

Date: 19th May, 2008

Hon. Bernard Chan, GBS, JP
Chairman of Subcommittee

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

Our Position

The Hong Kong Suppliers Association (HKSA) basically supports the initiative of establishing a nutrition labelling scheme to provide nutrition information to the public, however, we are disappointed by the unreasonable requirements embedded in the details of the Government proposed bill; the two most concern aspects lie in the too-short grace period of 2-year and unjustifiably high registration fee of \$345 per product for obtaining Small Volume Exemption.

We strongly suggest the administration to revisit the subjects by ascertaining the realistic time span through diagnosing into the practical difficulties for the trade to comply and to explore lower cost alternatives for handling the Small Volume Exemption System. Should the government insist on these undue restrictions, it would only defeat the whole purpose of the nutrition label and put the trade in chaos.

Our Submission

Grace Period:

1. FEHD proposed a Grace Period of 2 years. **We would request our honourable legislators to seek clarification on how does FEHD arrive at a 2 years Grace Period that would be sufficient for the trade to comply?** For a simple Allergen Label in 2007, FEHD allows a Grace Period of 3 years and it ended in a chaotic situation whereby products were off shelves and needed a series of meeting with FEHD for clarifications. **What is the basis for a 2 years period for this very complicated label change?**
2. European Union allows a Grace Period of 3 years for food business operators to comply and 5 years for small enterprises in their 2008 January proposal for provision of food information to consumer, whereby it would require a mandatory nutrition declaration of a 1+ 5 Nutrition Label (please refer to the attached two pages extracted from the EU publication). EU is a group of manufacturing countries that manufacture most of their foods. Hong Kong relies on import for foods; hence there is an additional factor of communicating with overseas manufacturers. **Why even EU allows a 3-year to 5-year Grace period dependent on business size and Hong Kong only 2 years?**
3. **Are there sufficient laboratories to carry out the nutrient analytical tests in Hong Kong once the regulation is passed?**

There are **only four HOKLAS laboratories** (which are recommended by FEHD) in Hong Kong that are accredited to carry out the nutrient analytical tests (food composition analysis). According to the most updated information in the Innovative and Technology Commission (the Government's laboratory accreditation authority, please refer to www.itc.gov.hk/en/quality/hkas/hoklas/directory/food.htm), none of the above mentioned laboratories are accredited to carry out all the 1+7 required and not to mention additional test needed if claim is made. If not for these HOKLAS laboratories, which are probably the largest laboratories in Hong Kong, **what other private laboratories can carry out the nutrient tests in Hong Kong?**

4. Time needed by the trade to do the nutrition label:

HKSA asked for a Grace Period of no less than 3 years. The 3-year period is based on a collective view that the large majority of products that need label changing due to the new Nutrition Label regulation would be able to comply. Of course, the time needed would be dependent on the nature of business (importer or agent or manufacturer, etc) of the companies, the complexity of range carrying, numbers of products carrying, manpower, size of business, relationship with manufacturers, etc. One most important factor in this case is **“Are the laboratories able to deliver test results timely with tens of thousand of products flooding their laboratories all at once?”**

Legislators asked for a breakdown of time needed to change a nutrition label. As we mentioned earlier, it will be dependent on a case-by-case basis. On the average and assuming everything goes as planned (for example, local nutrients testing are available and takes only 2 weeks to 4 weeks to obtain results) and no major delay occur, we believe the label can be done in 16.4 months. But, there is consideration of:

- a. FEHD supposedly would carry out a series of workshops to educate the trade on how to do the label. Learning from the experience of the Allergen Label, most of the trade would start planning on the label but would not start the labelling process until FEHD has clarified all details in the workshops. We expect the workshops should not be a one-time lecture. We estimate there are no less than 1,000 food suppliers, inclusive of manufacturers; the workshops should last one to three months. Of course, this timing is up to FEHD. **Experience from the Allergen label is that the first workshop was held 18 months after the regulation was passed.**
- b. Retailers generally required foods to be in compliant 6 months prior to the law is effective.

So, adding Point a. and b. to the estimated average 16.4 months, it is much more than 24 months. Again, we re-iterate that 16.4 months is everything goes as planned.

For product that requires **reformulation**, we need an additional 8 months to 22 months including but not limited to the following activities:

- ◆ Sourcing new and replacement ingredients
- ◆ Develop prototypes and validation of formulation
- ◆ In-house sensory test and evaluation

- ◆ Composition checking (including nutrient tests that time needed is unknown)
- ◆ Production viability test
- ◆ Organoleptic test by consumer panel
- ◆ Stability and shelf life expectancy testing

So, if a supplier starts the labelling process immediately taking the risk of not meeting the FEHD requirements, **it would take 16.4 months to 41.4 months** (3 months taken up by FEHD, 22 months for product development and 16.4 months to change the label). Then, you need to add the **6 months requirement by retailers** that foods needed to be in compliance before the law is effective. Please note that the above has yet taken into consideration that foods still have good shelf life needed to be disposed. Of course, 41.4 months is quite close to the extreme case. That is why **we ask for 3 years** provided that:

1. FEHD will come out with a workable Guideline on July 11, 2008.
 2. The Hong Kong laboratories are capable of absorbing the large number of products need testing.
5. Time needed for learning as considered by EU, US and Taiwan

Due to the complexity of analytical method selections, rigid presentation format of nutritional information, differentiation of different nutritional claims, etc. it takes time for all of us including the administration, the laboratories and the suppliers to learn and get familiar with the new Hong Kong nutrition label. **The Grace Period has to allow sufficient time for learning as well as recognized by EU, US and Taiwan.**

Below are references that support the need for a reasonable grace period:

- ◆ As mentioned in point 2 above, EU allows a 3-year to 5-year Grace period dependent on business size as per their 2008 proposal.
- ◆ US first started voluntary nutrition labeling in 1973 and made it mandatory on May 8, 1994 after finalizing details of the regulation in Jan 1993; it evidenced 18-month were provided for the trade to comply. Most importantly, the implementation date was based on the manufacture date, meaning any packaged food produced before May 8, 1994 could continue to use old labels and remain in the market for the entire shelf life. Besides, imported products were given an additional 18 months to comply, i.e. until January 1996, simply because importers need longer time to clarify about the regulation and understand how to implement the nutrition labelling format.
- ◆ Taiwan implemented the nutrition labelling in phases and by food category; the timetable is attached for reference.

Registration fee of Small Volume Exemption:

1. FEHD prepared to impose a registration fee of \$345 per product in the first year and \$335 per product per year thereafter. **How does FEHD come up with such charges?** The administration needs to explain by providing detail breakdown on the operating costs.
2. FEHD claimed to have based on the estimation of 10,000 products would register. Does it represent the total budget is **\$3,450,000?** **How do they come up with this big budget?**

- It is our query that whether the administration is employing an economical means to set up and maintain the system.
3. If more than 10,000 products (or whatever number of products FEHD used for budgeting) register, it would mean FEHD is making money and not just recovering costs. If that is the case, **would FEHD refund the difference to the Trade?**
 4. We somehow understand the claimed costs of the government operation tend to be higher than that in the competitive commercial world. **Can FEHD assign the job to a more cost-effective service provider?** HKSA had in fact suggested to FEHD to delegate the management job of the web-base system to educational institutes like the Chinese University where experts and technical supports could be readily available.
 5. **For the sake of public health interest and in helping the SMEs to survive, does it make good sense for FEHD to obtain subsidies elsewhere?** The administration can present the case to obtain funding from Government tax and surplus or seek for sponsorship from charitable Organizations like the Hong Kong Jockey Club, who has actually donated a much bigger sum of \$17 million for setting up the Nutrient Data Base.

Thank you for your attention.

Hong Kong Suppliers Association



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.1.2008
COM(2008) 40 final

2008/0028 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the provision of food information to consumers

(presented by the Commission)

{SEC(2008) 92}

{SEC(2008) 93}

{SEC(2008) 94}

{SEC(2008) 95}

2. Directive 90/496/EEC is repealed from [5 years after the entry into force].
3. References to the repealed acts shall be construed as references to this Regulation.

Article 53
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 14(1) shall apply from [*the first day of the month 3 years after the entry into force*].

Articles 29 to 34 shall apply from [*the first day of the month 3 years after the entry into force*] except in the case of foods labelled by food business operators with, on the date of entry into force, less than 10 employees and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million where they shall apply [*the first day of the month 5 years after the entry into force*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Implementation of Nutrition Labeling - Taiwan

- 2002 Sept. 1 Prepackaged foods with nutrition claims
- 2003 Jan. 1 Dairy products, Beverages
- 2004 Jan. 1 Fats/Oils, Iced products (冰品)
- 2005 Jan. 1 Bakery products, Cereal products
- 2006 Jan. 1 Canned foods, Confectioneries
- 2007 Jan. 1 Dehydrated foods, Pickled foods
- 2008 Jan. 1 Frozen foods, Seasonings, Others

Note: manufacture date is used as the basis of implementation