IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 82

Magistrate's Appeal No 9187 of 2015

Public Prosecutor

v

Pang Shuo

JUDGMENT

[Criminal Law] — [Statutory offences] — [Customs Act]
[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark sentences]
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High Court — Magistrate's Appeal No 9187 of 2015/01
Chan Seng Onn J
1 April 2016

28 April 2016 Judgment reserved.

Chan Seng Onn J:

Introduction

1 The annual loss of revenue to the Government through cigarette smuggling easily runs into tens of millions of dollars.[1] Smuggling activities undermine the integrity of Singapore's trading system, and more importantly our efforts to reduce the consumption of harmful goods. Between 2013 and 2015, about three million packets of duty unpaid cigarettes were seized each year, a figure that is double of that in 2012. Furthermore, while the number of persons prosecuted for cigarette offences declined from 2010 to a low in 2013, there has been an unfortunate slight rebound over the past two years.[2]

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[1] See *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) ("Sentencing Practice") at p 1597.

[2] Singapore Customs, Ministry of Finance, "Enforcement Statistics 2015" <http://www.customs.gov.sg/~/media/cus/files/news%20and%20media/statistics/enforcemen

2 This is the Prosecution's appeal against the sentence of the Respondent in respect of one charge under s 128H of the Customs Act (Cap 70, 2004 Rev Ed) ("the Customs Act") for unloading 480 kg of duty unpaid cigarettes. Upon the Respondent's plea of guilt, he was convicted by the District Judge and sentenced to a term of 15 months' imprisonment for the offence in question.

3 Having considered all the circumstances of the case, I am satisfied that the sentence imposed by the District Judge is manifestly inadequate. Accordingly, I allow the Prosecution's appeal, and order the Respondent's sentence to be enhanced to 24 months' imprisonment.

Background

Facts

4 On 28 July 2015 at about 6.35 p.m., officers from the Singapore Customs ("Customs officers") acting on information received saw a truck arrive at 10 Kaki Bukit Avenue 4.[3] The Respondent (an untraced 19 year old male Chinese national) was seen alighting from the passenger seat of the truck by the Customs officers, while one Zhi Dian (an untraced 20 year old male Chinese national) ("the co-accused") was seen approaching the truck and opening its back compartment door. The two began unloading brown boxes from the truck onto trolleys and pushing them into Unit #08-72 at the said location. About 15 minutes later, the Customs officers moved in, found and seized a total of 480 kg of duty unpaid cigarettes hidden in signboard lighting frames in brown boxes in Unit #08-72, on the loading/unloading bay platform at 10 Kaki Bukit Avenue 4, and inside the rear compartment of the truck.

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tstats.xls?la=en> (accessed 4 April 2016).

[3] Admitted Statement of Facts, ROP Bundle, at pp 8–10.

5 Both the Respondent and co-accused knew that they were unloading duty unpaid cigarettes. They had been engaged by one "Xiao Li". The Respondent and co-accused were each paid $200 for every truck delivery where:

(a) the Respondent would first collect the duty unpaid cigarettes from a freight forwarding company in a truck driven by one Ji Hongwei;

(b) the Respondent would next deliver these cigarettes to 10 Kaki Bukit Avenue 4; and

(c) thereafter, the co-accused would join the Respondent and both of them would unload the duty unpaid cigarettes and transfer them to Unit #08-72.

Additionally, the Respondent was provided with a meal allowance of $50.

6 One carton of duty unpaid cigarettes (amounting to 0.2 kg) was also found in the Respondent's backpack by the Customs officers. The Respondent had purchased this carton from an online peddler for his personal consumption. This carton of duty unpaid cigarettes formed the basis of a separate charge under s 128I(1)*(a)*(ii) of the Customs Act to which the Respondent also pleaded guilty (see [7] below), but which is not a subject of the present appeal.

The proceedings below

7 The Respondent pleaded guilty to the following two charges before the District Judge on 7 October 2015:

DAC 928764/2015 (subject matter of this appeal)

> … [T]hat you, on or about the 28th day of July 2015, at about 6.50 pm, at No 10 Kaki Bukit Avenue 4, Singapore, together with Zhi Dian, and in furtherance of the common intention of you two, were concerned in the unloading of uncustomed goods from a Singapore registered truck No. YL8825A into a unit, #08-72, located at No 10 Kaki Bukit Avenue 4, to wit, 2400 cartons x 200 sticks of Double Happiness duty unpaid cigarettes, weighing **480.000** kilogrammes, on which excise duty of **$186,240.00** was not paid, and you have thereby committed an offence under section 128H of the Customs Act, Cap 70, punishable under Section 128L(4) of the same Act, read with Section 34 of the Penal Code (Cap 224).
>
> DAC 928766/2015
>
> … [T]hat you, on the 28th day of July 2015, at about 6.55 pm, at No 10 Kaki Bukit Avenue 4, Singapore, did have in your possession uncustomed goods, to wit, 1 carton X 200 sticks of Double Happiness duty unpaid cigarettes, weighing **0.200** kilogrammes, on which excise duty of **$77.60** was not paid, and you have thereby committed an offence under section 128I(1)(a)(ii) of the Customs Act, Cap 70, punishable under Section 128L(2) of the same Act.
>
> [emphasis in original]

8 Two further related charges for the evasion of Goods and Services Tax ("GST") were taken into consideration for the purposes of sentencing with the consent of the Respondent. A joint Statement of Facts pertaining to both the Respondent and the co-accused was admitted without qualification by the Respondent.

9 The Prosecution urged the court to impose the same sentence of two years' imprisonment that was earlier imposed on the co-accused (see below at [12]) as there was "not much difference in [their] role[s]", and that the accused (the present Respondent) was in fact "a little bit more culpable".[4] Based on three sentencing precedents cited (*Public Prosecutor v Ren Zhenhua* (DAC 908961-2/2014 and DAC 908963-4/2014)*, Public Prosecutor v Chen Ying Hui*

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[4] Notes of Evidence (Pang Shuo), at p 3.

(DAC 928728-9/2014), and *Public Prosecutor v Ran Ganglei* (DAC 915813-4/2015)),[5] the Prosecution submitted that the sentencing range was between 25 to 30 months' imprisonment for the quantity of duty unpaid cigarettes involved. Additionally, the Prosecution cited the case of *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 ("*Yap Ah Lai*"), where Sundaresh Menon CJ held that the benchmark sentence for cases involving more than 400 kg of duty unpaid cigarettes would be 30 to 36 months, which was higher than what the co-accused was sentenced to, as well as what the Prosecution was seeking for the Respondent.

10 During the mitigation plea, the Respondent expressed remorse and explained that he took up the job without initially knowing that illegal cigarettes were involved, but had continued with it after finding that out as he needed money for his family.

11 The District Judge gave the following reasons in her grounds of decision (*Public Prosecutor v Pang Shuo* [2015] SGDC 308 ("the GD")) for her sentencing with regard to the charge of unloading duty unpaid cigarettes under s 128H of the Customs Act:

> (a) the three sentencing precedents cited by the Prosecution, which related to offences under different statutory provisions altogether (namely, ss 128I(1)(*a*)(ii) and 128I(1)(*b*) of the Customs Act), were unhelpful as they involved different acts and roles on the part of the offenders (see [14] of the GD);
>
> (b) the benchmark sentences in *Yap Ah Lai* were irrelevant to the present case as they dealt with the offence of *importation* under s 128F

[5] ROP Bundle, at p 35.

of the Customs Act, and not the offence of *unloading* under s 128H of the Customs Act (see [15] of the GD);

(c) the quantity of duty unpaid cigarettes involved, though "relevant and significant", could not be the "key factor" against which the sentence ought to be pegged as the Respondent was a "low level offender" who was paid a low sum of $250 (regardless of the quantity in each delivery) with no control over the amount of cigarettes involved (see [19]–[20] of the GD);

(d) parity in sentencing was not necessarily an overriding concern, and the sentence of two years' imprisonment (that was imposed on the co-accused) was too high and she felt constrained to depart from this figure (see [16] of the GD); and

(e) recognition should be given to the Respondent for his youth, plea of guilt and clean record; two years' imprisonment would be crushing for him (see [21] of the GD).

The co-accused's proceedings

12 The co-accused pleaded guilty to two charges before another district judge on 30 July 2015 (*PP v Zhi Dian* (DAC 928753-2015)): one similar charge as the Respondent's under s 128H of the Customs Act for unloading the same 480 kg of duty unpaid cigarettes, and another corresponding charge for evasion of GST. No charges were taken into consideration for the purpose of sentencing. The co-accused was convicted accordingly. In mitigation, the co-accused similarly expressed remorse and explained that he had needed the money to support his aged parents. He was sentenced to 24 months'

imprisonment for his first charge, and 8 months' imprisonment for the second. Both sentences were ordered to run concurrently.[6]

The appeal

Prosecution's submissions

13 During the appeal before me, the Prosecution contends that a custodial sentence of more than 24 months' imprisonment should be imposed on the Respondent. In support of its position, the Prosecution makes the following points:

(a) Although the sentencing benchmark in *Yap Ah Lai* related to the importation of duty unpaid cigarettes under s 128F of the Customs Act, there should be no meaningful variation in sentencing benchmarks between the offences in ss 128F and 128H since under the statutory scheme of the Customs Act, the various acts constituting the offences under both provisions are treated with equivalency. A common starting point in sentence should apply, and the sentencing benchmarks set in *Yap Ah Lai* should be taken into account when sentencing the Respondent.

(b) Recent precedents for offences under s 128H of the Customs Act show a general adherence to the sentencing benchmarks in *Yap Ah Lai*, as well as the trend that the sentences imposed for s 128H offences post-*Yap Ah Lai* are generally proportional to the quantity of the duty unpaid cigarettes involved. The Prosecution tendered the following graph in its submissions to illustrate this point:

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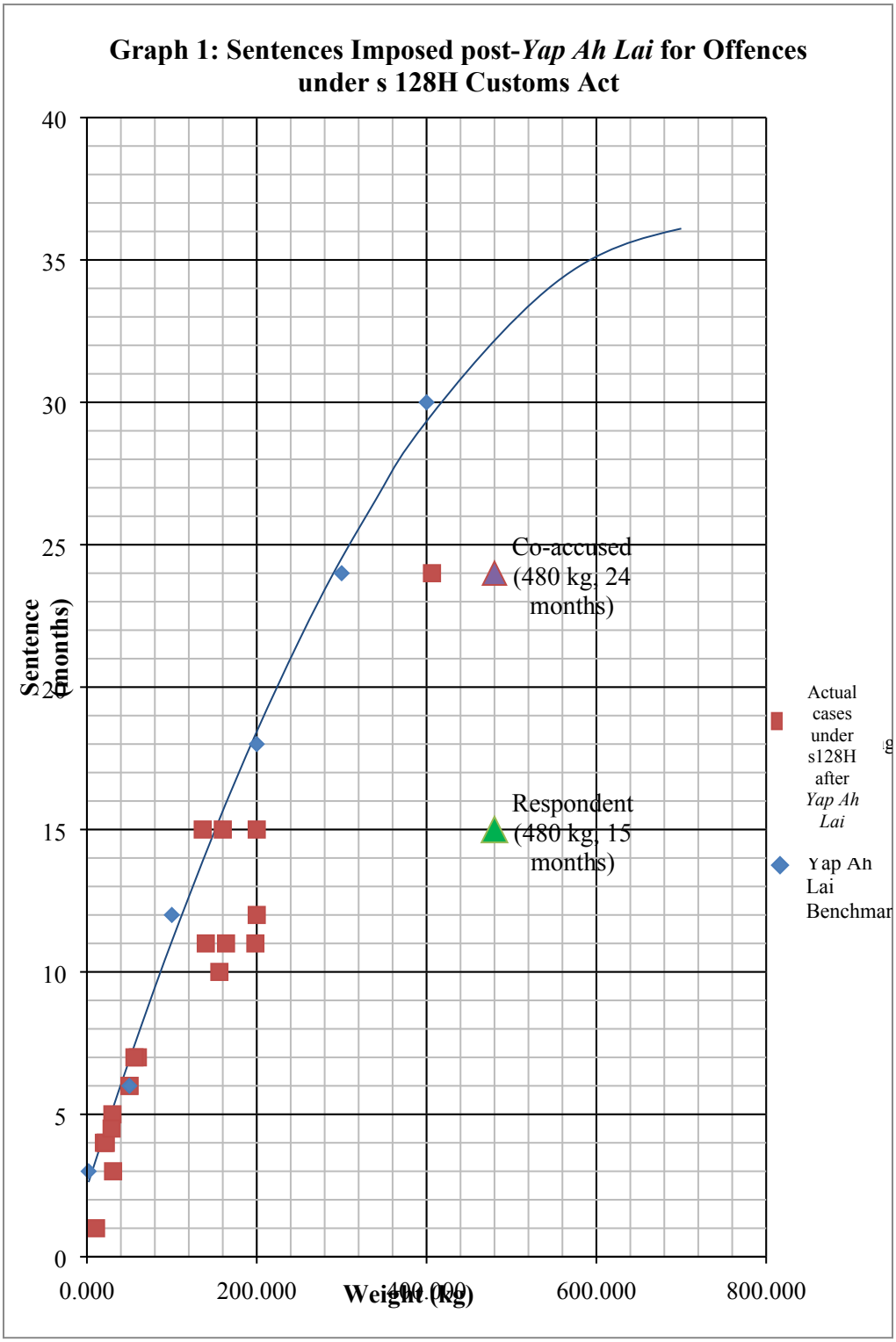
[6] Note of Evidence (Zhi Dian), at p 2.



(c) The District Judge did not give sufficient weight to the large quantity of duty unpaid cigarettes involved, as well as the enhanced role the Respondent played in collecting, delivering and unloading the said cigarettes (see [5] above), as opposed to the co-accused's role in only unloading the cigarettes.

(d) The District Judge had erred in failing to apply the principle of parity in sentencing in the present case. The co-accused's sentence of 24 months' imprisonment cannot be described as erroneously harsh, and there should not be inconsistent treatment between the two cases. To illustrate this, the Prosecution produced the following table:

Table 1: Comparison between the Respondent and Co-Accused

	Respondent	*Co-Accused*
Gender / age / antecedents	Male / 20 years old / untraced (19 at time of proceedings)	Male / 20 years old / untraced
Role	Concerned in collection, delivery and unloading of 480 kg of duty unpaid cigarettes	Concerned in unloading of 480 kg of duty unpaid cigarettes
Proceeds	Paid $200 per transaction plus $50 meal allowance	Paid $200 per transaction
Pleaded guilty or claimed trial	Pleaded guilty at first opportunity	Pleaded guilty at first opportunity
Mitigation	Expressed remorse and explained that he needed money for his family	Expressed remorse and explained that he needed money for his family
Sentence	**15 months' imprisonment**	**24 months' imprisonment**

(e) The District Judge had erred in attaching excessive weight to the Respondent's youthfulness. Although youthfulness is a valid mitigating factor, the weight attached to it should have been similar to that of the co-accused. The Respondent was a year younger than the co-accused, but had played a greater role in collecting, delivering and unloading the duty unpaid cigarettes.

Statutory scheme of cigarette smuggling offences under the Customs Act

Legislative intention and history

14 The courts must be cognisant of the legislative intention when developing appropriate sentencing frameworks for statutory offences. Sundaresh Menon CJ's remarks at [27] of *Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 ("*Mehra Radhika*") are instructive:

> Legislative intention is relevant to and influences sentencing in various ways. As a generally operative background factor, if Parliament has *increased* the punishment for an offence on the basis that the *mischief in question was becoming more serious* and needed to be arrested, as was the case in *Oramulu*, the courts would not be acting in concert with the legislative intent if they fail to have regard to this in developing the appropriate sentencing framework or if they nonetheless err on the side of leniency in sentencing.
>
> [emphasis added]

15 Legislative intention surrounding the historical development of the offences under the Customs Act and the penalties for acts that involve specifically tobacco product smuggling would thus be relevant in determining whether a sentencing framework for the importation for duty unpaid cigarettes (and/or other tobacco products) under s 128F of the Customs Act is applicable to offences involving the same products under s 128H of the Customs Act.

16 A survey of the developments surrounding the provisions relevant to cigarette smuggling offences in the Customs Act reveals four pertinent points:

(a) The offences set out in relation to uncustomed goods are directed at two evils: first, the loss of revenue to the Government, and second, the consumption of harmful goods (see *Yap Ah Lai* at [23]–[26]).

(b) The two offences in question here (the offences of importation and unloading) were originally found in a single provision under s 130(1)(*a*) of the Customs Act (Cap 70, 1995 Rev Ed) ("the Customs Act 1995"), along with the rest of the "steps" which together form a chain of actions amounting to the composite act of smuggling uncustomed goods.

(c) Parliament specifically targeted cigarette smuggling with enhanced and heavier penalties for dealing with duty unpaid tobacco products as opposed to other uncustomed goods, *without any regard to which offending step or act in the composite chain was engaged*.

(d) The offences of importing and unloading of uncustomed goods were split into their current forms for *better comprehension*, with no apparent legislative intention indicating a difference in sentencing treatment between them.

17 s 130(1)(*a*) of the Customs Act 1995 reads as such:

> Whoever —
>
> (a) is concerned in *importing* or exporting, or ships, unships, loads, *unloads*, lands or delivers or assists or is concerned in the shipping, unshipping, landing or delivery of, any uncustomed or prohibited goods whether the goods are

> shipped, unshipped, loaded, unloaded, landed, delivered or not; …
>
> [emphasis added]

18 The provision thus *collectively* deals with the various "steps" in the chain amounting to the composite act of smuggling uncustomed or prohibited goods. With the rise of cigarette smuggling in the 1990s, Parliament increased the penalties for smuggling cigarettes exceeding 2 kg with the enactment of ss 130(1)(iii) and (iv) of the Customs Act 1995, providing a higher fine and longer terms of imprisonment for both first-time and repeated offenders (see *Singapore Parliamentary Debates, Official Report* (12 July 1996) vol 66 at col 427):

> (iii) [W]here the goods consist wholly or partly of tobacco products and such tobacco products exceed 2 kilogrammes in weight — [the person convicted shall] on the first conviction [be liable] to both a fine of not less than 15 times the amount of the customs duty or tax and not more than 20 times the amount of the customs duty or tax or $10,000, whichever is the greater, and to imprisonment for a term not exceeding 3 years; and
>
> (iv) [W]here the goods consist wholly or partly of tobacco products and such tobacco products exceed 2 kilogrammes in weight — [the person convicted shall] on the second or subsequent conviction [be liable] to both a fine of not less than 30 times the amount of the customs duty or tax and not more than 40 times the amount of the customs duty or tax or $20,000, whichever is the greater, and to imprisonment for a term not exceeding 6 years.

19 I note that these enhanced penalties for cigarette smuggling were applied across the board for *all* offences under s 130 of the Customs Act 1995 in equal measure, including for the offences of importing and unloading under s 130(1)(*a*) of the Customs Act 1995. Parliament thus appears to treat the various acts in the chain with equivalency. This legislative intention is consistent with the fact that when the offences of importing and unloading in s 130(1)(*a*) of the Customs Act 1995 were split into their current forms in

ss 128F and 128H of the Customs Act respectively after the Customs (Amendment) Act 3 of 2008 was passed, there was again no differentiation made to the magnitude of the penalties (*ie* the minimum/ maximum fines and the maximum imprisonment terms) prescribed under the present ss 128L(4), 128L(5) and 128L(5A) for the offences of importing and unloading duty unpaid tobacco products. The relevant provisions are reproduced below:

> **Offences in relation to importation of uncustomed or prohibited goods**
>
> 128F. Any person who is in any way concerned in *importing* any uncustomed or prohibited goods shall be guilty of an offence.
>
> **Offences in relation to shipping, unshipping, loading, unloading, etc., of uncustomed or prohibited goods**
>
> 128H. Any person who ships, unships, loads, *unloads*, lands or delivers, or who assists or is concerned in the shipping, unshipping, loading, unloading, landing or delivery of, any uncustomed or prohibited goods, whether or not the goods are shipped, unshipped, loaded, unloaded, landed or delivered, shall be guilty of an offence.
>
> **Penalty for various offences**
>
> 128L—(4) Any person who is guilty of *any specified offence* involving goods consisting wholly or partly of relevant tobacco products shall, if such tobacco products exceed 2 kilogrammes in weight, be liable on conviction —
>
> (a) to a fine of —
>
> (i) not less than 15 times the amount of the customs duty, excise duty or tax the payment of which would have been evaded by the commission of the offence, subject to a minimum of $1,000; and
>
> (ii) not more than 20 times the amount of the customs duty, excise duty or tax the payment of which would have been so evaded or $10,000, whichever is the greater amount; or
>
> (*b*) to imprisonment for a term not exceeding 3 years,
>
> or to both.

(5) Where any person is convicted of a specified offence committed by him on or after the date of commencement of section 17(*d*) of the Customs (Amendment) Act 2011 involving goods consisting wholly or partly of relevant tobacco products and he has been convicted on a previous occasion of —

(*a*) that or any other specified offence involving such goods; or

(*b*) any offence under the repealed section 130(1) in force immediately before 4th April 2008 involving such goods,

then he shall be liable to —

(i) a fine of —

(A) not less than 30 times the amount of the customs duty, excise duty or tax the payment of which would have been evaded by the commission of the first-mentioned specified offence, subject to a minimum of $2,000; and

(B) not more than 40 times the amount of the customs duty, excise duty or tax the payment of which would have been so evaded or $20,000, whichever is the greater amount; or

(ii) imprisonment for a term not exceeding 6 years,

or to both.

(5A) Notwithstanding subsection (5), where any person is convicted of a specified offence committed by him on or after the date of commencement of section 17(*d*) of the Customs (Amendment) Act 2011 involving goods consisting wholly or partly of relevant tobacco products exceeding 2 kilogrammes in weight and he has been convicted on a previous occasion of —

(*a*) that or any other specified offence involving goods consisting wholly or partly of relevant tobacco products exceeding 2 kilogrammes in weight; or

(*b*) any offence under the repealed section 130(1) in force immediately before 4th April 2008 involving goods consisting wholly or partly of relevant tobacco products exceeding 2 kilogrammes in weight,

then he shall be punished with —

(i) a fine of —

> (A) not less than 30 times the amount of the customs duty, excise duty or tax the payment of which would have been evaded by the commission of the first-mentioned specified offence, subject to a minimum of $2,000; and
>
> (B) not more than 40 times the amount of the customs duty, excise duty or tax the payment of which would have been so evaded or $20,000, whichever is the greater amount; and
>
> (ii) imprisonment for a term not exceeding 6 years.
>
> (7) In this section —
>
> …
>
> *"specified offence" means an offence under* section 128D, 128E, *128F*, 128G, *128H*, 128I, 128J or 128K.
>
> [emphasis added]

20 Peripherally, I also note that the offence of exporting uncustomed goods in s 130(1)(*a*) of the Customs Act 1995 is presently found in s 128G of the present Customs Act. The other offences in the old s 130 of the Customs Act 1995 have also been re-organised after the old s 130 was repealed: for example, the offence of storing uncustomed goods in the old s 130(1)(*c*) is now found in s 128I(1)(*a*).

21 It is significant that the penalty regime did not change significantly when the offences were re-organised. The same statutorily provided minimum and maximum fines for all specified offences apply, and for cases involving more than 2 kg of tobacco products, the regime under the old ss 130(iii) and (iv) of the Customs Act 1995 has not changed except for the fact that for first-time offenders, the sentence imposed can now be fines and/or imprisonment or both (see s 128L(4) reproduced above), instead of fines and imprisonment previously. There is still no differentiated treatment in the magnitude of penalties imposed on the different acts in the chain of "steps" that form the

composite act of cigarette smuggling. Thus, the re-organisation and splitting of the offences were made for the purpose of comprehensibility, as opposed to an intention to differentiate between them substantively with separate sentencing schemes. Then Minister of State for Finance Mrs Lim Hwee Hua's comments on the re-classification are apposite (*Singapore Parliamentary Debates, Official Reports* (22 January 2008) vol 84 at col 249):

> ***Simplification* of penalty provisions and *streamlining* the enforcement regime**
>
> Sir, I shall now move on to the second category of amendments that *simplify and streamline the current penalty provisions and the enforcement regime* under the Customs Act.
>
> …
>
> ***Re-classifying* customs offences**
>
> The next change relates to the *re-classification of customs offences* by mode of commission of the offences. This serves to *streamline* the various offences for *better comprehension*. There are *no changes to the penalties* levied on the offences. There are also *no substantive changes* in the scope of customs offences other than the consequential change to cater for the introduction of the composite license.
>
> [emphasis added]

22 It thus seems to me that Parliament treats the mischief in question behind the different offences involved in the whole chain of "steps" in cigarette smuggling with equivalency, and courts should thus "act in concert" with this legislative intention in sentencing (*Mehra Radhika* at [27]).

Juridical basis of distinguishing between importing and unloading

23 Quite apart from reading into legislative intention, the juridical basis for distinguishing between the seriousness of the offences encapsulated in the act of importing and the act of unloading (or for that matter the other physical acts and steps in the whole chain of smuggling) is weak. In these cases, it is necessary and more appropriate to distinguish for the purpose of sentencing

between the offending physical acts of smuggling on the one hand and the offender's ownership, management, control and responsibility in the hierarchy of a smuggling syndicate on the other: the former being the offending action that triggers the corresponding provision under the Customs Act (*ie* loading, importing, unloading, delivering, etc. which are physical acts normally carried out by paid workers within the smuggling enterprise) and the latter being the extent or the level of control of the offender in the criminal enterprise (*eg* whether the offender is the owner of the criminal enterprise enjoying the profits derived from the criminal activities and/or whether he plays a leading or active management role within the criminal enterprise), which is a separate and an exceptionally serious aggravating factor in sentencing. The District Judge seems to have slightly conflated the two considerations when she states that "not all offences under section 128 [of the Customs Act] can be placed on the same level of seriousness" (presumably referring to the whole gamut of different possible offending physical *acts* of smuggling) before discussing the *role* of the offender where she differentiates between leaders and underlings (see [17] of the GD). She then goes on to state that "the charge preferred against the accused (the present Respondent) encapsulated his *role*, which was to unload the duty unpaid cigarettes and to bring them to the unit [*ie* his *act*]" (emphasis added) (see [19] of the GD).

24 However, the culpability of two "low-level" offenders as paid workers in the syndicate could be *equally* minor, even if one was involved in importing at the start of the chain and the other in unloading at the end when compared to the much higher culpability of one who substantially owns or has major control of the smuggling syndicate. If one considers the various offending physical acts needed to carry out a smuggling operation, it is perhaps fortuitous that an offender, a mere paid worker within the criminal smuggling enterprise hypothetically involved in the whole chain at every step, was caught

at one step, and not another. The level of culpability inherent in the different physical acts carried out by a paid worker in the smuggling chain can be regarded as largely similar. I cannot see any real or substantive distinction in the worker's culpability for these various individual physical acts.

25 *Ceteris paribus*, the type of offending act in the smuggling chain (want of any further details) should not have any serious bearing on the analysis that requires a significant differentiation to be made to the extent of the culpability of a worker employed to carry out different physical stages of the smuggling activity involving the same quantity of uncustomed goods. However, where the offender has a further involvement in owning, managing and/or controlling the smuggling enterprise, I would regard that to be a very serious aggravating factor that calls for a substantial differentiation in culpability.

26 Thus, I am of the view that the sentencing benchmarks set in *Yap Ah Lai* for the importation of duty unpaid cigarettes under s 128F of the Customs Act are relevant and applicable to the sentencing of offences of unloading (and other acts such as delivery, loading, unloading etc.) under s 128H of the Customs Act carried out by paid workers on behalf of a smuggling syndicate. A common starting point should apply, with adjustments upwards and downwards for other aggravating and mitigating factors not already implicit or captured within the reference benchmark cases, as each case must necessarily turn on its precise facts.

Benchmark sentences for cigarette smuggling offences

Developing benchmark sentences and sentencing frameworks

27 As Yong Pung How CJ in *Abu Syeed Chowdhury v Public Prosecutor* [2002] 1 SLR(R) 182 at [15] puts it:

> A "benchmark" is a sentencing norm prevailing on the mind of every judge, ensuring consistency and therefore fairness in a criminal justice system. … It … provides the focal point against which sentences in subsequent cases, with differing degrees of criminal culpability, can be accurately determined. A good "benchmark" decision therefore lays down carefully the parameters of its reasoning in order to allow future judges to determine what falls within the scope of the "norm", and what exceptional situations justify departure from it.

28 A good sentencing framework thus provides the analytical frame of reference to allow the sentencing judge to achieve a reasoned, fair and appropriate sentence in line with other like cases while having due regard to the facts of each particular case. Such guidelines also promote public confidence in sentencing, and enhance sentencing transparency and accountability in the administration of criminal justice. Broad consistency in sentencing also provides society with a clear understanding of what and how the law seeks to punish and allows for members of society to have regard to this in arranging their own affairs and making their own choices.[7]

29 Many judgments have recently laid out comprehensive sentencing frameworks and benchmarks for various offences: *eg* drink driving offences in *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139; offences under ss 140(1)(b) and (d), 146, 147 and 148 of the Women's Charter (Cap 353, 2009 Rev Ed) in *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892; s 49(*c*) Trade Marks Act (Cap 332, 2005 Rev Ed) offences in *Goik Soon Guan v Public Prosecutor* [2015] 2 SLR 655 ("*Goik Soon Guan*"); and diamorphine trafficking offences in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122. In particular, Menon CJ laid out benchmark sentences for the importation

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[7] See Menon CJ's extra-judicial comments during his opening address at the Sentencing Conference 2014 at [17], accessible at <http://www.supremecourt.gov.sg/docs/default-source/default-document-library/sjc/opening-address---sentencing-confererence-on-9-october-(101014---check-against-delivery).pdf>.

of duty unpaid cigarettes in the form of a graduated scheme in *Yap Ah Lai*, with the key parameter being the quantity of tobacco product involved which determines as a starting point the duration of imprisonment term to be imposed. This framework was established as a guide for the standard or archetypal offender which was defined (at [40]) as one:

(a) who is a first-time offender;

(b) who pleads guilty at the earliest opportunity; and

(c) whose role is limited to pure importation (*ie* not an enhanced *role* beyond committing the *act* in the charge preferred).

30 One approach to developing sentencing frameworks and benchmarks can be broadly described as encompassing the following steps:

(a) analyse the mischief targeted by the offence and the sentencing principles relevant to the offence in question;

(b) identify the primary factor(s) that would affect the length of the sentence, as well as other mitigating and aggravating factors;

(c) engage in scenario analysis, and set the standard/archetypal offender;

(d) derive the benchmarks for the standard case and any other scenarios; and

(e) test and calibrate the benchmarks against existing precedent cases.

31 Apart from my previous observations in *Public Prosecutor v Chow Chian Yow Joseph Brian* [2016] 2 SLR 335 at [42]–[46] on the development of benchmark sentences, I also further note that the framework should seek to capture the cases that make up the bulk of everyday sentencing practice, with room for departure for justice by allowing for upward and downward adjustments based on each particular case's facts and circumstances. For practical purposes and utility, the standard case should thus be analysed and set as the *typical* offender and situation for the particular offence, having regard also to the observations of cases that come before the courts. Where possible, quantitative sentencing data should be employed to aid the development of the framework for greater rigour. The following principles should also be kept in mind:

(a) Sentencing guides or guideline judgments are judicial creations not meant to usurp the Legislature, and legislative intention should always be adhered to when the offence is statutorily enacted (see *Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776 ("*Ong Chee Eng*") at [24]).

(b) Consequently, the full sentencing range available to the judge should be considered and incorporated into the sentencing calculus. The court's role is to ensure that the *full* spectrum of sentences enacted by Parliament is carefully explored in determining the appropriate sentence in the case at hand (*ie* where within the available range does the offender's conduct fall: see *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [44]), and thus give effect to the legislated maximum and/or minimum sentences.

(c) The concept of sentencing consistency extends to consistency in both *outcome* and *approach*. However, sentencing parity and

consistency are not "empty" end goals by themselves. Adhering to the principle of "like cases being treated alike" would not achieve substantive justice if the sentences in the reference cases were unjust or irrational in the first place. Thus, the "logic" of the set of reference cases has to be internally sound and coherent.

(d) In structuring the sentencing framework for coherence and logic, proportionality in sentencing to the culpability of the offender and to the seriousness of harm caused by the crime should be key considerations (see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [33]).

(e) Sentencing precedents that are unreasoned and unreported are of relatively little precedential value (see *Yap Ah Lai* at [11(d)], and also *Ong Chee Eng* at [33]).

(f) Judicial discretion underpins just sentencing, and sentencing benchmarks and frameworks must be capable of being simply yet *flexibly* applied with due regard to the facts (see *Yap Ah Lai* at [12] and also *Goik Soon Guan* at [43]). These are analytical tools meant to aid, and not hamper, judicial discretion to achieve both consistency and individualised justice.

Note on the Yap Ah Lai *benchmarks*

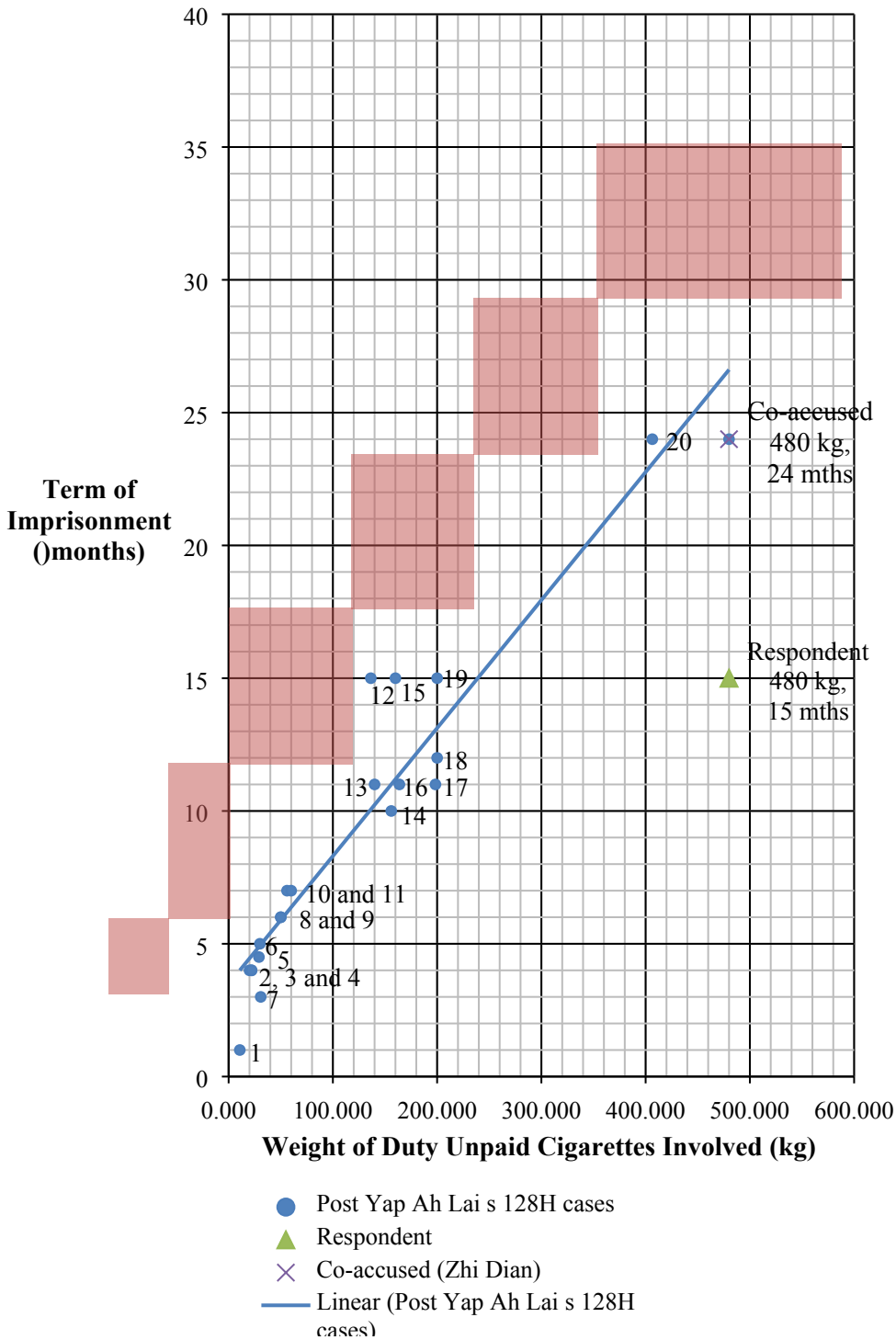
32 The present situation is not one where sentencing benchmarks are being newly calibrated *per se*. The Prosecution submits, and I agree, that a common starting point should apply for offences under ss 128F and 128H of the Customs Act, and that the sentencing benchmarks set in *Yap Ah Lai* for the former provision for the offence of *importing* should be taken into account

when sentencing the Respondent for his offence of *unloading* (see above at [13(a)]–[13(b)] and [14]–[26]). From the "twin objectives" of preventing a loss of revenue to the Government and discouraging the consumption of harmful goods as a matter of public policy and interest by raising the cost of such goods through the imposition of high excise duties on them, it was rationalised that the primary factor to be considered in sentencing for tobacco product smuggling offences would be the quantity of tobacco products that is involved (see *Yap Ah Lai* at [23]–[29], [35] and [57(b)]). Hence, proportionality to the harm caused by the crime is achieved by calibrating the sentence generally to the quantity of duty unpaid tobacco products involved as a starting point. Proportionality to the culpability of the offender would then be achieved by further downward and upward adjustments after taking into account other relevant mitigating and aggravating factors.

33 In line with the necessary rigour of developing a sound sentencing framework for importation cases, Menon CJ's exercise in *Yap Ah Lai* disregarded four non-importation cases (involving various acts of delivery, storage and unloading) tabled as precedents by the Prosecution, which were considered not directly relevant and where the offenders were considered by the court to have each taken a "*more active role* in the act of smuggling" (emphasis added) in comparison with a typical benchmark importation case "where the offender's *sole* role was to *transport* contraband cigarettes into Singapore" (see *Yap Ah Lai* at [40]–[45]). The fact that those four non-importation cases were disregarded for being irrelevant comparables outside the area of focus of the benchmarking analysis does not necessarily indicate that the sentencing scheme in *Yap Ah Lai* cannot apply to cases of delivery or unloading *per se*.

34 I have slightly retooled Graph 1, which the Prosecution tendered in its submissions:

Graph 2: Sentences Imposed post-*Yap Ah Lai* for Offences under s 128H Customs Act



35 Instead of a curve, the gradated benchmarks set in *Yap Ah Lai* are now presented as red shaded areas for easier comparison with the sentences imposed in post-*Yap Ah Lai* s 128H cases represented by the blue round-shaped markers. The exact plot values and other relevant information for the s 128H sentencing precedents can be found in Annex A at the end of this judgment. For these sentencing precedents, the offenders had all pleaded guilty, were not youthful offenders, and did not play leading or active management roles within the criminal enterprise. They were either paid workers engaged by others or had acted on their own (and not part of a syndicate). Three observations from Graph 2 must be noted:

(a) The blue markers generally fall within or very close to the red shaded areas; the recent sentencing precedents under s 128H of the Customs Act generally adhere to the sentencing benchmarks set in *Yap Ah Lai*.

(b) The blue markers increase largely linearly in proportion to the increase in the weight of the duty unpaid cigarettes along the *x*-axis, as represented by the blue trend-line derived from the blue data points; like the sentencing framework laid down in *Yap Ah Lai*, there is a rational and fairly proportional relationship between the increase in the sentence imposed and *the increase in the quantity of duty unpaid tobacco products involved* for post-*Yap Ah Lai* sentences for offences under s 128H of the Customs Act. This must be expected as dealing with a larger quantity of duty unpaid tobacco product must logically entail an increase in the degree of criminal culpability, and hence a corresponding general increase in the sentence imposed, when all other factors are held constant.

(c) The Respondent's sentence, represented by the green triangle marker, *prima facie* seems like a clear outlier against both the *Yap Ah Lai* benchmarks (the red shaded areas), as well as the post-*Yap Ah Lai* s 128H sentencing precedents (blue markers).

Major factors that influence the benchmark sentence

36 In *Moey Keng Kong v Public Prosecutor* [2001] 2 SLR(R) 867 ("*Moey Keng Kong*"), Yong CJ identified at [10] five significant factors relevant to sentencing for customs offences under s 130(1)(*a*) of the Customs Act 1995 (in relation to a case of importation of uncustomed cigars hidden in a vehicle):

> … the amount of duty evaded, the quantity of goods involved, repetition of the offence, whether the offender was acting on his own or was involved in a syndicated operation, and the role of the offender.

37 In *Yap Ah Lai* (at [28]–[32]), Menon CJ distilled these five factors into the following four factors:

(a) quantity of tobacco product involved (which would have a direct and virtually linear correlation to the amount of duty evaded);

(b) repetition of the offence;

(c) whether the offender was acting on his own or was involved in a syndicated operation; and

(d) the role of the offender.

Quantity of duty unpaid cigarettes involved

38 As identified in *Yap Ah Lai* (at [27] and [35]), the "primary factor" or "key parameter" that influences the length of sentence for a Customs Act

offence involving cigarette smuggling would be the quantity of duty unpaid cigarettes (or for that matter, any other tobacco products) involved. This is the *key indicator* of the seriousness of the crime, and directly correlates to the mischief targeted by the specified offences under the Customs Act. As Menon CJ pointed out at [29], this has a "direct and virtually linear correlation to the amount of duty evaded", and hence the two factors (*ie* amount of duty evaded and the quantity of goods involved) should be regarded together.

Repetition of the offence

39 The Customs Act already provides for enhanced sentences for repeat Customs Act offenders dealing with duty unpaid tobacco products: see ss 128L(3), 128L(5) and 128L(5A) of the Customs Act. Thus, this factor need not be included in the particular sentencing calculus for offenders sentenced under s 128L(4) of the Customs Act for the first time. Any other relevant non-Customs Act antecedents can still be treated as an aggravating factor that adjusts the sentence upwards within the sentencing framework (see [44] below and also *Yap Ah Lai* at [30]).

Whether offender acted on his own or was involved in a syndicated operation

40 If an offender was involved in a syndicated operation, it would be an aggravating factor that justifies an enhanced sentence in the interest of general deterrence (see *Law Aik Meng* at [25(b)]). This would thus be an aggravating factor not present in the standard case that requires an upward adjustment. However, I am of the view that a nuanced approach has to be taken in relation to this aggravating factor to avoid over-penalising the offender who is merely a paid worker working on behalf of the syndicate and is therefore fairly low down in the management hierarchy of the criminal syndicate having no share in the profits of the smuggling enterprise nor any management control of the

syndicate. Let me explain. In most cases where substantial quantities of duty unpaid cigarettes are found, syndicates would also most likely be involved. Assume a hypothetical case in which a fairly substantial amount of 200 kg of duty unpaid cigarettes is involved. If the offender "X" runs that fairly large smuggling operation all by himself and is therefore not involved in any syndicate, is he to be considered more or less culpable in comparison with (a) a person "A" who is the mastermind and the main partner of a syndicate involved in smuggling the *same* quantity of 200 kg of duty unpaid cigarettes; and (b) a person "B" who is a mere paid worker helping "A" with the physical loading, importation, delivery and/or subsequent unloading of the same quantity of 200 kg of duty unpaid cigarettes on behalf of the syndicate? All other things being equal, it is my view that "X" should be regarded as less culpable than "A" because "X" is not involved in a syndicate, but "X" should be regarded as much more culpable than "B" despite the fact that "B" may be involved in the syndicate, because the culpability of "X" is much elevated due to the fact of "X"'s ownership and control over a large-scale smuggling operation, though not in a syndicate.

Extent of role in smuggling

41 Next, the extent of the offender's role in the smuggling enterprise has to be taken into account. The court will thus consider the level of his ownership/management control or share in profits earned from the smuggling enterprise and the extent of his participation in the physical acts that are a part of smuggling operations. As I alluded to above at [23]–[24], it is necessary to distinguish between the offending *act* and the actual extent of the offender's *role* including whether he has overall ownership control and/or management functions in the smuggling syndicate. In cases where the extent of the offender's involvement is encapsulated in the sole act and hence captured

within the preferred charge (for example, the act of delivering under s 128H of the Customs Act), this factor would be neutral in the sentencing calculus. On the other hand, where the extent of the offender's involvement goes *beyond* the charge preferred (*eg* his acts in the smuggling operation extended beyond the offending act of delivering captured under s 128H to also include loading and unloading, sharing in the profits, and having management control of the smuggling enterprise), the offender's enhanced role and added physical participation in the smuggling operation would be an aggravating factor requiring an upward adjustment from the sentencing benchmark.

Impact of guilty plea

42 Beyond the factors discussed in *Moey Keng Kong* and *Yap Ah Lai*, the sentencing framework for s 128H offences should also consider the impact of a timely plea of guilt showing genuine remorse which would merit a sentencing discount (see *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [36]). Since the standard case in *Yap Ah Lai* already factors this in (see above at [29(b)]), the case where the offender *did not* plead guilty at the earliest opportunity or had claimed trial would attract an upward adjustment above the benchmarks.

Age of offender

43 It is trite law that youthfulness is a valid ground for extending leniency, and that the primary sentencing consideration for youthful offenders will generally be rehabilitation (see *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 ("*Mok Ping Wuen Maurice*") at [21] and *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 at [29]–[30]). The sentencing framework being explored and laid down in this case is thus restricted to situations where the conditions *do not* exist to make rehabilitative

sentencing options such as probation or reformative training viable or appropriate, for example when the offender is a foreign national or when the offender is hardened and recalcitrant. Where youthfulness is a factor, a sentencing discount can be applied to the benchmark arrived at in the framework (see [55] and Table 3 below) to account for the fact that a youthful offender lacks maturity and may not have fully realised the nature and consequences of his or her criminal actions at the time of the offence. All other things being equal, it is reasonable and logical to assume that the younger the age of the offender, the greater will be the immaturity and the lack of understanding of the nature and consequences of the offender's conduct, and hence the greater should be the discount to the benchmark sentence generally.

Other factors

44 Other aggravating and mitigating factors such as prior non-Customs Acts antecedents or elements of personal mitigation beyond the factors listed above present in each case would also then apply as upward or downward adjustments accordingly to the sentencing benchmark arrived at in the framework set out below.

Scenarios and the standard base case

45 I now proceed to analyse the two likely scenarios for situations under ss 128H (and 128F) of the Customs Act in relation to an offender dealing with duty unpaid cigarettes, and set out the respective sentencing curves for these scenarios. I will then set out the sentencing discount that might apply to offenders if the offenders were to be of a young age.

Scenario 1: Standard case

46 The standard/archetypal offender is assumed to have the following characteristics:

(a) a first-time offender who is not a youthful offender;

(b) performing a physical role in the cigarette smuggling operation as a paid worker but with no management control or profit share in the syndicate; and

(c) pleads guilty at the earliest opportunity.

Scenario 2

47 Relative to the standard case, a hypothetical offender in the second scenario with the following characteristics would attract a *higher* sentence:

(a) a first-time offender who is not a youthful offender;

(b) performing a physical role in the cigarette smuggling operation as a paid worker but with no management control or profit share in the syndicate; and

(c) claims trial and shows no remorse.

The benchmark sentences

48 In Graph 3 below, I set out the sentencing guides for both scenarios. In essence, I have:

(a) generally adopted the sentencing benchmarks in *Yap Ah Lai* for offences under s 128F of the Customs Act;

(b) considered the sentences imposed post-*Yap Ah Lai* for s 128H Customs Act cases (see Annex A);

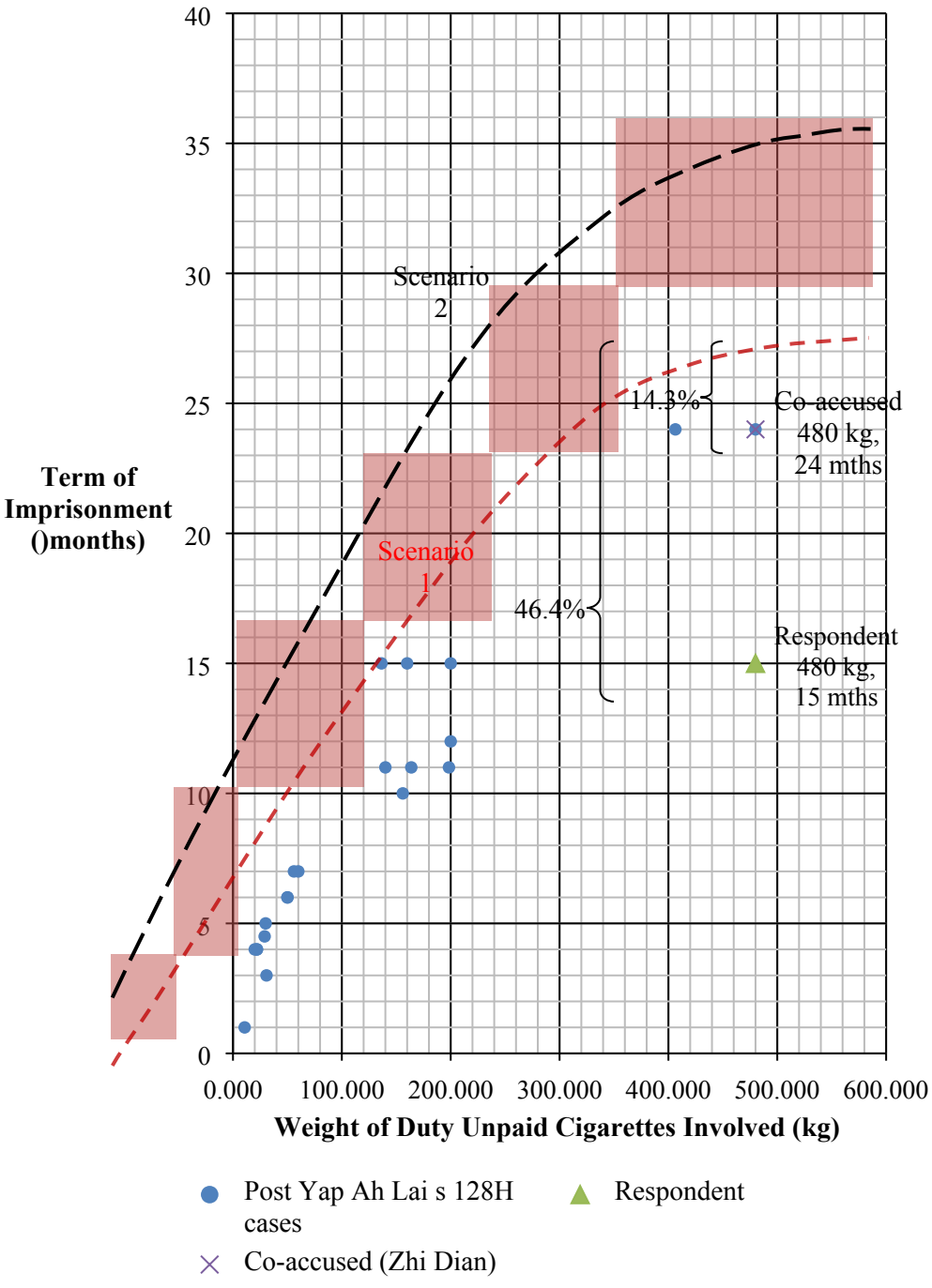
(c) adjusted the sentencing benchmarks slightly to take into account:

(i) the broader aspects of various possible physical roles that could be played by a paid worker (but not an exorbitantly paid worker who could then be regarded as having an aggravating feature of indirectly having a profit share in the syndicate) in the whole chain of a typical cigarette smuggling operation on behalf of a syndicate; and

(ii) the impact of a timely guilty plea in the standard case.

49 I must caution that these are guides that only take into account the characteristics listed under each scenario above. For the avoidance of doubt, these only apply to sentencing under s 128L(4) of the Customs Act and not to situations where enhanced sentences such as those under ss 128L(5) and 128L(5A) apply.

Graph 3: Benchmark Sentences for Offences under ss 128F and 128H Customs Act



50 The original tiered sentencing benchmarks in *Yap Ah Lai*, as represented by the red shaded areas in Graphs 2 and 3, are for a reference case involving a first-time offender who pleads guilty at the earliest opportunity and whose role is limited to pure importation (see *Yap Ah Lai* at [57(c)]):

Table 2: *Yap Ah Lai* Original Benchmarks

Quantity of tobacco product (kg)	*Sentencing range (months)*
2–50	3–6
51–100	6–12
101–200	12–18
201–300	18–24
301–400	24–30
> 400	30–36

51 However, for cases where a timeously-effected plea of guilt is entered, it is settled law that a sentencing discount is warranted (see above at [42]). Where the archetypal offender in the standard case is taken to have pleaded guilty at the earliest opportunity and hence demonstrated genuine remorse, the sentencing curve for the standard case should thus reflect such a discount. The magnitude of the discount given could *possibly* be in the range of a quarter to a third of what would have been an appropriate sentence (see *Fu Foo Tong v Public Prosecutor* [1995] 1 SLR(R) 1 at [12]), but this estimate is by no means an entitlement or a strict rule. I have hence adjusted the sentencing

guide for the standard case in Scenario 1 (denoted by the red dashed line) downwards to reflect this discount merely as a guide and no more, to make "room" for upward adjustments in situations falling under Scenario 1 with other aggravating factors present.

52 The sentencing curve for Situation 1 thus gradually tapers off at about 28 months after 500 kg on the *x*-axis. This, by no means, is an indication that the sentence imposed in typical plead-guilty situations would always be capped at 28 months. The imprisonment term on the sentencing curve for Scenario 1 will *still increase* (albeit only marginally) with an increase in the quantity of duty unpaid cigarettes involved beyond 500 kg on the *x*-axis. The curve still inches up very gradually and at the extreme limits of the *x*-axis, it might well theoretically reach the statutory maximum imprisonment term of 36 months if an extremely huge quantity far in excess of 500 kg of duty unpaid cigarettes is involved. The point being made here is that where the quantity involved is so huge, it can theoretically become such an overriding consideration for sentencing that the court may justifiably not even give any discount for a remorseful plea of guilt from a first-time offender and impose the maximum punishment of 36 months. This would be consistent with the benchmark of "30–36" months' imprisonment for "> 400" kg of tobacco product in *Yap Ah Lai* (see Table 2 above).

53 On the other hand, the sentencing guide for Scenario 2 (marked by the black dashed line) gradually tapers off at 36 months after 500 kg on the *x*-axis due to the statutory maximum imprisonment term under s 128L(4)(*b*) of the Customs Act.

54 This sentencing framework should thus provide guidance for judges to consider the full range of imprisonment lengths (with the quantity of duty

unpaid tobacco product involved as the key determinant) while deciding where in the range the conduct of a particular offender would fall. After deciding which scenario is applicable, the sentencing judge would then have to make appropriate adjustments upwards or downwards to the benchmark sentence according to other aggravating and mitigating factors borne out of the facts and circumstances of each case.

Sentencing discount for youthfulness

55 In situations where rehabilitative sentencing options such as probation or reformative training may not be considered appropriate by the court as is the case here where the offender is a foreign national not resident in Singapore (see *Tan Choon Huat v Public Prosecutor* [1991] 1 SLR(R) 863 at [24]), the operation of youthfulness as a mitigating factor is not precluded *per se*. All other factors being equal, youthfulness is a ground for extending leniency and applying a sentencing concession or discount to the benchmarks set out in either Scenario 1 or 2, both of which are premised on an offender not being a youthful offender. Here, the compassion should still be extended to the youthful offender based on the assumption that the young "don't know any better" and may not have had enough experience to realise the full consequences of their actions on themselves and on others (*Mok Ping Wuen Maurice* at [21]). I also note that the Penal Code (Cap 224, 2008 Rev Ed) stipulates that nothing is an offence done by a child under 7 years of age, or by a child above 7 years of age and under 12 years of age who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion (see ss 82 and 83 of the Penal Code). In such cases, the discount on any benchmark sentence would essentially increase to 100% when the criminal acts of the child are deemed not to be an offence under the Penal Code.

56 With this in mind, I set out the discount that may be applied to the benchmark sentence in Graph 3 in Table 3 below for typical Scenario 1 and 2 cases where the offender is a youthful offender who is to be sentenced to imprisonment.

Table 3: Discount that may be applied for youthfulness

Age of offender (at time of offence)	*Discount to benchmark sentence*
21	0%
20	5%
19	15%
18	25%
17	35%
16	45%

My decision

Application of the sentencing framework to the present case

57 Reverting to the present case, the Respondent's situation generally accords with the characteristics of an offender in Scenario 1 with the principal exception that he is a youthful offender: he is an untraced, first-time offender playing a relatively typical role in the smuggling operation as a paid worker to collect, deliver and unload duty unpaid cigarettes transported in a truck and he pleaded guilty at the earliest opportunity. In this case, a very large quantity of

480 kg of uncustomed cigarettes was involved. With quantity as the primary factor, a benchmark sentence of around 28 months would be derived by reading off the sentencing curve for Scenario 1 on the *y*-axis for 480 kg on the *x*-axis (see Graph 3 above). Applying **a discount of 15%** as the Respondent was 19 years old at the time of the offence (see Table 3 above) would then produce a benchmark sentence of about **23.8 months**. The sentence imposed by the District Judge of **15 months** falls well *below* the benchmark sentence derived of 23.8 months and in effect amounts to a huge **46.4% discount** from the benchmark in Graph 3 for Scenario 1 merely on account of the Respondent's youth. At 19 years old at the time of the offence, the Respondent is not exactly a very young offender to benefit from such an extensive discount from the benchmark. The District Judge was overly lenient.

Principle of sentencing parity

58 The Prosecution argues that a proper application of the parity principle should see similar sentences meted out for both the Respondent and the co-accused. For ease of reference, I reproduce Table 1 from [13(d)] above here:

Table 1: Comparison between the Respondent and Co-Accused

	Respondent	*Co-Accused*
Gender / age / antecedents	Male / 20 years old / untraced (19 at time of proceedings)	Male / 20 years old / untraced
Role	Concerned in collection, delivery and unloading of 480 kg of duty unpaid cigarettes	Concerned in unloading of 480 kg of duty unpaid cigarettes
Proceeds	Paid $200 per transaction plus $50 meal allowance	Paid $200 per transaction
Pleaded guilty or	Pleaded guilty at first	Pleaded guilty at first

claimed trial	opportunity	opportunity
Mitigation	Expressed remorse and explained that he needed money for his family	Expressed remorse and explained that he needed money for his family
Sentence	**15 months' imprisonment**	**24 months' imprisonment**

59 Although parity and consistency are not necessarily overriding considerations when an erroneously lenient or harsh sentence is given to a co-offender (see *Public Prosecutor v Ng Sae Kiat* [2015] 5 SLR 167 ("*Ng Sae Kiat*") at [87]), the co-accused's sentence of 24 months' imprisonment is not erroneously harsh in this case. In fact, the co-accused's sentence of 24 months is *less* than what would be derived from the sentencing framework set out above, which would be about 26.6 months (*ie* 28 months read off the Scenario 1 curve on the *y*-axis at 480 kg on the *x*-axis, with a discount of 5% for his age at 20 years old).

60 When co-offenders are involved in the same transaction with more or less the *same* degree of culpability after considering all the relevant mitigating and aggravating factors and are charged for the *same* offence, the principle of parity would generally apply. This principle was stated in *Public Prosecutor v Ramlee* [1998] 3 SLR(R) 95 at [7]:

> Where two or more offenders are to be sentenced for participation in the same offence, the sentences passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or their personal circumstances…

The parity principle has since been held to have a wider scope that this in *Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120 and *Ng Sae Kiat*.

61 In the present case, I consider that the parity principle applies as between the Respondent and the co-accused as they are generally equally placed in terms of criminal culpability and the harm caused by their acts. In mitigation, the same personal mitigation factors were also cited (see Table 1). Thus, there ought not to be a glaring disparity in the sentences passed on the Respondent as compared to that imposed on the co-accused. The proper application of the parity principle is important in maintaining public confidence in the integrity of the administration of justice: see Chan Sek Keong CJ's observations in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*") at [19]. Although I accept that the Respondent's role was slightly greater than the co-accused as he had also collected and delivered in addition to unloading the duty unpaid tobacco at 10 Kaki Bukit Avenue 4, his slightly higher culpability would be offset by the further discount attributed to his youthfulness. The Respondent was a year younger than the co-accused at the time of the offence.

62 Thus, I am of the view that the threshold for appellate intervention is met as the sentence below is manifestly inadequate (see *UI* at [12]–[13]). A similar sentence of 24 months' imprisonment (as the co-accused) should be imposed on the Respondent.

Conclusion

63 Having broadly adopted the benchmark sentences in *Yap Ah Lai* and clarified the sentencing framework for offences under s 128H of the Customs Act, I order the Respondent's sentence to be enhanced to a term of 24 months' imprisonment and be made similar to that of the co-accused for the reasons I

have stated. The Prosecution's appeal is thus allowed.

Chan Seng Onn
Judge

Ang Feng Qian and Choong Hefeng Gabriel (Attorney-General's Chambers) for the appellant;
The respondent in person.

Annex A: Plot Values and Additional Information for Post-*Yap Ah Lai* s 128H Customs Act cases

S/N (marked on Graph 2)	*DAC Reference*	*Accused*	*Age of Offender (at time of offence)*	*Weight of Duty Unpaid Tobacco Product involved (kg)*	*Nature of Offence*	*Pleaded Guilty*	*Role of Offender (Paid worker or part owner of the smuggling syndicate)*	*Sentence Imposed (months)*	*Starting point per* Yap Ah Lai *(months)*
1	DAC 5244-2014	Ong Beng Hin	61	10.72	Delivery	Yes	Paid worker: $30 to $40 to top-up petrol and given dinner	1	3–6
2	DAC 1414-2014	Tan Kim Meng (Chen Jinming)	42	20.00	Unloading	Yes	Paid worker: $100 per job	4	3–6
3	DAC 926023-2014	Fang Bin	24	22.00	Delivery	Yes	Acted on his own, not part of a syndicate	4	3–6
4	DAC 911828-2015	Chew Soon Yik	25	22.00	Delivery	Yes	Paid worker: $200 per delivery	4	3–6
5	DAC 927373-2014	Lim Siong Giong	55	29.08	Delivery	Yes	Paid worker: Conducted delivery in taxi, paid $30-$40 and meter fare	4.5	3–6
6	DAC 928777-2014	Gao Jian	30	30.00	Loading	Yes	Paid worker: Worked for syndicate member, paid $110 to $120 per trip	5	3–6

S/N (marked on Graph 2)	*DAC Reference*	*Accused*	*Age of Offender (at time of offence)*	*Weight of Duty Unpaid Tobacco Product involved (kg)*	*Nature of Offence*	*Pleaded Guilty*	*Role of Offender (Paid worker or part owner of the smuggling syndicate)*	*Sentence Imposed (months)*	*Starting point per* Yap Ah Lai *(months)*
7	DAC 907470-2014	Deng Yuzheng	37	30.80	Loading	Yes	Paid worker: $100 per delivery	3	3–6
8	DAC 925004-2014	Wang Wei	34	50.00	Delivery	Yes	Paid worker: Engaged by syndicate member, paid $500	6	3–6
9	DAC 907056-2015	Pan Bin	21	50.08	Delivery	Yes	Acted on his own, not part of a syndicate	6	3–6
10	DAC 912125-2015	Yin Yukun	26	56.00	Delivery	Yes	Paid worker: $200 for delivery	7	6–12
11	DAC 931747-2014	Duan Peicheng	34	60.00	Delivery	Yes	Paid worker: $200 to $300 per delivery	7	6–12
12	DAC 40444-2013	Wan Peng Yeow	41	136.40	Delivery	Yes	Paid worker: $120 per delivery	15	12–18
13	DAC 914739-2015	Tian Xiaohua	27	140.00	Delivery	Yes	Paid worker: $150 per trip	11	12–18
14	DAC 907828-2014	Raymond Tan Lye Heng	45	156.00	Delivery	Yes	Paid worker: Engaged by syndicate member, delivery in his taxi, paid $50 per hour on top of meter fare	10	12–18
15	DAC 918876-2014	Kuek Yi Feng Cedric	28	160.00	Delivery	Yes	Paid worker: $250 each job	15	12–18

S/N (marked on Graph 2)	*DAC Reference*	*Accused*	*Age of Offender (at time of offence)*	*Weight of Duty Unpaid Tobacco Product involved (kg)*	*Nature of Offence*	*Pleaded Guilty*	*Role of Offender (Paid worker or part owner of the smuggling syndicate)*	*Sentence Imposed (months)*	*Starting point per* Yap Ah Lai *(months)*
		Harrison							
16	DAC 926567-2014	Ramaiah Singamuthu	30	163.80	Delivery	Yes	Paid worker: Engaged by syndicate to collect and deliver, paid $150 (to share $50 with co-assisting accused)	11	12–18
17	DAC 924841-2014	Loo Liang Joo	70	198.40	Delivery	Yes	Paid worker: $100 for every 50 cartons delivered (shared equally with co-accused)	11	12–18
18	DAC 916410-2014	Hu Weijie Anthony	33	200.00	Delivery	Yes	Paid worker: $30 per box delivered	12	12–18
19	DAC 916412-2014	Ong Hui Jiu	59	200.00	Delivery	Yes	Paid worker: $70 per delivery	15	12–18
20	DAC 8569-2014	Tay Peng Hoe	43	406.40	Delivery	Yes	Paid worker: $40 per 50 cartons delivered	24	30–36
21	**DAC 928753-2015**	**Zhi Dian (co-accused)**	**20**	**480.00**	**Unloading**	**Yes**	**Paid worker: $200 to receive, load and unload (Respondent's co-accused)**	**24**	**30–36**