

立法會
Legislative Council

LC Paper No. CB(1)1847/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/SS/8/07

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

**Minutes of third meeting on
Tuesday, 20 May 2008, at 8:30 am
in Conference Room A 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 Vincent FANG Kang, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

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

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

Action

I Confirmation of minutes and matters arising
(LC Paper No. CB(1)1566/07-08 - Minutes of the meeting held on
6 May 2008)

The minutes of the meeting held on 6 May 2008 were confirmed.

II Meeting with the Administration
(Ref: CITB CR14/18/2)

-- Legislative Council Brief issued
by the Commerce and Economic
Development Bureau

LC Paper No. CB(3)534/07-08 -- L.N. Nos 79, 80, 81, 82, 83 and
84 of 2008 tabled at the
Legislative Council on 23 April
2008

LC Paper No. LS76/07-08 -- Legal Service Division Report on
Subsidiary Legislation tabled in
the Legislative Council on
23 April 2008

LC Paper No. CB(1)1435/07-08(01) -- Background brief prepared by the
Legislative Council Secretariat

LC Paper No. CB(1)1435/07-08(02) -- Assistant Legal Adviser's letter
dated 23 April 2008 to the
Administration

LC Paper No. CB(1)1435/07-08(03) -- Assistant Legal Adviser's letter
dated 28 April 2008 to the
Administration

- LC Paper No. CB(1)1435/07-08(04) -- Marked-up copy of Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 (Cap. 362 sub. leg. A), Trade Descriptions (Marking) (Platinum) Regulations (Cap. 362 sub. Leg. C) and Trade Descriptions (Definition of Platinum) Regulations (Cap. 362 sub. leg. B) as amended by L.N. 82 to L.N. 84
- LC Paper No. CB(1)1604/07-08(01) -- Marked-up copy of Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 (L.N. 82 of 2008 as amended by the Administration) *(tabled at the meeting on 20 May 2008 and subsequently issued on 21 May 2008)*
- LC Paper No. CB(1)1604/07-08(02) -- Marked-up copy of Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008 (L.N. 83 of 2008 as amended by the Administration) *(tabled at the meeting on 20 May 2008 and subsequently issued on 21 May 2008)*
- LC Paper No. CB(1)1604/07-08(05) -- Marked-up copy of Trade Descriptions (Provision of Information on Natural Fei Cui) Order (L.N. 79 of 2008 as amended by the Administration) *(tabled at the meeting on 20 May 2008 and subsequently issued on 21 May 2008)*
- LC Paper No. CB(1)1604/07-08(06) -- Marked-up copy of Trade Descriptions (Provision of Information on Diamond) Order (L.N. 80 of 2008 as amended by the Administration) *(tabled at the meeting on 20 May 2008 and subsequently issued on 21 May 2008)*
- LC Paper No. CB(1)1604/07-08(07) -- Marked-up copy of Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (L.N. 81 of 2008 as amended by the Administration) *(tabled at the meeting on 20 May 2008 and subsequently issued on 21 May 2008)*

LC Paper No. CB(1)1604/07-08(08) -- Summary of deputations' views
(*English version tabled at the meeting on 20 May 2008 and
subsequently issued on 21 May 2008,
Chinese version issued on 23 May
2008*) provided by the Administration)

2. 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

3. While noting that the Administration had consulted the gemstone industry and the Gemological Association of Hong Kong on the captioned Order, members were concerned about the appropriateness of using the English term "fei cui" and adopting the crystalline structure of a jade product as a criterion for the definition of fei cui. The Administration was invited to consider consulting academics in the relevant fields and other experts on the matter before commencement of the Order.

4. The Administration was requested to add the words "任何" before "改變其晶體結構或原色的處理或工序" in paragraph (b) of the Schedule to the Order.

Trade Descriptions (Provision of Information on Regulated Electronic Products) Order

5. While expressing support for the policy intent to apply the captioned Order to retailers selling second-hand regulated electronic products, members were concerned about the difficulties for these retailers to provide invoices/receipts listing the prescribed information. In particular, the requirement would impose a heavy burden on retailers running small second-hand stalls, which were selling low price products and the traders might not have the professional knowledge to provide the prescribed information required under the Order. The Administration was requested to consider ways to address the concern, including considering the feasibility of providing exemption for these retailers.

6. In connection with paragraph 5, the Administration was requested to provide information on consumer complaints in relation to second-hand products received in recent years, including the number, the types of products, and follow-up actions taken by the enforcement agencies.

Date of next meeting

7. The Chairman reminded members that the next meeting of the Subcommittee would be held on 22 May 2008, at 2:30 pm.

II Any other business

8. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
11 June 2008

**Proceedings of the third meeting of
the Subcommittee to Study Six Items of Subsidiary Legislation under
the Trade Descriptions Ordinance Gazetted on 18 April 2008
on Tuesday, 20 May 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000257 – 000323	Chairman	(a) Welcoming remarks by the Chairman (b) Confirmation of minutes of the meeting held on 6 May 2008 (LC Paper No. CB(1)1566/07-08)	
000324 – 001515	Chairman Administration Ms Audrey EU	<p>Clause-by-clause examination of the subsidiary legislation</p> <p><u>Trade Descriptions (Provision of Information on Natural Fei Cui) Order (Natural Fei Cui Information Order) (L.N. 79 of 2008 as amended by the Administration) (LC Paper No. CB(1)1604/07-08(05))</u></p> <p><i>Proposed section 1</i></p> <p>(a) Members did not raise any query</p> <p><i>Proposed section 2</i></p> <p>(b) Ms Audrey EU's concern that the English term "fei cui" was unknown to most foreign tourists who usually referred fei cui as jade</p> <p>(c) The Administration's responses as follows:</p> <p>(i) As defined under the Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation (the Fei Cui Definition Regulation), "fei cui" was composed solely or principally of any of the following substances or any combination of the substances: (1) jadeite; (2) omphacite; and (3) kosmochlor;</p> <p>(ii) Jade was a collective term for different kinds of gemstones; and</p> <p>(iii) The trade had agreed to use the English term "fei cui" to refer to articles of jade. The trade as well as the Consumer Council (CC) would help educate consumers about "fei cui" upon commencement of the Natural Fei Cui Information Order</p>	

Time marker	Speaker	Subject(s)	Action required
001516 – 002253	Chairman Mr SIN Chung-kai Administration Ms Audrey EU	<p>(a) Mr SIN Chung-kai's suggestion that the Administration should consult academics in the relevant fields, such as Geology, on whether fei cui was a proper term to be used. Ms Audrey EU's support for the suggestion</p> <p>(b) The Administration's advice as follows: (i) The Administration had consulted the gemstone industry and the Gemological Association of Hong Kong on the use of the term. The latter comprised relevant experts and academics as well as experienced trade members; and (ii) The English term "fei cui" was already adopted widely by the trade and used in the Fei Cui Definition Regulation</p> <p>(c) The Chairman's request for the Administration to consider consulting academics in the relevant fields and other experts on the use of the term "fei cui" before commencement of the Natural Fei Cui Information Order</p>	The Administration to take follow-up action as per paragraph 3 of the minutes
002254 – 003106	Chairman Mr Vincent FANG Administration	<p>(a) Mr Vincent FANG's concern that general consumers, in particular foreign tourists, might not be able to tell the difference between articles of "natural fei cui", "fei cui" and jade</p> <p>(b) The Administration's reiteration that the trade and CC would step up consumer education upon commencement of the Natural Fei Cui Information Order</p>	
003107 – 03340	Chairman Mr WONG Ting-kwong Administration	<p>(a) Mr WONG Ting-kwong's enquiry about the use of the English term "fei cui" in the Mainland, and overseas countries</p> <p>(b) The Administration's response that there was no internationally recognized term for 翡翠. The term was used by the trade and relevant books or writings in the Mainland</p>	
003341 – 003906	Chairman Administration Mr WONG Ting-kwong	<p><i>Proposed section 3</i></p> <p>(a) Mr WONG Ting-kwong's concern that the addition of "at retail level" in the Natural Fei Cui Information Order would have the effect of narrowing the scope of application of the Order to retailers only. His view that strictly speaking, retailers were consumers purchasing products from suppliers</p> <p>(b) The Administration's responses as follows: (i) The objective of the Natural Fei Cui Information Order was to enhance</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>protection for consumers in purchasing "natural fei cui" which was the subject of frequent complaints relating to false or misleading representations by deceitful retailers in recent years; and</p> <p>(ii) There would be practical difficulty in enforcing the requirements in the Natural Fei Cui Information Order for transactions between retailers and suppliers, in particular when the suppliers were outside the jurisdiction of Hong Kong</p>	
003907 – 005326	<p>Chairman Ms Audrey EU Mr SIN Chung-kai Administration Mr Vincent FANG Mr WONG Ting-kwong</p>	<p>(a) Ms Audrey EU's concern that as it was common for transactions of jewellery items, including natural fei cui and fei cui, to take place outside retail premises, the suppliers should be required to display prescribed notice and issue invoices or receipts in respect of articles of natural fei cui and fei cui</p> <p>(b) Mr SIN Chung-kai's concern about whether a fei cui workshop, which had displayed a notice stating that no retail purchases were available, would be required to comply with the requirements in the Natural Fei Cui Information Order if the premises was open to members of the public</p> <p>(c) Mr Vincent FANG's concern about enforcement against sales malpractices happening at private premises</p> <p>(d) The Administration's responses as follows:</p> <p>(i) The supply of fei cui was regarded as having taken place at the retail level as long as the sale was open to members of the public, whether or not they were walk-in clients or clients by invitation. Accordingly, the person concerned would be required to display the prescribed notice and issue detailed invoices or receipts in selling the goods. Enforcement might be conducted through under-cover arrangement;</p> <p>(ii) Under section 7 of the Trade Descriptions Ordinance (Cap. 362), 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; and</p> <p>(iii) The need to consult the suppliers/manufacturers if the proposed scope of</p>	

Time marker	Speaker	Subject(s)	Action required
		application were to be extended to cover these parties	
005327 – 005953	Chairman Mr WONG Ting-kwong Administration	<p><i>Proposed section 4</i></p> <p>(a) In reply to the Chairman, the Administration's explanation that while the supplier was required to retain invoices or receipts for three years, the consumers might claim damages in respect of the acquired natural fei cui articles after the three-year period by producing the relevant invoices or receipts</p> <p><i>Proposed section 5</i></p> <p>(b) Discussion on the need to add "A-4 size" in the proposed section 5(2) to give information on the size of the prescribed notice</p> <p><i>Proposed section 6</i></p> <p>(c) The Administration's advice that the auctioneer would be required to display the prescribed notice prior to and during the auction</p>	
005954 – 010820	Chairman Assistant Legal Advisor (ALA) Administration Mr SIN Chung-kai Ms Audrey EU	<p><i>Proposed Schedule</i></p> <p>(a) ALA's concern that under section 3 of the Fei Cui Definition Regulation, to qualify as being natural, a fei cui article had to satisfy two requirements, namely, it had not been subjected to any treatment or process which altered its crystalline structure <u>and</u> it had not been subjected to any treatment or process which altered its original colour. However, in paragraph (b) of the notice under the Schedule, reference was made to "which altered its crystalline structure <u>or</u> original colour"</p> <p>(b) Mr SIN Chung-kai's concern about whether the crystalline structure of fei cui should be adopted as a criterion in defining natural fei cui and fei cui</p> <p>(c) The Administration's responses as follows: (i) The description of natural fei cui in the Fei Cui Definition Regulation and in the notice was consistent. In the notice, if a piece of fei cui article did not satisfy either one of the two requirements, it could not be described as "natural". Nevertheless, the Administration agreed to add the words "任何" before "改變其晶體結構或原色的處理或工序" to reflect the meaning of the English text more clearly; and</p>	The Administration to take follow-up action as per paragraphs 3 and 4 of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>(ii) The Administration had consulted the gemstone industry and the Gemological Association of Hong Kong that impregnating fei cui with resin would alter its crystalline structure</p> <p>(d) Discussion on the need to use a connective between paragraphs (a) and (b) of the notice in the Schedule</p>	
010821 – 011405	Chairman Mr WONG Ting-kwong Administration	<p><u>Trade Descriptions (Provision of Information on Diamond) Order (L.N. 80 of 2008 as amended by the Administration) (LC Paper No. CB(1)1604/07-08(06))</u></p> <p>In reply to Mr WONG Ting-kwong's enquiry, the Administration's advice that the weight of diamond was expressed in carats</p>	
011406 – 014609	Chairman Administration Mr WONG Ting-kwong Mr SIN Chung-kai ALA	<p><u>Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (Regulated Electronic Products Information Order) (L.N. 81 of 2008 as amended by the Administration) (LC Paper No. CB(1)1604/07-08(07))</u></p> <p><i>Proposed section 2</i></p> <p>(a) Mr WONG Ting-kwong's concerns as follows:</p> <p>(i) With the advancement in technology, mobile phone might no longer work through a cellular radio network;</p> <p>(ii) Whether the Chinese rendition for "mobile" should be "移動" rather than "手提";</p> <p>(iii) Why "portable optical disc player" was excluded under "digital audio player"; and</p> <p>(iv) Whether the Chinese rendition for "principal function" should be "主要功能" rather than "首要功能" as the latter would convey the meaning of only one function</p> <p>(b) Mr SIN Chung-kai's concern that not all digital audio players were portable devices</p> <p>(c) The Administration's responses as follows:</p> <p>(i) The Administration would seek to amend the Order in future in response to technological advancement;</p> <p>(ii) "手提" was more commonly used by general consumers to refer to "mobile";</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(iii) "Portable optical disc player" did not have a memory capacity and was not a subject of complaints;</p> <p>(iv) "Digital audio player" referred to any device the principal function of which was to play digital audio files in one or more audio encoding formats from any storage medium; and</p> <p>(v) The terms "首要功能" and "主要功能" were used interchangeably although the former could mean the foremost important function. Both terms would not convey the meaning of only one function</p> <p>(d) Mr WONG Ting-kwong's view that the Chinese rendition of "principal function" should be "主要功能"</p> <p>(e) ALA's undertaking to look up examples of statutory provisions on the Chinese rendition for "principal"</p> <p><i>Proposed sections 3, 4 and 5, and Schedule</i></p> <p>(f) Members did not raise any query</p>	
014610 – 015313	Chairman Mr WONG Ting-kwong Mr SIN Chung-kai Administration	<p><u>Application of the Regulated Electronic Products Information Order to second-hand products</u></p> <p>(a) Mr WONG Ting-kwong's support for regulating retailers selling second-hand products. His concern about difficulties for retailers running small second-hand stalls to provide invoices/receipts listing the prescribed information. The requirement would impose a heavy burden on retailers selling low-price second-hand regulated electronic products because they might not have the professional knowledge to provide the prescribed information required under the Regulated Electronic Products Information Order</p> <p>(b) Mr SIN Chung-kai's concern that consumers who sold used regulated electronic products to second-hand retailers would also be subject to the requirements under the Regulated Electronic Products Information Order</p> <p>(c) The Administration's responses as follows: (i) It was the Administration's legislative intent to regulate retailers selling second-hand products. The Administration had consulted the District</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Councils and local trade associations. In view that the sale of second-hand regulated electronic products was not a subject of complaints, the Administration could consider making arrangements in the enforcement having regard to the practical difficulties faced by the retailers concerned; and</p> <p>(ii) The situation referred to (b) would not be regarded as a transaction at retail level</p>	
015314 – 015700	<p>Chairman Mr WONG Ting-kwong Mr SIN Chung-kai Administration</p>	<p>(a) Mr WONG Ting-kwong's concern as follows:</p> <p>(i) There was a need to maintain consistent enforcement; and</p> <p>(ii) As a LegCo Member, it was his responsibility to improve the drafting of the subsidiary legislation</p> <p>(b) Mr SIN Chung-kai's concern about the need to regulate retailers selling second-hand products given that they were not the subject of complaints. He requested the Administration to provide further information</p> <p>(c) The Administration's undertaking to consider ways to address members' concern. However, as not all retailers selling second-hand products were small retailers, it might not be appropriate to exempt all of them from the Regulated Electronic Products Information Order</p>	<p>The Administration to consider and take follow-up action as per paragraphs 4 and 5 of the minutes</p>
015701 – 020500	<p>Chairman Administration Mr WONG Ting-kwong ALA</p>	<p>(a) Mr WONG Ting-kwong's view that retailers selling second-hand products should be regulated but the difficult situation faced by small retailers should be addressed</p> <p>(b) The Administration's reiteration of its intention to regulate retailers selling second-hand regulated electronic products. Nevertheless, it would consider ways to address members' concern</p>	
020501 – 020515	<p>Chairman</p>	<p>Date of next meeting</p>	