

立法會
Legislative Council

LC Paper No. CB(1)/04-05
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by the Administration)

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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 & 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 &
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

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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

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

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

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

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Administration would provide more information on similar past cases in which 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.

Admin 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. Admin 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.

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