

**Bills Committee on Chemical Weapons (Convention) Bill
Twelfth meeting on 14 April 2003**

List of follow-up actions to be taken by the Administration

1. Clauses 15, 16, 21, 22 and 23

The Bills Committee notes 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 will include remarks notifying the owner concerned that -

- (a) under clause 16(4), he may 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 may impose;
- (b) he may apply to the Commissioner for restoration of the listed seized articles. The Commissioner may consider his application on a case-by-case basis; and
- (c) the Commissioner should return the listed seized articles to him when the articles are no longer required for the purpose of any criminal proceedings or investigation under the Bill or any other enactment.

Members are concerned that item (a) above does not apply to vehicles, vessels and aircraft. They are also concerned whether it is appropriate for the applications for restoration of the listed seized articles to be considered by the Commissioner who may always stand by his staff on the need to detain the seized articles. While appreciating that the owner concerned who is aggrieved by the Commissioner's decision may apply for judicial review, members consider that it may be too costly for the owner to do so. Even if the owner could afford the cost and applies for judicial review, the court may rule in favour of the Commissioner as he has legitimate reasons to detain the seized article, e.g. the seized article is an evidence of crime. The owner may suffer if the detention of the article has affected his business or if he has no knowledge of the article having been used by a third party to commit an offence under the Bill. The Administration is 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 suggests that a preliminary procedure be provided well in

advance of the formal hearing of the case in court, whereby the defendant is asked to confirm in writing whether the seized article is needed for inspection and if not, the seized article will be released to the owner. The Administration is 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 is requested to advise on the reasons why the detention period for vessel and vehicle (12 hours) is different from that for aircraft (6 hours).

2. Clause 27

The Bills Committee notes from the Administration's written response (LC Paper No. CB(1)1431/02-03(02)) that all appointed "in-country escorts" are 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 is requested to clarify on the definition of "public officers". In this connection, the Bills Committee notes that according to the Interpretation and General Clauses Ordinance (Cap. 1), "public officer" means any person holding an office of emolument under the Government, whether such office be permanent or temporary. If this definition applies to the Bill, the Administration is requested to clarify whether a member/officer of a Government advisory body who receives remuneration for his service is regarded as a "public officer".

The Bills Committee also notes from the Administration's written response (LC Paper No. CB(1)1155/02-03(01)) that CPG has set up a leading group for the implementation of the Chemical Weapons Convention (CWC) in People's Republic of China (PRC), under which there is 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 notes from the same paper that the CPG officer(s) in the aforementioned department(s) may be specified as "in-country escort(s)" in relation to inspections in HKSAR where necessary. In this connection -

- (a) Members consider it unclear what "etc." and "aforementioned department(s)" refer to. To avoid ambiguity, the Administration is requested to state clearly the department(s) of CPG involved, and to provide an organization chart showing the position of the department(s);
- (b) 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, may not be operating on a long-term basis, the Administration is requested to consider the need to

set out clearly in the Bill a mechanism for CPG to appoint officers as "in-country escorts";

- (c) The Administration is 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
- (d) The Administration is 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 come from, would be regarded as an act of "theft of state secrets" under Article 23 of the Basic Law.

3. Staffing resources for the implementation of the Bill

The Bills Committee notes from the Legislative Council Brief issued in September 2001 that the proposed legislation will generate additional workload for the Trade and Industry Department, the Customs and Excise Department and the Government Laboratory, and that additional resources have 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 is 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.

Legislative Council Secretariat

17 April 2003