LCQ15: Assisting Hong Kong enterprises in tapping Mainland market and in upgrading and restructuring
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Following is a written reply by the Secretary for Commerce and Economic Development, Mrs Rita Lau, to a question by Dr the Hon Lam Tai-fai in the Legislative Council today (May 27):

Question:

After meeting the Premier of State Council on April 18 of this year, the Chief Executive indicated that the Central Government would implement measures to further facilitate Hong Kong enterprises engaged in processing trades on the Mainland to sell their goods on the mainland market. In this connection, will the Government inform this Council:

(a) whether the Government of the Hong Kong Special Administrative Region (HKSAR Government) will take new actions, apart from the existing measures or those under study, including organising promotional activities such as exhibitions and symposiums on the Mainland, implementing the "single tax return for multiple domestic sales" arrangement, streamlining the procedures for opening shops and certification/inspection, expediting the approval process and simplifying the tax filing arrangements, etc., to complement the aforesaid measures to be introduced by the Central Government soon;

(b) whether it has specially formulated specific policy (e.g. providing tax concessions by amending the Inland Revenue Ordinance (Cap. 112) or other means) to further strengthen the competitiveness on the Mainland market of the goods produced by Hong Kong enterprises; and assist Hong Kong enterprises in upgrading and restructuring so as to meet the relevant requirements of the Mainland market; if it has, of the details; if not, the reasons for that; and

(c) whether the HKSAR Government will consider setting up, in addition to the Economic and Trade Office of the HKSAR Government in Guangdong and the Office of the HKSAR Government in Beijing, a dedicated department to focus on providing through-train services to Hong Kong enterprises and assisting them in developing the mainland market as well as upgrading and restructuring; if it will, when the department will be set up; if not, of the reasons for that;

(d) whether it will consider amending the legislation, so that the existing arrangement of assessing Hong Kong profits tax on a 50:50 basis of apportionment, which is applicable to the profits from sale of goods processed by mainland factories through "contract processing", will also

apply to profits from sale of products procured from mainland factories engaged in the "import processing" trade, so as to encourage the upgrading and restructuring of Hong Kong enterprises on the Mainland; if it will, of the details; if not, the reasons for that; and

(e) given the difference in the trademark registration and intellectual property rights protection regime between the Mainland and Hong Kong, whether the HKSAR Government will negotiate with the mainland authorities more actively, so as to expeditiously strengthen the protection of the intellectual property rights such as brands, trademarks, designs and patented technologies of Hong Kong enterprises, and implement facilitation measures (e.g. studying the feasibility of "one-registration, two-uses" for trademarks with reference to overseas practices, establishing a mutual recognition regime for trademark registration for the Mainland and Hong Kong, and giving special protection to famous trademarks and brands); if it will, of the details; if not, the reasons for that?

Reply:

President,

(a) & (b) One of the priorities of work of the Hong Kong Special Administrative Region (HKSAR) Government this year is to make sustained efforts in collaboration with the Mainland authorities to help Hong Kong enterprises upgrade and restructure themselves and tap the Mainland market, the latter also tying in with the Mainland's policy of expanding domestic demand. We are adopting a multi-pronged approach to achieve our work targets, including taking the following measures :

Maintaining close contact with the Mainland
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* We will continue to maintain close contact with the trade, the Central Authorities and other Mainland authorities at all levels, reflecting the views and suggestions of Hong Kong enterprises in the interest of helping them to develop and tap the Mainland domestic market. These suggestions include further streamlining the process and procedures for opening retail outlets and certification/inspection, expediting the approval process and simplifying the tax filing arrangements for Hong Kong enterprises.

* Through the Hong Kong/Guangdong Expert Group on the Restructuring and Upgrading of the Processing Trade and other channels, we will continue to actively pursue further progress in implementing measures such as "restructuring without stopping production", "carrying forward

without appraising the value" and "single tax return for multiple domestic sales" by the relevant Mainland authorities, and to examine different facilitation measures for Hong Kong enterprises.

Organising exhibition events
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* We will continue to organise domestic market business matching events and trade fairs with the Ministry of Commerce (MoC) and the relevant Mainland authorities with a view to providing a platform for Hong Kong enterprises to engage in domestic sales. For example, we organised the Domestic Market Business Matching Forum at the 105th China Import and Export Fair in Guangzhou jointly with MoC in late April with success. We will also support the Guangdong Foreign-invested Enterprises Commodities Fair in Dongguan organised by the Guangdong Province in mid-June.

* We are also giving strong encouragement and support to the Hong Kong Trade Development Council in organising trade fairs in the Mainland. Examples include the Hong Kong Consumer Products Expo held in Guangzhou in March this year; the Style Hong Kong Show held in Wuhan in May, and the Style Hong Kong Shows to be staged in Chongqing and Guangzhou respectively in November this year and February next year.

Financial and other support
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* To facilitate Hong Kong enterprises in developing the Mainland and overseas markets, we have enhanced the SME Export Marketing Fund (EMF) at the end of last year by raising the grant ceiling and extending the scope of reimbursable items. Further to that, the Financial Secretary proposed yesterday (May 26) afternoon to inject an additional $1 billion into the EMF and further expand its ambit by further extending the scope of reimbursable items to cover advertisements placed on websites. This could provide SMEs with greater flexibility in making use of the fund for tapping overseas markets, broadening their customer base and attracting more orders.

* The Hong Kong Export Credit Insurance Corporation (ECIC) will also introduce further measures to give more protection to the export trade, including raising the ceiling of "small credit limit" applications to cover those of $1 million or below. The ECIC will process these applications with greater flexibility and within two to three days. In addition, the ECIC will step up co-operation with the China Export and Credit

Insurance Corporation in the area of business referrals with a view to assisting enterprises in obtaining credit insurance services for their domestic sales. The two organisations will hold seminars in the Mainland and Hong Kong to promote credit insurance services to Hong Kong enterprises.

* Moreover, in order to further assist enterprises in obtaining commercial loans, the Financial Secretary announced yesterday his decision to extend the application period for the Special Loan Guarantee Scheme to the end of 2009 and proposed to raise the Government's loan guarantee ratio from 70 per cent to 80 per cent of the loans granted. The loan ceiling for each enterprise will also be substantially increased by one-fold, from $6 million to $12 million, of which the amount that can be used for revolving credit facilities will be increased from $3 million to $6 million. The maximum guarantee period will also be extended from three years to five years. As for the standing SME Loan Guarantee Scheme, it has been proposed to substantially increase the Government's total loan guarantee commitment from $12.6 billion to $20 billion.

With regard to the proposal for providing tax concessions mentioned in part (b) of the question, the HKSAR Government is committed to maintaining a low, simple and predictable tax regime so as to provide a level playing field for all sectors. Any proposal for providing tax or other concessions for specific industries must be considered in accordance with this principle.

(c) The Commerce and Economic Development Bureau and relevant Government departments, including the Trade and Industry Department and the offices of the HKSAR Government in the Mainland, have been assisting Hong Kong enterprises in developing the Mainland market and upgrading and restructuring themselves. In close liaison with Hong Kong enterprises through various channels, the bureau and departments endeavour to reflect their views, make recommendations to the Mainland authorities, and disseminate up-to-date information about the business environment in the Mainland. Apart from keeping in close contact with the MoC and relevant authorities in the Mainland, we are also studying possible support measures with the Guangdong Province, through the Guangdong/Hong Kong Co-operation Joint Conference as well as the Hong Kong/Guangdong Expert Group on the Restructuring and Upgrading of the Processing Trade established under it. We consider that the present arrangements have been effective and there is no need to set up a dedicated department to take up the tasks.

(d) With regard to the tax treatment for "contracting processing" and "import processing", the Inland Revenue Department (IRD) has on

different occasions explained to taxpayers, tax representatives and the trade the different profits tax arrangements for these two types of processing through different channels over the past years. For "contracting processing", raw materials are provided to the Mainland entity by the Hong Kong enterprise for processing into finished goods for sale by the enterprise. In the entire process from manufacture to sale, the Mainland entity is only paid a processing fee whereas the Hong Kong manufacturer has ownership title to the raw materials provided by it and the finished products. Recognising the involvement of the Hong Kong enterprise as a manufacturer in the manufacturing activities in the Mainland, IRD accepts that the profits may be apportioned on a 50:50 basis. As for "import processing", since the Mainland entity purchases raw materials and processes the goods on its own account, it takes ownership title to both the raw materials and the finished goods. The Hong Kong manufacturer only purchases the finished goods from the Mainland entity for sale, making sales profits in the same way as it does by purchasing goods from any other overseas companies. As such, the profits of the Hong Kong enterprise carrying out this kind of trading activities in Hong Kong should be taxable in full.

(e) Hong Kong's regime for intellectual property rights (IPR) is in compliance with the standards set out in the international conventions for protecting IPR, including the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organisation and the Paris Convention. Under these conventions, IPR protection is territorial in nature, which means that member states or economies, including the Mainland and Hong Kong, are to protect and execute IPR within their jurisdictions in accordance with the provisions of their respective legal systems.

On the proposal of "one registration, two uses", as has been highlighted above, the fact is that the authorities responsible for handling applications for registration in the Mainland and Hong Kong would still have to process cases according to their respective trade mark registration systems, laws and regulations. Hence, we have no plans for the time being to discuss such a proposal with the Mainland authorities. Separately, under Hong Kong's current trade mark registration system, a registration category for "famous trade mark" does not exist. Nonetheless, under the Paris Convention which is applicable to both the Mainland and Hong Kong, owners of trade marks which are entitled to protection as "well-known trade marks" could enjoy the pertinent protection, even if they have not registered their trade marks in the Mainland or Hong Kong.

The intellectual property authorities of both places have been in close

co-operation with each other all along. We are endeavouring to help enterprises enhance their understanding of the IPR laws and regulations in the two places and the corresponding protective measures. We are also striving to enhance the IPR protection and management capability and standards of practitioners in the two places. Co-operation items include organising IPR symposia or seminars, setting up co-ordination or expert groups, maintaining one-stop web-based IPR database and trade marks column, etc. Looking ahead, we will continue to explore with the Mainland authorities measures to facilitate IPR protection for enterprises in both places.

Ends/Wednesday, May 27, 2009