A. Introduction

The Audit Commission ("Audit") conducted a review of the Centre for Food Safety ("CFS")'s work in the regulatory control of food labelling, with focus on the implementation of the nutrition labelling scheme ("NLS") under the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 ("the 2008 Amendment Regulation"). The audit review also examined the adequacy of the nutrition labelling of infant and special dietary foods. Audit's findings were contained in two separate chapters of the Director of Audit's Report No. 57 ("Audit Report"), i.e. "Food labelling" (Chapter 3) and "Nutrition labelling of infant and special dietary foods" (Chapter 4).

2. The Committee held two public hearings on 6 and 8 December 2011 to receive evidence on the findings and observations in the above two chapters of the Audit Report.

3. The Committee's Report sets out the evidence gathered by the Committee which is relevant to the issues identified in the above two chapters of the Audit Report and was further revealed at the public hearings, as well as the Committee's conclusions and recommendations on those issues.

B. Nutrition labelling of infant and special dietary foods

Opening statements

4. At the Committee's public hearing held on 6 December 2011, **Dr York CHOW Yat-ngok, Secretary for Food and Health**, and **Mr Clement LEUNG Cheuk-man, Director of Food and Environmental Hygiene**, respectively made an opening statement. The full text of their statements is in ***Appendices 10 and 11*** respectively. **Mr Benjamin TANG, Director of Audit**, also made an opening statement, the full text of which is in ***Appendix 12***.

5. The Committee referred to the Secretary for Food and Health's opening statement in which he said that some of the recommendations made by Audit were related to policy matters, and as such recommendations were different in nature from those arising from the value-for-money audit, the Administration would continue to

discuss with Members through other appropriate channels under the established mechanism, such as the relevant Panels.

6. The Committee asked the Secretary for Food and Health about the specific issues which, in his view, should be discussed by Panels instead of the Public Accounts Committee and the rationale behind.

7. The **Secretary for Food and Health** replied that some of the issues examined in Chapter 4 of the Audit Report, including those concerning nutrition labelling of infant and special dietary foods and the development of a code on marketing of milk powder for compliance by the trade, were related to policy matters and had been discussed by the Legislative Council ("LegCo") Panel on Food Safety and Environmental Hygiene ("FSEH Panel"). In his opinion, such issues should continue to be pursued by the FSEH Panel.

8. On the other hand, the Committee noted the Director of Audit's explanation for conducting an audit review on the subject. According to the Director of Audit, although the Administration had undertaken in 2005 to review the need for introducing nutrition labelling requirements covering infant and special dietary foods, it had not informed the relevant Panel of the review timetable. Audit had therefore examined the adequacy of the nutrition labelling of infant and special dietary foods in the current audit review with a view to providing input to the Administration on whether there was a need to introduce nutrition labelling requirements covering such foods.

9. In view of the Director of Audit's remarks and the various inadequacies relating to nutrition labelling of infant and special dietary foods as identified by Audit, the Committee considered it appropriate for Audit to conduct a review on the subject and for the Committee to follow up the corresponding Audit Report. The Committee also pointed out that as the CFS under the Food and Environmental Hygiene Department ("FEHD") was the food safety authority in Hong Kong and operated with public funds, it was incumbent upon the Director of Audit to review if the CFS had cost-effectively performed its duties, including the implementation and enforcement of nutrition labelling legislation.

Infant and special dietary foods not covered by the 2008 Amendment Regulation, and regulation of nutrition information

Absence of statutory framework governing the nutritional composition and labelling of infant formula

10. The Committee pointed out that infants, young children and people with special dietary needs were generally more vulnerable, thus foods for them should be more strictly regulated, and the public expected the Administration to effectively regulate such foods marketed in Hong Kong. While the Secretary for Food and Health said in his opening statement that the Government had all along attached great importance to the safety of infant formula, the Committee noticed that currently there was no statutory framework governing the nutritional composition and labelling of infant formula in Hong Kong.

11. As highlighted in Chapter 4 of the Audit Report, the mandatory NLS under the 2008 Amendment Regulation, which came into operation on 1 July 2010, does not apply to infant and special dietary foods. Although the Administration had repeatedly informed the FSEH Panel that the NLS would not apply to infant and special dietary foods because they were regulated by different standards and guidelines developed by the Codex Alimentarius Commission ("Codex" — an international authority that develops food standards and guidelines), it had not disclosed to the FSEH Panel that compliance with the Codex standards and guidelines was not mandatory.

12. In addition, the Administration had neither proposed any ordinance or regulations to govern nutrition labelling of infant and special dietary foods marketed in Hong Kong, nor required such foods to comply with the relevant Codex standards and guidelines.

13. In the absence of a statutory framework governing the nutritional composition and labelling of foods for young children and people with special dietary needs, the Committee questioned:

- how the Administration could safeguard the safety of infant and special dietary foods in Hong Kong (including infant formula) or convince the public that it had attached a high priority to this area of work;

- why the Administration had not yet conducted a review on the need for introducing nutrition labelling requirements covering infant and special dietary foods, although it had undertaken to do so in as early as 2005; and

- why the Administration had not made compliance with the Codex standards and guidelines a statutory requirement.

14. The **Secretary for Food and Health** explained that:

- in drawing up the NLS, the Administration had already stated clearly that the scheme would not apply to infant formula or follow-up infant formula, or food for infants and young children because such foods were being regulated under different Codex standards;

- based on risk assessment, the CFS considered that there was risk in the safety of milk powder and hence it accorded a high priority to carrying out analysis of harmful substances which would adversely affect the health of infants. The CFS took milk powder samples (including infant formulae) at import, wholesale and retail levels for chemical and microbiological testing each year. Chemical testing covered testing for food additives, contaminants, toxins and other harmful residues whereas microbiological testing covered testing for bacteria and viruses. The CFS would also conduct enhanced surveillance in response to local and overseas food incidents, such as testing infant formulae for melamine following the detection of melamine in infant formulae in end 2008;

- the nutritional composition of infant formulae of different brands was indeed very similar. For normal healthy babies, paediatricians would advise parents that there would not be much difference if they switched from one brand of infant formula to another brand for their babies;

- the Administration noticed that the use of health claims to promote milk powder and other foods was becoming popular and some of the claims might be misleading. The Administration would take measures to deal with such problem; and

- while national authorities followed the Codex standards and guidelines generally, they could deviate from the Codex requirements as appropriate for the nutritional needs of their people. Therefore, different countries might have set different nutritional composition

requirements for formulae. All infant formulae or follow-up infant formulae sold in Hong Kong were imported. If the Administration was to set specific nutritional composition and labelling requirements governing infant formulae to be marketed in Hong Kong, it would have to consider carefully how the requirements could cater to variations in the formulae manufactured in different countries. The Administration would proceed with the work progressively and at the appropriate time.

15. It appeared to the Committee that the Administration was only concerned about the existence of harmful substances in infant foods, but did not see the need to prescribe specific nutritional composition requirements for such foods. It only relied on the milk powder manufacturers' compliance with the relevant requirements of foreign countries. As such, Hong Kong people had to accept imported formulae without knowing if the nutritional composition of the formulae were suitable for their infants.

16. Besides, the Committee noted from paragraph 3.3(a) of Chapter 4 of the Audit Report that in its food surveillance, the CFS had not selected any infant and special dietary foods for verification of the correctness of the nutrition information declared.

17. Against the above background, the Committee queried whether the existing regulatory regime in Hong Kong had provided sufficient control over the food safety of infant formulae.

18. The **Director of Food and Environmental Hygiene** and **Dr Constance CHAN Hon-yee, Controller, CFS**, stated that:

- having regard to the fact that milk powder marketed in Hong Kong was mainly of major international brands and the ingredients were from advanced countries, the risk in the nutritional composition of milk powder was not very high. Hence, the CFS had focused its efforts on detecting harmful substances to ensure the safety of milk powder;

- currently, the safety of infant formulae was regulated by section 54 of the Public Health and Municipal Services Ordinance ("PHMSO" — Cap. 132), which stipulated that all food for sale must be fit for human consumption. As food included infant formula, the CFS could regulate

its safety through section 54 and take prosecution action in cases where the infant formula was found to be unfit for human consumption; and

- in response to public concern, the CFS had adjusted its testing strategy and would start to conduct testing on the nutritional composition of infant formulae from 2012.

19. In his letter of 4 January 2012 (in ***Appendix 13***), the **Secretary for Food and Health** elaborated on the Administration's plan to test the nutritional composition of infant formulae. He said that:

- at present, there were 28 brands of infant formula in the retail market according to the CFS's records. The CFS would take a total of 48 samples from among these different brands for testing of the 33 nutrients as required by Codex; and

- the testing would be conducted in two stages with 28 samples in 2012 and the remaining 20 in 2013. The 28 samples in 2012 would be taken from the most popular infant formula (0-6 months or 0-9 months) of each brand. For the 20 samples in 2013, priority would be given to other infant formulae and formulae for 9 months or above.

Deviations from the Codex standards and guidelines

20. As reported in paragraphs 2.16 to 2.21 of Chapter 4 of the Audit Report, an examination by Audit of selected infant and special dietary foods marketed in Hong Kong revealed that there were various deviations from the Codex standards and guidelines. The Committee cited Case 1 in paragraph 2.16(a) as an example.

21. Codex has prohibited the use of pictures of infants and women which idealises the use of infant formula on the container labels. However, Case 1 revealed that the picture of an infant was displayed on the container labels of Formulae 1 and 2, which were popular brands of infant formula imported from Country A. Furthermore, Codex requires infant formula to contain 33 essential nutrients (including iodine and biotin) and follow-up formula 25 essential nutrients. However, iodine and biotin were not shown on the nutrition labels of Formulae 1 and 2.

22. The Committee asked whether the Administration was aware of the above breaches of the Codex standards and guidelines in Hong Kong before the audit review, and whether actions had been taken to address the situation.

23. The **Controller, CFS** said that iodine and biotin was not shown on the nutrition labels of Formulae 1 and 2 because they were not regarded as essential nutrients in Country A. However, this did not mean that they did not contain iodine or biotin.

24. The **Secretary for Food and Health** stated in his letter of 4 January 2012 that:

- the Codex standards, including those for infant formula, were non-binding and voluntary in nature. They were established to provide reference for jurisdictions in formulating their own regulations based on their local situation. Since it was not a legal requirement in Hong Kong to comply with the Codex standards, no enforcement action had been taken. However, traders were encouraged to adopt relevant Codex standards as appropriate as a matter of good practice;

- the CFS adopted a risk-based approach in its strategies and the planning and implementation of food safety control measures. Based on available information, there was no evidence suggesting that formula-fed infants were deficient of iodine or biotin and hence detailed investigation into this matter was not carried out; and

- the CFS was currently working together with the Department of Health ("DH") and other experts and members of the Taskforce on Hong Kong Code of Marketing of Breast-milk Substitutes ("the Hong Kong Code"), and would consider incorporating the relevant Codex nutrition labelling requirements and composition of infant formula into the Hong Kong Code.

Regulation of special dietary foods

25. The Committee noted Audit's concern raised in paragraph 3.8 of Chapter 4 of the Audit Report that in the absence of a legal definition of "food for special dietary uses", consumers had difficulties in differentiating special dietary foods from others. Moreover, Audit found that there were food products serving special

population subgroups, but not regarded by the CFS as "food for special dietary uses". The requirements of the NLS should be applicable to such food products. Audit, however, found that some of these products appeared to have not complied with the NLS in various areas.

26. Under the above circumstances, the Committee queried how the Administration could effectively regulate the nutritional composition of special dietary foods and safeguard the health of people with special dietary needs.

27. The **Director of Food and Environmental Hygiene** and the **Controller, CFS** responded that:

- foods for special dietary uses were products that were specially formulated for certain patients or physical conditions, products that must always be used under medical supervision, and products solely for tube feeding;

- products with statements such as "for children under age of 3, use under medical supervision only" or "use under medical supervision if use as sole source of nutrition" were not considered as food for special dietary uses. A lot of food products in the market, which were claimed to be suitable for diabetics, were not food for special dietary uses because ordinary people could also consume the products. Such products would be subject to the NLS and the CFS would take prosecution action if they were in breach of the scheme requirements; and

- in fact, the dietary needs of most people with different health conditions could be met by conventional food, which was already regulated under the PHMSO and its food-related regulations. Codex had not established compositional requirements for all types of special dietary foods since there was a wide range of foods for special dietary use. The CFS would study the current situation regarding labelling of such foods and make recommendations on the priority of regulating such products.

28. Regarding the three products in Case 5 (mentioned in paragraph 3.3(d) of Chapter 4 of the Audit Report) which were found by Audit to have variances for a number of nutrients between their declared values and the contents, the **Controller, CFS** said that the CFS had conducted testing on them. The results indicated that

one product was not satisfactory and the CFS had written to the relevant trader to seek its explanation. The other two products were satisfactory.

Development of the Hong Kong Code and the way forward

29. The Committee noted that the World Health Organisation issued the International Code of Marketing of Breast-milk Substitutes in 1981 ("the WHO Code") to contribute to the provision of safe and adequate nutrition for infants by, among others, ensuring the proper use of breast-milk substitutes on the basis of adequate information and through appropriate marketing and distribution. In the past 30 years since the issuance of the WHO Code, many countries had already developed their advertising and marketing guidelines applicable to their own countries for compliance by the trade.

30. The Audit Report, however, revealed that in Hong Kong, the Administration had not yet taken any measures to require compliance with the WHO Code. It mainly relied on milk powder manufacturers and distributors in Hong Kong to exercise self-discipline in compliance with the WHO Code and requirements in the relevant World Health Assembly ("WHA") resolutions in their marketing practices.

31. The Committee questioned why Hong Kong was lagging far behind other countries in requiring the trade to comply with WHO Code or introducing legislation to regulate the advertising and marketing of infant formula.

32. The **Secretary for Food and Health** replied that:

- it was the Government's policy to promote breast-feeding and infant formula was not treated as the main food for new born babies. At the time when the NLS was drawn up, it was agreed that the scheme should not apply to infant formula or follow-up infant formula as such foods should be treated separately. The Administration had not deliberately delayed the introduction of legislation to govern compliance with the WHO Code, but considered that it would be more appropriate to promote breast-feeding, which was also the aim of the WHO Code, and allow the trade to comply with the Code voluntarily;

- as Hong Kong relied on imported infant and follow-up infant formulae, the Administration had to examine carefully if legislation regulating

such foods was to be introduced. It had to make sure that milk powder manufacturers and importers would be able to comply with the requirements. Otherwise, the supply of infant and follow-up infant formulae in Hong Kong would be affected. The stable supply of formulae was particularly important in recent years because there had been cases of shortage of supply of infant formula due to the large number of mainlanders coming to Hong Kong to buy such formulae; and

- the Administration would first work on developing the Hong Kong Code. Afterwards, it would consider the need for introducing legislative control over the nutrition labelling of infant formula and the use of health claims in promoting infant formula.

33. **Dr LAM Ping-yan, Director of Health**, said that in general, milk powder manufactures and distributors in Hong Kong complied with the WHO Code in the promotion of infant formula for babies from zero to six months old. On the other hand, there was a growing trend of making misleading or exaggerated claims in promoting formula for young children aged between six and 36 months, and this was a cause for concern. He noticed that some advertisements exaggerated the nutrition of follow-up formula and seemed to suggest that children only need to take formula but not other food. There was thus a need to consider stepping up the regulation of such advertisements.

34. The Committee further asked whether the Administration would set a definite timetable for deciding on the need to introduce ordinance or regulations to govern the nutritional composition and labelling of infant foods.

35. The **Secretary for Food and Health** stated in his letter of 4 January 2012 and at the public hearings that:

- the Taskforce on the Hong Kong Code was set up under the DH in June 2010 to develop the Hong Kong Code. The objective of the Hong Kong Code was to regulate manufacturers and distributors of breast-milk substitutes and related products to prevent them from advertising and marketing their breast-milk substitutes and related products by way of malpractices. Besides, it was proposed that requirements including nutritional labelling and claims of breast-milk

substitutes and related products would be covered in the Hong Kong Code;

- it was expected that the drafting of the Hong Kong Code would be completed by early 2012. Upon completion of the drafting of the Code, the DH would consult the trade and collect the views of various parties. It was expected that the Hong Kong Code would be implemented within 2012;

- the Administration considered that it would be more advisable to make compliance with the Hong Kong Code voluntary as a start and the DH and the CFS would monitor the trade's adherence to the Code upon its implementation. Subject to the responses of the trade to the Hong Kong Code, the Government would consider in due course whether specific law or regulation governing nutritional composition and labelling of infant foods was necessary. In 2012, the CFS would conduct testing on the nutritional composition of infant formula available in the market in order to gather more information for future preparatory legislative work; and

- at present, the Administration could not decide when legislative control would be introduced.

C. Food labelling

Accuracy and legibility of food labels

Accuracy of nutrition information on food labels

36. The NLS requires all prepackaged foods to label the value/content of energy plus seven core nutrients (namely protein, carbohydrates, total fat, saturated fat, trans fat, sodium and sugars), or commonly known as "1+7", and any other nutrient for which a claim is made. The CFS conducts visual checking of nutrition labels and chemical analysis of declared nutrients on labels in selected prepackaged food products to ensure the trade's compliance with the NLS.

37. As reported in paragraph 2.5(a) of Chapter 3 of the Audit Report, the CFS checked 16,245 food samples in the first year of implementing the NLS and the compliance rate for visual checking was as high as 99.5%. However, Audit found that most of the food samples selected for checking were chosen from large chain

supermarkets which generally had a lower risk of non-compliance. The Committee enquired:

- why the Administration had focused on checking food samples from large chain supermarkets; and

- about the Administration's strategy to ensure that smaller food outlets such as ethnic shops and snack shops would also comply with the NLS requirements.

38. The **Secretary for Food and Health** responded that:

- large chain supermarkets took up a major share of prepackaged food sold in the market, out-numbering those sold in other food retail outlets. If the CFS could ensure their early compliance with the NLS, it would be in the best interest of the public. Hence, it was an appropriate enforcement strategy for the CFS to take more samples from supermarkets for inspection during the initial stage of the implementation of the NLS to ensure that the most popular prepackaged food items would comply with the requirements concerned;

- it might not be in the wider public interest if the CFS directed its enforcement actions specifically against small and medium enterprises ("SMEs"), including small groceries, market stalls and ethnic shops while neglecting large chain supermarkets immediately after the commencement of the legislation; and

- as for SMEs, particularly the small scale ones and shops selling food for ethnic minorities, the CFS's strategy was to focus more on publicity and education, rather than enforcement. The CFS arranged staff visits to such shops and distributed multi-language leaflets to ethnic shops so that they would have a more in-depth understanding of the legislation.

39. Noting that it was the CFS's conscious strategy to focus its enforcement efforts on large chain supermarkets during the initial stage of the NLS, the Committee queried why the CFS did not select food samples from small and medium retail outlets for checking, even though such shops had a higher risk of non-compliance. The Committee also pointed out that in cases where an SME was found to have breached the labelling requirements, the CFS could take other measures such as requiring the shop to stop selling the food products concerned

instead of taking prosecution action immediately. The Committee asked whether the CFS had considered adopting such an approach.

40. The **Secretary for Food and Health**, the **Director of Food and Environmental Hygiene** and the **Controller, CFS** explained that:

- at the early stage of implementing the NLS, the CFS did not know whether large chain supermarkets indeed had a lower risk of non-compliance and it would be inappropriate to assume that this would be the case. As the sales volume of prepackaged food in such supermarkets was huge, involving a large number of importers, suppliers as well as distributors and with a great variety of items, the Administration considered that it should focus on ensuring that supermarkets would comply with the scheme by taking more samples from them for checking;

- in the course of drawing up the NLS, the Administration had received comments from some LegCo Members and trade members that the nutrition labelling legislation would have more impact on SMEs, particularly the small scale ones and shops selling food for ethnic minorities. Some consumers of ethnic minorities also raised the concern that their country food might no longer be available in the market after the implementation of the scheme. Taking into account their concern, the CFS exercised flexibility in enforcement and directed its efforts to educating the SMEs about the scheme requirements initially;

- during the first year of the implementation of the NLS, although the CFS conducted more inspections on large chain supermarkets, it had also conducted inspections on SMEs, including ethnic shops and snack shops, and took enforcement actions where necessary. For instance, up to 24 June 2011, the CFS had found 111 food labels which did not comply with the scheme. Of these non-compliant cases, 41 (37%) were from large shops, 12 (11%) were from medium scale shops and the remaining 58 (52%) were from small scale shops; and

- to avoid the risk of corruption and inconsistent enforcement criteria adopted by Health Inspectors ("HIs"), the CFS had issued clear guidelines to its staff setting out the conditions under which they should institute prosecution or issue advisory/warning letters. For cases of serious irregularity and clear breaches of the legislation, such as absence

of nutrition labels or food labels, HIs were required to take prosecution actions no matter whether the shop concerned was a large supermarket or a small shop. For non-serious cases and technical breaches, such as indicating the "Use by"/"Best before" date in an improper format, HIs would not institute prosecution immediately. Instead, HIs would inform the shops of the requirements of the legislation and allow them some time for rectification. HIs would then conduct follow-up inspections to check if the irregularity had been rectified. If the irregularity still persisted, enforcement actions would then be taken.

41. The Committee further asked about the details of the guidelines issued by the CFS on the enforcement of the food and nutrition labelling legislation. The **Secretary for Food and Health** stated at the public hearings and in his letter of 4 January 2012 that:

- since 1 April 2011, the CFS had adopted a risk-based inspection approach as recommended in the Independent Commission Against Corruption ("ICAC")'s assignment report on enforcement of food labelling requirements. A database had been developed whereby all food outlets selling prepackaged food were profiled as high, medium and low risk based on four criteria, i.e. shop management, scale of business, type of food sold and track records. Ethnic shops and snack shops were categorised as high and medium risk groups, which would be covered in routine and targeted inspections. HIs were required to inspect about 50%, 30% and 20% of food labels from high risk, medium risk and low risk premises respectively and submit bi-weekly "Workdone Report for Label Checking/Sampling at Retail Outlets"; and

- the Internal Guidelines for Food Labelling Unit ("FLU") had been revised accordingly to set out the above new risk-based inspection requirement. The revised "Internal Guidelines for FLU (April 2011)" were given in Annex I of his letter. Section (B)(IV) of the internal guidelines specified the new risk-based inspection requirement while sections (J) and (M) set out the conditions under which HIs should institute prosecution and issue advisory/warning letters.

42. Regarding the testing of core nutrients by the CFS, paragraph 2.5(c) of Chapter 3 of the Audit Report revealed that of the 505 food samples chosen by the CFS for chemical analysis, only 30 (6%) had been tested for the "1+7" core nutrients, with 70% tested for only one nutrient. The nutrients selected for chemical analysis

were not necessarily the most essential ones or of higher risk of non-compliance having regard to the nature of the food products. Moreover, HIs were not required to document the justifications for their selection of food products for chemical analysis. The Committee asked about the criteria for selecting food products and nutrients for chemical analysis.

43. The **Controller, CFS** explained that:

- the CFS and the Government Laboratory ("GL") worked out a sampling plan at the beginning of each year, agreeing on the number of chemical analyses to be conducted each month and the nutrients to be tested for that month. The sampling plan took into account the availability of different equipment required for testing different nutrients;

- the Administration's testing target, which had been made known to the public, was about 500 samples a year. To be cost-effective, the CFS had initially focused its sampling on products with nutrition claims including "low sugar", "high calcium" and "low fat" etc. in the first year of implementation of the NLS; and

- HIs would purchase food samples from retail outlets based on the agreed sampling plan and in accordance with the districts/countries of origin/food categories which they were assigned, and send the samples to the GL for chemical analysis. An HI would not check all types of foods that were sold in a retail outlet or check all nutrients when conducting an inspection. For example, if an HI was assigned to check candies and biscuits in an inspection, he would focus on such foods and would not check other foods like soft drinks that were also sold in the same shop.

44. In view of the above reply that HIs would only select food samples from retail outlets based on the agreed sampling plan, the Committee queried whether the HIs only followed established rules and practices in performing their duties and ignored the need to select the most appropriate food products for testing in the light of actual circumstances. For example, Audit reported that a pack of soyabean milk containing a "low-sugar" claim was selected for chemical analysis of protein only, but not sugar. The reason for not testing sugar in the soyabean milk was not documented. The Committee therefore asked whether the CFS would:

- improve the documentation in conducting food sampling;

- test food samples for more or all of the "1+7" core nutrients;

- review its sampling strategy for compliance tests so as to cover a greater number of food products in each visit; and

- publish the results of its compliance tests, including the names of both complying and non-complying retail outlets, so as to enhance public awareness of the NLS and achieve deterrent effect.

45. The **Director of Food and Environmental Hygiene** and the **Controller, CFS** replied that:

- the CFS would require its staff to document the justifications for their selection of food products for chemical analysis;

- the CFS also accepted Audit's view that more nutrients should be tested per food sample. For the 500 food samples for testing in the following year, half of them would be tested for all the "1+7" core nutrients. The CFS would also clearly set out the number of nutrients tested for different food samples when reporting the testing results;

- the CFS reviewed its strategy from time to time to identify areas for improvement. A retail outlet which was found to have breached the legislation would be categorised as high risk and subject to re-visits by HIs. During the re-visits, the HIs would select more food products from the retail outlet for testing; and

- the Administration would consider the suggestion of publishing the results of the compliance tests for the sake of enhanced public awareness and deterrence.

46. The **Secretary for Food and Health** added that as it was the CFS's target to cover as many shops as possible in its inspections during the first year of the implementation of the NLS, it could not test all the food products sold in each retail outlet. To be cost-effective, the CFS selected a few samples from different outlets for testing so that more outlets would be covered. After gaining more experience, the CFS had adjusted its sampling strategy to focus more on high-risk outlets.

47. In response to the Committee's enquiry about the overall compliance rate after the CFS had adopted a risk-based inspection approach since 1 April 2011, the **Controller, CFS** said that the compliance rate had slightly decreased from 99.3% to 99.1%.

Tolerance limits for considering enforcement action

48. The Committee noted from paragraph 2.5(e) of Chapter 3 of the Audit Report that for the purpose of considering enforcement action, the CFS adopted tolerance limits for certain nutrients in assessing whether a food product had complied with the NLS. However, the CFS did not disclose the tolerance limits when reporting the compliance rate. Audit also pointed out that some of the tolerance limits adopted by the CFS were "open-ended" in that there was no upper limit (or lower limit) beyond which the nutrition deviation would be disallowed.

49. The Committee enquired why the tolerance limits were open-ended and whether the Administration had informed stakeholders and the LegCo when consulting them on the limits.

50. The **Controller, CFS** replied that:

- the Administration had made reference to the practice of overseas countries in deciding the adoption of tolerance limits to determine compliance. The same approach was adopted by many other jurisdictions, including the United States, mainland China and Singapore. The tolerance limits were included in the CFS Technical Guidance Notes and uploaded onto the CFS website;

- the NLS aimed to promote a healthy diet by increasing the intake of beneficial nutrients while limiting the intake of harmful ones. Hence, the tolerance limit for beneficial nutrients (such as calcium) was set at ≥80%, meaning that the measured quantity of such nutrients should not be less than 80% of the declared value. On the other hand, the tolerance limit for harmful nutrients (such as cholesterol, trans fat and saturated fat) was set at ≤120%, meaning that their measured quantity should not be more than 120% of the declared value so as to limit the intake of such harmful nutrients;

- the Administration had discussed the issue of tolerance limits with stakeholders during various technical meetings, workshops and seminars before implementation of the legislation. The stakeholders consulted included importers/suppliers, manufacturers, food retailers, food traders and laboratory service providers. LegCo Members had also been consulted when the NLS was drawn up; and

- the Administration accepted Audit's recommendation and would disclose the tolerance limits adopted when the CFS announced the compliance results of its chemical analyses in the future.

Results of the tests conducted by Audit

51. As stated in paragraphs 2.6 to 2.11 of Chapter 3 of the Audit Report, Audit had conducted independent tests to evaluate the trade's compliance with the NLS. Audit's visual checking of nutrition labels in 55 retail outlets showed that 46 of them were suspected to have committed one or more non-compliances in their food products. Audit had also commissioned a local university to provide accredited laboratory services for testing selected food samples purchased from the market. Of the 70 food samples tested by Audit, 42 (60%) were suspected to be non-compliant. Of the 42 food samples, 22 (52%) had discrepancies fallen outside the CFS tolerance limits in two or more nutrients.

52. On the other hand, the Committee noted from the Director of Food and Environmental Hygiene's opening statement that the Administration's testing of the suspected non-compliant cases disclosed in the Audit Report yielded different results, as follows:

- regarding the 42 samples which were found to be unsatisfactory after Audit's independent laboratory testing, the CFS collected 40 samples from the outlets concerned for testing by the GL. The results showed that 18 were satisfactory and the CFS was seeking clarification from food traders on the discrepancies in testing results for 22 samples; and

- in other words, the analysis results of the GL showed that the non-compliance rate was about 34% instead of 60% as mentioned in paragraph 2.10(a) of the Audit Report.

53. The Committee enquired about the basis of the 34% non-compliance rate and the reasons for the discrepancies between the results of the testing conducted by Audit and by the GL. The Committee also asked whether the Administration had informed Audit of the discrepancies in the testing results when it was invited by Audit to give comments on the draft Audit Report so that Audit could address the discrepancies in finalising the report.

54. The **Director of Food and Environmental Hygiene** responded that:

- as stated in paragraph 2.10(a) of the Audit Report, of the 70 food samples tested by Audit, 42 were suspected to be non-compliant, meaning that 28 were compliant. Adding these 28 samples to the 18 samples which were found to be satisfactory by the GL's testing, there should be 46 compliant samples out of 70 food samples. The compliance rate should thus be 66% while the non-compliance rate should be 34%;

- the discrepancies in the testing results might be due to the different strategies, sampling approaches and testing criteria adopted by Audit and the CFS; and

- for some suspected non-compliant cases found from visual checking by Audit, the FEHD had provided the results of its testing to Audit. However, for non-compliant cases found from laboratory testing, more time was needed before the test results were available. For example, the CFS had to collect food samples according to its procedures and the tests took time to produce results. In the circumstances, the FEHD could not inform Audit of its testing results in time before the deadline for giving formal comments on the draft Audit Report.

55. The **Director of Audit** said that the methodology, standards and testing criteria adopted by Audit for laboratory testing were largely the same as those of the CFS. However, it was not surprising to have different testing results for the same type of food products. For example, the same canned food product manufactured on different dates might yield different testing results.

Legibility requirements for nutrition information

56. As reported in paragraphs 2.15 to 2.18 of Chapter 3 of the Audit Report, the 2008 Amendment Regulation does not have adequate provisions (e.g. font size) to ensure the legibility of the nutrition information on food labels. Audit's market surveys found that the nutrition labels of some prepackaged foods were too small in font size, and the text and background of some were not shown in distinct contrast, thus making the nutrition information very difficult to read. Audit also noted that illegibility was one of the major obstacles to have hindered people from reading nutrition labels.

57. The Committee noted that the CFS had uploaded a set of draft guidelines onto its website to consult stakeholders. Given that illegible food labels would defeat the purpose of enabling consumers to make informed choice of foods by reading the labels for the information they required, the Committee questioned:

- why the Administration elected to consult the trade on the draft guidelines on the preparation of legible food labels instead of taking immediate actions to require the trade to make improvement, thereby safeguarding consumers' interest; and whether the Administration looked after the interest of traders at the expense of the interest of consumers; and

- about the parties which were being consulted.

58. The **Secretary for Food and Health** and the **Director of Food and Environmental Hygiene** explained that:

- when the NLS was drawn up, the FSEH Panel had discussed whether it was necessary to set mandatory rules on the package size of pre-packaged foods and the place of putting food labels, etc. It was agreed that the trade should be given time to comply with the legislation; and

- the Administration had not put traders' interest before consumers' interest. However, the trade had to adjust the packaging of food products in order to comply with the legislation. It was therefore proper to seek traders' views on the feasible ways of improving the legibility of food labels. Also, as the scheme had been implemented for some time, the Administration would also like to know the views of

consumers. Hence, both the trade and consumer groups and other stakeholders, such as food importers, distributors and patients' rights groups would be consulted.

Nutrition claims and health claims

59. The Committee noted that food traders had increasingly used nutrition and health claims to promote conventional foods (foods or drinks customarily consumed). While nutrition claims were governed by the NLS, health claims were not governed by any specific ordinance or regulations in Hong Kong. In 2005, the Undesirable Medical Advertisements (Amendment) Ordinance ("UMA(A)O") was enacted. But it only governed the prohibition/restriction on advertising relating to six groups of undesirable health claims on orally consumed products which did not cover conventional foods. The Administration could only rely on the general provisions of the PHMSO, such as by invoking section 61, to regulate health claims on conventional foods. Paragraph 3.8 of Chapter 3 of the Audit Report, however, revealed that up to August 2011, no successful prosecution under section 61 of the PHMSO had been brought against any food traders for improper health claims on conventional foods.

60. The Committee pointed out that the public expected the Administration to put in place proper legal framework to protect them from misleading or exaggerated health claims. In view of the unsatisfactory situation as highlighted by Audit, the Committee queried:

- about the reasons for the lack of regulation over health claims on conventional foods, and whether this was because the Administration considered the regulation of such claims unimportant;

- about the regulatory frameworks in overseas countries for dealing with misleading or exaggerated health claims on foods; and

- whether the FEHD had made any efforts to prosecute food traders under section 61 of the PHMSO, which outlawed a label or advertisement that falsely described the food or misled as to the nutritional or dietary value of the food, and what difficulties were encountered.

61. The **Director of Food and Environmental Hygiene** and the **Controller, CFS** stated that:

- the CFS accorded top priority to conducting testing in relation to food safety and did not conduct testing that targeted at health claims on conventional foods. The CFS hoped to educate consumers about the importance of checking the validity of health claims through measures such as conducting joint studies on health claims with the Consumer Council;

- in order to invoke prosecution under section 61 of the PHMSO, there must be sufficient evidence as advised by the Department of Justice. There was a lot of grey area between valid health claims and misleading health claims. It was often difficult to have evidence proving that a health claim was intentionally misleading or false. Nevertheless, if it had come to the CFS's notice or a complaint had been received that a health claim was allegedly misleading or false, the CFS would consult the Department of Justice to consider if there was sufficient evidence to institute prosecution; and

- regarding the inadequacies in the CFS's oversight of use of nutrition claims on foods by the trade as identified by Audit, the CFS would issue specific guidelines to assist its staff in record keeping and taking of enforcement actions.

62. On the regulatory frameworks in overseas countries, **Mr Philip CHAN Kwan-yee, Deputy Secretary for Food and Health (Food)2**, said that:

- Codex had provided guidelines for the use of health claims on foods and set out the various conditions that should be met for permitting health claims. Such conditions included: health claims must be based on current relevant scientific substantiation, and must be accepted by or be acceptable to the competent authorities of the country where the food product was sold. However, Codex had not stipulated in its guidelines the health claims that were acceptable or unacceptable; and

- the Administration would keep in view of the development of regulatory frameworks for the use of health claims on foods in overseas countries, which would serve as reference in its consideration of how to improve the current legislation.

63. The Committee further asked why the UMA(A)O which was enacted in 2005 had not yet come into operation. **Dr Gloria TAM Lai-fan, Acting Director of Health** said that the UMA(A)O provided that health food products carrying medical claims but not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549) had to carry an additional disclaimer indicating so. This provision could only be brought into operation after the Chinese Medicine Ordinance had been fully implemented. The Administration expected that the UMA(A)O would be brought into operation in the first half of 2012.

Exemptions from nutrition labelling

64. Under the small volume exemption ("SVE") scheme, the FEHD may grant exemption in respect of any prepackaged food from the nutrition labelling requirements if it is satisfied that the annual sales volume of the food in Hong Kong would not exceed 30,000 units.

65. The Committee noted that various problems had arisen in the first year of the implementation of the SVE scheme. For instance, according to paragraphs 4.14 and 4.16 of Chapter 3 of the Audit Report, the CFS had difficulty in monitoring whether the limit of 30,000 units a year had been exceeded as it mainly relied on the sales volumes reported by food traders without conducting any checks to verify the accuracy of the reported figures. Also, the CFS could not monitor the sales volumes of the same product made by other food traders who had not applied for SVE. The Committee asked how the Administration would plug such loopholes.

66. The **Controller, CFS** responded that drawing on the experience gained from the first year of the implementation of the SVE scheme, the CFS would take improvement measures. Starting from September 2011, the CFS would visit selected food importers or wholesalers who had been granted exemption under the scheme every month and conduct document checks to ascertain the sales volume of their SVE products. Particular attention would be given to those traders who had failed to timely report the sales figures of their SVE products.

Surveillance and enforcement work

Conduct of routine inspections and blitz operations

67. According to paragraph 5.2 of Chapter 3 of the Audit Report, the FLU of the CFS conducted routine inspections and weekly blitz operations to check the trade's compliance with the food labelling requirements. Regarding the enforcement activities carried out by the FLU, the Committee noted from Table 8 in paragraph 5.3 that the number of prosecutions relating to breaches of general food labelling requirements had dropped from 47 in 2010 to 7 in 2011 (up to 30 June 2011), and the number of convictions had also dropped from 47 to 0 during the same period. The Committee queried whether the significant reduction in the number of prosecutions was due to the laxity of the responsible FLU staff or decreased manpower deployed to undertake enforcement duties.

68. In his letter of 7 December 2011 in (***Appendix 14***), the **Director of Food and Environmental Hygiene** gave an account of the reasons for the reduction in the number of prosecutions and convictions for food labelling non-compliant cases in the first six months of 2011 as compared with the corresponding figures in 2010. He stated that:

- over the years, the chained supermarkets/stores had come to know better the general labelling requirements, particularly after the implementation of the NLS in July 2010. Accordingly, the compliance rate on general labelling had improved, resulting in the smaller number of prosecutions being made in 2011; and

- routine inspections and blitz operations to check the trade's compliance with the food labelling and nutrition labelling requirements had been temporarily suspended from April to June 2011 in order to release staff to help deal with the outbreak of food incidents arising from the Japanese nuclear accident and the plasticiser incident in Taiwan. Inspections were resumed to normal in July 2011. The CFS would endeavour to check a comparable number of samples as in 2010.

69. On the conduct of blitz operations, Appendix C in Chapter 3 of the Audit Report revealed that Audit staff found various inadequacies in the blitz operation conducted on 8 June 2011 when they attended as observers in the operation. For example, although the blitz operation was intended to cover all retail outlets selling prepackaged foods in the target area, there was no shop along the three streets

selected for inspection. Moreover, a wet market and an ethnic shop (which were high-risk outlets) in the targeted shopping centre were not visited.

70. The Committee questioned why there were such omissions and whether the CFS had drawn up an action plan setting out the retail outlets, particularly the high-risk ones, in the target area that should be inspected before a blitz operation was launched.

71. The **Controller, CFS** responded that:

- the aim of blitz operations was to quickly scrutinise as many shops in the target areas as possible. A Senior HI was responsible for arranging the schedule of the weekly blitz operations, but the HIs taking part in blitz operations were not informed of the target areas in advance. They were only informed of the location and target areas (usually covering two shopping centres and two streets) in the morning of the operation;

- the CFS staff conducted regular on-line surfing of Internet shops selling foods and inspected such shops during blitz operations. However, the actual number of retail outlets in a target area might not be known before an operation because a lot of outlets selling foods were not required to register with the Government. As such, the HIs would only know the number of shops located in a target area after they arrived at the site;

- regarding the blitz operation conducted on 8 June 2011, the wet market was not visited probably because the HIs did not see it or due to the lack of time. In fact, in response to the Audit staff's request, the HIs concerned had spent some time on locating an Internet shop which was found to have moved already. Normally, the HIs would only check the whereabouts of a moved shop after the operation. As a result, fewer shops could be covered in the operation on 8 June 2011. Nevertheless, the CFS had already reminded its staff that they should try to cover all the shops in the target area in each operation; and

- the CFS accepted Audit's recommendation of building up a comprehensive database of all retail outlets in each geographical area and keeping it up-to-date, so as to avoid omitting some retail outlets when conducting enforcement operations.

ICAC assignment report

72. The Committee noted from paragraph 5.5 of Chapter 3 of the Audit Report that the ICAC completed an assignment report on the CFS's enforcement of food labelling requirements in September 2010. In the report, the ICAC commented that the CFS's strategy and inspection procedures were "fraught with loopholes for manipulation (e.g. cover-up of non-compliance)" and had fallen short of an effective enforcement mechanism. The Committee asked about the background of the ICAC study and the progress in implementing the ICAC's recommendations.

73. The **Director of Food and Environmental Hygiene** stated in his letter of 7 December 2011 and the **Controller, CFS** stated at the public hearings that:

- the ICAC study was initiated by the FEHD. As the FEHD was responsible for a lot of law enforcement work, it always discussed with the Corruption Prevention Department of the ICAC to ensure that sufficient safeguards were put in place to prevent corruption. Prior to the current audit review, the FEHD invited the ICAC in November 2009 to examine the CFS's enforcement work of food labelling requirements from the corruption prevention angle and to make recommendations on areas for improvement;

- the FEHD had accepted all but two of the recommendations made in the assignment report. The two recommendations were:

  (a) *to take into account the residence of HIs when assigning districts to them for routine inspection:* This was not accepted because there were only 10 HIs in the FLU. To implement the ICAC's recommendation of not assigning an HI to conduct inspections in the district where he lived would pose operational difficulties in the deployment of staff for inspections. Moreover, the ICAC had made other recommendations that could enhance the integrity of site inspections, such as deploying two HIs to work as a team for blitz operations and requiring Senior HIs to regularly perform supervisory checks on the HIs' work. These measures had been implemented from 1 April 2011; and

  (b) *to move the Chief HI's office to the FLU office to enable the exercise of direct supervision over the FLU:* This was not accepted because the Chief HI, apart from overseeing the FLU's work, was also responsible for strategic analysis and assisting the Senior

Superintendent and Superintendent in policy matters. Hence, it was more desirable to locate the Chief HI's office with those of the Senior Superintendent and Superintendent; and

- the ICAC had agreed with the FEHD not to take on the above two recommendations having noted its explanations on the inherent operational difficulties.

74. The Committee noted the Director of Food and Environmental Hygiene's reply that the FEHD accepted all the recommendations of the ICAC (except the above two). On the other hand, the Committee noted from the Audit Report that despite the ICAC's recommendations that the CFS should adopt a risk-based inspection approach and develop a database of retail outlets for risk profiling and identification of inspection targets, Audit examination of the CFS's routine inspection work in March 2011 revealed that most of the food labels checked were still chosen from large chain supermarkets, which generally had a lower risk of non-compliance. Besides, the database of retail outlets being developed by the CFS was not yet complete.

75. In addition, the Committee referred to the ICAC assignment report which revealed that despite the magistrate's comments in one prosecution case that the FLU should ascertain the circumstantial evidence (i.e. the actual number of non-compliant food items on the spot) for future prosecution, no instruction had been issued to this effect. File search by the ICAC also showed that such information was still missing in the inspection records.

76. It appeared to the Committee that the lack of management action to follow up a magistrate's advice on prosecution matters cast doubt on the determination of the FEHD and the CFS to seriously implement the ICAC's and Audit's recommendations. The Committee questioned why the FEHD did not promptly act on the magistrate's advice.

77. In his letter of 4 January 2012, the **Secretary for Food and Health** informed the Committee that:

- it was regretted that the magistrate's advice, given on 9 October 2009 in relation to a case against general labelling irregularity, had not been followed up promptly, but improvement measures had since been

implemented in early 2011. HIs of the FLU had been required to ascertain, under the supervision of Senior HIs, the possession of circumstantial evidence before taking out prosecution since February 2011; and

- to better equip the staff concerned with the necessary legal knowledge, training courses were being conducted by the Training Section of the FEHD on evidence collection.

78. The **Director of Food and Environmental Hygiene** and the **Controller, CFS** said that:

- after the ICAC had submitted the assignment report to the FEHD in November 2010, the FEHD held further discussions with the ICAC on the contents of the report and reviewed the internal operations of the department. The FEHD then informed the ICAC that it accepted the report's recommendations and implemented the recommended measures in April 2011. This showed the FEHD's serious approach in following up the ICAC's recommendations and in carrying out its duties; and

- the CFS had also implemented the ICAC's recommendation on seeking legal advice on the circumstances under which prosecution might be waived and requiring HIs to seek approval from a designated senior officer (the relevant Senior HI) for not taking prosecution action.

Promoting the risk-based approach

79. The Committee noted that both the ICAC and Audit recommended that the CFS should adopt a risk-based approach in carrying out its duties, such as in selecting the food products and the nutrients to be tested and in conducting routine inspections. Such approach was also adopted by other government departments, like the Water Supplies Department in detecting unlawful water taking cases. The Committee further pointed out that although departments had different responsibilities and would define "risk" differently, using a risk-based approach in deploying resources could help them achieve the most with their limited resources. The Committee therefore asked whether the Financial Services and the Treasury Bureau ("FSTB") would take the lead to promote such approach among government bureaux and departments in performing their duties.

80. **Ms Alice LAU, Deputy Secretary for Financial Services and the Treasury (Treasury)1**, responded that as bureaux and departments had different areas of responsibility, they would inevitably interpret "risk" in different ways. Nevertheless, she agreed that a risk-based approach could help bureaux and departments to obtain the best results with their limited resources and would provide useful reference to them in making decisions on deployment of resources. The FSTB would actively consider the suggestion of promoting a risk-based approach among bureaux and departments where applicable.

D. Conclusions and recommendations

81. The Committee:

Overall comments

- notes the Secretary for Food and Health's view that some of the recommendations of the Audit Commission ("Audit") in Chapter 4 of the Director of Audit's Report ("Audit Report") concerning nutrition labelling of infant and special dietary foods were related to policy matters and should be discussed through other appropriate channels;

- does not accept the above view of the Secretary for Food and Health, but agrees with the Director of Audit that as the Administration had undertaken in 2005 to review the need for introducing nutrition labelling requirements covering infant and special dietary foods but the Legislative Council had not been informed of the timetable of the review, it is appropriate for Audit to examine the adequacy of the nutrition labelling of infant and special dietary foods with a view to providing input to the Administration on whether there is a need to introduce nutrition labelling requirements covering such foods;

- is dissatisfied that the Secretary for Food and Health failed to express the above view and the Director of Food and Environmental Hygiene failed to inform Audit of the disagreements with certain evidence presented in the Audit Report (e.g. the discrepancies between the results of Audit's and the Administration's testing of the suspected non-compliant cases) when being invited to give comments on the draft of the report, but only made known the view and raised the disagreements at the Committee's public hearings;

- considers that because infants, young children and people with special dietary needs are generally more vulnerable, foods for them should be more strictly regulated, and the public expects the Administration to effectively regulate such foods marketed in Hong Kong;

- expresses astonishment and finds it totally unacceptable that:

  (a) the Secretary for Food and Health has been inordinately slow in considering the introduction of appropriate ordinance or regulations to govern nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong, and Hong Kong is lagging behind many countries in regulating the various aspects of infant and follow-up formulae, in that:

    (i) although the Administration undertook as early as 2005 to review the need for introducing nutrition labelling requirements covering infant and special dietary foods, no such review has yet been conducted after a lapse of six years;

    (ii) despite the fact that many countries, including China, have already developed comprehensive ordinances or regulations governing the nutritional composition and labelling of infant and follow-up formulae to be marketed in their countries, Hong Kong has not yet developed such ordinances or regulations. Such situation is particularly unacceptable as there are frequent exchanges and cooperation between mainland China and Hong Kong on food related matters and enforcement measures and the standards governing foods (including infant and follow-up formulae) for the two places should be the same; and

    (iii) since the International Code of Marketing of Breast-milk Substitutes was issued by the World Health Organisation ("the WHO Code") some 30 years ago, many countries have already developed their advertising and marketing guidelines applicable to their own countries for compliance by the trade. In Hong Kong, however, the Administration has not yet taken any measures to require compliance with the WHO Code;

  (b) there are cases of blatant breaches of the standards of the Codex Alimentarius Commission ("Codex" — an international authority that develops food standards and guidelines) and the WHO Code, but since it is not a legal requirement in Hong Kong to comply with

the Codex standards and the WHO Code, the Administration has taken no action and has not considered the feasibility of proceeding against such breaches under the Public Health and Municipal Services Ordinance ("PHMSO" — Cap. 132); and

(c) the Centre for Food Safety ("CFS") and the Food and Environmental Hygiene Department ("FEHD") have not given the appropriate priority to protecting the health of infants and people with special dietary needs, as reflected by the following:

(i) although the practice of promoting foods for infants through making nutrition, health and other claims is prevalent in Hong Kong and the Director of Health has admitted that the growing trend of making misleading or exaggerated claims in promoting formula for young children aged between six and 36 months is a cause for concern, the CFS has not taken proactive actions to verify the validity of such claims by obtaining scientific evidence from the food traders, or to stop them from making such claims; and

(ii) the CFS and the FEHD have not always properly followed through the complaints and enquiries they received relating to the nutritional value of infant and special dietary foods, as illustrated in Cases 4 to 7 in Chapter 4 of the Audit Report. The inadequacy in the follow-up actions may result in the delay of detecting, or inability to timely detect, potential threats to public health;

- urges the Secretary for Financial Services and the Treasury to:

(a) remind all government bureaux and departments that they should inform Audit of their disagreements with any contents of an Audit Report when giving comments on the draft of the report before the report is finalised, so that Audit can take their views into consideration when finalising the report or address the different views in the report; and

(b) promote the adoption of a risk-based approach among government bureaux and departments in the performance of their functions where appropriate, given that the resources of bureaux and departments are limited;

Nutrition labelling of infant and special dietary foods

Infant and special dietary foods not covered by the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 ("the 2008 Amendment Regulation")

- expresses deep regret that:

  (a) the mandatory nutrition labelling scheme under the 2008 Amendment Regulation does not apply to infant and special dietary foods, and the Administration has neither proposed any ordinance or regulations to govern nutrition labelling of infant and special dietary foods marketed in Hong Kong, nor required such foods to comply with relevant standards and guidelines developed by the Codex;

  (b) although the Administration has repeatedly informed the Legislative Council Panel on Food Safety and Environmental Hygiene ("FSEH Panel") that the nutrition labelling scheme would not apply to infant and special dietary foods because they were regulated by different Codex standards and guidelines, it has not taken the initiative to disclose to the FSEH Panel and the public at the various meetings of the Panel held on this issue that compliance with the Codex standards and guidelines is not mandatory. Neither has the Administration disclosed the reasons for its failure to make compliance with such standards and guidelines a legal requirement;

  (c) an examination by Audit of selected infant and special dietary foods marketed in Hong Kong (as reported in Cases 1 to 3 in Chapter 4 of the Audit Report) revealed that there were various deviations from the Codex standards and guidelines:

    (i) in the nutritional composition and labelling of some infant and follow-up formulae;

    (ii) in the use of nutrition and health claims and other claims to promote infant and follow-up formulae; and

    (iii) in the use of claims in special dietary foods;

(d) nutrition and health claims and other claims are commonly used by formula traders to promote infant and follow-up formulae, notwithstanding that Codex prohibits the use of nutrition and health claims for foods for infants and young children, and the WHO Code also recommends that there should be no advertising or other form of promotion to the general public of breast-milk substitutes (including infant formula and follow-up formulae); and

(e) some special dietary foods contain many claims which may not be in line with the Codex standards and guidelines;

- is strongly of the view that given the various breaches of the Codex standards and guidelines by the trade, it is not in the public interest to continue relying on the trade to voluntarily comply with the Codex standards and guidelines;

Regulation of nutrition information

- expresses serious concern that:

(a) notwithstanding that the regulation of nutrition information for infant and special dietary foods is important because such foods are targeted at the more vulnerable subgroups of the population with special dietary needs, up to mid-2011, the CFS had not conducted any risk assessment studies on nutrition of infant and special dietary foods. In its food surveillance, the CFS focused on the chemical and microbiological testing of foods (including milk powder samples) and had not selected any infant and special dietary foods for verification of the nutrition information declared;

(b) in the absence of specific ordinance and regulations, the Administration mainly relies on the general provisions of the PHMSO to regulate infant and special dietary foods marketed in Hong Kong. Despite that section 61 of the PHMSO, which outlaws a label or advertisement that falsely describes the food or misleads as to the nutritional or dietary value of the food, can be invoked against malpractices identified in relation to infant and special dietary foods, the CFS has so far not invoked this section in relation to such foods;

(c) Audit's examination of selected infant and special dietary foods marketed in Hong Kong revealed that, for some of such foods

examined, there were obvious deviations between the nutrition information displayed on the nutrition labels and the nutrient contents. Some of the deviations would have fallen outside the CFS's tolerance limits and might have triggered the issue of warning/enquiry letters and enforcement actions, had the nutrition labelling scheme been applied to the products concerned. Besides, the products did not meet some of the scheme requirements;

(d) in the absence of a legal definition of "food for special dietary uses", consumers have difficulties in differentiating special dietary foods from others; and

(e) as reported in Cases 11 and 12 of Chapter 4 of the Audit Report, Audit found that there were food products serving special population subgroups, but not regarded by the CFS as "food for special dietary uses". The requirements of the nutrition labelling scheme should be applicable to such food products. Audit, however, found that some of these products appeared to have not complied with the scheme in various areas;

- acknowledges that the CFS will start to conduct testing on the nutritional composition of infant formula from 2012;

Development of a Hong Kong Code of Marketing of Breast-milk Substitutes ("the Hong Kong Code")

- expresses serious disappointment that:

(a) at present, the Administration mainly relies on milk powder manufacturers and distributors in Hong Kong to exercise self-discipline in compliance with the WHO Code and requirements in the relevant World Health Assembly resolutions in their marketing practices;

(b) although the Administration has set up a task force in June 2010 to develop the Hong Kong Code and the Code is expected to be implemented within 2012, compliance with the Hong Kong Code will still be voluntary and the Code so far developed has not specified any requirements in respect of the nutritional composition of foods for infants and young children; and

(c) the Administration will only consider whether it is necessary to introduce specific ordinance or regulations governing nutritional composition and labelling of infant foods after reviewing the responses of the trade to the Hong Kong Code;

The way forward

- expresses deep regret and finds it unacceptable that the Administration has failed to effectively discharge its role as the food safety authority in overseeing and regulating the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong, and hence public health has not been adequately safeguarded, in that:

  (a) there is/are no separate ordinance or regulations to govern the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong;

  (b) compliance with the Codex standards and guidelines, the WHO Code and the Hong Kong Code (about to be implemented) is only voluntary; and

  (c) Audit has revealed various inadequacies in the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong, and in the Government's regulation of nutrition information displayed on food labels of these foods;

- acknowledges that:

  (a) the CFS will work closely with the Department of Health to actively consider incorporating requirements on nutritional composition and labelling of infant and follow-up formulae marketed in Hong Kong into the Hong Kong Code, and to monitor the trade's compliance;

  (b) the CFS will study the current situation regarding labelling of foods for special dietary uses and make recommendations regarding the priority of regulating these products; and

  (c) the Department of Health will develop appropriate monitoring and reviewing mechanism, with a view to supporting the effective implementation of the Hong Kong Code. Besides, the Hong Kong Code task force is considering the relevant sanction mechanism;

- considers that the Administration has not taken adequate measures to protect public health, and strongly urges the Secretary for Food and Health to tackle the various problems raised in Chapter 4 of the Audit Report without delay. In particular, the Secretary should:

  (a) set a definite timetable for conducting a review on the need to introduce nutrition labelling requirements covering infant and special dietary foods marketed in Hong Kong, including the need for introducing appropriate ordinance or regulations;

  (b) expeditiously work out a plan to step up the statutory regulation of nutrition information on infant and special dietary foods marketed in Hong Kong; and

  (c) keep the FSEH Panel and the Committee informed of the review results, details of the plan and the progress of implementation;

Food labelling

Accuracy and legibility of food labels

- expresses serious concern that:

  (a) most of the food samples selected by the CFS for visual checking of compliance with the nutrition labelling scheme and for checking of compliance with the general food labelling requirements were chosen from large chain supermarkets, which generally had a lower risk of non-compliance;

  (b) although the Administration reported to the FSEH Panel in July 2011 that the nutrition labelling scheme had been implemented successfully and the overall compliance rate was 99.3%, the CFS's compliance tests conducted were subject to various limitations, as follows:

    (i) only 6% of the food samples chosen for chemical analysis had been tested for energy plus seven core nutrients, with 70% tested for only one of them;

    (ii) the nutrients selected for chemical analysis were not necessarily the most essential ones or of a higher risk of non-compliance; and

(iii) the tolerance limits for considering enforcement action against non-compliance with the nutrition labelling scheme were not disclosed in reporting the compliance rate;

(c) Audit's visual checking of nutrition labels in some retail outlets showed that a great number of suspected non-compliant food products were found available for sale in most of those outlets;

(d) Audit's laboratory tests found that 60% of the food samples tested were suspected to be non-compliant, and 52% of the samples had discrepancies fallen outside the CFS tolerance limits in two or more nutrients;

(e) for some nutrients in the food samples tested by Audit, there were large discrepancies between their nutrition contents and their declared values. Although the discrepancies did not fall outside the CFS tolerance limits (due to their "open-ended" characteristic), inaccurate nutrition information is not conducive to assisting consumers in making informed food choices;

(f) the 2008 Amendment Regulation does not have adequate provisions to ensure the legibility of the nutrition information on food labels, and the nutrition labels of some prepackaged foods marketed in Hong Kong were difficult to read due to small font size and the lack of contrast between the text and background; and

(g) in some retail outlets visited by Audit, suspected non-compliance with the general food labelling requirements was quite commonly found in their food products marketed;

- understands that the CFS consciously focused on large chain supermarkets during the initial stage of the nutrition labelling scheme (July 2010 to March 2011), but considers that the CFS should not neglect the need to conduct inspections on small and medium retail outlets, which have a higher risk of non-compliance, to ensure their compliance with the scheme;

- acknowledges that:

(a) the CFS has adjusted its enforcement strategy by including more small retail outlets since 1 April 2011. Under the adjusted enforcement strategy, small retail outlets such as ethnic shops and

market stalls with unsatisfactory compliance records are categorised as high risk, while medium chain shops and large chain supermarkets with good compliance records are categorised as medium and low risk respectively;

(b) to address the issue of legibility of food labels, the CFS has uploaded a set of draft guidelines onto the CFS website to consult the trade, with the objective of ensuring that consumers can read clearly the information on nutrition labels; and

(c) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraphs 2.12, 2.21 and 2.27 of Chapter 3 of the Audit Report;

- recommends that:

(a) the CFS should take effective measures to assist small and medium retail outlets to comply with the nutrition labelling scheme and monitor their compliance;

(b) the Director of Food and Environmental Hygiene should regularly publish the results of the CFS's compliance tests of food labels under the nutrition labelling scheme, including the names of both complying and non-complying retail outlets, to enhance public awareness of the scheme and to achieve deterrent effect; and

(c) the Director of Food and Environmental Hygiene should promptly initiate amendments to relevant legislation to ensure that there will be adequate statutory provisions governing the legibility of nutrition information on food labels, so as to safeguard the interest of consumers;

Nutrition claims and health claims

- finds it unacceptable that:

(a) food traders have increasingly used nutrition and health claims to promote conventional foods (foods or drinks customarily consumed). While nutrition claims are governed by the nutrition labelling scheme, health claims are not governed by any specific ordinance or regulations in Hong Kong. The Administration can only rely on the general provisions of the PHMSO to regulate

health claims on conventional foods. Up to August 2011, no successful prosecution had been brought against any food traders for improper health claims on conventional foods;

(b) the Undesirable Medical Advertisements (Amendment) Ordinance ("UMA(A)O"), which governs the prohibition/restriction on advertising relating to six groups of undesirable health claims on orally consumed products, was enacted in 2005 but the major amendments have not yet come into operation;

(c) the CFS staff had not taken proactive actions (e.g. by seeking scientific evidence from food traders) to verify the validity of the nutrition claims made by food traders, particularly those in advertisements. For the first year of implementing the nutrition labelling scheme, the CFS had only identified 12 inappropriate nutrition claims; and

(d) the CFS did not keep records on whether nutrition claims made on food products or in advertisements had been checked in its compliance tests, and whether the food samples selected for chemical analysis contained nutrition claims;

- acknowledges that:

(a) the UMA(A)O will be brought into operation in the first half of 2012;

(b) the CFS will step up its enforcement efforts on nutrition claims and has followed up on the suspected non-compliant cases identified by Audit; and

(c) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraph 3.16 of Chapter 3 of the Audit Report;

- urges the Director of Food and Environmental Hygiene to take effective measures to rectify the inadequacies in the CFS's oversight of use of nutrition claims on foods by the trade, including improving the CFS staff's capability and alertness in taking enforcement actions and reviewing the CFS's systems in relation to its enforcement work to identify any weaknesses, and keep the FSEH Panel and the Committee informed of the progress made;

Exemptions from nutrition labelling

- notes that under the small volume exemption ("SVE") scheme, the FEHD may grant exemption in respect of any prepackaged food from the nutrition labelling requirements if it is satisfied that the annual sales volume of the food in Hong Kong would not exceed 30,000 units;

- expresses disappointment that during the first year of the implementation of the SVE scheme, various problems had arisen, as follows:

  (a) the CFS had difficulty in monitoring whether the limit of 30,000 units a year had been exceeded as there was delay by some food traders in reporting the monthly sales volumes of their SVE products, and the CFS mainly relied on the sales volumes reported by food traders without conducting checks to verify the accuracy of the reported figures. As a result, the CFS could not take timely action to revoke the exemption status of some products even if their sales volumes had exceeded 30,000 units;

  (b) the CFS could not ascertain the overall sales volume of an SVE product because it could only monitor the sales volumes of an SVE product made by food traders who were granted exemption for the product, but not the sales volumes of the same product made by other food traders who had not applied for SVE;

  (c) for the purpose of processing SVE applications, the CFS staff have to satisfy that the products do not carry any nutrition claims, but they may sometimes find it difficult to vet food labels written in languages other than Chinese and English; and

  (d) many food traders withdrew their SVE applications after the CFS had given its approval in principle, and as a result, much of the CFS's work in processing the applications became abortive, involving unrecoverable costs of some $2.9 million up to June 2011;

- acknowledges that:

  (a) the post-implementation review of the SVE scheme is underway and the CFS will take into account Audit's observations and recommendations;

(b) the CFS will continue to explore ways to monitor the overall sale volumes of SVE products;

(c) the CFS will remind the trade that all claims, irrespective of the language being used, would be regulated, and the trade should exercise due diligence to ascertain that all information provided on the package is accurate. The CFS will also explore ways to further support its staff in scrutinising food labels written in languages other than Chinese and English;

(d) to avoid possible abuse, with effect from November 2011, the CFS will only issue the SVE number to grantees that have already paid the exemption fees. The CFS will consider the practicability of introducing an application fee in the present review to address the problem of frequent withdrawals; and

(e) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraph 4.24 of Chapter 3 of the Audit Report;

- recommends that the Director of Food and Environmental Hygiene should conclude the post-implementation review of the SVE scheme promptly and take effective measures to plug any loopholes in the enforcement of scheme requirements having regard to the outcome of the review;

Surveillance and enforcement work

- expresses astonishment that:

(a) although the Independent Commission Against Corruption ("ICAC") recommended in its assignment report of September 2010 that the CFS should adopt a risk-based inspection approach and develop a database of retail outlets for risk profiling and identification of inspection targets, Audit examination of the CFS's routine inspection work in March 2011 revealed that most of the food labels checked were still chosen from large chain supermarkets, which generally had a lower risk of non-compliance. Besides, the database of retail outlets being developed by the CFS was not yet complete;

(b) Audit examination of the CFS's blitz operation work in March 2011 revealed that most of the retail outlets inspected were located in shopping centres, and there were not many retail outlets along the streets selected for inspections. Audit staff attended as observers in a blitz operation conducted in June 2011 and noted that there were inadequacies in the operation (e.g. a few high-risk outlets were not visited);

(c) the CFS did not take adequate follow-up actions on irregularities of those food products which were only provided with the names and addresses of distributors or manufacturers outside Hong Kong;

(d) although the CFS guidelines provided that Health Inspectors ("HIs") were required to take subsequent follow-up actions on prosecution cases to ensure that the non-compliance did not persist, the guidelines contained no provisions on details of such actions, such as the timeframe and frequency of follow-up inspections. In some completed prosecution cases, there was no record of follow-up inspections conducted; and

(e) the CFS did not issue public alerts to draw the public's attention to the food safety problems of some food products which had been identified to contain undeclared allergens or unpermitted/excessive food additives;

- acknowledges that:

(a) the CFS will continue to build up, improve and update its database of retail outlets to facilitate its inspection, surveillance, enforcement, risk management and public education work;

(b) the CFS will supplement internal guidelines to require HIs to cover as many retail outlets as practicable in blitz operations and on details of follow-up actions to be taken to ensure that any non-compliance cases identified would not persist;

(c) the CFS will take enforcement action and make immediate public announcements if test results show that food samples are detected with immediate health risks; and

(d) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraph 5.24 of Chapter 3 of the Audit Report;

- recommends that the Director of Food and Environmental Hygiene should take actions to implement the ICAC's recommendations and the above Audit recommendations without delay;

Publicity and education

- expresses concern that:

(a) Audit's survey conducted in June and July 2011 revealed that although most of the respondents were aware of the nutrition labelling scheme, their understanding of the scheme was far from adequate. Besides, most respondents had not yet developed a habit of reading nutrition labels when purchasing prepackaged foods; and

(b) Audit's survey also revealed that there were differences in the level of awareness, perception and attitude on nutrition labelling among different categories of respondents, especially for senior citizens. Besides, there were obstacles hindering the public from using nutrition labels such as "font size too small", "the nutrition information could not be related to daily intake" and "the information provided was difficult to understand";

- acknowledges that:

(a) the CFS has started to implement a two-year enhancement publicity and education programme since July 2011, with a view to sustaining the educational efforts of the three-year campaign and motivating behavioural changes;

(b) the CFS will review the existing strategies and approaches in promoting the nutrition labelling scheme to different groups of the population, and seek to improve the user-friendliness of the nutrition labels; and

(c) the Director of Food and Environmental Hygiene has agreed with Audit's recommendations in paragraph 6.12 of Chapter 3 of the Audit Report;

- recommends that the Director of Food and Environmental Hygiene should implement the above Audit recommendations promptly; and

Follow-up action

- wishes to be kept informed of the progress made in implementing the various recommendations made by the Committee and Audit.