

立法會
Legislative Council

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Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 20 November 2018, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon YIU Si-wing, BBS (Chairman)
Hon Alvin YEUNG (Deputy Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Dr Hon CHIANG Lai-wan, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying, JP
Hon LAU Kwok-fan, MH

Member attending : Dr Hon Junius HO Kwan-yiu, JP

**Public officers
attending**

: Agenda item IV

Commerce and Economic Development Bureau

Mr Edward YAU, GBS, JP
Secretary for Commerce and Economic Development

Miss Eliza LEE, JP
Permanent Secretary for Commerce and Economic
Development (Commerce, Industry and Tourism)

Mr Eddie MAK, JP
Commissioner for Economic and Trade Affairs, USA

Ms Irene YOUNG, JP
Permanent Representative of the Hong Kong Special
Administrative Region of China to the World Trade
Organization

Ms Shirley LAM, JP
Special Representative for Hong Kong Economic and
Trade Affairs to the European Union

Mr Raymond FAN, JP
Director, Hong Kong Economic and Trade Affairs,
Sydney

Miss Shirley YUNG, JP
Principal Hong Kong Economic and Trade
Representative, Tokyo

Ms Priscilla TO, JP
Director-General, Hong Kong Economic and Trade
Affairs, London

Mr Ivanhoe CHANG
Director, Hong Kong Economic and Trade Affairs, San
Francisco

Mr Bruno LUK
Director, Hong Kong Economic and Trade Affairs,
Singapore

Miss Kathy CHAN
Director, Hong Kong Economic and Trade Affairs,
Toronto

Ms Joanne CHU
Director, Hong Kong Economic and Trade Affairs,
New York

Mr Bill LI
Director, Hong Kong Economic and Trade Affairs,
Berlin

Miss Angie CHUNG
Acting Director-General, Hong Kong Economic and
Trade Affairs, Jakarta

Constitutional and Mainland Affairs Bureau

Miss Charmaine LEE, JP
Deputy Secretary for Constitutional and Mainland
Affairs 2

Ms Gracie FOO, JP
Director, Beijing Office

Mr Albert TANG, JP
Director, Hong Kong Economic and Trade Affairs,
Guangdong

Mr Vincent FUNG
Director, Hong Kong Economic and Trade Affairs,
Wuhan

Miss Victoria TANG
Director, Hong Kong Economic and Trade Affairs,
Shanghai

Miss SO Tsz-yin
Acting Director, Hong Kong Economic and Trade
Affairs, Chengdu

Mr Larry CHU
Acting Director, Hong Kong Economic, Trade and
Cultural Office (Taiwan)

Agenda item V

Commerce and Economic Development Bureau

Dr Bernard CHAN, JP
Under Secretary for Commerce and Economic
Development

Mr Gary POON
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)²

Miss Alice CHOI
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)³

Intellectual Property Department

Ms Elsie TSE
Assistant Director of Intellectual Property
(Trade Marks)

Ms Winnie MAK
Senior Solicitor (Trade Marks)¹

Customs and Excise Department

Mr Ellis LAI, C.M.S.M.
Assistant Commissioner of Customs and Excise
(Intelligence and Investigation)

Clerk in attendance : Mr Desmond LAM
Chief Council Secretary (1)³

Staff in attendance : Mr Joey LO
Senior Council Secretary (1)⁸

Mr Terence LAM
Council Secretary (1)³

Ms May LEUNG
Legislative Assistant (1)3

Miss Zoe YIP
Clerical Assistant (1)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)89/18-19 -- Minutes of meeting held on 11 October 2018)

The minutes of meeting held on 11 October 2018 were confirmed.

II. Information papers issued since last meeting

(LC Paper No. CB(1)86/18-19(01) -- Information paper on the financial position of the Applied Research Fund for the period from 1 March to 31 May 2018

LC Paper No. CB(1)117/18-19(01) -- Information paper on "SME Financing Guarantee Scheme — Special Concessionary Measures"

File Ref: CITB CR 75/53/5/1 -- Legislative Council Brief on United Nations Sanctions (South Sudan) Regulation 2018)

2. Members noted the above papers issued since the last meeting.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)173/18-19(01) -- List of outstanding items for discussion

LC Paper No. CB(1)173/18-19(02) -- List of follow-up actions)

3. Members noted that the next regular Panel meeting would be held on 18 December 2018 at 2:30 pm to discuss the following items proposed by the Administration –

- (a) Trade relations between the Mainland and Hong Kong; and
- (b) City Innovation and Technology Grand Challenge.

Work plan and list of outstanding items for discussion for 2018-2019 session

4. The Chairman informed members that he and the Deputy Chairman had met with the Administration on 13 November 2018 to discuss the work plan of the Panel in the 2018-2019 session. Members noted that the items proposed for discussion in the 2018-2019 session, including those items suggested by members at the meeting on 11 October 2018, were incorporated in the List of outstanding items for discussion (LC Paper No. CB(1)173/18-19(01) ("the List").

5. The Chairman sought members' views on the Administration's latest proposal in relation to item no. 5 "Proposed framework for implementing a cooling-off period and legislative proposals for strengthening regulation of person-to-person telemarketing calls". Members noted that in the light of the Administration's proposal to hold a joint meeting of the Panel, Panel on Economic Development and Panel on Information Technology and Broadcasting to discuss "the proposed framework for implementing a cooling-off period" and "legislative proposals the establishment of a statutory Do-not-call Register for strengthening regulation of person-to-person ("P2P") telemarketing calls", Hon SHIU Ka-fai suggested that separate discussions should be arranged for the subjects to allow more focused discussion and sufficient time for members' deliberations. In response to Mr SHIU's suggestion, the Administration now proposed to arrange the "cooling-off" item for discussion at the regular meeting of the Panel on Economic Development in January 2019, and the "P2P telemarketing calls" item for discussion at the regular meeting of the Panel on Information Technology and Broadcasting in April 2019. Panel members would be invited to join the respective discussions. Members raised no objection to the Administration's latest proposal, and agreed to delete this item from the List.

(Post-meeting note: The item "Proposed framework for implementing a cooling-off period" was discussed at the meeting of the Panel on Economic Development on 28 January 2019. Panel members were invited to join the discussion.)

IV. Report on the work of the overseas Hong Kong Economic and Trade Offices and the Offices of the Government of the Hong Kong Special Administrative Region in the Mainland and Taiwan in 2017-2018

(LC Paper No. CB(1)173/18-19(03) -- Administration's paper on "Report on the Work of the Overseas Hong Kong Economic and Trade Offices" provided by the Commerce and Economic Development Bureau

- LC Paper No. CB(1)173/18-19(04) -- Administration's paper on "Report on the Work of The HKSAR Government's Offices in the Mainland and Taiwan" provided by the Constitutional and Mainland Affairs Bureau
- LC Paper No. CB(1)173/18-19(05) -- Paper on the work of the overseas Hong Kong Economic and Trade Offices and the Offices of the Government of the Hong Kong Special Administrative Region in the Mainland and Taiwan prepared by the Legislative Council Secretariat (updated background brief)

Presentation by the Administration

6. At the invitation of the Chairman, Secretary for Commerce and Economic Development ("SCED") briefed members on the work of the 12 overseas Hong Kong Economic and Trade Offices ("ETOs") and the Offices of the Government of the Hong Kong Special Administrative Region ("HKSARG") in the Mainland and Taiwan since the last report in November 2017. SCED said that the current term Government continued to proactively raise Hong Kong's profile in international arena and promote Hong Kong's advantages. ETOs were the official representatives of HKSARG whose primary responsibilities were to foster relations and liaison with the local authorities at the government-to-government level and to handle bilateral economic, trade and cultural matters between Hong Kong and the countries under their respective purviews. Details of the work of the overseas ETOs as well as the Mainland and Taiwan Offices were set out in the Administration's papers (LC Paper Nos. CB(1)173/18-19(03) and (04)). As agreed by the Chairman, SCED invited the heads of five overseas ETOs and the Beijing Office ("BJO") to brief the Panel on their work.

7. Commissioner for Economic and Trade Affairs, USA ("C, USA") briefed members on the work of the New York ETO, the San Francisco ETO and the Washington ETO. He said that during the past year, the three ETOs continued to keep a close watch on the policy direction of President Trump and his Government as well as the United States ("US") economic and political landscape, particularly on the outcome of the US mid-term elections that might affect Hong Kong and its bilateral relationship with the US. The three ETOs would continue to develop working relationships with interlocutors and senior officials in the US Government whose portfolios were relevant to Hong Kong, and would keep in view the

developments of the US-China trade relations.

8. Special Representative for Hong Kong Economic and Trade Affairs to the European Union briefed members on the work of the Berlin ETO, the Brussels ETO and the London ETO. She said that the Brussels and London ETOs monitored the development and related negotiations regarding the exit of the United Kingdom ("UK") from the European Union ("EU") ("Brexit"), as well as kept a close watch on the developments associated with the European Parliament election to be held in May 2019. On the trade and investment fronts, Hong Kong and Finland entered into a Comprehensive Avoidance of Double Taxation Agreement in May 2018, and the Brussels ETO would continue to explore with the EU the possibility of a Hong Kong/EU investment agreement.

9. Principal Hong Kong Economic and Trade Representative, Tokyo said that in the past year, the Tokyo ETO promoted closer economic trade ties and cultural and tourism exchanges with Japan and Korea. She said that to tie in with the visit by the Chief Executive ("CE") to Japan in October 2018, the Tokyo ETO organized the "Hong Kong Week" in collaboration with various organizations to promote different aspects of Hong Kong.

10. Director, Hong Kong Economic and Trade Affairs, Singapore briefed members on the work of the Jakarta ETO and the Singapore ETO. He said that the Jakarta ETO represented HKSARG in matters between Hong Kong and the Association of Southeast Asian Nations ("ASEAN") as a whole, and promoted bilateral economic, trade and cultural relations between Hong Kong and four ASEAN member states (i.e. Indonesia, Brunei Darussalam, Malaysia and the Philippines), whereas the Singapore ETO was responsible for the other six ASEAN member states (i.e. Singapore, Cambodia, Laos, Myanmar, Thailand and Vietnam). A lot of emphasis was put on Hong Kong's role in promoting the Belt and Road Initiative. In November 2017, Hong Kong and ASEAN signed a Free Trade Agreement ("FTA") and an Investment Agreement, which would come into force on 1 January 2019 at the earliest subject to the progress of the signatories' internal procedures. The conclusion of the two agreements would foster closer economic partnership between Hong Kong and ASEAN. The Singapore ETO would, in collaboration with the relevant policy bureaux and departments, continue to carry out the preparatory work for setting up the Bangkok ETO, which was expected to commence operation in early 2019.

11. Permanent Representative of the Hong Kong Special Administrative Region of China to the World Trade Organization briefed members on the work of the Geneva ETO in representing Hong Kong, China ("HKC") as a Member of the World Trade Organization ("WTO"). She said that the unilateral trade restrictive measures taken by the US had heightened international trade tensions, impacting on global economy and the multilateral trading system. At the relevant WTO

meetings, the Geneva ETO raised objection to measures inconsistent with WTO agreements and reaffirmed HKC's support for the rules-based multilateral trading system. Meanwhile, HKC would continue to participate actively in trade negotiations, as well as discussions on WTO reform to help the organization rise to challenges.

12. Director, Beijing Office ("D, BJO") briefed members on the work of the five Mainland Offices viz. the BJO, the Chengdu ETO, the Guangdong ETO, the Shanghai ETO and the Wuhan ETO. She highlighted that the major themes of work of the five Mainland Offices included the promotion of the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area ("Greater Bay Area") development. For example, during the report period, the Government organized a seminar entitled "Strategies and Opportunities under the Belt and Road Initiative – Leveraging Hong Kong's Advantages, Meeting the Country's Needs" at the Great Hall of the People in Beijing in February 2018. CE delivered the keynote speech and closing remarks, and representatives from business and professional services sectors in Hong Kong participated. Moreover, the Mainland Offices would continue to closely liaise with the relevant policy bureaux, Mainland authorities and Hong Kong business sector, and reflect the views of the business sector and stakeholders on a timely basis. Meanwhile, the five Mainland Offices would monitor the Mainland's new tax policies and organize seminars with experts speaking on the possible implications for Hong Kong enterprises and Hong Kong people in the Mainland.

Discussion

Coping with the US-China trade conflicts

13. Mr Charles Peter MOK relayed the concerns of the information technology ("IT") sector that Hong Kong had been listed in Group D (same group as the Mainland) in relation to the US' export control of IT products. To counteract the negative effect to the IT industry which might be caused by the escalating US-China trade conflicts, Mr MOK urged the overseas ETOs to focus more on promoting Hong Kong's strengths in overseas countries, including Hong Kong's competitive edges under the "one country, two systems" principle, the enhanced tax deduction for research and development ("R&D") activities in Hong Kong, and the support for start-ups and measures for attracting talents. He also urged the overseas ETOs to diversify their promotion targets from traditional enterprises and potential investors to start-ups and investors in the realm of the new economy, and to make use of more innovative approaches in their promotion campaigns.

14. SCED noted Mr MOK's suggestions, and advised that the overseas ETOs had been promoting Hong Kong's strengths, including its unique status and advantages under the "one country, two systems" principle, government policies

and measures in support of R&D and start-ups, and pointed out that the Administration had continued to make use of its global network of ETOs as well as overseas offices of the Hong Kong Trade Development Council ("HKTDC") and the Hong Kong Tourism Board in promoting Hong Kong. For example, during the Hong Kong Week organized by the Tokyo ETO from end October to early November 2018 in collaboration with various organizations, a series of innovative events were held to promote different aspects of Hong Kong.

15. The Deputy Chairman expressed concern about the 2018 Annual Report submitted by the US-China Economic and Security Review Commission ("USCC") to the US Congress, recommending that the relevant US Government agencies should examine and assess the adequacy of US export control policy for dual-use technology as it related to US treatment of Hong Kong and China as separate customs areas. He enquired whether the US Congress had approached the Washington ETO to gauge the official standpoint of HKSARG before the submission of the USCC Annual Report. He also urged the Washington ETO to foster ties with the newly-elected Congressional Members after the mid-term elections in order to present to them a clear picture of Hong Kong's status. Given the importance of maintaining a good US-Hong Kong relationship, the Deputy Chairman enquired if the overseas ETOs in the US had sufficient manpower resources.

16. C, USA clarified that the USCC Annual Report was not a report compiled by the US Congress, but a report submitted to the Congress by a Congress-appointed Commission comprising members outside the Congress. It would be entirely up to the US Congress to decide whether or how to follow up on the report. C, USA said that the Washington ETO had maintained communication regularly with USCC, and put forward HKSARG's views to the Commission. The Washington ETO would continue to engage with parties concerned, including the Commission, relevant Members of the US Congress, including incumbent and newly-elected Members, as well as US Government agencies, on relevant issues including the recommendations in the Report. He said that the overseas ETOs in the US had been operating on an effective manpower establishment in keeping with maintaining quality services. SCED supplemented that exchanges and liaison with the US took place through mutual visits, meetings amongst government officials, international conferences and events, the ETOs' contacts with the local business communities and think-tanks, etc.

17. Mr CHU Hoi-dick noted that both the USCC Annual Report and the Hong Kong Policy Act Report released by the US Department of State in May 2018 raised concerns about the diversion of controlled items, including during the annual bilateral discussion between the US and Hong Kong about strategic trade controls. He enquired whether the Administration was aware of any cases

involving unauthorized diversion of controlled items, what the Administration's plan was to clarify Hong Kong's position, and given Hong Kong's increasingly close collaboration with Mainland cities on innovation and technology ("I&T"), what measures the Administration would take to prevent such unauthorized diversion.

18. SCED said that the import, export, transshipment and transit of strategic commodities were subject to strict licensing control in Hong Kong under the Import and Export Ordinance (Cap 60) and the Import and Export (Strategic Commodities) Regulations (Cap 60G) and enforcement by the Customs and Excise Department ("C&ED"). He further pointed out that the USCC Annual Report referred to Hong Kong as an important partner in ensuring robust protections against unauthorized shipments of controlled US items to the Mainland. In the Hong Kong Policy Act Report 2018, the US Department of State had similarly noted that Hong Kong was a responsible trading partner by pointing out that the US cooperated closely with Hong Kong on strategic trade controls and counter-proliferation initiatives. SCED added that cooperation with Mainland cities in I&T would be subject to Hong Kong laws and in accordance with the "one country, two systems" principle.

19. Mr Dennis KWOK enquired whether there would be any substantial changes in the US' trade policy towards China in the Republican Party and the Democratic Party after the mid-term elections. He further enquired about the Administration's measures to ensure that the Hong Kong Policy Act would not be affected, given that the USCC Annual Report had recommended that the relevant US Government agencies should examine and assess the adequacy of US export control policy for dual-use technology as it related to US treatment of Hong Kong and China as separate customs areas.

20. C, USA said that according to his observation, the Republican Party and the Democratic Party had been basically supportive of the trade policy direction of the US Government towards China, although they might not necessarily agree with some implementation details such as tariffs. So far, there had been no sign of any major change in the trade policy towards China, both before and after the mid-term elections. The ETOs in the US had maintained close liaison and good ties with different levels of the US Congress and the US Government with portfolios covering Hong Kong, including the Foreign Relations/Affairs Committee of Congress, Department of State, Department of Commerce and other relevant Federal Government agencies. They generally had a good understanding of Hong Kong's uniqueness under the "one country, two systems" principle.

21. Mr WU Chi-wai noted that the latest USCC Annual Report had recommended that the relevant US Government agencies should examine and

assess the adequacy of US export control policy for dual-use technology as it related to US treatment of Hong Kong and China as separate customs areas. In response, CE had dismissed the allegations of the Annual Report as unfounded and based on double standard, saying that Hong Kong was the economy with which the US had the highest trade surplus. Mr WU enquired how the ETOs in the US would toe the CE's line in responding to such allegations, and what their assessment would be about the chances for the US Government to review the relevant policy.

22. C, USA said that the ETOs in the US had all along highlighted Hong Kong's unique strengths in their exchanges with US Congressional Members and Federal Government officials, and clarified any misunderstandings they might have on Hong Kong's situation. Given that the existing trade policy of the US with Hong Kong was mutually beneficial to both sides, there must be valid reasons for the US Government to change the policy. At present, there was no indication that such valid reasons existed.

23. Mr Jeffrey LAM welcomed the recent successful conclusion of negotiations on an FTA and an Investment Agreement between Hong Kong and Australia, which was a remarkable step in diversifying Hong Kong's overseas trade partners. He expressed concern about the dropping of Hong Kong's competitiveness ranking as a place that attracted and fostered talents in a global study by Switzerland-based International Institute for Management Development. He urged the overseas ETOs to promote Hong Kong's strong demand for talents given the development of the Greater Bay Area and the Administration's new infrastructure plans, including the large-scale reclamation plan – the Lantau Tomorrow Vision, which would attract talents to Hong Kong.

24. SCED advised that Australia was a very important trading partner of Hong Kong, being our 19th largest trading partner in merchandise trade and seventh largest trading partner in services trade. It was expected that Hong Kong and Australia would sign the FTA and the Investment Agreement in early 2019 at the earliest, upon the completion of the respective internal procedures. The overseas ETOs had been promoting Hong Kong to attract talents from abroad. CE had also requested the overseas ETOs to visit major universities and institutions in their respective countries to promote Hong Kong's competitive strengths.

Coping with Brexit

25. Mr WONG Ting-kwong enquired about the work of the London ETO in forging stronger economic and trade ties with the UK in anticipation of Brexit.

26. Director-General, Hong Kong Economic and Trade Affairs, London said that through its network of contacts, the London ETO kept in view the economic

and political developments in the countries under its purview with a view to fostering closer economic and trade relations between Hong Kong and these countries. In addition to continuing with the Strategic Dialogue on Trade Partnership, the Administration was also exploring with the UK options for forging closer economic ties, including the possibility of an FTA in future. The London ETO would continue to closely monitor the development of Brexit including the outcome of UK-EU negotiations on future trade relations. It would also make preparations for Hong Kong's economic and trade cooperation with the UK in the post-Brexit period, including strengthening communication with the relevant local organizations and stakeholders of various sectors, promoting the role of Hong Kong as a major partner and platform for further expansion in Asia, as well as new opportunities arising from the Belt and Road Initiative and the Greater Bay Area development, thereby attracting overseas investment and exploring business opportunities for Hong Kong.

27. Mr Martin LIAO enquired about details of the progress of fostering closer trade ties with the UK, and whether focuses would be put on specific areas such as the development of maritime and creative industries in which the UK excelled. Faced with global economic uncertainties and trade protectionist measures, Mr LIAO enquired how the overseas ETOs would help local businesses, which were keen to open up trade markets in other places, to bring more business opportunities to Hong Kong.

28. SCED advised that the UK could not enter into an FTA with Hong Kong before its formal exit from the EU. Nevertheless, the Administration had expressed to the UK the interest of fostering closer trade and economic ties following Brexit, including an FTA, and had carried out the Strategic Dialogue on Trade Partnership to identify priority areas for closer collaboration. On creative industries, Hong Kong would collaborate with the UK in the Business of Design Week 2019 and the UK would be the official partnering economy for the event. The London ETO would continue to promote Hong Kong's design, innovation and brands to the UK, and encourage further cooperation and exchange in the design and creative industries between the two places. To help the maritime industry, CE had announced in the 2018 Policy Address the Administration's plan to set up Regional Desks of the Hong Kong Shipping Registry in selected ETOs and Mainland Offices and Liaison Units to enhance support to shipowners.

Work of the Mainland ETOs

29. Mr MA Fung-kwok expressed concern about the possible impact on Hong Kong people working or living in the Mainland of the recent amendments to the tax law on the Mainland. He enquired whether the BJO had, before the passage of the new tax law, relayed to the Central authorities the concerns of Hong Kong people about the possible impact of the new tax law on them.

30. D, BJO said that this was a year of reform of tax and related matters in the Mainland. BJO had already organized a seminar in Beijing in September 2018 inviting expert speakers to talk about the Reform of the Administration Systems for the Collection of State and Local Taxes relating to the collection of pension and maternity insurance premiums by the tax bureau with effect from 1 January 2019. More importantly, the Decision Concerning the Amendment of the Individual Income Tax Law of the People's Republic of China, promulgated by the Standing Committee of the National People's Congress on 31 August 2018, provided for a number of changes (including those with significant impact on tax resident status and tax obligations relating to the individual income tax of foreign (Hong Kong inclusive) nationals) with effect from 1 January 2019. Detailed rules would be promulgated gradually, subject to public consultation as appropriate. In order to help Hong Kong enterprises and Hong Kong people in the Mainland better understand the possible impact of these new policies, BJO and the other four Mainland Offices were monitoring the relevant developments and were actively organizing more such seminars. BJO noted that Hong Kong's business associations as well as Hong Kong deputies to the National People's Congress and Hong Kong members of the Chinese People's Political Consultative Conference had expressed their views and concerns to the Central authorities. The five Mainland Offices would continue to closely monitor developments.

31. Regarding Mr MA Fung-kwok's enquiry about BJO's experience in the creation of the post of Head (Cultural Exchange) and whether similar posts would be created in other Mainland Offices, Director, BJO said that since the creation of the post of Head (Cultural Exchange) in 2016, BJO had fostered closer and more frequent contacts with relevant ministries, especially the Ministry of Culture and Tourism (formerly called as the Ministry of Culture). Through a variety of activities, Head (Cultural Exchange) of BJO had built connections and strengthened relationships with the arts and cultural institutions in Beijing and regions under BJO's purview. These efforts fostered more opportunities for the arts and culture groups, and enriched our youth internship and exchange activities with culture elements. All five Mainland Offices had been provided with additional resources and would continue to report their work to the Home Affairs Bureau and the Leisure and Cultural Services Department as the policy bureau and department in charge.

32. The Chairman noted that upon the Hong Kong-Zhuhai-Macao Bridge ("HZMB") opening to traffic on the 24 October 2018, a large number of tourists entering the territory via HZMB had flocked to Tung Chung, thus greatly affecting the daily lives of the local residents. Despite the introduction of a number of tourist diversion measures by the Administration, the situation had not been thoroughly addressed. In this regard, he enquired whether the Guangdong ETO had followed up the matter with the Mainland authorities, and formulated responsive measures to mitigate the current situation of Tung Chung; whether it

had discussed with the Mainland authorities the proposal to introduce tour groups or bus routes destined for the HZMB East Artificial Island, which was located within Mainland waters, so that Mainland residents who only intended to visit HZMB did not need to enter Hong Kong.

33. Director, Hong Kong Economic and Trade Affairs, Guangdong ("D(GD)") said that the Administration was highly concerned about the current situation of Tung Chung, and had reflected the concern via the Guangdong ETO to the authorities in Guangdong, which had issued notices to municipal tourism authorities in the province, urging them to strengthen market regulation and request the tourism operators in various cities to strictly abide by the laws and regulations in Hong Kong. With the assistance of the Guangdong authorities, the situation was largely improved.

34. SCED added that the Administration, including the Commerce and Economic Development Bureau, the Constitutional and Mainland Affairs Bureau and the Guangdong ETO, had been exploring with relevant Mainland authorities measures to mitigate the situation, including the opening of the HZMB's East Artificial Island as a short cut to allow tourists to visit HZMB and return to Zhuhai or Macao from the East Artificial Island without crossing the border of the Hong Kong Special Administrative Region.

35. Mr Christopher CHEUNG welcomed the Administration's effort to foster new trade ties to counteract the negative effects which might be brought by the US-China trade conflicts. He enquired about the business opportunities and facilitation measures to be offered by the development of the Guangdong Pilot Free Trade Zone and the Fujian Pilot Free Trade Zone to Hong Kong's financial and professional services sectors, and how such opportunities and measures compared to those offered by the development of the Greater Bay Area.

36. D(GD) said that Guangdong ETO endeavoured to provide support to Hong Kong enterprises in developing business in the five provinces/regions under its purview. Guangdong ETO's key services included collecting latest information on the Mainland's trade-related policies, laws and regulations as well as economic development, disseminating such information to the Hong Kong enterprises through the weekly Guangdong ETO Newsletter published by email, Guangdong ETO's website and official WeChat platform. Guangdong ETO also organized seminars on issues of general concern to Hong Kong enterprises (e.g. taxation, regulations and policies of Free Trade Zones, etc.) to help them capitalize on business opportunities, and conveyed their views on commercial and trade issues of concern to the relevant Mainland authorities. The Guangdong ETO would continue to strengthen support for Hong Kong people and enterprises, keep track of the latest implementation progress of the facilitation measures in the five provinces/regions and disseminate information through various channels, and

enhance publicity work in promoting Hong Kong's strengths and fostering a positive understanding of Hong Kong by people in the Mainland.

37. Ir Dr LO Wai-kwok said that he and Mr Tony TSE submitted a joint letter in April 2018 to the Ministry of Housing and Urban-Rural Development of the People's Republic of China ("MOHURD"), making a number of concrete proposals on assisting Hong Kong's construction and engineering enterprises to develop businesses in the Mainland. MOHURD's response had been very positive and it agreed to consider removing the relevant restrictions under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA"). In this regard, he asked about details of the measures to facilitate the participation of Hong Kong enterprises in the Mainland construction and infrastructural projects under CEPA.

38. SCED said that many infrastructure projects associated with the Belt and Road Initiative required professionals from the Hong Kong based construction and engineering firms. In this connection, the State-owned Assets Supervision and Administration Commission of the State Council had from time to time led visits comprising mainly Mainland state-owned enterprises to Hong Kong. In addition, a "Belt and Road: Hong Kong – IN" Forum would be held in December to further engage the professional services sector. SCED agreed to provide the requested information on CEPA to the Panel after consulting the Trade and Industry Department which was responsible for co-ordinating the work associated with CEPA.

(Post-meeting note: The information provided by the Administration was circulated to members on 13 December 2018 (LC Paper No. CB(1)340/18-19(01).)

ETO's work in the ASEAN countries

39. In response to Mr WONG Ting-kwong's enquiry about the follow-up work by the Jakarta ETO on the implementation of the Hong Kong-ASEAN FTA and Investment Agreement, Acting Director-General, Hong Kong Economic and Trade Affairs, Jakarta said that the two agreements were expected to come into force on 1 January 2019 at the earliest, subject to the progress of the signatories' internal procedures. Since the signing, the Jakarta ETO had been actively promoting the potential business opportunities brought by these two agreements in the region.

40. Mr CHAN Chun-ying welcomed Hong Kong's signing of an FTA and an Investment Agreement with ASEAN. He enquired whether the Administration would, apart from attracting investment from ASEAN member states in Hong Kong, assist Hong Kong enterprises in investing in the ASEAN region.

41. SCED advised that the Administration attached great importance to encouraging and assisting Hong Kong enterprises to invest in the ASEAN region. In this regard, the Financial Secretary had introduced a number of enhancement measures to funding schemes to assist small and medium enterprises ("SMEs"), including: (a) injecting HK\$1.5 billion into the Dedicated Fund on Branding, Upgrading and Domestic Sales ("BUD Fund"); (b) injecting HK\$1 billion into the SME Export Marketing and Development Funds; and (c) extending the geographical coverage of the Enterprise Support Programme under the BUD Fund from the Mainland to include the ASEAN countries. The respective cumulative funding ceiling for enterprises undertaking projects in the Mainland and ASEAN markets had been raised to HK\$1 million. In view of the US-China trade conflicts, the Administration envisaged that more local SMEs might be attracted to invest in the ASEAN markets. In the coming year, the Administration would organize more trade visits to the ASEAN region in collaboration with the HKTDC. Participation in such visits by traditional enterprises as well as I&T start-ups would be encouraged.

42. In response to Mr CHAN Chun-ying's enquiry about the division of work among the three ETOs in ASEAN after the setting up of the Bangkok ETO, Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism ("PSCIT") advised that currently the Singapore ETO and the Jakarta ETO covered six and four ASEAN member states respectively, while the Jakarta ETO also represented HKSARG in matters between Hong Kong and ASEAN as a whole. The Bangkok ETO, once set up, would take over the work associated with three ASEAN member states (i.e. Thailand, Cambodia and Myanmar) from the Singapore ETO. In other words, the three ETOs in ASEAN would each cover a similar number of countries in ASEAN.

Work associated with other ETOs

43. Mr Martin LIAO welcomed the setting up of the Bangkok and Dubai ETOs. He enquired about the progress and timetable of negotiations with the Governments of India, South Korea and Russia on the establishment of new ETOs. PSCIT said that the discussion with the Thai Government on setting up the Bangkok ETO had been satisfactorily completed while that with the United Arab Emirates Government regarding the Dubai ETO was very positive. The Administration was going to seek the Establishment Subcommittee's support for the creation of the directorate posts to head the two ETOs. For the establishment of the ETOs in India, South Korea and Russia, the Administration would continue discussion with the respective host governments concerned.

- V. **Proposed amendments to the Trade Marks Ordinance (Cap. 559)**
(LC Paper No. CB(1)173/18-19(06) -- Administration's paper on "Proposed Amendments to the Trade Marks Ordinance (Cap. 559)"
- LC Paper No. CB(1)173/18-19(07) -- Paper on the application of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks to the Hong Kong Special Administrative Region prepared by the Legislative Council Secretariat (updated background brief))

Presentation by the Administration

44. At the invitation of the Chairman, Under Secretary for Commerce and Economic Development ("USCED") briefed members on the proposed amendments to the Trade Marks Ordinance (Cap. 559) ("TMO") which sought to: (a) implement the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol") in Hong Kong; (b) confer powers on C&ED to enforce the criminal provisions under TMO; and (c) update certain provisions therein. Details of the proposed amendments were set out in the Administration's paper (LC Paper No. CB(1)173/18-19(06)).

Discussion

Implementation of the Madrid Protocol

45. While noting that the Administration considered that the implementation of the Madrid Protocol in Hong Kong involved no fundamental changes to the basic tenets of Hong Kong's trade marks regime as set out in TMO, the Chairman held that there might still be certain changes to the existing application and registration procedures for trade marks in Hong Kong. He enquired whether such changes, if any, would bring adverse effect to the local trade mark profession, and if so, whether the major stakeholders had been thoroughly consulted on the relevant changes.

46. USCED advised that upon implementation of the Madrid Protocol in Hong Kong, a trade mark owner in Hong Kong might file an application for international registration of trade mark with the Hong Kong Trade Marks Registry ("the Registry") and designate one or more contracting parties of the Madrid

Protocol in which protection was sought. Likewise, a trade mark owner in another contracting party of the Madrid Protocol might also file with the local trade mark office an application for international registration designating "Hong Kong SAR of China" for seeking protection in Hong Kong. USCED said that the increase in the utilization of the international trade mark registration system under the Madrid Protocol and the designations to Hong Kong might give rise to new business opportunities for the industry and increase the demand for its services in the longer term.

47. USCED further advised that the Administration had consulted the stakeholders on the proposal to seek the application of the Madrid Protocol to Hong Kong and provided briefings on the implementation arrangements. Deputy Secretary for Commerce and Economic Development (Commerce and Industry)2 ("DS(C&I)2") added that the Administration had engaged the stakeholders in the course of preparation of the legislative amendments to TMO, and would continue to maintain liaison with them and take into account their views when taking forward other preparatory work for implementing the Madrid Protocol (including the preparation of proposals for subsidiary legislation to provide for the procedural details, and detailed workflows for processing different applications, etc.).

Enforcement of criminal provisions under the Trade Marks Ordinance

48. Expressing no objection to the Administration's proposed legislative amendments to TMO to confer powers on C&ED to enforce the criminal provisions after the implementation of the Madrid Protocol in Hong Kong, Mr CHAN Chun-ying was concerned about its implications on C&ED's workload as the number of suspected cases of contravention might dramatically increase after the application of the Madrid Protocol to Hong Kong. He enquired whether C&ED would be provided with sufficient manpower to carry out the necessary enforcement duties. Noting that the Administration planned to regularize the existing arrangement by putting the enforcement of the criminal provisions under TMO under one roof, viz. on C&ED, Mr CHAN further enquired whether the manpower currently responsible for enforcing the criminal provisions under TMO by the Hong Kong Police Force would be transferred to C&ED.

49. USCED advised that, since over the years there were only a handful of suspected cases of contravention, C&ED should be able to cope with any increase in workload with its existing manpower and resources. The Administration would nevertheless keep in view the manpower requirements of C&ED having regard to the actual workload after the application of the Madrid Protocol to Hong Kong.

50. To promote international cooperation in protecting intellectual property ("IP") rights, the Chairman enquired whether it was common for the customs

authority to act as an enforcement agency of similar criminal provisions in other jurisdictions. He also enquired whether C&ED had been consulted on such proposed arrangements and C&ED's concerns in this regard.

51. DS(C&I)2 advised that the institutional set-up for each jurisdiction might vary according to its own laws and practices and it would be difficult to draw direct comparison. In Hong Kong, C&ED was currently responsible for taking criminal sanctions against copyright and trade mark infringements under the Copyright Ordinance (Cap. 528) and Trade Descriptions Ordinance (Cap. 362) ("TDO"). Alongside the implementation of the Madrid Protocol in Hong Kong, the Administration considered it appropriate to regularize the existing arrangement by assigning C&ED to take over the enforcement of the criminal provisions under TMO (e.g. the acts of falsifying the register of trade marks; falsely representing a trade mark as registered; and misusing the title of the Registry). This would help enhance the synergy in the enforcement of IP laws and the confidence of other jurisdictions in the integrity of Hong Kong's enforcement regime for offences related to trade marks registration.

52. Assistant Commissioner of Customs and Excise (Intelligence and Investigation) added that C&ED had studied the criminal provisions under TMO and was of the view that the provisions were of a similar nature to those provisions under TDO, which were currently enforced by C&ED. As such, he was confident that C&ED had relevant technical knowledge and experiences to take up the responsibilities as proposed in the legislative amendments to TMO.

Possible arrangement between Hong Kong and the Mainland to facilitate the reciprocal filing of trade mark applications alongside the Madrid Protocol

53. The Chairman noted that the Madrid Protocol, being an international agreement, was not applicable to mutual designations between Hong Kong and the Mainland. Yet, given the close economic ties between the two places, he enquired whether there would be any special arrangement to facilitate the reciprocal filing of trade mark applications between the two places alongside the Madrid Protocol.

54. USCED advised that trade mark rights were territorial in nature and were granted in each jurisdiction independently according to its own laws and practices. During the public consultation exercise on the proposed application of the Madrid Protocol to Hong Kong from November 2014 to February 2015, stakeholders had also been consulted on the need for a possible arrangement between Hong Kong and the Mainland without prejudice to the proposed application of the Madrid Protocol to Hong Kong. Some respondents, however, expressed the views that given the significant differences in the trade mark laws and practices between the two places, any such arrangement would entail a host of technical complexities

which had to be overcome and the administrative and costs implications for Hong Kong would also need to be studied. The Administration would continue to discuss with the relevant Mainland authorities in parallel the possibility of putting in place separate administrative arrangements to facilitate reciprocal applications by Hong Kong and Mainland applicants, while proceeding the implementation of the Madrid Protocol in Hong Kong.

Legislative approach

55. Mr CHAN Chun-ying sought clarifications on whether the Administration had to introduce a new piece of legislation in order to provide for the legal framework in implementing the Madrid Protocol in Hong Kong. If so, he was concerned whether it would be premature to table the subject legislative proposal to provide for the amendments relating to operational issues when the new legislation had yet to be introduced.

56. DS(C&I)2 responded that the implementation of the Madrid Protocol in Hong Kong did not involve any fundamental changes to the basic tenets of Hong Kong's trade marks regime as set out in TMO. The Administration nevertheless had to introduce new processes and modify the existing application and registration procedures in the subsidiary legislation (i.e. the Trade Marks Rules). As such, enabling provisions were needed in TMO to empower the Registrar of Trade Marks to make the essential procedural rules on such matters to give effect to the provisions of the Madrid Protocol in Hong Kong. The approach of including only enabling provisions in the principal legislation to empower the authorities to make relevant rules while leaving the substantive content of such rules in the subsidiary legislation was in line with the approach consistently adopted by many other common law jurisdictions in their legislative exercises for implementing the Madrid Protocol. Such enabling provisions would pave the way for the enactment of the necessary subsidiary legislation as the Administration took forward the exercise of implementing the Madrid Protocol in Hong Kong.

57. USCED added that the amendments to the Trade Marks Rules would be made under the overall legal framework in accordance with the enabling provisions under TMO and would be subject to negative vetting by the Legislative Council.

Summing up

58. The Chairman concluded that the Panel supported in principle the Administration's proposal to amend TMO for the implementation of the Madrid Protocol in Hong Kong.

VI. Any other business

59. There being no other business, the meeting ended at 4:39 pm.

Council Business Division 1
Legislative Council Secretariat
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