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6 December 2001

Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn : Ms Bernice Wong)

Dear Ms Wong,

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

Thank you for your letter of 26 November 2001.

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

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

3. In relation to the amended Regulation 9(2), you asked whether the exporter would be required to furnish a certificate and receipt to the Commissioner of Customs and Excise (the Commissioner) in the case of an electronic permit.

4. We have amended Regulation 9(2) to make it clear that the requirement to deliver a certificate and receipt to the Commissioner will only apply to an exporter if the “permit was sent to him in paper form”. In the case of an electronic permit, no certificate and receipt would be required.

5. Although no certificate or receipt is required under the electronic scenario, the Customs and Excise Department (C&ED) is satisfied that they have sufficient means to regulate the movement of dutiable commodities to prevent evasion of duty through automation of data cross matching among permits approved and warehouse returns.

Regulation 22

6. You asked in your paragraph 2(a) about the reasons for the different manner of application for a licence and a permit under the Regulation. You also asked whether any application fee is payable and if so, when and how it would be paid.

7. Under the Dutiable Commodities Ordinance, anyone who imports, exports, manufactures or operates a warehouse for storing dutiable commodities (DCs) must obtain relevant licences from the Customs and Excise Department. 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 DCPs.

8. We have not offered electronic services for the processing of licences because most of them are renewable annually and providing electronic service for such a small number of transactions would not be commercially viable.

9. We have, however, required that an application for a permit will have to be submitted in the form of an electronic record using a recognised electronic service. First, there is a strong demand from the industry for such a service. The service enhances the capability of traders to meet business demands and is in line with the rapid development of electronic commerce. Secondly, with electronic service, traders could enjoy improved efficiency and a significant reduction in paperwork. The processing time for an application for a permit would be shortened from two days to half a day. Thirdly, automated checking and cross matching of data in related documents ensures more accurate results. Finally, applicants could also save the manpower required to obtain permits in person.

10. The application fee for various licences is at the Annex. Traders may pay the licence fees at the counters of the Customs and Excise Department. As regards applications for permits, traders will need to pay a service fee per application to the service provider. At present, the service provider is Tradelink Electronic Commerce Limited (Tradelink). Traders are only required to authorize Tradelink to debit their bank accounts to pay for the service fee.

11. You asked in your paragraph 2(b) as to how a person applying for a permit by electronic means produce invoices, bills of lading, etc to the Commissioner under Regulation 22(4)(a) and (b). Further, you asked whether Regulation 22(4) requires copies and not original.

12. Regulation 22(4) states that the documents (including invoices, bills of lading, etc) have to be furnished to the Commissioner in the manner specified in the request. It does not restrict the provision of the documents in original or copy form. Normally, the Commissioner will only require a copy of the document sent by fax. However, if the original document is required for verification, the person may send it by post or deliver by hand to C&ED.

13. You asked in your paragraph 2(c) as to how a declaration would be submitted by a person applying for a permit under Regulation 22(5). The person applying for a permit to export goods as ship's or aircraft's stores by electronic means under Regulation 22(5) may fax the declaration.

14. You asked in your paragraph 2(d) about the policy intent of Regulation 22(6). The policy intent has been stated in paragraph 4 of the Legislative Council Brief on Dutiable Commodities (Amendment) Regulation 2001. To recap, the proposed new Regulation 22(6) empowers the Commissioner to revert to paper mode if necessary. This will cater for the situation where the computer system for processing DCPs breaks down for an extended period. It will also allow the Government to declare a new type of DC without having to enhance the computer system in advance, thus maintaining confidentiality.

15. You further asked in your paragraph 2(d) as to why Regulation 22(6) does not set out the specific circumstances mentioned in paragraph 4 of the LegCo Brief. The power provided for under Regulation 22(6) is a power to allow the submission of applications in paper form in addition to, and not in place of, their submission in electronic form under Regulation 22(3). As we are just providing an additional option to submit the application in paper form in necessary cases, there is no strong reason for the restrictions to be set on the exercise of powers of the Commissioner under Regulation 22(6). The "special circumstances" referred to in paragraph 4 of the Legislative Council Brief are but examples of necessary cases. They are by no means exhaustive and the exercise of power by the Commissioner under Regulation 22(6) should not be restricted accordingly.

16. In your paragraph 2(d), you asked what is meant 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” in Regulation 22(6). According to Regulation 22(3), an application for a permit shall be in the form of an electronic record that is submitted using a recognized electronic service, except as provided in subregulation (6). The supporting documents to such application should be submitted in manners specified in Regulation 22(4) and (5). When the Commissioner, by notice published in Gazette, specify that an application for a permit may be submitted in paper form according to Regulation 22(6), the supporting documents to such application made under Regulation 22(6) should still be submitted in manners specified in Regulation 22(4) and (5). This is what “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” means.

17. You asked in your paragraph 2(e) as to what is meant by “maintaining confidentiality for the purpose of revenue protection” mentioned in paragraph 4 of the LegCo Brief. You also asked whether a notice would be published every time a new type of dutiable commodity is declared.

18. Considerable lead time is required for changing the computer system at Tradelink to facilitate processing of permits for newly added dutiable commodity. If Tradelink is to be informed well before a new dutiable commodity is declared, it may lead to leakage of information and hence loss of revenue. From an operational point of view, a notice would be published in the Gazette under Regulation 22(6) every time a new type of dutiable commodity is declared.

19. You asked in your paragraph 2(f) as to why the notice under Regulation 22(6) is not subsidiary legislation. The matter being dealt with by the notice is one of administrative nature. The effect of the notice published under Regulation 22(6) is to provide an additional option for traders to submit the application for DCPs in paper form under necessary cases. We therefore consider it not necessary for such notice to be subject to negative vetting.

20. You asked in your paragraph 2(g) why the requirement for endorsement can be waived for a permit in electronic form. This is because control on movement of dutiable commodities is more effective under the electronic scenario (see paragraph 5 above). Besides, it is practically impossible for any endorsement to be made on an electronic permit.

Regulation 25

21. You asked in your paragraph 3 on why Regulation 25 restricts a permit in electronic form to be surrendered only by sending notice to the

Commissioner using a recognized electronic service. This is because no hard copy of the permit will be issued if the application is done in electronic form.

Regulation 98

22. You asked in your paragraph 4(a) as to whether Regulation 98(1)(b) reflects the policy intent as covered in paragraph 6 of the LegCo Brief. You are of the view that the effect of the amendment seems to be different in that it requires a copy of such information to be sent to the Commissioner as he may require.

23. Under the new Regulation 98(1), the warehouse-keeper should forthwith send to the Commissioner using a recognized electronic service a copy of the information entered in the stock account or record in respect of the goods as the Commissioner may require. The policy intent of Regulation 98(1)(b) is to have more timely information on the ins and outs of dutiable commodities so that more effective control on dutiable commodities can be achieved. The proposed amendment will achieve this policy objective.

24. You asked in your paragraph 4(b) as to whether "a copy of" is necessary under the new Regulation 98. The reference to "a copy of" is used to make clear that what is sent to the Commissioner under Regulation 98(1)(b) is exactly the same as the information entered in the stock account or record under Regulation 98(1)(a).

25. You asked in your paragraph 4(c) as to why Regulation 98(2) is still necessary with the introduction of Regulation 98(1)(b). Regulation 98(2) stipulates that every warehouse-keeper shall retain the stock account or record in the warehouse for a period of 24 months. The provision is necessary as it will allow a C&ED officer to check the stock book kept by the warehouse-keeper, together with other documents, to verify on-site that the stocks in the warehouse are in proper order.

26. You asked in your paragraph 4(d) whether all warehouse-keepers have been consulted. Most of them are ready to comply with the new requirements. There are, however, three operators who claimed themselves to be too old to learn to use computer. Tradelink is now in touch with these operators to provide the necessary support for them.

Regulation 106

27. You asked in your paragraph 5(a) the intended duration of the transitional period. The planned transitional period is 6 months after the roll out of the system, subject to the take-up rate by traders and the smooth running

of the system. This has the support of traders.

28. You also asked about the legal effect of Regulation 106(1). Its legal effect is to provide a transitional period whereby applications for dutiable commodities permits may be made in either paper or electronic form. An applicant may elect to submit his application in paper form as provided by the repealed version of Regulation 22, or in the form of an electronic record as provided by the proposed new version of Regulation 22. Only one or the other version of Regulation 22 will apply accordingly. As such, no inconsistency in practice would arise.

29. The drafting approach adopted in Regulation 106 reflects the policy intention that all permit applications should be made using a recognised electronic service, subject only to a reasonable transitional period to allow the industry to adapt to the change. Since this will achieve our policy objective, we have not considered using the approach suggested in your paragraph 5(b).

30. The commencement notices were published in the Gazette on 30 November 2001. You asked the urgency for commencing both the Amendment Ordinance and Amendment Regulation on 10 January 2002.

31. The commencement notices have been tabled in accordance with the normal procedures, allowing sufficient time for the Legislative Council to scrutinize the notices under Cap. 1. The commencement of both the Amendment Ordinance and the Amendment Regulation will facilitate the launching of the electronic services for processing applications for DCPs. Traders will benefit from an early implementation of the service as covered in paragraph 9 above. Traders are content with the fee to be charged by Tradelink and the technical support provided. They welcome the launching of the service on 10 January 2002. It will be a waste of resources if the service is not launched in January 2002 as both the Government and Tradelink have invested considerably in developing the computer system. As such, there is no reason why the Amendment Ordinance and Amendment Regulation should not be commenced on 10 January 2002.

32. You asked in your paragraph 5(d) about the ending date of the transitional period. We can confirm that the Commissioner would set the ending date of the transitional period specified in the notice falling after the period for scrutiny of such notice by the Legislative Council. Regarding the consequences if the Legislative Council exercises its power to amend (including repeal) the notice, our legal advice is that where an amendment (including repeal) is made to the subsidiary legislation by resolution of the Legislative Council, section 34(2) of Cap. 1 will be applicable and such

subsidiary legislation shall be deemed to be amended as from the date of publication in the Gazette of such resolution.

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33. The special fee package offered by Tradelink is \$11.0 per application on average.

34. You asked in your paragraph 6(b) about the types of documents using electronic data interchange (EDI) services and the legal basis for using such services. There are four types of documents using EDI services, namely, restrained textiles export licence (RTEL), certificate of origin (CO), production notification (PN) and trade declaration (TDEC).

35. Both RTEL and CO are covered by the definition of “licence” in the Import and Export Ordinance (Cap. 60). The Director-General of Trade and Industry (the Director) is empowered to determine the form and requirements of RTEL and CO, including the requirement of application using EDI service. For COs issued by the Government Approved Certification Organizations, the relevant provision is section 6(1) of the Protection of Non-government Certificates of Origin Ordinance (Cap. 324). Section 6AB(2)(a), (b) and (c) of Cap. 60 provide for the use of service provided by a specified body in lodging PN with the Director. Regulations (4) and (5) of the Import and Export (Registration) Regulations (Cap. 60E) provide for the lodgement of trade declarations using services provided by a specified body.

Others

36. We regret that there is a typo in line 4 of Regulation 106(2) of the Regulation at the Annex of the Legislative Council Brief. The line should read “ending at midnight on a date to be specified by the Commissioner by notice published in the Gazette”. No such typo is present in the gazetted version of the Regulation.

Yours sincerely,

(Philip Chan)
for Secretary for Commerce and Industry

D of J (Attn: Mr Jonothan Abbott, Miss Frances Hui, Miss Leonora Ip,
Mr M Y Cheung)
CCE (Attn: Mr Simon Wong, Mr K W Leung, Mr S Cheng)
S for Tsy (Attn: Miss Erica Ng, Mr Edward Mak)
DGTI (Attn: Miss Winnie To)
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Annex

Section of Enactment

Chapter: 109A Title: DUTIABLE COMMODITIES Gazette Number: L.N. 330 of
REGULATIONS 2000
Schedule: Heading: SCHEDULE Version Date: 12/01/2001

[regulations 2, 103 & 103A]

LICENCES AND FEES

PART I
GENERAL

Item	Licence or permit	Fee \$
1.	General bonded warehouse or public bonded warehouse licence	17500
2.	Warehouse licence in respect of one or more of the following- liquors, tobacco, hydrocarbon oil and methyl alcohol- (35 of 1992 s. 11; 32 of 1993 s. 7) (a) in conjunction with a licence to manufacture one or more of the commodities concerned	17500
3.	(b) in other cases	17500
3.	(a) Import and export licence (for one or more of the following)- liquors, tobacco, hydrocarbon oil and methyl alcohol	950
	(b) Import licence to persons licensed only to import for their own use or for a single commercial shipment of duty value less than \$2000	10% of the duty on the goods imported with a minimum fee of \$2.
4.	Special import licence (to keepers of licensed warehouses capable of storing not less than 500 kilolitres of hydrocarbon oil)	950

(L.N. 479 of 1997; L.N. 324 of 2000)

PART II
LIQUORS

Item	Licence or permit	Fee \$
1.	Manufacturer's licence	16300
2.	Distillery licence	16300
3.	Still licence (available only to an educational, scientific or charitable institution approved by the Financial Secretary)	Free
4.	Brewery licence	16300
5.	(Repealed L.N. 452 of 1996)	
6.	Temporary liquor licence (L.N. 226 of 1994; L.N. 145 of 1995)	290 per diem (L.N. 479 of 1997; L.N. 324 of 2000; L.N. 330 of 2000)

PART III
TOBACCO

Item	Licence or permit	Fee \$
1.	(Repealed L.N. 452 of 1996)	
2.	Manufacturer's licence	16300 (L.N. 479 of 1997; L.N. 324 of 2000)

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**PART IV
HYDROCARBON OIL**

Item	Licence or permit	Fee \$
1. Manufacturer's licence	22400 (L.N. 479 of 1997; L.N. 324 of 2000)	

PART V

(Repealed 35 of 1992 s. 11)
PART VI

(Repealed 32 of 1993 s. 7)

**PART VII
MISCELLANEOUS**

Item	Service	Fee \$
1. For every transfer of or substitution or amendment in any licence, not otherwise specified, except a transfer from one person to another	300	
2. For every transfer of any licence from one person to another, not otherwise specified	300	
3. For every certificate of the Government Chemist that any spirits or methyl alcohol are denatured	5 or one-twentieth of the duty, which would have been payable on the spirits or methyl alcohol had such spirits, or methyl alcohol not been denatured, whichever is the greater.	

4. For every landing certificate, certificate of shortages or breakages of cargo found damaged or short in bond, endorsement, certificate of accuracy or copy of or extract from official records, any other certificates on which statistics or any official signature has been given in connection with the importation, duty collection, shortage or exportation of any goods to which this Ordinance applies	130
5. For storage of goods to which this Ordinance applies at the Customs and Excise warehouse	1.20 per package (irrespective of size) per day or part of a day, 48 hours
6. For any attendance of a member of the Customs and Excise Service-	

- (a) at a warehouse or any other place; or
- (b) during the removal of goods to which this Ordinance applies from one place to another-

	Per hour or part of an hour \$	Per 8-hour day \$	Per month \$
Inspector	390	2930	71100
Chief Customs Officer	305	2265	54900
Senior Customs Officer	235	1760	42800
Customs Officer	155	1155	27900

(L.N. 358 of 1990; L.N. 479 of 1997; L.N. 324 of 2000)
(L.N. 165 of 1989; L.N. 444 of 1996; L.N. 452 of 1996)