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BY FAX

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(Attn : Mr Philip Chan
Principal Assistant Secretary)

Dear Mr Chan,

**Dutiable Commodities (Amendment)
Regulation (L.N. 248 of 2001)**

I refer to the above Amendment Regulation published in the Gazette as L.N. 248 of 2001 on 23 November 2001. I shall be grateful if you could clarify the following :

1. Regulation 9(2) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.)

In the case of a permit in electronic form, would the certificate and receipt be required? If so, would the exporter be required to furnish the same to the Commissioner?

2. Regulation 22

- (a) Please explain the reason for the different manner of application for a licence and a permit. Why does the Administration restrict an application for a permit to be submitted only in the form of an electronic record using a recognized electronic service? Is any application fee payable, and if so, when and how would it be paid?

- (b) How does a person applying for a permit by electronic means produce invoices, bills of lading, shipping orders or other documents or furnish copies of such documents to the Commissioner under Regulation 22(4)(a) and (b)? Does Regulation 22(4) require copies and not original of the relevant documents to be furnished to the Commissioner and that the same be retained or disposed of by him?
- (c) How does a person applying for a permit to export goods as ship's or aircraft's stores by electronic means furnish to the Commissioner at the time of submitting his application the declaration under Regulation 22(5)?
- (d) What is the policy intent of Regulation 22(6)? What does it mean by "subregulations (4) and (5) shall apply in relation to any application made pursuant to such notice subject to this subregulation and to any notice issued under this subregulation"? Paragraph 4 of the LegCo Brief refers to specific circumstances under which the Commissioner may exercise his powers, but no such restrictions are set out in the Amendment Regulation. Please explain.
- (e) What does it mean by "maintaining confidentiality for the purpose of revenue protection" in paragraph 4 of the Brief? Is it the policy intent that a notice would be published in the Gazette under Regulation 22(6) every time a new type of dutiable commodity is declared?
- (f) Why is the notice published under Regulation 22(6) not subsidiary legislation? Why does the Administration consider that such notice would not have legislative effect?
- (g) Why is the endorsement under Regulation 22(8) necessary for a permit to export goods as ship's or aircraft's stores in paper form but not for a similar permit in electronic form?

3. Regulation 25

Why does Regulation 25 restrict a permit in electronic form to be surrendered only by sending notice to the Commissioner using a recognized electronic service?

4. Regulation 98

- (a) What is the policy intent of Regulation 98(1)(b)? According to paragraph 6 of the LegCo Brief, the Regulation is amended to stipulate that a warehouse operator must immediately send to the Commissioner via a recognized electronic service information regarding any movement of dutiable commodities in and out of the warehouse. The effect of the proposed amendment seems to be different in that it requires a copy of such information to be sent to the Commissioner as he may require.
- (b) Is it necessary to make reference to "a copy of" when such information is sent to the Commissioner by electronic means?
- (c) Please explain why Regulation 98(2) is still necessary with the introduction of the requirement under Regulation 98(1)(b).
- (d) Have all warehouse-keepers been consulted? Are they prepared and ready to comply with the new requirements?

5. Regulation 106

- (a) How long is the transitional period intended to be? Please clarify the legal effect of Regulation 106(1). Is it intended that the repealed version of Regulation 22 and the proposed new version of Regulation 22 would take effect simultaneously during the transitional period notwithstanding that both are inconsistent with each other?
- (b) Has the Administration considered amending the Regulations to enable application for a permit to be made in either paper form or electronic form at this stage, and introducing further amendments at a future date?
- (c) Paragraph 16 of the LegCo Brief states that the commencement notices for the Amendment Regulation and the Dutiable Commodities (Amendment) Ordinance 2001 will be tabled at the Council meeting on 5 December 2001. Please confirm that such commencement notices would be published in the Gazette on 30 November 2001. Please also explain the urgency for commencing the Amendment Ordinance and Amendment Regulation on 10 January 2002.

- (d) Would the ending date of the transitional period specified in the notice under Regulation 106(2) falls after the period for scrutiny of such notice by the Legislative Council? What would be the consequences if the Council exercises its power to amend (including repeal) the notice?

6. *Legislative Council Brief*

- (a) Please elaborate the revised fee package offered by Tradelink mentioned in paragraph 10 of the Brief.
- (b) Paragraph 17 of the Brief refers to publicity measures proven effective when launching electronic data interchange (EDI) services for other documents in the past. Please let us know the types of documents using EDI and for each type of document, the legal basis for using such services.

It would be helpful if you could let us have your reply by 29 November 2001 to facilitate the House Committee to consider the Amendment Regulation at its meeting on 30 November 2001.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

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