

立法會
Legislative Council

LC Paper No. LS4/01-02

**Paper for the House Committee Meeting
of the Legislative Council
on 12 October 2001**

**Legal Service Division Further Report on
Import and Export (Electronic Transactions) Bill 2001**

At the meeting of the House Committee on 15 June 2001, Members agreed to defer the decision on whether to set up a bills committee on the Bill pending a further report from this Division. We have since sought clarifications from the Administration (see Annex). The main issues that we have raised are summarized as follows -

On the proposed scheme to use electronic service for submitting manifests

2. Currently, an owner of a vessel, aircraft or vehicle who imports or exports any specified article (such as textiles, rice, drugs, pesticides, strategic commodities) into or out of Hong Kong is required to deliver a relevant import/export licence or notification together with a copy or extract of a manifest to the Director-General of Trade and Industry (the Director) at the Trade and Industry Department within 14 days of each import/export of these articles.

3. In this Bill, the Administration proposed that the owner should use electronic data interchange (EDI) system via Tradelink to submit a manifest to the Director while at the same time, he still has to go to the Trade and Industry Department to deliver the relevant import/export licence or notification (except for those who have to submit restrained textile export licences). The Administration was of the view that inconvenience caused to the owners due to this arrangement is limited.

4. In submitting a manifest, an owner will be charged a fee by Tradelink on a per voyage basis. The fee level has not yet been determined. Tradelink will consult the industry shortly. As for the computer system for processing submission of manifests (EMAN), there are a number of technical issues that need to be resolved. Joint testing with owners on using EMAN will be held soon.

On the legal and drafting aspects of the Bill

5. According to paragraph 10 of the LegCo Brief, the EMAN will cover manifests submitted by owners of all modes of transport except the road mode because the risk is too high due to the stringent time limit requirements of cargo clearance and the huge traffic throughput involved for this mode of transport. Despite the policy objective as stated in the Brief, we note that according to the proposed new section 19A, owners of vehicles will have to submit manifests in EDI to the Director. Any person

who fails to submit a manifest to the Director commits an offence. (This is an offence newly created in this Bill.) It is by virtue of the new section 32A that the Commissioner of Customs and Excise can exempt the road mode of transport from complying with new section 19A. He can issue a notice of exemption which is not subsidiary legislation. If EDI submission of road mode manifests is to be implemented in future, the Administration can then just issue another notice not granting any exemption.

6. We have raised queries with the Administration on the proposed provisions. We are of the view that the Legislative Council should be able to examine the policy issue since any of these notices will be of great practical implications. The Administration has now no objection to making these notices subsidiary legislation and Committee Stage amendments (CSAs) will be proposed.

7. The Administration also agrees to propose a CSA to the Chinese term of "declaration" by adding "申報或" before "聲明" in relevant sections.

8. As regards whether the proposed amendments to sections 15 and 19 of the Ordinance will be in conflict with the Electronic Transactions (Exclusion) Order under the Electronic Transactions Ordinance (Cap. 553), the Administration agreed that they will arrange with the Information Technology and Broadcasting Bureau to synchronize the repeal of the relevant provisions in the Exclusion Order with the commencement date of the current Bill after its passage at LegCo.

9. As general observation, we note that different requirements are prescribed for submitting the six trade-related documents. Whilst the law has not mandated the use of EDI services for Production Notification (PN), the Administration has issued a Notice to Exporters (Certificate of Origin Circular No. 18/99) in December 1999 stating that the Trade Department would not accept any PN on paper with effect from 28 February 2000. The Administration stated that it is now considering whether this decision is contradictory with the law.

10. With respect to the submission of Trade Declaration (TD), we have pointed out to the Administration that the law does not allow paper TD even if the computer system breaks down. The Administration stated that it will consider making amendments in a separate exercise. In the meantime, in case system breakdown occurs and causes a late lodgment of TD, the Commissioner may waive the payment of any penalty which results from the late lodgment of TD.

11. Members may wish to set up a Bills Committee to consider in detail the policy aspects of this Bill.

Encl

Prepared by
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Legislative Council Secretariat
8 October 2001
a:/LS/B/56/00-01

CIB 89/14/5
LS/B/43/00-01

2877 5029

Secretary for Commerce and Industry
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28 August 2001

BY FAX & BY POST

Fax No. : 2869 4420

Total no. of page(s) : (4)

Dear Mr. Chan,

Import and Export (Electronic Transactions) Bill 2001

I am scrutinizing the above Bill with a view to advising Members on its legal and drafting aspects. I would be grateful if you could clarify the following -

Part I - on various Clauses

Sections 4, 5, 6 and 7 of Schedule 1 - delivery of manifest by electronic service via a specified body to the Director but delivery of import/export licence in person to the Director

2. Bu amending sections 8, 9, 11 and 15 of the Import and Export Ordinance (Cap. 60)(the Ordinance), procedurally an owner of a vessel, aircraft or vehicle who imports or exports any specified article into or out of Hong Kong will be required to -

- (a) deliver to the Commission of Customs and Excise (the Commissioner) the manifest in paper form on demand when the cargo enters or leaves Hong Kong; and
- (b) deliver to the Director-General of Trade and Industry (the Director) the manifest in electronic data interchange (EDI) service via a specified body (Tradelink) and also an import/export licence to the Director in person within 14 days after the import or export of the article.

3. It seems that if the law is not to be amended, the carriers can simply submit the import/export licence together with the manifest in paper form in person to the Director and they are not required to use any EDI service. How many carriers would be affected by this new procedure as mentioned in paragraph 2(b) above and have they been consulted on this arrangement? Will there be any additional cost incurred to the carriers if they are compelled to use EDI service to submit a copy or extract of a manifest? Has the specified body consulted the industry on the proposed fees and charges (if any)? (Similar issues were raised during the Bills Committee on Dutiable Commodities (Amendment) Bill and Members may also be interested in this aspect of the Bill).

Section 7 of Schedule 1 - conflict with the Electronic Transactions (Exclusion) Order under the Electronic Transactions Ordinance (Cap. 553)

4. Section 15(1) of the Ordinance and Regulation 11(1) and 12(1) of the Import and Export (Registration) Regulations are provisions excluded from the application of section 5 of the Electronic Transactions Ordinance (see Electronic Transactions (Exclusion) Order). This means that the submission of manifests has to be in writing and not by electronic means. However, section 7 of Schedule 1 amends section 15(1) to provide that a manifest may be furnished in the form of electronic record. Will this amendment be in conflict with that Exclusion Order? Should consequential amendment be made to that Exclusion Order in this Bill?

Section 8 of Schedule 1 - amending the word "written" to "in paper form"

5. In new section 19(1), it is noted that the word "written" is amended to "in paper form". Does it mean that the application of section 5 of the Electronic Transactions Ordinance is to be avoided? Is there any need to amend the Electronic Transactions (Exclusion) Order? Why is that an owner of a vessel required to furnish a list showing port of call only in paper form to the Commission? An alternative is provided in new section 15(1B)(b) (as amended by section 7 Schedule 1) but not in this section. Why is there a difference?

Sections 9 and 12 of Schedule 1

6. The proposed new section 19A provides that within 14 days after the arrival in or departure from Hong Kong of any vessel, aircraft or vehicle, the owner of the vessel, aircraft or vehicle shall furnish the Director with the manifest of the cargo imported or exported in or on the vessel, aircraft or vehicle using services provided by a specified body.

7. Paragraph 10 of the LegCo Brief states that an EDI system for processing submission of cargo manifests (EMAN) will be operational before the end of 2001. "It will cover manifests submitted by carriers of all modes of transport except the road mode. The road mode of transport is not included because the feasibility study on EMAN considers that the risk of implementing such an EDI system too high due to the stringent time limit requirements of cargo clearance for this mode of transport, and the high traffic throughput involved".

8. If it is considered too high a risk to implement an EDI system in respect of the road mode of transport, is there any risk to implement such system in respect of other modes of transport? Have all tests on the EMAN been found satisfactory by all potential users and that they supported EMAN as mentioned in paragraph 48 of the LegCo Brief?

9. Why is an owner of a vehicle included in the new section 19A which is contrary to the policy intent as explained in the LegCo Brief? I note that the new section 32A as amended by section 12 of Schedule I confers on the Commissioner a power of exemption. By using a Notice, the Commissioner can then exempt the road mode of transport from complying with the new section 19A (as explained in paragraph 22 of the LegCo Brief). But should the Director be given the power of exemption and not just the Commissioner since it is the Director who requires manifests by EDI and not the Commissioner?

10. By just reading the amendment in new section 19A, one will assume that an owner of a vehicle has to furnish a cargo manifest by EDI to the Director. Even by reading together with the new section 32A, one is not clear about the legal position of an owner of a vehicle. One will have to look at a notice (if there is one) some day in future which is not subsidiary legislation to learn that an owner of a vehicle is or is not to be exempted under the new section 19A. From the drafting point of view, would the law be clearer by omitting the reference of "the vehicle" in this Bill but adding the reference of "the vehicle" in future when it is considered appropriate?

11. How many manifests were received by the Administration from the road mode of transport in the past year? If the Administration considers that there is high risk in the use of EDI for the road mode transport, why is that a notice under new section 32A(1) or (2) which is a notice to exempt or to include the road mode of transport not subsidiary legislation? Should the Legislative Council be able to examine the policy issue since any such change will be of great implications? The same question applies to section 6 of Schedule 2. Why are notices under new section 14(5) not subsidiary legislation?

Section 2 of Schedule 3 - on the Chinese version

12. In the proposed section 30A)(1)(b) and (2)(b), should the Chinese term of "declaration" be "聲明" or should it be "申請書"?

Part II - General Observation

13. Paragraphs 3 and 4 of the LegCo Brief mention that EDI services for six of the trade-related documents to the Director have been launched or are soon to be launched. It is noted that for restrained textile export licence and trade declaration, they are to be lodged using services provided by a specified body. No alternative or exemption is provided. For certificate of origin and production notification (PN), they can be submitted either in paper form or using services by a specified body (but see paragraphs 14 and 15 below). For dutiable commodities permit, it is for the Commissioner to specify the form or requirement for giving information. For manifests, they shall be submitted to the Commissioner in paper form but to the Director by using EDI service provided by a specified body. Further, even though a provision of an Ordinance requires

that any information to be given shall be given using services provided by a specified body, the Commissioner may by notice specify that the information may be given in paper form. Legislative amendments were made to the relevant Ordinances in the recent years. Why are different requirements prescribed? If the computer system breaks down, does it mean that trade declaration and restrained textile export licence on paper cannot be submitted?

14. For PN, it is noted that the Director issued a Notice to Exporters (Certificate of Origin Circular No. 18/99) in December 1999 stating that the Trade Department decided to introduce full EDI for PN with effect from 28 February 2000. "The Department will close all the receipt and issue counters for PN. All PN submitted on paper will no longer be accepted." Apparently, this Notice is contradictory with section 6AB(2)(b) of the Ordinance which provides that a PN "shall be lodged with the Director on paper or using services provided by a specified body".

15. The above point was discussed in the Bills Committee on Dutiable Commodities (Amendment) Bill 2001. Members urged the Administration to review the relevant provisions and the Administration undertook to look into the matter. Has any decision been made thereon?

16. I shall be grateful if you can let me have a reply in both Chinese and English within two weeks from the date of this letter (*i.e. on or before 10 September 2001*) so that I can prepare a report to the House Committee.

Yours sincerely,

Anita HO
Assistant Legal Adviser

c.c. Department of Justice (Attn: Mr Jonothan ABBOTT, SALD and
Miss Frances HUI, SGC)

LA

Our ref. : CIB 89/18/1
Your ref. : LS/B/43/00-01

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15 September 2001

Legislative Council Secretariat
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Legislative Council Building
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Hong Kong

(Attn: Miss Anita Ho)

Dear Miss Ho,

Import and Export (Electronic Transactions) Bill 2001

Thank you for your letter dated 28 August 2001.

2. Our reply to the points raised in your letter, *seriatim*, is set out below.

Sections 4, 5, 6 and 7 of Schedule 1

3. You asked whether carriers had been consulted on the arrangement of submitting to TID the licence in paper form and a copy or extract of a manifest electronically under the proposed revised sections 8, 9 and 11 of the Import and Export Ordinance (Cap 60), and how many carriers would be affected. Carriers have been fully informed of this arrangement in early consultation before the development of the electronic data interchange (EDI) system for processing manifests (EMAN), and the arrangement is acceptable to them. In addition to licences, carriers are also required to submit textiles notifications to TID under regulations 6A, 6B and 6D of the Import and Export (General) Regulations (Cap 60A). Government is now actively considering the implementation of EDI submission of notifications. As regards the proposed revised sections 8, 9 and 11 of Cap 60, since EDI submission has been introduced for restrained textile export licence (RTEL), carriers can include the RTEL number in the EDI manifest submitted to TID and do not have to deliver a paper copy of the RTEL to TID. Since textiles and clothing form a significant portion of Hong Kong's exports and imports that require a licence or notification, notifications and RTELS together already account for over 80% of all licences/notifications required to be delivered by carriers to TID. Other licences, such as those required for drugs and strategic commodities, make up less than 20% of the total number of licences. As such, the inconvenience to the carriers as observed by you is limited. As regards the number of carriers affected, we are unable to provide the information since TID does not keep statistics on the number of carriers who have delivered licences to it.

4. You asked whether any additional cost would be incurred to carriers in using EDI service to submit a manifest, and whether they had been consulted on the proposed fees and charges. Carriers will be charged a fee by Tradelink, the present specified body for submission of manifest by EDI to the Government on a per voyage basis. Tradelink will propose the fee level shortly for consultation with the industry.

Section 7 of Schedule 1

5. You asked whether the amendment to be made to section 15(1) of the Import and Export Ordinance (Cap 60) would be in conflict with the Electronic Transactions (Exclusion) Order in respect of that provision, and whether consequential amendment should be made to that Exclusion Order in the current Bill. The amendments to be made to section 15(1) of Cap 60 and regulations 11(1) and 12(1) of the Import and Export (Registration) Regulations (Cap 60E) will render the relevant exemption in the Electronic Transactions (Exclusion) Order superfluous, but they would not be “in conflict” with the Order since section 5 of the ETO is always to be read subject to a specific provision or necessary implication to the contrary. We shall ask ITBB to repeal the relevant exemption in the Exclusion Order for the sake of tidiness.

6. Our legal advice regarding not making the repeal in the current Bill is that the general practice is not to include consequential amendments to subsidiary legislation in a Bill unless the amendment is necessary to avoid a conflict that would arise on enactment of the Bill. In the present case, there is no conflict as explained in paragraph 5 above.

Section 8 of Schedule 1

7. You asked whether there was any need to repeal the Electronic Transactions (Exclusion) Order in respect of section 19(1) of Cap 60, and why the alternative of submission in electronic form was not provided in the proposed revised section 19(1) while such provision was made in the proposed revised section 15. Our intention of amending section 19(1) is to make it clear that the owner of a vessel is required to furnish a list showing ports of call in paper form only to the Commissioner of Customs and Excise (“the Commissioner”). We will ask ITBB to repeal the relevant exemption in the Exclusion Order rather than making consequential amendments in the current Bill for the same reason given in paragraph 6 above.

8. The reason for allowing submission of such list in paper form only is that in practice, carriers never submit the list to C&ED in advance. The list is always submitted when the C&ED officer boards the vessel. It is therefore necessary to stipulate that the list be submitted in paper form, as the carrier and the C&ED officer may not have the necessary equipment to deliver and receive the list electronically in real time. On the other hand, the proposed revised section 15 of Cap 60 provides the alternative of manifest submission in electronic form if agreed by both the C&ED officer and the carrier. This alternative is provided because some ocean carriers follow the practice of furnishing the manifest to C&ED office before the C&ED officer boards the vessel and requests for the manifest. In such cases, the carrier and C&ED would have the necessary equipment to deliver and receive the electronic manifest.

Sections 9 and 12 of Schedule 1

9. In view of the risk to implement the EDI system in respect of road mode manifests, you asked whether there would be any risk to implement such system in respect of manifests in other modes of transport. The feasibility study for EMAN considered that the risk factors in EDI submission of road mode manifests were "stringent time limit requirement for clearance" and "huge traffic throughput". C&ED currently pledges to clear one set of road manifests within 60 seconds after its submission by the driver at Land Boundary Control Points. Only with this speed can C&ED manage to clear the huge number of road manifests submitted. If road manifests are processed by electronic service provided by a specified body, any computer failure would render C&ED not being able to meet its pledge. The consequence could be very serious considering the hold-up of traffic by huge number of vehicles at the boundary. Risk factors of stringent time limit requirement for clearance and huge traffic throughput are unique to road mode transport. There is no such risk in implementing EMAN in respect of other modes of transport.

10. You asked whether all tests on the EMAN had been found satisfactory by all potential users and whether they supported EMAN. Government and Tradelink have been holding consultation sessions for rail, air, river and ocean carriers on the implementation of EMAN. Carriers support the implementation, but there are a number of technical issues that need to be solved. Government and Tradelink are now working closely with the industry to solve these issues. Joint testing with carriers on using EMAN will be held soon, and we shall make sure that all technical issues are solved before EMAN service is launched.

11. You asked why an owner of a vehicle was included in the proposed section 19A of Cap 60 and whether it should be omitted. In view of recent advancements in information and communication technology, a feasibility study on using EDI to submit road mode manifests is being conducted. An owner of a vehicle is included in the proposed section 19A so that EDI submission of road mode manifests can be covered under this section when it is implemented in future.

12. Omitting reference to "vehicle" in the proposed section 19A would relieve road transport of any obligation to furnish a manifest under that section altogether. This would go beyond exemption under proposed section 32A, which only allows an exemption in respect of the "mode of submission" of the manifest, and not in respect of the underlying "obligation to submit a manifest". Thus the reference of "the vehicle" cannot be omitted from the proposed section 19A.

13. You asked why only the Commissioner but not the Director General of Trade and Industry ("the Director") as well was given the power of exempting the requirement to submit manifest using services provided by a specified body. Carriers are required by the Bill and the amendment Regulations to use service provided by a specified body to submit the manifest to the Commissioner under the proposed revised regulations 11 and 12 of Cap 60E, and to the Director under the proposed section 19A of Cap 60 (and also to the Director under the proposed revised sections 8, 9 and 11 of Cap 60 or proposed revised regulations 6A, 6B and 6D of Cap 60A for prohibited

articles, and proposed revised regulations 5, 6 or 8 of Cap 296A for reserved commodities). That is to say, both the Commissioner and the Director will require the submission of manifest by EDI. Under the EDI system, a manifest submitted will be sent to C&ED and TID simultaneously; the decision on exemption and transitional arrangements will therefore be made by the Commissioner and the Director in consultation with each other. Nevertheless, for the sake of tidiness, the Commissioner is proposed to be the only authority for deciding on the exemption and transitional arrangements in the Bill and the amendment Regulations.

14. You asked about the number of manifests received by the Administration from the road mode of transport in the past year. The number is 5,569,000 during the period April 2000 to March 2001.

15. You asked why the notices under the proposed section 32A(1) or (2) of Cap 60 as amended by section 12 of Schedule 1, and the notices under the proposed section 14(1) or (2) of the Reserved Commodities Ordinance (Cap 296) as amended by section 6 of Schedule 2 were not subsidiary legislation. These notices aim to provide exemptions from the mandatory submission of manifest in electronic form for road mode transport or in case of other modes when the EMAN system breaks down partially or completely for an extended period. We have no objection to making these notices subsidiary legislation.

16. You may wish to note that for the removal of exemption for road mode, the feasibility study on implementing electronic submission of road mode manifests is being conducted as mentioned in paragraph 11 above. If such implementation is found feasible, we shall conduct thorough consultation to ensure that the system is acceptable to road mode carriers before it is implemented.

Section 2 of Schedule 3

17. You asked whether the Chinese term of “declaration” in the proposed revised section 30A(1)(b) and (2)(b) should be “聲明” or “申報書”. The word “declaration”, according to its ordinary dictionary meaning, means a formal, emphatic or deliberate statement or announcement. In most cases, it is rendered as “聲明書” when referring to a document, and the statement made therein would be referred to as “聲明”. We therefore consider it is appropriate to render “declaration” as “聲明” in the proposed revised section 30A(1)(b) and (2)(b). However, given that “declaration” is also rendered as “申報書” in some of the existing provisions in Cap 318, the inclusion of “申報” in the Chinese term of “declaration” in the proposed revised section 30A(1)(b) and (2)(b) would serve to achieve consistency within the Ordinance. We would therefore like to add “、申報或” before “聲明” in that section.

General Observation

18. You asked why different requirements were prescribed for submission of the various documents. The reason is to cater for the specific requirements of handling each document.

19. The law has not mandated the use of services provided by a specified body for RTEL, CO and PN. Nevertheless, RTEL and CO are both covered by the definition of “licence” in Cap 60, and our legal advice confirmed that the Director is empowered to determine the form and requirements of RTEL and CO, including the requirement of application through EDI. For PN, TID is still looking into whether the decision to introduce full EDI for PN stated in the Notice to Exporters (Certificate of Origin Circular No. 18/99) is contradictory with the law. If legislative amendments are considered necessary to clarify the situation, amendments would be proposed at an appropriate time. For the above three documents, full migration to EDI service has been successfully implemented. Nonetheless, in the case of emergency, such as prolonged breakdown of the computer system, TID is prepared to accept and process paper applications, which the law already caters for.

20. As regards TDEC, the current legislation does not allow paper TDEC even if the computer system breaks down. To deal with this issue, we will examine the legislation and consider making amendments in a separate exercise to provide for exemption from the requirement to lodge TDECs using services provided by a specified body. In the meantime, in case system breakdown occurs and causes a late lodgement of TDEC, by regulation 7(4) of Cap 60E the Commissioner may waive the payment of any penalty which results from the late lodgement of TDEC.

21. For dutiable commodities permit, the application for a permit shall be submitted using a recognized electronic service, but the Commissioner has the power to revert to the paper mode of processing if necessary. This power to revert to the paper mode is to deal with emergency situations, such as when the computer system breaks down for an extended period. It will also allow the Government to declare a new type of dutiable commodity without having to enhance the EDI computer system in advance, thus maintaining confidentiality for the purpose of revenue protection.

22. For cargo manifests, the manifest is submitted to C&ED officers under the proposed revised section 15 of Cap 60 in paper form except if the C&ED officer and the carrier both agree that it be submitted in electronic form. This is to overcome the problem that the carrier and the C&ED officer may not have the necessary equipment to deliver and receive the manifest electronically in real time. Under the proposed section 32A of Cap 60, the Commissioner is given the power to allow the paper mode as an alternative, and to revert to the paper mode only respectively. As explained in paragraph 15 above, this will cater for the contingency where the EMAN breaks down partially or completely for an extended period, and will also allow the Commissioner to exempt road mode of transport from the mandatory use of services provided by a specified body in submitting manifests.

23. The Chinese translation of this letter will follow shortly.

Yours sincerely,

(Laura Tsoi)

for Secretary
for Commerce and Industry

c.c.

D of J (Attn: Mr Jonothan Abbott, Miss Frances Hui, Mr M Y Cheung)
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CIB 89/14/5
LS/B/43/00-01

2877 5029

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21 September 2001

BY FAX & BY POST
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Total no. of page(s) : (3)

Dear Miss Tsoi,

Import and Export (Electronic Transactions) Bill 2001

I refer to your letter of 15 September 2001 and would like to seek your further clarifications as follows -

Sections 4, 5, 6 and 7 of Schedule 1

2. In your paragraph 3, you stated that "(S)ince textiles and clothing form a significant portion of Hong Kong's exports and imports that require a licence or notification, notifications and RTEs together already account for over 80% of all licences/notifications required to be delivered by carriers to the Trade and Industry Department (TID). Other licences, such as those required for drugs and strategic commodities, make up less than 20% of the total number of licences. As such, the inconvenience to the carriers as observed by you is limited."

3. First of all, I would like to state that I have never mentioned the word "inconvenience" in my letter.

4. Secondly, is it that every time a carrier (an owner of a vessel, aircraft or vehicle) imports or exports textiles, rice, pesticides, pharmaceutical products, specified substances under the Ozone Layer Protection Ordinance (Cap. 403) and strategic commodities into or out of Hong Kong, he has to obtain a relevant licence from the importer/exporter? Is he then required to deliver the licence together with a manifest to the Director within 14 days of each import or export? The proposed amendments in this Bill mandate the carrier to submit the manifest by the electronic data interchange system (EDI) via Tradelink while at the same time, he is still required to go to TID to deliver the import/export licence. For import and

export of all textiles, a carrier has to submit to TID a notification or a licence in paper form. (The proposed amendments to Import and Export (General) (Amendment) Regulation 2001 at Annex B to the LegCo Brief refers.) For export of certain textiles, only those who have restrained textile export licences (RTEs) are exempted from submitting the relevant licences in paper form. How many import/export licences have TID issued? Of all the licences issued, how many are RTEs? Does RTE account for over 80% of all licences required to be delivered by carriers to TID?

5. Thirdly, you mentioned that TID does not keep statistics on the number of carriers who have delivered licences to it. In paragraph 8 of the LegCo Brief, you stated that the Regulations require carriers to submit to the Director an import or export licence or notification together with a manifest so that "TID crosschecks the manifest and licence/notification for trade control purposes". Please clarify how you can crosscheck if you do not keep statistics on the number of carriers who have delivered licence together with a manifest to it.

Sections 7 and 8 of Schedule 1

6. You admitted that the proposed amendment in this Bill will render the relevant exemption in the Electronic Transactions (Exclusion) Order superfluous and will ask ITBB to repeal the relevant exemption. If this Bill is enacted and ITBB does not repeal the relevant exemption, there will be two conflicting provisions in our statute for an indefinite time. Which provision will prevail? When will ITBB repeal the relevant exemption?

Sections 9 and 12 of Schedule 1

7. You stated in paragraph 9 of your letter that if road manifests are processed by electronic service, any computer failure would render C & E D not being able to meet its pledge. The consequence could be very serious considering the hold-up of traffic by huge number of vehicles at the boundary. There is no risk in implementing EMAN in respect of other modes of transport. Does it mean that there will not be any computer failure for rail, air, river and ocean transport or that there will not be any hold-up of traffic?

8. Whilst in paragraph 9 you stated that there is high risk for using EDI to submit road mode manifests, in paragraph 11 you stated that "an owner of a vehicle is included in the proposed section 19A so that EDI submission of road mode manifests can be covered under this section when it is implemented in future". Is there any time frame for implementing EDI submission of road mode manifests? If the Administration wants to implement EDI submission of road mode manifests, the Administration need only issue a notice to the vehicle owners. Such notice is not even a subsidiary legislation. Now "you have no objection to making these notices subsidiary legislation", will Committee Stage amendments be proposed?

Section 2 of Schedule 3

9. Will Committee Stage amendments be proposed?

10. I shall be grateful if you can let me have your clarifications *on or before 25 September 2001* so that I can include your reply in my further report to the House Committee.

Yours sincerely,

Anita HO
Assistant Legal Adviser

c.c. Department of Justice (Attn: Mr Jonothan ABBOTT, SALD and
Miss Frances HUI, SGC)

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Our ref. : CIB 89/18/1 (IX) 01

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26 September 2001

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(Attn : Miss Anita Ho)

Dear Ms Ho,

Import and Export (Electronic Transactions) Bill 2001

Thank you for your letter of 21 September 2001. Our responses to your questions are set out below.

Sections 4,5,6, and 7 of Schedule 1

2. You asked whether a carrier has to obtain a relevant licence from the importer/exporter every time he imports or exports textiles, rice, pesticides, pharmaceutical products, specified substances under the Ozone Layer Protection Ordinance (Cap 403) and strategic commodities into or out of Hong Kong; and whether a carrier is required to deliver the licence together with a manifest to the Director within 14 days of each import or export.

3. Except for textile articles, carriers must obtain licences on a consignment basis from the importer/exporter in respect of the goods mentioned in your letter. For textile articles, licensing requirement may be exempted for the export of certain types of textile articles and the import of all textile articles. Where exemption of licensing requirement is applicable, the carrier is required to collect an import/export notification instead of a licence from the importer/exporter and then deliver it to TID.

4. Regarding your second question, in the case of import, a carrier is required to collect the import licence/notification from the importer before he releases the goods

to the consignee. The carrier is then required to deliver the import licence/notification and the manifest to TID, within 7 days after collection in the case of licence and within 14 days after importation in the case of notification. Sections 8 and 9 of Cap 60, regulations 5, 6 and 7A of Cap 296A and regulation 6A of Cap 60A are relevant. In the case of export, a carrier is required to collect the export licence/notification from the exporter before the goods are exported. The carrier is then required to deliver the export licence/notification and the manifest to TID within 14 days after exportation. Sections 10 and 11 of Cap 60, regulations 7 and 8 of Cap 296A and regulation 6B of Cap 60A are relevant.

5. You asked how many import/export licences TID has issued and the number of RTEs among such licences. As explained above, for textile products, carriers are required to deliver licences or notifications depending on whether exemption of licensing requirements is applicable. It will not be meaningful to single out the figures for licences without reference to the notifications as well. For the year 2000, the total number of all licences/notifications received is 6,937,887, among which 5,670,115 are notifications and 536,472 are RTEs. For the remaining licences, they are related to products such as pesticides, pharmaceutical products and medicines, frozen and chilled meat and poultry, strategic commodities, rice, and ozone depleting substances etc. These licences involve processing by different departments and EDI service for their processing is not available now. Government is studying the feasibility of an integrated e-Trade System by which a single window is provided for the trade to communicate with the Government electronically in the import, export and transshipment of cargoes as well as in the clearance of port formalities. This system, if implemented, will further enhance the use of electronic service in the processing of trade documentation and hopefully will address the issue of the remaining licences mentioned above.

6. You asked how TID could cross-check the manifest and licence/notification for trade control purposes if TID does not keep statistics on the number of carriers who have delivered licences together with a manifest to it. First of all, unless the carriers refrain themselves from importing or exporting goods requiring licences, all carriers have to deliver licence/notification obtained to TID from time to time.

7. It is not necessary for TID to know the exact number of carriers who have delivered licences to TID. The cross-checking of licence/notifications and manifest focuses on the consignment particulars - product description and quantity, and not on the carrier. TID would go over the manifest to check that consignments requiring licences have been covered by licences/notifications, and that the particulars of shipment are as declared on the licences/notifications. For shipment identified to be not covered by licence/notification or when the particulars on the manifest do not tally with the licence/notification, TID will follow up with the respective carrier and /or trader involved.

Sections 7 and 8 of Schedule 1

8. You were of the view that if the subject Bill was enacted and ITBB did not

repeal the relevant exemption, there would be two conflicting provisions in our statute for an indefinite time. You asked which provision would prevail and when ITBB would repeal the relevant exemption. For the reason given in paragraph 5 of my letter of 15 September, there will be no conflict between the Electronic Transactions (Exclusion) Order and the proposed amendments to the Import and Export Ordinance (Cap 60) and the Import and Export (Registration) Regulations (Cap 60E). Having said the above, we will arrange with ITBB to synchronize the repeal of the relevant provisions in the Exclusion Order with the commencement date of the current Bill after its passage at LegCo.

Sections 9 and 12 of Schedule 1

9. You asked whether our previous reply meant that there would not be any computer failure for rail, air, river and ocean transport or that there would not be any hold-up for traffic.

10. Obviously, computer failure may happen to EMAN in respect of rail, air, river and ocean transport modes. That is the reason why we have made provisions for reverting to paper mode in case of emergency. However, there would not normally be any hold-up for traffic in the same degree of severity as the case in the road mode. Air, sea and rail cargoes are usually unloaded to the warehouses of the cargo operators awaiting Customs action or taking delivery by importers. As such, in the event of computer failure, there should not be any immediate hold-up of air or sea traffic. In the case of road cargo, there are no warehousing facilities available at the land boundary control points. In the event of computer failure, truckers would have to revert to submitting paper manifests within short notice. It is envisaged that the lead time for preparing and processing the paper manifests may lead to hold-up of traffic at the land boundary.

11. You asked the time frame for implementing EDI service for road mode. As mentioned in paragraphs 11 and 16 of my letter dated 15 September 2001, the feasibility study on implementing electronic delivery of road mode manifests is being conducted. It is scheduled for completion in end October 2001. If the implementation is found feasible, we shall consult the trade before implementation.

12. I confirm that CSAs will be proposed for making the relevant notice a subsidiary legislation.

Section 2 of Schedule 3

13. I confirm that CSAs will be proposed for the relevant Chinese term.

(Laura Tsoi)
for Secretary for Commerce and Industry

c.c.

D of J (Attn : Mr Jonothan Abbott, Miss Frances Hui, Mr M Y Cheung)
CCE (Attn : Mr K W Leung)
DGTI (Attn : Ms Carol Yuen, Ms Vivian Sum, Miss Winnie To)
C for C&S (Attn : Miss Josephine Lau, Ms Josephine Tse)