

立法會
Legislative Council

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LC Paper No. CB(2)2468/04-05
(These minutes have been seen by the
Administration)

Panel on Manpower

Minutes of meeting
held on Thursday, 16 June 2005 at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon LAU Chin-shek, JP (Chairman)
Hon KWONG Chi-kin (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung

Members absent : Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Frederick FUNG Kin-kee, JP

Public Officers attending : Item IV

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

Miss Charmaine LEE
Assistant Director-General of Trade and Industry (Systems)

Mr Raymond WONG
Head of Trade Controls
Customs and Excise Department

Mrs DO PANG Wai-yee
Assistant Commissioner for Labour
(Policy Support and Strategic Planning)

Item V

Mr Matthew CHEUNG Kin-chung, JP
Permanent Secretary for Economic Development and Labour
(Labour)

Mr Fred TING
Deputy Commissioner for Labour (Occupational Safety and
Health)

Mr TSO Sing-hin
Assistant Commissioner for Labour (Occupational Safety)

Item VI

Mr Matthew CHEUNG Kin-chung
Permanent Secretary for Economic Development and Labour
(Labour)

Mr Alan WONG
Assistant Commissioner for Labour (Labour Relations)

Miss Mabel LI Po-yi
Senior Labour Officer (Labour Relations)1
Labour Department

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2) 1

Staff in attendance : Mr Raymond LAM
Senior Council Secretary (2) 5

Ms Alice CHEUNG
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1890/04-05)

The minutes of the meeting held on 26 April 2005 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1889/04-05(01) and (02))

2. Members agreed that the regular meeting in July 2005 would not be held.

III. Draft report of the Panel on Manpower for submission to the Legislative Council
(LC Paper No. CB(2)1889/04-05(03))

3. Members endorsed the draft report which gave an account of the work of the Panel during the 2004-05 legislative session. Members noted that the report would be tabled at the Council meeting on 6 July 2005.

IV. Enforcement of certificate of origin and its implications on local employment
(LC Paper No. CB(2)1889/04-05(04))

4. At the invitation of the Chairman, Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) (DSCIT) briefed members on the system of certificate of origin (CO) under the Mainland and Hong Kong Closer Economic Partnership (CEPA) and its implications on employment in the local manufacturing sector.

5. Referring to paragraph 12 of the Administration's paper, Ms LI Fung-ying asked about the basis on which statistics regarding the jobs created by the first phase of CEPA (CEPA I) were compiled.

6. DSCIT responded that the statistics were compiled on the basis of a study on the economic impact of CEPA I conducted by the Commerce, Industry and Technology Bureau, the Economic Analyses and Business Facilitation Unit and the Census and Statistics Department about 12 months after the implementation of CEPA I. In the study, questionnaires were issued and visits were made to a number of enterprises and factories to gather the relevant information.

7. Ms LI Fung-ying asked whether CEPA had mainly benefited those businesses which were already engaged in the manufacturing of brand name products in Hong Kong.

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8. DSCIT responded that CEPA was intended for attracting to Hong Kong the manufacturing of brand name products, or manufacturing processes with high-value added content or substantial intellectual property input, and creating more jobs in Hong Kong. As CEPA was in the initial stage of implementation, further development and greater economic benefits could be expected. However, it could be noted that a number of enterprises had reported expansion of operations in Hong Kong since the implementation of CEPA.

9. Mr WONG Kwok-hing expressed concern that only about 2 000 jobs would be created with the implementation of CEPA I. He asked whether additional measures would be introduced to create more jobs.

10. DSCIT responded that the Administration had noted the views expressed by Members in the motion debate at the Council meeting held on 15 June 2005 regarding CEPA. He stressed that the Administration was committed to creating a good business environment and facilitating business and industrial development. A number of schemes had been introduced to support small and medium enterprises and facilitate technological development. The Administration had also noted some Members' concern about the employment situation of elementary workers. In this connection, CEPA I, especially the Individual Visit Scheme thereunder had created more job opportunities for low-skilled workers.

11. Ms LI Fung-ying considered that the Administration should provide more information on the economic benefits generated and jobs created by the implementation of CEPA. Miss CHAN Yuen-han added that the number of jobs created by the implementation of CEPA was too small. She considered that the Administration should introduce more measures to boost the job creation effect of CEPA and provide a progress report in October 2005. Mr WONG Kwok-hing said that the Administration should provide information on the number of production lines established or to be established in Hong Kong as a result of the implementation of CEPA. He added that a series of measures had been introduced in Macau to attract investment. The Administration should inform members of the measures to be introduced in Hong Kong to attract investment.

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12. DSCIT agreed to see if the above information requested by members could be provided. He informed members that as at 31 May 2005, 5 194 CO applications for trade in goods had been approved. The total export value of the goods involved amounted to around \$1.87 billion. From 1 January 2006 onwards, the Mainland would impose a zero tariff on goods manufactured in Hong Kong which satisfied the CEPA origin rules. This should bring further economic benefits to Hong Kong.

13. Mr LEE Cheuk-yan said that employees with a higher income were usually most affected by free trade agreements. Thus, CEPA might have a negative impact on the employment of some employees. Some advertising companies, for example, might

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shift their operations to the Mainland. He considered that the Administration should provide information on the positive as well as negative impacts of CEPA on employment.

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14. DSCIT agreed to examine whether statistics on the number of jobs deleted as a result of the implementation of CEPA were available. The Chairman said that if the Administration could not provide information on the number of jobs deleted, it should explain why it could not do so.

15. Mr LEE Cheuk-yan asked whether the administrative sanction of reducing the export quota of a trader was no longer imposed.

16. Assistant Director-General of Trade and Industry (Systems) explained that all quota-related administrative sanctions were confined to textiles and clothing products only. Besides, with the elimination of all global quotas under the World Trade Organisation Agreement on Textiles and Clothing with effect from 1 January this year, quota-related administrative sanctions were no longer applicable. As a pre-requisite for any CO application (including CO(CEPA) application), all manufacturers were required to obtain a valid Factory Registration (FR) from the Trade and Industry Department (TID) and to observe all CO issuing conditions. Those in breach of the CO and related requirements would be prosecuted and liable on conviction to a maximum fine of \$500,000 and five years' imprisonment. TID could also revoke a manufacturer's FR and refuse its CO applications. Under such a situation, the manufacturer would not be able to enjoy any zero tariff under CEPA.

17. Mr Vincent FANG said that most manufacturers would not take the risk of making false declaration on the origin of goods, which might be detrimental to their reputation and hence future business opportunities. He said that as CEPA was still in the early stage of implementation, time might be needed for some businesses to examine whether and how they could benefit from the implementation of CEPA. Thus, the impact of CEPA might not be noticeable until two or three years later. To his knowledge, a number of manufacturers of Chinese medicine and food products were planning to relocate their manufacturing plants from the Mainland to Hong Kong.

18. Mr WONG Kwok-hing considered that the Administration should open up the Frontier Closed Area (FCA) and the Shenzhen River Area for development.

19. DSCIT responded that the Administration was aware of the development potential of FCA and the Shenzhen River Area. To his knowledge, both the Hong Kong Special Administrative Region Government and the Shenzhen authorities had been looking at this issue.

20. Mr WONG Kwok-hing said that while Macau had offered incentives in respect of land premium and rent to attract investment, the measures implemented by the Administration in respect of CEPA had been mainly confined to the provision of

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information. He queried how such measures could create more job opportunities in Hong Kong.

21. DSCIT responded that there were extensive discussions and communications between the Administration and the Mainland authorities on the implementation of CEPA. Applications for FR and CO and certificates for Hong Kong service suppliers were processed by dedicated teams of TID. Much effort had been and would continue to be made by the Administration in the publicity and promotion of CEPA.

22. Mr Andrew LEUNG said that the impacts of CEPA were long-term in nature and thus might not be readily noticeable in the short term. He said that the successful implementation of CEPA required not only the provision of incentives by the Administration, but also efforts of the business sector. He informed members that the business sector was doing a lot in the promotion of CEPA.

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23. The Chairman requested the Administration to provide the information requested by members before the next legislative session which commenced in October 2005.

V. Hong Kong's Occupational Safety Performance in 2004
(LC Paper No. CB(2)1889/04-05(05))

24. Mr WONG Kwok-hing queried why there was an increase of 4.8% in the injury rate per 1 000 employees in 2004 in comparison with 2003.

25. Permanent Secretary for Economic Development and Labour (Labour) (PSL) responded that the number of occupational injuries had generally been decreasing since 1997. The increase in 2004 over that of 2003 was due to the downturn in economic activities and closure of many businesses after the outbreak of the Severe Acute Respiratory Syndrome (SARS) in 2003, which distorted the basis for comparison.

26. PSL pointed out that comparing 2004 to 2002, which was a "normal" year, the number of occupational injuries and injury rate per 1 000 employees in 2004 were in fact lower than those of 2002. In the first quarter of 2005, the total number of industrial accidents and occupational injuries decreased by 10.8% and 6.2% over the corresponding period in the previous year. The number of industrial injuries in the construction, catering and manufacturing industries decreased by 13%, 11% and 14% respectively over the corresponding period in the previous year. The number of occupational injuries and injury rate per 1 000 employees in the construction industry also decreased from 19 588 and 248 in 1998 to 3 833 and 60.3 respectively in 2004.

27. Mr WONG Kwok-hing asked about the situation in respect of unreported injuries. PSL responded that it was a requirement under the law to report all injuries at work as long as there was an employment relationship. Employers were also required

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to report occupational injuries before lodging insurance claims. Thus, the number of unreported occupational injuries was small.

28. Mr WONG Kwok-hing asked whether the statistics provided by the Administration covered injuries in private kitchens. PSL replied in the affirmative.

29. Ms LI Fung-ying asked about the situation regarding occupational injuries of sedentary employees.

30. PSL responded that problems faced by sedentary employees were mainly related to occupational diseases rather than occupational injuries. He informed members that the Administration was conducting an analysis on occupational diseases.

31. Mr LEE Cheuk-yan asked whether self-employed persons would be required to report occupational injuries. PSL responded that the matter was being studied by the Administration. He said that reporting requirements on self-employed persons might be difficult to enforce.

32. Mr LEE Cheuk-yan expressed concern that some construction companies had drawn up administrative measures, such as charging an administration fee on those who reported occupational injuries, to discourage contractors from reporting cases of occupational injuries.

33. PSL responded that the Administration was concerned about the problem. Contractors would be reminded during inspections at construction sites and the matter would be raised at meetings of the Tripartite Committee on Construction Industry. Mr LEE Cheuk-yan requested the Administration to report the progress of the discussion on the matter at the Tripartite Committee.

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34. Mr Albert HO asked whether the Administration would provide legal advice to a self-employed worker on whether he had an employment relationship with his contractor.

35. PSL responded that the Administration would inform the worker concerned of his rights. However, whether there was an employment relationship was a matter to be determined by the court. He said that it was usually difficult to prove an employment relationship for self-employed workers, although it might be easier if the equipment or tools used by the self-employed worker were provided by the contractor.

36. The Deputy Chairman said that even where an employer considered that a worker was self-employed and refused to report an occupational injury, the worker concerned could still report the injury on his own and the matter would be determined by the court.

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37. Mr Albert HO asked about the number of industrial accidents on which analyses were conducted to identify the causes. He also asked about the number of prosecutions instituted and whether there was a need to increase the penalty levels.

38. PSL responded that an analysis was conducted on each serious industrial accident. Prosecution would be instituted, if any breach of the law was identified. He informed members that about 1 600 successful summons were issued in 2003. In 2004, 2 105 summons were issued, of which 1 809 were successful ones involving a total fine of \$19 million. As the fines imposed were much lower than the maximum fine of \$500,000 under the law, the Administration hoped that the fines imposed on those convicted could be increased.

39. Mr Albert HO asked whether appeals had been lodged in respect of the fines imposed. PSL responded that whether an appeal was to be lodged was subject to the advice of the Department of Justice. Such appeals were small in number.

40. Mr Albert HO expressed concern about fatal industrial accidents involving containers. He asked whether the Administration had looked into the problem and issued guidelines to the relevant industries.

41. PSL responded that the Administration was analysing the cases concerned. He said that prosecution would certainly be instituted, if any negligence was identified. He informed members that the Administration had recently organised a talk on industrial safety in the handling of containers. Extensive publicity was launched and guidelines were constantly updated to promote industrial safety in the area.

VI. Protection for employees who are not employed under a continuous contract

(LC Paper Nos. CB(2)1553/04-05(05) and CB(2)1967/04-05(01))

42. At the invitation of the Chairman, PSL briefed members on the protection under the Employment Ordinance (EO) for employees who were not employed under a continuous contract.

43. Referring to the submission from the Hong Kong Federation of Trade Unions (HKFTU), Mr WONG Kwok-hing said that standard working hours should be established for employees. Those not employed under a continuous contract should be entitled, on a pro-rata basis, to the rights and benefits of a full-time employee.

44. PSL responded that the Administration would study the submission from HKFTU and the views of other parties concerned. It would conduct a special topic enquiry to gather updated information on employees who were not working under a continuous contract and study overseas experience. The matter would then be discussed by the Labour Advisory Board before reverting to the Panel.

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45. Ms LI Fung-ying expressed disappointment that although the subject matter was raised by some members in 2001 and the Administration had agreed to study the matter at that time, the information provided in the Administration's paper was basically the same as that provided in 2001. She considered that besides reviewing the protection under EO for employees not employed under a continuous contract, the Administration should also conduct a comprehensive review on the protection under EO for those employed under a fixed-term employment contract. Mr LEE Cheuk-yan added that many full-time employees were not paid for their overtime work. He considered that the Administration should protect the rights of such full-time employees.

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46. PSL agreed to consider the suggestions of Ms LI Fung-ying. He pointed out that there were about 30 000 to 40 000 part-time local domestic helpers in Hong Kong. Some households might decide not to employ local domestic helpers (LDHs), if the threshold of working 18 hours per week for four weeks or more for a continuous contract (the threshold) was removed. This would adversely affect the employment opportunities of the LDHs.

47. Ms LI Fung-ying asked about the timetable for the Administration's review. PSL responded that the Administration would first conduct a review on the protection of workers not employed under a continuous contract and revert to the Panel in the next legislative session.

48. Mr LEE Cheuk-yan expressed concern that a number of large firms in Hong Kong had employed many part-time employees who worked less than 18 hours a week. He pointed out that the United Kingdom had removed a similar threshold for continuous employment contracts after the court ruled in the case of *Regina v. Secretary of State for Employment Ex parte Equal Opportunities Commission and another* that the threshold was discriminatory against women. He said that the Administration should study the case concerned.

49. Miss CHAN Yuen-han expressed concern that the percentage of part-time employees in large department stores had increased from 20% in the past to 40%. She considered that the Administration should remove the threshold and adopt the suggestions referred to in the submission from HKFTU.

50. Referring to paragraph 12 of the Administration's paper, Mr Andrew CHENG questioned whether the removal of the threshold would adversely affect the employment opportunities of those who preferred to work shorter hours. He considered that the threshold should be removed. Employment opportunities were related to the economic situation rather than whether the threshold was removed. He added that the Democratic Party supported the views expressed in the submission from HKFTU, especially those regarding working hours. In this connection, he was drafting a Member's Bill on working hours. He said that the establishment of standard working

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hours would facilitate the determination of the rights and benefits of a part-time employee on a pro-rata basis.

51. Mr Andrew CHENG said that both the Administration and the Research and Library Services Division of the Legislative Council Secretariat should conduct studies on the protection of the rights of part-time employees in overseas countries. Mr LEE Cheuk-yan said that the Hong Kong Confederation of Trade Unions and the Social and Economic Policy Institute had conducted a comparative study on labour legislation protecting atypical workers. He undertook to provide members with a copy of the report on the study.

(Post-meeting note : The report provided by Mr LEE Cheuk-yan was circulated to members vide LC paper No. CB(2)2175/04-05 on 5 July 2005.)

52. Mr LEUNG Kwok-hung said that he had received many complaints from part-time employees regarding the protection of their rights. He considered that the Administration should, instead of conducting the reviews, directly take actions to protect the rights of employees not employed under a continuous contract.

53. Mr LEUNG Yiu-chung asked whether there was a threshold for the number of part-time employees above which the introduction of legislative amendments would be considered. He said that the threshold should be removed and the subject matter should be examined in a wider context in association with the issues of minimum wage and maximum working hours of employees.

54. PSL responded that there was no threshold for the number of part-time employees above which the Administration would consider introducing legislative amendments. He said that the Administration would update the statistics provided in its paper to identify the latest situation.

55. Miss CHAN Yuen-han considered that a special meeting should be held to discuss the introduction of minimum wages and maximum working hours in public bodies. Her view was shared by Mr WONG Kwok-hing. The Chairman said that he would discuss the matter with the Administration. PSL informed members that a question on the subject matter would be asked by Dr Fernando CHEUNG at the Council meeting to be held on 22 June 2005.

56. There being no other business, the meeting ended at 4:30 pm.