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**Subcommittee on
Harmful Substances in Food (Amendment) Regulation 2005**

Background Brief prepared by the Legislative Council Secretariat

Purpose

This paper summarises the issues and concerns raised by the Panel on Food Safety and Environmental Hygiene relating to the prohibition of presence of malachite green in all food, particularly live fish and fish products, sold in Hong Kong.

Background

Discovery of the presence of malachite green in eels and freshwater fishes

2. On 16 August 2005, the Guangdong Entry-Exit Inspection and Quarantine Bureau in the Mainland recalled eel products destined for exports as a precautionary measure to ensure that all eel products for export did not contain the chemical, malachite green. The Administration immediately collected samples of live eels and eel products, as well as samples of freshwater fish, for sale in local markets and food outlets for testing. As at 25 August 2005, the test results revealed that malachite green was found to be present in the majority (67 out of 80) of the eel samples and in some (13 out of 62) of the freshwater fish samples.

3. Given the increasing concern over the use of malachite green in eels and freshwater fishes and the safety of aquatic food products for human consumption, the Panel on Food Safety and Environmental Hygiene held four special meetings on 19, 26 and 30 August and 2 September 2005 to discuss the regulation of eels and freshwater fishes for supply to Hong Kong. The Panel also listened to the views of the live fish trade at the special meeting on 30 August 2005.

Prohibition of use of malachite green in other places

4. Malachite green is a type of industrial dye and has been used for treating infection in fish. At present, the Codex Alimentarius Commission has not established food safety standards for malachite green in food. According to the Administration, animal studies show that malachite green may cause liver tumour in mice but there is yet no such conclusive evidence in human. As malachite green is carcinogenic in animals, it is unsuitable for use in aquatic products intended for human consumption.

5. Malachite green is not allowed to be used in aquaculture in various major agricultural economies, such as the Mainland, European Union, the United States and Canada. In the Mainland, the Ministry of Agriculture incorporated malachite green in its List of Veterinary Drugs and Other Chemicals Prohibited in Food Animals in accordance with the Veterinary Drugs Control Law in 2002. The State General Administration of the Quality Supervision, Inspection and Quarantine (AQSIQ) also issued a directive in the same year to explicitly prohibit the use of malachite green in aquaculture.

Situation in Hong Kong

6. As for local fish farms, the Agriculture, Fisheries and Conservation Department (AFCD) advised local fish farmers more than a decade ago not to use malachite green. Before the gazettal of the Harmful Substances in Food (Amendment) Regulation 2005 on 26 August 2005, the legislation in Hong Kong did not explicitly prohibit the presence of malachite green in food imported, consigned, delivered, manufactured or sold in Hong Kong.

The Amendment Regulation

7. The Harmful Substances in Food Regulations (Cap.132 Sub Leg AF) govern the import and sale of food containing harmful substances. The First Schedule of the Regulations stipulates the maximum amount of harmful substances allowed in food. Any person who imports, consigns, delivers, manufactures or sells for human consumption any food containing substances exceeding the concentration level stipulated in the Regulations commits an offence.

8. To ensure food safety and protect public health, the Administration gazetted on 26 August 2005 an Amendment Regulation to add malachite green into the list of substances in the First Schedule. The maximum concentration prescribed is 0 microgram per kilogram in “any food (including live fish, live reptiles and live poultry). The effect of the addition is that importing, consigning, delivering, manufacturing and selling any food (including live fish)

for human consumption which contains malachite green becomes an offence punishable by a fine at level 5 and imprisonment for 6 months. The Amendment Regulation came into operation on the date of gazettal, i.e. 26 August 2005.

Discussion by the Panel on Food Safety and Environmental Hygiene

9. At the special meetings of the Panel held in August and September 2005, the Administration informed the Panel that upon the availability of test results concerning presence of malachite green in eels and eel products, it had informed the Mainland authorities of the test results and measures to protect public health in this connection. The Food Safety and Environmental Hygiene Department (FEHD) had also strengthened random checks on eels and freshwater fish.

10. Panel members expressed much concern about the effectiveness of the notification and communication system between the Mainland and Hong Kong about food safety matters. Some members also queried the Administration for not taking action earlier against the presence of malachite green in eels and live fish imported into Hong Kong, since the Mainland had prohibited the use of malachite green in aquaculture as early as 2002.

11. The Administration advised the Panel that in respect of food incidents and control of aquatic products imported from the Mainland, the communication and cooperation between Hong Kong and the Mainland have been strengthened. Consensus was reached on, among other things, the arrangement for exporting aquatic products to Hong Kong, and the notification mechanisms in respect of food incidents between the two places. To further strengthen the safety of live freshwater fish supply to Hong Kong, both sides agreed that only registered and approved fish farms could export freshwater fishes to Hong Kong, and the export must be accompanied with health certificates when entering Hong Kong to certify that they were free from malachite green or any other harmful agricultural pesticides and chemical substances. FEHD would send staff to inspect the registered and approved freshwater fish and aquaculture farms in the Mainland.

12. The Administration informed the Panel at the special meeting on 19 August 2005 that amendments would be made to the Harmful Substances in Food Regulations to prohibit the presence of malachite green in all fish sold in Hong Kong. FEHD and AFCD also issued letters on 20 August 2005 to operators of fishery and food trades respectively to inform them of the latest developments, and the proposal to prohibit the presence of malachite green in food.

13. While Panel members generally supported the prohibition of the presence of malachite green in live fishes and fish products intended for human consumption, some members have expressed concern about the implementation of the regulatory framework for live fishes and the enforcement of the Amendment Regulation. The Legal Service Division has prepared a paper on the Amendment Regulation for the Panel's reference [LC Paper No. LS108/04-05].

14. The issues and concerns raised by members and deputations at the Panel meetings are summarised below -

(a) Enforcement of the Amendment Regulation

Some members are concerned whether prosecution will be taken against fish traders if malachite green is found in freshwater fishes supplied from registered aquaculture fish farms, even though such fish has health certificates issued by the authorities;

(b) Control and checks for freshwater fishes supplied to Hong Kong

Some members prefer tightening control at source and at border control points;

(c) Assistance and compensation for freshwater fish trade

Some members have urged the Administration to provide financial assistance, such as ex-gratia payments and rental waiver, to fish wholesalers and retailers who have been affected by the introduction of the Amendment Regulation;

(d) Resumption of fish import

Some members have requested the Administration to facilitate the resumption of freshwater fishes supply to Hong Kong, especially those transported via Man Kam To Control Point; and

(e) Registered aquaculture farms that export freshwater fish to Hong Kong

The fish trade has urged the Administration to liaise with the Mainland authorities to increase the number of registered fish farms in the Mainland, and to include in such list fish farms operated by Hong Kong traders in the Mainland.

15. In response to the issues and concerns raised by members, the Administration has provided further information on the proposed regulatory framework for live fishes and the enforcement of the Amendment Regulation. The Administration has also provided written response to issues raised at the special meetings on 26 and 30 August 2005 [LC Paper No. CB(2) 2523/04-05(01)].

16. On issues relating to the Amendment Regulation, the Administration has explained that –

- (a) the Director of Food and Environmental Hygiene (DFEH) is already empowered under the existing provisions of the Public Health and Municipal Services Ordinance (Cap.132) to seize and remove any food which appears to him to be unfit for human consumption. However, as live fish is not included in the definition of food in the Ordinance, there may be disputes for DFEH to seize live fish deemed to be unfit for human consumption. The gazettal of the Amendment Regulation will remove the ambiguity in the control of live fish as food with regard to the use of malachite green;
- (b) after the coming into force of the Amendment Regulation, if malachite green is still found in freshwater fish samples collected from registered farms in the Mainland, the Administration will take appropriate actions in accordance with the law after taking due consideration of various factors, such as whether the fish trader concerned has taken adequate measures to ensure the safety of such food;
- (c) the Administration agrees that the most effective measure is to regulate the freshwater fishes supplied to Hong Kong at their sources. The Administration will send FEHD staff to inspect registered and approved farms in the Mainland for supplying freshwater fishes and aquatic products to Hong Kong. The Administration will also take samples for testing at Man Kam To Control Point and at the two fish wholesale markets;
- (d) while the Administration is willing to offer assistance to the affected fish trades, there is insufficient justification to use public money to grant ex-gratia payment and rent reduction/waiver to operators of fish trades; and
- (e) the Administration will assist the fish trade in arranging import of freshwater fishes and restoring public confidence in fish consumption. If the trade considers it necessary, the Administration will raise the proposal of increasing the number of registered fish farms with the Mainland authorities.

17. The Administration has also informed the Panel that, as a longer term measure, a legislative proposal would be introduced in the 2006-07 session to bring live fish under regulatory control.

Relevant papers

18. The Administration's papers and other relevant papers for the Panel meetings on 19, 26 and 30 August and 2 September 2005 are available on the Council website at <http://www.legco.gov.hk/english/index.htm>.

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