

立法會 *Legislative Council*

LC Paper No. CB(1) 505/99-00
(These minutes have been seen
by the Administration)

Ref: CB1/PL/TI/1

Panel on Trade and Industry

Minutes of meeting
held on Monday, 1 November 1999, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon CHAN Kam-lam (Chairman)
Hon Kenneth TING Woo-shou, JP (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Hon Cyd HO Sau-lan
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing
Prof Hon NG Ching-fai
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon MA Fung-kwok
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Hon CHAN Kwok-keung
Hon Bernard CHAN
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong

Public officers attending : **For Item IV**

Miss Yvonne CHOI
Deputy Secretary for Trade and Industry (1)

Miss CHEUNG Siu-hing
Deputy Secretary for Trade and Industry (2)

Miss Viola CHAN
Principal Executive Officer (Administration)

Miss Eliza LEE
Assistant Director-General of Trade (Systems)
Trade Department

Mr Anthony CHAN
Departmental Secretary
Trade Department

Mr A J Rocha
Assistant Director (Quality Services)
Industry Department

Mr LEUNG Koon-wah
Senior Superintendent (Information Technology) (Ag)
Customs and Excise Department

Mrs Susan LIU
Chief Intellectual Property Examiner
Intellectual Property Department

Mr K W CHAN
Head of Information Technology Services Department
Hong Kong Trade Development Council

Ms Joyce YAN
Senior Manager, Business Unit
Hong Kong Export Credit Insurance Corporation

Mr YUNG Kai-tai
General Manager, Information Technology Division
Hong Kong Productivity Council

Mr Joseph LEUNG
Manager, Information Technology
Hong Kong Industrial Technology Centre Corporation

Mr David LO
Analyst/Programmer
Consumer Council

Mr Peter YAN
Chief Operations Officer, Tradelink

For Item V

Miss CHEUNG Siu-hing
Deputy Secretary for Trade and Industry (2)

Mr Philip CHAN
Principal Assistant Secretary for Trade and Industry

Miss Pancy FUNG
Assistant Director of Intellectual Property

Mr Calvin LEUNG
Assistant Commissioner of Customs and Excise (Atg)

Mr Kevin Zerros
Senior Government Counsel (Prosecution Division)

Miss Leonora IP
Government Counsel (Law Drafting Division)

For Item VI

Mr Francis HO, JP
Director-General of Industry

Miss CHEUNG Siu-hing
Deputy Secretary for Trade and Industry (2)

For Item VII

Mr Francis HO, JP
Director-General of Industry

Miss CHEUNG Siu-hing
Deputy Secretary for Trade and Industry (2)

Miss Agnes WONG
Assistant Director-General of Industry

Clerk in attendance : Ms LEUNG Siu-kum, Chief Assistant Secretary (1)2

Staff in attendance : Ms Rosalind MA, Senior Assistant Secretary (1)9

I Confirmation of minutes of previous meeting
(LC Paper No. CB(1) 160/99-00)

The minutes of the meeting held on 7 October 1999 were confirmed.

II Information paper issued since last meeting

(LC Paper no. CB(1) 209/99-00 -- Referral from Members after meeting with Wong Tai Sin Provisional District Board members)

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

III Date of the next meeting and items for discussion

3. Members agreed that the next meeting would be held on Monday, 6 December 1999 at 2:30 p.m. to discuss the following:

- (i) Support to industry on environmental matters;
- (ii) Science Park at Pak Shek Kok Phase One ; and
- (iii) Civil liability for unsafe products.

4. Members suggested that the Tradelink Electronic Commerce Limited should improve the publicity on its postal/drop-off box facilities for lodgement of trade declarations, and should consider arranging lodgement by means of e-mail. They asked the Secretariat to convey members' suggestion to the Administration for consideration and follow up.

Secretariat

(Post-meeting note: A letter conveying members' views was sent to the Administration on 4 November 1999 for response.)

IV Y2K compliance work in Government departments and non-Government organizations under the purview of the Trade and Industry Bureau

(LC Paper No. CB(1) 207/99-00(01))

5. Deputy Secretary for Trade and Industry (1) (DS/TI(1)) highlighted salient points in the information paper for members' consideration. She said that all the mission-critical systems in the Trade and Industry Bureau (TIB), Hong Kong Trade and Economic Offices overseas, Government departments and non-Government organizations under the purview of the TIB were Y2K compliant. In addition, departments/organizations had worked out contingency plans for handling unforeseen events during the millennium roll-over.

Rollover arrangements of Tradelink Electronic Commerce Limited (Tradelink)

6. Mr SIN Chung-kai asked whether Tradelink had any special arrangements during the first two days of the new year before resumption of normal operations on 3 January 2000. DS/TI(2) replied that although Tradelink would only resume normal operations on 3 January 2000, there would be staff on duty during 1 and 2 January 2000 to conduct test runs on the computer systems so as to ensure smooth operations after the rollover. Mr Peter YAN of Tradelink supplemented that Tradelink had sought the co-operation of some clients to submit live transactions on those two days. Any irregularities detected would

be immediately rectified so that normal services on the first working day of the new year would not be adversely affected. In addition, he advised members that Tradelink would perform additional back-up on all computer systems to ensure that normal operations could be resumed with no delay in case of unforeseen events during the rollover.

Readiness of the business sector for the millenium rollover

7. The Chairman expressed concern over the preparation for Y2K compliance in the business sector, in particular, the small and medium enterprises (SMEs) which had limited resources for this purpose. He was also worried about the adverse impact those Y2K non-compliant SMEs might have on their business partners. DS/TI(1) advised that the Administration together with the Hong Kong Productivity Council (HKPC) and various commercial and trade associations had organized extensive publicity programmes to raise the awareness of the business sector, including the SMEs, to tackle the Y2K problem. In order to provide practical assistance to the business sector, the HKPC had arranged a number of services, including the establishment of a "Y2K Service Centre", the setting up of a "Y2K Helpline" and the provision of the "888 Bug-buster Programme" (the Programme) which provided consultancy services to SMEs on a non-profit making basis. On the charges for the latter services, she updated that in response to Members' earlier observation, the charge had been reduced to \$668. She added that the results of the survey conducted by the HKPC this August showed that the awareness and readiness of the business sector, including the SMEs, in tackling the Y2K problem had been increasing.

8. Mr James TIEN Pei-chun was concerned about the publicity of the available Y2K related services for the SMEs. He requested the HKPC to provide further information on the number of companies employing the service of the Programme and the extent of Y2K problem in these companies. Mr YUNG Kai-tai of HKPC responded that up to now, there were a total of 1,685 cases using the service of the Programme. He advised that HKPC had publicized the Programme and other related services through various channels, including advertising on television, setting up enquiry hotlines for the services and promoting through the industrial and trade organizations. Moreover, the HKPC had mailed information pamphlets on the services to 50,000 companies recently. Mr YUNG further said that majority of the companies employing the service of the Programme had only minor Y2K problems in their computer systems which could be rectified simply by advising them to purchase certain Y2K compliant software available in the market. Nevertheless, there were a small number of companies using programmes by free-lance programmers of which the source codes could not be traced and thus their Y2K compliance status could not be assessed.

9. In response to Dr Philip WONG Yu-hong's question on the arrangement of manpower to ensure a smooth rollover, DS/TI(1) explained that every policy bureau and every Government department had set up special task forces to oversee and monitor the implementation of the contingency arrangements during the rollover. Officers in the task forces would be required to perform emergency duties around the clock during the rollover in case of unanticipated events. She added that non-Government organizations under TIB's purview also had similar contingency arrangements.

V Organized and Serious Crimes Ordinance (Amendment of Schedule 1) Order 1999

(Legislative Council Brief (Ref : TIB 09/46/12))

10. Deputy Secretary for Trade and Industry(2) (DS/TI(2)) briefed members on the major proposals of the amendment. She informed members that the Administration had completed a two-month public consultation on the paper entitled "Combating Intellectual Property Rights Infringement in the HKSAR: Possible Additional Legal Tools" on 30 April 1999. Taking into account the results of the public consultation exercise, the following three relatively straightforward legislative amendments were proposed as a first step:

- (i) inclusion of piracy and counterfeiting offences in Schedule 1 to the Organized and Serious Crimes Ordinance (OSCO);
- (ii) prevention of bootlegging by creating an offence of unauthorized possession of video recording equipment in a cinema or concert venue; and
- (iii) clarification of the law to facilitate prosecution of end-user corporate intellectual property right (IPR) offenders.

11. DS/TI(2) advised that a Legislative Council Brief regarding the proposal at paragraph 10(i) above had been forwarded to Members for information and consideration. Other legislative proposals would be submitted separately.

Streamlining the processing of copyright piracy cases by allowing a 10% sampling of suspected infringing goods to be conclusive evidence in a criminal case

12. While supporting the Administration's proposal of combating intellectual property right (IPR) infringement through additional legal tools, Mr Kenneth TING Woo-shou wished to know the principle behind a 10% sampling of suspected infringing goods to be conclusive evidence in a criminal case and how this proposal would be carried out in practice. Mr CHEUNG Man-kwong added that the Administration should be cautious in employing the legal tools to avoid any abusive use. He opined that it would be unfair to the optical disc manufacturers and retailers if all of their stock would be seized by the Customs & Excise (C&E) officers when only 10% of the discs were found to be pirated goods.

13. DS/TI(2) responded that the proposal of a 10% sampling was aimed at streamlining the existing time-consuming process of a full examination of all the seized items. She said that the sampling would be made on those items which were suspected to have infringed IPR instead of taking 10% from all the stock of the manufacturers/retailers involved. Moreover, the manufacturers/retailers would have the right to request a 100% examination of the seized items under the provisions of the proposed legislation. The Administration was considering the detailed provisions in this respect.

14. Mr MA Fung-kwok shared the concern of Mr Kenneth TING and Mr CHEUNG Man-Kwong and enquired further on the sentencing guidelines. DS/TI(2) explained that the Administration would refer suitable cases to the Court to make sentencing guidelines within prevailing legal provisions.

Protection for landlords affected by closure orders

15. In response to Dr. Philip WONG Yu-hong's concern over the legislative protection of landlords' rights when closure orders were imposed on their premises as a result of IPR infringement by the tenants, DS/TI(2) said that many respondents of the public consultation exercise supported the imposition of closure orders. Nevertheless, a number of respondents had also expressed concern over the need to strike a balance between fighting against piracy and the protection of rights of the landlords. She advised that the Administration would draw reference from the handling of vice premises under the Crimes Ordinance in this regard.

16. Dr. Philip WONG opined that although the landlords could terminate the tenancy agreement if the tenants used the premises for unlawful activities, it would be hard for them to get back the arrears of rent. He asked whether the Administration could consider protection for the landlords in this connection. DS/TI(2) replied that even if the landlords did not terminate the tenancy agreements with the tenants infringing IPR, they might not be able to get back the arrears of rent if the tenants had been caught and put in jail or had become bankrupt. She assured members that all relevant factors would be taken into consideration in considering the proposal.

Financial and staffing implications

17. In reply to Mr NG Leung-sing's question on the staffing arrangements for the additional duties brought about by the amendment, Assistant Commissioner of Customs and Excise said that the additional duties would be absorbed by the existing establishment and no new post would be created in this connection. He explained that C&E Department had an investigation team of 32 staff dealing with cases of drug trafficking and smuggling activities. This team would be arranged to absorb the additional duties. Staff training would not be required since the team already had the relevant work skills.

Prosecution of end-user corporate IPR offenders

18. Mr James TIEN Pei-chun expressed concern over the proposed facilitation on prosecution of end-user corporate IPR offenders. DS/TI(2) responded that in the case of computer software, an individual software package was usually not sold for multiple users. Therefore, the practice of copying the software for multiple use by a corporate end-user would likely be infringing IPR and subject to prosecution. She suggested that corporate end-users discuss with the software supplier for a licence for multiple use.

Difficulties in checking the authenticity of authorization documents

19. Mr Fred LI made reference to a recent case of a fake authorization document found in a licensed optical disc factory and expressed concern over the possibility of holding innocent manufacturers responsible for producing pirated goods just because they were unable to detect a fake authorization document. He asked whether the Administration could provide assistance to the optical disc manufacturers in checking the authenticity of the documents. Mrs. Selina CHOW shared his concern. She said that the trade organization of the licensed optical disc factories had reflected to her their worries in this respect. She wished to know whether the Administration had done any consultation with the trade members on this issue.

20. DS/TI(2) explained that any person involved in the production of IPR items without valid authorization would be an IPR offender irrespective of whether he produced the items in a licensed factory or not. She said that the manufacturers could check the authenticity of the authorization document with the relevant organizations, for example, the International Federation of the Phonographic Industry in case of the production of optical discs for music. She added that when taking enforcement action, the individual circumstances of a case would be taken into account i.e. whether the manufacturer had performed "due diligence" in checking the authenticity of the document. As regards the consultation of trade members on this issue, she informed members that there were regular meetings between the Administration and the representatives of the trade. Trade members had expressed difficulties in checking the authenticity of the authorization documents in terms of the time taken to obtain the verification. She reiterated that the Administration would take all relevant factors into account in the enforcement of the legislation.

21. The Principal Assistant Secretary for Trade and Industry informed members that subject to the support of the Panel, the Secretary for Trade and Industry would move a motion to the Council for amending Schedule 1 of OSCO. The amendment would be subject to positive vetting by the Council.

22. While supporting the amendment in general, Members still had concerns over the difficulties encountered by the trade in checking the authenticity of relevant authorization documents. They considered that it was necessary for the Council to hear the views of the trade members before a resolution could be made. Therefore, members agreed that the Panel would recommend to the House Committee the formation of a subcommittee to study the amendment proposal.

VI Special Finance Scheme for Small and Medium Enterprises

(LC Paper No. CB(1)207/99-00(02) - Legislative Council Brief (Ref : TIB CR12/10/2))

23. The Director General of Industry (DG/I) briefed members on the proposal to raise the approved commitment under the Special Finance Scheme for SMEs (the Scheme) from \$2.5 billion to \$5 billion to increase the amount of guarantees under the Scheme. He informed members that after the revision of the Scheme in May 1999 in raising the Government's risk-sharing factor to 70% and extending the maximum length of guarantees from one year to two years, the take-up rate of the Scheme had increased considerably. By 31 August 1999, all the funds under the Scheme had been committed. Further applications had been put on a waiting list and the number of applications on the list had accumulated to 2,452 as at 21 October 1999.

Difficulties of the small and medium enterprises in obtaining funds

24. Mr Kenneth TING supported the proposal of doubling the ceiling of guarantee under the Scheme. However, he expressed concern over the general lack of experience/expertise in banks on the assessment of SME loans. He proposed that the Administration should consider the formation of a special committee with experts from the Hong Kong Monetary Authority(HKMA) and accounting firms for the establishment of criteria on assessing SME loans.

25. DG/I responded that the idea of setting up a special committee could be further considered. Meanwhile, the Administration was having discussion with the Hong Kong Society of Accountants to explore means of assistance to SMEs in the provision of quality financial reports for banks to assess their loan applications. In addition, the HKMA was studying the possibility of a credit reference system in Hong Kong, which covered SMEs.

26. Dr. Philip WONG commented that the guideline issued by HKMA on credit policy of banks regarding the percentage of non-collateral-based lending was another obstacle to loan application of SMEs besides the lack of experience of banks in assessing such loans. Mr NG Leung-sing concurred and cited the example that the high loan provisioning level required by HKMA for unsecured lending would cause the banks to become strict on the loans to SMEs. He suggested HKMA consider adjusting the loan provisioning level in the difficult time of economic depression.

27. DG/I said that the Administration had frequent discussions with the HKMA on the issue of encouraging banks to provide loans to SMEs. He explained that it was important for the banks to strike a balance between providing adequate assistance to SMEs, and upholding prudent finance principles.

Preventing Abuse of the Special Finance Scheme

28. Mr SIN Chung-kai expressed concerned over the possibility of the Scheme being abused by some irresponsible banks. He suggested that the Administration should adopt a flexible approach in setting the percentage of the risk-sharing factor for individual banks subject to the number of their default cases or default amount under the Scheme. Mr CHEUNG Man-kwong shared his concern and pointed out that there were cases of some financial institutions providing readily available loan amounting to \$ 50,000 to SMEs without adequate vetting/risk assessment.

29. DG/I said that the Administration was aware of the provision of this kind of SME loans and had advised the banks involved to review their lending policy. He informed members that the banks concerned had already stopped the processing of new loan applications of this nature. To avoid reoccurrence of such undesirable practice, the Administration would issue guidelines to banks to advise that unsecured SME loans should be provided in response to market demand rather than commercializing them to attract potential customers.

30. In response to Mr CHEUNG Man-kwong's enquiry on the number of cases of this nature and the amount of money involved in these cases, DS/TI(2) said that there were about 3,400 cases with a total loan amount of approximately \$120 million involved. She said that these loans were provided by two related banks.

31. Dr. LUI Ming-wah requested the Administration to provide further information on default cases such as the names of the defaulted enterprises and the banks involved in granting these defaulted loans so as to monitor the proper usage of the Scheme. DG/I replied that the Administration would ensure adequate transparency of the Scheme. However, it was not the right timing for releasing the information since the Scheme was still at an early stage in which only a small number of loans had become mature. He said that premature release of information would give a misleading picture to the public and might be unfair to the enterprises and banks concerned.

Other concerns

32. In reply to Mr James TIEN's question on the principles of giving loan guarantees to banks and SMEs on the waiting list, DG/I said that the Scheme was open to all banks. He informed members that the banks had been advised to process loan applications on a first-come-first-serve basis since 31 August 1999 when all the funds under the Scheme had been committed.

33. Mrs. Selina CHOW raised concern over the small percentage of loans provided to the SMEs in the wholesale and retail sector despite their significant share in the economy. DG/I explained that the Scheme operated in a market-driven manner depending on the expertise assessment of the banks to process the applications. He said that taking into account the strong blow to the wholesale and retail sector during the economic depression, it was likely that banks would adopt a more cautious approach in assessing loan applications of SMEs in this sector.

VII Report of the Task Force on the Applied Science and Technology Research Institute

(LC Paper No. CB(1) 207/99-00(03))

34. DG/I highlighted the main points in the information paper for members' consideration. He informed members that the Task Force had submitted its report to the Secretary for Trade and Industry in April 1999. The Commission on Innovation and Technology (CIT) had endorsed the general thrust of the Task Force's recommendations. The report covered recommendations on various aspects of the Applied Science and Technology Research Institute (ASTRI), including its role and mission, organization and management, finance and budget, as well as evaluation and monitoring. However, the Task Force did not attempt to make recommendations on the work plan or research area at this stage since it considered that it would be more appropriate for the ASTRI to make its own decision taking into account the rapidly changing circumstances.

Monitoring the performance of ASTRI

35. Mr CHEUNG Man-kwong expressed concern over the mechanism for monitoring the performance of ASTRI. He commented that the management of ASTRI would have role conflicts if it had to take up the responsibility of monitoring the institute's own performance. He suggested the Administration set up an independent body to monitor the performance of ASTRI. Mrs. Selina CHOW shared his concern.

36. DG/I explained that as a statutory body, ASTRI would submit regular report to the Administration and the Legislative Council. Ultimately, its performance would be accounted for by the Administration through the Secretary for Trade and Industry and the Director General of Industry. Nevertheless, the Administration would consider members' suggestion of bringing in a more external and independent mechanism for the purpose of monitoring ASTRI's performance.

37. Dr. Philip WONG opined that the performance of the ASTRI should be assessed in terms of its ability to produce research results which were of commercial value. DG/I responded that the Task Force had taken this into consideration in the preparation of its report.

However, it concluded that it would be more appropriate for the ASTRI to engage in mid-stream research of the production line. He said that research on commercial products might induce undesirable competition with the private sector and thus should not be the focus of the ASTRI's work. He added that public expectation on the work results of ASTRI might be unrealistically high. However, the overseas experience in the establishment of similar institution on applied science and technology e.g. Taiwan, had revealed that significant achievement in productivity could hardly be realized in the short run.

38. Dr. LUI Ming-wah agreed that ASTRI should not engage in short term research on commercial products since the industrial enterprises would be in a better position to do this kind of research. He considered that the Administration should formulate a long term direction for product development. In this connection, he asked whether the Administration had considered setting up an advisory committee to advise ASTRI on its work plans. DG/I replied that the broad direction of industrial development would be a matter for the permanent commission on innovation and technology to be established shortly; whereas the development of specific technology areas would be a matter for the future ASTRI.

Other concerns

39. In reply to Mr SIN Chung-kai's question on the source of funding for the establishment and recurrent operation cost of ASTRI, DG/I advised that an estimated cost of \$785 million for constructing and equipping ASTRI's permanent building would be provided under the Capital Works Reserve Fund . Annual subvention of up to \$95 million and \$245 million for recurrent operating cost during Phase I and II development respectively would be provided by public funds. Whilst for the financing of its research projects, applications for funding would be made to the ITF.

40. Prof. NG Ching-fai appreciated the efforts of the Task Force in preparation of the report on ASTRI. He agreed with the Task Force's decision of leaving the formulation of work plans to the Board of Directors of ASTRI and opined that a flexible approach should be adopted in the formulation of work plans. In relation to the ranking of the Chief Executive Officer of ASTRI, he suggested that more flexibility should be allowed so that a suitable person of the required quality could be employed. Moreover, with reference to paragraph 54 of the report, he commented that the option of incorporating the Hong Kong Institute of Biotechnology(HKIB) into ASTRI as the latter's biotechnology arm should have majority support. He wished to know the authority to decide on the suitable option as regards ASTRI's linkage with other industry support organizations, and whether ASTRI was an independent body or it had to be monitored by the Secretary for Trade and Industry (S for TI) or the DG/I.

41. DG/I welcomed Prof. NG's view on adopting a flexible approach in the formulation of work plans. He said that the approach would be further considered by the Administration. He explained that the ranking of the Chief Executive Officer recommended by the Task Force was set for reference purpose and was not final. Concerning the role of the HKIB after the establishment of ASTRI, he said that the Administration had discussed with HKIB on the possible options. The HKIB agreed that there should be some changes in its functions and organization to avoid overlapping of research work by ASTRI and HKIB. DG/I further informed members that the ASTRI would be an independent body with a Board of Directors to determine its long term goals and direction. He said that the S for TI would report the work of ASTRI to the Legislative Council.

VIII Any other business

42. There being no other business, the meeting was adjourned at 4:40 p.m.

Legislative Council Secretariat
2 December 1999