

立法會
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by the Administration and
cleared with the Chairman)

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Panel on Trade and Industry

**Minutes of special meeting
held on Thursday, 18 May 2000, at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon CHAN Kam-lam (Chairman)
Hon Kenneth TING Woo-shou, JP (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Hon Cyd HO Sau-lan
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing
Hon MA Fung-kwok
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Hon CHAN Kwok-keung
Hon Mrs Sophie LEUNG LAU Yau-fun, JP

Members absent : Prof Hon NG Ching-fai
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Bernard CHAN
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong

Public officers : **For Item I**
attending

Trade and Industry Bureau

Mr Kenneth MAK
Deputy Secretary for Trade and Industry

Mr Philip CHAN
Principal Assistant Secretary for Trade and Industry

Mr Johann WONG
Assistant Secretary for Trade and Industry

Economic Services Bureau

Miss Rachel CHAN
Principal Assistant Secretary for Economic Services

Environment and Food Bureau

Mr John LEUNG
Principal Assistant Secretary for the Environment and Food

Health and Welfare Bureau

Miss Angela LUK
Principal Assistant Secretary for Health and Welfare 1

Mr Eddie POON
Principal Assistant Secretary for Health and Welfare 3

Electrical and Mechanical Services Department

Mr Roger LAI
Deputy Director/Regulatory Services

Food and Environmental Hygiene Department

Mr LEE Chung-pui
Superintendent (Import/Export)

Department of Health

Mr Thomas TAM
Acting Chief Pharmacist

Clerk in attendance: Mrs Mary TANG
Chief Assistant Secretary (1)6

Staff in attendance : Ms Alice AU
Senior Assistant Secretary (1)5

I Labelling requirements for consumer goods

(LC Paper No. CB(1)1604/99-00(01) - Information paper provided by the Trade and Industry Bureau;

LC Paper No. CB(1)1604/99-00(02) - Information paper provided by the Economic Services Bureau;

LC Paper No. CB(1)1604/99-00(03) - Information paper provided by the Environment and Food Bureau; and

LC Paper No. CB(1)1604/99-00(04) - Information paper provided by the Health and Welfare Bureau)

The Chairman welcomed the representatives from the policy bureaux and government departments who attended the meeting. He said that this special meeting was convened to follow-up on issues raised by the Bills Committee on Trade Marks Bill when discussing the parallel importation of trade mark goods and the labelling requirements for imported goods. Members could exchange views with the Administration on matters relating to the labelling requirements for consumer goods in Hong Kong.

Labelling requirements for consumer goods in general

2. At the Chairman's invitation, the Deputy Secretary for Trade and Industry (DS/TI) briefed members on the existing labelling requirements for consumer goods governed by legislation under the purview of the Trade and Industry Bureau (TIB), as set out in the information paper (LC Paper No. CB(1)1604/99-00(01)) provided by the Bureau.

3. Miss Cyd HO was particularly concerned about the safety of toys and children's products as no specific labelling requirements were laid down under the law. According to existing legislation, the Commissioner of Customs and Excise was only empowered to require that a warning notice be published in a form and manner to be specified by him. In response, the Principal Assistant Secretary for Trade and Industry (PAS/TI) explained that a general safety requirement for toys and children's products had already been stipulated under the Toys and Children's Products Safety Ordinance (Cap. 424). When deciding whether certain toys or children's products were in compliance with the requirement, consideration would be given to the manner in which such toys or children's products was marketed, including the use of any additional mark and any instructions or warnings with respect to the keeping or use of the products.

4. Miss HO queried whether the general safety requirement was adequate for the purpose. Illustrating her point with the general requirement for toys, she said that only simple warning about toys with small accessories were not suitable for children of a certain age was made. Other than that, no other safety standards were set out. She opined that the law should ensure that before such products were put on sale in Hong Kong, they should have clear labels specifying the relevant safety requirements,

the potential risks and the correct use of the products. This would enable consumers to make informed choices. Moreover, it would obviate the need to recall products which were subsequently found to be defective upon testing by the Customs and Excise Department (C&ED) or the Consumer Council (CC).

5. PAS/TI replied that when enforcing the general safety requirement, C&ED would take into account results of sampling tests conducted either in-house or by CC, as well as research findings from overseas countries before a suitable course of action was decided. Possible actions would include serving a notice to warn in respect of a particular product to the concerned party and recalling products which were found to be defective. He emphasized that the law had clearly stipulated that the manufacturers and retailers had criminal liability for ensuring product safety. In this connection, Miss Cyd HO considered that the Administration should step up its enforcement actions in order to uphold the spirit of the legislation and ensure public safety.

6. Mr NG Leung-sing expressed concern about the question of effective enforcement of labelling requirements as mentioned in paragraph 5 of the paper. He took the view that the problems in respect of enforcement should be resolved first to ensure that relevant statutory requirements were clear and practicable so that a proper balance between the interests of the public and the importers could be maintained. In reply, PAS/TI reported that many practical questions in respect of enforcement had been raised by Members in the course of deliberation of the Bills Committee on Trade Marks Bill, such as how to ensure that the labelling requirements could apply to products of different sizes and shapes and how to deal with cases where the labels had been lost.

7. Referring to paragraph 6 of the paper which stated that additional labelling requirements would “adversely affect consumers who will pay higher prices and have fewer choices”, Mr NG requested information from the Administration to illustrate the extent of such adverse impacts. DS/TI clarified that the statement was made in response to the suggestion that parallel imported goods should be required to bear a label setting out the name and address of the importer. He further advised that while the Administration had not carried out any specific analysis, given the various types of products involved, it would be very difficult to give a realistic assessment of the increased costs. Generally speaking, in terms of the value of the products itself, the cost of adding such a label for high value goods (e.g. cars) would be low while that for low value goods and goods in small packages (e.g. biscuits) would be high. Under most circumstances, as parallel importers did not buy their goods directly from the manufacturers, it was unlikely that they could request the manufacturers to add the labels onto the products. Furthermore, as their profits might be reduced as a result of the additional labelling requirements, parallel importers might stop importing such goods, thereby reducing the choices available to the public.

8. In this connection, Mr NG suggested that the Administration might consider granting “exemption” to certain categories of consumer goods for which the addition of such labels might create technical problems. DS/TI said that the Administration would adopt a positive attitude when examining any proposals for additional labelling

requirements, and the member's suggestion would also be considered in the same light. Discussions would also be held with the trades to solicit their views on issues relating to enforcement. However, he emphasized that as any labelling requirement would incur additional cost, a proper balance had to be maintained so that the interests of the consumers could be safeguarded without creating additional burden or operating cost for the businessmen. Mr NG nevertheless took the view that in a free market, the operators would decide for themselves whether the business they were running was profitable. He requested the Administration to draw on the experience of overseas countries in the implementation of labelling requirements and provide relevant information to members for consideration.

9. Given that the Economic Services Bureau (ESB), the Environment and Food Bureau and the Health and Welfare Bureau all stated in their papers that from the angle of ensuring public safety or health, it would not be necessary to have additional information of the importers on the labels which was exactly the same stance adopted by TIB, Mr James TIEN sought clarification from the three policy bureaux on whether they had really considered the matter solely from the perspective of public health and safety, without taking into account reasons such as higher costs and fewer choices as mentioned by TIB. In this regard, DS/TI reiterated that TIB was only against the proposal of adding information about the importers onto the labels of parallel imported goods. The matter of whether additional labelling requirements were needed for certain categories of goods would be considered in the positive light in future. The Principal Assistant Secretary for Economic Services (PAS/ES) and the Deputy Director of Electrical and Mechanical Services/Regulatory Services (DD/EMSD), the Principal Assistant Secretary for the Environment and Food (PAS/EF) and the Principal Assistant Secretary for Health and Welfare 1 (PAS/HW1) responded respectively on behalf of the three policy bureaux and stated that the view of each bureau was made solely on the consideration of ensuring product safety and protecting public health.

10. Mrs Sophie LEUNG considered that in the matter of additional labelling requirements, the policy bureaux were only concerned about the present situation and this attitude was not forward-looking. Even if the existing system could cope with the goods being imported into Hong Kong at present, the variety of such goods would undoubtedly increase in future. It might not be sufficient if the matter was merely considered from the angle of ensuring public safety and health. In view of the increased accessibility of information in the society, the consumers' right to be informed would also have to be taken into account. Her views were shared by the Chairman who opined that the Government should consider the way forward for regulation carefully and it should not just focus on the cost factor when formulating policies. Instead, it should critically examine whether there was a need to enhance regulation.

11. As the labels of many imported products on sale in the market were written neither in English nor Chinese, Miss Cyd HO asked whether the Administration should require that labels written in a foreign language be translated to either one of the official languages. In reply, PAS/EF said that the law had already stipulated that labels of food should be either in Chinese or English or both. As for electrical and

gas appliances, as well as pharmaceutical products and tobacco products, PAS/ES and PAS/HW1 respectively advised that the labels concerned should be either in Chinese or English or contain internationally recognized symbols. In this connection, the Chairman suggested that relevant government departments should step up their enforcement actions so as to eliminate such situations.

Labelling requirements for electrical and gas appliances

12. At the Chairman's invitation, PAS/ES briefed members on the statutory labelling requirements for electrical and gas appliances which were within the purview of ESB, details of which were set out in the information paper (LC Paper No. CB(1)1604/99-00(02)) provided by the Bureau.

13. Referring to the several accidents caused by faulty electrical products recently, Dr LUI Ming-wah enquired whether there was a need for Hong Kong to establish its own standards on testing electrical products. In response, DD/EMSD informed members that according to the regulation passed by the Legislative Council in April 2000 which would come into operation by the end of the year, all electrical products for sale in Hong Kong would have to pass safety tests conducted by qualified testing centres and be issued with a certificate of safety compliance. The regulatory authority was also empowered to require the retailers, wholesalers, importers or even manufacturers to produce relevant safety documentation. Moreover, given that Hong Kong was a relatively small market and goods were imported from all over the world, the Administration considered that it would be more appropriate to establish a system whereby safety certificates issued by testing centres of other countries would be recognized. So far, more than 50 testing centres had acquired the relevant qualification.

14. Mr Kenneth TING opined that the certificate of safety compliance should also contain information on the importers so that when accidents occurred, it would be easier to track down the party to be held liable. In reply, DD/EMSD advised that it was envisaged that the responsibility of taking the electrical products to recognized testing centres for testing and thus acquiring the safety certificate would normally rest with the manufacturers. However, under the member's suggestion, the importers might have to obtain the safety certificates. Although the Administration had not considered the question on whether the safety certificates should belong to the importers or the manufacturers, DD/EMSD said that he would examine the matter further, taking into consideration the member's suggestion.

Labelling requirements for food

15. At the Chairman's invitation, PAS/EF briefed members on the purpose of food labelling and the labelling requirements in Hong Kong, details of which were set out in the information paper (LC Paper No. CB(1)1604/99-00(03)) provided by the Environment and Food Bureau. He said that under the Food and Drugs (Composition and Labelling) Regulations (Cap. 132, sub. leg.), all pre-packaged food were required to bear labels containing the following information: name of the food; ingredients; durability period; storage instructions; quantity; name and address of the manufacturer

or packer. The objectives of setting out these information was to protect consumers' rights and ensure food safety. Moreover, they would also facilitate the regulatory authority in tracing the source and adopting appropriate control measures in cases of food-related incidents.

16. Mr Fred LI pointed out that at present, there were two types of labels regarding durability periods, namely the "use by date" and "best before date" labels. The former applied to perishable food such as dairy products and it was illegal to sell such products after the "use by date". The latter applied to food not easily perishable and it was not against the law to sell such food after the "best before date". Considering that the subject of regulation was food which would directly affect the health of the general public, and the consumers might not be aware of the difference between the two labels, he suggested that the enforcement of these two labels should be standardized so that anyone who sold food after its "best before date" would also be prosecuted.

17. In response, PAS/EF said that the two different labelling requirements were set according to the characteristics of the food concerned. Similar practice was also adopted by other countries such as the European Union and Australia. The "best before date" label was mainly applied to food that was not easily perishable. Although the quality of food sold after the "best before date" might be less assured from the consumers' point of view, no major health hazard would be caused by the consumption of such food. Regarding the enforcement of this label requirement, verbal warning would be given to anyone who was found to be selling food after the "best before date" during spot checks conducted by the regulatory authority. Generally speaking, the retailers would co-operate and recall those products from the shelf. However, if it was confirmed that health hazard would be caused by the food in question, the retailer would still be prosecuted. The Administration took the view that as the consumption of food sold after the "best before date" would not cause adverse effect on one's health, the sale of such food should not be regarded as illegal. In respect of publicity to increase awareness, information leaflets, posters and pamphlets had already been published to educate the public about the difference of the two labels. PAS/EF assured members that greater efforts would be made to explain the meaning and difference of the two labels to the public.

18. Mr LI opined that as only verbal warning was given to those who sold food after the "best before date" and enforcement actions would be taken only after accidents had occurred, no deterrent effect could be achieved and the Administration was indirectly allowing such practices. In response, PAS/EF emphasized that identification purpose was served by labelling so as to enable consumers to make the best choice. For some kinds of food, no health hazard would be created by their consumption after the "best before date". As such, there was no need to impose a statutory prohibition on their sale. Furthermore, as "the best before date" of the food had already been properly labelled, consumers could make appropriate choices accordingly and there would not be serious problems. He however undertook to examine whether further improvements could be made.

19. As a related question, the Chairman sought elaboration on the enforcement actions taken by the Food and Environmental Hygiene Department (FEHD) on expired foods. According to the spot checks carried out by the Democratic Alliance for the Betterment of Hong Kong every year, many expired foods were sold in shops and supermarkets. Thus, he considered that greater efforts should be made to tackle the problem. In response, PAS/EF advised that sampling checks on food labels would be conducted by FEHD staff at the retailers' point of sale. The target of such checks was 30 000 in 2001. In the past three years, the department had checked through 80 000 food labels, with 1 000 warning letters issued and 60 prosecutions instituted. The Administration would consider suggestions from members and see whether the number of sampling checks could be increased.

20. Mr Fred LI was concerned that more and more food products were sold in break-bulk in the market, such as biscuits and candies with individual wrappings. However, the wrappings neither contained such information as required by the law nor any related product information in Chinese or English. Thus, he questioned about the adequacy of relevant provisions on the language used on the labels and in regulating the sale of food in break-bulk. He also suggested that the Administration should consider imposing a labelling requirement on biscuits and candies sold in break-bulk with individual wrappings in respect of the durability period. Similar concern was raised by the Chairman who pointed out that when food was sold in break-bulk, the consumers would have no way to learn about the durability date which was shown on the original packaging box. He thus asked about the way in which enforcement actions on labelling requirements would be taken under the circumstances.

21. In reply, PAS/EF advised that under the relevant legislation, individually wrapped confectionery products in a fancy form intended for sale as single items were exempted from the addition of labels because the size of the packaging was too small for printing all the information required by law. Furthermore, these kinds of food were generally not easily perishable. For biscuits and candies sold in break-bulk with individual wrappings, the relevant information had already been shown in the packaging box and thus, it would be difficult to request the manufacturers or sellers to attach labels on individual packs as additional cost would be incurred. In respect of exercising control in food safety, sampling checks would be conducted to ensure that exempted foods would not endanger public safety. PAS/EF nevertheless acknowledged that the requirements concerned were made years ago and a review on food labelling was being conducted. The review would make reference to the practices of overseas countries and the criteria laid down by the United Nations' Codex Alimentarius Commission, with a view to ascertaining whether there were inadequacies in the prevailing system and identifying ways in which the requirements on labelling could be enhanced. Preliminary proposals were expected to be submitted to the Health Services Panel by the end of this year or early next year. In this regard, the Chairman urged the Administration to consider all the issues involved in a comprehensive manner when conducting the review.

22. Mr HUI Cheung-ching pointed out that under the existing requirements, labels were required to bear information of the manufacturers or packers only, but not the importers. He was concerned that in cases of food incidents relating to parallel

imported products, it would be difficult to hold the party concerned liable as the Administration only had information about the overseas source of the product. He also queried how the products could be recalled when information about the parallel importers was not available. In response, PAS/EF said that the requirement for including information on the party close to the source of the food supply chain was laid down to deal with foods which became defective during the production process. By obtaining information such as batch numbers from the manufacturers or packers for identification, a recall of the products by the retailing agents would be facilitated. However, he acknowledged that it would be difficult to hold overseas manufacturers liable when food safety incidents occurred. In fact, the sellers were held liable under all legislation on food labelling and food safety. The Superintendent (Import/Export), FEHD supplemented that under the existing mechanism of voluntary recall of products, when food with problems was identified, the Administration would try to contact the importers and at the same time, demand an immediate recall at various levels, including the recall of those products by the agents, wholesalers and retailers. PAS/EF emphasized that a co-operative attitude was generally adopted by the trades and the mechanism had been operating well.

23. The Chairman was concerned that under the mechanism of voluntary recall, the responsibility of the retailers might not be clearly specified. As a result, consumers' interests were not properly safeguarded. PAS/EF pointed out that the retailers had a great responsibility to recall the products concerned because they were required under the law to ensure that the food sold was safe and up to the consumers' expectations and they would be the ones to pay the penalty and face the prosecution.

24. PAS/EF further said that in view of the likelihood that some retailers might not be co-operative, the Administration was examining the need to introduce legislation for the establishment of a mandatory recall mechanism. The Administration would make reference to overseas practices whereby the monitoring authority was empowered to impose a mandatory recall of defective food items. In this connection, Miss Cyd HO agreed that the Administration should conduct a review on the recall mechanism, particularly for perishable food items which could not be labelled, as there had been several incidents in Hong Kong where defective food items were not promptly recalled.

25. The Chairman enquired about the Administration's policies on the labelling of genetically modified food (GM food) in order to ensure that informed choices were made by the public. In response, PAS/EF informed members that there was no standardized practice internationally on the labelling of GM food. For example, under the requirements of the European Union, food having more than 1% of genetically modified ingredients had to be labelled. In North America, however, labels were only required when the characteristics of a GM food had differed significantly from its conventional counterpart (e.g. when there was a change in the nutritional values) or when allergens were contained. As for other Asian countries such as Japan and South Korea, no labelling system on GM food was in place yet. He further advised that two public consultation seminars on the safety and labelling requirements of GM food had been held this year to solicit views of the public on the matter. On the other hand, the trade had also advised that there might be problems

with the addition of labels to these food. Apart from the increase in cost, no differentiation on raw materials or products containing genetically modified ingredients was made by the United States which was the biggest producing country of GM foods. The Administration was in the process of collating and evaluating the views collected. Updated progress would be reported to the Health Services Panel in June. It was expected that proposals would be formulated by the end of this year and extensive consultation among Members of the Legislative Council, the public and the relevant trades would be held.

26. Mrs Sophie LEUNG pointed out that the labelling systems of GM food imposed by other countries were basically a form of protectionism while Hong Kong was a free trading port which had never implemented any protectionism measures to restrict the import and export of goods. She also urged the Administration to take note of the latest technological development in respect of GM foods, such as the potential benefits it might have on people with congenital deficiencies.

27. In response, PAS/EF assured members that the Administration would consider thoroughly all views for and against the imposition of labelling requirements, as well as other relevant factors, including the consumers' aspiration to be kept informed, the interests of the manufacturers and retailers, and the considerations at the international trade level. Although no scientific evidence had so far been produced to prove that GM foods would have adverse effects on human beings, there was a strong call from the public for the addition of labels on GM foods. In this respect, Miss Cyd HO disagreed with the notion that labelling requirements were only applicable to those GM foods whose characteristics had differed significantly from their conventional counterparts.

Labelling requirements for pharmaceutical and tobacco products

28. At the Chairman's invitation, PAS/HW1 and PAS/HW3 briefed members respectively on the existing labelling requirements for pharmaceutical and tobacco products sold in Hong Kong. Details were set out in the information paper (LC Paper No. CB(1) 1604/99-00(04)) provided by the Health and Welfare Bureau.

29. In order to enhance the protection on consumers' rights, Mr Kenneth TING opined that labels of pharmaceutical products should contain information on the importers to facilitate the tracking down of the responsible party. Otherwise, the consumers would have difficulty in identifying the importers concerned simply by referring to the registration number. In response, PAS/HW1 said that under the existing registration system, the Administration could track down all relevant information including the importer of a particular pharmaceutical product by referring to the registration number. Nevertheless, she agreed to relate the member's suggestion to the Pharmacy and Poisons Board for consideration.

30. Mr MA Fung-kwok was concerned that the registration number of pharmaceutical products could not adequately safeguard the consumers' right to information as the general public might not be able to verify their authenticity. He asked whether there were simple ways to help the consumers identify pharmaceutical

products that were regulated. In reply, the Acting Chief Pharmacist explained that an authentic registration number was made up of “K” and five digits. If the public had any queries, they could call the hotline of the Pharmaceuticals Registration and Import/Export Control Section of the Department of Health (DH). They could also check through the Compendium of Pharmaceutical Products published by DH or DH’s website. He said that the retailers had the responsibility to ensure that all pharmaceutical products sold were registered. Otherwise, they would be in breach of the law. Inspections on the retailers and wholesalers would be carried out by the Inspection and Licensing Section of DH to see whether the pharmaceutical products had been registered and whether labelling requirements were met. PAS/HW1 supplemented that if members of the public came across any pharmaceutical products which had no registration number, they could make a report to DH. Mr MA Fung-kwok nevertheless suggested that the Administration should consider adding information of the importers onto the labels of pharmaceutical products with a view to safeguarding the consumers’ right to information.

31. The Chairman enquired about the existing regulation imposed on health foods which claimed to have therapeutic functions. In reply, PAS/HW1 said that health foods which did not contain medicinal ingredients would have to comply with the statutory requirements for food in general, while those containing western drugs would be regulated by the Pharmacy and Poisons Ordinance (Cap. 138). As for health foods containing Chinese medicine, although no specific regulation was imposed at the moment, proprietary Chinese medicines would be regulated by the subsidiary legislation to the Chinese Medicine Ordinance (Cap. 549) passed in July last year. In this connection, the Chairman urged the Administration to consider all the relevant issues carefully and take heed to the views expressed by the trades on the addition of labels and information of the importers during the course of drafting the subsidiary legislation.

II Any other business

32. There being no other business, the meeting ended at 4:15 pm.