LC Paper No. CB(2)1453/13-14(05)

For discussion on
13 May 2014

Legislative Council Panel on Security

Proposed amendments to the schedules to the Dangerous Drugs Ordinance (Cap. 134) and the Control of Chemicals Ordinance (Cap. 145)

PURPOSE

This paper seeks Members' views on the Administration's proposal to –

(a) bring methoxetamine (MXE) and relevant derivatives as specified in **Annex** under control by amending Part I of the First Schedule to the Dangerous Drugs Ordinance (DDO) (Cap. 134); and

(b) bring alpha-phenylacetoacetonitrile (APAAN) under control by amending Schedule 2 to the Control of Chemicals Ordinance (CCO) (Cap. 145).

BACKGROUND

MXE and relevant derivatives

2. The chemical structure of MXE bears a close resemblance to that of ketamine. Its generic definition, as described in **Annex**, represents a group of synthetic chemicals that exhibit psychoactive properties.

3. According to the Advisory Council on the Misuse of Drugs (ACMD)[1] of the United Kingdom (UK), the effects of MXE are similar to those of ketamine (hallucinations, drowsiness and dissociative effects),

[1] Source: ACMD Report dated 18 October 2012.

with additional toxicity including agitation, other stimulant effects such as tachycardia (fast heart rate) and cerebellar features such as ataxia (unsteadiness on the feet). On the other hand, its hypertension effect is greater than what would generally be expected with ketamine.

4. According to ACMD, MXE has no recognized legitimate medical or chemical use beyond potential research use. Although there is no registered pharmaceutical product containing MXE in Hong Kong, two pharmaceutical products containing tiletamine, a derivative related to MXE, are registered for veterinary use. As regards trade declarations for MXE and relevant derivatives, there were only 28 import declarations and 26 export declarations for tiletamine between 1 January 2010 and 15 April 2014. The Administration has not encountered any seizure cases involving MXE and relevant derivatives. However, intelligence suggests that these substances are readily available through the internet and some young people are aware of its existence and effects.

5. In response to potential health concerns, various jurisdictions[2] have already imposed legislative control on MXE. Among them, the UK has adopted a more robust approach by controlling the generic form of MXE, i.e. all known relevant derivatives, instead of the specific substance only. However, taking into account the relatively low abusive potential of tiletamine and its relevant pharmaceutical use, the UK has exempted the substance from legislative control.

6. In Hong Kong, the generic definition of MXE contains five substances already controlled under Part I of the First Schedule to the DDO, namely eticyclidine, ketamine, phencyclidine, rolicyclidine and tenocyclidine. Separately, tiletamine is controlled under the Pharmacy and Poisons Ordinance (PPO) (Cap. 138) and its subsidiary legislation. Save for these substances, MXE and the relevant derivatives as set out in **Annex** are not subject to any legislative control in Hong Kong.

APAAN

7. APAAN is an immediate precursor to 1-phenyl-2-propanone (P-2-P), a substance for manufacturing amphetamine and methamphetamine. The drug harm of abusing amphetamine and

[2] These jurisdictions include Australia, Austria, Denmark, Germany, Greece, Hungary, Italy, Portugal, Russia, Sweden, Switzerland, Turkey and the UK, as well as some states in the USA.

methamphetamine includes depression, toxic psychosis, loss of appetite, as well as kidney and heart failure.

8. APAAN has no known legitimate use except in small amount for research and laboratory purposes, as well as being used as a chemical intermediate in the legitimate manufacture of P-2-P. APAAN has no recognized medical use and there is no registered pharmaceutical product containing APAAN in Hong Kong. Locally, there has not been any seizure involving APAAN. Between 1 January 2010 and 15 April 2014, there were only three trade declarations (two imports and one export) of APAAN.

9. At present, APAAN is not subject to any legislative control in Hong Kong. According to the International Narcotics Control Board (INCB), the number of abuse cases involving APAAN has since 2012 been on the rise on international level. The situation is particularly prominent in Europe. In November 2013, the INCB recommended to the United Nations Commission on Narcotic Drugs (UNCND) to include APAAN in Table I[3] of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the 1988 Convention). The recommendation was approved at the 57th Session of the UNCND held in March 2014. The proposed regulatory control of APAAN in Hong Kong is not expected to cause difficulties to the industry in view of the small volume of import and export involving the substance.

RECOMMENDATIONS

MXE and relevant derivatives

10. The generic definition as described in **Annex** captures a wide variety of synthetic MXE. In order to allow the law enforcement agencies of Hong Kong to respond to the changing local drug situation effectively, we propose to adopt a more stringent approach in controlling MXE in Hong Kong along the UK model, i.e. to control all its relevant derivatives. This would be more effective in preventing drug traffickers from circumventing the new law by making minor modifications to the chemical structure of the substance.

[3] Participants of the 1988 Convention have the obligation to monitor the manufacture and trade of the substance scheduled under Table I.

11. As set out in paragraph 6 above, the generic definition of MXE contains five substances already controlled by Part I of the First Schedule to the DDO, namely eticyclidine, ketamine, phencyclidine, rolicyclidine and tenocyclidine. In line with established practice, we propose to continue to control these substances using relevant existing provisions.

12. Under the DDO, substances included in Part I of the First Schedule are dangerous drugs and are subject to the control of a licensing scheme administered by the Department of Health (DH). As stipulated under the DDO, the manufacture, import, export, as well as supply of these substances will require licences from DH. Illicit trafficking and manufacturing of the substances will be subject to a maximum penalty of life imprisonment and a fine of $5 million. Possession, consumption and supply of the substances would also constitute criminal offences.

13. Based on the UK model, we recommend to exclude tiletamine from the proposed control of the DDO in the current exercise. This proposal has taken into account the relatively low abusive potential of tiletamine and its pharmaceutical use in Hong Kong. Locally, registered pharmaceutical products which contain tiletamine are used by certain organisations which deal with wild animals and veterinary clinics for the restraint of or anaesthesia in the animals. Specifically, there is no suitable alternative in terms of its medical application in some wild animals. Accordingly, it would be more appropriate to exclude tiletamine from the current legislative exercise, but it would continue to be controlled under the PPO (paragraph 6 above), which provides a specific control mechanism for pharmaceutical products.

APAAN

14. The 1988 Convention applies to Hong Kong. With UNCND's agreement to include APAAN in Table I of the 1988 Convention (paragraph 9 above), Hong Kong should also bring the substance under legislative control. Locally, the effect of UNCND's decision is similar to including APAAN into Schedule 2 to the CCO. We recommend to include APAAN into Schedule 2 to the CCO.

15. Under the CCO, substances prescribed under Schedule 2 are subject to the control of a licensing scheme administered by the Customs and Excise Department. By virtue of Section 2A of the CCO, no person shall have in his possession, manufacture, transport or distribute the

substance for the unlawful production of a dangerous drug. Any person who contravenes offences under the CCO will be subject to a maximum penalty of imprisonment for 15 years and a fine of $1 million.

CONSULTATION

16. The Administration has consulted relevant traders, as well as licensees of the DDO and CCO respectively, on the proposed legislative control for both MXE and relevant derivatives, as well as APAAN. There was no objection. Licensees of the PPO were also consulted and raised no objection to the proposed control of MXE and relevant derivatives with the exclusion of tiletamine.

17. The Administration has also consulted the Action Committee Against Narcotics, which supports the proposed control.

WAY FORWARD

18. Pursuant to section 50(1) of the DDO, the Chief Executive may by order published in the Gazette amend the First Schedule to the DDO. Under section 18A of the CCO, the Security of Security may by order amend Schedule 2 to the CCO.

19. Having consulted Members' views on the above proposals, we plan to table the relevant amendment orders in the Legislative Council for negative vetting in July 2014.

ADVICE SOUGHT

20. Members are invited to comment on and support the Administration's proposal as set out in paragraph 1 above.

Narcotics Division
Security Bureau
May 2014

Annex

Methoxetamine (MXE) and relevant derivatives

1-phenylcyclohexylamine or any compound structurally derived from 1-phenylcyclohexylamine or 2-amino-2-phenylcyclohexanone by modification in any of the following ways:-

(a) by substitution at the nitrogen atom to any extent with alkyl, alkenyl or hydroxyalkyl groups, or replacement of the amino group with a 1-piperidyl, 1-pyrrolidyl or 1-azepyl group whether or not the nitrogen containing ring is further substituted with one or more alkyl groups;

(b) by substitution in the phenyl ring to any extent with amino, alkyl, hydroxy, alkoxy or halide substituents, whether or not further substituted in the phenyl ring to any extent;

(c) by substitution in the cyclohexyl or cyclohexanone ring with one or more alkyl substituents; and

(d) by replacement of the phenyl ring with a 2-thienyl ring.

Notes

In line with established practice, we propose to continue to control eticyclidine, ketamine, phencyclidine, rolicyclidine, tenocyclidine, and any compound for the time being specified in paragraph 1(a) of Part I under Schedule I to the Dangerous Drugs Ordinance (Cap.134), using the relevant existing provisions.

In addition, in view of its relatively low abusive potential and its pharmaceutical use, tiletamine, which is controlled under the Pharmacy and Poisons Ordinance (Cap.138), would be excluded from the current legislative exercise.