

立法會
Legislative Council

LC Paper No. CB(1)1944/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/07

Bills Committee on Trade Descriptions (Amendment) Bill 2007

**Minutes of fifth meeting on
Tuesday, 6 May 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming, JP (Chairman)
Hon Margaret NG
Hon SIN Chung-kai, SBS, JP
Hon Vincent FANG Kang, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
- Member absent** : Hon Audrey EU Yuet-mee, SC, JP
- Public Officers attending** : Agenda item II

Ms Annie CHOI Suk-han, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)³

Mr Luke AU YEUNG Ho-lok
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)⁶

Mr CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

Mr Gilbert MO Sik-keung
Deputy Law Draftsman
Department of Justice

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)6

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Action

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)1270/07-08 -- Minutes of the meeting held on 10 April 2008)

The minutes of the meeting held on 10 April 2008 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)1423/07-08(01) -- Assistant Legal Adviser's letter dated 30 April 2008 to the Administration

LC Paper No. CB(1)1264/07-08(01) -- List of follow-up actions arising from the discussion on 10 April 2008 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)1264/07-08(03) -- Assistant Legal Adviser's letter dated 11 April 2008 to the Administration

LC Paper No. CB(1)1417/07-08(01) -- Administration's response to LC Paper No. CB(1)1264/07-08(01) and LC Paper No. CB(1)1264/07-08(03)

LC Paper No. CB(1)1264/07-08(05) -- Provisions under existing legislation that are similar in nature to the proposed section 13C of the Bill provided by the Assistant Legal Adviser

LC Paper No. CB(1)1205/07-08(01) -- Marked-up copy of the Bill showing the amendments to be proposed by the Administration prepared by the Legal Service Division (as at 3 April 2008)

LC Paper No. CB(3)250/07-08 -- The Bill

LC Paper No. CB(1)1185/07-08(04) -- Draft Committee Stage amendments proposed by the Administration)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken arising from the discussion at the meeting

Proposed section 13A and the draft Committee Stage amendments (CSAs) proposed by the Administration

3. Concern had been raised about the use of the phrase "readily comprehensible" ("可輕易閱覽") and the word "apprehend" ("掌握") in the English and Chinese versions of the CSAs to the proposed section 13A. The Administration was requested to consider members' views and refine the drafting to better reflect the policy intent.

4. There was concern that the proposed new section 13A(3) could not address the situation under which a retailer displayed a sign which only indicated the price of goods, and another sign indicating that the price shown on the sign was set by reference to a specific unit of quantity. The Administration was requested to consider members' views and refine the drafting.

Proposed section 13C

5. Concern had been raised about the drafting of the Chinese text of the new section 13C(5) in the CSA proposed by the Administration. The Administration was requested to consider members' views and refine the drafting.

Part 2 of the proposed Schedule 2

6. Concern had been raised about inconsistencies in the definitions of "digital audio player" and "portable multimedia player" in the Bill and the proposed Trade Descriptions (Provision of Information on Regulated Electronic Products) Order. The Administration was requested to consider members' views and refine the drafting.

Way forward

7. The Bills Committee had completed the clause-by-clause examination of the Bill and considered the CSAs proposed by the Administration. The Administration was requested to take follow-up action on paragraphs 3 to 6 above and provide the draft CSAs for members' consideration by circulation. It was agreed that if members did not raise queries on the Administration's draft CSAs,

the Bills Committee could conclude its deliberations.

8. The Administration said that it intended to resume Second Reading debate on the Bill on 18 or 25 June 2008. Members noted that the corresponding dates of the House Committee meetings on which the Bills Committee would report its deliberations were 30 May or 13 June 2008. The deadlines for giving notice of moving CSAs were 7 or 16 June 2008.

(Post-meeting note: The draft CSAs proposed by the Administration was circulated to members vide LC Paper No. CB(1)1644/07-08 issued on 26 May 2008. The Administration subsequently advised that it intended to resume Second Reading debate on the Bill on 18 June 2008. Members were notified of the details vide LC Paper No. CB(1)1644/07-08 issued on 26 May 2008.)

III Any other business

9. There being no other business, the meeting ended at 9:45 am.

Council Business Division 1
Legislative Council Secretariat
18 June 2008

**Proceedings of the fifth meeting of
the Bills Committee on
Trade Descriptions (Amendment) Bill 2007
on Tuesday, 6 May 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000145 – 000217	Chairman	(a) Welcoming remarks by the Chairman (b) Confirmation of minutes of the meeting held on 10 April 2008 (LC Paper No. CB(1)1270/07-08)	
000218 – 002134	Chairman Administration Assistant Legal Adviser (ALA) Mr Vincent FANG Mr WONG Ting-kwong	<p>The Administration's briefing on its responses to the follow-up actions arising from the discussion of the meeting on 10 April 2008 and to ALA's letters dated 11 and 30 April 2008 (LC Paper Nos. CB(1)1264/07-08(01) & (03), CB(1)1417/07-08(01) and CB(1)1423/07-08(01))</p> <p><u>Clause 7 – Proposed section 13A(1) and (2) and the draft Committee Stage amendments (CSAs) proposed by the Administration</u></p> <p>(a) ALA's observation as follows:</p> <p>(i) Concern about the appropriateness of the phrase "readily comprehensible" ("可輕易閱覽") in CSAs to the proposed section 13A(1) in reflecting the policy objective. If the policy objective was that a price sign should be easily understood by consumers, the phrase "可容易理解" should be used in place of "可輕易閱覽"; if, however, the policy objective was that a price sign should be easily read, "readily legible" ("清楚易讀"/"清晰可閱") should be used in place of "readily comprehensible"</p> <p>(ii) In the CSAs to the proposed section 13A(2)(b)(ii), instead of using "apprehend", consideration should be given to use "comprehend" in order to achieve consistency with the phrase "readily comprehensible" in the CSAs to the proposed section 13A(1); and</p> <p>(iii) Suggestion that the Chinese text for "manner of presentation" in the CSAs to the proposed section 13A(2)(b)(ii) be changed to "顯示方式"</p> <p>(b) The Administration's response as follows:</p> <p>(i) The Administration intended to change the Chinese text of "readily comprehensible" to</p>	The Administration to consider and take

Time marker	Speaker	Subject(s)	Action required
		<p>"清楚易明", the criteria of which had been set out in the CSAs to the proposed section 13A(2)(b);</p> <p>(ii) The word "apprehend" was used when referring to the content of the price sign; and</p> <p>(iii) The Administration's agreement to change the Chinese text for "manner of presentation" to "顯示方式"</p>	<p>follow-up action as per paragraph 3 of the minutes</p>
<p>002135 – 003809</p>	<p>Administration Chairman ALA Mr Vincent FANG</p>	<p><u>Clause 7 – Proposed new section 13A(3)</u></p> <p>(a) ALA's concerns as follows:</p> <p>(i) The proposed new section 13A(3) could not address the situation under which a retailer displayed a sign that only indicated the price of goods, and another sign indicating that the price shown on the sign was set by reference to a specific unit of quantity;</p> <p>(ii) Drafting of the proposed section 13A(3)(a) was the same to the proposed section 13A(1)(a); and</p> <p>(iii) Suggestion that the proposed section 13A(3)(a) should be changed to "displays ... a sign that indicates the price of any goods which is intended to be set by reference to a unit of quantity" to reflect the Administration's intention that the price must necessarily be intended to be set by reference to a unit of quantity, but the relevant unit of quantity was shown on another sign rather than on the same sign which indicated the price of the goods</p> <p>(b) Administration's response that the proposed section 13A(1) should be read together with 13A(2), and its undertaking to refine the drafting of the proposed section 13A(3)(a) in the light of ALA's comments</p>	<p>The Administration to consider and take follow-up action as per paragraph 4 of the minutes</p>
<p>003810 – 004417</p>	<p>Chairman ALA Administration</p>	<p><u>Clause 7 - Proposed section 13C</u></p> <p>(a) The Administration's briefing on its response to address the concern on possible conflict between the proposed section 13C(2) in the Bill and the defence provision in section 13C(5) proposed in the Administration's CSAs</p> <p>(b) ALA's explanation that given that the offence under the proposed section 13C(2) was regulatory in nature, it was likely that the offence would be construed by the courts as a strict liability</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>offence. Indeed, it was the Administration's intention that the offence was one of strict liability. While at common law, the prosecution was required to prove all the elements of an offence, in strict liability offences, it was not necessary for the prosecution to prove the mental element or knowledge in respect of one or more elements of the offence concerned. A person could be held liable for the offence under the proposed section 13C(2) when the elements of the offence set out in the paragraphs (a) to (c) of the proposed section were proved. The proposed section 13C(5) would provide a defence for a person charged with the offence under section 13C(2). It had been held by the courts that strict liability offences were compatible with the presumption of innocence</p>	
004418 – 004735	Chairman Administration	<p><u>Proposed section 2(1)- proposed paragraphs (k) – (p) of the definition of "trade description" and the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order</u></p> <p><u>Part 2 of the proposed Schedule 2</u></p> <p>Briefing by the Administration on its responses to the concerns raised on the above provisions</p>	
004736 – 005622	Chairman Ms Margaret NG Administration Mr WONG Ting-kwong	<p>(a) Ms Margaret NG's views on the appropriateness of using words "comprehend" and "apprehend" in the CSAs to the proposed section 13A</p> <p>(b) The Administration's undertaking to refine the drafting of the proposed section 13A to better reflect the policy intent</p>	The Administration to consider and take follow-up action as per paragraph 3 of the minutes
005623 – 010520	Chairman ALA Administration	<p>Clause-by-clause examination of the Bill and consideration of CSAs proposed by the Administration (LC Paper Nos. CB(1)1205/07-08(01) and CB(1)1185/07-08(04))</p> <p><u>Clause 7 – Proposed section 13C(2) to (4)</u></p> <p>(a) Members did not raise any query</p> <p><u>Clause 7 – New section 13C(5)</u></p> <p>(b) Chairman's concern about the drafting of the Chinese text of the new section 13C(5) in the draft CSA proposed by the Administration</p> <p>(c) The Administration's undertaking to review the</p>	The Administration to consider and take follow-up action as per paragraph 5 of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>drafting</p> <p><u>Clause 8 – Proposed section 18</u></p> <p>(d) Members did not raise any query</p>	
010521 – 011124	Chairman Administration ALA	<p><u>Clauses 9 and 10– Proposed Schedule 1 & Schedule 2</u></p> <p>(a) ALA's concern about inconsistencies in the definitions of "digital audio player" and "portable multi-media player" in the Bill and the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order gazetted on 18 April 2008</p> <p>(b) The Administration's undertaking to review the drafting</p>	The Administration to consider and take follow-up action as per paragraph 6 of the minutes
011125 – 011412	Chairman Administration	Members' agreement on the way forward	