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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting on 17 and 18 April 2013

**Proposed resolution under the
Interpretation and General Clauses Ordinance**

The Secretary for Food and Health will move, at the above Council meeting, a proposed resolution under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to the Import and Export (General) (Amendment) Regulation 2013, which was published in the Gazette as Legal Notice No. 25 of 2013. The proposed resolution is attached for Members' consideration. The President has directed that it be printed in the terms in which it was handed in on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is also attached.

(Odelia LEUNG)
for Clerk to the Legislative Council

Encl.

Interpretation and General Clauses Ordinance

Resolution

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

**Import and Export (General) (Amendment) Regulation
2013**

Resolved that the Import and Export (General) (Amendment) Regulation 2013, published in the Gazette as Legal Notice No. 25 of 2013 and laid on the table of the Legislative Council on 27 February 2013, be amended as set out in the Schedule.

Schedule

**Amendments to Import and Export (General)
(Amendment) Regulation 2013**

1. **Section 2A added**
After section 2—
Add
“2A. **Import and Export (General) Regulations further amended**
The Import and Export (General) Regulations (Cap. 60 sub. leg. A) are further amended as set out in section 6.”
2. **Section 6 added**
After section 5—
Add
“6. **Regulation 2 amended (interpretation)**
Regulation 2, definition of *powdered formula*—
Repeal
everything after “means”
Substitute
“any substance in powder form that, having regard to any product descriptions and users instructions (if applicable) and any other relevant circumstances, is intended for or claimed to be for consumption, as milk powder or soya-based formula powder, in liquid form by persons of any age under 36 months (notwithstanding it

is also claimed, if applicable, to be suitable for consumption by persons of any age over 36 months) to satisfy their nutritional requirement;”.”.

**Speech by the Secretary for Food and Health
on his Proposed Amendments to the
Import and Export (General) (Amendment) Regulation 2013
at the Legislative Council Meeting on 17 April 2013 (Wednesday)**

Mr President,

I rise to move the resolution, as set out under my name, to amend the Import and Export (General) (Amendment) Regulation 2013 (“the Amendment Regulation”) to amend the definition of “powdered formula” added by Regulation 3 of the Amendment Regulation. The details are set out in the Agenda circulated to Members.

2. First of all, I would like to express my gratitude to the Subcommittee on the Amendment Regulation, led by its Chairman, the Hon WONG Ting-kwong, for giving us valuable views and comments on our policy and the provisions of the Amendment Regulation at its meetings over the past few weeks.

3. The Government has been promoting the merits of breastfeeding to encourage its adoption. Nevertheless, we have also noted that for various reasons, many parents have not chosen to breastfeed. For the infants and young children of these parents, powdered formula is their sole or major source of food. Therefore, it is very important to ensure a sufficient and steady supply of powdered formula for these parents and their infants and young children.

4. At the beginning of this year, the Government noted a serious shortage of individual brands of powdered formula at the local retail level due to parallel trading activities. Despite our efforts in actively liaising with suppliers, urging them to enhance their services, ensure sufficient stock in hand, and put in place measures to combat the malpractices of some retailers, the shortage still persisted. The parallel trading activities

of powdered formula showed no sign of receding, but instead became more rampant. The activities spread from areas in the New Territories, including Sheung Shui, Fanling and Tai Po, to urban areas.

5. I would like to stress that the Amendment Regulation is only a measure of last resort. We hope that the Government's action will have the understanding of the people of Hong Kong and the Mainland. The purpose of our measure is not to target visitors from the Mainland or other places. Our sole intention is to ensure a sufficient and steady supply of powdered formula for the infants and young children of local parents.

6. We have also noted that since the commencement of the Amendment Regulation on 1 March, parallel trading activities related to powdered formula has dropped substantially, while the supply at retail outlets has apparently become sufficient and stable compared with the previous situation. The Amendment Regulation has been very effective.

7. We will continue to maintain close liaison with major suppliers of powdered formula and retail representatives and urge them to step up efforts in improving the supply chain management to ensure a sufficient and steady supply of powdered formula for local infants and young children. Among other things, they should ensure sufficient local supply, improve the stock replenishment mechanism, set up services for advance order at retail outlets and provide support to hotlines for taking purchase orders by ensuring that there is sufficient manpower to handle purchase orders arising from a surge in demand.

8. The Administration will conduct a comprehensive review of the effectiveness of these enhancement measures after the Amendment Regulation has been in force for one year. In the meantime, we will report on the progress to the LegCo Panel concerned regularly.

9. On the definition of powdered formula in the Amendment Regulation, we consider that the present definition has fully and effectively reflected our policy intent in regulating powdered formula. In response to Members' views, however, we have decided to refine the definition. The purpose of our proposed amendments only aims at making the provisions clearer. The scope of regulation on the export of powdered formula and our policy intent remain unchanged.

10. I will now introduce three aspects of the amendments in detail, namely, the meaning of powdered formula, considerations of the Customs and Excise Department (C&ED) in law enforcement, and consumption groups of the powdered formula subject to regulation.

The meaning of powdered formula

11. The target of the Amendment Regulation is milk powder or soya-based formula powder which is intended for consumption in liquid form by infants and young children and which is in the form of powder before blending/mixing with water. The newly amended definition serves to clearly reflect the scope of regulation.

Considerations of C&ED in law enforcement

12. In the current definition, the element of "appears to be" has been included to facilitate effective law enforcement by C&ED by allowing it to make reference to the product descriptions and users instructions on the package of powdered formula products in enforcing the Amendment Regulation. In fact, the package of powdered formula available in the market provides information on the nature, target age group and preparation method, etc. of the product. The current definition also caters for the situation where C&ED cannot take effective enforcement actions by solely relying on the descriptions on the package, such as when the product descriptions or users instructions are deliberately altered or defaced, resulting in illegibility, or when parallel traders change

the appearance of the package of powdered formula in an attempt to evade the enforcement actions of C&ED. In response to Members' views, however, we have decided to delete "appears to be" in the original definition and include the wording "having regard to any product descriptions and users instructions (if applicable) and any other relevant circumstances" in the newly amended definition, with a view to spelling out the original intent of the definition more clearly. There has been a suggestion from Members to delete "and any other relevant circumstances" in the newly amended definition. The Administration considers that the wording is necessary to cater for all possible scenarios in law enforcement which cannot be set out exhaustively, and that deletion of "and any other relevant circumstances" will pose enormous difficulties for C&ED in its enforcement actions and greatly undermine the effectiveness of this provision.

Consumption groups of the powdered formula subject to regulation

13. On the target age groups, the definition of powdered formula in the Amendment Regulation aims at covering powdered formula for consumption by persons of any age under 36 months, thereby ensuring a sufficient and steady supply of powdered formula for infants and young children in Hong Kong.

14. Some Members of the Subcommittee have expressed concern that the present definition would cover some milk powder products intended for adults which may also be consumed by persons aged under 36 months. To tackle this problem, we have considered whether it can be specified in the definition of powdered formula that only formula products "for consumption by persons of 0-36 months only" are included. However, adoption of this phrase as part of the definition of powdered formula will create a huge loophole since the manufacturer may circumvent the Amendment Regulation by slightly changing the target group of the product, for example, specifying that it is for consumption by persons of 0-37 months.

15. In fact, if “for consumption by persons of 0-36 months only” is adopted as part of the definition of powdered formula, no fewer than 80 types of powdered formula for consumption by infants and young children will not be subject to control under the Amendment Regulation as they are targeted “for consumption from birth”, “for consumption from 6 months”, “for consumption by persons aged above 9 months”, “for consumption by persons aged 1-7 years”, etc. Therefore, to avoid creating a loophole while having regard to the demarcation of target groups of the powdered formula products available in the market, we cannot adopt the wording “for consumption by persons of 0-36 months only” as part of the definition of powdered formula.

16. To clearly reflect our policy intent, we have proposed a newly amended definition which specifies that the powdered formula is: “for...persons of any age under 36 months (notwithstanding it is also claimed, if applicable, to be suitable for consumption by persons of any age over 36 months)”. I would like to stress, however, that the definition of powdered formula in the Amendment Regulation does not cover milk powder for consumption only by persons aged above 36 months, such as those intended for pregnant women only as well as those which are prescribed for particular adult age groups (for example, persons aged 51 years or above).

17. The Subcommittee set up by the Legislative Council to scrutinise the Amendment Regulation has carefully deliberated the above amendments. I invite Members to support the resolution.

18. Thank you, Mr President.