

立法會
Legislative Council

LC Paper No. CB(2)1861/14-15(04)

Ref : CB2/PL/FE

Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 14 July 2015**

**Consultation document on the proposed regulation of nutrition and health
claims on formula products and prepackaged food for infants and young
children under the age of 36 months in Hong Kong**

Purpose

This paper provides background information on issues relating to the regulation of nutrition and health claims on formula products (i.e. infant formula and follow-up formula) and prepackaged food for infants and young children under the age of 36 months ("IYC foods") in Hong Kong. It also summarizes major views of members of the Panel on Food Safety and Environmental Hygiene on the Administration's proposed regulatory framework on nutrition and health claims on formula products and IYC foods.

Background

2. According to the Administration, nutrition and health claims are representations which state, suggest or imply that a food has particular nutritional properties, or that a relationship exists between a food or its constituent and health. These claims have been widely used in various food products, including formula products and IYC foods. In the Administration's view, factually correct food labels and claims can provide consumers with useful information to arrive at informed choices. In contrast, incorrect or misleading nutrition and health claims on formula products and IYC foods may cause undue influence on the decisions of parents and caregivers on whether to breastfeed, and may in turn adversely impact their children's health. According to the Administration, while there are currently legislation governing the labelling and advertisement of food products in Hong Kong, with some of them applicable to

the nutrition and health claims made on formula products and IYC foods¹, there is presently no legislation capable of effectively regulating the nutrition and health claims made on formula products and IYC foods.

3. On 22 October 2014, the Legislative Council ("LegCo") completed its scrutiny of the Food and Drugs (Composition and Labelling) (Amendment) (No.2) Regulation 2014 ("the Amendment Regulation")², which sets out requirements on nutritional composition and nutrition labelling of formula products and IYC foods. However, regulation of nutrition and health claims on these products had not been included in that legislative amendment exercise. During the discussion on the Amendment Regulation and at various committee meetings, Members expressed grave concern about the misleading and exaggerated health claims made in some formula products advertisements. They urged the Administration to expeditiously introduce legislation to regulate the marketing of formula products. The Administration advised that the Centre for Food Safety ("CFS") was studying the local and international situations on the use of nutrition and health claims of the formula products concerned. It was the Administration's plan that a public consultation on the subject would be launched at around the end of 2014.

Proposed regulatory framework on regulation of nutrition and health claims on formula products and IYC foods

4. On 6 January 2015, the Administration released a consultation document proposing a regulatory framework to enhance the regulation of nutrition and health claims on formula products and IYC foods in Hong Kong through legislation to safeguard the health of infants and young children.

5. Public views were invited on the Administration's proposal, in particular the following —

- (a) the establishment of five overarching principles to delineate the boundary of the regulatory framework relating to nutrition and health claims on formula products and IYC food and to prescribe conditions that will bind any claims eventually allowed;
- (b) the regulatory options for the product-claim combinations that are within the bounds of the relevant overarching principles;

¹ These legislation include Public Health and Municipal Services Ordinance (Cap. 132), Food and Drugs (Composition and Labelling) Regulation (Cap. 132W), Food and Drugs (Composition and Labelling) (Amendment) (No.2) Regulation 2014, Undesirable Medical Advertisements Ordinance (Cap. 231) and Trade Descriptions Ordinance (Cap. 362). Details are set out in Chapter 2 of the consultation document.

² The Amendment Regulation will come into force on 13 December 2015 (after a grace period of 18 months) for infant formula and on 13 June 2016 (after a grace period of 24 months) for follow-up formula and IYC foods.

- (c) the development of a mechanism for establishing and maintaining a list of approved claims and the corresponding conditions;
- (d) the establishment of a mechanism for revising the list of approved claims; and
- (e) the length of the grace period.

The three-month public consultation exercise ended on 17 April 2015.

Members' concerns

6. At the Panel meeting on 10 February 2015, the Administration briefed members on the proposed regulatory framework on nutrition and health claims on formula products and IYC foods. The major views expressed by members at the meeting are summarized in the ensuing paragraphs.

Proposed regulatory framework on nutrition and health claims

7. While some members supported the proposed regulatory framework on nutrition and health claims on formula products and IYC foods to regulate the marketing practices of the trade, there was a view that the proposed regulatory framework did not provide sufficient protection to infants and young children. It was noted that according to the Codex Alimentarius Commission ("Codex"), nutrition and health claims were not permitted for formula products and IYC foods. However, the Administration proposed that certain product-claim combinations would be allowed in Hong Kong, and sought the public's views on the different regulatory options for other product-claim combinations through the consultation document. There was a concern that consumers might not be able to differentiate whether the claims made in formula products advertisements complied with the relevant requirements.

8. The Administration advised that in coming up with the five overarching principles for the regulatory framework, it had taken into account various factors, including the Codex principles, practices of other jurisdictions and opinions of the Expert Committee on Food Safety. The regulatory options for various product-claim combinations proposed in the consultation document were open for discussion. The Administration emphasized that under the current proposal, any nutrition and health claims eventually allowed must still meet specific content conditions, and that health claims must be scientifically substantiated and had undergone credible evaluation process by the relevant authority.

9. According to the consultation document, the Administration proposed to develop a mechanism for establishing and revising a list of approved claims to provide guidance for the trade to make nutrition and health claims on the relevant products legally. Some members enquired about the details of the proposed mechanism and whether claims that had been accepted by a recognized authority in their country of origin would be considered for adoption in Hong Kong.

10. The Administration advised that for nutrition claims, it would make reference to overseas practices to establish certain conditions under which some nutrient content claims and nutrient comparative claims were permitted. As regards health claims, CFS would establish a list of approved claims by way of application of the trade. For claims that had been accepted in other jurisdictions, as long as the applicant was able to produce adequate documentary proof that the claim in question had already been accepted by a recognized authority in their country of origin or another country, and that relevant claim conditions had been set by the relevant authority, the claim would be considered for adoption in Hong Kong through a "fast-track" assessment mechanism. Once a claim had been included in the list of approved claims, the applicant and other traders could make the claim on the relevant product as well as products in the same product category, so long as the specified conditions had been fulfilled. As regards claims that had never been approved by a recognized authority, traders would need to submit relevant documents on the scientific substantiation of the claims for assessment by CFS and a longer approval process might be required in such cases. In developing the mechanism for approving claims, the Administration would make reference to the practices of overseas jurisdictions and the Mainland China where there were recognized authorities to approve claims under established mechanisms.

11. There was a view that a reasonable grace period should be allowed for the trade to prepare for the implementation of the new compliance requirements. The Administration advised that subject to the finalized proposal on the regulatory framework, it would propose the length of the grace period taking into account the time required for processing applications relating to claims and the time required by the trade for compliance, etc. The Administration would consult the trade of their views in this respect.

Regulating the advertising of formula products and IYC foods

12. Concern was raised about the use of graphics and images in the advertisements to associate the formula products with the healthy growth and achievement of children if claims were prohibited on formula products and IYC foods. In some members' view, the sensational way of advertising of formula products and IYC foods in media might have greater influence than their claims

on the decisions of parents on whether to breastfeed. These members enquired how the Administration would ensure the accuracy of information in the advertisements of formula products.

13. The Administration assured members that the Amendment Regulation would better regulate the nutritional composition of infant formula and nutrition labelling of formula products and IYC foods after its coming into operation. The relevant articles of the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants and Young Children ("the Hong Kong Code") drafted by the Department of Health would also serve as guidelines with respect to the marketing practices of formula products, including advertisements on these products. The Administration would promulgate the revised Hong Kong Code in due course upon completion of the legislative exercises on nutritional composition, nutrition labelling and claims relating to formula products and IYC foods.

Legislative plan

14. Some members pointed out that there was currently legislation prohibiting false and misleading information on goods and regulating the advertising of specified claims for orally consumed products, such as the Trade Descriptions Ordinance (Cap. 362) ("TDO") and Undesirable Medical Advertisements Ordinance (Cap. 231) ("UMAO"). They enquired whether the Administration would enact a new piece of legislation or make amendments to the existing legislation to effect the proposed regulatory framework. There was a view that if those sensational advertisements of formula products and IYC foods were not to be covered by the proposed regulatory framework, there was no point in introducing new legislation for specifically regulating claims as TDO had already imposed prohibitions against false, misleading or incomplete information in respect of goods provided in the course of trade. There was also a concern that the introduction of a series of legislative proposals on formula products and IYC foods would cause undue burden to the trade in complying with the new requirements.

15. The Administration explained that as stated in the consultation document, while there were legislation governing the labelling and advertisement of food products, there was currently no legislation capable of specifically regulating the nutrition and health claims made on formula products and IYC foods. Subject to the outcome of the current public consultation exercise and the finalized regulatory framework, the Administration would decide whether to make amendments to the Food and Drugs (Compositional and Labelling) Regulations (Cap. 132W) to provide for the regulatory framework on nutrition and health claims on formula products and IYC foods. The Administration advised that the threshold for prosecution under TDO was high and nutrition and health

claims on formula products and IYC foods were generally not covered by UMAO as these products did not fall within the definition of medicine or that orally consumed products under UMAO. Therefore, the Administration considered it more suitable to amend the existing legislation under the purview of the Food and Health Bureau to provide for the new regulatory requirements.

Latest development

16. The Administration will brief the Panel on the outcome of the public consultation on the proposed regulation of nutrition and health claims on formula products and IYC foods and the way forward at the meeting on 14 July 2015.

Relevant papers

17. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
7 July 2015

Relevant papers on

Consultation document on the proposed regulation of nutrition and health claims on formula products and prepackaged food for infants and young children under the age of 36 months in Hong Kong

Committee	Date of meeting	Paper
Panel on Health Service	16.4.2012 (Item V)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene and Panel on Health Services (Joint meeting)	20.11.2012 (Item II)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	12.3.2013 (Item IV)	Agenda Minutes
Subcommittee on Food and Drugs (Composition and Labelling) (Amendment) (No.2) Regulation 2014	2.7.2014 (Item II)	Agenda Minutes
	22.7.2014 (Items I and II)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	10.2.2015 (Item IV)	Agenda Minutes