

**Letterhead of Hong Kong Special Administrative Region of the People's Republic of
China LEGISLATIVE COUNCIL SECRETARIAT LEGAL SERVICE DIVISION**

Appendix III

OUR REF LS/B/9/00-01
TELEPHONE 2869 9209
FACSIMILE 2877 5029

By Fax No. 28690189

8 November 2000

Mr. Ronny TONG, S.C.
Chairman
Hong Kong Bar Association
LG2 High Court
38 Queensway
Hong Kong

Dear Mr. TONG,

Dutiable Commodities (Amendment) Bill 2000

The above Bill has been gazetted on 27 October 2000 introducing a presumption provision on dutiability of light diesel oil based on its sulphur contents. I am scrutinizing the Bill on behalf of our Members. It is noted from the newspaper that you have made certain comments on this presumption provision to the effect that it may be inconsistent with the Hong Kong Bill of Rights Ordinance. A copy of the press report is attached for your reference.

I have taken the liberty to inform members of the House Committee about the press report which contained comments attributed to you and that I would be writing to you to seek your views on the matter. The House Committee has yet to decide whether to set up a Bills Committee.

I should be grateful if you would indicate whether you would let Members have your views in order to assist them in the consideration of this Bill. Your early reply is most appreciated.

Yours sincerely,

(Anita Ho)
Assistant Legal Adviser

Encl.
c.c. LA

汽油含硫超標 擬當私油入罪

律師：政府貪方便易害無辜

為打擊不法之徒利用過境車輛走私未完稅燃油進港銷售，香港海關將於新一屆立法會期建議修例，一旦發現本地汽車油缸內的燃油含硫量高出法定標準，海關便會推定有關司機使用有未完稅燃油，司機若未能證明自己使用的並非走私油，便會被定罪。

雖然海關相信此舉能有效打擊走私油活動，惟有關「推定條文」有違本港法律「無罪假設」的大原則，大律師公會主席湯家驊批評此舉無疑是與人權法相違背，極具爭議性。

有資深律師更批評政府並不值得只求「方便」打擊私油行動，而在重要的法制關口作出退讓，因為這樣不但容易害及無辜，更嚴重的是會損害香港法制。

新一屆立會期提修例

湯家驊表示，受人權法保障之下，任何人在未經定罪之前均屬無罪，無須以「證明自己無罪」的方法洗脫指控，該條針對走私油活動的推定條文明顯是違反了人權法。

而資深律師黃國桐更批評，此做法無疑是與香港的法制精神背道而馳，雖然昔日的販毒和貪污罪行亦以相類似的手法作出起訴，惟本港於九一年制定人權法案後，有關罪行條例亦已

作出修改，故該推定條文一經通過，法制就如開倒車。

他批評政府毋須為求有成效打擊走私油，而在重要的法制關口作出讓步。

湯家驊批評違人權法

不過，海關助理關長黃榮銘則解釋，由於走私燃油不單影響政府稅收，非法油站的配套設施亦不合消防規格，嚴重威脅消防安全；而且其含硫量之高更會造成空氣污染。

而有關推定條文則可使執法人員更有效地打擊及檢控非法燃油的供應和使用。

黃榮銘稱，由於國內燃油的含硫量較本港出售的燃油為高，而香港的車輛是禁止使用含硫量超過百分之零點零五的輕質柴油，故透過測試含硫量，便能成功分辨司機使用的是否未完稅走私油。

根據推定條文，發現汽車燃油含硫量高於標

準的有關司機，若未能出示入油資料證明並無使用未完稅走私油，便會被定罪。

違反應課稅條例最高刑罰為罰款一百萬元及監禁兩年，一經法庭定罪兩次，更會被吊銷駕駛執照六個月。

用私油可罰百萬囚兩年

不過，有關推定條文只適用於本地車輛，而持中港牌照的過境車輛，因工作關係經常要穿梭中港兩地，氣缸內儲有儲於內地的燃油並不出奇，故不受所限。

海關表示，今年首六個月所作出的五十七次打擊非法燃油行動中，共檢獲了五十八萬七千八百公升非法燃油。

不過，由於海關所檢獲的非法燃油並非完全屬未完稅，另加上部分走私燃油的不法之徒仍未落網，故海關難以估計政府在當中的稅收損失。

Letterhead of HONG KONG BAR ASSOCIATION

10th November 2000

Ms. Anita Ho
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong.

Dear Ms Ho,

Re: Dutiable Commodities (Amendment) Bill 2000

Thank you for your letter of 8th November 2000 for drawing my attention to the press report.

I honestly cannot remember the interview. All that I can recall is that I was asked a general hypothetical question on the issue of presumption and I offered the opinion that generally speaking any presumption of guilt will be contrary to the presumption of innocence enshrined in the Bill of Rights and the Basic Law.

As to whether the proposed legislation does in fact offend the Bill of Rights and the Basic Law, the Bar will need to study carefully the provision in question before we are in a position to offer any comment.

In this regard, may I remind you that sufficient time must be allowed to enable us to consider any proposed legislation before we are in a position to offer any comment.

Ronny K.W. Tong, S.C.
Chairman

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China LEGISLATIVE COUNCIL SECRETARIAT LEGAL SERVICE DIVISION**

OUR REF : LS/B/9/00-01
TELEPHONE: 2869 9209
FACSIMILE : 2877 5029

By Post and
By Fax No. 28690189

15 November 2000

Mr. Ronny TONG, S.C.
Chairman
Hong Kong Bar Association
LG2 High Court
38 Queensway
Hong Kong

Dear Mr. TONG,

Dutiable Commodities (Amendment) Bill 2000

Thank you for your very prompt reply dated 10 November 2000. Please be informed that members in the House Committee of 10 November 2000 had decided to form a Bills Committee to scrutinize the Bill. The first meeting is scheduled to be held on 23 November 2000. I have taken the liberty to pass our correspondences to the Clerk to the Bills Committee for the information of the members. The Clerk would probably contact you direct later should members of the Bills Committee wish to invite submissions.

Yours sincerely,

(Anita Ho)
Assistant Legal Adviser

c.c. LA

Letterhead of HONG KONG BAR ASSOCIATION

By fax and by delivery
(fax: 2877-5029)

Your Ref: LS/B/9/00-01

17th November 2000

Ms. Anita Ho
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Ms Ho,

Re: Dutiable Commodities (Amendment) Bill 2000

Further to my letter to you dated 10th November 2000 on the Dutiable Commodities (Amendment) Bill which was considered at the Bar Council Meeting yesterday and the Bar have no objection to the proposed amendments.

Yours sincerely,

Ronny Tong, SC
Chairman

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Please Address All Correspondence to the Bar Secretariat.