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6 October 2003

The Hon Donald TSANG, GBM, JP  
The Chief Secretary for Administration  
Government Secretariat  
Central Government Offices  
Lower Albert Road  
Hong Kong

On behalf of Members, I am writing to convey to you the conclusions of the subcommittee formed by the House Committee to study the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 and the United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002.

Under the chairmanship of Hon Margaret NG, the subcommittee had held five meetings with the Administration before it reported its deliberations to the House Committee on 3 October 2003.

As far as the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 is concerned, the subcommittee is of the view that the Regulation is ultra virus and therefore void. This is because "sanction" is defined in the United Nations Sanctions Ordinance as "mandatory measures decided by the Security Council of the United Nations, implemented against a place outside the People's Republic of China", whereas the Regulation imposes sanctions against "persons" instead of a place. It is the subcommittee's conclusion that the Administration has not given effect to the relevant instruction of the Ministry of Foreign Affairs (MFA) of the People's Republic of China (PRC).

The subcommittee also considers that it was wrong for the Administration to have used administrative measures, during the period from 17 May to 17 October 2002, to give effect to the instruction given by the MFA to

implement the measures of the United Nations Security Council Resolution 1412 when the United Nations Sanctions (Angola) Regulation was still in force.

In addition, the subcommittee holds the view that the United Nations Sanctions Ordinance should be amended to expand its scope to cover all kinds of United Nations sanctions, irrespective of whether they are targeted at persons or places, and also to provide the Legislative Council with the power to scrutinise regulations made under the Ordinance. The subcommittee has also requested that when making a regulation under the Ordinance in future, the relevant instruction given by the MFA of the PRC should be provided to enable Members to assess whether the regulation has given effect to the instruction in full.

The House Committee has asked that the subcommittee's conclusions be conveyed to you for your consideration and response. For further details of the subcommittee's deliberations and views, please refer to the attached report of the subcommittee to the House Committee meeting on 3 October 2003.

I look forward to your early reply.

(Selina CHOW LIANG Shuk-ye)  
Chairman  
Legislative Council House Committee

Encl.

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