

Our ref. : CIB 89/48/1
Your ref. : LS/B/24/00-01

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Ms Anita Ho
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Dear Ms Ho,

Dutiable Commodities (Amendment) Bill 2001

Thank you for your letter of 8 March.

2. Our reply to the points raised in your letter, *seriatim*, is set out below.

Clause 2 - Interpretation

3. The term “specified electronic service provider” is defined as “a person specified under Section 3A(1)”. The word “person” is the term normally used in drafting. Although it is wide enough to cover natural person, it is not the administration’s intent to appoint a natural person as a specified electronic service provider.

4. The term “specified body” is defined in the Import and Export Ordinance (Cap. 60), which means a body specified in Schedule 2 of Cap. 60. At present, Tradelink Electronic Commerce Limited (Tradelink) is the only body specified therein. This is because the Government has entered into an agreement with Tradelink in 1992, granting the latter an exclusive right to provide front-end EDI service for processing official trade-related transactions. Tradelink’s franchise would be seven years from the start of its commercial operation in 1997, expiring on 31 December 2003. As regards

the term “specified electronic service provider”, it is meant to be the provider of a service for the interchange of electronic records under Cap. 109. During the period of Tradelink’s exclusive franchise, Tradelink will be the only body so specified. (See paragraph 13 of LegCo Brief).

5. As regards your question on the Chinese terms, it is not necessary to add “電子” in “指明服務提供者” and “認可服務”, since these two Chinese terms are defined terms in the Bill and carries respectively a meaning identical to its corresponding English defined term.

Clause 3 - new section 3B(1) and (2)

6. The English and Chinese versions of the new section 3B(1) and (2) have the same legal effect. The Chinese version improves the existing ones in Cap 60.

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

7. The words “licence, permit” should not be added before the words “book or document” in section 11A(1). This is because section 11A(1) applies to things “kept in pursuance of this Ordinance”. Licences and permits do not fall within this category.

8. The Chinese version of the amended Section 11A with the words “有關項目” has the same legal effect as the English version.

Clause 9 - Import and export statements

9. It is not necessary to include the requirements of “at the office of the Commissioner” and “signature of the parties” in the new section 22(7). Hence their exclusion from Clause 9(3).

10. The Import and Export (Registration) Regulation will be amended so that import and export manifests are required to be lodged within 14 days after the arrival and departure of the vessel, aircraft or vehicle concerned. Clause 9 will come into operation on the same day as the Import and Export (Registration)(Amendment) Regulation.

11. The English and Chinese versions of the new Section 22(7) have the same legal effect.

12. The English and Chinese versions of the new Section 22(8) and (10) have the same legal effect. The new section 22(8) or section 22(10), as

read with section 22(1), clearly reflects that the notice referred to in “如某人獲給予上述通知” is given by the Commissioner.

13. The English and Chinese versions of the new Section 22(9) have the same legal effect.

14. The English and Chinese versions of the new section 22(9)(b) have the same legal effect.

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

15. The Chinese version of the amended section 36(1) reflects the meaning in the English text.

16. Our replies to your three questions regarding the existing section 36(3) are as follows:

(i) How can one deface or erase a permit when it is issued in electronic form?

Under the EDI scenario, the permit information stored in and transmitted through the computer system may be subject to hackers' attack. The attack can be of any kind including defacement or erasure.

(ii) How can we ensure that a permit issued has not been altered or meddled with when being transmitted by the specified eligible agent?

The security measures for transmission of electronic messages adopted by a specified eligible agent are identical to, and as good as, those provided by Tradelink.

(iii) How can we ensure that information collected by the agent is not disclosed to an unauthorized person?

There is a contract between Tradelink and Electronic Trading Access Service operators (the specified eligible agent), binding the latter not to disclose information to an unauthorized person.

Clause 12 (new section 42A) - Proof of contents of electronic record

17. The English and Chinese versions of the new section 42A(2)(a)(i) have the same legal effect.

Draft Dutiable Commodities (Amendment) Regulation 2001

18. The law provides for the submission of restrained textile export licence, production notification and certificate of origin in paper form or EDI. In effect, full migration to EDI services have been implemented smoothly in each case. A long migration period has been allowed for traders to make arrangement for the change in mode of submission.

19. Our legal advice is that if sufficient prior notice is given to applicants on the change in mode of application, the Director of Trade and Industry can require the application to be submitted in EDI.

20. We would be grateful to receive your comments on the draft Regulation as we need to bring that into effect after the Bill is enacted. We believe that Members should make use of this opportunity to scrutinize the Regulation together with the Bill.

21. The Chinese translation of this letter will follow shortly.

(Philip Chan)
for Secretary for Commerce and Industry

c.c. D of J (Attn : Mr J. Abbott
Miss Frances Hui)
C of C&E (Attn : Mr Simon Wong
Mr K.W. Leung)