

立法會
Legislative Council

LC Paper No. CB(1)1071/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/PL/CI/1

Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 15 February 2005, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)
Hon WONG Ting-kwong, BBS (Deputy Chairman)
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Vincent FANG Kang, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC

Members attending : Hon CHAN Yuen-han, JP
Hon WONG Kwok-hing, MH

Members absent : Dr Hon LUI Ming-wah, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon CHIM Pui-chung

Public officers attending : Agenda Item IV

Mr Philip YUNG
Deputy Secretary for Commerce, Industry and
Technology (Commerce and Industry) 1

Mr Clement LEUNG
Deputy Director-General of Trade and Industry

Miss Elley MAO, JP
Principal Economist
Financial Secretary's Office

Mr K K CHAN
Principal Trade Officer
Commerce, Industry and Technology Bureau

Agenda Item V

Miss Mary CHOW
Deputy Secretary for Commerce, Industry and
Technology (Commerce and Industry) 2

Ms Priscilla TO
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)

Mr Stephen SELBY, JP
Director of Intellectual Property

Mr Frederick WONG
Senior Solicitor (Copyright)
Intellectual Property Department

Mr Y K TAM
Senior Superintendent
Intellectual Property Investigation Bureau
Customs and Excise Department

Agenda Item VI

Mr Philip YUNG
Deputy Secretary for Commerce, Industry &
Technology (Commerce and Industry) 1

Ms Janet WONG
Head, MC6 Co-ordination Office
Trade and Industry Department

Mr Bill SUEN
Commandant (Police Tactical Unit)
Hong Kong Police Force

Mr Frank POON
Deputy Principal Government Counsel (Treaties and
Law) 2
Treaties and Law Unit
International Law 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

Ms Sharon CHAN
Legislative Assistant (1)6

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)863/04-05 -- Minutes of meeting held on
18 January 2005

The minutes of the meeting held on 18 January 2005 were confirmed.

II Paper issued since last meeting

2. Members noted that no paper had been issued since last meeting.

III Date and items for discussion for next meeting

LC Paper No. CB(1)861/04-05(01) -- List of outstanding items for
discussion

LC Paper No. CB(1)861/04-05(02) -- List of follow-up actions

3. Members noted that for the time being, the Administration had not proposed any item for discussion for the March 2005 meeting. It had proposed the following items for discussion at the regular meeting to be held on 19 April 2005:

- (a) Impact of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)
- (b) Progress Report on SME Funding Schemes
- (c) Impact of economic restructuring
- (d) Consultancy study on the supply and demand for exhibition facilities in Hong Kong

4. Members also noted that according to the Administration, none of the items above would be ready for consideration by the Panel at the March meeting. As it was unlikely that the Panel would be able to deal with all the four items at a regular two-hour meeting, members agreed to extend the April meeting to 5:30 pm.

IV Preliminary report on the impact of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)

LC Paper No. CB(1)861/04-05(03) -- Information paper (in powerpoint format) provided by the Administration

LC Paper No. CB(1)860/04-05 -- Background brief on Recent Developments of Mainland and Hong Kong Closer Economic Partnership Arrangement prepared by the Secretariat

LC Paper No. CB(1)861/04-05(04) -- Question raised by Hon Jeffrey LAM at the Council meeting on 26 January 2005 and the Administration's reply

5. With the aid of powerpoint presentation, the Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) 1 (DSCIT(CI)1) briefed members on the preliminary assessment on the economic impact of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), which mainly covered the areas of trade in goods and the Individual Visit Scheme (IVS) as set out in CB(1)861/04-05(03). He said that the Administration would complete the assessment on the impact of trade in services as well as trade and investment facilitation under CEPA on Hong Kong's economy, and submit the comprehensive assessment report for the consideration of the Panel at its April meeting.

Implications of CEPA on employment situation

6. Mr WONG Kwok-hing observed that the Administration had conducted a random sampling survey for the economic assessment on trade in goods under

CEPA among 250 enterprises and the overall response rate was 75%. Noting that among the respondents who had benefited or intended to be benefited from CEPA, 9% of the companies had increased their number of staff in the past year and 11% planned to increase their staff in the next year, Mr WONG sought further details on the number and categories of staff involved.

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7. In reply, the Principal Economist of the Financial Secretary's Office (PE/FSO) advised that at this stage, the Administration had completed data collection and was in the course of analysing them for the purpose of evaluating the impact of trade in goods. She undertook to provide further information in the full report to be submitted for the consideration of the Panel at its April meeting. Mr WONG Kwok-hing considered the Administration's explanation not fully acceptable and pointed out that the data he had requested should be readily available. Otherwise, the Administration could hardly have come up with the reported percentages.

8. Mr Jeffrey LAM expressed the support of the business community for the implementation of CEPA because of its positive impact on the local economy and employment. However, as many Hong Kong manufacturers had moved their production lines to the Pearl River Delta (PRD) in the past two decades, Hong Kong was in need of skilled labour. As such, he urged the Administration to consider exercising flexibility to admit skilled labour in PRD to come and work in Hong Kong factories. In response, DSCIT(CI)1 recalled that the question of importing skilled labour from the Mainland to Hong Kong had been discussed at another committee of the Legislative Council (i.e. the Panel on Manpower) and the Administration had stated its stance very clearly to Members.

Setting up production base in Hong Kong

9. Mr WONG Kwok-hing enquired whether new policy initiatives, such as concessions in land grant, taxation and machine investment, would be introduced to encourage Hong Kong manufacturers to relocate or set up their production base in Hong Kong, which in turn could help boost local employment. In this connection, the Chairman noted from the preliminary report that investment in machinery and equipment had picked up by 18% in real term in the first three quarters of 2004. She believed that part of the reason was the acquisition of new equipment and technologies by textile manufacturers. She therefore urged the Administration to take note of the importance of providing more favorable taxation arrangements such as increasing the depreciation allowances for plant and machinery.

10. Responding to members' concern, DSCIT(CI)1 stressed that the Administration was committed to improving the business environment and facilitating local enterprises, especially small and medium enterprises (SMEs) to make the best use of the business opportunities brought about by CEPA. Where necessary, the Administration would formulate appropriate measures having regard to the needs of various industries. DSCIT(CI)1 further advised that at present, taxation arrangements covering various aspects of manufacturing costs

were in place. Nevertheless, the manufacturing sector was welcome to express further views for the consideration of the Administration.

Admin 11. Mr WONG Kwok-hing expressed his strong disappointment at the slow response of the Government in devising timely measures to assist local manufacturers to take advantage of the liberalization measures under CEPA. Mr WONG could not accept that the Administration still remained at the stage of examining needs and formulating policies. He requested the Administration to report to the Panel concrete policy measures to be undertaken by the Administration to assist Hong Kong manufacturers when the Panel re-visited the issue again at its April meeting.

Admin 12. Referring to the Administration's reply to his LegCo question that in general, the Trade and Industry Department (TID) would complete the registration procedures and issue the Factory Registration (FR) within 14 working days, Mr Jeffrey LAM said that in practice, it often took more than 14 working days for Hong Kong manufacturers who relocated their factories to Hong Kong to obtain the FR. He urged the Administration to expedite the process, such as by conducting the vetting procedures by different Government departments in parallel. DSCIT(CI)1 assured members that the Administration would look into Mr LAM's concern and see if further streamlining was necessary.

13. In this connection, the Chairman requested the Administration to note that most of the existing factory buildings in Hong Kong were built some 30 years ago and that their outdated design might not be capable of meeting the operational needs of modern-day factories.

Views and needs of the manufacturing sector

14. Miss CHAN Yuen-han was very concerned that the Administration's preliminary report had neither reflected nor responded to the views/needs put forward by small manufacturers and trade unions on various occasions. These included measures to enhance the competitiveness of local products exported to the Mainland market, the establishment of a river-loop industrial zone and formulation of effective measures to encourage the employment of local labour. Miss CHAN urged that these concerns should be properly addressed, and considered that the report had only included the positive impact of CEPA but not those aspects which required improvement.

Admin 15. In response, DSCIT(CI)1 confirmed that the Commerce, Industry and Technology Bureau would continue to work in conjunction with the relevant bureau(x)/department(s) to address the needs of manufacturers. He said that more information on the Administration's responses to the issues raised by members and the manufacturing sector would be provided when the full assessment report was available. On the competitiveness of Hong Kong products when the Mainland market was further opened to other trading partners under its World Trade Organization (WTO) commitment, DSCIT(CI)1 explained that unlike Hong Kong products which were eligible for tariff-free entry to the

Mainland under CEPA, the average tariffs for foreign products exported to the Mainland would only be reduced by phases to around 10%. As such, the zero tariff preferential treatment applicable to Hong Kong products would remain a competitive edge vis-à-vis the tariff concession enjoyed by foreign products.

16. Miss CHAN Yuen-han considered that the Administration should provide more practical assistance to the manufacturing sector to facilitate them in relocating their production base to Hong Kong. For example, the Administration might provide assistance to the Chinese medicine industry by facilitating the import of raw materials from the Mainland. In this connection, the Deputy Chairman recalled that a local manufacturer who decided to set up a factory in Hong Kong to produce packaged Chinese medicine had encountered difficulties in processing an application with the Immigration Department for a team of Mainland technical staff to come to Hong Kong to set up the necessary facilities. He called for the co-ordinated support of different departments to facilitate the manufacturers in setting up production in Hong Kong.

17. Noting members' views, DSCIT(CI)1 assured members that the Administration would continue to work closely with the manufacturing sector and discuss with them appropriate measures that might help them realize the potential of CEPA. In this connection, the Chairman opined that the Administration might also consider examining the needs of the various trades which had benefited or would benefit from further liberalization under CEPA II, and formulate appropriate support measures.

Certificate of Origin (CEPA)

18. Noting that the responses to CEPA of certain labour-intensive industries such as clocks and watches, food and beverages were less positive at the present stage, Mr WONG Kwok-hing considered that the Administration should direct more effort to assist these trades.

19. In response, DSCIT(CI)1 anticipated that following the implementation of CEPA II starting from 1 January 2005, more manufacturing activities would take place in Hong Kong. He expected that the number of applications for Certificates of Hong Kong Origin - CEPA (CO(CEPA)) for products under CEPA II would gradually increase.

20. The Deputy Chairman noted that as at 31 December 2004, 3 008 out of 3 211 applications for CO(CEPA) were approved. He enquired about the reasons for the rejection of some 200 applications. In reply, DSCIT(CI)1 advised that the applications were not approved mainly because the products in question could not meet the origin requirements under CEPA.

21. The Deputy Director-General of Trade and Industry (DDG/TI) supplemented that since the signing of the main text of CEPA in June 2003, the Administration had been maintaining close contact with the manufacturing sector to make sure that they were aware of the opportunities presented by CEPA. For

example, having regard to the views of the relevant sectors, the Administration had commenced discussion with the Mainland on whether and how the rules of origin (ROO) for clocks and watches could be revised so that more SMEs could benefit from zero-tariff under CEPA. On food and beverages, DDG/TI said that as a result of further liberalization under CEPA II, the number of applications for CO(CEPA) for food and beverage products was expected to rise.

22. Mr CHAN Kam-lam reckoned that although it might be premature to evaluate the economic impact of CEPA at this stage, he was of the view that the implementation of CEPA so far was by and large satisfactory. Noting the value of domestic exports to the Mainland which had applied for CO(CEPA) to enjoy zero tariff in 2004 was only HK\$1.15 billion, he considered that there were still plenty of business opportunities as the value of domestic exports of CEPA I products to Mainland for the same period was as high as HK\$24.4 billion. Moreover, he noted that Hong Kong products which met the CEPA ROO could also enjoy zero-tariff after 1 January 2006 upon application by local manufacturers. Given the many opportunities brought about by CEPA, Mr CHAN urged the Administration to further streamline the application procedures for CO(CEPA) to encourage more Hong Kong enterprises to leverage on the liberalization measures under CEPA. Noting that some manufacturers might forego the tariff preference under CEPA for very urgent orders and small value consignments, Mr CHAN suggested that the Administration should expedite processing work so that approval for the relevant CO(CEPA) could be given within one or half working day.

23. While agreeing with the need for prompt approval of CO(CEPA) applications, DDG/T&I highlighted that to safeguard against possible abuse of the zero-tariff concessions under CEPA, it was incumbent upon the Administration to vet all applications for CO(CEPA) in a prudent manner to ensure that the products in question could meet the relevant CEPA ROO. Since a CO(CEPA) was valid for 120 days, manufacturers could apply in advance without having to wait till the last minute, so that the consignment concerned could still enjoy zero tariff under CEPA even if there was an urgent need to advance shipment. DDG/T&I said that the TID would step up publicity on the arrangement so that manufacturers would be aware of it. In this regard, Mr CHAN Kam-lam remarked that as manufacturers became more conversant with the arrangement, the Administration might reduce the regulatory burden on manufacturers by conducting random verifications only to make sure that products under application for CO(CEPA) were in compliance with CEPA ROO.

Publicity on CEPA

24. In view of the favorable economic impact brought about by CEPA in its first year of implementation, Mr Jeffrey LAM urged the Administration to step up publicity and promotion of CEPA to foreign investors. In response, DSCIT(CI)1 remarked that since the announcement of CEPA, the relevant bureaux/departments, overseas offices and the Trade Development Council had been promoting actively the business opportunities brought about by CEPA to

local, Mainland, and foreign investors.

Trade and investment facilitation measures

25. Noting from the preliminary report that as at mid-2004, the number of Mainland enterprises with regional headquarters and regional offices in Hong Kong was 12.9% higher than in the previous year, Mr SIN Chung-kai sought information on the actual number and nature (e.g. state-owned enterprises) of such Mainland enterprises, and their business plans in Hong Kong. He considered that such information would shed light on the impact of these enterprises on the local economy and employment.

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26. In response, PE/FSO informed members that the number of such Mainland enterprises was 84 and 106 for the entire year of 2003 and 2004 respectively. DSCIT(CI)1 explained that as a result of the robust domestic economy in the Mainland, there had been an upward trend for Mainland enterprises to set up regional headquarters/offices in Hong Kong. PE/FSO commented that this trend was indicative of closer trade and investment relationship between Hong Kong and the Mainland and it would help boost bilateral economic and commercial exchanges. In fact, Hong Kong played a key role in facilitating the commerce and industry development of the Mainland by serving as a springboard for the Mainland to reach out to other parts of the world. As trade and investment facilitation measures for Mainland enterprises to invest in Hong Kong had only been implemented since September 2004, the impact of these measures on local economy and employment would be analyzed in further detail in the full report. PE/FSO also agreed to provide the information requested by Mr SIN when they were available.

27. In reply to Mr SIN Chung-kai, DSCIT(CI)1 advised that the "Invest Hong Kong One-Stop Service" provided free enquiry service on the regulations and procedures of setting up businesses in Hong Kong. Invest Hong Kong had also co-operated with the Mainland Ministry of Commerce to produce a step-by-step guide on the application procedures for Mainland enterprises to invest in Hong Kong.

Individual Visit Scheme

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28. Noting that about 1.18 million IVS visitors were same-day visitors, Mr WONG Kwok-hing requested the Administration to provide, in its full report, the reasons why these visitors had left Hong Kong on the same day.

Summing up

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29. The Chairman recapped that the Panel would consider the full assessment on the economic impact of CEPA at its meeting in April 2005. She requested the Administration to note members' views and to include, inter alia, the information requested by members in the full evaluation report.

V Unauthorized downloading of copyright works from the Internet

LC Paper No. CB(1)861/04-05(05) -- Information paper provided by the Administration

LC Paper No. CB(1)861/04-05(06) -- Extract of minutes of meeting of the Panel on Information Technology and Broadcasting held on 25 March 2004

Other relevant information for reference

LC Paper No. CB(1)2325/03-04(01) -- Information note on Peer-to-Peer (P2P) File Sharing and Copyright Infringement prepared by the Research and Library Services Division of the Secretariat
<http://www.legco.gov.hk/yr03-04/english/panels/ci/papers/cicb1-2325-1e.pdf>

30. The Chairman informed members that the item was referred by the Panel on Information Technology and Broadcasting at its meeting on 25 March 2004.

31. At the invitation of the Chairman, the Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) 2 (DSCIT(CI)2) briefed members on the actions taken by the Government to combat infringing activities on peer-to-peer (P2P) file sharing networks, including law enforcement, industry cooperation and public education.

32. Noting that on 12 January 2005, the Customs and Excise Department (C&ED) had arrested a person on suspicion of illegal distribution of copyright movies on the Internet through Bit Torrent (BT) software, Mr SIN Chung-kai enquired about the progress of prosecution action, if any.

33. In response, the Senior Superintendent of the Intellectual Property Investigation Bureau of the C&ED advised that because of their special nature, it normally took one to two months to go through the computer forensics process in order to collect and consolidate necessary digital evidence to substantiate computer-related offences. Prosecution action would be considered in the next two months after the evidence preparation work on the case was completed.

34. Referring to the operational features of P2P software such as BT, Mr Ronny TONG pointed out that the file-sharer who downloaded an infringing copy of a copyright work or fragments of it from the Internet was at the same time making the infringement copy available for downloading by other peers.

Nevertheless, the file-sharer in question might not have the intention of distributing the infringing copy. As such Mr TONG considered that enforcement and prosecution actions should be targeted at the BT "initiator" who owned a complete infringing copy of the copyright work (i.e. a source seed) and initiated sharing activities of the file containing the infringing copy, instead of at ordinary users who downloaded the file. He pointed out that unless the Prosecution could prove the criminal intent on the part of the person who committed the offence, it was unlikely that ordinary down-loaders could be successfully prosecuted and convicted as they might have no intention to distribute the infringing copy. Moreover, Mr TONG reflected the strong concerns expressed by Internet users that the recent arrest by C&ED had deterred them from surfing the Internet and engaging in on-line activities for fear of breaching the law inadvertently. He cautioned that it might cause a public outcry if enforcement actions were targeted at ordinary users who had no intention to distribute the infringing copies they had downloaded using P2P software such as BT. Mr TONG urged the Administration to seek further legal advice and limit criminal liability to the "initiators" who had uploaded the source seeds onto the Internet with the intention of distribution.

35. In response, DSCIT(CI)2 referred to section 118(1)(f) of the Copyright Ordinance (CO) (Cap 528) which provided that it was a criminal offence for a person to distribute an infringing copy of a copyright work to such an extent as to affect prejudicially the owner of the copyright. To substantiate an offence under the aforesaid section, it was necessary for the Prosecution to prove the criminal intent of the person to distribute or attempt to distribute the infringing copy of copyright work. At present, C&ED's enforcement was targeted at those Internet users who had deliberately uploaded the infringing copy of copyright work for sharing with other peers, as in the case of the recently arrested person. Nevertheless, DSCIT(CI)2 pointed out that the act of downloading an infringing copy of a copyright work was illegal and subject to civil liability. DSCIT(CI)2 supplemented that in addition to enforcement efforts, C&ED would also address the piracy problem through briefings to parents and teachers on the possible criminal and civil liabilities that their children/students might face if the latter took part in copyright infringing activities on P2P networks.

36. While noting the need to combat infringement activities on the Internet, Mr CHAN Kam-lam cautioned that if due prudence was not exercised, vigorous enforcement action might affect other normal activities on the Internet. He believed that many ordinary Internet users might not be aware or could not tell whether the files made available for downloading on the Internet contained infringing copies of copyright works. A web master who had obtained authorization from a copyright owner to post a copy of copyright work on his website might not know that the file containing the copyright work would become a source seed for downloading and sharing over P2P networks. To avoid ambiguities, Mr CHAN suggested that the Administration should define offences under CO more clearly, such as providing a definition on "source seeds", in order that enforcement would not affect the normal exchange and dissemination of information and other activities on the Internet.

37. In response, DSCIT(CI)2 advised that under the CO, it would be a defence if a person could prove that he did not know and had no reason to believe that the copies in question were infringing copies. On the issue of distributing the source seeds, DSCIT(CI)2 said that the concept of "initiator" was only relevant to BT file sharing networks in which the "initiator" initiated file sharing activities by creating and posting a "torrent file" in a discussion forum or newsgroup to notify other users visiting the discussion forum or newsgroup that he had a file for sharing among peers. As regards downloading of materials from websites, warnings or advisory messages were usually put up to inform users whether it was permissible to download the information contained in the webpages.

38. Mr SIN Chung-kai said that pending the outcome of the intended prosecution case under section 118(1)(f) of CO, he was of the view that it might be quite difficult to prosecute a BT "initiator" and secure a conviction unless the Prosecution could prove that the person had the intent to "distribute" infringing copies of copyright works. He considered that strictly speaking, an "initiator" had merely posted the file containing infringing copies of copyright works in a discussion forum or newsgroup, instead of distributing the file. It would be up to other users to download the file if they so wished. Nevertheless, Mr SIN said that if the BT "initiator" arrested recently could be successfully prosecuted and convicted, infringing activities on P2P networks might be deterred. Otherwise, the Administration should re-examine whether existing provisions in CO were adequate in dealing with infringing activities on P2P networks. He also noted that the present issue was not one of the subjects included in the public consultation exercise on reviewing certain provisions of CO.

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39. Having regard to the views raised by members, the Chairman said that the Administration should examine carefully the policy considerations underpinning the problem of unauthorized downloading of copyright works in deciding whether lenient, or stringent, provisions should be enacted. She stressed that any statutory provisions, in particular those giving rise to criminal liability, must be clear in scope and enforceable. On wider principles, the Chairman remarked that it would be useful to examine the question of whether or not strict liability should be introduced for certain offences.

VI Hosting of the Sixth Ministerial Conference of the World Trade Organization

(a) Progress report

LC Paper No. CB(1)861/04-05(07) -- Information paper provided by the Administration

LC Paper No. CB(1)862/04-05 -- Background brief on Hong Kong's hosting of the Sixth Ministerial Conference of the World Trade Organization prepared by the Secretariat

40. At the invitation of the Chairman, DSCIT(CI)1 updated members on the latest progress of logistics preparation for the Sixth Ministerial Conference (MC6) of the World Trade Organization (WTO) to be held in Hong Kong from 13 to 18 December 2005 at the Hong Kong Convention and Exhibition Centre (HKCEC). He said that the MC6 Coordination Office (MCO) had appointed a hotel agent to handle hotel accommodation arrangements for MC6; and the Electrical and Mechanical Services Trading Fund to be the Project Manager to coordinate the provision of conference facilities, and information and communications technology services. He also reported that preparatory work on security and accreditation, transport arrangements, publicity etc was progressing well.

Security and accreditation

41. On security and accreditation, the Commandant (Police Tactical Unit) of Hong Kong Police Force (C(PTU)/HKPF) remarked that the primary objective of security arrangements during MC6 was to ensure the security of all participants and their attendance of the various MC6-related activities at the designated venues, while keep the inconvenience and disruption to the community to the minimum. To devise a security plan which would be most suitable for Hong Kong, the HKPF would also draw on overseas experience in hosting comparable global events while preparing for a worst case scenario. HKPF would also strengthen training of PTU officers and other logistical support for MC6.

42. Referring to the staging of protests, Mr SIN Chung-kai urged the Administration, in particular frontline police officers, to attach due importance to the freedom of expression and adopt an open attitude in handling these activities properly so as to maintain Hong Kong's metropolitan image and international reputation.

43. Referring to mass rallies and demonstrations which had been held in a peaceful manner in Hong Kong, C(PTU)/HKP assured members that HKPF, in line with established policy, would endeavour to facilitate all peaceful protest activities as far as possible during the MC6 period while ensuring an appropriate degree of security. To this end, HKPF would maintain communication with non-government organizations as well as other concern groups, both local and overseas, on suitable arrangements for their planned demonstrations in the run-up to and during MC6. C(PTU)/HKP stressed that it was the HKPF's statutory duty to ensure security and public order during the event and would take prompt and effective actions against any outbreak of violence during the Conference period.

44. Mr Ronny TONG concurred with Mr SIN's view and considered that to reflect Hong Kong's genuine respect for people's freedom of expression, the Administration should set up designated zones for concern groups/protestors within sight and sound of their targets attending MC6.

45. Taking note of members' concern, C(PTU)/HKP said that in addition to designating protest zones as far as practicable within sight and sound, the Administration would also consider other factors such as accessibility of the designated zones by the concern groups/protestors and their impact on traffic flow in the vicinity. He stressed that the HKPF would seek to strike a balance between the rights of demonstrators and the need to ensure that no danger or undue inconvenience would be caused to others. C(PTU)/HKP further advised that when more details on the arrangement of MC6 were confirmed and based upon up-to-date assessment of threats nearer the time of the Conference, the Administration would define the security zones in the vicinity of the Conference venue. The suitable locations for protest activities could then be designated accordingly.

46. Mr CHAN Kam-lam pointed out that the Administration must not lose sight of its primary task which was to host MC6 successfully. He stressed that while it was important to facilitate the freedom of expression, it was also essential to maintain law and order to safeguard the interest of the community and the smooth conduct of the international event. He trusted that HKPF was competent in crowd management and handling of contingency situations and would put their professional skills to good use if necessary.

Related arrangements

47. Mr Jeffrey LAM highlighted the positive impact of hosting MC6 which could help showcase the strengths of Hong Kong to the world. Noting that social programmes would be worked out for MC6 participants and their accompanying family members, Mr LAM considered that the Administration should spare no effort to impress upon MC6 participants and their families the hospitality and tourism attractions of Hong Kong. Given that a large number (about 10 000) of overseas participants would be attending MC6 and a lot of tourists would also be visiting Hong Kong during the conference period, Mr LAM urged the Administration to make timely announcements so that local residents and visitors would be aware of all activities and arrangements related to MC6, including details of large-scale entertainment events and special traffic arrangements.

48. In response, the Head, MC6 Co-ordination Office of Trade and Industry Department (Head, MCO) advised that MC6 was an important event that could enhance the position of Hong Kong as Asia's World City. The Administration would step up publicity on MC6 so that the community at large would appreciate its importance and benefits to Hong Kong. Where special traffic arrangements were required, the department(s) concerned would keep the public informed so as to minimize as far as possible any inconvenience which might be caused. As regards public relations strategy, the Administration would continue to work closely with the hotel and tourism industries and secure their assistance in making MC6 a success. Head, MCO added that MC6 would provide a good opportunity to showcase Hong Kong's cultural characteristics. Among the social programmes to be organized, Chinese cultural performances would be

staged.

(b) Proposed Subsidiary legislation relating to privileges and immunities for the World Trade Organization

LC Paper No. CB(1)861/04-05(08) -- Information paper provided by the Administration

49. At the invitation of the Chairman, DSCIT(CI)1 briefed members on the proposed subsidiary legislation relating to the privileges and immunities (P&Is) for WTO under the International Organizations (Privileges and Immunities) Ordinance (IO(P&Is)O) (Cap 558). The subsidiary legislation would be named International Organizations (Privileges and Immunities) (World Trade Organization) Order (the WTO Order). He advised that part of the obligations of being a WTO member was to accord P&Is to WTO, its officials and representatives of its members in accordance with the Marrakesh Agreement Establishing the WTO (Marrakesh Agreement). As stipulated in Article VIII.4 of the Marrakesh Agreement, the P&Is of the WTO should be similar to those stipulated in the 1947 United Nations Convention on the P&Is for the Specialized Agencies (1947 Convention). DSCIT(CI)1 highlighted the need for the new legislation to be enacted before MC6 to ensure that officials and representatives of WTO members could enjoy the relevant P&Is when they exercised their functions in Hong Kong during their preparation for and participation in the MC6. Members noted that the Administration planned to introduce the WTO Order into the Council for negative vetting shortly, so that the legislative process could be completed within the 2004-05 legislative session.

Proposed scope of P&Is

50. Mr Ronny TONG pointed out that as WTO did not have the status of a sovereign state, it should not be entitled to the P&Is applicable to a sovereign state. He then referred to paragraph 3 (a) to (g) of the Administration's paper (CB(1)861/04-05(08)) and said that he did not have strong views against the proposed P&Is except those listed in paragraph 3(e) and (g). Mr TONG was gravely concerned whether the P&Is under paragraph 3(e) and (g) would include immunity from criminal liability. If this was the case, he considered that the scope of the P&Is might be too excessive vis-à-vis the extra-territorial rights enjoyed by foreign consular or diplomatic representatives in Hong Kong. He understood that although generally speaking, a diplomatic representative who had committed an offence might be immune from prosecution in the country where he was posted, he might need to face proceedings instituted against him in his home country.

51. The Deputy Principal Government Counsel (Treaties & Law) 2 (DPGC(T&L)2) advised that in accordance with relevant international requirements, the P&Is contemplated under paragraph 3(e) and (g) of the Administration's paper covered both civil and criminal liabilities. He further confirmed that while WTO did not have the status of a sovereign state, the status

of the Director-General of WTO was equivalent to that of a diplomat of a sovereign state and the Director-General should therefore be accorded P&Is, exemptions and facilities enjoyed by diplomatic envoys. For WTO officials below the rank of Director-General and representatives of WTO members, they would only be accorded such P&Is as were necessary for their exercise of functions in connection with the WTO.

52. Mr Ronny TONG observed that under Article VIII.2 and 3 of the Marrakesh Agreement, the WTO, its officials and representatives of WTO members should be accorded by each of its members such P&Is as were necessary for the independent exercise of their functions in connection with the WTO. He was concerned that certain acts which attracted criminal sanctions, such as speeding or reckless driving, should not be immune from legal actions because he failed to see how such immunity, if accorded, could be regarded as "necessary" for the exercise of functions in connection with the WTO.

53. In response, DPGC(T&L)2 explained that P&Is must be conferred on international organizations in compliance with international requirements. The implementation of the P&Is for international organizations before 1 July 1997 were provided for by way of subsidiary legislation enacted under the International Organizations and Diplomatic Privileges Ordinance (Cap 190). After the handover, a new ordinance, IO(P&Is)O (Cap 558), was enacted to serve the purpose. In this case, the WTO Order would be made under IO(P&Is)O based on the requirements in the Marrakesh Agreement and the 1947 Convention. DPGC(T&L)2 pointed out that in enacting local legislation to give effect to its international obligation, Hong Kong could not seek to diminish or reduce the P&Is to which the relevant personnel were entitled under the Marrakesh Agreement and 1947 Convention. With regard to the examples of speeding and reckless driving, he said that it would be difficult to argue that such acts were performed in the exercise of the functions and duties of the WTO. He added that the chance of someone invoking the P&Is under the WTO order should be very small.

54. Mr Ronny TONG reiterated his concerns about the propriety of according immunities from legal process as currently proposed by the Administration. He also pointed out that in enacting domestic legislation to give effect to international obligations, it had not been an invariable practice that Hong Kong adopted the requirements in full. Mr TONG specifically referred to various International Human Rights Treaties which, on account of Hong Kong's circumstances, had not been implemented in full by local legislation. He urged the Administration to examine the provisions in the Marrakesh Agreement and 1947 Convention carefully and avoid replicating indiscriminately all the provisions into the WTO Order.

55. Head, MCO and DPGC(T&L)2 undertook to take heed of the concerns in drafting the WTO Order and ensure that its scope would not be excessive. In this connection, the Chairman remarked that it would be most useful if the Administration would provide more information on similar past cases in which

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Hong Kong enacted local legislation to provide P&Is to international organizations and their representatives; as well as how other hosting countries had handled similar P&Is requirements for past MCs. Head, MCO agreed to consider the matter in consultation with the Director of Administration and try to provide the necessary information to address members' concerns.

56. Referring to paragraph 3(a) to (g) of the Administration's paper, Mr SIN Chung-kai asked whether the P&Is were proposed at the Administration's initiative or at the request of WTO. He remarked that according to his understanding, other international bodies such as the International Telecommunication Union did not seem to enjoy such a wide scope of P&Is. He noted that section 19(a) under Article VI of the 1947 Convention (Annex II of CB(1)861/04-05(08)) was broadly comparable to the immunity proposed under paragraph 3(g). However, he sought information on the provision(s) in the 1947 Convention on which paragraph 3(e) was modelled.

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57. In reply, DPGC(T&L)2 clarified that paragraph 3(a) to (g) of the Administration's paper had set out in general terms the proposed P&Is for WTO having regard to the relevant sections in the 1947 Convention. Paragraph 3 (a) to (g) were not intended to represent the specific language which would be used in the proposed legislation. Nevertheless, he assured members that their concerns would be taken into account when drafting the WTO Order and that the P&Is provided therein would be consistent with but not wider in scope than the relevant requirements in the Marrakesh Agreement and the 1947 Convention. He added that the Administration would not include those P&Is which could be accorded through administrative measures or the existing laws of Hong Kong. Moreover, the P&Is to be conferred on each category of personnel would be clearly specified in the proposed subsidiary legislation.

Legislative process

58. To address members' concerns about the scope of the proposed subsidiary legislation, Mr Ronny TONG asked whether the Administration could provide the draft of the WTO Order for the Panel's consideration. Mr SIN Chung-kai agreed that given the tight timeframe for negative vetting, the Panel's comments on the draft WTO Order before its formal gazettal might help resolve some of the difficulties and facilitate scrutiny of the subsidiary legislation after it had been introduced into the Council.

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59. In response, DSCIT(CI)1 assured members that their views and concerns on the proposed scope of P&Is would be seriously considered and addressed during the drafting process. The Administration undertook to consider the Panel's request to provide the draft of the WTO Order and where necessary, to communicate further with members. Head, MCO said that the Administration would attempt to provide further information on past cases and overseas practices as suggested by the Chairman earlier on.

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60. In conclusion, the Chairman said that the Panel agreed that it was necessary to enact subsidiary legislation to provide P&Is for the WTO in connection with Hong Kong's hosting of MC6. She also advised that to facilitate future scrutiny of the WTO Order, the Administration should seriously consider members' request to be provided with the draft of the WTO Order for perusal prior to gazettal. The Chairman suggested and members agreed that if necessary, the Panel would consider the matter at the next meeting scheduled to be held on 15 March 2005.

VII Any other business

61. There being no other business, the meeting ended at 4:55 pm.

Council Business Division 1
Legislative Council Secretariat
14 March 2005