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Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by
the Legislative Council Secretariat for the meeting on 13 May 2014**

Implementation of the Nutrition Labelling Scheme

Purpose

This paper gives an account of the past discussions by the Panel on Food Safety and Environmental Hygiene ("the Panel") on the implementation of the Nutrition Labelling Scheme ("the Scheme").

Background

2. The Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 ("the Amendment Regulation"), which introduces the Scheme for prepackaged food, came into operation on 1 July 2010 after a two-year grace period. The Scheme requires all prepackaged food to label the content of energy plus seven core nutrients, namely: (i) protein, (ii) carbohydrates, (iii) total fat, (iv) saturated fat, (v) trans fat, (vi) sodium, and (vii) sugars, as well as any nutrient for which a claim is made, and regulates different types of nutrition claims.¹

3. To facilitate the food trade and to minimize the impact on food choice, a number of exemptions from the nutrition labelling requirements are provided in the Amendment Regulation, e.g. exemption for prepackaged food packed in a

¹ These include nutrient content claim, nutrient comparative claim and nutrient function claim. A nutrient content claim describes the energy value or the level of a nutrient contained in a food, e.g. "High calcium"; "Low fat"; and "Sugar-free". A nutrient comparative claim compares the energy value or the nutrient levels of two or more different versions of the same food or similar food, e.g. "Reduced fat – 25% less than the regular product of the same brand". A nutrient function claim describes the physiological role of a nutrient in growth, development and normal functions of the body, e.g. "Calcium aids in the development of strong bones and teeth".

container which has a total surface area of less than 100 cm². In addition, a small volume exemption ("SVE") scheme has been introduced to exempt food products with annual sales volume of 30 000 units or below which do not carry nutrition claims. Food manufacturers/importers need to apply to the Director of Food and Environmental Hygiene ("DFEH") for SVE, which is subject to conditions set by DFEH, including the requirement of monthly reporting of sales volume at the importer's/manufacturer's level. Traders will be notified when the sales volume has reached 70% of the 30 000 level, and once the sales volume exceeds the limit, i.e. 30 000 units per year, all food items currently being put on the market will have to be labelled in accordance with the legal requirements within 30 days.

4. As advised by the Administration at the Panel meeting on 10 December 2013, there were a total of 16 124 SVE products with valid exemption for sale in the market. As stipulated in subsections 1(3) and 2(3) of Part 2 of Schedule 6 to the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) ("the Regulations"), the SVE fee for new application and renewal application is \$345 and \$335 respectively. These two subsections of Part 2 of Schedule 6 to the Regulations were amended in January 2014. After the amendment, the SVE fee for new and renewal application submitted electronically by means of an online communication system provided by DFEH is \$265 and \$250 respectively.

Past discussions by the Panel

5. The subject of the implementation of nutrition labeling scheme was discussed at the Panel meetings on 12 July 2011 and 8 May 2012.

Taste claims of food

6. Members expressed grave concerns that some prepackaged food claiming "less sweet" actually contained high amount of sugars. To prevent consumers from being misled by such taste claims, members suggested that "taste" of food be defined in the legislation. According to the Administration, given that the sense of taste depended on subjective factors of human feelings perception, it had been thoroughly discussed during the scrutiny of the Amendment Regulation and agreed that it could not be defined in the legislation the claims of such perceived taste. Education on taste claims such as "less sweet" and "light fat" were covered in the public education and publicity programmes. With the intensive public education and publicity activities, the public would understand how to make use of the information in nutrition labels to make healthier food choices.

Prosecutions and enforcement actions against non-compliant cases

7. There was concern that the "Trade Guidelines on Preparation of Legible Food Label" could not exert deterrent effect on non-compliant traders. The Administration advised that the stakeholders had been consulted on the Guidelines and they considered the content acceptable. At present, traders were required by the law to ensure the legibility of food labels of their products. The Centre for Food Safety ("CFS") would make reference to the Guidelines in assessing the legibility of nutrition label of the prepackaged products during its surveillance. CFS would take appropriate enforcement action if prepackaged food was found not legibly marked or labelled. Breaches of the Guidelines and subsequent enforcement action would be dealt with on a case-by-case basis.

8. In response to members' enquiry about the inspection work and prosecution of the non-compliant cases since the implementation of the Scheme, the Administration advised that as at 13 April 2012, CFS had checked the nutrition labels of 19 340 prepackaged food products with 188 found not complying with the Scheme. Of the 188 non-compliant cases, 121 were identified by visual checking for not complying with the statutory "1+7" labelling requirements and 67 by chemical analysis on the inaccuracy of the nutrition labels and nutrition claims. As regards the enforcement action concerning the indication of "use by" or "best before" date on pre-package food product, the Administration advised that in 2011, CFS had checked the labels of 55 180 prepackaged food items with 25 found not complying with the legal requirements. Of which, 24 were found neither displaying nor properly indicating their shelf lives and one was sold after its expiry date. These 25 non-compliant cases were being prosecuted.

Compliance with the Scheme

9. Members noted that in the first year of implementation of the Scheme, upon detection of irregularities, CFS would first issue a letter to the retailer/ manufacturer/ importer concerned requiring an explanation within 21 days. If the explanation was not accepted by CFS, a warning letter would be issued requiring actions to comply with the requirements of the Scheme within 60 days. For traders who failed to do so, CFS would initiate prosecution. Members considered that the 21-day enquiry period was necessary for the trade to verify the test result from the Administration.

10. According to the Administration, CFS had tightened up its enforcement strategy since July 2011, taking into account that the trade had become familiar with the operation of the Scheme after the first year of implementation. Upon detection of irregularities such as incomplete nutrition label, CFS would issue a warning letter to the trader concerned requiring actions to comply with the requirements of the Scheme within 60 days. For discrepancy between the

actual nutrient content based on test result and the stated value on the nutrition label, CFS would issue a letter to the trader concerned requiring an explanation within 21 days. If the explanation was not accepted by CFS, a warning letter requiring actions to comply with the requirements of the Scheme within 39 days would then be issued. The Administration advised that traders had been co-operative so far. Where irregularities were identified, traders would either withdraw the product in question from the shelf or rectify the nutrition label according to the statutory requirements of the Scheme.

Food choices for consumers

11. In response to members' concern about the impact of the Scheme on food choices for people with allergies, the Administration advised that according to the Chairman of The Hong Kong Allergy Association ("Allergy HK"), the Scheme had not brought any negative impact on food prices and choices for people with allergies. Allergy HK indicated that for people with food allergies, their food choices hinged on whether the food product contained substances that would cause allergy and its country of origin.

12. The issue of whether the Scheme had limited the food choices of consumers was raised. Concern was expressed about whether the food choices of ethnic groups might be significantly reduced as a result of the stepped-up surveillance efforts in small-scale operations. The Administration was requested to take a lenient approach in dealing with the non-compliant food items for ethnic minorities given its insignificant share of the prepackaged food market.

13. The Administration advised that the Market Survey commissioned by CFS suggested that there was no considerable impact on the food choices available in the market after the commencement of the Scheme. The annual Food Expo had been regarded as a testing ground for bringing new prepackaged food products to the Hong Kong market. The Administration had commissioned survey in the Food Expos of both 2010 and 2011 to assess the impact of the Scheme on new-to-market prepackaged food products introduced at Food Expo. The results of the survey indicated that the implementation of the Scheme had not brought any significant impact on the introduction of new prepackaged food products to Hong Kong via Food Expo. On members' concern about the possible impact of the Scheme on the food choices available in ethnic shops, members were advised that CFS had all along proactively managed communications with the trade. Although the number of prepackaged food products in ethnic shops was found to have reduced after the commencement of the Scheme, CFS would take appropriate actions to assist the traders in complying with the requirements of the Scheme.

Food products sold by hawkers and trans fat in non-packaged food

14. Members sought clarification as to whether food products sold by hawkers, such as peanut candies, were regarded as prepackaged food and regulated under the Scheme. The Administration pointed out that according to Regulation 4B(1) of the Regulations, unless exempted, "prepackaged food shall be marked or labeled with its energy value and nutrient content in compliance with Part 1 of Schedule 5". Regulation 4B(5) further stipulated that "any nutrition claim made on the label of, or in any advertisement for, a prepackaged food shall conform to Part 2 of Schedule 5". Concerning the case of peanut candies sold by hawkers, the Administration explained that it depended on whether the food product concerned fulfilled the definition of prepackaged food under the Regulations. According to Regulation 2 of the Regulations, "prepackaged food meant any food packaged, whether completely or partially, in such a way that (a) the contents could not be altered without opening or changing the packaging; and (b) the food was ready for presentation to the ultimate consumer or a catering establishment as a single food item".

15. Noting that the Scheme had already covered the prepackaged food with trans fat, members raised concern as to whether there would be a mechanism enabling consumers to become aware of the amount of trans fat that they would take in from non-prepackaged food. The Administration advised members that CFS had set up two working groups to develop two sets of guidelines for the trade to promote manufacturing foods containing low levels of sodium, sugar and fat (including trans fat). The Administration was of the view that thorough discussion and consideration would be required on whether more information could be provided about the amount of trans fat in non-prepackaged food at the levels of retailers and food service establishments, as well as the feasibility and coverage of food labeling scheme for trans fat. Though there was an overseas example in the United States where trans fat had been banned from restaurants in the New York City, it was difficult for restaurants in Hong Kong to indicate in their menus the amount of trans fat contained in the food they sold given that there was a wide variety of dishes in Hong Kong.

SVE Scheme

16. In response to members' concern about the verification of the annual sales volume of food products applying SVE, the Administration explained that apart from the requirement of monthly reporting of sales volume at the importer's and manufacturer's level, site inspection at importers and retailers would also be conducted by CFS on the food products applying for SVE. Retailers might be requested to provide receipts for verification.

17. Members asked how the Administration monitored those SVE products with valid exemption in the market. According to the Administration, prepackaged food with annual sales volume not exceeding 30 000 units which did not carry nutrition claims was exempted from the nutrition labelling requirements. Each exempted product would be assigned a number. Officers of CFS would verify the exemption number of the product during inspection. The exemption might be renewed for the following year if the 30 000-unit exemption limit was not exceeded at the end of one year. CFS would keep track of the annual sales volume of the exempted products to prevent the SVE scheme from being abused.

Relevant Council questions

18. Hon Frederick FUNG raised a written question at the Council meeting of 19 January 2011 enquiring on the implementation of the Scheme. He raised another written question at the Council meeting of 23 May 2012 on the same subject.

Latest development

19. The Administration will brief the Panel on the latest progress of the implementation of the Scheme on 13 May 2014.

Relevant papers

20. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Relevant papers on the Nutrition Labelling Scheme

Meeting	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	22.6.2009 (Item II)	Agenda Minutes CB(2)1917/08-09(01)
	13.4.2010 (Item V)	Agenda Minutes CB(2)1225/09-10(01) CB(2)1230/09-10(05)
	12.7.2011 (Item IV)	Agenda Minutes CB(2)2305/10-11(02) CB(2)2305/10-11(03)
Legislative Council	19.1.2011	Written question raised by Hon Frederick FUNG on "Implementation of Nutrition Labelling Scheme"
Panel on Food Safety and Environmental Hygiene	8.5.2012 (Item IV)	Agenda Minutes
Legislative Council	23.5.2012	Written question raised by Hon Frederick FUNG on "Implementation of Nutrition Labelling Scheme"