

立法會
Legislative Council

LC Paper No. CB(1) 2096/99-00
(These minutes have been seen
by the Administration and
cleared by the Chairman)

Ref: CB1/BC/3/99/2

**Bills Committee on
Dutiable Commodities (Amendment) Bill 1999**

**Minutes of meeting held on
Friday, 2 June 2000, at 12:45 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Howard YOUNG, JP
Hon Mrs Miriam LAU Kin-ye, JP
Hon Emily LAU Wai-hing, JP
- Members absent** : Hon James TIEN Pei-chun, JP
Hon Ronald ARCULLI, JP
Hon HUI Cheung-ching
- Public officers attending** : Finance Bureau

Mr Martin GLASS
Deputy Secretary for the Treasury (2)

Ms Esther LEUNG
Principal Assistant Secretary for the Treasury
(Revenue)

Mr Donald CHEN
Assistant Secretary for the Treasury (R1)

Hong Kong Customs and Excise Department

Mr Lawrence WONG
Assistant Commissioner of Customs and Excise

Mr Simon WONG
Senior Staff Officer, Office of Dutiable
Commodities Administration

Department of Justice

Miss Betty CHEUNG
Senior Government Counsel

Clerk in attendance : Ms LEUNG Siu-kum
Chief Assistant Secretary (1)4

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Rosalind MA
Senior Assistant Secretary (1)6

I Meeting with the Administration

Briefing on the Administration's response to members' concerns raised at 22 May 2000 meeting

The Deputy Secretary for the Treasury (DS/T) drew members' attention to the letter (LC Paper No. CB(1)1734/99-00(01)), which set out the Administration's response to members' concerns raised at the last meeting. In the letter, the Administration provided statistics on prosecution in respect of supply of illicit fuel for members' information. In 1999, 663 charges were laid against suppliers of illicit fuel and 457 of these charges resulted in fines. As to members' concern about the impact on professional drivers of the proposed presumption about the dutiability (based on sulphur content test) of fuel found in the fuel tanks of vehicles, the Administration proposed to defer the introduction of this new presumption pending completion of consultation with the transport trade. The Administration would make immediate arrangements to discuss this presumption with the transport trade and in particular, how best to set up a proper record-keeping system which could effectively demonstrate the extent of knowledge that professional drivers might have about the source of fuel in the tanks of their vehicles. The Administration intended to

reintroduce the presumption provision as soon as possible in the next legislative session. In the meantime, a CSA would be introduced to impose an additional penalty. Under the proposal, a person convicted of illicit fuel related offences for the second or subsequent times could be disqualified from holding a driving licence for a period of not less than six months.

2. The Principal Assistant Secretary for the Treasury (PAS/T) explained to members the follow-up actions taken by Customs and Excise Department (CED), Lands Department (LD) and Fires Services Department (FSD) on premises or sites used for supply of illicit fuel. CED had taken effective enforcement actions against the supply of illicit fuel in car parks on Government land under short term tenancies. In 1999, there were 121 cases charged and the fines imposed ranged from \$2,000 to \$20,000 while terms of imprisonment ranged from two to three months. Where CED had taken prosecution action against illicit fuel operations in car parks, it would refer the cases to LD which would issue warning letters to the car park operators demanding eradication of such illegal activities. These operators would also be requested to improve the security of their premises, otherwise their tenancy agreements might be terminated and they might be excluded from future tender exercises. LD also had plans for enhancement of provisions of the tenancy agreements to facilitate more effective lease enforcement action. These included adding special conditions and new clauses and requiring the provision of proper security systems in car parks for approval by the Police facilitating early termination of tenancies upon confirmed reports of illegal activities. As regards FSD, the Department had instituted 376 prosecution cases under the Dangerous Goods Ordinance against unlicensed storage of fuel in 1999, of which 351 prosecutions were taken as a result of joint enforcement operations with CED. FSD had also proposed to reduce the exempted quantity for the storage of diesel oil in non-industrial premises from 2,500 litres to 500 litres.

3. PAS/T invited members to note the Administration's response to members' suggestion of introducing legislative amendments to enable the court to close down premises used repeatedly for supply of illicit fuel and to register the closure order with the Land Registry. Under the Fire Services Ordinance, FSD might issue a Fire Hazard Abatement Notice (the Notice) on any persons whose acts gave rise to a fire hazard, requiring him to remove the hazard within a specified period of time. In the event of non-compliance with the Notice, FSD might apply to the magistrate for a closing order to prohibit the use of the premises for specified purposes. However, enforcement experience had revealed that the current statutory mechanism required to be strengthened as there had been cases where the same premises were found to be used again for illicit fuel dealings by a different operator after the first one had moved out under the Notice. In this circumstance, FSD had to serve another Notice before they could proceed to apply for a closing order under the existing system. FSD was considering measures to strengthen their enforcement powers in this respect. One of the proposals being considered was to make storage of diesel

oil or petrol in any premises other than licensed premises a strict offence under the Fire Services Ordinance.

Discussion with members

Penalty level imposed on convicted cases relating to the supply and use of illicit fuel

4. Noting that the statutory maximum fine for offences relating to supply or use of dutiable fuel was \$1 million, Mrs Miriam LAU commented that the actual levels of fines imposed on suppliers of illicit fuel in 1999 was on the low side. Bearing in mind the seriousness of these offences, which led to revenue loss, environmental pollution, and caused fire hazards and threats to public safety, she urged the Administration to seek appeals or reviews for cases where low penalty levels were imposed. She pointed out that heavier penalty including higher level of fines and longer terms of imprisonment, should be imposed in order to give sufficient deterrent effect. The Chairman shared her view.

5. The Assistant Commissioner of Customs and Excise (AC/CE) agreed that offences relating to supply or use of illicit fuel did not only lead to revenue loss, but also caused environmental problems and threats to public safety. However, as these offences were charged under the Dutiable Commodities Ordinance, the court tended to consider the cases with regard to revenue loss. CED officers would try to brief the judge on the adverse impact of these offences so as to facilitate the court decision on the appropriate sentences. When there was a case in which the penalty imposed was considered too low, CED would consult the Department of Justice as to whether the case would justify an appeal. DS/T said that the Administration would consider members' views. Nevertheless, consideration had to be made in consultation with the Department of Justice and other relevant Bureaux as issues concerning fire safety and environmental matters were involved.

6. Noting that the statistics provided in the Administration's reply covered only the level of fines imposed on suppliers of illicit fuel in 1999 but not users, Miss Emily LAU sought information on the fine levels imposed on the latter. She also enquired whether the convicted users of illicit fuel were all caught red-handed when refilling their vehicles at illicit fuel stations or some were caught with illicit fuel found in the fuel tanks of their vehicles. AC/CE responded that the fines imposed on users of illicit fuel ranged from \$800 to \$2,000. Most of the convicted offenders were caught red-handed while a small number of the offenders were found with marked oil in the fuel tanks of their vehicles. As marked oil could be detected from its appearance, people using it as fuel for their vehicles would be charged even though the proposed presumption on the dutiability of fuel with excessive sulphur content was not in place. However, the proposed presumption would facilitate enforcement actions against users of

dutiabale light diesel fuel which was visually indistinguishable from ordinary light diesel fuel.

7. In response to Mr Howard YOUNG's enquiry about the rate of conviction of offences relating to illicit fuel in 1999, AC/CE said that there was a 100% conviction rate for charges on supply of illicit fuel in 1999. He explained that the Administration would only take to court those cases with sufficient evidence against the offenders and this might be the reason for the high conviction rate.

8. Mr SIN Chung-kai commented that the existing penalty imposed on the supply and use of illicit fuel did not seem to carry sufficient deterrent effect. While the proposed additional penalty of disqualifying a person from holding a driving licence on second or subsequent convictions of illicit fuel-related offences would be effective in deterring the use of illicit fuel, the Administration should put in place appropriate penalty against the supply of illicit fuel as well. He sought information on whether the equipment used in the illicit fuel stations could be confiscated as penalty for the suppliers. He also asked the Administration to consider proper measures to identify the source of supply of the illicit fuel, and to extract information from front-line suppliers on the masterminds behind the offences.

9. AC/CE replied that the Administration would apply to the court for confiscation of the equipment used for the supply of illicit fuel found during the enforcement actions. The majority of such applications were successful. The Administration had also considered other penalties for the suppliers, such as the application for closure orders to close down premises used for the supply of illicit fuel. However, as there was existing statutory mechanism for closing down repeated offending premises under the Fire Services Ordinance, it was considered more appropriate to enhance the existing mechanism than to create a separate mechanism under the legislation. As to the investigation of the culprits behind the scene, he assured members that the Administration would continue to conduct follow-up investigations to identify any culprits other than those arrested at the site. There were successful cases where the culprits were identified and brought under prosecution after detailed investigation. In response to the Chairman's enquiry on the cooperation with the Mainland authorities in the investigation of cases where the source of illicit fuel was from the Mainland, AC/CE said that CED had close liaison with relevant Mainland authorities for information sharing and joint enforcement actions against smuggling, in particular, offences relating to illicit fuel.

Proposed presumption of the dutiability (based on sulphur content test) of fuel found in fuel tanks of vehicles

10. Miss Emily LAU supported the Administration's proposal of deferring the introduction of the presumption of the dutiability of fuel based on sulphur

content test until completion of consultation with the transport trade. She sought information on the Administration's plan for the consultation and whether the Administration would provide a proposed record-keeping system for discussion with the trade. She urged the Administration to complete the consultation expeditiously so that the proposed presumption could be reintroduced for consideration by the Legislative Council as soon as possible in the next Legislative session.

11. PAS/T said that the preliminary plan for consultation with the transport trade was to brief the trade on the proposed presumption and seek their views on the record-keeping arrangements through the various standing advisory committees under the Transport Department. AC/CE added that although the Administration did not have a comprehensive proposal on the record-keeping system at present, reference could be made to guidelines for the trade on transportation of goods from the Mainland. DS/T said that the Administration would try its best to conduct the consultation expeditiously. However, the completion date of the consultation would depend on the progress of discussion with the trade and the Administration could not commit a date for the reintroduction of the proposed presumption at this stage.

12. The Chairman pointed out that the Administration should be cautious in drafting the guidelines on the proper record-keeping system and the defence provisions on use of illicit fuel to eliminate the possibility of abuse. Mr CHAN Kam-lam supported the proposed presumption as it would facilitate enforcement actions against illicit fuel. He also opined that tougher penalty should be imposed so as to give sufficient deterrent effect.

13. Mrs Miriam LAU said that the transport trade fully supported the stepping up of enforcement against illicit fuel and they had no objection to the proposed presumption. The trade was more concerned about solving the technical enforcement problems so that innocent drivers would not be penalized. The proposed penalty of disqualifying the drivers from holding their driving licences was of particular concern to the professional drivers, since their livelihood would be adversely affected. The transport trade had expressed their worries about the difficulties in proving the source of fuel found in the fuel tanks of their vehicles due to the shift system in the trade. The initial idea of providing the receipt of refilling at fuel station had been considered by the trade. However, they wished to establish a proper record-keeping system which would be acceptable to the Administration. She urged the Administration to arrange meetings with the trade as soon as possible and undertook to liaise with the trade on the meeting arrangements.

Clause-by-clause examination of the Bill

Clause 1

14. Members did not have any comments on the clause.

Clause 2

15. Upon members' request made at the first meeting on 16 May 2000, the Administration had provided a draft Committee Stage amendment (CSA) specifying that regulations made under the new section 6(1)(i) would be subject to positive vetting by the Legislative Council (LC Paper No. CB(1)1768/99-00(01)). Members agreed with the proposed CSA.

Clause 3

16. Members noted that to clarify the legislative intent on the exemption of home-brewed liquor which did not involve distillation process from section 17(4) of the Dutiable Commodities Ordinance, the Administration had prepared a draft CSA at LC Paper No. CB(1)1768/99-00(01). Members agreed with the proposed CSA.

Clause 4

17. Members agreed that a CSA should be moved by the Administration to delete clause 4(b), which set out the proposed presumption on the dutiability of fuel in the fuel tanks of vehicles based on a sulphur content test.

(Post-meeting note: The draft CSA was provided by the Administration and circulated to members vide LC Paper No. CB(1)1793/99-00.)

Clause 5

18. Noting the proposed penalty of disqualifying a person who had been convicted for the second or subsequent times of carrying or using illicit fuel with the use of a vehicle from holding his driving licence for a period of not less than six months, Mr SIN Chung-kai commented that the period of suspension might be too long in the case of a second conviction. The Chairman shared his view and suggested that the period of disqualification should be limited to six months for a second conviction and longer period of disqualification could be imposed on further convictions.

19. PAS/T responded that there were provisions to allow the court or magistrate, if satisfied that there were special reasons for doing so, to order that a person be disqualified for a period shorter than six months or that the person

not be disqualified. Nevertheless, she undertook to take members' suggestion into consideration.

(Post-meeting note: After consideration, the Administration provided a draft CSA which was circulated to members vide LC Paper No. CB(1)1793/99-00.)

20. Mr CHAN Kam-lam supported the proposed penalty for it would have more deterrent effect on offences relating to the use of illicit fuel. He expressed concern that the deterrent effect would be reduced if the court or magistrate exercised the discretion of imposing a lighter penalty on special grounds frequently. The Chairman responded that from his experience, it was difficult to convince the judge that a certain case had special reasons for a lighter penalty than the statutory one.

21. Members noted that the draft CSA to clause 5 included provisions which were reproduced from the Road Traffic Ordinance. The definition of "special reasons" provided in the CSA was the same as that in the Road Traffic Ordinance. The Chairman invited the Assistant Legal Adviser to study the CSA in detail after the meeting and inform members if there were any irregularities in the drafting.

Clause 6

22. Members did not have any comments on the clause.

Clause 7

23. The Chairman opined that the requirement for the home-brewed liquor to be stored in containers marked legibly in English "Home Brewed, Not for Sale" or in Chinese "家中自釀，不得售賣" in the proposed section 64A(2)(c)(i) might need more publicity as this specific requirement might be easily overlooked. He doubted the effectiveness of this provision in the enforcement actions against duty-not-paid liquor and sought clarification on the need to have such a provision in the legislation. The provision might only penalize those people who failed to meet the requirement because of ignorance or innocence. However, it would not be effective in identifying those culprits who intentionally abused the exemption by crossing out or removing the labels with the words "Home Brewed, Not for Sale" when they put the liquor on sale. He asked the Administration to provide examples to illustrate how this requirement could facilitate CED's enforcement actions. Even if the Administration considered that such a requirement would be necessary, it might not be necessary to specify the exact wordings of the required label in the legislation. Mrs Miriam LAU concurred and said that flexibility should be allowed as long as phrases of the same meaning of "Home Brewed, Not for Sale" were marked on the containers.

24. AC/CE explained that the purpose of the provision was to prevent abuse of the exemption for home-brewed liquor. The same principle was adopted in the control measures for other dutiable commodities in which there was a requirement for attaching a "Hong Kong Duty Not Paid" label to dutiable goods for easy inspection by CED officers. Without the labels, it would be difficult for CED officers to differentiate the dutiable goods from duty paid goods immediately. There would be publicity to arouse public awareness of the new requirement. To address members' concerns, DS/T undertook to prepare a CSA for revision of the requirement under the proposed section 64A(2)(c)(i) to the effect that the requirement would be met if a label with words of the same meaning as "Home Brewed, Not for Sale" was put on the container of the home-brewed liquor.

(Post-meeting note: The CSA provided by the Administration was circulated to members vide LC Paper No. CB(1)1793/99-00.)

Clause 8 to 10

25. Members did not have any comments on the clauses.

II Any other business

Legislative timetable

26. Members agreed that the Bills Committee had completed its scrutiny of the Bill and there was no need for further meetings. The Bills Committee would submit its report to the House Committee on 16 June 2000 and the Second Reading debate on the Bill would be resumed on 26 June 2000. The deadline for giving notice for CSA to the Bill would be on 16 June 2000.

27. There being no other business, the meeting ended at 2:30 pm.

Legislative Council Secretariat
12 September 2000