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22 May 2000

Ms Leung Siu-kum
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong
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Dear Ms Leung,

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

Thank you for your letter of 17 May 2000. Our response to the concerns raised by Members at the Bills Committee meeting on 16 May is set out in ensuing paragraphs.

Penalty Level

The Administration agrees with Members that the penalty provisions for offences relating to illicit fuel should carry sufficient deterrent effect, since they not only lead to revenue loss, but will also cause environmental and fire hazards.

Following the meeting with Members on 16 May, the Administration has considered how the deterrent effect of the penalty provisions can be further enhanced. We now propose the following additional penalty provisions (i.e. in addition to any fines or imprisonment terms to be determined by the courts) for Members' consideration:

- If a person is convicted of illicit fuel-related offences during the course of committing which he used a vehicle, he shall be disqualified from holding a driving licence for a period of not less than six months in the case of a second or subsequent conviction unless the court or magistrate for special reasons order that he be disqualified for a shorter period or that he not be disqualified. If the last previous conviction of the offender was made at

least five years ago, the court may deal with the latest offence as the offender's first offence.

We prefer the above option to the proposal of setting a minimum penalty level or introducing a penalty formula linked to the volume of the fuel tank of a vehicle or the volume of illicit fuel seized, for the following reasons:

- (a) We consider disqualifying a person who has been repeatedly convicted of carrying or using illicit fuel with the use of a vehicle from holding his driving licence has a greater deterrent effect than a financial penalty, especially for professional drivers. We therefore propose that unless there are special reasons, the court shall disqualify a person who has been convicted for the second and subsequent times from holding his driving licence for no less than 6 months.
- (b) For any minimum financial penalty or penalty formula to carry sufficient deterrent effect, the penalty must be made mandatory. Otherwise, the minimum financial penalty system will not add much deterrent effect to the existing penalty system. Making the penalty mandatory will however take away the court's sentencing discretion. This is not desirable, because in the interest of justice, the court should retain the discretion to fix an appropriate penalty that reflects all relevant aspects of a particular case. Our proposal aims to strike a suitable balance between the need to provide a penalty with sufficient deterrent effect, and the need to leave the ultimate sentencing discretion to the court.

Statistics on vehicles involved in the cases of using illicit fuel

The number of vehicles found involved in using illicit fuel since 1996, and their breakdown by types are appended below.

Number of Vehicles Involved in Using Illicit Fuel (From 1996 to 1999)

Type of vehicles	No. of vehicles 1996	No. of vehicles 1997	No. of vehicles 1998	No. of vehicles 1999
Taxis	523	80	123	178
Public Light Bus	78	20	20	21
Others (including goods vehicles, coach, private cars, etc.)	914	605	178	257
Total	1,515	705	321	456

Of the above vehicles, a total of three light goods vehicles have been forfeited.

Effects of home-brewed liquor on health

We have consulted the Food and Environmental Hygiene Department and the Department of Health. We can confirm that home-brewed alcoholic liquor will not cause any significant risk to human health as long as the hygienic principles are strictly observed during the brewing process. It is important to note that methanol, a toxic by-product of poorly controlled distillation, would not be generated in home-brewing process under the proposed amendment. This is because home-brewed liquor by way of distillation is prohibited under the proposed amendment bill.

Subjecting regulations made under section 6(1)(i) of the Dutiable Commodities Ordinance to positive vetting

We have considered Members' counter-proposal to subject regulations made under section 6(1)(i) of the Dutiable Commodities Ordinance to positive vetting, and conclude that it is acceptable. The reason is that it can also achieve the primary objective underlying our original proposal, i.e. to streamline the legislative procedures relating to duty exemption proposals.

The proposed new section 6(1)(i) in the Bill confers a general regulation-making power on the Chief Executive in Council in respect of exempting any categories of goods. We will introduce a CSA to specify that regulations made under the new section 6(1)(i) will only take effect after the regulations have been approved by the Legislative Council through positive vetting.

Yours sincerely,

(Ms Esther Leung)
for Secretary for the Treasury

c.c.

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