

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2001/99-00

(These minutes have been  
seen by the Administration  
and cleared by the Chairman)

Ref: CB1/BC/17/98/2

**Bills Committee on Trade Marks Bill**

**Minutes of Twenty-third meeting held on  
Monday, 15 May 2000, at 2:30 pm  
in the Chamber of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon HUI Cheung-ching  
Hon CHAN Kam-lam  
Hon Mrs Sophie LEUNG LAU Yau-fun, JP  
Hon SIN Chung-kai  
Hon FUNG Chi-kin
- Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon MA Fung-kwok  
Hon James TO Kun-sun
- Public officers attending** : Mr Philip CHAN  
Principal Assistant Secretary for  
Trade and Industry
- Mr Rayman PERERA  
Assistant Director (International Registration)  
Intellectual Property Department
- Miss Finnie QUEK  
Senior Solicitor  
Intellectual Property Department
- Mr Johann WONG  
Assistant Secretary for Trade and Industry
- Mr Jeffrey E GUNTER  
Senior Assistant Law Draftsman

Ms Phyllis POON  
Government Counsel

**Clerk in attendance :** Miss Odelia LEUNG  
Chief Assistant Secretary (1)1

**Staff in attendance :** Miss Anita HO  
Assistant Legal Adviser 2

Ms Rosalind MA  
Senior Assistant Secretary (1)6

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**I. Discussion on draft Committee Stage amendment to clause 19 proposed by the Bills Committee**  
(LC Paper No. CB(1)1603/99-00)

The Assistant Legal Adviser (ALA) informed members that the first draft of the Committee Stage amendment (CSA) to clause 19 had been revised in response to members' comments. The revised draft, together with its Chinese rendition, were at LC Paper No. CB(1)1603/99-00. She explained that the proposed clause 19(2)(b) had been revised to exclude goods imported for personal use and not for sale in the retail market from the requirement to identify the importer. To reflect the intention of members that the means of identifying the importers listed in clause 19(3) should not be meant to be exhaustive, the proposed clause 19(3)(b) was revised to stipulate the acceptance of other methods as provided by the Trade Marks Rules (the Rules).

2. The Chairman suggested that the Chinese rendition of clause 19(2)(b) could be refined by replacing the phrase "而將該貨品輸入的人不能予以識別" with "而不能識別將該貨品輸入的人". Similarly, the phrase "則該人須視爲已予識別" in clause 19(3)(b) could be revised as "則視爲已識別該人".

3. Noting that any one of the methods for identifying the importer as stipulated in clause 19(3) would be considered acceptable under the law, Mr CHAN Kam-lam sought clarification of whether an importer would be considered as complying with the requirement if he identified himself by providing his name and address on a document attached to the package of the goods but the goods were removed from the package and sold individually afterwards. He opined that it would be unfair to the parallel importers if the requirement for provision of importers' information only applied to them but not the mainstream importers. This might in effect stigmatize the parallel imports as goods inferior to the mainstream imports. In accordance with the free trade policy of Hong Kong, no additional requirement should be imposed as a precondition for liberalizing parallel importation. Moreover, he doubted the effectiveness of the proposed amendment in facilitating consumers to make informed choices. If consumers depended on the label to distinguish between parallel imports

and mainstream imports, non-compliance of the labelling requirement might ironically cause confusion as consumers might mistake the parallel imports without labels as mainstream ones. He suggested that mainstream importers jointly designed a special label to effectively assist consumers in distinguishing between mainstream imports and parallel imports.

4. As to the acceptable means of identifying the importers, ALA explained that in addition to the means set out in clause 19(3)(a)(i) to (v), other acceptable means could be specified in the Trade Marks Rules (the Rules). If the parallel importer could not satisfy the statutory requirement, he would not be able to enjoy the exemption in clause 19(1) and the trade mark owner might take infringement proceedings against him.

5. In response to Mr CHAN Kam-lam's concern about the appropriateness of moving the proposed amendments when the Rules had yet to be finalized, the Chairman said that the provisions in the main legislation would govern the Rules and the Rules would only list out the detailed guidelines for operational purpose. Therefore, members should consider the proposed amendments in the context of the main legislation.

6. As regards Mr CHAN Kam-lam's doubt about the effectiveness of the proposed amendments, the Chairman said that the proposed requirement of providing importers' information was not for the purpose of assisting consumers in distinguishing between parallel imports and mainstream imports. The Bills Committee considered that consumers had the right to have information about the importers which might be useful for them in making purchase decisions or in seeking remedies for buying defective products. By proposing the amendments, the Bills Committee was trying to enhance protection of consumers within its ambit. She was given to know that mainstream importers intended to provide importers' information to consumers on a voluntary basis in the light of the proposed amendments. She pointed out that any measure to distinguish between mainstream imports and parallel imports might have a stigmatizing effect. Mr Kenneth TING shared her views.

7. Noting that the importers' information could be provided in either English or Chinese, Mr HUI Cheung-ching enquired whether this was in line with existing labelling requirements in other legislation. ALA explained that bilingual labels were required for products relating to safety and health of consumers under the existing legislation. For the proposed requirement for provision of importers' information, members had agreed at the meeting held on 4 May 2000 that information provided in either language would be acceptable.

8. Members endorsed the draft CSAs to clause 19 to be moved by the Chairman of the Bills Committee.

9. Members noted that except for a few minor typing errors to be rectified, the Chinese rendition of the CSAs proposed by the Administration was in order.

Legislative timetable

10. Members noted that the Administration intended to resume the Second Reading debate on the Bill on 31 May 2000. The Bills Committee would submit its written report to the House Committee on 19 May 2000. The deadline for notice of CSAs would be 22 May 2000.

11. Concluding the work of the Bills Committee, the Chairman thanked members and the representatives of the Administration for their efforts and assistance throughout the course of examination of the Bill.

12. The meeting ended at 3:00 pm.

Legislative Council Secretariat

17 August 2000