

立法會
Legislative Council

LC Paper No. CB(1)1503/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/HS/2/08

**Subcommittee to Examine the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions**

**Minutes of the seventh meeting
held on Friday, 5 March 2010 at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon LAU Kong-wah, JP
Hon Cyd HO Sau-lan

Public Officers attending : Agenda item II

Ms Linda LAI Wai-ming, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Miss Wendy CHUNG
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)

Mr Peter WONG Hing-hong
Principal Government Counsel
Department of Justice

Mr James DING
Acting Deputy Principal Government Counsel (Treaties &
Law)
Department of Justice

Ms Francoise LAM See-man
Senior Government Counsel
Department of Justice

Ms Lonnie NG Wah-chi
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Annette LAM
Senior Council Secretary (1)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)1240/09-10 -- Minutes of meeting held on
29 January 2010)

The minutes of the meeting held on 29 January 2010 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)1291/09-10(01) -- Administration's response to issues
raised at meeting on 29 January
2010

LC Paper No. CB(1)903/09-10(01) -- Administration's paper on United
Nations Sanctions (Democratic
People's Republic of Korea)
(Amendment) Regulation 2010

LC Paper No. LS36/09-10 -- Report on subsidiary legislation
gazetted on 15 January 2010 to the
House Committee meeting on
22 January 2010

LC Paper No. CB(1)1022/09-10(01) -- Letter from Assistant Legal
Adviser to the Administration
dated 27 January 2010)

2. The Subcommittee deliberated (Index of proceedings attached at
Appendix).

3. The Subcommittee completed the study of Part 6 (i.e. sections 24, 24A, 24B and 25) of the mark-up English version of the United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation 2010 (the Amendment Regulation).
4. The Assistant Legal Adviser was requested to examine the legal and drafting aspects of the Chinese version of the Amendment Regulation and to report irregularity, if any, to the Subcommittee.

The way forward

5. Members agreed that an interim report on the Subcommittee's work should be made to the House Committee before the end of the current legislative session. The report should cover concerns raised by members during the study of the Regulations made under the UNSO since October 2008. The House Committee's support should be sought for Dr Hon Margaret NG, in the capacity as the Subcommittee Chairman, to move a motion for adjournment on the subject under Rule 16(4) of the Rules of Procedure at a Council meeting before the end of the current legislative session.

(Post-meeting note: The date and the proposed wording of the motion to be discussed by the Subcommittee at the next meeting.)

III. Any other business

Meeting arrangement

6. Noting that the Government would submit other Regulations to the Subcommittee within the current legislative session, members agreed that a further meeting should be scheduled to study those Regulations when received. The Secretariat would consult members on the meeting date nearer the time.
7. There being no other business, the meeting ended at 11:30 am.

Council Business Division 1
Legislative Council Secretariat
30 March 2010

**Proceedings of the seventh meeting of
the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions
on Friday, 5 March 2010 at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
00000 – 000209	Chairman	<p>Opening remarks by the Chairman</p> <p>Confirmation of minutes of meeting held on 29 January 2010 (LC Paper No. CB(1)1240/09-10)</p>	
000210 – 001144	<p>Chairman Administration Mr LAU Kong-wah Ms Cyd HO</p>	<p>Meeting with the Administration</p> <p>Briefing by the Administration on the rationale and basis for introducing the new provisions on forfeiture and disposal of seized prohibited items pursuant to a court order under new sections 24A and 24B (as added by section 26 of the Amendment Regulation) (LC Paper No. CB(1)1291/09-10(01)).</p> <p>The Administration advised that:</p> <p>(a) the new provisions on forfeiture and disposal were properly made pursuant to section 3 of the United Nations Sanctions Ordinance (Cap. 537) (UNSO) and were <i>intra vires</i>; and</p> <p>(b) new sections 24A and 24B were appropriate and adequate for the purpose of implementing paragraph 14 of the United Nations Security Council (UNSC) Resolution 1874.</p> <p>The Chairman was of the view that neither the UNSC nor the Ministry of Foreign Affairs had prescribed the specific vehicle to be used for implementing the UNSC sanctions. The actual method of implementation was a decision for the HKSAR Government and the Administration was at liberty to consider how best to implement the UNSC resolutions. Given that new sections 24A and 24B purported to have serious penal effect and confer vast enforcement power, the provisions of such a nature should be subject to vetting by the legislature and the proper way of conduct was to seek to amend the principal Ordinance first. She expressed reservation about the current mechanism for implementing UN sanctions in Hong Kong whereby the procedures of positive vetting or negative vetting applicable to subsidiary legislation did not apply to regulations made under section 3(1) of the UNSO. She cautioned against the present arrangement which she considered might jeopardize Hong Kong's legal system.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Mr LAU Kong-wah said that it was a pragmatic and appropriate approach to enact sections 24A and 24B in accordance with the empowering section under section 3 of the UNSO for the purpose of implementing the UNSC Resolution 1874. He considered it not necessary to amend the principal Ordinance and disagreed that the current mechanism for implementing UN sanctions would undermine Hong Kong's legal framework.</p> <p>Ms Cyd HO considered it regrettable that the Amendment Regulation was not subject to amendment by the Legislative Council (LegCo) given that under section 3(5) of the UNSO, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) were not applicable to the regulations so made. She considered it necessary to improve the existing regulation-making process to achieve greater transparency and accountability by engaging LegCo in the process.</p> <p>The Administration noted members' concerns and views.</p>	
001145 – 001445	Chairman Ms Cyd HO Administration	<p>In response to Ms Cyd HO's enquiry about the list of persons and entities specified by the Chief Executive under Cap. 537AE, the Administration explained that:</p> <ul style="list-style-type: none"> (a) under section 31 of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537AE), the Chief Executive (CE) might specify the persons and entities designated by the Committee established under paragraph 12 of UNSC Resolution 1718 or by the Security Council (SC) pursuant to paragraph 8(d) of UNSC Resolution 1718 as relevant persons and entities by notice in the Gazette; (b) the CE had no power to specify persons and entities other than those designated by the Committee or the SC; and (c) the latest list of relevant persons and entities had been published in the Gazette (GN. 505) in January 2010. 	
001446 – 002011	Chairman Administration Ms Cyd HO Mr LAU Kong-wah	Study of Part 6 (i.e. sections 24, 24A, 24B and 25) of the mark-up English version of the United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation 2010 (LC Paper No. CB(1)903/09-10(01))	

Time marker	Speaker	Subject(s)	Action required
002012 – 002749	Chairman Administration Ms Cyd HO Mr LAU Kong-wah	<p>In response to members' enquiry about the procedures for forfeiture and disposal of seized prohibited items, the Administration explained that:</p> <ul style="list-style-type: none"> (a) training on the handling of seized prohibited items had been provided to the front-line staff of the Customs and Excise Department. Where necessary, international expertise would be enlisted; (b) the provisions in new sections 24A and 24B largely mirrored those in Part VI of the Import and Export Ordinance (Cap. 60); (c) the trade would find sections 24A and 24B familiar as they were not too different from the established forfeiture arrangements under Part VI of Cap. 60 (apart from excluding the mandatory forfeiture provisions); and (d) the newly added provisions provided transparency and improvement to the procedural aspect to enable the interested parties to claim back or object to the forfeiture of seized items, thereby giving better protection to the rights of the owner of the seized items. <p>The Chairman urged the Administration to consider standardizing the procedures on forfeiture and seizure of prohibited items in future review of the relevant ordinances.</p>	
002750 – 004059	Chairman Administration Clerk Mr LAU Kong-wah Ms Cyd HO	<p>Members agreed that an interim report on the Subcommittee's work should be made to the House Committee before the end of the current legislative session. The report should cover concerns raised by members during the study of the Regulations made under the UNSO since October 2008.</p> <p><u>Discussion on options for Members to debate at a Council meeting on Regulations made under section 3(1) of the UNSO</u></p> <p>Given the important legal and constitutional implications arising from the current mechanism of implementing UN sanctions in Hong Kong as provided under the UNSO, and for the purpose of enhancing transparency and public accountability of the Subcommittee's work, the Chairman considered it necessary to provide a forum for Members to give views on the subject and to elicit the Administration's response at a Council meeting before the end of the current legislative session.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>At the Chairman's request, the Clerk outlined the options for Members to debate at a Council meeting on the subject as follows:</p> <ul style="list-style-type: none">(a) motion debate initiated by the Subcommittee under House Rule (HR)14A; or(b) moving a motion for adjournment initiated by the Subcommittee under Rule 16(4) of the Rules of Procedure. <p>Mr LAU Kong-wah was of the view that it would suffice for the Subcommittee to submit an interim report to the House Committee before the end of the current legislative session. Nevertheless, it was up to the Chairman to decide the options for Members to debate at a Council meeting on Regulations made under section 3(1) of the UNSO.</p> <p>The Chairman was of the view that option (b) might be a more appropriate option.</p> <p>Ms Cyd HO suggested and the Chairman agreed that the House Committee's support be sought for the Subcommittee Chairman to move a motion for adjournment at a Council meeting.</p>	
004100 – 004245	Chairman	The way forward	