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Panel on Food Safety and Environmental Hygiene

**Background Brief prepared by the Legislative Council Secretariat for the
meeting on 10 December 2013**

**Implementation of the Import and Export (General) (Amendment)
Regulation 2013**

Purpose

This paper provides background information on the implementation of the Import and Export (General) (Amendment) Regulation 2013 ("the Amendment Regulation") and summarizes the concerns raised by relevant committees of the Legislative Council ("LegCo") on the subject.

Background

2. In January 2013, there was a run on certain brands of powdered formula in Hong Kong. According to the Administration, the supply chain failure in relation to powdered formula was closely related to parallel trading activities, and the serious shortage of certain brands of powdered formula at the retail level was due to the huge demand of parallel traders.

3. On 1 February 2013, the Administration announced a series of measures to combat parallel trading activities. These measures included setting up a 24-hour special hotline to provide assistance to local parents who were unable to purchase powdered formula in the market; strengthening enforcement efforts against parallel trading of daily commodities through joint operation by the Hong Kong Customs and Excise Department ("C&ED") and Shenzhen Customs; imposing more weight limit restrictions on passenger luggage along the East Rail Line by the Mass Transit Railway Corporation Limited; and introducing a legislative proposal to prohibit the export of powdered formula

from Hong Kong except with a licence issued by the Director-General of Trade and Industry ("DGTI").

4. On 22 February 2013, the Administration published in the Gazette the Amendment Regulation to amend the Import and Export (General) Regulations (Cap. 60 sub. leg. A) ("the IE Regulations") to prohibit the export of powdered formula to all places outside Hong Kong, except with a licence issued by the DGTI. The Amendment Regulation came into operation on 1 March 2013. Upon expiry of the scrutiny period on 17 April 2013, the provisions introduced by the Amendment Regulation have continued in force in their original version. In response to the request of the Subcommittee on Import and Export (General) (Amendment) Regulations 213 ("the Subcommittee"), the Administration has undertaken to review the implementation of the Amendment Regulation in about one year's time and to report the implementation of the Amendment Regulation to the Panel on Food Safety and Environmental Hygiene ("the Panel") at regular intervals.

5. When discussing with the Administration the issues relating to the implementation of the Amendment Regulation at its meeting on 28 May 2013, the Panel was advised of the signing of the "Sufficient Supply Charter" and the announcement of the introduction of a retail store pre-order system by the seven major suppliers of powdered formula¹ and the Hong Kong General Chamber of Pharmacy in late April 2013. The Panel also noted that the Administration would conduct a review and stress tests in October 2013 to examine and assess the effectiveness of the supply chain improvement measures.

Deliberations of the relevant committees

6. Issues relating to the implementation of the Amendment Regulation to prohibit the export of powdered formula from Hong Kong have been discussed at meetings held by the Panel and the Subcommittee. The Panel also received views of deputations on the subject at two of its meetings. The deliberations and concerns of Members on the subject are summarized below.

Review of the implementation of the Amendment Regulation

7. When scrutinizing the Amendment Regulation, most members of the Subcommittee were of the view that the export control and exemption arrangements made under the Amendment Regulation should not be made permanent and called on the Administration to set a timeline to review the

¹ The seven major brands include Abbott, Cow & Gate, Friso, Mead Johnson, Nestle, Snow Brand and Wyeth. They account for over 95% of the market share.

effectiveness and necessity to continue with these arrangements. Members asked about the circumstances under which the Administration would consider it appropriate to discontinue the implementation of the Amendment Regulation. According to the Administration, strengthening the supply chain in relation to powdered formula in Hong Kong was the most important means to prevent a recurrence of the problem of serious shortage of powdered formula and allay the stress and anxieties of parents. The Administration would keep in view the effectiveness of the relevant measures and the market situation.

8. Members also enquired about the specific factors to be taken into account by the Administration in its review of the effectiveness of the relevant measures. The Administration explained that since the supply chain failure in relation to powdered formula had a major bearing on the serious shortage of powdered formula recently, a crucial consideration in its review was whether suppliers of powdered formula had effectively strengthened their supply chain to ensure a sufficient and steady supply of powdered formula for infants and young children in Hong Kong. In this regard, the Administration would urge local suppliers of powdered formula to -

- (a) increase the efficiency of stock replenishment from places outside of Hong Kong by reducing the time required;
- (b) enhance the capacity for distribution and delivery of goods to improve the supply chain management at the retail and wholesale levels and replenish the stock at retail outlets expeditiously;
- (c) commit additional resources to boost the number of hotlines for taking purchase orders and establish a mechanism for promptly increasing the number of hotlines and staffing level under exceptional circumstances to handle the purchase orders; and
- (d) examine and set up services for advance order of powdered formula at retail outlets of different regions throughout the territory.

9. Noting that the Administration might consider repealing the provisions introduced by the Amendment Regulation if the supply chain improvement measures were proven to be effective and sustainable after passing the stress tests on the measures, some Members were concerned that the suppliers might manipulate their supply of powdered formula in the short term in order to pass the stress tests. The demand for powdered formula might surge again if the Administration decided to discontinue the implementation of the Amendment Regulation. The Administration stressed that it would not just look at the results of the stress tests but would also examine the efforts, manpower and

resources that the suppliers had invested into the improvement measures to ensure their sustainability.

10. There was a view that there was no critical shortage of powdered formula in Hong Kong. The supply chain failure in relation to powdered formula was limited to the shortage of certain brands of powdered formula at certain retail outlets. The stress tests were considered unnecessary as there was an abundant supply of powdered formula of various other brands in the market. The stress tests were excuses for the Administration to continue the implementation of the Amendment Regulation.

11. The Administration advised that while it would closely monitor the efficiency of stock replenishment between the suppliers and their holding companies, it was equally important to have the stress tests in order to enhance public confidence in the improvement of the supply chain.

Definition of powdered formula

12. Some Members considered that there was a need to improve the clarity of the definition of powdered formula so as to facilitate the enforcement of the Amendment Regulation. According to the Administration, the existing definition had already fully and effectively reflected the policy intent and the scope of regulation on powdered formula. Although there might be room for improvement, the Administration did not see the need to do so. The first and foremost task of the Administration was to improve the supply chain management of the suppliers and retailers, so as to ensure a sufficient and stable supply of powdered formula for local infants and young children.

13. There was a view that a sunset clause should be included in the Amendment Regulation so as to set a timeline for the Administration to review the effectiveness of the Amendment Regulation and for the suppliers to improve their supply chain. The sunset clause would create pressure for the stakeholders to improve their supply chain management by the date set by the sunset clause. However, there was another view objecting to the suggestion of sunset clause as parallel trading activities might revive after the repeal of the Amendment Regulation.

Law enforcement and publicity

14. The Subcommittee members noted that any person who contravened section 6D(1) of the Import and Export Ordinance ("IE Ordinance") in respect of any articles specified in the second column of Part 1 of that Schedule would be guilty of an offence and would be liable on conviction to a fine of \$500,000 and imprisonment for two years. Some members considered that the level of

penalty for breach of the Amendment Regulation was too heavy and was not proportionate to the seriousness of the offence in question. The Administration explained that the penalty level under the IE Ordinance was applicable to different offences, including smuggling activities for which heavier sentences had to be imposed.

15. Concern about implementation difficulties was raised during the scrutiny of the Amendment Regulation. Members were advised at the Panel meeting on 28 May 2013 that the Administration had issued a set of guidelines, which set out the scope, nature and targeted consumers of the powdered formula subject to regulation, for the frontline staff of C&ED to enable them to enforce the law effectively. The Administration had also compiled a list of powdered formula regulated by the Amendment Regulation and available at the retail level in Hong Kong. The list set out details including the brands, types, nature, weight and intended age groups of the powdered formula products, and was also provided to C&ED staff for reference when taking enforcement actions. Some Members were dissatisfied with the Administration's refusal to make public the guidelines and urged the Administration to make the guidelines available to the retailers.

16. The Administration explained that the enforcement guidelines for C&ED staff served as internal reference only and contained information on operational procedures. It was considered inappropriate to distribute these guidelines to the public. To promote a better understanding of the policy intent and scope of the Amendment Regulation by the public, the Administration would publish a new and detailed pamphlet for the public and the trade. The pamphlet would illustrate the scope, nature and targeted consumers of the powdered formula subject to regulation.

17. There was a suggestion that the Administration should consider allowing persons departing Hong Kong and found carrying small quantity of powdered formula in excess of 1.8 kilograms to dispose of the excess quantity at the boundary control points before immigration clearance. At the Panel meeting on 28 May 2013, members were advised that a trial scheme to place receptacles for collection of powdered formula at Lo WU and Lok Ma Chau Spur Line Control Points would be launched in June 2013. The Administration had liaised with four non-governmental organizations operating the Short-term Food Assistance Service Projects to donate powdered formula collected at the receptacles to those in need. In response to members' enquiry about the duration of the trial scheme, the Administration advised that it would review the effectiveness of the trial scheme after its operation for a suitable period of time before deciding on the long term arrangements.

Latest development

18. In July 2013, the Administration appointed a Committee on Supply Chain of Powdered Formula ("the Committee") which is tasked to study and recommend to the Government a proposal on improving the supply chain management of powdered formula. The Committee comprises 14 non-official members, including major powdered formula suppliers, retailers, parents, representatives from the logistics sector, relevant academia and those representing consumer interests. The Government has also engaged a consultancy firm to assist in examining the improvement measures proposed by the major suppliers of powdered formula and the Hong Kong General Chamber of Pharmacy, as well as to provide professional input and support.

19. The Administration conducted a stress test on the improvement measures during the National Day Golden Week just passed as well as the days immediately before and after it. A marketing consultancy firm has been commissioned to assist in conducting the stress test. The stress test covered the following areas:-

- (a) the improvement measures proposed by suppliers of powdered formula: including the level of stock reserved for local infants and young children; the capacity for local stock replenishment; the ability of the hotlines to cope with the incoming calls; and the operation of the coupon scheme;
- (b) taking into account the market share of different brands, the test touched on how the powdered formula suppliers implemented the aforesaid measures; and
- (c) the test was conducted in different districts across the territory, including pharmacies participating in the coupon scheme, warehouses for storing powdered formula, etc.

20. According to the Administration, through the stress test, the Government hopes to evaluate whether the improvement measures can still work effectively under stress by employing certain model scenarios in the real life environment. As advised by the Administration in its information paper (LC Paper No. CB(2)1817/12-13(01)), the Administration will consider repealing the provisions introduced by the Amendment Regulation if the improvement measures are proven to be effective and sustainable.

21. The Administration will brief the Panel on the results of the stress test at the meeting on 10 December 2013.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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**Relevant papers on proposed amendments to the
Import and Export (General) Regulation 2013**

Committee	Date of meeting	Paper
Subcommittee on Import and Export (General) (Amendment) Regulation 2013	---	Report
Panel on Food Safety and Environmental Hygiene (joint meeting with the Panel on Health Services)	20.11.2012 (Item II)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	4.2.2013 (Item I)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	28.5.2013 (Item III)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	---	LC Paper No. CB(2)1817/12-13(01)