

立法會
Legislative Council

LC Paper No. CB(1)1888/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

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

**Minutes of fourteenth meeting held on
Monday, 26 May 2003 at 1:00 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon HUI Cheung-ching, JP
Hon LAU Kong-wah
Hon Audrey EU Yuet-mee, SC, JP

Member absent : Hon James TO Kun-sun

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. Meeting with the Administration

(LC Paper No. CB(1)1752/02-03(01) — “Follow-up to the thirteenth meeting on 19 May 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)1752/02-03(02) — Administration’s response to the issues of concern raised by members at the thirteenth meeting on 19 May 2003

Action

Examination of the draft proposed Committee Stage Amendments

LC Paper No. CB(1)1752/02-03(03) — Draft proposed Committee Stage Amendments provided by the Administration (12th 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)

The updated marked-up copy of the Bill was tabled at the meeting.

(Post-meeting note: The updated marked-up copy of the Bill (showing the draft proposed Committee Stage Amendments) was issued on 27 May 2003 vide LC Paper No. CB(1)1775/02-03(01).)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**). Members examined clauses 5 to 21(3). Members had no comments on clauses 6 to 14 and 16 to 20.

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 noted that the Administration considered it not necessary to prescribe, in the definition of “in-country escorts” in the Bill, the administrative arrangements between the Central People’s

Action

Government and the Hong Kong Special Administrative Region Government for appointing “in-country escorts” for inspection in Hong Kong. In the circumstance, members considered that the administrative arrangements and the reasons for not prescribing the administrative arrangements in the Bill should be clearly stated in the Secretary for Commerce, Industry and Technology’s speech when the Second Reading debate on the Bill was resumed. The Administration was requested to provide a copy of the speech to the Bills Committee for consideration before it presented a report to the House Committee.

- (ii) The Bills Committee noted that the definition of “in-country escorts” had not been incorporated in the draft Committee Stage Amendments (CSAs) proposed by the Administration. The Administration was requested to update the draft CSAs.

(b) Clause 5(c)

On the draft CSA to clause 5(c), members were concerned whether “保有” was the standard Chinese translation of the term “retain”. The Administration was requested to conduct a research in this aspect and advise the Bills Committee.

(c) Clause 5(f)

- (i) Noting the Administration’s view that the term “encourage” in clause 5(f) should be retained to reflect the provisions in paragraph 1(d) of Article I of the Convention, members reiterated their concern that as the term “encourage” was rarely used in common law legislation, the use of the term in the Bill would become a precedent. In this connection, members noted that the Administration had not confirmed in its written response (LC Paper No. CB(1)1752/02-03(02)) whether replacing the term “encourage” by “incite” would constitute a breach of the Convention or failure to fulfil any obligation under the Convention. The Administration was requested to provide a written response to confirm this point.

- (ii) The Administration was requested to confirm in writing the coverage of the term “encourage” in paragraph 1(d) of Article I of the Convention and whether its coverage was wider than, or the same as, that of the term “incite”. If the coverage of the two terms was the same and the Administration insisted that the term “encourage” in clause 5(f) should

Action

be retained, some members considered that the Secretary for Commerce, Industry and Technology should state, in his speech when the Second Reading debate on the Bill was resumed, the reason for retaining the term “encourage” and that the use of the term in the Bill would not become a precedent. The Administration was requested to provide a copy of the speech to the Bills Committee for consideration before it presented a report to the House Committee.

(d) Clause 15(5) and (6)

The Bills Committee noted that under clause 15(5), the Chief Secretary for Administration (CS) had the power to further detain a vessel or an aircraft. However, under the new clause 15(6), the power to further detain a vehicle was vested with the Commissioner of Customs and Excise (the Commissioner). A member considered that for the sake of consistency, the power to further detain a vessel, an aircraft or a vehicle should be vested with the same person and therefore, the power to further detain a vehicle should also be vested with CS.

(e) Clauses 16(5), 21(3), 21(7) and 21(12)

On the revised draft CSAs to clause 21(3), members considered that the gist of the provisions, but not the entire provisions, in clauses 16(5), 21(7) and 21(12) should be provided in the notice of seizure to inform the owners of the seized article, vessel or article of the following:

- (i) Under clause 16(5), the Commissioner was required 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;
- (ii) Under clause 21(7), if an article, vessel or vehicle was liable to forfeiture under clause 21(1), the owner concerned might within 30 days give notice in writing to the Commissioner claiming that the article, vessel or vehicle was not liable to forfeiture; and
- (iii) Under clause 21(12), if, on the date of expiration of the appropriate period of time specified in clause 21(7) for the giving of a notice of claim, no such notice had been given in writing to the Commissioner, then the article, vessel or vehicle should be forfeited forthwith to the Government and might be disposed of as the Commissioner thought fit.

Action

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)1844/02-03 on 30 May 2003.)

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Friday, 30 May 2003 from 1:00 pm to 2:30 pm.

(Post-meeting note: As directed by the Chairman of the Bills Committee, the next meeting was subsequently rescheduled to be held on Tuesday, 10 June 2003 at 10:45 am.)

III. Any other business

5. There being no other business, the meeting ended at 2:30 pm.

Council Business Division 1
Legislative Council Secretariat
6 June 2003

Appendix

**Proceedings of the fourteenth meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Monday, 26 May 2003 at 1:00 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000001-000207	Chairman Administration	Briefing by the Administration on its response to the issues of concern raised by members at the thirteenth meeting on 19 May 2003 (LC Paper No. CB(1)1752/02-03(02))	
000208-001111	Chairman Mr HUI Cheung-ching Administration Mr LAU Kong-wah Ms Audrey EU	Whether the administrative arrangements for the appointment of “in-country escorts” should be specified in the Bill (LC Paper No. CB(1)1752/02-03(02))	Admin was requested to take the action under paragraph 3(a)(i) of the minutes
001112-001416	Chairman Ms Audrey EU Administration	(a) Meaning, usage and Chinese translation of the term “retain” in the Laws of Hong Kong (b) Whether “保有” was the standard Chinese translation of the term “retain” (Clause 5(c)) (LC Paper No. CB(1)1752/02-03(02))	Admin was requested to take the action under paragraph 3(b) of the minutes
001417-001744	Chairman Administration	Servicing of notice of seizure on the owner (Clause 21(6)(c)) (LC Paper No. CB(1)1752/02-	

Time marker	Speaker	Subject(s)	Action Required
		03(02))	
001745-001913	Chairman Administration	Definition of “in-country escorts” (LC Paper No. CB(1)1735/02-03(01)) (LC Paper No. CB(1)1752/02-03(02))	Admin was requested to take action under paragraph 3(a)(ii) of the minutes
001914-002135	Chairman Administration	Textual details of the definition of “claimant” (Clause 2) (LC Paper No. CB(1)1752/02-03(05))	
002136-004420	Chairman Administration Ms Audrey EU Mr HUI Cheung-ching Mr LAU Kong-wah	Whether the term “encourage” in clause 5(f) should be replaced by “incite” (Clause 5(f)) (LC Paper No. CB(1)1752/02-03(05))	Admin was requested to take the action under paragraph 3(c)(i) and (ii) of the minutes
004421-004920	Chairman Administration	Clauses 6 to 14 (LC Paper No. CB(1)1752/02-03(05))	
004921-010650	Mr LAU Kong-wah Chairman Administration Ms Audrey EU Mr HUI Cheung-ching	(a) Power of the Chief Secretary for Administration (CS) to further detain a vessel or an aircraft (b) Power of the Commissioner to further detain a vehicle (c) Whether the power to further detain a vehicle should also be vested with CS	Admin was requested to take the action under paragraph 3(d) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		(Clause 15(5) and (6)) (LC Paper No. CB(1)1752/02-03(05))	
010651-010800	Chairman Administration	Clauses 16 to 20 (LC Paper No. CB(1)1752/02-03(05))	
010801-012317	Chairman Administration ALA 2 Ms Audrey EU	Seized articles liable to forfeiture: (a) Why the article referred to in clause 21(1)(c) had been left out from the provisions in clause 21(3)(b)(ii) (b) Need to inform the owner of the gist of the provisions in clauses 16(5), 21(7) and 21(12) (Clauses 16(5) and 21) (LC Paper No. CB(1)1752/02-03(05))	Admin was requested to take the action under paragraph 3(e) of the minutes
012318-012400	Chairman Administration	Date of next meeting	

Council Business Division 1

Legislative Council Secretariat

6 June 2003