

立法會
Legislative Council

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by the Administration)

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**Subcommittee to Study Six Items of Subsidiary Legislation under
the Trade Descriptions Ordinance Gazetted on 18 April 2008**

**Minutes of second meeting on
Thursday, 15 May 2008, at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Fred LI Wah-ming, JP
Hon SIN Chung-kai, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung

Member attending : Hon Alan LEONG Kah-kit, SC

Members absent : Hon Vincent FANG Kang, JP
Hon Ronny TONG Ka-wah, SC

Public Officers attending : 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

Attendance by invitation : Hong Kong Tourism Industry Employees General Union

Mrs TANG YU Li-hua
Board member

Mr LAU Kai-ming
Vice-Chairman

Hong Kong & Kowloon Jade Merchants Union Association

Ms CHENG Lai-wah
Vice-Chairman

Consumer Council

Ms Connie LAU Yin-hing
Chief Executive

Mr Simon CHUI
Senior Legal Counsel

Hong Kong Jade Wholesalers & Retailers Association Limited

Ms Winnie SO Wing-kam
Chairman

Mr Peter CHAN Wing-yun
Vice-Chairman

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

Staff in attendance : Ms Connie FUNG
Assistant Legal Advisor 3

Ms Debbie YAU
Senior Council Secretary (1)1

Ms Michelle NIEN
Legislative Assistant (1)9

Action

I Meeting with deputations and the Administration

Submissions from deputations

- (LC Paper No. CB(1)1515/07-08(01) -- Submission from Hong Kong Tourism Industry Employees General Union (Chinese version only)
- LC Paper No. CB(1)1515/07-08(02) -- Submission from Consumer Council
- LC Paper No. CB(1)1515/07-08(03) -- Submission from The Hong Kong Electronic Industries Association Limited (Chinese version only)
- LC Paper No. CB(1)1515/07-08(04) -- Submission from Hong Kong General Chamber of Commerce (English version only)
- LC Paper No. CB(1)1522/07-08(01) -- Submission from German Industry and Commerce Ltd. (English version only)
- LC Paper No. CB(1)1522/07-08(02) -- Submission from The Law Society of Hong Kong (English version only)
- LC Paper No. CB(1)1522/07-08(03) -- Submission from Hong Kong Trade Services Council (Chinese version only)
- LC Paper No. CB(1)1522/07-08(04) -- Submission from The Hong Kong Chinese Enterprises Association (Chinese version only)

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up action required to be taken by the Administration

Trade Descriptions (Provision of Information on Natural Fei Cui) Order

2. The Administration was requested to consider requiring a retailer selling fei cui articles to display prominently a notice setting out the meaning of the term "fei

cui" at the point of supply to facilitate consumers' understanding of the term.

Date of next meeting

3. Members agreed to commence examination of the provisions of the six items of subsidiary legislation at the next meeting to be held on 20 May 2008, at 8:30 am. The Chairman reminded the Administration to provide its proposed amendments to the subsidiary legislation as early as possible.

II Any other business

4. There being no other business, the meeting ended at 12:25 pm.

Council Business Division 1
Legislative Council Secretariat
30 May 2008

**Proceedings of the second meeting of
the Subcommittee to Study Six Items of Subsidiary Legislation under
the Trade Descriptions Ordinance Gazetted on 18 April 2008
on Thursday, 15 May 2008, at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000319 – 000505	Chairman	Welcoming remarks by the Chairman	
000506 – 000929	Chairman Hong Kong Tourism Industry Employees General Union	<u>Meeting with deputations</u> Presentation of views (LC Paper No. CB(1)1515/07-08(01))	
000930 – 001113	Chairman Hong Kong & Kowloon Jade Merchants Union Association (JMUA)	Presentation of views as follows: (a) Support for the Trade Descriptions (Provision of Information on Natural Fei Cui) Order (Natural Fei Cui Information Order) in general; (b) Enquiry on the party responsible for the display of the notice at the point of supply of natural fei cui; and (c) Stress on the importance of enhancing publicity on the new requirement and strengthening enforcement on dishonest retailers	
001114 – 001303	Chairman Consumer Council (CC)	Presentation of views (LC Paper No. CB(1)1515/07-08(02))	
001304 – 001340	Chairman Hong Kong Jade Wholesalers & Retailers Association Limited (JWRAL)	Presentation of views as follow: (a) Support for the Natural Fei Cui Information Order to avoid misunderstanding by consumers on the term "natural fei cui"; and (b) The Natural Fei Cui Information Order would benefit honest retailers selling natural fei cui	
001341 – 002100	Chairman Ms Audrey EU JMUA CC JWRAL	(a) Ms Audrey EU's concerns/enquiry as follows: (i) With a view to protecting the interest of all consumers, retailers selling "natural fei cui" and those selling "fei cui" should be required to display prominently a prescribed notice setting out the meaning of "natural fei cui" and "fei cui" at the point of supply; (ii) The wording of the notice as prescribed in the Schedule to the Natural Fei Cui	

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		<p>Information Order did not convey specific meaning on the terms "natural fei cui" and "fei cui" to general consumers; and</p> <p>(iii) Enquiry about complaints against sales malpractices other than those covered by the Trade Descriptions (Amendment) Bill 2007 (the Amendment Bill) and the six items of subsidiary legislation gazetted on 18 April 2008 (the subsidiary legislation)</p> <p>(b) JMUA's explanation that fei cui being sold at the market was mainly classified into three types:</p> <p>(i) Type A: fei cui not having been artificially colored, nor impregnated with resin, i.e. "natural fei cui";</p> <p>(ii) Type B: fei cui not having been artificially coloured but impregnated with resin; and</p> <p>(iii) Type C: fei cui having been artificially coloured</p> <p>(c) JMUA's view that more detailed information highlighting the characteristics of "natural fei cui" should be provided in the notice to educate consumers</p> <p>(d) CC's response that the Amendment Bill and the subsidiary legislation had addressed problems associated with most complaints on sales malpractices received by CC in recent years. Other complaints were mainly related to sales malpractice in the services sector, in particular in the telecommunications and pay-TV service markets. CC had published a report entitled "Fairness in the Marketplace for Consumers and Business", recommending a comprehensive prohibition provision against unfair trade practices covering all consumer goods and services</p>	
002101 – 002516	Chairman Administration JMUA	<p>(a) The Administration's preliminary response to the views of deputations and members as follows:</p> <p>(i) The Natural Fei Cui Information Order required a retailer selling natural fei cui to display a notice in specified size and with specified content;</p> <p>(ii) The Customs and Excise Department (C&ED) would be responsible for</p>	

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		<p>enforcing the requirements under the subsidiary legislation; and</p> <p>(iii) According to the industry, using "non-natural fei cui" for Type B and Type C fei cui articles might attach a negative label on the articles and adversely affect the business of concerned retailers</p> <p>(b) JUMA's concern that using the term "fei cui" for Type B and Type C fei cui would be unfair to retailers selling "natural fei cui"</p>	
002517 – 003100	Chairman Ms Audrey EU Administration	<p>(a) Ms Audrey EU's views/enquiry as follows:</p> <p>(i) Consumers should be provided with information on different types of fei cui sold in the market;</p> <p>(ii) The Natural Fei Cui Information Order appeared to target at retailers of natural fei cui only. Retailers selling Type B and Type C fei cui should also be regulated; and</p> <p>(iii) Whether outlets usually sold one or more types of fei cui</p> <p>(b) The Administration's advice as follows:</p> <p>(i) The subsidiary legislation sought to regulate retailers selling Type B and Type C fei cui articles by prohibiting them from using the term "natural fei cui" in the sale of their articles;</p> <p>(ii) The notice required to be displayed by retailers selling "natural fei cui" could help educate consumers about the difference between "natural fei cui" and "fei cui". Consumers might not be interested in reading detailed descriptions regarding all three types of fei cui and could be confused by the technical terms used; and</p> <p>(iii) The trade had reservation about using "non-natural fei cui" for Type B and Type C fei cui. It agreed to use the term "fei cui" to refer to Type B and Type C fei cui</p>	
003101 – 004319	Chairman Mr WONG Ting-kwong JMUA JWRAL	<p>(a) Mr WONG Ting-kwong's views/enquiry as follows:</p> <p>(i) Concern that dishonest traders selling mainly Type B and Type C fei cui articles but had very few articles of Type A fei cui</p>	

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	Administration	<p>might put up the notice at the shop with a view to inducing consumers to believe that all articles sold at the shop were "natural fei cui"; and</p> <p>(ii) Enquiry about the price levels of the three types of fei cui</p> <p>(b) The Administration's clarification as follows:</p> <p>(i) Besides displaying the prescribed notice, retailers selling "natural fei cui" articles were required to issue to consumers an invoice or receipt on the article including a description of the article as "natural fei cui";</p> <p>(ii) Retailers selling only Type B and Type C fei cui articles would not need to put up the prescribed notices for "natural fei cui"; and</p> <p>(iii) The definition of "fei cui" and "natural fei cui" had been provided in the Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation (the Definition Regulation). The Schedule to the Natural Fei Cui Information Order had referred to the definitions of "fei cui" and "natural fei cui" in the Definition Regulation</p> <p>(c) JMUA's advice/views as follows:</p> <p>(i) All JMUA's members were selling Type A fei cui only. In general, the prices of Type A fei cui articles were much higher; and</p> <p>(ii) To combat the malpractice of dishonest retailers misrepresenting Type B and Type C fei cui articles as "natural fei cui" articles, retailers should be required to issue a detailed invoice or receipt in respect of every article of "natural fei cui" supplied</p> <p>(d) JWRAL's views as follows:</p> <p>(i) Supported the proposed terminology for "natural fei cui" and "fei cui" because classification of Types A, B and C fei cui was not recognized internationally; and</p> <p>(ii) Some Type B fei cui could be more expensive than Type A fei cui</p>	

Time marker	Speaker	Subject(s)	Action required
004320 – 0043	Mr WONG Ting-kwong Chairman Administration JWRAL	<p>(a) Mr WONG Ting-kwong's view that it would be clearer to set out the differences between "natural fei cui" and "fei cui" in the same notice</p> <p>(b) The Administration's advice that the prescribed notice would spell out the difference between the two as the notice would state that 'fei cui may be described as "natural" only if it has not been subjected to any treatment or process which altered its crystalline structure or original colour'</p> <p>(c) JWRAL's support for the Natural Fei Cui Information Order</p>	
004958 – 010023	Chairman Mr Andrew LEUNG Administration	<p>(a) Mr Andrew LEUNG's views and concerns as follows:</p> <p>(i) Retailers of "fei cui" should also be required to display relevant notices; and</p> <p>(ii) Reflection of the concern raised by Hong Kong Trade Services Council (HKTSC) that small retailers without computer systems would have difficulties in complying with the requirement under the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (the Regulated Electronic Products Information Order) to issue an invoice or receipt containing specified particulars (including description of the regulated electronic product, the core features, availability or otherwise of after-sale services and details of the transaction) at the time of transaction. His urge for the Administration to balance the interests of the consumers and the retailers</p> <p>(b) The Administration's responses that under the new requirement, suppliers of regulated electronic products were required to issue an invoice or receipt containing eight items of information, the first five, including the name and address of the supplier, the price, the date of transaction, brand name of the product and the model number, were already information provided in invoices or receipts currently issued by retailers. If the place of manufacture of the product was unknown to the retailers, they could just state so in the invoice or receipt. The requirement was to discourage retailers from inducing customers to</p>	

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		purchase the product by providing misleading information such as the availability of after-sale services	
0110024 – 011110	Chairman Mr Fred LI Administration JWRAL JMUA	<p>(a) Mr Fred LI's suggestion that the term "artificially treated fei cui" could be used for fei cui which had been artificially coloured</p> <p>(b) The Administration's responses as follows:</p> <p>(i) Fei cui impregnated with resin were not "natural fei cui" because its crystalline structure had been altered;</p> <p>(ii) The use of the terms "natural fei cui" and "fei cui" had been agreed by the trade; and</p> <p>(iii) The Administration's undertaking to keep the implementation of the Natural Fei Cui Information Order under review and introduce necessary amendments to strengthen the regulation if confusion between "natural fei cui" and "fei cui" was found</p> <p>(c) JWRAL's and JMUA's views on the use of "fei Cui" for Type B and Type C articles. JMUA's further view on the relevant parties to be consulted on the use of the term</p>	
011111 – 012153	Chairman Ms Audrey EU Administration	<p>(a) Ms Audrey EU's views as follows:</p> <p>(i) Concern that retailers selling Type B and Type C fei cui articles should also be required to put up notices to facilitate consumers to make informed purchase decisions; and</p> <p>(ii) The wording of the prescribed notice as provided in paragraph (a) of the Schedule to the Natural Fei Cui Information Order did not convey any meaningful information to consumers. The notice should help educate consumers on the difference between Type A and Type B/C fei cui</p> <p>(b) The Administration's responses as follows:</p> <p>(i) There were practical difficulties for some retailers, who were selling Type B and Type C fei cui articles in small stalls on the streets, to comply with the requirement of displaying the notice;</p> <p>(ii) Verbal representations by retailers</p>	The Administration to consider and take follow-up action as per paragraph 2 of the minutes

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		<p>describing their articles as "natural fei cui" would also be subject to regulation of the Definition Regulation and hence the Trade Descriptions Ordinance (Cap. 362) (TDO); and</p> <p>(iii) The statutory definitions of "natural fei cui" and "fei cui" and the criteria regarding their composition had been set out in the Definition Regulation. Reference to these definitions were made in the Schedule to the Natural Fei Cui Information Order</p>	
012154 – 012259	Chairman JWRAL	<p>(a) Chairman's remark that consumers could obtain more information about natural fei cui and fei cui by raising questions to the salespersons at the shop</p> <p>(b) JWRAL's advice that it would organize training for salespersons of the trade to enhance their professional knowledge on natural fei cui and fei cui</p>	
012300 – 013025	Chairman Administration	<p><u>The Administration's responses to concerns raised in submissions from organizations not attending the meeting</u></p> <p><i>German Industry and Commerce Ltd. (LC Paper No. CB(1)1522/07-08(01))</i></p> <p>(a) Requiring retailers to issue an invoice or receipt containing specified particulars at the time of transaction could deter dishonest retailers from providing false descriptions about the product</p> <p><i>The Law Society of Hong Kong (LC Paper No. CB(1)1522/07-08(02))</i></p> <p>(b) The Regulated Electronic Products Information Order would apply to second-hand electronic products as well as parallel-imported products</p> <p><i>HKTSC (LC Paper No. CB(1)1522/07-08(03))</i></p> <p>(c) HKTSC's proposal of attaching warranty card on the product, the product specification and user manual etc. to the invoice or receipt could not effectively protect consumers from retailers' deceptive acts. By providing information on the core features and availability or otherwise of after-sale services in the invoice or receipt, consumers could read</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the information at the time of the transaction. The warranty card, and user guide/product specification were usually contained inside the packing of the product and consumers could not raise enquiries in a timely manner</p> <p>(d) Information on the invoice or receipt could be stated in Chinese or English. The information could be hand-written, computer-printed, or sealed in chop</p> <p><i>Hong Kong General Chamber of Commerce (LC Paper No. CB(1)1515/07-08(04))</i></p> <p>(e) Regarding the concern that the subsidiary legislation would place all legal responsibilities on the retailers, it should be noted that the retailers had the obligation to inform consumers of the details of the products as manufacturers and importers did not interact with consumers direct. The retailers could request the manufacturers/importers to provide the relevant information on the regulated electronic products;</p> <p>(f) The required information was very basic, and should be readily available to the retailers. It would take retailers only a bit more time to issue the specified invoice or receipt</p> <p><i>The Hong Kong Chinese Enterprises Association (LC Paper No. CB(1)1522/07-08(04))</i></p> <p>(g) It was not appropriate to use "jadeite" for "fei cui" as jadeite was just one of the three components of which "fei cui" was composed</p>	
013026 – 013917	Chairman Mr WONG Ting-kwong Administration Assistant Legal Advisor (ALA)	<p>(a) In reply to Mr WONG Ting-kwong, the Administration's responses as follows:</p> <p>(i) A defence was available for a retailer under section 26 of TDO if he supplied false or misleading information on the product to consumers relying on the information provided by manufacturer/importer;</p> <p>(ii) The provisions in TDO applied to the retail as well as supply levels unless specified otherwise; and</p> <p>(iii) Instead of prosecuting the retailers for false or misleading trade descriptions, C&ED might consider prosecuting the manufacturer/importer if there was</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>evidence to show that the retailer had relied on the information provided by the manufacturer/importer</p> <p>(b) ALA's elaboration as follows:</p> <p>(i) The subsidiary legislation targeted at sale at retail level. The retailer could rely on the defence under section 26 of TDO when charged with an offence in relation to false trade descriptions; and</p> <p>(ii) Under section 7 of TDO, any person, including the manufacturer/supplier, who in the course of any trade or business, applied a false trade description to any goods committed an offence</p>	
013918 – 014012	Chairman Administration	<p>(a) Chairman's request for the Administration to provide its proposed amendments early for timely circulation to members</p> <p>(b) Date and purpose of the next meeting</p>	