

立法會
Legislative Council

LC Paper No. CB(1) 1432/00-01
(These minutes have been seen
by the Administration)

Ref: CB1/BC/8/00/2

**Bills Committee on
Dutiable Commodities (Amendment) Bill 2001**

**Minutes of meeting
held on Thursday, 15 March 2001, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, JP
Hon Eric LI Ka-cheung, JP
Hon HUI Cheung-ching
Hon CHAN Kam-lam

Member absent : Hon SIN Chung-kai

Public officers : Commerce and Industry Bureau
attending

Mr Philip CHAN
Principal Assistant Secretary

Department of Justice

Mr Jonothan ABBOTT
Senior Assistant Law Draftsman

Miss Frances HUI
Senior Government Counsel

Customs and Excise Department

Mr Simon WONG
Assistant Commissioner (Administration &
Excise)

Mr K W LEUNG
Senior Staff Officer (Office of Information
Technology)

Clerk in attendance : Mrs Florence LAM
Chief Assistant Secretary (1)4

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Erin TSANG
Senior Assistant Secretary (1)3

I. Election of Chairman

Nominated by Mr HUI Cheung-ching and seconded by Mr CHAN Kam-lam, Mr Kenneth TING was elected Chairman of the Bills Committee on the Dutiable Commodities (Amendment) Bill 2001 (the Bills Committee).

II. Meeting with the Administration

{ AUTONUM }. The Chairman and Mr James TIEN declared their interests as the respective Vice-Chairman of the Federation of Hong Kong Industries and General Committee Member of the Hong Kong General Chamber of Commerce, which were shareholders of Tradelink Electronic Commerce Ltd. (Tradelink).

The use of electronic data interchange for processing applications for dutiable commodities permits

{ AUTONUM }. The Principal Assistant Secretary for Commerce and Industry (PAS/CI) briefed members on the salient points in the Dutiable Commodities (Amendment) Bill 2001 (the Bill) which were set out in the Legislative Council (LegCo) Brief issued to members under the reference of

CIB 89/48/1.

{ AUTONUM }. Members noted that the Administration planned to mandate the use of electronic data interchange (EDI) service for processing applications for dutiable commodities permits (DCPs) from a future date. According to the Administration, this would be in line with the practice regarding the other four official trade-related documents, i.e. restrained textile export licence, trade declaration, production notification and certificate of origin, for which EDI services had been launched. Assistant Legal Adviser 2 (ALA2) pointed out that pursuant to the Import and Export Ordinance (Cap.60) and the Protection of Non-Government Certificates of Origin Ordinance (Cap. 324), a production notification/certificate of origin could be lodged or issued either on paper or by using services provided by a specified body. As such, she questioned whether the practice in mandating only the use of EDI services was in compliance with the current law.

Admin

{ AUTONUM }. PAS/CI explained that according to the legal advice sought, the Administration could require the submission of restrained textile export licence, production notification and certificate of origin to be made in the form of EDI if sufficient prior notice had been given to applicants on the change of mode of application. In effect, full migration to EDI services had been implemented in each case, and traders had already accepted the change in the mode of submission. Nevertheless, to address the Chairman's concern that the practice of mandating the use of EDI services seemed to be at variance with the provisions of the law, he undertook to seek further legal advice on the issue and to report back to the Bills Committee.

{ AUTONUM }. Regarding ALA2's concern that applications for DCPs must be made in electronic form as required in the proposed regulation 22(3) while the notices of the Commissioner of Customs and Excise (the Commissioner) could be served in writing under the proposed sections 22(8) and 22(10), PAS/CI clarified that in accordance with the Electronic Transactions Ordinance (Cap. 553), the phrase "in writing" actually referred to communication in both the paper and electronic mode. Highlighting the fact that notices made by the Commissioner to carriers and applicants in relation to their respective import or export statements and DCP applications had to be served in the most efficient fashion, flexibility had to be provided to the Commissioner for serving those notices in either paper or electronic mode to cater for, say, situations where the applicants did not have computer systems for receipt of notices made in the electronic mode. In further reply to ALA2, he stressed that the provision of such flexibility to the Commissioner was made not because of the higher cost incurred in serving notices in electronic form.

{ AUTONUM }. In response to Mr HUI Cheung-ching's concern about the publicity measures to be adopted to alert the industry to the impending changes of applying DCPs electronically, PAS/CI advised members that apart

from setting up Tradelink information booths at Customs' counters currently processing DCPs, the Administration would display messages at relevant websites and send letters to the industry and major business associations. He assured members that those measures had proven to be effective when the EDI services for other official documents were launched in the past.

Introduction of market competition for provision of EDI services

{ AUTONUM }. Mr James TIEN pointed out that the development of e-commerce in early 1990's was relatively slow and thus it was necessary for the Government to enter into a franchise agreement with Tradelink, requiring the latter to develop the computer gateway for provision of EDI services. However, as the commercial information technology environment had been developing quite rapidly, consideration should be given to abolishing Tradelink's exclusive right as currently provided in the Dutiable Commodities Ordinance (Cap. 109) (the Ordinance) upon completion of its agreement with the Government in end 2003, and to open up the market for competition.

{ AUTONUM }. PAS/CI clarified that the Ordinance provided the Secretary for Commerce and Industry (SCI) with the authority to appoint, by notice published in the Gazette, specified electronic service provider (service provider). The Ordinance did not stipulate that Tradelink had an exclusive right for provision of EDI services. In fact, SCI could specify more than one company as the service provider under the Ordinance.

{ AUTONUM }. As for the proposal of introducing market competition, PAS/CI advised members that the initial view of the Administration was that additional service provider(s) should be appointed upon the expiry of Tradelink's exclusive franchise to foster market competition with a view to improving service quality, lowering price and increasing efficiency. The LegCo Panel on Commerce and Industry (the Panel) had been consulted in February 2001 and was supportive of such an idea. In view of the market size and the concern then raised by a Panel member that it might not be commercially viable if too many service providers were appointed, the Administration's initial plan was to appoint two additional service providers. In parallel, Tradelink's services would be retained to ensure continued reliable provision of EDI services to the trading community. Nevertheless, subject to the market responses at the expression of interest stage, consideration would be given to appointing more than two additional service providers. He added that the process for engaging new service providers would include invitation of expression of interest, tendering, negotiation, award of contract and development of the necessary computer systems by both the service providers and the Government. This would take about two and a half years, and a decision on the way forward would be reached by mid-2001.

{ AUTONUM }. In the light of the fact that traders might wish to have

more choices in selecting EDI services, Mr James TIEN held that the Government should cease to maintain a regulatory role in the appointment of service providers, and should leave it entirely to private sector companies to decide whether they wished to provide EDI services. Sharing Mr TIEN's views, Mr Eric LI also questioned the Administration's rationale of limiting the initial appointment of service providers to three.

{ AUTONUM }. PAS/CI underscored the fact that since the service provider, which was an intermediary between traders and the Government, was responsible for transmitting data submitted by traders to relevant Government departments, such as the Customs and Excise Department, Trade and Industry Department and Census and Statistics Department, it would be extremely difficult, if not impossible, to ensure service quality if there was an unlimited number of service providers. Moreover, as some of the data provided by traders might relate to the commercial secrets of their companies, it was of paramount importance that the service providers must be reliable agents recognized by the Government, lest there would be indiscreet disclosure of information. On balance, the Administration planned to appoint three service providers. Taking into account the size of the market, this would ensure market competition on the one hand while lessening the risk of price fixing on the other. Nevertheless, he assured members that the Administration was determined to bring in market competition, and would, subject to market responses, consider appointing more service providers if the need arose.

{ AUTONUM }. While acknowledging the Administration's determination to foster market competition, Mr Eric LI was concerned that since the Government was the major shareholder of Tradelink, and that the Administration intended to retain Tradelink's services after 2003, other potential contenders might be anxious about unfair competition. As such, he asked whether there was any plan to privatize Tradelink to maintain a level playing field in the market. In addition, he suggested that a detailed plan should be worked out if the Administration were to open up the market for fair competition, and that consideration should be given to releasing information relating to the revenue base. If possible, Tradelink's accounts should be made available to prospective contenders for reference. This would help potential participants estimate their investment returns before considering whether they wished to express interest.

{ AUTONUM }. PAS/CI indicated that although the Government currently had a 42.5% stake in Tradelink, in the long run, it would withdraw gradually from Tradelink. Suitable options, such as selling of shares through public offers, were being explored. As for the future arrangements for provision of EDI services upon the expiry of Tradelink's exclusive franchise, he referred members to the Administration's paper which was submitted to the Panel in February 2001 and was tabled at the meeting. The paper had outlined the Administration's preliminary ideas on the relevant issues, such as the scope

of service to be provided by and computer systems required of new service providers, service requirements, pricing policy, termination of contract, etc. In this connection, Mr Eric LI asked and PAS/CI advised that instead of putting in place a licensing system, the Administration intended to enter into a contract of five years with service providers, and renewal/termination of contracts would be subject to service providers' performance.

{ AUTONUM }. In response to Mr Eric LI's question about the size of the potential market, PAS/CI said that Tradelink presently had some 50 000 registered customers. Upon the launch of the EDI service for processing DCP applications, those traders who wished to apply for DCPs for removal of dutiable commodities, such as tobacco, alcoholic liquor and hydrocarbon oil, for local sale, to and from bonded warehouses, or for export would have to patronize Tradelink or its authorized service centres as well. The Assistant Commissioner (Administration and Excise) supplemented that around 140 000 DCPs had been issued in the year of 2000.

Clause-by-clause examination

Clause 1 – Short title and commencement

{ AUTONUM }. Members noted that Clause 1 was a commencement clause.

Clause 2 – Interpretation

{ AUTONUM }. PAS/CI took members through the definition of various terms used in the Bill.

{ AUTONUM }. With respect to the term “specified electronic service provider” which was defined as “a person specified under section 3A(1)” of the Ordinance, PAS/CI clarified in response to ALA2 that although it was the Administration’s intention to appoint a company, rather than a natural person, to be a specified electronic service provider, the term “person”, which was commonly adopted in drafting and was wide enough to cover both a company and a natural person, was used to provide flexibility in the legislation. As to whether the term "specified electronic service provider" referred to the same "specified body" as provided in the proposed section 22(7)(a) of the Ordinance, he explained that as defined in the Import and Export Ordinance (Cap. 60), "specified body" referred to a body stipulated in Schedule 2 of Cap.60, which was presently Tradelink. Since Tradelink had been granted an exclusive right for provision of EDI services, Tradelink was also the only specified electronic service provider under the Ordinance during the period of its exclusive franchise.

{ AUTONUM }. Regarding the term “recognized electronic service”,

PAS/CI highlighted that in view of the rapid technological advancement, a more neutral term “electronic service”, instead of EDI, was employed to afford greater flexibility in the legislation.

{ AUTONUM }. In this connection, members noted with concern that the terms “recognized electronic service” and “specified electronic service provider” were translated respectively as “認可服務” and “指明服務提供者” with the words “電子” omitted in the Chinese text. Given that the word “electronic” was added to the English text for clear reference to the specific nature of the service referred to in the Ordinance, they queried the omission of the words “電子” in the Chinese text.

{ AUTONUM }. The Senior Government Counsel explained that pursuant to the prevailing drafting policy, as long as both the English and Chinese texts of the legislation could accurately reflect the policy intent and that there was not any discrepancy in meaning between the two texts, it was not necessary to adopt the word-for-word translation approach. As for the term “認可服務”, since it was a defined term in the Bill which carried a meaning identical to its corresponding English defined term, it was considered not necessary to add the words “電子” to the Chinese text. PAS/CI supplemented that although the words “電子” were omitted in “指明服務提供者”, when the relevant provisions were read together, the meaning of “electronic” could still be deduced.

{ AUTONUM }. Mr James TIEN then sought clarification from ALA2 as to whether the textual differences between the English and Chinese texts of the legislation would give rise to disputes in court. ALA2 advised that as far as this Bill was concerned, there were substantial differences between the English and Chinese texts. By way of illustration, the words “furnished to the Commissioner” in the English text of the proposed section 22(7)(b) were not reflected in the Chinese text, which only stated “提交的（陳述書）” instead of “向關長提交的（陳述書）”. The words “under that subsection in relation to goods” in the proposed section 22(9)(b) were not reflected in the Chinese text while the phrase “就該船舶或飛機” only appeared in the Chinese text but not the English one. However, the Administration's position was that despite the differences, the English and Chinese texts of the Bill carried the same legal effect. Nevertheless, she remained of the view that it was undesirable to require readers, including members of the public, judges and lawyers, to read between lines or refer to other parts of the Bill before they could deduce the meaning therein. Confusion might arise if lawyers resorted to different versions when presenting their cases in court. As far as possible, consistency in drafting style between the two texts of the Bill should be maintained.

{ AUTONUM }. Echoing ALA2's views, Mr Eric LI highlighted the fact that apart from legal effect, the drafting style and presentation of the English

and Chinese texts were also of paramount concern to members in scrutinizing the Bill, and that it was unfair to require members to deduce for themselves whether the two texts carried the same legal effect. After further deliberation, at the request of members, the Administration undertook to refine the English and Chinese texts of the Bill to bring the drafting of the two texts in line with each other as far as practicable so as to eliminate any ambiguity and uncertainty in the interpretation of the provisions in the Bill.

III Any other business

{ AUTONUM }. Members agreed that the next meeting would be convened to continue the clause-by-clause examination as soon as the Administration had completed the review on the drafting aspect of the Bill and had sought ALA2's comments on its proposed Committee Stage Amendments.

{ AUTONUM }. There being no other business, the meeting ended at 12:27 pm.

Legislative Council Secretariat
7 June 2001