

**Seventh Meeting of
the Business Facilitation Advisory Committee**

Agenda Item 3(c) : Report on the work of the Retail Task Force

Purpose

This paper reports on the work of the Retail Task Force (RTF) since the last Business Facilitation Advisory Committee (BFAC) meeting on 1 November 2007.

Work Progress of the RTF

2. The following issues are being considered by the RTF –
 - (a) Regulatory review of the beauty products/cosmetics/medicine categories;
 - (b) Nutrition labelling scheme;
 - (c) Concerns of the proprietary Chinese medicine trade;
 - (d) Proposed amendments to the Preservatives in Food Regulations; and
 - (e) Proposed Food Safety Bill.

Regulatory review of the beauty products/cosmetics/medicine categories

3. The trade urges the Department of Health (DH) to impose a less stringent registration process on vitamins, minerals, other health supplements and antiseptics or to exempt them from registration as pharmaceutical products. Based on the trade's feedback, the RTF has consolidated a proposed list of beauty/health products with precise information on the types of ingredients that may be exempted from registration for the consideration of DH. DH is actively considering the proposed list. DH will finalise the draft guidelines on beauty/health products that need registration as pharmaceutical products for the endorsement of the Pharmacy and Poisons Board in its coming meeting in February 2008. DH will consult the trade again before finalizing the guidelines.

4. In response to the RTF's referral, DH undertook to convey the trade's specific proposals to streamline the registration of health food products such as vitamins and minerals to the Registration Committee of the Pharmacy and Poisons Board for consideration at its next meeting in February 2008.

5. Once the Pharmacy and Poisons Board and its Registration Committee have made a decision on the trade's proposals, DH will inform the trade of the outcome and clarify with the trade the rationale and considerations behind the decision in due course.

6. DH has recently issued a set of new guidelines on re-registration of pharmaceutical products and another new guide on the poison classification of ingredients. DH has also refined the guidance notes on registration of pharmaceutical products. These reference materials have been uploaded on DH's web site and the trade has been informed of the availability of these materials. DH will assess the effectiveness of these guidelines/guidance notes in due course and make necessary refinement in response to the trade's feedback.

7. Though its request for additional manpower was unsuccessful, DH undertook to continue its efforts to streamline the processing of drug registration and facilitate the trade through administrative measures as far as possible. The RTF will continue to monitor the progress.

Nutrition labelling scheme

8. The Administration has further moderated the scope of its proposal on nutrition labelling scheme for pre-packaged food in Hong Kong after further consultation with the RTF and other relevant stakeholders. The revised proposal has provided certain exemptions from the labelling requirements and allowed more flexibility in the labelling requirements to facilitate the trade. The Administration presented its revised proposal to the Legislative Council (LegCo) Panel on Food Safety and Environmental Hygiene on 11 December 2007 and the RTF on 23 January 2008.

9. Under its revised proposal, the Administration proposed, inter alia, to –

- (a) require all prepackaged food (unless exempted) to label energy, trans fat plus six core nutrients, namely, protein, carbohydrates, fat, saturated fat, sodium and sugars on their food labels, as well as any

nutrient for which a claim is made. When a claim is made on the amount of cholesterol or the amount and/or type of fat, the amount of cholesterol, monounsaturated fat and polyunsaturated fat should also be declared;

- (b) allow flexibility for the labelling of other nutrients voluntarily provided by food traders e.g. the amount of calcium, dietary fibre, etc. contained in the prepackaged food, providing that it is true and accurate. Food traders therefore need not blacken out any of the nutrient information already included in the nutrition labels, providing that it is true and accurate;
- (c) allow the labelling of energy in either kilocalorie or kilojoule format and the labelling of nutrients in either per 100 g/ml or per serving format;
- (d) allow a two-year grace period before implementation of the requirements on nutrition labeling;
- (e) allow certain types of prepackaged food to be exempted from the nutrition labelling requirements (*e.g. prepackaged food packed in a container which has a total surface area of less than 100cm²*); and
- (f) implement a small volume exemption scheme for food products with annual sales volume of 30 000 units or below under the Nutrition Labelling Scheme.

10. The RTF generally supported the Administration's revised proposal. The RTF was pleased with the progress made by the Administration in working out the details of the proposal with the trade and other stakeholders concerned. In particular, the RTF welcomed the efforts made by the Administration to facilitate the trade and propose a scheme that benefits consumers by ensuring approximately 95% of pre-packaged food supplied in the market (*in terms of volume*) is covered by the labelling regulations, while at the same time keeping the market open to products that are sold in small volume.

11. The RTF still had a few observations which it believed merit further consideration by the Administration –

- (a) Small volume exemption items should not lose their exemption status if any nutrient-related claim is made to allow the continued

supply of a wide selection of healthy food products, most of which only take up a small fraction of the market;

- (b) As a general principle, those non-Codex nutritional claims that can be scientifically substantiated and are permitted in the country of origin should be permitted in Hong Kong's new regulations in the interests of public health;
- (c) Products with fat claims should not require the labelling of monounsaturated fat and polyunsaturated fat, considering that the fat claims are always "Low (or free) fat" and by definition the amount of monounsaturated fat and polyunsaturated fat contained in the products would be extremely low; and
- (d) To allow for the varying shelf life of food products, a defense clause should be introduced (*as is the case in the UK*) to provide for a legal defence that food products marketed or labelled before a specified date do not have to comply with the new regulations.

12. The Administration responded that –

- (a) Regulating misleading or false claims was one of the most important objectives for introducing a nutrition labelling scheme in Hong Kong. The Administration therefore considered it of utmost importance that food products with nutrient-related claim should comply with the statutory labelling requirements. If the food traders chose to make a claim, they should be responsible for providing all the necessary information to the consumers so as to justify their claims for consumers' reference. Under the Codex Guidelines on Nutrition Labelling, the application of nutrition labelling was mandatory when a nutrient-related claim was made for a food. It was in line with the Codex Guidelines to remove the small volume exemption status of the food concerned when a nutrient-related claim was made;
- (b) Under the Administration's revised proposal, the amount of cholesterol, monounsaturated fat and polyunsaturated fat should also be declared when a claim was made on the amount of cholesterol or the amount and/or type of fat. This requirement was in line with the Codex Guidelines and similar approach was adopted in other countries adopting either the mandatory or claim-based nutrition labelling scheme;

- (c) The Administration had strived to strike a proper balance in facilitating consumers' right to make informed choices and maintaining the variety of food choices in revising the proposal. The Administration did not see much scope to further relax the requirements under the revised proposal which had already incorporated certain trade facilitation measures as appropriate;
- (d) Concerning the inclusion of other non-Codex claims apart from those claims such as "low-sugar" claim and "low-protein" claim which were commonly used in the local context, the trade was invited to provide specific proposals with scientific support and justifications for the consideration of the Administration. While noting that a number of non-Codex claims were being adopted by different countries, the Administration did not consider it appropriate to indiscriminately include all these non-Codex claims in the Schedule of the Amendment Regulation as they might not be commonly adopted by overseas countries and there was no consensus on the standards for labelling purpose;
- (e) The Administration noted the trade's concern about the grace period, and would consider the views of parties concerned before tabling the Amendment Regulation to the LegCo. The Administration undertook to further examine the feasibility of the defence clause proposal, drawing reference to the experience of other countries;
- (f) According to the Administration's assessment, products from countries such as Canada and USA with more stringent labelling requirements than Hong Kong's and countries such as New Zealand and Australia with similar labelling requirements probably would not have much difficulty in complying with Hong Kong's nutrition labelling requirements. For products from the EC with less stringent requirements, the provision of small volume exemption would help reduce the regulatory impact to a certain extent; and
- (g) The Administration would hold another round of technical meetings with the trade representatives concerned (*including importers, distributors, retailers, etc.*) to clarify the remaining outstanding issues before tabling the legislative amendments to the LegCo. The Administration's plan was to issue the final draft of the technical guidance note when the Amendment Regulation was tabled at the LegCo in early 2008. With reference to the views of

the LegCo on the Amendment Regulation, the Administration would finalise the guidance note for issue shortly after the Amendment Regulation was passed.

13. As agreed by Members, the RTF had written to the Secretary for Food and Health, urging the Administration to give due consideration to its views and further refine the revised proposal as appropriate to reduce the compliance costs to the trade and to keep the wide selection of food products available to consumers. The RTF also appealed to the Administration to continue with its efforts to clarify and sort out the implementation details with the trade in time through technical meetings before tabling the relevant Amendment Regulation at the LegCo and to issue the final technical guidance note as soon as possible after the enactment of the Amendment Regulation.

14. The RTF will continue to monitor the progress of development.

Concerns of the proprietary Chinese medicine (pCm) trade

15. Regarding the progress of pCm registration, DH continues to accord priority to evaluate the 14 000 applications for transitional registration. As advised by the RTF, DH agreed to duly consult the trade before finalizing the arrangements for issue of the “Confirmation Notice for transitional registration of pCm” (Notice), with a view to avoiding any potential confusion and misunderstanding as to whether it is legitimate to continue selling products not yet registered/under consideration. DH’s latest plan is to issue the first batch of the Notice in March 2008. Having regard to the trade’s preliminary views, DH has worked out a preliminary plan for issue of the Notice with the Chinese Medicines Board, and a briefing session with the trade was held on 15 February 2008 to discuss the arrangements. DH will report the progress to the RTF in due course.

16. Concerning the trade’s concerns about various regulatory barriers affecting the trade such as difficulties in formulating the quality standards of products and the testing methods, difficulties encountered in compliance with the Protection of Endangered Species of Animals and Plants Ordinance, etc., DH undertook to continue exploring possible ways to address the trade’s concerns subject to fulfilling the legal requirements under the current regulatory framework.

17. The Administration noted the trade's proposals for improving the business environment. The Administration will continue with its efforts to promote the industry.

18. The RTF will continue to facilitate the communication between the trade and the Administration, and monitor the progress.

Proposed amendments to the Preservatives in Food Regulations

19. The Administration briefed the RTF on the latest progress of its proposed amendments to the Preservatives in Food Regulations. The proposed amendments which were made with reference to the relevant Codex standards would provide the trade and consumers with more choices through permitting the use of 11 new types of preservatives or antioxidants and relaxing some of the existing permissible levels. The Administration had completed a public consultation on the proposed amendments. The majority of submissions received during the consultation period supported the proposed amendments. Some trade representatives requested a longer grace period before implementation of the new requirements. After consideration, the Administration proposed to allow a transitional period of two years, given the discontinuation of one type of preservative and tightening of some of the permissible levels of preservatives. During the transition period, it is legally in order for any single food item to comply wholly with either the existing Regulations or the Amendment Regulation. The Administration planned to table the Amendment Regulation to the Legislative Council in early 2008.

20. The RTF welcomed the proposed amendments which would allow the use of more preservatives and antioxidants and benefit both consumers and the trade. However, the RTF urged the Administration to fully consider the shelf life of food products whenever a proposal was initiated to change the food labelling legislation in the future. The RTF suggested that as a good practice, the Administration should consider providing a defence clause as in the case in the UK and other countries, which catered for the varying shelf life of food products. The Administration agreed to consider the proposal.

Proposed Food Safety Bill

21. The Administration briefed the RTF of its proposal on the formulation of a Food Safety Bill with new food safety control tools to enhance the protection of public health and consumer interests. This is a new initiative pledged in the Chief Executive's 2007 Policy Address in response to heightened public concern about food safety arising from food incidents. The Administration plans to introduce the Food Safety Bill into the LegCo

for first and second reading in the 2008-09 legislative session. The Administration is now conducting a three-month public consultation on the proposal, which will end on 31 March 2008.

22. The key features of the Food Safety Bill were summarized below –

(a) Authority of the Bill

The Director of Food and Environmental Hygiene (DFEH) would be the Food Safety Authority (FSA) under the new legislation. The FSA would be empowered to make regulations under the Bill within the ambit of the Bill.

(b) Definition of “food”

The Administration proposed to broaden the definition of “food” under the Bill to cover live fish, live amphibian as well as ice. In order that the food safety standards under the Public Health and Municipal Services Ordinance (PHMSO) (Cap. 132) were also applicable to these new food types as defined in the Bill and, for the sake of consistency, consequential amendments to the definition of “food” under PHMSO would be made.

(c) Mandatory registration scheme for food importers and distributors

There would be a provision under the Bill requiring mandatory registration of all food importers and distributors with the FSA. Only food importers and distributors who had registered with the FSA would be allowed to import and distribute food into Hong Kong. The registration requirement would equally apply to food coming from overseas and locally produced.

(d) Record-keeping requirement

Under the Bill, all food importers and distributors were required to keep records of the business from which they obtained their food and the business to which they supplied their food. The record-keeping requirement would also apply to all food retailers but they would only be required to keep records of the source of their food.

(e) Specific import control for food types

The Administration proposed to include in the Bill various import control measures for different food types, according to their risk level.

(f) Prohibition of import and sale of problem food and mandatory recall

The FSA would be empowered to issue an order to prohibit the import or sale of problem food and to issue a recall order, where the FSA had reasonable grounds to believe that the food concerned posed a serious health hazard to the public.

(g) Food Safety Appeals Board

A new Food Safety Appeals Board would be established under the Bill to hear appeals from any person who felt aggrieved by the decision of the FSA.

23. The RTF generally supported the proposed Food Safety Bill which would help protect public health, enhance public confidence in our food trade and contribute towards making Hong Kong a better place to live and to do business. The RTF asked the Administration to fully consult the trade and strive to reduce compliance costs on the trade in working out the implementation details. In anticipation that many Small and Medium Enterprises (SMEs) engaged in the food business would have concerns about the proposed Food Safety Bill, the RTF suggested that the Administration should consider consulting the SME Committee on this issue as well.

24. The RTF will monitor the progress of the proposed Food Safety Bill.

Way forward

25. Members are invited to note the work progress of the RTF.

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February 2008