

立法會
Legislative Council

LC Paper No. CB(2)2321/13-14
(These minutes have been seen
by the Administration)

Ref : CB2/SS/8/13

Subcommittee on Food and Drugs (Composition and Labelling)
(Amendment) (No. 2) Regulation 2014

Minutes of meeting
held on Wednesday, 2 July 2014, at 8:45 am
in Conference Room 2A of the Legislative Council Complex

- Members present** : Hon Alice MAK Mei-kuen, JP (Chairman)
Hon Vincent FANG Kang, SBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon WONG Ting-kwong, SBS, JP
Dr Hon LEUNG Ka-lau
Hon Alan LEONG Kah-kit, SC
Hon Steven HO Chun-yin
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu, JP
- Member absent** : Hon Cyd HO Sau-lan, JP
- Public Officers attending** : Item II
Professor Sophia CHAN Siu-chee, JP
Under Secretary for Food and Health

Mr Jeff LEUNG Wing-yan
Principal Assistant Secretary for Food and Health (Food) 1

Mr Henry LAI
Assistant Secretary for Food and Health (Food) 2

Dr Samuel YEUNG Tze-kiu
Consultant (Community Medicine) (Risk Assessment
and Communication) (Acting)
Centre for Food Safety, Food and Environmental
Hygiene Department

Dr Kelvin LOW Hon-kei
Principal Medical Officer (Risk Management) (Acting)
Centre for Food Safety, Food and Environmental
Hygiene Department

Dr Allen CHAN Chi-wai
Senior Medical Officer (Risk Assessment)
Centre for Food Safety, Food and Environmental
Hygiene Department

Mr HO Kwok-wai
Scientific Officer (Nutrition Labelling)
Centre for Food Safety, Food and Environmental
Hygiene Department

Miss Elaine NG Pui-kei
Senior Government Counsel
Department of Justice

Miss Shirley LI Kwan-ting
Government Counsel
Department of Justice

**Clerk in
attendance** : Ms Alice LEUNG
Chief Council Secretary (2) 2

**Staff in
attendance** : Miss Winnie LO
Assistant Legal Adviser 7

Miss Karen LAI
Council Secretary (2) 6

Miss Emma CHEUNG
Legislative Assistant (2) 2

I. Election of Chairman

Mr Vincent FANG, member who had the highest precedence in Council among members of the Subcommittee present, presided over the election of the Chairman. Mr FANG called for nominations for the chairmanship of the Subcommittee.

2. Dr Helena WONG was nominated by Dr KWOK Ka-ki and the nomination was seconded by Prof Joseph LEE. Dr Helena WONG accepted the nomination. Mr Vincent FANG called for other nominations.

3. Miss Alice MAK was nominated by Mr WONG Ting-kwong and the nomination was seconded by Mr Steven HO. Miss Alice MAK accepted the nomination.

4. As there was no other nomination, Mr Vincent FANG announced that voting be conducted by secret ballot. After all the members present had cast their votes, Mr FANG invited Dr KWOK Ka-ki and Mr WONG Ting-kwong, who had nominated the two candidates respectively, to monitor the counting of votes.

5. Mr Vincent FANG announced that three members voted for Dr Helena WONG and seven members voted for Miss Alice MAK. Mr FANG declared Miss Alice MAK elected as the Chairman of the Subcommittee. Miss Alice MAK then took the chair.

6. Members agreed that the election of Deputy Chairman was not necessary.

II. Meeting with the Administration

[Legislative Council Brief File Ref: FH CR 4/3231/13, L.N. 90 of 2014, LC Paper Nos. LS62/13-14, CB(2)1933/13-14(02) and CB(2)1933/13-14(03)]

7. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Follow-up actions arising from the discussion

8. Members, including Mr Vincent FANG, Mr TANG Ka-piu, Prof Joseph LEE, Dr Helena WONG and Mr Steven HO expressed similar concern that it had become increasingly popular for some parents to buy

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formula products directly from overseas markets via online purchasing agents. They were concerned whether and in what ways online purchasing activities and offering of formula products as gifts by some private clinics and child service organizations were subject to the regulation of the Food and Drugs (Composition and Labelling) (Amendment) (No. 2) Regulation 2014 ("the Amendment Regulation"). Mr TANG Ka-piu also raised concern about the offering of formula products as gifts by some private clinics and child service organizations. The Subcommittee requested the Administration to provide a written response to members' concerns.

Admin

9. While holding different views on the suitable length of grace period, members shared similar views that the Administration should provide the same grace period for infant formula, follow-up formula and prepackaged food for infants and young children under the age of 36 months. The Subcommittee requested the Administration to provide a written response to members' views.

Admin

10. Dr Helena WONG expressed the view that the moisture content of and the use of additives in formula products should also be regulated. The Administration undertook to respond in writing to Dr WONG's view.

Admin

11. The Subcommittee requested the Administration to -

Admin

- (a) advise whether and to what extent the proposed nutritional composition and labelling requirements for infant formula, follow-up formula and prepackaged food for infants and young children under the age of 36 months under the Amendment Regulation were in line with the international standards adopted by other overseas jurisdictions, including such as the United States, Australia, New Zealand, European Union and Singapore;
- (b) advise whether the nutrition labels of infant formula products, which were currently on sale in Hong Kong, indicating energy value and the 33 nutrients ("1+33") that were required to be present in infant formula could comply with the nutrition labelling requirement under the Amendment Regulation, and whether or not these labels were required to be re-printed for indicating energy value and 29 nutrients ("1+29") as prescribed under the Amendment Regulation;
- (c) in respect of the 33 nutrients required to be present in infant formula under the Amendment Regulation, advise which four nutrients were not covered in the proposed labelling

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requirements ("1+29"), and provide reasons for that;

- (d) advise why it was proposed to exempt prepackaged food for infants and young children from the proposed nutrition labelling requirement if it was packed in a container with a total surface area of less than 100 cm²; and provide information on the Administration's estimation on the number and types of such products;
- (e) provide information, in a table format, the tolerance limits adopted by the Centre for Food Safety ("CFS") for each nutrient against the minimum and maximum levels of the 33 nutrients as set out under the Amendment Regulation, with reference to the tolerance limits adopted by other overseas jurisdictions including such as the United States, Australia, New Zealand, European Union and Singapore;
- (f) provide information on the sampling tests on the nutritional composition of formula products and prepackaged food for infants and young children under the age of 36 months conducted by CFS in the past two years, including the number of samples taken for testing, the number and names of nutrients tested as well as the testing results, and details of the food samples where there were discrepancies between labelled and tested nutrient values; and
- (g) advise whether the term "infants" was defined in the law; and if so, please provide details.

III. Any other business

12. The Subcommittee agreed that a meeting would be held before summer recess to receive views from deputations on the Amendment Regulation. The Subcommittee further agreed that to allow more time for the scrutiny work, the Chairman would move at the first Council meeting of the next session a proposed resolution to extend the scrutiny period of the Amendment Regulation to the first Council meeting after 21 days from the second Council meeting of the next session.

(Post-meeting note: The second meeting of the Subcommittee had subsequently been scheduled for 22 July 2014 to meet with the Administration and receive views from deputations. As for the date of

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the first Council meeting of the 2014-2015 session, it would be held on 8 October 2014.)

13. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
23 September 2014

**Proceedings of the meeting of the
Subcommittee on Food and Drugs (Composition and Labelling)
(Amendment) (No. 2) Regulation 2014 on Wednesday, 2 July 2014, at 8:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000137 - 000746	Mr Vincent FANG Dr KWOK Ka-ki Prof Joseph LEE Dr Helena WONG Mr WONG Ting-kwong Mr Steven HO Miss Alice MAK	Election of Chairman	
000747 - 000920	Chairman	The Chairman's opening remarks	
000921 - 001719	Chairman Admin	Briefing by the Administration on the Food and Drugs (Composition and Labelling) (Amendment) (No. 2) Regulation 2014 ("the Amendment Regulation") - Legislative Council Brief (File Ref.: FH CR 4/3231/13).	
001720 - 002549	Chairman Mr Vincent FANG Admin	<p>Mr Vincent FANG considered that all formula products and prepackaged food for infants and young children should be given a 24-month grace period to allow sufficient time for the trade to prepare for the changes. In his view, the Subcommittee should hold a meeting to listen to the views from various stakeholders on the Amendment Regulation.</p> <p>Mr FANG pointed out that under the Amendment Regulation, there were different nutrition labeling requirements for infant formula (i.e. the labeling of energy value and the 29 nutrients ("1+29")), follow-up formula ("1+25") and prepackaged food for infants and young children ("1+4"). As regards the nutritional composition of infant formula, infant formula composed of taurine and DHA was required to follow the maximum value and the proportion requirements. Given that most formula products were manufactured and imported from overseas, there might be difficulties for overseas manufacturers to comply with the proposed nutritional composition and labeling requirements. He also expressed concern that the formula products purchased by the public via on-line agents might not meet the proposed nutritional</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>composition and labelling requirements as they were not manufactured for Hong Kong markets.</p> <p>The Administration responded that -</p> <ul style="list-style-type: none"> (a) the grace period would be effective from the date of gazettal on 13 June 2014; (b) the proposed grace period was set in response to traders' request for a minimum of 24 months for calibration of products. As infant formula was the sole source of nutrition for infants, a shorter period of 18 months was proposed to ensure that the products were safe and nutritionally adequate; (c) should members have a strong view that the same grace period should be provided for infant formula, follow-up formula and prepackaged food for infants and young children, the Administration would consider proposing a shorter grace period of 18 months; (d) the proposed nutritional composition and labelling requirements were in line with the relevant Codex Alimentarius Commission standards ("Codex standards"). According to a survey, around 70% of products on sale in the market met the proposed composition and labelling requirements; and (e) given the aim of the Amendment Regulation was to protect the health of infants and young children, all formula products and prepackaged food for infants and young children were subject to regulation, regardless whether they were big brands or small brands. 	
002550 - 003314	Chairman Mr WONG Ting-kwong Admin	<p>Mr WONG Ting-kwong indicated that the Democratic Alliance for the Betterment and Progress of Hong Kong supported in principle the Amendment Regulation.</p> <p>Mr WONG pointed out that the trade considered that a 24-month grace period should be provided across the board. The</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>trade was also concerned whether the proposed composition and labelling requirements were in line with the international standards adopted by overseas jurisdictions.</p> <p>In response to Mr WONG's enquiry about whether the grace period was counted from the date of the products imported to Hong Kong or put on shelves, the Administration advised that all formula products advertised for sale, sold or manufactured for sale in Hong Kong would be subject to regulation and enforcement actions would be taken after the expiry of the grace period. However, those formula products imported for re-export, and hence not for sale in Hong Kong would not be under the regulation of the Amendment Regulation.</p> <p>On Mr WONG's further enquiry about the proposed penalty, the Administration responded that the penalty set under the Amendment Regulation (the maximum penalty of a fine at level 5 (\$50,000) and imprisonment for six months) was in line with that under the Nutrition Labelling Scheme ("NLS") for prepackaged food products under the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W).</p> <p>The Administration was requested to advise in writing -</p> <p>(a) whether and to what extent the proposed composition and labelling requirements for formula products and prepackaged food for infants and young children under the age of 36 months under the Amendment Regulation were in line with the international standards adopted by overseas jurisdictions including the United States, Australia, New Zealand, European Union and Singapore; and</p> <p>(b) whether the same length of grace period should be provided for infant formula, follow-up formula and prepackaged food for infants and young children under the age of 36 months.</p>	<p>Admin to provide written response (paragraphs 11(a) and 9 of the minutes refer)</p>

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003315 - 003721	Chairman Mr TANG Ka-piu Admin	<p>Mr TANG Ka-piu's enquiries about whether online purchasing activities and the offering of formula products as gifts by some private clinics and child service organizations were subject to the regulation of the Amendment Regulation.</p> <p>The Administration undertook to provide a written response to members concern about the regulation on on-line purchasing and the giving of complimentary formula products under the Amendment Regulation.</p>	<p>Admin to provide written response (paragraph 8 of the minutes refers)</p>
003722 - 004503	Chairman Mr KWOK Wai-keung Admin	<p>Mr KWOK Wai-keung expressed concern that there might be a loophole for granting exemption for formula for special medical purposes ("FSMP") as some FSMP might have become regular foodstuff of infants' diet. He enquired whether the Administration would require the manufacturers to provide documents as proof of compliance with the Amendment Regulation before the formula products and prepackaged food for infants and young children could be put on shelves for sale or conduct tests for samples before they were put on sale. He also sought information on the grounds for exempting prepackaged food for infants and young children in a container with a total surface area of less than 100 cm² from labelling or providing with notes of nutrition inside the container.</p> <p>The Administration responded that -</p> <p>(a) while Codex had developed standards on the nutritional composition and labeling for infant products and prepackaged products for infants and children, it did not have any specific requirement for conducting sampling tests before the products were put on sale; and</p> <p>(b) the Centre for Food Safety ("CFS") staff would carry out regular inspections of food labels at retail outlets and some 55 000 food labels would be inspected each year. More resources would be provided for conducting inspections on the nutrition labels of the formula products after the grace period.</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>At the request of Mr KWOK Wai-keung, the Administration would provide reasons for the proposed exemption for products with package size with total surface area of less than 100 cm² and a response on the estimated number and types of such products.</p>	<p>Admin to provide written response (paragraph 11(d) of the minutes refers)</p>
<p>004504 - 005542</p>	<p>Chairman Prof Joseph LEE Admin</p>	<p>Prof Joseph LEE was concerned that the time for scrutiny of the Amendment Regulation by way of negative vetting might not be sufficient if there were proposed amendments to the Amendment Regulation. He shared members' view that the same grace period should be provided for all infant formula and prepackaged products under the Amendment Regulation to avoid confusion. He also shared the concern about how the Administration could enforce the Amendment Regulation if the formula products were purchased via the internet.</p> <p>Pointing out that infant formula was required to contain the energy value and the 33 nutrients ("1+33") under the Amendment Regulation, Prof LEE enquired about the reasons for adopting the Codex standards for the nutrition labelling requirements which only covered 29 nutrients. He asked whether traders were required to reprint the 1+33 labels so as to indicate energy value and 29 nutrients ("1+29") as prescribed under the Amendment Regulation.</p> <p>The Administration responded that -</p> <ul style="list-style-type: none"> (a) the labels indicating energy value and 33 nutrients would comply with the nutrition labelling requirement under the Amendment Regulation and there was no need to reprint all the labels; (b) CFS surveillance work covered food products sold via on-line agents; (c) a shorter grace period of 18 months would be proposed if it was considered desirable to provide the same grace period for infant formula, follow-up formula and prepackaged food for infants and young children; and 	

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		<p>(d) the Administration had conducted various consultation exercises to gauge the views of stakeholders before drafting the Amendment Regulation.</p> <p>The Administration was requested to advise in writing on Prof LEE's enquiry about the need to re-print the nutrition labels.</p>	<p>Admin to provide written response (paragraph 11(b) of the minutes refers)</p>
005543 - 010637	Chairman Dr Helena WONG Admin	<p>Dr Helena WONG indicated that she might consider proposing amendment to provide the same grace period of 18 months for formula products and prepackaged food for infants and young children. She enquired about which four nutrients were not covered in the proposed labelling requirements and the tolerance limits adopted by CFS for each of the 33 nutrients that were required to be present in infant formula.</p> <p>In response to Dr WONG's enquiries, the Administration advised that -</p> <p>(a) the four nutrients that were not covered were Linoleic acid, α-Linolenic acid, Myo-Inositol and L-Carnitine; and</p> <p>(b) tolerance limits were set at a certain percentage for the measured quantity and the declared value to accommodate variation in nutrient value e.g. during storage period.</p> <p>At the request of Dr WONG, the Administration agreed to -</p> <p>(a) in respect of the 33 nutrients required to be present in infant formula under the Amendment Regulation, advise which four nutrients were not covered in the proposed labelling requirements ("1+29"), and provide reasons for that; and</p> <p>(b) provide information, in a table format, the tolerance limits adopted by CFS for each nutrient against the minimum and maximum levels of the 33 nutrients as set</p>	<p>Admin to provide written response (paragraphs 11(c) and (e) of the minutes refer)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>out under the Amendment Regulation, with reference to the tolerance limits adopted by other overseas jurisdictions including such as the United States, Australia, New Zealand, European Union and Singapore.</p>	
010638 - 011310	<p>Chairman Mr Steven HO Admin</p>	<p>Mr Steven HO shared members' concern about the regulation of overseas formula products purchased via the internet which did not follow the nutritional composition and labelling requirements under the Amendment Regulation. Given the impact of the Amendment Regulation on the trade and the time limit for the scrutiny of the Amendment Regulation by way of negative vetting, he also raised concern about the introduction of the amendments to the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) under the negative vetting procedure.</p> <p>In response to Mr HO's enquiries, the Administration advised that -</p> <ul style="list-style-type: none"> (a) it would educate consumers on selection of formula products which was safe and nutritionally adequate for infants in Hong Kong; (b) the proposed nutritional and labelling requirements for infant formula, and the labelling requirements for follow-up formula and prepackaged products were largely in line with the relevant Codex Standards; and (c) apart from the frequent exchange of views between CFS and the trade, a two-month public consultation exercise was conducted from November 2012 to January 2013 and there was a strong support for the legislative proposals. The findings were reported to the Panel on Food Safety and Environmental Hygiene at its meeting in March 2013. 	
011311 - 011959	<p>Chairman Mr TANG Ka-piu Admin</p>	<p>Mr TANG Ka-piu's views that the same length of grace period should be provided for all formula and prepackaged products.</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>In response to Mr TANG's enquiry about how to calculate the surface area of those products with small package size which would be exempted from the labelling requirements, the Administration advised that 100 cm² covered the total area of packaging surface (six dimensions or two dimensions) for pre-packaged food.</p> <p>At the request of Mr TANG, the Administration agreed to advise in writing whether the term "infants" was defined in the law; and if so, the details of it.</p>	<p>Admin to provide the requested information (paragraph 11(g) of the minutes refers)</p>
012000 - 012226	Chairman Dr Helena WONG	<p>Members' agreement that the Chairman would move a proposed resolution at the first Council meeting of the next session to extend the scrutiny period of the Amendment Regulation and that the Subcommittee would hold its next meeting in July to receive views from deputations.</p> <p>The Chairman's request for the Administration should provide written response to members' views and enquiries before the next meeting.</p> <p>Views of Dr Helena WONG on arrangements for inviting public views.</p>	
012227 - 012821	Chairman Mr KWOK Wai-keung Admin	<p>Mr KWOK Wai-keung reiterated his concerns that traders would reduce the package size to smaller than 100 cm² so that the products were not subject to the labelling requirements.</p> <p>In response to Mr KWOK's concern about the proposed exemption of FSMP from nutrition labelling requirements, the Administration explained that FSMP were specially manufactured and be used under medical supervision. Given the market size for FSMP was small, manufacturers might not export FSMP products to Hong Kong if they were required to comply with the labelling requirements.</p>	
012822 - 013918	Chairman Dr Helena WONG Admin	Dr Helena WONG reiterated her view and concern about the regulation of the moisture content of and the use of additives in formula	

Time marker	Speaker	Subject(s)	Action Required
		<p>products, and the tolerance limits adopted by CFS for each nutrient against the minimum and maximum levels of the 33 nutrients as set out under the Amendment Regulation.</p> <p>At the request of Dr Helena WONG, the Administration agreed to -</p> <ul style="list-style-type: none"> (a) respond in writing to Dr WONG's view on the regulation of the moisture content of and the use of additives in formula products; and (b) provide information on the sampling tests on the nutritional composition of formula products and prepackaged food for infants and young children under the age of 36 months conducted by CFS in the past two years, including the number of samples taken for testing, the number and names of nutrients tested as well as the testing results, and details of the food samples where there were discrepancies between labelled and tested nutrient values. 	<p>Admin to provide the requested information (paragraphs 10 and 11(f) of the minutes refer)</p>
013919 - 014503	Chairman Admin	<p>In response to the Chairman's enquiries, the Administration advised that -</p> <ul style="list-style-type: none"> (a) CFS would put in more resources for conducting sampling tests on formula products after the implementation of the Amendment Regulation; (b) the Administration would study the experiences of overseas countries and aimed to invite public views on regulation of health and nutrition claims of formula products and food for infants and young children under 36 months old in end-2014. The relevant articles of the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products and Food Products for Infants & Young Children would serve as guidelines for manufacturers and traders of formula products to prevent malpractices in advertising and marketing related products; and (c) the Administration had monitored the implementation of NLS and did not notice 	

Time marker	Speaker	Subject(s)	Action Required
		any cases in which the trade had shrunk the package size of products in order to avoid the compliance with the nutrition labelling requirements.	
014504 - 014729	Chairman Dr Helena WONG Chairman	Meeting arrangements of the next meeting	

Council Business Division 2
Legislative Council Secretariat
23 September 2014