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Paper for the House Committee meeting on 21 June 2002

**Report of the Bills Committee on
Import and Export (Electronic Transactions) Bill 2001**

Purpose

This paper reports on the deliberations of the Bills Committee on Import and Export (Electronic Transactions) Bill 2001.

Background

2. Under the Import and Export Ordinance (Cap. 60) (the Ordinance), carriers of cargo imported into and exported from Hong Kong are required to submit cargo manifests to the Customs and Excise Department for the purposes of cargo clearance and compilation of trade statistics. For carriers of prohibited articles and reserved commodities, they are required under the Ordinance, the Import and Export (General) Regulations and the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations to submit to the Director-General of Trade and Industry (the Director) an import or export licence or notification in respect of the cargo, together with a copy or extract of the relevant cargo manifest for trade control purposes.

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 international trading 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, trade declaration, certificate of origin, production notification, cargo manifest and dutiable commodities permit (DCP). In 1992, the Administration granted the Tradelink Electronic Commerce Ltd (Tadelink) an exclusive franchise to provide front-end services for the Government for seven years

note¹ EDI is a particular type of electronic service which involves computer-to-computer exchange of information in a standard format.

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 trade declaration in 1997, for certificate of origin and production notification in 1999, and for DCP in 2002.

The Bill

5. The Import and Export (Electronic Transactions) Bill 2001 aims to provide the legal framework for processing submission of cargo manifests by electronic means under the Ordinance, the Reserved Commodities Ordinance (Cap. 296), Industrial Training (Clothing Industry) Ordinance (Cap. 318) and Protection of Non-Government Certificates of Origin Ordinance (Cap. 324).

The Bills Committee

6. At the House Committee meeting on 12 October 2001, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Kenneth TING Woo-shou, the Bills Committee has held six meetings. The membership list of the Bills Committee is at **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from the industry. Five groups, including those representing the air freight, river vessel, sea transport and railway trades, have made oral and/or written representation to the Bills Committee. A list of these groups is at **Appendix II**.

Deliberations of the Bills Committee

Launching of EDI service for cargo manifests

7. The Bills Committee notes that the implementation of EDI service for cargo manifests (EMAN) will result in reduction in paperwork and a net deletion of 30 posts with annual staff savings of \$6.5 million within the Government.

Concerns of the industry

8. Members note that the industry generally supports the electronic collection, submission, distribution and sharing of data to improve efficiency, cost effectiveness and quality of cargo operations. However, concerns have been raised on the need for the industry to upgrade their computer systems to ensure compatibility with the system of Tradelink, the cost of which will inevitably have impact on the industry, particularly small and medium enterprises (SMEs) which have been struggling for survival amid the economic downturn. To this end, consideration should be given for Tradelink to interface with different computer systems developed by river trade companies. There

is also suggestion that it will be more effective for the industry to develop their own solution to meet the Government's specifications and requirements for manifest submission, thereby dispensing with the need for a specified service provider.

9. According to the Administration, direct submission of manifests to the Government is technically feasible, but it will require a revamping of the existing back-end systems in the Government which will incur substantial capital cost. In addition, staff establishment will have to be considerably augmented for customer interface and service support. Outsourcing the front-end EDI service to the private sector will contain the size of the civil service, enhance cost effectiveness and create business opportunities for the private sector. On technical aspect, Tradelink has undertaken to resolve problems of carriers having difficulty in connecting with its system. It will also provide technical support such as hotline service, seminars and training to carriers. Regarding the trade's concern about the additional cost incurred in procuring computer software and hardware for submitting manifests electronically, the Administration's view is that SME carriers may apply for the SME Business Installations and Equipment Loan Guarantee Scheme whereby the Government acts as the guarantor of individual SMEs to secure loans from the participating lending institutions of the Scheme to procure business installations and equipment. The maximum guarantee amount for each SME is \$1 million or 50% of the approved loan, whichever is the less.

10. On the need for EMAN when air mode cargo clearance has already been carried out by the Customs' Air Cargo Clearance System (ACCS), the Administration's explanation is that ACCS is operated for facilitating cargo clearance with the cargo operators. The cargo data submitted through ACCS do not satisfy the legal requirement of a cargo manifest. For instance, certain particulars such as licence and permit numbers are required in a manifest but not ACCS. Moreover, the cargo data submitted through ACCS has to be updated subsequently to prepare a manifest. To allay the trade's concern that EMAN will eventually replace ACCS, the Administration undertakes to include in the speech of the Secretary for Commerce and Industry at the resumption of the Second Reading debate of the Bill that EMAN will not replace the existing ACCS.

11. As regards the interface between Hong Kong and the Pearl River Delta Region in respect of submission of export manifests in electronic form, the Administration's explanation is that the Customs and Excise Department has liaised with the Guangdong Customs Sub-Administration and has been given to understand that the Guangzhou Customs is conducting trial runs on a new scheme under which carriers are required to submit manifests electronically in advance. To address the concern of the river trade companies, particularly in respect of double handling of cargo data to meet the requirements of both Hong Kong and individual Mainland authorities, a meeting among the service provider of electronic service for manifest submission under the new scheme of the Guangzhou Customs, Tradelink and representatives from the river trade association has been held. Consideration is being given for Tradelink to work out with the Mainland service provider with a view to putting in place a one-stop shop

for electronic submission of manifests. Notwithstanding, members hold the view that the Administration should take a proactive role and make use of all available channels to discuss with the decision-making authorities in the Mainland with a view to expediting the interface process.

12. On the level of fees, the Bills Committee note that Tradelink has proposed four fee packages as follows:

	Ocean / Air / Rail (HK\$/ manifest)			River (HK\$/ manifest)
	1 st – 200 th manifests in a month	201 st – 1000 th manifests in a month	1001 st or above manifests in a month	Regardless Of volume Of manifests
Standard	28.6	17.2	8.6	14.3
3-year contract	24.3	14.6	7.3	12.2
5-year contract	21.5	12.9	6.4	10.7
7-year contract	18.6	11.2	5.6	9.3

According to the industry, a franchise service provider is not cost effective and the proposed fees are too high given that cargo manifests submitted in paper form are free of charge at the moment. It is also unfair to impose levy on carriers who merely provide information required by the Government. They point out that countries such as the United States of America and major European countries do not have such a levy on carriers.

13. The Administration's explanation is that the Government has invested \$110 million in developing the EMAN back-end system without recovering the cost from the industry. While the EMAN service is not treated as a profit-making business, it is only fair for Tradelink to charge a service fee in order to recoup the considerable investment it has made in developing the front-end system and providing the package of services to carriers. Given that Tradelink's exclusive franchise will expire in end 2003, effort is being made to introduce competition for the provision of front-end EDI services by engaging two new service providers in addition to Tradelink. It is expected that market competition will generally increase efficiency, lower prices and improve service quality. Meanwhile, Tradelink is still discussing with carriers on the EMAN fee to be charged.

Transitional period

14. To allow the industry to adapt to the change, the Bill provides a transitional period during which both paper and electronic submission of cargo manifests are allowed. The end date of which is to be specified by the Commissioner of Customs and Excise (the Commissioner) by notice published in the Gazette and subject to negative vetting by the Legislative Council. The Bills Committee considers that the Administration should extend the transitional period to allow ample time for the

industry to adapt to the use of EMAN. According to the Administration, the duration of the transition will depend on the readiness of the industry. In deciding when to end the transitional period, the Commissioner will consider the take-up rate by users of the EMAN service and the smooth operation of the system. At the request of the Bills Committee, the Administration undertakes that the Legislature will be informed of the outcome of the review to be taken to ascertain when the transitional period should end.

Provision of manifests

15. The Bill proposes that the furnishing of a manifest on demand to a member of the Customs and Excise Service by a carrier on entering or leaving Hong Kong shall be in paper form or an electronic record form if the former so permits. This is to take account of the fact that the relevant parties may not have the necessary equipment to deliver and receive the manifest electronically in real time. In response to members' suggestion that an option should be given for carriers to submit manifests in either form, the Administration is prepared to move a Committee Stage amendment (CSA) to allow a manifest to be given in paper form, electronic record form or by using services provided by a specified body at the option of the carrier. There has also been concern about possible duplication in the submission of manifest if a carrier who, upon entering or leaving Hong Kong, has already submitted a manifest using services provided by a specified body is subsequently required to lodge an identical manifest to the Commissioner under the Import and Export (Registration) Regulations (the Regulation) at a later stage. According to the Administration, if a full and complete manifest is submitted by a carrier upon entering or leaving Hong Kong using services provided by a specified body, there is no point in asking for a second submission of an identical manifest some time later. To avoid unnecessary duplication, the Administration will amend the Regulation to make it clear that the submission of a full and complete manifest on demand using services provided by a specified body will constitute compliance with the requirement for delivery of manifests under the Regulation.

16. To reflect the current practice whereby carriers deliver a copy of every cargo manifest to the Director, the Bill proposes that a manifest shall be furnished to the Director using an electronic service provided by a specified body within 14 days after the arrival or departure of every vessel, aircraft or vehicle. Failure to do so without reasonable excuse constitutes an offence. Doubt has been cast on the propriety of imposing such a sanction which is at variance with the current practice whereby failure to deliver a copy of every cargo manifest to the Director for trade control purpose will not attract any penalty. In the light of members' concern, the Administration agrees to move a CSA to empower the Director to have access to information contained in a manifest lodged with the Commissioner, thereby dispensing with the need for creation of any new offence.

17. Concern has been raised about the circumstances, including breakdown of the back-end and front-end systems of the Government and Tradelink respectively or failure of computer system of EMAN users, where provision of information using services provided by a specified body is not practicable. According to the Administration, the EMAN system is designed to achieve high system availability with back-up at system component level. Notwithstanding, contingency measures are in place to keep EMAN service available to carriers when any of the system components supporting the EMAN service fails. Redundant equipment has been installed to serve as back up to the primary production system in case of system failure. Where the front-end system breaks down completely or partially for an extended period, reversion to the use of paper submission may be considered. Failure of back-end system will not affect front-end operation. In the event of system breakdown of EMAN users, they can use Tradelink's Electronic Trading Access Service centres for submission of manifest. To allay members' concern about the power of the Commissioner to revert to the paper mode, the Administration is prepared to move a CSA to stipulate that the exercise of the Commissioner's power is limited to cases where it is not practicable for information to be given using services provided by a specified body.

Submission of manifests in respect of road mode carriers

18. The Bills Committee understands from the Administration that the road mode of transport is not included in the EMAN system because the feasibility study on EMAN considers that the risk of implementing such an EDI system is too high due to the stringent time requirements of cargo clearance for this mode of transport and the huge traffic throughput involved. Moreover, most of the carriers in the road mode transport are small operators who are not ready to switch to electronic submission of manifest. However, as it remains the Government's intention to promote electronic exchange of information, a separate feasibility study on electronic submission of road mode manifests is underway. According to the Administration, the feasibility study is due to be completed in the second quarter of 2002. Pursuant to members' request, the Administration undertakes that if a decision is made to implement electronic submission of road mode manifests, it will first be made optional. Any decision to make electronic submission of road mode manifests mandatory will be subject to the scrutiny of the Legislative Council. To reflect such a policy intent, CSAs will be introduced to empower the Commissioner to, by notice published in the Gazette, specify that manifest information in relation to the road mode shall be given in paper form only. Such a notice shall come into force at the same time as the commencement of the Bill so that the road mode carriers will continue submitting manifests in paper form only. In the event that a decision is made to implement electronic system for road mode manifests, the notice will be revoked and the transitional provision allowing the information to be given either in paper form or by using services provided by a specified body during the transitional period will then apply.

Committee Stage amendments

19. A copy of the Committee Stage amendments to be moved by the Administration is at **Appendix III**. According to the Administration, the implementation of the accountability system will involve a reorganization of a number of policy bureaux, including the Commerce and Industry Bureau. It may therefore need to move a consequential CSA to reflect the new nomenclature of the Bureau Secretary after the relevant Resolution to effect the transfer of statutory functions has been approved at the Council meeting on 19 June 2002.

Recommendation

20. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 10 July 2002.

Advice sought

21. Members are requested to support the recommendation of the Bills Committee at paragraph 20 above.

Prepared by
Council Business Division 1
Legislative Council Secretariat
20 June 2002

Appendix I

Bills Committee on Import and Export (Electronic Transactions) Bill 2001

Membership list

Chairman Hon Kenneth TING Woo-shou, JP

Members Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai
Hon Miriam LAU Kin-yee, JP

(Total : 6 Members)

Clerk Miss Becky YU

Legal Adviser Miss Anita HO

Date 22 January 2002

Appendix II

A list of deputations which have made oral presentation to the Bills Committee

Tradelink Electronic Commerce Limited

Carrier Liaison Group

Guangdong and Hong Kong Feeder Association Limited

The Hong Kong Sea Transport Association Limited

Kowloon-Canton Railway Corporation

Appendix III

IMPORT AND EXPORT (ELECTRONIC TRANSACTIONS) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce, Industry and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
Clause 1(2)	By deleting “Commerce and Industry” and substituting “Commerce, Industry and Technology”.
Schedule 1, section 4(2)	By deleting proposed section 8(2A) and substituting – “(2A) The requirement under subsection (2)(b)(ii) is deemed to have been complied with if at the time of delivering the import licence under subsection (2)(b)(i) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.
Schedule 1, section 5(2)	By deleting proposed section 9(2A) and substituting – “(2A) The requirement under subsection (2)(b)(iii) is deemed to have been complied with if at the time of delivering the declaration under subsection (2)(b)(ii) the manifest has been lodged

with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

Schedule 1, section 6(2)

By deleting proposed section 11(2A) and substituting –

“(2A) The requirements under subsection (2)(a)(ii) and (b)(ii) are deemed to have been complied with if, at the time of informing the Director of the export licence number under subsection (2)(a)(i) or delivering the export licence under subsection (2)(b)(i), the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 12 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

Schedule 1, New

By adding –

“6A. Section added

The following is added –

**“11A. Director to have access to
manifests lodged with
Commissioner**

The Director shall have access to any information contained in a manifest of cargo that has been lodged under this Ordinance with the Commissioner or with an officer

appointed by the Commissioner.”.”.

Schedule 1, section 7(2)

By deleting proposed section 15(1B) and substituting –

“(1B) For the purpose of any requirement under subsection (1)(a) to furnish a member of the Customs and Excise Service with a manifest, the manifest may –

- (a) be given to the member of the Customs and Excise Service in paper form;
- (b) be given or sent to the member of the Customs and Excise Service in the form of an electronic record, but only if the manner and format in which the information is given or sent comply with any requirements specified under section 11(2) of the Electronic Transactions Ordinance (Cap. 553) in relation to this Ordinance; or
- (c) be sent to the member of the Customs and Excise Service using services provided by a specified body.

(1C) In this section, "manifest" () means a record prepared as a manifest and containing such of the particulars prescribed under section 17 as the member of the Customs and Excise Service considers sufficient for his purposes.”.

Schedule 1, section 8	By deleting the section.
Schedule 1, section 9	By deleting the section.
Schedule 1, section 12	By deleting proposed section 32A and substituting –

“32A. Provision of information where use of services provided by specified body is not practicable

(1) This section applies to any information that under a provision of this Ordinance (a “relevant provision”) is required to be given to another person by using services provided by a specified body.

(2) Where the Commissioner considers that –

(a) it is not practicable for any information to which this section applies to be given in the manner specified in subsection (1), he may determine that the information shall be given in paper form and shall not be given by using services provided by a specified body; or

(b) it is not practicable for any information to which this section applies to be given solely in the manner specified in subsection (1), he may determine that the information shall be given either in paper form or by using services

provided by a specified body, and where a determination has been made under this subsection, the relevant provision shall have effect subject to that determination.

(3) Notice of a determination made under subsection (2) shall be published in the Gazette within 14 days of the determination having been made.

(4) A determination made under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(5) A determination made under subsection (2) may make different provision in relation to different classes of persons or information.

32B. Provision of manifest information relating to cargo carried in a road vehicle

(1) This section applies to any information that is contained in the manifest of cargo carried in or on a vehicle other than a train and that under this Ordinance is required to be given to the Commissioner or the Director, or to an officer appointed by the Commissioner, by using services provided by a specified body.

(2) The Commissioner may, by notice

published in the Gazette, specify that any information to which this section applies shall be given in paper form and, where a notice published under this subsection has effect, the information shall, in accordance with the provisions of this Ordinance as read together with the notice, be given in paper form only.

(3) A notice published under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(4) A notice published under subsection (2) is not subsidiary legislation.”.

Schedule 1, section 13

By deleting proposed section 42(1) and substituting –

“(1) Any provision of section 8, 9 or 11 requiring that information given under those sections be given by using services provided by a specified body shall, in respect of the period specified in subsection (2), but subject to any determination made under section 32A(2)(a) or notice published under section 32B(2), be construed as requiring that the information be given either in paper form or by using services provided by a specified body.”.

Schedule 2, section 1

In the amendment to section 2(1) of the Ordinance --

(a) in the definition of “specified electronic services agent”, by deleting “section 2A(2)” and

substituting “Schedule 2”;

- (b) in the definition of “specified electronic services provider”, by deleting “section 2A(1)” and substituting “Schedule 1”;
- (c) by adding –

““manifest” () means a record prepared as a manifest containing the particulars prescribed under section 17 of the Import and Export Ordinance (Cap. 60) but does not include any record, containing the same or similar particulars, which is not specifically prepared as a manifest;”.

Schedule 2, New

By adding –

“1A. Interpretation

Section 2 is amended by adding –

“(3) The Secretary for Commerce, Industry and Technology may, by notice published in the Gazette, amend Schedule 1 or 2; and a notice under this subsection is subsidiary legislation.””.

Schedule 2, section 2

By deleting proposed section 2A.

Schedule 2, section 6

By deleting proposed section 14 and substituting –

“14. Provision of information where use of recognized electronic service is not practicable

(1) This section applies to any information that under a provision of this Ordinance (a “relevant provision”) is required to be given to another person using a recognized electronic

service.

(2) Where the Commissioner considers that –

- (a) it is not practicable for any information to which this section applies to be given in the manner specified in subsection (1), he may determine that the information shall be given in paper form and shall not be given using a recognized electronic service; or
- (b) it is not practicable for any information to which this section applies to be given solely in the manner specified in subsection (1), he may determine that the information shall be given either in paper form or using a recognized electronic service,

and where a determination has been made under this subsection, the relevant provision shall have effect subject to that determination.

(3) Notice of a determination made under subsection (2) shall be published in the Gazette within 14 days of the determination having been made.

(4) A determination made under subsection (2) may require that the information to be given in paper form be certified as correct or

that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(5) A determination made under subsection (2) may make different provision in relation to different classes of persons or information.

15. Provision of manifest information relating to cargo carried in a road vehicle

(1) This section applies to any information that is contained in the manifest of cargo carried in or on a vehicle other than a train and that under this Ordinance is required to be given to the Director using a recognized electronic service.

(2) The Commissioner may, by notice published in the Gazette, specify that any information to which this section applies shall be given in paper form and, where a notice published under this subsection has effect, the information shall, in accordance with the provisions of this Ordinance as read together with the notice, be given in paper form only.

(3) A notice published under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(4) A notice published under subsection
(2) is not subsidiary legislation.”.

Schedule 2, New

By adding –

“7. Schedules added

The following is added –

“SCHEDULE 1 [s. 2]

SPECIFIED ELECTRONIC
SERVICES PROVIDERS

1. Tradelink Electronic Commerce Limited

SCHEDULE 2 [s. 2]

SPECIFIED ELECTRONIC
SERVICES AGENTS

1. Tradelink Electronic Commerce Limited”.

Schedule 3, section 2

In proposed section 30A(1)(b) and (2)(b), by adding “、申
報” after “陳述” wherever it appears.