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LEGISLATIVE COUNCIL BRIEF

Dutiable Commodities Ordinance
(Chapter 109)

DUTIABLE COMMODITIES (AMENDMENT) BILL 2008

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 2008

INTRODUCTION

At the meeting of the Executive Council on 15 April 2008, the Council ADVISED and the Chief Executive ORDERED that the Dutiable Commodities (Amendment) Bill 2008 and the Dutiable Commodities (Amendment) (No. 2) Bill 2008, at Annexes A and B respectively, should be introduced into the Legislative Council (LegCo).

A and B

JUSTIFICATIONS

Further development of Wine-related Business

2. In the 2008-09 Budget, the Financial Secretary proposed reducing the duties on certain alcoholic beverages to zero, and the removal of related administrative controls. When announcing the proposals, the Financial Secretary made reference to the added impetus that he hoped this would give to the further development of wine trading and distribution business in Hong Kong.

3. The industry forecasts significant potential for growth in wine consumption across Asia. Fuelled by economic growth, rising income and a reduction in wine duty last year (from 80% to 40%), our wine consumption and trading have enjoyed impressive growth in recent years. The present Budget proposals on wine duty reduction and removal of the related administrative arrangements will give Hong Kong added room to

capitalize on the growing wine market in the region, particularly demands from the Mainland.

4. In the longer run, the proposals would also bring benefits to other related economic activities such as auction, catering and hospitality, tourism, wine appreciation and education. Taking into account the overall economic benefits, the loss in Government revenue is considered well justified.

5. For parity sake, the duty rate for beer and other non-spirit alcoholic beverages should also be reduced from 20% to zero.

Dutiable Commodities (Amendment) Bill 2008

6. On 27 February 2008, the Chief Executive, after consulting the Executive Council, made the Public Revenue Protection Order 2008 (the Order) to give immediate effect to the Dutiable Commodities (Amendment) Bill 2008 (hereafter called the "first amendment bill").

7. Provisions in the first amendment bill mirror those in the Order. By amending the Dutiable Commodities Ordinance (Cap.109) (the DCO), they :

(a) reduce the ad valorem duty for wine from 40% to 0%, and that for non-wine alcoholic beverages with an alcoholic strength of not more than 30% (mainly beer) from 20% to 0% (all these alcoholic beverages are hereafter collectively referred to as the "selected alcoholic liquors"); and

(b) provide for temporary retention [1] of the licensing/permit arrangements needed to keep track of the movement of these goods for duty collection purposes, with minor modifications[2].

[1] This is to avoid pre-empting LegCo. Under section 7 of the Public Revenue Protection Ordinance (Cap.120), the original duty rates will have to be reinstated **retrospectively** from the Budget Day should LegCo choose not to approve the proposed rate reductions. Under such a scenario, the administrative arrangements (that are retained in the interim) would provide a trail for recovering any duty that becomes payable.

[2] We have removed the administrative arrangements for small commercial shipments (i.e. goods valued less than $5,000 each) or goods for personal use. This is to minimize the delay that may be caused to in-bound passengers carrying small amounts of the selected alcoholic liquors. Also, the administrative costs otherwise needed to recover any duty that becomes payable would be disproportionate to the likely amount of duty to be collected.

8. The Order will lapse in four months. In other words, the above provisions will cease to have effect from 27 June 2008, if the relevant legislative amendments have not yet been passed by then. We therefore need to introduce the legislative amendments into LegCo well before that.

9. Given the transitional nature of the arrangements in paragraph 7(b) above, we intend to remove them by way of Committee Stage Amendments after introducing the first amendment bill into LegCo.

Dutiable Commodities (Amendment) (No. 2) Bill 2008

10. The Dutiable Commodities (Amendment) (No. 2) Bill 2008 (hereafter called the "second amendment bill") provides for suspension of the licensing/permit arrangements hitherto required for import/export, storage, manufacturing and movement of the selected alcoholic liquors for the purpose of duty collection, until and unless the duty rates concerned have been changed to be higher than zero. We do not propose to repeal the related provisions in the DCO altogether so that the duties concerned remain a possible revenue source for the Government in future.

11. Manufacturers of the selected alcoholic liquors need not apply for any licences under the DCO any more. They will remain responsible for maintaining the sanitation and cleanliness of manufacturing premises and subject to sanctions by the Food and Environmental Hygiene Department under the Public Health and Municipal Services Ordinance (Cap.132). As at present, the Fire Services Department will monitor the fire safety of these premises pursuant to provisions in the Buildings Ordinance (Cap.123) and the Fire Services Ordinance (Cap.95).

12. In the DCO, there are other liquor-related controls not related to duty collection. They are for policy objectives such as regulating consumption of alcoholic liquors as well as protection of consumer rights and public health. We have reviewed these provisions and consider that these controls should continue to apply to the selected alcoholic liquors.

Consequential Amendments to the Legislative Council Ordinance

13. Section 20W of the Legislative Council Ordinance (Cap.542) provides that the Import and Export functional constituency (FC) is composed of, among others, companies licensed under the DCO for the import or export, or import and export, of dutiable commodities.

14. Upon removal of the relevant licensing requirement, importers and exporters of the selected alcoholic liquors will lose their eligibility to vote or to register as electors in this FC when their present annual licences expire. To maintain the existing electorate basis of the Import and Export FC, we propose to grandfather those who hold valid licences for importing/exporting liquors immediately before the second amendment bill takes effect, so that their eligibility as electors in the Import and Export FC will remain unchanged.

THE BILLS

15. The main provisions of the first amendment bill are as follows –

(a) clause 2 provides that the first amendment bill when enacted will be deemed to have come into operation at 11:00 a.m. on 27 February 2008;

(b) clause 7 amends Part I of Schedule 1 to the DCO to reduce the rates of duty on the selected alcoholic liquors to 0%; and

(c) the other clauses amend the DCO and its subsidiary legislation to retain the administrative arrangements for administering the duty collection system in respect of the selected alcoholic liquors.

16. The main provisions of the second amendment bill are as follows:

(a) clause 2 adds a definition of “specified goods” in section 2(1) of the DCO, meaning the selected alcoholic liquors;

(b) clause 6 adds a new Schedule 4 to the DCO to set out the provisions of the DCO that do not apply to the specified goods during the period in which the rate of duty on the specified goods is 0% of the value of the goods; and

(c) clause 7 contains the grandfathering provision referred to in paragraph 14 above.

LEGISLATIVE TIMETABLE

17. We intend to introduce the two amendment bills at the same time to enable the immediate suspension of the administrative arrangements once LegCo endorses the duty rate reductions.

18. The legislative timetable will be as follows –

Publication in the Gazette	25 April 2008
First Reading and commencement of Second Reading debate	7 May 2008
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSALS

19. The proposals have financial, economic and civil service
C implications as set out in Annex C. The amendment bills are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the binding effect of the existing provisions of the DCO and its subsidiary legislation. The proposals have no sustainability or environmental implications.

PUBLIC CONSULTATION

20. Owing to the confidentiality of the Budget, formal consultation specifically on the proposals to reduce duty and remove the administrative arrangements was not done before the Budget announcement. Nevertheless, the Financial Secretary conducted consultation sessions with LegCo Members, various business bodies and the general public during the formulation of the Budget. We met representatives from the wine, hotel and restaurant industries after the Budget announcement. They applauded the proposals and endeavoured to pass on the duty savings to the consumers as far as possible.

PUBLICITY

21. A press release will be issued on 23 April 2008. A spokesman will be available to answer media and public enquiries.

BACKGROUND

22. Under the DCO and discounting the amendments set out in the first amendment bill, the following administrative arrangements apply to the selected alcoholic liquors for revenue protection purpose :

(a) ***traders*** require a licence for the importation, exportation, storage and manufacturing of these liquors. A permit is needed for their movement within Hong Kong; and

(b) ***passengers*** entering Hong Kong are required to declare if the quantities of the selected alcoholic liquors carried by them exceed the prescribed exemption levels. Duty needs to be paid on the excessive quantities.

ENQUIRIES

23. Enquiries on this Legislative Council Brief may be directed to Ms Wendy Cheung, Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) at telephone number 2918 7575.

Commerce and Economic Development Bureau
23 April 2008

Annex A

A BILL

To

Amend the Dutiable Commodities Ordinance to lower the rates of duty on two types of liquors and provide for related matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Dutiable Commodities (Amendment) Ordinance 2008.

2. Commencement

This Ordinance shall be deemed to have come into operation at 11:00 a.m. on 27 February 2008.

3. Interpretation

(1) Section 2(1) of the Dutiable Commodities Ordinance (Cap. 109) is amended, in the English text, in the definition of "warehouse", by repealing the full stop and substituting a semicolon.

(2) Section 2(1) is amended by adding –

"zero-rated goods" (零稅率貨品) means goods the rate of duty on which as set out in Part I of Schedule 1 is 0% of the value of the goods.".

4. Section added

The following is added -

"**2A. Zero-rated goods**

(1) If on a licence or permit relating to zero-rated goods, the Commissioner or another officer has under section 7(1)(b)(v) endorsed that the duty on the goods is 0% of the value of the goods, the goods shall be regarded as duty-paid goods for the purposes of this Ordinance.

(2) Unless the context otherwise requires, any reference to dutiable goods in this Ordinance shall be construed as also including zero-rated goods for which there is no licence or permit with an endorsement referred to in subsection (1).".

5. Grant and revocation of licences and permits

Section 7(1)(b) is amended by adding –

"(v) where the licence or permit relates to any zero-rated goods, endorse on the licence or permit that the duty on the goods is 0% of the value of the goods;".

6. Duty exempt goods dutiable in certain cases

Section 38A is amended by adding –

"(3) This section does not apply to any zero-rated goods exempted under regulation 12(1)(eb) or (ec) of the Dutiable Commodities Regulations (Cap. 109 sub. leg. A).".

7. Schedule 1 amended

(1) Schedule 1 is amended by repealing "[ss." and substituting "[ss. 2(1),".

(2) Schedule 1 is amended, in paragraph 1 of Part I, under the column headed "Rate" –

(a) by repealing "20%" and substituting "0%";

(b) by repealing "40%" and substituting "0%".

Dutiable Commodities Regulations

8. Exemptions

(1) Regulation 12(1)(ea) of the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) is amended by adding "(not being zero-rated goods)" after "alcoholic liquor".

(2) Regulation 12(1) is amended by adding –

"(eb) zero-rated goods which are –

(i) imported by a passenger or crew member of any ship, aircraft, train or vehicle in his baggage;

(ii) imported by any person (whether or not he is a passenger or crew member referred to in subparagraph (i)) for his own use; or

(iii) bought by a passenger or crew member referred to in subparagraph (i) at a licensed warehouse located at any place approved by the Commissioner in the arrival area at an entry point in Hong Kong;

(ec) zero-rated goods which –

(i) have a value (calculated by reference to section 26A of the Ordinance) of less than $5,000; and

(ii) are imported by any person in a single commercial shipment;".

9. Licences and fees

The Schedule is amended, in item 3(b) of Part I, by repealing "Import" and substituting "For goods which do not consist of zero-rated goods, import".

Dutiable Commodities (Exempted Quantities) Notice

10. Quantities of alcoholic liquor and tobacco exempted from duty

Section 1(1) of the Dutiable Commodities (Exempted Quantities) Notice (Cap. 109 sub. leg. G) is amended by adding "(not being zero-rated goods)" after "alcoholic liquor".

Explanatory Memorandum

The main purpose of this Bill is to amend the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance") to give effect to the proposal in the 2008-2009 Budget to lower the rates of duty on two types of liquors.

2. Clause 1 sets out the short title to the Bill.

3. Clause 2 provides that the Bill when enacted will be deemed to have come into operation at 11:00 a.m. on 27 February 2008.

4. Clause 7 amends Part I of Schedule 1 to the Ordinance to –

(a) lower the rate of duty on liquor (other than wine) with an alcoholic strength of not more than 30% by volume measured at a temperature of 20°C from 20% of its value to 0%; and

(b) lower the rate of duty on wine from 40% of its value to 0%.

5. The other clauses amend the Ordinance and its subsidiary legislation on related matters. In particular –

(a) clause 3 amends section 2(1) of the Ordinance by adding a definition of "zero-rated goods" (meaning goods the rate of duty on which as set out in Part I of Schedule 1 to the Ordinance is 0% of the value of the goods);

(b) clause 4 adds the new section 2A of the Ordinance to clarify when the provisions in the Ordinance relating to dutiable goods and duty-paid goods apply to zero-rated goods;

(c) clause 5 amends section 7(1)(b) of the Ordinance to empower the Commissioner of Customs and Excise or an officer deputed by him to endorse on a licence or permit relating to zero-rated goods that the duty on the goods is 0% of the value of the goods;

(d) clause 6 amends section 38A of the Ordinance to clarify that that section does not apply to zero-rated goods exempted under the new regulation 12(1)(eb) or (ec) of the Dutiable Commodities Regulations (Cap. 109 sub. leg. A);

(e) clause 8 adds the new regulation 12(1)(eb) and (ec) of the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) to exempt certain zero-rated goods;

(f) clause 9 amends item 3(b) of Part I of the Schedule to the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) to clarify that the fee prescribed in that item only applies to an import licence for goods that do not consist of zero-rated goods;

(g) clause 10 amends section 1(1) of the Dutiable Commodities (Exempted Quantities) Notice (Cap. 109 sub. leg. G) to clarify that the references to "alcoholic liquor" in that Notice do not include zero-rated goods.

Annex B

A BILL

To

Amend the Dutiable Commodities Ordinance to suspend the application of certain provisions in the Ordinance to two types of liquors, and to provide for related amendments.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Dutiable Commodities (Amendment) (No. 2) Ordinance 2008.

2. Interpretation

Section 2(1) of the Dutiable Commodities Ordinance (Cap. 109) is amended by adding –

""specified goods" (指明貨品) means –

(a) liquor, other than wine, with an alcoholic strength of not more than 30% by volume measured at a temperature of 20°C; or

(b) wine;".

3. Application

Section 3(1)(a) is repealed and the following substituted -

"(a) subject to section 3AA, alcoholic liquors;".

4. Section added

The following is added immediately after section 3 -

"**3AA. Zero-rated specified goods**

(1) Subsection (2) applies to specified goods the rate of duty on which as set out in Part I of Schedule 1 is 0% of the value of the goods (referred to in this section as "zero rate").

(2) During the period in which the rate of duty is zero rate –

(a) the provisions of this Ordinance that are set out in Schedule 4 do not apply to the specified goods;

(b) references to dutiable goods in this Ordinance shall be construed as not including the specified goods;

(c) the specified goods shall be regarded as duty-paid goods; and

(d) references to dutiable commodities (however described) in any other Ordinance shall, in the absence of a contrary intention expressed in that Ordinance, be construed as not including the specified goods.

(3) For the avoidance of doubt, nothing in this section prevents the rate of duty on any specified goods as set out in Part I of Schedule 1 from being amended during the period in which the rate of duty is zero rate.".

5. Schedule 1 amended

Schedule 1 is amended by repealing "4(1), (2) & 53(2)]" and substituting "3AA & 4]".

6. Schedule 4 added

The following is added –

"SCHEDULE 4 [s. 3AA]

PROVISIONS THAT DO NOT APPLY TO
ZERO-RATED SPECIFIED GOODS

1. Section 17(1), (3), (3A), (3AA), (3AB) and (4).

2. Section 19.

3. Section 20.

4. Section 22.

5. Section 23.

6. Section 24.

7. Section 36(2)(c).

8. Section 40(b).

9. Section 58.

10. Section 60.".

Related Amendments

Legislative Council Ordinance

7. Composition of the import and export functional constituency

Section 20W of the Legislative Council Ordinance (Cap. 542) is amended by adding –

"(aa) companies licensed under the Dutiable Commodities Ordinance (Cap. 109) immediately before the commencement of the Dutiable Commodities (Amendment) (No. 2) Ordinance 2008 (of 2008) for the import, or import and export, of alcoholic liquors; and".

Explanatory Memorandum

The main purpose of this Bill is to amend the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance") to suspend the application of certain provisions in the Ordinance to two types of liquors.

2. Clause 1 sets out the short title to the Bill.

3. Clause 2 amends section 2(1) of the Ordinance to add a definition of "specified goods", meaning two types of liquors.

4. Clause 3 amends section 3(1)(a) of the Ordinance, clause 4 introduces the proposed section 3AA of the Ordinance and clause 6 introduces the proposed Schedule 4 to the Ordinance, mainly to set out the provisions of the Ordinance that do not apply to specified goods during the period in which the rate of duty on the specified goods is 0% of the value of the goods.

Annex C

Financial implications

The proposed duty reductions for the selected alcoholic liquors would cost the Government $556 million in 2008-09.

Economic implications

2. The proposed duty reduction and removal of administrative arrangements will promote wine trading and help further boost the wine re-export business that grew at an average rate of close to 50% per annum in value over the last 7 years, thus enabling Hong Kong to capitalize on the business opportunities arising from the rapid growth in demand for wine in the Mainland and in the region.

3. The duty reduction on wine have benefited consumers and will promote further domestic wine consumption that has been growing at over 12% per annum in value in recent years. The fall in wine prices would also have some effect on promoting Hong Kong's role as an international business centre.

4. In 2007-08, trading and local consumption of the selected alcoholic liquors contributed directly and indirectly some value-added economic benefits of about $1.5 billion and an employment of around 7,900. Given the potential in the business as shown by the rapid growth rates in recent years, the proposed wine duty reduction enhances considerably the further development of wine-related business in Hong Kong.

Civil Service implications

5. Upon commencement of the amendment bills, the related administrative and enforcement controls of the Customs & Excise Department (C&ED) governing duty assessment, import, export, storage and manufacture of selected liquors will no longer be necessary. C&ED will be able to deliver some staff savings following the reduction of workload. The Civil Service Bureau and the Financial Services and the Treasury Bureau are working out with C&ED the exact number of posts and ranks involved and whether C&ED's establishment level will need adjustment.