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**Report of the Bills Committee
on Dutiable Commodities (Amendment) Bill 2001**

Purpose

This paper reports on the deliberations of the Bills Committee on Dutiable Commodities (Amendment) Bill 2001 (the Bill).

Background

2. Under the Dutiable Commodities Ordinance (Cap. 109) (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 for the removal of DCs. These permits are called dutiable commodities permits (DCPs). 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.

3. Electronic data interchange (EDI) is a particular type of electronic service involving computer-to-computer exchange of information electronically in a standard format. In 1992, the Administration granted Tradelink Electronic Commerce Ltd. (Tradelink) an exclusive franchise 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.

4. The Administration has 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. The Administration plans to launch EDI services for DCP and cargo manifest (excluding road-mode transportation

manifest) in the second half of 2001.

The Bill

5. The purpose of the Bill is to introduce a legal framework for the use of EDI in processing DCP applications via the service of Tradelink.

The Bills Committee

6. The House Committee agreed at its meeting on 2 March 2001 to form a Bills Committee to study the Bill. Chaired by Hon Kenneth TING, the Bills Committee held a total of three meetings to discuss with the Administration. The Bills Committee has considered the views of the Dutiable Commodities Customer Liaison Group received by the Panel on Commerce and Industry. The Group comprises major users of DCPs. The membership list of the Bills Committee is in **Appendix I**.

Deliberations of the Bills Committee

Regulation-making power under the Ordinance

7. Clause 4 of the Bill amends the regulation-making power under the Ordinance. 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. The Bills Committee notes that the Administration intends 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.

8. The Bills Committee is concerned whether clause 4 will provide a legal basis for Government or Tradelink, a private entity, to impose a service fee for the use of EDI for giving information in respect of any movement of DCs in and out of the warehouse, bearing in mind such service is at present not subject to any charge.

9. The Administration clarifies that clause 4 is not intended for any charging purposes. It merely seeks to empower the Commissioner to specify any form or requirement for giving information under the Ordinance in respect of any goods to which the Ordinance applies. In practice, Tradelink will charge a single fee for processing of applications for DCP, on the basis of each application. The administration costs incurred in connection with the reporting of movement of DCs in and out of the warehouse by means of EDI to the Commissioner will be included in the application fee for DCPs, and hence, a separate fee will not be imposed on users.

10. Notwithstanding the clarification by the Administration, the Bills Committee is worried that it will be difficult to restrain a private company from imposing a service fee in this regard as there is no express provision in the law binding the company from not doing so. The Bills Committee notes that under the agreement between the Government and Tradelink, Tradelink's fees for EDI services for Government-related documents have to be approved by the Government. It has been Government's standing arrangement to consult the relevant Panel before finalizing the Tradelink's fees. Although Tradelink can set its fees to secure an internal rate of return on its investment not exceeding 18% over the franchise period, the internal rate of return of Tradelink over the past few years has been around 9% to 10% only. At the request of members, the Administration undertakes to state clearly during the Second Reading debate on the Bill the pricing mechanism of DCPs, including an undertaking not to impose a separate charge on the use of EDI service in respect of the reporting of any movement of DCs in and out of the warehouse.

11. On the proposed fees for using EDI services relating to DCPs, the Bills Committee notes that the fees are not collected by Government but Tradelink, which serves as a Government agent to provide front-end services for the processing by EDI of the official trade-related documents. According to the Administration, Tradelink originally proposed a fee of \$60 per DCP application. However, during Tradelink's consultation with the industry, users found the proposed fee, particularly for processing applications for Ship's Stores Permits (SSPs¹) too high. Some also considered it unfair to apply a flat rate to all users regardless of the volume of transactions. Taking into account the views of the industry, Tradelink has reduced and restructured the fees. The present thinking is that Tradelink intends to charge a fee of \$44 per DCP application and \$25 per SSP application. Applicants will be entitled to a discounted fee at \$40 for 2001 if they apply for more than 1 000 DCPs annually.

12. The Bills Committee notes that the industry has different views on the levels of fees as proposed by Tradelink. According to the Administration, the projected return rate of Tradelink for processing DCP is only 3%. Given the investment by the company to install front-end systems for processing DCPs by EDI, there is a need to impose a service fee as appropriate. Further, the proposed level of fee has already excluded the monies spent on the extension of the Government EDI system to receive and process DCPs. Should the User-Pay principle be strictly adhere to, the unit cost for processing a DCP in paper form by Government is \$120. From this perspective, the proposed fee for processing DCPs in EDI form would be significantly lower than that in paper form.

Mandating the use of EDI services

13. The Bills Committee notes that the Administration intends to mandate the use of EDI services for processing DCP applications from a future date. This is in line

¹ Under the Ordinance, traders will need to apply for permits to export any DCs as ships stores for consumption on board. In general, the number of applications are high, although each permit only covers a small quantity of DCs.

with the practice regarding the four official documents for which EDI services have been launched. To ensure a smooth migration, the Administration will also provide a transitional period whereby DCP applications may be made in either paper or electronic mode. The industry has also expressed concern about the technical problems encountered by individual companies in submitting applications for DCPs by EDI, and the monitoring mechanism for ensuring reliability of the EDI system. The Administration has advised that given the experience of Tradelink in providing EDI services for other trade-related documents, it is not envisaged that major problems will be encountered. Government will continue to monitor the implementation of the programme. Tradelink will also liaise with individual companies with a view to resolving any technical problems. Teething problems will also be fixed after implementation. A contingency plan has also been drawn up to cope with emergencies and system failures.

14. To address members' concern about the publicity measures to alert the industry to the impending changes of applying DCPs electronically, the Bills Committee notes that apart from setting up Tradelink information booths at Customs' counters currently processing DCPs, the Administration will send letters to the industry and major business associations and display messages at relevant websites.

15. The Bills Committee has also examined whether mandating the use of EDI services for other trade-related documents is in full compliance with the current law, given that an express provision has been provided in the relevant legislation that trade-related documents could be submitted in either the paper or electronic mode.

16. The Administration clarifies that according to the legal advice sought, it can require the submission of trade-related documents to be made in the form of EDI if sufficient prior notice has been given to applicants on the change of mode of application. In effect, full migration to EDI services has been implemented in each case, and traders have already accepted the change in the mode of submission. The Bills Committee accepts that with the use of EDI, traders would prefer to submit their applications/requests at their own premises, saving the time and resources for trips to Trade and Industry Department for the submission and re-submission of applications/requests. As such, the Administration is of the view that legal omission of this kind, even if it exists, will not have significant implications on the industry. The Bills Committee however urges the Administration to look into the legal points raised and introduce suitable amendments, if necessary.

Promotion of competition in Government EDI services

17. The Bills Committee recognizes the need to encourage the trading community to acquire the capability to communicate electronically with trade partners, which is important for maintaining Hong Kong's position as a leading trade centre. However, members are concerned about the exclusive right granted to Tradelink to provide EDI services for official trade-related documents. Members generally consider that there is a need to open up the market to improve service quality, lower prices and increase

efficiency, thereby benefiting consumer welfare. In the course of deliberation, the Bills Committee has examined various initiatives to facilitate entry of new electronic service providers upon the expiry of Tradelink's exclusive franchise in end 2003.

18. The Administration accepts that there is a need to introduce measures to foster competition in the market. As such, apart from Tradelink, it will appoint two additional electronic service providers upon the expiry of Tradelink's exclusive franchise in December 2003, subject to responses at the expression of interest stage. The Administration is of the view that with three electronic service providers, there will be greater assurance of market competition. On the other hand, if there is an unlimited number of electronic service providers, it would reduce commercial viability, and increase the difficulty on the part of Government to ensure service quality and to manage and co-ordinate them in terms of, say, revising document report requirement.

Selection criteria for new electronic service providers

19. On the selection criteria and regulatory framework for new electronic service providers, the Bills Committee is of the view that the Administration shall make reference to the voluntary system of recognition introduced under the Electronic Transactions Ordinance (Cap. 553) (ETO) whereby Certification Authorities (CAs) are free to apply for recognition from Government. Under the voluntary regime, the Director of Information Technology Services (DITS) will be the authority for granting Government recognition to CAs. Recognized CAs will have to meet certain requirements, including, inter alia, the engagement of a professional approved by the DITS to conduct an annual audit on the provision of CA services and compliance with a code of practice issued by Government. Failure to comply with the requirements may result in suspension or revocation of the recognition granted by Government. Through the operation of this regime, consumers will be able to assess the trust standard of individual CAs and to make an informed choice when obtaining CA services.

20. The Bills Committee notes that at present, Tradelink has maintained regular contacts with Information Technology Services Department to ensure the provision of a trustworthy technical system. Regular audits have been conducted by Tradelink to ensure data security and integrity. In future, Government will lay down clear service requirements for compliance by new electronic service providers before actual appointment. The Administration agrees to take into account the Bills Committee's view in formulating an appropriate legal framework for appointing and regulating all electronic service providers. In the interim, a Committee Stage amendment will be introduced by the Administration to empower the Secretary for Commerce and Industry to revoke the appointment of the relevant service providers/agents, if necessary.

Pricing of EDI services

21. On the pricing of EDI services upon liberalization of the market, the Bills Committee notes that the Administration will set a ceiling on the price that each new electronic service provider may charge for each service, taking into account the existing fees by Tradelink. The Administration will then let market competition decide the prices.

Privatization of Tradelink

22. In order to minimize uncertainty and foster confidence in system fairness and predictability, the Bills Committee has examined whether there is any plan to privatize Tradelink given that Government currently has a 42.5% stake in Tradelink. The Bills Committee is pleased to note that Government will withdraw gradually from Tradelink. Suitable options, such as selling of shares through public offers, are being explored. To ensure a level-playing field, the Bills Committee also calls on the Administration to consider releasing information relating to the revenue base of EDI services. 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 wish to express interest.

General drafting issues

23. New section 3B provides for aids to proof in relation to information received by the Commissioner that has been sent using a recognized electronic service and clause 12 serves to facilitate the admission and proof of electronic records in court proceedings. The Bills Committee is of the view that if the concerned provisions are consistent with the spirit of ETO which provides a statutory framework for conducting commercial and other transactions by electronic communication in Hong Kong, and gives electronic records and digital signatures used in electronic transactions the same legal status as that of their paper-based counterparts, it is not necessary to introduce a separate provision in each and every piece of related legislation for the purpose. Rather, a cross reference can be made to apply the relevant provisions in ETO to different ordinances.

24. The Bills Committee accepts that this is a wider drafting issue which requires further consideration by the Administration. The latter also undertakes to follow up on the issue separately.

25. The Bills Committee has examined whether the term "security device" in clause 2 is wide enough to cover items such as a diskette provided by Tradelink containing the person's private key in encrypted software which is used to generate a digital signature. The Administration is of the view that the word "device" in the Merriam-Webster's dictionary means, inter alia, something devised or contrived as a plan, procedure or technique. It clearly suggests something intangible. As such, the term "security device" is wide enough to cover the said items.

Conclusion

26. In view of the concerns expressed by the industry, the Bills Committee has examined whether it should support the Bill under such circumstances. The Bills Committee has no dispute about the need to promote the greater use of EDI service in processing trade-related documents to enhance Hong Kong's competitiveness. The Bills Committee therefore supports, in principle, the present Bill which seeks to introduce a legal framework for the use of EDI in processing DCP applications via the service of Tradelink. Implementation details of EDI for DCP are not part of the Bill. Even upon the passage of the Bill, traders will not be forced to use EDI for DCP immediately, and they will have a choice to use the paper mode until a certain date to be determined by the Administration and approved by the Legislative Council by means of subsidiary legislation.

27. Against this background, the Bills Committee supports the Administration's proposal to resume Second Reading debate on the Bill on 4 July 2001. However, it urges the Administration to maintain regular dialogue with the industry and take positive actions to address the concerns expressed by the industry before making the EDI service for DCP mandatory.

Committee Stage amendments

28. After discussion with the Bills Committee, the Administration has accepted a number of suggestions from members and agreed to move Committee Stage amendments (CSAs) accordingly. These CSAs cover technical amendments and improvements to various provisions in the Bill, in particular, to bring the drafting of the English and Chinese texts in line with each other so as to eliminate any ambiguity in the interpretation of the provisions in the Bill. The Administration has also accepted members' suggestion to include two schedules each listing the name(s) of the specified electronic service provider(s) and the specified eligible agent(s), using the approach in the Import and Export Ordinance (Cap. 60). The Administration will therefore propose a new clause 12A to introduce Schedule 1A (covering specified electronic service provider(s)) and Schedule 1B (covering specified eligible agent(s)). The Administration will further propose a new clause 2(2) to the effect that the Secretary for Commerce and Industry may amend Schedule 1A or 1B by notice published in the Gazette. The power to amend the schedules carries with it the power to appoint or revoke the appointment of the relevant person.

29. A full set of the CSAs from the Administration is in **Appendix II**. The Bills Committee has not proposed any CSAs.

Dutiable Commodities (Amendment) Regulation 2001

30. The Bills Committee notes that the Administration intends to bring the Dutiable Commodities (Amendment) Regulation 2001 (the Regulation) into effect on 20 July 2001 after the passage of the Bill. The Regulation seeks to amend the Dutiable Commodities Regulations (Cap. 109 sub. leg.) to make provision regarding the use of a particular electronic service in connection with application for permits under the Dutiable Commodities Ordinance, and for dealings in relation to permits generally. The effect of the proposal is that Members will not be able to exercise their power of intervention under Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) before the Regulation comes into operation. Any motion from Members to amend the Regulation will have to be deferred to the next legislative session. This is contrary to the long-standing agreement with the Administration that subsidiary legislation should, as far as possible, be made effective at least 35 days after it has been tabled. Moreover, it may not be desirable to bring the Regulation into operation prior to the expiry of the scrutiny period by the Legislative Council as this would mean that the implementation of EDI for DCP would then be subject to future changes that may be affected by amendments by the Legislative Council in the next legislative session.

31. The Administration holds the view that the proposed early commencement will not prejudice Legislative Council's right to examine the Regulation after the summer recess. In the event that Legislative Council considers it necessary to amend the Regulation after the summer recess, it could be effected from a current date. On the other hand, to defer the effective date to the next legislative session would mean that traders would not be able to make use of the new system when it is operationally ready for such a service.

32. The Bills Committee has expressed reservation about the Administration's proposal to allow the Regulation to come into force during the scrutiny period, particularly in light of the comments from the trade. The majority of members do not support the Administration's proposal, but one member considers that interested users would benefit from the early implementation of EDI service for DCP. Any teething problems, if identified, could be rectified at an early stage, which could be regarded as a trial period. Another member is of the view that it would be a matter for the Administration to judge whether the Regulation shall come into force during the summer recess, taking into account the implications and risks of the proposal.

33. As the scrutiny of the Regulation is outside the purview of the Bills Committee, members unanimously agree that it would not be appropriate for the Bills Committee to make any specific recommendation in this regard nor to examine the Regulation.

Consultation with the House Committee

34. The Bills Committee presented two reports to the House Committee for its meetings on 22 and 29 June 2001. The House Committee supported the Bills Committee's recommendation for the Administration to resume Second Reading debate on the Bill on 4 July 2001.

Council Business Division 1
Legislative Council Secretariat
29 June 2001

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

Membership list

Chairman Hon Kenneth TING Woo-shou, JP

Members Hon James TIEN Pei-chun, JP
Hon Eric LI Ka-cheung, JP
Hon HUI Cheung-ching
Hon CHAN Kam-lam
Hon SIN Chung-kai

(Total : 6 Members)

Clerk Mr Andy LAU

Legal Adviser Miss Anita HO

Date 8 June 2001

Appendix II

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) By renumbering the clause as clause 2(1).</p> <p>(b) In subclause (1), 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>(c) In subclause (1), in the proposed definition of "specified electronic service provider" -</p> <p>(i) by deleting "section 3A(1)" and substituting "Schedule 1A";</p> <p>(ii) by adding "電子" before "服務".</p> <p>(d) In subclause (1), in the proposed definition of "specified eligible agent", by deleting "section 3A(2)" and substituting "Schedule 1B".</p>

(e) In subclause (1), 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".

(f) By adding -

"(2) Section 2 is amended by adding -

"(5) The Secretary for Commerce and Industry may, by notice published in the Gazette, amend Schedule 1A or 1B, and a notice under this subsection is subsidiary legislation."."

3

(a) By deleting the proposed section 3A.

(b) 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。".

(c) In the proposed sections 3C(1) and (2) and 3D(1), by adding "電子" after "認可".

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 repealing "whether or not such statement, declaration or information is made verbally or in writing" and substituting "however made or furnished";
- (b) by repealing "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".

New By adding -

"12A. Schedules 1A and 1B added

The following are added before

Schedule 1 -

"SCHEDULE 1A [s. 2]

SPECIFIED ELECTRONIC SERVICE PROVIDERS

1. Tradelink Electronic Commerce Limited

SCHEDULE 1B [s. 2]

SPECIFIED ELIGIBLE AGENTS

1. Tradelink Electronic Commerce Limited