

## CONSULTATION ON DRAFT PROVISIONS IN THE FOOD SAFETY AND SECURITY BILL

### **SEGMENT B: IMPORT, EXPORT & TRANSHIPMENT**

1 Key provisions related to the regulation of import, export and transhipment (Part 3) also span other cross-cutting topics, mainly Part 7 (Food Safety and Sustainable Primary Production Measures), Part 8 (Offences relating to Food Safety) and Part 13 (Monitoring and Enforcement) of the FSSB. Their details are summarised below.

#### **Background**

2 More than 90% of our food is imported from over 180 countries/regions. SFA has a food safety assurance regime to ensure that imported food meets SFA's food safety requirements and is safe for human consumption.

3 Currently, SFA regulates the import, export and transhipment of food, food additives, regulated food contact articles and animal feed through a two-tier regulatory regime comprising the (i) licensing or registration of a person/business that carries out import, export, and transhipment of these items in the course of business; and (ii) granting of permit for each import, export or tranship consignment. Licensing imposes responsibility and accountability on the person/business to meet the requirements on what can be imported. The granting of permits allows SFA to impose consignment-specific food safety requirements such as subjecting specific food to inspection and testing before they are put on the market.

4 The legal provisions regulating the import, export and transhipment of meat, fish, fresh vegetables, fresh fruits, eggs, processed food, rice, food additives, regulated food contact articles and animal feed are currently prescribed in several pieces of legislation viz. the Wholesome Meat and Fish Act, Control of Plants Act, Animals and Birds Act, Food Regulations of the Sale of Food Act, Feeding Stuffs Act, and Price Control Act. These will be consolidated in Part 3 of the FSSB.

#### **Proposed Provisions**

##### **Definition of "unsafe" and "unsuitable" food**

5 The Bill will largely retain the key concepts of "unsafe and unsuitable" food as found in the current Sale of Food Act (SOFA), with some extensions to better ensure food safety. The definition of "unsafe" will refer to food that is likely to cause physical harm to an individual who may consume it, and this is substantively unchanged from the definition in the SOFA. The definition of "unsuitable" will be extended beyond food that is damaged and deteriorated to cover food that (i) is outdated, defined to be unused or unconsumed by the period recommended by the manufacturer, or by the dates specified on the packaging, (ii) contains a food production substance (e.g. food additive) that has not been approved, (iii) contains contaminants (e.g. heavy metals) that are prohibited or if approved, is present above allowable levels and (iv) food that contains inedible components (e.g. hair, nail clippings, rubber bands).

### Concept of “Supply”

6 The Bill will introduce a concept of “supply” of food that goes beyond the “sale” of food. In other words, the Bill extends to situations where food is given away i.e. food donation and distributing donated food. The proposed powers are intended to help better safeguard the food safety of donated food, given that similar food safety risks exist for both donated and sold food, and thus better protect all members of our community.

### Concept of “Controlled Items”

7 The Bill will introduce a concept of “controlled item” which means any food, pre-packed food additive preparation, regulated food contact article or animal feed<sup>1</sup> that is subjected to import control, export control or transshipment control<sup>2</sup>. The import of live animals for slaughter as food and for primary production will continue to be regulated under the Animals and Birds Act<sup>3</sup>. In addition, since SFA will only regulate the export and transshipment of items that have stricter requirements for trade due to animal disease considerations, the transshipment of fruits and vegetables (currently regulated under the Control of Plants Act) will no longer be regulated. Agri-food production inputs<sup>4</sup> such as seeds, fish fries and chicks that are used for primary production activities will not, at the outset, be subjected to import, export or transshipment controls but may eventually become controlled items in future. This is to provide SFA the flexibility to impose the requirement for a procurement plan (para 10) on agri-food production inputs, should there be a need to do so for food resiliency.

---

<sup>1</sup> Animal feed, which is intended to be fed directly to any food producing animal, may pose food safety risks or compromise local production of food derived from animals.

<sup>2</sup> In the Bill, “import controlled items” refer to any food, any pre-packed food additive preparation, any regulated food contact article, any animal feed, or any agri-food production input that the Minister declares, by order in the Gazette, to be an import controlled item. “Transshipment controlled items” refer to any meat or meat product, any fish or fish product, any eggs, any other food or any agri-food production input that the Minister declares, by order in the Gazette, to be a transshipment controlled item. “Export controlled item” refers to any transshipment controlled item, any rice, or any other food or any agri-food production input that the Minister declares, by order in the Gazette, to be an export controlled item.

<sup>3</sup> This will include the import of live fish for primary production, which is currently regulated under the Wholesome Meat and Fish Act. Notwithstanding, the FSSB will empower SFA to make directives of general application banning the import of any live food producing animal of a particular kind from a particular country or place outside Singapore as may be necessary to alleviate or minimise any risk of the death of, or a serious physical harm to, any individual who might later consume in Singapore the animal, or any meat, meat product or fish product derived from such an animal. For live insect-like species and land snails, their import will be regulated under the Control of Plants Act or Wildlife Act.

<sup>4</sup> “agri-food production input”, in the context of import, export and transshipment control, will exclude the following even if essential in undertaking any primary production activity:

- (a) any other animal reproductive material from a food producing animal;
- (b) any young of a food producing animal;
- (c) any seed, spore, bulb, root, cutting or other part of a plant from which plants grow or further plants grow;
- (d) any veterinary biologics, or any vaccines, antitoxins or other preparations made from living organisms, which are suitable for use in diagnosing, treating or immunising animals

### Two-tier Regulatory Regime

8 The abovementioned two-tier regulatory regime (para 3) will be applied to all items listed as controlled items. Any person/business importing, exporting or transshipping controlled items in the course of business will be required to obtain a licence, and apply for a permit for every consignment imported into, or exported and transhipped from Singapore. Under the Bill, it will be an offence to import, export or tranship controlled items without a licence, without a permit, or if the declarations on the permit failed to conform with the description of the consignment (e.g. quantity was under-declared). In deciding whether to grant (or renew) a licence, SFA will consider whether the applicant or licensee was disqualified from holding the licence or whether the applicant is an associate of the disqualified licensee (refer to section under “Disqualification” below).

9 Quantities up to a cumulative 15kg (inclusive of 30 eggs) of food which are not of higher regulatory concern may be imported without the need for a licence or permit, for private consumption. However, it would be an offence to sell or supply such food, which are imported without licence or permit, to others.

### Procurement Plan

10 The Bill will include new provisions that require licensees to identify the risks and have plans of action to manage disruptions in the import of the controlled items. These plans will support licensees in achieving business continuity and prevent or mitigate the impact of disruptive events on food security in Singapore. Today, the requirement to have plans to manage supply disruption is applied to egg importers. This will continue to be scoped to eggs. SFA will adopt a phased approach and consult industry and affected licensees, should they be required to submit such plans and give them lead time for implementation.

### Inspection Schemes, Advice, Holding Orders and Failing Food

11 The Bill will explicitly spell out the current practice for inspection of controlled items. Specific controlled items that are deemed as examinable matters<sup>5</sup> would need to be **either** (i) subject to inspection at the point of import, export or transshipment; **or** (ii) for the case of imports, be accompanied by a recognised foreign government certificate or other document. Consignments may be subject to holding order pending the outcome of an inspection or be subjected to analysis. An inspection advice will be issued to require owners to treat, destroy or re-export in the case of failing or non-conforming consignments.

---

<sup>5</sup> “examinable matter” means a controlled item —

- a) of a kind that is prescribed under any inspection scheme regulations that if imported, exported or transhipped, must be —
  - i. inspected, or inspected and analysed, under this Part; or
  - ii. covered by a recognised foreign government certificate;
- b) of a kind that is the subject of a holding order;
- c) that, despite the fact that it is not of a kind referred to in paragraph (a) or (b), is nevertheless required to be inspected, or inspected and analysed, under any inspection scheme regulations; or
- d) that is other than a controlled item of a kind referred to in paragraph (a) or (b) or a controlled item in paragraph (c) and —
  - i. that an authorised officer has reasonable grounds to believe may be failing; and
  - ii. in respect of which the authorised officer has notified that belief to an owner of that import controlled item;

12 Finally, the Bill sets out offences for any persons/businesses who (i) import items which are prohibited, unsafe or not meeting applicable standards or (ii) deal with any prohibited or imported examinable matter without inspection advice. All these provisions will provide greater clarity on SFA's regime and requirements that importers, exporters and transhippers of controlled items have to comply with.

#### Possession for Supply of Imports which are Prohibited or Not Meeting Applicable Standard

13 Under the Bill, it is an offence if a person or entity is found to be in possession and knowingly supply prohibited items or import controlled items that do not meet applicable standard or have been deemed as failing after an inspection, even if the person or entity is not responsible for the import of the controlled item in the first place. This is adapted from the existing section 23 of the WMFA and meant to safeguard against the distribution of these products to consumers. This provision will be used judiciously, and the person will be entitled to the defence of due diligence, if it can be proven that the commission of the offence (i) was due to the act or omission of another person; (ii) was due to an accident beyond the person's control; or (iii) occurred in spite of the fact that due diligence and all necessary reasonable precautions had already been taken.

#### Regulatory Action

14 The Bill will have provisions to enable SFA to take regulatory action, such as financial penalties, suspending or revoking licences, if non-compliances are found. This will see SFA decriminalising non-compliances that are less egregious in nature and instead take regulatory action if they are committed. In this way, SFA can strike a better balance between assuring food safety and reducing unnecessary compliance costs for less serious infringements by giving quicker closure to investigations and without resulting in criminal convictions.

#### Strengthening of Penalty Framework for Offences

15 Complementing the move to decriminalise less egregious non-compliances, the Bill will rationalise the penalties across existing Acts. Currently, the penalties for food safety offences are markedly different across different Acts even though the offences are similar in substance. The maximum penalty is also raised to be consistent with the existing penalties in the Wholesome Meat and Fish Act 1979, which is the highest among existing food legislation. This will ensure continued deterrent effect as Singapore's living standards have increased and considering the trend in sentencing by courts.

16 Further, a two-tier offence system will be introduced, where the offences are divided generally into the "mental" and/or "physical" elements<sup>6</sup>. Offences committed "knowingly" will attract a higher punishment upon conviction, where the prosecution has to prove this mental

---

<sup>6</sup> In order to secure a conviction for both "strict liability" and "knowingly" offences, the prosecution must prove the offence beyond reasonable doubt. This is the standard of proof for every criminal offence in Singapore. In respect of a "strict liability" offence, the prosecution only needs to prove the physical element(s) of the offence. In contrast, for a "knowingly" offence, the prosecution must take an additional step of proving the requisite mental element i.e., he committed the offence knowingly (via a confession) or he ought reasonably to know (via circumstantial evidence) at the time of the commission of the offence.

element. "Strict liability" offences which attracts a lower punishment upon conviction is where the prosecution has to prove only the physical elements of the offence.

### Disqualification

17 The Bill will introduce new provisions to disqualify the person whose SFA licence has been revoked, from holding the same licence issued for the specific type of controlled item for a specified period.

18 Further, an associate of a disqualified person will also have that association taken into consideration when SFA assesses whether a licence should be granted to the associate. A disqualified person should not be allowed to circumvent his/her disqualification by making use of their associates.

### Traceability Obligations

19 A robust traceability system along the food supply chain is necessary for a swift response to recall food in the event of any food safety incident. SFA currently does not mandate the implementation of a traceability system, nor prescribe the specific requirements of the traceability system e.g. the type of records that should be kept to trace imported, manufactured and supplied food products.

20 All licensed importers of food (including pre-packed food additives for retail sale), regulated food contact articles<sup>7</sup> and animal feed<sup>8</sup> will be required to keep proper records of certain controlled items to facilitate traceability and timely recalls. Information to be kept includes data to identify, locate and trace (i) incoming ingredients or products (one step back); and (ii) where the outgoing products are distributed (one step forward), unless the transaction is to final consumers.

21 The Bill will also have new provisions to require all licensed importers of food (including pre-packed food additives for retail sale), regulated food contact articles and animal feed to: (i) provide records within 24 hours when requested, and (ii) complete recalls of food or food products within the timeframe as directed by SFA (e.g., within 48 hours). If a licensed importer initiates a voluntary recall on the grounds that (i) the food might be unsafe or unsuitable, (ii) the regulated food contact article might be dangerous for use with food, or (iii) the animal feed is not fit for purpose, it must also notify SFA within 24 hours. Further, to strengthen the robustness of processes, the Bill will have provisions for SFA to work with industry to conduct simulations to test recall procedures when required.

22 The above-mentioned provisions will enable products with safety concerns to be removed from the market promptly so as to protect consumers. SFA will engage affected licensees before implementing such requirements.

---

<sup>7</sup> As certain food contact articles might be dangerous to use with food.

<sup>8</sup> In view of the strong link between food and feed control; for example, undesirable substances in feed such as heavy metals, banned drugs could give rise to food safety concerns in local production of eggs and fish.

### Monitoring and Enforcement

23 Accompanying the new regulatory framework above, the Bill will also include clear and proportionate powers for authorised personnel to monitor, investigate and enforce against non-compliances. This includes the power to enter premises at a reasonable time in order to (i) observe activities within the premises, (ii) record the observations in physical (e.g., a sketch or report) or digital forms (e.g., a photograph or video) or (iii) require the provision of documents, samples, or information. There will be no forced entry into private residences. The authorised personnel will also be empowered to detain or seize materials if he or she reasonably believes the material is relevant to any offences being committed. Obstructing these authorised personnel in the discharge of their duties will be an offence.

24 To supplement internal resources for monitoring and enforcement purposes, the Bill will enable SFA to work on a whole-of-Government basis and appoint officers from other public sector agencies as well as trained individuals from the private sector. Their powers will be scoped to be commensurate with their expected roles and ensure that there is no overreach. If there are arrestable offences, SFA will call on the assistance of SPF.

### Appeals

25 The FSSB will include an appeal mechanism to the Minister of Sustainability and the Environment, against discretionary decisions made by SFA, Director-General (Food Administration) or Director-General (Food Security), where such decisions can adversely affect livelihoods or business viability. This would allow businesses and individuals aggrieved by the decisions to bring fresh evidence and ask the Minister, as an independent authority, to re-assess the merits of the decision taken.

26 In deciding on an appeal, the Minister can confirm or revoke the decision appealed against. Minister can also substitute or vary the decision appealed against, except when the decision is a direction issued by the Director-General (Food Administration) in his / her capacity as a technical expert. The Minister's decision on appeal (including a substituted decision) will be final.

27 To ensure consumer safety and safeguard national security interests, a fixed list of directions issued by the Director General (Food Administration) where compliance is required on an immediate basis, will be non-appealable.<sup>9</sup> These are time-limited measures (lasting only 10 days) to prevent or reduce serious danger to public health or imminent risk of death or serious illness, or a significant threat to supply sources of food for the general public.

28 The proposed provisions will streamline existing provisions across the eight existing Acts, strengthen the suite of regulatory tools, and provide clarity on: (i) the controlled items for which the import, export and transshipment require a SFA licence and permit, (ii) the requirements associated with these licences, (iii) the actions SFA can take in administering

---

<sup>9</sup> The list of non-appealable directions are (i) prohibition on supply of food or primary produce, (ii) recall of food; (iii) prohibition on movement of live animals into or out of affected premises to prevent spread of animal disease; and (iv) stopping supply of unwholesome drinking water and immediate remedial measures.



the licences, including the initiation of regulatory action against breaches for conditions of licence or enforcement against non-compliances.

29 SFA would like to assure traders that any new requirements will be implemented with lead time and in close consultation with the industry.

### **Request for Comments**

30 SFA invites feedback and comments on the proposed provisions. Please refer to the explanatory notes as well as the draft provisions of Parts 3, 7, 8, 12 and 13 in **Annex I**.

31 All submissions should be clearly and concisely written. They should provide a reasoned explanation for any proposed revisions. Please submit your feedback at <https://go.gov.sg/fssb-reach-part3>. Alternative, please send in your feedback to [fssb\\_engagement@sfa.gov.sg](mailto:fssb_engagement@sfa.gov.sg) using the template in **Annex III**.