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Pesticide Regulation Coming into Effect August 2014

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Report Highlights:

Hong Kong will have its first-ever enacted Pesticide Residues in Food Regulation come into force August 1, 2014. The Regulation will remain as it was enacted in June 2012 with no further amendments to the pesticide list before the effective date as earlier planned. Meanwhile, the proposed amendments, which include the latest changes to maximum residue limits (MRLs)/extraneous maximum residue limits (EMRLs) adopted by Codex in 2012 and 2013 as well as proposals put forth by stakeholders (including the U.S. government) since the enactment of the Regulation in June 2012, are to be reviewed by a “Working Group”. The Hong Kong government assured the trade that risk assessments will be conducted when unlisted pesticides are found in products. The import or sale of the concerned food is allowed if the consumption of the food is not dangerous or prejudicial to health according to the risk assessments. The HKG explained that this risk assessment mechanism will allow smooth trade flows even though the MRLs/EMRLs will not be updated before the August effective date.

Latest Development

Hong Kong's first-ever pesticide regulation was enacted in June 2012 and will come into effect August 2014 following a two-year grace period which allows the trade to get familiarized with the new regulation. According to the original thinking of the Hong Kong government (HKG), the MRLs and EMRLs on the Regulation were to be amended before August 1, 2014 with the effect of incorporating 2012 and 2013 updates by Codex and proposals put forth by stakeholders after the enactment of the Regulation in 2012.

In early 2014, the Hong Kong Center for Food Safety (CFS) provided a summary of their proposed revision of the MRLs/EMRLs to the Legislative Council (LegCo) for consultation. (Please see report [hk1414](#).) Among the proposed changes, the deletions of three pesticides (fosetyl aluminium, thidiazuron and triphenyltin hydroxide) from MRLs listing raised concerns by certain members of Hong Kong's Legislative Council (LegCo). The proposed deletions were based on a stakeholder's comments and the CFS agreed to the suggestion explaining that Codex has not set any standards for the three pesticides in question. However, the LegCo members insisted that food safety should not be compromised and questioned the government's justification given that not all MRLs on the Hong Kong pesticide list have had international consensus.

To address the concerns of the LegCo members, the CFS decided not to amend the pesticide list before the effective date of August 1. Also, the CFS will have the entire proposed revised list to be examined by a Working Group. As such, the pesticide list enacted in 2012 will be enforced after August 1 and will not include Codex updates of 2012 and 2013.

However, the HKG assured the trade that they will do a risk assessment in cases where they find unlisted pesticides in food samples. The risk assessment will take into account the local food consumption patterns and Acceptable Daily Intake (ADI) among other factors. The import or sale of food is allowed if consumption of the food is not dangerous or prejudicial to health. According to the HKG, with this risk assessment mechanism in place, the trade should not be affected even if the effective pesticide MRL list might not have the latest Codex updates.

The Regulation

Key Features of the Regulation

- The Regulation defines "pesticide" and other related terms in a way consistent with the Codex Alimentarius Commission (Codex).
- The Regulation provides a [list of MRLs/EMRLs](#), to adopt MRLs/EMRLs recommended by Codex as the backbone as well as the Codex classification of foods. The presence of any pesticide residues in food exceeding the specified MRLs/EMRL is not permitted under the Regulation. The MRLs list consists of 360 pesticides and residue limits for over 7,000 pesticide-

food pairs.

- The Regulation adopts a “modified positive list” approach. If a food is found to contain pesticide residues for which no MRLs/EMRLs have been specified in the Regulation, except for exempted pesticides, the import and sale of the concerned food is only allowed if the consumption of the food is not dangerous or prejudicial to health. The CFS will conduct risk assessments taking into account the local food consumption patterns and other factors.
- The Regulation provides a list of exempted substances, amounting to 78 exempted pesticides in total.

In addition, the CFS indicates that they will update the MRLs/EMRLs and exempted pesticides by making reference from the latest international developments. Also, they will provide a mechanism that allows the trade to make suggestions for adding or revising MRLs/EMRLs to the existing pesticides list. All applications have to be accompanied by supporting documentation. No application fee is required. A [guide](#) to making proposals is provided at the CFS website.

The CFS has prepared a [User Guidelines for Pesticide Residues in Food Regulation](#) which also contains some “Frequently Asked Questions”.

Moreover, a website providing quick search function on the pesticide – food pair is under construction. Once the database search engine is available, traders can easily identify pesticide MRLs of their specific products. Currently the available information is provided on a PDF file.

Detailed information on the pesticide regulation is available on the CFS [webpage](#).

Some Concerns for the Trade

Over the years, the Hong Kong government has conducted a series of trade forums briefing the trade over the development of the pesticide regulation and explaining the regulation itself. The trade is still skeptical how the regulation will be enforced. One of their concerns arises from the fact that they will be held accountable if they have imported or sold foods which are found violating the regulation. Yet, in most cases, they have no knowledge as to what pesticides have been applied on their imported food.

With the impending enforcement of the pesticide regulation, some importers/retailers have started to request suppliers to give undertakings that their products comply with Hong Kong’s pesticide regulation. According to the statutory defense under Hong Kong’s food ordinance, a defendant has to prove that he has exercised full diligence in ensuring food regulation compliance of the food concerned and it is in the original state without any further treatment. Therefore, importers/retailers try to obtain warranty from their suppliers, which could be pleaded as defense when their food supplies are found violating the regulation.

The trade has some other concerns as well.

A question that is always asked at trade forums but no concrete answer is given is whether the products

will be recalled or removed from the shelf if they are found with pesticides not on the list. The CFS answer is that they will conduct risk assessment to determine whether the products could be sold in Hong Kong. However, they did not address directly the fate of the products when the result of the risk assessment is not yet available.

Another concern is about the drawing of samples. The CFS indicated that samples will be taken at import, wholesale or retail levels as necessary. In 2013, CFS took a total of about 65,000 samples for microbiological, chemical and radiation testing. In the future, the testing on pesticide residue will be grouped under this general surveillance program unless there are intelligent reports warranting target testing on specific pesticides on foods.

Last but not the list, the trade is concerned whether the CFS is able to incorporate the annual Codex updates in a timely manner. However, the CFS did not commit as to how often or regularly that they will update the list despite pledging that they will update the pesticide list according to international developments.