

NUTRITION LABELING REGULATION PROPOSAL WILL REDUCE HEALTHY CHOICES

- SCMP oped by James B. Cunningham, U.S. Consul General (15th April 2008)

One of the Hong Kong daily papers recently ran an editorial supporting the Hong Kong government's food labeling proposal, gazetted on April 3. I was pleased to see that to illustrate the desirability of a quality labeling regime, the paper used a U.S. nutrition label. We consider the U.S. regime to be among the best and most demanding in the world, and want consumers to have good information about what they eat. The irony here, though, is that under the proposal in its current form, many American products bearing that label will be effectively excluded from the Hong Kong market.

One of the pillars of Hong Kong's status as an international city is the tremendous variety and quality of its food choices. The cosmopolitan makeup of Hong Kong's population and its pragmatic regulatory regime have given its residents access to the newest, the finest and the healthiest products the world has to offer. This appealing characteristic will change if the labeling proposal takes effect as currently written. Though well-intentioned, the proposal will significantly reduce the variety of healthier food choices for Hong Kong consumers. It will also raise prices and contribute to inflation.

The policy objectives behind the labeling amendment are laudable: to help consumers make informed food choices, to encourage manufacturers to apply sound nutrition principles, and to prevent misleading or false labels and claims. But, despite its overwhelming dependence on imported food, Hong Kong authorities have devised a labeling scheme unique in the world. Most products would have to be relabeled and many would have to undergo new nutritional analysis to comply with the government's regulation. For a market of just seven million people, these added costs will make the importation of many products unfeasible.

Hong Kong's proposal is also far more rigid than other major importers, including mainland China, Japan and Korea. Singapore -- a market that also carefully protects its consumers -- has a flexible system that accommodates the various labeling standards of its principal suppliers.

Hong Kong's inclusion of a "small volume exemption" (i.e., not requiring re-labeling for products selling fewer than 30,000 units) is important and will doubtless keep many products in the market. However, it will make it more difficult and more costly to import *healthier* foods. This is because the small volume exemption to Hong Kong's rigid requirements is lost if the packaging contains a nutritional claim such as "low fat," "low sodium," or "high in vitamin A".

This is not an issue of labeling versus non-labeling, or of Hong Kong's right to set its own standards. It is an issue of rigid standards that unnecessarily reduce consumer choice versus more flexible ones. Virtually every one of the tens of thousands of imported items that make a nutritional claim already provides detailed nutritional information on the package. For example, products from the U.S. are labeled according to U.S. law, which is the world's most stringent. They do not, however, comply with Hong Kong's proposal. If not relabeled precisely according to the Hong Kong standard, these products will be banned. The economic reality of today's highly efficient and innovative food processing industry is that many of these foods will disappear from the Hong Kong market.

Clearly, the growing number of Hong Kong consumers who depend on products with claims for medical reasons (such as products for diabetics labeled "sugar-free"), or simply for their general health, will be seriously affected by this legislation. Moreover, if passed in its current form, the amendment will make Hong Kong people among the last instead of the first to gain access to newer and better foods. By imposing high registration, nutritional analysis, and relabeling costs on products with claims, test marketing new foods becomes expensive and complicated.

There is a simple solution. Hong Kong should broaden the small volume exemption to include food products that make nutritional claims. This would allow today's flexible labeling standards to apply to foods until sales reach a level that economically allows them to comply with the new Hong Kong scheme. This would go a long way in preserving the wonderful diversity of food that is a unique part of the fabric of "Asia's world city." Moreover, it would do so without undermining the objectives of this important legislation.

Q & A on Nutrition Labeling (April 28, 2008)

1. How does US Consulate General comment on the HK Nutrition Label system?

The policy objectives behind the proposed labeling amendment are laudable: to help consumers make informed food choices, to encourage manufacturers to apply sound nutrition principles, and to prevent misleading or false labels and claims. Though well-intentioned, this proposal as currently written will significantly reduce the variety of healthier food choices for Hong Kong consumers. It will also raise prices and contribute to inflation. This is because Hong Kong has developed a standard that is unique in the world. No other country labels its products according to the Hong Kong standard, especially when a nutritional claim is made. Because Hong Kong is a relatively small market, it is not economically feasible to re-label foods especially for Hong Kong.

2. Is it too difficult for the US Food Industries to meet the requirement?

Yes, it is too difficult and too costly for the U.S. food industry to meet Hong Kong's unique requirements when those foods carry claims and are imported in small volumes. Despite the fact that the U.S. has the most rigorous labeling standard in the world, U.S. labels would not be acceptable under the Hong Kong proposal for products that carry nutritional claims.

The problem has to do with the fact that Hong Kong has adopted a different set of definitions and standards for measuring nutrients than is used by the United States. For example, because Hong Kong has different definitions for "low fat," and "0 Transfat," U.S. products making these claims could not enter Hong Kong without being re-tested and re-labeled at a cost of thousands of dollars. The same is true for vitamins and minerals. Because Hong Kong uses a different standard, most U.S. "high calcium" and "high in Vitamin C" products that are currently available in Hong Kong and in most other countries would be economically forced from the market.

Because approximately 90% of all "0 Transfat" products currently available in Hong Kong are from the United States and sold in small volumes, Hong Kong residents will lose access to most of these products. The same is true for many "low fat," "low sugar," and "high vitamin and mineral" items that are sold in Hong Kong. Because these products represent healthier choices, we believe it is unfortunate that these products will be forced from the market for those that want healthy choices, or have special dietary needs.

3. Do the US food industries show any concern to the system?

Yes. The largest U.S. exporter of foods to Hong Kong (approximately 3000 different products) has already been informed by a major Hong Kong importer that because of the new labeling proposal, the importer will not purchase any new U.S. products that are "0 Transfat" or "Low Fat." We have heard exporters from some other countries have been told the same thing.

4. Is there any statistics reflect the volumn, number or types of US food which contain nutritional claim (high calcium, low fat or no sugar)? Are there any difficulties for them to meet the HK standard?

Over 20% of the thousands of U.S. prepackaged foods carry nutrition claims, which are based on stringent claims conditions set up by the FDA. Certain product categories, like breakfast cereals and fruit juices, snack foods and yogurts would have a much higher percentage carrying claims, between 65-80%.

To repeat, no U.S. products that carry vitamins and minerals claims meet the Hong Kong labeling requirement because of the differences in the format of labeling. (U.S. products show vitamins and minerals by percentage of daily value, whereas the Hong Kong requires absolute value.)

5. Is there any estimate on the volume, number or types of US pre-packaged food will withdraw from HK after the execution of the Nutrition Label System?

We understand from speaking with retailers and industry that a very large percentage of U.S. (and non-U.S.) products with nutritional claims will leave the market. Neither importers nor manufacturers will find it economically viable to make the necessary changes Hong Kong's unique system requires.

It is also important to note that few if any new-to-market products making nutritional claims will be able to enter the market.

6. As we know, HK will give exemption to the food which annual sales below 30000 items except the food with nutritient claims. HK government officials emphasize the rule is the same as US. How does US Consulate General think about it? Does US Consulate General support this rule?

Hong Kong's inclusion of a "small volume exemption" (i.e., not requiring re-labeling for products selling fewer than 30,000 units) is important and will doubtless keep many products in the market. However, it will make it more difficult and more costly to import healthier foods. This is because the small volume exemption to Hong Kong's rigid requirements is lost if the packaging contains a nutritional claim such as "low fat," "low sodium," or "high in vitamin A".

The U.S. small volume exemption scheme was developed primarily for domestic industry in a market of 300 million consumers to help small and medium sized enterprises. It was not developed for a city of 7 million residents that depends on imported products to supply the vast majority of its food. Furthermore, all U.S. products sold in Hong Kong already carry full nutrition information.

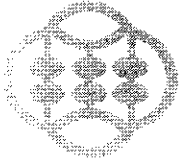
This is not an issue of labeling versus non-labeling, or of Hong Kong's right to set its own standards. It is an issue of rigid standards that artificially reduce consumer choice versus more flexible ones. Virtually every one of the tens of thousands of imported items that makes a nutritional claim already provides detailed nutritional information on the package. For example, products from the U.S. are labeled according to U.S. law, which is the world's most stringent. They do not, however, comply with Hong Kong's proposal. If not relabeled precisely

according to the Hong Kong standard, these products will be banned. The economic reality of today's highly efficient and innovative food processing industry is that many of these foods will disappear from the market.

Clearly, the growing number of Hong Kong consumers who depend on products with claims for medical reasons (such as products for diabetics labeled "sugar-free"), or simply for their general health, will be seriously affected by this legislation. Moreover, if passed in its current form, the amendment will make Hong Kong people among the last instead of the first to gain access to newer and better foods. By imposing high registration, nutritional analysis, and relabeling costs on products with claims, test marketing new foods becomes expensive and complicated.

There is a simple solution. Hong Kong should broaden the small volume exemption to include food products that make nutritional claims. Extending the small volume exemption to foods whose packaging make nutritional claims would ensure that these healthier foods--many from the U.S. and thus labelled already according to one of the world's most stringent standards--would continue to be available for Hong Kong consumers. This would allow today's flexible labeling standards to apply to foods until sales reached a level that economically allows them to comply with the new Hong Kong scheme. It would do so without undermining the objectives of this important legislation.

END



For Immediate Release

Draft food labelling legislation deprives consumers of healthy choices

(17 April 2008, Hong Kong) The Hong Kong Retail Management Association shares consumers' fear that the unintended consequence of the nutrition labelling legislation as currently proposed will be the disappearance from sale of nearly all products that make nutrition claims, including those that are labelled "transfat-free", "contains omega-3", "25% less fat", "low sodium", and "cholesterol -free", to name but a few.

Although accounting for only 2.5% of pre-packaged food eaten in Hong Kong, the Association estimates that there are 15,000 of these healthier products that make nutrition claims, representing more than 20% of the variety of all pre-packaged food products that are available in Hong Kong.

The disappearance of up to 15,000 of these healthier and more nutritious products from sale would have a major impact on consumers, who presently enjoy and are demanding a wide variety of international food choices. Furthermore, new food products will bypass the Hong Kong food market, which will stagnate as another unintended consequence.

The trade supports the introduction of mandatory nutrition labelling, but a scheme must be devised that maintains consumer choice and provides nutrition information for consumers.

There is no international consensus on nutrition labelling and Hong Kong is a small market that imports 90% of its pre-packaged food range, with relatively few local manufacturers. Accordingly, flexibility is required otherwise consumers will be deprived of the wonderful array of international food choices that they presently enjoy.

95% of pre-packaged food that is currently eaten in Hong Kong will be covered by



**HONG KONG
RETAIL MANAGEMENT
ASSOCIATION**

香港零售管理協會

the proposed new unique nutrition labelling scheme, and we generally support the Government's proposal in this regard.

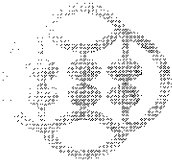
By including in the regulations a small volume exemption for products that sell less than 30,000 units per year, the Government has recognised that it is not economically viable for small volume products that are not packaged specifically for the Hong Kong market to comply with its proposed nutritional labelling regulations. We support the Government's proposal in this respect as this will keep products on shelves for consumers by allowing small volume products to be imported without incurring prohibitively expensive nutrient testing and re-labelling costs.

Unfortunately, the exemption will not apply to small volume products that make nutrition claims, such as those claims listed above. That means that healthier products, organic products, and products favoured by ethnic minorities may disappear from sale because it will not be economically viable to nutrient test and re-label these products. All of these products already have extensive nutrition labelling that complies with the labelling laws of the country of origin.

The current nutrition labelling proposal will also ban from sale products that make nutrition claims that are permitted in other countries, such as "contains omega-3", because these claims are not included in Hong Kong's unique list of allowable claims. For example, many smoked salmon products, canned fish products and fish oil capsules will be banned from sale in Hong Kong, despite being legitimately sold overseas.

Much has been said about products that make false claims and the need for further regulations in this regard, but it is important to note that it is already an offence under existing food labelling regulations to sell products that make false claims. Where false claims are made on products, offenders can and should be prosecuted.

By being too prescriptive in the definition of allowable claims, it means that no product that makes a nutrition claim that is imported from USA can automatically be



HONG KONG
RETAIL MANAGEMENT
ASSOCIATION

香港零售管理協會

sold in Hong Kong because Hong Kong has different standards to USA for *all* types of nutrition claims (including “low fat”, “transfat-free”, and “low sugar”).

To avoid the loss to consumers of up to 15,000 healthier products and to avoid the stagnation of Hong Kong’s food market, we urge the Government and legislators to extend the small volume exemption to products that make nutrition claims.

- END -

For further enquiries, please contact:

Mr Charlie Wood

Tel: 2299 1956