Purpose

This paper sets out the Administration’s latest response to the Retail Task Force’s (RTF) and the Business Facilitation Advisory Committee’s (BFAC) observations/comments on the proposed Nutrition Labelling Scheme for prepackaged food in Hong Kong.

Progress

2. The RTF has been facilitating communication between the trade and the Administration, with a view to coming up with a workable scheme and reducing the regulatory impact on the trade. In the last RTF meeting held on 23 January 2008, the Administration briefed the RTF of its revised proposal on nutrition labelling vide RTF Paper 39. The key features of the revised proposal are summed up in Appendix I. The Administration’s plan is to table the relevant Amendment Regulation at the Legislative Council (LegCo) in early 2008 for negative vetting.

RTF’s views and observations

3. At the last RTF meeting, Members of the RTF and trade representatives concerned generally supported the Administration’s latest proposal which provided certain relaxation and trade facilitation measures. However, they had a few major observations/comments which they believed merit further consideration by the Administration. As agreed by the RTF, the RTF Convenor subsequently wrote to the Secretary for Food and Health (SFH) on 30 January 2008, urging the Administration to further consider the following –

(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. It is advisable not to draw up a definitive list in the new legislation in order to cater changes in the market;

(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;

(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; and

(e) The Administration should take timely action to clarify and thrash out the implementation details with the trade through technical meetings before tabling the Amendment Regulation at the LegCo, and issue the final technical guidelines as soon as possible after the enactment of the Amendment Regulation.

Trade’s follow-up action with the Administration after the last RTF meeting

4. Subsequent to the last RTF meeting, a trade representative concerned formally requested the Administration to consider allowing the claims of “No Trans Fat”, “Low Trans Fat” or “Omega 3” as health claims under the Amendment Regulations. The Administration replied that it was studying the issues with reference to the practices of other authorities (see the Administration’s further response at para 7(e)).

The Administration’s reply to the RTF’s letter of 31 January 2008

5. On 22 February 2008, the SFH replied to the RTF Convenor. In his reply, the SFH thanked the RTF for its constructive views but expressed reservations to further relax the requirements as proposed by the RTF and trade representatives. SFH’s reply (Appendix II) was copied to members of the RTF and trade representatives concerned for reference on 22 February 2008.
RTF’s report to the BFAC and the Administration’s response

6. The RTF Convenor reported the progress of the issue to the BFAC at the last BFAC meeting held on 25 February 2008. The BFAC appreciated the efforts made by the Administration to moderate the scheme to meet different interests. But in response to the trade’s feedback, the BFAC Chairman urged the Administration to seriously consider not removing the exemption status of small volume products with nutrient-related claim in order to maintain the variety of ethnic food and small volume healthy food supplied in the market.

7. The Administration appreciated the constructive views and suggestions of the BFAC and the RTF. In reply to the comments of the RTF and the BFAC, the Administration provided the following response at the BFAC meeting –

(a) Hong Kong imported some 60% of prepackaged food from overseas. The Government was mindful that Hong Kong’s nutrition labelling scheme should be appropriately formulated to balance the needs to provide useful nutrition information for consumers to assist them in making healthy food choices, regulate misleading or deceptive labels and nutrition claims, and minimize the effect on food choice for our consumers;

(b) Making nutrition claim was a choice for the food manufacturers. If food manufacturers chose to make a claim, they were responsible for providing all necessary information to justify the claim to the consumers;

(c) The Government had worked out the proposed small volume exemption scheme with reference to an earlier proposal forwarded by the Hong Kong Retail Management Association and the Hong Kong Suppliers Association. In their proposals, both Associations supported the provision of small volume exemption to food products, except those with nutrient-related claims;

(d) The US was the only overseas authority which had implemented a small volume exemption scheme for nutrition labelling. In the US, a food product with nutrient-related claim would not be entitled to small volume exemption. A food product with any nutrition information on the food label (regardless of whether it is a nutrient-related claim or not) would also not be entitled to small volume exemption. Hong Kong’s proposed small volume exemption scheme, which allowed food products to contain nutrition information (but not claims), was already a more relaxed one than that of the US;
The Government had adopted the principles and conditions of Codex in formulating Hong Kong’s nutrition labelling scheme. Nutrition claims that were considered useful to the local population and most common in the market had already been covered by the Government’s proposed scheme. The Government remained open to other non-Codex nutrition claims and was prepared to adopt them once they were widely accepted internationally. However, as overseas authorities did not have common views on certain claims, the Government considered it inappropriate to adopt those claims that were not widely accepted internationally;

Under the Administration’s 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. Having said this, the Government noted the trade’s argument that since the amount of monounsaturated fat and polyunsaturated fat in food products claiming “Low (or free) fat” would be extremely low, it might not be necessary to require the compulsory labelling of monounsaturated fat and polyunsaturated fat in these products. The Government would consult medical experts before deciding whether to accept the trade’s proposal, and inform the RTF of the outcome;

Concerning the trade’s concern about the grace period, the Government had taken into account the views of various stakeholders and proposed a two-year grace period to the LegCo Panel on Food Safety and Environmental Hygiene. The Government would consider the views of the parties concerned on the grace period before tabling the Amendment Regulation to the LegCo;

The Government noted the trade’s concern that the relevant guidelines should be issued in time. The Government had already distributed the draft guidelines to the trade at the last round of technical meetings in January 2008. SFH had undertaken to issue the final version of the relevant draft guidelines on nutrition labelling requirements when the relevant Amendment Regulation was tabled in LegCo. With reference to the views of the LegCo on the Amendment Regulation, the Administration would finalise the guidelines for issue shortly after the Amendment Regulation was passed;
(i) While some BFAC Members considered that only few consumers would read the labels, the Government believed that proper nutrition information labels would be a useful public tool to help consumers make informed food choice. As shown in a report issued by the World Cancer Research Fund in 2007, there was evidence to show that cancer was closely related to diet and many of the recommendations given were related to proper selection of food with different levels of nutrient. The Government was committed to helping people of all ages to understand how to read the food labels to facilitate their choice of food. The Government would step up its work on educating the public about nutrition labelling;

(j) The Government had considered the feasibility of accepting labels from source countries and sought legal advice. However, this proposal was considered infeasible in view of legal, international trade and practical difficulties. From the legal point of view, it was considered inappropriate to allow overseas legislation to override local legislation. The Government believed that majority of the food products from the US (adopting a “1+14” system) and Canada (adopting a “1+13” system) would have no problem in complying with Hong Kong’s nutrition labelling requirements so long as these products complied with the requirements in the US or Canada since their requirements were more stringent. Some US products currently on sale in the Hong Kong market did not comply with the labelling requirements in the US as they were for export only and not for sale in the US market. So long as food products from the US used the same food labels which were used in their own local market, majority of them would be able to comply with Hong Kong’s basic “1+7” requirement. For many popular Mainland products such as luncheon meat which were sold in the Hong Kong market, it was noted that the nutrition information labels of these products had already fulfilled the proposed Hong Kong requirements because the labels were prepared in line with the US requirements for export to the US market. From the international trade perspective, the proposed acceptance of labels of source countries might be construed as unfair trade practice because different source countries supplying the same type of product might be adopting different requirements. From the practical point of view, for products produced in a certain country but packed in different countries, the packing countries might be adopting different labelling requirements as the food producing country, and there were practical difficulties in ascertaining which labelling standards should be adopted;
On the withdrawal of food products from the shelf as a result of the implementation of the allergen labelling scheme, based on a relevant list provided by the trade, it was noted that half of the products had been withdrawn because these products contained preservatives or additives which were not permitted in existing legislation of Hong Kong. For the remaining half, it was gathered that the overseas manufacturers refused to provide the necessary information to the Hong Kong traders for labelling purpose. According to the Government’s understanding, the Consumer Council had not received any complaint from the public about reduction of food choice following the implementation of the allergen labelling scheme;

Based on the findings of an earlier Regulatory Impact Assessment on the nutrition labelling scheme, 5 to 10% of the imported food products might disappear from the market under the most stringent requirement of “1+9”. With the flexibility and exemptions provided under the revised proposal, the Government believed that the impact would be reduced. While some products might eventually be withdrawn from the local market upon implementation of the nutrition labelling scheme, the scheme had the overwhelming support of the public who were aware of the possible impact on the price and choice of food. The Administration considered that the revised proposal had struck a right balance in accommodating different interests; and

The Government appreciated that the trade might need to incur additional testing and re-labelling costs for some products arising from the additional nutrition labelling requirements. The Government had strived to reduce the regulatory impact on the trade by introducing various trade facilitation measures and relaxing the labelling requirements as appropriate. There were currently four local laboratories with accreditation to test the nutrients in prepackaged food. It was expected that the testing cost would reduce gradually with competition. As an alternative, the trade could make use of the food composition database to calculate the nutrient value if there was available information on the ingredients in the prepackaged food.

Conclusion of the BFAC

8. The BFAC appreciated the policy objectives of the proposed nutrition labelling scheme. The BFAC also understood that the Government had strived to balance different interests. However, to strike a proper balance between nutrition
information and maintaining the choice of products and to reduce the regulatory impact on the trade, the BFAC urged the Government to continue thrashing out the implementation details with the trade and refine the revised proposal as appropriate.

**Way forward**

9. Members are invited to note the progress and consider how best to further take forward the issues with the Administration.

10. As the Administration would sort out the technical details with the trade in the last round of technical meetings on 19 and 20 March 2008, it is suggested that the RTF could focus on the major points of principle such as whether the granting of small volume exemption should be subject to the condition that no nutrient-related claim is made and the length of the grace period.

11. Regarding the major observations raised by the trade as set out in paragraph 3 above, the Secretariat has the following observations -

   (a) Regarding the trade’s proposal that small volume exemption items should not lose their exemption status if any nutrient-related claim is made, the trade claimed that a recent survey of an international food store showed that 73% of the small volume items in certain categories had a nutritional claim. To enable the Administration to better feel the adverse impact on the trade and consumer choice by imposing such a condition, it will be helpful if the trade could provide more detailed information and further breakdown on the small volume products that may be affected;

   (b) Concerning the defence clause proposal, the Administration considered that given that there is no legal requirement in Hong Kong on the labelling of the manufacturing date on the food labels, it would be difficult for a defense provision which relies heavily on the manufacturing date of individual food products. The Government undertook to consider the views of the parties concerned on the grace period before tabling the Amendment Regulation to the LegCo. It was noted that some LegCo Members thought that the two-year grace period might be shortened because most prepackaged food products had a shelf life of not more than two years. It may be useful if the trade could provide further information on the shelf life of different kinds of pre-packaged food products and further consider whether there are other feasible administrative measures to overcome the constraint about manufacturing date as observed by the Government;
(c) Regarding the proposal of non-Codex nutritional claims, the Government remained open to other non-Codex nutrition claims and was prepared to adopt them once they were widely accepted internationally. The trade would need to provide relevant scientific support to substantiate its further requests, if any;

(d) Concerning the proposal that products with fat claims should not require the labelling of monounsaturated fat and polyunsaturated fat, the Administration would consult medical experts before deciding whether to accept the trade’s proposal, and inform the RTF of the outcome; and

(e) Regarding the technical guidelines, the Administration undertook to finalise the guidelines for issue shortly after the Amendment Regulation was passed.

Business Facilitation Advisory Committee Secretariat
March 2008
Appendix I

A summary of the key features of the Administration’s proposed nutrition labelling scheme

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 100cm$^2$); 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.