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Consultative Committee for the
Basic Law of the Hong Kong Special
Administrative Region. Special
Group on Finance, Business and
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FINAL REPORT ON
THE POLICY REGARDING INDUSTRY AND COMMERCE,
FREE TRADE, AND POLICY REGARDING AGRICULTURE AND FISHERY

(passed by the Executive Committee on 8 August 1987)

Special Group on
Finance, Business, and Economy

1 Foreign Trade

1.1 According to Mr Wong Po Yan's report, the provisions under section 3: "foreign trade" are as follows:

- (1) "The HKSAR shall continue a policy of free foreign trade."
- (2) "The HKSAR Government shall protect the freedom of foreign trade, and the free movement of goods (including invisible capital) and capital."

1.2 Members held discussions on the foregoing provisions and expressed the following comments:

- (1) The expression "a policy of free foreign trade" is obscure. It is not a common economic term. Does it refer to "a free trade policy" or "the freedom to conduct foreign trade" or other meanings?
- (2) "Invisible capital" is not a common economic term. Does it refer to "invisible trade" or "intellectual property" or other meanings? If "invisible capital" includes "intellectual property", the provision will be contrary to the view of the Working Group. Members hold that the free movement of intellectual property should not be allowed as the HKSAR Government should be responsible for protecting the copyrights, patents and registration in the HKSAR.

1.3 Members hold that the provisions regarding the trade policy should be re-drafted as follows:

- (1) The HKSAR shall practise a free trade policy and protect free trade. The features of a free trade policy are: free enterprise, minimum government intervention, no control on foreign exchange, free port status, free flow of capital, etc.
- (2) The HKSAR shall protect intellectual property such as copyrights, patents, and registration.
- (3) The HKSAR shall have the right to negotiate with foreign governments for the furtherance of trading benefits provided that such right is not a breach to the PRC sovereignty on the diplomacy level.
- (4) A view was expressed that it was preferable to allow the HKSAR Government to decide its economic and trade policies on its own.

1.4 The provisions proposed above by members are elaborations on a principle under the Joint Declaration i.e. the HKSAR shall be an independent economic entity. Members hold that the Basic Law should contain more detailed provisions to guarantee such independence.

1.5 In addition, members are very much concerned that the HKSAR Government should have the right to fight for a seat in any international body with the purpose of promotion of trade. Members are of the view that the Basic law should provide for such right.

2 Policy regarding industry and commerce

2.1 According to Mr Wong Po Yan's report, the provisions under section 4: "the various industries and commerce" are as follows:

- (1) "The HKSAR shall practice a free and open policy regarding industry and commerce".
- (2) "The HKSAR shall encourage industrial investment and technological advancement, and open up burgeoning industries in order to strengthen its competitiveness in the international arena."
- (3) "The HKSAR Government shall actively create the necessary environment and conditions for the development of industry and commerce."
- (4) "The HKSAR shall actively adopt appropriate policies to promote the development of commerce, transport industry, public utilities, service industries, tourism, real estate industry, and agriculture and fishery."
- (5) Some Drafting Committee members hold that there should be a separate clause providing for commercial development, e.g. "The HKSAR Government shall protect the freedom of commercial undertakings and shall adopt active measures to facilitate commercial development."

2.2 Members expressed the following views on the provisions regarding "the various industries and commerce":

- (1) Members hold that the provision on "a free and open industrial policy" is hardly comprehensible and may be misleading. "A free and open industrial policy" refers to the absence of any established policy, that is, the government would not interfere in any matter affecting industry e.g. environmental control, labour legislation etc. The Working Group advocates "free enterprise" and "a fully competitive economy" instead of "a free and open industrial policy".

- (2) If the Drafting Committee was in favour of a free and open industrial policy, the ensuing provisions on the encouragement of industrial investment would be inconsistent.
- (3) The provisions seem to have confused the terms "policy", "system", and "measure".
- (4) The draft version can better be summarised in six words "The HKSAR Government should encourage industrial development". The word "encourage" is capable of too broad an interpretation, ranging from verbal exhortation to a programme of action.
- (5) Technology and manufacturing are inseparable and by moving technology to chapter 6 which deals generally with science and technology for society as a whole, the industrial policy in chapter 5 has become vague and inconsequential.

2.3 Members hold that the provisions regarding industrial and commercial policy should be re-drafted as follows:

- (1) The HKSAR shall maintain the existing free enterprise policy to activate a free and fully competitive economy.
- (2) The HKSAR Government shall continue to create the necessary environment and conditions for the development of industry and commerce.
- (3) The HKSAR Government shall maintain the policy of giving investment incentives.
- (4) The HKSAR Government shall continue to pursue a programme of industrial support services.
- (5) The HKSAR shall promote:-
 - i) the development of industry (and take the role of small and medium industries into account);
 - ii) the establishment of new industries; and
 - iii) advances in technology capability.
- (6) The HKSAR will:-
 - a) be fully entitled to export quotas, tariff preferences and other similar arrangements obtained by itself;
 - b) operate as a separate customs territory.
- (7) The HKSAR shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.
- (8) The HKSAR Government shall on its own decide policies regarding commerce and various industries such as transport, public utilities, service, tourism, real estate, and agriculture and fishery.

* Appended for reference is the written submission from representatives of the agriculture and fishery sector.

** If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

APPENDIX

1 Policy on agriculture and fishery

The Consultative Committee Members have received suggestions concerning the agricultural policy of the HKSAR submitted by representatives of the agricultural sector. Their suggestions are as follows:

- 1) The social and political status of farmers must not be overlooked. Agricultural bodies should be regarded as a functional constituency and there should be seats in the legislature allocated to agricultural representatives. Agricultural representatives should also participate in district organisations where there is a concentration of agricultural activities in the district.
- 2) Set up a consultative committee on agriculture to review policy on agriculture at regular intervals.
- 3) There should be an appropriate land policy to preserve agricultural land, develop agricultural resources and assist agricultural development.
- 4) Besides safeguarding the rights of landowners, those of the tenant farmers should also be safeguarded. Agricultural investment should be protected by law. In case of requisition of land, compensations to farmers' investments should be calculated in terms of actual materials, facilities and production cost, and should be reviewed at regular intervals. There should also be arrangements for reallocation or employment transfer so that the farmers' livelihood can be maintained.
- 5) Set up various sorts of markets for agricultural produce so that there will be a more reasonable supply and distribution situation.
- 6) Preserve the existing agricultural organisations and agricultural development funds to assist agricultural development.

The suggestions were raised at a seminar for representatives of the agricultural sector. The convenor of the seminar was Mr Lee Lin Sang, member of the Consultative Committee for the Basic Law.

* If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

工商業政策、自由貿易、 漁農業政策

最後報告

(1987年8月8日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會
金融財務經濟專責小組

1. 對外貿易

1.1 根據黃保欣委員的匯報，第三節：「對外貿易」有以下條文：

- (1) 「香港特別行政區實行自由的對外貿易政策」。
- (2) 「香港特別行政區政府保障對外貿易的自由，保障貨物(包括無形的資產)及資本的流動自由。」

1.2 委員就該兩條條文進行討論，提出以下意見：

- (1) 「自由的對外貿易政策」字眼含糊，並非經濟學上的慣用詞語；令人不明所指的是「自由貿易政策」還是「可自由地進行對外貿易」，還是其他意思。
- (2) 「無形資產」一詞亦非經濟學上慣用詞語，令人不明所指的是「無形的貿易」，還是「知識資產」，還是其他意思。若「無形資產」包括「知識資產」，則此條文與工作組的意見相反，委員認為知識資產不可任由自由流動，特區政府應有責任保障特區的版權、專利及登記等。

1.3 委員認為貿易政策條文應再行草擬如下：

- (1) 香港特別行政區實行貿易自由政策，保障「自由市場」，其特色是：有自由企業，政府盡少干預，無外匯管制，自由港，資金自由流動等。
- (2) 香港特別行政區保障版權、專利和登記等知識資產。
- (3) 香港特別行政區有權與外國政府談判，以爭取貿易權益，但以不違反中國外交主權為原則。
- (4) 有意見認為以下條文更為可取：香港特別行政區自行決定經濟和貿易政策。

1.4 委員所提的以上各條條文皆為引申《中英聯合聲明》中的一項原則，即香港特別行政區為一獨立經濟體系。委員認為基本法應有較詳細的條文以保障這獨立性。

1.5 另外，委員亦很關注特區政府應有權在以促進貿易為目標的國際性機構保留及爭取席位，認為這條文亦應寫入基本法有關的章節內。

2. 工商業政策

2.1 根據黃保欣委員的匯報，第四節：「工商業和其他產業」有以下的條文：

- (1) 「香港特別行政區實行自由開放的工商業政策」或「...自由開放的工業和商業政策。」
- (2) 「香港特別行政區鼓勵工業投資、技術進步和開拓新興產業以增強國際競爭能力。」
- (3) 「香港特別行政區政府積極創造必要的環境和條件，以利工商業的發展。」
- (4) 「香港特別行政區積極採取適當政策促進商業、運輸業、公用事業、服務性行業、旅遊業、房地產業、漁農業等的發展。」
- (5) 有部份起草委員認為應為商業發展另擬一條文，例如：「香港特別行政區政府保障經商自由並採取積極措施以利商業發展。」

2.2 委員對以上條文提出意見：

- (1) 委員認為「自由開放的工業政策」條文令人難於理解及容易被受誤導。自由開放工業政策的意義為沒有既定政策，即政府在任何影響工業，如環境控制、勞工法例等事宜上不加干預。工作組主張「自由企業」及「競爭性經濟」，而非自由開放的工業政策。
- (2) 倘若起草委員會主張自由開放的工業政策，則與其隨後有關鼓勵工業投資的條文互相矛盾。
- (3) 條文在區分政策及制度與措施上頗為混淆。
- (4) 草擬條文可撮要為「特別行政區政府應鼓勵工業發展」。然而「鼓勵」一詞意義廣泛，可包括口頭勸諭以至一連串活動計劃，因為草稿用詞顯得含糊空泛。
- (5) 科技與製造乃不可分離，把科技轉移到概括論述整體社會的科學與技術之第六章，第五章的工業政策就顯得內容毫無意義。

2.3 委員認為工商業政策條文應再行草擬如下：

- (1) 香港特別行政區政府維持現行自由企業政策，以促進自由及競爭性經濟。
- (2) 香港特別行政區政府繼續創造必要環境和條件，以利工商業的發展。
- (3) 香港特別行政區政府維持鼓勵投資的政策。
- (4) 香港特別行政區繼續實行工業扶助服務計劃。
- (5) 香港特別行政區促進：
 - i) 工業的發展(並須顧及中小型工業在香港扮演的角色)
 - ii) 新工業的設立
 - iii) 技術的進步
- (6) 香港特別行政區
 - i) 享有其本身取得的出口配額、特惠關稅及其他相類安排；
 - ii) 繼續維持獨立關稅地區的運作。
- (7) 香港特別行政區有權根據當時的產地規則，對在當地製造的產品簽發產地來源證。
- (8) 香港特別行政區政府自行制訂商業政策及各行業的政策，例如：運輸業、公用事業、服務業、旅遊業、房地產業及漁農業。

※本報告附有漁農界代表書面意見，供起草委員會參考。

漁農業政策

附件一

基本法諮詢委員會收到由農業界代表有關香港特別行政區的農業政策的建議，照錄如下：

1. 農民的社會地位和政治地位不可忽視，農業團體應列為功能團體組別，在立法機關中應有農業代表的席位，在農業集中的地區，區域組織應有農業代表參加。
2. 設立農業諮詢委員會，定期檢討農業政策。
3. 要有適當的土地政策，確保農業用地，拓展農業資源，輔助農業發展。
4. 除了土地業主的權利得到保障外，租用農地的農民權益應同樣得到保障。農業投資應受到法律的保護，在徵收土地時，對農民投資的賠償應以實際材料、設備、成本計算，定期檢討，並給予重建或轉業之安排，得以維持生計。
5. 設立各類農貿市場，使農產品的產供銷更為合理。
6. 保留現有的農業機構及農業發展基金，輔助農業發展。

以上建議為在農業界代表舉行的研討會中提出。研討會由基本法諮詢委員李連生召集，參加人士有：

香港大學嘉道理農業研究所所長

黃成達博士

香港大學生物系教授

徐是雄博士

香港中文大學生物系教授

張樹庭博士

園藝系博士

謝天佑先生

新界社團聯會理事長

梁煜林先生

香港新界養豬聯合總社理事長

梁植先生

香港農牧職工會主席

羅叔清先生

世界家禽學會香港分會主席

黃振球先生

港九蔬菜合作社聯合總社理事長

翁天德先生

親界養雞同業會副主席

陳汝旭先生

香港禽畜業聯會會長

謝慶祥先生

香港禽畜業聯會副主席

趙汝鵬先生

港九花卉職工總會副主席

溫忠平先生

譚耀宗議員辦事處秘書

方瑛小姐

