

立法會
Legislative Council

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LC Paper No. CB(2)655/03-04

(These minutes have been seen by the
Administration)

Panel on Manpower

**Minutes of meeting
held on Thursday, 20 November 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon LAU Chin-shek, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon LI Fung-ying, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon LEUNG Fu-wah, MH, JP
Hon Frederick FUNG Kin-kee
- Members absent** : Hon CHAN Kwok-keung, JP (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon Michael MAK Kwok-fung
- Public Officers attending** : Item III
Mr Raymond YOUNG
Deputy Secretary for Commerce Industry and Technology
(Commerce and Industry) 1

Mr K Y TANG
Government Economist

Mr Matthew CHEUNG Kin-chung, JP
Permanent Secretary for Economic Development and
Labour (Labour)

Mrs DO PANG Wai-yee
Assistant Commissioner for Labour
(Policy Support and Strategy Planning)

Item IV

Mr Matthew CHEUNG Kin-chung, JP
Permanent Secretary for Economic Development and
Labour (Labour)

Mr CHOW Tung-shan
Assistant Commissioner for Labour (Labour Relations)

Mrs Clare SIU HO Kar-yuk
Chief Labour Officer
Labour Department

Item V

Mr Byron LAM
Principal Assistant Secretary for Education and Manpower

Mrs Carrie WILLIS, JP
Executive Director (Acting)
Vocational Training Council

Clerk in : Mrs Sharon TONG
attendance : Chief Assistant Secretary (2) 1

Staff in : Ms Amy WONG
attendance : Senior Assistant Secretary (2) 1

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**I. Confirmation of minutes of previous meeting and matters arising
(LC Paper No. CB(2)333/03-04)**

The minutes of the meeting held on 21 October 2003 were confirmed.

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II. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)332/03-04(01) and (02))

2. Members agreed that the following items proposed by the Administration be discussed at the next meeting to be held on 18 December 2003 at 2:30 pm -

- (a) Tackling wage offences; and
- (b) New measures to enhance the employment services.

III. Impact of implementation of the Mainland and Hong Kong Closer Economic Partnership Arrangement on local employment

(LC Paper No. CB(2)332/03-04(03))

3. Deputy Secretary for Commerce Industry and Technology (Commerce and Industry) (DSCIT) briefed members on the Administration's assessment on the impact of the implementation of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) on local employment. He said the Administration anticipated that the implementation of CEPA would bring about unprecedented opportunities to Hong Kong business, trade and service sectors, and directly and indirectly create employment opportunities. However, it would be premature at this stage to assess the specific number of jobs created. Such assessment would only be objective some time after the implementation of CEPA on 1 January 2004 when more statistics on trade and related aspects became available.

4. Miss CHAN Yuen-han expressed dissatisfaction that the Administration had yet to assess the impact of CEPA on local employment. As CEPA had been under discussions for one to two years, she wondered whether an assessment should be done in the process. She also raised query whether the findings of the Manpower Projection to 2007 were still applicable, as the effects of CEPA and "individual visit" scheme had not been taken into consideration.

5. DSCIT responded that CEPA would provide a platform for business and trade development. Whether or not the enterprises in the relevant sectors would make use of this advantage to expand their business in the Mainland would be a business decision. As the specific number of jobs created would depend on how the trade in Hong Kong and overseas took advantage of the CEPA benefits to enter the Mainland market as well as on their professional and business development strategies, it would be difficult to make an assessment in quantitative terms. Any assessment at this stage would be a guesstimate. He assured members that a detailed assessment on the impact of CEPA on local employment would be conducted as soon as possible after its implementation.

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6. Regarding the applicability of the findings of Manpower Projection to 2007, Government Economist (GE) said that the projection was not outdated. During the manpower projection exercise, CEPA was already under discussion. The companies and households participated in the surveys underpinning the projection exercise should have already taken CEPA into account in their responses. GE shared the view of DSCIT that it would be premature at this stage to assess the number of jobs created from CEPA. He said that CEPA was but one of the many factors that would have influence on manpower demand in Hong Kong's economy, and whatever feedback specifically on CEPA from the companies at this stage would be only preliminary and broadbrush. More time was needed to establish data and obtain meaningful feedback from the relevant business sectors, for more concrete assessment of job creation from CEPA to be made.

7. Miss CHAN Yuen-han considered that the Administration should make use of the new opportunities arising from CEPA to identify some backbone industries for development and help enhancing their competitiveness with a view to revitalizing the economy and alleviating the unemployment problem.

8. DSCIT responded that the Administration was aware of which industries had competitive edge. He said that 273 Mainland products meeting the rules of origin requirement, which were about 90% of the domestic exports to the Mainland, would enjoy zero tariff with effect from 1 January 2004. In the discussion with the Central People's Government, the Administration had made every effort to remove the obstacles in the way for the trade and service sectors to gain greater access in the Mainland market. For instance, efforts were made to facilitate Hong Kong goods meeting the origin rules requirement. He believed that the implementation of CEPA would have a very positive impact on Hong Kong economy and thereby bring about local employment opportunities.

9. The Chairman asked when the impact assessment of CEPA on local employment would be conducted. DSCIT said it would be done as soon as possible when more data on trade and related aspects became available after the implementation of CEPA. He added that the timetable for the assessment would be drawn up after discussion with GE.

10. The Permanent Secretary for Economic Development and Labour (PSL) supplemented that he had personally contacted some manufacturers, and they had indicated that they would adopt a "wait and see" attitude towards CEPA. He shared the view that an assessment on the impact of CEPA on local employment should be conducted as soon as practicable.

11. Ms LI Fung-ying pointed out that the Administration had only emphasised the positive impact of CEPA. She expressed concern whether the implementation of CEPA would have negative impact on other business sectors, e.g. the logistic and transport industry. She said that some lorry drivers had expressed worry that they

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might lose their jobs when logistics and transport traders in Hong Kong were allowed to start business in the Mainland.

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12. DSCIT responded that the Administration would follow up any concerns raised by the trades concerned. He would be pleased to follow up the concerns of the logistics and transport trade in consultation with the Economic Development and Labour Bureau and relevant government departments.

13. GE said that the implementation of CEPA would bring about business opportunities as well as challenges to Hong Kong. The challenges for the trades concerned were how to fully grasp the opportunities whilst seeking to minimise the dislocations.

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14. Ms LI Fung-ying criticised that the Administration should have conducted a detailed assessment on the impact of CEPA on Hong Kong, both the positive and negative impact, before CEPA was signed. She said the Administration should conduct an assessment on the impact in quantitative terms of the 18 services sectors which enjoyed the "first mover" advantage under CEPA on local employment. She urged the Administration to give an undertaking on the timetable for the assessment.

15. As the Administration anticipated that the sectors concerned would likely set up new manufacturing plants in Hong Kong or increase the manufacturing processes locally, Mr LEUNG Fu-wah asked whether the Administration had contacted the manufacturers concerned to find out their difficulties in relocating their production base to Hong Kong. He considered that the Administration should be more proactive and offer assistance when required.

16. DSCIT responded that the Commerce, Industry and Technology Bureau and the Trade and Industry Department (TID) had established channels, formal and informal, to communicate with entrepreneurs. Either they were unwilling to reveal their business plans or they only quoted often cited reasons such as high labour and land costs as deterrents for relocating their operations to Hong Kong. Some entrepreneurs might request direct assistance such as free land and tax exemption, initiatives which were beyond existing policy. When conducting the impact assessment of CEPA in future, the Administration would consult every sector and industry concerned.

17. Mr LEE Cheuk-yan queried the basis for the claim by the Administration that CEPA would bring about employment opportunities for local workforce. He said that with more integration and traders moving their business to the Mainland as a result of CEPA, job opportunities for local workers would certainly be adversely affected. He considered that the Administration should assess the number of companies which would invest and expand their business in Hong Kong and the number of companies which would relocate their operations to the Mainland as a result of CEPA. He was

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particularly concerned about the negative impact on workers with low skills and low education.

18. DSCIT reiterated that CEPA would open up many more new business opportunities to Hong Kong business, trade and service sectors, and thereby creating job opportunities. He said that CEPA would provide a platform for industries to expand their business and relocate their manufacturing processes to Hong Kong. Additional market access under CEPA would be conducive to improving opportunities for professionals of Hong Kong. There had also been inquiries from overseas entrepreneurs to find out how they could take advantage of the opportunities brought about by CEPA. DSCIT further said that since the CEPA certificate of origin system would only be introduced in December 2003, it would be difficult to assess the number of applications for certificate of origin received. The Administration would be in a better position to assess the economic benefits and jobs opportunities created in quantitative terms after CEPA had been implemented for some time.

19. GE concurred. He said that as some companies were in the contemplating stage of expanding their business in Hong Kong or the Mainland, it would be better to wait for these moves to materialise so that more concrete assessment could be made.

20. Mr LEUNG Yiu-chung said that the "wait and see" attitude of the Government was causing worries to workers. It would be important for the Administration to conduct the assessment on local employment so the Government could map out its strategies and policies to meet with the manpower needs arising from Hong Kong business expansions to avoid the need to import workers.

21. Mr Kenneth TING asked whether consideration would be given to products which had never been imported into the Mainland to enjoy tariff benefit under CEPA. Mr TING was of the view that as long as the importation of labour did not affect the job opportunities of existing workers, the Government should remain open-minded.

22. DSCIT said that other than the 273 products covered at the initial phase, other items of Hong Kong exports to the Mainland would enjoy zero tariff by January 2006. Other products which were not manufactured in Hong Kong would start to enjoy zero tariff for export to the Mainland one year after production in Hong Kong commenced.

23. Miss CHAN Yuen-han said that the Administration should focus on selected industries and consider all the factors in making the assessment of the impact of CEPA on local employment. Regarding products made in the Mainland but exported to the United States (US) under Hong Kong quota, Miss CHAN suggested that the Administration should consider reviewing the existing definition of "Hong Kong manufacturer". She said that at present, to qualify as a Hong Kong manufacturer, it was only required to employ local workers and have a factory in Hong Kong. She also suggested that the Administration should adopt measures to ensure that the number of workers employed and their wages were in proportion to the output.

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24. DSCIT responded there was a set of established procedures adopted by both the Mainland and Hong Kong customs to ensure that Hong Kong products were meeting the rules of origin requirement. Before the issue of the certificate of origin, the TID would ensure that the manufacturer had a valid Factory Registration and the number of workers employed supported the quantity of products manufactured. TID and Customs and Excise Department would conduct regular inspections of the factories and manufacturers were required to submit application for the certificate of origin with every batch of goods exported.

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25. The Chairman asked the Administration to advise in writing its response to Miss CHAN Yuen-han's suggestions, and provide information on the inspection procedures and measures to prevent illegal circumvention of origin rules in respect of Hong Kong exports to the US. DSCIT agreed.

Clerk

26. At the suggestion of Mr LEE Cheuk-yan, the Chairman said that the enforcement of certificate of origin and its implication on local employment would be discussed at a future meeting. The Chairman said that a letter would be sent to the Financial Secretary (FS) conveying members' concerns on the impact of implementation of CEPA on local employment.

(Post-meeting note : The letter to FS was sent on 1 December 2003.)

IV. Proposed amendments to reinstatement and re-engagement provisions under the Employment Ordinance
(LC Paper No. CB(2)332/03-04(04))

27. PSL briefed members on the Administration's proposal to amend the reinstatement and re-engagement provisions under Part VIA of the Employment Ordinance, Cap 57 as set out in the Administration's paper. He said that the Administration intended to introduce the amendment bill into the Legislative Council within the current legislative session.

28. Mr LEE Cheuk-yan expressed support for the proposed amendments. Given that it was an unlawful and unreasonable dismissal, he asked whether the reinstated employee would be entitled to payment of wages for the period he was out of work. He considered whether some flexibility would be provided in the legislation to allow for the employee concerned to seek remedies.

29. PSL said that under the existing legislation, in a case of unreasonable and unlawful dismissal, Labour Tribunal (LT) might award terminal payments as well as compensation up to \$150,000 if no order of reinstatement/re-engagement was made. If a reinstatement/re-engagement order was made, it would be up to LT whether to also make monetary award to the employee. PSL added that where the employee was

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re-engaged by the employer's successor or associated company, his previous length of service with the original employer would be reckoned as service with the new employer.

30. Chief Labour Officer of Labour Department (CLO) added that the existing legislation did not provide for wage payment in the intervening period. This was because wages were payable in respect of work done. The law should not provide for wage payment as such when no work was performed. This position would remain unchanged after the proposed amendments. In considering whether or not to award to the employee payment of an amount equivalent to his lost wages, LT would take into account the individual circumstances of the case e.g. the employee might have taken up other employment during the intervening period.

31. Referring to paragraphs 9 and 10 of the Administration's paper, Mr. Andrew CHENG sought clarification on whether the proposed amendments could plug the loophole for an irresponsible employer to evade his responsibility to comply with an re-engagement order.

32. PSL said under the proposed amendment, an re-engagement order would be directed at the employer. He could not shift the responsibility to his successor or associated company. The employer could only relieve his obligation to comply with such order if his successor or associated company re-engaged the employee concerned and if the employee consented.

33. While agreeing to the employee's right of reinstatement in case of unreasonable and unlawful dismissal, Mr Kenneth TING considered that the proposed amendment removing the requirement to secure the consent of the employer in making an reinstatement/re-engagement order would deprive the right of and discriminate against employers. He expressed worry about the possible increase in conflict if the employer was "forced" to reinstate/re-engage the employee whom he did not like.

34. PSL said that reinstatement and re-engagement arrangements were part of employment protection which had been commonly adopted in the Commonwealth countries. Similar provisions also existed in other discrimination ordinances in Hong Kong. He said that the number of reinstatement claims that required the mediation of LT was insignificant. Since July 1997 when the relevant employment protection legal provisions came into effect, the Labour Department (LD) handled 180 000 cases of labour claims, of which 23 000 (12%) cases were related to employment protection. Out of the 23 000 claims, 80 requested reinstatement, 16 of which were related to unreasonable and unlawful dismissal. Of these 16 claims, 12 cases had been successfully settled after mediation by LD, and only 4 cases needed to be referred to LT.

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35. Regarding Mr TING's concern over the possible increase in conflict between the employer and the reinstated employee, PSL said that in determining whether an order of reinstatement should be made in cases of unreasonable and unlawful dismissal, LT might request LD to submit a report on the circumstances of the case and consider all relevant factors. If reinstatement was impracticable, e.g. sour employer-employee relationship, LT would only award monetary compensation.

36. The Chairman asked whether the litigation parties could challenge the report on the circumstances of the case. PSL responded that LD would only provide the report upon the request of the LT, and the report would contain only factual information on the case as agreed by both the employer and employee.

37. Mr LEUNG Fu-wah asked whether there would be a case when LT ordered reinstatement/re-engagement against the wish of the employee. PSL responded that this was unlikely because all reinstatement/re-engagement requests had to be initiated by the employee.

38. Ms LI Fung-ying expressed support for the proposed amendments. She requested the Administration to provide the statistics on claims and litigation cases on reinstatement and re-engagement referred to in paragraph 34 above after the meeting. Mr LEUNG Yiu-chung added that information on the amount of compensation awarded by LT should also be included. PSL agreed.

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V. Amendment of the Vocational Training Council Ordinance (LC Paper No. CB(2)332/03-04(05))

39. Ms LI Fung-ying agreed that there was a growing number of Hong Kong firms engaging in cross-border activities and employing workforce from Hong Kong. However, she requested the Administration to provide further information, such as the number of firms operating business in the Mainland, the number of Hong Kong workers employed, the workers' length of stay in the Mainland, the number of trips made by the workers to Hong Kong, and whether the workers were on permanent or short-term contracts, to support the need for the proposed amendment to the Vocational Training Council Ordinance (VTCO).

40. Principal Assistant Secretary for Education and Manpower (PAS/EM) responded that in view of the rapid economic development of the Pearl River Delta in the coming years, the amendment to the VTCO would allow the Vocational Training Council to help equip our workforce and thereby maintaining the competitiveness and employment prospects of our workers. He said that according to the research "Made in Pearl River Delta - the Changing Face of Hong Kong Manufacturers" conducted by the Federation of Hong Kong Industries, there were about 63 000 Hong Kong based firms engaging in manufacturing activities in the Mainland. There were about 53 000 Hong Kong based companies operating factories in Guangdong and

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about 83 000 Hong Kong employees working in Guangdong. According to Government statistics, over 190 000 people were working in the Mainland. PAS/EM agreed to provide the report conducted by the Federation of Hong Kong Industries for members' reference. He added that he did not have information on the number of workers engaged on permanent and short-term contracts.

VI. Any other business

41. On behalf of Miss CHAN Yuen-han, Ms LI Fung-ying suggested that consideration be given for the Panel to undertake overseas duty visit to better understand overseas experience in areas of training of workforce and accreditation of qualifications. The Chairman said that the matter would be further discussed.

42. There being no other business, the meeting ended at 4:00 pm.

Council Business Division 2
Legislative Council Secretariat
17 December 2003