

立法會
Legislative Council

LC Paper No. LS121/99-00

**Paper for the House Committee Meeting
of the Legislative Council
on 28 April 2000**

**Legal Service Division Further Report on
Air Cargo Transshipment (Facilitation) Bill 2000**

Members may recall that the Legal Service Division made a report to the House Committee on 17 March 2000 on the Bill (LC Paper No. LS104/99-00). During the meeting, a Member asked whether the Administration would set out the additional safeguards to guard against any possible abuses arising from the relaxation of the import and export control over certain air cargo goods that were transhipped through Hong Kong. Members agreed that a decision on the Bill be deferred pending receipt of the clarification from the Administration.

2. We have referred the above query together with our queries on the legal and drafting aspects of the Bill to the Administration on 17 March 2000 (see Annex A). A reply was received on 19 April 2000 (see Annex B).

3. In the first part of its reply, the Administration explained that there would be additional safeguards to detect and deter smuggling and illegal transshipment of air cargo at the Airport. These would include pre-shipment data monitoring and documentary checks; post-shipment inspection and verification of licences and manifests; targeted and random physical checks of cargo based on risk assessment and intelligence. The Administration assured Members that they were confident that through these additional safeguards to be implemented by the Customs, the integrity of the overall control system would not be compromised.

4. With regard to the legal and drafting issues, the Administration agreed to make some Committee Stage amendments to the Bill (see Annex C). The purposes of the CSAs are to -

- (a) specify that the Commissioner of Customs and Excise would first consult the Airport Authority before approving any area to be a part of the cargo transshipment area of Hong Kong International Airport;

- (b) make some technical amendments so as to avoid any doubt; and
- (c) amend some terms in the Chinese version.

5. The legal and drafting aspects of the Bill are in order. Subject to Members' views, this Bill is ready for resumption of Second Reading Debate.

Encl.

Prepared by

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25 April 2000

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Secretary for Trade and Industry
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17 March 2000

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Total No(s) of Page(s): (7)

Dear Mr. Tam,

Air Cargo Transshipment (Facilitation) Bill 2000

I refer to the above Bill. In paragraph 13 of the LegCo Brief, it is said that "The Customs and Excise Department will introduce additional safeguards to guard against any possible abuses. Members would like to know what are the additional safeguards.

With regard to the legal and drafting aspects of the Bill, I should be grateful if you would clarify the following :-

Sections 1 and 2 of Schedule 1

In the proposed definition of "cargo transshipment area of Hong Kong International Airport" (in section 1) and the newly added section 2AA (in section 2), it is stated that the Commissioner of Customs and Excise can approve any area within the Airport Area as a "cargo transshipment area". The Commissioner is not the land owner of the Airport Area. The Airport Authority (the AA) is responsible for operating and developing the Airport at Chek Lap Kok. Can the Commissioner approve an area as a cargo transshipment area without AA's consent? It is noted that even if the Director of Civil Aviation wants to delineate the Airport Area and the Restricted Area, he has to first consult the AA (section 37 of the Airport Authority Ordinance (Cap. 483)).

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Section 5 of Schedule 1

In the newly added section 6AA(2), should there be a word "and" at the end of paragraph (a) as in the Chinese version?

In the newly added section (5)(a), it states that "For the purpose of the issue of a licence under section 3 of the Ordinance for the import of an article specified in paragraph (2), the import of such an article that is air transshipment cargo does not take place" In fact, the article has already entered into the Hong Kong territory and "import" has already taken place. (See also the definition of "import" in section 2 of the Import and Export Ordinance which means "to bring, or cause to be brought, into Hong Kong any article"). Should this section 5(a) be drafted as a deeming provision? Say, the import is deemed not to have taken place?

Section 10 of Schedule 1

The newly added section 2A(2) states that "The Director may, whether at the time of making the exemption or subsequently, impose such conditions as he thinks fit ...". Conditions should be imposed when an exemption is granted so that the applicant knows what conditions he has to comply with. If the Director wants to impose any new conditions after an exemption is granted, those conditions should not have retrospective effect and reasonable time should be given for conditions to take effect. This has not been so specified in the new section 2A. Would this section be viewed as unfair as to enable the Director to impose conditions subsequently and arbitrarily? In Clause 10 of the Broadcasting Bill, it is proposed that if the Broadcasting Authority wants to vary the licence at any time during its period of validity, it will first serve a notice to the licensee and afford the licensee an opportunity to make representations. Would the Administration consider including similar provisions into this Bill?

Section 2 of Schedule 3

In the newly added section 17(3AD)(b), there is the mentioning of transit cargo. Should the term "article in transit" be used so as to achieve consistency with other ordinances?

Schedule 8

In the Ozone Layer Protection Ordinance (Cap. 403), it is noted that in the Chinese version of the definitions of "import" and "export", the Chinese term for "article in transit" is "轉運物品" and not "過境物品". Should that term be amended?

On the Chinese version of the Bill, I have made some comments thereon as marked up in the annexed pages for your consideration. I should be grateful if you would let me have your reply in both Chinese and English as soon as possible.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

Encl.

c.c. Department of Justice
(Attn: Mr. Abbott Jonothan, SALD and Mr. W L Cheung, SGC)
LA

Our Ref: TIB CR 14/46/17 (SD) Pt. 7
Your Ref: LS/B/47/99-00

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19 April 2000

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(Attn: Ms Anita Ho
Assistant Legal Adviser)

Dear Ms Ho,

Air Cargo Transshipment (Facilitation) Bill 2000

Thank you for your letter of 17 March in which you conveyed Members' request for information on the additional safeguards to be introduced by the Customs and Excise Department and sought clarification on a number of issues relating to the legal and drafting aspects of the captioned Bill. The following are our replies :

Additional safeguards

The Customs and Excise Department has in place a comprehensive mechanism to detect and deter smuggling and illegal transshipment of air cargo at the Airport. It includes pre-shipment data monitoring and documentary checks; post-shipment inspection and verification of licences and manifests; targeted and random physical checks of cargo based on risk assessment and intelligence. (Details are contained in Annex B of the Legislative Council Brief issued to Members on 9 March 2000.)

As Hong Kong develops our Airport into an air cargo hub, we anticipate an increase in the volume of air cargo and changes in the mode of air cargo handling in future. Customs is attuned to these developments and would upgrade its operational resources and plans to handle the new workload.

Customs has sophisticated equipment to assist in its work. Their computer system, the Air Cargo Clearance System (ACCS) captures air cargo data electronically, thus facilitating processing, checking and monitoring of cargo movement as well as selection of cargo for inspection. The ACCS would be enhanced in its capacity and functionality after the passage of the Bill. Additional machines like the mobile x-ray scanner and portable contraband detectors would be purchased to increase the flexibility and effectiveness in cargo examination, especially for air transshipment cargo that normally requires fast customs processing.

Special deployment of officers to handle air transshipment cargo would also be made after the Bill is passed. Additional dog teams would be deployed to check air transshipment cargo to prevent specifically the smuggling of narcotic drugs. Surprise on-the-spot physical checks and post-shipment documentary verification would be increased. Furthermore, Customs would increase liaison with members of the air cargo industry to enhance cooperative arrangements in the clearance of air transshipment cargo to prevent smuggling and illegal transshipment.

We are confident that through these additional safeguards to be implemented by Customs, the integrity of the overall control system would not be compromised with the introduction of the trade facilitative measures proposed in the Bill for air transshipment cargo.

Legal and drafting issues

Sections 1 and 2 of Schedule 1 - The power of Commissioner of Customs and Excise (CCE) to “approve any area to be a part of the cargo transshipment area of Hong Kong International Airport”

The proposed power of the CCE does not interfere with the power of the Airport Authority (AA). It is not a power to control or designate the use of land but only to approve a place in the Airport where exemption from licence/permit requirements could apply to air transshipment cargo. CCE is the only person who could so approve this application of exemption because the basis for such exemption rests on Customs being able to render sufficient safeguards at the cargo transshipment area to prevent the smuggling and illegal transshipment of air cargo.

It is normal practice and reasonable for CCE to consult AA before making a decision of approval. We therefore consider that for the purpose of reflecting the operational practice and avoidance of doubt, the requirement to consult AA should be built into CCE’s power of approving any cargo transshipment area. The proposed new s.2AA of the Import and Export Ordinance will be amended accordingly.

Section 5 of Schedule 1 - The absence of the word “and” at the end of para. (a) of new s.6AA(2) of the Import and Excise (General) Regulations in the English version of the Bill

The Law Draftsman has advised that the English draft is appropriate as it stands. He has also advised that the drafting practices for the English and Chinese laws are slightly different to cater for the two different languages and the word “and” in the Chinese draft is appropriate. We confirm that both the English and Chinese drafts clearly reflect the policy objective.

Section 5 of Schedule 1 - The drafting of new s.6AA(5)(a) of the Import and Export (General) Regulations to say that the import “does not take place” or “is deemed not to have taken place”

Upon advice of the Law Draftsman, we confirm that, in the particular context of the provision, it is a matter of drafting style whether one says that the import “does not take place” or “is deemed not to have taken place” and there is no difference in terms of legal effect between the two.

Section 5 of Schedule 1 – The scope of reference of the phrase “of which the defendant serves notice” in new s.6AA(7) of the Import and Export (General) Regulations

Proposed new s.6AA(7) will be amended to make it clear that the phrase “of which the defendant is aware at the time he serves notice” refers to the particulars of both “the persons who committed or gave the information” and “the act, default and information”.

The same amendment will be made to all similar provisions in the respective Schedules of the Bill.

Section 10 of Schedule 1 - The power of DGT to subsequently impose conditions in new s.2A(2) of the Import and Export (Strategic Commodities) Regulations

The power to impose conditions subsequently is to enable the Director-General of Trade (DGT) to vary existing conditions or add new conditions for the effective administration of the proposed transshipment cargo exemption scheme for

strategic commodities. Greater flexibility in such power is useful and necessary for DGT to take account of changing requirements in line with international practices and to complement the export control arrangement of our trading partners.

The power is only concerned with the granting of exemption from licensing requirements for the purpose of trade facilitation. Conditions imposed under the scheme serve more to safeguard the integrity of the scheme than to restrict the benefits of the registrant; there is always a choice for the registrant to resort to normal licensing procedures if he finds it more appropriate to do so.

The Secretary for Justice has advised that from the angle of administrative law, DGT is subject to the duty to exercise his discretionary power reasonably and his decisions will be subject to judicial review.

We hold the view that it is more appropriate to give DGT more flexibility in exercising his power in the light of the particular circumstances of each individual case.

Section 2 of Schedule 3 - The use of the term “transit cargo” and not “article in transit” in s.17(3AD) of the Dutiable Commodities Ordinance

The term “transit cargo” is a term defined and used in the Dutiable Commodities Ordinance. The Bill has not touched this term; it only seeks to add “air transshipment cargo” after “transit cargo” in s.17(3AD). We have accordingly referred your suggestion for amendment to the policy bureau responsible for the Dutiable Commodities Ordinance, i.e. the Finance Bureau, for their further consideration and follow-up action.

Cap 403 - Chinese translation of the term “article in transit” as “轉運物品” and not “過境物品”

The Law Draftsman takes the view that Cap. 403 should be amended to bring it in line with Cap. 60. Such an inconsistency will be picked up by way of a Secretary for Justice’s order pursuant to section 4D of the Official Languages Ordinance, Cap. 5.

Chinese drafting issues

The following provisions of the Bill will be amended :

(a) Sections 1 and 2 of Schedule 1

“總監” will be replaced by “關長” in the definition of “機場貨物轉運區”, and in new s.2AA(1) of the Import and Export Ordinance.

(b) Section 2 of Schedule 1

“通知” will be replaced by “公告” in new s.2AA(1) and (2) of the Import and Export Ordinance.

Regarding the remainder of the Chinese text, the Law Draftsman has confirmed that they have the same legal effect as the English draft and accurately reflect the policy intentions.

I also attach for your reference a set of draft Committee Stage Amendments in both English and Chinese for introducing amendments to the respective provisions of the Bill as indicated above.

Yours sincerely,

(Y K Tam)
for Secretary for Trade and Industry

DRAFT

Annex C

AIR CARGO TRANSHIPMENT (FACILITATION)

BILL 2000

COMMITTEE STAGE

Amendments to be moved by the _____

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| Schedule 1 | <p>(a) In section 1, in paragraph (b) of the definition of "機場貨物轉運區", by deleting "總監" and substituting "關長".</p> <p>(b) In section 2, in proposed section 2AA(1) -</p> <p>(i) by deleting "總監可藉於憲報公布的通知" and substituting "關長可藉刊登於憲報的公告"; and</p> <p>(ii) by adding ", after consultation with the Airport Authority," after "may".</p> |

(c) In section 2, in proposed section 2AA(2), by deleting “公布的通知” and substituting “刊登的公告”.

(d) In section 5, in proposed regulation 6AA(7), by deleting everything after “particulars of” and substituting -

“-

(i) the person who committed the act or default or gave the information; and

(ii) the act, default or information,

of which he is aware at the time he serves the notice.”.

Schedule 2 In section 2, in proposed section 9A(4)), by deleting everything after “particulars of” and substituting -

“-

(i) the person who committed the act or default or gave the information; and

(ii) the act, default or information, of which he is aware at the time he serves the notice.”.

Schedule 4 (a) In section 2, in proposed regulation 5A(3),
by deleting everything after "particulars of"
and substituting -

" -

(i) the person who committed the
act or default or gave the
information; and

(ii) the act, default or
information,

of which he is aware at the time he serves
the notice."

(b) In section 4, in proposed regulation 3A(3),
by deleting everything after "particulars of"
and substituting -

" -

(i) the person who committed the
act or default or gave the
information; and

(ii) the act, default or
information,

of which he is aware at the time he serves
the notice."

(c) In section 6, in proposed regulation 3A(3),
by deleting everything after "particulars of"

and substituting -

"-

(i) the person who committed the
act or default or gave the
information; and

(ii) the act, default or
information,

of which he is aware at the time he serves
the notice."

(d) In section 8, in proposed regulation 3B(3),
by deleting everything after "particulars of"
and substituting -

"-

(i) the person who committed the
act or default or gave the
information; and

(ii) the act, default or
information,

of which he is aware at the time he serves
the notice."

(e) In section 10, in proposed regulation 4A(4),
by deleting everything after "particulars of"
and substituting -

"-

(i) the person who committed the

act or default or gave the
information; and

(ii) the act, default or
information,

of which he is aware at the time he serves
the notice."

(f) In section 12, in proposed regulation 7A(3),
by deleting everything after "particulars of"
and substituting -

"-

(i) the person who committed the
act or default or gave the
information; and

(ii) the act, default or
information,

of which he is aware at the time he serves
the notice."

(g) In section 14, in proposed regulation 3A(3),
by deleting everything after "particulars of"
and substituting -

"-

(i) the person who committed the
act or default or gave the
information; and

(ii) the act, default or

information,
of which he is aware at the time he serves
the notice."

Schedule 5 In section 2, in proposed regulation 3A(4), by
deleting everything after "particulars of" and
substituting -

"-

(i) the person who committed the act or
default or gave the information;
and

(ii) the act, default or information,
of which he is aware at the time he serves the
notice."

Schedule 6 In section 3, in proposed regulation 4BA(4), by
deleting everything after "particulars of" and
substituting -

"-

(i) the person who committed the act or
default or gave the information;
and

(ii) the act, default or information,
of which he is aware at the time he serves the
notice."

Schedule 7 In section 2, in proposed regulation 4A(5), by deleting everything after "particulars of" and substituting -

"-

(i) the person who committed the act or default or gave the information; and

(ii) the act, default or information, of which he is aware at the time he serves the notice."

Schedule 8 In section 2, in proposed section 4A(4), by deleting everything after "particulars of" and substituting -

"-

(i) the person who committed the act or default or gave the information; and

(ii) the act, default or information, of which he is aware at the time he serves the notice."

Schedule 9 In section 2, in proposed section 11A(4), by deleting everything after "particulars of" and

substituting -

"-

(i) the person who committed the act or
default or gave the information;
and

(ii) the act, default or information,
of which he is aware at the time he serves the
notice."