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Secretary for Commerce and Industry
(Attention: Ms Ellen Choy,
Principal Assistant Secretary)
Commerce and Industry Bureau
Level 29 One Pacific Place
88 Queensway
Hong Kong

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BY FAX

Fax No. : 2877 5650
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Dear Ms Choy,

Chemical Weapons (Convention) Bill

At the first meeting of the Bills Committee on 18 April 2002, members questioned whether the possession of toxic chemicals listed in the Schedules to the Convention such as sarin and saxitoxin is an offence under Clause 5 of the Bill. To supplement your response at the time, please set out under what circumstances, say in terms of quantities or purposes, will the possession of these chemicals become an offence. I would also like to seek further clarifications on the Bill as follows.

The relationship of this Bill with other Ordinances

2. Are all the chemicals listed in Schedules 1, 2, 3 and the unscheduled discrete organic chemicals already subject to licencing control under the Import and Export Ordinance and the Import and Export (Strategic Commodities) Regulations? If so, does it mean that the Director-General of Trade and Industry has already some records of the movements of these chemicals? Are there any examples of "unscheduled discrete organic chemicals" (please also supply their common names, if available) that are widely used or produced by Hong Kong manufacturers which may warrant notification under Clause 11 of the Bill?
3. Are all these chemicals already under some control of some other Ordinances, say, the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526)? What is the relationship of Clause 5(f) of this Bill with that Ordinance?
4. Are these chemicals or some of these chemicals already subject to the Control of Chemicals Ordinance (Cap. 145), Dangerous Goods Ordinance (Cap. 295), Pharmacy and Poisons Ordinance (Cap. 138) or the Dangerous Drugs Ordinance (Cap. 134)? If so, is a person already required to apply for a licence if he stores or manufactures these chemicals?

5. If an operator of a facility uses these chemicals and during the production process, chemical wastes are discharged, is he already required to apply for a chemical waste discharge permit under the Waste Disposal Ordinance (Cap. 354)?

6. Is the possession or use of these chemicals or chemical weapons already a criminal offence under section 13 of the Offences Against the Persons Ordinance (Cap. 212), section 16 of the Firearms and Ammunition Ordinance (Cap. 238), the Crimes Ordinance (Cap. 200) or the Public Order Ordinance (Cap. 245)? Please clarify the inter-relationship of this Bill with those Ordinances and whether there is any duplication.

Schedule 1

7. Schedule 1 sets out the Convention. Some of these Articles such as the undertakings by a State Party, the set up of the Organization, the Executive Council and the Technical Secretariat, may not be relevant to the people of Hong Kong. Do these Articles have the full force and effect of law in Hong Kong? It is noted that in the Biological Weapons Ordinance (Cap. 491), which implements the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, the contents of the Convention are not incorporated. It is also noted that the Australian Chemical Weapons (Prohibition) Act 1994 and the U.K. Chemical Weapons Act 1996 do not incorporate the Convention into their domestic law.

Chinese version

8. The Chinese version of Clauses 10(3), 13(2), 15(2), 21(7) and (13)(b), 24(2), 38(1) and 43 does not seem to match with the English version. Please review the relevant clauses.

9. I would be grateful if you could let me have a reply in both English and Chinese 5 days before the next meeting.

Yours sincerely,

Anita HO
Assistant Legal Adviser

c.c. DoJ (Attn: Mr Geoffrey FOX, SALD and Ms Marie Siu, SGC)
LA