

立法會
Legislative Council

LC Paper No. CB(1)693/06-07
(These minutes have been
seen by the Administration)

Ref: CB1/PL/CI/1

Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 19 December 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon Vincent FANG Kang, JP (Chairman)
Hon WONG Ting-kwong, BBS (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC

Members absent : Dr Hon LUI Ming-wah, SBS, JP
Hon CHIM Pui-chung

Public officers attending : Agenda Item IV

Mr Anthony S K WONG
Commissioner for Innovation and Technology

Mr Gordon LEUNG
Deputy Commissioner for Innovation and Technology

Agenda Item V

Mr Christopher K B WONG
Deputy Secretary for Commerce, Industry and
Technology (Commerce and Industry)

Ms Priscilla TO
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)

Ms Fanny PANG
Assistant Director of Intellectual Property

Mr Anthony CHAN
Chief Pharmacist
Department of Health

Agenda Item VI

Mr Christopher K B WONG
Deputy Secretary for Commerce, Industry and
Technology (Commerce and Industry)

Ms Priscilla TO
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)

Mr Peter CHEUNG
Acting Director of Intellectual Property

**Attendance by
invitation** : Agenda Item IV

Mr Carlos GENARDINI
Chief Executive Officer
Hong Kong Science and Technology Parks Corporation

Clerk in attendance : Miss Erin TSANG
Chief Council Secretary (1)3

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms YUE Tin-po
Senior Council Secretary (1)5

Ms May LEUNG
Legislative Assistant (1)6

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)485/06-07 -- Minutes of meeting held on
21 November 2006)

The minutes of meeting held on 21 November 2006 were confirmed.

II. Information paper issued since last meeting

2. Members noted that there had not been any paper issued for the Panel's information since the last meeting held on 21 November 2006.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)486/06-07(01) -- List of outstanding items for
discussion)

LC Paper No. CB(1)486/06-07(02) -- List of follow-up actions)

3. Members agreed that the following items would be discussed at the next meeting scheduled for 16 January 2007 –

- (a) Consultation on the review of copyright protection in the digital environment; and
- (b) Electronic advance cargo information.

IV. Work of the Hong Kong Science and Technology Parks Corporation

(LC Paper No. CB(1)486/06-07(03) -- Paper provided by the
Administration)

Briefing by the Administration

4. At the invitation of the Chairman, the Commissioner for Innovation and Technology (C(IT)) briefed members on the work of the Hong Kong Science and Technology Parks Corporation (HKSTPC) as detailed in the Administration's paper (LC Paper No. CB(1)486/06-07(03)). In gist, C(IT) said that HKSTPC was established in May 2001 by merging three former organisations, namely the Hong Kong Industrial Estates Corporation, Hong Kong Industrial Technology Centre Corporation, and the Provisional Hong Kong Science Park Company Limited into a statutory corporation wholly-owned by the Government. Apart from operating and managing the Hong Kong Science Park (Science Park) at Pak Shek Kok, three Industrial Estates (IEs) at Tai Po, Yuen Long and Tseung Kwan O respectively, and the InnoCentre at Kowloon Tong, HKSTPC also provided support services and facilities through its technology support centres in the

Science Park and incubation programmes in the Science Park and the InnoCentre. HKSTPC was governed by a Board of Directors, with the Chairman appointed by the Chief Executive and other members by the Financial Secretary. On the financial situation of HKSTPC, C(IT) highlighted that while there were deficits in previous years, HKSTPC recorded surplus in 2005-2006 and 2006-2007.

The Science Park

5. C(IT) informed that the Science Park was a flagship project of the Government's strategy in providing technological infrastructure for applied research and development (R&D). It was being developed in three phases on 22 hectares of land along the clustering concept, covering the four domains of electronics, information technology and telecommunications, biotechnology, and precision engineering. The construction of Phase One was completed in October 2004. By the end of November 2006, around 90% of the lettable space of Phase One had been occupied by or earmarked for approved tenants. Including prospective tenants in the pipeline, the occupancy rate was about 97%, with electronics as the largest cluster (39 approved tenants taking up 43.2% of the total let out space), and followed by information technology and telecommunications (32 approved tenants taking up 31.4% of the total let out space); precision engineering (17 approved tenants taking up 20.1% of the total let out space) and biotechnology (12 approved tenants taking up 5.3% of the total let out space). While 53% of the approved tenants were Hong Kong companies, the remaining 47% originated from outside Hong Kong. The construction of Phase Two of the Science Park was underway and would be completed in stages from early 2007 until 2009. Phase Two would provide 11 buildings including dedicated laboratory buildings, R&D office buildings, and additional laboratory facilities. HKSTPC was currently engaging in intensive marketing programme to promote Phase Two, and tenancy agreements had already been signed with some tenants. So far, tenants of the Science Park had created about 1,700 new jobs, of which 85% were in R&D, and made a total investment of \$4.7 billion during their first three years of operation. HKSTPC was examining the demand for Science Park Phase Three, and was planning to submit a development plan to the Government in early 2007.

6. Regarding the technology support services provided by the Science Park, C(IT) said that apart from letting premises to companies for operation, high-cost and advanced centralized facilities and equipment were also provided on an hourly fee-charging basis in the Science Park so as to help reduce entry barriers for industry, small firms in particular, to engage in high-end activities. HKSTPC also launched a technology incubation programme in the Science Park for technology start-up companies by providing them with low-cost accommodation. Incubatees would be provided with office premises at nil rental for the first year, and concessionary rates at the subsequent two years. In addition, incubatees were also provided with centralized facilities and technical assistance, as well as legal and marketing consultancy services. As at the end of November 2006, 222 technology companies had participated in the programme,

with 70 of them still under incubation. 18 incubatees had, upon graduation, become Science Park tenants and rented premises for R&D activities. In 2005-2006, the incubatees had in total filed 19 patents/trademarks and won 32 technical and management awards. 18 incubatees had in aggregate attracted \$69.23 million angel or venture capital investment. The aim of HKSTPC was to support, in the long run, over 100 technology-based incubatees each year.

IEs

7. C(IT) said that the IEs in Tai Po, Yuen Long and Tseung Kwan O commenced operation in 1978, 1980 and 1994 respectively with a total area of 217 hectares. As at the end of November 2006, 86% of the total leasable area had been occupied by or earmarked for approved grantees. The IEs in Tai Po and Yuen Long were practically full, and 62% of the Tseung Kwan O IE had been taken up. C(IT) stressed that the IEs were facing challenges as a result of changes in the local economic and industrial landscape. On the other hand, the implementation of the Closer Economic Partnership Arrangement (CEPA) provided Hong Kong with a free trade pact under which all Hong Kong goods could be exported duty-free to the Mainland. Some companies such as those engaging in Traditional Chinese Medicine (TCM) had set up their business operations in Hong Kong, and obtained land grants in IEs for manufacturing and R&D activities. In addition, the IEs also promoted inward investment, and about 40% of the grantees originated from Mainland and overseas companies which created lots of job opportunities for the local market. C(IT) added that HKSTPC was undertaking a comprehensive study to examine the position of the IEs in the overall context of the economic and industrial environment in the region. Issues like demand for special industrial land of IEs, admission criteria, competitiveness of land premium, lease management policies, and the need or otherwise for a fourth industrial estate, etc would be reviewed in the study. Meanwhile, HKSTPC management was proactive in improving the utilization of IE land and premises.

The InnoCentre

8. As regards the InnoCentre managed by HKSTPC, C(IT) said that the InnoCentre building, which was completed in 1994, had been used to accommodate technology-based companies and incubatees under the Technology Incubation Programme before the Science Park was developed. Since the companies and incubatees were gradually moving to the Science Park, the InnoCentre Building was renovated to incubate design-based start-up companies. Apart from incubation services, the InnoCentre also provided the following services: leasing of office space to design companies, organization of design-related exhibition, seminars and workshops, and the operation of a design-related resource centre, etc. The InnoCentre was officially opened on 13 November 2006, and by the end of November 2006, the InnoCentre already had 11 design tenants and 13 design incubatees.

9. C(IT) highlighted that since the Government policy was to provide a conducive environment for the development of high value-adding and high technology industries in Hong Kong through a programme of funding and infrastructural support to meet the market demands, HKSTPC was established as a statutory institution to provide an important part of local technology infrastructure. HKSTPC would continue to play a leading role in contributing to local innovation and technology development.

Discussion

The Science Park

10. Noting that 42.3% and 57.7% of the total lettable space of Science Park Phase One were taken up by Hong Kong companies and non-local companies respectively, Mr Jeffrey LAM remarked that the business scale of the non-local companies seemed to be larger than that of the local ones. As the construction of Phase Two of the Science Park would soon be completed in stages, he enquired about the present position of letting the premises therein, and the number of tenants already earmarked for the lettable space, of which how many were local companies and non-local companies, as well as when HKSTPC would expect a full occupancy rate. He also sought information on whether the same admission criteria and tenancy terms would be applied to local and non-local companies.

11. In response, Mr Carlos GENARDINI, Chief Executive Officer of Hong Kong Science and Technology Parks Corporation (CEO of HKSTPC) advised that so far, 20 companies, which included several large international companies as well as local companies, had been selected from an extensive list of prospective tenants for taking up the lettable space of the first two buildings of Phase Two to be commissioned in April and May 2007. HKSTPC was pleased with the market response to Phase Two. The targeted number of companies to be recruited under Phase Two was 150, which would be a mix of both local and non-local companies. While HKSTPC was open-minded in this respect, it would endeavour to assist SMEs in taking up premises in Phase Two. On the admission criteria and tenancy terms offered to tenants, he stressed that HKSTPC adopted a fair approach to all of its tenants irrespective of their business scale and whether they were local companies or otherwise. Nevertheless, he added that the incubation programme launched in the Science Park was specifically designed to help local and foreign SMEs.

12. Mr WONG Ting-kwong enquired whether companies which were not tenants could have access to the technology support services and facilities provided by the Science Park. CEO of HKSTPC advised that non-tenants could use the centralized facilities and equipment provided in the Science Park on a fee-charging basis, and different rates were applied to local and non-local companies. Nevertheless, under the loyalty scheme, tenants would be offered a significant discount for use of those facilities and equipment with a view to

attracting them to stay in the Science Park. In further reply to Mr WONG, CEO of HKSTPC said that since the existing utilization rate of the facilities and equipment remained at an acceptable level, priority treatment for tenants for using those facilities and equipment was not required.

13. Commending on HKSTPC's efforts in upgrading the capabilities of the local manufacturing and service industry which should deserve recognition, Mr CHAN Kam-lam expressed support for the future development plan of the Science Park as it would facilitate the development of high value-adding and high technology industries in Hong Kong. In this connection, he noted that Science Park tenants had created about 1,700 new jobs during their first three years of operation. He enquired whether the employees were successful applicants under the talent admission scheme. In response, CEO of HKSTPC said that to his knowledge, the majority of the employees were local Chinese, though he would expect that there should be a fair number of employees working in the Science Park being successful applicants of the Admission Scheme for Mainland Talents and Professionals, which had been contributing to the building up of a rich talent base in Hong Kong. Pursuant to a job search recently undertaken, there were about 1,200 applicants from the Mainland who had applied for 80 positions created by Science Park tenants, which reflected the keenness of Mainland talented people wishing to work in Hong Kong. Upon completion of the Science Park Phase Two, it was expected that a total of 9,000 to 10,000 new jobs would be created.

14. In this connection, Mr WONG Ting-kwong mentioned a case in which a Science Park tenant had requested professional personnel from the Mainland to provide technical expertise on the installation of equipment in the Science Park premises. HKSTPC management had been approached for assistance on the application of working visas for those Mainland personnel, but to no avail. Mr WONG was of the view that professionals from the Mainland seemed to be subject to tighter immigration controls as compared with those from overseas, and it would usually take a longer time before working visas were issued to them. In response, C(IT) said that he was not aware of such a case and the difficulties faced by that tenant. Although HKSTPC management was not in the position to deal with visa applications, he undertook to follow up on the issue with the Immigration Department if necessary.

IEs

15. Noting that the occupancy rate of the Tseung Kwan O IE only reached 62% which was at a rather low level, especially when compared with the IEs in Tai Po and Yuen Long which were practically full, Mr Jeffrey LAM enquired whether the infrastructural facilities and support services provided by the Tseung Kwan O IE to its grantees were in line with those provided by the IEs in Tai Po and Yuen Long. In response, C(IT) advised that the Tseung Kwan O IE only commenced operation in 1994 whereas the other two IEs had been operating since 1978 and 1980 respectively. Similar to the other two IEs, Tseung Kwan O

IE also offered fully serviced land for lease at cost to companies. Unlike the Science Park which offered centralized and infrastructural facilities to its tenants, the IEs only provided general estate management services to their grantees. CEO of HKSTPC added that several large companies had already expressed interest in leasing land in the Tseung Kwan O IE for logistics and food business. However, the cycle time for those large companies to make decision on the lease was usually lengthy. In this connection, C(IT) informed that there had been a ground settlement problem in the Tseung Kwan O IE arising from the reclamation of land in the area, and this might have affected the occupancy rate.

16. Mr CHAN Kam-lam also considered the occupancy rate of the Tseung Kwan O IE not entirely satisfactory. He enquired whether this was due to the site settlement problem in Tseung Kwan O which had undermined the industry's confidence in setting up production plants in the Tseung Kwan O IE. In response, C(IT) explained that as many local manufacturers had moved to operate in the Mainland after 1980, there had been a lower demand for industrial land in the Tseung Kwan O IE, which had a total leasable area of 75 hectares. However, with the implementation of CEPA, the demand for industrial land had increased in the last two years. At the request of Mr CHAN, the Administration undertook to provide after the meeting figures on the annual growth rate in respect of the granting of leasable area in the Tseung Kwan O IE since its set up in 1994 for the Panel's reference.

Admin

(Post-meeting note: The information provided by the Administration has been circulated to members on 12 January 2007 vide LC Paper No. CB(1)711/06-07(01).)

17. On the future development plan of the IEs, CEO of HKSTPC and C(IT) informed that according to the record, around four hectares of land were taken up every year. It, therefore, followed that the existing land reserve for development (around 31 hectares of land) could only last for eight years. Meanwhile, Chinese companies were keen to establish their business in Hong Kong due to Hong Kong's brand name, sound legal system, as well as the protection afforded to intellectual property rights. As such, consideration was given to undertaking a study on whether the industrial land reserve for development should be increased in order to address the market demand which was on the rise in recent years. The Chairman and Mr CHAN Kam-lam urged the Administration to complete the study as soon as possible for early preparation and better planning of industrial land use. In this connection, the Chairman expressed concern that the Tseung Kwan O IE had been operating for only 12 years since its set up in 1994, but 62% of its leasable area had already been taken up. Since more companies such as those engaging in food processing and the manufacturing of TCM might wish to establish their business in Hong Kong and hence their demand for industrial land as consumers seemed to have greater confidence in products made in Hong Kong, leasable area available in the IEs might not be able to cope with the market demand in the long run. In response,

C(IT) advised that a comprehensive study would be undertaken to examine, inter alia, the need or otherwise for a fourth industrial estate. Meanwhile, as some grantees had relocated their production base to the Mainland, the IE land previously granted to them was not fully utilized. As such, measures would also be explored to fully utilize the existing IE land and premises.

18. Noting that HKSTPC was undertaking a comprehensive study to examine the position of the IEs in the overall context of the economic and industrial environment in the region, Mr WONG Ting-kwong sought information on when the study would be completed. In this connection, he was of the view that in order to cope with changes in the local economic and industrial landscape, HKSTPC should consider extending further the scope of activities permissible in the IEs to cover product promotion services. C(IT) took note of Mr WONG 's suggestions for consideration during the study, which was expected to be conducted in 2007. In further response to Mr WONG, C(IT) advised that permissible IE land uses had kept pace with the local economic and industrial development, e.g., land grants had been approved for logistics operations in the Tai Po IE, while a data centre was set up in the Tseung Kwan O IE.

HKSTPC's finances

19. Mr SIN Chung-kai sought information on HKSTPC's decrease of surplus from \$63 million in 2005-2006 to \$24.2 million in 2006-2007, and the item of "Government grant in respect of Science Park recognized" as shown in the Statement of Income and Expenditure of HKSTPC's annual report for the year of 2005-2006, which amounted to \$78 million. He was concerned that after deducting the Government grant, HKSTPC seemed to have a deficit, instead of a surplus, in 2005-2006. He also expressed concern that the income generated from the Technology Support Centres (i.e. \$31.2 million) could not meet their expenses (i.e. \$67.4 million) in 2005-2006.

20. CEO of HKSTPC, C(IT) and the Deputy Commissioner for Innovation and Technology explained that unlike the construction of Science Park Phase Two which was undertaken by HKSTPC with the Government injecting \$2,435 million as equity and providing commitment of a loan of \$1,043 million from the Capital Investment Fund to HKSTPC, the construction of Science Park Phase One was put under the Public Works Programme with the Government being responsible for the construction process. Upon completion of the construction, the buildings and other physical facilities were handed over to HKSTPC. The item of "Government grant in respect of Science Park recognized" as shown in the Statement of Income and Expenditure actually reflected the deferred income representing the value of assets granted by the Government in respect of the construction of Phase 1 of the Science Park to HKSTPC.

(Post-meeting note: The Administration has confirmed further that in HKSTPC's accounts, the "Government Grant in respect of Science Park recognized" at \$78.14M on the income side is matched by depreciation

charges on the expenses side. If the Government grant of \$78.14M for 2005-06 is to be taken out, the corresponding depreciation charge for Science Park which is \$78.14M for 2005-06 would also need to be taken out at the same time. In other words, the two items (deferred income and depreciation charge) offset each other and hence the HKSTPC's surplus of \$63 million in 2005-2006 will not be affected.)

21. In response to Mr SIN's concerns about the Technology Support Centres, CEO of HKSTPC pointed out that the centres were established to attract companies. Although Government subsidy in the initial stage was required, it would diminish over a time schedule. It was HKSTPC's objective that the centres would operate on a self-sustaining model, without compromising their service quality nor losing their tenants, as soon as practicable. .

22. CEO of HKSTPC assured members that efforts would be made to improve HKSTPC's overall financial situation, and HKSTPC would continue to operate on prudent commercial principles. Apart from conducting regular rental reviews for Science Park premises, HKSTPC would also explore ways to better utilize its assets with a view to achieving a better revenue generation. CEO of HKSTPC stressed that as the number of tenants was expected to increase in the coming years, HKSTPC was positive towards its financial position.

23. In further response to Mr SIN Chung-kai on the development of Science Park Phase Three, C(IT) said that the Government had already earmarked land for development of Phase Three. The financial proposal for the development of Phase Three, if undertaken, would be submitted to the Finance Committee for consideration and approval.

24. Summing up the discussion, the Chairman said that the Panel appreciated the work of HKSTPC which was contributory to the industrial development in Hong Kong.

V. Proposed amendments to the Patents Ordinance

(LC Paper No. CB(1)486/06-07(04) -- Paper provided by the Administration)

Introduction by the Administration

25. At the invitation of the Chairman, the Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) (DSCIT(CI)) briefed members on the Administration's proposal to amend the Patents Ordinance (PO) (Cap. 514) in order to implement a Protocol which aimed to facilitate access to generic versions of patented drugs when addressing public health problems. In gist, he said that under Article 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO), a WTO Member might issue a compulsory licence allowing a third party

to use generic versions of patented drugs provided, inter alia, that the use had to be predominantly for the supply of the domestic market of the WTO Member authorizing such use, which meant that the majority of the product could not be exported. As such, WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of the compulsory licensing system as they could not appeal to other economies with manufacturing capacity to export generic versions of the product to them. The General Council of the WTO, therefore, decided in August 2003 to temporarily waive the obligations as set out in the above Article and to allow pharmaceutical products made under compulsory licences in one WTO Member to be exported to another WTO Member lacking production capacity. In December 2005, the General Council of the WTO further adopted the aforesaid Protocol which would replace permanently the temporary waiver if it was accepted by two thirds of the WTO Members by 1 December 2007 (or such later date as might be decided by the Ministerial Conference of the WTO). Hong Kong, as a WTO Member, intended to notify the WTO of its acceptance of the Protocol. In this connection, the existing PO, which provided for a compulsory licensing framework modelled on Article 31 of the TRIPS Agreement, had to be amended to implement the Protocol.

26. Regarding the proposed amendments to be made to PO, DSCIT(CI) said that Hong Kong, together with 10 other developing economies, had agreed that it would only use the framework provided in the Protocol to import pharmaceutical product in situations of emergency or other circumstances of extreme urgency. As such, it was proposed that the Chief Executive-in-Council might declare a period of extreme urgency in Hong Kong by way of notice in the Gazette if it was considered necessary or expedient in the public interest to do so to address any public health problem or threatened public health problem. During such a period of extreme urgency, if the Director of Health (the Director) was satisfied that Hong Kong had insufficient or no manufacturing capacity to manufacture a certain pharmaceutical product to address the public health problem in question, the Director might grant a compulsory licence to any person to import, use, and distribute etc, the pharmaceutical product without the consent of the patent holder. The compulsory licence should satisfy conditions such that it should only cover such quantity of pharmaceutical product as was necessary to meet the public health needs of Hong Kong, the entire quantity of the pharmaceutical product should only be used in Hong Kong, and the pharmaceutical product should have specific labelling or marking for easy identification. DSCIT(CI) highlighted that pursuant to the Protocol, there was no need to pay remuneration at the Importing Member's end if adequate remuneration was paid at the Exporting Member's end. However, in order to provide for a comprehensive coverage of circumstances which might arise, a proposed provision would be made to PO which stipulated that there was no need to pay remuneration to the holder of the patent in Hong Kong unless adequate remuneration had not been paid at the Exporting Member's end.

27. DSCIT(CI) advised further that likewise, as an Exporting Member, Hong Kong might also make use of the system under the Protocol to export generic versions of patented pharmaceutical products if a WTO Member indicated that it intended to avail itself of the Protocol to source a certain pharmaceutical product. It was proposed that the Director be empowered to issue such compulsory licences. However, for cases where the importing WTO Member did not declare that it was under national emergency or other circumstances of extreme urgency, the Director would only consider granting the compulsory licence if the local manufacturer who applied for such a licence had failed to obtain an authorization from the patent holder on reasonable commercial terms and conditions within 28 days. As to cases where the importing WTO Member was under national emergency or other circumstances of extreme urgency, the aforesaid requirements would not apply. Similarly, certain conditions had to be met such as the posting on a designated website by the licensee before shipment of the product the quantities of the product supplied to the Importing Member, and the distinguishing feature of the label/marketing of the product.

28. On the amount of remuneration to be paid by the licensee at the Exporting Member's end to the patent holder, DSCIT(CI) said that as the system had not been used by any WTO Member before, reference was drawn from other jurisdictions which had indicated acceptance of the Protocol, or had made/were making legislation or measures to implement the Protocol such as the Mainland China, the European Union, Canada and Switzerland. To allow for greater flexibility in determining the amount of remuneration payable to the patent holder, it was proposed that there would not be a formula prescribed in PO. The amount of remuneration would be determined on a case-by-case basis but it would not exceed 4% of the total price to be paid by the Importing Member to the Hong Kong manufacturer on the grounds of the humanitarian and non-commercial considerations underlying the promulgation of the Protocol which was to help needy WTO Members with public health problems. Nevertheless, DSCIT(CI) assured members that the Administration would continue to keep international developments in view and might re-visit the propriety of pitching the cap at 4%. In this connection, it was proposed that the Secretary for Commerce, Industry and Technology be delegated the authority to amend the cap by means of subsidiary legislation if it was considered necessary.

29. On the consultation made with the stakeholders, DSCIT(CI) informed that consultation on the proposed amendments had been made with the major medical, legal and intellectual property practitioners' associations, the major trade associations representing the pharmaceutical industry, local universities, etc. Although some of them had expressed views on the maximum cap to be pitched at 4% or suggested removal of the cap, they were, in principle, supportive of the proposal.

Discussion

30. While expressing, in principle, his support and the support of the Democratic Alliance for the Betterment and Progress of Hong Kong for the proposal, Mr WONG Ting-kwong noted that some Exporting Members might not impose any maximum cap nor even prescribe the remuneration to be paid to the patent holder. He enquired about the implication on Hong Kong as an Importing Member under such circumstances. In response, DSCIT(CI) explained that there was no need for Hong Kong as an Importing Member to pay remuneration to the patent holder as the remuneration should have already been paid at the Exporting Member's end. However, in extreme circumstances (such as where the manufacturer at the Exporting Member's end went bankrupt and could not pay the remuneration), the Director might have to determine the amount of remuneration to be paid to the patent holder, by say making reference to the international practices then prevailing. The patent holder, if aggrieved at the decision made by the Director, could appeal to the Court of First Instance, for adjudication.

31. Mr SIN Chung-kai also expressed his support, in principle, for the Administration's proposal to amend PO for fulfillment of the international obligation to implement the Protocol. Nevertheless, he added that details of the proposal had to be further examined when a Bills Committee was formed to scrutinize the proposed legislative amendments.

32. Regarding the legislative timetable of the proposal, the Chairman enquired and DSCIT(CI) advised that the Administration planned to introduce the Amendment Bill into the Legislative Council in the first half of 2007 with a view to its enactment before the end of 2007, as the WTO had requested its Members to notify acceptance of the Protocol by 1 December 2007.

33. Summing up the discussion, the Chairman said that the Panel was, in principle, supportive of the Administration's proposal to amend PO for the implementation of the Protocol which would be particularly useful in face of public health problems such as avian influenza. He also urged the Administration to introduce the Amendment Bill as soon as possible for the Legislative Council's deliberation.

VI. Promoting the use of genuine software in business

(LC Paper No. CB(1)486/06-07(05) -- Paper provided by the Administration)

Introduction by the Administration

34. At the invitation of the Chairman, the Acting Director of Intellectual Property (DIP(Atg)) briefed members on the Business Software Certification Programme ("the Programme") which aimed to promote best practices in information technology (IT) management among organizations, small and medium enterprises (SMEs) in particular, as set out in the Administration's paper (LC Paper No. CB(1)486/06-07(05)). In gist, DIP(Atg) said that since some SMEs might have inadvertently used unlicensed software, the Administration, in collaboration with the Business Software Alliance (BSA), launched the Programme on 23 October 2006. The Programme was pilot in nature and would run up to 15 March 2007. Under the Programme, around 30 000 organizations, mainly SMEs, would be approached through various means including direct mailing and telephone calls to promote proper management of software assets. For those organizations which signified agreement to participate in the Programme, they would, upon provision of basic IT information relating to their organizations, receive free on-site software audit and professional Software Asset Management (SAM) consultancy services from an independent SAM Contractor ("the Contractor") commissioned by the Intellectual Property Department (IPD). Before the free on-site software audit service was provided, the Contractor would enter into an agreement with the participating organizations to ensure that the information collected during the on-site software audit in relation to the software licensing situation in the organisations would not be disclosed to any third parties. If a participating organization was found to be in full compliance with the copyright law, IPD and BSA would issue a certificate to the organization as a testimony of its intellectual property compliance. The commendable efforts of all such organizations would also be recognized through a series of publicity events in March 2007. As for those participants who were found to have inadvertently used unlicensed software, they would be encouraged to sign an undertaking to rectify the situation before 30 April 2007. In return, they would receive an assurance that BSA member companies would not initiate civil action against them in the intervening period. Consultancy services would also be provided to them for better management of their business software. Those organizations might even obtain discounts on products and services from software vendors.

35. DIP(Atg) highlighted that apart from encouraging organizations to use genuine software, the Programme was intended to instill a sense of pride amongst the participating organizations in using genuine software. Through effective SAM practices, organizations could also save costs from excessive licensing of their business software and enhance employee productivity by optimizing software deployment.

36. DIP(Atg) advised further that since the implementation of the Programme, liaison had been made with and good support received from various trade organizations and the Chinese Manufacturers' Association of Hong Kong had even volunteered as a supporting organization of the Programme. So far, 25000 SMEs had been issued letters in respect of the Programme, and 2000 follow-up telephone calls had been made. Free on-site software audit service had already been provided to some organizations, and some organizations had made appointment for such service.

Discussion

37. On the number of organizations which had agreed to participate in the Programme since its implementation, Mr WONG Ting-kwong enquired and DIP(Atg) said that although the Programme had commenced in end October 2006, promotional activities such as distribution of leaflets, advertisements in newspapers and publicity made at seminars were subsequently rolled out in November and December 2006. So far, five organizations (with a total of over 30 computers) had been provided with on-site software audit service, six organizations had made an appointment for such service, and 40 organizations had expressed keen interest in the Programme. DIP(Atg) added that it seemed that some organizations might wish to self-audit their software before considering whether the Contractor should be engaged for free on-site audit. Since large enterprises might have already maintained proper management of their software assets, telephone calls were made to follow up particularly with SMEs with less than 100 employees to promote the Programme with a view to attracting more organizations to participate in it. He assured members that efforts to promote the Programme would continue.

38. Acknowledging that the Programme could enhance the awareness of intellectual property rights (IPR) among the business community, and could minimize SMEs' exposure to avoidable legal risk arising from causal or inadvertent downloading of illegal software, Mr WONG Ting-kwong was of the view that the Programme would receive good response as various trade associations had already expressed support for the Programme. However, he was concerned that while most of the organizations might at present adopt a wait-and-see approach, there might be a last-minute rush for participation in the Programme. As such, he enquired whether the Contractor would have sufficient manpower to cater for the surge of demand for audit and consultancy services. He also sought information on circumstances where SMEs had made appointment but could not be provided with the audit and consultancy services before the end of the pilot period, i.e. 15 March 2007.

39. In response, DIP(Atg) assured that the Contractor had already been alerted that there might be a sudden increase in service demand. The Contractor, which operated on a team basis, should have adequate manpower to provide the services to participating organizations even if there was a surge of service demand. He

added that a review would be made at the end of the pilot period, and consideration might be given to launching a second round of audit and consultancy services if there were good response and great demand from organizations.

40. However, Mr WONG Ting-kwong was of the view that the Administration should be forward-looking, and should consider putting in place measures to cater for situations where SMEs had signified their interest to participate in the Programme but could not be provided with the services so as to ensure those SMEs, if found to have inadvertently used unlicensed software, would also not be liable to civil action. Mr CHAN Kam-lam echoed that the Administration should adopt a forward-looking manner and should have adequate preparation for all likely situations which might arise as mentioned by Mr WONG. Consideration might be given to extending the pilot period beyond 15 March 2007.

41. In response, DIP(Atg) informed that the Programme was part of the “Genuine Business Software Campaign” jointly launched by IPD, the Customs and Excise Department and BSA. Under the Campaign, if an organization approached BSA for SAM arrangements, BSA would undertake not to initiate civil action against the organization before 30 April 2007 if any inadvertent use of unlicensed software within the organization was found. Nevertheless, he took note of members' concerns, and undertook to review the situation by January 2007 for better preparation of any circumstances which might arise. On the extension of the pilot period, he explained that as the financial provision for implementation of the Programme was sought until March 2007, the pilot period would not be extended beyond 15 March 2007. He, however, reiterated that a review on the Programme would be conducted, and subject to the demand from organizations, a second round of audit and consultancy services might be considered.

42. Mr CHAN Kam-lam expressed that while he supported the protection of IPR and hence the implementation of the Programme to raise the awareness of and support for IPR, he was of the view that measures to be taken on organizations which had inadvertently used unlicensed software should not be too stringent. In this connection, he noted that the Programme was jointly launched by the Government and BSA but solely financed by the Government. He remarked that although the community as a whole could benefit in one way or another from the improvements in IP compliance in the business community as a result of the Programme, IPR holders were the ultimate beneficiaries of the Programme. As such, he considered that on the basis of equity, BSA should be responsible for part of the expenses incurred from the implementation the Programme if there would be a new phase of similar services provided to organizations. Sharing Mr CHAN Kam-lam's views, Mr WONG Ting-kwong added that under the Programme, if organizations were found to have inadvertently used unlicensed software, they would have to rectify by, say, buying licensed software from software vendors. Such arrangement could

bring about business opportunities to BSA member companies. As such, the Government should not solely sponsor the Programme. In response, DIP(Atg) explained that under the existing arrangement, the Government would finance the operating costs of the Programme such as the commissioning of the Contractor for provision of audit and consultancy services to participating organizations, while BSA would provide expertise advice and personnel to support the operation of the Programme. Nevertheless, he took note of members' suggestion and undertook to relay it to BSA for consideration during the review of the Programme.

43. Summing up the discussion, the Chairman said that Panel members welcomed, in principle, the implementation of the Programme.

VII. Any other business

44. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 1
Legislative Council Secretariat
15 January 2007