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Panel on Food Safety and Environmental Hygiene

**Background brief prepared by
the Legislative Council Secretariat for the meeting on 8 May 2012**

Implementation of the Nutrition Labelling Scheme

Purpose

This paper gives an account of the past discussions by the Panel on Food Safety and Environmental Hygiene ("the Panel") on the implementation of the Nutrition Labelling Scheme ("the Scheme").

Background

2. The Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 ("the Amendment Regulation"), which introduces the Scheme for prepackaged food, came into operation on 1 July 2010 after a two-year grace period. The Scheme requires all prepackaged food to label the content of energy plus seven core nutrients, namely: (i) protein, (ii) carbohydrates, (iii) total fat, (iv) saturated fat, (v) trans fat, (vi) sodium, and (vii) sugars, as well as any nutrient for which a claim is made, and regulates different types of nutrition claims.

3. To facilitate the food trade and to minimize the impact on food choice, a number of exemptions from the nutrition labelling requirements are provided in the Amendment Regulation, e.g. exemption for prepackaged food packed in a container which has a total surface area of less than 100 cm². In addition, a

small volume exemption ("SVE") scheme has been introduced to exempt food products with annual sales volume of 30 000 units or below which do not carry nutrition claims. Food manufacturers/importers need to apply to the Director of Food and Environmental Hygiene ("DFEH") for SVE, which is subject to conditions set by DFEH, including the requirement of monthly reporting of sales volume at the importer's/manufacturer's level. Traders will be notified when the sales volume has reached 70% of the 30 000 level, and once the sales volume exceeds the limit, i.e. 30 000 units per year, all food items currently being put on the market will have to be labeled in accordance with the legal requirements within 30 days. Sales volume refers to those at the manufacturer or importer level, i.e. number of units that were sold to the retailers or distributors, and does not refer to those actually sold out by the retailers to the ultimate consumers.

Past discussions by the Panel

4. The Panel was briefed at its meeting on 12 July 2011 on the implementation of the Scheme since it came into operation on 1 July 2010.

Taste claims of food

5. Members expressed grave concerns that some prepackaged food claiming "less sweet" actually contained high amount of sugars. To prevent consumers from being misled by such taste claims, members suggested that "taste" of food be defined in the legislation. According to the Administration, given that the sense of taste depended on subjective factors of human feelings perception, it had been thoroughly discussed during the scrutiny of the Amendment Regulation and agreed that it could not be defined in the legislation the claims of such perceived taste. Education on taste claims such as "less sweet" and "light fat" were covered in the public education and publicity programmes. With the intensive public education and publicity activities, the public would understand how to make use of the information in nutrition labels to make healthier food choices. The Administration stressed that it would ensure the accuracy of nutrition labels and nutrition claims of food products by carrying out inspections and taking samples for chemical analysis.

Prosecutions and enforcement actions against non-compliant cases

6. Regarding the query on why there had been no prosecution cases since the implementation of the Scheme, the Administration advised members that as at 24 June 2011, the Centre for Food Safety ("CFS") had checked 16 245 prepackaged food products with 111 found not complying with the Scheme. Of the 111 non-compliant cases, 47 were found without either nutrition labels or complete "1+7" core nutrients label and 33 were found to be inaccurate in the nutrition labels and nutrition claims after chemical analysis. Where such irregularities were identified, CFS would issue letters to the traders concerned requiring explanations within 21 days. If their explanations were not accepted by CFS, warning letters would be issued requiring actions to comply with the requirements of the Scheme within 60 days. For traders who failed to do so, CFS would initiate prosecution. Nevertheless, the trade had been co-operative so far, and thus no prosecution had been mounted.

7. On whether there was sufficient manpower to support enforcement, members were advised that CFS had deployed staff to conduct inspections in retail outlets including hawkers to undertake enforcement actions since the implementation of the Scheme on 1 July 2010.

The 21-day enquiry period

8. There was a strong call for retaining the 21-day enquiry period so that the traders concerned could be allowed more time to look into the matter before the food product in question was required to be withdrawn from the shelves. As supermarkets would not allow the food products for which warning letters had been issued by the Food and Environmental Hygiene Department to remain on shelves, members took the view that the 21-day enquiry period was necessary for the trade to verify the test result from the Administration.

9. The Administration advised members that the trade had been consulted before the implementation of the Scheme, and it was agreed that the 21-day enquiry period would be arranged as a flexible enforcement measure for traders to explain any irregularities identified in the first year of the implementation of the Scheme. As the Scheme had been operated for one year, the Administration considered that the trade was already familiar with the statutory

requirements. The 21-day enquiry period was thus no longer necessary, and CFS should issue a warning letter to the trader concerned upon detection of irregularity. This practice would also be consistent with the enforcement actions taken against other non-compliant cases relating to general-labelling. The Administration pointed out that strong response from the trade to such arrangement had not been received.

10. To facilitate the trade's compliance with the Scheme, members requested the Administration to reconsider retaining the 21-day enquiry period, and suggested including those 21 days into the grace period of 60 days.

Food choices for consumers

11. While commending the Administration for its efforts in promoting and implementing the Scheme, members queried whether the Scheme had reduced the food choices for consumers, particularly those for people with allergies. Members were advised that an independent consultant was commissioned to find out the quantity of different types of prepackaged food products available in various retail outlets before and after the commencement of the Scheme. The consultant had completed the fieldwork of the last phase of the survey project in April 2011 and was analyzing the data collected. The preliminary figures obtained from the survey showed that the food choices had increased since the implementation of the Scheme. The survey was expected to be completed in the second half of 2011. The Administration pledged to report to the Panel when the result was available.

12. Regarding the impact of the Scheme on food choices for people with allergies, the Administration advised members that according to the Chairman of The Hong Kong Allergy Association ("Allergy HK"), the Scheme had not brought a negative impact on food prices and choices for people with allergies. Allergy HK indicated that for people with food allergies, their food choices hinged on whether the food product contained substances that would cause allergy and its country of origin.

Food products sold by hawkers and trans fat in non-packaged food

13. Members sought clarification as to whether food products sold by hawkers, such as peanut candies, were regarded as prepackaged food and

regulated under the Scheme. The Administration pointed out that according to Regulation 4B(1) of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W), unless exempted, "prepackaged food shall be marked or labeled with its energy value and nutrient content in compliance with Part 1 of Schedule 5". Regulation 4B(5) further stipulated that "any nutrition claim made on the label of, or in any advertisement for, a prepackaged food shall conform to Part 2 of Schedule 5". Concerning the case of peanut candies sold by hawkers, the Administration explained that it depended on whether the food product concerned fulfilled the definition of prepackaged food under Cap. 132W. According to Regulation 2 of Cap. 132W, "prepackaged food meant any food packaged, whether completely or partially, in such a way that (a) the contents could not be altered without opening or changing the packaging; and (b) the food was ready for presentation to the ultimate consumer or a catering establishment as a single food item".

14. Noting that the Scheme had already covered the prepackaged food with trans fat, members raised concern as to whether there would be a mechanism enabling consumers to become aware of the amount of trans fat that they would take in from non-prepackaged food. The Administration advised members that CFS had set up two working groups to develop two sets of guidelines for the trade to promote manufacturing foods containing low levels of sodium, sugar and fat (including trans fat). The Administration was of the view that thorough discussion and consideration would be required on whether more information could be provided about the amount of trans fat in non-prepackaged food at the levels of retailers and food service establishments, as well as the feasibility and coverage of food labeling scheme for trans fat. Though there was an overseas example in the United States where trans fat had been banned from restaurants in the New York City, it was difficult for restaurants in Hong Kong to indicate in their menus the amount of trans fat contained in the food they sold given that there was a wide variety of dishes in Hong Kong.

SVE Scheme

15. As regards members' concern as to how to verify the annual sales volume of food products applying SVE, the Administration explained that apart from the requirement of monthly reporting of sales volume at the importer's and manufacturer's level, site inspection at importers and retailers would also be conducted by CFS on the food products applying for SVE. Retailers might be

requested to provide receipts for verification. The Administration would further explore with the trade on how to increase the transparency of the SVE Scheme with a view to facilitating traders to keep track of the sales volume of their food products.

Relevant papers

16. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
2 May 2012

Relevant papers on the Nutrition Labelling Scheme

Meeting	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	22.6.2009 (Item II)	Agenda Minutes CB(2)1917/08-09(01)
	13.4.2010 (Item V)	Agenda Minutes CB(2)1225/09-10(01) CB(2)1230/09-10(05)
	12.7.2011 (Item IV)	Agenda Minutes CB(2)2305/10-11(02) CB(2)2305/10-11(03)
Legislative Council	19.1.2011	[Question 20] Asked by: Hon Frederick FUNG Implementation of Nutrition Labelling Scheme