

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1992/99-00

(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 nineteenth meeting held on  
Monday, 17 April 2000, at 8:30 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon MA Fung-kwok  
Hon James TO Kun-sun  
Hon HUI Cheung-ching  
Hon CHAN Kam-lam  
Hon SIN Chung-kai
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, JP  
Hon FUNG Chi-kin
- Public officers attending** : Mr Philip CHAN  
Principal Assistant Secretary for  
Trade and Industry
- Mr Stephen SELBY  
Director of Intellectual Property
- 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 Confirmation of minutes of meeting**  
(LC Paper No CB(1)1387/99-00)

The minutes of meeting held on 26 February 2000 were confirmed.

**II Discussion on parallel importation**

2. The Principal Assistant Secretary for Trade and Industry (PAS/TI) briefed members on the information paper provided by the Administration to address concerns raised on clause 19 during the examination of the Bill (LC Paper No CB(1)1370/99-00(02)). He stressed that parallel imports were genuine goods and not counterfeit or sub-standard products. The Administration had considered carefully members' proposal of imposing additional labelling requirements on goods for the provision of importers' information. He explained the Administration's views on the proposal as follows-

- (i) the safety and labelling requirements under the existing legislation provided adequate protection to consumers and there was no compelling reason for imposing additional statutory labelling requirements solely because of the liberalization of parallel importation;
- (ii) given that there was no contractual relationship between consumers and the importer, consumers could not seek compensation from the importer even knowing the latter's identity;
- (iii) additional labelling requirements would increase the cost of import

which would ultimately be transferred to consumers who had to pay a higher price for the goods;

- (iv) mainstream importers and authorized distributors could promote their goods by highlighting to consumers the various value-added services they provided; and
- (v) the Administration would enhance consumer protection upon the liberalization of parallel importation. These included, speeding up the drafting of the bill on civil liability for unsafe products, strengthening consumer education and reviewing the impact of liberalization, in particular on the number of consumer complaints.

3. Noting paragraph 12 of the information paper, the Chairman clarified that members of the Bills Committee had no intention of creating criminal liability for failure to observe the proposed labelling requirements. The claim of the Administration that the introduction of the labelling requirements would incur resources on the Customs and Excise Department (CED) for taking enforcement action was unfounded. The various ordinances quoted in Appendix A to the information paper were of a different nature because contravention of the labelling requirements stipulated therein attracted criminal sanctions.

4. Mrs Selina CHOW expressed dissatisfaction towards the approach taken by the Administration in tackling the issue of liberalization of parallel importation. She said that instead of trying to resolve the problem, the Administration was intensifying the conflict between mainstream importers and parallel importers. The Administration's proposal would upset the level playing field between mainstream importers and parallel importers. Referring to paragraph 5 of the information paper, she sought the Administration's assessment on the extent of the problem faced by mainstream importers in getting complaints from dissatisfied consumers who bought sub-standard parallel imports in the belief that these were mainstream products. She also queried the rationale behind the Administration's objection to members' proposal of imposing additional labelling requirements. She pointed out that given the various labelling requirements under the existing legislation, the additional labelling for the provision of importers' information should not be adding too much cost on the part of the importers. As the Bill would only deal with registered trade mark goods, only a certain proportion of the goods in the market would be subject to the additional labelling requirements.

5. PAS/TI said that the Administration's main reason for objecting to the proposed amendments to clause 19 was that it would not enhance consumers' interest. Consumers seldom turned to the importer as the first port of call if they had bought defective goods. Often they would seek remedy from the retailer. The Administration was given to understand from the Hong Kong Retail Management Association (HKRMA) that its members were providing after-sale services, including handling consumers' complaints and referring these to the relevant importers. As

HKRMA had a membership of over 500 major retail chains covering over 5,000 outlets in the territory, it was representing the majority of the retail sector. Defective parallel imports and irresponsible importers did exist but the problems were not serious.

6. In response to the Chairman's enquiry on whether the Administration had discussed with any other retailers besides HKRMA on the issue of after-sale services, the Director of Intellectual Property (DIP) said that they had discussed with other retailers such as the Mega Warehouse and parallel importers of perfumery and skin products. These retailers had undertaken to provide extensive after-sale services including refund for defective products.

7. As to Mrs Selina CHOW's question on the additional cost involved in labelling the importers' information on goods, PAS/TI said that the cost of the additional labelling requirements was one of the factors for consideration. Even if there was no substantive increase in cost, the proposal was not worth pursuing since it could not provide the expected protection to consumers. The Chairman and Mrs Selina CHOW disagreed with the point made in the Administration's information paper that the additional labelling requirements would result in an increase in cost to an extent that parallel importers would be driven out of the market. They opined that without making any assessment on the cost involved, the Administration should not have said that the proposed labelling requirements were undesirable because of the high cost involved.

8. Mr Kenneth TING said that without knowing the identity of the importers, consumers would have difficulties in taking civil proceedings against them even if the proposed bill on civil liability for unsafe products was passed. He doubted whether it was fair for the retailer to bear all the liabilities in the event that the importers could not be identified. Mr HUI Cheung-ching shared his concern and sought information on any proposed mechanism for getting the importers' information from the retailers.

9. PAS/TI explained that the proposed legislation would enable consumers to take civil action against manufacturers, importers and retailers for loss or injury arising from the use of defective products. It was intended that importers would have the principal liability. The proposed legislation would provide for a mechanism to encourage retailers to disclose the importers' information. Retailers who could not provide the requested information within reasonable time would be held liable for the provision of unsafe products. The Chairman remarked that although importers would have the principal liability for supplying unsafe products, they could be hiding behind the scene compared with retailers and manufacturers. PAS/TI responded that despite that the importers' information might not be readily available to consumers in all cases, consumers would be able to obtain this through the retailers.

10. Mr SIN Chung-kai said that if consumers' choice between parallel imports and mainstream imports was a matter of taste instead of safety, the proposed legislation would not be of any assistance to them. He asked whether the Administration would

have any measures to facilitate consumers in making informed choices. He also sought information on the possible actions to be taken by the Administration in the event that complaints concerning parallel imports increased significantly after the enactment of the Bill.

11. PAS/TI said that if taste was at stake, additional labelling with importers' information would not facilitate consumers' choice effectively. Enhancing consumer education to increase their awareness of rights and the importance of making informed choice would better serve the purpose. In the event that complaints on counterfeit goods increased considerably after the enactment of the Bill, CED would step up enforcement actions. DIP added that parallel importers would be prohibited from altering the packaging of the products which might mislead consumers that those were mainstream imports. Consumers would be able to detect from the difference in packaging of parallel imports and mainstream products. It was expected that the Consumer Council (CC) would step up consumer education and make available useful product information to the public.

12. The Chairman pointed out that as parallel imports were genuine products and not counterfeit, CED could not take enforcement action in response to complaints related to parallel imports. She sought clarification of the position of CC regarding the provision of additional information to consumers through labelling. DIP said that CC had in previous occasions explained that it supported the provision of additional information to consumers in the context of general consumer protection policy; but not as a prerequisite for the liberalization of parallel importation.

13. Mr MA Fung-kwok said that consumers might find the importers' information helpful in distinguishing the products under the same trade mark. Based on past experience, consumers might have confidence in some importers and would thus take into account who the importer was in making purchase decisions. PAS/TI responded that importers would surely promote the merits of their products and let consumers know the distinctive features of their products. This market mechanism for building up the reputation of products would be far more useful to consumers than the provision of importers' information.

14. Mr James TO opined that importers' information might not be helpful to consumers in making decisions for purchase. As notorious importers could establish a shell company with a different name. Importer's information on the label of goods might not be a reliable indicator of the quality of the product. In considering the proposed labelling requirements, members needed to assess whether these were effective in protecting consumer's interest, their impact on the cost of parallel imports, and the effect, if any, on preservation of a level playing field for importers of mainstream products and parallel imports. He requested the Administration to provide an assessment on the impact of the proposed labelling requirements on imported goods.

15. PAS/TI responded that there was no labelling requirement for the provision of

importers' information on general consumer products under the existing legislation. The Administration had assessed the cost-effectiveness of the proposed labelling requirements for the protection of consumers' interest. It had concluded that the proposal would not help consumers to distinguish the quality of different products or to seek damages from the importers for defective products.

16. The Chairman said that as gathered from the discussions at previous meetings, members did appreciate that parallel importation was a fact of life which could not be prohibited. However, with the introduction of clause 19 of the Bill which expressly legitimized parallel importation, there was a change in the existing law and it would be essential to ensure that consumers' interests were adequately safeguarded. The proposed labelling requirements on provision of importers' information was considered by members an appropriate measure to facilitate consumers in making informed choices.

17. Mrs Selina CHOW agreed with Mr James TO that there should be a level playing field for all importers. The proposed labelling requirements were intended to be imposed on all imported goods, regardless of whether they were mainstream goods or parallel imports. Putting the importer's information on a label was one of the means to identify the importers, other possible means could be explored. In this connection, she sought information on overseas experience about liberalization of parallel importation such as Australia.

18. PAS/TI responded that the Administration had made reference to practices in overseas jurisdictions. Both Singapore and Australia had confirmed that they had not imposed any additional labelling requirements in connection with the liberalization of parallel importation.

19. Mr CHAN Kam-lam supported liberalization of parallel importation and the provision of more information to consumers. However, he considered that the proposal to identify the name and address of the importer of goods might not achieve the intended purpose of enhancing consumers' interest. He pointed out that Hong Kong consumers were sophisticated enough to identify the source of import of the goods through various means, such as by making enquiries with retailers. Mainstream importers and authorized distributors could advertise the characteristics of their products to assist consumers in distinguishing mainstream imports from parallel imports. Therefore, he supported clause 19 of the Bill without the imposition of any additional labelling requirements.

20. The Chairman invited members to indicate their views on clause 19 of the Bill. Mr Kenneth TING, Mrs Selina CHOW, Mr HUI Cheung-ching and Mr MA Fung-kwok supported liberalization of parallel importation but considered it necessary to provide the importer's name and address on a label to the goods. Mr CHAN Kam-lam supported clause 19 without any precondition. Mr SIN Chung-kai said that the Democratic Party supported clause 19 but had yet to make a decision on the proposed labelling requirements. In any event, the Democratic Party would not support the

imposition of criminal sanctions in connection with the labelling requirements.

21. The Chairman concluded that the majority of members present at the meeting expressed conditional support for liberalization of parallel importation, namely, that parallel importation of registered trade mark goods did not infringe the trade mark provided that the goods bore a label stating the name and address of the importer. She urged the Administration to consider members' view and examine the best way to incorporate this labelling requirement in clause 19 or any other clause of the Bill.

(*Post-meeting note* : the Administration's response was circulated to members vide LC Paper No. CB(1)1457/99-00(01).)

22. As to the possible way of amending clause 19 to incorporate members' suggestion, ALA advised that it was technically feasible to add the labelling requirement in clause 19(2). However, there would still be a grey area in the law concerning whether a trade mark owner's right was infringed if the parallel importer failed to provide his information on the label. Mrs Selina CHOW opined that if a provision on labelling requirements was added to the Bill, parallel importers who failed to comply should be liable to infringement proceedings. Mr MA Fung-kwok doubted the effectiveness of the labelling requirement if importers would not have legal liability for failure to meet the statutory requirements.

23. The Chairman pointed out that under the existing law (section 27(3) of TMO), parallel importation would not infringe a trade mark owner's rights if the owner had at any time, expressly or impliedly, consented to the use of the trade mark. It would depend on the facts of each case to determine whether the owner had given his consent and whether parallel importation infringed his rights. With the introduction of international exhaustion of the trade mark owners' rights in clause 19, the trade mark owner could no longer take actions against parallel importers unless the condition specified in clause 19(2) applied, i.e. the condition of the goods had been changed or impaired. She said that amendments could be made to clause 19(1) or clause 19(2) to include the provision of importers' information as one of the conditions for exempting parallel importation from infringement. Members' major concern was that free circulation of goods should be allowed through liberalization of parallel importation but consumers' interest must be adequately protected at the same time. If there was no effective and viable way to achieve consumer protection, members might have to reconsider their support to liberalizing parallel importation. She requested the Administration to advise the Bills Committee at its next meeting its response to the proposal regarding labelling requirements.

#### Date of future meetings

24. Members agreed on the schedule of the next three meetings as follows-

- (a) twentieth meeting on Thursday, 27 April 2000 at 10:45am;
- (b) twenty-first meeting on Thursday, 4 May 2000 at 4:30pm; and

(c) twenty-second meeting on Wednesday, 10 May 2000 at 8:30 am.

25. The meeting ended at 10:30 am.

Legislative Council Secretariat  
10 August 2000