

# 立法會

## *Legislative Council*

LC Paper No. CB(1)1654/08-09

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### **Bills Committee on Dutiable Commodities (Amendment) Bill 2009**

### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper sets out the background to the Dutiable Commodities (Amendment) Bill 2009 (the Bill), and summarizes major views and concerns expressed by Legislative Council Members on the proposal of increasing the duty rates on tobacco by 50%.

#### **Background**

2. The Administration last increased tobacco duty in 2001-2002. Government statistics show that price is a key factor influencing tobacco consumption and smoking prevalence. According to the Administration, smokers are picking up the habit at an earlier age and smokers, especially young smokers, are smoking more cigarettes. This is reflected in the increase of duty-paid cigarettes from around 3.5 billion sticks in 2007 to about 3.8 billion sticks in 2008.

3. According to the Administration, the proposed increase of tobacco duty is to strengthen tobacco control efforts to protect public health, and in response to the calls from the community for further increase of tobacco duty to discourage smoking. The proposed increase is also aimed at reducing the long-term disease burden for Hong Kong.

#### **Proposal contained in the 2009-2010 Budget**

4. In paragraph 108 of the 2009-2010 Budget Speech delivered on 25 February 2009, the Financial Secretary (FS) proposed to increase tobacco duty by 50% with immediate effect for public health reasons. As a result, the duty on cigarettes increased from \$0.804 per stick to \$1.206 per stick. The duty rates on other tobacco products (namely cigars, Chinese prepared tobacco, and all other manufactured tobacco except tobacco intended for the manufacture of

cigarettes) also increased by the same extent. The new rates of duty are -

- (a) \$1,206 for each 1 000 cigarettes;
- (b) \$1,553 for each kilogramme of cigars;
- (c) \$296 for each kilogramme of Chinese prepared tobacco; and
- (d) \$1,461 for each kilogramme of all other manufactured tobacco except tobacco intended for the manufacture of cigarettes.

#### Public Revenue Protection Order 2009

5. In order to give immediate effect to increase the duty rates on tobacco, the Chief Executive, after consultation with the Executive Council, made the Public Revenue Protection Order 2009 (the Order) under section 2 of the Public Revenue Protection Ordinance (Cap. 120) (PRPO) on the same day. Section 2 of PRPO provides, among other things, that if the Chief Executive approves of the introduction into the Legislative Council of a bill whereby, if the bill were to become law any duty, tax, fee, rate, etc., would be imposed, removed or altered, the Chief Executive may make an order giving full force and effect of law to all the provisions of the bill so long as such order remains in force.

6. The Schedule to the Order contains a proposed bill to amend the Dutiable Commodities Ordinance (Cap. 109), which is identical to the Bill. The Order was made to give full force and effect to all the provisions of the bill contained in the Schedule to the Order.

7. The Order is a temporary measure. Under section 5 of PRPO, the Order shall come into force immediately upon signing by the Chief Executive and shall expire and cease to be in force –

- (a) upon the notification in the Gazette of the rejection by the Legislative Council of the bill in respect of which the Order was made; or
- (b) upon the notification in the Gazette of the withdrawal of the bill or the Order; or
- (c) upon the bill, with or without modification, becoming law in the ordinary manner; or
- (d) upon the expiration of four months from the day on which the Order came into force, whichever event first happens.

8. Under section 6 of PRPO, any duty paid under the Order in excess of the respective duty immediately after the expiry of the Order shall be repaid to the person who paid the same.

9. The Order came into force at 11 a.m. on 25 February 2009. With a four-month temporary effect, the Order will lapse on 25 June 2009.

10. Section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that Members may amend subsidiary legislation in any manner whatsoever consistent with the power to make such subsidiary legislation. The power of the Chief Executive in Council under section 2 of PRPO is to make an order giving full force and effect of law to all the provisions of the Bill. Consistent with this power, Members have the power to repeal the Order but do not have power to amend the provisions therein.

#### Proposed resolution to repeal the Order

11. The Order was published in the Gazette as Legal Notice No. 27 of 2009 and laid on the table of the Legislative Council on 4 March 2009. At the Council meeting on 2 April 2009, Hon Albert CHAN moved a motion to repeal the Order. The motion was negatived.

#### **The Bill**

12. The Bill was introduced into the Legislative Council on 13 May 2009 in accordance with the normal legislative procedure,. A Legislative Council Brief [File Ref: FIN CR 3/7/2201/08] on the Bill was issued to all Members on 29 April 2009. At the House Committee on 15 May 2009, Members agreed to form a bills committee to scrutinize the Bill.

#### **Major views and concerns expressed by Members**

13. No Panels have been consulted on the Bill. During the debate on the motion moved by Hon Albert CHAN to repeal the Order at the Council meeting on 2 April 2009, the major views expressed by Members are summarized below –

##### Major views in favour of the motion

- (a) Both alcoholic beverages and tobacco products were harmful to the society. The policy of increasing rates of duty on tobacco products on the one hand and reducing the rates of duty on alcoholic beverages on the other was illogical and unacceptable

as this would allow the rich to enjoy cheaper wines while the poor were required to pay for expensive cigarettes, which was tantamount to “class discrimination”;

- (b) The increase of the rates of duty of tobacco products had resulted in a drop of the sale of duty-paid cigarettes and severely affected the income of retailers of duty-paid cigarettes. It was estimated that the livelihood of about 20 000 newspaper stallholders had been affected;
- (c) The tax income of the Administration had also suffered reduction as people had shifted to purchase duty-free cigarettes when crossing boundaries;
- (d) The large increase in tobacco duty had stimulated smuggling of cigarettes. However, the Administration failed to tackle the sale of smuggled cigarettes effectively and the illegal trade had become blatant and totally out of control;
- (e) Some smuggled cigarettes were actually counterfeits smoking of which might pose even greater health hazards to smokers;
- (f) Instead of raising tobacco duty, the Administration should tackle the smoking problem at the root, e.g. to allocate more resources to educate young people about the harmful effect of smoking and promote the message of a healthy life amongst youngsters.

#### Major opposing views against the motion

- (g) The health risks of smoking and secondhand smoking were irrefutable and that price was a very effective factor in reducing the smoking population; and
- (h) The problem of the trade of illegal cigarettes should be tackled by stepping up enforcement.

14. Members in general expressed concern about loss in income of newspaper stallholders as a result of a drop in the sale of cigarettes. They urged the Administration to explore feasible ways of enhancing the income of newspaper stallholders to make up for their loss. In response, the Secretary for Food and Health agreed to exercise flexibility in the regulatory control of newspaper stalls and the Administration would consider, e.g. permitting newspaper stalls to sell additional commodities other than those specified in the relevant licence.

## **Relevant papers**

15. The Committee on Youth Smoking Prevention recently wrote to the Panel on Financial Affairs requesting Members to consider increasing the duty rates on tobacco by 100% in order to strengthen tobacco control efforts. The relevant submission (LC Paper No. CB(1)1217/08-09(01)) and the Administration's written response (LC Paper No. CB(1)1440/08-09(01)) were issued on 2 April and 28 April 2009 respectively.

16. A list of relevant papers is in the **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
20 May 2009

## Bills Committee on Dutiable Commodities (Amendment) Bill 2009

## List of relevant papers

Date of meeting	Committee	Minutes/Paper	LC Paper No.
N.A.	Financial Affairs Panel	Submission on the increase of tobacco duty from the Committee on Youth Smoking Prevention	CB(1)1217/08-09(01) <a href="http://www.legco.gov.hk/yr08-09/chinese/panels/fa/papers/facb1-1217-1-c.pdf">http://www.legco.gov.hk/yr08-09/chinese/panels/fa/papers/facb1-1217-1-c.pdf</a>
N.A.	Financial Affairs Panel	Administration's response to the submission on the increase of tobacco duty from the Committee on Youth Smoking Prevention	CB(1)1440/08-09(01) <a href="http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/facb1-1440-1-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/facb1-1440-1-e.pdf</a>
6 March 2009	House Committee	Legal Service Division Report	LS44/08-09 <a href="http://www.legco.gov.hk/yr08-09/english/hc/papers/hc0306ls-44-e.pdf">http://www.legco.gov.hk/yr08-09/english/hc/papers/hc0306ls-44-e.pdf</a>
15 May 2009	House Committee	Legal Service Division Report	LS63/08-09 <a href="http://www.legco.gov.hk/yr08-09/english/hc/papers/hc0515ls-63-e.pdf">http://www.legco.gov.hk/yr08-09/english/hc/papers/hc0515ls-63-e.pdf</a>
2 April 2009	Council meeting	Hansard	<a href="http://www.legco.gov.hk/yr08-09/chinese/counmtg/floor/cm0402-confirm-ec.pdf">http://www.legco.gov.hk/yr08-09/chinese/counmtg/floor/cm0402-confirm-ec.pdf</a>