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2 June 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 23 May 2000. Our response to the concerns raised by Members at the Bills Committee meeting on 22 May is set out in the following paragraphs.

Statistics on Prosecution in respect of Supply of Illicit Fuel

In 1999, 663 charges were laid against suppliers of illicit fuel. Out of these, 457 resulted in fines. The levels of fines imposed and the statutory maximum fines are set out in the following table. Sentences for the remaining 206 charges were in the form of custodial sentence (48 charges), suspended sentence (88 charges) and probation order, training centre, detention centre, etc. (70 charges)

Distribution of Fines imposed on suppliers of illicit fuel in 1999

Fine Imposed	No of Charges	%
<\$5,000	364	79.6%
\$5,001 to \$10,000	56	12.3%
\$10,001 to \$30,000	34	7.4%
>\$30,000	3	0.7%
Total:	457	100%

Note: The statutory maximum fine for offences related to supply or use of dutiable fuel under the Dutiable Commodities Ordinance is \$1,000,000.

The statutory maximum fine for offences related to illegal supply or use of marked oil and detreated oil under the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations is \$200,000. -

Consultation with the transport trade on proposed presumption relating to the use of illicit fuel found in fuel tanks of vehicles and the proposed new penalty

At the last two Bills Committee meetings, Members expressed the following two major concerns:

- a) The impact of the proposed presumption about the dutiability (based on sulphur content test) of the fuel found in the fuel tanks of vehicles on professional drivers, who may have no knowledge about the source of the vehicular fuel in question (e.g. when a taxi driver adopts fuel from a previous shift).

They requested the Administration to consult the trade on this presumption, and the proposed new penalty (disqualification from holding driving licences) for the relevant offences. They also requested us to work out with the trade a proper record-keeping system which can help them demonstrate the extent of their knowledge about the source of illicit fuel.

- b) The need to have, in the earliest possible instance, sufficiently deterrent penalties under the law for those convicted of offences relating to illicit fuel.

We agree with Members that the trade should be consulted on the proposed presumption relating to the dutiability of fuel in the fuel tanks of vehicles, and that a proper record-keeping system should be established. It is however impracticable for us to complete a thorough consultation with the transport trade in time for the legislation to be enacted before the end of the current legislative session, as Members have requested.

Considering the need to enact the bill as soon as possible, and the need for sufficiently deterrent penalties for those convicted of offences relating to illicit fuel, we propose to introduce the following two Committee Stage Amendments:

- a) Delete the proposed presumption about dutiability of fuel in the fuel tanks of vehicles based on sulphur content test; and
- b) Apart from the existing penalty of a fine and imprisonment, add penalty provisions relating to those who have been convicted of offences relating to illicit fuel to the following effect:

“If a person is convicted of an illicit fuel-related offence and the person either commits the offence in respect of hydrocarbon oil in a vehicle he uses, or uses a vehicle in the course of commission of the offence, 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 present offence as the offender’s first offence.”

(Prosecution may be triggered by the existing presumption provision which can be invoked if a person is transferring light diesel oil or petrol to or from a vehicle’s fuel tank; or by the newly proposed presumption which can be invoked if a person is found to be selling, supplying, buying, receiving or otherwise dealing in light diesel oil or petrol outside licensed premises)

We would like to stress that the CSA at (a) above does not mean that we are abandoning the presumption about the dutiability of fuel in the fuel tank altogether, since we still consider the presumption conducive to Customs & Excise Department’s (C&ED) enforcement efforts against the use of illicit fuel. We are simply deferring its introduction, pending completion of consultation

with the transport trade. To this end, we will 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 can effectively demonstrate the extent of knowledge that professional drivers may have about the source of fuel in the tanks of their vehicles. Our intention is to reintroduce the presumption provision in the next legislative session, once our consultations with the trade are complete.

As regards some Members' proposal of introducing a mandatory minimum penalty we are unable to accept it, because it runs contrary to established legal principle and policy. A mandatory minimum penalty will affect the independence of the judiciary as it limits the discretion of a judge or magistrate to impose any fine less than the statutory minimum.

Information on follow-up actions taken by C&ED, Lands Department and Fire Services Department on premises or sites used for supply of illicit fuel

At the last meeting, Members sought information on action taken by C&ED, Lands Department and Fire Services Department on premises and sites where sale and supply of illicit fuel activities had taken place, in particular actions taken against illegal fuel filling stations on Government land sites held for fee-paying vehicle parking under short term tenancies, as well as the relevant prosecution and penalty statistics.

C&ED has taken effective enforcement action against the supply of illicit fuel in carparks on Government land under short term tenancies. In 1999, there were 121 cases. The fine imposed ranged from \$2,000 to \$20,000, as against the statutory maximum of \$1,000,000 (for Dutiable Commodities Ordinance) or \$200,000 (for Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations)), and terms of imprisonment imposed ranged from 2 months to 3 months, as against the statutory maximum of 2 years imprisonment under both the Dutiable Commodities Ordinance and Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations. In 2000, up to April, there have been 57 cases. Prosecution of 42 cases is in progress. For the 15 cases where prosecution has been concluded, the fine imposed ranged from \$2,000 to \$10,000 and terms of imprisonment imposed including custodial sentence and suspended sentence, ranged from one to three months.

Where C&ED has taken prosecution action against illicit fuel operations in carparks, the Department will refer the cases to Lands Department which will issue warning letters to the carpark operators demanding eradication of such illegal activities. They have also been warned that unless they improve

the security of their premises through effective measures, the Government will terminate their tenancy agreements and consider excluding them from future tender exercises. This helps prevent unauthorised entry to car parks for sale and supply of illicit fuel.

The Lands Department will further enhance the existing provisions of the tenancy agreements to facilitate more effective lease enforcement action. A new clause has been included in the special conditions of new tenancy agreements for vehicle parking sites. The clause mandates the provision of proper security systems on vehicle parking sites for approval by the Police, and prohibits any changes to the approved systems without prior consent of the Police.

Moreover, to ensure that the tenancy agreement can be terminated early upon confirmed reports of illegal activities, Lands Department will include new clauses in future tenancy agreements to facilitate early termination of tenancies.

As regards Fire Services Department (FSD), the Department has been working very closely with C&ED in taking enforcement actions against supply of illicit fuel. In 1999, FSD instituted 376 prosecution cases under the Dangerous Goods Ordinance against unlicensed storage of fuel, of which 351 prosecutions were taken as a result of joint enforcement operations with C&ED. Among the 376 prosecutions, 98 concerned cases in car parks on government land. The rest covered illicit fuel dealings on open ground (235 cases), in domestic or domestic/commercial composite buildings (42 cases), and in industrial premises (1 case). The fine imposed in the 376 prosecution cases ranges from \$2,000 to \$5,000, against the maximum fine of \$25,000

To strengthen and facilitate enforcement actions against illicit oil dealings, FSD has proposed to reduce the exempted quantity for the storage of diesel oil in non-industrial premises from 2,500 litres to 500 litres. The proposal will be incorporated in the subsidiary legislation amendment exercise following the passage of the Dangerous Goods (Amendment) Bill, which was introduced into this Council on 1 December 1999.

Legislation to close down premises used repeatedly for dealings in illicit fuel

Some Members suggested that the Administration should consider 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.

Members may wish to note that there exists a statutory mechanism under the Fire Services Ordinance which may be invoked to prohibit the use of premises as illicit fuelling stations through a closing order. According to Section 9 of the Fire Services Ordinance, FSD may issue a Fire Hazard Abatement Notice on any persons whose acts give rise to a fire hazard, requiring him to remove the hazard within a specified period of time. The Notice is valid for a period of twelve months as from the date it was served on the person. Failure to comply with the Notice is an offence punishable by a maximum fine of \$25,000 plus a daily fine of \$2,500 during the period of non-compliance. In the case of illicit fuel dealings, the conduct of fuel dispensing activities in buildings is regarded as a fire hazard. In 1999, 24 Fire Hazard Abatement Notices were issued to premises used as illicit fuelling stations.

Where a Fire Hazard Abatement Notice has been served on a person and where the fire hazard in the premises persists, the Director of Fire Services may apply to the magistrate for a closing order to prohibit the use of the premises for a specified purposes. No such closing order was applied for in 1999, as all illicit fuel dispensing facilities had been removed from the premises after the Fire Hazard Abatement Notices were served on operators.

Enforcement experience reveals that there have been cases where the same premises were found to be used again for illicit fuel dealings, but by a different operator after the first operator had moved out under the previous Fire Hazard Abatement Notice. Since the illicit fuelling station was run by another operator, FSD had to serve another Fire Hazard Abatement Notice before they could proceed to apply for a closing order under the existing system. In view of this problem, FSD is considering measures to strengthen their enforcement powers in this respect. One of the proposals being considered is to make storage of diesel oil or petrol in any premises other than the premises licensed under the Dangerous Goods (General) Regulations a strict offence under the Fire Services Ordinance, so that they can take immediate prosecution action against such premises and their operators, instead of relying on the Fire Hazard Abatement Notice system. Those who are so convicted will be subject to a fine of Level 6 (\$100,000) on first conviction. Those who are on second or subsequent conviction will subject to a fine of \$200,000 and imprisonment for one year. Moreover, they will also be subject to a fine of level 5 (\$50,000) for each day during which the offence continues. The Administration plans to introduce the amendments in the 2000-01 legislative session.

We will keep the situation under review and are prepared to consider other ways and means to further strengthen our enforcement powers regarding premises used repeatedly for dealings in illicit fuel, following the implementation of the above proposals.

Yours sincerely,

(Ms Esther Leung)
for Secretary for the Treasury

c.c.

C of C&E (Attn: Mr Lawrence Wong)
D of J (Attn: Miss Betty Cheung)