

立法會
Legislative Council

LC Paper No. CB(1)1827/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

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

**Minutes of thirteenth meeting held on
Monday, 19 May 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
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 Andrew WONG
Head of Trade Controls
Customs and Excise 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

Mr Joey LO
Assistant Secretary (1)1

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1573/02-03 — Minutes of twelfth meeting held on
14 April 2003)

The minutes of the twelfth meeting held on 14 April 2003 were confirmed.

Action

II. Meeting with the Administration

(Matters arising from previous meetings)

LC Paper No. CB(1)1572/02-03(01) — “Follow-up to the twelfth meeting on 14 April 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)1572/02-03(02) — Administration’s response to the issues of concern raised by members at the twelfth meeting on 14 April 2003

Examination of the draft proposed Committee Stage Amendments

LC Paper No. CB(1)1572/02-03(03) — Draft proposed Committee Stage Amendments provided by the Administration (11th draft)

LC Paper No. CB(1)1572/02-03(04) — Explanatory notes on the draft proposed Committee Stage Amendments

LC Paper No. CB(1)1572/02-03(05) — Marked-up copy of the Bill (showing the draft proposed Committee Stage Amendments)

LC Paper No. CB(1)1701/02-03(01) — Letter dated 14 May 2003 from the Assistant Legal Adviser to the Administration

LC Paper No. CB(1)1701/02-03(02) — Reply dated 16 May 2003 from the Administration to the Assistant Legal Adviser)

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) Clause 2

(i) The Bills Committee considered that the Chinese or English version of

Action

the definition of the term “claimant” could be rephrased so as to achieve consistency in the expression of both versions. The Administration was requested to make appropriate amendments.

- (ii) The Bills Committee considered that the word “和” in the Chinese version of the definition of the term "facility" should be replaced by “或” in order to reflect the meaning of the word “or” in the English version. The Administration was requested to amend the Chinese version of the definition accordingly.
- (iii) The Bills Committee considered it not necessary to amend item (d) of the Chinese version of the definition of the term “purposes not prohibited under the Convention”.
- (iv) The Bills Committee agreed that the definitions of “toxic chemical” and “precursor” should be added to clause 2. The Administration was requested to provide the relevant draft Committee Stage Amendments (CSAs).
- (v) The Bills Committee noted the English version of the definition of the term “in-country escorts” tabled at the meeting. Members considered that the proposed definition did not reflect the agreed arrangement between the Central People's Government (CPG) and the Hong Kong Special Administrative Region Government (HKSARG) for specifying officers as “in-country escorts”, as follows:
 - According to the paper provided by the Administration in March 2003 (LC Paper No. CB(1)1155/02-03(01)), the CPG and HKSARG had agreed that the HKSARG might, under normal circumstances, nominate officers as “in-country escorts” for endorsement by the CPG, and where necessary, the CPG might, after consultation with the HKSARG, specify officer(s) to be “in-country escort(s)” along with the HKSARG officers.
 - According to the paper provided by the Administration in May 2003 (LC Paper No. CB(1)1572/02-03(02)), for the CPG, officials specified as “in-country escorts” could come from the relevant departments under the State Development and Reform Commission, Ministry of Foreign Affairs and Ministry of National Defense. For inspections in HKSAR, only public officers working in the Commerce, Industry and Technology Bureau, Customs and Excise

Action

Department, Trade and Industry Department and/or Government Laboratory would be nominated by the HKSARG as “in-country escorts” for endorsement by the CPG.

Members considered that the arrangement should be clearly stated in the Bill to protect the interests of the CPG, HKSARG and the persons involved in the inspection, including the person under inspection. The Administration was requested to amend the definition of “in-country escorts” accordingly.

(Post-meeting note: The English version of the definition of the term “in-country escorts” tabled at the meeting was issued to member vide LC Paper No. CB(1)1735/02-03(01) on 21 May 2003.)

(b) Clause 4

- (i) The Bills Committee agreed that the heading of clause 4 be amended to “Power of Director to appoint public officers to exercise powers and perform duties conferred or imposed on the Director by this Ordinance”. The Administration was requested to provide the relevant draft CSAs.
- (ii) The Bills Committee agreed that the Chinese version of the word “duty” in clause 4 be amended to “職責”. The Administration was requested to provide the relevant draft CSAs.

(c) Clause 5

- (i) The Bills Committee noted that the Administration proposed to amend clause 5(c) by replacing “have a chemical weapon in his possession” with “acquire, stockpile or retain a chemical weapon” to reflect the provisions in the Convention. Members were concerned that the word “retain” was not commonly used in Hong Kong legislation. The Administration was requested to conduct a research in this aspect and advise the Bills Committee.
- (ii) The Bills Committee noted that the Administration had maintained its view that the word “encourage” in clause 5(f) should be retained to reflect the provisions in the Convention. To facilitate members’ consideration of whether a CSA should be moved to replace the word “encourage” by “incite”, the Administration was requested to confirm whether such an amendment would constitute a breach of the

Action

Convention or failure to fulfil any obligation under the Convention.

Action

(d) Clauses 16(5), 21(1) and 21(3)

The Bills Committee noted that under clause 21(3), the Commissioner of Customs and Excise (the Commissioner) should, not later than 30 days beginning on the date of the seizure of an article, vessel or vehicle, serve a notice of the seizure on the owner concerned, “specifying the reasons for the seizure and accompanied by a copy of this section”. Members considered that:

- (i) it should also be specified in the notice of seizure the grounds on which the seized article, vessel or vehicle was liable to forfeiture, i.e. to inform the owner concerned that it was liable to forfeiture because of the grounds provided in clause 21(1)(a), (b) or (c); and
- (ii) it should be reflected in clause 21(3) the statutory duty of the Commissioner under clause 16(5) to restore the seized article, vessel or vehicle to the owner concerned where it was not, or was no longer, required for the purposes of any investigation or criminal proceedings and where it was not liable to forfeiture.

The Administration was requested to make appropriate amendments.

(e) Clause 21(6)(c)

The Bills Committee noted that under clause 21(6)(c), a notice given under clause 21(3) or 21(5) should be deemed to have been duly served if it was exhibited at the Customs and Excise Department. Members considered it not a desirable option, as it was not common for the public to go to the Customs and Excise Department to read notices. The Administration was requested to explore other options, such as publication of the notice in the Gazette.

(Post-meeting note: The Administration’s response to issues of concern raised by members was issued vide LC Paper No. CB(1)1752/02-03 on 23 May 2003.)

Date of next two meetings

4. Members agreed that the next two meetings would be held on Monday, 26 May 2003 and Friday, 30 May 2003 from 1:00 pm to 2:30 pm.

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(Post-meeting note: The meeting on 30 May 2003 was rescheduled to 10 June 2003 from 10:45 am to 12:45 am.)

III. Any other business

5. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
5 June 2003

Appendix

**Proceedings of the thirteenth meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Monday, 19 May 2003 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000001-000020	Chairman	Confirmation of minutes of the twelfth meeting (LC Paper No. CB(1)1573/02-03)	
000021-000200	Chairman	Internal discussion	
000221-000409	Administration	Briefing by the Administration on its response to the issues of concern raised by members at the twelfth meeting of the Bills Committee on 14 April 2003 (LC Paper No. CB(1)1572/02-03(02))	
000410-000516	Chairman Administration	Detention of seized articles and detention period for vessel and vehicle (Clauses 15, 16, 21, 22 and 23) (LC Paper No. CB(1)1572/02-03(02))	
000517-001348	Administration Mr LAU Kong-wah Chairman	(a) Departments of the Central People's Government (CPG) the officials of which could be specified as "in-country escorts" and the position of the departments (b) Whether public officers working in the HKSAR	

Time marker	Speaker	Subject(s)	Action Required
		<p>Government could accompany inspections in HKSAR</p> <p>(Clause 27) (LC Paper No. CB(1)1572/02-03(02))</p>	
001349-001554	<p>Chairman Administration Mr HUI Cheung-ching</p>	<p>Staffing resources for the implementation of the Bill</p> <p>(LC Paper No. CB(1)1572/02-03(02))</p>	
001555-010700	<p>Chairman ALA 2 Administration Ms Audrey EU Mr James TO Mr LAU Kong-wah</p>	<p>(a) Whether it should be specified in the notice of seizure the grounds on which the seized article, vessel or vehicle was liable to forfeiture</p> <p>(b) Restoration of the seized article, vessel or vehicle to the owner concerned where it was not, or was no longer, required for the purposes of any investigation or criminal proceedings and where it was not liable to forfeiture</p> <p>(c) Whether the statutory duty of the Commissioner to restore the seized article, vessel or vehicle to the owner under clause 16(5) should be reflected in clause 21(3)</p> <p>(d) Proposed administrative measures to issue a separate notice to the owner informing him the list of seized articles not liable to forfeiture</p>	<p>Admin was requested to take the action under paragraph 3(d) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		(Clauses 16(5), 21(1) and 21(3)) (LC Paper Nos. CB(1)1701/02-03(01) and (02)) (LC Paper No. CB(1)1431/02-03(02)) (LC Paper No. CB(1)1572/02-03(02))	
010701-013120	Chairman ALA2 Administration Mr HUI Cheung-ching Mr James TO	(a) Examination of the draft proposed Committee Stage Amendments provided by the Administration (b) Drafting aspects of the Chinese and English versions of the definition of the term “claimant” (c) Chinese and English versions of the definition of the term “facility” (d) Meaning of the term “domestic” in the definition of “purposes not prohibited under the Convention” (e) Addition of the definitions of “toxic chemical” and “precursor” to clause 2 (f) Amending the Chinese version of the word “duty” in clause 4 to “職責” (g) Amending the heading of clause 4 to “Power of Director to appoint public officers to exercise powers and perform duties conferred or imposed on the Director by this Ordinance”	Admin was requested to take the action under paragraph 3(a)(i) to (iv) and 3(b)(i) and (ii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>(Clauses 2 and 4) (LC Paper Nos. CB(1)1572/02-03(04) and (05)) (LC Paper Nos. CB(1)1701/02-03(01) and (02))</p>	
013121-014646	<p>Chairman Administration Mr James TO Mr LAU Kong-wah</p>	<p>(a) Definition of the term “in-country escorts”</p> <p>(b) Whether it should be reflected in the definition of the term “in-country escorts” the agreed arrangement between the CPG and HKSARG for specifying officers as “in-country escorts”</p> <p>(Clause 2) (LC Paper Nos. CB(1)1572/02-03(02), (04) and (05)) (LC Paper No. CB(1)1155/02-03(01))</p>	<p>Admin was requested to take the action under paragraph 3(a)(v) of the minutes</p>
014647-015151	<p>Administration Chairman Mr James TO Ms Audrey EU</p>	<p>(a) Use of the word “retain” versus “possess” in clause 5(c)</p> <p>(b) Whether the word “retain” was commonly used in other ordinances in Hong Kong</p> <p>(Clause 5(c)) (LC Paper No. CB(1)1572/02-03(05))</p>	<p>Admin was requested to take the action under paragraph 3(c)(i) of the minutes</p>
015152-020300	<p>Chairman Mr James TO ALA2 Ms Audrey EU Administration</p>	<p>Whether the word “encourage” in clause 5(f) should be replaced by the word “incite”, and whether such an amendment would constitute a breach of the Convention or failure to fulfil any obligation under the Convention</p>	<p>Admin was requested to take the action under paragraph 3(c)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		(Clause 5(f)) (LC Paper No. CB(1)1572/02-03(05))	
020301-020653	Chairman Administration Mr James TO Ms Audrey EU	Dates of fourteenth and fifteenth meetings	
020654 -020922	Chairman Mr James TO	Whether the notice of seizure should be exhibited at the Customs and Excise Department (Clause 21(6)) (LC Paper No. CB(1)1572/02-03(05))	Admin was requested to take the action under paragraph 3(e) of the minutes