

立法會
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LC Paper No. CB(2)1747/06-07
(These minutes have been seen
by the Administration)

Panel on Food Safety and Environmental Hygiene

Minutes of meeting
held on Tuesday, 10 April 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon Tommy CHEUNG Yu-yan, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon WONG Yung-kan, JP
Hon TAM Yiu-chung, GBS, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, JP
Dr Hon KWOK Ka-ki

Members absent : Hon Andrew CHENG Kar-foo
Hon Alan LEONG Kah-kit, SC

Public officers attending : Mr CHEUK Wing-hing
Permanent Secretary for Health, Welfare and Food
(Food and Environmental Hygiene)(Acting)

Mr Wallace LAU Ka-ki
Principal Assistant Secretary for Health, Welfare and Food
(Food and Environmental Hygiene)1

} For Items
IV and V

Miss Vivian KO Wai-kwan
Principal Assistant Secretary for Health, Welfare and Food
(Food and Environmental Hygiene)2

} For
Item VI

Mr Eddy CHAN
Director of Food and Environmental Hygiene

Dr MAK Sin-ping Controller, Centre for Food Safety Food and Environmental Hygiene Department	For Items IV and V
Dr Philip HO Yuk-yin Consultant (Community Medicine) (Risk Assessment and Communication), Centre for Food Safety, Food and Environmental Hygiene Department	For Item IV
Dr Constance CHAN Hon-ye Assistant Director (Food Surveillance & Control), Centre for Food Safety, Food and Environmental Hygiene Department	For Item V
Mr LO Fu-wai Assistant Director (Operations) ¹ Food and Environmental Hygiene Department	For Item VI

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Ms Alice LEUNG
Senior Council Secretary (2)1

Miss Kiwi NG
Legislative Assistant (2)2

Action

I. Confirmation of minutes

[LC Paper No. CB(2)1498/06-07]

The minutes of the meeting held on 13 March 2007 were confirmed.

II. Information paper(s) issued since last meeting

[LC Paper No. CB(2)1382/06-07(01)]

2. Members noted that a letter provided by the Administration on the follow-up actions taken by the Centre for Food Safety (CFS) regarding an incident of suspected consumption of oilfish had been issued to members since the last meeting.

III. Date of next meeting and items for discussion

Action

[Appendices I and II to LC Paper No. CB(2)1514/06-07]

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting on Tuesday, 8 May 2007 at 2:30pm -

- (a) Proposed joint user complex and wholesale fish market in Area 44, Tuen Mun; and
- (b) Control of environmental nuisances caused by the operation of Tsuen Wan Slaughterhouse.

(Post-meeting note: with the concurrence of the Chairman, the meeting on 8 May 2007 was advanced to start at 2:00 pm and the agenda item referred to in paragraph 3(a) was taken out with an addition of a new item on "Regulation of the level of arsenic in dried food products". With the concurrence of the Chairman and Chairman of the Panel on Home Affairs, the two Panels would hold a joint meeting, immediately after the regular meeting of the Panel at around 3:30 pm on 8 May 2007, to discuss the proposed joint user complex and wholesale fish market in Area 44, Tuen Mun.)

IV. Results of the public consultation exercise on proposed amendments to the Preservatives in Food Regulations

Briefing by the Administration

4. Consultant (Community Medicine) (Risk Assessment and Communication) of the Centre for Food Safety (Consultant(CM)(RAC)/CFS) briefed members on the results of the public consultation exercise on the proposed amendments to the Preservatives in Food Regulations (Cap. 132BD) ("the Regulations"), with details as set out in the Administration's paper [LC Paper No. CB(2)1514/06-07(01)]. He advised that the public consultation exercise on the proposed amendments to the Regulations was conducted from 14 December 2006 to 28 February 2007 and two public consultation forums were held in January and February 2007. Copies of the consultation paper were sent to various parties concerned, including food trade associations, consulates, relevant authorities in the Mainland, the Consumer Council and the World Trade Organisation etc.

5. Consultant(CM)(RAC)/CFS said that the majority of the participants, who attended the two consultation forums and completed an evaluation questionnaire, fully agreed or agreed with the broad direction and principles in the proposed amendments. CFS also received a total of 25 written submissions and 24 of them fully supported/agreed with the scope of the proposed amendments. He further said that the Administration would conduct technical meetings with the trade to exchange views on the detailed amendments and planned to introduce the legislative proposal into the

Action

Legislative Council (LegCo) in the end of 2007.

Background brief

6. Members noted that a background brief entitled "Review of the Preservatives in Food Regulations" prepared by LegCo Secretariat had been issued to members [LC Paper No. CB(2)1514/06-07(02)].

Issues discussed

Food standards/guidelines of the Codex Alimentarius Commission

7. Mr Vincent FANG said that he was, in principle, supportive of the Administration's proposal to amend the Regulations by making reference to the food standards and guidelines of the Codex Alimentarius Commission (Codex). He, however, queried why the Administration did not maintain a consistent stance on bringing its food standards in line with Codex standards/guidelines. Citing nutrition labelling as an example, Mr FANG pointed out that the Codex guidelines only required that the nutrition label should include declaration of four core nutrients. Nonetheless, under the mandatory nutrition labelling scheme as proposed by the Administration, the labelling requirements were energy plus nine core nutrients. He further said that, though the food industry was supportive of the nutrition labelling with an objective to enable consumers to make informed food choices, it had practical difficulties in complying with the new requirements if the nutrition labelling requirements put in place in Hong Kong were not in line with the standards that were widely adopted in overseas countries/places.

8. Permanent Secretary for Health, Welfare and Food (Food and Environmental Hygiene)(Acting) (PS(FEH)(Ag)) responded that the food standards and guidelines developed by Codex did not have any mandatory status it was up to governments to develop their own food standards. When formulating food regulations and standards, individual country/place could make reference to the minimum requirements as recommended in Codex standards/guidelines and also take into account its circumstances, so as to meet the needs of its people in respect of health and nutritional intake.

9. Director of Food and Environmental Hygiene (DFEH) supplemented that the Administration had made reference to Codex standards/guidelines in working out the proposal for the nutrition labelling scheme. He pointed out that the Codex guidelines, whilst recommending the four core nutrients as the basic nutrition labelling requirements, also made it clear that each individual country/place could require the labelling of any other nutrients as may be appropriate having regard to the public health circumstances of that country/place. The Administration considered that the labelling requirements of energy plus five core nutrients for the pre-packaged food with nutrient-related claims were appropriate in Phase I of the mandatory nutrition

Action

labelling scheme, having regard to the local health situation and the needs of the public. He added that there would be a two-year grace period before the implementation of Phase I and, in Phase II, mandatory nutrition labelling would be implemented and all pre-packaged food except those exempted, would have to label energy plus nine core nutrients as well as any nutrient for which a claim was made. Phase II would be implemented two years after the implementation of Phase I.

10. The Chairman said that, Hong Kong being a small market, it was not comparable to overseas countries/places and should not implement its own food standards. He considered that the Administration should take a consistent approach by making reference to and adopting Codex standards in developing the food-related standards and regulations in Hong Kong so that the standards and requirements put in place in Hong Kong would not be out of the step with the rest of the world. The Chairman further said that, in view of the Mainland's market size, the Administration should take note of the standards and regulations in respect of food additives in the Mainland. He enquired whether the Mainland's standards and regulations in this respect were in line with Codex standards; and if not, whether the Mainland authorities had the plan to bring its standards in line with the standards that were widely adopted internationally.

11. Mr Vincent FANG said that, given that over 90% of food products in Hong Kong were imported from other countries/places, the food industry had serious concerns about the practical difficulties in sourcing and importing food products from the Mainland as well as other countries/places should the food standards put in place in Hong Kong were "unique" and did not follow the prevailing international standards. Mr FANG asked whether the standards adopted by Hong Kong were in line with the Mainland's standards.

12. In response to the questions raised by the Chairman and Mr FANG, Consultant(CM)(RAC)/CFS said that the Mainland authorities were currently revising its preservatives regulations, including amending the definitions of preservatives and developing a food category system, to incorporate the Codex's format. In the light of this, the Mainland and Hong Kong were aligning their regulations with the internationally accepted standards, notably Codex standards. However, he did not have information on the Mainland's legislative timetable in this regard on hand. At the Chairman's request, he said that the Administration would provide information on the regulation for preservatives and antioxidants in food in the Mainland after the meeting.

(Post-meeting note: the Administration's response on the Mainland's regulation for preservatives and antioxidants in food was circulated to members vide [LC Paper No. CB(2)1670/06-07(01) issued on 23 April 2007].

13. The Deputy Chairman held a different view, saying that Codex standards should not be followed fully. He considered that the Administration should not fully

Admin

Action

adopt Codex standards in formulating its food-related standards and regulations regardless of local situation and the concerns as well as the needs of the public in respect of health and nutritional diet. The Administration should accord priority to public health needs in developing its standards, policies and legislations in respect of food. The Deputy Chairman cited the case of the labelling of genetically modified food and said that Codex could not reach a consensus in the standards of the labelling of genetically modified food though it had discussed the subject matter for a long time. He commented that the member countries of Codex, in particular those better developed and high income countries/places, would place more emphasis on their economic and political interests when proposing and deciding on food-related standards.

Transitional arrangement

14. Noting the Administration's plan to introduce the legislative proposal into LegCo in the end of 2007, Mr TAM Yiu-chung asked whether the amendment regulations would come into immediate effect upon the introduction or a grace period would be allowed to allow the food trade operators to sell out all their stocks. He said that, in view of the benefits of the amendment regulations in safeguarding the public's health and food safety, the length of grace period should not be too long. He considered that the proposed amendments to the Regulations should come into force as early as possible.

15. Consultant(CM)(RAC)/CFS responded that, to allow sufficient time for the trade to adjust for the changes and taking into account the wide varieties of food items that would be affected and the shelf lives of a large variety of pre-packaged food items, the Administration intended to allow a grace period so that the food trade operators could sell out their stocks. He added that, as a general practice and as in the cases of other legislative amendments of similar scale and nature, there would be a transitional provision in the legislation and the grace period could range from 12 to 36 months.

16. The Deputy Chairman, Mr WONG Kwok-hing and Mr WONG Yung-kan gave similar views that the grace period should not be too long. The Deputy Chairman referred to the case of nutrition labelling and opined that the 36-month grace period was too long.

17. Mr Vincent FANG said that the Administration should fully consult with the trade on this legislative amendment exercise and advise the trade clearly that the amendments would be introduced into LegCo by the end of 2007. He considered that this would facilitate the trade in planning its business so as to avoid the overstock of food items that might breach the statutory requirements under the amendment regulations.

18. Mr TAM Yiu-chung asked if the Administration would take into consideration

Action

"the manufacture date" of the food products in deciding on the length of grace period. The Chairman also enquired if "the use-by date" would be used for reference.

19. Consultant(CM)(RAC)/CFS responded that the Administration would consider the views of the food industry and take into account other considerations including shelf-lives of the food products currently on sale by the food trade operators. He added that the shelf lives of food products varied, where some food products had a long shelf life of two to three years.

20. Mr Vincent FANG asked whether the grace period would commence immediately after the enactment of the amendment regulations or whether the imported dates of food products would be used in counting the grace period.

21. PS(FEH)(Ag) said that, in view of the vast varieties of food items imported from overseas countries and their different shelf lives, it was considered not appropriate nor practicable to make reference to the imported dates of food products in counting the grace period. Controller of the Centre for Food Safety (Controller/CFS) supplemented that the grace period would normally commence on the date of the enactment of the legislation. For example, should the amendment Regulations were enacted on 1 January 2008 with a six-month grace period, the amendments would come into operation on 1 July 2008.

22. The Chairman asked if the Administration had a predetermined position on the length of the grace period. In response, Controller/CFS said that the Administration was open-minded about this issue. She further said that, through the platform of the technical meetings organised by CFS, the Administration hoped to gauge the food trade's views on the proposed amendments and to discuss with the trade on its concerns such as the types of food products that it considered difficult in complying with the new statutory requirements. The Administration would also consult with the trade on transitional arrangement for the implementation of statutory requirements in respect of the provision of grace period.

Legislative timetable

23. Mr WONG Kwok-hing said that he considered that the amendments to the Regulations should be enacted without further delay with a view to better protecting the public's health. He criticised that it had taken too long for the Administration to introduce the legislative amendments as he noted that amendments were made to the Regulations from time to time and the latest amendments in late 2005. Noting that the Administration had the plan to introduce the legislative proposal into LegCo into the end of 2007, Mr WONG urged the Administration to introduce the legislative proposal expeditiously.

24. PS(FEH)(Ag) responded that the Administration would seriously consider members' views and would make its best efforts to introduce the legislative proposal

Action

into LegCo as early as possible as practicable.

25. In response to the Chairman's enquiry on the technical meetings with the trade, Consultant(CM)(RAC)/CFS said that CFS would hold the first technical meeting on 12 April 2007 and was prepared to organise more technical meetings as appropriate. He reiterated that the main purpose of the technical meetings was to consult with the trade on the outline of the proposed amendments to the Regulations, in particular those proposed amendments that were more stringent than the present provisions. He added that the responses from the food industry to the technical meeting were positive and the participants registered for the meeting so far could widely represent various stakeholders in the industry.

26. The Chairman asked whether the Administration would update the Panel on the results of the consultation with the trade after the technical meeting on 12 April 2007. He asked whether the Administration would be able to introduce the legislative proposal into LegCo by July 2007 if the consultation work with the trade progressed well and a consensus could be reached at the technical meeting on 12 April 2007.

27. Consultant(CM)(RAC)/CFS advised that copies of the consultation paper were sent to various parties concerned, including food trade associations, individual companies, the Consumer Council, consulates and relevant authorities in the Mainland. The consultation paper was also made available to the public on CFS's website. He said that the technical meeting on 12 April 2007 was only the first technical meeting and it was expected that there would be several more meetings which would be held in the coming months. Consultant(CM)(RAC)/CFS further said that Codex would hold its annual meeting in July 2007 during which it would conduct an annual review on its standards and guidelines. He hoped that any revised/new requirements in Codex standards could also be considered in this major amendment exercise in respect of the Regulations and the trade's views on Codex's revised/new requirements could be sought at the coming technical meetings. It was expected that all the technical meetings would be completed around August to September 2007. In the light of this, he said that it would not be possible to introduce the legislative proposal into LegCo before July 2007.

28. Mr WONG Kwok-hing said that he was dissatisfied with the Administration's response. On the premise of public health, he hoped that the legislative proposal could be introduced into LegCo soon after the summer recess of LegCo. Mr WONG further said that, as advised by the Administration, it had consulted various stakeholders in the food industry in regard to the proposed amendments to the Regulations. He considered that the Administration should have also gauged the views of consumers and taken into consideration their interests in the consultation exercise.

29. PS(FEH)(Ag) explained that, in view that the relevant drafting instructions to be given to the Department of Justice (DoJ) were not yet prepared, he could not give

Action

an undertaking of introducing the legislative proposal into LegCo immediately after the summer recess without prior discussion and consultation with DoJ. However, he said that he shared with members' views on the need for expeditious introduction of the legislation. Having regard to the fact that the food industry was well aware of the direction of the amendment exercise and the outline on the amendments to the Regulations and that there was a considerable time from now to the enactment of the amendment regulations, the length of the grace period could be shortened.

30. Mr WONG Yung-kan said that members of Democratic Alliance for Betterment and Progress of Hong Kong were supportive of the Administration's proposal to amend the Regulations. He shared the view of other members that the amendment regulations should be enacted as soon as possible. Noting from the Administration's paper that there were some different views received from the trade concerned, he considered that the Administration should give a clear stance on whether it was supportive of the amendments.

31. PS(FEH)(Ag) reiterated that the Administration's plan was to introduce the legislative proposal into LegCo by the end of 2007. He said that the Administration noted members' views on the provision of grace period. Should a consensus be reached with the food industry, the Administration would consider providing a grace period of less than 12 months.

32. In concluding the discussion, the Chairman said that the Panel was supportive of the Administration's proposal of amending the Regulations. The Panel urged the Administration to introduce the legislative proposal into LegCo expeditiously and to consider providing a grace period of not more than 12 months so that the amendments would come into operation earlier. The Chairman asked the Administration to take the opportunity of the technical meeting on 12 April 2007 to remind the food industry that the legislative amendments would be introduced in the latter part of 2007 so that the food trade operators could take this into account in ordering their food items from the food suppliers. He added that, with a view to expediting the legislative process, he would favourably consider the need of holding a special meeting in September 2007 should the legislative proposal was ready for discussion by the Panel by that time.

V. Strategy for surveillance in 2007

Briefing by the Administration

33. Assistant Director (Food Surveillance & Control) of Centre for Food Safety (AD(FSC)/CFS) briefed members on the strategy for the food surveillance programme to be adopted by CFS of the Food and Environmental Hygiene Department (FEHD) in 2007, with details as set out in the Administration's paper [LC Paper No. CB(2)1514/06-07(03)]. She pointed out that, to be in line with the international trend of putting more focus on target-based surveillance, CFS proposed to adopt a three-tier

Action

approach to food surveillance - routine food surveillance, targeted food surveillance and seasonal food surveillance.

34. AD(FSC)/CFS said that CFS would continue to conduct routine surveillance on food available in Hong Kong and release the findings of the food tests regularly. With a view to providing better information on the types of food and hazards being tested and to facilitating easy understanding by members of the public, the findings would be presented by food groups, hazard groups and food items or hazards that were of particular public concern. As regards targeted food surveillance, AD(FSC)/CFS further said that CFS had already commenced its targeted surveillance in 2007 on testing of formaldehyde in noodle fish and the findings of the testing had been released recently. She said that CFS would continue to conduct tests on festive or seasonal food and the findings of the testing would be released in batches, if applicable, to provide the most timely information to the public.

35. AD(FSC)/CFS advised that, in view of increased caseload of food incidents, the Government Laboratory (GL) was exploring the opportunities and feasibility to outsource to private laboratories part of the straight-forward analytical work which was not related to prosecution action so as to free up its resources for more complex and crucial analytical duties that required higher level of expertise.

The CFS's work

36. Referring to CFS's recent announcement of the findings of the testing of noodle fish samples and the food alert in regard to the voluntary recall of Kit Kat chocolate bar products in Australia, the Deputy Chairman said that CFS had showed improvement in its risk communication by disseminating relevant information to the public and the food trade in a more timely manner. He, however, commented that the information provided in the table, which summarised the number samples taken in Hong Kong and other overseas countries, as provided in the Administration's paper was not meaningful. He pointed out that, unlike other overseas countries, over 90% of food in Hong Kong were imported from other countries/places, with the Mainland as the major source of food supply. In view that there was presently no control over food products imported from the Mainland farms which were not registered for export, it was considered necessary to monitor food safety by collecting food samples at import, wholesale and retail levels.

37. Dr Joseph LEE said that he shared a similar view with the Deputy Chairman. He pointed out that the table did not provide any essential and crucial information such as the origins of the food samples taken (i.e. Hong Kong, the Mainland and overseas countries/regions). He criticised that, in the absence of the details of the breakdown of the data, the information provided in respect of the number of samples taken under routine food surveillance programme failed to present the true picture of food safety in Hong Kong.

Action

38. Regarding the details of the breakdown of the food samples, Controller for the Centre for Food Safety (Controller/CFS) said that CFS had practical difficulties in presenting its data by countries/regions of food samples. She explained that Hong Kong imported over 90% of its food from other countries/places and that, under the existing legislation, importers were not required to register and to apply for permits before importing food into Hong Kong and importers/wholesalers/retailers were also not required to keep all relevant documents for the checking by the relevant departments. Noting the inadequacies in the existing legislation and to better safeguard food safety and public health in Hong Kong, the Administration had the plan to introduce a new piece of legislation and, under the proposed regulatory framework, importers were required to register with CFS and importers, wholesalers and distributors to keep relevant records.

39. On the findings of food tests under routine food surveillance, Controller/CFS said that, as pointed out earlier by AD(FSC)/CFS in her presentation, there was a trend in many overseas countries to shift from routine compliance surveillance to target-based surveillance with a view to generating more meaningful information and providing a preventive basis for interventions. CFS would continue to conduct routine surveillance on food for sale in Hong Kong and the findings would be released regularly and presented in a new format to provide timely and better information to members of the public. She added that, by making reference to the widely promoted healthy eating plan of food pyramid, the findings would be presented by food groups e.g. fruits and vegetables, meat, seafood and cereals.

40. Dr KWOK Ka-ki said that the Administration's paper could not provide a satisfactory answer to his query whether CFS had taken into account food origins in conducting its risk assessment analysis. He further said that, in his view, the findings of the food tests of the 64 000 samples should be presented by food groups, food origins, sampling locations and hazard groups, and the permitted levels of the chemical substances under international standards levels should also be provided. He requested CFS to give an undertaking to provide such information in future.

41. Controller/CFS reiterated that, in the coming Food Surveillance Reports, the findings of the testings would be presented by food groups (e.g. fruits and vegetables, meat, seafood, cereals), hazard groups (e.g. heavy metals, pesticides, pathogens) and food items or hazards that were of particular public concern (e.g. sudan dyes, carcinogenic chemicals). Having regard to the fact that the importers were not presently required by law to apply for permits before importing foods into Hong Kong (except for some high risk products such as meat) and to keep relevant records, CFS had practical difficulties in obtaining genuine information on the sources of food.

42. Director of Food and Environmental Hygiene (DFEH) supplemented that, as the findings of the testing on food samples under routine food surveillance programme were released in the form of summary data previously, the data was not presented by food groups (e.g. meat, fruits and vegetables). With a view to enhancing the public's

Action

understanding of the information on problems identified and the food safety risks, CFS would release the findings regularly and the presentation of the findings would be improved in the coming Food Surveillance Reports. DFEH further said that, as pointed out by Controller/CFS, importers and distributors of imported food were not required to register before importing food and to keep proper all relevant documents under the existing law. In the light of this, information on the source countries/regions of food samples would not be made available for the time being. However, the Administration would introduce a new piece of legislation for food regulation including registration of food importers and distributors. Once the law was enacted, all importers and distributors would be required by law to register with CFS and to provide health certificates of imported food and the documents which would facilitate CFS to trace sources when needed.

43. Referring to paragraph 7 of the Administration's paper, Mr WONG Kwok-hing said that he was surprised to note that fruits and vegetables were put under routine food surveillance. He further said that the Secretary for Health, Welfare and Food (SHWF) had stated in many previous occasions that there was no need to conduct food tests of fruits having regard to its low safety risk.

44. Controller/CFS clarified that, to her understanding, the statement made by SHWF was related to the issue of regulation of the import of fruits by the issuance of health certificates. She said that fruit samples were taken for testing under routine food surveillance programme and the results of a special study on pesticides and heavy metals in fruit samples were announced in end 2006.

45. Noting that the Food Experts Committee was supportive of the proposed strategy, Mr WONG Kwok-hing wondered whether there was any mechanism for CFS to gauge the public's views on its food surveillance strategy. The Chairman also asked if there was a hotline for members of the public to make their complaints related to consumption of problematic food.

46. Controller/CFS said that CFS had set up a Consumer Liaison Group which provided a platform for members of public to give their views and concerns on food safety related issues. She further said that CFS received food complaints from members of the public everyday and would follow up on every food complaint received. There were several hundreds of food complaints every month. CFS would review its work priorities under food surveillance programme regularly by taking into account the food complaints received, food incidents occurred both locally and overseas and risk assessments conducted by local and overseas authorities.

47. Noting that CFS proposed to adopt a more targeted and client-oriented approach in its food surveillance strategy, Dr Joseph LEE wondered if CFS would conduct any focus group study to collect data to assist them in according priorities of food under the targeted food surveillance. He enquired about the considerations that CFS would take into account in deciding on food items that would be put under

Action

targeted food surveillance. Referring to the testing of formaldehyde in noodle fish as the first targeted surveillance in 2007, Dr LEE said that he failed to see the reasons why the testing of noodle fish was included in the targeted food surveillance programme. He queried whether considerations were made on the safety risk of noodle fish or it was a subject that was of the public's concern. As regards seasonal food surveillance, Dr LEE considered that timing of the release of the findings of the food testing was important. The findings should be announced before the festive season commenced so as to alert the public of the food safety of the seasonal food.

48. In response to Dr LEE's views on the client-oriented approach, PS(FEH)(Ag) said that CFS had adopted this approach in strengthening its work in risk communication in respect of the findings of food samples under food surveillance. He reiterated that CFS would release the findings of the testing by food groups and hazard groups regularly so that the public could have better information and understanding on the types of food and hazards being tested, as well as the testing results for each food or hazard group. He further said that CFS would take into consideration the public's concern and the consumption pattern of the public in determining the types of food items to be put under routine food surveillance and targeted food surveillance. With regard to seasonal food surveillance, PS(FEH)(Ag) said that he shared Dr LEE's views that the findings of the testing should be released before the festive season commenced. He pointed out that, in the case of seasonal food surveillance on the Chinese New Year food in 2007, the testing results of the food samples were released in three batches once samples of seasonal food were available on sale. By releasing the findings in three batches, the food trade and the public would be kept in vigilance of the safety risk of Chinese New Year food. In the case of the testing of noodle fish, PS/EH(Ag) said that there was positive feedback from the media and members of the public.

49. On Dr LEE's enquiry on how to accord priority of food items under targeted food surveillance, Controller/CFS said that CFS would take into account various considerations including public concern, food complaints and the findings of the routine food surveillance. She informed members that, under its targeted food surveillance programme in 2007, CFS would conduct the testing of preservatives (ie. nitrate and nitrite) in meat as these preservatives might react with chemical components in food (amines or amides) to form cancer-causing nitrosamines. Controller/CFS said that supplementary information on targeted food surveillance would be provided to the Panel after CFS had collated more information and views on this subject.

Admin

50. The Chairman said that the paper failed to provide information on how CFS would perform its duties in monitoring food safety in Hong Kong through enhanced source management and the "from farm to table" approach. Apart from taking food samples at the import, wholesale and retail levels, he held the view that CFS should conduct regular inspections to registered farms in the Mainland which was the major source of food supplies. He further said that he remained of the view that 64 000 food

Action

samples taken in each year were not sufficient as FEHD had already collected about 62 000 food samples for testing before the establishment of CFS. Regarding to the targeted food surveillance, the Chairman said that there was a motion debate on the regulation of the use of trans-fat in food in Hong Kong in LegCo meeting held in March 2007. He considered that CFS should undertake a study on the subject of trans-fat and asked whether CFS had any plan to do so.

51. Controller/CFS clarified that CFS had a wide spectrum of work and food surveillance was only part of its work. There were other areas of work such as regulation of imported food, inspections to registered farms, handling food complaints, management of food incidents and risk assessment. She advised that CFS had the plan to conduct seven major risk assessment studies and one of the studies would be trans-fat, to be conducted in collaboration with the Consumer Council. These studies were separate from the food surveillance programme.

52. The Deputy Chairman said that the testing of food items under targeted food surveillance should be of the public's concerns. Noting that CFS would conduct more surveillance targeted at specific food hazard, he further said that he hoped that CFS would not reduce the number of food samples collected for testing under its routine food surveillance. He pointed out that CFS was allocated with an additional \$4,900 million in the 2007-2008 budget and enquired about the areas of work that would be improved with the additional resources.

53. In response, Controller/CFS said that the additional resources would be used to increase the manpower in strengthening CFS's work on import control of food and to recruit more veterinarians to better safeguard the health and safety of food animals and monitoring the food animals in slaughterhouses.

54. Noting that CFS would have been established for a year by July 2007, the Chairman said that the Administration should provide a paper for the Panel's discussion on the Centre's scope of work including information on its resources allocation in respect of each area of work (e.g. food sampling, inspections to registered farms) and its future direction of work. Mr WONG Kwok-hing expressed similar views with the Chairman. In response, Controller/CFS undertook to provide a report to the Panel on the Centre's work by July 2007.

Admin

Outsourcing of food testing work

55. Mr WONG Kwok-hing said that he recalled that, when the Panel discussed the proposal for setting up the new CFS, he had repeatedly asked the Administration whether CFS had sufficient resources for its food sampling activities and the Administration had indicated that the proposed budget would be adequate. In view that CFS had been established for only less than a year, he was dissatisfied with the Administration's proposal for exploring the opportunities and feasibility to outsource part of GL's food testing work to private laboratories. He asked how much work in

Action

respect of food testing would be outsourced.

56. PS(FEH)(Ag) explained that, under the current arrangement, CFS would send its food samples for chemical tests to GL. However, in view of the increasing caseload of food incidents, GL was considering the feasibility to outsource to private laboratories part of the straight-forward analytical work. It was hoped that GL could free up its resources for more complex and crucial analytical duties that required higher level of expertise. PS/FEH(Ag) stressed that CFS's work in respect of food surveillance, safety control of imported food and management of food incidents would not be affected by this proposal. The study of identifying outsourcing opportunities commissioned by GL did not imply that the resources of CFS were insufficient for its food sampling activities related to food surveillance.

57. DFEH supplemented that the objective of GL's proposal was to better utilise its resources and manpower. Having considered that the requirements concerning the presentation of evidence and its admissibility in court were more stringent, GL would continue to provide services for conducting more complex and crucial analytical tests related to prosecution action associated with food incidents. GL would only consider outsourcing the straight-forward analytical work related to food testings under regular food surveillance programme. He added that the feasibility study conducted by the Efficiency Unit was under way and it was expected that a report would be available by June 2007.

58. Notwithstanding the Administration's responses, Mr WONG Kwok-hing reiterated his strong dissatisfaction with the Administration's proposal.

59. Dr Joseph LEE expressed concern about the quality of work that was outsourced to private laboratories. He considered that the Administration should put in place appropriate mechanism to monitor the quality of work undertaken by private laboratories.

60. Dr KWOK Ka-ki said that he was dissatisfied with the Administration's paper for its failure to provide concrete reasons for the proposal to outsource part of GL's food testing work to private laboratories and the objectives of the proposal. He enquired about the amount of money that would be involved in the outsourcing of testing work and the details of the testing work to be outsourced.

61. PS(FEH)(Ag) explained that the purpose of the Administration's paper was to seek members' views on the proposed food surveillance strategy to be adopted by CFS in 2007. He said that, in view that the proposal of outsourcing of food testing work put forward by GL was only a preliminary thinking and the feasibility study conducted by the Efficiency Unit was under way, details of information on the resources involved for outsourcing were not be available at this stage.

62. The Chairman said that he was concerned whether the cost of the testing work

Action

would be reduced if GL outsourced part of its food testing work to private laboratories; and if so, whether the resources saved could be deployed to conduct more food sampling tests, say 80 000 food samples in a year.

63. In response, PS(FEH)(Ag) said that, considering that the percentage of increase in the number of food samples from the existing 64 000 to 80 000 as suggested by the Chairman was rather significant, it would not be practical to do so at the initial stage of outsourcing of work. However, it was hoped that, through better utilisation of resources, more food tests would be conducted under targeted food surveillance in future.

Law enforcement actions

64. The Deputy Chairman sought clarification from the Administration whether the regulation of the smuggling of aquatic products and live poultry was under the purview of CFS or other divisions of FEHD.

65. Controller/CFS said that CFS's scope of work also covered import control of food products. CFS would collect food samples at import control points and work closely with the Police and Customs and Excise Department (C&ED) to take joint actions to combat the smuggling of aquatic products and live poultry into Hong Kong.

66. The Deputy Chairman said that, as earlier reported by the media, the labels on Ribena products in New Zealand were found not accurately reflected the stated levels of Vitamin C in the drink. Referring to this case, he asked whether it was CFS or C&ED responsible for taking enforcement actions for the contravention of the relevant legislation on inaccurate labelling of food items.

67. Controller/CFS said that there were food-related provisions under the Public Health and Municipal Services Ordinance (Cap. 132) regulating food labelling. In the event of contravention of such provisions under Cap. 132, having regard to the evidences collected, enforcement actions would be taken by FEHD as appropriate. C&ED was responsible for enforcing the provisions under the Trade Descriptions Ordinance (Cap. 362). She said that, subject to the results of investigation and the evidence collected, both Ordinances might be applicable to a particular case.

68. On the Administration's response, the Deputy Chairman said that, to his knowledge, a person would not be prosecuted for two separate offences based upon the same criminal act.

69. The Chairman said that, as in the case of Ribena, it was not related to food safety of the food product concerned but rather the stated levels of Vitamin C in the drink were not correctly appeared in the food labels. He sought clarification whether the incorrect labelling was regulated by the Trade Descriptions Ordinance.

Action

70. PS(FEH)(Ag) explained that there were provisions under the Public Health and Municipal Services Ordinance prohibiting against selling food which was not of the nature or quality of the food demanded by the purchaser and labelling calculated to mislead as to its nature, substance or quality. C&ED would consider whether the trade descriptions on Ribena labels constituted false trade descriptions under the Trade Descriptions Ordinance. If affirmative, C&ED would initiate investigation and, subject to the availability of sufficient evidence, prosecute any business or person for breaching the relevant Ordinance. He added that the relevant provision under the Trade Descriptions Ordinance applied to labels of goods in general whereas the relevant provisions under the Public Health and Municipal Services Ordinance were related to food items.

71. In response to the Deputy Chairman's enquiry about the recent food incidents associated with the sale of oilfish as cod fish, DFEH said that FEHD had completed an investigation of a food complaint case and that summonses were served against the supermarket chain store concerned for contravening the sections of 52(1) and 61(1)(b) of Cap.132 relating to food safety, food labelling and food quality. He further said that, to his understanding, C&ED was considering whether the trade descriptions on the labels of oilfish constituted false trade descriptions under the Trade Descriptions Ordinance. If affirmative, C&ED would initiate investigation and, subject to the availability of sufficient evidence, prosecute any business or individuals for breach of the Ordinance.

72. Citing the oilfish incidents as an example, the Chairman asked whether it was the case that, if two different complainants made their complaints concerning the purchase/consumption of oilfish to FEHD and C&ED separately, the same business or individual concerned might be prosecuted separately by FEHD and C&ED for breaching the provisions under Cap. 132 and Cap. 362, subject to the evidence collected, as appropriate.

73. PS(FEH)(Ag) responded that the same business or individual would not be prosecuted twice for the same offence or separately be prosecuted for two offences based upon the same criminal act. Considerations for instituting prosecution would be made in the light of the individual circumstances of each complaint case, the legal advice from DoJ and the evidence gathered.

VI. Improvements to the procedures and practices of the Food and Environmental Hygiene Department for handling cases for prosecution

Presentation by the Administration

74. Director of Food and Environmental Hygiene (DFEH) briefed members on the improvement measures adopted by FEHD for monitoring cases with statutory time limit for prosecution and the follow-up actions to be taken in response to the Direct

Action

Investigation conducted by The Ombudsman, as detailed in the Administration's paper [LC Paper No. CB(2)1514/06-07(04)]. DFEH said that FEHD had considered and accepted all the recommendations made by The Ombudsman and implemented a number of measures, as outlined in the Administration's paper, to improve the established procedures and practices in respect of handling cases for prosecution and in monitoring developments.

75. As regards the criticisms relating to departmental staff as made in The Ombudsman's Direct Investigation Report ("the Report"), DFEH said that FEHD had already started in-depth investigations into all the cases in question. He added that disciplinary actions would be taken in accordance with the established procedures and the Civil Service Regulations as appropriate. DFEH stressed that he had reminded FEHD staff at all levels, including the Superintendent/Senior Superintendent and Inspector levels, of the importance of upholding "integrity" in discharging their duties.

Improvement measures taken by FEHD

76. Mr TAM Yiu-chung said that he received an unsigned letter from a group of Health Inspectors in which they questioned the effectiveness of FEHD's plan of developing a computer network in enhancing their efficiency of work. They were of the opinion that such plan would only increase their workload and considered that the management of FEHD should consider increasing departmental staff at the inspector level and reducing their workload of duties that were not directly related to the department's purview of responsibility. Mr TAM further said that they stated in their letter that FEHD had only 800 Health Inspectors who were responsible for performing a wide spectrum of duties including inspection of licensed food premises, market management, monitoring of street cleansing work, hawker control and law enforcement, etc. This group of Health Inspectors also claimed that there was a shortage of manpower at the inspector level as 138 Health Inspectors had already left. He requested the Administration to address the issues raised in the letter.

77. DFEH responded that, as stated in the Report, among over 50 000 summons cases of prosecution, 33 cases could not proceed because they were time barred. Most of the cases which could not be taken forward were due to reasons related to deficiencies in the existing administrative procedures and practices. He reiterated that FEHD had implemented a number of improvement measures to prevent recurrence of time-barred incidents such as enhancing the existing manual monitoring mechanism through a computerised platform for on-line updating and sharing of summons details, adding the subject of time-bar in the training course for new recruits as well as refresher courses for serving Health Inspectors and strengthening its liaison with GL.

78. DFEH said that it was regrettable that there were two cases where FEHD staff told lies to the complainants to cover their mistakes. While he appreciated the heavy workload and work pressure faced by FEHD staff in discharging their duties having regard to the wide scope of work under the purview of FEHD, he however, considered

Action

that the heavy workload and work pressure should not be used as an excuse or justification for the staff to cover up their mistake by lying to members of the public. He advised that, to cope with the increasing workload and to address the turnover problem in the existing staff complement, FEHD had already recruited about 110 Health Inspectors last year. FEHD would recruit another 70 new staff at the inspector level in 2007-2008.

79. Referring to the Administration's paper, Dr KWOK Ka-ki said that the information as presented in the paper gave him the impression that the staff at the inspector level were held responsible for the mistakes as observed and criticised by The Ombudsman in the Report. He opined that the senior management of FEHD should also be responsible for the mistakes made by its departmental staff. Noting that FEHD was conducting an investigation of all the cases involved, Dr KWOK hoped that the investigation would be conducted in a fair and objective manner. He asked when the investigation would be completed.

80. In response to Dr KWOK's views on the Administration's paper, DFEH explained that, under the existing working procedures for handling prosecution cases, it was the Senior Health Inspectors who were responsible for handling the complaints and informing the complainants of the outcome of prosecution cases arising from complaints. He said that FEHD had accepted the recommendations made in the Report and implemented the improvement measures as presented earlier. He further said that, in future, withdrawal of prosecution and time-barred cases would be personally reviewed and handled by a directorate staff, including the replies to complainants of the time-barred cases. In regard to those cases which could not proceed because of insufficient evidence or complainant's refusal to testify in court, the authority to make such a decision would be escalated to the Superintendent/Senior Superintendent level. Such cases would also be reported to directorate staff on a regular basis.

81. On the two cases where FEHD staff did not tell the truth to the complainants about the reasons for the withdrawal of prosecutions, Mr WONG Kwok-hing said that, as stated in paragraph 22 of the executive summary of the Report [LC Paper No. CB(2)1514/06-07(05)], such action was tantamount to giving knowingly false information or covering up their mistake by lying to members of the public. This was even more serious than the mistake itself. He asked what actions FEHD would take in response to the criticisms made by The Ombudsman and to restore the public's confidence in FEHD. He further asked whether DFEH would apologise to the public.

82. DFEH responded that, when FEHD received the Report, it had taken a number of improvement measures immediately to address the problems in the working procedures for handling and monitoring of prosecution cases. He stressed that FEHD took the criticisms seriously and an internal investigation was underway to look into these 33 cases in question. Disciplinary actions would be taken in accordance with the established procedures and the Civil Service Regulations as appropriate should

Action

any FEHD staff found guilty of misconduct.. He said that the Department had already apologised to the public and sent letters of apology to the two members of public involved in the two cases.

83. Regarding the result of FEHD's internal investigation, DFEH said that the Secretary for Health, Welfare and Food had already directed him to provide a report on these two cases to him as soon as possible. FEHD would therefore accord priority to these two cases and the investigation of these two cases was expected to be completed by the end of April.

84. The Deputy Chairman said that, in his view, the response made by the Acting Deputy Director of FEHD, Ms LO Yuet-ye, to the media on the question whether FEHD would take disciplinary action against the staff involved in the two cases was inappropriate. He opined that the public would have a wrong impression that FEHD was defensive and evasive about the criticisms and that Ms LO should make a public apology on that day. Referring to the unsigned letter from a group of Health Inspectors, the Deputy Chairman further said that FEHD should consider seriously the views of the Health Inspectors as stated in the letter, e.g. measures to reduce their workload of performing clerical duties and duties that were not directly related with food safety and environmental hygiene.

85. DFEH said that FEHD maintained constant communication with its staff associations and a review on the grades of its staff was in progress. He reiterated that he appreciated the heavy workload and work pressure faced by FEHD staff in discharging their duties at the district level, particularly in respect of those grey areas where either no single department was responsible for the work or that the nature of work would require the efforts of different departments. He quoted the example of collection of metal cages for used clothes which was not an environmental hygiene or food safety issue but nonetheless required the assistance of FEHD. Whilst he would be pleased to absolve his staff from doing work unrelated to FEHD's core responsibilities, he explained that it would only be appropriate for his Department to participate fully in the District Administration Scheme whereby district management work would invariably involve the co-ordinated efforts of different departments in resolving district problems.

86. The Chairman said that the credibility of FEHD was greatly undermined after the release of the Report. He asked how FEHD could re-inculcate its staff with the value of integrity and restore the public's confidence in FEHD.

87. DFEH stressed that he and the management of FEHD would endeavour to restore the value of integrity in the department, to rebuild the credibility of FEHD in law enforcement and to restore public's confidence in FEHD. He said that, as the Director of the Department, he had repeatedly reminded the importance of upholding integrity to FEHD staff in discharging their duties.

Action

Monitoring of prosecution cases

88. As regards The Ombudsman's criticism on timely analysis of food testing, Dr KWOK Ka-ki said that he wondered if there was a staff manual on the working procedures in this respect. He further said that he was surprised to note from the Administration's paper that FEHD had not implemented any computerised programme for on-line updating and sharing of summons data so that case progress could be tracked in a timely manner.

89. The Deputy Chairman expressed reservations about the effectiveness of the improvement measures implemented by FEHD. He pointed out that it was important to put in place a mechanism to monitor the case progress and the performance of action officers to ensure that the prosecution cases were still within the time-bar.

90. DFEH explained that there was presently a computer system for registering the prosecution cases but it was only accessible to the staff working at the prosecution section. With a view to better supervising the processing and monitoring of prosecution cases, FEHD had already put in place a manual system for tracking the development of prosecution cases by the District Offices, Prosecution Sections and Headquarters. DFEH reiterated that FEHD would further enhance this manual monitoring mechanism through a computerised platform for on-line updating and sharing of summons details. It was expected that the new system would be ready for implementation in three months. He advised that, with the implementation of the new system, case progress would be tracked more efficiently as well as timely and the performance of action officers would be monitored in a more effective manner. FEHD had a long-term plan to develop a comprehensive on-line information-cum-tracing system for maintaining summons data and monitoring the progress of laying of information to the court.

91. Regarding the case which involved a delay in sending food samples for analyses, DFEH explained that FEHD received the milk in question from the complainant in the afternoon of the day when the complaint was made. As GL needed a control sample for laboratory test, it requested FEHD staff to buy a milk product sample of the same brand from the same retail outlet where the complainant purchased the milk in question. Unfortunately, a typhoon signal number 8 was hoisted on the next working day which was a Friday. When FEHD staff went to the same retail outlet to buy the milk product on Saturday, it was out of stock. It was not until Monday that FEHD staff was able to buy a milk product sample of the same brand from the same retail outlet. DFEH said that, to avoid the recurrence of the delay in sending food samples that were involved in food complaints, FEHD would send the food samples in question to GL immediately upon receipt from the complainants and would not wait until control samples were available.

92. Referring to paragraph 10 of the Administration's paper on the measure to improve liaison with GL, the Deputy Chairman commented that sending weekly

Action

reminders to GL would not be an effective measure to monitor the progress of food tests for prosecution cases with the time-bar. He wondered whether there were any other reasons for its delay in its reports.

93. In response, DFEH said that there were 11 summons cases which could not be taken forward because the tests results were only available after the time-bar. He explained that these cases happened between 2003 and early 2006 when there was an occurrence of a series of incidents of discovery of malachite green in freshwater fish. Extra workload on the testing of malachite green in freshwater fish could be the reason for the late laboratory results. However, DFEH advised that, to his understanding, additional resources had been allocated to GL to recruit additional staff to cope with the increasing workload.

Number of summons issued

94. Noting from the Administration's paper that FEHD handled 17 000 summons cases on average each year, the Chairman said that he was inclined to believe that FEHD did preset a quota of prosecution cases each year. He further said that the improvement measures implemented could not prevent the recurrence of the problems as observed in the Report if FEHD did not review the need for these summons cases. The Chairman considered that, by developing a partnership with the licensed food premises, FEHD could effectively promote and enhance food safety in Hong Kong. FEHD should change its culture and approach in discharging its duties concerning food safety and environmental hygiene. He further said that FEHD should put more efforts in encouraging the compliance of the law by providing more training and education to licensed food premises.

95. Regarding the number of prosecution cases, DFEH clarified that FEHD did not set any quota and its staff were not required to meet any target. He however pointed out that FEHD would need to investigate complaints lodged by members of the public related to food safety and environmental hygiene and conduct regular inspections to licensed food premises and Fresh Provision Shops. Should there be any contravention of provisions under the relevant legislation or breaching of the licensing requirements and conditions, FEHD had no alternative but to institute prosecution actions as appropriate.

96. On the proposal to amend the relevant legislation in relation to unauthorised alteration to approved layout of licensed premises, the Chairman enquired about the justifications for extending the time-bar to more than six months.

97. PS(FEH)(Ag) explained that prosecution against unauthorised alteration is subject to a six-month statutory time limit under the Magistrates Ordinance. According to legal advice for cases of unauthorised alteration to approved layout of licensed premises, the time limit should normally count from the date the approved plan was last checked and not the date the breach was detected. In view that

Action

inspection to licensed food premises was conducted in every five months, there would not be sufficient time for FEHD staff to initiate prosecution as there would be less than six months from the date of detection of unauthorised alteration. He said that, as recommended by The Ombudsman's Report, the Administration proposed to amend the relevant legislation to remove the deficiency. It was hoped that the amendment would enable FEHD staff to initiate prosecution within six months from the unauthorised alteration being discovered or coming to their notice.

VII. Any other business

98. There being no other business, the meeting ended at 5:30 pm.

Council Business Division 2
Legislative Council Secretariat
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