

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2095/09-10  
(These minutes have been seen by  
the Administration)

Ref : CB1/SS/7/09

**Subcommittee on Dutiable Commodities  
(Exempted Quantities) (Amendment) Notice 2010**

**Minutes of the second meeting held on  
Thursday, 6 May 2010, at 4:40 pm  
in the Chamber of the Legislative Council Building**

- Members present** : Hon CHAN Kin-por, JP (Chairman)  
Hon CHEUNG Man-kwong  
Hon Vincent FANG Kang, SBS, JP  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Dr Hon LEUNG Ka-lau  
Hon CHEUNG Kwok-che
- Public Officers attending** : Agenda item II
- Professor Gabriel LEUNG, JP  
Under Secretary for Food and Health
- Miss Anita CHAN  
Principal Assistant Secretary (Health) Special Duties 1  
Food and Health Bureau
- Mr K H YU, C.M.S.M  
Assistant Commissioner (Excise and Strategic Support)  
Customs and Excise Department
- Ms Linda TSUI  
Senior Staff Officer (Dutiable Commodities  
Administration)  
Customs and Excise Department

Dr Ronald LAM  
Head of Tobacco Control Office  
Department of Health

Mr Sunny CHAN  
Senior Assistant Law Draftsman  
Department of Justice

**Attendance by  
invitation**

: Agenda item II

Free Duty of Sky Connection Limited and Anway  
Limited

Mr Simon AU Tze-kei  
Merchandising & Buying Director

Mr Gary LI Ka-yin  
Buyer

The Hong Kong Council on Smoking and Health

Ms Lisa LAU Man-man, MH, JP  
Chairman

Asian Consultancy on Tobacco Control, Hong Kong

Professor Judith MACKAY, SBS  
Director

The University of Hong Kong

Professor LAM Tai-hing, JP  
Chair Professor and Director of School of Public Health

Life Education Activity Programme

Ms Vicky CHUNG  
Deputy Director

**Clerk in attendance** : Ms Debbie YAU  
Chief Council Secretary (1)6

**Staff in attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Angel SHEK  
Senior Council Secretary (1)1

Ms Michelle NIEN  
Legislative Assistant (1) 9

Action

**I Confirmation of minutes of meeting**

(LC Paper No. CB(1)1821/09-10 -- Minutes of meeting held on 27 April 2010)

The minutes of the meeting held on 27 April 2010 were confirmed.

**II Meeting with deputations and the Administration**

(LC Paper No. CB(1)1818/09-10(01) -- List of follow-up action arising from the discussion at the meeting on 27 April 2010

LC Paper No. CB(1)1818/09-10(02) -- Administration's response to CB(1)1818/09-10(01)

LC Paper No. CB(1)1818/09-10(03) -- Submission from Free Duty of Sky Connection Limited and Anway Limited (Chinese version only)

LC Paper No. CB(1)1818/09-10(06) -- Submission from Hong Kong Council on Smoking and Health

LC Paper No. CB(1)1818/09-10(06) -- Submission from Asian Consultancy on Tobacco Control, Hong Kong

LC Paper No. CB(1)1845/09-10(02) -- Submission from Asian Consultancy on Tobacco Control, Hong Kong (English version only)  
*(tabled at the meeting and issued via email on 7 May 2010)*

LC Paper No. CB(1)1818/09-10(06) -- Submission from School of Public Health, University of Hong Kong

LC Paper No. CB(1)1818/09-10(06) -- Submission from Life Education Activity Programme)

Submissions from organizations/individuals not attending the meeting

- (LC Paper No. CB(1)1818/09-10(04) -- Submission from Mr YEUNG Wai-sing, a member of the Eastern District Council (Chinese version only)
- LC Paper No. CB(1)1818/09-10(05) -- Submission from Mr Phil VAUDIN of ALFA International Logistics Co. Limited (English version only)
- LC Paper No. CB(1)1818/09-10(07) -- Submission from Mr CHEUNG Lap-kei (English version only)
- LC Paper No. CB(1)1818/09-10(08) -- Submission from Miss Agnes SO (English version only)
- LC Paper No. CB(1)1845/09-10(01) -- Submission from Clean The Air  
(*tabled at the meeting and issued via email on 7 May 2010*) (English version only)

Other relevant papers

- (LC Paper No. CB(1)1711/09-10(01) -- Marked-up copy of the Amendment Notice prepared by the Legal Service Division
- L.N. 35 of 2010 -- Dutiable Commodities (Exempted Quantities) (Amendment) Notice 2010
- LC Paper No. LS55/09-10 -- Legal Service Division Report
- LC Paper No. CB(1)1711/09-10(02) -- Background brief prepared by the Legislative Council Secretariat)

2. The Subcommittee met with the Administration and deputations (Index of proceedings attached at **Appendix**).

3. The Subcommittee had completed scrutiny of the Amendment Notice. Members noted that the Subcommittee would report to the House Committee on 14 May 2010, and the deadline of giving notice to move amendments to the subsidiary legislation was 26 May 2010.

**III Any other business**

4. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1  
Legislative Council Secretariat  
31 May 2010

**Proceedings of the second meeting of  
the Subcommittee on Dutiable Commodities (Exempted Quantities)  
(Amendment) Notice 2010  
on Thursday, 6 May 2010, at 4:40 pm  
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
001039 – 001415	Chairman	The Chairman's introductory remarks  Confirmation of minutes of meeting on 27 April 2010 (CB(1)1821/09-10))	
001416 – 001812	Chairman Free Duty of Sky Connection Limited and Anway Limited (FD)	Presentation of views (CB(1)1818/09-10(03)).	
001813 – 002125	Chairman Hong Kong Council on Smoking and Health (COSH)	Presentation of views (CB(1)1818/09-10(06)). COSH considered that there was a need to implement comprehensive and multi-pronged tobacco control policy measures to reduce tobacco use. In the long run, the Government should increase the tobacco tax because as made clear by the World Health Organization (WHO), imposing duties on tobacco products was an effective measure for controlling tobacco use. COSH was opposed to the suggestion of changing the exempted amount of cigarettes from 19 to 20 sticks in the Amendment Notice.	
002126 – 002413	Chairman Asian Consultancy on Tobacco Control, Hong Kong	Presentation of views (CB(1)1818/09-10(06) and CB(1)1845/09-10(02)).	
002414 – 002712	Chairman School of Public Health, University of Hong Kong (HKUSPH)	Presentation of views (CB(1)1818/09-10(06)). HKUSPH also highlighted the harmful effects of smoking on health, with reference to the research findings of WHO and other relevant studies. HKUSPH said that one in every two adult smokers, and two in every three adolescents who smoked would die early from smoking-related diseases. HKUSPH supported the Government's measure to abolish duty-free concessions on tobacco products to discourage smoking, especially among the youth. HKUSPH understood the legislative intent of allowing an incoming passenger to carry an opened packet of 19 cigarettes or less for personal consumption was to reduce inconvenience to smokers, which was considered more practicable than a total abolition of duty-free concessions on tobacco products.	
002713 – 003022	Chairman Life Education Activity Programme (LEAP)	Presentation of views (CB(1)1818/09-10(06)). LEAP added that the harmful effects of smoking on the public, especially youngsters, could be prevented by stepping up measures on tobacco control, such as abolishing	

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		<p>duty-free concessions on tobacco products. It stressed the importance to protect the interests of children and teenagers and minimize the adverse effects of smoking and passive smoking on them. As such, LEAP expressed support for the implementation of the Amendment Notice which would reduce the availability of low-priced or illicit tobacco products in the local market to youngsters and the public in general. LEAP also urged the Government to further raise the tobacco tax which was a more effective measure to discourage smoking.</p>	
003023 – 003810	Chairman Administration	<p>The Administration's response to the deputations' views –</p> <ul style="list-style-type: none"> <li>(a) a multi-pronged approach comprising legislation, taxation, publicity, education and enforcement was adopted to control tobacco use and minimize the health hazards posed by smoking;</li> <li>(b) the Amendment Notice was to give effect to the abolition of duty-free concessions on tobacco products as proposed by the Financial Secretary in the 2010-2011 Budget, and small amounts of tobacco products would be exempted for own consumption by incoming passengers taking into account the need to minimize nuisance to passengers who smoked and ensure the smooth operation of the boundary control points ;</li> <li>(c) while Switzerland had allowed greater duty-free concessions on tobacco products, it did not seem that this was related to the country being WHO's host country; and</li> <li>(d) regarding the potential impact of the Amendment Notice on the businesses of duty-free shops (DFS), it was noted that the duty-free outlets in Singapore had not closed down after it had abolished duty-free concessions on tobacco products. As the sales of cigarettes at the inbound DFS accounted for just around 10% of the overall sales of cigarettes at all inbound and outbound DFS in 2009, it was envisaged that the Amendment Notice would not have much bearing on the businesses of DFS.</li> </ul>	
003811 – 003939	Chairman FD	<p>FD advised that the sales of tobacco products made up about 60% of revenue of its inbound DFS (which was \$300 million based on the 2009 sales volume). FD highlighted that the smoking population in Singapore was 13.6% in 2007 vis-à-vis 11.8% in Hong Kong, and Singapore received about eighteen-fold less number of Mainland visitors than Hong Kong each year.</p>	

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003940 – 005414	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong expressed concern about the inconvenience caused to the incoming passengers if they had to dispose one cigarette from a newly acquired packet or pay the duty before entering Hong Kong. He suggested that the Administration should consider banning the sale of tobacco products at the inbound DFS.</p> <p>The Administration responded that it would actively and carefully consider banning the sale of tobacco products at inbound DFS by amending the Dutiable Commodities Ordinance (Cap. 109) as well as other relevant legislation.</p> <p>Mr WONG expressed concern whether the proposed ban, which would adversely affect the businesses of inbound DFS, was legally in order with the relevant terms and conditions of tenancy for the inbound DFS premises, as otherwise DFS might seek judicial review of the legislative amendment.</p> <p>The Administration advised that it had studied related issues and the Department of Justice (DoJ) had confirmed that the proposed ban would not affect the existing tenancy agreements for the two inbound DFS premises of which the Government Property Agency was the landlord. Mr WONG commented that the Administration should also take into account the impact on those tenancy agreements entered between DFS and the Airport Authority Hong Kong (AA) and the Mass Transit Railway Corporation Limited (MTRC) respectively, as the Government was a major shareholder in them.</p> <p>In reply to Mr WONG's further enquiry about whether, according to the Amendment Notice, two incoming passengers together could bring into Hong Kong free of duty one un-opened 20-stick packet of cigarettes and 18 cigarettes in an opened packet, the Administration clarified that the Amendment Notice did not specify the condition of the packet of cigarettes, i.e. opened or remained intact. The Amendment Notice was on the quantity of cigarettes brought into Hong Kong rather than on whether the cigarette packs were sealed or not.</p> <p><i>(post meeting note :</i> The Administration has subsequently clarified its position on the matter in its paper (CB(1)1893/09-10(01) issued on 13 May 2010), advising that the exempted quantity under the Principal Notice applies to each individual passenger provided that the duty-free tobacco is imported or bought by the passenger for his/her own use. For example, if two incoming passengers travelling together bring into Hong Kong one un-opened packet of 20 cigarettes and one opened packet of 18 cigarettes for their own use, the one</p>	



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		<p>carrying 20 cigarettes will need to pay duty for 1 cigarette and no duty is payable for the 18 cigarettes carried by the other passenger.)</p> <p>The Administration also advised that the 24-hour rule on time spent outside Hong Kong for entitlement of the duty-free concessions on tobacco products would be removed under the Amendment Notice.</p> <p>Noting the Administration's explanation, Mr WONG considered that the proposal might encourage the carrying of duty-free cigarettes in un-opened packets for resale as illicit cigarettes in an "ants-moving" manner every day.</p>	
005415 – 005817	Chairman FD Administration	<p>FD expressed concern that if the proposed ban on the sale of duty-free cigarettes would be implemented, the inbound DFS would suffer loss from the sale of around 0.4 billion duty-free cigarettes each year but the shops at outbound control points in the Mainland and Macau selling duty-free tobacco products would remain unaffected. The Administration responded that the Amendment Notice would serve the larger interests of the public by containing tobacco consumption and reducing public healthcare costs arising from smoking-related diseases.</p> <p>In response to FD's concern about enforcement, the Administration said that subject to the negative vetting of the subsidiary legislation, it would launch publicity and education campaign about one month before the Amendment Notice came into operation on 1 August 2010 to enhance public awareness of the new requirements. It would also disseminate relevant information to the tourism industry and engage the customs counterparts at the Mainland and Macau to help publicize the new measure at relevant boundary control points.</p>	
005818 – 011418	Chairman Mr Vincent FANG Administration	<p>Discussion on the condition of the packet of cigarettes under the Amendment Notice.</p> <p>Discussion on the impact of the proposed ban on the sale of tobacco products at inbound DFS on the contract terms entered between DFS and the landlords (including Government Property Agency, MTRC and AA).</p>	
011419 – 011809	Chairman Mr CHEUNG Kwok-che Administration HKUSPH	<p>Mr CHEUNG Kwok-che enquired about</p> <p>(a) the harmful effects on a smoker and those around who also smoked passively if the maximum number of tax-free cigarettes he/she was allowed to bring into Hong Kong was lowered from 60 to 19 sticks free of duty; and</p> <p>(b) the legal and financial implication if the proposed</p>	

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		<p>ban on the sale of tobacco products at inbound DFS would be implemented.</p> <p>HKUSPH considered that duty-free concessions should be abolished for cigarettes as they would endanger public health irrespective of the quantity, and cause pollution to the environment.</p> <p>The Administration reiterated that according to DoJ, the proposed ban would give no cause to legal proceedings seeking redress and compensation by DFS.</p>	
011810 – 012114	Chairman Mr WONG Ting-kwong Administration	Mr WONG Ting-kwong urged the Administration to thoroughly consider the interests of different stakeholders (smokers, anti-smokers, duty-free trade etc) in the implementation of tobacco control policy, including the proposed ban on the sale of tobacco products at inbound DFS.	
012115 – 012447	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG reiterated his concern about the impact of the Amendment Notice and other tobacco control policy measures on the revenue and business plan of DFS. He considered that the interest of the company should be safeguarded.</p> <p>The Administration reiterated that all measures to carry out the tobacco control policy was essentially to protect public health and raise their standard of living, and there was no bias against any parties including DFS and other retail outlets of cigarettes. While the abolition of duty-free concessions might reduce the sales of tobacco products at the inbound DFS, this might divert sales to small and medium retail outlets such as newspaper stalls.</p>	
012448 – 012925	Chairman FD Mr Vincent FANG Mr WONG Ting-kwong Administration	<p>Discussion on banning the sale of tobacco products on board aircraft landing Hong Kong.</p> <p>Mr WONG Ting-kwong urged the Administration to strengthen publicity of the new requirements under the Amendment Notice at the various boundary control points to minimize inconvenience caused to travellers which might inadvertently breach the law. He also stressed the importance to devise measures to reduce conflicts in enforcement and achieve social harmony.</p>	
012926 – 013132	Chairman Assistant Legal Adviser Administration	<p><u>Section-by-section examination of the Amendment Notice (CB(1)1711/09-10(01))</u></p> <p>Members did not raise any query.</p> <p>In reply to the Chairman, the Administration advised that the ban on the sales of tobacco products at the inbound DFS would be considered under a separate legislative proposal, if any, and it would follow the established procedures and brief the Panel on Health</p>	

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		Services if such a decision was to be taken.	

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