

立法會
Legislative Council

LC Paper No. CB(1) 2095/99-00
(These minutes have been seen
by the Administration and
cleared by the Chairman)

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

**Minutes of meeting held on
Monday, 22 May 2000, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon James TIEN Pei-chun, JP
Hon HUI Cheung-ching
Hon CHAN Kam-lam
Hon Mrs Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP

Members absent : Hon Ronald ARCULLI, JP
Hon SIN Chung-kai
Hon Howard YOUNG, JP

**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 LAM Ming-mon
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

The Deputy Secretary for the Treasury (DS/T) briefed members on the main points in the Administration's responses to members' concerns raised at the meeting on 16 May 2000 and Mrs Miriam LAU's concern about the application of the new presumption on dutiability of fuel with an excessive sulphur content (LC Paper Nos. CB(1)1638/99-00(01) and 1650/99-00(01)) as follows-

- (i) Regarding Mrs Miriam LAU's concern about whether the proposed amendments would adversely affect innocent drivers who were unaware of the existence of illicit fuel in their fuel tanks, DS/T explained that the application of the proposed presumption would not by itself be sufficient to establish an offence. Taking the example of a taxi driver who had the fuel tank filled with illicit fuel by another driver in an earlier shift, the taxi driver would be required to explain whether the diesel oil was dutiable. If he claimed that the fuel was filled by the driver in the earlier shift and that he had no reason to suspect that the

fuel was dutiable, Customs officers would then conduct follow-up investigations, including probing the driver of the earlier shift. Depending on what had transpired in evidence, the innocent driver might not be prosecuted.

- (ii) To address members' concern about the deterrent effect of the penalty provisions for offences relating to illicit fuel, the Administration proposed to add the penalty provisions 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 a driving licence for a period of not less than six months unless the court ordered otherwise for special reasons. If the last previous conviction took place five or more years ago, the offence in question would be regarded as if it were a first offence. The Administration considered this proposed penalty more appropriate than the proposal of setting a minimum financial penalty or penalty formula as making the penalty mandatory would take away the court's sentencing discretion.
- (iii) As requested by members at the last meeting held on 16 May 2000, the Administration had provided statistics on vehicles involved in the cases of using illicit fuel from 1996 to 1999. A total of three light goods vehicles were forfeited during this period.
- (iv) On the effects of home-brewed liquor on health, the Finance Bureau had consulted relevant departments and it was confirmed that home-brewed liquor would not cause any significant risk to human health as long as hygienic principles were strictly observed during the brewing process.
- (v) After consideration, the Administration accepted members' proposal of subjecting regulations made under section 6(1)(i) of the Dutiable Commodities Ordinance (DCO) to positive vetting by the Legislative Council. A Committee Stage amendment (CSA) would be introduced by the Administration to this effect.

Discussion with members

Proposed presumption on the dutiability of light diesel fuel with a sulphur content in excess of 0.05%

2. Mrs Miriam LAU said that the transport trade was in support of stepping up enforcement actions against offences relating to supply and purchase of illicit fuel. However, the trade had grave concern about the application of the new presumption on the dutiability of light diesel oil found in the fuel tank of vehicles with a sulphur content in excess of 0.05%. Taking

into account the operation of shift system in the transport trade in which different drivers would be driving the same vehicle in different shifts, innocent drivers who had no knowledge of the kind of fuel in their fuel tanks might be penalized as a result of the application of the new presumption. She sought information about the defence available to the driver to prove his innocence.

3. DS/T explained that it was always important that enforcement officers made effective investigation to identify the perpetrator of an offence. The new presumption would not bring about any changes to the circumstances enforcement officers faced in their investigation. Under the existing legislation, there were offences relating to the use of marked oil or detreated oil and similar difficulties were encountered in collecting evidence against the culprits. The Assistant Commissioner of Customs and Excise (AC/CE) supplemented that the new presumption on dutiability of fuel based on sulphur content test would only assist the enforcement staff in establishing the dutiability of fuel found in the fuel tanks of vehicles. The application of this new presumption would in no way undermine the normal investigation process required for collection of evidence for prosecution. It would not create any new offence in relation to dealings in illicit fuel. The enforcement officer would have to collect relevant evidence, including probing the driver of an earlier shift if the driver in possession of the illicit fuel had claimed that he had no knowledge of the kind of fuel in the fuel tank, before deciding on the person to be prosecuted.

4. Mr CHAN Kam-lam sought information on the statistics concerning cases where the driver found in possession of marked oil or detreated oil, claimed that he had no knowledge of the type of fuel in his fuel tank and whether the owner of the vehicle would be prosecuted if no driver was found to be responsible. AC/CE said that there were cases in which after investigation, persons other than the driver found in possession of illicit fuel were prosecuted. However, he had no statistics showing the number of such cases in hand.

5. The Chairman enquired whether there was a simple chemical test which would enable the professional drivers to test the sulphur content of the fuel in the fuel tanks when they took over the vehicles from drivers of the earlier shift. AC/CE replied that the sulphur content of light diesel fuel could not be detected through simple chemical test on the spot. At present, the Customs and Excise Department (CED) had to use a special machine to analyze the sulphur content of the light diesel fuel.

6. While appreciating the need to step up enforcement actions against the use of illicit fuel, Mrs Miriam LAU still had reservations over the proposed presumption of the dutiability of fuel with a sulphur content higher than the specified standard. She urged the Administration to defer the application of the presumption and arrange discussion with the transport trade with a view to establishing a proper record-keeping system which could demonstrate the extent of knowledge professional drivers might have about the source of illicit

fuel in the tanks of their vehicles. Miss Emily LAU supported measures to step up actions against illicit fuel but pointed out that the Administration had not consulted the transport trade on the amendment proposals in the Bill. She agreed with Mrs Miriam LAU that the hardship of professional drivers should be taken into account and that the Administration should work with the trade towards an acceptable system so that innocent drivers would not be penalized.

7. DS/T said that the Administration had briefed the Panel on Financial Affairs in November 1999 on the proposals of the Bill before its introduction into the Legislative Council. He pointed out that since then, the Administration had not received any adverse comments on the proposals from the transport trade in connection with the widening of the presumption relating to the use of illicit fuel. AC/CE added that some companies in the trade had established their own record-keeping system and they might not need the assistance of the Administration in this regard. He said that if the driver found in possession of illicit fuel could provide a proper receipt as evidence that to his best knowledge the fuel in his fuel tank was from a legitimate source, it would be unlikely that the Administration would bring legal proceedings against him. In response to members' request, the Administration undertook to reconsider the appropriate time for introducing the proposed presumption.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)1734/99-00(01).)

8. Noting that cross-border vehicles were exempted from the presumption of dutiability of the light diesel fuel with sulphur content in excess of the specified standard, Mr HUI Cheung-ching sought clarification of the control measures in place to prevent the abuse of this exemption. The Chairman also sought information on the possibility of these cross-border vehicle drivers simply refilling their tanks with illicit fuel in Hong Kong but claiming that the fuel was refilled in the Mainland. He enquired whether CED would conduct random inspection of these vehicles at the border.

9. AC/CE said that CED did conduct random inspection of cross-border vehicles to ensure that the amount of fuel they brought in from the Mainland was within the permitted limits. As these vehicles were required to obtain a permit under the current system, drivers of these vehicles were usually very cautious in following the conditions of the permits and it was unlikely that they would take the risk of losing their permits by abusing the exemption.

Penalty level

10. Mrs Miriam LAU expressed strong reservations over the new penalty proposal of disqualifying repeated offenders from holding a driving licence for a period of not less than six months. She opined that the proposed penalty was too harsh as professional drivers would be deprived of their means of making a living if they were disqualified from holding driving licence. This

severe penalty should only be imposed on persons caught red-handed when refilling their vehicles at illicit fuel stations but not those found with illicit fuel in their fuel tanks as it would be difficult to ensure the person responsible for purchasing the illicit fuel in the latter case.

11. Mr James TIEN shared her view that the proposed penalty of disqualification from holding a driving licence would be too harsh, especially for professional drivers whose livelihood would be adversely affected. He recalled that at the last meeting on 16 May 2000, members were concerned about the deterrent effect of the existing level of fine imposed. They therefore requested an increase in the penalty level by setting a minimum financial penalty for offences relating to illicit fuel. There had not been any call for the penalty of disqualification. He doubted the rationale behind the Administration for introducing such a harsh penalty.

12. DS/T explained that the Administration agreed with members that the penalty provisions for offences relating to illicit fuel should carry sufficient deterrent effect. The proposed penalty of disqualifying a person from holding his driving licence was considered to have a greater deterrent effect than a financial penalty, especially for professional drivers. Moreover, this proposed penalty was preferred to the proposal of setting a mandatory minimum financial penalty because the latter proposal ran contrary to established legal principle and policy. A mandatory minimum penalty would affect the independence of the judiciary as it limited the discretion of a judge or magistrate to impose any fine less than the statutory minimum. He pointed out that under the proposed penalty provision, a person would only be subject to the penalty of disqualification from holding a driving licence upon his second or subsequent conviction of an offence relating to using a vehicle for dealings in illicit fuel. As such, the first conviction should serve as sufficient warning to the offender. The court could also exercise its discretion under special circumstances to order that the person would be disqualified from holding the driving licence for a shorter period or that he not be disqualified. The Administration had tried to come up with the most appropriate penalty to achieve greater deterrent effect after balancing all considerations.

13. Miss Emily LAU supported the move towards increased penalty so as to achieve greater deterrent effect. However, a balance should be struck between increasing the penalty level and protecting the interest of professional drivers. She suggested that different penalty levels be imposed for different offences. For example, persons convicted of an offence of purchasing illicit fuel at illicit fuel station could be disqualified from holding their driving licence while persons convicted of possessing illicit fuel in their fuel tank could be ordered to pay fines only. In addition, she requested the Administration to consult the transport trade on the additional penalty provisions on the disqualification of holding a driving licence before putting this into practice. Mrs Miriam LAU shared her view on the need to consult the trade before putting in place such a harsh penalty.

14. DS/T explained that the additional penalty provisions were put forward in response to members' concern on the deterrent effect of existing penalty provisions expressed at the last meeting on 16 May 2000. The Administration did not consult the trade on the proposed penalty because of the time constraint. He nevertheless undertook to reconsider the proposal in the light of members' comments.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)1734/99-00(01).)

Statistics on vehicles involved in the cases of using illicit fuel

15. The Chairman drew members' attention to the statistics on vehicles involved in the cases of using illicit fuel from 1996 to 1999 that were set out in LC Paper No. CB(1)1638/99-00(01). He sought the Administration's analysis on the statistics and asked whether any type of vehicles would be exempted from the proposed presumptions in the Bill.

16. AC/CE replied that as observed from the statistics, the number of vehicles involved dropped from 1996 to 1998 but had a slight increase in 1999. The increase was due to the allocation of more resources in setting up road blocks in the second half of 1999, resulting in an increased number of vehicles being detected. He advised members that the proposed presumptions would apply to all types of vehicles except cross-border vehicles.

Information on follow-up actions taken by other relevant departments on premises or sites used for supply of illicit fuel

17. Mr CHAN Kam-lam pointed out that some of the illicit fuel filling stations were on Government land sites used as car parks under short term tenancies. He sought information on the follow-up action taken by relevant departments, including CED, the Lands Department (LD) and the Fire Services Department (FSD) to prevent illegal use of the sites. He also enquired whether the car park operators would be charged for offences relating to the sale and supply of illicit fuel. Mrs Miriam LAU also expressed concern about the follow-up action by relevant departments to prevent repeated use of the sites as illicit fuel filling stations. She sought information on the prosecution and penalty statistics relating to such offences.

18. AC/CE explained that CED had taken effective enforcement action against the supply of illicit fuel in car parks on Government land under short term tenancies. The fines imposed ranged from \$2,000 to \$20,000 and the terms of imprisonment imposed ranged from two to three months in 1999. Where CED had taken prosecution action against illicit fuel operations in car parks on Government land, the department would refer the cases to LD for necessary follow-up action, including issuing warning letters to the car park operators and termination of tenancy agreements depending on the

circumstances of the case. CED had also been working very closely with FSD in taking enforcement action against supply of illicit fuel. Cases detected by CED involving possibilities of breaching the Dangerous Goods Ordinance would be referred to FSD for follow-up action. He informed members that an inter-departmental working group under the coordination of the Environment and Food Bureau was formed to conduct a comprehensive review of action against activities relating to dealings in illicit fuel. He undertook to provide members with additional information on the follow-up action to be taken by relevant departments, and the figures for cases of prosecution and penalty imposed.

(Post-meeting note: The requested information was provided by the Administration and circulated to members vide LC Paper No. CB(1)1734/99-00(01).)

19. As regards the enforcement action against illicit fuel filling stations in domestic premises, Mrs Miriam LAU suggested the Administration consider the feasibility of introducing legislative amendments to enable the court to close down the premises which were repeatedly used for such illegal purpose and to register the closure order with the Land Registry. She also sought information as to whether CED would step up actions against those premises which had been repeatedly used as illicit fuel filling stations. The Chairman shared her view that the application of closure orders to these domestic premises would increase the deterrent effect of the penalty. He enquired whether CED had in place a reward scheme for those providing information on the operation of the illicit fuel filling stations and the effectiveness of such a scheme, if there was one. Miss Emily LAU shared their concerns over enforcement actions against those notorious black spots which were repeatedly used as illicit fuel filling stations. She was also concerned about the follow-up action undertaken by other relevant departments, i.e. LD and FSD, to prevent repeated use of the sites for illegal purposes.

20. AC/CE responded that CED was very concerned about the use of domestic premises for the sale and supply of illicit fuel as this would pose fire hazards and threats to the lives of people in the vicinity. CED had established a reward scheme to encourage people to provide information about the locations and operations of illicit fuel filling stations and it had been in smooth operation providing a source of information for CED to take enforcement action. Frequent enforcement action was also taken against those notorious black spots which were repeatedly used as illicit fuel filling stations. Enforcement experience revealed that there had been cases where the same premises were found to be used again for illicit fuel dealings, but by different operators after the first operator had moved out under the FSD's notice. He undertook to provide more information on the operation and enforcement action against these black spots for members' consideration. In response to the suggestion of enabling the court to apply closure orders on premises repeatedly used for illicit fuel dealings and to register the closure orders with

the Land Registry, DS/T said that the Administration would consider the feasibility of such a legislative amendment in the light of members' comments.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)1734/99-00(01).)

21. Mrs Miriam LAU suggested that the Administration could request the fuel companies to establish a register system so that transactions in marked oil would be recorded and any illegal dealings in marked oil could be traced from these transactions. The Chairman said that it would be outside the ambit of the Bills Committee to discuss the detailed enforcement operations of CED. He suggested that these be handled in a separate forum.

II Any other business

Date of next meeting and legislative timetable

22. Members agreed that in order to allow time for the Administration to respond to the concerns raised at the meeting, the next meeting scheduled for Tuesday, 23 May 2000 should be cancelled. The next meeting would be re-scheduled for Friday, 2 June 2000 at 12:45 pm.

23. Members noted that the Administration intended to resume the Second Reading debate by the end of this Legislative Council session in June 2000. The Bills Committee agreed to submit its report to the House Committee on 16 June 2000.

24. There being no other business, the meeting ended at 4:15 pm.

Legislative Council Secretariat

6 September 2000