

立法會
Legislative Council

LC Paper No. CB(1)499/05-06
(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 November 2005, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Vincent FANG Kang, JP (Deputy Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
- Members attending** : Hon CHAN Yuen-han, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)
Hon Timothy FOK Tsun-ting, GBS, JP
- Public officers attending** : Agenda Item IV

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 Peter CHEUNG
Deputy Director of Intellectual Property

Mr Sam LUI
Acting Senior Superintendent
Intellectual Property Investigation Bureau,
Customs and Excise Department

Agenda Item V

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

Mr Clement LEUNG
Deputy Director-General of Trade and Industry

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

Agenda Item VI

Mr Stephen LAM
Secretary for Constitutional Affairs

Mr Philip YUNG
Deputy Secretary for Commerce, Industry and
Technology

Mr Arthur HO
Head, Hong Kong Guangdong Cooperation
Coordination Unit

Mr Peter LEUNG
Director, Hong Kong Economic & Trade Affairs,
Guangdong

Mr Michael WONG
Deputy Secretary for Security

Miss Katharine CHOI
Assistant Secretary for Constitutional Affairs

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr Paul WOO
Senior Council Secretary (1)3

Ms Sharon CHAN
Legislative Assistant (1)6

Action

The Deputy Chairman informed members that he would chair the meeting as the Chairman could not attend the meeting due to other engagement.

I. Confirmation of minutes and matters arising

(LC Paper No. CB(1)184/05-06 -- Minutes of meeting held on
13 October 2005

LC Paper No. CB(1)261/05-06 -- Minutes of meeting held on
18 October 2005)

2. The minutes of the meetings held on 13 and 18 October 2005 were confirmed.

II. Papers issued since last meeting

(LC Paper No. CB(1)49/05-06(01) -- Proposed Amendments to the Schedules to the Patents Ordinance (Cap.514), Registered Designs Ordinance (Cap.522), Trade Marks Ordinance (Cap.559) and Layout-design (Topography) of Integrated Circuits (Designation of Qualifying Countries, Territories or Areas) Regulation (Cap.445B)

LC Paper No. CB(1)131/05-06(01) -- Subsidiary Legislation relating to Government Electronic Trading Services

LC Paper No. CB(1)181/05-06(01) -- The BitTorrent case (TMCC 1268/2005))

3. Members noted that the above papers had been issued for the Panel's information.

III. Date and items for discussion for next meeting

(LC Paper No. CB(1)260/05-06(01) -- List of outstanding items for discussion

LC Paper No. CB(1)260/05-06(02) -- List of follow-up actions)

December meeting

4. Members agreed to discuss the item "Import and Export (General) (Amendment) Regulation and Import and Export (Fees) (Amendment) Regulation" at the next meeting to be held on 20 December 2005.

5. The Deputy Chairman invited members to notify the Clerk should they wish to propose other agenda items for the next meeting.

Hong Kong's participation in the World Trade Organization

6. Members noted a letter from Mr SIN Chung-kai to the Panel Chairman (tabled at the meeting and circulated vide LC Paper No. CB(1)305/05-06 on 16 November 2005) suggesting that the Panel should discuss the above item at the Panel meeting on 20 December 2005.

7. The Clerk informed members that the Administration had liaised with the Deputy Chairman and Mr SIN concerning the item and Mr SIN had agreed to the Administration's proposal to discuss the item at the Panel's meeting scheduled for January 2006. Members noted the proposed arrangement.

IV. Proposals on various copyright-related issues

(LC Paper No. CB(1)260/05-06(03) -- Information paper provided by the Administration)

Late submission of paper by the Administration

8. The Deputy Chairman informed members that the Administration's paper on the item reached the Secretariat on 10 November 2005, i.e. two days after the deadline on 8 November 2005. He said that in accordance with a decision reached by the House Committee on 26 November 2004 on late submission of papers by the Administration for committee meetings, members should decide whether the paper provided by the Administration should still be discussed as scheduled.

9. The Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry)2 (DSCIT(CI)2) apologized for the late submission which was due to

the great number of submissions received by the Panel on the Administration's preliminary proposals and the time taken to incorporate in the paper the Administration's responses to the submissions. She said the Administration would strive to meet the deadline in future submission of papers.

10. Members agreed that in view of the importance and urgency of the item, the Panel should discuss the paper at the meeting.

Discussion

11. DSCIT(CI)2 briefed members on the Administration's paper, which highlighted the refined proposals on various copyright-related issues. The paper also reported on the major feedbacks from stakeholder groups which the Administration had received on the preliminary proposals announced in June 2005 and the Administration's responses to those feedbacks.

Directors'/Partners' criminal liability in business end-user infringements

12. Referring to the proposed directors'/partners' criminal liability in business end-user infringements, Mr Jeffrey LAM expressed reservation on the proposal that if a body corporate or a partnership committed an act attracting the business end-user criminal offence, the director(s) of the body corporate or the partner(s) of the partnership would be equally liable unless there was evidence showing that the director(s)/partner(s) had not authorized the infringing act to be done. Mr LAM said that in criminal proceedings, the burden of proof was on the prosecution and not on the defendant. Placing the burden on the directors/partners in defence was against the well-established principles of criminal prosecution and presumed innocence. Mr LAM further said that according to his understanding, similar approach had not been adopted in other jurisdictions. In the United States, for example, directors/partners would be prosecuted only if there was evidence of actual involvement in the infringing act in question. He considered that the Administration should re-consider and revise the proposal. Mr CHIM Pui-chung and Mr WONG Ting-kwong shared the view that the established principle of criminal prosecution should be followed and that the burden should not be on the defendant to prove his innocence.

13. DSCIT(CI)2 highlighted that the proposal aimed at promoting corporate accountability and responsible governance. She explained that the Administration's package of proposals included an "employees' defence" for employees who had been required by their employers to use infringing copies of copyright works in their employment. The Administration considered that criminal liability should also be applicable to directors or partners in order to encourage businesses to put in place policies and practices to ensure that genuine copies of copyright works were used. Under the proposal, the scope of criminal liability would only cover those directors, partners or persons that carried out chief executive functions of the body corporate or partnership in question. She further advised that the proposed offence would place an evidential burden rather than a legal burden of proof on the defendant. The latter was of a more stringent

standard requiring the defendant to prove, on the balance of probabilities, a matter which was essential to determine his guilt or innocence. An evidential burden, however, only required the defendant to adduce sufficient evidence to raise a defence/doubt to absolve his liability. Regarding the proposed offence in question, it would be a defence for the directors or partners charged if they could raise evidence to show that for instance, they had put in place relevant policies and practices to guard against business end-user infringements. DSCIT(CI)2 added that the Broadcasting Ordinance (Cap. 562) also contained similar provisions on the liability of directors and partners for the use of unauthorized decoders in business.

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14. Mr CHAN Kam-lam commented that the proposed evidential burden of proof might not be the most effective approach to adopt as it would be relatively easy to point to some evidence to raise doubt on an alleged misconduct. He suggested that the Administration should give further thought to the proposal and re-consider the evidence which could be regarded as sufficient to raise a defence/doubt.

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15. Mr CHIM Pui-chung asked whether the proposed offence provisions, if enacted, would carry retrospective effect. DSCIT(CI)2 replied that transitional provisions were normally included when enacting legislation which created new offences. The Administration would take this into consideration when drafting the amendment bill.

16. Ms Audrey EU noted that under the Administration's proposal, the scope of criminal liability would cover only those directors, partners or persons who carried out "chief executive functions". In her opinion, this would create enforcement difficulties as it would not always be easy in practice to identify the person, or group of persons, who carried out chief executive functions. To illustrate, Ms EU said that the typical senior management structure of a company might comprise a managing director, a few executive directors, a chief executive officer and managers down the line, all of whom could be said to be performing executive functions. It would be difficult to determine who was/were carrying out "chief executive functions" as required under the proposal and hence, would be held liable. Ms EU cautioned that legislative provisions would have to be clearly drafted to minimize ambiguities and uncertainties, particularly when they would create an offence and attract a criminal liability.

17. Referring to practical difficulties, Mr WONG Ting-kwong pointed out that his company had the actual experience of an employee using an infringing copy of a computer software programme for business purpose without the management's knowledge. As it was difficult for directors and partners to have full knowledge of and control over their staff's activities in the course of business, he considered that the proposed criminal offence would put innocent directors or partners at risk of prosecution. Mr WONG considered that the proposed directors'/partners' liability should be put on hold pending a more satisfactory solution to be worked out.

Admin 18. In response, DSCIT(CI)2 said that under the Administration's original proposal, the proposed criminal liability would apply to all directors/partners alike, including non-executive directors and partners. However, having regard to subsequent feedbacks from a number of stakeholder groups that the proposal was too onerous, the Administration decided to narrow the scope by limiting the liability to only those directors, partners or persons carrying out chief executive functions. Regarding the problem of identifying the person(s) who carried out chief executive functions, DSCIT(CI)2 advised that this would have to be considered in the circumstances of individual cases. She assured members that their concerns would be taken into account in the drafting stage and the Administration would strive to ensure that the proposed amendments would reflect the policy intention and address concerns about compliance and enforceability.

Admin 19. Dr LUI Ming-wah suggested that apart from referring to local legislation (viz Broadcasting Ordinance), the Administration should also draw reference from the experience of other jurisdictions on how they had approached the problem. At the Deputy Chairman's request, the Administration agreed to provide a paper on overseas practice for the Panel's consideration.

Copying/distribution of copyright infringing printed works

20. Ms Audrey EU was concerned whether copying/distribution of copyright works included their circulation by electronic means. Referring to the proposed "safe harbour" perimeters, she asked whether an act of putting an infringing copy of an article in a newspaper or magazine on the Internet, which might be visited by more than 1 000 people within a 14 day period, would be caught by the offence provisions.

21. In response, DSCIT(CI)2 confirmed that the proposed end-user copying/distribution criminal liability would apply to printed copyright works and business end-users only. The Administration had not proposed to apply the copying/distribution offence to digital versions of books, reference materials and academic journals. For the distribution of copyright infringing printed works through digital channels, she pointed out that there were already provisions in the Copyright Ordinance to deal with such infringing acts on the Internet affecting prejudicially the owner of the copyright work. The Administration would need to hold further discussions with the publishing industry and other stakeholders on how to deal with the distribution of copyright materials via the intranet of a company. In this regard, she pointed out that currently, there were no licensing schemes whereby business end-users could conveniently obtain authorization from copyright owners of printed works to cover electronic distribution of the work concerned. Hence, the Administration's intention at this stage was that the proposed business end-user copying/distribution criminal offence and "safe harbour" would not apply to the posting of copyright infringing printed works on a website.

22. DSCIT(CI)2 further clarified that in determining whether the number of infringing copies made for distribution or distributed had exceeded the "safe

harbour" perimeters of 1 000 copies in any 14 day period, individual copyright works (e.g. each single article which appeared in a newspaper) from all newspapers, periodicals and magazines would be counted, rather than the number of pages of photocopies. For copyright works in books (including academic journals), reference would be made to the percentage of the total number of pages of a book copied within a specified period and the retail value would take into account all infringing copies made and distributed from any book within the specified period, rather than from one book.

Admin 23. In this regard, Ms Audrey EU pointed out that academic journals were similar to newspapers, magazines and periodicals in that they might also contain separate and independent articles, each being a copyright work per se. Noting that academic journals were excluded from the perimeters applicable to copyright works in newspapers, magazines and periodicals, she urged the Administration to take this factor into account in finalizing the "safe harbour" perimeters.

Protection of copyright owners

24. Mr SIN Chung-kai queried the policy intent underlying the Administration's revised proposals as he considered that they were grossly inadequate in protecting the interests of copyright owners. He said that the feedbacks he had received from representatives of various industries (including publication, software and information technology, film, music and video etc) had indicated disappointment over the proposals which were considered retrogressive and not conducive to achieving greater protection for intellectual property right and promoting the development of creative industries. He indicated that if the Bill would contain the revised proposals as they currently stood, then, he would likely propose extensive amendments to the Bill with a view to strengthening copyright protection.

25. DSCIT(CI)2 did not agree that the revised proposals represented a retrograde step and stressed that the Administration had refined its preliminary recommendations after careful consideration of the feedbacks received. She pointed that the revised proposals contained a number of new measures to tackle copyright infringement, including, inter alia, the introduction of new business end-user criminal liability for distributing infringing copies of printed works and criminal and civil liability to prevent the circumvention of technological measures for copyright protection. Notwithstanding the Administration's proposal to remove the civil and criminal liability pertaining to the importation and possession for use of parallel imports of copyright works by business end-users, such relaxation would not apply to commercial dealing or public performance of certain categories of copyright works. In addition, she highlighted that the Administration had also proposed to introduce rental rights for films and comic books.

26. Mr CHAN Kam-lam remarked that copyright protection was a controversial subject as there were a lot of conflicting interests between owners and users of copyright works at stake. He considered that a fine balance had to

be struck in the overall interest of the community. In his view, the current proposals put forward by the Administration had, to a certain extent, clarified the liabilities of users of infringing copies of copyright works and was an improvement in the right direction. The Administration should therefore introduce the relevant legislative amendments into LegCo as soon as possible. However, he warned that certain proposals such as that relating to business end-user liability of directors/partners might give rise to disputes and had to be dealt with in a cautious manner.

Legislative timetable

27. DSCIT(CI)2 informed members that drafting of the Amendment Bill was in progress and the Administration planned to introduce the Bill into LegCo in early 2006.

28. The Deputy Chairman urged the Administration to expedite the drafting work and introduce the relevant Bill as early as practicable in order to allow sufficient time for LegCo to study the Bill.

V. Implementation of the third phase of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA III)

LC Paper No. CB(1)90/05-06(01) -- Information paper provided by the Administration

(issued on 8 November 2005) -- Leaflet on Mainland and Hong Kong Closer Economic Partnership Arrangement published by the Trade and Industry Department in October 2005

LC Paper No. CB(1)259/05-06 -- Background brief on recent developments of the Mainland and Hong Kong Closer Economic Partnership Arrangement prepared by the Secretariat

Introduction by the Administration

29. The Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry)1 (DSCIT(CI)1) referred members to the Administration's paper on the outcome of the discussions with the Mainland on further liberalization measures under CEPA III, which would be implemented on 1 January 2006. He also gave an overview on the liberalization measures implemented under CEPA since 1 January 2004 –

- (a) So far, a total of 1 396 product items of Hong Kong origin which met the CEPA rules of origin (ROOs) would enjoy tariff free treatment when exported to the Mainland. Agreement had also been reached with the Mainland that starting from 2006, in respect of the products that were of no interest to Hong Kong traders for the time being, the relevant ROOs would be jointly worked out twice a year on application by the trade, instead of once a year as under CEPA I and II. New ROOs would take effect on 1 July or 1 January of the following year after they had been agreed upon.
- (b) Having regard to the views expressed by the local watch industry, the Mainland had agreed to amend the existing ROOs to waive the 30% value adding requirement for watches of Hong Kong brand names.
- (c) Up to end October 2005, about 9 000 applications for certificates of origin (COs) had been approved, involving exports with a FOB value exceeding \$3 billion. The number of COs applications in 2005 roughly represented a two-fold increase as compared to that of 2004.
- (d) As regards trade in services, a total of 27 sectors were covered under CEPA to date.
- (e) The Individual Visit Scheme (IVS) would be extended to four more Mainland cities effective from 1 November 2005, namely Chengdu, Jinan, Shenyang and Dalian. The Administration was in the course of discussion with Mainland authorities to extend the IVS to those Pan-Pearl River Delta provincial capitals not yet covered by the Scheme.
- (f) The Administration would continue to work closely with the Mainland authorities in promoting CEPA and assist the local business community to tap the full advantage of the liberalization measures under CEPA. For example, discussions between the Guangzhou authorities and the Trade Development Council were in progress on the implementation of a pilot scheme in Guangzhou, under which a co-ordination mechanism would be worked out by the two sides to enhance understanding of the policy specifics and liberalization measures relating to CEPA, and to provide practical guidance and assistance to Hong Kong businesses in the Mainland market.

Discussion

30. Referring to paragraphs 10 and 11 of the background brief prepared by the LegCo Secretariat on job creation under CEPA and support measures, Mr WONG Kwok-hing sought the Administration's advice on the following issues –

- (a) Of the estimated 29 000 new jobs (including those generated by the IVS) created in the first two years of implementation CEPA I, the number of new jobs that had been created and the number forecast to be created.
- (b) Whether the Administration would further consider some members' suggestion to introduce new initiatives such as concessions in land grant and taxation to encourage Hong Kong manufacturers to relocate or set up their production base in Hong Kong.
- (c) Whether the land which would be released a result of the reduction of the frontier closed area would be developed as a production base for the local manufacturing industries.

31. DSCIT(CI)1 and the Deputy Director-General of Trade and Industry (DDG(TI)) responded as follows –

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- (a) The implementation of CEPA had led to increased business activities which were conducive to creating more employment opportunities. The figure of 29 000 new jobs previously provided by the Administration was a projection made in 2004 on the basis of a study on the impact of the implementation of CEPA I in the first nine months of 2004. Out of this figure, it was estimated that about 20 000 new jobs were created in 2004 while the remaining 9 000 were/would be created in 2005. It must however be noted that the estimated figure of 29 000 was only an initial forecast which could not reflect the full impact of CEPA, particularly that of the subsequent phases and the enhanced measures under the IVS, on local employment. The Administration would continue to monitor development and report to the Panel again.

Admin

- (b) The bureaux concerned had noted some LegCo Members' suggestion on land grant and tax concessions. The stance of the Administration was that for the time being, there was no plan to provide such concessions specifically for the purposes of CEPA. However, a number of tax concessions which were applicable to all sectors such as depreciation of machine and equipment etc., were in place.
- (c) The proposed use and development of the frontier closed area was still being studied by various bureaux and departments. Members' suggestion to develop the area in the light of CEPA would be reflected to these bureaux and departments for their consideration.

32. Mr WONG Kwok-hing further enquired whether job opportunities in the local watch industry had improved as a result of CEPA and whether there was a growing demand for manpower like research and design staff. In reply, DDG(TI)

replied that with the relaxation of the ROOs for local watches under CEPA, Hong Kong watch dealers had expressed increased interest in accessing the Mainland market, particularly in developing brand name products. According to the knowledge of the Administration, more than ten local watch manufacturers were in the course of developing Hong Kong brand name watches. If their products were popular in the Mainland market, it was likely that these watch manufacturers would demand more personnel in product design, research and development and brand name management, as well as lower-skilled workers like assembly workers etc. However, DDG(TI) said that so far, no concrete and up-to-date information had been provided by the local watch industry on the additional manpower required and job opportunities created for Hong Kong workers. Nevertheless, He explained that the industry would tend to adopt a pragmatic approach in planning their scale of production and adjusting their mode of operation, taking account of the initial response and performance of the Mainland market. Currently, there was no indication that the watch industry was suffering from acute shortage of manpower.

33. In this connection, DSCIT(CI)1 added that product design, among others, was an important element in the development of high value-added goods. He recapped that an "InnoCentre", a one-stop-shop located at Kowloon Tong aiming at providing for activities such as professional education and training, exhibitions and networking events and the like for designers and users of design services, would be established under the collaboration of Hong Kong Science and Technology Parks Corporation and Hong Kong Design Centre.

34. Mr CHAN Kam-lam commented that the economic benefits which Hong Kong could derive from CEPA had only come about from the implementation of the policy, rather than as a result of any proactive efforts on the part of the SAR Government to assist various sectors to make the best use of CEPA. The Administration had in practice adopted a rather passive or lay-back approach in seizing the best advantages from CEPA. In substantiating his views, Mr CHAN pointed out that at the initial stage of implementation of IVS, the Democratic Alliance for the Betterment and Progress of Hong Kong had urged the Administration to pursue with the Mainland authorities the opening up of the Scheme to more Mainland cities and provinces. However, the Administration had not pursued the matter vigorously because of the concern that local reception facilities such as hotels and guesthouses might not be sufficient and well prepared to cope with the upsurge in IVS visitors. Now that the scope of IVS had expanded at a rapid pace, it was evident that the hospitality sector in Hong Kong could well cater for the demand. Mr CHAN suggested that in addition to extending the IVS to cover more provinces and cities, consideration should also be given to allowing multiple visits by Mainland residents to Hong Kong within the same year, and extending the maximum duration of each visit to more than seven days.

35. On how far Hong Kong could further benefit under CEPA, Mr CHAN Kam-lam pointed out that with the implementation of CEPA III, almost all Hong Kong products could enjoy zero tariff when being exported to the Mainland. It

thus appeared that all possible concession in terms of zero tariff had been granted as far as trade in goods was concerned. Therefore, the Administration should conduct a comprehensive review on whether various liberalization measures under CEPA had been fully utilized for the benefit of Hong Kong and take proactive action to promote CEPA to overseas investors and to encourage local manufacturers to re-locate their operations in Hong Kong. These measures could boost the local economy and create more job opportunities.

36. Noting Mr CHAN's views, DSCIT(CI)1 advised that the implementation of CEPA would be kept closely in view. Members' observations on the IVS would be conveyed to relevant Bureaux. With regard to efforts to promote trade and investment, he advised that Invest HK and the Trade Development Council were working closely and actively to promote CEPA and attract inward investment to Hong Kong, offering solution-oriented investment strategies to potential investors. Many of the investors attracted to Hong Kong had indicated that CEPA was a significant factor in their consideration of setting up businesses in Hong Kong. DSCIT(CI)1 further informed members that following the Mainland's new policy announced in September 2004, the number of Mainland enterprises investing or setting up businesses in Hong Kong had been on a steady increase. There was also a marked increase during the past few years in the number of foreign corporations setting up regional headquarters and offices in Hong Kong to make use of Hong Kong's unique advantage as a springboard to gain access to the Mainland market. To date, there were about 4 000 overseas companies which had set up offices in Hong Kong.

37. DDG(TI) further advised that since the implementation of CEPA, the Administration had been engaged in active discussion on an on-going basis with various local business and services sectors and the Mainland. Views on how to make the best use of the opportunities offered by CEPA had been carefully considered, including measures to attract foreign enterprises for products of international brand names to set up their production base in Hong Kong. He added that there was an increasing number of brand name product manufacturers and services providers expressing interest in making use of the arrangements under CEPA to access the Mainland market.

38. Sharing Mr CHAN Kam-lam's concerns, Mr WONG Ting-kwong said that CEPA should serve as a catalyst for Hong Kong to generate its own competitive strengths. Hong Kong should take initiatives to maintain the impetus provided by CEPA and implement new measures to strengthen the economy. In his view, in addition to attracting investments into Hong Kong and facilitating foreign investors to make use of Hong Kong and CEPA to access the Mainland markets, the Government should also provide assistance to local traditional trades and industries to upgrade their products or develop products of a higher value-added content, as well as offer incentives to encourage local manufacturers in the Mainland to relocate their production back to Hong Kong. This would create new employment opportunities for the local workforce, particularly those with lower skills and educational qualifications. The Deputy Chairman concurred and pointed out that traditional industries like garment and textiles could benefit from

moving up the value chain.

39. In noting members' views, DSCIT(CI)1 assured members that the Administration would strengthen dialogue with all quarters on promoting the best use of CEPA for the benefit of the economy of Hong Kong, and enhance Hong Kong's competitive advantages to attract inward investments. With regard to reviving Hong Kong's manufacturing industries, he said that the Government had been working towards this direction, with the provision of support infrastructure such as the Industrial Estates and the Science Park etc.

VI. Strengthening HKSAR's representation in the Mainland

(LC Paper No. CB(1)260/05-06(04) -- Information paper provided by the Administration

EC(2001-02)26 -- Paper previously provided by the Administration for the meeting of the Establishment Subcommittee on 6 February 2002

LC Paper No. ESC26/01-02 -- Minutes of the meeting of the Establishment Subcommittee on 6 February 2002)

Introduction by the Administration

40. The Secretary for Constitutional Affairs (SCA) briefed members on the Administration's proposals, inter alia, to create two directorate posts respectively to head the Economic and Trade Offices (ETOs) to be set up in Shanghai and Chengdu:

- (a) The ETO in Shanghai would be set up with a tentative coverage including the Yangtze River Delta (YRD) region and its peripheries, i.e. the Municipality of Shanghai and the four provinces of Jiangsu, Zhejiang, Anhui and Hubei. It would be headed by a Director pitched at Administrative Officer Staff Grade (AOSG)B (D3) level, and supported by 14 non-directorate officers.
- (b) The ETO in Chengdu would be set up with a tentative coverage including four of the Pan-Pearl River Delta (PPRD) provinces and its peripheries, i.e. the provinces of Sichuan, Yunnan, Guizhou, Hunan, Shaanxi and the Municipality of Chongqing. It would be headed by a Director pitched at AOSGC (D2) level, and supported by 13 non-directorate officers.

41. SCA highlighted that the ETOs in Shanghai and Chengdu would respectively be responsible for promoting communication and cooperation with, as

well as economic and investment interests in, the eastern and south-western regions of the Mainland. They would also work towards strengthening Hong Kong's ties with the provinces/municipalities in YRD and the western part of PPRD region. Subject to Members' support, the two ETOs were expected to commence operation in the third quarter of 2006.

Discussion

Work of ETOs in the Mainland

42. Mr WONG Ting-kwong commended the efforts made by the Guangdong ETO in fostering closer ties and economic and trade cooperation between the HKSAR and the Mainland, which had brought tremendous benefits to the local business sector and the community at large. He said that while public money should be used in a prudent manner, it should be spent where it was worth. Mr WONG expressed support for the Administration's proposals on expanding the functions of Guangdong ETO and setting up additional ETOs in Shanghai and Chengdu to further promote exchanges and co-operation with the Mainland as well as providing additional support to Hong Kong people in the Mainland.

43. Dr LUI Ming-wah supported the setting up of new ETOs at major locations in the Mainland to promote economic and trade relations and co-operation. Noting that the geographical coverage of each ETO included four to five provinces/municipalities, Dr LUI was concerned about the wide coverage and heavy workload which could not be effectively handled by the ETOs. He considered that the coverage of each ETO should be reviewed and re-aligned in the light of operational experience, and that where necessary, consideration might be given to establishing sub-offices under each ETO to service designated areas more efficiently. He also cautioned that the Administration should ensure that the ETOs would put their resources to optimal use in fulfilling their duties and functions, stressing that the ETOs should focus on concrete trade promotion work and not functions of a diplomatic nature.

44. Noting Dr LUI's views, SCA said that in general, officers at ETOs were prepared to cover a large area, and additional support for ETOs could be obtained through various channels. Apart from setting up sub-offices, services from local consultants could also be engaged to this end.

45. Dr LUI Ming-wah further suggested that Directors of the ETOs in the Mainland should provide detailed reports on their work to the Legislative Council (LegCo) periodically. He commented that the existing practice for all the heads of the HKSAR's ETOs to give an annual briefing to the Panel might not be sufficient to enable LegCo to have a good understanding of the work done by the ETOs, in particular those responsible for economic and trade-related matters in the Mainland. In this connection, SCA acknowledged that the general public might have a higher expectation and greater interest in the work of the Mainland ETOs. He undertook to further consider the feasibility of arranging separate briefings by the heads of Mainland ETOs for LegCo Members on a regular basis and to provide

detailed written reports for Members' reference.

Provision of assistance to Hong Kong residents in the Mainland

46. Mr CHAN Kam-lam pointed out that currently, there was a large number of Hong Kong residents staying in the regions covered by the Shanghai and Chengdu ETOs for various purposes like business, study and vocation. He asked whether consideration would be given to expanding the functions of the two ETOs to include providing assistance to Hong Kong residents encountering problems which were not within the scope of trade and business. In this connection, Mr CHAN pointed out that the Taiwan authority had set up official bodies in Shanghai to which Taiwan businessmen could approach for assistance should they encounter difficulties in the Mainland.

47. In response, SCA explained that apart from setting up ETOs in Shanghai and Chengdu, the Administration also proposed expanding the coverage of the Guangdong ETO to include five of the PPRD provinces/region (i.e. Guangdong, Guangxi, Fujian, Jiangxi and Hainan), and enhancing its functions to provide practicable assistance to Hong Kong residents in distress or seeking assistance within its coverage. At present, the Office of the Government of the HKSAR in Beijing (BJO) was responsible for providing assistance to Hong Kong residents in distress in the Mainland. However, as the majority of requests for assistance received by the Immigration Department from Hong Kong residents in the Mainland had originated from Guangdong, the Administration proposed to deploy staff from the Immigration Department to the Guangdong ETO for rendering assistance to Hong Kong residents in distress. Meanwhile, requests for assistance from areas outside Guangdong ETO's coverage would continue to be handled by BJO. It was envisaged that the proposed arrangements would enable more expeditious and effective support for Hong Kong residents. SCA added that in the long run, consideration might be given to extending such services to the Shanghai and Chengdu ETOs. The Administration would take forward the matter step by step in the light of operational experience.

Admin

48. Mr CHAN Kam-lam said that there were currently about 250 000 Hong Kong residents in the Mainland and the number was expected to rise. The problems encountered by Hong Kong residents in the Mainland would therefore likely to increase in number and complexity. He therefore called on the Administration to formulate plans as soon as possible to upgrade the functions of ETOs in the Mainland so as to provide effective and practical assistance to Hong Kong residents encountering various problems in the Mainland.

Admin

49. Ms CHAN Yuen-han considered that the Administration should conduct a comprehensive review on the functions of ETOs from the perspective of the assistance needed by Hong Kong residents in distress. In her view, the policy framework in which the establishment and operation of ETOs were conceived had inappropriately limited the services provided by the ETOs to economic and trade related matters. This was out of step with the demand of the day as experience had shown that the current services provided by the ETOs were hardly sufficient

to cope with the broad range of the distress cases. Ms CHAN specifically referred to those Hong Kong buyers of defaulted Mainland properties who could not obtain any assistance from the HKSAR's offices in the Mainland and the Mainland authorities. She considered that the Administration should take a more forward looking and proactive stance to enhance the capability of ETOs to assist Hong Kong residents encountering problems.

50. SCA responded that the scope of work of Mainland ETOs would not be confined to economic and trade matters as defined narrowly. ETOs also worked on a wide range of related issues like culture and education, environment, immigration, infrastructural development etc. He added that Mainland ETOs would also be tasked to promote cooperation between the Mainland and Hong Kong which impinged on a wide range of areas. He assured members that HKSARG's Mainland offices would render their best efforts to provide assistance to Hong Kong residents in distress, within their scope of authority and with due regard to the legal and administrative requirements in the Mainland. Where necessary, the SAR offices would refer specific problems to the appropriate Mainland authorities for follow-up.

51. Ms CHAN Yuen-han remained of the view that the Administration should take more proactive action to enhance the functions of ETOs in the Mainland to help Hong Kong residents in distress. To illustrate, she advised that the Hong Kong Federation of Trade Unions (FTU) had already established an office in Guangdong to offer advice and practical assistance to Hong Kong residents, in particular those taking up employment in the Mainland. She reiterated that support of this type should be rendered by the SAR Government on an official basis instead of by non-government organizations such as FTU.

52. SCA noted Ms CHAN's views and expressed the Administration's appreciation for the efforts of FTU, which would serve as useful reference regarding the functions of Mainland ETOs.

Way forward

53. Members did not raise any objection to the proposals for strengthening SAR's representation in the Mainland. Members also noted that the Administration planned to submit the relevant staffing proposals for consideration by the Establishment Subcommittee in December 2005. They also noted that the Administration would consult the Panel on Constitutional Affairs on its proposals regarding the Mainland Affairs Liaison Office and BJO at the meeting on 21 November 2005.