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中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

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29 October 2008

Miss Mary So
Clerk to the Subcommittee on
Harmful Substances in Food (Amendment) Regulation 2008
Legislative Council Secretariat
Council Business Division 2
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Hong Kong
(Fax : 2509 0775)

Dear Mary,

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

At the meeting of the Subcommittee on Harmful Substances in Food (Amendment) Regulation 2008 on 20 October 2008, Members raised a number of questions. I append below the Administration's response.

“Consign” and “Deliver”

Section 3 of the Harmful Substances in Food Regulations (Cap 132AF) provides that no person shall import, consign, deliver, manufacture or sell, for human consumption, any food which contains any substance in greater concentration than is specified in the First Schedule. Members were concerned

about the words “consign” and “deliver” in the provision and asked whether the Administration would take prosecution action against those parties who were only involved in the consignment or delivery of food products.

The provision “no person shall import, consign, deliver, manufacture or sell” is not unique to Cap 132AF. Similar provision appears in a number of subsidiary legislation under the Public Health and Municipal Services Ordinance (Cap 132) which govern food standards. 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 consignor/ deliverer, 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 owner of the goods they consign/deliver, so that such information can be provided to the Authority as necessary for tracing the owner of the problem food.

In deciding who should be prosecuted under Cap 132AF when a food is found containing excessive amount of harmful substances, we would take into consideration the merit of individual case, the evidence collected, and the blameworthiness of the parties involved, e.g. 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 is not impossible that the deliverer himself is the owner of the fish import. From our 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, we would use the information provided to trace the owner of the food and we would not prosecute the deliverers.

In the past three years, there are nine cases (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.

Products that fail the melamine test

Members requested information on the details of the food samples that have been tested to contain melamine above the legal limits. As at 28 October 2008, the Centre for Food Safety 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 products have been withdrawn from the market. Details of these products are set out in the **Annex A**. Information on the test results can be found on the CFS’s Website, www.cfs.gov.hk.

Definition of “milk”

As we have explained at the Subcommittee meeting, we propose to move a resolution to amend the Harmful Substances in Food (Amendment) Regulation 2008 to add a definition for the terms “milk” and “milk beverage” in the Harmful Substances in Food Regulations.

The Harmful Substances in Food (Amendment) Regulation 2008 amends the Harmful Substances in Food Regulations (Cap 132AF) so that any person who imports, consigns, delivers, manufactures or sells any food containing melamine of a concentration greater than that specified in the Schedule commits an offence.

The maximum concentration of milk is set at 1mg/kg of the food. In relation to milk, it has always been the policy intention that all liquid milk and milk beverage should comply with the 1 mg/kg 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 flavourings (e.g. chocolate-flavoured milk). All these liquid milk products should comply with the 1 mg/kg requirement. We have explained the above to

the trade very clearly.

To reflect the above clearly in the law and to facilitate compliance by the trade, we propose to include a definition of "milk" and "milk beverage" in Cap 132AF. The new definition would apply to all harmful substances listed in Cap 132AF.

The proposed definitions are as follows –

"milk" means cows milk, buffaloes milk and goats milk, and includes cream, separated milk and milk beverage, but does not include dried milk, condensed milk or reconstituted milk.

"milk beverage" means any beverage resulting from combining liquid milk fat with other solids derived from milk whether exclusive of any food additive or otherwise.

I attach the draft resolution at **Annex B** for Members' reference. The Secretary for Food and Health will move the resolution at the Legislative Council meeting on 26 November 2008.

Yours sincerely,



(Mrs Angelina Cheung)
for Secretary for Food and Health

Serial No. 編號	Sample 樣本名稱	Manufacturer's name & address 製造商名稱及地址	Date of Announcement 公布日期	Melamine detected 「三聚氰胺」含量
Milk and Milk Beverages 奶類及奶類製品 (法定上限: 百萬分之 1 Legal Limit : 1 ppm)				
1	Yili High calcium low fat milk beverage 伊利高鈣低脂奶類飲品 (淨體積: 1 公升) (Expiry Date 食用期限: 2.4.2009)	Manufacturer: Inner Mongolia Yili Industrial Group Co., Ltd. 內蒙古伊利實業集團股份有 限公司 Address: No.2, Jin 3 Ave, Jinchuan Development Zone, Hohhot, Inner Mongolia, China 中國內蒙古呼和浩特 市金川開發區金三道 2 號	18.9.2008	9.9 ppm
2	Yili High Calcium Milk Beverage 伊利高鈣奶類飲品 (淨體積: 1 公升) (Expiry Date 食用期限: 15.11.2008)	Manufacturer: Inner Mongolia Yili Industrial Group Co., Ltd. 內蒙古伊利實業集團股份有 限公司 Address: No.2, Jin 3 Ave, Jinchuan Development Zone, Hohhot, Inner Mongolia, China 中國內蒙古呼和浩特 市金川開發區金三道 2 號	18.9.2008	5.5 ppm

3	<p>Yili Pure Milk 伊利純牛奶 (淨體積: 250 毫升) (Expiry Date 食用期限: 28.2.2009)</p>	<p>Manufacturer: Inner Mongolia Yili Industrial Group Co., Ltd. 內蒙古伊利實業集團股份有 限公司 Address: No.2, Jin 3 Ave, Jinchuan Development Zone, Hohhot, Inner Mongolia, China 中國內蒙古呼和浩特 市金川開發區金三道 2 號</p>	18.9.2008	2.2 ppm
4	<p>Yili Pure Milk 伊利純牛奶(淨體積: 1 公升) (Expiry Date 食用期限: 26.3.2009)</p>	<p>Manufacturer: Inner Mongolia Yili Industrial Group Co., Ltd. 內蒙古伊利實業集團股份有 限公司 Address: No.2, Jin 3 Ave, Jinchuan Development Zone, Hohhot, Inner Mongolia, China 中國內蒙古呼和浩 特市金川開發區金三道 2 號</p>	18.9.2008	3.5 ppm
5	<p>Nestle Dairy Farm UHT Pure Milk 1L (Catering) 雀巢牛奶公司純牛奶 1 升 (餐 飲專用) (Expiry Date 食用期限: 12.5.2009)</p>	<p>Manufacturer: Nestlé Qingdao Limited 青島雀巢有限公司 Address: Weihai Xi Lu, Laixi City, Qingdao, China 中國 青島萊西市威海西路</p>	21.9.2008	1.4 ppm

Baby Food 嬰兒食品
(法定上限: 百萬分之 1 Legal Limit : 1 ppm)

6	Heinz DHA+AA Vegetable Formula Cereal 亨氏金裝智多多 DHA+AA 蔬菜嬰兒配方營養米 粉 (適合 7 個月或以上嬰兒) (淨重: 200 克(g)) (Expiry Date: 26.4.2010)	原產地: 中國	26.9.2008	1.6 ppm
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Frozen confections 冰凍甜點
(法定上限: 百萬分之 2.5 Legal Limit : 2.5 ppm)

7	Natural Choice Yogurt Flavoured Ice Bar with Real Fruit 伊利牧場大果粒酸奶味雪條 (淨體積: 90 毫升)	Manufacturer: Shanghai Yili AB Foods Co., Ltd Address: No. 269 Beidou Road, Minhang Zone, Shanghai P.R. of China	16.9.2008	15 ppm
8	Yili Bean Club- Matcha red bean ice bar 伊利佰豆集抹茶紅豆(雪條) (淨體積: 87 毫升) (Expiry Date: 6.5.2010)	Manufacturer: Shanghai Yili AB Foods Co., Ltd Address: No. 269 Beidou Road, Minhang Zone, Shanghai P.R. of China	18.9.2008	4.4 ppm
9	Yili Bean Club- Red bean milk bar 伊利佰豆集牛奶蜜豆(雪條) (淨體積: 95 毫升) (Expiry Date: 2.6.2010)	Manufacturer: Shanghai Yili AB Foods Co., Ltd Address: No. 269 Beidou Road, Minhang Zone, Shanghai P.R. of China	18.9.2008	5 ppm

10	Yili Prestige Chocliz - Dark Chocolate Bar 伊利臻品巧樂茲-黑朱古力味(雪條) (淨體積: 100 毫升) (Expiry Date: 24.3.2010)	Manufacturer: Shanghai Yili AB Foods Co., Ltd Address: No. 269 Beidou Road, Minhang Zone, Shanghai P.R. of China	18.9.2008	13 ppm
11	Yili Super Bean Red Bean Chestnut Ice Bar 伊利伊豆紅豆/板栗 (雪條) (淨體積: 48 毫升) (Expiry Date: 8.6.2010)	Manufacturer: Shanghai Yili AB Foods Co., Ltd Address: No. 269 Beidou Road, Minhang Zone, Shanghai P.R. of China	18.9.2008	21 ppm
Other Food Products 其他食品 (法定上限: 百萬分之 2.5 Legal Limit : 2.5 ppm)				
12	White Rabbit Creamy Candies 大白兔奶糖 (淨含量: 227 g) (Expiry Date: 20.12.2009)	Manufacturer: Shanghai GuanShengYuan Food General Factory 上海冠生園 食品總廠 Address: 220 Cao Bao Road, Shanghai 上海市漕寶路 220 號	23.9.2008	4.6 ppm
13	Four Seas Cake (Strawberry Flavour) 四洲蛋糕士多啤梨味 (淨重量: 160 g (32g x5)) (Expiry Date: 1.6.2009)	Sole Agent: Four Seas Mercantile Limited 四洲貿易 有限公司 Address: Four Seas Group Building, No. 1, Hong Ting Road, Sai Kung, Hong Kong 香港西貢康定路 1 號四洲集 團大廈	23.9.2008	6.1 ppm
14	White Rabbit creamy candies 大白兔奶糖 (淨含量: 454 克) (Expiry Date: 20.11.2009)	Manufacturer: Shanghai GuanShengYuan Food General Factory. 上海冠生園 食品總廠 Address: 220 Cao Bao Road, Shanghai 上海市漕寶路 220 號	24.9.2008	16 ppm .

15	<p>Silang House of Steamed Potato Wasabi Cracker (Net weight: 238g (8.39oz))</p> <p>思朗蒸薯坊芥末味餅乾淨含量: 238 克 (8.39 安士)</p> <p>(Expiry Date: 3.9.2009)</p>	<p>Manufacturer: Dong Guan Kam Tai Co., Ltd 東莞錦泰食品有限公司</p> <p>Address: Xi Ping Village, Nancheng Area, Dong Guan City, Guang Dong, China 中國廣東省東莞市南城區西平村</p>	26.9.2008	18 ppm
16	<p>利誠干吃奶片</p> <p>(淨重量: 168 克)</p>	<p>製造商: 內蒙古利誠實業有限公司</p>	27.9.2008	3 ppm
17	<p>Lotte Koala Strawberry Biscuit (Family Pack)</p> <p>樂天小熊餅(草莓忌廉夾心)(家庭庄)</p> <p>(淨重: 200 克(20 克 x 10 包))</p> <p>(Expiry Date: 26.9.2009)</p>	<p>Manufacturer: Lotte China Foods Co., Ltd. (Product of China)</p>	27.9.2008	4.3 ppm
18	<p>Lotte Koala's March Chocolate Biscuit (Family Pack)</p> <p>樂天小熊餅(朱古力夾心)(家庭庄)(淨重: 200 克 (20 克 x 10 包))</p> <p>(Expiry Date: 29.1.2010)</p>	<p>Manufacturer: Lotte China Foods Co., Ltd. (Product of China)</p>	27.9.2008	57 ppm
19	<p>Lotte Koala Biscuit (Family Pack)(Chocolate Filled)(Double Chocolate Flavor)</p> <p>樂天小熊餅(朱古力夾心)(家庭庄)(特濃朱古力新口味)</p> <p>(淨重: 200 克 (20 克 x 10 包))</p> <p>(Expiry Date: 29.1.2010)</p>	<p>Manufacturer: Lotte China Foods Co., Ltd. (Product of China)</p>	27.9.2008	68 ppm

20	Licheng Milk Slice (Original) 利誠實業干吃奶片(原味) (淨重: 168 克) (Expiry Date: 10.03.2009)	製造商: 內蒙古利誠實業有限公司 地址: 內蒙古呼和浩特市機場路鴻盛高科技園區緯二路	29.9.2008	8.3 ppm
21	(Expiry Date: 13.03.2009)			4.7 ppm
22	Glico Pocky Men's Coffee Cream Coated Biscuit Stick (Net 52g) 固力果百奇咖啡味忌廉餅乾條 (淨重: 52 克) (Expiry Date: 5.6.2009)	原產地: 中國	30.9.2008	43 ppm
23	東望洋 Walnut Cakes 東望洋核桃酥 (Net Wt./ 淨含量: 150 g (5.29 oz)) (Expiry Date: 20.7.2009)	Manufacturer: Zhongshan City Tian Le Yuan Foods Co. Ltd (澳資)中山市天樂園食品有限公司 Address: Wushi Ind. Area, Sanxiangtown, Zhongshancity Guangdong Provicine 廣東省中山市三鄉烏石管理區	30.9.2008	3.7 ppm
24	東望洋 Coconut Cakes 東望洋椰蓉酥 (Net Wt./ 淨含量: 180 g (6.35 oz)) (Expiry Date: 20.7.2009)	Manufacturer: Zhongshan City Tian Le Yuan Foods Co. Ltd (澳資)中山市天樂園食品有限公司 Address: Wushi Ind. Area, Sanxiangtown, Zhongshancity Guangdong Provicine. 廣東省中山市三鄉烏石管理區	30.9.2008	19 ppm

25	Lotte Cream Cheese Cake 樂天奶油芝士夾心蛋糕 (淨重: 27.5 克 x 6 個) (Expiry Date: 17.7.2009)	Manufacturer: Lotte China Foods Co. Ltd (Product of China)	1.10.2008	3.4 ppm
26	Cadbury Dairy Milk Cookies Chocolate (5kg bulk pack) 吉百利香酥曲奇牛奶巧克力 (大量裝: 5 公斤) (Expiry Date: 2.11.2009)	製造商: 吉百利(中國)食品有限公司 地址: 中國北京市大興區永外萬源路東廡殿路 24 號	5.10.2008	6.9 ppm
27	吉百利香脆榛仁牛奶巧克力 (大量裝: 5 公斤) (Expiry Date: 23.1.2010)	製造商: 吉百利(中國)食品有限公司 地址: 中國北京市大興區永外萬源路東廡殿路 24 號	5.10.2008	56 ppm
28	EDO Pack Almond Cacao Biscuit Sticks (Net Wt/ Poids Net: 36g (1.269oz)) EDO Pack 可可杏仁餅干條(淨重/淨含量: 36 克 (1.269 安士)) (Expiry Date: 17.5.2009)	原產地: 中國	9.10.2008	8.5 ppm
29	Doraemon Chocolate Gummy Muscat Flavour Net Weight: 50g 多啦 A 夢朱古力橡皮糖青提味 淨含量: 50 克 (Expiry Date: 19.8.2009)	原產地: 中國	14.10.2008	12 ppm

30	菓子達人 Strawberry Flavor Cream Malt Biscuits 菓子達人草莓味忌廉麥芽餅 Net Weight 淨重量: 85.5g/克 (Expiry Date: 28/8/2009)	原產地: 中國	17.10.2008	3.2 ppm
31	Munchy's Mini Crackers With Cheese Cream Munchy's 迷你芝士夾心餅 (Net Wt.: 45g (1.58 oz)) (Expiry Date: 15/7/2009)	Manufacturer: Munchy Food Industries SDN. BHD. Address: Lot 9366, Batu 7, Simpang 3, Tongkang Pecah, 83010 Batu Pahat, Johor, Malaysia 製造商: 麥奇食品 工業有限公司	18.10.2008	3.8 ppm
32	Munchy's Mini Crackers With Peanut Butter Munchy's 迷你花生夾心餅 (Net Wt.: 45g (1.58 oz)) (Expiry Date: 15/7/2009)	Manufacturer: Munchy Food Industries SDN. BHD. Address: Lot 9366, Batu 7, Simpang 3, Tongkang Pecah, 83010 Batu Pahat, Johor, Malaysia 製造商: 麥奇食品 工業有限公司	18.10.2008	5.4 ppm
33	Julie's Wheat Crackers Julie's 麥香蘇打餅 Net Wt: 350g (12.34 oz) 淨重: 350 公克 (12.34 安士) 14 convi-Packs 14 獨立包裝 (Expiry Date: 9/8/2009)	Manufacturer: Perfect Food Manufacturing (M) SDN. BHD. Address: AG 6876, Alor Gajah Industrial Estate, 78000 Alor Gajah, Melaka, Malaysia. 柏發食品(馬)有限 公司	20.10.2008	5.8 ppm

34	Munchy's The Original Sugar Crackers Munchy's 原味梳打餅 Net Weight: 380g (13.40 oz) (Expiry Date: 15/7/2009)	Manufacturer: Munchy Food Industries SDN. BHD. Address: Lot 9366, Batu 7, Simpang 3, Tongkang Pecah, 83010 Batu Pahat, Johor, Malaysia. 麥奇食品工業有限公司	21.10.2008	4.0 ppm
35	美心大酒樓 (香港小西灣藍灣廣場) 馬拉糕	N/A	22.10.2008	3.2 ppm
36	Croley Foods Sunflower Crackers (Blueberry Cream Sandwich) Net Weight: 270g (Expiry Date: 5.12.2008)	Manufacturer: Croley Foods MFG. Corp. Address: Barangay Gulod, Novaliches, Quezon City, MM, Philippines	25.10.2008	3.2 ppm
37	Select Fresh Brown Eggs (Extra Large)佳之選新鮮啡蛋(特大裝) (Expiry Date: 25.10.2008)	製造商: 大連韓偉養雞有限公司 地址: 大連旅順口區三潤堡鎮東泥河	25.10.2008	4.7 ppm
38	Fresh Hen Eggs 鮮雞蛋 (Star Seafood Restaurant Ngau Tau Kok Road, Kowloon 明星海鮮酒家九龍牛頭角道)	加工廠名稱: 湖北京山鵬昌農產品有限公司 生產日期: 2008年10月10日 生產批號: 4200/D0701808223	28.10.2008	2.9 ppm

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

HARMFUL SUBSTANCES IN FOOD (AMENDMENT)
REGULATION 2008

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on 2008.

RESOLVED that the Harmful Substances in Food (Amendment) Regulation 2008, published in the Gazette as Legal Notice No. 215 of 2008 and laid on the table of the Legislative Council on 8 October 2008, be amended by adding –

“2. Interpretation

Section 2 is amended by adding –

““milk” (奶類) means cows milk, buffaloes milk and goats milk, and includes cream, separated milk and milk beverage, but does not include dried milk, condensed milk or reconstituted milk;

“milk beverage” (奶類飲品) means any beverage resulting from combining liquid milk fat with other solids derived from milk,

whether exclusive of any food additive or otherwise;”.”.

Clerk to the Legislative Council

2008