

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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**Subcommittee on Dutiable Commodities
(Exempted Quantities) (Amendment) Notice 2010**

**Minutes of the first meeting held on
Tuesday, 27 April 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHAN Kin-por, JP (Chairman)
Hon CHEUNG Man-kwong
Hon Vincent FANG Kang, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHEUNG Kwok-che
- Member absent** : Dr Hon LEUNG Ka-lau
- Public Officers attending** : Agenda item II
Professor Gabriel LEUNG, JP
Under Secretary for Food and Health

Miss Anita CHAN
Principal Assistant Secretary (Health) Special Duties 1
Food and Health Bureau

Dr Ronald LAM
Head/Tobacco Control Office
Department of Health

Mr CHOW Chi-kwong
Head of Revenue and General Investigation Bureau
Customs and Excise Department

Ms Linda TSUI
Senior Staff Officer (Dutiable Commodities
Administration)
Customs and Excise Department

Mr Sunny CHAN
Senior Assistant Law Draftsman
Department of Justice

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Angel SHEK
Senior Council Secretary (1)1

Ms Michelle NIEN
Legislative Assistant (1)9

Action

I Election of Chairman

Mr CHAN Kin-por was elected Chairman of the Subcommittee.

II Meeting with the Administration

(L.N. 35 of 2010

-- Dutiable Commodities
(Exempted Quantities)
(Amendment) Notice 2010

LC Paper No. LS55/09-10

-- Legal Service Division Report

LC Paper No. CB(1)1711/09-10(01)

-- Marked-up copy of the
Amendment Notice prepared by
the Legal Service Division

LC Paper No. CB(1)1711/09-10(02)

-- Background brief prepared by the
Legislative Council Secretariat)

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

Follow-up action required to be taken by the Administration

3. The Subcommittee requested the Administration to consider specifying under the Amendment Notice 20 cigarettes, instead of 19, as the new quantity of duty-free cigarettes allowed to be brought into Hong Kong by a passenger for own consumption.

Date of next meeting

4. The Subcommittee agreed to hold the next meeting on Thursday, 6 May 2010 from 4:30 pm to 6:30 pm in the Chamber of the Legislative Council Building.

(post-meeting note: With the concurrence of the Chairman, the next meeting has been rescheduled to start at 4:40 pm to allow some overrun, if any, of the Chief Executive's Question and Answer Session which will also be held at the Chamber from 3:00 pm to 4:30 pm.)

Invitation of public views

5. Members agreed to invite the duty-free shops to give views to the Subcommittee and attend the next meeting.

(post-meeting note: The Free Duty of Sky Connection Ltd and Anway Limited has been invited to provide views to the Subcommittee and attend the next meeting. At the instruction of the Chairman, a general notice has been posted on the website of the Legislative Council to invite submissions from the public. In line with the usual practice, the 18 District Councils have also been invited to submit views on the subject.)

Extension of scrutiny period

6. Members noted that the Chairman would move a motion at the Council meeting on 5 May 2010 to extend the scrutiny period of the Amendment Notice to 2 June 2010.

III Any other business

7. There being no other business, the meeting ended at 6:10 pm.

**Proceedings of the first meeting of
the Subcommittee on Dutiable Commodities (Exempted Quantities) (Amendment) Notice 2010
on Tuesday, 27 April 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000155	Mr CHEUNG Man-kwong Mr CHEUNG Kwok-che Mr WONG Ting-kwong Mr CHAN Kin-por	Election of Chairman	
000156 – 000705	Chairman Administration	Briefing by the Administration on the aims of the Dutiable Commodities (Exempted Quantities) (Amendment) Notice 2010 under the prevailing tobacco control policy, and the publicity on the new requirements under the Amendment Notice to be launched by the Customs and Excise Department (C&ED) about one month before it came into effect on 1 August 2010.	
000706 – 002246	Chairman Mr WONG Ting-kwong Administration Assistant Legal Adviser	<p>Mr WONG Ting-kwong expressed in-principle support for the Amendment Notice. He was however concerned about enforcement difficulties as tobacco products around the world came in different quantities and weight.</p> <p>The Administration advised that the newly specified quantities of duty-free tobacco products, i.e. up to 19 cigarettes, or 1 cigar (or 25 grams of cigars), or 25 grams of other manufactured tobacco, had taken into account the most common packages of tobacco products consumed in Hong Kong. Besides, it was a statutory requirement that cigarettes sold in Hong Kong had to be in a packet of at least 20 sticks. Under the Dutiable Commodities Ordinance (Cap. 109), a passenger carrying tobacco products into the territory in excess of the duty-free concession limits without making any declaration to the C&ED was liable to prosecution with a maximum penalty of two years' imprisonment and \$1 million in fines if the passenger did that knowingly. Compounding of such an offence was possible under the Ordinance with a fine of \$2,000 and five times the duty payable on the tobacco products concerned.</p>	
002247 – 002537	Chairman Mr CHEUNG Man-kwong	Mr CHEUNG Man-kwong said that Members belonging to the Democratic Party supported the Amendment Notice, under the premises to protect public health and tackle the problem of bringing into the territory of duty-free cigarettes by "courier" passengers. As tobacco products available in the market came in different quantities, the Administration might need to take enforcement action flexibly.	

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002538 – 004659	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG opined that instead of 19 cigarettes, the maximum number of duty-free cigarettes should be 20 so as to obviate the need for the incoming passengers to dispose one cigarette from the newly acquired packet. He also expressed concern about the adverse impact of the increasingly stringent tobacco control policy measures, including those to be implemented under the Amendment Notice, on –</p> <ul style="list-style-type: none"> (a) the businesses of the catering, hospitality and entertainment industries; (b) the income and business plan of the duty-free shops (DFS) at the boundary control points; (c) the smuggling and sale of illicit cigarettes; and (d) the sale of counterfeit cigarettes. <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) The Financial Secretary had proposed to abolish duty-free concessions on tobacco products in the 2010-2011 Budget, and the same had been implemented by Singapore for a number of years. Exempting small amounts of tobacco products for own consumption under the Amendment Notice was to facilitate law enforcement and minimize nuisance to passengers; (b) the existing 31 DFS at the boundary control points were run by two companies under the same enterprise, and 13 of them were located at the inbound area where incoming passengers might visit. In 2009, the sales of cigarettes, cigars and manufactured tobacco products at the inbound DFS accounted for just around 11.7%, 3.6% and 1.7 % of the overall sales of the respective products at all DFS which were also selling a large range of other products. As such, it was envisaged that the Amendment Notice would not have much bearing on the businesses of DFS, which in fact should have already got used to Government's adjustments to the duty-free concessions on dutiable commodities made under the Budget from time to time; (c) although the number of cases involving smuggling, storage, distribution or peddling of illicit cigarettes detected by C&ED had increased after the increase of the tobacco tax in 2009, the quantity of illicit cigarettes seized during enforcement had dropped; and (d) C&ED was working in collaboration with the 	

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		Government Laboratory to conduct tests on counterfeit tobacco products upon the request of the Food and Health Bureau.	
004700 – 005106	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong also expressed concern about the inconvenience caused to the incoming passengers if they had to dispose one cigarette from a newly acquired pack before entering Hong Kong. As such, he suggested banning the sale of tobacco products at the inbound DFS.</p> <p>The Administration advised that incoming passengers carrying cigarettes in excess of the statutory duty-free limits would not constitute an offence if they declared the quantity of dutiable cigarettes and they had the options of paying the duty, or abandoning the excessive cigarettes to Customs under simple procedures.</p>	
005107 – 010306	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG reiterated his concern about the prevalent difficult business environment which would be further aggravated by the implementation of the Amendment Notice, and the small and medium establishments would be particularly affected.</p> <p>The Administration said that while the abolition of duty-free concessions might reduce the sales of tobacco products at the inbound DFS, this might divert sales to small and medium retail outlets such as newspaper stalls. It was Government's tobacco control policy to discourage smoking and purchase of tobacco products.</p> <p>In reply to the Chairman's enquiry, the Administration advised that there was no pledge made on the part of the Government Property Agency as landlord to compensate DFS if the Government introduced changes to the duty-free concessions on dutiable commodities as it was made clear to the DFS that duty-free concessions were subject to adjustments.</p> <p>Mr FANG expressed concern about the stringent enforcement concerning tobacco product display at newspaper stalls, and that the inspection of entertainment premises like pubs, karaokes and cinemas to enforce the smoking ban was rather lax.</p> <p>The Administration advised that –</p> <p>(a) the Administration adopted a step-by-step and multi-pronged approach comprising legislation, publicity, education, enforcement and cessation programmes to carry out the tobacco control policy;</p> <p>(b) the Department of Health (DH) and the Food and Environmental Hygiene Department had already</p>	

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		<p>liaised with the concern groups of newspaper stalls to resolve issues about the enforcement of tobacco product display requirements; and</p> <p>(c) DH adopted a consistent enforcement policy to all no smoking areas. Investigations would be conducted to all complaints of non-compliance. The smoking ban had been extended to the six types of qualified establishment (bars, clubs, nightclubs, bathhouses, massage parlours, and mahjong and tinkau parlours hitherto exempted from the ban) since 1 July 2009. As of 31 March 2010, 720 complaints (i.e. around 10% of the overall complaint cases) of non-compliance related to these establishments had been received among which 380 fixed penalty notices were issued. It was also observed from comparing the data of the Census and Statistics Department in the latter half of 2009 with the same period of 2008 that the businesses of bars had not been significantly affected by the extended smoking ban. In fact, similar to overseas experience, the businesses of the catering establishments had increased after the implementation of the smoking ban probably because of improvements to the eatery environment.</p>	
010307 – 011300	Chairman Dr Joseph LEE Administration	<p>While supporting the Amendment Notice, Dr Joseph LEE expressed concern about enforcement difficulty unless body search was conducted, as incoming passengers might abuse the duty-free concessions by hiding away the excessive cigarette(s) to evade declaration and duty payment.</p> <p>The Administration reiterated that incoming passengers carrying cigarettes in excess of the statutory limits for duty-free concessions might choose to pay the duty or relinquish the excessive cigarette(s). As for body search, it would only be conducted for suspected cases.</p> <p>In reply to the Chairman, the Administration confirmed that the duty would be payable only on the quantities in excess of the prescribed duty-free limits.</p>	
011301 – 012504	Chairman Mr WONG Ting-kwong Mr Vincent FANG Mr CHEUNG Man-kwong Mr CHEUNG Kwok-che Administration	<p>Mr WONG Ting-kwong suggested raising the statutory duty-free limit for cigarettes to 20, which in his view would not deviate from the legislative intent but facilitate enforcement and reduce conflicts. Mr Vincent FANG and Mr CHEUNG Man-kwong shared the suggestion.</p> <p>The Administration explained that the original intention of the policy was to abolish duty-free concessions on tobacco products. However, it was common for passengers who smoked to carry small amounts of</p>	

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		<p>cigarettes for their own consumption. Therefore, the statutory duty-free limit of 19 cigarettes was intended to reduce the inconvenience to smokers and facilitate law enforcement.</p> <p>The Chairman also opined that the specification of 19 cigarettes might create confusion and misunderstanding among the public, in particular it would upset the smokers. He suggested the Administration consider moving amendment to change the specification to 20 cigarettes to facilitate enforcement.</p> <p>Discussion on Mr WONG's suggestion on banning the sale of tobacco products at the inbound DFS to tie in with the implementation of the Amendment Notice.</p>	
012505 – 012926	Chairman Mr Vincent FANG Administration	<p>Discussion on invitation of deputations.</p> <p>Mr Vincent FANG suggested that specific targets should be set to carry out more random inspections at the boundary control points upon the implementation of the Amendment Notice. The Administration responded that subject to the negative vetting of the subsidiary legislation, C&ED would launch publicity and education campaign through pamphlets, posters and the media one month before the Amendment Notice came into operation on 1 August 2010 to enhance public awareness of the new requirements. On enforcement, the Administration would base on risk assessment to conduct inspection at the boundary control points, and would review the enforcement extent in the light of implementation of the Amendment Notice.</p>	
012927 – 013142	Chairman Mr WONG Ting-kwong CHEUNG Man-kwong Administration	Discussion on Mr WONG Ting-kwong's suggestion of specifying duty-free cigarettes to 20 to facilitate enforcement.	
013143 – 013608	Chairman Mr CHEUNG Man-kwong	<p>Date of next meeting.</p> <p>Extension of the scrutiny period.</p>	