



21st July 2014

Submission to Legislative Council

Subcommittee on Food and Drugs (Composition and Labelling) (Amendment) (No. 2) Regulation 2014

1. Labelling requirement regarding Nutrition and Health Claims should remain in the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children (“HK Code”)
2. The HK Code should be implemented immediately
3. The Scope of the HK Code should cover formula milk and food products for 36 months and below

Introductory Remarks

Infants and young children are the most vulnerable group in our population. Legislation on nutrition labelling and nutrition claims covering food products for use over the age of 36 months came into force in 2010. There is an obvious gap in the protection of the under 36 months age group. The legislative amendment proposed now is for nutrition composition and labelling of contents only. While this is welcomed, the pending discussion on legislation for nutrition and health claims is not a reason to remove the guidance on nutrition and health claims from the HK Code. The public consultation on the HK Code was completed nearly one and a half years ago. Further consultation serves little purpose. With the majority of submissions supporting the HK Code including a few urging more stringent measures and a few less, and opposition as expected mainly from the trade,¹ the HK Code should be implemented without delay.

Amendment on the Labeling of Content

Trans fatty acids are of health concern. Whereas the content of trans fat is a requirement for foods for consumption above the age of 36 months, this is not listed as a requirement for foods for infants and young children. Guidelines on Nutrition Labelling (CAC/GL 2-1985) revised 2013² allows the requirement to declare the amount of trans fatty acids through national legislation. Even if trans fatty acids can occur naturally in milk products, at least consumers know the amount in the product purchased.

Grace Period before enforcement

¹ <http://www.legco.gov.hk/yr13-14/english/panels/hs/papers/hs0721cb2-2048-5-e.pdf>

² [file:///C:/Documents%20and%20Settings/user/My%20Documents/Downloads/CXG_002e%20\(1\).pdf](file:///C:/Documents%20and%20Settings/user/My%20Documents/Downloads/CXG_002e%20(1).pdf)



Currently the labelling of infant formula and follow on formula purchased by the Hospital Authority differs from that sold to the public as the tender specification requires that vendors adhere to the WHO International Code of Marketing of Breastmilk Substitutes and subsequent relevant World Health Assembly resolutions including labelling requirements within the Hospital Authority premises. The time required for modifications of labels to conform to Hospital Authority requirements takes far less than 18 or 24 months as the entire contract period had only been just over 2 years. Consideration should be given to protect children in HK as early as feasible.

Nutrition and Health Claims

Had action been taken earlier as urged by the Director of Audit and other organisations, legislation on nutrition and health claims for food products used below the age of 36 months may have already been in place. Now a public consultation is planned for the end of the year. The legislative process itself is expected to be prolonged when details of the legislation are being debated with the trade, and when issues related to Nutrient Reference Values for young children are yet to be resolved. Existing regulations are too general to be effective deterrents of the current prevalence of misleading, exaggerated claims through words and imagery as evidenced by their widespread use in product promotion. With no guidance in the interim period for foods consumed below the age of 36 months as outlined in the HK Code means such practice will continue to influence parents and the general public to the detriment of child health.

International Consensus

The government opines that there is a lack of “international consensus”³ on the regulation of nutrition and health claims. The international consensus is in fact very clear.

With the awareness of the use of nutrition and health claims being used to promote breastmilk substitutes as superior to breastfeeding, World Health Assembly resolution WHA58.32 in 2005⁴ asked member states to “**ensure that nutrition and health claims are not permitted for breastmilk substitutes except where specially provided for in national legislation.**”

Codex Standard on Nutrition and Health Claims (CAC/GL 23-1997) amended 2013⁵ also states “**Nutrition and health claims shall not be permitted for foods for infants and young children except where specifically provided for in relevant Codex standards or national legislation.**” This requirement is repeated in Standard for Infant Formula and Formulas for

³ <http://www.legco.gov.hk/yr13-14/english/panels/hs/papers/hs0721cb2-2048-5-e.pdf>

⁴ [.who.int/nutrition/topics/WHA58.32_ijcn_en.pdf](http://www.who.int/nutrition/topics/WHA58.32_ijcn_en.pdf)

⁵ file:///C:/Documents%20and%20Settings/user/My%20Documents/Downloads/CXG_023e.pdf



Special Medical Purposes intended for infants (CODEX STAN 72 -1981) amended 2011,⁶ and referred to in Codex Standard for Follow-up Formula (CODEX STAN 156-1987) amended 2011⁷ and Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985) amended 2010.⁸ Therefore in Hong Kong there should actually be NO such nutrition and health claims unless and till specific, relevant legislation is in place.

As the Convention on the Rights of the Child (CRC)⁹ has been extended to HK, HK has an international obligation to ensure the Convention is implemented. The right of the child “to the enjoyment of the highest attainable standard of health” is enshrined in Article 24 of the CRC and parents are to be informed of the “advantages of breastfeeding”. This means parents are to be protected from mis-information including through biased information and misleading claims.

Therefore it is not a lack of international consensus in standards but rather variability in international practices. These are subject to lobbying by the trade especially in countries with large dairy industries. This may also not be a priority issue yet in countries where the tradition is for the family including young children to drink whole cow’s milk and the promotion of formula milk for older infants and young children are much less pervasive than in HK. Even so, the European Union is tightening regulations on labelling of infant and follow-on formula to prevent the idealization of breastmilk substitutes over breastmilk.¹⁰ In HK, where drinking milk is not traditionally part of the family diet, the promotion of follow-up formula is such that the Department of Health found 77% of 4 year olds still drinking formula milk¹¹ and mothers believing follow-up formula has nutrients that promote children’s brain development not found in other foods. Excessive intake of formula milk led to an unbalanced diet for the children.

While widespread promotion of follow-up formula is “allowed” in Hong Kong, WHO has already declared follow-up milks as “unnecessary” in 1986¹² and “unsuitable” when used as a breastmilk replacement from 6 months of age onwards in 2013.¹³ WHO further stated current

⁶ file:///C:/Documents%20and%20Settings/user/My%20Documents/Downloads/CXS_072e.pdf

⁷ file:///C:/Documents%20and%20Settings/user/My%20Documents/Downloads/CXS_156e.pdf

⁸ file:///C:/Documents%20and%20Settings/user/My%20Documents/Downloads/CXS_001e%20(1).pdf

⁹ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁰ Astley M. 2013. <http://www.dairyreporter.com/Regulation-Safety/European-Parliament-slaps-ban-on-baby-images-on-infant-follow-on-formula>

¹¹ Luk WY, Leung S, Leung, C. A Survey of Infant and Young Child Feeding in Hong Kong: Milk Consumption. Department of Health, Hong Kong SAR Government; 2012. http://www.fhs.gov.hk/english/reports/files/Survey_IYCF_Dietnutrient%20intake.pdf

¹² World Health Assembly Resolution 39.28, 16 May 1986

¹³ http://www.who.int/nutrition/topics/WHO_brief_fufandcode_post_17July.pdf



formulations lead to higher protein intake and lower intake of other nutrients than those recommended by WHO for adequate growth and development of infants and young children. HK is doing a disservice to our children and their parents if we do not at least provide guidance as to the use of nutrition and health claims covering such products through the HK Code before legislation could be passed.

Infants fed by Formula Milk need Protection

We value informed choice, whether for the mother to decide on the method of infant feeding or the selection of formula milk if her decision is to use formula milk. Such decisions should be based on evidence-based information rather than misleading claims. If there is sufficient scientific evidence that a certain nutrient ought to be in a formula for the growth of a child, it should be in whichever brand that is allowed to be sold to protect every child who uses formula milk. The legislation on “Composition and Labelling” amendment regulation already follows Codex standard setting the composition required to meet the normal requirements of infants. More or less of the quantity of any nutrients within recommended limits, or the addition of optional ingredients without a minimal requirement in the standard has no meaning to the nutritional value of the product. Highlighting certain ingredients only serves as product differentiation to expand the market. Expansion of the market for formula milk means more infants are fed artificially,¹⁴ and therefore less infants on breastmilk.

Nutrition policy

Currently the Department of Health has a Breastfeeding Policy. It is important to define the nutrition policy for Hong Kong, if not for the whole population at least for children, as a matter of urgency. Guidelines for Use of Nutrition and Health Claims (CAC/GL 23-1997) amended 2013¹⁵ states “Nutrition claims should be consistent with national nutrition policy and support that policy. Only nutrition claims that support national nutrition policy should be allowed.” Such a policy will facilitate the different bureau and departments of the government institute measures in compliance with and in support of such a policy, not the least, in the legislation of nutrition claims.

Conclusion

The WHO International Code of Marketing of Breastmilk Substitutes was adopted in 1981. HK has at last drafted a HK Code. A whole generation of children has missed the protection from regulation of marketing practices which exposed them to the risks of not breastfeeding. Every day 150 babies are born in HK when the exclusive breastfeeding rate at 6 months is only 2.3%.

¹⁴ http://www.who.int/nutrition/publications/infantfeeding/infant_formula_trade_issues_eng.pdf

¹⁵ file:///C:/Documents%20and%20Settings/user/My%20Documents/Downloads/CXG_023e.pdf



Baby Friendly Hospital Initiative
Hong Kong Association
愛嬰醫院香港協會

unicef 
聯合國兒童基金會

While low breastfeeding rates depends on multiple factors, lack of regulation of marketing practices is a major contributor which also affects public acceptance of other supportive measures for breastfeeding. Implementation of the HK Code should no longer be delayed. As legislation takes precedence over a voluntary Code, parts in Article 8 of the HK Code on Labelling referring to nutrition composition and labeling of contents could be omitted but parts referring to claims should be retained. As the guidance on claims in the HK Code follows international standards, adherence or otherwise to the guidance will enrich the related public discussion and facilitate the drafting of the related legislation. HK is under an international obligation to uphold the Convention on the Rights of the Child. This is a golden opportunity for HK to demonstrate not only through words but through action “In all actions concerning children... the best interests of the child shall be a primary consideration.”