

**For information on
17 June 2004**

**LegCo Subcommittee on Food and Drugs (Composition and Labelling)
(Amendment) Regulation 2004**

PURPOSE

This paper briefs Members on the Administration's response to the concerns expressed by the trade on the proposed Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004.

BACKGROUND

2 The Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004 (herein after referred to as the "Amendment Regulation") was gazetted on 14 May 2004. The Administration has since then received considerable comments from the trade on different aspects of the Amendment Regulation. The Subcommittee on Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004 (herein after referred to as the "Subcommittee") and the Government have also exchanged views on Amendment Regulation during a number of Subcommittee meetings. The following paragraphs summarize the latest concerns and views expressed by both Members of the Subcommittee and the trade as well as the Administration's response.

CONCERNS FROM TRADE AND THE ADMINISTRATION'S RESPONSE

Provide for a disclaimer in the legislation

3 The trade has proposed that a disclaimer should be provided in the Amendment Regulation in the event of accidental mixing and presence of traces of allergenic substances in pre-packaged food. The Administration has duly considered this suggestion but is of the view that the proposed blanket disclaimer does not appear to serve the purpose of discharging liability. Under the Amendment Regulation, the new sub-paragraph 4E in paragraph 2 of Schedule 3 requires the name of eight allergenic substances to be specified in the list of ingredients of pre-packaged food, therefore the label in the wording of “may contain allergens” cannot meet the requirement of sub-paragraph 4E. If, however, a local retailer/importer has made reasonable effort to ascertain the item(s) of allergenic substances contained in the food, and state those items specifically on the label, though the word “may” appears on the label, it will be considered as having taken reasonable steps.

Apply new labelling requirements on the basis of source countries

4 Regarding the suggestion that the new labelling requirements on additives and allergens should apply to pre-packaged food imported from countries/places which have already implemented similar labelling requirements, the Administration has consulted the Department of Justice and concluded that the suggestion is not feasible. The suggestion has the effect of allowing overseas legislation to override our local law, which is not acceptable from the legal policy point of view. Furthermore, the suggestion on partial application of the labelling requirements to products from some countries but not from other parts of the world appears to violate

the Most Favoured Nation obligation under the General Agreement on Tariffs and Trade and the Agreement on Technical Barriers to Trade of the World Trade Organization (WTO). In particular, the Agreement on Technical Barriers to Trade provides that WTO members shall ensure that in respect of technical regulations, products imported from the territory of any member shall be treated like products originating in any other country. The suggestion also calls into question whether the legitimate objective that is required for implementing the labelling requirements under the Agreement on Technical Barriers to Trade can be justified by this partial application.

PROPOSED WAY FORWARD BY THE ADMINISTRATION

5 Having considered the views and suggestions raised by the Subcommittee and the trade in paras. 3 and 4 above, we propose to add a new sub-section to section 5(3) of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W) to provide for a defence clause to clarify the circumstances under which the trade could defend its position against accidental mixing and presence of traces of allergenic substances in pre-packaged food. We propose that it shall be a defence to show that the defendant has reasonably and in good faith relied on information provided by the importer or manufacturer as to whether the food consisted of or contained any allergenic substances. We believe that this arrangement should help address the trade's concerns.

6 In response to the concerns raised by the trade on the other aspects of the Amendment Regulation, the Administration proposes to introduce the following amendments:

- Wines, liqueur wines, sparkling wines, aromatized wines, fruit wines, sparkling fruit wines and other drinks with an alcoholic strength by volume of 10% or more as determined under section 53 of the Dutiable Commodities Ordinance (Cap.109) should be exempted from all labelling requirements;
- Drinks with an alcoholic strength by volume of more than 1.2% but less than 10% as determined under section 53 of the Dutiable Commodities Ordinance (Cap.109) should be exempted from all labelling requirements except that on durability; and
- Extend the grace period of the Amendment Regulation from 18 months to 30 months (except on the relaxation of control over additives in milk products and butter, which will be effected on 9 July 2004).

7 A draft resolution to be moved in the Legislative Council to effect the suggested amendments is attached at Annex for Members' comments.

8 Separately, we will also prepare a voluntary code of practice on the labelling of alcoholic drinks with an alcoholic strength by volume of 1.2% or more in consultation with the trade. The voluntary code of practice will be reviewed after one year of implementation.

9 We trust that the above proposals would help address the concerns raised by

the trade and strike a proper balance between the need to protect public health and to minimise the impact on the trade. We have also written to the trade representatives on our proposal to extend the grace period from 18 to 30 months.

OTHER ISSUES

10 At the Subcommittee meeting held on 14 June 2004, Members requested for information on the Mainland authorities/organisations which the Administration had consulted over the new labelling requirements. Members may wish to note that during the public consultation exercise conducted in October to December 2000, about 1,200 letters attaching the amendment proposals were sent to various parties including the major importers of Chinese food products. The amendment proposals were sent to the then State Administration for Entry-Exit Inspection and Quarantine, the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Health for information. No objections were received from the major importers of Chinese food products and the three Mainland authorities.

Health, Welfare and Food Bureau
Food and Environmental Hygiene Department
June 2004

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

FOOD AND DRUGS (COMPOSITION AND LABELLING)
(AMENDMENT) REGULATION 2004

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on July 2004.

RESOLVED that the Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004, published in the Gazette as Legal Notice No. 85 of 2004 and laid on the table of the Legislative Council on 19 May 2004, be amended -

(a) by adding the following after section 2 -

"2A. Offences and penalties

Regulation 5 is amended by adding the following after paragraph (3) -

"(3A) Without affecting paragraph (3), in any proceedings for an offence against paragraph (1) in relation to any prepackaged food which is not marked or labelled in accordance with paragraph 2(4E) of

Schedule 3, it shall be a defence to show that the defendant reasonably and in good faith relied on information provided by the importer or manufacturer as to whether the food consisted of or contained any substance referred to in that subparagraph.";

(b) in section 5 -

(i) in section (a), by repealing "Paragraph 2" and substituting "The whole Schedule except paragraphs 3 and 4";

(ii) in subsection (b), by repealing "Paragraphs 2 and 4" and substituting "The whole Schedule except paragraph 3";

(c) in section 6, by repealing "2006" and substituting "2007".

Clerk to the Legislative Council

July 2004