

LEGISLATIVE COUNCIL BRIEF

Dutiable Commodities Ordinance
(Chapter 109)

DUTIABLE COMMODITIES (AMENDMENT) BILL 2001

DUTIABLE COMMODITIES (AMENDMENT) REGULATION 2001

INTRODUCTION

At the meeting of the Executive Council on 13 February 2001, the Council ADVISED and the Chief Executive ORDERED that the Dutiable Commodities (Amendment) Bill 2001 at Annex A should be introduced into the Legislative Council, and the Dutiable Commodities (Amendment) Regulation at Annex B should be approved in principle and be made after the Bill has passed into law, to provide the legal basis for using a particular type of electronic service to process applications for dutiable commodities permits (DCPs).

BACKGROUND AND ARGUMENT

General Background

2. Electronic data interchange (EDI) is a particular type of electronic service involving computer-to-computer exchange of information electronically in a standard format. The application of EDI in commerce results in improved efficiency and a significant reduction in paperwork.

3. In 1992, we granted Tradelink Electronic Commerce Ltd. (Tradelink) an exclusive franchise¹ to provide front-end services for the processing by EDI of six official trade-related documents. These six documents are restrained textile export licence, trade declaration, certificate of origin, production notification, cargo manifest, and DCP.

¹ Tradelink's franchise will last for seven years from the launch of the first commercial EDI service in 1997, expiring on 31 December 2003.

4. We have since launched EDI services for four of the documents, after the necessary computer systems have been developed. Services for restrained textile export licence and trade declaration were launched in 1997, and those for production notification and certificate of origin in 1999. We plan to launch EDI services for DCP and cargo manifest (excluding road-mode transportation manifest) in the second half of 2001.

Present System of Control for Dutiable Commodities

5. Under the Dutiable Commodities Ordinance (the Ordinance), the Commissioner of Customs and Excise (the Commissioner) is responsible for controlling the import, export, storage, manufacture and movement of dutiable commodities (DCs) for the purpose of revenue protection. Anyone who imports, exports, manufactures or operates a warehouse for storing DCs must obtain relevant licences from Customs and Excise Department (C&ED). In addition, licensees must apply for a permit before they can remove DCs for local sale, to or from a warehouse, or for export. These permits are called DCPs.

6. At present, licensees are required to apply for a DCP on paper. Supporting documents (e.g. invoices) must accompany the application. A DCP will be issued after validation of the supporting documents and the necessary duty is paid.

7. The Ordinance also requires carriers to submit to the Commissioner an import or export statement on the DCs carried within seven days, or such longer period as the Commissioner may specify, after the arrival or departure of the aircraft, vessel or vehicle concerned. C&ED crosschecks these import and export statements against the relevant DCPs issued for control purposes.

EDI System for Dutiable Commodities Permit

8. With the approval of funds by the Legislative Council in 1999, we have been developing the EDI system for processing DCPs (EDI-DCP). This system will be operational in June 2001. The system will not cover the processing of licences because most of them are renewable annually and providing EDI service for a small number of transactions would not be commercially viable.

9. After the implementation of EDI-DCP, licensees will be able to apply electronically for DCPs via the service of Tradelink. Supporting documents need not be submitted unless requested by C&ED and may in appropriate cases be submitted by fax if requested. Duty may be paid by cash, cheque or electronic funds transfer.

Legal Framework for EDI Service

10. We need to introduce a legal framework for the use of EDI in processing DCP applications via the service of Tradelink. In addition, we propose to mandate the use of EDI service for processing DCP applications from a future date. This is in line with the practice regarding the four official documents for which EDI services have been launched. However, we should provide the Commissioner with the power to revert to the paper mode of processing if necessary. This will cater for, say, the situation where the EDI-DCP breaks down for an extended period. It will also allow the Government to declare a new type of DC without having to enhance the EDI computer system in advance, thus maintaining confidentiality for the purpose of revenue protection.

11. To ensure a smooth migration, we will provide a transitional period whereby DCP applications may be made in either paper or electronic mode.

12. To cater for licensees who are unwilling to make an electronic DCP application on their own, we will allow them to authorize an agent to submit the application on their behalf. In practice, these agents will be the Electronic Trading Access Service centres authorized by Tradelink.

THE BILL

13. **Clause 2** amends section 2(1) of the Ordinance to provide key definitions. The definitions of "recognized electronic service" and "specified electronic service provider", read together with **new section 3A(1)** in **Clause 3**, provide for the Secretary for Commerce and Industry to specify a person as provider of a service for the interchange of electronic records under the Ordinance. It is our intention that during the period of Tradelink's exclusive franchise, Tradelink will be the only body so specified. **Clause 2** also defines "specified eligible agent". This definition, read together with **new section 3A(2)** in **Clause 3**, will allow persons who wish to send information using a recognized electronic service to do so by means of an agent if they so prefer (paragraph 12 above).

14. **New section 3B(1)** provides that a person sending information to Government via a recognized electronic service is responsible for the contents of the information if his identity is authenticated by a security device. In practice, the security device may be a diskette provided by Tradelink containing the person's private key in encrypted software which is used to generate a digital signature. **New section 3C** provides that a person who has been issued a security device has the duty to keep the device for his own use only.

15. **New section 3B(2)** provides that where the information is sent by a specified eligible agent using a recognized electronic service, the person authorizing the agent to send the information is responsible for the contents of the information. **New section 3D** requires a specified eligible agent not to send information unless duly authorized to do so.

16. **Clause 8** amends section 11A to provide that in relation to investigation of offences under the Ordinance, officers of C&ED are empowered to require production of the relevant electronic information (e.g. books and documents) in a legible form.

17. **Clause 9** amends section 22 to relax the current requirement on submission of import and export statements (paragraph 7 above). **Clause 9(3)** provides that the requirement will be satisfied if a manifest has already been submitted under the Import and Export (Registration) Regulations, provided that the manifest contains all the information required in the statement. **Clause 9(3)** also reserves the power of the Commissioner to demand an import or export statement if necessary.

18. **Clause 12** adds a new section 42A to facilitate the admission and proof of electronic records in court proceedings.

THE REGULATION

19. **Section 3** amends regulation 22 of the Dutiable Commodities Regulations to provide that an application for a DCP shall be in electronic form. The proposed new regulation 22(6) empowers the Commissioner to revert to paper mode if necessary (paragraph 10 above).

20. **Section 4** amends regulation 25 to provide for the surrender of permits issued in electronic form.

21. **Section 5** amends regulation 98(1) to stipulate that a DC warehouse operator must immediately send to the Commissioner via a recognized electronic service information regarding any movement of DCs in and out of the warehouse. This will enable C&ED to strengthen control of the DC stock in the warehouse.

22. **Section 6** adds a new regulation to provide for a transitional period during which applications for DCPs may be made in either the paper or electronic mode (paragraph 11 above).

23. The relevant provisions of the Ordinance and the Dutiable Commodities Regulations to be amended are at Annexes C and D respectively.

LEGISLATIVE TIMETABLE

24. The legislative timetable will be as follows -

Publication in the Gazette	16 February 2001
First Reading and commencement of Second Reading debate	28 February 2001
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

BASIC LAW IMPLICATIONS

25. The Department of Justice advises that the Bill and the Regulation do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

26. The Department of Justice advises that the Bill and the Regulation are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

27. The amendments will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

28. To support electronic processing of DCP applications, we have provided \$32 million to upgrade the existing Government EDI computer system and a total staff cost of \$5.8 million for eight time-limited posts to support system development. The upgraded system will require an additional recurrent operating cost of \$3.3 million a year. It is expected that the implementation of EDI-DCP will result in a net deletion of 26 posts with annual staff cost of \$9.9 million. The proposed legislative amendments do not have other financial or staffing implications for Government.

ECONOMIC IMPLICATIONS

29. The Bill will facilitate the launching of EDI-DCP, which will reduce significantly the time and resources spent by traders on applying for DCPs. It will also promote the wider use of EDI, thereby maintaining Hong Kong's position as a leading international trading centre.

PUBLIC CONSULTATION

30. Government and Tradelink have been jointly consulting the industry on EDI-DCP and have its support. The Legislative Council Panel on Commerce and Industry supports the introduction of the Bill.

PUBLICITY

31. We plan to organize publicity measures to alert the industry to the impending changes. These measures include setting up booths by Tradelink at the counters currently processing DCPs, displaying messages at websites, sending letters to the industry and relevant business associations. These measures proved effective when we launched the EDI services for other documents in the past.

32. A press release will be issued on 14 February 2001. A spokesman will be available to handle media enquiries.

ENQUIRIES

33. Enquiries on this brief should be referred to Mr Philip Chan, Principal Assistant Secretary for Commerce and Industry, on telephone number 2918 7480.

Commerce and Industry Bureau
13 February 2001

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A BILL

To

Amend the Dutiable Commodities Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Dutiable Commodities (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce and Industry by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Dutiable Commodities Ordinance (Cap. 109) is amended by adding -

"electronic record" (電子紀錄) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"information" (資料) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"information system" (資訊系統) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"recognized electronic service" (認可服務) means a service for the interchange of electronic records that is provided by a specified electronic service provider;

"security device" (保安裝置) means a device issued to a person to be used for authenticating that person as the sender of information using a recognized electronic service;

"specified electronic service provider" (指明服務提供者) means a person specified under section 3A(1);

"specified eligible agent" (指明合資格代理人) means a person specified under section 3A(2);".

3. Part added

The following is added -

"PART IA

USE OF ELECTRONIC RECORDS AND PROCEDURES

3A. Specified electronic service providers and eligible agents

(1) The Secretary for Commerce and Industry may, by notice published in the Gazette, specify a person to be a provider of a recognized electronic service under this Ordinance.

(2) The Secretary for Commerce and Industry may, by notice published in the Gazette, specify a person who is eligible to accept appointment to act as an agent for any person -

- (a) in sending information to the Commissioner under this Ordinance using a recognized electronic service; or
- (b) in receiving information that has been sent by the Commissioner under this Ordinance using a recognized electronic service.

(3) A notice issued under subsection (1) or (2) is not subsidiary legislation.

3B. Presumption regarding information sent by recognized electronic service

(1) Where information received by the Commissioner was sent using a recognized electronic service, evidence that shows that the identity of the sender of the information was authenticated by the use of a security device is, in the absence of evidence to the contrary, proof that the person issued with the security device -

- (a) furnished the information; or

(b) made any statement or declaration contained in the information.

(2) Where information received by the Commissioner was sent using a recognized electronic service by a specified eligible agent who has obtained an authorization in accordance with section 3D, a person named in the information as the person who furnished the information or who made a statement or declaration contained in the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who -

(a) furnished the information; or

(b) made the statement or declaration contained in the information.

3C. Safe-keeping of security device

(1) A person who has been issued with a security device shall not authorize or allow any other person to use the device in connection with the sending of information to the Commissioner under this Ordinance using a recognized electronic service.

(2) A person who has been issued with a security device shall take all reasonable steps and exercise due diligence to prevent any other person from using the device in connection with the sending of information to the Commissioner under this Ordinance using a recognized electronic service.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

3D. Duty of specified eligible agent

(1) A specified eligible agent shall not send on behalf of any person information using a recognized electronic service unless the agent has obtained from the person an authorization in writing to do so.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3."

4. Regulations

Section 6(1) is amended by adding -

"(ea) the Commissioner to specify any form or requirement for giving information required to be given in respect of any goods to which this Ordinance applies;"

5. Grant of licences and permits

Section 7(1)(b)(iii) is amended by repealing "either personally or by registered post".

6. Applications for licences and permits

Section 8(b) is amended by repealing "either personally or in writing".

7. Register of requisitions and permits

Section 9 is amended by repealing -

"entered in a book or books in the office of the officer authorized to issue the permit, and the absence of a requisition or copy therefrom"

and substituting -

"kept under the control of the officer authorized to issue the permit, and the absence of any requisition or copy from its usual place of keeping".

8. Books and documents, etc. in non-legible form

(1) Section 11A(2) is amended -

(a) by repealing "book or document" where it first appears and substituting "licence, permit, book or other document was issued or";

(b) by repealing "book or document" where it secondly and last appears and substituting "licence, permit, book or other document".

(2) Section 11A is amended by adding -

"(3) Without affecting the generality of subsection (2), where any premises or place have been entered under section 11(1)(a), a power conferred by this Ordinance -

- (a) to require the production of any licence, permit, book or other document shall be construed as including the power to require that any information of a kind specified in subsection (4) and relating to such licence, permit, book or other document be produced in the premises or place in a legible form;
- (b) to inspect, remove and detain for the purposes of examination, or to examine and copy, any licence, permit, book or other document shall be construed as including the power -
 - (i) to require that any information of a kind specified in subsection (4) and relating to such licence, permit, book or other document be produced in a form in which it can be taken away and in which it is either legible or capable of being retrieved on a computer; and
 - (ii) to take away the material so produced.

(4) The information specified for the purposes of subsection (3) is information that is -

- (a) stored in the form of an electronic record in or accessible from the premises or place entered under section 11(1)(a); or
- (b) contained in any device found in the premises or place entered under section 11(1)(a) and that is

capable of being retrieved in the form of an electronic record."

9. Import and export statements

(1) Section 22(1) is amended by repealing "7" and substituting "14".

(2) Section 22(2) is amended by repealing "7" and substituting "14".

(3) Section 22 is amended by adding -

"(7) The requirement under subsection (1) to furnish a statement in relation to goods to which this Ordinance applies that are imported or exported in any ship, aircraft or vehicle shall be regarded as having been complied with if -

(a) a manifest of the cargo imported or exported in the ship, aircraft or vehicle is lodged for the purposes of regulation 11 or 12 (as may be appropriate) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) using services provided by a specified body;

(b) the manifest contains such particulars in relation to the goods as is required to be contained in a statement furnished to the Commissioner under subsection (1); and

(c) the manifest is lodged within the period specified in subsection (1) for the furnishing of a statement under that subsection in relation to the goods.

(8) Despite subsection (7), the Commissioner may, by notice in writing given to any person to whom subsection (1) applies, require that a statement as required under subsection (1) be furnished and, if such a notice is given -

(a) a statement as required under subsection (1) shall be furnished to the Commissioner within 14 days after

service of the notice but otherwise in accordance with that subsection;

- (b) subsection (5) shall apply in relation to a failure to comply with this subsection as it applies in relation to a failure to comply with subsection (1).

(9) The requirement under subsection (2) to furnish a statement in relation to goods to which this Ordinance applies in the case of a ship or aircraft that arrives in or departs from Hong Kong shall be regarded as having been complied with if -

- (a) a manifest of the cargo imported or exported in the ship or aircraft is lodged for the purposes of regulation 11 or 12 (as may be appropriate) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) using services provided by a specified body; and
- (b) the manifest is lodged within the period specified in subsection (2) for the furnishing of a statement under that subsection in relation to the goods.

(10) Despite subsection (9), the Commissioner may, by notice in writing given to any person to whom subsection (2) applies, require that a statement as required under subsection (2) be furnished and, if such a notice is given -

- (a) a statement as required under subsection (2) shall be furnished to the Commissioner within 14 days after service of the notice but otherwise in accordance with that subsection;
- (b) subsection (5) shall apply in relation to a failure to comply with this subsection as it applies in relation to a failure to comply with subsection (2)."

10. Assessment of duty

Section 26(2) is amended -

- (a) in paragraph (c), by repealing the full stop and substituting "; or";
- (b) by adding -
 - "(d) if sent to him in the form of an electronic record."

11. Misrepresentation, concealment, removal of goods, and defacement of licence or permit

Section 36(1) is amended by repealing "whether or not such statement, declaration or information is made verbally or in writing" and substituting "however made or furnished".

12. Section added

The following is added -

"42A. Proof of contents of electronic record

- (1) A document -
 - (a) purporting to be a copy, produced from one of the Government's information systems, of the record of any information sent or received by a Government information system in the form of an electronic record; and
 - (b) purporting to be certified by the Commissioner,

shall be admitted in any proceedings under this Ordinance before a court or magistrate on its production without further proof.

(2) Where a document is produced and admitted as evidence under subsection (1) -

- (a) the court or magistrate before which it is produced shall, until the contrary is proved, presume that -
 - (i) it was certified under subsection (1)(b);

(ii) the document is a true copy of the record of information so sent; and

(iii) the record was duly made at the time referred to in the document; and

(b) the document is evidence of the contents of the information sent by the sender.

(3) Where a document is produced and admitted as evidence under subsection (1), the court or magistrate may, if it or he thinks fit, on its or his own motion or on the application of any party to the proceedings, summon the person who certified the document and examine him as to its subject-matter."

13. "文本" substituted for "副本"

Sections 11A(2), 42, 48A(9)(a) and 49 are amended by repealing "副本" wherever it appears and substituting "文本".

Explanatory Memorandum

The purpose of this Bill is to amend the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance") to allow for the use of a particular electronic service that is recognized by the Commissioner of Customs and Excise ("the Commissioner") in sending information, or receiving of information sent, under the Ordinance and to make other miscellaneous amendments relating to the use of electronic records generally under the Ordinance.

2. Clause 2 amends section 2(1) of the Ordinance to introduce and define certain terms relevant to the use of recognized electronic services.

3. Clause 3 adds new sections 3A to 3D to the Ordinance. Those sections provide for the specification of persons as providers of recognized electronic services under the Ordinance (new section 3A(1)), for the use of agents in sending information using a recognized electronic service (new sections 3A(2) and 3D), for aids to proof in relation to information received by the Commissioner that has been sent using a recognized electronic service (new

section 3B) and for the use of security devices in connection with recognized electronic services (new section 3C).

4. Clause 4 amends the regulation-making power under the Ordinance (section 6). This amendment will allow regulations to be made in relation to the use of recognized electronic services for giving information in respect of goods to which the Ordinance applies.

5. Clause 5 amends section 7(1) of the Ordinance. The legal effect of this amendment is to provide for the issue of directions to licencees or holders of permits under that section in electronic form.

6. Clause 6 amends to section 8(b) of the Ordinance in relation to the form of applications for licences or permits in cases that are not specifically provided for by regulations.

7. Clause 7 amends section 9 of the Ordinance. The legal effect of this amendment is to allow for the keeping of a register of requisitions and permits in electronic form.

8. Clause 8 amends section 11A of the Ordinance to provide that the powers conferred under section 11(1)(b) of the Ordinance shall apply in relation to documents in non-legible form.

9. Clause 9 amends section 22 of the Ordinance. The legal effect of this amendment is to allow for information in relation to import and export statements to be lodged in electronic form in certain circumstances.

10. Clause 10 amends section 26(2) of the Ordinance to provide for notices as to duty payable under that section to be issued in electronic form.

11. Clause 11 amends section 36(1) of the Ordinance, which prohibits the giving of false information for any purpose under the Ordinance. The legal effect of this amendment is to ensure that it covers information given in electronic form.

12. Clause 12 adds new section 42A to the Ordinance to facilitate the admission and proof of electronic records in court proceedings.

**DUTIABLE COMMODITIES (AMENDMENT)
REGULATION 2001**

(Made by the Chief Executive in Council under section 6 of the Dutiable
Commodities Ordinance (Cap. 109))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Commerce and Industry by notice published in the Gazette.

2. Foreign landing certificate and receipt for stores to be delivered to Commissioner

Regulation 9(2) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.) is amended by repealing "shall give the Commissioner endorsed on a permit" and substituting "and who holds a permit that was sent to him in paper form, shall give to the Commissioner endorsed on the permit".

3. Applications for licences and permits

Regulation 22 is amended by repealing everything after subregulation (1) and substituting -

"(2) An application for a licence, and any information that is submitted in connection with the application -

- (a) shall be in paper form; and
- (b) shall be submitted in such number of copies as the Commissioner may determine.

(3) Except as provided in subregulation (6), an application for a permit shall be in the form of an electronic record that is submitted using a recognized electronic service.

(4) A person applying for a permit shall -

- (a) if so requested by the Commissioner, produce to the Commissioner, or other officer authorized to grant the same, any invoices, bills of lading, shipping

orders or other documents relating to the goods in respect of which the application is made; and

- (b) furnish such invoices, bills of lading, shipping orders or other documents in the number of copies and in the manner specified in the request,

and any such invoices, bills of lading, shipping orders or other documents may be retained by the Commissioner and disposed of as he thinks fit.

(5) Every person applying for a permit to export goods as ship's or aircraft's stores shall at the time of submitting his application furnish to the Commissioner, or other officer authorized to grant the permit, such declaration by the master of the ship, or by the person in charge of the aircraft, as the Commissioner or other officer may require.

(6) The Commissioner may, by notice published in the Gazette, specify that an application for a permit may be submitted in paper form, and subregulations (4) and (5) shall apply in relation to any application made pursuant to such notice subject to this subregulation and to any notice issued under this subregulation.

(7) A notice published under subregulation (6) is not subsidiary legislation.

(8) Every permit to export goods as ship's or aircraft's stores shall, if it was sent to the permittee in paper form, be endorsed by the master or other person in charge of the ship or aircraft that he has received the stores applied for."

4. Surrender of permits

Regulation 25 is amended -

- (a) by renumbering it as regulation 25(1);
- (b) in subregulation (1)(a), by repealing "to the Commissioner or other officer who granted it";

(c) by adding -

"(2) For the purposes of subsection (1)(a), a permittee shall surrender a permit in the following manner -

- (a) if the permit was sent to him in paper form, by returning the permit to the Commissioner or other officer who granted it;
- (b) if the permit was sent to him in electronic form, by sending notice of such surrender to the Commissioner using a recognized electronic service."

5. Record of goods

Regulation 98(1) is amended by repealing everything after "forthwith" and substituting -

"-

- (a) make such entries in respect of the goods as the Commissioner may require, in a stock account or record, in such form as may be approved by the Commissioner; and
- (b) send to the Commissioner using a recognized electronic service a copy of such of the information entered in the stock account or record under paragraph (a) as the Commissioner may require."

6. Part added

The following is added -

"PART XI

MISCELLANEOUS

106. Transitional

(1) During the period specified in subregulation (2), an application for a permit may be made in the manner provided for by regulation 22 as it applied immediately before the commencement of section 3 of the Dutiable Commodities (Amendment) Regulation 2001 (L.N. of 2001) and, for the purposes of any such application, regulation 22 as it so applied shall continue to have effect despite the repeal taking effect on that commencement.

(2) The period specified for the purposes of subregulation (1) is the period beginning with the commencement of section 3 of the Dutiable Commodities (Amendment) Regulation 2001 (L.N. of 2001) and ending at such time as may be specified by the Commissioner by notice published in the Gazette.

(3) A notice published under subregulation (2) is subsidiary legislation."

7. "文本" substituted for "副本"

Regulations 98(2) and 105(2)(g) and item 4 of Part VII of the Schedule are amended by repealing "副本" and substituting "文本".

Clerk to the Executive Council

COUNCIL CHAMBER

2001

Explanatory Note

The purpose of this Regulation is to amend the Dutiable Commodities Regulations (Cap. 109 sub. leg.) ("the Regulations") to make provision regarding the use of a particular electronic service in connection with applications for permits under the Ordinance, and for dealings in relation to permits generally.

2. Section 2 amends regulation 9(2) of the Regulations to limit its application to cases where the permit is one that was issued in paper form.

3. Section 3 amends regulation 22 of the Regulations to require all applications for permits to be submitted to the Commissioner of Customs and Excise ("the Commissioner") using a recognized electronic service, except in cases where the Commissioner has by notice to the Gazette specified that an application may be submitted in paper form.

4. Section 4 amends regulation 25 of the Regulations to provide for the surrender of permits issued in electronic form.

5. Section 5 amends regulation 98 of the Regulations to require stock records kept by warehouse keepers to be sent to the Commissioner using a recognized electronic service.

6. Section 6 is a transitional provision. It allows for applications for permits to continue to be made in paper form, at the option of the applicant, for a transitional period to be determined by the Commissioner.

Chapter:	109	Title:	DUTIABLE COMMODITIES ORDINANCE	Gazette Number:	29 of 2000
Section:	2	Heading:	Interpretation	Version Date:	26/05/2000

- (1) In this Ordinance, unless the context otherwise requires-
- "A.T.A. Carnet" (暫准進口證) means a document-
- in the form set out in the annex to the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (otherwise known as the A.T.A. Convention) agreed at Brussels on 6 December 1961, or set out in Appendix 1 to Annex A to the Convention on Temporary Admission agreed at Istanbul on 26 June 1990; or
 - in such other form as may from time to time be provided by any amendment to the A.T.A. Convention, so long as it applies to Hong Kong, or by any amendment to the Convention on Temporary Admission, so long as Hong Kong remains a contracting party to it; (Added 46 of 1996 s. 2. Amended 12 of 1999 s. 3)
- "air transhipment cargo" (航空轉運貨物) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap 60); (Added 29 of 2000 s. 4)
- "claimant" (申索人) means a person-
- who claims to be the owner of goods or things liable to forfeiture;
 - who is the authorized agent of a person claiming to be the owner of goods or things liable to forfeiture;
 - who was in possession of goods or things at the time of seizure of the goods or things liable to forfeiture; or
 - who claims to have a legal or equitable interest in goods or things liable to forfeiture,
- and who makes a claim or petitions under this Ordinance; (Added 70 of 1993 s. 2)
- "Commissioner" (關長) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise; (Added L.N. 294 of 1982. Amended 12 of 1999 s. 3)
- "container" (容器) includes any receptacle or vessel and any wrapper, packing, cover or stopper;
- "Customs and Excise warehouse" (海關保稅倉) means a place specified by the Commissioner under section 7(1)(g) as a Customs and Excise warehouse; (Added 46 of 1996 s. 2)
- "dutiable goods" (應課稅貨品) means goods to which this Ordinance applies, which are not exempt from duty and on which the full duty prescribed by law has not been paid, and includes goods on which duty has been paid if subsequently reimported; (Amended 3 of 1970 s.3)
- "duty-paid goods" (已完稅貨品) means goods on which the full duty prescribed by law has been paid;
- "export" (出口) means to carry or cause to be carried out of Hong Kong by land, air or water and includes the export of anything carried or sent from any country and brought into Hong Kong by land, air or water for the sole purpose of being carried to another country after transhipment into another conveyance, but does not include transit cargo;
- "goods or things liable to forfeiture" (可予沒收的貨品或東西) means the goods and things referred to in section 48(1) and (2) or any of them; (Added 70 of 1993 s. 2)
- "gross tonnage" (總噸位) means gross tonnage determined in accordance with the Merchant Shipping (Registration) (Tonnage) Regulations (Cap 415 sub. leg.); (Added 3 of 1970 s. 3)
- "HKDNP" is an abbreviation for Hong Kong Duty Not Paid; (Added 46 of 1996 s. 2)
- "import" (進口) means to carry or cause to be carried into Hong Kong by land, air or water;
- "licence" (牌照、牌) means a licence granted or issued under this Ordinance or under the former Ordinance; (Replaced 3 of 1970 s. 3)
- "liquor licence" (酒牌) means a licence for the sale or supply of liquor at any premises specified therein for consumption on the premises; (Added 3 of 1970 s. 3)

"manifest" (艙單) means the manifest of a ship or aircraft, and in relation to a vehicle, the statement referred to in section 22 of goods imported or for export in such vehicles;

"manufacture" (製造) includes every kind of preparation, mixing and treatment except packing and unpacking;

"master" (船長) includes every person, except a pilot, having command or charge of any ship;

"member of the Customs and Excise Service" (香港海關人員) means a person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap 342); (Amended 46 of 1977 s. 18)

"net register" (淨註冊噸位) means register tonnage determined in accordance with the Merchant Shipping (Registration) (Tonnage) Regulations (Cap 415 sub. leg.); (Replaced 3 of 1970 s. 3)

"offence" (罪行) means an offence against any of the provisions of this Ordinance, and includes any act or omission declared or deemed by any of the provisions of this Ordinance to be an offence; (Amended 3 of 1970 s. 36)

"pass" (通行證) means a document issued by a licensee who is authorized by the Commissioner under this Ordinance for the removal of dutiable goods from a licensed warehouse; (Added 46 of 1996 s. 2)

"permit" (許可證) means a permit granted or issued under this Ordinance and includes a pass and a voucher; (Amended 46 of 1996 s. 2)

"place" (地方) means any area on land or water and includes any ship, aircraft, vehicle, train, building, structure or enclosure, whether movable or not; (Added 66 of 1986 s. 3)

"ship" (船、船舶) includes every description of vessel (not being or having the status of a vessel of war) used, or adapted for use, in navigation or for the carriage of goods or persons;

"transit cargo" (過境貨物) means goods which are destined for a place outside Hong Kong and are passing through Hong Kong on the same ship or aircraft without transshipment; (Amended 23 of 1998 s. 2)

"travel document" (旅行證件) means a passport furnished with a photograph of the holder or a similar document establishing to the satisfaction of a member of the Customs and Excise Service or a police officer the identity of the holder and his nationality, domicile or place of permanent residence; (Added 46 of 1996 s. 2)

"voucher" (憑單) means a document issued by a licensee who is authorized by the Commissioner under this Ordinance for the removal from a licensed warehouse of dutiable goods on which duty is deemed to have been paid; (Added 46 of 1996 s. 2)

"warehouse" (保稅倉) means a place set apart for storing dutiable goods and specified by the Commissioner as-

- (a) a general bonded warehouse;
- (b) a public bonded warehouse; or
- (c) a licensed warehouse,

but does not include a Customs and Excise warehouse. (Replaced 46 of 1996 s. 2)
(Amended 46 of 1996 s. 2; 78 of 1999 s. 7)

(2) (Repealed 66 of 1986 s. 3)

(3) For the purposes of subsection (1), where-

- (a) duty has been paid on goods by reference to the purpose for which the goods were intended to be used; and
- (b) the goods are used, or are intended to be used, for some other purpose which attracts a higher rate of duty,

then, until duty is paid at that higher rate, the goods shall be deemed to be goods on which the full duty prescribed by law has not been paid. (Replaced 3 of 1970 s. 3)

(4) (Repealed 66 of 1986 s. 3)

Chapter:	109	Title:	DUTIABLE COMMODITIES ORDINANCE	Gazette Number:	L.N. 243 of 2000
Section:	6	Heading:	Regulations	Version Date:	28/07/2000

(1) The Chief Executive in Council may by regulation prescribe or provide for- (Amended 12 of 1999 s. 3)

- (a) regulating, restricting, licensing or prohibiting, except by licensed persons and on, from or to licensed premises, vehicles, trains, ships or aircraft, as the case may be, the importation, exportation, manufacture, storage, sale, supply, use and possession of goods to which this Ordinance applies; (Amended 66 of 1986 s. 6)
- (aa) the Commissioner to authorize a licensee to issue a pass or voucher for the removal of goods to which this Ordinance applies from a licensed warehouse, and conditions that the Commissioner may apply to the authorization; (Added 46 of 1996 s. 6)
- (b) standards of quality for and determining the quality and origin of, and for packing, canning or bottling any goods (to which this Ordinance applies) to be manufactured, sold or exported under licence; and for materials to be used in such manufacture;
- (c) (Repealed 46 of 1996 s. 6)
- (d) the construction, maintenance, management and control of licensed premises;
- (e) books and records to be kept for the purposes of this Ordinance, the manner in which they are to be kept, and the periods for which they are to be preserved, and empowering the Commissioner and any member of the Customs and Excise Service so authorized in writing by him to grant exemptions from any such requirement; (Amended 66 of 1986 s. 6)
- (f) the containers in which goods to which the Ordinance applies may be imported, exported, kept, sold or supplied and for the labelling or marking of such goods and containers;
- (g) fees other than fees referred to in section 6A; (Replaced 78 of 1999 s. 7)
- (h) the payment of fees, duties and drawback; (Replaced 66 of 1986 s. 6)
- (ha) the refund of duty-
 - (i) on duty-paid goods used in the manufacture of dutiable goods;
 - (ii) on duty-paid goods destroyed in Hong Kong with the written consent of the Commissioner;
 - (iii) on duty-paid goods exported from Hong Kong with the written consent of the Commissioner;
 - (iv) on duty-paid goods drawn as samples for analysis by the Government Chemist;
 - (iva) on duty-paid fuel for ships of more than 60 tons net register, for use either outside Hong Kong or partly inside and partly outside Hong Kong; (Added 35 of 1992 s. 4)
 - (v) on such other duty-paid goods as the Legislative Council may by resolution direct; (Added 66 of 1986 s. 6)
- (i) dispensing with or relaxing any of the provisions of this Ordinance or duties imposed under this Ordinance relating to goods to which this Ordinance applies and empowering the Commissioner to impose conditions in respect of the dispensation or relaxation; (Replaced 57 of 2000 s. 2)
- (ia) exemptions from or refunds of duty which are required by any Ordinance as to immunities and privileges of a diplomatic, consular or similar nature; (Added 40 of 1974 s. 4)
- (j) the furnishing of bonds, or cash or other securities, by licensees and others to secure the due payment of duty and the observance of the provisions of this Ordinance and the conditions of licences; (Amended 3 of 1970 s. 36)

- (k) the examination of the baggage and goods of persons entering or leaving Hong Kong;
- (ka) the procedures for compounding offences under this Ordinance; (Added 46 of 1996 s. 6)
- (l) requiring importers and exporters of goods to which this Ordinance applies to furnish certificates relating to the goods from places outside Hong Kong;
- (m) marking by means of chemicals and coloration of hydrocarbon oil; (Amended 66 of 1986 s. 6)
- (n) the issue, suspension and revocation of liquor licences and the establishment of a board for the purpose of issuing liquor licences and the functions, powers and procedure of that board; (Added 3 of 1970 s. 4. Amended 4 of 1979 s. 2; 78 of 1999 s. 7)
- (na) exemptions from the requirement for a liquor licence; (Added 78 of 1999 s. 7)
- (o) regulating the premises in respect of which a liquor licence is granted; (Added 3 of 1970 s. 4)
- (p) regulating or prohibiting the sale and supply of liquor to minors; (Added 3 of 1970 s. 4)
- (q) regulating or prohibiting the employment and presence of minors on licensed premises;
- (r) the conditions of employment of minors on licensed premises; (Added 3 of 1970 s. 4)
- (ra) the issue of certificates as evidence of landing, shortages and breakages of cargo or relating to entries in official records; (Added 66 of 1986 s. 6)
- (s) matters in which the Commissioner may give directions for the protection of the revenue and the carrying out of the provisions of this Ordinance, and for empowering him to give such directions; (Amended 3 of 1970 s. 36; L.N. 294 of 1982)
- (sa) empowering the Commissioner to grant exemptions in any particular case or generally from any regulations made under this section; (Added 66 of 1986 s. 6)
- (t) anything which is by this Ordinance to be prescribed or provided for by regulation;
- (u) generally, carrying into effect the provisions of this Ordinance.

(2) Without prejudice to subsection (1)(n), regulations made under this section may provide that a contravention of any regulation shall be an offence and prescribe a penalty therefor: (Amended 4 of 1979 s. 2)

Provided that no penalty so prescribed shall exceed a fine of \$1000000 and imprisonment for 2 years. (Amended L.N. 338 of 1995)

(3) Any regulation made under this Ordinance may provide that in any criminal proceedings for a contravention thereof-

- (a) it shall be for the person charged with such contravention to prove certain facts; or
- (b) facts may be presumed, with or without proof of other facts, until the contrary is proved.

(4) Any regulation made by the Chief Executive in Council-

- (a) on the matter stated in subsection (1)(i); or
- (b) in exercise of the powers conferred by subsection (3),

shall be subject to the approval of the Legislative Council. (Replaced 57 of 2000 s. 2)

(4A) Without limiting subsection (1)(n), regulations made under that subsection may-

- (a) provide for the composition of the board established under the regulations; including the appointment of its members by the Chief Executive and its staff by the Secretary for the Environment and Food;
- (b) empower the board to determine its procedures and forms for the purposes of those regulations (in addition to the procedure provided in the regulations). (Added 78 of 1999 s. 7)

(5) (Repealed 48 of 1994 s. 2)

(6) (Repealed 66 of 1986 s. 6)

(7) (Repealed 48 of 1994 s. 2)

(8) (Spent)

Chapter:	109	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			ORDINANCE		
Section:	7	Heading:	Grant of licences and permits	Version Date:	30/06/1997

(1) Subject to the provisions of this Ordinance-

- (a) the Commissioner or other officer deputed by him in that behalf may in his absolute discretion grant and issue licences or permits on payment of the fees, for the periods prescribed, or if no such period is prescribed in any case, for periods of one year at a time, and may renew such licences or permits;
- (b) the Commissioner or an officer deputed by him to grant a licence or permit may
 - (i) in granting or renewing the licence or permit impose such special conditions or restrictions in particular cases as he thinks fit;
 - (ii) permit the transfer of the licence or permit from one person to another or, if the licence was issued for certain premises, the substitution therefor of other premises, or may amend the licence or permit, on sufficient cause being shown to his satisfaction and on payment of the fee prescribed for such transfer, substitution or amendment and of such fee, or such proportionate part of such fee, payable under paragraph (a) as the change may involve;
 - (iii) give either personally or by registered post such directions to licensees or holders of permits in writing in prescribed matters as he may deem necessary for the protection of the revenue; (Amended 66 of 1986 s. 7)
 - (iv) revoke the licence or permit on proof to his satisfaction of an offence against this Ordinance, whether any person has been convicted of such offence or not;
- (c) the Commissioner may determine the form of a licence and any conditions that attach to a licence that he may issue under this Ordinance; (Replaced 46 of 1996 s. 8)
- (d) the Commissioner may determine the form of a permit and any conditions that attach to a permit that he may issue under this Ordinance; (Replaced 46 of 1996 s. 8)
- (e) the Commissioner shall publish a list of general bonded warehouses and a list of public bonded warehouses in January of each year; (Added 46 of 1996 s. 8)
- (f) the Commissioner shall publish details of any alterations to the lists of bonded warehouses within one month of the addition or deletion of a warehouse; (Added 46 of 1996 s. 8)
- (g) the Commissioner may specify premises to be a Customs and Excise warehouse and shall publish details of the Customs and Excise warehouse on a notice board in a place within the Customs and Excise Department to which the public have access. (Added 46 of 1996 s. 8)

(2) Any person who is aggrieved by the exercise of the powers conferred by this section by the Commissioner or by any officer deputed by him in that behalf may appeal to the Administrative Appeals Board. (Amended 46 of 1996 s. 8)

(Amended L.N. 294 of 1982)

Chapter:	109	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			ORDINANCE		

Section: 8 Heading: **Application for licences and permits** Version Date: 30/06/1997

Any person seeking a licence or permit or the renewal, extension, transfer or amendment of a licence or permit shall make application-

- (a) in accordance with regulations; or
- (b) in any case not provided for by regulations, either personally or in writing to the Commissioner in accordance with a form approved by him and subject to his directions,

and shall furnish such information and evidence relating to the application as may be prescribed or as the Commissioner may require.

(Replaced 3 of 1970 s.6. Amended L.N. 294 of 1982)

Chapter: 109	Title: DUTIABLE COMMODITIES	Gazette Number:
Section: 9	Heading: Register of requisitions and permits	Version Date: 30/06/1997

Every requisition for a permit and a copy of every permit issued shall be entered in a book or books in the office of the officer authorized to issue the permit, and the absence of a requisition or copy therefrom shall be prima facie evidence that a permit has not been applied for or, as the case may be, that a permit has not been issued.

Chapter: 109	Title: DUTIABLE COMMODITIES	Gazette Number:
Section: 11A	Heading: Books and documents	Version Date: 30/06/1997

(1) Any book or document kept in pursuance of this Ordinance shall be kept in a legible form or in a non-legible form capable of being reproduced in a legible form.

(2) If any book or document is kept otherwise than in legible form, any power conferred by this Ordinance to require the production of such book or document, to remove and detain it for the purpose of examination, to examine it or to take copies of it shall be construed as including power to require production of it, to remove it and to detain it for the purpose of examination, to examine or to take copies of a reproduction of the book or document or of the relevant part of it in a legible form.

(Added 66 of 1986 s. 10)

Chapter:	109	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			ORDINANCE		
Section:	22	Heading:	Import and export statements	Version Date:	30/06/1997

(1) The owners, charterers or agents of every ship, aircraft or vehicle, in which goods to which this Ordinance applies are imported or exported, or the master of every such ship, the person in charge of every such aircraft or the driver of every such vehicle shall, within 7 days or such longer period as the Commissioner may specify, after the arrival in or departure from Hong Kong of such ship, aircraft or vehicle furnish to the Commissioner at the office of the Commissioner an accurate and complete statement of all such goods. (Amended L.N. 294 of 1982)

(2) The owners, charterers or agents of every ship or aircraft which arrives in or departs from Hong Kong having on board no goods to which this Ordinance applies, or the master of every such ship or the persons in charge of every such aircraft, shall, within 7 days or such longer period as the Commissioner may specify, after such arrival or departure furnish to the Commissioner or other prescribed officer at the office of the Commissioner a statement that no such goods were carried in the ship or aircraft. (Amended 3 of 1970 s. 14; L.N. 294 of 1982; 66 of 1986 s. 14)

(3) Every statement furnished in accordance with the provisions of this section shall be in a form approved by the Commissioner, signed by the party furnishing it, and shall contain such particulars, if any, as may be prescribed by regulations and such further particulars as the Commissioner or other prescribed officer may require. (Amended L.N. 294 of 1982; 66 of 1986 s. 14)

(4) Separate statements shall be furnished in respect of each class of goods specified in section 3 or by any resolution under that section:

Provided that-

- (a) where no goods of a class so specified were carried, it shall be sufficient to include a statement to that effect in any other statement made under this section; and
- (b) where no goods to which this Ordinance applies were carried, a single statement to that effect shall suffice. (Replaced 3 of 1970 s. 14)

(5) If any statement is not furnished in accordance with, or is furnished in breach of, the provisions of this section, the owners, charterers and agents of the ship, aircraft or vehicle, the master of the ship, the person in charge of the aircraft and the driver of the vehicle, in respect of which the statement is, or should have been, furnished, shall each and all be guilty of an offence.

(6) The Commissioner may, with respect to any case or class of cases, grant in writing exemptions from any of the requirements of this section and may impose conditions with respect to such exemptions. (Added 66 of 1986 s. 14)

Chapter:	109	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			ORDINANCE		
Section:	26	Heading:	Assessment of duty	Version Date:	30/06/1997

(1) Subject to the provisions of sections 4 and 26A, the duty on dutiable goods shall be assessed by the Commissioner or any officer authorized by him in that behalf, and the duty shall be paid at such times and to such officer, at the office of the Commissioner or elsewhere, as he may direct. In assessing the duty on any goods allowance may be made for any loss or contraction which may since the goods became dutiable have occurred therein from unavoidable accident or natural causes and, in the discretion of the Commissioner, for waste or loss in manufacture if the loss, contraction or waste has been duly notified and accounted for to the satisfaction of the Commissioner. (Amended 46 of 1980 s. 3; 34 of

1984 s. 3; 46 of 1996 s. 11)

(2) Where any notification of duty payable is given under the provision of subsection (1) such notice shall be deemed to have been duly served on the person concerned-

- (a) if given verbally by the Commissioner or other authorized officer to the person responsible; or
- (b) if delivered to him personally; or
- (c) if addressed to him and left or forwarded by registered post to him at his usual or last known place of abode or business.

(3) A person aggrieved by the decision of the Commissioner as to the amount of duty payable on goods may appeal to the Administrative Appeals Board. (Added 46 of 1996 s. 11)

(Amended L.N. 294 of 1982)

Chapter:	109	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			ORDINANCE		
Section:	36	Heading:	Misrepresentation, concealment, removal of goods, and defacement of licence or permit	Version Date:	30/06/1997

(1) No person shall make any incomplete statement or declaration or furnish any incorrect information, whether or not such statement, declaration or information is made verbally or in writing, or apply any incorrect description or supply any incorrect particulars in any document made or furnished for the purposes of this Ordinance or for any licence or permit to be issued under this Ordinance.

(2) Any person who-

- (a) attempts to evade payment of duty on any goods to which this Ordinance applies, embarks or causes to be embarked for exportation on any ship or aircraft, or produces or causes to be produced to any member of the Customs and Excise Service to be so embarked-
 - (i) any goods to which this Ordinance applies and which are not intended for export; or
 - (ii) any goods, matter or thing as goods to which this Ordinance applies, the same not being goods to which this Ordinance applies or which are different in type, nature, quantity or quality from the goods shown on any export permit or statement which is presented and which purports to cover such goods; or
- (b) with any such intent fraudulently removes, deposits or conceals any goods, matter or thing; or
- (c) after any goods to which this Ordinance applies have been embarked for exportation on any ship or aircraft, without the consent of the Commissioner opens the packages in which the goods are contained or cancels, or obliterates, or alters the marks, letter or devices thereon,

shall on summary conviction, in addition to all other penalties which he may thereby incur, pay or forfeit either treble the amount of duty payable on any goods involved or the sum of \$50000, at the election of the Commissioner (which election shall be certified by the Commissioner in writing under his hand), and all such goods, matters or things shall be forfeited and may be seized by any member of the Customs and Excise Service. (Amended L.N. 294 of 1982; L.N. 338 of 199)

(3) No person shall without lawful authority alter, deface or make any erasure on a licence or permit, or have in his possession a licence or permit on which such an erasure has been made or which has been so defaced or altered.

(Amended 46 of 1996 s. 18)
[cf. 1840 c. 18 s. 15 U.K.; 1981 c. 15 s. 15(5) U.K.]

Chapter:	109	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			ORDINANCE		
Section:	11A	Heading:	Books and documents	Version Date:	30/06/1997

(1) Any book or document kept in pursuance of this Ordinance shall be kept in a legible form or in a non-legible form capable of being reproduced in a legible form.

(2) If any book or document is kept otherwise than in legible form, any power conferred by this Ordinance to require the production of such book or document, to remove and detain it for the purpose of examination, to examine it or to take copies of it shall be construed as including power to require production of it, to remove it and to detain it for the purpose of examination, to examine or to take copies of a reproduction of the book or document or of the relevant part of it in a legible form.

(Added 66 of 1986 s. 10)

Chapter:	109	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			ORDINANCE		
Section:	42	Heading:	Certain certificates to be evidence	Version Date:	30/06/1997

In all proceedings under this Ordinance and in all proceedings for the recovery of any duty on goods to which this Ordinance applies, copies of or extracts from the records of the Commissioner or the officer authorized to grant any licence or permit, purporting to be certified by him, shall be prima facie evidence of the facts stated or appearing therein or to be inferred therefrom.

(Amended 31 of 1969 Schedule; L.N. 294 of 1982)

Chapter:	109	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			ORDINANCE		
Section:	48A	Heading:	Proceedings for forfeiture	Version Date:	30/06/1997

(1) When a claimant gives notice under section 48(6), the Commissioner shall apply to a magistrate for the forfeiture of the goods or things liable to forfeiture and shall state in the application the name and address of the claimant or in the case of a claimant who does not have a permanent address in Hong Kong, the name and address of the solicitor authorized to accept service.

(2) When an application is made to a magistrate, the magistrate shall issue a summons to the claimant, requiring him to appear before a magistrate upon the hearing of the application, and shall cause a copy of the summons to be served on the Commissioner.

(3) Where a claimant is the defendant in criminal proceedings before a magistrate and there is no other claimant, on an application made in that behalf by the Commissioner, the magistrate may hear the forfeiture application immediately following the hearing of criminal proceedings and subsection (2) shall not apply.

(4) A magistrate may, at the time and place of hearing for forfeiture application, or at an

adjourned hearing, hear a person-

- (a) who has not been served with a notice of seizure and was not present when goods or things liable to forfeiture were seized; or
- (b) whose identity was not known to the Commissioner at the time of, or immediately after, seizure; and
- (c) who appears to the magistrate to have a right to claim ownership of, or a legal or equitable interest in, the goods or things liable to forfeiture,

on his claim as to why the goods or things liable to forfeiture should not be forfeited.

(5) If, at the time and place appointed in a summons, neither the claimant nor another person who may have been entitled to make a claim appears and the magistrate is satisfied-

- (a) that the summons was served;
- (b) that a person at the address for service, including a solicitor nominated to accept service on behalf of a claimant, has refused to accept the service of summons; or
- (c) that the address for service given to the Commissioner is inadequate to effect service of the summons,

the magistrate shall hear the application without further inquiry as to the whereabouts of the claimant.

(6) Upon the hearing of an application under this section a magistrate shall order that the goods or things, as the case may be, be forfeited to the Government where- (Amended 46 of 1996 s. 23)

- (a) the person who appears in answer to the summons fails to satisfy the magistrate that he was, or would have been, entitled to make a claim under section 48(6) in respect of the seized goods or things; and
- (b) no other person appears before the magistrate and satisfies him that he was, or would have been, entitled to make a claim; and
- (c) the magistrate is satisfied that the goods or things are liable to forfeiture.

(7) Upon the hearing of an application under this section, in any case other than a case referred to in subsection (6), a magistrate may if he is satisfied that the goods or things are liable to forfeiture and that a person is, or would have been, entitled to make a claim under section 48(6) in respect of the seized goods or things order that the goods or things-

- (a) be forfeited to the Government; (Amended 46 of 1996 s. 23)
- (b) be delivered to the claimant subject to any condition which he may specify in the order, including a condition-
 - (i) that the duty payable under this Ordinance be paid; and
 - (ii) that the claimant discharge the obligations imposed on him under this Ordinance; or

- (c) be disposed of in the manner and subject to the conditions as he may specify in the order.

(8) If, after a magistrate has ordered that goods or things liable to forfeiture be delivered to a person, that person cannot be found or refuses to accept the goods or things, the Commissioner may apply to a magistrate who may-

- (a) order that the goods or things liable to forfeiture be forfeited; or
- (b) make any other order as he considers fit in the circumstances.

(9) On the hearing of an application-

- (a) a certified copy of the record of proceedings, including the decision of the court or magistrate, in proceedings for the contravention of this Ordinance is admissible in evidence; and
- (b) a certificate issued by the Director of Marine or a person authorized by him as a Certifying Authority under the Merchant Shipping (Registration) (Tonnage) Regulations (Cap 415 sub. leg.) certifying the gross tonnage of a ship, shall without proof of the signature, be admissible as evidence of the facts stated in the certificate.

(Added 70 of 1993 s.5)

Chapter:	109	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			ORDINANCE		
Section:	49	Heading:	Evidence of forfeiture	Version Date:	30/06/1997

Forfeiture by order of a magistrate under this Ordinance may be proved in any court, or before any competent tribunal, by the production of a certificate of such forfeiture purporting to be signed by the magistrate or by an examined copy of the record of such forfeiture certified by the magistrate's clerk.

Chapter:	109A	Title:	DUTIABLE COMMODITIES REGULATIONS	Gazette Number:	
Regulation:	9	Heading:	Foreign landing certificate and receipt for stores to be delivered to Commissioner	Version Date:	30/06/1997

(1) Within a reasonable time after the export of dutiable goods or duty-paid goods for which a refund of duty has been applied, excluding those supplied as stores to aircraft or ships replenishing their stores in Hong Kong, of which the duty exceeds \$500, the exporter shall deliver to the Commissioner a certificate of the authority in the place of destination that the goods have been landed there. The Commissioner may require a certificate for any goods exported whether or not the duty exceeds \$500. (L.N. 452 of 1996)

(2) The exporter of any goods, including stores, which are dutiable or exempt from duty or on which duty has been paid and a refund of duty has been applied for, shall give the Commissioner endorsed on a permit-

- (a) a certificate signed by a member of the Customs and Excise Service that he has examined the goods; and
- (b) a receipt for the goods signed by the master or officer in charge of the ship or by the freight supervisor of the aircraft or by an officer of the Post Office if the goods are sent by post, or by a member of the Customs and Excise Service that the goods have been delivered for export in any other case. (L.N. 452 of 1996)

(3) Every person requiring a permit to export any goods to which this regulation applies may be required by the Commissioner to furnish a security, with such cash or bond as he shall direct, for the due observance of this regulation. (L.N. 7 of 1987)

(4) The Commissioner may relax all or any of the requirements of this regulation as he may think fit in relation to any goods to which this Ordinance applies.

(L.N. 294 of 1982)

Chapter:	109A	Title:	DUTIABLE COMMODITIES REGULATIONS	Gazette Number:	
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PART VI

LICENCES AND PERMITS

(1) Every person applying for a licence in respect of any premises shall furnish to the Commissioner, or other officer authorized to grant the same-

- (a) the particulars specified in the application form, and such other particulars as the officer may require;
- (b) (Repealed L.N. 7 of 1987)
- (c) such particulars as the officer may require of any person other than the applicant who may have charge of the premises;
- (d) if the construction of the premises is subject to the officer's approval, adequate plans signed by the applicant, showing clearly the whole of the premises to be used in connection with his proposed business, detailed drawings of all machinery installed or to be installed on the premises and a description of the proposed use of all the machinery and each portion of the premises; and
- (e) if the premises are intended for manufacturing purposes, a complete list of all apparatus to be used on the premises for the manufacture of dutiable goods.

(2) Every person applying for a permit shall produce to the Commissioner, or other officer authorized to grant the same, any invoices, bills of lading, shipping orders and other documents together with such copies thereof as the Commissioner may require relating to the goods in respect of which the application is made, and any such invoices, bills of lading, shipping orders and other such documents and copies thereof may be retained by the Commissioner and disposed of as he may think fit.

(3) Applications for licences and permits shall be submitted in such number of copies as the Commissioner may determine. (L.N. 7 of 1987)

(4) Every application for a permit to export goods as ship's or aircraft's stores shall be accompanied by such declaration by the master of the ship, or by the person in charge of the aircraft as the Commissioner may require. (L.N. 6 of 1970)

(5) Every permit to export goods as ship's or aircraft's stores shall be endorsed by the master or other person in charge of the ship or aircraft that he has received the stores applied for.

(6) Every written application for a licence or permit shall be signed by the person requiring the same or by some person duly authorized by him. If the application is made by a corporation or partnership it shall be endorsed with details of the office held in the corporation or partnership by the person signing the application on behalf of the corporation or partnership.

(7) (Repealed L.N. 7 of 1987)

(L.N. 294 of 1982)

Chapter: 109A	Title: DUTIABLE COMMODITIES REGULATIONS	Gazette Number:
Regulation: 25	Heading: Surrender of permits	Version Date: 30/06/1997

Whenever the permittee to do anything which may lawfully be done by virtue of the terms of a permit issued under the provisions of the Ordinance and regulations made thereunder, finds that he cannot avail himself thereof, he shall- (L.N. 452 of 1996)

- (a) forthwith surrender the permit to the Commissioner or other officer who granted it;
- (b) until such surrender, keep the goods, wherever they may be, separate and intact in their containers; and
- (c) thereafter abide by such directions as the Commissioner may give for the disposal of the goods.

(L.N. 294 of 1982)

Chapter:	109A	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			REGULATIONS		
Regulation:	98	Heading:	Record of goods	Version Date:	30/06/1997

(1) Whenever any goods are taken into or out of a warehouse or are treated in any manner, the warehouse-keeper shall forthwith make such entries in respect thereof as the Commissioner may require in a stock account or record in such form as may be approved by the Commissioner.

(2) Every warehouse-keeper shall, if requested by a member of the Customs and Excise Service, produce the stock account or record referred to in subregulation (1) for examination and shall provide him with copies of that stock account or record or with any other relevant information which the member deems necessary.

(3) Except with the written permission of the Commissioner, every warehouse-keeper shall retain the stock account or record referred to in subregulation (1) in the warehouse for a period of 24 months. (L.N. 452 of 1996)

(L.N. 7 of 1987)

Chapter:	109A	Title:	DUTIABLE COMMODITIES	Gazette Number:	
			REGULATIONS		
Regulation:	105	Heading:	Compounding of offences	Version Date:	30/06/1997

(1) Where the Commissioner decides to compound an offence under section 47A of the Ordinance, he shall serve on the person a written notice stipulating the amount of money payable as listed in column 4 of Schedule 3 to the Ordinance in satisfaction of the duty and as a penalty for the compounded offence.

(2) The notice shall set out-

- (a) the particulars of the offender;
- (b) the particulars of the offence being compounded;
- (c) the description of the goods involved;
- (d) the duty payable on the goods;
- (e) the maximum penalty prescribed for the offence if the offender had been prosecuted;
- (f) that the offender has the option-
 - (i) to pay the amount of money payable as listed in column 4 of Schedule 3 to the Ordinance in satisfaction of the duty and as a penalty for the compounded offence; or
 - (ii) to have the matter dealt with as an offence by a magistrate and, if convicted, be

- liable to the duty, the penalty as prescribed and to have the goods forfeited;
- (g) that a copy of the compounding record may be brought to the attention of a magistrate or court in the event of future offences committed under the Ordinance; and
- (h) any other information that the Commissioner thinks fit.
- (3) The notice is to be in the form which the Commissioner specifies.

(L.N. 452 of 1996)

Chapter:	109A	Title:	DUTIABLE COMMODITIES REGULATIONS	Gazette Number:	L.N. 330 of 2000
Schedule:		Heading:	SCHEDULE	Version Date:	12/01/2001

[regulations 2, 103 & 103A]

LICENCES AND FEES

PART I

GENERAL

Item	Licence or permit	Fee \$
1.	General bonded warehouse or public bonded warehouse licence.....	17500
2.	Warehouse licence in respect of one or more of the following- liquors, tobacco, hydrocarbon oil and methyl alcohol- (35 of 1992 s. 11; 32 of 1993 s. 7)	
	(a) in conjunction with a licence to manufacture one or more of the commodities concerned	17500
	(b) in other cases	17500
3.	(a) Import and export licence (for one or more of the following)- liquors, tobacco, hydrocarbon oil and methyl alcohol	950
	(b) Import licence to persons licensed only to import for their own use or for a single commercial shipment of duty value less than \$2000	10% of the duty on the goods imported with a minimum fee of \$2.
4.	Special import licence (to keepers of licensed warehouses capable of storing not less than 500 kilolitres of hydrocarbon oil).....	950

(L.N. 479 of 1997; L.N. 324 of 2000)

PART II

LIQUORS

Item	Licence or permit	Fee \$
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1.	Manufacturer's licence	16300
2.	Distillery licence	16300
3.	Still licence (available only to an educational, scientific or charitable institution approved by the Financial Secretary)	Fee
4.	Brewery licence	16300
5.	(Repealed L.N. 452 of 1996)	
6.	Temporary liquor licence (L.N. 226 of 1994; L.N. 145 of 1995; L.N. 330 of 2000).....	290 per diem (L.N. 479 of 1997; L.N. 324 of 2000)

PART III

TOBACCO

Item	Licence or permit	Fee \$
1.	(Repealed L.N. 452 of 1996)	
2.	Manufacturer's licence	16300 (L.N. 479 of 1997; L.N. 324 of 2000)

PART IV

HYDROCARBON OIL

Item	Licence or permit	Fee \$
1.	Manufacturer's licence	22400 (L.N. 479 of 1997; L.N. 324 of 2000)

PART V

(Repealed 35 of 1992 s. 11)

PART VI

(Repealed 32 of 1993 s. 7)

PART VII

MISCELLANEOUS

Item	Service	Fee \$
1.	For every transfer of or substitution or amendment in any licence, not otherwise specified, except a transfer from one person to another	300
2.	For every transfer of any licence from one person to another, not otherwise specified.....	300

3. For every certificate of the Government Chemist that any spirits or methyl alcohol are denatured 5
or one-twentieth of the duty, which would have been payable on the spirits or methyl alcohol had such spirits, or methyl alcohol not been denatured, whichever is the greater.
4. For every landing certificate, certificate of shortages or breakages of cargo found damaged or short in bond, endorsement, certificate of accuracy or copy of or extract from official records, any other certificates on which statistics or any official signature has been given in connection with the importation, duty collection, shortage or exportation of any goods to which this Ordinance applies 130
5. For storage of goods to which this Ordinance applies at the Customs and Excise warehouse 1.20 per package (irrespective of size) per day or part of a day, 48 hours
6. For any attendance of a member of the Customs and Excise Service-
(a) at a warehouse or any other place; or
(b) during the removal of goods to which this Ordinance applies from one place to another-

	Per hour or part of an hour \$	Per 8-hour day \$	Per month \$
Inspector.....	390	2930	71100
Chief Customs Officer.....	305	2265	54900
Senior Customs Officer.....	235	1760	42800
Customs Officer.....	155	1155	27900

(L.N. 358 of 1990; L.N. 479 of 1997; L.N. 324 of 2000)
(L.N. 165 of 1989; L.N. 444 of 1996; L.N. 452 of 1996)
