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7 April 2008

Mrs Angelina Cheung
Principal Assistant Secretary
Food and Health Bureau
20/F, Murray Building
Garden Road
Hong Kong

BY FAX
Fax No. 2136 3281

Dear Mrs Cheung,

**Food and Drugs (Composition and Labelling)
(Amendment: Requirements for Nutrition Labelling and
Nutrition Claim) Regulation 2008 (L.N. 69 of 2008)**

I am studying the legal and drafting aspects of the above Regulation and my comments are set out in the Annex for your consideration.

As the above Regulation will be considered by Members at the House Committee meeting on 11 April 2008, I would appreciate it if you could let me have the Administration's reply in both languages as soon as possible, preferably on or before that date.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

Encl.

cc: DoJ (Attention: Miss Emma WONG, GC) Fax No. 2536 8178
LA
SALA1

Annex

Comments on Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 (L.N. 69 of 2008)

1. Section 2

(a) In section 2(3), in paragraph (c) of the definition of "advertisement" where reference is made to electronic messages, is it necessary to define "electronic messages" in the Regulation? If it is intended that the definition of "electronic message" in the Unsolicited Electronic Messages Ordinance (9 of 2007) be adopted in this Regulation, please reflect this intention clearly in the Regulation.

(b) In paragraph (e) of the proposed definition of "advertisement", should the Chinese text of "samples" be "樣本" to make the text consistent with that of the same term used in section 62 of the Public Health and Municipal Services Ordinance (Cap. 132)?

(c) Is there any reason for defining "vitamin A" only? Is it necessary to also define other vitamins or minerals set out in Schedule 7?

2. Part 2 of Schedule 6

(a) Paragraph 18 of the LegCo Brief sets out the details relating to the implementation of the small volume exemption for food products. However, those details are not provided in the Regulation. Please clarify whether those details are to be included as conditions to be imposed by the Authority upon the grant of exemption.

(b) In section 1(1), what does "food of the same version" refer to? Does it refer to food of the same brand, food of the same size or of the same package? Is it necessary to define the phrase for the sake of clarity?

(c) In section 2, does the Authority have the power to impose conditions upon granting approval of the application for renewal of the exemption? If so, should an express provision be included to cover this?

(d) Is it intended that the Authority may exercise the powers under section 3 if the applicant or importer/manufacturer has breached the undertaking referred to in section 1(4)(b)? If so, should this intention be reflected clearly in section 3? Alternatively, please consider stipulating in section 1(4)(b) that requiring the applicant to give an undertaking is one of the conditions that the Authority may impose. Please refer to a similar context in section 21(8) and (9) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

(e) If a person is aggrieved by a decision of the Authority refusing an application for grant of exemption, refusing an application for renewal of the exemption or revoking the exemption, can the person appeal against the decision?