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Paper for the House Committee meeting on 4 January 2002

**Report of the Subcommittee on
Dutiable Commodities (Amendment) Regulation 2001 and
two related Commencement Notices**

Purpose

This paper reports on the deliberations of the Subcommittee on Dutiable Commodities (Amendment) Regulation 2001 and two related Commencement Notices.

Background

2. Under the Dutiable Commodities Ordinance (Cap. 109), 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 DCs or operates a warehouse for storing DCs must obtain relevant licences from the Customs and Excise Department (C&ED). In addition, licensees must apply for a permit before they can remove DCs for local sale, to or from a warehouse, or for export. These permits are called dutiable commodities permits (DCPs). At present, licencees are required to apply for a DCP on paper.

3. To pursue the policy objective of encouraging traders to acquire the capability to transact business electronically with their trading partners which is important to maintain Hong Kong's position as a leading trade centre, the Administration has decided to make the use of Electronic Data Interchange (EDI)¹ compulsory for processing six types of official trade-related documents, namely, restrained textile export licence, import and export declarations, production notification, certificate of origin, DCPs, and cargo manifest. In 1992, the Administration granted Tradelink Electronic Commerce Limited (Tradelink) an

¹ Electronic Data Interchange is the electronic transfer of data from one computer to another using agreed standards.

exclusive franchise to provide the related front-end services for the Government for seven years from the launch of the first commercial EDI service in 1997 to 31 December 2003.

4. The Administration has launched EDI services for restrained textile export licence and import and export declarations in 1997, and for production notification and certificate of origin in 1999. The Administration plans to launch EDI service for DCP in early 2002. In this connection, the Dutiable Commodities (Amendment) Bill 2001 which aims to provide a legal framework for the use of EDI in processing DCP applications through the service of Tradelink was passed by the Legislative Council (LegCo) on 4 July 2001 with amendments.

The Amendment Regulation and two related Commencement Notices

5. The Dutiable Commodities (Amendment) Regulation 2001 (the Amendment Regulation), published in the Gazette as Legal Notice No. 248 of 2001 and laid on the table of LegCo on 28 November 2001, amends the Dutiable Commodities Regulations (Cap. 109 sub. leg.) to provide that an application for DCP and surrender of permits shall be in electronic form, and that a dutiable commodities warehouse operator must immediately send to the Commissioner using a recognized electronic service information regarding any movement of DCs in and out of the warehouse. The Commissioner is, however, empowered to specify by notice published in the Gazette that an application for a DCP may be submitted in paper form. This will cater for the situation where the computer system for processing DCP breaks down for an extended period, and allow the Government to declare a new type of DC without having to enhance the computer system in advance, thus maintaining confidentiality for the purpose of revenue protection. The Amendment Regulation also provides for a transitional period during which applications for DCPs may be made in either paper or electronic form.

6. The Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2001, published in the Gazette as Legal Notice No. 255 of 2001 and laid on the table of LegCo on 5 December 2001, appoints 10 January 2002 as the day on which the Amendment Ordinance shall come into operation, with the exception of section 9 of the Amendment Ordinance (relating to import and export statements).

7. The Dutiable Commodities (Amendment) Regulation 2001 (L.N. 248 of 2001) (Commencement) Notice 2001, published in the Gazette as Legal Notice No. 256 of 2001 and laid on the table of LegCo on 5 December 2001, appoints 10 January 2002 as the day on which the Amendment Regulation shall come into operation, with the exception of section 5 of the Amendment Regulation (relating to record of goods).

The Subcommittee

8. The House Committee agreed at its meeting on 30 November 2001 to form a Subcommittee to study the Amendment Regulation. The House Committee further agreed at its meeting on 7 December 2001 that the two Commencement Notices mentioned in paragraphs 6 and 7 above should be studied by the same Subcommittee.

9. The Subcommittee first met on 8 December 2001 and Hon Kenneth TING was elected Chairman. The membership list of the Subcommittee is in **Appendix I**. The Subcommittee held a total of two meetings, and a representative of the Dutiable Commodities Customer Liaison Group (DCCLG) was invited to attend the first meeting.

10. To allow time for the Subcommittee to scrutinize the three items of subsidiary legislation, the Chairman of the Subcommittee moved a motion at the LegCo meeting on 19 December 2001 to extend the scrutiny period of the three items of subsidiary legislation to the LegCo meeting on 9 January 2002. The motion was passed.

Deliberations of the Subcommittee

Launching of EDI service for DCP

11. The Subcommittee notes that with the launch of EDI service for DCP, the processing time for an application for a permit would be shortened from two days to half a day and the paperwork involved would be reduced significantly. Members are in support of the early launch of the service for DCP so that traders could enjoy enhanced efficiency and save the manpower required to obtain the permits in person.

Concerns of the industry

12. The Subcommittee notes from the representative of DCCLG that the industry welcomes the early launch of EDI service for DCP, as their concerns about the proposed launch of the service have been addressed by the Administration and Tradelink. Their concerns presented to the LegCo Panel on Commerce and Industry at its special meeting held on 26 June 2001 were three-fold: the level of fees for using the service, the technical support provided by Tradelink, and the need for a mechanism to monitor the performance of the system.

13. On the level of fees, the Subcommittee notes that Tradelink originally proposed to charge \$25 for each application for Ship's Stores permits and \$44 for each application for other types of DCP. To address the concern of the industry that the proposed fees were too high, Tradelink then offered three special fee packages as follows:

- (a) Users who have signed a seven-year service contract with Tradelink will be charged \$9 for each application for any type of DCP;
- (b) Users who have signed a five-year service contract with Tradelink will be charged \$11 for each application for any type of DCP; and
- (c) Users who have signed a three-year service contract with Tradelink will be charged \$13 for each application for any type of DCP.

14. The Subcommittee understands from the representative of DCCLG that the special fee packages are considered acceptable by DCCLG and some other users. Whilst appreciating that it will be for the individual users to decide whether to enter into service contract with Tradelink and if so, the fee package to be adopted, members consider it important for the Administration to provide relevant information to the users to enable them to make an informed decision. In particular, it should be made known to the users that the Administration intends to engage additional service providers to foster market competition upon the expiry of Tradelink's franchise on 31 December 2003, i.e. two years later. Members note the Administration's advice that the Commerce and Industry Bureau has issued a letter dated 7 August 2001 to relevant parties, including members of the industry, inviting them to submit an expression of interest to provide front-end EDI services for official trade-related documents in the Hong Kong Special Administrative Region upon the expiry of Tradelink's franchise on 31 December 2003. The representative of DCCLG also confirms that the industry is aware of the expiry date of Tradelink's franchise.

15. As regards the technical support provided by Tradelink, the Subcommittee notes that since end of June 2001, the system has been put to tests by the three parties concerned, i.e. Tradelink, C&ED and users, and the results were satisfactory. Tradelink, in consultation with C&ED and the industry, has also issued a users' guide book for electronic applications for EDP.

16. The Subcommittee also notes that two members of DCCLG have been invited to join a task force to monitor the performance of the system and that DCCLG is satisfied with the arrangement.

Commencement date of the Amendment Regulation

17. While members have no objection to the Administration's proposal of appointing 10 January 2002 (Thursday) as the day on which the Amendment Regulation shall come into operation, they draw the Administration's attention that in accordance with section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), if a resolution is passed by LegCo on 9 January 2002 (the expiry date of the extended scrutiny period) to amend the Amendment Regulation, the Amendment Regulation shall be deemed to be amended as from the date of publication in the Gazette of such resolution, which normally is the following Friday, i.e. 11 January

2002. In response to members' concern about the possible one-day time gap between the commencement date of the Amendment Regulation and the effective date of the amendment resolution, the Administration confirms that arrangement has been made for such resolution to be published in the Gazette Extraordinary on 10 January 2002 (Thursday).

Transitional period

(New Regulation 106)

18. To allow the industry to adapt to the change, the Subcommittee supports the Administration's proposal of introducing a six-month transitional period during which both paper and electronic applications are allowed before making electronic application for DCP compulsory. Members however note that the end date of the transitional period is not specified in the new Regulation 106, but is to be specified by the Commissioner by notice published in the Gazette.

19. Members recall that a different approach has been adopted for the use of EDI for import and export declarations in 1997. They note the Administration's explanation that back in 1997, the use of electronic services to submit trade-related documents was in its infancy and the potential users were unfamiliar with the concept. Time was needed to educate the 60 000 or so users on using the new EDI service for import and export declarations. As it was difficult to assess the duration of the transitional period at that time, the Administration considered it prudent to adopt a gradual and phased approach whereby provisions were first made in the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) that import and export declarations could be lodged in person or electronic form. After two years when the majority of such declarations were lodged electronically, the Administration considered it the right time to make lodgement of such declarations by EDI compulsory. Amendments were then made to the Import and Export (Registration) Regulations in 1999 to remove the option of lodgement of such declarations in person. The present situation is however different. The industry is now more familiar with the mature operation of EDI service and Tradelink has gained more experience in running the service. Given the relatively small number of DCP users (about 2000) and the short duration of the planned transitional period (six months), the Administration considers it appropriate to adopt a more straightforward approach by empowering the Commissioner to specify the end date of the transitional period by notice published in the Gazette.

20. Members consider that the end date of the six-month transitional period should be specified in the new Regulation 106 to provide certainty to all relevant parties, in particular the inactive or new users. Members note the Administration's view that the planned six-month transitional period is subject to the take-up rate by traders and the smooth running of the system. In view of the industry's support of the compulsory EDI application for DCP after a six-month transitional period, members maintain their view that the end date of the transitional period should be specified in the new Regulation 106. To allow flexibility for the Administration to amend the end

date if necessary, members suggest to add a provision that the Commissioner may amend the end date by notice published in the Gazette before the end date. As the Amendment Regulation is expected to come into operation on 10 January 2002, the end date of the six-month transitional period should be 10 July 2002, the day on which the last LegCo meeting for the 2001-2002 session is scheduled to commence. In the light of previous experience that the last LegCo meeting may last for a few days, it is suggested to the Administration that the end date be specified as 20 July 2002 (Saturday) to provide for the possibility of a resolution of LegCo published in the Gazette on 19 July 2002 (Friday) to amend the notice. The Administration accepts members' suggestion and undertakes to amend the new Regulation 106 accordingly.

21. Members also note that a notice published by the Commissioner under the new Regulation 106 is subsidiary legislation subject to the negative vetting of LegCo. Members are assured by the Administration that if there is a need to amend the end date of the transitional period, arrangements will be made for the publication of the notice in the Gazette well before the end date so as to allow sufficient time for LegCo to scrutinize the subsidiary legislation.

Reversion to paper form under very exceptional circumstances
(*New subregulation (6) of Regulation 22*)

22. The Subcommittee notes that under the new subregulation (6) of Regulation 22, the Commissioner may, by notice published in the Gazette, specify that an application for a DCP may be submitted in paper form. Members note that the new provision is added to cater for the situation where the computer system for processing DCP breaks down for an extended period, and to allow the Government to declare a new type of DC without having to enhance the computer system in advance, thus maintaining confidentiality for the purpose of revenue protection. Members are assured by the Administration that the Commissioner will only exercise his power to provide an additional option for traders to submit applications for DCPs in paper form under these very exceptional circumstances. Members consider that the drafting of the new subregulation (6) should be amended to reflect this policy intent to make it clear that the Commissioner will only exercise his power where it is not practicable for an application to be submitted solely in electronic form. The Administration undertakes to amend the drafting of the new subregulation (6) accordingly.

23. To avoid delay and minimize the disruption to be caused to users under the very exceptional circumstances mentioned in paragraph 22 above, members suggest to the Administration that the drafting of the new subregulation (6) be amended to allow the notice made by the Commissioner under the subregulation to take effect before the notice is published in the Gazette, e.g. to provide that the notice made by the Commissioner under subregulation (6) shall be published in the Gazette within 14 days. The Administration undertakes to amend the drafting of the new subregulation (6) accordingly.

24. Members are also assured by the Administration that there is no question of the Commissioner abusing the power to revert to paper form for an indefinite period because the policy aim is to encourage electronic submission. The Administration considers it not necessary to provide an express power for the Commissioner to specify when the period for reversion to paper form would end because by virtue of section 46 of the Interpretation and General Clauses Ordinance (Cap. 1), the power conferred on the Commissioner under the new subregulation (6) is deemed to include related powers that would enable the Commissioner to bring to an end the use of the paper form as and when necessary.

Proposed amendments

25. The proposed amendments agreed by the Subcommittee and the Administration have been incorporated into the resolution in **Appendix II**.

Recommendations

26. The Subcommittee supports the resolution (**Appendix II**) to be moved by the Secretary for Commerce and Industry at the LegCo meeting on 9 January 2002 to amend the Amendment Regulation. The Secretary has already given the notice of motion on 2 January 2002.

27. The Subcommittee supports the two Commencement Notices mentioned in paragraphs 6 and 7 above.

Advice sought

28. Members are invited to support the recommendations of the Subcommittee in paragraph 26 and 27 above.

《2001年應課稅品(修訂)規例》及
兩份相關生效日期公告
小組委員會
Subcommittee on
Dutiable Commodities (Amendment) Regulation 2001 and
two related Commencement Notices

委員名單
Membership List

主席 Chairman	丁午壽議員, JP	Hon Kenneth TING Woo-shou, JP
委員 Members	朱幼麟議員, JP	Dr Hon David CHU Yu-lin, JP
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	余若薇議員, SC, JP	Hon Audrey EU Yuet-mee, SC, JP
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秘書 Clerk	陳美卿小姐	Miss Salumi CHAN
法律顧問 Legal Adviser	黃思敏女士	Ms Bernice WONG
日期 Date	2001年12月8日 8 December 2001	

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

DUTIABLE COMMODITIES (AMENDMENT)
REGULATION 2001

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on 2002.

RESOLVED that the Dutiable Commodities (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 248 of 2001 and laid on the table of the Legislative Council on 28 November 2001, be amended –

- (a) in section 3 –
- (i) by renumbering new regulation 22(8) as new regulation 22(9);
 - (ii) by repealing new regulation 22(6) and (7) and substituting –

“(6) Where the Commissioner considers that it is not practicable for any one or more applications for a permit to be submitted using a recognized electronic service he may determine –

- (a) that an application for a permit may either be submitted in paper form or be in the form of an electronic record that is submitted using a recognized electronic service; or
- (b) that the application or applications shall be submitted in paper form and shall not be in the form of an electronic record that is submitted using a recognized electronic service,

and subregulation (3) shall have effect subject to the determination.

(7) Notice of any determination made under subregulation (6) shall be published in the Gazette within 14 days of the determination having been made.

(8) For the purposes of an application for a permit that is submitted in paper form pursuant to the determination made under subregulation (6), subregulations (4) and (5) apply subject to the determination.”;

- (b) by repealing section 6 and substituting –

“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. 248 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. 248 of 2001) and ending at midnight on –

- (a) 20 July 2002; or
- (b) such later date as may be specified by the Commissioner by notice published in the Gazette.

(3) A notice published under subregulation (2)(b) has effect only if published before 20 July 2002.

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