

立法會
Legislative Council

LC Paper No. CB(1) 679/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/2/05/2

**Bills Committee on
Hazardous Chemicals Control Bill**

**Minutes of the third meeting
held on Wednesday, 6 December 2006, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHOY So-yuk, JP (Chairman)
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Member absent** : Hon SIN Chung-kai, JP
- Public officers attending** : Environmental Protection Department

Mr Esmond LEE
Deputy Director of Environmental Protection

Dr Stephanie MA
Senior Environmental Protection Officer

Department of Justice

Ms Frances HUI
Senior Government Counsel

Ms Phyllis POON
Government Counsel
- Clerk in attendance** : Miss Becky EU
Chief Assistant Secretary (1)1
- Staff in attendance** : Miss Monna LAI
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Assistant Secretary (1)2
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I Confirmation of minutes

(LC Paper No. CB(1) 429/06-07 -- Minutes of the meeting held on 20 November 2006)

The minutes of the meeting held on 20 November 2006 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 431/06-07(01) -- List of follow-up actions arising from the discussion on 20 November 2006
LC Paper No. CB(1) 431/06-07(02) -- Administration's response to LC Paper No. CB(1) 431/06-07(01)
LC Paper No. CB(1) 431/06-07(03) -- Assistant Legal Adviser's letter dated 5 December 2006 to the Administration
LC Paper No. CB(1) 1876/05-06(01) -- A list of questions raised by Hon CHOY So-yuk
LC Paper No. CB(1) 2287/05-06(03) -- Administration's response to LC Paper No. CB(1) 1876/05-06(01))

2. The Administration was requested to -

- (a) provide a written response to the list of follow-up actions arising from the discussion at the meeting on 20 November 2006;
- (b) re-consider specifying the requirements under the two Conventions which the Director would consider when exercising his power under the Bill to regulate the manufacture, export, import and use of scheduled chemicals;
- (c) advise whether a magistrate/judge was empowered to issue a warrant in respect of any premises under section 34, given that the definition of "court" under clause 2 included a magistrate, and whether similar provisions could be found in other legislation;
- (d) consider regulating the possession and transaction of scheduled chemicals with a view to protecting public health.

3. Members agreed that the fourth and fifth meeting of the Bills Committee would be held on Friday, 12 January 2007, at 8:30 am and Monday, 29 January 2007, at 2:30 pm respectively.

II Any other business

4. There being no other business, the meeting ended at 10:33 am.

**Proceedings of the meeting of the
Bills Committee on Hazardous Chemicals Control Bill
Meeting on Wednesday, 6 December 2006, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000212	Chairman	Confirmation of minutes of the meeting held on 20 November 2006 (LC Paper No. CB(1) 429/06-07)	
000213 - 000530	Administration Chairman	<p>Administration's response to the list of follow-up actions arising from the discussion on 20 November 2006 -</p> <p>The Administration agreed to review the definition of "manufacture" under clause 2 to make it clear that the Bill would not cover the unintentional production and release of scheduled chemicals</p>	The Administration to provide written response to the list of follow-up actions arising from the discussion at the meeting on 20 November 2006
000531 - 002033	ALA7 Chairman Administration	<p>Discussion on the need to specify the requirements under the two Conventions which the Director would have regard to and was empowered when exercising his power under the Bill</p> <p>ALA7's views -</p> <p>(a) according to the Draft Hong Kong Implementation Plan, different local legislation was required to meet the requirements of the Stockholm Convention (SC). However, the Bill as drafted only covered the manufacture, import, export and use of scheduled chemicals. Thus, the scope of the Director's power with reference to the requirements of the two Conventions remained unclear; and</p> <p>(b) a person might have difficulties in knowing the extent of such requirements when the Director would be empowered under the Bill to impose conditions which were more stringent than the requirements under the two Conventions, and some critics had commented that the language of the SC was "regrettably vague"</p>	The Administration to re-consider specifying the requirements under the two Conventions which the Director would consider when exercising his power under the Bill to regulate the manufacture, export, import and use of scheduled chemicals.

Time marker	Speaker	Subject(s)	Action required
	ALA7 Chairman Administration	<p>Administration's explanation -</p> <p>(a) there were six action plans under the draft Hong Kong SAR Implementation Plan to fulfill the various requirements of SC. The Bill was one action item under Action Plan 1 "Strengthening Legislative Framework for Persistent Organic Pollutants Management and Control" to regulate the import, export, manufacture and use of non-pesticide hazardous chemicals in Hong Kong. As regards the power of the Director, consideration could be given to (i) removing any references to the requirements of the two Conventions in the Bill (having the effect of not making it explicit that the Director would have regard to such requirements when issuing, varying or cancelling permits), and (ii) qualifying the scope of requirements by reference to those relating to the manufacture, import, export and use of scheduled chemicals; and</p> <p>(b) the language of the Conventions had to be sufficiently flexible to allow adaptation to local legislation by member countries</p> <p>Chairman's views-</p> <p>(a) members had generally accepted that the Bill would not cover unintentional production and release of scheduled chemicals; and</p> <p>(b) it would be more preferable to specify the scope of requirements of the two Conventions which the Director should have regard to when exercising her power under the Bill</p>	

Time marker	Speaker	Subject(s)	Action required
002034 - 003050	Ms Audrey EU Administration Chairman	<p>Ms Audrey EU's concerns -</p> <p>(a) whether the unintentional production of furans and dioxins in the course of manufacture of scheduled chemicals might lead to cancellation of permits and if so, the requirements which would be taken into account; and</p> <p>(b) there might be a need to set out more clearly the relevant parts of the two Conventions applicable to the provisions of the Bill</p> <p>Administration's explanation -</p> <p>(a) the two Conventions had not banned the unintentional production of hazardous chemicals as by-products, such as dioxins and furans, but requested member countries to endeavour to reduce their production. Hence, the Bill would not cover unintentional production and release of these substances as by-products;</p> <p>(b) the main requirements of the two Conventions had been set out in the Bill. It might be difficult to set out precisely the relevant parts of the two Conventions which were applicable to the Bill; and</p> <p>(c) consideration could either be given to removing the references to the requirements of the Conventions as was the case in the Waste Disposal (Amendment) Bill, or qualifying the scope of the requirements by reference to those relating to the manufacture, import, export and use of scheduled chemicals in the Bill</p>	

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003051 - 003643	ALA7 Administration	<p>Discussion on the adaptation of international conventions to local legislation</p> <p>ALA7's concerns -</p> <ul style="list-style-type: none">(a) the requirements of the two Conventions should be suitably adapted to meet local circumstances; and(b) clear indication on the relevant parts of the two Conventions which were applicable to the Bill would facilitate compliance <p>Administration's explanation -</p> <ul style="list-style-type: none">(a) the main requirements of the two Conventions had been set out in the Bill; and(b) the references to the requirements of the two Conventions would have the effect of making it explicit that the Director would have regard to these requirements when regulating the manufacture, import, export and use of scheduled chemicals	

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003644 - 004122	Chairman Administration	<p>Chairman's views -</p> <ul style="list-style-type: none">(a) there was a need to clearly set out the relevant requirements of the two Conventions in the Bill for the sake of clarity and to avoid grey areas; and(b) need to explain whether permits would be affected if large amount of scheduled chemicals were unintentionally produced during a manufacturing process <p>Administration's explanation -</p> <ul style="list-style-type: none">(a) the Department of Justice considered that inclusion of the references to the requirements of the two Conventions would qualify the power of the Director; and(b) qualifying the requirements by reference to those relating to the manufacture, import, export and use of scheduled chemicals would exclude the unintentional production of scheduled chemicals from the Bill. Any unintentionally produced scheduled chemicals as by-products during a manufacturing process could not be used or exported without a valid permit under the Bill.	

Time marker	Speaker	Subject(s)	Action required
004123 - 005113	Ms Audrey EU Administration Chairman ALA7	<p>Ms Audrey EU's concern about the unintentional production of scheduled chemicals which were subject to control under the two Conventions</p> <p>Administration's explanation that the two Conventions had not banned the unintentional production of hazardous chemicals as by-products, such as dioxins and furans, but had requested member countries to endeavour to reduce their production. Hence, the Bill would not cover unintentional production and release of these substances as by-products. However, for any scheduled chemicals (which were subject to control under the two Conventions) unintentionally produced as by-products during a manufacture process, these chemical by-products could not be used or exported without a valid permit under the Bill.</p>	
005114 - 005735	Administration Chairman	<p>Legislative tools to be used for the inclusion of convention and non-convention chemicals in Schedules 1 and 2 of the Bill</p> <p>The Administration would consider members' suggestion that amendments involving inclusion of convention chemicals into Schedules would be made by way of negative vetting procedure while inclusion of non-convention chemicals would be made by way of positive resolution. Consultation with the Legislative Council and the trades would be carried out before chemicals were included in the Schedules</p>	

Time marker	Speaker	Subject(s)	Action required
005736 - 013223	Administration ALA7 Chairman Ms Audrey EU	<p>Administration's response to list of questions raised by the Chairman on 27 June 2006 (LC Paper No. CB(1) 2287/05-06(03) -</p> <p>Definition of "hazardous chemicals" -</p> <p>In determining whether a chemical should be regarded as hazardous, the Administration would consider its toxicity or eco-toxicity data, taking into account the criteria to be followed under the two Conventions.</p> <p>Definition of "court" -</p> <p>The Administration considered it appropriate to define the expression "court" used in the Bill to include a magistrate, as it was the policy intention that a magistrate should be empowered to issue a warrant under the Bill. In addition, the Administration considered it appropriate to refer to a magistrate, not a magistracy, in the definition because it was a magistrate, not a magistracy, who was appointed to exercise jurisdiction under the Magistrates Ordinance)</p> <p>Definition of "premises" -</p> <p>The Administration considered that there was no need to replace "aircraft, vehicle or vessel" in the definition of "premises" by "conveyance" as suggested by the Chairman since the definition of "premises" was an inclusive definition. Besides, a similar definition was provided under the Import and Export Ordinance (Cap. 60)</p> <p>On members' concern about scheduled chemicals which were hand-carried to and from Hong Kong, the Administration's explanation was that any of these cases would be referred to the Director after interception at the control points.</p>	<p>The Administration to advise whether a magistrate/judge was empowered to issue a warrant in respect of any premises under section 34, given that the definition of "court" under clause 2 included a magistrate, and whether similar provisions could be found in other legislation.</p>

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013224 - 014029	Ms Audrey EU Administration Chairman	<p>Chairman's concern whether the possession of hazardous chemicals would constitute an offence</p> <p>Administration's explanation -</p> <p>(a) the Bill aimed at regulating the manufacture, import, export and use of scheduled chemicals but not possession; and</p> <p>(b) restriction on the possession of scheduled chemicals could have a much wider implication</p>	
014030 - 014216	Chairman Administration Ms Audrey	<p>Chairman's concern about the need to control scheduled chemicals which were unintentionally produced in large amounts</p> <p>Administration's views -</p> <p>(a) the drafting of the definition of "manufacture" would be reviewed in an attempt to suitably "carve out" scheduled chemicals which were unintentionally produced as by-products during a manufacture process; and</p> <p>(b) unintentionally produced hazardous chemical by-products, if used or exported, would be subject to control under the Bill.</p>	
014217 - 014307	ALA7 Administration Chairman Ms Audrey EU	<p>Application of the Rotterdam Convention (RC) and SC to Hong Kong</p> <p>Administration advised that the Central People's Government had consulted the Government of the Hong Kong Special Administrative Region on the application of the two Conventions to Hong Kong. SC had been applied to Hong Kong but RC had yet to be applied pending the enactment of the Bill and other associated arrangements</p>	

Time marker	Speaker	Subject(s)	Action required
014308 - 014628	Chairman Administration Ms Audrey EU	<p>Ms Audrey EU's enquiry on the whether the "use" of scheduled chemicals would also include the "sale" of such chemicals</p> <p>Administration's response -</p> <p>(a) it was the policy intent that "sale" did not constitute the "use" of scheduled chemicals. The two Conventions were also silent on the sale of scheduled chemicals; and</p> <p>(b) consideration would be given to reviewing whether the "use" of scheduled chemicals would cover the "sale and purchase" of such chemicals</p>	<p>The Administration to consider regulating the possession and transaction of scheduled chemicals with a view to protecting public health</p>
014629 - 014808	Chairman Ms Audrey EU Administration	<p>Chairman's concern about the potential dangers associated with negligence on the use/possession of scheduled chemicals</p> <p>Administration's explanation that the manufacture, import, export and use of scheduled chemicals were regulated through a permit system under proposed sections 6 to 9 while the Director was empowered to impose permit conditions under proposed section 11</p>	
014809 - 015846	Chairman Ms Audrey EU ALA7 Administration	<p>Members' concern about the lack of control over the storage/possession of scheduled chemicals, particularly those which had been smuggled into Hong Kong</p> <p>Administration's explanation that control over the possession of scheduled chemicals would carry a much wider implication as permits would be required for storage and transport of chemicals</p>	
015847 - 015952	Chairman	Arrangements for the next meeting	