

立法會
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Paper for the House Committee meeting on 7 November 2008

**Report of the Subcommittee on
Harmful Substances in Food (Amendment) Regulation 2008**

Purpose

This paper reports on the deliberations of the Subcommittee on Harmful Substances in Food (Amendment) Regulation 2008 (the Amendment Regulation).

Background

2. Earlier in September 2008, melamine was found in the infant formula produced by the Mainland's Sanlu brand and there were infants in the Mainland who suffered kidney stones and kidney failure after consuming Sanlu infant formula. On 16 September 2008, the Mainland authorities further announced that melamine was detected in the milk products of 22 corporations.

3. Melamine is an industrial chemical used for the production of melamine resins, which are used in laminates, glues, adhesives, molding compounds, coatings, paper, textiles, flame retardants or superplasticizer for concrete. Melamine should not be used in food products. It is understood that melamine was added to milk to raise the level of nitrogen present in the product for testing (the level of nitrogen present is higher in protein-rich food product). While melamine has low oral acute toxicity, excessive and prolonged exposure to melamine has been found to cause bladder stones, crystals in urine and proliferation of epithelial cells of urinary bladder in experimental animals.

The Amendment Regulation

4. In view of the immense public concern over the safety of milk and milk products, the Administration made the Amendment Regulation to set the maximum concentration of melamine in food as follows -

- (a) 1 milligram per kilogram for milk, any food intended to be consumed principally by children under the age of 36 months and any food intended to be consumed principally by pregnant or lactating women; and
- (b) 2.5 milligrams per kilogram for other food.

Contravention of the above requirements is subject to a maximum fine of \$50,000 and imprisonment of six months.

5. The Amendment Regulation amends the Harmful Substances in Food Regulations (Cap. 132AF) which governs, among other things, the presence of harmful substances in food imported to and sold in Hong Kong. The Amendment Regulation was gazetted on 23 September 2008 and came into force on the same day.

6. The scrutiny period of the Amendment Regulation has been extended from 5 to 26 November 2008 by a resolution of the Council.

The Subcommittee

7. At the meeting of the House Committee on 10 October 2008, members agreed that a subcommittee should be formed to study the Amendment Regulation. Under the chairmanship of Hon Fred LI Wah-ming, the Subcommittee held one meeting with the Administration. The membership list of the Subcommittee is in the **Appendix**.

Deliberations of the Subcommittee

Standard for melamine

8. Whilst welcoming the Amendment Regulation, Hon WONG Yung-kan, Hon Alan LEONG and Hon WONG Ting-kwong have queried why the Administration does not adopt a "zero tolerance" standard for melamine in milk and other food.

9. The Administration has explained that the standards are set with reference to the Tolerable Daily Intake then promulgated by the US Food and Drug Administration, and are in line with the standards promulgated by most places that have subsequently set standards for melamine in food, e.g. Canada and New Zealand. The Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department will closely monitor international developments in the setting of standards for melamine in food and review the current melamine standards accordingly.

"Consign" and "Deliver" under section 3 of Cap. 132AF

10. The First Schedule to Cap. 132AF stipulates the maximum amount of harmful substances allowed in food. Any person who imports, consigns, delivers, manufactures or sells for human consumption any food containing substances in greater concentration than that stipulated in the First Schedule to Cap. 132AF commits an offence.

11. Hon Tommy CHEUNG and Hon WONG Ting-kwong have pointed out that it is not realistic to expect every one in the food chain can ensure that the food they supply for human consumption do not contain melamine exceeding the legal requirements under the Amendment Regulation.

12. Hon Albert CHAN is of the view that the Administration should first give a verbal warning to food traders for supplying food containing melamine or other harmful substances exceeding the legal levels, instead of prosecuting these traders in the first instance, as has been done for contravention of the licensing conditions and requirements for food premises.

13. The Administration has advised that defence for persons charged with committing an offence under Cap. 132AF is provided under section 71 of the Public Health and Municipal Services Ordinance (Cap. 132). It shall be a defence for the defendant to prove that he purchased the food as being an article which could be lawfully sold and with a written warranty to that effect; that he had no reason to believe that it was otherwise; and that the food was then in the same state as when he purchased it. Traders should keep proper records of transaction in order that they may plead warranty.

14. Hon Cyd HO and Hon Alan LEONG have expressed concern that those parties who are only involved in the consignment or delivery of food products may be caught by section 3 of Cap. 132AF. For instance, a waiter bringing a cup of coffee containing melamine-tainted milk to a customer unknowingly may commit an offence.

15. The Administration has explained that the provision "no person shall import, consign, deliver, manufacture or sell" is not unique to Cap. 132AF. Similar provisions appear in a number of subsidiary legislation under Cap. 132. These include sections 3, 4 and 5 of the Colouring Matter in Food Regulations (Cap. 132H), section 3 of the Sweeteners in Food Regulations (Cap. 132U), section 3 of the Food Adulteration (Metallic Contamination) Regulations (Cap. 132V) and section 6 of the Preservatives in Food Regulations (Cap. 132BD). The rationale behind these provisions is that all parties in the food chain, including the importer, consignor, deliverer, manufacturer and seller, should bear responsibility to ensure that the food they handle is free from harmful substance and is fit for human consumption. For the consignors/deliverers, while they may not be the one who manufacture or sell

the products direct, in some cases, they may possess some critical information, such as the owners of the foods they consign/deliver, so that such information can be provided to the Authority as necessary for tracing the owner of the problem food.

16. The Administration has pointed out that in deciding who should be prosecuted under Cap. 132AF when a food is found containing excessive amount of harmful substances, consideration would be given to the merit of individual case, the evidence collected and the blameworthiness of the parties involved. For instance, if an unsatisfactory food sample is collected at manufacturing level, prosecution is normally taken against the manufacturer. It is necessary to include "consign/deliver" in the offence provision, as under certain circumstances, it may be difficult to identify the owner/manufacturer of the food. Importation of fish by sea transport is a good example. Manifest/import declaration is often absent in smuggling cases and either no one admits to be the owner or the deliverer refuses to provide information on the ownership of the fish import. In some cases, it may be possible that the deliverer himself is the owner of the fish import. From enforcement experience, genuine drivers/deliverers involved in regular imports in general are willing to cooperate with enforcement officers to provide evidence to identify the real owner of the food. In such cases, the information provided would be used to trace the owner of the food and the deliverers would not be prosecuted.

17. The Administration has further advised that in the past three years, there are nine out of 27 cases under Cap. 132AF where the deliverer of the food in question was prosecuted and all cases are related to fish import which were found to contain malachite green, a harmful substance regulated under Cap. 132AF. All the nine cases were convicted. The inclusion of the words "consign/deliver" in the legal provision is therefore essential for handling cases like food smuggling.

18. Dr Hon Priscilla LEUNG considers that it would be useful if the Administration could formulate guidelines on steps to be taken to avoid infringing Cap. 132AF. The Administration has advised that CFS has been and will continue to maintain close liaison with the food trade on the steps that need to be taken to ensure that the food they supply is fit for human consumption. Efforts in this regard will be stepped up to protect public health.

Products that fail the melamine test

19. Members note that as at 28 October 2008, CFS has tested a total of 3 226 food samples for melamine. 38 samples have been tested to contain melamine above the legal limits. All these implicated food products have been withdrawn from the market.

20. Members also note that CFS will expand the scope of testing to cover Mainland raw materials commonly used in manufacturing local food products. To this end, CFS has sought the support of food trade associations in providing relevant information.

Definition of "milk"

21. The Administration has advised that that it has always been the policy intention that all liquid milk and milk beverages should comply with the 1 milligram per kilogram requirement. This includes liquid milk in bottles, paper-boxes and plastic-boxes, etc. which are commonly available in the market. It also includes those products which are made from milk solids (e.g. high-cal low-fat milk) and milk with other added ingredients, like flavouring (e.g. chocolate-flavoured milk). All these liquid milk products should comply with the 1 milligram per kilogram requirement. The above has been very clearly explained to the trade.

22. Members note that the Administration will move an amendment to add definitions for the terms "milk" and "milk beverage" in the Amendment Regulation to reflect its policy intention more clearly in the law and to facilitate compliance by the trade. The new definitions would apply to all harmful substances listed in Cap. 132AF.

Advice sought

23. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
6 November 2008

**Subcommittee on
Harmful Substances in Food (Amendment) Regulation 2008**

Membership list

Chairman Hon Fred LI Wah-ming, JP

Members Hon WONG Yung-kan, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Dr Hon Joseph LEE Kok-long, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Hon Cyd HO Sau-lan
Hon Tanya CHAN
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Dr Hon PAN Pey-chyou

(Total : 16 Members)

Clerk Miss Mary SO

Legal Adviser Mr Kelvin LEE

Date 20 October 2008