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Bills Committee on Chemical Weapons (Convention) Bill

**Background brief
on Chemical Weapons (Convention) Bill**

Purpose

This paper summarizes the views expressed by Members on the proposed Chemical Weapons (Convention) Bill (the Bill) when the Legislative Council (LegCo) Panel on Commerce and Industry (CI Panel) was consulted on the gist of the legislative proposal in July 2001.

Background

The Convention

2. The "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction" (the Convention) is an international treaty that aims at banning the development, production, use and retention of chemical weapons. As the People's Republic of China is a signatory to the Convention, the Central People's Government has from 1 July 1997 extended the application of the Convention to the Hong Kong Special Administrative Region (HKSAR) under Article 153 of the Basic Law.

3. The full text of the Convention is set out in Schedule 1 to the Bill. To facilitate Members' reference, a content page of the Convention is prepared in **Appendix I** of this paper.

4. There are three Annexes to the Convention: the "*Annex on Chemicals*", "*Annex on Implementation and Verification*" and "*Annex on the Protection of Confidential Information*". In the "*Annex on Chemicals*", there are three Schedules respectively covering chemicals with little or no known industrial applications; chemicals which have some industrial applications; and chemicals which have widespread industrial applications.

The Bill

5. The object of the Bill is to implement the Convention in HKSAR by controlling chemical weapons and certain chemicals capable of being used as chemical weapons.

6. A number of the provisions of the Bill are based on the provisions of either the Chemical Weapons (Prohibition) Act 1994 of the Commonwealth of Australia or the Chemical Weapons Act 1996 (c. 6) of the United Kingdom.

Members' views

7. During the consultation with the CI Panel in July 2001, the following issues were raised:

- (a) Scope of the Bill, and whether the Bill should be merged with relevant existing ordinances, such as the Import and Export Ordinance (Cap. 60), the Import and Export (Strategic Commodities) Regulations and the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526);
- (b) Impact of imposing the requirements under the Convention on the local industry, such as the declaration requirements, notification requirements and inspection arrangements, and whether the Administration could fully consult the industry by means of a survey; and
- (c) To allow Members to fully analyse and consider the matter, the Administration should provide a comparison on similar legislation of other jurisdictions when submitting the Bill into LegCo.

8. An extract from the minutes of the CI Panel meeting on 9 July 2001 is in **Appendix II**.

Further information provided by the Administration after the introduction of the Bill

9. The Secretary for Commerce and Industry, in his response dated 24 November 2001 to the Assistant Legal Adviser of LegCo Secretariat (LC Paper No. CB(1)1511/01-02(03)), advised that the Administration had considered Members' views that if the notification requirement in relation to the finding of an article believed to be a chemical weapon was couched in too general terms, it might affect the operation of the industry. The Administration now intends to propose an amendment to clause 7(1) of the Bill by adding "reasonably" before "believes". With the proposed amendment, a person's legal obligation to notify the enforcement agencies of

the discovery of a possible chemical weapon will only be triggered if the person has reasonable grounds to believe that the article is a chemical weapon. The Administration considers that the amendment will also introduce an objective element into the prosecution process; prosecutors will need to prove what a reasonable man would have believed in the circumstances, rather than to prove what the person charged with the offence actually believes.

10. As regards Members' request for a comparison on similar legislation of other jurisdictions (paragraph 7(c) above), the Secretary for Commerce and Industry advised that the Bill set out cross-references to the relevant provisions in the Australian and UK legislation. For example, it is set out after clause 7 of the Bill: [*cf. Chemical Weapons (Prohibition) Act 1994, s. 13, Commonwealth of Australia*]. However, the comparison requested by Members has not been provided.

Council Business Division 1
Legislative Council Secretariat
16 April 2002

**Convention on the Prohibition of the Development, Production, Stockpiling
and Use of Chemical Weapons and on their Destruction**
(Schedule 1 to the Chemical Weapons (Convention) Bill)

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**Extracts from the minutes of the Panel on Commerce and Industry
held on 9 July 2001**

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III Chemical Weapons (Convention) Bill
(LC Paper No. CB(1) 1682/00-01(02))

3. The Deputy Secretary for Commerce and Industry (DSCI) briefed members on the proposed Chemical Weapons (Convention) Bill ("the Bill"). Details were set out in the information paper provided by the Administration (LC Paper No. CB(1) 1682/00-01(02)).

4. Mrs Selina CHOW agreed to the Administration's proposal of implementing the "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction" (the Convention). She however considered that the Administration should pay attention to the impact of the requirements under the Convention on the industry, in particular, the cost implications. In this regard, she enquired whether manufacturers, traders, research and medical institutions, testing laboratories, etc., were now required to submit information as stated in paragraph 5(c) of the Administration's paper. Besides, she doubted whether the Administration could fully consult the industry on the Bill by means of a survey. DSCI advised that at present, manufacturers, traders, research and medical institutions, testing laboratories etc. were not required to submit the relevant information to the Administration. However, according to the Bill, these organizations would have to submit such information to the Administration for preparing and making annual declarations to the Secretariat of the Convention. As reflected from the 1998 survey which had a 70% response rate, only a few organizations were involved in the import of chemicals listed in the three Schedules to the Convention. Besides, these organizations had already applied to the Director-General of Trade and Industry (DGTI) for import licences under the Import and Export Ordinance to import such chemicals. It was expected that the implementation of the Bill would not have a significant impact on the industry. The Administration was currently conducting another survey on the matter and the preliminary findings were more or less the same as those of the 1998 survey.

5. In response to the enquiry of Mrs Selina CHOW, DSCI advised that the information to be required from the organizations concerned were mainly on the forecast and actual production, consumption, storage, transfer, facilities used in such processes and other related activities concerning the toxic chemicals and their precursors listed in the three Schedules to the Convention. At the Chairman's request, DSCI undertook to provide the three Schedules to the Convention after the meeting for members' reference.

(Post meeting note: The three Schedules to the Convention were issued for members' reference on 19 July 2001. Details were set out in LC Paper No. CB(1) 1821/00-01.)

6. Mr NG Leung-sing expressed his concern about the inspection arrangements for compliance with the Convention and enquired whether the Secretariat of the Convention would provide justifications on inspections for inquiry purpose. He further asked whether the Administration had consulted the industry on such inspections. DSCI advised that according to the Bill, the Administration could authorize the inspection team sent by the Secretariat of the Convention to inspect the organizations concerned and the inspection was confined to the scope as defined by the Bill and the provisions of the Convention. She said that the Secretariat of the Convention would provide sufficient justifications on inspections for inquiry purpose. In general, the Secretariat of the Convention would notify the Party State, i.e. the People's Republic of China, in advance. The responsible State agent would then relay the message to the Government of the Hong Kong Special Administrative Region (HKSAR) in order to notify the organizations concerned for the inspection. The HKSAR Government would seek the approval of the Central People's Government regarding the candidates nominated for receiving the inspection team of the Secretariat of the Convention. Where necessary, the Central People's Government could also appoint officials to assist in the inspection process. Through the 1998 and current surveys, the industry had acquired reasonable understanding on the requirements of the Convention. Besides, the inspection team of the Secretariat of the Convention would in general only inspect those organizations declared by the HKSAR Government.

7. In reply to Mr NG Leung-sing's enquiry, DSCI said that the scope of the Bill was different from that of the Weapons of Mass Destruction (Control of Provision of Services) Ordinance. The former only regulated chemical but not biological weapons.

8. Dr LUI Ming-wah was concerned that the Administration's control on chemicals would be too stringent, which might affect the operation of the commercial and industrial sectors. He asked whether the present clearance procedures could be replaced by declarations. DSCI replied that under the existing Import and Export Ordinance, licences had to be obtained from DGTI on the import and export of all specified chemicals. Such requirement could ensure Hong Kong's compliance with the international standards on control of chemicals. Regarding the plastic chemical material for industrial use mentioned by Dr LUI Ming-wah, she suggested that he might provide the relevant information after the meeting for the Administration to check whether the material was regulated by the Import and Export Ordinance. If it was already subject to control, the required clearance procedures could not be replaced by declarations.

9. Mr CHAN Kam-lam would like to know the circumstances under which the activities involving chemicals were subject to declarations. DSCI advised that according to the Convention, a State Party was required to make declarations only under the following two circumstances:

- (a) The forecast and actual production, consumption, storage, transfer, facilities used in such processes and other related activities concerning the toxic chemicals and their precursors listed in the three Schedules to the Convention; and

- (b) The facilities producing other organic chemicals not listed in the three Schedules exceeding a certain specified amount.

As Hong Kong intended to develop its chemical and biological technology, Mr CHAN Kam-lam urged the Administration to handle the issue concerning chemicals with care.

10. In view of the similar nature of the existing Import and Export (Strategic Commodities) Regulations, the Weapons of Mass Destruction (Control of Provision of Services) Ordinance, the Bill under discussion and any possible legislation in future which regulated chemical and biological weapons, Mr SIN Chung-kai suggested that the Administration should consider streamlining the enforcement procedures by merging the relevant ordinances. DSCI responded that despite their similar nature, their different scopes rendered it inappropriate to consolidate them into a composite ordinance. She also pointed out that biological weapons were currently placed under the control of the Biological Weapons Ordinance.

11. In response to Mr HUI Cheung-ching's enquiry, DSCI said that at present, none of the organizations in Hong Kong were involved in the trading of chemical weapons.

12. Mrs Selina CHOW suggested that the Administration should avoid including those commonly used chemicals under the Bill so as to prevent causing unnecessary disturbances to the commercial and industrial sectors. In addition, she expressed concern about the requirement set out in paragraph 6 of the Administration's paper that "any person who finds an article which he believes to be a chemical weapon will be required to report to the Commissioner of Customs and Excise". Having regard to the people and the criminal liability which might be involved, she considered such a requirement too general, which would jeopardize the normal operation of the commercial and industrial sectors. DSCI said that she would follow up the above suggestion.

13. Mr NG Leung-sing expressed concern on paragraph 6 of the Administration's paper that "all chemical weapons seized or found, whether or not in connection with an offence under the Ordinance, will be forfeited to the Government and may be disposed of by the Commissioner" and urged the Administration to exercise due care when drafting the relevant provisions of the Bill to avoid affecting the rights of the owners of the chemicals. DSCI clarified that the aforesaid provision only applied to the handling of chemical weapons, and that there had already been in place a clear definition for them.

14. Mr CHAN Kam-lam suggested that in order to allow members to fully analyse and consider the matter, the Administration should provide a comparison on similar legislation of other jurisdictions when submitting the Bill to the Legislative Council for deliberation in the next legislative session. DSCI advised that she would take into account Mr CHAN's suggestion. However, she pointed out that the Administration had already made reference to the relevant legislation of Australia and the United Kingdom in drafting the Bill.