

立法會
Legislative Council

LC Paper No. CB(1)1257/04-05
(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 March 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)
Dr Hon LUI Ming-wah, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Vincent FANG Kang, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon CHIM Pui-chung
- Members absent** : Hon WONG Ting-kwong, BBS (Deputy Chairman)
Hon Ronny TONG Ka-wah, SC
- Public officers attending** : Agenda Item IV

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

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

Ms Patricia LUI
General Manager (Liaison & Co-ordination)
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

Clerk in attendance : Ms Debbie YAU
Senior Council Secretary (1)1

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Sharon CHAN
Legislative Assistant (1)6

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)1071/04-05 -- Minutes of meeting held on
15 February 2005

The minutes of the meeting held on 15 February 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)1069/04-05(01) -- List of outstanding items for
discussion

LC Paper No. CB(1)1069/04-05(02) -- List of follow-up actions

3. Members noted that as agreed at the last meeting, the Panel would discuss the following four items at the next meeting to be held on 19 April 2005 from 2:30 pm to 5:30 pm:

- (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; and

- (d) Consultancy study on the supply and demand for exhibition facilities in Hong Kong.

IV Hosting of the Sixth Ministerial Conference of the World Trade Organization (WTO) - Proposed subsidiary legislation relating to privileges and immunities for the WTO

- LC Paper No. CB(1)1069/04-05(03) -- Information paper provided by the Administration
- LC Paper No. CB(1)861/04-05(08) -- Information paper provided by the Administration for discussion on 15 February 2005
- LC Paper No. CB(1)1069/04-05(04) -- Extract of minutes of meeting of the Panel on Commerce and Industry held on 15 February 2005

4. Members noted that the subject had been discussed at the last Panel meeting held on 15 February 2005. At the invitation of the Chairman, the Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) (DSCIT(CI)) briefed members on the Administration's paper (CB(1)1069/04-05(03)) providing further information on the proposed subsidiary legislation relating to privileges and immunities (P&Is) for the World Trade Organization (WTO). DSCIT(CI) recapped that the relevant P&Is must be enacted in time for Hong Kong to fulfill its international obligations in hosting the Sixth Ministerial Conference (MC6) of the WTO. He explained that the P&Is granted to International Organizations (IOs) served to enable the IO personnel or the representatives of its members to carry out their functions without undue impediments and interferences and that the P&Is would not be conferred for their personal benefit. DSCIT(CI) further said that the P&Is provided for the WTO, its officials and representatives of its members should be at the level of P&Is granted under the 1947 United Nations Convention on the Privileges and Immunities for the Specialized Agencies (1947 Convention). Members noted that the Administration had prepared a table (Annex III to CB(1)1069/04-05(03)) setting out all the articles/sections of the 1947 Convention and highlighting the ones which were intended to be included in the proposed subsidiary legislation to be named International Organizations (Privileges and Immunities) (World Trade Organization) Order (WTO Order).

5. In this connection, Mr SIN Chung-kai said that Members of the Democratic Party supported in principle the proposed WTO Order as described in LC Paper No. CB(1)1069/04-05(03).

Granting and invoking P&Is

6. Expressing his support for the formulation and enactment of the necessary subsidiary legislation, Mr Jeffrey LAM agreed that there was urgency in this legislative exercise to ensure that the WTO, its officials and the representatives of WTO members could enjoy the relevant P&Is when they exercised their functions in Hong Kong in connection with MC6. He also considered that as every member of the IO was obliged to confer P&Is to each other with reference to the same statute/international agreement, members would in fact adopt the same standards of treatment towards each other. It was therefore important that Hong Kong should also fulfil its international obligations. Mr LAM sought information on precedent cases, if any, of foreign representatives and officials of IO concerned having committed unlawful acts at the place where P&Is had been conferred on them, and how such cases had been resolved.

7. In response, the Head, MC6 Co-ordination Office of Trade and Industry Department (Head, MCO) explained that P&Is were extended to WTO officials and representatives of its members to enable them to perform their proper functions efficiently. However, the relevant P&Is were not a blanket authority for those concerned to disregard the law or lawful directions in the jurisdiction granting such P&Is. In fact, immunity of foreign representatives might be waived with the express consent of the IO in question. Moreover, there were usually safeguards built into the statutes/international agreements to prevent abuses of P&Is. Head, MCO assured members that under section 22 of the 1947 Convention, the P&Is were not granted for personal benefit and the WTO had the right and duty to waive such immunity when deemed necessary. She advised that as understood from the research of the Department of Justice, the United Nations (UN) had in the past respected this principle and would waive the immunities conferred upon UN Specialized Agencies under the 1947 Convention if it deemed such waivers to be necessary.

8. The Deputy Principal Government Counsel (Treaties & Law) 2 (DPGC(T&L)2) supplemented that, according to a study carried out by the Department of Justice, there had not been any precedent international court case involving a trade-related IO in dispute with the host government concerning its P&Is, nor had there been any such case dealt with by the International Court of Justice. According to the findings of the study, agencies of the UN, such as the United Nations Peacekeeping Force, which carried out missions in different places, would also resort to resolving disputes relating to P&Is through bilateral negotiations rather than by relying completely on invoking their P&Is in order to avoid any possible impact on the rule of law or the private rights in the jurisdiction concerned.

Overseas arrangements

9. Mr CHAN Kam-lam agreed that it was necessary to enact the proposed WTO Order. He enquired how other jurisdictions, such as the Mainland, had fulfilled international obligations to confer P&Is on IO personnel and its

members. He also sought information as to how Hong Kong had handled similar P&Is requirements for past international conferences or events involving IOs.

10. Referring to P&Is conferred by the hosts of the past five MCs, Head, MCO pointed out that due to the difference in the legal systems of the host countries, it was not feasible to make a direct comparison of the relevant legislation enacted to provide P&Is for WTO. Among the five countries which had hosted MCs, three were non-English speaking countries and their legislation was in foreign languages. The Administration had not proceeded to arrange translation for the legislation because of time constraint. For the other two MC host countries, Singapore had apparently followed closely the 1947 Convention in implementing the P&Is. The United States (US) had also provided P&Is for the WTO, its officials and the representatives of its members following closely the 1947 Convention with necessary clarifications and adaptations in relation to subjects such as taxation.

11. Regarding the arrangements in the Mainland, DPGC(T&L)2 advised that unlike the common law tradition in Hong Kong which required the enactment of local legislation to transform requirements on P&Is from the international legal plane to the domestic legal plane, the Mainland handled the P&Is requirements for WTO in a different way. Following the Mainland's accession to the WTO, the relevant provisions of the 1947 Convention, including those relating to P&Is in respect of the WTO, would have taken effect directly within the Mainland. As such, so far as he was aware, no domestic legislation had been enacted in the Mainland to specifically confer P&Is upon the WTO.

12. Regarding the P&Is for WTO vis-à-vis those for other IOs previously implemented in Hong Kong, Head, MCO recalled that P&Is for IOs before the enactment of the International Organizations (Privileges and Immunities) Ordinance (IO(P&Is)O) (Cap 558) were provided for by way of subsidiary legislation made under the International Organizations and Diplomatic Privileges Ordinance (Cap 190). Since the enactment of IO(P&Is)O, the only international organization granted P&Is under this Ordinance was the Office of the Commission of the European Communities but the case was different in that it was a supranational institution. She further pointed out that since each IO was governed by a different international agreement and their functions and nature of activities in Hong Kong might not be the same, a direct comparison of the P&Is granted to various IOs might not be very useful. Nevertheless, Head, MCO pointed out that the fundamental spirit and principles underpinning the implementation of P&Is for the WTO in Hong Kong would be similar to those for other IOs.

The drafting approach

13. On the drafting approach, the Assistant Legal Adviser 2 enquired whether the relevant provisions of the 1947 Convention would be spelt out in full, or whether reference would merely be made to the relevant articles/sections of the

Convention in the proposed WTO Order. In reply, DPGC(T&L)2 said that the proposed WTO Order would only include those specific provisions in the 1947 Convention that needed to be implemented by local legislation. The Administration had examined each article/section of the 1947 Convention to see (a) whether it was relevant to the WTO; (b) whether it affected private rights and obligations; (c) whether it required exceptions to be made to the existing laws of the Hong Kong Special Administrative Region (HKSAR); and (d) whether it could be accorded through administrative arrangements or the existing laws of the HKSAR. He added that the Administration's current thinking was to list out these specific provisions, which would be adapted if necessary in the proposed WTO Order.

Admin

14. The Chairman remarked that the Administration had provided useful supplementary information to facilitate members' consideration, in particular the detailed table at Annex III which highlighted those specific provisions in the 1947 Convention that would be included in the proposed subsidiary legislation. Summing up, the Chairman said that the Panel agreed that the Administration should introduce the proposed WTO Order into the Council as soon as possible with a view to enacting it within the current legislative session.

V Any other business

15. There being no other business, the meeting ended at 2:55 pm.