

立法會
Legislative Council

LC Paper No. CB(1)2487/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/EDEV/1

Panel on Economic Development

Minutes of meeting
held on Monday, 22 June 2009, at 10:45 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Hon Starry LEE Wai-king (Deputy Chairman)
Hon Fred LI Wah-ming, JP
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Albert CHAN Wai-yip
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Tanya CHAN
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
- Members absent** : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Public officers
attending**

: Agenda Item IV

Miss Margaret FONG, JP
Commissioner for Tourism

Mrs Laura ARON
Assistant Commissioner for Tourism

Agenda Item V

Mr Gregory SO, JP
Under Secretary for Commerce and Economic
Development

Ms Annie CHOI Suk-han, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)³

Mr YAU Kin-chung
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)
Special Duties

Mr CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

**Attendance by
invitation**

: Agenda Item IV

Travel Industry Compensation Fund Management
Board

Mr Ignatius CHAN Tze-ching, BBS, JP
Chairman

Tiglion Travel Services Company Limited

Mr Peter HUNG
Managing Director

Concern Group of Travel Industry in Hong Kong

Mr Tim LEE
Chief Executive Director

Hong Kong Association of Travel Agents

Mr Michael WU
Chairman

Hong Kong Outbound Tour Operators' Association
Limited

Mr Peter KONG Pak-cheung
Chairman

Agenda Item V

Consumer Council

Ms Wendy LAM
Acting Chief Executive

Mr Simon CHUI
Senior Legal Counsel

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Angel SHEK
Senior Council Secretary (1)1

Ms Clara LO
Legislative Assistant (1)3

Action

I Confirmation of minutes and matters arising
(LC Paper No. CB(1)1937/08-09 - Minutes of meeting held on
25 May 2009)

The minutes of the meeting held on 25 May 2009 were confirmed.

II Information papers issued since last meeting
(LC Paper No. CB(1)1765/08-09(01) - Tables and graphs showing the
import and retail prices of major
oil products from May 2007 to

April 2009 furnished by the
Census and Statistics Department)

2. Members noted the information paper issued since last meeting.

III Items for discussion at the next meeting

(LC Paper No. CB(1)1939/08-09(01) - List of outstanding items for discussion

LC Paper No. CB(1)1939/08-09(02) - List of follow-up actions)

3. Members noted that the Administration had not proposed any item for discussion at the next meeting scheduled for Wednesday, 15 July 2009, at 10:45 am.

4. Members agreed to exchange views with the Administration on cooperation between Hong Kong and the Pearl River Delta (PRD) Region in respect of the areas on tourism and logistics as a follow-up to the Study of the Economic Development and Environmental Protection in the PRD Region conducted by the delegation of the Legislative Council in May 2009. Mr Albert CHAN requested that the notes of the briefing delivered by Mr WAN Qingliang, Vice-Governor of the Guangdong Province during the delegation's study visit should be prepared for members' reference. Ms Emily LAU suggested that the meeting with the Administration should also cover the area on environmental protection, and the Chairman agreed to follow up with the Chairman of the Panel on Environmental Affairs.

(Post-meeting note: With the concurrence of the Chairmen of the two Panels, a joint Panel meeting was scheduled to be held on 15 July 2009 at 10:45 am. Members were notified about the meeting arrangement on 25 June 2009 vide LC Paper No CB(1)2064/08-09(01).)

IV Proposals to amend the Travel Agents Ordinance (Specification of Fund Levy) Notice (Cap. 218 sub. leg. D) and the Travel Industry Compensation Fund Rules (Cap. 218 sub. leg. E and F)

(LC Paper No. CB(1)1939/08-09(03) - Administration's paper on proposals to amend the Travel Agents Ordinance (Specification of Fund Levy) Notice (Cap. 218D) and the Travel Industry Compensation Fund Rules (Cap. 218E & F)

LC Paper No. CB(1)1939/08-09(04) - Paper on the Travel Industry Compensation Fund prepared by the Legislative Council Secretariat (Background brief)

- LC Paper No. CB(1)1939/08-09(05) - Submission from Concern Group of Travel Industry dated 2 June 2009
- LC Paper No. CB(1)1939/08-09(06) - Submission from Tiglion Travel Services Company Limited dated 11 June 2009
- LC Paper No. CB(1)1972/08-09(01) - Submission from Tiglion Travel Services Company Limited dated 16 June 2009
- LC Paper No. CB(1)1972/08-09(02) - Submission from Tiglion Travel Services Company Limited dated 18 June 2009
- LC Paper No. CB(1)2030/08-09 - Submission from Tiglion Travel Services Company Limited dated 19 June 2009)
(*tabled at the meeting and subsequently issued via e-mail on 23 June 2009*)

Meeting arrangements

5. Noting that there were four deputations attending the meeting, Mr Paul TSE and Mr Fred LI asked about the meeting arrangements.

6. The Clerk reported that when the Panel agreed to discuss the item as proposed by the Administration at the last regular meeting, members had not made any suggestion to invite deputations to give views to the Panel. The Secretariat therefore explained to some groups who expressed interest to give views that the Panel had not taken a decision of inviting the industry's views. Nevertheless, a group made repeated requests to give views at this meeting. The Chairman subsequently acceded to such request on the condition that a further meeting would be convened to provide a fair chance for other deputations also to express their views to the Panel.

7. Mr Albert CHAN said that a further meeting should be convened to enable other interested parties from the travel industry to provide their views to the Panel. Miss Tanya CHAN agreed with Mr CHAN.

8. In response to Mr Paul TSE, the Chairman advised that Hong Kong Association of Travel Agents (HATA) and Hong Kong Outbound Tour Operators' Association Limited (OTOA) were also invited to attend this meeting because they were closely related to the use of the Travel Industry Compensation Fund (TICF). The Clerk added that as the Chairman had made the decision in the afternoon of the previous Thursday, there was insufficient time for the Panel to invite other parties to join this meeting. Mr Vincent FANG supported the Chairman's decision to

invite HATA and OTOA to the meeting.

9. Mr WONG Ting-kwong said that he respected the Chairman's decision regarding the meeting arrangement, and urged that a further meeting be convened as soon as practicable. Mr CHAN Kam-lam added that many industry players would also like to express views on the regulation of the travel industry by the Travel Industry Council of Hong Kong (TIC).

Presentation by the deputations

10. The Chairman welcomed the deputations and invited them to present their views.

Tiglion Travel Services Company Limited
(LC Paper Nos. CB(1)1939/08-09(06), CB(1)1972/08-09(01) & (02),
CB(1)1939/08-09(06) and CB(1)2030/08-09)

11. Mr Peter HUNG, Managing Director of Tiglion Travel Services Company Limited (TTSC) requested the Administration to withdraw the proposals recommended by the TICF Management Board as listed in the public consultation document. He pointed out that under the Travel Agents Ordinance (Cap. 128) (TAO), any person carrying on business as a travel agent was required, inter alia, to be a member of TIC in order to obtain a licence from the Registrar of Travel Agents. He opined that this had violated Article 27 of the Basic Law of the Hong Kong Special Administrative Region, which stipulated, among others, the rights of Hong Kong residents in the freedom of association. He considered that the levy to TIC (the Council Levy) had also encroached Article 105 of the Basic Law as it was made without compensation to the travel agents. Referring to Article 104 of the Basic Law, Mr HUNG requested the Secretary for Commerce and Economic Development to fulfill her obligation to uphold the Basic Law, and revise the proposals for public consultation.

Concern Group of Travel Industry
(LC Paper No. CB(1)1939/08-09(05))

12. Mr Tim LEE, Chief Executive Officer of the Concern Group of Travel Industry in Hong Kong (CGTI) supported a reduction of TICF Levy (the Fund Levy) rate from 0.15% to 0%. However, he considered that the Administration should implement the same reduction for the Council Levy as it was unreasonable to compel members of TIC to pay for it since it was no longer necessary for TIC to collect the Fund Levy. He opined that the continuation of the Council Levy was tantamount to channelling interests to TIC. He strongly requested the Panel to arrange a meeting to discuss the Council Levy in connection with the Fund Levy.

Hong Kong Association of Travel Agents

13. Mr Michael WU, Chairman of HATA declared that he was a member of the Board of Directors of TIC. Mr WU explained the purpose of the Fund and the

associated work of TIC including collection of Fund Levy, maintenance of franking machines, and assisting affected travellers to apply for ex gratia payment from the Fund and financial assistance from the Package Tour Accident Contingency Fund Scheme. He stressed that the protection offered by the Fund was applicable to all travellers irrespective of the size of operation of the travel agents concerned. Highlighting the important role of TIC as a middle-man to protect the interests of the trade and the consumers, Mr WU disagreed with the view that the Council Levy had channelled interests to TIC.

Hong Kong Outbound Tour Operators' Association Limited

14. Mr Peter KONG, Chairman of OTOA said that he was a member of the TIC Board of Directors. Referring to the purposes of the Fund, Mr KONG pointed out that the Fund had provided protection to both travellers and the travel trade, in particular the small travel agents. He said that TIC had played a vital role in coordinating among relevant parties to settle disputes and claims for travellers. The Fund had enhanced consumers' confidence in travel agents and the business viability of the trade.

Briefing by the Administration

15. At the invitation of the Chairman, the Commissioner for Tourism (C for T) briefed members on the proposals to amend TAO (Specification of Fund Levy) Notice (Cap. 218D) and the TICF Rules (Cap. 218E & F) as set out in the Administration's paper CB(1)1939/08-09(03), namely, setting up a levy rate adjustment mechanism for the Fund Levy; suspension of the Fund Levy; increase in ex gratia payments to travellers who died or were injured whilst travelling abroad; and introduction of a new set of procedures including a new authorization form to be signed by an outbound tour traveller before departure. C for T advised that the first proposal would be effected through administrative means whilst the remaining three were subject to the negative vetting process. The TICF Management Board had conducted a public consultation between 13 March and 30 April 2009 to collect the views of the stakeholders on the proposals. Consultation sessions with interested bodies including TIC, the Advisory Committee on Travel Agents and the Consumer Council (CC) were also conducted upon request. All four proposals had received majority support during the consultation. The Administration intended to introduce the proposed amendment to the TAO (Specification of Fund Levy) Notice (Cap. 218D) to the Legislative Council (LegCo) for negative vetting on 8 July 2009 to reduce the Fund Levy rate from 0.15% to 0%, with a view to implementing the suspension of the Fund Levy on 1 November 2009. Subject to members' endorsement, consideration could be given to effecting the suspension upon gazettal, i.e. 3 July 2009, so as to reduce the operating cost of travel agents at the earliest possible opportunity to help them tide over the difficult times amidst the global economic crisis. As for the other legislative amendments, the Administration aimed to introduce them to LegCo for negative vetting by end 2009 for implementation in the first quarter of 2010.

Discussion

16. Mr CHAN Kam-lam declared that he was a member of the TICF Management Board. Mr Paul TSE declared that he was the owner of a travel agency, and his travel company was a member of TIC, HATA and OTOA. The Chairman also declared that he was a shareholder and non-executive director of a travel agency.

Suspension of Fund Levy

17. Based on some surveys he conducted with the travel industry, Mr Paul TSE said that travel agents generally supported the Administration's proposed amendments. Mr CHIM Pui-chung and Mr Vincent FANG considered that the proposals, in particular the suspension of the Fund Levy, would be welcomed by the travel trades.

18. Mr CHAN Kam-lam said that he was pleased to note that the proposals had received majority support during the consultation conducted by the TICF Management Board. He commented that issues related to the levies on outbound tour fares had long been a subject of contention. While travel agents had reflected difficulty to incorporate the levy in the outbound tour fare and that the levies (Fund Levy and Council Levy) were essentially contribution at the agents' own cost, consumers were skeptical of the impact of the levies on tour prices. He believed that the present proposal to suspend the collection of the Fund Levy would help reduce the operation cost of travel agents, serve the interests of consumers while not affecting the Board's ability to meet statutory obligations in ex gratia payments. In the light of the current balance of the Fund, he envisaged that the suspension of the Fund Levy could be maintained for a long period for the benefits of the trade and consumers.

19. While supporting the proposals, Mr Fred LI was however concerned whether the reduction of Fund Levy rate would be genuinely reflected in the outbound tour fares to benefit the consumers. C for T advised that during the consultation with the travel industry, the travel agents had been asked to reflect the costs saved from the suspension of the Fund Levy in benefits to consumers. Taking into account the different modes of operation of travel agents, variety of tourism products and the varying interests of consumers, the Administration considered it appropriate and practical for the travel agents to decide how the suspension of the Fund Levy could benefit the consumers, such as by enhancing the services and quality of tours, or reducing outbound tour fares.

20. Mr Fred LI opined that a mechanism should be put in place to ensure that the suspension of the Fund Levy would be reflected in the outbound tour fares or quality of tourism products in the interests of consumers. In his view, it would not be effective to ask the travel agents to act on the matter on a self-regulatory basis. Mr Ronny TONG commented that market competition would serve as a driving force for travel agents to translate the levy saved into benefits for the consumers.

Adjustment mechanism for Fund Levy rate

21. In reply to Mr CHIM Pui-chung, C for T explained that the triggering thresholds to suspend or resume collection of the Fund Levy were proposed on the recommendations of a professional actuarial study which recommended that the prudent level of the Fund and the buffer level should be set at \$400 million and \$500 million respectively. These thresholds had taken into account the worst case scenario which involved default of two large-scale travel agents and a number of smaller establishments at the same time. Mr CHAN Kam-lam considered it appropriate to set up a levy rate adjustment mechanism, with the prudent level of the Fund set at \$400 million.

22. Mr CHIM Pui-chung expressed concern that the Fund had largely served the interests of large travel agents at the expense of the smaller ones, as the amount of compensation involved in case of default of large travel agents would normally be much higher. C for T responded that the Fund offered protection to outbound tour travellers irrespective of the scale of operation of the travel agents. In fact, the protection offered by the Fund had helped boost consumers' confidence in the small and medium travel agents in spite of their smaller scale of operation. Mr Peter HUNG of TTSCCL commented that small and medium-sized travel agents did not rely simply on the protection offered to travellers by the Fund to maintain their business viability.

Scope and utilization of the Fund

23. Ms Starry LEE noted that ex gratia payment of about \$18 million were paid in the default of 28 travel agents between 1993 and February 2009 and \$2 million were expended on applications under the Package Tour Accident Contingency Fund Scheme. In view of the small amount of ex gratia payment made in the past 16 years and a long history of surplus, she doubted why the TICF Management Board had not conducted a review earlier regarding adjustment of levy rate and scope of the Fund's protection. In this regard, she enquired about the decision-making process of the Board in determining the utilization of the Fund.

24. Mr Ignatius CHAN, Chairman of the TICF Management Board advised that as the TICF Management Board was a statutory body established under section 32B of the TAO, it had to hold, manage and apply the Fund in accordance with the TAO provisions. As such, the Board did not possess the absolute right and sole power to determine the use of the Fund. The Board had regularly reviewed the reserve level of the Fund and the Fund Levy rate. Since he had taken up the Chairmanship some two years ago, the Board had been gauging the views of the travel sector on the proposals to enhance the scope of protection to travellers and facilitating trade development. After examining in details the feasibility of the suggestions from the travel sector and the financial position of the Fund, the Board recommended to SCED the four proposed measures. As the legislative proposals entailed relatively straight-forward amendments, it was envisaged that they could take effect within a short period to bring about prompt assistance to the trade and protection to travellers. As for the way forward, he undertook to explore more

channels to deliver the objectives of the Fund, and study the suggestions collected during consultation.

25. Mr Vincent FANG noted that the Fund had used to provide protection to outbound tour travellers who might claim up to 90% of the outbound tour fare paid if the licensed travel agent patronized defaults but the purchase of air tickets or hotel accommodation alone was not covered. He enquired whether there was any plan to extend the scope to cover purchases of single item of air tickets, hotel accommodation, etc. C for T advised that the proposal to extend the scope of the Fund's protection would be further studied by the TICF Management Board. Under the current scope, the purchases of air/bus tickets alone or hotel accommodation alone were not covered by the Fund. Such single items of purchase would also not be liable to payment of either the Fund Levy or Council Levy.

26. At the request of Mr CHAN Kam-lam, and upon invitation by the Chairman, deputations attending the meeting were asked to indicate whether they were in support of the four proposals put forth by the Administration. Mr Peter HUNG of TTSC expressed objection to the proposals as the travel agents were still required to pay the Council Levy after the collection of the Fund Levy was suspended. Mr Tim LEE of CGTI supported the proposal to reduce the Fund Levy rate from 0.15% to 0% but objected to the continuation of the collection of the Council Levy. He opined that the two levies were inter-related, hence they should be considered together. Mr Michael WU of HATA supported all four proposals which had the majority support of the travel agents as reflected in the consultation conducted by HATA with the trade. Mr Peter KONG of OTOA said that he and members of OTOA were supportive of the proposed amendments.

Levy to the Travel Industry Council of Hong Kong

27. As the workload of TIC would be reduced after the collection of Fund Levy was suspended, Mr Fred LI enquired whether the Administration would review the level of the Council Levy which was meant to meet the operational expenses of TIC.

28. Noting the huge amount of annual revenue received by TIC from the Council Levy as stated in the submission from Mr Tim LEE of CGTI (CB(1)1939/08-09(05)) (i.e. \$16,294,380 in the year from July 2007 to June 2008 and a total of \$131,879,589 for the past 11 years since July 1997), Mr Ronny TONG enquired about the need to continue the levy payment to TIC if there was a substantial surplus so generated. He suggested that a reduction in the Council Levy might further help the travel agents, especially the small and medium establishments, to ride out the financial crisis.

29. Mr CHIM Pui-chung opined that as Council Levy was paid by consumers, the Administration should exercise caution to ensure that the money would be expended on the operational expenses of TIC for the pursuit of its mission and objectives, and not channelled to serve the interests of political affiliations.

30. C for T explained that, apart from the collection of the Fund Levy, the work of TIC covered a wide range of areas, such as establishing codes of conduct and directives, regulating the day-to-day operation of the travel trade, maintaining the standard of professionalism within the industry, and dealing with disciplinary matters and handling consumer complaints. The Council Levy was introduced under TAO in 1993, with a view to providing a stable source of income to fund the operational expenses of TIC in the pursuit of its industry self-regulatory objectives. While the Council Levy was capped at 80% of the operational expenses of TIC, the actual Levy income in the past years had formed only about 60% of the revenue of TIC. Apart from the need to secure additional income to fill the funding gap, it was noted that the operational expenses of TIC had increased with the expansion of its role over the years, from regulation of outbound travel agents only to also include inbound travel agents from 2002 onward, and the number of member travel agents of TIC had increased from about 1 000 in 1993 to the current 1 480. C for T hoped that members would understand that a reduction or suspension of the Council Levy would adversely affect the financial stability of TIC and its self-regulatory work.

31. At the invitation of the Chairman, Mr Michael WU of HATA advised that TIC was responsible for a wide spectrum of services pertaining to the operation of the industry. As the current discussion mainly focused on proposed legislative amendments with regard to the Fund Levy and the operation of TIC was a separate issue, he invited members to visit the website of TIC for details of its services.

32. Referring to the income and surplus of the Fund, Mr WONG Ting-kwong expressed concern about the substantial amount of income to TIC from Council Levy, which might be more than \$16 to \$20 million a year. He doubted the justification for the relatively high operational expenses of TIC and whether the resources had been deployed in a cost-effective and appropriate manner.

33. Mr Ignatius CHAN of the TICF Management Board said that the cumulative surplus of the Fund could not serve as a reference for the amount of Council Levy as the surplus included income from investment over the years and deduction of ex gratia payment since 1993. As the Fund Levy and Council Levy operated on different basis, he considered it not appropriate to draw a direct comparison between the two. Since the TICF Management Board and TIC Board were independent of each other, Mr CHAN said that he was not in a position to make further comments on TIC matters.

34. The Chairman advised that as issues related to the Council Levy or operation of TIC fell outside the scope of the present discussion at the current meeting, and in view of the shortage of time for deliberation, he suggested that members might pursue the matter at the special meeting to be arranged.

Review of the operation of the Travel Industry Council of Hong Kong

35. Mr Ronny TONG said that as the operation of TIC had drawn criticisms from the travel industry and the public from time to time, the Administration should address the concerns and review the organizational structure and operation of TIC, with a view to increasing its accountability and transparency.

36. Mr Paul TSE commented that there were divergent views and growing concerns in the community about the effectiveness of self-regulation for different professions and trades, as the approach might lead to channelling of benefits or conflict of interests. He urged that the Administration should act on its commitment to conduct value-for-money audits in respect of the economy, efficiency and effectiveness of the operation of TIC to enhance monitoring of its performance, having regard to the role and extent of the powers of TIC in regulating the industry and the substantial amount of revenue it received from Council Levy and other sources.

37. C for T recalled that TAO was amended in 1988 to accord formal recognition to TIC in regulating the travel industry. The self-regulatory role of TIC, which had a history of over 20 years, was considered effective and widely accepted by the travel industry and the general public in maintaining a high standard of professionalism within the industry and protecting the interests of both the trade and travellers. Nevertheless, the Administration would, in the longer run, examine the need to review the operation of TIC.

Way forward

38. Mr WONG Ting-kwong supported the proposals but considered it necessary to resolve the controversies over the Council Levy and review the operation of TIC. He considered it unjustified for travel agents to continue their contribution to the Council Levy.

39. Mr Ronny TONG took the view that the issue of the Fund Levy should be studied in connection with the Council levy. Mr Albert CHAN suggested that Panel members should gauge the views of deputations at a separate meeting for further consideration of the current proposals. Mr CHAN Kam-lam said that as the TICF Management Board had already conducted a public consultation on the current proposals, he considered that the issues of TIC and the Council Levy should be dealt with separately from the current proposals so that the latter could be implemented as soon as possible. The Chairman shared similar views and commented that it would be desirable to implement the proposals early to bring about benefits to the trade and consumers.

40. Mr Paul TSE requested the Administration and TICF Management Board to expedite the study on the various suggestions received during consultation (paragraph 8 of the Administration's paper CB(1)1939/08-09(03)) to extend the scope of the Fund's protection to travellers, in particular, the Fund should also cover purchases of single item of air tickets, hotel accommodation, etc. as these

areas were more prone to causing disputes. He understood that the large travel operators were unwilling to enhance the Fund's coverage as it would enhance the competitiveness of the small and medium-sized operators. Mr TSE observed that members' main concerns were about the operation of TIC and the Council Levy. He requested the Administration to address the concerns about the operation of TIC and conduct a review in this regard.

41. C for T said that the role and work of TIC had been established since the enactment of TAO in 1988. It was understandable that over the years there might be different views and suggestions from the community about the operation of TIC. She took note of members' views and suggestions for consideration in future. C for T requested members to give consideration to the current proposals, including the proposal to suspend the Fund Levy on the date of gazettal, i.e. 3 July 2009.

42. As members held different views on the way forward, the Chairman put the item to vote. A majority of the members voting voted in support of the Administration's proposals. Members agreed that the suspension of the Fund Levy would take effect upon gazettal. They also agreed to hold a special meeting to meet with deputations and the Administration on the operation of TIC.

V Review of consumer protection legislation

(LC Paper No. CB(1)1939/08-09(07) - Administration's paper on the consumer protection regime in Hong Kong

LC Paper No. CB(1)1939/08-09(08) - Paper on review of consumer protection legislation prepared by the Legislative Council Secretariat (Background brief)

43. The Chairman proposed and members agreed to extend the meeting to 1:00 pm.

Briefing by the Administration

44. At the invitation of the Chairman, the Under-Secretary for Commerce and Economic Development (USCED) referred members to the current consumer protection regime in Hong Kong as set out in LC Paper No. CB(1)1939/08-09(07). He said that the Administration's consumer protection policy was to ensure that products and services procured by consumers were safe and of reasonable quality, and that consumers were treated fairly. CC had conducted a review and submitted a report entitled "Fairness in the Marketplace for Consumers and Business" in 2008, which recommended that a cross-sectoral legislation should be enacted to prohibit unfair trade practices in the supply of all goods and services. The Commerce and Economic Development Bureau agreed in principle to strengthen the consumer protection regime and was now examining CC's recommendations in detail, in consultation with other government bureaux/departments, and making reference to

the legislative and institutional arrangements adopted in overseas jurisdictions. In the coming months, the Administration's consumer protection work would focus on, inter alia, considering the way forward in tackling the most prevalent unfair trade practices.

45. At the invitation of the Chairman, Ms Wendy LAM, Acting Chief Executive, CC reiterated its call for legislation to tackle unfair trade practices, in particular in the supply of services. She informed members that service-related complaints had risen from 22 427 cases (representing 62% of total complaints) in 2006 to 29 247 cases (representing 70% of total complaints) in 2008. For the first five months in 2009, there were 10 898 cases of services-related consumer complaints which represented 71% of all complaints. Most services-related complaints involved elements of unfair, misleading and deceptive conduct to some extent and in some forms, namely: (i) misleading advertisements and claims, (ii) adopting unfair contract terms, (iii) accepting payment without ability or intention to supply, (iv) bait and switch, and (v) aggressive and high pressure tactics. CC was worried that the present economic downturn could aggravate the problems as some businesses might turn aggressively to sales practices detrimental to the interest of consumers. CC hoped that its recommendations in the aforesaid report would be carefully considered and supported, as the need for legislation to curb unfair trade practices was imminent. Since introducing a new law was a long process, CC would welcome any legislative measures that could be put into implementation without undue delay.

Discussion

46. Ms Starry LEE noted that one of the foci of the Administration's consumer protection work in the coming months was to carry out more publicity and publication work, particularly in regard to advertising bluffs, consumer scams and traps, as well as high pressure sales tactics, with a view to strengthening the awareness of consumers. She expressed concern that unscrupulous sales practices cited above had existed for a long time, which could not be eradicated by public education alone. Ms LEE asked about the next step forward in prohibiting prevalent unscrupulous sales practices, such as by way of legislation. Ms LEE also asked whether consideration would be given to providing a "cooling-off" period for consumers who acquired membership services under high pressure sales tactics.

47. USCED agreed in principle that the Administration should strengthen regulation of unfair trade practices, particularly in respect of services. Further to the implementation of the Trade Descriptions (Amendment) Ordinance 2008 which targeted at certain malpractices in the sales of goods, the Administration would conduct a further review to strengthen protection for consumers.

48. Reiterating her concern that advertising bluffs and consumer scams had been in practice for a long time, Ms Starry LEE asked about the timeframe for the last review, including the release of outcome and recommendations, and the taking of action to safeguard the interests of consumers.

49. Regarding advertising bluffs, USCED said that there were several pieces of legislation in place to protect consumers. For example, the Broadcasting Ordinance (Cap. 562) and Broadcasting Authority Ordinance (Cap. 391) provided relevant standards and guidelines in advertising. The Trade Description Ordinance (Cap. 362) (TDO) sought to prohibit misleading or false trade descriptions on goods. The Undesirable Medical Advertisements Ordinance (Cap. 231) aimed at restricting certain advertisements relating to medical matters. As new unscrupulous practices emerged from time to time, the Administration would have to conduct review every now and then to explore ways to combat misleading and undesirable sales practices. It would conduct relevant public consultation in due course.

50. Mr Ronny TONG said that he was disappointed that the Administration had not taken on board CC's recommendation to introduce a cross-sector legislation, which was common among overseas jurisdictions, to prohibit unfair trade practices in the supply of all goods and services. Noting that the Administration planned to introduce amendments to existing legislation to protect consumers, Mr TONG enquired whether the Administration would make reference to overseas legislation and allow "class action" to be taken on behalf of aggrieved consumers.

51. USCED highlighted the work undertaken by the Administration to protect consumer rights. While the Administration agreed in principle that it should strengthen regulation of unfair trade practices, it was mindful that CC's recommendations were wide-ranging and complex, entailing very substantial changes to the existing legal and enforcement framework in the consumer protection regime. The Administration would adopt a targeted approach by tackling the most prevalent unfair trade practices and consult the public once it had formulated its initial view on the way forward. While the Administration would make reference to overseas legislation and include relevant examples in the documents, USCED remarked that "class action" would have a far-reaching impact on the existing legal system. Mr Ronny TONG stressed that consideration could be given to limiting the applicability of "class action" to consumer rights only.

52. In reply to Mr Ronny TONG', the Deputy Secretary for Commerce and Economic Development (Commerce and Industry)³ (DS/CED) added that CC's recommendations would involve complicated issues such as the establishment of new enforcement agency and new tribunal. The Administration agreed that there was an urgency to regulate unscrupulous practices in the supply of services, and was examining existing legislation to see if the control measures could be tightened. Subject to the progress of review, the Administration's target was to introduce the proposed legislative amendments by late 2009/early 2010.

(Post-meeting note: The Administration subsequently advised that its target was to formulate legislative proposals for public consultation in late 2009/early 2010.)

53. Mr Fred LI declared that he was a member of CC. While noting that there were regulations on television and radio advertisements, he expressed grave concern about the proliferation of advertising bluffs in the print media, especially the weekly magazines which was not subject to any regulatory control. He was very dissatisfied about the Government's inaction which had indirectly led to the present flourishing publication of advertising bluffs, in particular on areas of beauty and slimming.

54. USCED and DS/CED acknowledged the inadequacy of TDO which only sought to regulate representations on goods. The Administration was exploring the possibility to extend the scope of TDO to cover services. It was also considering matters related to the burden of proof. DS/CED added that if the descriptions of beauty products in advertisements were misleading, it had contravened TDO and was liable to prosecution. At present, the Administration might encounter difficulties in enforcement of TDO as the burden of proof rested with the Customs and Excise Department, and some descriptions were hard to be disproved.

55. Mr Fred LI considered it of paramount importance to expedite the legislative process of extending TDO to cover services.

56. Mr Albert CHAN was dissatisfied with the Administration's response and remarked that it should act more proactively on consumer complaints. He highlighted the numerous complaints received by his office and urged that the Consumer Legal Action Fund should be deployed more widely to deter unscrupulous trade practices. Ms Wendy LAM of CC informed members that the CC was the trustee of the Consumer Legal Action Fund and was advised by an independent Management Committee on the eligibility and merits of the applications seeking assistance under the Fund. As the Fund had been in operation since 1994, CC would undertake a strategic review of the Fund within 2009. Mr CHAN expressed concern that the Fund should approve more cases to safeguard the interests of consumers.

57. Concluding the discussion, the Chairman urged the Administration to expedite the processes of public consultation and legislative amendments with a view to combating the prevalent unscrupulous trade practices.

VI Any other business

58. There being no other business, the meeting ended at 1:00 pm.