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Date: 3/8/2011

GAIN Report Number: HK1106

Hong Kong

Post: Hong Kong

Hong Kong Plans for New Pesticide Regulation in Late 2011

Report Categories:

Agriculture in the News

FAIRS Subject Report

Sanitary/Phytosanitary/Food Safety

Approved By:

Erich Kuss

Prepared By:

Caroline Yuen

Report Highlights:

Hong Kong is planning to introduce a new Pesticide Regulation to the Legislative Council in late 2011. While details are gradually being revealed, Hong Kong's intentions are that the proposed Pesticide Regulation will adopt maximum residue limits (MRLs) developed by Codex, supplemented in priority sequence by those of China, the U.S. and Thailand through the use of a "positive list" approach. However, the HKG intends to relinquish the original thinking of setting a "default value", implying that there would be zero tolerance for non-listed pesticides. Exporters and industry groups are encouraged to share with ATO their views in the context of practicality and trade impact so that we may convey such concerns to the Hong Kong government for their consideration.

Following the first round of public consultation on Hong Kong's new Pesticide Regulation in 2007, the Hong Kong government has modified their 2007 proposal and is now planning to introduce the regulation to the Legislative Council for discussion in late 2011 following a second round of public consultation scheduled for mid 2011. The biggest modification is the elimination of "default value" which was proposed in the original consultation paper of 2007, implying that there will be zero tolerance for pesticides which are not listed in the regulation. The other principles of the 2007 proposals remain unchanged. These principles include: 1) adopting a "positive list" approach; 2) adopting maximum residue limits (MRLs) developed by Codex, supplemented in sequence by those of China, the U.S. and Thailand; 3) developing a list of "exempted substances" and 4) adopting Codex's classification of foods.

Background

Currently, Hong Kong does not have any regulation governing pesticide residue in food. Food retailers/manufacturers are expected to sell/produce food products that are fit for human consumption. In 2007, the Hong Kong government (HKG) launched its first consultation paper entitled "Proposed Regulatory Framework for Pesticide Residues in Food in Hong Kong", followed by a WTO notification in January 2008 (SPS/N/HKG/26) outlining the following six major elements:

1. To adopt the definition of "pesticide" and other related terms from the codex Alimentarius Commission (Codex);
2. To adopt a "positive list" approach to clearly specify the MRLs and extraneous maximum residue limits (EMRLs) of pesticides allowed in food in the legislation;
3. To adopt MRLs/EMRLs developed by codex as the backbone;
4. To develop a "default value", such that the detection of pesticide residues without specified MRLs in excess of which is unacceptable and a list of "exempted substances";
5. To adopt Codex classification of foods; and
6. To implement the next piece of subsidiary legislation with a two-year grace period.

Since the public consultation in late 2007, the HKG had not announced any progress on the preparation of the Pesticide Regulation until early 2011 when they started to stage some public forums explaining the upcoming regulation. At these recent public forums, the government officials announced their planned schedule of releasing a detailed revised proposal of the new regulation and conducting a second consultation exercise in mid 2011. They are aiming to start the legislative process in late 2011.

Major Modification of the 2007 Proposal – Elimination of Default Value

At a recent public forum on the proposed regulation, it was revealed that the future regulation will not provide a default value as stated in the original proposal in 2007 and the 2008 WTO notification. It implies that there will be zero tolerance for pesticides which are not listed on the future regulation.

When participants explained their concern of zero tolerance of non-listed pesticide, the officials responded that the international trend is to do away "default value", so their approach is to be in line with international trend. They added that the spirit of Hong Kong's food regulation is that food

supplied to the public should be fit for human consumption. Thus, the detection of non-listed pesticide residue in food will be considered in that light during prosecution deliberations.

Key Principles of the future Pesticide Regulation

1) Adopt MRLs and EMRLs of Codex

Hong Kong’s Pesticide Regulation will adopt MRLs and EMRLs of individual pesticides recommended by Codex in full as the backbone. When there are no corresponding Codex standards, the MRLs and EMRLs of China, the U.S. and Thailand in priority sequence will be adopted. The government official explained that the sequence of the referenced countries is based on their market share of Hong Kong’s food supplies. China’s standard will be referenced first in the absence of a Codex standard of a particular pesticide because China accounted for 34 percent of fresh and semi-processed fruits, vegetables and cereals.

Example One:

Codex has a MRL standard for “cattle liver” but not for the commodity group “cattle offals” while the U.S. has MRL standard for the entire group of cattle offals. Thus, Hong Kong’s proposed standard will be as follows:

1. for Cattle liver, Hong Kong will adopt the Codex MRL
2. for Cattle, all edible offal except liver , Hong Kong will adopt the U.S. standard

Example Two: Buprofezin in citrus fruits (ppm)

Commodity	Codex	China	USA	Thailand	HK’s proposed standard
Citrus fruits		0.5	2.5		0.5
Oranges, sweet, sour	0.5				--

Codex does not have a Buprofezin standard for citrus fruits. Hong Kong, therefore, will adopt the Chinese standard (0.5 ppm) for citrus fruits. Since codex standard of oranges share the same MRL of the category of citrus fruits, HK does not plan to set the Buprofezin MRL for oranges.

For this example, certain traders questioned the rigid principle of the preference given to the MRLs of China rather than to those of the U.S. or Thailand in the absence of Codex standard. The Hong Kong official responded that the Chinese standard is adopted on the basis of their own risk assessment and the fact that Codex is also using 0.5 ppm as the MRL for Buprofezin in oranges.

2) Adopt Codex’s Classification of Food

Hong Kong’s future Pesticide Regulation will adopt Codex’s classification of food. The Regulation will be supplemented with MRLs/EMRLs from China, U.S, or Thailand only if their respective food classification fits to that of Codex.

3) Adopt Codex’s Pesticide Residue Definitions

The “residue definition of a pesticide” defines the exact combination of the pesticide and its metabolites, derivatives and related compounds to which the MRL/EMRL applies. The proposed Regulation will adopt Codex’s pesticide residue definitions, thus the MRLs of a particular pesticide from China/U.S./Thailand might be adopted only if the residue definition is the same as that of Codex.

- 4) Adopt the higher MRL/EMRL available when a chemical is used as both pesticide and veterinary drug

Based on the recommendation of FAO/WHO Expert Committee on Food Additives (JECFA) and Joint Meeting on Pesticide Residues (JMPR) Informal Harmonization Meeting held in 1999, the proposed Regulation will adopt the higher MRL/EMRL available when a chemical is used as both pesticide and veterinary drug.

- 5) Not to adopt MRLs for individual food established by specific import regulations

The proposed Regulation will not adopt individual MRLs standards of China/U.S./Thailand if they are established only for regulating the importation of specific food products. For example, the U.S. has set a MRL for Deltamethrin in lychee & starfruit for the importation of these particular food items to the U.S., while there is no such registered use in the United States. Thus, Hong Kong will not make reference to such an import control standard.

- 6) Establish a list of Exempted Substances

To encourage the use of natural pesticides by the trade, the HKG plans to make reference to major food supplying countries and will establish a list of Exempted Substances. They are divided into eight groups, namely: inorganics, organics, pheromones, plant materials or derivatives, bacteria, fungus, protozoan and virus. Exempted pesticides have to fulfill the following criteria:

- the use of the pesticides do not result in residues occurring in food; or
- the residues are identical to or indistinguishable from natural food components; or
- the residues are of no toxicological significance or public health concern.

To provide for pesticides that have been found acceptable from the public health perspective but not yet been included in the local legislation, the future Regulation will allow application for “exemption”. Applicants for “exemption” have to submit documentation such as the residue definition and toxicological data to the HKG to determine whether the MRL or exemption status of a certain pesticide not already in the Regulation could be allowed. Once the application is approved, announcement will be made in the government Gazette and the MRL/exemption status of the pesticides in question will apply.

Additional Comments

Given the ever changing knowledge and development of pesticides, the measure to allow for the application of MRLs/exemptions for new pesticides not covered by the Hong Kong Regulation should be commended as it provides flexibility to the Regulation. However, the HKG has not yet announced

who shall be eligible to apply. It would be desirable that the eligibility of applicants not be limited to local interests/traders as it may not be in their interests or they may not have the adequate information to apply for the MRL or exemption of a new pesticide.

While the Hong Kong government has been staging a series of public forum explaining the upcoming Pesticide Regulation and its adherence to Codex regulation, they have yet to address all issues that impact specific products. For example, it remains uncertain how the Regulation will address the issue of certain Chinese food products which are not covered by the Codex food classification system, such as American ginseng. Enquirers at the public forum could not get a specific answer whether these products could be excluded from the new regulation.

The U.S. exported a total of \$2.1 billion in consumer oriented agricultural products to Hong Kong in 2010, making Hong Kong the 4th largest U.S. market. Major export items include meats and dairy products, fresh fruits and tree nuts. Hong Kong's Pesticide Regulation, once implemented, will apply to all of these U.S. exports. Interested parties are encouraged to share their views with ATO Hong Kong (ATOhongkong@usda.gov) as soon as possible so that we may pass on the information to the Hong Kong government for their consideration in the light of practicality and trade impact before the Regulation is submitted to the legislative process.