

Submission to Subcommittee on Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrient Claim) Regulation 2008

Date: 5th May 2008

Our Position

The Hong Kong Suppliers Association (HKSA) supports a nutrition labelling scheme that will provide nutrition information to the public without sacrificing consumer choices and cause food price inflation. We are committed to provide true and useful nutrition information. We would like to get it right instead of just getting it done. This is the reason we spend so much time with the Administration and we hope our effort is appreciated and not being criticized as against the Administration and against the health of the public.

After much deliberation, HKSA proposed and the Administration accepted a Small Volume Exemption Scheme. We are of the view that a practical Small Volume Exemption Scheme is the only possible solution “in providing maximal amount of nutrition information that is feasible for Hong Kong on large majority of food consumed without significantly sacrifice consumer choice and cause price inflation”.

It is unfortunate that our Government, on one hand, accepted our view by proposing a small volume exemption scheme in the Amendment. But, on the other hand, making the small volume exemption practically useless by imposing undue restriction and conditions. We are also disappointed that some of our legislators and consumer groups oppose to the small volume exemption without objectively listening to the details and accepting the reality that consumer will be deprived of choices (mainly healthy choices), deprived of new products entries and prices of some foods will inflate without a sensible Small Volume Exemption Scheme.

Our Submission

The Administration had stated in the Press and in many occasions that their Nutrition Scheme is the most flexible scheme in the world. This is not true and we strongly disagree. The proposed scheme has the second most stringent requirement in some aspects and most stringent in totality. Any minor deviation will render the label illegal. The following submission is based on the most recent proposal gazetted:

- 1. The trade need a minimum of three years Grace Period from the time the final Guideline is published. The Guideline has to be practical and workable to enable the trade to understand how compliance of the Nutrition Label Scheme can be achieved.*

2. The Small Volume Exemption Scheme should be simple and practical as proposed by HKSA as attached in Exhibit 1. There should not be unwarranted restriction and conditions such as:
 - a. Require exemption sticker on each product and/or bearing identification of the individual Small Volume Exemption number for the product. *Our submission is - Labelling on the product to identify it is being exempted should be waived.*
 - b. Imposing a registration fee of \$345 per product in the first year and \$335 per product per year thereafter. *Our submission is - The registration should be no more than \$50 per product.*
 - c. Once nutrient claim is made, the exemption status is lost. *Our Submission is - Food with nutrient claim should be included in the Small Volume Exemption as long as the claim is true, not misleading and comply with the requirement of source countries since all foods with nutrient claim would have nutrition information but may not be the exact 1+7 as Hong Kong.*

3. The draft Guideline is rigid and unreasonable in some parts. *Our submission is – The Guideline should adopt a flexible and realistic approach that is compatible with other countries due to the unique characteristic of Hong Kong that 90% of foods are imported.* Below are some obvious examples inflexibility:
 - a. When state on the packaging as “zero % fat”, it must be in “zero gm/ml fat”, the Administration should accept both zero gm/ml and zero % since the meaning is the same;
 - b. There is no international standard for labelling vitamin or minerals. By Hong Kong selecting its own unique and rigid standard, it forced from the market all those products, which use different presentation format. U.S.A. uses % NRV for vitamin and mineral. Hong Kong requires absolute value per 100 g/ml when vitamin and mineral claim is made. The difference in these amounts is negligible in their impact on human health but large amount of effort has to be paid to put on sticker either to hide the information or change it into the unique Hong Kong format;
 - c. Not many countries have mandatory requirement to state Trans Fat content. The definition of “zero Trans Fat” differs from one country to another. U.S.A. adopted 0.5g while Malaysia adopted 0.1 g. Hong Kong takes 0.3g and thus rendering all products from U.S.A. claiming zero Trans Fat will face problems when importing into the Hong Kong market.

Details of such fine points should be further discussed and worked out with the trade.

The Pre-packaged food suppliers

Individual Legislators had accused the trade in the Press and on the radio on wrong doing such as:

1. Pressured the Government on sacrificing vital nutrition information on the label for the interest of the trade

2. The Government and the trade is collaborating on sacrificing the health of the public
3. The Government had made substantial concession on the nutrition label, but the trade is not satisfied, thus, disappoint on the trade's attitude

The Pre-packaged food suppliers did not pressure the Government. The Pre-packaged food suppliers do not have an attitude. The Pre-packaged food suppliers only expressed our view in achieving a nutrition labelling scheme that "provide nutrition information to the public without sacrificing consumer choices and cause food price inflation". We are not evil. We are not trying to deprive consumer of informed choices. We are just a group of mid-income, law abiding citizen that have chosen the career in the suppliers trade to provide pre-packaged foods to the people in Hong Kong regardless of nationality, food preference and income level. We are doing our best to supply safe and good products to the market and keep the consumer informed. At the end, suppliers will have to carrying out the labelling. We know what can be done and what cannot be done. Voicing our view is not wrong. The Administration "really listening" to our voice is not wrong.

The pre-packaged food suppliers in Hong Kong composes of local manufacturers, overseas manufacturers with manufacturing and distribution in Hong Kong, overseas manufacturers with distribution in Hong Kong and non-manufacturing suppliers with imported and/or local pre-packaged foods. For non-manufacturing suppliers, the large majority are SME importers. We estimated there are 600 to 800 such SME suppliers in Hong Kong. In this group, the small suppliers would have less than 10 persons in the company and the medium size suppliers would have 10 to 30 persons in the company.

The suppliers that have difficulties and face the possibility of business closures are the SME non-manufacturing suppliers and small local manufacturers (collectively referred as "SME suppliers"). The Regulatory Impact Assessment published in 2005 also concluded that SME would be most affected by the amendment, suggesting that 191 SME may face closure. The reasons are simple:

1. Human Resource:
The SME suppliers do not have a technical person or any designated person to take care of regulation compliance. The person that takes care of these issues generally is the owner or marketing person that takes care of planning, marketing, sales and liaison with manufacturers. Frankly, these SME suppliers probably are aware of the Nutrition Label, but they do not know about the details and how it would impact on their companies. This should be obvious to the Administration since the companies that ask questions and express difficulties in the Technical Meetings are big companies. Does it means that the SME suppliers have no questions and no difficulties in complying with what the Government impose? **The answer should be an obvious "NO"**. The SME suppliers are busy making a living and barely surviving in their business. They don't have the human resource to get involved. **We plead our Legislators and Government Official to be reasonable and don't conclude that SME have no difficulties since they don't speak up.**
2. These small business operators do not have the technical know-how to comprehend what are required in the Amendment. The nutrition labelling scheme with its **new requirement on nutrient claim** is very complicated. It is not simply a matter of sticking

- a label onto the product. It requires full knowledge of the unique Hong Kong nutrition label scheme, conducting the nutrient test, comparing the nutrition claims in according to the law and reformulation or cover up or change of claims if the food currently sold do not comply with the new requirement. To comply take time that the Administration is not allowing us to have with only a two years Grace Period while taking them three years to work out very stringent requirements that are second in the world in many aspects and in total probably the most stringent.
3. SME suppliers are not cash rich companies. If the compliant cost is high, they will be forced out of business and many of these low to mid-income people will be forced out of a job. For example, to register a limited company cost \$2,600. To register a product under small volume exemption would cost \$245 and register 11 products would be more than the business registration fee of \$2,600. The compliant cost in registering a small volume product is much too high for a small company with many small volume sales products not to mention the time and labour cost involved in the registration, case opening and stickering the product one by one with “Small Volume Exempted” label (as currently mandated in the Administration’s proposal) and reseal the case again, monthly report to the authority, etc. Cease importation of such small volume items may ultimately be the only solution, though reluctant.

The Hong Kong nutrition labelling scheme is not only unique but also new to Hong Kong. It is stringent and complicated. Even large suppliers with resources are having difficulties in complying with the Amendment and they have presented their views to the Administration. Hong Kong is a small market and most products are imported. The main business of the large suppliers is in quality control and the selling and marketing of products, not in product development for the Hong Kong market. Even big suppliers do not have sufficient technical personnel to fully comprehend the requirement, not to mention to fully implement it before the Grace Period.

Large local and overseas manufacturers selling big volume could comply with the nutrition labelling given that there is enough time and requirements are reasonable and clear. Legislators and the Administration had commented in the Press that why some large local manufacturers can comply with the unique nutrition label requirement for U.S. and why not for Hong Kong. The examples quoted are only a small number of products exported to the U.S.A. and they are all big volume sales item. If the suppliers can sell the same big volume in Hong Kong, for sure there is no problem in complying to the Hong Kong regulation as long as the requirements are clear, which they are not at this moment. Admittedly, even for large local and overseas manufacturers may have to cease supply of some small volume sales items to the Hong Kong market.

Small Volume Exemption

The Administration is in agreement that exemption on small volume sales items would have a small impact on the health of the public since the large majority of foods we consumed are sold in big volume. Some legislators had said that the Administration is making concession due to pressure from the trade and go as far as the Administration is sacrificing the health of the public by collaborating with the trade. These legislators had been misled or misinformed. The reality is that the Small Volume Exemption is the only solution in maintaining choices and not cause price

inflation.

Why small volume is necessary for Hong Kong? Hong Kong imports 90% of foods. Many are imported in small volume for various reasons, food for special needs, food for ethnic minority, food for test marketing, foods for variety, etc. These small volume foods will definitely not able to comply with the Hong Kong unique and stringent nutrition label requirement. Without small volume exemption, the large majority of these foods will be out of the market and the remaining would have to sell at higher prices due to nutrient testing and the label, stickering and additional logistic cost. How much higher? It would be dependent on the product cost. The nutrient test cost about \$5,000 to \$7,000 per product. Nutrient test is not a one time cost. It needs to be re-tested whenever needed. For a supplier selling 10,000 units per year and re-test on an annual basis, the testing cost is \$0.5 to \$0.7 per product sold. The impact of testing cost on selling price would be dependent on the product cost. Putting a label on a product would cost about \$0.40 to \$0.70. So, if the product cost is \$5, it would be 8% to 14% (or cost become \$5.40 to \$5.70); if the product cost is \$10, it would be 4% to 7% (cost become \$10.40 to \$10.70), etc. Legislator can easily verify these labelling costs by a few phone calls to printer, labelling and logistic companies. In principle, if cost is transferred to the consumer, consumer price would increase by the same % increase in product cost, which is the total of nutrient testing cost (e.g. 10% to 14% for a product sold 10,000 units in a year with a product cost of \$5) and labelling cost (e.g. 8% to 14% for a product with product cost of \$5). Again, if the suppliers can absorb the cost, the suppliers would gladly do so. However, with the recent inflation on everything, including, Hong Kong dollar deflation, increase in gasoline and transport cost, raw material cost, we dare to say that suppliers can absorb no more and consumer would have to pay for the nutrition label, this is especially true when sales volume is small. For small volume items, the only way to label the nutrition table is to physically stick on an environmental unfriendly printed label with glue. Nutrient testing cost is a re-occurring cost and labelling is a variable and re-occurring cost that is part of product cost.

The Administration has agreed on the small volume exemption. But they are making it useless to the trade by adding undue restriction. The Administration is charging \$345 for registration in the first year for one product and renew at \$335 per year thereafter. If you have 8 products to register, it is equal to \$2,760. It is more money than the business registration fee of \$2,600 for a limited company. SME suppliers depend on selling small volume of many products to make their livelihood. They can easily sell 100 to 200 products, each sell really small volume. They just don't have the money to pay for the registration fee. We asked the Administration why they charge so much. They said they expected 10,000 registration and they need \$3,450,000 to recover the cost of registration! \$3,450,000 may not be a lot to the Administration, but in the real world, we can do a lot with \$3,450,000. We are of the view that it shouldn't cost \$3,450,000 to register 10,000 products or more on the web-base system as we proposed. If the Administration need \$3,450,000 to do a little bit of work in registration to maintain food choices and may help the SME to survive, we suggest the Administration find money somewhere in the large amount of money collected from tax and surplus to subsidize.

The Administration also required having a 7 sq. cm sticker "Nutrition Labelling Exempted (Small Sales Volume)". This is completely unnecessary as the consumer already know that the product is exempted under small volume when purchase the goods on the shelves and such move will definitely cause price inflation because it involves case opening, stickering the specific label one by one and

resealing and additional logistic cost.

The Administration also excludes food with nutrient claim from the small volume exemption. This defeat the whole purpose of the nutrition label since these are likely the more healthier food choice and the large majority of these foods will not be sold in Hong Kong.

Queries on the existing proposal by the Administration

According to FEHD's website at the following address as at 1st May 2008, we can see not many countries having mandatory Nutrition Labelling (here after referred as “NL”) system.

http://www.cfs.gov.hk/tc_chi/programme/programme_nifl/programme_nifl_03.html

This paragraph was copied from the above link:

很多發達國家已為預先包裝食物制定一套標籤制度。除非食物附有與營養素有關的聲稱，否則大部分發達國家都容許食物製造商自行決定是否在食物標籤中標示營養標籤；不過，美國、加拿大、澳洲、新西蘭及馬來西亞均訂立規例強制規定食物必須備有營養標籤，而歐洲聯盟、日本及新加坡則規定如果預先包裝食物附有與營養素有關的聲稱，就必須附加營養標籤，至於那些採用自願標籤制度的國家，現正積極考慮把這項制度轉化為強制性質。

From the list of those countries with mandatory Nutrition Label law, they all have different requirements from Hong Kong. We can generally say U.S.A. and Canada are similar to each other but they use total carbohydrate and declare vitamin and minerals in DV; Australia and New Zealand are similar to each other but they do not have to state Trans Fat. Malaysia and Thailand are mandatory on specified foods only. We can see most other countries' existing Nutrition Label Law are on claim basis, so most products are exempted from the Nutrition Label Law. For China, the proposed NL is 1+4 claim base.

Our concern is when most of the countries are not ready for mandatory NL law, Hong Kong being a small area rely heavily on imported foods, is it really appropriate to have such a sophisticated NL law so hastily?

We agree Nutrition Label is important but it should be done step-by-step and follow the international trend as suggested in the Regulatory Impact Assessment. What is the point of conducting the Regulatory Impact Assessment but refuse to follow its suggestions.

By looking at the Bill and the draft technical guideline closely, we dare to say that it is bewildering. It uses Codex requirements as the skeleton and then uses different countries standards as its fresh and bone, such as: Chinese NRV, requiring labelling of Trans Fat as the U.S.A. (not in CODEX), however, decided to define our own unique “zero” standard (differed from the U.S. standard) of Trans Fat at 0.3g per 100g/ml., somewhere between the US standard which is 0.5g per serving for a minimum of 50 g per serving and Malaysia standard (for specified foods only) which is 0.1g per

100g/ml.

The Chinese NRV, though closely similar to Codex NRV but still they are different. By adopting the Chinese NRV increase the complexity of the law unnecessarily. Secondly, in Chinese NRV, total carbohydrate is use and thus when making claims, transformation is necessary and this will also create unnecessary complexity.

The Bill has other unreasonableness:

1. Grace Period

Since the NL law is different from the requirement of all other countries, so it is expected over 90% of pre-packaged food has to be relabelled.

Bearing in mind the trade has just finished the label change for the allergen and additive requirements. For Allergen and Additive Regulations, the trade has 3 years grace period. However for the new NL law, the trade has only 2 years grace period.

For Allergen and Additive Regulation, compliance is a bit straightforward but yet still complicated for the trade due to complex communication with the Administration, the manufacturers and the retailers. For the NL law, laboratory test or calculation must be conducted to obtain the figures for the Nutrition Table. Only those people equipped with expertise know how to do the calculation and laboratory test also takes time.

With a Grace Period of 2 years or 24 months, retailers generally require labels to be in compliance 6 months before the Grace Period is concluded. This is reasonable since retailers need time to ensure products on shelves will meet the new regulation and to protect them from being prosecuted once the Grace Period is over. So, a **Grace Period of 24 months is actually 18 months for the suppliers.** Imaging a company with 600 regular products, all the testing and packaging label change has to be completed in 6 month time for 12 months shelf life products (6 months to prepare plus 12 months shelf life equal 18 months that the label must be corrected on the shelves); and products with 18 months shelf life has zero time to prepare, or face the consequence of product recall.

When the manpower remain unchanged with sudden load of extra work while the market has no people understand the new law, it would be almost impossible for the trade to comply with the new NL law in such short period of time?

The trade once asked whether the laboratories are ready for such huge amount of tests at the initial few months after the law takes effect. After all, **there are only three accredited laboratories in Hong Kong.**

2. Laboratory test issues

The laboratory carrying out the nutrient testing needs to be accredited under HOKLAS (Hong Kong Laboratory Accredited Scheme); there are only three such laboratories in Hong Kong. With regard to testing, the trade has doubt as to the capacity of the laboratory, although the Administration

assumed there is no problem with testing capacity and that the laboratory will add equipment and personnel to cope with the sudden demand. It is reasonably foreseeable that the testing would flood the laboratories. Furthermore, none of the three laboratories in Hong Kong has HOKLAS accredited for all the Hong Kong required nutrition test items at the time of this writing. We urge our Legislators to seek clarification from the Administration on this point.

3. Environmental protection

In the moment when everyone is talking about environment protection, Hong Kong is going to be the sticker city. Go to the supermarket and have a look at the product packaging, you will be surprised to see how many Best Before Date stickers and allergen stickers. Now we are going to have the NL stickers or “Small Volume exemption” stickers if exempted and also many other stickers of different size to cover up the claims should they fail to fulfil the unique Hong Kong NL law.

4. Nutrient data base

The Government has once suggested to the trade that the NL law will not be a big concern as we can make use of the nutrient data base for conducting the calculation. This is completely wrong and misleading.

The data base is developed by the Chinese University with HK\$17 million sponsorship from the Hong Kong Jockey Club. The data base is estimated to be available 3 years later. The trade will face serious difficulty when they have to conduct the calculation for the nutrition information without the help of the nutrient data base that is designed for this purpose. Furthermore, the data base is designed to help local small manufacturers and not importers since making use of the calculation required detailed ingredient list with composition and manufacturing process. Most of these information are trade secrets and importers would not be able to obtain from manufacturers.

5. Standards

Currently Hong Kong does not have a set of standard governing the nutrition claims. Now the Government introduced a new set of standards following Codex, which we are not opposing. However, the Government out of sudden introduces a set of standards into the Hong Kong market. Hence many products with claims are to be affected. Take a simple example, low fat milk, Hong Kong suppliers since 1980's have used 2% fat as low fat standard. However under the Codex standard, the fat content will be reduced to 1.5%. As such, all low fat milk products have to be reformulated to suit the new standard.

To do the reformulation is not a simple matter, especially when it comes to a number of products, it takes time to do it one by one. The trade needs time to scrutinize their current products one by one to see which one is in compliance and which one is not. Only after this, the trade can decide whether to cover up the claim by stickers or simply withdraw the product from shelf pending reformulation.

As most of us are aware of, claims can be anywhere on the packaging and it would be extremely difficult to tailor-made different size of stickers to be put on different places on the packaging to cover up the claims with blank stickers!

6. Special dietary needs

We have special concern on the following groups of people:

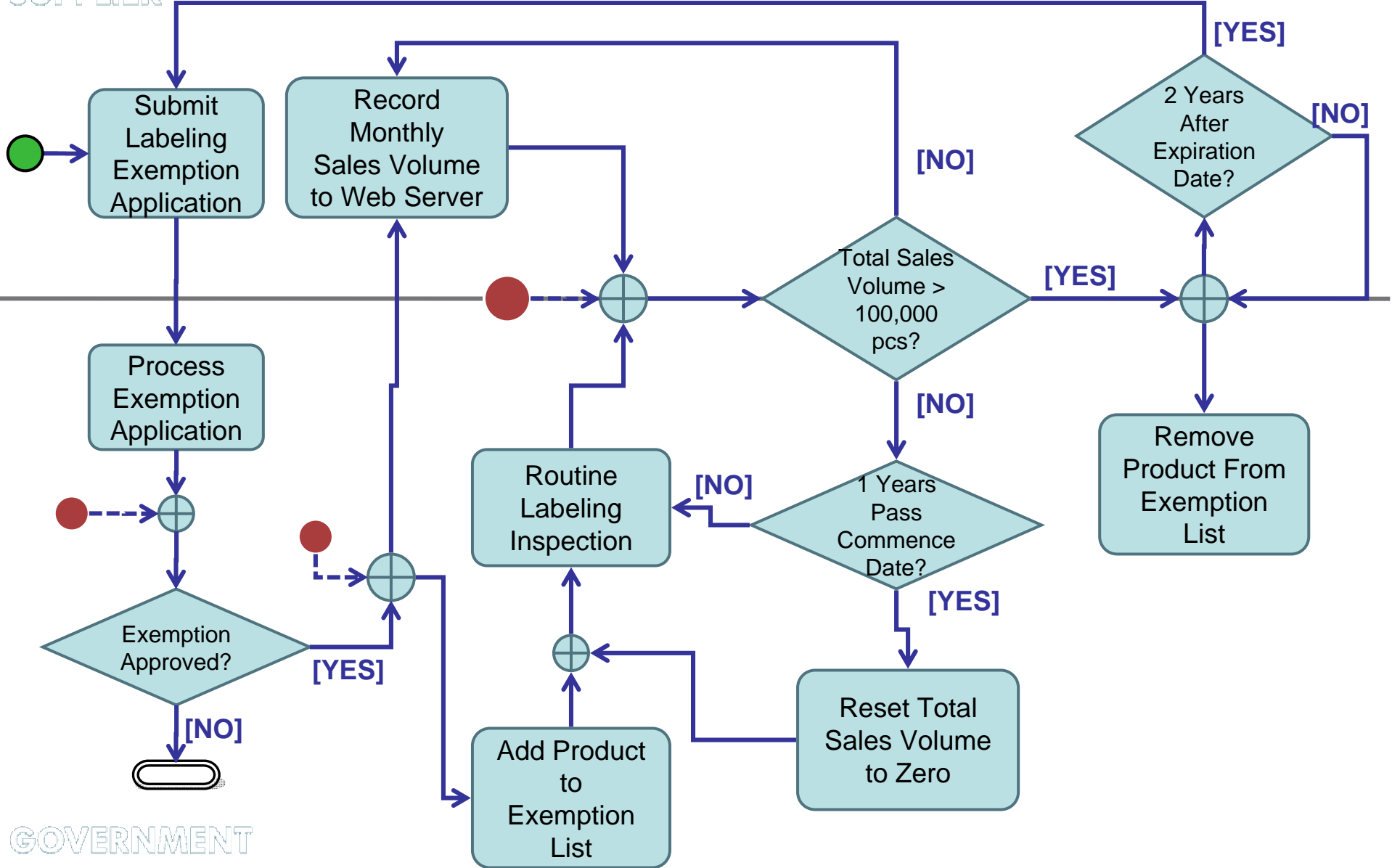
1. patient
2. infant
3. pregnant women
4. elderly

Special Dietary Need has clear definition in Mainland China's voluntary nutrition label law but Hong Kong's mandatory scheme does not. What we know is the Nutrition Label law is not applicable to pre-packaged food for people of special dietary needs, nevertheless, without a clear definition on this, no one knows for sure how big the impact of the Nutrition Label Law would be on the above mentioned group of people.

Our concern is not an empty tale, it comes from the fact that there are many clinical nutritional products in the market; they are supplied Over the Counter in the Pharmacy. These products carry varies nutrient claims for special group of people to enable them to have better understanding as to the nature of the food. It would deprive the patient's benefit by removing the claims. In the worst scenario selling of these products has to be suspended pending reformulation of the product.

End

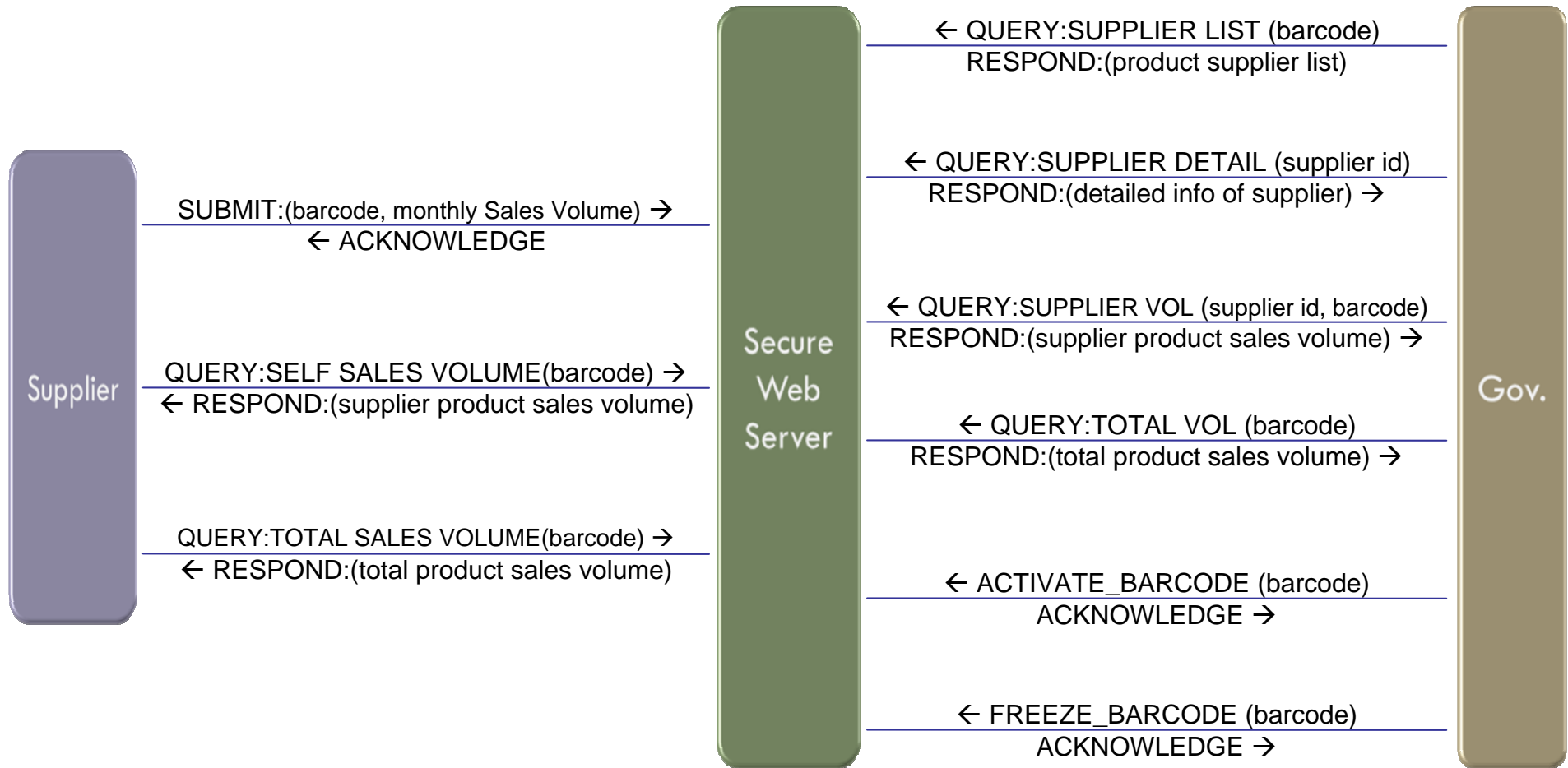
SUPPLIER



GOVERNMENT

- First Applying Supplier
- Subsequent Applying Suppliers

Appendix 1: Small Volume Exemption



Secure Web Server
Operations

Appendix 1: Small Volume Exemption