

**Bills Committee on Chemical Weapons (Convention) Bill
Fourteenth meeting on 26 May 2003**

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

1. Clause 2

- (a) The Bills Committee notes that the Administration considers it not necessary to prescribe, in the definition of "in-country escorts" in the Bill, the administrative arrangements between the Central People's Government and the Hong Kong Special Administrative Region Government for appointing "in-country escorts" for inspection in Hong Kong. In the circumstance, members consider 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 is resumed. A copy of the speech should be provided to the Bills Committee for consideration before it presents a report to the House Committee.
- (b) The Bills Committee notes that the definition of "in-country escorts" has not been incorporated in the draft Committee Stage Amendments (CSAs) proposed by the Administration. Please update the draft CSAs.

2. Clause 5(c)

On the draft CSA to clause 5(c), members are concerned whether "保有" is the standard Chinese translation of the term "retain". Please conduct a research in this aspect and advise the Bills Committee.

3. Clause 5(f)

- (a) 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 reiterate their concern that as the term "encourage" is rarely used in common law legislation, the use of the term in the Bill would become a precedent. In this connection, members note that the Administration has 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. Please provide a written response to confirm this point.

- (b) Please also confirm in writing the coverage of the term "encourage" in paragraph 1(d) of Article I of the Convention and whether its coverage is wider than, or the same as, that of the term "incite". If the coverage of the two terms is the same and the Administration insists that the term "encourage" in clause 5(f) should be retained, some members consider that the Secretary for Commerce, Industry and Technology should state, in his speech when the Second Reading debate on the Bill is resumed, the reason for retaining the term "encourage" and that the use of the term in the Bill would not become a precedent. A copy of the speech should be provided to the Bills Committee for consideration before it presents a report to the House Committee.

4. Clause 15(5) and (6)

The Bills Committee notes that under clause 15(5), the Chief Secretary for Administration (CS) has the power to further detain a vessel or an aircraft. However, under the new clause 15(6), the power to further detain a vehicle is vested with the Commissioner of Customs and Excise (the Commissioner). A member considers 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. Please consider the member's view.

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

On the revised draft CSAs to clause 21(3), members consider 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:

- (a) Under clause 16(5), the Commissioner is required to restore the seized article, vessel or vehicle to the owner concerned where it is not, or is no longer, required for the purposes of any investigation or criminal proceedings and where it is not liable to forfeiture;
- (b) Under clause 21(7), if an article, vessel or vehicle is liable to forfeiture under clause 21(1), the owner concerned may within 30 days give notice in writing to the Commissioner claiming that the article, vessel or vehicle is not liable to forfeiture; and
- (c) 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 has been given in writing to the

Commissioner, then the article, vessel or vehicle shall be forfeited forthwith to the Government and may be disposed of as the Commissioner thinks fit.

Please make the appropriate amendments.

Council Business Division 1
Legislative Council Secretariat
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