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2877 5029

Secretary for Commerce and Industry
(Attention: Mr. Philip CHAN,
Principal Assistant Secretary (5))
Commerce and Industry Bureau
Level 29 One Pacific Place
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Hong Kong

21 March 2002

BY FAX & BY POST
Fax No. : 2869 4420
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Dear Mr. Chan,

Import and Export (Electronic Transactions) Bill 2001

I refer to the paper (Ref.: CB(1)1336/01-02(04)) entitled "Follow-up actions arising from the meeting on 21 February 2002" submitted by the Administration to the Bills Committee and the proposed Committee Stage amendments (CSA) annexed therein. My preliminary comments/observations on the CSAs are as follows:

On Annex A - new section 15(1B)(c) of Cap. 60 (Bill: section 7(2) of Schedule 1)

2. In this new s.15(1B)(c), does it mean that if a carrier submits a manifest to a member of the Customs and Excise Service using services provided by a specified body when his aircraft, vessel or vehicle enters or leaves Hong Kong, he is no longer required to lodge a manifest within 14 days of the arrival or departure of his aircraft, vessel or vehicle to the Commissioner under the proposed new regulations 11 and 12 of the Import and Export (Registration) Regulations? Or is he required to submit a manifest using services provided by a specified body twice?

On Annex B - new section 11A of Cap. 60 (Bill: new section 6A of Schedule 1)

3. The Director-General of Trade and Industry is allowed to have access to the information contained in a manifest lodged to the Commissioner of Customs and Excise. Where is the legal authority for the Commissioner of Census and Statistics to receive such information?

On Annex C - amendment of s. 8, 9 & 11 of Cap. 60 (Bill: sections 4(2), 5(2) & 6(2) of Schedule 1)

4. The wordings that "the requirement under subsection xxx does not apply....." seem to suggest that the legal requirement for submitting manifests to the Director is to be dispensed with. May I suggest to use the wordings along the line that the legal requirements are deemed to have been complied with if the manifest has already been lodged with the Commissioner under another regulation?

On Annex D - new section 32A of Cap. 60 (Bill: section 12 of Schedule 1)

5. If there is a computer breakdown and the Commissioner determines that it is not practicable for any information to be given using services provided by a specified body but shall be given in paper form within the next 7 days, how is he going to publicise this determination? Carriers may not be on time to send in their information in paper form "if the notice of determination is published in the Gazette within 14 days of the determination having been made" (new section 32A(3)). In any event, by the time of the publication of the notice, the computer might have been brought back to operation and such notice serves little purpose.

6. Further, under the new section 32A(4), if a manifest is to be given in paper form, it has to be certified correct but there is no such requirement if the manifest is sent using services provided by a specified body. Why is there a different requirement for a manifest in paper form?

On Annex E - on proposed new s.32B of Cap. 60 - paper form submission of manifest information relating to cargo carried by road vehicles (Bill: section 12 of Schedule 1)

7. The Commissioner may by notice specify that any manifest information relating to cargo carried in a vehicle is to be given in paper form and this notice is not subsidiary legislation. In paragraph 15 of your reply dated 15 September 2001 to my first letter, you stated that "[t]hese notices aim to provide exemptions from the mandatory submission of manifest in electronic form for road mode transport We have no objection to making these notices subsidiary legislation.". The proposed section 32B(4) has not reflected your intention of not objecting to making these notices subsidiary legislation.

8. On the drafting aspects, is there any need to expressly state in sections 8, 9 and 11 that they are to be subject to this new section 32B?

9. I shall be grateful if you can let me have a reply in both Chinese and English versions as soon as possible.

Yours sincerely,

Anita HO
Assistant Legal Adviser

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

LA

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

23 April 2002

Miss Anita Ho
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Hong Kong

Dear Miss Ho,

Import and Export (Electronic Transactions) Bill 2001

Thank you for your letter of 21 March 2002.

2. Our reply to the points raised in your letter on the proposed committee stage amendments annexed in the paper "Follow-up actions arising from the meeting on 21 February 2002", *seriatim*, is set out below.

New section 15(1B)(c)

3. Under the new section 15(1B)(c), a carrier may submit a manifest to a member of the Customs and Excise Service using services provided by a specified body when his aircraft, vessel or vehicle is entering or leaving Hong Kong. You ask whether the carrier would still be required to lodge a manifest under Regulations 11 and 12 of the Import and Export (Registration) Regulations (Cap. 60E).

4. We are reflecting on this issue and will revert to you as soon as possible.

New section 11A

5. You ask about the legal authority for the Commissioner of Customs and Excise (the Commissioner) to delegate the powers to other public officers for receiving the manifests lodged with the Commissioner. Section 43 of the Interpretation and General Clauses Ordinance (Cap. 1) is the legal authority.

Amendments to sections 8, 9 & 11 of Cap. 60

6. We have accepted your suggestion of revising sections 8, 9 and 11 of Cap. 60. The revised provisions are at the Annex.

New section 32A

7. You ask about how the Commissioner will publicise the determination regarding the reversion to use paper submission if there is a computer breakdown. In practice, the Commissioner will publicise such determination by various means such as issuing press release, sending e-mails to registered users and posting notice outside all Electronic Trading Access Service (ETAS) centres.

8. You are of the view that the notice published in the Gazette serves little purpose. The requirement for such a notice is modeled on the Dutiable Commodities (Amendment) Regulation 2001. The notice serves to enhance transparency and will particularly be useful in cases where the computer system breaks down for an extended period.

9. You ask the reason for the requirement of a manifest given in paper form to be certified correct while there is no such requirement if the manifest is sent using services provided by a specified body. You may wish to note that in the case of electronic submission, there is a requirement that the sender of a manifest has to certify that the content of the submission is correct before he can send it to the Government.

Proposed new s. 32B

10. The proposed section 32B(4) provides that a notice published under section 32B(2) is not subsidiary legislation. You pointed out that this has not reflected our intention in our reply dated 15 September 2001 of not objecting to making such notice subsidiary legislation.

11. The present draft reflects a suggestion made by Members at the first Bills Committee meeting in January 2002. At that meeting, Members suggested that a decision by the Commissioner to make electronic submission of

road mode manifests an option need not be subject to the scrutiny of the Legislative Council. However, any decision to make electronic submission of road mode manifests mandatory should be subject to the scrutiny of the Legislative Council.

12. Under the present draft, the Commissioner is empowered to publish a notice under section 32B(2), which is not subsidiary legislation, to enable road mode carriers to continue submitting manifests in paper form only as at present. If subsequently it is decided to move to electronic submission, the Commissioner may publish another similar notice to revoke the previous one, at which time the transitional provisions under section 42 of Cap. 60 will then apply, allowing the information to be given either in paper form or by using services provided by a specified body. When it is considered appropriate to make electronic submission of road mode manifests mandatory, the Commissioner will publish a notice in the Gazette under section 42(2). Such notice will be subsidiary legislation according to section 42(4) and so will be subject to the scrutiny of the Legislative Council.

13. You ask whether there is any need to expressly state in sections 8, 9 and 11 that these sections are to be subject to the new section 32B. Our legal advice is that there is no need to do so because this is already clearly provided for in section 32B itself.

Yours sincerely,

(Philip Chan)
for Secretary for Commerce and Industry

c.c.

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| Clerk to Bills Committee | (Attn: Miss Becky Yu) |
| D of J | (Attn: Mr Jonothan Abbott, Ms Frances Hui, Mr M Y Cheung) |
| C of C&E | (Attn: Mr K W Leung, Mr S Cheng) |
| C for C&S | (Attn: Ms Josephine Tse) |
| DGTI | (Attn: Miss Winnie To) |

IMPORT AND EXPORT (ELECTRONIC TRANSACTIONS) BILL 2001
Proposed committee stage amendments
(“As if amended” version)

**Amendment of s. 8, 9 & 11 of Cap. 60, consequential to
the replacement of section 19A of Cap. 60 by section 11A
(Bill: sections 4(2), 5(2) & 6(2) of Schedule 1)**

(a) Section 8 of Cap. 60 (Bill: section 4(2) of Schedule 1)

(2) Section 8 is amended by adding –

“(2A) The requirement under subsection (2)(b)(ii) is deemed to have been complied with if at the time of delivering the import licence under subsection (2)(b)(i) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

(b) Section 9 of Cap. 60 (Bill: section 5(2) of Schedule 1)

(2) Section 9 is amended by adding –

“(2A) The requirement under subsection (2)(b)(iii) is deemed to have been complied with if at the time of delivering the declaration under subsection (2)(b)(ii) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

(c) Section 11 of Cap. 60 (Bill: section 6(2) of Schedule 1)

(2) Section 11 is amended by adding –

“(2A) The requirements under subsection (2)(a)(ii) and (b)(ii) are deemed to have been complied with if at the time of informing the Director of the export licence number under subsection (2)(a)(i) or delivering the export licence under subsection (2)(b)(i), as the case may be, the manifest has been

lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 12 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.