

立法會
Legislative Council

LC Paper No. CB(1)902/06-07
(These minutes have been seen
by the Administration)

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Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 16 January 2007, 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)
Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
- Member absent** : Hon Timothy FOK Tsun-ting, GBS, JP
- Public officers attending** : Agenda Item IV

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)³

Agenda Item V

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

Mr David LEUNG
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)⁴

Mr Lawrence S P WONG
Deputy Commissioner of Customs and Excise

Ms Diana WONG
Senior Staff Officer (Special Duties)
Customs and Excise Department

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

Staff in attendance : Ms YUE Tin-po
Senior Council Secretary (1)⁵

Ms May LEUNG
Legislative Assistant (1)⁶

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)693/06-07 -- Minutes of meeting held on
19 December 2006)

The minutes of the meeting held on 19 December 2006 were confirmed.

- II. Information paper issued since last meeting**
(LC Paper No. CB(1)607/06-07(01) -- Information on the financial
position of the Applied
Research Fund for the period
of 1 September 2006 to
30 November 2006)

2. Members noted that the above paper had been issued for the Panel's
information since the last meeting held on 19 December 2006.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)694/06-07(01) -- List of outstanding items for discussion)

LC Paper No. CB(1)694/06-07(02) -- List of follow-up actions)

3. Members agreed that the following items would be discussed at the next meeting scheduled for 13 February 2007 –

(a) Progress of the WTO Doha Development Agenda negotiations; and

(b) Promotion of inward investment.

4. In this connection, the Chairman suggested to advance the discussion of the item of "Economic Summit - Action Agenda of the Focus Group on Trade and Business" to the February meeting, and instructed the Clerk to liaise with the Administration.

Clerk

(Post-meeting note: The Administration has proposed and the Chairman agreed that the item of "Update on the No Fakes Pledge Scheme" instead of the item of the "Economic Summit - Action Agenda of the Focus Group on Trade and Business" will be discussed at the next meeting held on 13 February 2007. The notice and agenda for the meeting have been issued to members vide LC Paper No. CB(1)766/06-07 on 19 January 2007.)

IV. Consultation on the review of copyright protection in the digital environment

(LC Paper No. CB(1)694/06-07(03) -- Paper provided by the Administration)

LC Paper No. CB(1)759/06-07 -- A set of power-point presentation materials provided by the Administration)

Briefing by the Administration

5. At the invitation of the Chairman, the Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) (DSCIT(CI)) briefed members on the public consultation exercise launched by the Administration in December 2006 on issues relating to copyright protection in the digital environment with the aid of power-point presentation.

6. In gist, DSCIT(CI) stressed that the Government was committed to providing a robust copyright protection regime in order to facilitate the sustainable development of creative industries in Hong Kong. Apart from constant review of the copyright law to ensure its effectiveness and appropriateness in present-day circumstances, the Government also took other measures including vigorous enforcement actions, on-going public education programmes, and co-operation with the copyright owners to combat copyright infringement activities. Following the introduction of the Copyright (Amendment) Bill 2006 into the Legislative Council in March 2006 which aimed to strengthen copyright protection whilst affirming users' need for fair and reasonable use of copyright works, the Government was now launching the next phase of the review of the copyright law to meet the challenges posed by advances in technology. The main objective of the review was to consider whether and if so how the copyright protection regime should be further enhanced to provide effective copyright protection in the digital environment. A consultation document was published in mid-December 2006, which set out the following six issues for consultation:

(a) legal liability for unauthorized uploading and downloading of copyright works

Under the existing Copyright Ordinance (CO) (Cap. 528), the act of unauthorized uploading of a copyright work for others to download might attract civil or even criminal sanctions, whereas the unauthorized downloading of copyright works would entail civil liability. However, copyright owners were concerned that as technological advances in recent years (such as the emergence of peer-to-peer (P2P) technology) had allowed data files to be transmitted over the Internet in more and more efficient ways, large-scale copyright infringement would quickly emerge. As such, the Government would like to seek views from the public on whether unauthorized downloading should be subject to criminal liability; and if so, how the scope of criminal liability should be expanded.

(b) protection of copyright works transmitted to the public via all forms of communication technology

Views were sought on whether an all-embracing right should be provided to copyright owners under the CO so that their copyright works would be accorded protection irrespective of the forms of communication technology through which the works were transmitted to the public.

- (c) *the role of online service providers (OSPs) in relation to combating Internet piracy*

Views were sought on whether new liability should be imposed on OSPs for online piracy activities undertaken by their clients via their service platforms, and if so, whether there should be provisions to limit OSPs' liability under specified circumstances which included the introduction of a system for OSPs to remove or disable access to the infringing materials identified on their service platforms.

- (d) *facilitation to copyright owners to take civil actions against online infringement*

Views were sought on whether an expedient and simple mechanism should be provided for copyright owners to request Internet Access Service Providers (IASPs) to disclose the identity of their clients alleged to have engaged in online infringing activities, and whether IASPs should be required to keep records of their clients' online communication for a specified period to facilitate civil actions against online infringers.

- (e) *statutory damages for copyright infringement*

Views were sought on whether statutory damages should be introduced for copyright infringements so as to alleviate the problems copyright owners encountered in proving their actual losses and reduce their cost burden in pursuing infringement proceedings.

- (f) *copyright exemption for temporary reproduction of copyright works*

Views were sought on whether the existing scope of copyright exemption for temporary reproduction of copyright works should be expanded to cover such activities as caching undertaken by OSPs.

7. DSCIT(CI) pointed out that the issues raised in the consultation document were complicated and controversial in nature. The Government was also mindful that enhanced intellectual property rights protection might have profound impact on the dissemination of information, protection of personal privacy in relation to individuals' activities on the Internet, as well as the development of Hong Kong as an Internet service hub. In order to facilitate informed deliberations of the issues raised in the consultation document, the consultation document outlined the situations in other jurisdictions. Possible options for addressing the issues identified, together with the relevant considerations, were also floated to facilitate public discussion. DSCIT(CI)

stressed that the Government had an open mind on how the various issues raised should be addressed, and views from the stakeholders and members of the public were welcome. To promote discussion of the relevant issues with a view to assisting the Government in striking a reasonable balance between competing interests, public forums were being lined up and consultation sessions for targeted groups would be organized. Briefings for District Councils would also be provided upon invitation. DSCIT(CI) assured Members that views received during the consultation exercise, due to end on 30 April 2007, would be carefully considered. The Administration would revert to the Panel if any proposals were to be formulated.

Discussion

Legal Liability for unauthorized uploading and downloading of copyright works

8. Noting that technological advances in recent years had enabled efficient transmission of information on the Internet, Mr CHAN Kam-lam agreed that copyright owners should be afforded adequate protection; or else the Internet piracy problem would worsen. Nevertheless, he was concerned that unduly enhanced protection for copyright works in the digital environment might have negative impact on the dissemination of information. If criminal liability was to be extended to cover unauthorized downloading of copyright works from the Internet, users might be caught unaware. As such, while unauthorized uploading and downloading of copyright works for commercial purposes should not be allowed, he doubted if unauthorized downloading of copyright works such as literary or musical works from the Internet for private use or record purpose should entail criminal liability. In this connection, he enquired about the Administration's position on this issue.

9. DSCIT(CI) took note of Mr CHAN's views and reiterated that the Administration had an open-mind on how the issue should be addressed. He added that the Administration was conscious that criminalization of unauthorized downloading was a highly controversial issue. He pointed out that under the scenario where the new criminal liability was to be introduced, there could be different extent of criminalization. For instance, one possible option might be to criminalize unauthorized file sharing of copyright works using P2P technology only as large-scale copyright infringement might easily emerge under those circumstances. Consideration could also be given to criminalizing, irrespective of the technology employed, large-scale infringements which prejudicially affected the interest of copyright owners. These options were highlighted in the consultation document to illustrate the range within which choices could be made if unauthorized downloading was to be criminalized. The Administration would carefully consider the views received on the issue before coming up with any proposals. As to how "large-scale infringement" was to be defined, DSCIT(CI) said that reference could be made to the case law of overseas jurisdictions, though there was only a limited number of enforcement cases in these jurisdictions, and enforcement actions were usually taken against downloading activities which involved large quantities of infringing copies. He added that if

the mainstream view was in support of criminalizing unauthorized downloading activities which were significant in scale, the circumstances in which unauthorized downloading would fall under the criminal net would need to be clearly defined in law to ensure that users would not be caught unaware.

10. In response, Mr CHAN Kam-lam opined that the protection accorded to personal privacy in overseas jurisdictions might be the reason which attributed to the limited number of enforcement cases in those jurisdictions, as it was difficult, if not illegal, for IASPs to disclose the identity of their clients alleged to have engaged in infringement activities. He nevertheless remarked that other than the scale of infringement, the Government should also focus on the intent of the unauthorized downloading activities in order to decide whether such activities warranted criminal sanctions. He stressed that since advances in technology enabled users to have easy access to copyright materials available on different media platforms, if unauthorized downloading of materials from the Internet for private use was to be regarded as infringement activities, a lot of day-to-day activities such as video-taping a movie from the television or recording a song from the radio might also be tantamount to infringement, and this would bring about undesirable impact to society. As such, he reiterated that infringement activities should only cover unauthorized downloading for commercial purposes, whereas unauthorized downloading for private use or record purpose should not be regarded as infringement and hence should neither be subject to criminal sanction nor even civil liability. He also considered that as operators, OSPs should shoulder up the major responsibility for ensuring that the materials such as movies and songs uploaded onto the Internet had already got the authorization of concerned copyright owners so as to afford more effective protection to the rights of copyright owners.

11. In reply, the Principal Assistant Secretary for Commerce, Industry and Technology (Commerce and Industry)³ (PASCIT(CI)³) explained that as Hong Kong had to comply with the international standards for copyright protection, unauthorized downloading which involved copying of copyright works without authorization was regarded as an infringement activity which would at least entail civil liability. Nevertheless, she added that exemptions were provided under the CO such that certain acts were permitted notwithstanding the restriction in copyright, such as fair dealing with a work for the purposes of research or private study, reprographic copying of a literary, dramatic, musical or artistic work, to a reasonable extent, for the purpose of instruction, etc. She pointed out that the present consultation exercise aimed to gauge views on whether and if so the copyright protection regime should be enhanced by, say, criminalizing unauthorized downloading activities.

12. Mr CHAN Kam-lam reiterated his concern that due regard should be made to the impact that stronger copyright protection in the digital environment might have on the free dissemination of information, protection of personal privacy, as well as the daily activities of members of the public. The Administration took note of Mr CHAN's concerns.

Role of OSPs in relation to combating Internet piracy

13. On the option of introducing a system to enable efficient takedown of infringing materials on the Internet or blocking of access to such materials by OSPs, Mr WONG Ting-kwong enquired whether it was feasible for OSPs to have timely information on the uploading of infringing materials to the websites by their clients and hence the takedown of or blockage of access to those materials by OSPs. He was also concerned that a takedown system without legislative backing might lead to abuse as OSPs might remove materials from their servers lightly without concrete evidence on whether those were infringing materials, and hence adversely affect dissemination of information in Hong Kong.

14. In response, PASCIT(CI)3 concurred that OSPs might not know in the very first instance that there were online piracy activities occurring on their service platforms, and it might not be reasonable to impose the responsibilities of detecting and investigating online piracy activities on the OSPs. In this connection, she advised that according to overseas practices such as the notice and takedown procedures adopted in the US, rather than mandating OSPs to take proactive measures to remove or disable access to infringing materials found on their service platforms, copyright owners could serve a notice to an OSP on certain online piracy activities identified on the OSP's service platform. The OSP should, in response, take down or disable access to the infringing material found. In the event that the affected service subscriber considered that the material removed or the access disabled was a result of mistake or misidentification, he could serve a counter notice to the OSP which should then put back the removed material or cease disabling access. PASCIT(CI)3 pointed out that while such procedures provided a framework for the parties concerned to follow with respect to the takedown of or blockage of access to infringing materials, there were cases where the procedures had been abused in the early days of implementation. Thus, it might take some time for the notice and takedown system, if introduced, to operate smoothly in Hong Kong. She also shared with the meeting the approach adopted in UK, whereby the UK copyright law provided that copyright owners could apply for injunctive relief from their court against OSPs who had actual knowledge of another person using their service to infringe copyright, even though the OSPs themselves were not infringing the owners' rights. While such an arrangement might be more effective in guarding against abuse as copyright owners had to go through legal proceedings for obtaining injunctive relief against OSPs, copyright owners had to bear the cost of the proceedings. She remarked that the Administration did not have any preconceived position on the issue. The Administration would listen to views from different quarters including the Internet service sector and copyright owners before coming up with a view on what sort of mechanism would be most suitable for Hong Kong which could afford protection to copyright owners without casting negative impact on the dissemination of information as well as the protection of personal privacy.

15. Mr WONG Ting-kwong raised another concern: unless OSPs were able to certify the identity of copyright owners, they might wrongly remove materials from their service platforms as notices for removal could be served by anyone disguising as the concerned copyright owners. The question of responsibility for the losses incurred arising from incorrect removal of materials would then arise. As such, he remarked that the implementation details of the notice and takedown system, if introduced, had to be deliberated with due care. He also opined that it might not be easy to strike a balance between the protection of copyright and the need to uphold free dissemination of information as well as the protection of personal privacy. Collective wisdom was required to work out a sensible solution.

16. On the liability to be imposed upon OSPs for online piracy activities undertaken by their clients via their service platforms, Mr SIN Chung-kai considered that as a matter of fairness and reasonableness, the legal responsibilities to be imposed should not be greater than those currently imposed upon OSPs in relation to criminal activities such as hacking activities. He maintained that any legal responsibility to be imposed should be appropriate and proportionate. DSCIT(CI) took note of Mr SIN's concerns, and advised that OSPs would be approached for their views on the issue.

The way forward

17. Notwithstanding the public forums to be lined up and consultation sessions to be organized by the Administration to gauge views on the subject, Mr SIN Chung-kai suggested that the Panel should invite the stakeholders to provide views on the various issues raised in the consultation document at an appropriate time in future as there might be divergent, if not conflicting, views between copyright owners and the information and communication technology sectors. Concurring with Mr SIN's suggestion, the Chairman said that upon completion of the consultation exercise by 30 April 2007, the Panel would invite the stakeholders and other interested parties to attend the Panel meeting in order to receive their views on the subject so that the Administration could have a more comprehensive picture before deciding on the way forward. Members agreed to such an arrangement.

18. Summing up the discussion, the Chairman called on the Administration to take note of Members' aforementioned concerns, and to ensure that adequate consultation was made on such a highly controversial subject before coming up with any implementation plan.

V. Electronic advance cargo information

(LC Paper No. CB(1)694/06-07(04) -- Paper provided by the Administration

LC Paper No. CB(1)760/06-07 -- A set of power-point presentation materials provided by the Administration)

Briefing by the Administration

19. At the invitation of the Chairman, the Administration briefed members on the Government's proposal to implement an electronic customs clearance system for road cargoes ("the proposed electronic system"). With the aid of power-point presentation, the Senior Staff Officer (Special Duties) of the Customs and Excise Department (SS of C&ED) explained to members the existing customs clearance system and the proposed electronic customs clearance system for road cargoes. In brief, she said that under the existing system which was operated manually, upon arrival at a land boundary control point (LBCP) at either Man Kam To, Lok Ma Chau or Sha Tau Kok, the driver of a laden truck had to stop firstly at an Immigration kiosk for immigration clearance and then a Customs kiosk for customs clearance. At the Customs kiosk, the truck driver had to deliver a paper manifest to a Customs officer who would, with the help of a computerized intelligence system, determine on the spot whether physical inspection was necessary. As such, under the existing system, a truck driver had to stop twice for the necessary clearances. Under the proposed electronic system, however, Customs officers could conduct risk profiling on every cargo consignment using the pre-defined set of cargo information so submitted by the shipper electronically and determine in advance whether the truck needed to be inspected. As such, a truck driver would normally only need to stop once for immigration clearance at a LBCP kiosk.

20. SS of C&ED explained further that the pre-defined cargo information to be submitted by a shipper to the Customs and Excise Department (C&ED) before the cargo entered or exited Hong Kong by truck included only data essential for customs clearance purpose, such as number of package/quantity, description of package, description of articles in each package, name and address of consignor, name and address of consignee, and expected departure/arrival date. Upon receipt of the cargo information, the proposed electronic system would allocate a Unique Reference Number (URN) to the shipper who would then relate it to the truck driver. With the submission of the electronic advance cargo information (e-ACI) by shippers, risk profiling could be conducted in advance. On the part of the truck driver, 30 minutes before his laden truck arrived at a LBCP, he had to undertake a bundling act (i.e. reporting to C&ED, by phone or via Internet, the URN concerned and his vehicle registration number). Upon arrival at a LBCP, the driver would then undergo immigration clearance at the Immigration kiosk, and also dropped into a collection box (placed at the Immigration kiosk) a paper manifest to fulfil his existing legal responsibility of submitting a cargo manifest as a carrier. She stressed that except those which were selected for inspection,

all cross-boundary trucks could enjoy seamless customs clearance at the LBCP as truck drivers would only need to stop once for both immigration and customs clearances.

21. SS of C&ED advised further that the proposed electronic system would also enable C&ED to have more room for formulating measures to further facilitate the passage of transshipment cargoes involving inter-modal transfer. With proper interface between the proposed electronic system and other existing electronic customs clearance systems for air and water-borne cargoes, integrated risk assessment and one-stop customs clearance could be achieved. Instead of going through Customs inspections twice at both the LBCP and the airport under the existing procedure, air-land transshipment cargoes would only need to be subject to inspection, if required, at either one of the Customs control points.

22. On the need for early implementation of the proposed electronic system, the Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) (DSCIT(CI)) referred to regional initiatives which Hong Kong's major trading partners were rolling out. These initiatives rode on the concept of e-ACI and other key customs standards enshrined in the World Customs Organization's Framework of Standards for enhancing the security of the supply chain and facilitating legitimate trade. In addition, China was committed to the vision that all APEC economies should strive to achieve electronic customs clearance at their checkpoints by 2010. DSCIT(CI) stressed that if Hong Kong failed to roll out the proposed electronic system in time, overseas Customs authorities might impose more stringent clearance requirements on goods coming from or passing through Hong Kong, and there might also be diversion of transshipment cargoes away from Hong Kong. In view of the regional and international developments, there was a need for early implementation of the proposed electronic system in order to maintain Hong Kong's competitiveness as an international trading centre.

23. DSCIT(CI) advised that to provide a legal basis for the new cargo information reporting requirements under the proposed electronic system, the Import and Export Ordinance (Cap. 60) had to be amended. Having regard to the lead time required for preparing the amendment bill, securing funds and developing the electronic infrastructure, the Administration aimed to put in place the proposed electronic system in 2009. The Administration planned to introduce the necessary amendment bill into the Legislative Council in the second quarter of 2007.

24. Regarding consultation with stakeholders, DSCIT(CI) informed members that in developing the proposed electronic system, the Administration had consulted industry stakeholders involved in the handling of cross-boundary road cargoes (including a number of associations and companies of cross boundary truck drivers), major Chambers of Commerce, the Hong Kong Shippers' Council, and the Hong Kong Association of Freight Forwarding and Logistics Limited, etc. The stakeholders had indicated either in-principle support for or no in-principle objection to the proposed electronic system. DSCIT(CI) added that in response to the views from the industry, the following

arrangements would be made:

- (a) The Government intended to fund in full the operation of the proposed electronic system, without charging the users.
- (b) As some small and medium enterprises (SMEs) without the in-house information technology (IT) system for making electronic submissions might find it uneconomical to acquire the necessary IT capabilities due to their low and infrequent cargo declaration pattern, the Government intended to make available workstations at designated locations for the staff of SMEs to key in the necessary cargo information for electronic submissions free of charge.
- (c) In formulating the penalty provisions, the Government would ensure that the level of penalty would be commensurate with the nature of non-compliance. For instance, for technical breaches of the law such as failure to provide the specified information in time, the penalty under contemplation would be a fine. However, in case of non-compliance related to the smuggling of prohibited articles, the Government would need to set the penalty level on par with existing smuggling offences to deter illicit activities.
- (d) A transitional period of reasonable length would be provided for stakeholders to adjust their modus operandi to meet the new reporting requirements.

Discussion

Workflow

25. On the issuance of URNs to shippers upon their provision of pre-defined cargo information to C&ED, the Chairman asked and the Deputy Commissioner of Customs and Excise (DC(C&E)) advised that under the proposed electronic system, a URN would be automatically assigned by the proposed system upon receipt of e-ACI, and hence it would only take a few seconds for shippers to obtain the URNs. In this connection, the Chairman commended the Administration for its initiative to fund in full the operation of the proposed electronic system. He wished that the Administration would continue with such arrangement, and would not, after several years of implementation of the system, charge users on a user-pays principle.

26. Noting that truck drivers were required to report to C&ED at least 30 minutes before the arrival of the laden trucks, Mrs Sophie LEUNG enquired whether there would also be a time-limit for shippers to provide C&ED with the pre-defined set of cargo information. She was concerned that if there would be time-limit for the provision of cargo data by shippers, it would not be viable for them to make last-minute amendments to the cargo information. In response,

DC(C&E) clarified that under the proposed electronic system, there would not be any time-limit imposed upon shippers for the provision of cargo information to C&ED. It was truck drivers who would be required to report to C&ED at least 30 minutes before the arrival of their trucks at a LBCP. As such, he stressed that as long as a truck driver had not undertaken the bundling act to report the URNs and his vehicle registration number to C&ED, the concerned shipper could still make amendments to the cargo information. As for the making of last-minute amendments to cargo information, DC(C&E) informed members that consultation would be made in this respect, and any views provided by the relevant industries would be taken into consideration.

27. In this connection, Mrs Sophie LEUNG considered that since C&ED could have direct contact with truck drivers when the latter reported URNs and vehicle registration numbers to C&ED, consideration could be given to designing the proposed electronic system such that time slots could be assigned to truck drivers during inclement weather such as the hoisting of Tropical Cyclone Warning Signals to avoid unnecessary congestion.

28. On the provision of workstations at designated locations to facilitate SMEs' submission of e-ACI, the Chairman remarked that while such an arrangement would be very welcome especially by SMEs, it would be desirable if the Administration could provide short-term training courses to equip SMEs with the necessary IT knowledge. In response, DSCIT said that consideration would be given to organizing training courses to users if there was a need. A User Consultation Group would be set up to collate the views of industry stakeholders on areas such as the detailed operational arrangements under the proposed electronic system.

29. On the arrangement for air-land transshipment cargoes, Mrs Sophie LEUNG asked and DC(C&E) advised that measures would be formulated to facilitate the passage of transshipment cargoes which involved inter-modal transfer. As long as shippers could provide C&ED with the cargo information of the incoming and outgoing trips in advance, one-stop customs clearance could be arranged for inter-modal transshipment of cargoes involving the proposed electronic system.

Compatibility of the proposed electronic system

30. While welcoming the Administration's proposal to implement the electronic system for submission of e-ACI, Mr CHAN Kam-lam noted that the proposed electronic system would be similar to the electronic customs clearance infrastructure of the Mainland Customs which had already been in operation since 2003. In view of the fact that due to technological advances, the Mainland Customs electronic clearance infrastructure might need to be replaced by the time the proposed electronic system was rolled out in Hong Kong in 2009, he was concerned whether the proposed electronic system would have to be modified soon after implementation in order to be compatible with the Mainland electronic clearance infrastructure. Alternatively, he enquired whether the Mainland

Customs would be requested to adjust its electronic clearance infrastructure in order to keep up with the proposed electronic system when it was rolled out in 2009. He was also concerned whether close co-ordination had been made between C&ED and the Mainland Customs in this respect.

31. In response, PASCIT(CI)4 said that close liaison had been maintained between C&ED and the Mainland Customs. The design of the workflow of the proposed electronic system would be similar to that of the Mainland electronic clearance infrastructure. The Administration was mindful that one of the objectives of the implementation of the proposed electronic system was to expedite cargo movement between Hong Kong and the Mainland via the land boundary. On the compatibility of the proposed electronic system with the electronic customs clearance infrastructure of the Mainland Customs as well as those of APEC economies, PASCIT(CI)4 said that his understanding was that the design of data fields was among the key parameters to facilitate data sharing. In this regard, the Administration would ensure compatibility between the proposed electronic system and other electronic customs clearance infrastructures. In this connection, DC(C&E) supplemented that there was close co-operation between C&ED and the Mainland Customs. For instance, in 2004, in order to render greater facilitation to the industry, the two Customs administrations had worked out the design of the unified cargo manifest which could be applicable for customs clearance by both authorities. Such an arrangement also aimed to facilitate both authorities to share the same set of information for customs clearance. In addition, an optical fibre cable was installed in Shenzhen Bay Port to facilitate the sharing of electronic cargo information between the two Customs authorities on a case-by-case basis.

32. In this connection, the Chairman enquired as to why the proposed electronic system had not been rolled out earlier as the Mainland Customs had already put in place an electronic customs clearance infrastructure since 2003. PASCIT(CI)4 took note of the Chairman's concern and said that with the support of Members for the proposed electronic system, the Government would expedite where possible the rolling out of the proposed electronic system.

Road cargo manifests

33. In view of the fact that all advanced economies and Hong Kong's major trading partners had already signed a letter of intent to implement the "Framework of Standards to Secure and Facilitate Global Trade" whereby e-ACI for all modes of transport (including road mode) had to be provided to Customs authorities in time for risk profiling, and that upon the implementation of the proposed electronic system, truck drivers were still required to submit paper manifests to C&ED, Mr CHAN Kam-lam enquired whether consideration would be given to obviating the submission of paper manifests in future in order to keep in pace with the international development. The Chairman also sought the Administration's clarification on whether the submission of paper manifests was not required upon the smooth operation of the proposed electronic system.

34. In response, PASCIT(CI)4 explained that the proposed electronic system which captured the cargo information in eight data fields to be provided by shippers to C&ED electronically would achieve electronic customs clearance of road cargo. The cargo information in the remaining nine data fields of paper manifests were not required for customs clearance purpose and hence not time-critical. Having regard to the IT readiness of truck drivers, the Administration, after consultation with the industry, did not plan to introduce the electronic manifest system for road cargoes at the present stage. In further response to Mr CHAN Kam-lam as to why truck drivers were not ready to switch from paper to electronic mode of cargo manifests, PASCIT(CI)4 said that apart from the need to acquire the IT capabilities and equipment which might be considered as uneconomical, quite a number of truck drivers were resistant as they did not see tangible benefits arising from the electronic mode of submission of cargo information. That notwithstanding, the Administration would keep in view stakeholders' disposition and pursue the implementation of the electronic road cargo manifest system as and when the conditions were ripe.

35. On the resistance of truck drivers to submit electronic cargo manifests, Mr SIN Chung-kai remarked that apart from fully funding the electronic manifest system, if introduced, so that the implementation of which would not incur additional costs to truck drivers, the Administration should also consider providing suitable incentives so that the industry would be more receptive to the new system. As such, he opined that when the proposed electronic system was rolled out, the Administration should ensure that it would bring about convenience and speediness to users so as to attract them to switch to the use of the electronic service. Echoing Mr SIN's views, the Chairman opined that if the proposed electronic system could be implemented successfully as to shorten the time required for customs clearance, truck drivers would certainly support the introduction of the electronic manifest system.

36. Since the proposed electronic system would be rolled out in two years' time, i.e. in 2009, Mr CHAN Kam-lam suggested the Administration to develop, during the interim, system software which would provide simple procedures for truck drivers to input cargo information in the remaining data fields so as to facilitate their switch to the electronic submission of road cargo manifests. Consideration could be given to exploring the feasibility of using electronic cards which could store high volume of information at low operating cost. In order to maintain Hong Kong's international position as a logistics hub, Mr CHAN considered that the Administration should be forward-looking, and should implement a comprehensive electronic system to cater for customs clearance as well as the submission of cargo manifests. With regard to truck drivers, Mr CHAN was of the view that there might not be strong resistance to the introduction of an electronic manifest system for road cargoes as truck drivers' legal liability remained the same only that their submission of cargo manifests changed from paper to electronic mode. As such, he asked the Administration to explore the feasibility of his aforementioned suggestion with the concerned consultant.

37. In response, PASCIT(CI)4 said that it remained the Administration's plan to introduce the electronic manifest system for road cargoes when conditions were ripe and would adopt an incremental approach in implementing the system. As such, the Government would adopt a modular IT infrastructure so that the proposed electronic system would be scalable to cater for the implementation of the electronic road cargo manifest system in the longer term. He added that since truck drivers would participate in the use of the proposed electronic system when it was rolled out in 2009, they would have first-hand experience of the convenience of electronic means, thereby enhancing the chance of their acceptance of the use of the electronic manifest system in future.

38. While noting the Administration's aim to pursue the implementation of the electronic manifest system in the longer term, Mr CHAN Kam-lam considered that the Administration should start developing the necessary software with a view to implementing the system, which should also be fully funded by the Government, on a trial basis in 2009 in parallel with the proposed electronic system. He opined that such an arrangement could effectively shorten the time taken for implementation of the electronic manifest system. As Hong Kong had already lagged behind the Mainland in the implementation of the electronic customs clearance infrastructure, he urged the Administration to consider seriously early implementation of the electronic manifest system. The Chairman shared Mr Chan's views.

39. Echoing Mr Chan Kam-lam's views, Mrs Sophie LEUNG opined that the Administration should not think along the conventional line as to adopt an incremental approach in taking forward its plans; instead, it should be forward-looking and should consider issues from a wider perspective for greater benefit to the public. As truck drivers had already been accustomed to the electronic customs clearance infrastructure adopted by the Mainland Customs since 2003, the Administration should not underestimate their capabilities to submit cargo manifests in electronic mode. As such, she called on the Administration to explore the issue with the concerned service provider with a view to implementing earlier the electronic manifest system. PASCIT(CI) said that the trucking industry, and the drivers of single-trailer container lorries in particular had expressed difficulty in submitting electronic manifests which contain 17 data fields in advance.

40. Mrs Sophie LEUNG, however, suggested that the Administration should make it clear to truck drivers that they would not be required to take on the sole responsibility for the information to be provided in the e-ACI submissions as the shippers would input those information together with the truck drivers. Moreover, training in this respect would also be provided to truck drivers to assist them in familiarizing with the electronic manifest system. In view of the fact that there might be enhanced anti-terrorist movement and that truck drivers who were only required to undertake a bundling act would not be held responsible for the consignments concerned under the proposed electronic system, she considered it necessary for the Administration to implement the electronic manifest system as soon as possible so that truck drivers would also be

responsible for the consignments concerned. In this connection, Mr CHAN Kam-lam remarked that consideration should also be given to simplifying the procedure such as the information to be provided in the electronic cargo manifests so as to provide greater convenience and hence the facilitation of the implementation of the electronic manifest system.

41. DSCIT(CI) took note of members' views regarding the need for early implementation of the electronic manifest system. He reiterated that thorough consultation with the industry concerned had to be made before the rolling out of the system. He undertook to reflect members' views to truck drivers via the User Consultation Group, and report their responses to the Panel in due course. He also assured members that the Administration would be mindful, when designing the proposed electronic system, of the need to build in flexibility to cater for the implementation of the electronic manifest system in future.

Legislative proposal

42. While expressing his support, in principle, for the Administration's proposal as to implement the proposed electronic system which would enhance the efficiency of customs clearance at LBCPs, Mr SIN Chung-kai remarked that the amendment bill should be introduced into the Legislative Council first for scrutiny, if considered necessary, as soon as practicable before funding was sought from the Finance Committee (FC) for implementation of the system. In response, DSCIT(CI) said that the Administration was drafting the amendment bill and would introduce it into the Legislative Council in the second quarter of 2007. In view of members' concerns, he undertook to expedite the work schedule with a view to implementing earlier the proposed electronic system.

43. In response to Mrs Sophie LEUNG, PASCIT(CI) advised that the operator of the proposed electronic system had yet to be selected as the tendering process had not commenced. Nevertheless, he took note of members' concerns and undertook to expedite the procedures by commencing the tendering procedure as soon as the funding proposal was approved by FC with a view to rolling out the proposed electronic system early.

44. Summing up the discussion, the Chairman said that the Panel was, in principle, supportive of the Administration's proposal. He also called on the Administration to take note of members' views and concerns for expediting the implementation of the electronic customs clearance infrastructure in Hong Kong.

VI. Any other business

45. There being no other business, the meeting ended at 4:20 pm.