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Dr. Leung Sze Lee, Shirley
Assistant Director
Family Health Service
Department of Health
Room 1308, 13/F, Guardian House
32 Oi Kwan Road
Wan Chai
Hong Kong

Dear Dr. Leung,

Our office has been directed to deliver to the Hong Kong Government the United States Government's comments on the draft Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants and Young Children.

BEGIN COMMENTS:

The United States appreciates the opportunity to comment on the draft Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants and Young Children, notified to the WTO as TBT/N/HKG/43, TBT/N/HKG/44 and SPS/N/HKG/38.

The United States acknowledges the important work of Hong Kong in promulgating a code of marketing for infant formula, a commodity associated with important public health considerations. However, the United States has several questions for clarification regarding Hong Kong's draft below and appreciates any responses that Hong Kong is able to provide.

Page 2 of the introduction in the document notes, in part, the importance of creating a parental decision-making environment "free from commercial influence…" Does this imply that Hong Kong intends to ban all forms of infant formula advertising?

Article 3 on definitions for the term "advertisement" includes "electronic messages" in its purview. Could Hong Kong please clarify if the term "electronic messages" encompass websites and all Internet-based communication or solely electronic mail messages?

Article 3 on definitions for the terms "follow-up formula" and "infant formula" appear to overlap. Could Hong Kong please clarify if "follow-up formula" is considered to be a subset of "infant formula" or, if not, how the two commodity categories are related? The term "follow-up formula" also appears to include formula intended for use by infants older than 6 months as well as "formula for special medical purposes". Could Hong Kong please clarify how it will differentiate between these two products with two different intended uses?

Article 3 on definitions for the term "health claim" states that this term includes "reduction of disease risk claim[s]". Could Hong Kong please clarify the type of evidence required to be provided before these claims can be made on infant formula? Furthermore, could Hong Kong please explain how it intends to determine regulatory requirements for infant formulas versus drugs and if disease claims are used in the process of that determination?

Article 3 on definitions for "infant formula" characterizes the product as "milk or milk-like…" Could Hong Kong please clarify if resemblance to human milk is part of this characterization?

Article 3 on definitions for "labeling" lists several types of media considered to be labeling. Could Hong Kong please clarify if Internet-based websites are included under the term "labeling"?

Article 3 on definitions for "nutrient" characterizes it as "any substance present in a designated product other than formula milk related products…" Could Hong Kong please clarify its rationale for exempting "formula milk related products" from the definition of a nutrient? Is it because these products are not intended for human consumption?

Similarly, Article 3 on definitions for "quality standard" characterizes it as "the requirements of a designated product other than formula milk related products…" Could Hong Kong please clarify its rationale for exempting "formula milk related products" from the definition of a quality standard? Is it because these products are not intended for human consumption?

The United States notes that Sections 4.1.1 and 4.2.1 appear to contradict each other in that Section 4.1.1. appears to prohibit the production and distribution of informational or educational materials by manufacturers and distributors whereas Section 4.2.1. appears to allow the distribution of information by manufacturers and distributors. Is Section 4.2.1. an exemption to the general ban outlined in Section 4.1.1. and if not, could Hong Kong please clarify this apparent contradiction?

The United States notes that Section 7.1.2. directs health workers to provide information on "the risks of the use of infant formula". Could Hong Kong please clarify the "risks of the use of infant formula" that should be provided to parents?

The United States notes that Sections 8.2.1.d and 8.4.1.b.i require warning statements on infant formula that "use of breastmilk substitutes may put infants and children at risk of diarrhea and

other illnesses." Could Hong Kong please provide information as to the scientific basis for this warning statement and the meaning of the term "other illnesses"?

The United States thanks Hong Kong for its favorable consideration of these comments.

END U.S. COMMENTS

Sincerely,

Erich Kuss
Director
Agricultural Trade Office
American Consulate General Hong Kong

CC: Dr. Y.Y. Ho, Consultant, Center for Food Safety, FEHD