

立法會
Legislative Council

LC Paper No. CB(1)1573/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

**Bills Committee on
Chemical Weapons (Convention) Bill**

**Minutes of twelfth meeting held on
Monday, 14 April 2003 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon James TO Kun-sun
Hon HUI Cheung-ching, JP
Hon LAU Kong-wah

Member absent : Hon Audrey EU Yuet-mee, SC, JP

Public officers attending : Miss Clara TANG
Principal Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)

Miss Amy CHAN
Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)

Ms Vivian SUM
Assistant Director-General
Trade and Industry Department

Ms Peony LEUNG
Principal Trade Officer
Trade and Industry Department

Mr Paul SIT
Principal Trade Controls Officer
Customs and Excise Department

Mr Geoffrey FOX
Senior Assistant Law Draftsman
Department of Justice

Ms Marie SIU
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Cindy CHENG
Senior Assistant Secretary (1) 4

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1433/02-03 — Minutes of eleventh meeting held on
31 March 2003)

The minutes of the eleventh meeting held on 31 March 2003 were confirmed.

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II. Meeting with the Administration

(Matters arising from previous meetings)

- LC Paper No. CB(1)762/02-03(01) — “Follow-up to the seventh meeting on 9 January 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1431/02-03(01) — “Follow-up to the eleventh meeting on 31 March 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1431/02-03(02) — Administration’s response to the issues of concern raised by members at the eleventh meeting on 31 March 2003
- LC Paper No. CB(1)1431/02-03(03) — Administration’s response to the issues of concern raised by members at the seventh meeting on 9 January 2003 (fee level and staffing resources required for processing the applications))

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

Follow-up actions to be taken by the Administration

3. As requested by the Bills Committee, the Administration undertook to take the follow-up actions listed below:

(a) Clauses 15, 16, 21, 22 and 23

The Bills Committee noted from the Administration’s written response (LC Paper No. CB(1)1431/02-03(02)) that the Commissioner of Customs and Excise (the Commissioner) should, within 30 days of the seizure, issue a notice to the owner concerned, informing him the list of seized articles not liable to forfeiture and the reasons for seizure and detention. The notice would include remarks notifying the owner concerned that -

- (i) under clause 16(4), he might photograph or make any other form of copy of the seized articles or document on application to the Commissioner and subject to such conditions as the Commissioner might impose;

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- (ii) he might apply to the Commissioner for restoration of the listed seized articles. The Commissioner might consider his application on a case-by-case basis; and
- (iii) the Commissioner should return the listed seized articles to him when the articles were no longer required for the purpose of any criminal proceedings or investigation under the Bill or any other enactment.

Members were concerned that item (i) above did not apply to vehicles, vessels and aircraft. They were also concerned whether it was appropriate for the applications for restoration of the listed seized articles to be considered by the Commissioner who might always stand by his staff on the need to detain the seized articles. While appreciating that the owner concerned who was aggrieved by the Commissioner's decision might apply for judicial review, members considered that it might be too costly for the owner to do so. Even if the owner could afford the cost and applied for judicial review, the court might rule in favour of the Commissioner as he had legitimate reasons to detain the seized article, e.g. the seized article was an evidence of crime. The owner might suffer if the detention of the article had affected his business or if he had no knowledge of the article having been used by a third party to commit an offence under the Bill. The Administration was therefore requested to consider how to strike a balance between the need to detain the seized articles for investigation and the need to safeguard the interests of the owner concerned. A member suggested that a preliminary procedure be provided well in advance of the formal hearing of the case in court, whereby the defendant was asked to confirm in writing whether the seized article was needed for inspection and if not, the seized article would be released to the owner. The Administration was requested to consider this option and make reference to the provisions in the Complex Commercial Crimes Ordinance (Cap. 394), if appropriate, and to explore other options.

On clause 15(4), the Administration was requested to advise on the reasons why the detention period for vessel and vehicle (12 hours) was different from that for aircraft (6 hours).

(b) Clause 27

The Bills Committee noted from the Administration's written response (LC Paper No. CB(1)1431/02-03(02)) that all appointed "in-country escorts"

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were public officers from the Central People's Government (CPG) and/or under the Hong Kong Special Administrative Region (HKSAR) Government. For the sake of clarity, the Administration was requested to clarify on the definition of "public officers". In this connection, the Bills Committee noted that according to the Interpretation and General Clauses Ordinance (Cap. 1), "public officer" meant any person holding an office of emolument under the Government, whether such office be permanent or temporary. If this definition applied to the Bill, the Administration was requested to clarify whether a member/officer of a Government advisory body who received remuneration for his service was regarded as a "public officer".

The Bills Committee also noted from the Administration's written response (LC Paper No. CB(1)1155/02-03(01)) that CPG had set up a leading group for the implementation of the Chemical Weapons Convention (CWC) in People's Republic of China (PRC), under which there was the National CWC Implementation Office of PRC, comprising officers of the competent department of the chemical industry of the State Council, the Ministry of Foreign Affairs, etc. The Bills Committee also noted from the same paper that the CPG officer(s) in the aforementioned department(s) might be specified as "in-country escort(s)" in relation to inspections in HKSAR where necessary. In this connection -

- (i) members considered it unclear what "etc." and "aforementioned department(s)" referred to. To avoid ambiguity, the Administration was requested to state clearly the department(s) of CPG involved, and to provide an organization chart showing the position of the department(s);
- (ii) as the departments of CPG involved, such as the leading group for the implementation of CWC in PRC and the National CWC Implementation Office of PRC, might not be operating on a long-term basis, the Administration was requested to consider the need to set out clearly in the Bill a mechanism for CPG to appoint officers as "in-country escorts";
- (iii) the Administration was requested to consider how to ensure that officers of CPG appointed as "in-country escorts" would only perform the required duties to accompany and assist the inspection team in HKSAR, and would not perform other duties; and

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- (iv) the Administration was requested to confirm whether an enquiry by a HKSAR citizen or a press report by HKSAR media about the officers appointed by CPG as “in-country escorts”, such as an enquiry about which departments the officers came from, would be regarded as an act of “theft of state secrets” under Article 23 of the Basic Law.

(c) Staffing resources for the implementation of the Bill

The Bills Committee noted from the Legislative Council Brief issued in September 2001 that the proposed legislation would generate additional workload for the Trade and Industry Department, the Customs and Excise Department and the Government Laboratory, and that additional resources had been provided to these three departments to create a total of 18 posts at an annual staff cost of \$12.2 million to cope with the additional workload. The Administration was requested to provide updated information on the number, rank and duties of the posts created/to be created for the implementation of the Bill and the annual staff cost involved.

(Post-meeting note: The Administration’s response to issues of concern raised by members on clauses 15, 16, 21, 22, 23 and 27 and staffing resources for the implementation of the Bill was circulated to members vide LC Paper No. CB(1)1572/02-03(02) on 30 April 2003.

- 4. At the request of the Chairman, the Administration undertook to provide the Bills Committee with the revised draft proposed Committee Stage Amendments (CSAs) one week before the next meeting as far as practicable.

(Post-meeting note: The revised draft CSAs and the relevant explanatory notes provided by the Administration were circulated to members vide LC Paper Nos. CB(1)1572/02-03(03) and (04) on 2 May 2003.)

Clause 5

- 5. Members noted from the Administration’s written response (LC Paper No. CB(1)1431/02-02(02)) that the Administration remained of the view that clause 5(f) of the Bill, including the word “encourage”, should be retained to reflect fully the prohibitions prescribed in paragraph 1(d) of Article I of the Convention. The Chairman said that members who did not accept the Administration’s response might consider moving CSAs to clause 5.

Date of next meeting

Action

6. The Chairman reminded members that the next meeting would be held on Monday, 5 May 2003 at 4:30 pm.

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7. The Chairman also indicated that if the revised draft proposed CSAs were not received on or before Monday, 28 April 2003, she would consider postponing the next meeting.

III. Any other business

8. There being no other business, the meeting ended at 3:50 pm.

Council Business Division 1
Legislative Council Secretariat
2 May 2003

Appendix

**Proceedings of the twelfth meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Monday, 14 April 2003 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000330	Chairman	Confirmation of minutes of the eleventh meeting (LC Paper No. CB(1)1433/02-03)	
000331-000527	Chairman	Internal discussion	
000528-000608	Administration	Briefing by the Administration on its response to the issues of concern raised by members at the seventh meeting on 9 January 2003 (fee level and staffing resources required for processing the applications) (LC Paper No. CB(1)1431/02-03(03))	
000609-000923	Chairman Administration	Updated information on the staffing resources required for the implementation of the Bill	Admin to provide updated information on the number, rank and duties of the posts created/ to be created for the implementation of the Bill and the annual staff cost involved

Time marker	Speaker	Subject(s)	Action Required
000924-001555	Administration	<p>Briefing by the Administration on its response to the issues of concern on clauses 5, 15, 16, 21, 22, 23, 27, 29, 42 and Schedule 2</p> <p>(LC Paper No. CB(1)1431/02-03(02))</p>	
001556-003844	<p>Chairman Mr HUI Cheung-ching Administration Mr LAU Kong-wah Mr James TO</p>	<p>Appointment of public officers as “in-country escorts” -</p> <p>(a) Definition of “public officer”</p> <p>(b) Whether a member/officer of a Government advisory body who received remuneration for his service was regarded as a “public officer”</p> <p>(c) Departments of the Central People’s Government (CPG) the officers of which might be appointed as “in-country escorts”</p> <p>(d) Need to set out clearly in the Bill a mechanism for CPG to appoint officers as “in-country escorts”</p> <p>(e) Whether officers of CPG appointed as “in-country escorts” would only perform the required duties to accompany and assist the inspection team in HKSAR</p> <p>(f) Whether an enquiry by a HKSAR citizen or a press report by HKSAR media about the officers appointed by CPG as</p>	<p>Admin to clarify on items (a) and (b)</p> <p>On item (c), Admin to state clearly the departments of CPG involved and to provide an organization chart showing the position of the departments</p> <p>On item (d), Admin to consider the need to set out clearly in the Bill a mechanism for CPG to appoint officers as “in-country escorts”</p> <p>On item (e), Admin to consider how to ensure that officers of CPG appointed as “in-country escorts” would only</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>“in-country escorts” would be regarded as an act of “theft of state secrets” under Article 23 of the Basic Law</p> <p>(LC Paper No. CB(1)1155/02-03(01)) (LC Paper No. CB(1)1431/02-03(02)) (Clause 27)</p>	<p>perform the required duties to accompany and assist the inspection team in HKSAR and would not perform other duties</p> <p>On item (f), Admin to confirm whether the enquiry would be regarded as an act of “theft of state secrets” under Article 23 of the Basic Law</p>
003845-011308	Mr LAU Kong-wah Mr James TO Chairman Administration	<p>(a) Different detention periods for vessel and vehicle (12 hours) and for aircraft (6 hours)</p> <p>(b) Application to the Commissioner of Customs and Excise for restoration of seized articles not liable to forfeiture</p> <p>(c) Circumstances where seized vehicles not liable to forfeiture would not be restored to the owner until completion of legal proceedings or investigation</p> <p>(d) Need to safeguard the interest of an owner of a seized article who might suffer if the detention of the article had affected his business or if he had no knowledge of the article having</p>	<p>On item (a), Admin to advise on the reasons why the detention period for vessel and vehicle (12 hours) was different from that for aircraft (6 hours)</p> <p>On item (d), Admin to consider how to strike a balance between the need to detain the seized articles for investigation and the need to safeguard the</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>been used by a third party to commit an offence under the Bill</p> <p>(LC Paper No. CB(1)1234/02-03(01)) (LC Paper No. CB(1)1431/02-03(02)) (Clauses 15, 16, 21, 22 and 23)</p>	<p>interests of the owner concerned; Admin to consider providing a preliminary procedure well in advance of the formal hearing of a case by making reference to the provisions in the Complex Commercial Crimes Ordinance (Cap. 394), if appropriate, and to explore other options</p>
011309-011357	Chairman	<p>Administration's written response on clause 5</p> <p>(LC Paper No. CB(1)1431/02-03(02)) (Clause 5)</p>	
011358-011500	Chairman Administration	Date of next meeting	