



Submission to the Legislative Council [Subcommittee on Import and Export (General) (Amendment) Regulation 2013]

The Hong Kong Infant and Young Child Nutrition Association's Recommendation on Import and Export (General) (Amendment) Regulation 2013

Position Paper: Securing Powdered Formula Supply for Hong Kong

Introduction

Powdered formula is an important source of nutrition for infants and young children, when mothers cannot or choose not to breastfeed. It is important to ensure that proper procedures are in place to secure constant availability of powdered formula for Hong Kong mothers and babies. However, it is important to do this without detriment to commerce and to Hong Kong's status as a free trade port.

Hong Kong introduced an export ban on powdered formula products effective from 1 March 2013. We view this development as being inconsistent with Hong Kong's international trade obligations and urge the government to consider lifting the export ban.

We submit that there are less trade restrictive ways of ensuring availability of powdered formula to support Hong Kong mothers and babies without negatively impacting Hong Kong's image as the bastion of free trade.

Export Ban is Inconsistent with Hong Kong's WTO Obligations

Hong Kong as a member of the World Trade Organization ("WTO") is bound by its obligations under the WTO Agreements. Specifically, the General Agreement on Trade and Tariffs 1947 ("GATT") prevents Hong Kong from implementing quantitative export restrictions and prohibitions, such as the export ban on powdered formula, except in very limited situations which do not apply at present.

These limited situations include temporary export restrictions and prohibitions to relieve critical shortages of essential foodstuffs as permitted by Article XI:2(a) of GATT. However, the conditions for the exception to apply are not satisfied because:

- (a) *There is no critical shortage of powdered formula.* There is only a perceived shortage since Hong Kong consumers only experienced availability issues at a number of retail outlets for some periods of time. There has been no endemic shortage of formula powder and different brands of formula powder can be substitutable. In this regard, the Department of Health in Hong Kong and other professional organizations have publicly endorsed parents to switch brands if needed.
- (b) *The export ban is permanent in nature.* Even where there is a critical shortage of an essential foodstuff, the GATT only authorizes export restrictions and prohibitions that are temporary in nature. The Hong Kong export ban is legislated as a permanent ban with no mechanism for review.

Therefore, the export ban is inconsistent with Hong Kong's WTO obligations and we would suggest that the government consider repealing this.

Export Ban is Inconsistent with Hong Kong's Free Trade Port Status

Hong Kong has always been a free trade port. The export ban is contrary to Hong Kong's international reputation as a business friendly market for the following reasons:

- (a) The main issue lies with deficiencies in the supply chain to cater for high-season demand for some brands and the solution is to address local demand effectively.
- (b) The degree of the measures adopted is not proportionate to the objective. Other less restrictive measures are available, including getting retailers to commit to restricting the sale. We note that some chain retailers have done so on a voluntary basis.
- (c) The export ban diverts trade from Hong Kong, and harms local employment and the domestic industry. It will result in lost sales opportunities and export of retail jobs overseas.
- (d) The export regulations and associated paperwork for importers of Infant Formula are increasing the cost of doing business in Hong Kong for the industry.

The export ban is therefore unfavourable to Hong Kong's position as a place for free trade. It creates a bad precedent as businesses fear the government may adopt similar measures in respect of other goods to appease negative sentiment from the public.

Sunset Reviews are Needed

Nevertheless, we understand the importance of securing constant availability of formula powder in Hong Kong. As an industry, we are prepared to work with the Hong Kong authorities to guarantee constant availability of powdered formula by working with our suppliers and distributors.

Whilst we urge the government to consider repealing the export ban, as an alternative, we welcome proposals to implement sunset reviews of the export ban. However, these sunset reviews should have clear provisions on:

- (a) Timing of the sunset reviews (e.g., reviews on every six-month anniversary of the export ban);
- (b) Providing clear indication of factors that will be taken into consideration in determining whether to terminate the export ban;
- (c) Allowing the industry to make submissions for the sunset of the export ban;
- (d) Providing criteria to determine whether the availability of powdered formula in the market is an issue, including clear definitions of when availability is an issue as well as clarification on whether issues for some but not all Stock Keeping Units ("SKUs") would constitute sufficient justification to prolong the export ban; and

We believe this would better satisfy the demands of the local market without blemishing Hong Kong's image as a free trader.

Conclusion

As an industry, we support the Hong Kong government's goals of ensuring that there is a constant and secure availability of powdered formula in the market to fit the needs of all Hong Kong babies. However, the export ban is an inappropriate measure to achieve this objective. The ban conflicts with Hong Kong's international trade law obligations and tarnishes Hong Kong's reputation as a free trade port. As such, we would recommend that the government consider lifting the export ban or at the very least, incorporating appropriate safeguards such as a sunset review mechanism.