

立法會
Legislative Council

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(These minutes have been seen
by the Administration and
cleared with the Chairman)

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Legislative Council
Panel on Economic Services

Minutes of meeting held on
Monday, 18 June 2001, at 4:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon James TIEN Pei-chun, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Fred LI Wah-ming, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon LAU Chin-shek, JP
Hon Mrs Miriam LAU Kin-ye, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS
Hon Audrey EU Yuet-mee, SC, JP

Non-Panel members attending : Hon LEE Cheuk-yan
Hon CHAN Kwok-keung
Hon Albert CHAN Wai-yip

Members absent : Dr Hon LUI Ming-wah, JP (Deputy Chairman)
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, JP
Hon HUI Cheung-ching
Hon Howard YOUNG, JP
Hon CHOY So-yuk

**Public officers
attending**

: Agenda Item IV

Economic Services Bureau

Ms Sandra LEE, JP
Secretary for Economic Services

Mr Richard LUK
Principal Assistant Secretary for Economic Services

Civil Aviation Department

Mr George CHAO
Assistant Director-General of Civil Aviation
(Airport Standards)

Mr Simon CHEAN
Senior Safety Officer (Safety Regulations)

Agenda Item V

Economic Services Bureau

Ms Sandra LEE, JP
Secretary for Economic Services

Mrs Rebecca LAI
Commissioner for Tourism

Mr Richard LUK
Principal Assistant Secretary for Economic Services

Agenda Item VI

Economic Services Bureau

Ms Sandra LEE, JP
Secretary for Economic Services

Mr Alex FONG
Deputy Secretary for Economic Services

Attendance by invitation : **Agenda Item V**

Consumer Council

Mr LI Kai-ming
Acting Chief Executive

Ms Wendy CHAN
Senior Legal Counsel

Agenda Item VI

Hong Kong Container Tractor Owner Association Limited

Mr CHIANG Chi-wai
Representative

Mr Ricky WONG
Representative

Clerk in attendance : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Ms Alice AU
Senior Assistant Secretary (1)5

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I Confirmation of minutes and endorsement of the report of the Panel on Economic Services for submission to the Legislative Council

(LC Paper No. CB(1)1467/00-01 - Minutes of meeting held on 6 March 2001; and

LC Paper No. CB(1)1503/00-01 - Draft report of the Panel on Economic Services for submission to the Legislative Council)

The minutes of meeting held on 6 March 2001 were confirmed.

2. Members noted and endorsed the draft report of the Panel on Economic Services (LC Paper No. CB(1)1503/00-01) for submission to the Legislative Council (LegCo).

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II Information papers issued since last meeting

- (LC Paper No. CB(1)1417/00-01 - Tables and graphs showing the import and retail prices of major oil products from May 1999 to April 2001;
- LC Paper No. CB(1)1519/00-01 - Development of the Helicopter Industry in Hong Kong; and
- LC Paper No. CB(1)1539/00-01 - Mid-stream fee)

3. Members noted the above information papers issued since last meeting.

III Items for discussion at the next meeting scheduled for 17 July 2001

- (LC Paper No. CB(1)1542/00-01(01) - List of outstanding items for discussion; and
- LC Paper No. CB(1)1542/00-01(02) - List of follow-up actions)

4. Members agreed to discuss the following items at the Panel meeting scheduled for 17 July 2001:

- (a) Development of the helicopter industry in Hong Kong;
- (b) Analysis of prices of major fuels; and
- (c) International Civil Aviation Organization Audit on Hong Kong's Aviation Safety Oversight System.

(Post-meeting note: The agenda for the next meeting was subsequently revised to include an urgent item on "Operation of the airport during and after typhoon Utor". Items (b) and (c) above were deferred.)

5. Members went through the list of outstanding items for discussion by the Panel. Ms Audrey EU reiterated her concerns about the ways in which enhanced protection could be offered to Hong Kong tourists visiting the Mainland, particularly the Administration's role in monitoring tour operators organizing tours in the Mainland such as accuracy of promotional materials, and the level of assistance rendered to Hong Kong tourists who met with accidents or other emergencies while travelling in the Mainland. Members noted the Administration's advice that related matters under the subject would fall under the purview of a number of bureaux/government departments, and agreed that the Administration should provide a consolidated response to the concerns raised by way of an information paper.

(Post-meeting note: An information paper provided by the Administration on "Assistance to travellers in case of travel accidents in the Mainland" was circulated to members vide LC Paper No. CB(1)1852/00-01.)

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IV Air Navigation (Dangerous Goods) Regulations and Dangerous Goods (Consignment by Air) (Safety) Regulations
(LC Paper No. CB(1)1542/00-01(03) - Information paper provided by the Administration)

6. The Principal Assistant Secretary for Economic Services (PAS/ES) introduced the Administration's paper on the subject (LC Paper No. CB(1)1542/00-01(03)). He advised members that in the interest of ensuring safety, the International Civil Aviation Organization (ICAO) set out requirements regarding the transport of dangerous goods (DG) by air. Detailed provisions were contained in the "Technical Instructions for the Safe Transport of Dangerous Goods by Air" (TI), which were updated and published by ICAO biennially as a regular exercise. In March 2001, the Civil Aviation Department (CAD) received the 2000-2001 edition of the TI (the new TI) which would come into effect on 1 July 2001. To bring the relevant legislation in Hong Kong into line with the new TI, the Air Navigation (Dangerous Goods) Regulations (AN(DG)R) and the Dangerous Goods (Consignment by Air) (Safety) Regulations (DG(CAS)R) would have to be amended to effect the latest international standards in the transport of DG by air. In response to Mrs Miriam Lau's question, PAS/ES said that the Aviation Advisory Board had discussed the subject and had no objection to the proposed amendment.

7. The Chairman was concerned whether the industry would have any difficulty in following the new TI. Sharing similar concerns, Mrs Selina CHOW sought assurance from the Administration that the industry was well aware of the scope and impact of changes to be effected by the new TI and that no major operational problem would be resulted.

8. In response, the Senior Safety Officer (Safety Regulations) (SSO/SR) explained that the purpose of the exercise was to effect an update in the relevant requirements. In fact, the industry had already adopted some of the new requirements and made itself ready for the change by incorporating the new provisions into its handbook, viz. the International Air Transport Association Dangerous Goods Regulations. Hence, the Administration did not expect the industry to face difficulty in following the new TI. In this connection, Mrs Selina CHOW called on the Administration to adopt a tolerant attitude and to render assistance to the industry as necessary.

9. Mr SIN Chung-kai supported the proposal which would bring Hong Kong's relevant requirements on par with international standards. He asked whether the amendment Regulations were subsidiary legislation subject to negative vetting by LegCo. PAS/ES replied that the proposed amendments Regulations were subsidiary legislation subject to negative vetting by LegCo. However, to enable Hong Kong to comply with the new international requirements as soon as possible, the amendment Regulations would take immediate effect on the date of gazettal, which was expected to be in October 2001.

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10. Mr Kenneth TING enquired about the reasons for Hong Kong's delay in compliance with the new TI and was concerned that it might reflect badly on Hong Kong's image as a first-class international city. In reply, SSO/SR explained that time was needed to review the large number of reformatting and renumbering changes introduced by the new TI. SES added that while every effort had been made by the Administration to expedite the process, substantial work was involved in translation as well as adapting the changes to the two Regulations. As regards the time gap between the commencement of the new TI and Hong Kong's legislation, SES assured members that it would be quite acceptable as the existing TI was still applicable and a high standard would be maintained. As far as she knew, the situation was similar in many other countries.

V Regulation of deceptive, misleading and unfair practices in consumer transactions

(LC Paper No. CB(1)1542/00-01(04) - Information paper provided by the Administration; and

LC Paper No. CB(1)1559/00-01(01) - Supplementary information note provided by the Consumer Council)

11. Mr Fred LI referred to the recent report published by the Consumer Council (CC) on 11 May 2001 entitled "Regulating Deceptive, Misleading and Unfair Practices in Consumer Transactions" and expressed support for CC's recommendations that in the short term, relevant provisions in the Trade Descriptions Ordinance (Cap. 362), the Summary Offences Ordinance (Cap. 228) and the Unconscionable Contracts Ordinance (Cap. 458) should be strengthened to better protect local consumers as well as tourists against sharp practices used by unscrupulous traders. In the long term, he considered that CC's recommendation for enacting a single piece of comprehensive trade practices legislation should be pursued.

12. Mr LI was concerned that due to deficiencies in the current laws, certain deceptive trade practices such as bait & switch selling continued to thrive in the marketplace, affecting local consumers as much as tourists for whom shopping might be an important reason for coming to Hong Kong. He was strongly of the view that this unsatisfactory situation should no longer be tolerated and called on the Commissioner for Tourism (C for Tourism), who was tasked with the responsibilities of consumer protection and promoting tourism, to take more concrete actions.

13. In response, SES emphasized that the Government was committed to protecting the legitimate interests of consumers. As CC's recommendations covered a range of matters which involved a number of bureaux and departments, the Economic Services Bureau had started consultation within the Administration upon receipt of the Council's report. However, as different bureaux and departments had their own priorities of work, she could not give a definite timetable as to when the consultation would complete.

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14. SES further said that when studying the report, the Administration would carefully examine the feasibility of implementing the recommendations, as well as their effectiveness. In addition, the Administration would need to ascertain whether the existing law was inadequate to curb such deceptive trade practices; and if so, the extent of legislative amendments required, or whether the work of CC could be further strengthened to take on an enhanced role. She stressed that as legislation would effectively net all businesses in Hong Kong, it would be most important to ensure that a balance was maintained between the interests of the consumers and traders, and that any proposed legislative amendments would ultimately benefit the consumers. In this respect, she advised that taking into account the unique circumstances in Hong Kong, the value of overseas experience for Hong Kong should be assessed within local context. She underscored that any proposed legislative amendment should not be taken lightly and that these might not be the most cost-effective solution.

15. C for Tourism also assured members that the Administration would not tolerate the use of deceptive and unfair practices in consumer transactions. Given the importance of the matter, the Administration would need to study CC's report thoroughly before any decision could be taken. If Legislative amendments were considered desirable and members would be consulted accordingly. However, she stressed that positive actions would continue to be taken by the Police and CC to curb malpractice by traders and to promote consumer awareness. As regards protection for tourists, the Quality Tourism Services Scheme was launched by the Hong Kong Tourism Board to promote and acknowledge quality service among retail business. Separately, a licensing regime to regulate in-bound travel agents would be introduced shortly to ensure the quality of travel services provided to visitors.

16. Mr Kenneth TING remarked that a useful role was played by CC in exposing the name and location of delinquent traders. However, more would need to be done to encourage tourists who had fallen victim to such malpractices to take legal action and seek remedy. In reply, C for Tourism advised that under the existing redress mechanism, claims brought by tourists would be dealt with expeditiously in the Small Claims Tribunal. The Government would also reimburse the travelling expenses incurred by overseas visitors who came back to Hong Kong to testify in prosecution cases.

17. When considering the way forward, Ms Audrey EU called on the Administration to make reference to relevant experience of more advanced jurisdictions, as well as the consumer protection legislation in the Mainland. C for Tourism agreed to take the member's suggestion into consideration.

18. While stressing the importance of consumer protection, Mrs Selina CHOW considered that legislation was an important step to take as it would invariably incur a great social cost. Without a proper balance, legislation might sometimes become a blunt instrument. Moreover, the free trade economy of Hong Kong should be maintained to ensure that the operation of honest businesses would not be adversely affected. She opined that while the case had yet to be proven for a single trade

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practices legislation in Hong Kong, amendments to relevant ordinances could be considered to target those extreme cases, such as bait & switch selling, where enforcement was difficult under the existing law.

19. Mr LI Kai-ming, the Acting Chief Executive of CC (CE(Atg.)/CC), advised that for the past 26 years, CC had been dealing with complaints against unfair or deceptive trade practices by mediation. However, experiences had shown that very often, the consumers could only get little compensation from the dishonest businesses. Hence, CC considered that more would need to be done in the development of laws for the purpose of curbing deceptive conduct and unfair practices which were harming the economic interest of the consumers. As compared with the trade practices legislation in other common law jurisdictions like Australia, the United Kingdom and the United States, the existing laws in Hong Kong clearly had inadequacies in providing safeguards against misleading or false advertising, misleading or false trade representation, misleading indication as to price, bait & switch sales tactics, and accepting payment without the intention to supply.

20. Mrs Miriam LAU however considered that mediation might not be the right approach, particularly for those cases where the malpractices involved were clearly actionable under the current law, for example, a trader who accepted payment without intention to supply could be prosecuted under the statutory offence of obtaining property by deception. She opined that as mediation would be seen as an easy way out by the offending traders, strengthened enforcement was required to bring about a stronger deterrent effect.

21. In response, CE(Atg.)/CC explained that many a times, the complainants would choose to settle their cases through mediation because the time and litigation expenses taken to initiate legal actions to pursue redress were very often not commensurate with the monetary loss in the purchase. Also, extensive investigation was required to gather evidence. To address such shortcomings, legislative amendments to relevant ordinances were recommended by CC with a view to empowering the enforcement agencies to act more effectively and encouraging aggrieved consumers to seek legal redress.

22. While acknowledging that certain deterrent effects would be achieved through successful prosecutions by the Police, Ms Audrey EU pointed out that such operations were manpower intensive because of the high standard of proof required in criminal prosecution. Taking into account the need for expediting prosecution, she considered that CC's recommendation for creating a new summary offence against such malpractices might be useful.

Admin. 23. Summing up the discussion, the Chairman suggested that the Administration should analyze the proposals put forward by CC, and revert to the Panel its latest position on the proposals as well as the adequacy of existing legislation in protecting the consumers against the sharp practices used by unscrupulous traders.

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VI Mid-stream Fees

(LC Paper No. CB(1)1539/00-01 - Information on Mid-stream fees provided by the Hong Kong Shippers' Council)

The Chairman welcomed the representatives of the Administration and the Hong Kong Container Tractor Owner Association Limited (HKCTOA) to the meeting. At the request of Mrs Miriam LAU and with the agreement of other members, the Chairman allowed three more representatives of the transport trade to attend the meeting.

25. The Chairman informed members that subsequent to the previous Panel meeting held on 26 March to discuss the subject on mid-stream fee (MSF), two mid-stream terminal operators had started to enforce the collection of MSF coupon in early June and this had again led to protest actions taken by the truck drivers. HKCTOA had subsequently requested for the Panel to hold discussion on this matter. In this connection, the Chairman drew members' attention to the submissions from HKCTOA and the Hong Kong Mid-stream Operators Association (HKMOA) tabled at the meeting. Separately, relevant documents provided by the Hong Kong Shippers' Council (HKSC) on the incident had been issued to members vide LC Paper No. CB(1)1539/00-01.

(Post-meeting note: The submissions from HKCTOA and HKMOA were subsequently issued to members vide LC Paper No. CB(1)1583/00-01.)

Views of the transport trade

26. At the request of the Chairman, Mr CHIANG Chi-wai of HKCTOA briefly stated the position of the transport trade as regards the enforcement of MSF coupon by two mid-stream terminal operators, Floata Consolidation Ltd. and Sakoma (HK). He said that when the matter on MSF was previously discussed by the Panel, the Secretary for Economic Services (SES) had reiterated the understanding reached on 13 February 2001 amongst HKMOA, the Hong Kong Liner Shipping Association (HKLSA) and HKSC jointly that no truck drivers should be required to pay the MSF. However, in the present incident, the Administration had repeatedly stated that it was purely a business dispute. The transport trade was gravely dismayed by such statements from the Administration which seemed to suggest that such unfair actions taken by the two mid-stream operators had the blessing from the Government. He reiterated that from the truck drivers' point of view, the incident was not a business dispute because the truck drivers had no contractual relationship with mid-stream operators whatsoever. Being forced into a very difficult position, truck drivers had no choice but to stage slow-drive protests to demonstrate their deep discontent.

27. As regards the actual operation at the sites of these two mid-stream terminal operators, Mr CHIANG reported that truck drivers who did not have a coupon would have to wait long hours for the delivery/collection of containers, while those who had coupons could jump the queue and were served immediately. Also, there had been

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cases where the two mid-stream operators had refused to handle loaded containers delivered at night, causing great trouble to the truck drivers. Condemning such actions as blatantly unfair and were in breach of the understanding reached by the relevant parties on 13 February 2001, as well as the spirit of the joint statement between HKMOA and the China-Hong Kong Transportation Joint Conference (CHKTJC) on 5 March 2001, Mr CHIANG called on the Legislative Council and the Administration to take actions to ensure that such unfairness would not prevail. If the Government continued to turn a blind eye to such unfair practices, truck drivers might have to take stronger actions to defend their own interests.

28. Mr Ricky WONG of HKCTOA also referred to the potential damage such unfair practices might have on the reputation of the Hong Kong port. He was worried that if an additional charge was required for a faster service, it would be very difficult to maintain the orderly operation at the terminals. Eventually, an even higher charge might be levied. He pointed out that the Administration should have the power and responsibility to ensure the smooth and efficient operation of the Hong Kong port, as well as the quality of port services provided.

The Administration's stance

29. Responding to the above remarks, SES advised that from the Administration's point of view, there were two separate issues involved. She recapitulated that on 13 February 2001, she had reported to this Panel about the preliminary agreement reached by HKMOA, HKLSA and HKSC on a new mechanism for collecting MSF. The most important point in that agreement was that the parties had agreed to work out an arrangement not to collect any service fee from truck drivers. Subsequently, a joint statement was issued by HKMOA and CHKJTC on 5 March 2001, under which HKMOA had undertaken to urge its members to be flexible in implementing the coupon collection mechanism, pending the establishment of a new mechanism that could satisfy all parties concerned. A Steering Group on Mid-stream Fee had been established by HKMOA, HKLSA and HKSC to discuss the workings of a mid-stream fee collection mechanism. While the Administration would continue its efforts to bring the three parties together for discussion with a view to resolving their differences, it had to be recognized that questions relating to the collection mechanism to be adopted, would have to be negotiated and agreed by these parties themselves. Hence, the Administration could neither force a decision on the parties concerned nor set a deadline for their discussions.

30. On the complaints from truck drivers about the actual implementation of MSF coupon mechanism by two mid-stream terminal operators, SES said that she had no information as to whether any mid-stream terminal operators had demanded MSF payment from truck drivers or otherwise. She considered that if payment was demanded from truck drivers, it would be in breach of the preliminary agreement reached by the parties concerned on 13 February 2001. As far as she knew, a two-stream payment collection system was adopted by two mid-stream terminal operators to handle the containers, which had resulted in complaints from truck drivers. In this

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respect, the Administration had been taking actions to look into the complaints from the truck drivers. SES stated that it would be most important that the three parties in the Steering Group to ensure that the parties concerned would honour their undertaking in the preliminary agreement reached on 13 February 2001 that the truck drivers would not be required to pay the MSF.

31. SES also remarked that over the past few months, a lot of time and effort had been spent by various government departments such as the local District Office (DO) and the Police on this matter. Taking up the role as a facilitator, best efforts had been made by both the Economic Services Bureau (ESB) and the Port and Maritime Board (PMB) Secretariat to enhance the communication between all parties concerned with a view to resolving the matter. However, there were priorities in the Administration's work and efforts spent on this matter should not affect the normal workings of the Government.

Enforcement of MSF coupon collection by two mid-stream terminal operators

32. Mr Albert CHAN considered that as the Administration had made tremendous efforts to bring about the preliminary agreement on 13 February 2001, it should also ensure that the agreement would remain in force with compliance by all parties concerned. He expressed strong reservation about the different mode of operation adopted by the two mid-stream terminal operators, and was worried that this practice of demanding extra payment for faster service would not only affect the operation of truck drivers, but also have an adverse and far-reaching impact on Hong Kong's economic system which had all along been operating on the principle of fair and healthy competition. While expressing strong opposition to the adoption of this new charging practice in view of its potential harmful effect on Hong Kong's reputation as a free trade economy and the World's busiest container port, he cautioned that the incident should not be taken lightly by the Administration.

33. Sharing similar views, Mr LEE Cheuk-yan stated his position that by adopting a two-stream payment collection system, the two mid-stream terminal operations were in breach of the preliminary agreement on 13 February 2001. On the other hand, he expressed grave dissatisfaction about HKMOA's decision to impose a MSF which had since created a lot of disputes among the parties concerned and serious disruption to port operation and the community. He suggested that the Panel, SES and truck drivers should issue a joint statement expressing their strong discontent against HKMOA.

34. The Chairman remarked that while no Government service should adopt such a charging practice, it was in fact a common business practice that with payment of an extra fee, one could get priority in obtaining certain services. Expressing disagreement with the views expressed by the Chairman on behalf of the Liberal Party, Mr Albert CHAN stated that the Democratic Party was strongly opposed to the adoption of such unfair charging practice in Hong Kong as it was in fact a form of discrimination against those who could not afford to pay the extra fee. He also

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considered that the Chairman should maintain his impartiality in the conduct of Panel discussions. In response, the Chairman clarified that his remarks had nothing to do with the stance of the Liberal Party and they were simply meant to reflect the existence of a common practice in the business world.

35. Both Mr Albert CHAN and Mr LEE Cheuk-yan sought the stance of ESB on this charging practice and asked whether the two-stream payment collection system adopted by the two mid-stream terminal operators had contravened the preliminary agreement reached by the parties concerned. In reply, SES clarified that ESB did not have any comments to make on the said charging practice. Restating the Administration's position, SES considered that if the \$40 MSF payment was demanded from truck drivers, it would be in breach of the preliminary agreement reached by the parties concerned on 13 February 2001. Mr LEE however considered that if faster service was provided to those drivers with coupons, it was essentially no different from demanding payment from the truck drivers.

36. The Deputy Secretary for Economic Services (DS/ES) referred to the joint statement between HKMOA and CHKTJC on 5 March 2001, and highlighted the undertaking made respectively by HKMOA and truck drivers to each other as regards the implementation of the MSF coupon system, i.e. "(CHKTJC) urges its members to co-operate with the existing coupon system as an interim measure and the HKMOA urges its members to be flexible in implementing this mechanism". He clarified that unlike the preliminary agreement reached on 13 February 2001, SES was not involved in the negotiation of the above joint statement. Separately, the Administration was actively liaising with the parties concerned last week in the hope of setting up a meeting between HKMOA, HKLSA and HKSC. But as some of the representatives were out of town, a meeting date had yet to be confirmed.

37. DS/ES suggested that the following follow-up actions be taken to address the issues involved:

- (a) truck drivers could take up their concerns directly with HKMOA under the terms of the agreement they themselves had reached with the HKMOA on 5 March 2001;
- (b) the Administration would relay the concerns raised on delays caused to truckers who could not present the MSF coupons by members to the two mid-stream terminal operators; and
- (c) the Administration would continue to broker a meeting amongst HKMOA, HKLSA and HKSC to further discuss the collection mechanism under the terms of the February 13 agreement these parties had made.

38. Mr LEE Cheuk-yan however was worried that if the Administration chose to interpret the joint statement in that sense, a partial stance might have been taken by the Administration for the mid-stream terminal operators. As such, the mid-stream

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operators would have no incentive to resolve this matter through meaningful discussions with other parties concerned. In response, DS/ES clarified that the Administration had not taken any stance in this matter. He added that if the Administration had taken a stance, it would be all the more difficult for ESB to play a mediating role for the concerned parties.

39. On the question of whether the two mid-stream operators were using the two-stream payment collection system to bypass the agreement reached by the parties concerned that truck drivers would not be required to pay the MSF, the Chairman was of the view that he would consider the two-stream payment collection system acceptable if the waiting time of truck drivers at the slow queue was maintained as usual. However, if the system had resulted in truck drivers having to wait for unreasonably long hours, that would be a cause for concern as the operation of truck drivers was adversely affected.

40. Concurring with the Chairman's view, Mr Kenneth TING opined that the key objective of the joint statement on 5 March 2001 was "to maintain smooth port operation". He also pointed out that the practices adopted by the two mid-stream terminal operators, such as the prolonged waiting time and refusing to handle loaded containers delivered at night, were clearly not conducive to normal operation. Considering that such an arrangement had contravened the joint statement, he said that the Administration should have good grounds to take the issue up with the mid-stream operators. In response, DS/ES said that the two mid-stream operators had indicated to him that the implementation of the MSF coupon system was solely based on commercial decisions and they had not violated any agreement made by HKMOA previously.

41. Mr CHAN Kam-lam expressed regret that the MSF incident had yet to be resolved satisfactorily. Noting the work done by the Administration, he said that it was after all a matter involving business operation. In this respect, he considered that if agreements had been made by HKMOA on behalf of its member, HKMOA would have a duty to ensure that the same practice was adopted by all its members. He hoped that the Administration would continue its efforts to enhance the communication between the parties concerned and closely monitor the service provided by individual terminal operators.

42. While considering it unacceptable for truck drivers to wait for long hours at the two mid-stream sites, Mrs Miriam LAU hoped that early discussion could be held by the parties concerned to resolve the matter. However, in order to avoid any further disputes at the mid-stream sites, she suggested that the Administration should first of all seek assurance from the mid-stream terminal operators that truck drivers who did not present a coupon would not have to wait for unreasonably long hours for delivery/collection of containers. Afterwards, other measures could be taken to address the issues involved in the MSF payment collection system. While agreeing to relay Mrs LAU's suggestion to the two mid-stream terminal operators, DS/ES requested that the minutes of the present meeting be provided to the Administration as

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soon as possible to facilitate the Administration's follow up work with the mid-stream operators.

43. Highlighting the difficult situation faced by the drivers, Mrs Selina CHOW also took the view that as a matter of priority, the Administration should ask for re-assurance from HKMOA that mid-stream operators would not seek to collect the \$40 MSF from truck drivers. In addition, truck drivers who did not have a coupon should not be required to wait for long hours at mid-stream sites. Noting the shippers' wish to continue negotiations with other parties concerned to explore possible solutions, Mrs CHOW called on the Administration to bring them together for early discussions. As clear requests had been made by members at the meeting, she called on the Administration to follow-up on the matter expeditiously, instead of having to wait for the minutes of meeting.

44. In this respect, Mr CHIANG Chi-wai informed members that while the normal waiting time was 1 to 1½ hour, truck drivers without a coupon would now have to wait for 3 to 6 hours at those two mid-stream sites. He added that under the joint statement on 5 March 2001, truck drivers would co-operate and surrender the coupons to mid-stream operators if such were provided by the shippers. However, the tacit understanding was that all truck drivers would take turn to be served in a single queue and be given equal treatment regardless of whether they had a coupon or not. The truck drivers were strongly opposed to the two-stream payment collection system adopted by the two mid-stream terminal operators.

45. Noting the views and concerns raised at the meeting, DS/ES asked for members' understanding that in resolving the fundamental questions as regards the imposition of an MSF and its collection mechanism, the Administration could only act as a facilitator and any decisions would have to come from the three concerned parties. He clarified that his request for the minutes was to help him in conveying members' views to the mid-stream operators. He had been following up with the parties on issues of common concern with or without the minutes.

46. In this connection, Mrs Miriam LAU said that although truck drivers did not want to get involved in the negotiations between HKMOA, HKLSA and HKSC, it was inevitable that any decisions they made would directly affect the operation of truck drivers at mid-stream sites. Hence, she called on the Administration to look into ways in which the truck drivers could be suitably involved in the discussions on this subject.

47. Given HKSC's views on the imposition of an MSF, the coupon collection mechanism and the proposed electronic payment system, Mr Ricky WONG was concerned that it would take some time before such outstanding issues could be resolved. In order to avoid any potential disputes, he suggested that the Administration should request the two mid-stream operators to suspend the two-stream payment collection system pending further discussions by the parties concerned on a new mid-stream terminal handling charge. In response, SES said that she had no

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authority to make such a request. But she would relay this view to the two mid-stream operators for consideration.

Follow-up actions taken by the Administration

48. Referring to the waiting times quoted by Mr CHIANG, the Chairman asked whether the Administration was aware of the seriousness of the problem and whether any information was available to verify the waiting times for the delivery/pick-up of containers at mid-stream sites before and after the two-stream payment collection system was adopted.

49. In response, SES said that the Administration had requested the truck drivers to provide details about their complaints for follow-up last week. Without such information, it would be very difficult for the Administration to seek verification and explanation from the mid-stream terminal operators concerned. In reply to the Chairman, Mr CHIANG Chi-wai confirmed that detailed records about the activities which took place from 13 June to 15 June at the mid-stream sites had been supplied to the local DO for onward transmission to ESB. However, he remarked that in order to avoid any query about the accuracy of such records, the information should have been collected by the Administration.

50. SES clarified that the Administration was not solely relying on the records provided by truck drivers and information had been separately collected by staff of the local DO. Staff from her office had also paid independent site visits to ascertain the state of affairs. Considering that it was highly unfair to say that the Administration had not done anything in this matter, SES stated that the Administration had been working very hard within the existing staffing and resources constraints in its attempt to deal with each and every incident arising out of the MSF. Hence, she hoped that the record could be set straight about the efforts made by the Administration in its role as a facilitator in the whole matter.

51. DS/ES gave a detailed account of the actions taken by the Administration to follow-up on the complaints lodged by truck drivers about the unsatisfactory service provided at the two mid-stream sites. He emphasized that the Administration had been collecting information from all possible sources since the matter was first brought to the Administration's attention on 8 June 2001. As soon as he received HKCTOA's complaint, the Administration had written to the two mid-stream terminal operators seeking for explanation and relevant information from the two companies. A meeting had also been arranged between the truck drivers and mid-stream operators to encourage them to have a dialogue over the truckers' concerns. As an outcome of that meeting, both sides agreed that the prevailing mechanism set up some months ago to deal with complaints from truckers about the mid-stream operators would continue to be used, i.e. information about the waiting time at those mid-stream sites would be collected by staff of the local DO so that they would be forwarded to the mid-stream terminal operators through PMB. The records provided by truck drivers had subsequently been passed to the two mid-stream operators under such arrangement.

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In addition, staff from both the local DO and PMB had been sent to observe the operation at the mid-stream sites to ensure that a balanced picture of the problem would be presented to the mid-stream operators.

52. DS/ES further advised that on 15 June 2001, he had written to the two mid-stream terminal operators personally to seek clarification about reported cases where truck drivers had to wait three hours at their sites. According to their reply, he was informed that the two mid-stream terminal operators had put in place different arrangements for providing service to truck drivers for delivering/collecting of containers. Due to resource constraints, truck drivers who did not have a coupon might have to wait for longer. However, the mid-stream terminal operators had undertaken to look further into the situation with a view to ensuring that no more than 15 trucks would be waiting at any one time. Separately, he had also asked the Police to keep track of any traffic disruption that might be caused by the waiting trucks. He assured both members and truck drivers that the Administration would continue to follow-up on the matter with the mid-stream terminal operators. However, he stressed that it was not the intention of the Administration to decide whether any party was right or wrong in this matter. Instead, PMB's focus was to ensure the quality of service provided by various port service providers was of a reasonable standard.

53. In reply to the Chairman, DS/ES advised that rather than taking up individual cases with the two mid-stream operators, the Administration's major concerns were whether normal operation was maintained and how long truck drivers who could not present coupons would have to wait at the two mid-stream sites in general since the two-stream payment collection system was adopted. In this connection, SES added that the two mid-stream terminal operators had been requested to account for any special reasons for the longer-than-usual processing time required on those days.

54. On the question of what was a reasonable time limit, DS/ES stated that as commercial operation was involved, it would not be appropriate for the Administration to have any predetermined view in this matter. However, mindful of the need to maintain an efficient operation of the Hong Kong port, the Administration would try its best to persuade the mid-stream terminal operators to give an indication on a reasonable expected waiting time at their sites.

55. Mr Albert CHAN however was worried about the procrastinating attitude taken by DS/ES. He considered that if the Administration was sincere in its efforts to follow-up on the complaints from the drivers, the relevant information would have been collected by its staff much earlier, instead of having to wait for verification by the two mid-stream operators. Basing on such information, the Administration should be able to make a judgement as to whether the preliminary agreement on 13 February 2001 or the joint statement on 5 March 2001 had been contravened. He was dismayed by the fact that the Administration had chosen not to take any stance or position on the matter.

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56. In response, DS/ES said that as far as the Administration was concerned, the information provided by truck drivers had been referred to the mid-stream terminal operators for follow-up under an arrangement agreed by both sides. In addition, the Administration was closely monitoring the new developments that happened everyday. He added that the Administration had already fully accounted for why it had not taken any stance (as this was a commercial dispute and that it had only been playing the role of a facilitator to help the parties to resolve their differences), members were entitled to their own opinion and he would welcome any specific suggestions on ways to help resolve the differences amongst the parties concerned from members.

Admin. 57. Unconvinced by the Administration's reply, Mr Albert CHAN asked whether the Administration had any verified information that could confirm how much longer truck drivers without coupons had to wait at the two mid-stream sites after the implementation of the two-stream payment collection system. In reply, SES undertook to provide a written response on this point when the verified information was available.

Land grant conditions of mid-stream sites

Admin. 58. Mr Albert CHAN referred to the land grant conditions of mid-stream sites and asked whether the charging practice adopted by the two mid-stream terminal operators were in breach of any provisions stipulated under their respective land grants. SES responded that she did not have the information on hand and would liaise with the Lands Department and provide a written reply to members after the meeting.

59. Mr SIN Chung-kai did not accept the Administration's point that it could do nothing against the two mid-stream terminal operators as the matter was purely a business dispute. He considered that as the incident had adversely affected the operation of our port and Hong Kong's reputation, the Administration should face up to its regulatory role and consider imposing suitable conditions in the land grants to the mid-stream operators to the effect that the relevant sites would be resumed if their operation had led to any damage to Hong Kong's reputation.

60. Mr CHAN Kam-lam however did not support the idea of Government intervention. In his view, such a move would affect the economy of Hong Kong and also dampen Hong Kong's reputation as a free trade economy. He also pointed out that in face of tough competition, mid-stream operators and truck drivers should co-operate and work together with each other so that a better service could be provided. Otherwise, it would only hasten the decline of mid-stream industry in Hong Kong which would in turn affect the livelihood of the drivers.

61. SES said that the Government had no plans to seek to regulate the business of mid-stream operation through land grants conditions or legislation, pointing out that the member's suggestion would be very difficult to enforce without an objective definition of "any damage to Hong Kong's reputation". The Administration would

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also need to consider whether it was indeed a desirable course of action and what purpose it would serve.

62. Unconvinced by the Administration's reply, Mr SIN opined that the question really involved a matter of principle. Citing the Government's regulation in the financial market, he said that notwithstanding the difficulty involved, an appropriate regulatory regime could be worked out by the Administration if it was indeed considered necessary to impose regulation on mid-stream operation for the purpose of upholding Hong Kong's reputation.

Way forward

63. Summing up the discussion, the Chairman invited the Administration to take note of members' concerns about the unsatisfactory condition at the two mid-stream sites. In this regard, the Administration was requested to set up a meeting amongst the three parties concerned with a view to resolving the matter. He also called on the Administration to verify the records provided by truck drivers as regards the waiting time at the two mid-stream sites and to produce a report for the consideration of the Panel as early as possible, preferably by late June/early July.

64. As the current session was coming to an end and the Panel's last regular meeting was scheduled on 17 July 2001, the Chairman advised that information provided by the Administration would be circulated to members once available. Subject to members' views, the Panel would decide whether a special meeting was needed to hold further discussions. In response, SES said that while the Administration would try its best to get an early reply, all would depend on how long it took for the two mid-stream terminal operators to respond.

Admin.

VII Any other business

65. There being no other business, the meeting ended at 7:20 pm.

Legislative Council Secretariat
8 October 2001