

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance
(Chapter 60)

IMPORT AND EXPORT (AMENDMENT) BILL 2007

IMPORT AND EXPORT (ELECTRONIC CARGO INFORMATION) REGULATION

INTRODUCTION

At the meeting of the Executive Council on 27 March 2007, the Council ADVISED and the Chief Executive ORDERED that –

A (a) the Import and Export (Amendment) Bill 2007 (the Amendment Bill), at Annex A, should be introduced into the Legislative Council (LegCo); and

B (b) the draft Import and Export (Electronic Cargo Information) Regulation (the draft Regulation), at Annex B, should be approved in principle, to be referred back to the Executive Council to be made after the Bill has passed into law.

JUSTIFICATIONS

The Electronic System for Customs Clearance of Road Cargo

2. At present, road cargoes are processed manually with limited automation provided by the Customs and Excise Department (C&ED)'s Land Boundary System (LBS)¹. At existing land boundary control points (LBCPs), a truck driver has to stop first at an Immigration kiosk and then a Customs kiosk. At the latter kiosk, he delivers a paper manifest to a Customs officer who will, with the help of the LBS, determine on the spot whether physical inspection is necessary.

¹ LBS is a computerized C&ED intelligence system used for targeting vehicles for examination.

3. In terms of trade value, cargoes transported by the road mode from the Mainland account for about one-third of the goods entering Hong Kong. We have the necessary electronic infrastructure for customs clearance of cargoes carried by different modes of transport, except the road mode. We need to fill this gap in our electronic infrastructure, in order to keep abreast with the global, regional and national developments as set out at Annex C. Should Hong Kong fail to do so in a timely manner, overseas customs authorities may impose more stringent clearance requirements on goods coming from or passing through Hong Kong. There may also be diversion of transshipment cargoes away from Hong Kong.

4. To maintain Hong Kong's competitiveness as an international trading centre, the Financial Secretary announced in the 2007-08 Budget an initiative to implement an electronic advance cargo information (e-ACI) system for customs clearance of road cargoes (the electronic system). The electronic system has the following key features –

- (a) a **shipper** (or his agent) provides **cargo data in eight fields**² to C&ED electronically before the cargo enters or exits Hong Kong by truck. In return, he receives a customs reference number for his consignment;
- (b) the **driver** of a laden truck (or his agent) reports to C&ED, at least 30 minutes before his truck arrives at a LBCP, the customs reference number(s) of the consignment(s) concerned received from the shipper(s) together with his **vehicle registration number**. As at present, the driver drops a cargo manifest into a collection box when he arrives at a LBCP, to fulfill his legal responsibility as a cargo carrier; and
- (c) **C&ED** performs risk profiling on the basis of the e-ACI before a truck arrives at a LBCP and determines, in advance, whether it needs to be inspected.

5. We intend to fund the electronic system in full without charging the users. C&ED shall make available workstations at designated locations for the staff of small and medium enterprises without in-house IT system to key in the necessary cargo information for electronic submission free of charge.

² The eight fields of cargo data are : (i) package description / gross weight or volume of cargo; (ii) number of package/ quantity of cargo; (iii) description of articles in each package/ cargo; (iv) name of consignor; (v) address of consignor; (vi) name of consignee; (vii) address of consignee, and (viii) expected departure/arrival date.

6. With the electronic system, C&ED can deploy staff to patrol LBCPs on a need basis, without having to station officers at every customs kiosk. All cross-boundary trucks, except those selected for inspection, will enjoy seamless customs clearance at the LBCP. C&ED will also have more room to facilitate the passage of transshipment cargoes which involve inter-modal transfer. For example, air-land transshipment cargoes may only be subject to inspection at either the LBCP or the airport, instead of having to go through customs inspections at both control points under the existing procedure.

Implementation Timetable

7. Taking into account the lead time required for securing the funds, calling tenders and developing the necessary electronic infrastructure, we plan to roll out the electronic system in 2009 and commence an 18-month transitional period, before we mandate the e-ACI submissions for road cargoes in early 2011.

8. The transitional period aims to provide a clear and achievable target upfront for all parties concerned to prepare themselves for e-ACI submissions. We shall provide seminars on the new workflow before system roll-out and hands-on training throughout the transitional period. The stakeholders concerned may try out e-ACI submissions voluntarily as and when their IT systems are ready during this period. We expect that a considerable number of users would be attracted to submitting e-ACI at the early stage, so as to benefit from faster customs clearance and any other customs facilitation initiatives which ride on e-ACI, such as the one-stop customs facilitation measures as set out in paragraph 6. To cater for possible occurrence of teething problems, C&ED will continue to station staff at customs kiosks during the first six months after mandating e-ACI submissions.

Proposed Legal Framework

9. At present, road cargo carriers submit paper cargo information when a truck arrives at the LBCP, whereas carriers of air and water-borne cargoes submit electronic cargo information within 14 days after the import and export of the cargoes concerned. Under the “Framework of Standards to Secure and Facilitate Global Trade” advocated by the World

Customs Organization (WCO)³, customs administrations should, in the long run, require the submission of e-ACI for all modes of transport to Customs authorities in time for adequate risk profiling. We **propose** to amend section 31(1) of the Import and Export Ordinance (the Ordinance) to give the Chief Executive-in-Council (CE-in-Council) the necessary regulation-making power for requiring the submission of e-ACI in respect of different modes of transport.

10. We also **propose** to set out in the draft Regulation the following key parameters of the legal provisions required to mandate e-ACI submissions for road cargoes –

- (a) a transitional period of 18 months during which the new mode of submitting e-ACI for road cargoes will be optional;
- (b) the principle that the level of penalty should be commensurate with the nature of non-compliance with the statutory obligations set out in paragraph 4. For technical breaches of the e-ACI related provisions (e.g. failure to provide the specified information in the specified timeframe and manner), we consider it not necessary to impose imprisonment penalty. We shall also provide defence or exemption provisions on justifiable grounds. In case of non-compliance with essential requirements knowingly in relation to prohibited articles⁴, we intend to set the penalty at a level with sufficient deterrence against smuggling activities involving these articles; and
- (c) vesting the Commissioner of Customs and Excise (the Commissioner) with the power to waive the e-ACI reporting requirements in certain circumstances to cater for emergency. Where the electronic system breaks down for an extended period, C&ED will put in place a contingency plan to ensure that any such system failure would not cause traffic confusion nor compromise the integrity of customs control at LBCPs.

We intend to make the Regulation at a later stage to tie in with the system roll-out in 2009.

³ The WCO is an independent inter-governmental body whose mission is to enhance the effectiveness and efficiency of customs administrations. Membership of the WCO comprises 171 customs administrations which, together, process 90% of international trade. Hong Kong has been a WCO member since 1987.

⁴ Examples of prohibited articles include dangerous drugs, strategic commodities and dutiable commodities.

11. The CE-in-Council's power to make similar regulations for cargoes carried by other modes of transport will not be invoked until such time as the conditions are ripe and after thorough consultation with the stakeholders concerned.

THE BILL

12. The Amendment Bill seeks to enable the CE-in-Council to make regulations that provide for the lodgment by electronic means of information in advance relating to cargoes to be imported or exported. The main provisions are -

- (a) **Clause 3(a)** adds new provisions to the Ordinance to enable the making of regulations requiring a person in charge of a vehicle entering or leaving Hong Kong to give certain information in respect of the vehicle;
- (b) **Clause 3(b)** amends section 31(1)(i) of the Ordinance to enable the making of regulations requiring an importer or exporter of any article or a person involved in importing or exporting the article to give certain information in advance relating to the article;
- (c) **Clause 3(c)** amends section 31(1)(ia) of the Ordinance to enable the making of regulations empowering the Commissioner (and the Director-General of Trade and Industry) to specify the form or requirement for giving information under the Ordinance, in addition to information in respect of imported or exported articles;
- (d) **Clause 3(d)** adds new provisions to the Ordinance to enable the making of regulations empowering the Commissioner to grant exemption from e-ACI related provisions in regulations to be made by the CE-in-Council.

 D The existing provisions being amended are at Annex D.

THE REGULATION

13. The draft Regulation seeks to provide for a system under which persons who import or export any cargo into or from Hong Kong **by the road mode of transport** are required to lodge with the Commissioner by electronic means certain information in advance relating to the cargo.

The provisions that reflect the key parameters described in paragraph 10 are as follows –

- (a) **Section 1** seeks to provide for the transitional period by way of specifying the commencement date of the Regulation as the date 18 months after the commencement of the relevant amendment ordinance. We intend to bring the relevant amendment ordinance into operation when the electronic system is rolled out;
- (b) **Sections 4, 5, 6 and 8** set out the statutory obligations of the parties concerned and the corresponding levels of fines for breaches under the system. They include provisions governing the following matters : importers and exporters shall lodge with the Commissioner certain information in advance relating to any cargo to be imported or exported, as set out in Schedule 1 to the Regulation; the Commissioner shall assign a customs reference number; a person in charge of a laden vehicle shall lodge with the Commissioner the customs reference number and the registration mark of the vehicle; and a person in charge of an unladen vehicle shall indicate that the vehicle is empty. **Section 7** seeks to provide for offences with imprisonment terms where a person knowingly contravenes certain requirements in sections 4 or 6 in relation to prohibited articles; and
- (c) **Section 11** seeks to empower the Commissioner to grant exemptions from all or part of the requirements for which the Regulation seeks to provide, by virtue of a notice published in the Gazette or under exceptional circumstances where compliance with the relevant requirements is not practicable.

Other sections seek to provide the necessary legal backing for the operation of the system.

LEGISLATIVE TIMETABLE

14. The legislative timetable will be as follows -

Publication in the Gazette	4 April 2007
First Reading and Commencement of Second Reading debate	18 April 2007

IMPLICATIONS OF THE PROPOSAL

E 15. The electronic system to be underpinned by the legislative proposal has economic, sustainability, financial and civil service implications as set out at Annex E. The proposal has no environmental implications. It is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the binding effect of the Ordinance.

PUBLIC CONSULTATION

16. We have consulted the industry stakeholders involved in the handling of cross-boundary road cargoes⁵. Except for a group of practitioners in the logistics sector who have expressed concern about the adverse impact of the 30-minute lead time requirement on their just-in-time freight operations, the majority of the stakeholders have indicated in-principle support or no in-principle objection on the understanding that –

- (a) the industry will not be required to pay service charges for making e-ACI submissions;
- (b) there should be a reasonable transitional period for the industry to adjust their modus operandi; and
- (c) the penalty for failure to provide e-ACI in time shall be commensurate with the nature of non-compliance.

17. The Hong Kong Logistics Development Council⁶ noted that the

⁵ These stakeholders include associations of cross boundary truck drivers, five Chambers of Commerce (namely, the Chinese General Chamber of Commerce; the Chinese Manufacturers' Association of Hong Kong; the Federation of Hong Kong Industries; the Hong Kong General Chamber of Commerce; and the Indian Chamber of Commerce), the Hong Kong Shippers' Council, the Hong Kong Association of Freight Forwarding and Logistics, the Hong Kong Logistics Association, and four express couriers.

⁶ The Hong Kong Logistics Development Council is an advisory body which comprises business leaders and experts from both big international companies to small and medium-sized enterprises in the logistics sector, as well as representatives of major logistics organizations and trade associations.

current proposal has addressed the previous concerns that Council members raised about possible adverse impact on road freight operations in terms of costs and time. The Council pledged support for early implementation of the electronic system, on the understanding that there would be a reasonable transitional period before full migration to the use of the electronic service.

18. We consulted the LegCo Panel on Commerce and Industry on 16 January 2007. Some members suggested that the Administration should consider measures to obviate the need for truck drivers to submit paper manifests. We explained that, in that case, all truck drivers would be required to submit, electronically, cargo information in a total of 17 data fields in a road cargo manifest on a pre-shipment basis. Some truck drivers failed to see tangible benefits from such an arrangement, but they would need to incur additional costs by acquiring the necessary IT capabilities and equipment; they also expressed practical difficulty in submitting all the manifest data electronically in light of the time-critical nature of road freight operations. We advised the Panel that when designing the proposed electronic system, we shall adopt a modular system configuration with flexibility that can cater for the submission of all data in a road cargo manifest electronically in the longer term as and when the conditions are ripe. The Panel indicated in-principle support for the Administration's proposal and asked us to introduce the enabling legislation into LegCo as soon as practicable.

PUBLICITY

19. A press release will be issued on 4 April 2007. A spokesperson will be available to handle media and public enquiries.

ENQUIRIES

20. Enquiries on this Legislative Council Brief may be directed to Mr David Leung, Principal Assistant Secretary for Commerce, Industry and Technology at telephone number 2918 7575.

Commerce, Industry and Technology Bureau
2 April 2007

A BILL

To

Amend the Import and Export Ordinance to enable the Chief Executive in Council to make regulations that provide for a system for the lodgement, by electronic means, with the Commissioner of Customs and Excise of certain information relating to cargo to be imported into or exported from Hong Kong and to provide for incidental and connected matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Import and Export (Amendment) Ordinance 2007.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.

3. Power to make regulations

Section 31 of the Import and Export Ordinance (Cap. 60) is amended –

- (a) in subsection (1), by adding –
 - “(ha) requiring any person in charge of a vehicle entering or leaving Hong Kong to give such information in respect of the vehicle as may be necessary for giving effect to this Ordinance;”;
- (b) in subsection (1)(i), by adding “or any person involved in the importing or exporting of any article” after “any article”;

- (c) in subsection (1)(*ia*), by repealing “respectively in respect of any imported or exported article” and substituting “under this Ordinance”;
- (d) in subsection (1), by adding –
 - “(wa) empowering the Commissioner to grant exemptions from any requirements of the regulations respecting the furnishing of information to the Commissioner;”.

Explanatory Memorandum

The main object of this Bill is to extend the regulation making power under section 31 of the Import and Export Ordinance (Cap. 60) (“the Ordinance”) so that a system for the lodgement with the Commissioner of Customs and Excise (“the Commissioner”), by electronic means, of information relating to any cargo to be imported or exported can be provided for under regulations made under that section.

2. Clause 3(*a*) adds new provisions to enable the enactment of regulations requiring a person in charge of a vehicle entering or leaving Hong Kong to give certain information in respect of the vehicle.
3. Clause 3(*b*) amends section 31(1)(*i*) of the Ordinance to enable the enactment of regulations requiring an importer or exporter of any cargo or a person involved in importing or exporting the cargo to give certain information relating to the cargo.
4. Clause 3(*c*) amends section 31(1)(*ia*) of the Ordinance to enable the enactment of regulations empowering the Commissioner and the Director-General of Trade and Industry to specify any form or requirement for giving information to them under the Ordinance.
5. Clause 3(*d*) adds new provisions to enable the enactment of regulations empowering the Commissioner to grant exemptions from any requirements of the regulations respecting the furnishing of information to the Commissioner.

**IMPORT AND EXPORT (ELECTRONIC CARGO
INFORMATION) REGULATION**

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IMPORT AND EXPORT (ELECTRONIC CARGO INFORMATION) REGULATION

(Made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60))

1. Commencement

This Regulation shall come into operation 18 months after the day appointed for the commencement of the Import and Export (Amendment) Ordinance 2007 (of 2007).

2. Interpretation

In this Regulation, unless the context otherwise requires –

“customs clearance point” (海關清關站) means a customs clearance point designated under section 10;

“customs reference number” (海關編號), in relation to any cargo intended to be imported or exported, means the customs reference number assigned to the cargo under section 5;

“prescribed vehicle” (訂明車輛) means a vehicle in respect of which this Regulation applies.

3. Application

This Regulation applies in respect of any vehicle other than –

- (a) a train; and
- (b) a vehicle registered under any of the following classes of vehicles under the Road Traffic Ordinance (Cap. 374) –
 - (i) private car;
 - (ii) private light bus;
 - (iii) public light bus;
 - (iv) private bus;
 - (v) public bus.

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4. Lodgement of cargo information before import or export

(1) A person who intends to import or export any cargo in or on a prescribed vehicle shall, before the cargo is brought into or taken out of Hong Kong (as the case may be), lodge with the Commissioner the information specified in Part 1 or Part 2 of Schedule 1 (whichever is applicable) in relation to that cargo.

(2) The person shall lodge the information in the form of an electronic record that complies with the requirements specified for the purposes of this section by the Commissioner by notice published in the Gazette.

(3) The person shall lodge the information not earlier than 14 days before the expected date of arrival of the cargo in Hong Kong or expected date of departure of the cargo from Hong Kong (as the case may be).

(4) A person who, without reasonable excuse, imports or exports any cargo in relation to which the information required to be lodged under subsection (1) has not been lodged as required by that subsection commits an offence and is liable on conviction to a fine at level 3.

(5) A person who, without reasonable excuse, imports or exports any cargo in relation to which the information required to be lodged under subsection (1) has not been lodged in the form required by subsection (2) commits an offence and is liable on conviction to a fine at level 2.

5. Commissioner to assign and issue customs reference number

Where a person lodges information with the Commissioner in compliance with section 4(1), (2) and (3), the Commissioner shall –

- (a) assign a customs reference number to the cargo in relation to which the information is lodged; and
- (b) issue, in the form of an electronic record, the customs reference number assigned under paragraph (a) to the person who lodged the information.

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6. Lodgement of customs reference number, etc. by person in charge of vehicle

(1) Where a prescribed vehicle carries any cargo that is to be brought into or taken out of Hong Kong, the person in charge of the prescribed vehicle shall lodge with the Commissioner, before the prescribed vehicle arrives at a customs clearance point –

- (a) the customs reference number assigned to the cargo; and
- (b) the registration mark of the prescribed vehicle within the meaning of the Road Traffic Ordinance (Cap. 374).

(2) The person shall lodge the customs reference number and the registration mark at least 30 minutes before the prescribed vehicle arrives at a customs clearance point.

(3) The person shall lodge the customs reference number and the registration mark in the manner specified for the purposes of this section by the Commissioner by notice published in the Gazette.

(4) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.

(5) A person who, without reasonable excuse, contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 2.

7. Contravention in relation to prohibited article

A person who knowingly contravenes section 4(1) or 6(1) in relation to any cargo that consists, or part of which consists, of a prohibited article commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.

8. Indication of unladen vehicle

(1) Where a prescribed vehicle that is to enter into or leave Hong Kong is not carrying any cargo, the person in charge of the vehicle shall make an

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indication in accordance with subsection (2) to the effect that the prescribed vehicle is not carrying any cargo when the indication is made.

(2) The indication shall be made within the period of time and in the manner specified for the purposes of this section by the Commissioner by notice published in the Gazette.

(3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.

9. Requirement, etc. given by member of Customs and Excise Service, etc.

Any requirement, direction or demand given or made by a member of the Customs and Excise Service or an authorized officer in the exercise or performance of a power or duty under the Ordinance for the purposes of this Regulation may be communicated to any person through a visual display unit installed by the Commissioner at a customs clearance point.

10. Designation of customs clearance point

(1) The Commissioner may designate an area within a place set out in Schedule 2 as a customs clearance point for the purposes of this Regulation.

(2) The Commissioner shall display at a prominent position at an area designated as a customs clearance point a sign indicating that the area is a customs clearance point.

11. Exemption

(1) The Commissioner may, by notice published in the Gazette, exempt any class or description of persons or vehicles from the application of this Regulation or any provision of this Regulation as specified in the notice.

(2) An exemption under subsection (1) –

(a) may be expressed to apply generally, or for such purpose or by reference to such circumstances as specified in the notice; and

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(b) may be granted subject to such conditions as specified in the notice.

(3) The Commissioner may exempt any class or description of persons or vehicles from the application of all or any of the provisions of this Regulation if he is satisfied that there exist exceptional circumstances that make it impracticable for persons or vehicles of that class or description to comply with those provisions.

(4) Notice of an exemption granted under subsection (3) shall be published in the Gazette within 14 days of the exemption having been granted.

SCHEDULE 1**[s. 4]****CARGO INFORMATION****PART 1****INFORMATION IN RELATION TO CARGO IN PACKAGES**

1. Description of packages.
2. Number of packages.
3. Description of articles contained in each package.
4. Name of consignor of each package.
5. Address of consignor of each package.
6. Name of consignee of each package.
7. Address of consignee of each package.
8. Expected date of arrival in Hong Kong of cargo to be imported (where applicable).
9. Expected date of departure from Hong Kong of cargo to be exported (where applicable).

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1. Gross weight or gross volume of cargo.
2. Quantity of cargo (where applicable).
3. Description of cargo.
4. Name of consignor of cargo.
5. Address of consignor of cargo.
6. Name of consignee of cargo.
7. Address of consignee of cargo.
8. Expected date of arrival in Hong Kong of cargo to be imported (where applicable).
9. Expected date of departure from Hong Kong of cargo to be exported (where applicable).

SCHEDULE 2**[s. 10]****LOCATION OF CUSTOMS CLEARANCE POINT**

1. Lok Ma Chau Boundary Control Point.
2. Man Kam To Boundary Control Point.
3. Sha Tau Kok Boundary Control Point.

Clerk to the Executive Council

COUNCIL CHAMBER

2007

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Explanatory Note

The object of this Regulation is to provide for a system under which a person who intends to import or export any cargo into or from Hong Kong by certain classes of vehicles is required to lodge, before importing or exporting the cargo, with the Commissioner of Customs and Excise (“the Commissioner”) by electronic means certain information relating to the cargo.

2. Section 1 provides for the commencement of this Regulation.
3. Section 2 defines certain expressions used in this Regulation.
4. Section 3 provides for the scope of application of this Regulation.
5. Section 4 imposes a duty on an importer and an exporter to lodge with the Commissioner certain information relating to cargo to be imported or exported.
6. Section 5 provides that the Commissioner shall assign a customs reference number to a cargo in relation to which information has been lodged in accordance with section 4 and issue the number to the person who lodged the information.
7. Section 6 imposes a duty on a person in charge of a vehicle that carries any cargo into or from Hong Kong to lodge with the Commissioner the customs reference number assigned to the cargo under section 5 and the registration mark of the vehicle.
8. Section 7 provides for an offence of knowingly contravening section 4(1) or 6(1) in relation to any cargo consisting of any prohibited article.
9. Section 8 imposes a duty on a person in charge of a vehicle that enters into or leaves Hong Kong to indicate whether the vehicle is carrying any cargo.
10. Section 9 provides that any requirement, direction or demand given by the Customs and Excise Service for the purposes of this Regulation may be given through a visual display unit installed at a customs clearance point.
11. Section 10 empowers the Commissioner to designate an area at a place set out in Schedule 2 as a customs clearance point.

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12. Section 11 empowers the Commissioner to grant exemptions from this Regulation or part of this Regulation by virtue of a notice published in the Gazette, or under exceptional circumstances where the compliance with this Regulation or part of this Regulation is impracticable.
13. Schedule 1 sets out those information required to be lodged with the Commissioner under section 4.
14. Schedule 2 sets out the places where customs clearance points are located.

Global, Regional and National Development
on Electronic Customs Clearance

- The World Customs Organization (WCO) adopted in June 2005 the Framework of Standards to Secure and Facilitate Global Trade (FoS) for enhancing the security of the international supply chain and for facilitating legitimate trade. Over 80% of WCO members, including all advanced economies and our important trading partners¹ already signed a letter of intent to implement the FoS. In November 2005, Hong Kong declared its intention to implement the FoS. One core requirement of the FoS is the provision of e-ACI for all modes of transport to Customs authorities in time for adequate risk profiling.
- Regional initiatives among our major trading partners which ride on e-ACI and other key customs standards enshrined in the FoS are emerging. Coupled with the application of modern technology to ensure the integrity of cargo flow, the participating customs authorities seek to provide more speedy clearance of cargoes at their control points.
- The Minister of Commerce Bo Xilai of the Central People's Government announced, at the 18th APEC Ministerial Meeting on 16 November 2006, China's vision that APEC should strive to achieve electronic customs clearance at the checkpoints of all APEC economies by 2010.

¹ These WCO members include China, the United States, all member states of the European Union, Canada, Australia, New Zealand, Japan, Korea, Singapore, Brazil, India, South Africa, etc.

Chapter:	60	IMPORT AND EXPORT ORDINANCE	Gazette Number	Version Date
Section:	31	Power to make regulations	L.N. 40 of 2003	11/04/2003

PART VII

REGULATIONS

- (1) The Chief Executive in Council may make regulations for all or any of the following purposes- (Amended 66 of 2000 s. 3)
- (a) prohibiting the import and export of any article;
 - (b) prohibiting the import and export of any article except under and in accordance with the terms and conditions of a licence;
 - (c) providing for the issue of licences to import or export any article;
 - (ca) empowering the Director to exempt any person from any requirement to obtain a licence to import or export any prohibited article; (Added 50 of 1984 s. 2)
 - (cb) prescribing any article or a class or description of an article the import or export of which except under and in accordance with a licence is prohibited under this Ordinance; (Added 62 of 1993 s. 13)
 - (d) prescribing conditions to be observed by any person before or after the issue of an import licence or an export licence;
 - (e) imposing upon owners of ships, aircraft and vehicles, masters of ships, commanders of aircraft and persons in charge of vehicles such obligations in respect of manifests, bills of lading, air waybills, air consignment notes and such other similar matters as may be necessary for carrying into effect the provisions of this Ordinance;
 - (f) imposing other conditions or restrictions on the import or export of any article;
 - (g) imposing conditions or restrictions on any cargo placed in or on any vessel, aircraft or vehicle for the purpose of import or export;
 - (h) controlling the examination and storage of articles imported or exported or about to be imported or exported;
 - (i) requiring any person importing or exporting any article to give any specified information in respect of the article before or after it has been imported or exported;
 - (ia) empowering the Commissioner or the Director to specify any form or requirement for giving information required to be given to the Commissioner or the Director respectively in respect of any imported or exported article; (Added 30 of 1995 s. 11. Amended 24 of 2002 s. 2)
 - (j) regulating the movement within Hong Kong of any article which has been or is intended to be imported or exported or otherwise dealt with under the provisions of this Ordinance;
 - (ja) providing for the imposition of conditions in the discretion of the Commissioner on the carriage of articles prescribed by the regulations or by the Director in accordance with the requirements of this Ordinance on or by vessels in the waters of Hong Kong including activities incidental to the transportation on land of the articles to the vessels and loading of such articles on to such vessels and for the issue of licences by the Commissioner

to regulate all such activities; (Added 22 of 1991 s. 11. Amended 1 of 1994 s. 16)

- (k) providing for the issue of certificates in respect of the importing, exporting, producing, processing, manufacturing and composition of any article and for conditions which may be attached to such certificate;
- (l) providing for the issue of certificates in respect of preferential customs tariffs and for conditions which may be attached to such certificate;
- (m) providing for the registration of any person applying for the issue of any licence or validated production notification, or any person required to lodge a production notification or any other document under this Ordinance, or any combination thereof, and for conditions which may be attached to such registration; (Amended 37 of 1999 s. 6)
- (n) providing for the registration of any person importing, exporting, manufacturing, processing, storing, distributing, selling or dealing with any article in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof, and for the conditions which may be attached to the registration of any such person; (Amended 37 of 1999 s. 6)
- (o) providing for the registration of any premises-
 - (i) in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof; or
 - (ii) connected with the importing, exporting, manufacture, processing, storage, distribution, sale or other dealing with any article in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof,and prescribing any condition upon the registration of such premises; (Amended 37 of 1999 s. 6)
- (p) providing for the cancellation, revocation or suspension for any period of the registration of any person where the Director is satisfied that the person so registered has contravened any condition of any licence, validated production notification or other document issued under this Ordinance; (Amended 37 of 1999 s. 6)
- (q) providing for the imposition and administration of quota controls in respect of the import or export of any article;
- (r) providing for the sale or transfer of any quota and for the conditions under which any quota may be sold or transferred;
- (s) providing for the registration of any person involved in any dealing with an article on which any quota control is imposed and the transfer of any such registration from one person to another;
- (t) requiring importers, exporters, carriers, owners and manufacturers to furnish to the Director or any other specified public officer information for the purpose of compiling statistics of trade with any person or body of persons, corporate or unincorporate, carrying on business or other activities outside Hong Kong; (Amended 23 of 1998 s. 2)
- (u) prohibiting or controlling the publication or disclosure of information or particulars furnished to the Commissioner or the Director, an authorized officer, an appointed officer or a member of the Customs and Excise

Service under this Ordinance;

- (ua) controlling the use of a security device issued by a specified body for authenticating information to be sent for the purposes of this Ordinance using services provided by a specified body; (Added 30 of 1995 s. 11)
- (ub) prohibiting the unauthorized sending of information for the purposes of this Ordinance by a specified agent on behalf of a person using services provided by a specified body; (Added 30 of 1995 s. 11)
- (v) providing for the verification of any particulars or information required to be furnished by any person under this Ordinance;
- (w) providing that any person who fails to submit any document or furnish any information to the Commissioner or the Director or other specified public officer within a prescribed period of time shall be liable to pay a prescribed sum of money, which sum shall be a civil debt due to and recoverable by the Government; (Amended 66 of 2000 s. 3)
- (x) prescribing fees to be collected by the Commissioner or the Director in respect of any matter arising under this Ordinance and generally to prescribe the mode and time of payment of such fees;
- (y) empowering the Director to determine the form of any licence and any undertaking required under this Ordinance;
- (z) providing that the Director-General of Trade and Industry may, by notice published in the Gazette, amend the Schedule to any regulation made under this Ordinance, other than a Schedule or a part of a Schedule referred to in section 6B(1) or 6F; (Amended L.N. 292 of 1989; 1 of 1994 s. 16; L.N. 173 of 2000)
- (za) requiring any person to whom a licence has been issued to keep such records or documents as may be prescribed or as the Director may determine; (Added 3 of 1973 s. 3)
- (zb) providing for any matter required or permitted by Part IIA to be prescribed by or provided for in the regulations; (Added 37 of 1999 s. 6)
- (zc) without prejudice to the generality of paragraph (z), specifying any matter referred to in paragraph (zb) in a Schedule to any regulation made under this Ordinance, and providing that the Director-General of Trade and Industry may, by order published in the Gazette, amend that Schedule; (Added 37 of 1999 s. 6. Amended L.N. 173 of 2000)
- (zd) empowering the Director to determine a process to be the process of manufacturing any specified textiles for the purposes of the definition of "production" in section 6AA(1); (Added 37 of 1999 s. 6)
- (ze) empowering the Director to specify a particular as material for the purposes of the definition of "material particular" in section 6AA(1); (Added 37 of 1999 s. 6)
- *(aa) levying, with or without exception or exemption, a charge on persons or any category of persons who furnish particulars pursuant to any regulation made under this section, and prescribing the amount or method of ascertaining the amount of such charge and the mode and time of payment thereof; (Amended 30 of 1995 s. 11; 24 of 2002 s. 2)
- (ab) imposing or providing for the imposition of a pecuniary penalty, recoverable civilly, on any person who, being required under any regulation made under this Ordinance to lodge a declaration with the Commissioner in connexion with the import or export of any article, fails to lodge such a declaration or fails to lodge such a declaration within a prescribed period of time;
- (ac) empowering the Commissioner to waive the payment of any pecuniary

penalty imposed under regulations made under paragraph (ab) and to refund any such pecuniary penalty which has been paid;

- (ad) empowering the Director to require an applicant for a licence to deposit with him, before the issue of a licence, such sum of money as the Director may specify;
- (ae) providing for the forfeiture to the Government by a magistrate of all or any of the sum of money deposited under regulations made under paragraph (ad); (Amended 66 of 2000 s. 3)
- (af) prescribing any thing which is to be or may be prescribed under this Ordinance; and
- (ag) generally for the better carrying out of the provisions and purposes of this Ordinance. (Amended L.N. 294 of 1982)

(1A) Regulations made for the purposes of subsection (1)(x) or (aa) may provide that any fee or charge payable in connection with information that is sent using services provided by a specified body shall be paid in such manner as may be agreed between the Government and the specified body. (Added 24 of 2002 s. 2)

(2) Subject to subsection (3), regulations made under this section may provide that a contravention of any such regulation shall be an offence and may prescribe penalties therefor.

(3) Regulations made under this section may prescribe that a contravention or breach thereof shall be punishable by a fine not exceeding \$500000 and imprisonment for a term not exceeding 2 years. (Amended 60 of 1980 s. 5)

(4) No regulation made under paragraph (aa), (ab), (ac), (ad) or (ae) shall come into operation until it has been approved by resolution of the Legislative Council.

Note:

* **The amendment to paragraph (aa), as introduced by section 11 of the Import and Export (Amendment) Ordinance 1995 (30 of 1995), was repealed by section 2 of the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) before the commencement of the amendment.**

Implications of the Proposal

Economic Implications

The electronic system will enable trucks not selected for inspection to enjoy seamless customs clearance at land boundary control points (LBCPs). This will improve traffic flow across the land boundary and reduce the expected costs of legitimate shipments being held up by inspection at LBCPs. As the electronic system can be accessed free of charge, apart from the set-up requirements of in-house information system to support e-ACI submissions for road cargoes, there would not be any significant cost impact on the operation of the industry. More importantly, it will help to maintain Hong Kong's position as an international trading centre by enabling Hong Kong to meet the emerging global customs standards and to contribute to international initiatives aimed at securing and facilitating cargo flow. In addition, the electronic system will provide the necessary foundation for the Customs and Excise Department (C&ED) to develop one-stop customs clearance for inter-modal transshipment cargo. This development would very likely enhance the competitiveness of Hong Kong's port and airport in the transshipment cargo market.

Sustainability Implications

2. The electronic system will provide a platform for future inter-modal customs clearance facilitation which, when put in place, will enhance the efficiency of transshipment of cargoes and hence generate economic benefits. In general, the proposal is in line with the sustainability guiding principle of improving mobility by facilitating the movement of goods.

Financial and Civil Service Implications

3. Pending the formulation of detailed operational and service delivery arrangements, our preliminary estimate is that the electronic system will entail capital costs in the region of \$200 million and annual recurrent costs of about \$78 million upon full implementation¹. The recurrent costs will be more than offset by savings from deletion of existing posts in C&ED and cost avoidance for new posts required for manning customs kiosks.

¹ The operation of the electronic system during the first two years will incur an estimated expenditure of about \$50 million per annum, as C&ED will continue to retain officers at customs kiosks during the 18-month transitional period and the first six months after mandating e-ACI submissions.