

Executive Summary

Direct Investigation into Food and Environmental Hygiene Department's criteria for publicising list of traders involved after issuing Food Safety Order

Background

Between September and November 2014, the Food and Environmental Hygiene Department ("FEHD") made 3 Food Safety Orders ("FS Orders") under the Food Safety Ordinance to prohibit the import into and supply within Hong Kong of cooking oil products manufactured by 5 Taiwanese companies involved in the incident of "substandard cooking oils" from Taiwan, and to impose a recall of all relevant products. On the same day that the first FS Order was issued, FEHD published a list of Hong Kong traders ("list of relevant traders") who might have distributed or used the lard / lard products produced by the Taiwanese company concerned. However, no such list was published when FEHD issued the second and third FS Orders.

2. Regarding FEHD's apparent inconsistency in publishing the list of relevant traders, we initiated a direct investigation to examine any inadequacies on the part of FEHD in releasing information to the public in the incident.

Our Findings

Issuance of the First FS Order and Publication of List of Relevant Traders

3. On 12 September 2014, FEHD was notified by the Taiwan authorities that some Hong Kong importers had imported the problematic lard products from Chang Guann Co., Ltd. ("Chang Guann"), and those lard / lard products might have been used for producing other food products.

4. On 13 September, FEHD issued an FS Order to prohibit the import into and supply within Hong Kong of all lard / lard products manufactured by Chang Guann, and all food products made with those lard / lard products. The Order also directed that all affected food products be recalled, marked and sealed within 14 days.

5. On the same day (13 September), FEHD published, pursuant to section 28 of the Food Safety Ordinance, a list of traders who might have imported, distributed or used those lard / lard products specified in the FS Order. FEHD compiled the list of traders with information provided by importers and major distributors of the affected products. When publishing the list, FEHD indicated that some of those traders might have already stopped using or supplying the affected lard products.

Subsequent Surveillance Work

6. Between 8 and 28 October, FEHD adopted the following measures under the first FS Order: contacting by telephone those restaurants and retailers who had procured cooking oils from Taiwan, and conducting surprise inspections of hundreds of traders, so as to ensure that distributors and retailers had stopped the supply of cooking oils produced in Taiwan.

Expanding the Prohibition of Import and Sale of Cooking Oils from Taiwan

7. On 8 October, the Taiwan authorities announced that Cheng I Food Co., Ltd. (“Cheng I”) was found to have used substandard ingredients (such as lard for animal feeds) for production, and the scope of affected products was extended to include butter, margarine and shortening.

8. On 9 October, FEHD prohibited the import into and sale within Hong Kong of all cooking oils of animal origins from Taiwan pursuant to the Public Health and Municipal Services Ordinance.

9. On 10 October, the Taiwan authorities announced that Ting Hsin Oil & Fat Industrial Co., Ltd. (“Ting Hsin”) was also found to have used substandard ingredients (such as lard for animal feeds) for production of lard / lard products.

10. On 15 October, FEHD announced a total ban on the import into and sale within Hong Kong of all cooking oils produced in Taiwan.

Issuance of the Second FS Order

11. On 29 October, FEHD issued the second FS Order to prohibit the import into and supply within Hong Kong of all cooking fats and oils produced by Cheng I and Ting Hsin and all food products made with those fats and oils. Food traders were also mandated to recall, mark and seal all the relevant products.

Issuance of the Third FS Order

12. On 3 November, the Taiwan authorities announced that Beei Hae Oil And Fats Co., Ltd. (“Beei Hae”) and Shyeh Chyng Enterprise Co., Ltd. (“Shyeh Chyng”) were suspected to have used substandard ingredients for production of cooking fats and oils.

13. On 6 November, FEHD issued the third FS Order prohibiting the import into and supply within Hong Kong of all cooking fats and oils produced by Beei Hae and Shyeh Chyng and all food products made with those fats and oils. Food traders were also required to recall, mark and seal all the relevant products.

FEHD's Explanation for Not Publishing a List of Relevant Traders When Issuing the Second and Third FS Orders

14. FEHD held that when issuing the second and third FS Orders, there was no need to publish a list of relevant traders as in the case of the issuance of the first FS Order. Its justifications included:

- (1) After several rounds of recall, marking and sealing of oil products, FEHD believed that when the second and third FS Orders were issued, the vast majority of traders had already stopped using all cooking oils from Taiwan.
- (2) After issuing the first FS Order, FEHD twice issued press releases to announce the prohibition of import into and sale within Hong Kong all cooking oils of animal origins from Taiwan. The Centre for Food Safety ("CFS") under FEHD deemed the result of tracing origins and the product recalls satisfactory.
- (3) The actions taken as mentioned in (2) above had effectively ensured that when the second and third FS Orders were issued, all distributors and traders had exercised self-discipline and stopped supplying the lard / lard products covered by the two FS Orders.
- (4) Before deciding whether to publish a list of relevant traders, FEHD had to give thorough consideration to safeguarding both consumer health and consumers' right of choice of food and the food supply in the market to avoid causing a confidence crisis among consumers and in the market.
- (5) During the period when the three FS Orders were made, CFS had issued 22 press releases in total and conducted eight media sessions. It announced the latest findings of its investigations of the incidents to keep the general public and the food industry abreast of developments.

Our Comments

15. We notice that the cooking oils involved in the incidents are food ingredients. It would be difficult, if not impossible, for consumers to tell from finished food products (such as bread and dishes cooked in restaurants) the origins of the oils and their suppliers, or to check their quality. Since the incident of problematic lard products of Chang Guann and the news that such products had been imported into Hong Kong broke out suddenly, we agreed that it was necessary for FEHD to take effective measures to notify the public within the shortest time possible in order to safeguard public health. And so on 13 September 2014, the Department published the list of relevant traders when issuing the first FS Order. That action served to alert members of the public so

that they could, as a safety precaution, make their own choice on whether to stop buying products from the traders involved or consuming the relevant products already purchased.

16. Some people held the view that there was no need for FEHD to publish the list of relevant traders as that might affect the catering industry. On this, we consider that FEHD's primary duty is to protect public health and safety. In view of the urgency of the matter, and when some of the problematic lard / lard products in the market could not be taken off the shelves in time, stopped from sale or recalled, it was legitimate, reasonable, and in the interests of the public, for FEHD to publish information on traders who might have distributed or used the problematic lard/lard products. This could enable consumers to expediently learn about and differentiate those food items that might pose threats to their health. Furthermore, when publishing the list, FEHD made it clear that some of the traders on the list might no longer be supplying the problematic lard / lard products. Though not absolutely accurate and precise, the list could be considered as an honest disclosure of the potential food safety hazard made in good faith. In this light, this Office considers that it was necessary for FEHD to publish the list of traders at that time and in the given circumstances.

17. When the second and third FS Orders were issued on another four Taiwanese manufacturers of cooking oils, the circumstances had indeed changed. After issuing the first FS Order, FEHD had taken a number of surveillance actions to check whether the distributors and retailers concerned had complied with the first FS Order and stopped supplying or using problematic cooking oils. In view of subsequent developments, FEHD had even invoked its statutory power to prohibit the import into and sale within Hong Kong of all cooking oils from Taiwan and extended the ban to cover a wider range of cooking oils. Conceivably, the general public and the food industry were already well aware of the problem of substandard oils.

18. We accept FEHD's explanation that after the first FS Order was issued and following several rounds of recall, marking and sealing of products, the vast majority of traders had stopped using all cooking oils from Taiwan. The subsequent FS Orders and FEHD's publicity efforts had also exposed the problem more fully. The traders concerned should have learned from the events and followed the Orders. Having considered the changed circumstances and balanced the interests of all parties concerned, FEHD decided not to publish a list of relevant traders when issuing the second and third FS Orders, in order not to cause unnecessary public panic. We find FEHD's decision not unreasonable.

**Office of The Ombudsman
June 2017**