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Panel on Food Safety and Environmental Hygiene

Background brief prepared by the Legislative Council Secretariat for the meeting on 9 January 2018

Export control on and supply chain of powdered formula

Purpose

This paper provides background information on issues relating to the export control on and supply chain of powdered formula, and highlights major views and concerns expressed by members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the subject.

Background

The Import and Export (General) (Amendment) Regulation 2013

2. To combat the problem of parallel traders diverting large quantities of powdered formula away from the supply chain in Hong Kong, the Administration published in the Gazette on 22 February 2013 the Import and Export (General) (Amendment) Regulation 2013 ("the Amendment Regulation") to amend the Import and Export (General) Regulations (Cap. 60A) to prohibit the export of powdered formula to all places outside Hong Kong, except under an export licence or exemption arrangements¹. The Amendment Regulation came into operation on 1 March 2013.

¹ To allow a reasonable quantity for personal use, the Amendment Regulation provides that the prohibition does not apply to powdered formula not exceeding 1.8 kg in total net weight that is exported in the accompanied personal baggage of a person leaving Hong Kong. However, the person must be aged 16 or above who did not in the last 24 hours leave Hong Kong.

Measures to improve and monitor the supply chain of powdered formula

3. In tandem with the implementation of the Amendment Regulation, the Administration has urged suppliers of powdered formula to ensure a sufficient and stable supply of powdered formula for Hong Kong people. In April 2013, seven major suppliers of powdered formula² joined hands with the Hong Kong General Chamber of Pharmacy and proposed a series of measures to improve the supply chain of powdered formula, including the introduction of the Coupon Scheme³. The Administration also set up the Committee on Supply Chain of Powdered Formula⁴ ("the Powdered Formula Committee") in July 2013 to study and recommend improvement measures on the supply chain management of powdered formula.

4. To facilitate the Powdered Formula Committee to have a good grasp of the market situation and to monitor the efforts of improving the supply chain of powdered formula undertaken by suppliers, the Administration has engaged consultancy firms to conduct regular surveys on the retail supply and price levels of major brands of powdered formula across the territory, and also on the experience of parents of local infants and young children in purchasing powdered formula and their attitude towards using various pre-order channels.

Members' concerns

5. The major views and concerns expressed by members at various meetings of the Panel are summarized in the ensuing paragraphs.

Need for the Amendment Regulation

6. Some members were of the view that to pursue the policy of free trade and to safeguard free market operations, the Amendment Regulation should only be adopted as a short-term measure to modulate the demand for powdered formula in Hong Kong. In these members' view, the export restrictions under

² The seven major brands include Abbott, Cow & Gate, Friso, Mead Johnson, Nestle, Snow Brand and Wyeth.

³ The Coupon Scheme is a "pre-order system" set up at designated pharmacies as a "safety net" to ensure sufficient local supply. Parents of local infants and young children may call the powdered formula suppliers for registration and be given "coupons". With these coupons, parents may purchase the powdered formula they need at designated pharmacies, with the maximum amount of six cans per month. In cases where parents are unable to acquire the powdered formula they need from the designated pharmacies readily, the trade has pledged that the powdered formula would be available within three working days (excluding Saturdays, Sundays and public holidays).

⁴ 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 Amendment Regulation should only apply to those brands and stages of powdered formula that had shortage at retail level. Some other members, however, considered that the Amendment Regulation should continue to be adopted as medium- and long-term measures, given that non-local demand for powdered formula remained strong and shortage problem of powdered formula was still observed in some districts due to parallel trading activities.

7. There were divided views on the circumstances under which the Administration should discontinue the implementation of the Amendment Regulation. While some members were of the opinion that the Administration should not repeal the Amendment Regulation as long as parallel trading activities continued to be prevalent, some other members considered that priority should be given to improving the supply chain of powdered formula instead of combating parallel trading activities of powdered formula.

8. According to the Administration, the Amendment Regulation was not intended to be a long-term arrangement. Given that there had been different degrees of shortage of products of individual brands in certain districts and being mindful of the concerns of different stakeholders in the community over the export control on powdered formula, the Administration would not rush into repealing the provisions introduced by the Amendment Regulation unless stable and sufficient supply of powdered formula for local infants and young children was ensured. In the Administration's view, the Amendment Regulation had, to a certain extent, catered for the needs of parents of local infants and young children for powdered formula while safeguarding free trade and commerce. It would continue to keep in view the progress on the improvement of the supply chain and the market situation, including the supply and price level of powdered formula, before deciding on the Government's position in respect of the Amendment Regulation.

9. Pointing out that there was no scientific evidence suggesting that powdered formula for infants and young children of 12 to 36 months had nutritional and health benefits, some members queried the justification for subjecting follow-up/growing-up formula under the restrictions of the Amendment Regulation. There was a suggestion that the Administration should enhance public education on the nutritional need of infants and young children aged between 12 to 36 months in order to alleviate the reliance of local parents on powdered formula.

10. According to the Administration, some parents continued to use powdered formula as the major diet for their young children under the age of 36 months. To protect the health of infants and young children aged below 36 months in genuine need of powdered formula, it was necessary to ensure that follow-up/growing-up formula had sufficient and stable supply.

Monitoring the supply and price levels of powdered formula

11. An enquiry was raised as to how the Administration would consider the supply of powdered formula sufficient and its price levels stable for the purpose of considering whether to discontinue the implementation of the Amendment Regulation. The Administration advised that it had commissioned consultancy firms to conduct surveys on the supply and price levels of powdered formula at local retail level. The survey results indicated that serious out-of-stock situation was still observed for some major powdered formula brands in retail outlets. For this reason, the Administration considered it premature to repeal the Amendment Regulation.

12. Some members were concerned whether the full implementation of the Competition Ordinance (Cap. 619) as well as the Amendment Regulation had in any way affected the retail prices of powdered formula. They wondered whether there were signs of collaborative price fixing among powdered formula suppliers and retailers. According to the Administration, the surveys showed that the retail prices of powdered formula remained stable with no major fluctuation during the survey periods in that the prices in major chain stores were more or less the same as the suppliers' recommended retail prices, while the average retail prices in pharmacies were in general lower than those in major chain stores by 8% to 10%. The Administration did not have information on the retail prices of powdered formula before the implementation of the Amendment Regulation, but it would continue to monitor the retail prices and urge the suppliers through the Powdered Formula Committee to stabilize the retail prices.

Measures to improve the supply chain

13. Noting that serious shortage of two brands of powdered formula (i.e. Friso and Mead Johnson) was still observed at retail level, members urged the Administration to follow up with the suppliers concerned so that the latter would make better efforts in ensuring a stable supply of these two brands of powdered formula. Some members considered that the trade should continue to promote pre-order services (including the Coupon Scheme and order placement through suppliers' hotline for home delivery/collection from retail stores) and make greater efforts to enhance parents' awareness of and willingness to use these services. There was a suggestion that consideration should be given to specifying powdered formula as a reserved commodity under the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulation (Cap. 296A) so as to keep a reserve stock sufficient for the consumption by the local population for a reasonable period.

14. The Administration advised that according to the survey outcomes, while the shortage problem of powdered formula had continued to improve, products of individual brands and individual stages revealed different degrees of shortage in certain districts. There were various reasons why shortage of specific products occurred, e.g. stock replenishment failing to catch up with demand and active parallel trading activities at certain districts, etc. The Administration had passed the survey outcomes to the relevant suppliers and urged them to actively follow up on the findings to ensure sufficient and stable supply of powdered formula for local infants and young children. The survey outcomes had also been reported to the Powdered Formula Committee for discussion on ways to further improve the supply chain. Both the Administration and the Powdered Formula Committee shared members' view that the trade should encourage local consumers to learn more about the operation of the pre-order services, thus enhancing their awareness of and confidence in using these services.

Latest developments

15. During the scrutiny of the Amendment Regulation by the Legislative Council ("LegCo"), members of the relevant subcommittee had called on the Administration to set a timeline to review the effectiveness and necessity to continue with the export control and exemption arrangements under the Amendment Regulation. The Chief Executive has announced in the 2017 Policy Address the Administration's plan to review the export control on powdered formula and to explore long-term measures for safeguarding the stability of the local supply of powdered formula. The Administration will brief members on its plan to conduct a review at the Panel meeting on 9 January 2018.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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**Relevant papers on
Supply chain of powdered formula**

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	28.5.2013 (Item III)	Agenda Minutes
	25.9.2013*	Administration's paper entitled "Supply Chain of Powdered Formula: Stress Test" (LC Paper No. CB(2)1817/12-13(01))
	10.12.2013 (Item III)	Agenda Minutes
	10.6.2014 (Item IV)	Agenda Minutes
	9.12.2014 (Item IV)	Agenda Minutes
	12.1.2016 (Item IV)	Agenda Minutes
Legislative Council	7.6.2017	Official Record of Proceedings Pages 9128 to 9136 (Oral question raised by Hon WONG Ting-kwong on "Restriction on the export of as well as the supply of and demand for powdered formula for infants and young children")

* Issue date