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Directorate G - Veterinary and International affairs
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Subject: **EU comments on the draft guidelines notified in document G/SPS/N/HKG/38**

Dear Sir,

Please find attached the European Union comments in reply to notification G/SPS/N/HKG/38.

It would be very much appreciated if any reply to this letter were also copied to the EU Delegation in Hong Kong, China.

Ella Strickland
EU SPS Notification Authority

COMMENTS OF THE EUROPEAN UNION TO THE NOTIFICATION SUBMITTED BY HONG KONG, CHINA CONCERNING THE DRAFT GUIDELINES NOTIFIED TO THE SECRETARIAT OF THE WTO AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES UNDER CODE G/SPS/N/HKG/38 RELATED TO HONG KONG, CHINA CODE OF MARKETING AND QUALITY OF FORMULA MILK AND RELATED PRODUCTS AND FOOD PRODUCTS FOR INFANTS & YOUNG CHILDREN.

The European Union (EU) would like to thank Hong Kong, China for notification G/SPS/N/HKG/38, and for the opportunity to comment on the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children ("the HK Code").

The EU welcomes the aims of the HK Code to contribute to the provision of safe and adequate nutrition for infants and young children, by:

- (a) protecting breastfeeding; and
- (b) ensuring the proper use of formula milk, formula milk related products, and food products for infants and young children up to the age of 36 months,

on the basis of adequate and unbiased information and through appropriate marketing.

The EU agrees with the aims of the HK Code – aims that are supported within the EU as well as at an international level, by a number of standards of the *Codex Alimentarius* and the International Code of Marketing of Breast-Milk Substitutes.

The EU would like to make the following comments on the notified draft and would be grateful if these were taken into account or, alternatively, if the Hong Kong, China authorities could provide a detailed explanation about the rationale for their decision.

Voluntary nature of the code

The EU notes that the notified HK code would cover the marketing and quality aspects of formula milk and related products and food products for infants and young children and that the code would be of a voluntary nature.

The EU notes that a series of Codex Alimentarius standards has been adopted on these products. In the EU, specific legal measures are in place that set relevant rules for foods for infants and young children, including, among others, rules on composition, labelling and advertising¹. EU legislation has also incorporated provisions of the International Code of Marketing of Breast-Milk Substitutes that apply only to infant formula.

¹ Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae and amending Directive 1999/21/EC, OJ L 401, 30.12.2006, p. 1–33; Commission Directive 2006/125/EC of 5 December 2006 on processed cereal-based foods and baby foods for infants and young children, OJ L 339, 6.12.2006, p. 16–35.

Introduction of new restrictions for foods covered by the code

The EU notes that certain restrictions of the HK Code on labelling, advertising or promotion of foods covered by the HK Code go beyond the existing rules set in the relevant Codex Alimentarius standards (cf. for example, paragraph 5.2 or 8.1). Some of them, for example the application of paragraph 4.4.1.e (ii) (A) to all products that may be used up to the age of three years, seem quite excessive. Also, the HK Code incorporates certain provisions of the International Code of Marketing of Breast Milk Substitutes but makes them applicable to all formula milk for infants (cf. for example paragraph 5.1).

The EU notes that infants being weaned and young children progressively adapting to a diversified diet do not consume exclusively "special" products covered by the HK Code, but also "normal" products that form part of the family diet. Introducing restrictions on certain foods for complementary feeding would be discriminatory with respect to "normal" foods that could also be used by infants and young children as part of a diversified diet without being subject to the same restrictions. It may also deprive persons - responsible for the feeding of that category of the population - of useful information.

Similarly, the EU would like to ask the Hong Kong, China authorities to provide clarification on the background that led them to conclude that introducing specific requirements on foods that are given as part of a diversified diet would have a positive impact on protecting breastfeeding. This leads, in certain cases, to confusing requirements (cf. for example paragraph 8.1.1) that seem to imply that breast-milk and complementary foods have the same role in the diet of an infant or a young child.

The EU would like to thank Hong Kong, China for the opportunity to comment on the code and asks for its comments to be taken into account.