

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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**Subcommittee on International Organizations
(Privileges and Immunities) (World Trade Organization) Order**

**Minutes of second meeting
held on Wednesday, 25 May 2005, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
- Members absent** : Hon LEE Cheuk-yan
Hon CHAN Kam-lam, JP
- Public officers
Attending** : Mr Philip YUNG
Deputy Secretary for Commerce, Industry &
Technology (Commerce & Industry) 1
- Ms Janet WONG
Head, MC6 Co-ordination Office
Trade and Industry Department
- Mr Frank POON
Deputy Principal Government Counsel (Treaties &
Law) 2
Treaties and Law Unit
International Law Division
Department of Justice
- Mr Allen LAI
Senior Government Counsel
Bilingual Drafting Unit
Law Drafting Division
Department of Justice

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Debbie YAU
Senior Council Secretary (1)1

I Meeting with the Administration

LC Paper No. CB(1)1622/04-05(01) - Marked-up copy of the Order prepared by the Administration

L.N.62 of 2005 - The International Organizations (Privileges and Immunities) (World Trade Organization) Order

CR WT 204/2/8 - The Legislative Council Brief issued by the Commerce, Industry and Technology Bureau

LC Paper No. LS64/04-05 - The Legal Service Division Report on the Order

LC Paper No. CB(1)1621/04-05 - Background brief on International Organizations (Privileges and Immunities) (World Trade Organization) Order prepared by the Secretariat

LC Paper No. CB(1)861/04-05(08) - Information paper on proposed subsidiary legislation relating to privileges and immunities for the World Trade Organization for the Panel on Commerce and Industry

LC Paper No. CB(1)1069/04-05(03) - Follow-up paper on proposed subsidiary legislation relating to privileges and immunities for the World Trade Organization for the Panel on Commerce and Industry

The Subcommittee deliberated on the International Organizations (Privileges and Immunities) (World Trade Organization) Order (the WTO Order) (Index of proceedings attached at **Appendix**).

Clause-by-clause examination

2. The Chairman requested Assistant Legal Adviser 2 to scrutinize the Chinese version of the WTO Order and where necessary, draw the Subcommittee's attention to relevant drafting issues.

Follow-up action

3. Members noted that as currently drafted, those provisions of the 1947 United Nations Convention on the Privileges and Immunities of the Specialized Agencies which would be implemented in Hong Kong were reproduced in the Schedule to the Order and shall have the force of law in Hong Kong subject to section 3(2) and (3) of the Order which set out how certain expressions in these provisions should be construed. Mr Martin LEE expressed concern about the drafting approach adopted for the WTO Order which, in his view, was cumbersome and not reader-friendly.

Clerk

4. After discussion, members agreed that the Panel on Administration of Justice and Legal Services should be invited to follow up the subject of the drafting approaches for preparing local legislation to implement provisions of international agreements in Hong Kong. The Administration noted members' concern and agreed to also look into its drafting practice.

Admin

The way forward

5. Members agreed that it was necessary to enact the WTO Order. Both the Administration and the Subcommittee would not propose any amendment to the Order. As the Subcommittee had concluded its deliberations, members agreed that the Subcommittee would report to the House Committee on 27 May 2005.

(Post-meeting note: After further consultation and as decided by Mr SIN Chung-kai, Subcommittee Chairman, the report on the Subcommittee's deliberations will be submitted to the House Committee on 3 June 2005.)

II Any other business

6. There being no other business, the meeting ended at 10:05 am.

**Proceedings of the second meeting of the
Subcommittee on International Organizations
(Privileges and Immunities) (World Trade Organization) Order
on Wednesday, 25 May 2005, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000459	Chairman The Administration	(a) Welcoming remarks. (b) The Administration briefed members on the legislative proposal, including the scope and applicability of the privileges and immunities (P&Is) for the World Trade Organization (WTO) based on the 1947 United Nations Convention on the Privileges and Immunities of the Specialized Agencies (the 1947 Convention). (c) Members noted that the International Organizations (Privileges and Immunities) (World Trade Organization) Order (the WTO Order), once enacted, would continue to apply to the WTO, its officials and representatives of WTO members in connection with WTO-related activities held in Hong Kong in future.	
000500 – 001609	Chairman Mr Martin LEE The Administration Mr Jeffrey LAM	(a) Mr Martin LEE's view that the drafting approach adopted for the WTO Order was quite cumbersome and not reader-friendly. (b) Members agreed to invite the Panel on Administration of Justice and Legal Services (AJLS) to follow up the subject of the drafting approaches for preparing local legislation to implement provisions of international agreements in Hong Kong.	- The Clerk to follow up with the Panel on AJLS. - The Administration to note and follow up as per paragraph 4 of the minutes.
001610 – 003111	Chairman The Administration Mr Martin LEE Mr Jeffery LAM	(a) Mr Martin LEE's concern about the long drafting process and that the Administration should have introduced the WTO Order into this Council much earlier. (b) Mr Martin LEE's concern about the long time taken to enact relevant regulations under another piece of legislation, namely, the United Nations Sanctions Ordinance (Cap.537). (c) The Administration's explanation on the wide range of preparatory work for the Sixth Ministerial Conference (MC6) and that in preparing the WTO Order, intensive	The Administration took note of members' concern.

Time Marker	Speaker	Subject(s)	Action Required
		interdepartmental consultation had taken place over individual provisions of the 1947 Convention and whether or not certain provisions should be included in the WTO Order.	
003112 – 003334	Chairman	<p><u>Clause-by-clause examination of the WTO Order (Annex A of the Legislative Council Brief (File Ref.:CR WT 204/2/8):</u> (The sections below refer to sections in the WTO Order) <u>Sections 1 and 2</u></p> <p>Members raised no query.</p>	
003335 – 011017	<p>Chairman The Administration Mr Martin LEE Mr Jeffery LAM Assistant Legal Adviser 2 (ALA 2) Mr Andrew LEUNG Mr WONG Ting-kwong Clerk</p>	<p><u>Section 3(1)</u></p> <p>(a) Discussion on whether “Hong Kong Special Administrative Region” should be used in lieu of “Hong Kong” in the WTO Order.</p> <p>(b) Members noted the Administration's view that in the context of international treaties and law, the expression “Hong Kong” normally referred to a geographical place while “Hong Kong Special Administrative Region” referred to Hong Kong as a political entity and its status in the People's Republic of China, and that the two expressions had been used in a similar manner in the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order. Members also noted that Article 109 of the Basic Law referred to the status of “Hong Kong” as an international financial centre.</p>	
011018 – 011118	<p>Chairman Administration ALA2</p>	<p><u>Section 3(2)(a)</u></p> <p>(a) Members raised no query</p> <p><u>Section 3(2)(b)</u></p> <p>(b) ALA2's advice that while there was a difference between the English and Chinese texts, the drafting of the clause was in order.</p>	

Time Marker	Speaker	Subject(s)	Action Required
011119 – 011421	Chairman Administration	<p><u>Section 3(2)(c)(i)</u></p> <p>(a) Members raised no query.</p> <p><u>Section 3(2)(c)(ii)</u></p> <p>(b) The Administration’s explanation that there was in effect no import tariff for furniture at present, the clause would provide the flexibility if such tariff might be imposed in future.</p>	
011422 – 011813	Chairman Administration	<p><u>Section 3(2)(d) to (i) and 3(3)</u></p> <p>Members raised no query</p>	
011814 – 012108	Chairman Administration Mr Andrew LEUNG	<p><u>Marked-up copy of the Schedule to the WTO Order (CB(1)1622/04-05(01)</u> (The sections below refer to sections in the Schedule)</p> <p><u>Sections 1 (iv) to (vii), 3 and 4</u></p> <p>(a) Members raised no query.</p> <p><u>Section 5</u></p> <p>(b) The Administration’s confirmation that offices in the conference venues designated for the use of WTO during the MC6 to be held in Hong Kong in December 2005 would be regarded as “the premises of WTO” under section 5.</p>	
012109 – 012620	Chairman The Administration Mr Martin LEE Mr Jeffrey LAM	<p><u>Section 9(a) and (c)</u></p> <p>(a) Members raised no query.</p> <p><u>Section 9(b)</u></p> <p>(b) The Administration’s explanation that the P&Is, including the exemptions stipulated in the section, were granted to officials in connection with the functions of WTO and not for their personal benefit.</p> <p>(c) Regarding any possible abuse of the P&Is, the Administration’s advice that such matters would normally be resolved between the WTO member and the WTO,</p>	

Time Marker	Speaker	Subject(s)	Action Required
		and that they had the right and the duty to waive the immunity of their officials/representatives where necessary.	
012621 – 012744	Chairman The Administration Mr Martin LEE	<u>Section 11</u> The Administration’s clarification that emails were included under “other communications”.	
012745 – 012833	Chairman The Administration	<u>Section 12</u> Members noted that “codes” under the section referred to the encrypted form of communications.	
012834 – 013151	Chairman The Administration Mr Martin LEE	<u>Sections 13 (a), (b), (c) and (f), 14,15,16, 17, 19 (a), (b) and (f), 21 and 22</u> Members raised no query.	
013542 – 013700	Chairman The Administration Mr Martin LEE	The way forward	