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**COMMERCE AND ECONOMIC
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4 February 2019

Mr Desmond Lam
Clerk to Panel on Commerce and Industry
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr Lam,

Panel on Commerce and Industry

Implementation of Strategic Trade Control and United Nations Security Council Sanctions in Hong Kong

The Panel has asked the Government to provide a response to the letter from the Hon CHU Hoi-dick dated 8 January 2019 to the Panel Chairman. The Hon CHU's letter has raised issues relating to the implementation of strategic trade control and United Nations Security Council ("UNSC") sanctions in Hong Kong. Our response is set out below.

Strategic Trade Control

The Government has all along been robustly and comprehensively implementing a strategic trade control system in accordance with the laws of Hong Kong, the effectiveness of which has been respected and recognised by our trading partners. The Government will continue to abide by international standards and maintain our robust control system in accordance with the law to control and monitor the export, import and re-export of strategic commodities. The law enforcement agency ("LEA") will also continue to conduct investigation in an impartial manner and in accordance with the law on any cases of suspected violation, and maintain close cooperation with our trading partners.

The strategic trade control system of Hong Kong comprises an import and export licensing system administered by the Trade and Industry Department (“TID”) and an enforcement system implemented by the Customs and Excise Department (“C&ED”). It is built on the following four pillars:

(1) Law-based

Hong Kong implements strategic trade control in accordance with the Import and Export Ordinance (Cap. 60) (“I&E Ordinance”). According to the Ordinance, no person shall import or export strategic commodities except under and in accordance with a valid licence issued by TID.

Hong Kong’s control lists on strategic commodities are drawn up on the basis of the control lists adopted by various international non-proliferation regimes and convention¹, and are set out in detail in the Schedules to the Import and Export (Strategic Commodities) Regulations (Cap. 60G) (“I&E Regulations”). It comprises a munitions list and a dual-use goods list. The munitions list covers items specially designed or adapted for military use, such as firearms, ammunition, explosives, etc. The dual-use goods list covers dual-use industrial goods which can be converted to military use, such as nuclear materials, chemicals, electronics, computers, telecommunications and information security products, etc. The Hong Kong control lists are amended regularly to reflect the latest control standards and criteria of the international regimes and convention.

Individual countries may, based on their own consideration, implement unilateral control against certain other countries on products not set out in Hong Kong’s strategic trade control lists under the I&E Regulations. Hong Kong does not have the responsibility nor the legal basis to implement such unilateral controls or investigate relevant cases.

¹ The relevant international non-proliferation regimes and convention are the Chemical Weapons Convention, the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement.

(2) Comprehensive Licensing System

Import and export of strategic commodities are subject to licensing control in Hong Kong. Re-exports and transshipment of strategic commodities are regarded as import and export, and are also subject to such control. More sensitive items, despite being article-in-transit, also require to be covered by import and export licences.

In processing a licence application, TID will conduct a technical assessment on the technical capabilities of the subject goods and a risk assessment on the possible risk of diversion for illegitimate uses or proliferation activities, for instance, whether the technical capabilities of the goods are suitable for the end-use declared, whether the end-use is acceptable and believed to be genuine, and there is no adverse consideration against the consignor, the consignee, the end-user, and the applicant. All import and export licence applications must undergo the same processing procedure and subject to the same considerations. There is no differential or preferential treatment for any individual business corporate or place.

(3) Vigorous Enforcement System

C&ED is responsible for the enforcement of the strategic trade control under the I&E Ordinance. Any person who imports or exports strategic commodities without a valid import or export licence commits an offence and is liable to an unlimited fine and to imprisonment for 7 years on conviction. The enforcement strategies of C&ED include:

- on-site inspections of import and export cargoes and verification of information provided in import and export licences, investigation on cases of suspected violation of Hong Kong laws and detaining suspicious goods, and prosecution of illegal actions contravening strategic trade controls;
- risk assessment based on intelligence and information collected;
- maintaining close liaison with the enforcement agencies of other places and cooperation in enforcement cases where necessary; and

- establishing partnership with the industry and encouraging them to share with C&ED information on suspected illegal transshipment of strategic commodities.

Statistics on strategic commodity-related enforcement in the past five years, i.e. 2014 to 2018, is tabulated below:

	2014	2015	2016	2017	2018
No. of licence verifications	2,732	3,090	2,899	3,046	3,527
No. of investigation cases	204	179	192	231	285
No. of prosecution cases	23	62	45	33	49
Fine (in HK\$ million)	0.85	3.58	1.18	0.75	0.94
Value of forfeited goods (in HK\$ million)	0	0.98	10.93	1.17	1.45

(4) Effective International Cooperation

Hong Kong has been maintaining close communication and cooperation with trading partners to keep them up to date on the latest developments of the strategic trade control system in Hong Kong. Over the years, Hong Kong has established various cooperation arrangements with our trading partners, including regular meetings and mutual visits. We also actively participate in various international and regional exchange and bilateral meetings on strategic trade controls. Through these exchange platforms, we learn about the latest control measures imposed by the international community and let our trading partners know the latest developments in Hong Kong's strategic trade control system.

UNSC Sanctions

The Government implements and strictly enforces sanctions imposed by the UNSC through the United Nations Sanctions Ordinance (Cap. 537) (“UN Sanctions Ordinance”). The HKSAR has made regulations under the said Ordinance to fully implement current UNSC sanctions or restrictions against the 14 places and 2 organisations² respectively.

Generally speaking, the three most common types of measures imposed by the UNSC are financial sanction, travel ban and arms embargo:

- (1) financial sanction prohibits the making available of financial assets and economic resources to persons or entities designated by the UNSC or its relevant Committees, or dealing with financial assets and economic resources of such persons or entities;
- (2) travel ban prohibits the entry or transit of designated persons into or through the territories of United Nations Member States; and
- (3) arms embargo prohibits the supply, sale or transfer of arms and related materiel, and technical advice, assistance or training related to military activities, to places or organisations under sanction.

Apart from the three aforementioned types of sanction measures, the UNSC may also impose other sanctions or restrictions having regard to the situation of individual places or organisations³.

² These 14 places are Afghanistan, Central African Republic, Democratic Republic of the Congo, Democratic People's Republic of Korea (“DPRK”), Guinea-Bissau, Iran, Iraq, Lebanon, Libya, Mali, Somalia, South Sudan, Sudan and Yemen, and the two organisations are Islamic State in Iraq and the Levant (“ISIL”) and Al-Qaida.

³ For instance, the UNSC prohibits Member States from:

- (1) the supply or procurement of nuclear- and ballistic missile-related items to or from Iran or the DPRK;
- (2) the supply of items such as aviation fuel, refined petroleum products, crude oil, industrial machinery and transport vehicles and certain luxury goods to the DPRK, the procurement of items such as coal, iron, rare earth minerals, textiles, seafood, food and agricultural products from the DPRK, certain business activities of financial institutions in the DPRK, provision of financial support for trade with persons connected with the DPRK, and engaging in ship-to-ship transfers with DPRK-registered ships, etc.;
- (3) the import of charcoal from Somalia; and
- (4) the transport or discharge of petroleum from Libya by vessels designated by the relevant UNSC Committee, or engaging in financial transactions concerned, etc.

Whenever the Chief Executive makes new regulations under the UN Sanctions Ordinance or amends existing regulations to implement new resolutions adopted by the UNSC, representatives of the Government will attend meetings of the Legislative Council Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions, to brief Members on the regulations and answer Members' questions on the implementation and enforcement of the regulations.

As regards the enforcement of the UN Sanctions Ordinance, C&ED is one of the LEAs and is mainly responsible for enforcement against the import and export, supply, sale or transfer of sanctioned items (e.g. arms). Apart from C&ED, the Hong Kong Police Force is the other LEA under the UN Sanctions Ordinance.

The LEAs stay highly vigilant against suspected violations of the UN Sanctions Ordinance. They also closely monitor reports published by relevant UNSC committees or panels of experts and other organisations, and actively investigate suspected cases allegedly involving Hong Kong. The LEAs have been acting in accordance with the law, without fear or favour, to follow up on suspected violations of the regulations.

Individual countries may, based on their own considerations, impose unilateral sanctions against certain places. Hong Kong does not have the responsibility nor the legal basis to enforce these unilateral sanctions or investigate relevant cases.

In the past five years, C&ED investigated 99 suspected cases of sanctions violations. Breakdowns by year⁴ are as follows:

Year	Number of Cases investigated by the C&ED
2014	10
2015	3
2016	7
2017	28
2018	51
Total	99

⁴ To ensure confidentiality of investigation work, we will not disclose detail of the cases.

Hong Kong has a robust system to implement sanctions imposed by the UNSC. Coupled with the investigation efforts of our LEAs which are vigilant and with deterrent effect, a number of alleged Hong Kong-registered companies have been struck off, and suspicious vessels have been denied entry into Hong Kong waters. All these are conducive to preventing attempts to make use of Hong Kong as a base to violate UNSC sanctions, and hence safeguarding the international reputation of Hong Kong.

There are currently no prosecution cases under the United Nations Sanctions Ordinance. We will continue to maintain a stringent system of implementing UNSC sanctions in accordance with the law. Exercising their statutory authorities, the LEAs will continue to follow up on all suspected violations of UNSC sanctions, and will institute prosecution when there is sufficient evidence.

As seen from the above, the Government premises the implementation of strategic trade control and UNSC sanctions on the stringent systems provided under the relevant ordinances, and LEAs conduct enforcement and investigations in accordance with their statutory authorities, without fear or favour, thereby fulfilling Hong Kong's international obligations.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Harry Lin', with a stylized, cursive script.

(Harry Lin)

for Secretary for Commerce and Economic Development

c.c. Director-General of Trade and Industry (Attn.: Mr Francis Ho)
Head of Trade Controls (Attn.: Ms Teresa Fu)