

立法會
Legislative Council

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Paper for the House Committee meeting on 21 March 2003

**Report of the Subcommittee on
Import and Export (General)(Amendment) Regulation 2003,
Import and Export (Registration)(Amendment) Regulation 2003,
Import and Export (Removal of Articles)(Amendment) Regulation 2003,
Reserved Commodities
(Control of Imports, Exports and Reserve Stocks)(Amendment) Regulation 2003,
Import and Export (Electronic Transactions) Ordinance 2002
(24 of 2002)(Commencement) Notice 2003 and
Dutiable Commodities (Amendment) Ordinance 2001
(19 of 2001)(Commencement) Notice 2003**

Purpose

This paper reports on the deliberations of the Subcommittee on Import and Export (General) (Amendment) Regulation 2003, Import and Export (Registration) (Amendment) Regulation 2003, Import and Export (Removal of Articles) (Amendment) Regulation 2003, Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003, Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) (Commencement) Notice 2003 and Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2003.

Background

2. The Import and Export (Electronic Transactions) Ordinance promulgated in 2002 aims to provide the legal framework for processing submission of cargo manifests by electronic means under the Import and Export Ordinance (Cap. 60) and Reserved Commodities Ordinance (Cap. 296). However, it has not been brought into operation pending the making of the following four proposed Regulations -

- (a) Import and Export (General) (Amendment) Regulation 2003;
- (b) Import and Export (Registration) (Amendment) Regulation 2003;

- (c) Import and Export (Removal of Articles) (Amendment) Regulation 2003; and
- (d) Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003.

3. The Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) provides the legal basis for traders to use services provided by Tradelink Electronic Commerce Limited (Tradelink) to process applications for dutiable commodities permits electronically. The amendment Ordinance, except section 9, commenced operation on 10 January 2002.

4. In sync with the commencement of the four proposed Regulations, the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) (Commencement) Notice 2003 and Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2003 appoint 11 April 2003 as the day on which the Import and Export (Electronic Transactions) Ordinance 2002 and section 9 of the Dutiable Commodities (Amendment) Ordinance 2001 will come into operation.

The Subcommittee

5. At the House Committee meeting on 21 February 2003, members agreed to form a Subcommittee to study the four proposed Regulations and the two Notices. Under the chairmanship of Hon Kenneth TING Woo-shou, the Subcommittee has held one meeting. The membership list of the Subcommittee is at **Appendix I**.

Deliberations of the Subcommittee

6. Concern has been raised on the disagreement between some users and Tradelink over the fees to be charged for the electronic services for processing cargo manifests (EMAN). According to the Administration, Tradelink has secured the acceptance by air, rail and river carriers of its proposed fees. As regards ocean carriers, Tradelink has reached an agreement with some 80 major ocean carriers, representing about 80% of the total number of manifests submitted by ocean carriers last year. While discussion between Tradelink and the remaining ocean carriers is still underway, the Administration holds the view that the progress being made provides a solid foundation for the launch of EMAN.

7. A member however points out that river carriers are not entirely satisfied with the proposed fees, particularly those incurred from the service provider in the Mainland. Given that many of the river carriers are small and medium enterprises (SME) which may not be ready to adopt EMAN, consideration should be given to extending the transitional period in which both paper and electronic submission of

cargo manifests are allowed to end 2003. According to the Administration, the duration of the transition will depend on the readiness of the industry. In deciding when to end the transitional period, the Commissioner of Customs and Excise (the Commissioner) will consider the take-up rate by users of the EMAN service, the smooth operation of the system and the views of the trade. The end date of the transitional period will be specified by the Commissioner by notice published in the Gazette and the notice is subsidiary legislation subject to negative vetting by the Legislative Council. On the progress of interface between Hong Kong and the Pearl River Delta Region in respect of submission of export manifests in electronic form, the Administration's explanation is that Tradelink has been able to reach an agreement with the Mainland service provider to put in place a one-stop shop for electronic submission of manifests.

Import and Export (Removal of Articles) (Amendment) Regulation 2003

8. Question has been raised on the legal status of the notice, notification or information given under section 20A or 20B of the Import and Export Ordinance consequent upon the removal of the requirement for an officer's signature in the proposed Schedules 1 and 2. The Administration's explanation is that the signature is not necessary since a built-in mechanism is in place to establish accountability and ensure data accuracy. In addition, the name of the officer who authorizes the issue of the document will be specified therein.

9. The Subcommittee notes that at present, Tradelink will only accept digital signature for message authentication as required under the implementation instructions. Given the more common use of other forms of electronic signature, question has been raised on how the Administration can ensure that Tradelink will abide by its contractual obligation to adhere to the use of digital signature. According to the Administration, the Government requires all electronic service providers to adopt a reliable authentication system. At present, the contract between the Government and Tradelink stipulates the use of digital signature for message authentication. Should Tradelink wish to make any change to the digital signature requirement, prior consent of the Government is required. In addition, Tradelink has to ensure compatibility of its systems with the Government's systems for any change.

Amendments

10. The Administration will move a motion to amend the Import and Export (Removal of Articles) (Amendment) Regulation 2003 and the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003. A copy of the draft motion is at **Appendix II**.

Conclusion

11. The Subcommittee considers that all aspects of the four proposed Regulations and two Notices have been fully deliberated. It would be for individual Members to decide whether or not to support the Amendment Regulations.

Advice sought

12. Members are invited to note the deliberations of the Subcommittee.

Prepared by
Council Business Division 1
Legislative Council Secretariat
20 March 2003

Appendix I

**Subcommittee on
Import and Export (General)(Amendment) Regulation 2003,
Import and Export (Registration)(Amendment) Regulation 2003,
Import and Export (Removal of Articles)(Amendment) Regulation 2003,
Reserved Commodities
(Control of Imports, Exports and Reserve Stocks)(Amendment) Regulation 2003,
Import and Export (Electronic Transactions) Ordinance 2002
(24 of 2002)(Commencement) Notice 2003 and
Dutiable Commodities (Amendment) Ordinance 2001
(19 of 2001)(Commencement) Notice 2003**

Membership list

Chairman Hon Kenneth TING Woo-shou, JP

Members Hon HUI Cheung-ching, JP
 Hon CHAN Kam-lam, JP
 Hon SIN Chung-kai
 Hon Miriam LAU Kin-yee, JP

(Total : 5 Members)

Clerk Miss Becky YU

Legal Adviser Miss Connie FUNG

Date 5 March 2003

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

IMPORT AND EXPORT (REMOVAL OF ARTICLES) (AMENDMENT)
REGULATION 2003

RESERVED COMMODITIES (CONTROL OF IMPORTS, EXPORTS AND RESERVE
STOCKS) (AMENDMENT) REGULATION 2003

Resolution made and passed by the Legislative Council under section 34 (2) of the Interpretation and General Clauses Ordinance (Cap. 1) on 2003.

RESOLVED that -

- (a) the Import and Export (Removal of Articles) (Amendment) Regulation 2003 published in the Gazette as Legal Notice No. 34 of 2003 and laid on the table of the Legislative Council on 19 February 2003, be amended, in section 6, in the new Schedule 2, in item 7, by repealing "該船隻、飛機或車輛的收貨人或" and substituting "所涉物品的收貨人或該船隻、飛機或車輛的";
- (b) the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003 published in the Gazette as Legal Notice No. 35 of 2003 and laid on the table of the Legislative Council on 19 February 2003, be amended -

- (i) in section 3(2), in the new regulation 5(3),
by repealing "11(2)(b)" and substituting
"11(1)(d)";
- (ii) in section 4(4), in the new regulation 6(2A),
by repealing "11(2)(b)" and substituting
"11(1)(d)";
- (iii) in section 5(2), in the new regulation 8(3),
by repealing "12(2)(b)" and substituting
"12(1)(d)".

Clerk to the Legislative Council

2003

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap.1))

IMPORT AND EXPORT (REMOVAL OF ARTICLES) (AMENDMENT)
REGULATION 2003

RESERVED COMMODITIES (CONTROL OF IMPORTS, EXPORTS AND RESERVE
STOCKS) (AMENDMENT) REGULATION 2003

RESOLVED that -

- (a) the Import and Export (Removal of Articles) (Amendment) Regulation 2003 published in the Gazette as Legal Notice No. 34 of 2003 and laid on the table of the Legislative Council on 19 February 2003, be amended, in section 6, in the new Schedule 2, in item 7, by repealing “該船隻、飛機或車輛的收貨人或” and substituting “所涉物品的收貨人或該船隻、飛機或車輛的”;
- (b) the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation

2003 published in the Gazette as Legal Notice No. 35 of 2003 and laid on the table of the Legislative Council on 19 February 2003, be amended -

- (i) in section 3(2), in the new regulation 5(3), by repealing "11(2)(b)" and substituting "11(1)(d)";
- (ii) in section 4(4), in the new regulation 6(2A), by repealing "11(2)(b)" and substituting "11(1)(d)";
- (iii) in section 5(2), in the new regulation 8(3), by repealing "12(2)(b)" and substituting "12(1)(d)".