



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2136 3281)

1 March 2013

Mr Jeff LEUNG  
Prin AS for Food & Health (Food)1  
Food and Health Bureau  
17/F, East Wing,  
Central Government Offices,  
2 Tim Mei Avenue,  
Tamar,  
Hong Kong

Dear Mr LEUNG,

**Re: Import and Export (General) (Amendment) Regulation 2013  
(L.N. 25 of 2013) (Amendment Regulation)**

I am scrutinizing the Amendment Regulation and should be grateful for your clarification on the matters set out below.

Chinese rendition of "powdered formula"

"Powdered formula" is rendered as "配方粉" in the Chinese text of the Amendment Regulation. It is noted that "formula" (rather than "powdered formula") is rendered as "配方粉" in the Chinese text of regulation 4B(6) of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W) and item 15 of Schedule 2 of the Food Safety Ordinance (Cap. 612).

Please consider whether it is more appropriate to render "powdered formula" as "嬰兒配方奶粉" in the Chinese text. According to Cambridge Dictionaries Online, one of the meanings of formula is artificial milk which can be given to babies instead of milk from their mother.

Definition of "powdered formula"

Please clarify the following aspects of the definition of "powdered formula" -

- (a) the reasons for including "appears to be" as an element in the definition of "powdered formula". It seems that "appears to be" is not an element in the definitions of all the other articles specified in Part 1 of Schedule 2 to the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (IE Regulations). How could one determine from appearance that certain milk powder is for a person of any age or whether it satisfies the nutritional requirement of any person;
- (b) the need to extend to "milk-like substance", giving examples; and
- (c) the grounds for making "nutritional requirement" an element in the definition of "powdered formula". Could other kinds of milk powder for human consumption, such as milk powder for the aged or pregnant women, be able to satisfy partly the nutritional requirement of a person aged under 36 months (child)? What if they are contained in cans of milk powder that are labelled as powdered formula for consumption by a child, would they appear to be milk in powder form that satisfies partly the nutritional requirement of a child?

Offence under section 6D(3) of the Import and Export Ordinance (Cap. 60) (IEO)

A person who exports powdered formula to a place outside Hong Kong without an export licence issued under section 3 of IEO is guilty of an offence under section 6D(3) of IEO unless an exemption applies. Is the offence an offence of strict liability?

Suppose an elderly person fills empty cans of milk powder that are labelled as powdered formula for consumption by a child with milk powder made for the aged which exceeds 1.8 kg and exports these cans of milk powder to a place outside Hong Kong without an export licence. Would that person commit the offence under section 6D(3) of IEO?

Exemption for personal use

The newly added regulation 6(1D) of the IE Regulations provides that section 6D(1) of IEO does not apply to powdered formula (whether of the same composition and whether in one or more containers) that is exported in the accompanied personal baggage of a person aged 16 or above leaving Hong Kong if the conditions specified in either paragraph (a) or (b) are satisfied. Please explain the meaning of and reasons for mentioning "same composition" in this provision, given that in the definition of powdered formula, no reference has been made to "composition".

Please clarify the meaning of "together" as set out in the newly added regulation 6(1D)(b)(ii) of the IE Regulations. In case there are two persons (X and Y) leaving Hong Kong with a child and the powdered formula is exported in the accompanied personal baggage of X (aged 16 or above), and it is Y who actually carries the child in Y's arms when leaving Hong Kong, is the requirement of "together" satisfied?

I would be grateful if you could let me have your reply in bilingual form before close of play on 5 March 2013.

Yours sincerely,



(Wendy KAN)  
Assistant Legal Adviser

cc. DoJ (Attn.: Ms Leonora IP, SALD (By Fax: 2869 1302) & Mr Peter SZE, SGC (By Fax: 2845 2215))