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Your ref. : LS/B/24/00-01

Tel. no. : 2918 7480
Fax no. : 2869 4420

4 June 2001

Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn : Miss Anita Ho)

Dear Miss Ho,

Dutiable Commodities (Amendment) Bill 2001

Thank you for your letter dated 23 May 2001.

2. Our reply to the points raised in your letter, *seriatim*, is set out below. The draft Committee Stage Amendments (CSAs) to the Bill have also been revised accordingly (enclosed).

Clause 2

3. To address your concern, the English version of the draft CSAs has been revised accordingly to specify which amendments are proposed to be made to the Chinese text only.

Clause 3

4. The word “declaration” is rendered as “聲明” or “申報” in different provisions under the existing Cap. 109 and 109A, depending on the context of the particular provision. Since the word “declaration” in both Section 36(1) and the new section 3B applies generally to all declarations, we

therefore propose that the word “declaration” should be rendered as “申報或聲明” in both sections. This will ensure consistency within the Bill.

Clause 4

5. To address your observation on drafting style, we propose to amend the proposed section 6(1)(ea) by deleting “required to be given” and substituting “under this Ordinance”.

Clause 9

6. Section 22(1) deals with the situation where goods to which Cap 109 applies are imported or exported, while section 22(2) deals with the situation where there are no goods on board to which the Ordinance applies. The two sections are mutually exclusive.

7. In addition, section 22(1) would not be regarded as having been complied with by an owner if the statement supplied is not a valid statement (that also meets with requirements under other subsections including subsection (3)). If an owner is deemed to have complied with the new section 22(7), he should therefore be deemed to have lodged a statement that meets with other requirements under other subsections.

8. Notwithstanding paragraphs 6 and 7, we agree that the wording of section 22(7) can be revised to make the above points more obvious. We therefore propose to add “, in accordance with this section” after “furnish” in the chapeau of the new section 22(7). We also propose similar revision to the new section 22(9).

9. We see no harm in introducing more flexibility to the length of period within which the statement must be furnished in new section 22(8). We therefore propose to delete everything after “Commissioner” in the new section 22(8)(a) and substitute “ in accordance with that subsection, except that the statement shall be furnished within 14 days after service of the notice or such longer period as the Commissioner may specify in the notice;”. We also propose similar revision to the new section 22(10)(a).

10. To address your observation on drafting style, we propose to amend the chapeau of the new section 22(9) by deleting “a statement in relation to goods to which this Ordinance applies in the case of a ship or aircraft that arrives in or departs” and substituting “, in accordance with this section, a statement that no goods to which this Ordinance applies were carried in a ship or aircraft that arrived in or departed”.

11. Please let us know whether the revised CSAs are agreeable. The undersigned and the law draftsmen will be happy to discuss with you.

12. Assuming that you are content with the revised CSAs, we are preparing a short covering note to circulate them to Members of the Bills Committee. I have also requested the Clerk to the Bills Committee to arrange a meeting to be held on 8 June 2001, if possible.

Yours sincerely,

(Philip Chan)
for Secretary for Commerce and Industry

c.c.

D of J

(Attn: Mr Jonothan Abbott, Miss Frances Hui, Mr M Y Cheung)

CCE

(Attn: Mr Simon Wong, Mr K W Leung)

《2001年應課稅品(修訂)條例草案》

委員會審議階段

由工商局局長動議的修正案

條次

建議修正案

- 2 (a) 在建議的“認可服務”的定義中 —
- (i) 在“認可”之後加入“電子”；
 - (ii) 在“指明”之後加入“電子”。
- (b) 在建議的“指明服務提供者”的定義中，在“服務”之前加入“電子”。
- (c) 在建議的“保安裝置”的定義中，刪去“核證某人是利用某認可”而代以“認證某人是利用某認可電子”。
- 3 (a) 在建議的第 3A 條中，在標題中，在“**服務**”之前加入“**電子**”。
- (b) 在建議的第 3A(1)及(2)(a)、3C(1)及(2)及 3D(1)條中，在“認可”之後加入“電子”。
- (c) 刪去建議的第 3B 條而代以 —

**“3B. 關於利用認可電子服務
發送資料的推定**

(1) 凡由關長接收到的資料是利用某認可電子服務發送的，如有證據顯示該資料的發送人的身分已藉某保安裝置經認證的，則在沒有相反證據的情況下，該證據即可作為證據證明獲發給該保安裝置的人 —

- (a) 提交該資料；或
- (b) 作出該資料中載有的陳述、申報或聲明。

(2) 凡由關長接收到的資料是由按照第3D條獲授權的指明合資格代理人利用某認可電子服務發送的，在該資料中點名為提交該資料或作出該資料中載有的陳述、申報或聲明的人的人，在沒有相反證據的情況下，須就本條例的目的視為 —

- (a) 提交該資料的人；或
- (b) 作出該資料中載有的陳述、申報或聲明的人。”。

4 在建議的第6(1)(ea)條中，刪去自“為”起至“指明”為止的所有字句而代以“就根據本條例提供與本條例適用的貨品有關的資料的事宜，指明提供該等資料的”。

8 (a) 在第(1)(a)款中，刪去“(“有關項目”)”。

(b) 在第(1)(b)款中，刪去“有關項目”而代以“牌照、許可證、簿冊或其他文件”。

(c) 在第(2)款中，在建議的第11A(3)(a)條中 —

(i) 刪去“(“有關項目”)”；

- (ii) 刪去“有關項目”而代以“牌照、許可證、簿冊或其他文件”。
 - (d) 在第(2)款中，在建議的第 11A(3)(b)條中，刪去所有“有關項目”而代以“牌照、許可證、簿冊或其他文件”。
- 9(3)
- (a) 在建議的第 22(7)條中，在“第(1)款中須”之後加入“按照本條”。
 - (b) 在建議的第 22(7)條中，在“的本條例”之前加入“進口或出口”。
 - (c) 在建議的第 22(7)(b)條中，在“的陳述書”之前加入“予關長”。
 - (d) 在建議的第 22(7)(c)條中，刪去自“第”起至“書”為止的所有字句而代以“就根據第(1)款提交陳述書而指明”。
 - (e) 在建議的第 22(8)(a)條中，刪去在“該款”之後的所有字句而代以“提交予關長，但提交的限期是該通知送達後的 14 天內或關長在該通知中指明的較長期間內；”。
 - (f) 在建議的第 22(9)條中，刪去“就某船舶或飛機提交”而代以“按照本條提交表明抵達或離開香港的某船舶或飛機並無運載本條例適用的貨品的”。
 - (g) 在建議的第 22(9)(b)條中，刪去自“第”起至“書”為止的所有字句而代以“就根據第(2)款提交陳述書而指明”。
 - (h) 在建議的第 22(10)(a)條中，刪去在“該款”之後的所有字句而代以“提交予關長，但提交的限期是該通知送達後的 14 天內或關長在該通知中指明的較長期間內；”。

**“11. 失實陳述、隱藏、移走貨品、
污損牌照或許可證**

第 36(1)條現予修訂 —

(a) 刪去“，不論其為以口頭或書面方式作出或提供者”而代以“(不論該陳述、申報、聲明或資料採用何種形式)”；

(b) 刪去“或申報，”而代以“、申報或聲明”。

12

(a) 在建議的第 42A(2)(a)(i)條中，刪去“under subsection (1)(b)”而代以“by the Commissioner”。

(b) 在建議的第 42A(2)(b)條中，刪去“利用認可服務”。

DUTIABLE COMMODITIES (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Commerce and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the proposed definition of "recognized electronic service" -</p> <p>(i) by adding "電子" after "認可";</p> <p>(ii) in the Chinese text, by adding "電子" after "指明".</p> <p>(b) In the proposed definition of "specified electronic service provider" by adding "電子" before "服務".</p> <p>(c) In the proposed definition of "保安裝置", by deleting "核證某人是利用某認可" and substituting "認證某人是利用某認可電子".</p>
3	<p>(a) In the proposed section 3A, in the heading, by adding "電子" before "服務".</p> <p>(b) In the proposed sections 3A(1) and (2)(a), 3C(1) and (2) and 3D(1), by adding "電子" after "認可".</p>

(c) In the Chinese text, by deleting the proposed section 3B and substituting -

**"3B. 關於利用認可電子服務
發送資料的推定**

(1) 凡由關長接收到的資料是利用某認可電子服務發送的，如有證據顯示該資料的發送人的身分已藉某保安裝置經認證的，則在沒有相反證據的情況下，該證據即可作為證據證明獲發給該保安裝置的人 -

(a) 提交該資料；或

(b) 作出該資料中載有的陳述、申報或聲明。

(2) 凡由關長接收到的資料是由按照第3D條獲授權的指明合資格代理人利用某認可電子服務發送的，在該資料中點名為提交該資料或作出該資料中載有的陳述、申報或聲明的人的人，在沒有相反證據的情況下，須就本條例的目的視為 -

(a) 提交該資料的人；或

(b) 作出該資料中載有的陳述、申報或聲明的人。".

4 In the proposed section 6(1)(ea), by deleting "required to be given" and substituting "under this Ordinance".

8

- (a) In subclause (1) (a), by deleting "(有關項目)".
- (b) In subclause (1) (b), by deleting "有關項目" and substituting "牌照、許可證、簿冊或其他文件".
- (c) In subclause (2), in the proposed section 11A(3) (a) -
 - (i) by deleting "(有關項目)";
 - (ii) by deleting "有關項目" and substituting "牌照、許可證、簿冊或其他文件".
- (d) In subclause (2), in the proposed section 11A(3) (b), by deleting "有關項目" wherever it appears and substituting "牌照、許可證、簿冊或其他文件".

9(3)

- (a) In the proposed section 22(7), by adding ", in accordance with this section," after "furnish".
- (b) In the proposed section 22(7), by adding "進口或出口" before "的本條例".
- (c) In the proposed section 22(7) (b), by adding "予關長" before "的陳述書".
- (d) In the proposed section 22(7) (c), by deleting everything after "specified" and substituting

"for the furnishing of a statement under subsection (1).".

- (e) In the proposed section 22(8)(a), by deleting everything after "Commissioner" and substituting "in accordance with that subsection, except that the statement shall be furnished within 14 days after service of the notice or such longer period as the Commissioner may specify in the notice;".
- (f) In the proposed section 22(9), by deleting "a statement in relation to goods to which this Ordinance applies in the case of a ship or aircraft that arrives in or departs" and substituting ", in accordance with this section, a statement that no goods to which this Ordinance applies were carried in a ship or aircraft that arrived in or departed".
- (g) In the proposed section 22(9)(b), by deleting everything after "specified" and substituting "for the furnishing of a statement under subsection (2).".
- (h) In the proposed section 22(10)(a), by deleting everything after "Commissioner" and substituting "in accordance with that subsection, except that the statement shall be furnished within 14 days after service of the

notice or such longer period as the Commissioner may specify in the notice;".

11 By deleting the clause and substituting -

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

Section 36(1) is amended -

(a) by deleting "whether or not such statement, declaration or information is made verbally or in writing" and substituting "however made or furnished";

(b) by deleting "或申報," and substituting "、申報或聲明".

12 (a) In the proposed section 42A(2)(a)(i), by deleting "under subsection (1)(b)" and substituting "by the Commissioner".

(b) In the proposed section 42A(2)(b), by deleting "利用認可服務".