

Legislative Council Panel on Commerce and Industry

Proposed Commencement of the Dutiable Commodities (Amendment) Regulation 2001

Introduction

This paper seeks Members' view on our proposal to commence the Dutiable Commodities (Amendment) Regulation 2001 on 20 July 2001.

Background

2. We have given notice to resume the second reading of the Dutiable Commodities (Amendment) Bill on 4 July 2001. A marked up version of the Bill incorporating the amendments to be moved at Committee Stage is at Annex A.

3. We also consulted the LegCo Panel on Commerce and Industry on 11 June on the proposed charges for Dutiable Commodities Permit (DCP). The Panel has no objection to the proposal.

4. After the passage of the Bill, we will need to make the Dutiable Commodities (Amendment) Regulation 2001 (Annex B), and to commence both the amendment Ordinance and the Regulation in order to launch the Electronic Data Interchange (EDI) service for DCP on a voluntary basis.

The Dutiable Commodities (Amendment) Regulation 2001

5. The Regulation concerns technical operational matters and does not involve any new policy issue.

6. Section 3 amends regulation 22 of the Dutiable Commodities Regulations to provide that an application for a DCP shall be in electronic form. The proposed new regulation 22(6) empowers the Commissioner to revert to paper mode if necessary.

7. Section 4 amends regulation 25 to provide for the surrender of permits issued in electronic form.

8. Section 5 amends regulation 98(1) to stipulate that a Dutiable Commodities (DC) warehouse operator must immediately send to the Commissioner via a recognized electronic service (i.e. EDI services provided by Tradelink during its franchise period) information regarding any movement of DCs in and out of the warehouse. This will enable the Customs and Excise Department to strengthen control of the DC stock in the warehouse. Warehouse operators are not charged for using the EDI service on report of movement of DCs as this will be covered by the relevant DCP charge.

9. Section 6 adds a new regulation to provide for a transitional period during which applications for DCPs may be made in either paper or electronic mode.

Commencement date of amendment Ordinance and Regulation

10. Normally, we will appoint a commencement date that will allow sufficient time for LegCo to scrutinize the Regulation and the commencement notice for the amendment Ordinance and the Regulation in accordance with the negative vetting procedure under Cap. 1. In this particular case, however, we propose to commence the Ordinance and the Regulation on 20 July 2001. This will mean that there will not be a full negative vetting period due to the summer recess of LegCo. Our proposal is based on the following reasons –

- (i) the Regulation concerns only technical operational details and is not controversial;
- (ii) to wait until October when LegCo reconvenes would mean that traders would not be able to make use of the new system when it is ready operationally;

- (iii) at least in 2001, traders will use the EDI service for DCP on a voluntary basis, and may still use the paper mode; and
- (iv) to make the EDI service for DCP mandatory, the Commissioner of Customs and Excise will need to issue a notice in the Gazette which is subject to negative vetting by LegCo.

11. The proposed early commencement will not prejudice LegCo's right to examine the Regulation after the summer recess. In the event that LegCo considers it necessary to amend the Regulation after the summer recess, say, for a technical reason, it could be effected from a current date. In the unlikely event that the amendment must be backdated to the commencement of the Regulation, we envisage that the consequence, if any, on those companies which have voluntarily chosen to use EDI services for DCP during the summer would be small.

Advice Sought

12. Members' views are sought on whether the Dutiable Commodities (Amendment) Regulation 2001 should be commenced on 20 July 2001.

Commerce and Industry Bureau
June 2001

A BILL

To

Amend the Dutiable Commodities Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Dutiable Commodities (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce and Industry by notice published in the Gazette.

2. Interpretation

(1) Section 2(1) of the Dutiable Commodities Ordinance (Cap. 109) is amended by adding-

““electronic record” (電子紀錄) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“information” (資料) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“information system” (資訊系統) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“recognized electronic service” (認可電子服務) means a service for the interchange of electronic records that is provided by a specified electronic service provider;

“security device” (保安裝置) means a device issued to a person to be used for authenticating that person as the sender of information using a recognized electronic service;

“specified electronic service provider” (指明電子服務提供者) means a person specified under ~~section 3A(1)~~Schedule 1A.”

“specified eligible agent” (指明合資格代理人) means a person specified under ~~section 3A(2)~~Schedule 1B;

~~(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. Part added

The following is added-

“PART IA

USE OF ELECTRONIC RECORDS AND PROCEDURES

~~3A.— Specified electronic service providers and eligible agents~~

~~(1) — The Secretary for Commerce and Industry may, by notice published in the Gazette, specify a person to be a provider of a recognized electronic service under this Ordinance.~~

~~(2) — The Secretary for Commerce and Industry may, by notice published in the Gazette, specify a person who is eligible to accept appointment to act as an agent for any person —~~

~~(a) — in sending information to the Commissioner under this Ordinance using a recognized electronic service;~~
~~or~~

~~(b) — in receiving information that has been sent by the Commissioner under this Ordinance using a recognized electronic service.~~

~~(3) — A notice issued under subsection (1) or (2) is not subsidiary legislation.~~

3AB. Presumption regarding information sent by recognized electronic service

(1) Where information received by the Commissioner was sent using a recognized electronic service, evidence that shows that the identity of the sender of the information was authenticated by the use of a security device is, in the absence of evidence to the contrary, proof that the person issued with the security device -

- (a) furnished the information; or
- (b) made any statement or declaration contained in the information.

(2) Where information received by the Commissioner was sent using a recognized electronic service by a specified eligible agent who has obtained an authorization in accordance with section ~~3CD~~, a person named in the information as the person who furnished the information or who made a statement or declaration contained in the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who-

- (a) furnished the information; or
- (b) made the statement or declaration contained in the information.

~~3BC~~. Safe-keeping of security device

(1) A person who has been issued with a security device shall not authorize or allow any other person to use the device in connection with the sending of information to the Commissioner under this Ordinance using a recognized electronic service.

(2) A person who has been issued with a security device shall take all reasonable steps and exercise due diligence to prevent any other person from using the device in connection with the sending of information to the Commissioner under this Ordinance using a recognized electronic service.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

3CD. Duty of specified eligible agent

(1) A specified eligible agent shall not send on behalf of any person information using a recognized electronic service unless the agent has obtained from the person an authorization in writing to do so.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3.”.

4. Regulations

Section 6(1) is amended by adding-

“(ea) the Commissioner to specify any form or requirement for giving information ~~required to be given under this Ordinance~~ in respect of any goods to which this Ordinance applies;”.

5. Grant of licences and permits

Section 7(1)(b)(iii) is amended by repealing “either personally or by registered post”.

6. Applications for licences and permits

Section 8(b) is amended by repealing “either personally or in writing”.

7. Register of requisitions and permits

Section 9 is amended by repealing-

“entered in a book or books in the office of the officer authorized to issue the permit, and the absence of a requisition or copy therefrom”

and substituting-

“kept under the control of the officer authorized to issue the permit, and the absence of any requisition or copy from its usual place of keeping”.

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

(1) Section 11A(2) is amended-

- (a) by repealing “book or document” where it first appears and substituting “licence, permit, book or other document was issued or”;
- (b) by repealing “book or document” where it secondly and last appears and substituting “licence, permit, book or other document”.

(2) Section 11A is amended by adding-

“(3) Without affecting the generality of subsection (2), where any premises or place have been entered under section 11(1)(a), a power conferred by this Ordinance -

- (a) to require the production of any licence, permit, book or other document shall be construed as including the power to require that any information of a kind specified in subsection (4) and relating to such licence, permit, book or other document be produced in the premises or place in a legible form;
- (b) to inspect, remove and detain for the purposes of examination, or to examine and copy, any licence, permit, book or other document shall be construed as including the power-
 - (i) to require that any information of a kind specified in subsection (4) and

relating to such licence, permit, book or other document be produced in a form in which it can be taken away and in which it is either legible or capable of being retrieved on a computer; and

(ii) to take away the material so produced.

(4) The information specified for the purposes of subsection (3) is information that is-

(a) stored in the form of an electronic record in or accessible from the premises or place entered under section 11(1)(a); or

(b) contained in any device found in the premises or place entered under section 11(1)(a) and that is capable of being retrieved in the form of an electronic record.”.

9. Import and export statements

(1) Section 22(1) is amended by repealing “7” and substituting “14”.

(2) Subsection 22(2) is amended by repealing “7” and substituting “14”.

(3) Section 22 is amended by adding-

“(7) The requirement under subsection (1) to furnish [in accordance with this section](#), a statement in relation to goods to which this Ordinance applies that are imported or exported in any ship, aircraft or vehicle shall be regarded as having been complied with if-

(a) a manifest of the cargo imported or exported in the ship, aircraft or vehicle is lodged for the purposes of regulation 11 or 12 (as may be appropriate) of the Import and Export (Registration) Regulations (Cap.

60 sub. leg.) using services provided by a specified body;

- (b) the manifest contains such particulars in relation to the goods as is required to be contained in a statement furnished to the Commissioner under subsection (1); and
- (c) the manifest is lodged within the period specified ~~in subsection (1) for the furnishing of a statement under that subsection in relation to the goods for the furnishing of a statement under subsection (1).~~

(8) Despite subsection (7), the Commissioner may, by notice in writing given to any person to whom subsection (1) applies, require that a statement as required under subsection (1) be furnished and, if such a notice is given-

- (a) a statement as required under subsection (1) shall be furnished to the Commissioner ~~within 14 days after service of the notice but otherwise in accordance with that subsection~~ 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;
- (b) subsection (5) shall apply in relation to a failure to comply with this subsection as it applies in relation to a failure to comply with subsection (1).

(9) The requirement under subsection (2) to furnish ~~a statement in relation to goods to which this Ordinance applies in the case of a ship or aircraft that arrives in or departs~~, 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 from Hong Kong shall be regarded as having been complied with if-

- (a) a manifest of the cargo imported or exported in the ship or aircraft is lodged for the purposes of regulation 11 or 12 (as may be appropriate) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) using services provided by a specified body; and
- (b) the manifest is lodged within the period specified ~~in subsection (2) for the furnishing of a statement under that subsection in relation to the goods~~ for the furnishing of a statement under subsection (2).

(10) Despite subsection (9), the Commissioner may, by notice in writing given to any person to whom subsection (2) applies, require that a statement as required under subsection (2) be furnished and, if such a notice is given-

- (a) a statement as required under subsection (2) shall be furnished to the Commissioner ~~within 14 days after service of the notice but otherwise in accordance with that subsection~~ 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;
- (b) subsection (5) shall apply in relation to a failure to comply with this subsection as it applies in relation to a failure to comply with subsection (2).”.

10. Assessment of duty

Section 26(2) is amended-

- (a) in paragraph (c), by repealing the full stop and substituting “; or”;
- (b) by adding-
 - “(d) if sent to him in the form of an electronic record.”.

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

~~Section 36(1) is amended by repealing “whether or not such statement, declaration or information is made verbally or in writing” and substituting “however made or furnished”.~~

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. Section added

The following is added-

“42A. Proof of contents of electronic record

- (1) A document -
 - (a) purporting to be a copy, produced from one of the Government's information systems, of the record of

any information sent or received by a Government information system in the form of an electronic record; and

(b) purporting to be certified by the Commissioner, shall be admitted in any proceedings under this Ordinance before a court or magistrate on its production without further proof.

(2) Where a document is produced and admitted as evidence under subsection (1)-

(a) the court or magistrate before which it is produced shall, until the contrary is proved, presume that -

- (i) it was certified ~~under subsection (1)(b)~~ by the Commissioner;
- (ii) the document is a true copy of the record of information so sent; and
- (iii) the record was duly made at the time referred to in the document; and

(b) the document is evidence of the contents of the information sent by the sender.

(3) Where a document is produced and admitted as evidence under subsection (1), the court or magistrate may, if it or he thinks fit, on its or his own motion or on the application of any party to the proceedings, summon the person who certified the document and examine him as to its subject-matter.”.

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

13. “文本” substituted for “副本”

Sections 11A(2), 42, 48A(9)(a) and 49 are amended by repealing “副本” wherever it appears and substituting “文本”.

**DUTIABLE COMMODITIES (AMENDMENT)
REGULATION 2001**

(Made by the Chief Executive in Council under section 6 of the Dutiable
Commodities Ordinance (Cap. 109))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Commerce and Industry by notice published in the Gazette.

2. Foreign landing certificate and receipt for stores to be delivered to Commissioner

Regulation 9(2) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.) is amended by repealing “shall give the Commissioner endorsed on a permit” and substituting “and who holds a permit that was sent to him in paper form, shall give to the Commissioner endorsed on the permit”.

3. Applications for licences and permits

Regulation 22 is amended by repealing everything after subregulation (1) and substituting –

“(2) An application for a licence, and any information that is submitted in connection with the application –

- (a) shall be in paper form; and
- (b) shall be submitted in such number of copies as the Commissioner may determine.

(3) Except as provided in subregulation (6), an application for a permit shall be in the form of an electronic record that is submitted using a recognized electronic service.

(4) A person applying for a permit shall –

- (a) if so requested by the Commissioner, produce to the Commissioner, or other officer authorized to grant the same, any invoices, bills of lading, shipping

orders or other documents relating to the goods in respect of which the application is made; and

- (b) furnish such invoices, bills of lading, shipping orders or other documents in the number of copies and in the manner specified in the request,

and any such invoices, bills of lading, shipping orders or other documents may be retained by the Commissioner and disposed of as he thinks fit.

(5) Every person applying for a permit to export goods as ship's or aircraft's stores shall at the time of submitting his application furnish to the Commissioner, or other officer authorized to grant the permit, such declaration by the master of the ship, or by the person in charge of the aircraft, as the Commissioner or other officer may require.

(6) The Commissioner may, by notice published in the Gazette, specify that an application for a permit may be submitted in paper form, and subregulations (4) and (5) shall apply in relation to any application made pursuant to such notice subject to this subregulation and to any notice issued under this subregulation.

(7) A notice published under subregulation (6) is not subsidiary legislation.

(8) Every permit to export goods as ship's or aircraft's stores shall, if it was sent to the permittee in paper form, be endorsed by the master or other person in charge of the ship or aircraft that he has received the stores applied for."

4. Surrender of permits

Regulation 25 is amended –

- (a) by renumbering it as regulation 25(1);
- (b) in subregulation (1)(a), by repealing "to the Commissioner or other officer who granted it";

(c) by adding –

“(2) For the purposes of subsection (1)(a), a permittee shall surrender a permit in the following manner –

- (a) if the permit was sent to him in paper form, by returning the permit to the Commissioner or other officer who granted it;
- (b) if the permit was sent to him in electronic form, by sending notice of such surrender to the Commissioner using a recognized electronic service.”.

5. Record of goods

Regulation 98(1) is amended by repealing everything after “forthwith” and substituting –

“_

- (a) make such entries in respect of the goods as the Commissioner may require, in a stock account or record, in such form as may be approved by the Commissioner; and
- (b) send to the Commissioner using a recognized electronic service a copy of such of the information entered in the stock account or record under paragraph (a) as the Commissioner may require.”.

6. Part added

The following is added –

“PART XI

MISCELLANEOUS

106. Transitional

(1) During the period specified in subregulation (2), an application for a permit may be made in the manner provided for by regulation 22 as it applied immediately before the commencement of section 3 of the Dutiable Commodities (Amendment) Regulation 2001 (L.N. of 2001) and, for the purposes of any such application, regulation 22 as it so applied shall continue to have effect despite the repeal taking effect on that commencement.

(2) The period specified for the purposes of subregulation (1) is the period beginning with the commencement of section 3 of the Dutiable Commodities (Amendment) Regulation 2001 (L.N. of 2001) and ending at such time as may be specified by the Commissioner by notice published in the Gazette.

(3) A notice published under subregulation (2) is subsidiary legislation.”.

7. “文本” substituted for “副本”

Regulations 98(2) and 105(2)(g) and item 4 of Part VII of the Schedule are amended by repealing “副本” and substituting “文本” .

Clerk to the Executive Council

COUNCIL CHAMBER

2001

Explanatory Note

The purpose of this Regulation is to amend the Dutiable Commodities Regulations (Cap. 109 sub. leg.) (“the Regulations”) to make provision regarding the use of a particular electronic service in connection with applications for permits under the Ordinance, and for dealings in relation to permits generally.

2. Section 2 amends regulation 9(2) of the Regulations to limit its application to cases where the permit is one that was issued in paper form.

3. Section 3 amends regulation 22 of the Regulations to require all applications for permits to be submitted to the Commissioner of Customs and Excise (“the Commissioner”) using a recognized electronic service, except in cases where the Commissioner has by notice to the Gazette specified that an application may be submitted in paper form.

4. Section 4 amends regulation 25 of the Regulations to provide for the surrender of permits issued in electronic form.

5. Section 5 amends regulation 98 of the Regulations to require stock records kept by warehouse keepers to be sent to the Commissioner using a recognized electronic service.

6. Section 6 is a transitional provision. It allows for applications for permits to continue to be made in paper form, at the option of the applicant, for a transitional period to be determined by the Commissioner.

