

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1270/07-08  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/2/07

**Bills Committee on Trade Descriptions (Amendment) Bill 2007**

**Minutes of fourth meeting on  
Thursday, 10 April 2008, at 4:30 pm  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon Fred LI Wah-ming, JP (Chairman)  
Hon Margaret NG  
Hon SIN Chung-kai, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon WONG Ting-kwong, BBS

**Public Officers attending** : Agenda item II  
  
Ms Annie CHOI Suk-han, JP  
Deputy Secretary for Commerce and Economic  
Development (Commerce and Industry)<sup>3</sup>  
  
Mr Luke AU YEUNG Ho-lok  
Principal Assistant Secretary for Commerce and  
Economic Development (Commerce and Industry)<sup>6</sup>  
  
Mr CHEUNG Sai-yan  
Head of Trade Controls  
Customs and Excise Department  
  
Mr Gilbert MO Sik-keung  
Deputy Law Draftsman  
Department of Justice

Ms Karmen KWOK Man-yi  
Government Counsel  
Department of Justice

**Clerk in attendance :** Ms Connie SZETO  
Chief Council Secretary (1)6

**Staff in attendance :** Ms Connie FUNG  
Assistant Legal Adviser 3

Ms Debbie YAU  
Senior Council Secretary (1)1

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Action

**I Confirmation of minutes and matters arising**

(LC Paper No. CB(1)1186/07-08 -- Minutes of the meeting held on  
6 March 2008)

The minutes of the meeting held on 6 March 2008 were confirmed.

**II Meeting with the Administration**

(LC Paper No. CB(1)1185/07-08(01) -- List of follow-up actions arising  
from the discussion on 6 March  
2008 prepared by the Legislative  
Council Secretariat

LC Paper No. CB(1)1185/07-08(02) -- Administration's response to LC  
Paper No. CB(1)1185/07-08(01)

LC Paper No. CB(1)1185/07-08(03) -- Summary of deputations' views  
on individual clauses of the Bill  
with the Administration's  
response (position as at 3 April  
2008)

LC Paper No. CB(1)1205/07-08(01) -- Marked-up copy of the Bill  
showing the amendments to be  
proposed by the Administration  
prepared by the Legal Service  
Division (as at 3 April 2008)

LC Paper No. CB(3)250/07-08 -- The Bill

LC Paper No. CB(1)1185/07-08(04) -- Draft Committee Stage amendments proposed by the Administration)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken arising from the discussion at the meeting

3. The Administration and the legal adviser to the Bills Committee were requested to take the below follow-up actions:

(a) Clause 7 – proposed section 13A

In order to address concern about unclear and complicated drafting of the proposed section 13A(2)(b)(ii), the Administration was requested to review the drafting to clearly reflect the policy intent, facilitate compliance by traders, and ensure effective enforcement of the provision. In this regard, the Administration was invited to consider members' suggestion to expressly set out in the provision that signs must not give misleading information as to the actual price of the goods; and

(b) Clause 7 – proposed section 13C

Concerns had been raised about possible conflict between the proposed section 13C(2)(b) and the Administration's draft Committee Stage amendment of adding subsection (5), including whether the onus of proof would be shifted from the prosecution to the defendant, possible confusion to the law with the inclusion of subsection (5), and circumstances under which the subsection would apply. The legal adviser to the Bill Committee had agreed to provide information on existing legislation with similar provisions for members' reference and the Administration was requested to provide written response to address the concerns.

Date of next meeting

4. The Chairman reminded members that the next meeting had been scheduled for Tuesday, 22 April 2008, at 4:30 pm.

**III Any other business**

5. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 1  
Legislative Council Secretariat  
21 April 2008

**Proceedings of the fourth meeting of  
the Bills Committee on  
Trade Descriptions (Amendment) Bill 2007  
on Thursday, 10 April 2008, at 4:30 pm  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000135	Chairman	(a) Welcoming remarks by the Chairman  (b) Confirmation of minutes of the meeting held on 6 March 2008 (LC Paper No. CB(1)1186/07-08)	
000136 – 001046	Chairman Administration	Administration's briefing on:  (a) Its response to the list of follow-up actions arising from the discussion on 6 March 2008 (LC Paper No. CB(1)1185/07-08(01)); and  (b) Its response to views on the Bill raised by The Law Society of Hong Kong (LC Paper No. CB(1)1185/07-08(03))	
001047 – 002233	Chairman Mr Vincent FANG Mr WONG Ting-kwong Administration	(a) Discussion on Mr Vincent FANG's enquiry about the feasibility of requiring retailers selling expensive dried seafood or Chinese herbal medicine to use "tael" as the unit of measurement on price signs  (b) The Administration's responses as follows: (i) The suggestion might bring unnecessary compliance burden on honest retailers selling the products; and  (ii) The Administration's proposed Committee Stage amendment (CSA) to extend the scope of the proposed section 13A to cover all units of quantity could address misleading price indication by unscrupulous retailers	
002234 – 002829	Chairman Mr WONG Ting-kwong Administration	(a) Mr WONG Ting-kwong's views as follows: (i) Support for the proposed CSA to extend the scope of the proposed section 13A to cover all units of quantity;  (ii) Concern that providing a general prohibition against misleading price indication (including verbal representation) might make retailers easily fall foul of the provision;  (iii) Concern that setting detailed requirements on price signs regarding the size, colour and font size of characters etc, would be too rigid and affect all retailers; and	

Time marker	Speaker	Subject(s)	Action required
		<p>(iv) Suggestion of setting a requirement on the proportion between the size of the price characters and the size of the characters of unit of quantity</p> <p>(b) The Administration's reservation about the suggestion in (a)(iv) as small retailers usually used simple hand-written price signs which were not sophisticated, and hence might easily fall foul of the law. The Administration believed that in the absence of detailed requirements on the size or colour of the characters, the court would adopt an objective reasonable man test in deciding whether the price indication had contravened the relevant provision or not</p>	
002830 – 003047	<p>Chairman Mr Andrew LEUNG Assistant Legal Adviser (ALA) Administration</p>	<p>(a) Mr Andrew LEUNG's enquiry about the units of measurement that were lawful for use in the course of trade in Hong Kong</p> <p>(b) The Administration's advice that the units of measurement and their permitted symbols of abbreviations that were lawful for trade use in Hong Kong was provided in Schedule 2 to the Weights and Measures Ordinance (Cap. 68)</p>	
003048 – 005220	<p>Chairman Administration Ms Audrey EU Mr WONG Ting-kwong Mr Vincent FANG</p>	<p><b>Clause-by-clause examination of the Bill and consideration of CSAs proposed by the Administration</b> (LC Paper Nos. CB(1)1205/07-08(01), CB(1)1185/07-08(04))</p> <p>(a) Members' agreement to examine the Chinese and English texts of the Bill and the proposed CSAs simultaneously</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Commencement</u></p> <p><u>Clause 3 – Long title</u></p> <p>(b) Members did not raise any query on clauses 1 to 3</p> <p><u>Clause 4 – Interpretation</u></p> <p>(c) On the proposed paragraphs (k) to (p) of the definition of "trade description", Ms Audrey EU's concern that it was necessary to state whether the services provided under (k) were subject to charges or otherwise</p> <p>(d) The Administration's explanation that the requirement on the need to state whether the said services were subject to charges would be</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>provided in the relevant subsidiary legislation to be tabled at the Council on 23 April 2008</p> <p>(e) ALA was requested to ensure that the requirement referred to in (d) was provided when examining the subsidiary legislation</p> <p>(f) On the amendment to the definition of "goods in transit", the Administration's explanation that the amendment was textual in nature and aimed at improving the clarity of the provision</p> <p><u>Clause 5 – Special provisions applicable to goldware</u></p> <p>(g) Members did not raise any query</p>	
005221 – 010349	<p>Chairman Administration Ms Audrey EU Mr WONG Ting-kwong</p>	<p><u>Clause 6 – Marking orders</u></p> <p>(a) Upon the enquiry of the Chairman and Ms Audrey EU, the Administration's advice as follows:</p> <p>(i) Section 4(2) of the Trade Descriptions Ordinance (TDO) (Cap. 362) made it an offence if a person who, in the course of any trade or business, supplied or offered to supply goods in contravention of an order made under section 4 of TDO. The proposed section 4(4) referred to contravention of orders not related to the transaction, such as the failure of the retailer to keep invoice copies for three years;</p> <p>(ii) The penalties for the offence under the proposed section 4(4) were lighter than that for section 4(2) which were provided in section 18 of TDO;</p> <p>(iii) The orders were subsidiary legislation subject to the negative vetting procedure; and</p> <p>(iv) A golden bracelet bearing Fei Cui and/or diamond was an example of "the same item of goods" referred to in the proposed section 4(5)</p>	
010350 – 013001	<p>Chairman ALA Administration Ms Audrey EU Mr Vincent FANG Mr WONG Ting-kwong</p>	<p><u>Clause 7 – Part IIA added - New section 13A -- Signs indicating price per weight unit must give clear information</u></p> <p>(a) Upon the enquiry of ALA and members on the proposed section 13A(2)(b)(ii) and the draft CSAs, the Administration's clarification as follows:</p> <p>(i) The proposed section was intended to compare any letter, word, numeral or</p>	

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		<p>character on the sign that indicated the price with those indicating the unit of quantity, as well as to compare the letters, words, numerals or characters within the price indication itself; and</p> <p>(ii) Currency symbols and the word "up" appearing on a sign would be considered as part of the price indication</p> <p>(b) Ms Audrey EU's concern about the proposed section 13A(2)(b)(ii) as follows:</p> <p>(i) The references to "前者" and "後者" in the Chinese version were unclear, in particular during application; and</p> <p>(ii) Why a sign would be considered having failed to give clear information as to the actual price of the goods if the "前者" was substantially less conspicuous than the "後者" but not otherwise</p> <p>(c) The Administration's agreement to review the drafting of the proposed section 13A(2)(b)(ii) to clearly reflect the policy intent</p>	<p>The Administration to consider and provide written response as per paragraph 3(a) of the minutes</p>
<p>013002 – 013309</p>	<p>Chairman Administration</p>	<p><u>Clause 7 – New section 13B -- If price does not include basic accessories, purchaser to be informed before payment</u></p> <p>Members did not raise any query</p>	
<p>013310 – 014439</p>	<p>Chairman Ms Audrey EU Administration ALA</p>	<p><u>Clause 7 – New section 13C -- False or misleading representation as regards seller's connection with another person</u></p> <p>(a) Members supported the Administration's proposed CSA to limit the application of the proposed section 13C(2) to those representations made in connection with the supply or possible supply of any goods or the promotion of the supply of any goods, in the course of any trade or business</p> <p>(b) Ms Audrey EU's concern about the need to introduce a CSA to add section 13C(5), which provided a defence for the accused charged under subsection (2) to prove that he had believed, on reasonable grounds, that the information recipient did not mistake the individual or body represented by him (the subject individual or body) for the individual or body who or which</p>	



Time marker	Speaker	Subject(s)	Action required
		<p>was widely known to be of good standing and reputation (the reputable individual or body)</p> <p>(c) The Administration's explanation that the proposed section 13C(2) required a person who had made a representation (the maker) in relation to the seller's connection with the subject individual or body and ought reasonably to expect that the information recipient was likely to mistake the subject individual or body for the reputable individual or body, to take steps to clarify that the subject individual or body was not the reputable individual or body. If the maker had not done so, he/she could rely on the defence under the proposed section 13C(5) to explain why no clarification had been made, such as he/she was aware that the seller and the information recipient were personal friends</p>	
014440 – 020519	Chairman ALA Ms Audrey EU	<p>(a) ALA's observation that the prosecution had the burden of proving the matters set out in the proposed section 13C(2) and the required standard of proof was beyond reasonable doubt while the defendant was merely required to prove the defence under the proposed section 13C(5) on a balance of probabilities</p> <p>(b) Ms Audrey EU's concern about possible conflict between the proposed section 13C(2)(b) and the proposed subsection (5), including whether the onus of proof would be shifted from the prosecution to the defendant, possible confusion to the law with the inclusion of subsection (5), and circumstances under which the subsection would apply</p> <p>(c) ALA's agreement to provide information on existing legislation with similar provisions for members' reference</p> <p>(d) The Administration's advice as follows:                      (i) The proposed section 13C(2)(b) would be invoked based on the objective element that the name of the subject individual or body was identical with, or very similar to, that of the reputable individual or body; and                      (ii) A similar defence was provided under section 26 of TDO to an accused who was charged for an offence that involved objective elements</p>	<p>ALA to take action as per paragraph 3(b) of the minutes</p> <p>The Administration to consider and provide written response as per paragraph 3(b) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
020520 – 020545	Chairman Administration	Date of next meeting	

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Legislative Council Secretariat  
21 April 2008