

Legislative Council Bills Committee

Dutiable Commodities (Amendment) Bill 2001 Committee Stage Amendments

Purpose

This paper explains the Committee Stage Amendments (CSAs) (in both English and Chinese texts at the Annex) which the Administration intends to move to amend the Dutiable Commodities (Amendment) Bill 2001.

Background

2. At the last Bills Committee meeting, Members requested that the Administration should review the drafting aspect of the Bill and seek the advice of the Assistant Legal Adviser (ALA) on the proposed CSAs. Since then, we have exchanged correspondence with ALA on this issue. The CSAs at the Annex are technical in nature.

3. To facilitate Members' reading, we have separately submitted an amended version of the Bill incorporating the CSAs.

Alignments of English and Chinese Texts - Amendments to Clauses 2, 3, 8, 9(3), 11 and 12

4. We propose to amend Clauses 2, 3, 8, 9(3), 11 and 12 to align the English and Chinese texts. For Members' easy reference, we have included in brackets the relevant CSAs in italics.

5. We propose to add “電子” to “認可服務” and “指明服務提供者” in Clauses 2 and 3 (*Items (a) and (b), Clause 2 and Clause 3*) so that the two terms become “認可電子服務” and “指明電子服務提供者” respectively to align with the terms “recognized electronic service” and “specified electronic service provider” in the English text.

6. We propose to replace “核證” by “認證” in the definition of “security device” in Clause 2 (*Item (c), Clause 2*), as the latter reflects more appropriately the term “authenticating” in the English text.

7. We propose to amend the Chinese version of the new section 3B in Clause 3 (*Item (c), Clause 3*) by modelling it on the existing section

2B(1) of the Import and Export Ordinance (Cap. 60).

8. We propose to replace the term “有關項目” by the full term “牌照、許可證、簿冊或其他文件” of Clause 8 (*Items (a)-(d), Clause 8*) to match the English text.

9. We propose to add “進口或出口” before “的本條例” in the chapeau of the new section 22(7) in Clause 9(3) to reflect the words “that are imported or exported” in the English text (*Item (b), Clause 9(3)*).

10. We propose to add “予關長” in the new sections 22(7)(b), 22(8)(a) and 22(10)(a) of Clause 9(3) to reflect the words “furnished to the Commissioner” in the English text (*Items (c), (e) and (h), Clause 9(3), Chinese text CSA*).

11. We propose to amend Clause 11 to render “declaration” as “申報或聲明” instead of “申報” (*New Clause 11*). The word “declaration” is rendered as “聲明” or “申報” in different provisions under the existing Dutiable Commodities Ordinance (Cap. 109), depending on the context of the particular provision. As the word “declaration” in section 36(1) applies generally to all declarations, we have therefore proposed to render “declaration” as “申報或聲明”.

12. We propose to delete “under subsection (1)(b)” and substitute “by the Commissioner” in the new section 42A(2)(a)(i) of Clause 12 (*Item(a), Clause 12*) to reflect the wording “該文件是由關長核證的” in the Chinese text.

13. We also propose to delete “利用認可服務” of the new section 42A(2)(b) of Clause 12 (*Item (b), Clause 12*) as there is no equivalent of the term in the English text.

Improvements to Drafting - Amendments to Clauses 4 and 9(3)

14. We propose to amend the new section 6(1)(ea) in Clause 4 (*Clause 4, English text CSA*) by deleting “required to be given” and substituting “under this Ordinance”.

15. We also propose to amend the new section 6(1)(ea) in Clause 4 by deleting “為須就本條例適用的貨品提供的資料的提供，指明” and substitute “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” (*Clause 4, Chinese text CSA*).

16. These amendments will make both the English and Chinese texts of the new section 6(1)(ea) more readable.

17. We propose to amend the new section 22(7) by adding “, in accordance with this section,” after “furnish” and by adding “按照本條” after “第(1)款中須” (*Item (a), Clause 9(3)*). This will put beyond doubt that a person who relies on the new section 22(7) is deemed to have lodged a statement under section 22(1) that complies with all the requirements under that section.

18. We propose to amend the chapeau of the new section 22(9) in Clause 9(3) (*Item (f), Clause 9(3) English text CSA*) 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”.

19. We also propose to amend the new section 22(9) of Clause 9(3) by deleting “就某船舶或飛機提交” and substituting “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” (*Item (f), Clause 9(3) Chinese text CSA*).

20. These amendments will improve the drafting of both the English and Chinese texts of the new section 22(9) by stating the requirement under section 22(2) more clearly.

21. We propose to amend new section 22(7)(c) of Clause 9(3) by deleting everything after “specified” and substituting by “for the furnishing of a statement under subsection (1).” (*Item (d), Clause 9(3) English text CSA*). We also propose to delete “第(1)款指明的就該等貨品提交陳述書” and substitute “就根據第(1)款提交陳述書而指明” in the Chinese text of the same section (*Item (d), Clause 9(3) Chinese text CSA*).

22. In line with paragraph 21, we propose similar amendments to the new section 22(9)(b) of Clause 9(3) (*Item (g), Clause 9(3) English and Chinese text CSA*).

23. These amendments will improve the drafting of the new sections 22(7)(c) and 22(9)(b).

Minor Amendments to Clause 9(3)

24. We propose to amend the new section 22(8)(a) of Clause 9(3) (*Item (e), Clause 9(3) English text CSA*) 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;”. This will provide the Commissioner with more flexibility regarding the period within which the statement must be furnished.

25. Accordingly, we also propose to amend the Chinese text of the new section 22(8)(a) of Clause 9(3) by deleting “提交，但提交限期是該通知送達後的 14 天；” and substituting “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；” (*Item (e), Clause 9(3) Chinese text CSA*).

26. In line with paragraphs 24-25, we propose similar amendments to the new section 22(10)(a) of Clause 9(3) (*Item (h), Clause 9(3)*).

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Commerce and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1), by deleting "subsection (2), with effect on and from the commencement of this Ordinance" and substituting "subsections (2) to (2C), with effect on and from 1 April 2001".</p> <p>(b) In subclause (2)(a), by deleting "and that has been published or is intended to be published in Hong Kong or elsewhere".</p> <p>(c) In subclause (2)(b), by deleting "and that has been published or is intended to be published in Hong Kong or elsewhere;" and substituting "; or".</p> <p>(d) In subclause (2)(c) -</p> <ul style="list-style-type: none">(i) by deleting "substantial" and substituting "predominant";(ii) by deleting "或任" and substituting "及任";(iii) by deleting "; or" and substituting a full stop.

Clause

Amendment Proposed

(e) By deleting subclause (2)(d).

(f) By adding -

"(2A) Subsection (1) does not apply in relation to an infringing copy of a computer program that is an infringing copy by virtue of section 35(2) of the Copyright Ordinance (Cap. 528).

(2B) Subsection (1) does not apply in relation to an infringing copy of a computer program that -

(a) is an infringing copy by virtue of section 35(3) of the Copyright Ordinance (Cap. 528); and

(b) was not lawfully made in the country, territory or area where it was made.

(2C) Subsection (1) does not apply in relation to an infringing copy of a computer program that -

(a) is an infringing copy by virtue of section 35(3) of the

Clause

Amendment Proposed

Copyright Ordinance
(Cap. 528); and

- (b) was made in a
country, territory or
area where there is
no law protecting
copyright in the work
or where the
copyright in the work
has expired.

(2D) For the purposes of
subsections (2A), (2B) and (2C),
"infringing copy" (侵犯版權複製品) does
not include an infringing copy -

- (a) that is in a printed
form; or
- (b) that incorporates the
whole or any part of
a work not being a
computer program
itself and that is
technically required
for the viewing or
listening of that
work by a member of
the public to whom a

Clause

Amendment Proposed

copy of the work is
made available.

(2E) With effect on and from 1
April 2001, for the purposes of any
offence under section 118 or 120 of
the Copyright Ordinance (Cap. 528)
relating to an infringing copy of
any of the works described in
subsections (2), (2A), (2B) and (2C)

-

(a) the reference to "for
the purpose of, in
the course of, or in
connection with, any
trade or business" in
sections 31(1)(a) and
(c), 32(1)(c),
95(1)(a) and (c),
96(5) and (6),
109(1)(a), 118(1)(d)
and (e), 207(1)(b),
211(1)(b) and 228(1)
of that Ordinance
shall be read as a
reference to "for the
purpose of, or in the

Clause

Amendment Proposed

course of, any trade or business”;

- (b) the reference to “otherwise than for the purpose of, in the course of, or in connection with, any trade or business” in sections 31(1)(d), 95(1)(d) and 118(1)(f) of that Ordinance shall be read as a reference to “otherwise than for the purpose of, or in the course of, any trade or business”; and

- (c) the reference to “for the purpose of, in the course of, or in connection with, any trade or business” in sections 118(4), (5) and (8), 120(2) and 273(2)(a) of that

Clause

Amendment Proposed

Ordinance shall be read as a reference to "for the purpose of, or in the course of, any trade or business".

- (g) In subclause (3), by deleting "The terms" and substituting "Except as otherwise provided in subsection (2D), the terms".