

立法會
Legislative Council

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by the Administration)

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Bills Committee on Dutiable Commodities (Amendment) Bill 2000

Minutes of meeting
held on Thursday, 23 November 2000, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon James TO Kun-sun (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, JP
Hon HUI Cheung-ching
Hon CHAN Kwok-keung
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Mrs Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo

Member absent : Hon Eric LI Ka-cheung, JP

Public officers attending : Ms Esther LEUNG
Principal Assistant Secretary for the Treasury (Revenue)

Mr Donald CHEN
Assistant Secretary for the Treasury (R1)

Mr Simon WONG
Assistant Commissioner of Customs & Excise
(Administration & Excise)

Mr M M LAM
Senior Staff Officer (Office of Dutiable Commodities
Administration)

Miss Betty CHEUNG
Deputy Principal Government Counsel (Acting)

Clerk in attendance : Miss Odelia LEUNG
Chief Assistant Secretary (1)1

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Miss Becky YU
Senior Assistant Secretary (1)3

I Election of Chairman

Mr Kenneth TING, the member who had the highest precedence among members of the Bills Committee, presided at the election of Chairman and invited nominations for the chairmanship of the Bills Committee.

Mr HUI Cheung-ching nominated Mr CHAN Kam-kam and the nomination was seconded by Mr CHAN Kwok-keung. Mr SIN Chung-kai nominated Mr James TO and the nomination was seconded by Mr Andrew CHENG.

2. As there were two nominations, Mr Kenneth TING announced that the nominations be put to vote by a show of hands as agreed by members. Of the members present, five voted for Mr James TO and two voted for Mr CHAN Kam-lam. Mr TING therefore declared that Mr James TO was elected Chairman of the Bills Committee.

3. Mr James TO took over the chair.

II Meeting with the Administration

(Legislative Council Brief (Ref: FIN CR 6/3231/89), LC Paper Nos. CB(3) 104/00-01, LS 12/00-01, Appendices III and IV to CB(1) 194/00-01)

4. At the invitation of the Chairman, the Principal Assistant Secretary for the Treasury (Revenue) (PAS for Tsy (R)) highlighted the salient points in the Legislative Council (LegCo) Brief. She said that the Dutiable Commodities (Amendment) Bill 1999 (the 1999 Bill) was introduced into LegCo of the last term for the purpose of strengthening the enforcement and prosecution actions of the Customs and Excise Department (C&ED) against the supply, sale and use of illicit fuel. Amongst other proposals, the 1999 Bill sought to add a presumption provision in the Dutiable Commodities Ordinance (Cap. 109) (the Ordinance) to the effect that any light diesel

oil found in the fuel tank of a motor vehicle with a sulphur content in excess of the limit prescribed under the Air Pollution Control (Motor Vehicle Fuel) Regulation was presumed to be dutiable. While the then Bills Committee generally supported the need for the proposed presumption, some members expressed concern about its inadvertent impact on professional drivers who worked on shifts and adopted fuel from previous shifts without any knowledge about the source of fuel in their fuel tanks. In the light of members' concern, the Administration deleted the presumption proposal from the 1999 Bill and agreed to consult the transport trade and work out a proper record-keeping system to help drivers demonstrate the extent of their knowledge about the source of fuel in their vehicles before the proposal was re-submitted to LegCo. Since then, C&ED had consulted a total of 86 organizations and individuals representing different sectors of the trade. Given the positive response from the trade and the need to facilitate C&ED's enforcement actions against the use of illicit fuel, the Administration re-introduced the presumption proposal in the current Bill.

5. Mrs Miriam LAU queried the thoroughness of the consultation exercise given that only 15 out of the some 50 existing taxi associations had been consulted. In view of the large number of 150,000 professional drivers in Hong Kong, Mrs LAU expressed concern that not every professional driver, particularly those who had not joined any trade associations, was aware of the proposed presumption and the record-keeping system as well as the penalty in the event of non-compliance. The Assistant Commissioner of Customs & Excise (Administration & Excise) (AC of C&E (A&E)) explained that since the consultation exercise was carried out during the regular consultation between the Transport Department and individual trade associations, it was not possible for C&ED to consult all trade associations at the same time. Nevertheless, C&ED had printed 30,000 pamphlets on the guidelines on keeping proper fuelling records for distribution to all registered trade associations and their member drivers. Publicity would also be stepped up to facilitate a better understanding of professional drivers about the measures, including the need to keep the last three oil filling receipts for establishing the source of fuel in their fuel tanks, to be taken to avoid being implicated in the use of illicit fuel. Mrs LAU opined that apart from trade associations, consideration should be given to distributing the pamphlets to individual professional drivers through petrol filling stations. C&ED should also make use of broadcasting media to get the message across to the transport trade, such as putting up an Announcement in the Public Interest programme in television and radio. AC of C&E (A&E) took note of Mrs LAU's views.

6. Mr HUI Cheung-ching enquired about the number of prosecutions against the use of illicit fuel over the past three years. AC of C&ED (A&E) advised that there were 1,437 and 1,112 cases involving the use of illicit fuel in 1999 and during the period from January to August 2000 respectively. As most of these cases were related to the use of marked oil which was an offence in law, C&ED had successfully prosecuted 98% of those involved. He added that since the introduction of the mobile X-ray fluorescence analysers in August 2000 to detect the sulphur content in fuel, C&ED had inspected 1,407 vehicles and found that 44 and 154 drivers had used marked oil and light diesel oil with excessive sulphur content respectively. Of the 154 cases, C&ED had instituted prosecutions against 15 drivers who admitted using illicit fuel but no action could be taken against the remaining drivers since it was

difficult for C&ED to prove that the fuel in question was duty-not-paid. The inclusion of the presumption provision would help to address the problem.

7. Mr James TIEN expressed worries that the presumption proposal was contrary to the presumption of innocence enshrined in the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Basic Law. Mr Andrew WONG also enquired about the operation of the presumption proposal. AC of C&ED (A&E) advised that while it could be presumed that light diesel oil with an excessive sulphur content was dutiable by virtue of the presumption provision, prosecution would only be taken if there was no reasonable doubt. As the scope of the presumption was limited to the element of dutiability, PAS for Tsy (R) remarked that it would not contravene the human rights provisions of the Basic Law. The proposed presumption also satisfied the tests of rationality and proportionality in relation to statutory mandatory presumption of facts and was therefore consistent with the right to be presumed innocent guaranteed by the Hong Kong Bill of Rights Ordinance. She added that only in the absence of evidence to the contrary could proceedings under section 40 of the Ordinance be instituted. Besides, the question of whether or not a suspect should be convicted was a matter for the court to decide after taking into account all relevant factors, including whether the suspect knew the fuel was dutiable.

8. Referring to the guidelines on keeping proper fuelling records at Annex C to the LegCo Brief, Mr TIEN questioned the rationale behind the requirements for professional drivers to check the fuel tank whenever they took over a vehicle to ascertain any presence of reddish colour in the fuel and to ensure drivers of the previous shifts kept their last three oil filling receipts. AC of C&ED (A&E) advised that the purpose of the guidelines was to help professional drivers to avoid being implicated in illegal activities. They were advised to check the presence of reddish colour in the fuel as it was an offence in law to use marked oil. He also clarified that professional drivers would only be required to keep their own oil filling receipts for establishing the source of fuel. As to whether C&ED would consider providing a standard log sheet for vehicle owners to record the details of the names and duty hours of driver, odometer reading and fuelling records, AC of C&ED (A&E) said that the trade had already in place its own logging system.

9. Mr SIN Chung-kai and Mr Andrew WONG cautioned that people might be able to get round the presumption by diluting the illicit fuel. AC of C&ED (A&E) advised that the sulphur content of illicit light diesel oil might be 0.5% by weight which was ten times of the prescribed limit (0.05% by weight) and 100 times of the ultra low sulphur diesel oil (0.005% by weight) currently available from legitimate sources. In order to meet the prescribed limit, 94-98% of ultra low sulphur diesel oil had to be used to dilute the illicit fuel which rendered it unprofitable.

10. Mr SIN expressed concern that professional drivers might purchase duty-paid light diesel oil to obtain oil filling receipts but replaced the legitimate fuel with illicit fuel. AC of C&E (A&E) advised that this would unlikely be the case since transfer of fuel was a time-consuming process. Besides, the drivers concerned would be subject to prosecution if being caught for using illicit fuel. He reiterated that professional drivers who could produce oil filling receipts for establishing the source

of fuel would not be held liable even if the light diesel oil in the fuel tank of their vehicles was found to have a sulphur content higher than the prescribed limit. Mr WONG questioned the efficacy of the presumption provision under such circumstances. Miss CHOY So-yuk also pointed out that oil filling receipts might be subject to abuse as they did not register the licence numbers of vehicles. AC of C&ED (A&E) clarified that the object of the Bill was to facilitate investigation by C&ED rather than imposing undue pressure on professional drivers. He nevertheless undertook to liaise with oil companies on the feasibility of including licence numbers of vehicles on oil filling receipts as proposed by Ms CHOY. He said that it would also be useful if professional drivers used oil cards instead of cash for purchasing fuel.

11. Mr Kenneth TING asked how professional drivers could ensure that light diesel oil from legitimate sources complied with the prescribed limit. PAS for Tsy (R) advised that staff from the Environmental Protection Department conducted spot checks at petrol filling stations to ensure compliance. AC of C&ED (A&E) added that C&ED staff also checked the sulphur content of fuel stored in oil tanks of oil companies to determine the duty to be paid before the fuel left the terminals.

12. Mr SIN Chung-kai questioned why the presumption would not apply to light diesel oil in fuel tanks of cross-border vehicles entering Hong Kong from the Mainland even if such oil might have a sulphur content above 0.05% by weight. AC of C&ED (A&E) advised that under the Dutiable Commodities Regulations, light diesel oil in the fuel tank of any vehicle arriving from China, for the use of that vehicle, was exempt from duty up to the following prescribed limits, provided that it was not transferred to the fuel tanks of other vehicles for use:

Cylinder capacity of vehicle	Exemption
below 3,000 cubic centimeters (cm ³)	100 litres (L)
3,000 - 10,000 cm ³	200 L
over 10,000 cm ³	300 L

He added that the exempted limits were worked out having regard to the practical need of cross-border vehicle drivers who might have to travel a long way to and from the Mainland and Hong Kong within a short period of time. The Administration had consulted the transport trade in setting the exempted limits with reference to the cylinder capacity instead of the fuel tank capacity of vehicles to avoid possible abuse through enlargement of fuel tanks. The Chairman cautioned that the exemption might enable cross-border vehicle drivers to use illicit fuel in Hong Kong. AC of C&E (A&E) advised that this would unlikely be the case in view of the low light diesel oil price in the Mainland.

13. On the number of cross-border vehicles, PAS for Tsy (R) advised that as at April 2000, there were 41,000 cross-border vehicles of which 6,000 were motor vehicles. As fuel with a higher sulphur content emitted more particulates and sulphur oxides, the Chairman pointed out that cross-border vehicles might exacerbate the problem of air pollution in Hong Kong. Expressing similar concern, Mr James TIEN remarked that the situation would be further aggravated as the number of cross-border

vehicles increased. As cross-border vehicles arriving from the Mainland could easily get a refill of fuel after entering Hong Kong, Mr TIEN urged the Administration to discuss with the transport trade on the possibility of lowering the exemption limits with a view to reducing air pollution. His view was shared by Ms Emily LAU.

14. Mrs Miriam LAU considered it unfair to attribute the cause of air pollution to cross-border goods vehicles as these vehicles always moved round the container terminal in Kwai Chung and the public cargo working areas in the New Territories (NT) which were distant from the urban areas. Besides, the prevailing exempted limits were worked out after taken into account the practical need of the transport trade. She stressed that while efforts should be made to reduce air pollution, the livelihood of the transport trade should not be jeopardized. Ms Emily LAU however pointed out that there were millions of people living in NT who were vulnerable to air pollution. To tackle the problem, Ms LAU considered it necessary for the Administration to discuss with the transport trade to work out an acceptable solution. PAS for Tsy (R) replied that she was not in a position to comment on the subject as it fell within the purview of the Environment and Food Bureau (EFB). She informed that EFB had pledged in the 2000 policy objectives to formulate a proposal in 2001 to reduce the amount of fuel not meeting the local standards carried by cross-border vehicles.

15. Noting that disputes might arise between C&ED staff and professional drivers in the course of enforcement of the presumption provision, Mrs Miriam LAU asked if there was a channel through which disputes could be resolved expeditiously. AC of C&E (A&E) advised that apart from the existing 24-hour hotline, C&ED had set up an additional hotline to handle complaints against its staff on enforcement matters. Details of these hotlines had been included in the pamphlets on the use of legitimate oil for distribution to professional drivers. As to whether C&ED would consider changing the number of the 24-hour hotline to an easily remembered one, AC of C&ED (A&E) considered it not necessary as the public should be very familiar with the hotline which had been in existence for a long time.

16. Members then proceeded to examine the Bill clause by clause.

Clause 1. Short title

17. As the presumption provision would come into operation immediately after the enactment of the Bill, Mrs Miriam LAU cautioned that this would leave no time for publicity work to alert professional drivers of the presumption and the need to keep proper fuelling records. She urged that a grace period should be allowed before the Bill came into effect. The Chairman added that the Administration might consider including a commencement date of the Bill in clause 1. PAS for Tsy (R) noted the members' views and undertook to revert back to the Bills Committee on how best to take forward the Bill before the Administration decided when to resume the Second Reading debate on the Bill.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1) 239/00-01 on 29 November 2000.)

Clause 2. Presumptions

18. The Chairman and Mr Andrew WONG asked whether a professional driver would be held liable if he kept a tank of light diesel oil with excessive sulphur content in the back compartment of his vehicle. AC of E&C (A&E) advised that the presumption would not apply if such oil was not used as fuel for the vehicle.

19. As regards rebuttal against the presumption, the Deputy Principal Government Counsel (Acting) advised that under section 40 of the Ordinance, the presumption would stand in the absence of evidence to the contrary. In other words, the defence might rebut the presumption by adducing evidence to the contrary.

20. Members agreed that subject to the Administration's response on the commencement date of the Bill and the intended date for resumption of the Second Reading debate on the Bill, a report on the deliberations of the Bills Committee would be submitted to the House Committee for consideration.

21. There being no other business, the meeting ended at 12:20 pm.

Legislative Council Secretariat
2 January 2001