

LEGISLATIVE COUNCIL BRIEF

Dutiable Commodities Ordinance
(Chapter 109)

DUTIABLE COMMODITIES (AMENDMENT) BILL 2002

INTRODUCTION

At the meeting of the Executive Council on 15 January 2002, the Council ADVISED and the Chief Executive ORDERED that the Dutiable Commodities (Amendment) Bill 2002, at Annex, should be introduced into the Legislative Council to enable the implementation of the Open Bond System (OBS) in all bonded warehouses in Hong Kong.

BACKGROUND AND ARGUMENT

Bonded Warehouse Arrangements: Closed Bond System Vs Open Bond System

2. Duty is imposed on liquor, tobacco, hydrocarbon oil and methyl alcohol used for local consumption (as opposed to export or re-export) in Hong Kong. The bonded warehouse is a duty-deferral facility. Owners of dutiable commodities may store their goods “under bond” in a Customs controlled warehouse until such time as they are ready to pay the duty or otherwise discharge the duty liability. Upon entry of dutiable goods into a bonded warehouse, the warehouse operator incurs a duty liability for the goods. This liability is discharged when the goods are duty paid, exported or transferred to another bonded warehouse. There are currently 60 warehouses storing dutiable commodities in Hong Kong. They are licensed and controlled by the Customs and Excise Department (C&ED) either under a Closed Bond System (CBS) or an OBS. They are managed either by warehouse operators or the

importers/manufacturers of the dutiable commodities.

3. The majority of our bonded warehouses (51, which are mainly for storing liquor and tobacco) are controlled under a closed bond environment. Under this system, to ensure compliance and protect government revenue, C&ED exercises full physical control over goods entering, leaving, being stored or processed in bonded warehouses. Officers of C&ED are stationed full-time at the bonded warehouses to supervise the movement of dutiable commodities, exercise physical control over dutiable commodities held in a bonded warehouse and over the bonded warehouse itself, endorse the permits issued by C&ED for the removal, domestic sale and export of the goods, supervise all vanning (i.e. loading of dutiable goods into a cargo container for export) and devanning (i.e. unloading of dutiable goods from an imported cargo container), and supervise labelling, sampling, bottling, blending, denaturing, and other in-bond operations. In the absence of C&ED officers, the warehouses are required to be closed under revenue locks. The warehouse operators/traders must meet government's charges in respect of C&ED officers in their role as warehouse officers. The fees range from \$60,000 to \$330,000 per warehouse per month (depending on the number of C&ED officers stationed in the warehouse). In addition, a fee of \$500 is charged for every operation of vanning or devanning. Around \$70 million is expected to be paid to C&ED in 2001-02 for the service of about 150 Customs officers.

4. The oil companies and the breweries (nine in total) have been granted permission to operate under an Open Bond System (OBS). Under this system, no Customs officer is stationed on the premises to provide physical supervision and warehouse operators do not have to pay any attendance fee to the government. Control of dutiable commodities mainly relies on self-compliance by the licensee, and on risk-management and periodic inspections by Customs. Under the OBS, licensees are given full autonomy in managing

the stock inventory of raw materials, finished products or dutiable goods stored and in supervising releases of the goods for local consumption and export.

The Consultancy Study

5. The Administration commissioned a consultancy study in 1999 on the feasibility of extending the OBS to all bonded warehouses in Hong Kong, taking into account overseas experience and practices. The study confirmed the feasibility and benefits of introducing an OBS in Hong Kong. It confirmed that extension of open bond arrangements to the liquor and tobacco industry would reduce the traders' compliance costs, induce additional business opportunities and enhance Hong Kong's competitiveness in the international market. It pointed out that while in general, there would be an increase in revenue fraud, missing goods, thefts, mishandling of dutiable commodities, etc. upon the withdrawal of C&ED officers, the risk of revenue loss would be manageable if we had in place a comprehensive audit and risk-management system. The consultancy further noted that Australia, Canada, New Zealand, Singapore, UK and USA had already moved to open bond systems. It recommended the adoption of the Australian model (as the Australian duty system is the closest to Hong Kong's), and made suggestions on a structured audit method for checking the compliance of warehouse owners and the necessary legislative amendments.

The Pilot Scheme

6. We agreed with the conclusion of the consultancy and launched a pilot scheme to test the implementation of an OBS on liquor and tobacco bonded warehouses and the auditing framework as recommended by the consultant. The pilot scheme was conducted from 1 January to 30 June 2001 on five bonded warehouses randomly selected. Feedback from the participants was highly positive. They found the operation of the OBS very smooth and successful, and had no difficulty in complying with the new reporting and other

obligations. The majority considered that the OBS had enhanced their management flexibility and had brought considerable savings in their operating costs. The participants expressed strong support for the introduction of the OBS to their bonded warehouses on a permanent basis. From the revenue protection aspect, we observed no anomaly in the duty collected from the participating warehouses when compared to the trend in the same period in other bonded warehouses.

Implementation of OBS

7. We recommend to introduce the full implementation of the OBS in two phases. In the first phase, the OBS would be applied to all bonded warehouses, including warehouses storing tobacco and liquor, except distilleries (which are manufacturing cum storage places for liquor). C&ED would withdraw Customs officers' attendance at these warehouses, while conducting surprise checks on the riskier operations such as vanning and devanning. In the second phase to be implemented some six months after the first phase, the OBS would be extended to distilleries, which require a more comprehensive control system to be in place.

Transitional arrangements for existing bonded warehouse licensees

8. The existing bonded warehouse licences are valid for one year. We propose that, after the Amendment Ordinance has come into effect, we should be prepared to allow licensees to operate according to the existing law and the terms and conditions of their existing licences, until expiry, whereupon C&ED would assess their applications for renewal, based on the requirements of the Amendment Ordinance.

9. However, since some licensees might opt to operate under the OBS before their existing licences had expired, we also propose to allow them to surrender their existing licences to C&ED and apply for new licences under the

terms of the Amendment Ordinance. C&ED would make a pro-rata refund of the licence fee paid for the unexpired period of validity of the existing licence.

Legislative Amendments Proposed

10. The existing Dutiable Commodities Ordinance is designed for the control of bonded warehouses under a closed bond environment. For the oil companies and breweries where an OBS is in operation, C&ED control, especially the requirements to produce commercial documents for audit purposes, is achieved through administrative means. If the OBS is to be extended to all bonded warehouses in Hong Kong, a legal basis has to be provided for an OBS to ensure its smooth operation and effective protection of revenue. Also, as the CBS will be gradually phased out, the provisions relating to that will become obsolete and need to be deleted.

Relaxing restrictions on the operation of bonded warehouses

11. As the need for Customs officers' full-time attendance would be removed under the OBS, we propose to delete the provisions in the Dutiable Commodities Regulations (the Regulations) that requires C&ED's attendance for entrance to any spirit store of the distillery, entrance to any bonded warehouse and opening of container of dutiable goods (ref. Clauses 10, 16, and 18 in Annex).

12. For the same reason, we propose to delete the requirement that liquor in a distillery should be reduced to uniform strength and spirit receivers emptied before a C&ED officer takes account of the liquor for the purpose of measuring dutiable quantity. We also propose to delete the requirement for a distiller to keep records of the personal particulars and attendance of each person employed by him in a distillery, as such a requirement is considered not necessary under an OBS (ref. Clauses 11 and 12 in Annex).

13. We propose to replace the regulation that prescribes the hours of opening for bonded warehouses, with a requirement for warehouse licensees to inform C&ED in advance of the opening of warehouses or changes in the reported opening hours. This will allow the operators to decide on the operating hours of their warehouses and at the same time, will facilitate the conduct of surprise checks by C&ED (ref. Clause 15 in Annex).

14. Without C&ED's attendance under the OBS, there could be more unintended mistakes in the stock account of the quantity and description of dutiable goods. We consider that it would be reasonable to subject such unintended mistakes to the compounding procedure where the deviation from the stock account does not exceed \$10,000 in terms of the duty value of the goods involved (ref. Clauses 5 and 6 in Annex).

Tightening licensing, storage, record-keeping and auditing requirements

15. To minimise the risk of duty evasion under an OBS, we would need to tighten the licensing, storage, record-keeping and auditing requirements for warehouse owners.

16. Section 7 of the existing Ordinance already empowers C&ED to grant and issue licences for operating bonded warehouses, to attach conditions to the licences and to revoke licences issued. For the sake of clarity, we propose to state in the Ordinance the factors that C&ED shall take into account when considering the grant or renewal of licences for operating bonded warehouses, including -

- (a) the financial status of the applicant;
- (b) the suitability of the documents that the applicant proposes to keep for C&ED's auditing, the systems and procedures in respect of inventory control, record-keeping and security of the warehouse;

and

- (c) the fitness and propriety of the applicant and the responsible personnel.

17. Responsible personnel is defined in the Bill to cover persons who are or will be wholly or mainly responsible for managing the warehouse, including directors where the applicant is a body corporate (ref. Clause 3 in Annex). Similar criteria for considering warehouse licence applications are used in a number of developed economies which have adopted the OBS.

18. As to storage requirements, we need to ensure that, without C&ED's attendance and physical supervision, warehouse-keepers would still store dutiable goods in a manner that facilitates C&ED's examination and surprise checks. We propose to stipulate the way in which goods should be stored. We also propose to require a warehouse-keeper to produce goods for inspection and to offer assistance when requested by C&ED (ref. Clause 14 in Annex).

19. As to record-keeping and auditing requirements, it is crucial under an OBS that warehouse-keeper should keep and produce the documents that would allow C&ED to perform full and effective audit checks. Section 11(1)(b) of the existing Ordinance provides for the licensee to keep and produce documents which has a bearing on the quantity, origin, value and nature of the dutiable goods. The existing Regulations also require a warehouse-keeper to keep, and produce to C&ED on request, a stock account or record of movement of dutiable goods into and out of a warehouse. To ensure that a full audit check may be performed, we propose to expand the list of information required to be kept and produced by the warehouse-keeper to include all the movement and payment records, balance sheets and audit reports. These documents are necessary for C&ED to ascertain whether a stock account and record is genuine

and trustworthy. We also propose to require the warehouse-keeper to retain such records for at least two years (ref. Clause 20 in Annex).

Other amendments

20. Under current practice, for effective administrative control, C&ED does not grant licences to domestic premises as bonded warehouses. For the sake of clarity, we propose to make it clear that such licences shall not be granted in respect of domestic premises (ref. Clause 3 in Annex).

21. A number of miscellaneous amendments, which aim at improving the operation of bonded warehouses in the light of developments in the trade, are also proposed in the Bill.

THE BILL

22. The main provisions in relation to the adoption of the OBS include the following -

- (a) clause 2 adds to the existing section 7 of the Ordinance a new subsection, which gives the Commissioner the power to revoke a licence that was granted in respect of premises for the storage or manufacture of dutiable goods. Clause 3 adds to the Ordinance a new provision, which requires the Commissioner to take into account certain matters when considering whether to revoke the licence, and when determining an application for the grant or renewal of such a licence;
- (b) clauses 10-12, 16 and 18 repeal certain existing provisions which will become obsolete once the OBS is implemented;
- (c) clauses 5 and 6 amend section 47A and Schedule 3 of the

Ordinance to give the Commissioner power to compound an offence under regulation 99 of the Regulations; clause 23 makes a consequential amendment to regulation 105;

- (d) clause 7 adds to regulation 22(1) of the Regulations a new paragraph, which requires the applicant for a licence to furnish information about the proposed opening hours; clause 15 replaces existing regulation 85 by a new provision, which requires a warehouse-keeper to notify the Commissioner of certain decisions in relation to opening the warehouse or changing its opening hours;
- (e) clause 8 adds to the Regulations a new provision, which requires applications for renewal of licences to be made at least one month and no earlier than two months before the expiration of the licence;
- (f) clause 14 adds to the Regulations a new provision, which imposes new duties on warehouse-keepers to produce goods for inspection and to store goods in a certain manner;
- (g) clause 19 makes minor and consequential changes to regulation 95 of the Regulations;
- (h) clause 20 adds to the Regulations a new provision, which requires a warehouse-keeper to keep certain documents;
- (i) clause 21 amends regulation 99 of the Regulations and stipulates that the existing requirements of reporting in relation to deficiency of dutiable goods stored in a warehouse will apply also to a case of surplus;

- (j) clause 22 makes consequential amendments to regulation 104 of the Regulations;
- (k) clauses 24-26 make transitional and saving provisions to -
 - (i) save the validity of existing licences;
 - (ii) provide for a procedure for the surrender of existing licences in return for new licences;
 - (iii) save the application of the existing provisions to pending applications for the grant or renewal of a licence, if the applicant so requests.

PUBLIC CONSULTATION

23. We have fully consulted bonded warehouse owners and traders in dutiable goods on the detailed arrangements and requirements under the OBS. In the first half of 2001, we conducted a pilot scheme on the OBS. Participants expressed strong support for the implementation of the OBS. We have also considered the trade's feedback on the detailed arrangements under the OBS and have duly reflected such suggestions in the Bill.

24. We have consulted the Business Advisory Group which strongly supported implementation of the OBS. The Group also gave an award to the OBS initiative under the Helping Business Awards Scheme 2001.

25. We consulted the Legislative Council Panel on Commerce and Industry on 14 January 2002.

BASIC LAW IMPLICATIONS

26. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

27. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

28. The Bill does not affect the existing binding effect of the Dutiable Commodities Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

29. Upon the full implementation of the OBS, the division in C&ED responsible for the bonded warehouse system will be downsized from 204 posts to 58 posts, which will result in savings in staff cost of \$78 million. This will more than offset the revenue forgone of \$70 million, which C&ED would otherwise collect as charges from the warehouse operators and traders under the closed bond system.

ECONOMIC IMPLICATIONS

30. The adoption of an OBS will provide major facilitation for bonded warehouse owners and traders of dutiable goods by lowering their compliance costs and allowing them to operate under more flexible conditions, thereby improving their business environment. It will also bring Hong Kong into line with international practice. This will enhance the competitiveness of the local bonded warehouse owners and traders in dutiable goods vis-à-vis their counterparts in the region.

LEGISLATIVE TIMETABLE

31. The legislative timetable will be -

Publication in the Gazette

18 January 2002

First Reading and commencement of Second Reading debate 30 January 2002

Resumption of Second Reading debate, Committee Stage and Third Reading to be notified

PUBLICITY

32. We will issue a press release when the Bill is published in the Gazette on 18 January 2002.

ENQUIRIES

33. Enquiries may be directed to Miss Erica Ng, Principal Assistant Secretary for the Treasury, at 2810 2370.

Finance Bureau
January 2002

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DUTIABLE COMMODITIES (AMENDMENT) BILL 2002

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A BILL

To

Amend the Dutiable Commodities Ordinance.

Enacted by the Legislative Council.

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Dutiable Commodities (Amendment) Ordinance 2002.

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

PART II

AMENDMENT OF DUTIABLE COMMODITIES ORDINANCE
AND ITS SUBSIDIARY LEGISLATION

Dutiable Commodities Ordinance

2. Grant and revocation of licences and permits

Section 7 of the Dutiable Commodities Ordinance (Cap. 109) is amended by adding -

"(1A) Without prejudice to subsection (1) (b) (iv) and subject to section 8A(3), the Commissioner or other officer deputed by

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him in that behalf may revoke a licence that was granted in respect of any premises."

3. Section added

The following is added -

"8A. Determining applications for and revocation of licences in respect of premises

(1) In determining an application for the grant or renewal of a licence in respect of any premises, the Commissioner or the officer deputed by him in that behalf shall take into account -

- (a) whether the applicant possesses the appropriate financial status;
- (b) whether the books of account and other documents that are kept or proposed to be kept by the applicant in relation to the premises are sufficient for the purpose of auditing;
- (c) whether the systems, procedures and standards that are used or proposed to be used by the applicant in respect of inventory control, record keeping and security are appropriate;
- (d) whether the applicant and his responsible personnel are fit and proper persons; and
- (e) any other relevant matter.

(2) No licence shall be granted in respect of any premises which are or will be used wholly or partly as a place of residence.

(3) In determining whether to revoke under section 7(1A) a licence that was granted in respect of any premises, the Commissioner or the officer shall take into account -

- (a) whether the licensee possesses the appropriate financial status;

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- (b) whether the books of account and other documents that are kept by the licensee in relation to the premises are sufficient for the purpose of auditing;
- (c) whether the systems, procedures and standards that are used by the licensee in respect of inventory control, record keeping and security are appropriate;
- (d) whether the licensee and his responsible personnel are fit and proper persons; and
- (e) any other relevant matter.

(4) In determining whether a person is a fit and proper person for the purposes of subsection (1)(d) or (3)(d), the Commissioner or the officer shall take into account -

- (a) the fact that the person has a conviction in Hong Kong or elsewhere for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;
- (b) the fact that the person has been convicted of an offence against this Ordinance;
- (c) if the person is an individual, the fact that the person is an undischarged bankrupt or has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) within the 5 years preceding the date of the application;
- (d) if the person is a body corporate, the fact that

the person is in liquidation, is the subject of a winding-up order or there is a receiver appointed in relation to it or it has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) within the 5 years preceding the date of the application; and

(e) any other relevant matter.

(5) In this section, "responsible personnel" (負責人員), in relation to a person who is an applicant or licensee (as the case may be), means -

- (a) where the person is a body corporate, any of its directors;
- (b) where the person is an unincorporated association, the president, chairman, vice chairman or secretary of its management or executive committee (however described), or a person holding a similar office; or
- (c) any other person who is or will be wholly or mainly responsible for the management of the premises concerned."

4. Deputy for absent licensee

Section 10 is repealed.

5. Power of Commissioner to compound

Section 47A is amended -

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- (a) in subsection (2), by repealing "in satisfaction of the duty and the balance";
- (b) in subsection (3) -
 - (i) by adding "in a case where dutiable goods are seized in connection with the offence" after "(2)";
 - (ii) in paragraph (a), by repealing "dutiable goods seized in connection with the offence" and substituting "goods".

6. Compounding of offences

Schedule 3 is amended -

- (a) by repealing the column headings and substituting -

"Dutiable Commodities Ordinance

Column 1	Column 2	Column 3	Column 4
Section	Offence	When compoundable	Penalty";

- (b) in column 4, against "34A" in column 1, by adding "and, where dutiable goods are seized in connection with the offence, 5 times the duty payable on the goods concerned" after "1";

- (c) by adding at the end -

"Dutiable Commodities Regulations

Column 1	Column 2	Column 3	Column 4
Regulation	Offence	When compoundable	Penalty
99(1)	Failing to	if the duty value	a fine at

Clause

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enter in of the deficient level 1".
stock or surplus
account or goods (as the
record case may be) does
deficiency not exceed
or surplus in \$10,000 as
dutiabale assessed by the
goods stored Commissioner
in a
warehouse,
or failing to
report such
deficiency
or surplus to
the
Commissioner
within 24
hours

Dutiabale Commodities Regulations

7. Applications for licences and permits

Regulation 22(1) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.) is amended -

- (a) in paragraph (d), by repealing "and" at the end;
- (b) in paragraph (e), by repealing the full stop and substituting "; and";

(c) by adding -

"(f) either one of the following statements, as the case may be -

(i) where the premises will be regularly open, a statement of the proposed opening hours; or

(ii) a statement that the premises will not be regularly open."

8. Regulation added

The following is added before regulation 22A -

"22AA. Renewal of licences

Except with the written permission of the Commissioner, an application for the renewal of a licence shall be made at least 1 month before, and no earlier than 2 months before, the expiration of the licence."

9. Identification of licensees

Regulation 26 is repealed.

10. Unauthorized person prohibited in spirit store

Regulation 56 is repealed.

11. Liquor to be reduced to uniform strength and spirit receivers emptied when account is taken

Regulation 59 is repealed.

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12. Records to be kept by distiller

Regulation 61(2) is repealed.

13. Lamps

Regulation 82 is repealed.

14. Regulation added

The following is added -

**"83A. Production of goods for inspection
and manner of storage**

(1) When required so to do by the Commissioner, the warehouse-keeper shall promptly produce any goods stored in a warehouse for inspection.

(2) Except with the written permission of the Commissioner, a warehouse-keeper shall, when storing goods in the warehouse -

- (a) not alter the packaging in which the goods were first entered;
- (b) arrange the goods in a tidy manner to ensure safe and easy access to and from the goods; and
- (c) mark all packaging legibly and uniquely so that the goods can be easily identified by reference to the stock account or record."

15. Regulation substituted

Regulation 85 is repealed and the following substituted -

"85. Notification regarding opening of warehouses

(1) If, in respect of a warehouse -

- (a) a statement has been furnished under regulation

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22(1)(f)(i), and it is decided to change the opening hours mentioned in that statement or open the warehouse outside those hours; or

- (b) a statement has been furnished under regulation 22(1)(f)(ii), and it is decided to open the warehouse,

the warehouse-keeper shall notify the Commissioner of such decision in writing.

- (2) The notification mentioned in subregulation (1) shall -
 - (a) specify when the decision is to be implemented; and
 - (b) be made at least 4 hours before the implementation of the decision."

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16. Entry, etc., only with a member of the Customs and Excise Service

Regulation 86 is repealed.

17. Damaged containers

Regulation 93 is amended by repealing "empty or".

18. Opening containers

Regulation 94 is repealed.

19. Sampling and other treatment of goods

Regulation 95 is amended -

- (a) in subregulation (1), by repealing everything before
", samples" and substituting -

"(1) After giving notice to the
Commissioner";

- (b) in subregulation (2), by repealing everything before
"in" and substituting -

"(2) Notice under subregulation (1) shall be
given".

20. Regulation added

The following is added -

"98A. Keeping of documents by warehouse-keepers

- (1) A warehouse-keeper shall keep -

- (a) a copy of every relevant document that he issues;
and

- (b) every relevant document that he -

Clause

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(i) prepares, including one that is

prepared for the purpose of issuing but not issued; or

(ii) receives,

until the expiration of 2 years from the relevant date.

(2) In this regulation -

"relevant date" (有關日期) means -

(a) where the relevant document relates to the movement of goods into and out of the warehouse, the date on which the goods are taken out of the warehouse;

(b) in any other case, the date on which the document is issued, prepared or received (as the case may be);

"relevant document" (有關文件) means any document that relates to -

(a) the movement of goods into and out of the warehouse, including delivery orders, goods receipt notes, invoices, credit notes, debit notes, bills of lading or air waybills and air consignment notes; or

(b) payments made and received in the course of the business of the warehouse, including ledgers, statements of accounts, profit and loss accounts, balance sheets and auditor's reports.

(3) For the purposes of this regulation, a document that is issued, prepared or received (as the case may be) in the course

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of the business of a warehouse shall be regarded as issued, prepared or received (as the case may be) by the warehouse-keeper.".

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21. Deficiencies or surpluses

Regulation 99 is amended by adding "or surplus" after "deficiency" wherever it appears.

22. Penalties

Regulation 104 is amended -

(a) in subregulation (1) -

- (i) by repealing "61" and substituting "61(1)";
- (ii) by adding "83A," after "67,";
- (iii) by repealing "94,";

(b) in subregulation (2) -

- (i) by repealing "26,", "56,", "59,", "82," and "86,";
- (ii) by adding "98A," after "93,".

23. Compounding of offences

Regulation 105 is amended -

(a) in subregulation (1), by repealing "in satisfaction of the duty and";

(b) in subregulation (2) -

- (i) by adding ", where applicable" after "out";
- (ii) in paragraph (f)(i), by repealing "in satisfaction of the duty and".

PART III

SAVING AND TRANSITIONAL PROVISIONS

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24. Interpretation

In this Part -

"existing licence" (現有牌照) means a licence that is valid immediately before the commencement of this Part;

"licence" (牌照) means a licence that was or will be granted in respect of any premises;

"original Ordinance" (原有條例) means the Dutiable Commodities Ordinance (Cap. 109) as it is in force immediately before the commencement of this Part.

25. Existing licences

(1) An existing licence shall remain valid for the unexpired portion of its period of validity that falls after the commencement of this Part, and the original Ordinance shall apply to the existing licence.

(2) If the holder of an existing licence applies for a licence -

(a) the Commissioner or the officer deputed by him in that behalf shall not grant a licence except upon the surrender of the existing licence; and

(b) the existing licence shall upon its surrender cease to be valid.

(3) The fee payable for a licence granted in accordance with subsection (2) shall be reduced by any fee paid for the existing licence in respect of the unexpired portion of its period of validity that falls after the surrender.

(4) For the purposes of subsection (3), the fee to be reduced shall be calculated on a pro-rata basis by reference to the number of

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months of the unexpired portion of the period of validity of the existing licence bears to the number of months for which the existing licence was granted, and part of a month shall be reckoned as a month.

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26. Pending licence applications

Where, immediately before the commencement of this Part, an application made under the original Ordinance for the grant or renewal of a licence is pending, the application shall, if the applicant so requests in writing, be determined in accordance with the original Ordinance.

Explanatory Memorandum

This Bill amends the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance") and the Dutiable Commodities Regulations (Cap. 109 sub. leg.) ("the Regulations") for the following main purposes -

- (a) to introduce an Open Bond System ("OBS") for premises storing or manufacturing dutiable goods, including warehouses and factories; and
- (b) to make other changes, including ancillary, minor and consequential changes, to existing provisions in the Ordinance and the Regulations.

2. In relation to OBS -

- (a) clause 2 adds to existing section 7 of the Ordinance a new subsection, which gives the Commissioner of Customs and Excise ("the Commissioner") the power to revoke a licence that was granted in respect of such premises. Clause 3 adds to the Ordinance a new provision, which requires the Commissioner to take into account certain matters when determining whether to revoke the licence. The Commissioner shall take into account the same matters when determining an

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- application for the grant or renewal of such a licence;
- (b) clauses 10 to 12, 16 and 18 repeal certain existing provisions which will become obsolete once OBS is implemented;
 - (c) clauses 5 and 6 amend section 47A of and Schedule 3 to the Ordinance to give the Commissioner power to compound an offence under regulation 99 of the Regulations;
 - (d) clause 7 adds to regulation 22(1) of the Regulations a new paragraph, which requires the applicant for such a licence to furnish information about the proposed opening hours;
 - (e) clause 14 adds to the Regulations a new provision, which imposes new duties on warehouse-keepers to produce goods for inspection and to store goods in a certain manner;
 - (f) clause 15 replaces existing regulation 85 of the Regulations by a new provision, which requires a warehouse-keeper to notify the Commissioner of certain decisions in relation to opening the warehouse or changing its opening hours;
 - (g) clause 19 makes minor and consequential changes to regulation 95 of the Regulations;
 - (h) clause 20 adds to the Regulations a new provision, which requires a warehouse-keeper to keep certain documents;
 - (i) clause 21 amends regulation 99 of the Regulations - the existing requirements of reporting in relation to deficiency of dutiable goods stored in a warehouse will

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- apply also to a case of surplus;
- (j) clauses 22 and 23 make consequential amendments to regulations 104 and 105 of the Regulations respectively;

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(k) clauses 24 to 26 make saving and transitional provisions

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(i) to save the validity of existing licences;

(ii) to provide for a procedure for the surrender of an existing licence in return for a new licence;

(iii) to save the application of the existing provisions to pending applications for the grant or renewal of such licences, if the applicant so requests.

3. In relation to the other amendments -

(a) clauses 4, 9, 13 and 17 repeal certain existing provisions which have become obsolete;

(b) clause 5 amends section 47A of the Ordinance - the consequences now stated in subsection (3) will apply only where dutiable goods are seized;

(c) clause 8 adds to the Regulations a new provision, which requires renewal applications of licences under the Ordinance to be made at least 1 month before and no earlier than 2 months before the expiration of the licence.