

立法會
Legislative Council

LC Paper No. LS101/02-03

**Paper for the House Committee Meeting
on 25 April 2003**

**Legal Service Division's Further Report on
Import and Export (General)(Amendment)(No. 2) Regulation 2003
(L.N. 93 of 2003)**

At the meeting of the House Committee on 11 April 2003, the Division reported that we were studying the reply of the Administration on certain drafting issues which needed to be clarified. We have since sought further clarification from the Administration. The Administration has accepted some of our observations and agreed to move amendments to the Amendment Regulation. The draft Resolution is attached as **Annex A**.

2. Subject to the proposed Resolution, we feel that the issues have been addressed. The written replies of the Administration are attached as **Annex B** for Members' perusal.

Encl

Prepared by

KAU Kin-wah
Assistant Legal Adviser
Legislative Council Secretariat
22 April 2003

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

IMPORT AND EXPORT (GENERAL)(AMENDMENT)(No. 2) REGULATION 2003

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

RESOLVED that the Import and Export (General)(Amendment)(No.

2) Regulation 2003, published in the Gazette as Legal Notice No. 93 of 2003 and laid on the table of the Legislative Council on 9 April 2003, be amended -

(a) in section 3, by repealing "取得" and substituting "領取";

(b) in the Chinese text, in section 4, in the new regulations 6A(2), 6BA(2), 6BC(2) and 6BE(2), by repealing "在根據第(1)(a)款自登記紡織商收到" and substituting "自登記紡織商收到第(1)(a)款所指的";

(c) in section 7, in the new Eighth Schedule -

(i) in the Chinese text, in regulations 6A(2), 6BA(2), 6BC(2) and 6BE(2), by repealing "在根據第(1)(a)(i)款自登記紡織商收到" and

substituting "自登記紡織商收到第(1)(a)(i)款所指的";

- (ii) in regulations 6B(3)(a)(i) and (3)(b)(ii)(A) and 6BD(3)(a)(i) and (3)(b)(ii)(A), by repealing "certified copy or certified extract of the manifest of the importing vessel, aircraft or vehicle" and substituting "copy or extract of the manifest of the importing vessel, aircraft or vehicle, duly certified by the import carrier";
- (iii) in regulations 6BB(3)(a)(i) and (3)(b)(ii)(A) and 6BF(3)(a)(i) and (3)(b)(ii)(A), by repealing "certified copy or certified extract of the manifest of the exporting vessel, aircraft or vehicle" and substituting "copy or extract of the manifest of the exporting vessel, aircraft or vehicle, duly certified by the export carrier".

Clerk to the Legislative Council

Tel No. : 2918 7483

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Our Ref. : CIB 89/62/5
Your Ref : LS/S/26/02-03

9 April 2003

Mr Kau Kin Wah
Assistant Legal Adviser
Legal Service Division
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8 Jackson Road
Central
Hong Kong

Dear Mr Kau,

**Import and Export (General) (Amendment) (No. 2) Regulation 2003
(L.N. 93 of 2003)**

Thank you for your letter of 7 April 2003.

2. Our reply to the points raised in the Schedule attached to your letter is set out below.

General

3. *You asked whether our intention is that a trader who delivers a notification to the Director without using services provided by a specified body should be guilty of an offence.* We confirm that this is our intention, subject to two exceptions, namely (a) when a trader chooses to deliver a paper notification to the Director via the carrier during the transitional period; and (b) when a determination has been made under section 32A of the Import and Export Ordinance allowing submission of a notification to the Director in paper form when it is not practicable for notifications to be delivered using services

provided by a specified body.

4. *You asked whether such a provision will serve to enhance the monopoly status of Tradelink and is inconsistent with the spirit of open competition promoted by WTO.* In late 2001, we consulted and obtained support from the Textiles Advisory Board, registrants under the Textiles Trader Registration Scheme (TTRS), carrier associations and the Legislative Council Panel on Commerce and Industry to introduce electronic services for the TTRS so that the trading community could reap benefits from electronic submission. Tradelink, the service provider of current electronic services for certain official trade-related documents, will make use of existing infrastructure for the provision of the new service, the development cost and delivery time will be minimized. We therefore engage Tradelink to provide the electronic services for the TTRS until the end of 2003 when its franchise will expire.

5. The Trade and Industry Department is conducting a review of Hong Kong's textiles control regime following the abolition of quota restrictions in 2005 under the World Trade Organization Agreement on Textiles and Clothing. Subject to the outcome of the review, we will decide whether the scheme needs to be retained and if so, whether additional service providers to provide the electronic service concerned should be introduced. In the meantime, we intend to continue to engage Tradelink to provide the services on a non-exclusive basis till end-2004 to ensure continuity in service provision.

Regulation 2

6. *You asked whether “A” should be added after “sub. leg.” In “Import and Export (General) Regulations (Cap. 60 sub. leg.)” to keep with the new drafting convention announced by the Law Draftsman.* Since the captioned amendment Regulation was drafted some time ago, the old mode of citation has been adopted. The mode of citation is editorial in nature and does not affect the legal effect of the Regulation. The new mode of citation will be adopted in legislation drafted in future.

Regulation 3

7. *You asked whether consistency should be maintained for the Chinese text of the term “licensing requirements”, since it was rendered as “申領許可證的規定” in some other regulations while it is now rendered as “取得許可證的規定” in regulation 6(2) and (3A).* The rendition “取得許可證的規定” correctly reflects the meaning of “licensing requirements” in regulation

6(2) and (3A). This is slightly different from the rendition as “領取許可證的規定” in the heading of Part V and in regulation 6DF of the Import and Export (General) Regulations but serves the same purpose. For the sake of consistency, we will include an amendment to replace “取得” by “領取” in a motion to be moved by the Secretary for Commerce, Industry and Technology (SCIT).

Proposed new Regulation 6A(1)

8. *You asked whether our intention is that once a registered textiles trader has complied with regulation 6A(1)(a), (b) and (c), he no longer needs to ensure that no textiles are imported otherwise than as transshipment cargo in reliance on an exemption issued to him under regulation 6(3A).* The effect of regulation 6A(1) is that once a registered textiles trader has complied with the procedural steps set out in regulation 6A(1)(a), (b) and (c) in respect of the textiles consignment concerned, the prohibition on importing such textiles otherwise than as transshipment cargo ceases. However, in so far as the procedural steps set out in regulation 6A(1)(a), (b) and (c) are not complied with in respect of any other consignments, the trader continues to have the duty to ensure those other consignments are not imported. This reflects our policy intent.

9. Further, as discussed between the drafting counsel and yourself, there are difficulties with the suggestion that the trader's duty to comply with regulation 6A(1)(a), (b) and (c) and similar provisions be stated in the positive, e.g. the trader shall do X, Y, Z. As a matter of fact, the time of complying with the procedural steps in regulation 6A(1)(a), (b) and (c) and similar provisions cannot be ascertained until the textiles are imported. In other words, there is no duty to do anything positive as such; there is only a prohibition on certain activities without complying with certain requirements. This is like many other statutory provisions that forbid a person from carrying out certain activities without a licence - no duty is imposed on the person to obtain a licence; he only commits an offence if he carries out the activity without a licence.

10. *You considered that it is ambiguous as to whether “in reliance on an exemption issued to him under regulation 6(3A)” relates to “imported” or to “transshipment”.* The phrase “in reliance on an exemption issued to him under regulation 6(3A)” makes reference to regulation 6(3A) and hence can best be understood by looking at regulation 6(3A) itself. The exemption under regulation 6(3A) is an exemption “from the licensing requirements under

sections 6C(1) and 6D(1) of the Ordinance for the import or export of textiles”. Therefore, the phrase should relate to “are imported” instead of “transshipment”.

Proposed new Regulations 6B(3)(b), 6BB(3), 6BD(3)(b), 6BF(3) & 8th Schedule

11. *You asked whether “C” should be added after “sub. leg.” in “Import and Export Manifests Notice (Cap. 60 sub. leg.)” to keep with the new drafting convention announced by the Law Draftsman.* For the same reason stated in paragraph 6 above, the old mode of citation has been used for the captioned amendment Regulation. The mode of citation is editorial in nature and does not affect the legal effect of the Regulation. The editor will add the letter “C” after “sub. leg.” when the regulations are incorporated into the looseleaf edition of the Laws of Hong Kong.

Proposed new Regulation 6BA(1)

12. *You asked whether our intention is that once a registered textiles trader has complied with regulation 6BA(1)(a), (b) and (c), he no longer needs to ensure that no textiles are exported otherwise than as transshipment cargo in reliance on an exemption issued to him under regulation 6(3A).* The effect of regulation 6BA(1) is that once a registered textiles trader has complied with the procedural steps set out in regulation 6BA(1)(a), (b) and (c) in respect of the textiles consignment concerned, the prohibition on exporting such textiles otherwise than as transshipment cargo ceases. However, in so far as the procedural steps set out in regulation 6BA(1)(a), (b) and (c) are not complied with in respect of any other consignments, the trader continues to have the duty to ensure those other consignments are not exported. This reflects our policy intent.

13. *You considered that it is ambiguous as to whether “in reliance on an exemption issued to him under regulation 6(3A)” relates to “exported” or to “transshipment”.* For reasons set out in paragraph 10 above, the phrase should relate to “are exported” instead of “transshipment”.

Proposed new Regulation 6BC(1)

14. *You asked whether our intention is that once a registered textiles trader has complied with regulation 6BC(1)(a), (b) and (c), he no longer needs to ensure that no textiles are imported as transshipment cargo in reliance on an exemption issued to him under regulation 6(3A).* Similar to paragraph 8 above, the effect of regulation 6BC(1) is that once a registered textiles trader has

complied with the procedural steps set out in regulation 6BC(1)(a), (b) and (c) in respect of the textiles consignment concerned, the prohibition on importing such textiles as transshipment cargo ceases. However, in so far as the procedural steps set out in regulation 6BC(1)(a), (b) and (c) are not complied with in respect of any other consignments, the trader continues to have the duty to ensure those other consignments are not imported. This reflects our policy intent.

Proposed new Regulation 6BE(1)

15. *You asked whether our intention is that once a registered textiles trader has complied with regulation 6BE(1)(a), (b) and (c), he no longer needs to ensure that no textiles are exported as transshipment cargo in reliance on an exemption issued to him under regulation 6(3A).* Similar to paragraph 12 above, the effect of regulation 6BE(1) is that once a registered textiles trader has complied with the procedural steps set out in regulation 6BE(1)(a), (b) and (c) in respect of the textiles consignment concerned, the prohibition on exporting such textiles as transshipment cargo ceases. However, in so far as the procedural steps set out in regulation 6BE(1)(a), (b) and (c) are not complied with in respect of any other consignments, the trader continues to have the duty to ensure those other consignments are not exported. This reflects our policy intent.

Proposed new Regulation 6C

16. *You asked whether “E” should be added after “sub. leg.” in “Import and Export (Registration) Regulations (Cap. 60 sub. leg.)” to keep with the new drafting convention announced by the Law Draftsman.* For the same reason stated in paragraph 6 above, the old mode of citation has been used. The mode of citation is editorial in nature and does not affect the legal effect of the Regulation. The editor will add the letter “E” after “sub. leg.” when the new regulation 6C is incorporated into the looseleaf edition of the Laws of Hong Kong.

Clause 5

17. *You asked why the defence of due diligence does not apply to the proposed regulations 6A(5), 6B(5), 6BB(5), 6BC(5), 6BD(5) and 6BF(5).* This is because compliance with these regulations (which require a trader to provide the notification information to the carrier before taking possession or causing to be taken possession of the textiles imported, and for a carrier to deliver manifest

with the notification reference number to the Director within specified timeframe) should be straightforward and easy in practice.

Eighth Schedule

General

18. Our reply set out above is also applicable to the corresponding provisions in the Eighth Schedule.

19. *You asked how and by whom the copy or extract of manifest mentioned in the Eighth Schedule is to be certified.* The carrier who delivers paper manifest to the Director will certify on the manifest or extract of manifest (by way of an authorised person's signature and/or the company chop of the carrier) that the manifest information so lodged is lodged by the carrier. This is no different from the current arrangements when carriers deliver paper manifests to the Director. We will provide details in trade circulars to be issued to traders and carriers upon the launching of the electronic TTRS services.

Chinese version

Proposed new Regulation 6A

20. *You considered that the Chinese rendering of regulation 6A(1) does not seem to convey the meaning intended by the English version.* Our policy intent has been explained in paragraph 8 above and the Chinese version reflects that intent.

Proposed new Regulation 6B(2)

21. *You considered that the words “符合有關規定” and “有關規定指” do not appear in the English version and it does not appear that the rendering of the English version into Chinese necessitates such addition.* The effect of the English version is that -

- (a) The carrier shall not release possession of the textiles imported until he has received from the registered textiles trader certain information;
- (b) The information must be in electronic form or in paper form; and
- (c) The information must satisfy the requirements in regulation 6B(2)(a), (b) and (c).

The present Chinese rendition accurately reflects the English version.

Proposed new Regulation 6BA(1)

22. *You considered that the Chinese rendering of regulation 6BA(1) does not seem to convey the meaning intended by the English version. Our policy intent has been explained in paragraph 12 above and the Chinese version reflects that intent.*

Proposed new Regulation 6BA(2)

23. *You were of the view that the “under paragraph (1)(a)” in the English version appears to relate to “export notification” but the Chinese rendering “署長在根據第(1)(a)款” seems to suggest that the receiving of the notification was under paragraph (1)(a). To address this, we suggest replacing “在根據第(1)(a)款自登記紡織商收到” by “自登記紡織商收到第(1)(a)款所指的” in a motion to be moved by the SCIT. Same amendment will be made to proposed new regulations 6A(2), 6BC(2) and 6BE(2).*

Proposed new Regulation 6BB(2)

24. *You considered that the words “符合有關規定” and “有關規定指” do not appear in the English version and it does not appear that the rendering of the English version into Chinese necessitates such addition. For reasons similar to that set out in paragraph 21 above, we consider that the present Chinese rendition accurately reflects the English version.*

Proposed new Regulation 6BC(2)

25. *You were of the view that the “under paragraph (1)(a)” in the English version appears to relate to “transhipment notification” but the Chinese rendering “署長在根據第(1)(a)款” seems to suggest that the receiving of the notification was under paragraph (1)(a). As proposed in paragraph 23 above, we suggest replacing “在根據第(1)(a)款自登記紡織商收到” by “自登記紡織商收到第(1)(a)款所指的” in a motion to be moved by the SCIT.*

Proposed new Regulation 6BD(2)

26. *You considered that the words “符合有關規定” and “有關規定指” do not appear in the English version and it does not appear that the*

rendering of the English version into Chinese necessitates such addition. For reasons similar to that set out in paragraph 21 above, we consider that the present Chinese rendition accurately reflects the English version.

Proposed new Regulation 6BF(2)

27. *You considered that the words “符合有關規定” and “有關規定指” do not appear in the English version and it does not appear that the rendering of the English version into Chinese necessitates such addition.* For reasons similar to that set out in paragraph 21 above, we consider that the present Chinese rendition accurately reflects the English version.

Eighth Schedule

General

28. Our reply set out in paragraphs 20 to 27 above is also applicable to the corresponding provisions in the Chinese version of the Eighth Schedule.

Yours sincerely,

(Miss Helen Chung)
for Secretary for Commerce, Industry and Technology

c.c.

D of J (Attn: Miss Betty Cheung, Mr M Y Cheung)
DG of TI (Attn: Ms Carol Yuen, Miss Winnie To, Miss Mandy Au)
C of C&E (Attn: Mr Ben Leung, Mr P C Fan, Mr Raymond Y M Wong,
Mr Marcus Lau, Mr B K Lo)

Tel No. : 2918 7483

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Our Ref. : CIB 89/62/5
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22 April 2003

Mr Kau Kin Wah
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Legislative Council Building
8 Jackson Road
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Hong Kong

Dear Mr Kau,

**Import and Export (General) (Amendment) (No. 2) Regulation 2003
(L.N. 93 of 2003)**

Thank you for your letter of 14 April 2003.

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

Proposed new regulations 6A(1), 6BA(1), 6BC(1) & 6BE(1)

3. *You considered that the difficulties with the present drafting of the captioned provisions are threefold. First, a registered textiles trader cannot ensure that no textiles are imported. He can only ensure that he would not import any textiles. Secondly, the general prohibition seems to be abrogated punctually upon the procedural steps having been complied with for certain textiles. Thirdly, the reference to “the textiles” in paragraph (a) hangs in the air since they are nowhere mentioned before paragraph (a). You asked us to consider alternative formulation.*

4. On the first point, our intention is that the steps in paragraphs (a) to (c) must be completed before the textiles cross the border. The alternative formulation “the registered textiles trader should ensure that he imports/exports no textiles unless [certain steps are taken]” emphasizes the trader importing/exporting the textiles rather than the textiles crossing the border. That approach departs from the Import and Export Ordinance and the Import and Export (General) Regulations, which refer to “within 14 days after the day on which the textiles are imported”, “within 14 days after the day on which the textiles are exported” and “before the textiles are exported”. They do not refer to “within 14 days after the day on which [a person] imports the textiles”, “within 14 days after the day on which [a person] exports the textiles” or “before [a person] exports textiles”. (See sections 8(1), 9(1), 11(1) & (2) of the Import and Export Ordinance and regulations 6A(3), 6B(1) & (2) and 6D(1), (2) & (4) of the Import and Export (General) Regulations.)

5. Under the alternative formulation, a question arises as to when the trader imports textiles. Acts on the part of the trader regarding import (defined as "bring or cause to be brought into Hong Kong") in fact extends to his placing shipping orders. It is not our intent to require the steps in paragraphs (a) to (c) to be completed before a trader placing the shipping orders. This complication does not arise with the gazetted version that follows the approach adopted in the Import and Export Ordinance and the Import and Export (General) Regulations.

6. On the second and the third point, the structure of our formulation is similar to s.64, Food Act 1984 [UK] (quoted in page 277, Legislative Drafting (4th Ed.) by G. C. Thornton), which reads -

“64(1) In any area in which this and the following sections of this Part are in force -

- (a) no person shall hawk food unless he is registered under those sections by the local authority for the area; and
- (b) no premises shall be used as storage accommodation for any food intended for hawking unless the premises are so registered.”.

7. Clearly, the intention of such a drafting structure is not to have the general prohibition on all persons hawking food abrogated upon the registration of a particular person, or the general prohibition on all premises from being used for hawking food abrogated upon the registration of particular premises. Rather, the effect of s.64(1) is that the prohibition will be lifted in respect of a particular person if he is registered, and the prohibition lifted in respect of particular premises if they are registered. Similarly, in our case, we consider

that under our current formulation, the general prohibition will not be abrogated upon compliance with the procedural steps set out in paragraphs (a) to (c) for certain textiles, and the reference to “the textiles” in paragraph (a) clearly follows from the reference in the chapeau to “no textiles”. The effect is that the prohibition will be lifted in respect of certain textiles if the procedural steps are completed for those particular textiles. We do not consider there is a need for modification.

8. *You considered that it is not immediate apparent that the exemption has nothing to do with the transshipment, and asked us to consider moving “in reliance on an exemption issued to him under regulation 6(3A)” immediately behind “exported” or, as the case may be, “imported”.*

9. Each of the three phrases “otherwise than as transshipment cargo”, “in or on any vessel, aircraft or vehicle” and “in reliance on an exemption issued to him under regulation 6(3A)” relates to “imported” or “exported”. We have examined the order of placing these expressions carefully, and find no problem with the current formulation.

Eighth Schedule

10. *In relation to the copy or extract of manifest to be certified, you asked us to consider making clear who is to certify such copy or extract in the relevant provisions.*

11. A draft amendment has been included in the draft resolution at the Annex to this letter.

Chinese version

Proposed new regulations 6B(2), 6BB(2), 6BD(2) & 6BF(2)

12. *You agreed that the Chinese rendition reflects the English text but considered that it is not impossible for the English text to be rendered into Chinese without adding “符合有關規定” and “有關規定指”. You asked us to consider doing an alternative rendition into Chinese without employing those additional words.*

13. We have given the suggestion due consideration. We find that with the words “符合有關規定” and “有關規定指”, the linkage between the requirements that the information needs to meet and the prohibition from

release of possession of imported textiles/export of textiles is better. As such, we consider that the rendition with such words should be adopted.

Draft resolution

14. The draft resolution which incorporates the amendments we have indicated that we will make as per our letter of 9 April 2003 and the amendment as per paragraph 11 above is at the Annex for your consideration, please.

Yours sincerely,

(Miss Helen Chung)
for Secretary for Commerce, Industry and Technology

c.c.

D of J (Attn: Miss Betty Cheung, Mr M Y Cheung)
DG of TI (Attn: Ms Carol Yuen, Miss Winnie To, Miss Mandy Au)
C of C&E (Attn: Mr Ben Leung, Mr P C Fan, Mr Raymond Y M Wong,
Mr Marcus Lau, Mr B K Lo)

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

IMPORT AND EXPORT (GENERAL)(AMENDMENT)(No. 2) REGULATION 2003

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(a) in section 3, by repealing "取得" and substituting "領取";

(b) in the Chinese text, in section 4, in the new regulations 6A(2), 6BA(2), 6BC(2) and 6BE(2), by repealing "在根據第(1)(a)款自登記紡織商收到" and substituting "自登記紡織商收到第(1)(a)款所指的";

(c) in section 7, in the new Eighth Schedule -

(i) in the Chinese text, in regulations 6A(2), 6BA(2), 6BC(2) and 6BE(2), by repealing

"在根據第(1)(a)(i)款自登記紡織商收到" and substituting "自登記紡織商收到第(1)(a)(i)款所指的";

- (ii) in regulations 6B(3)(a)(i) and (3)(b)(ii)(A) and 6BD(3)(a)(i) and (3)(b)(ii)(A), by repealing "certified copy or certified extract of the manifest of the importing vessel, aircraft or vehicle" and substituting "copy or extract of the manifest of the importing vessel, aircraft or vehicle, duly certified by the import carrier";
- (iii) in regulations 6BB(3)(a)(i) and (3)(b)(ii)(A) and 6BF(3)(a)(i) and (3)(b)(ii)(A), by repealing "certified copy or certified extract of the manifest of the exporting vessel, aircraft or vehicle" and substituting "copy or extract of the manifest of the exporting vessel, aircraft or vehicle, duly certified by the export carrier".

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

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

IMPORT AND EXPORT (GENERAL)(AMENDMENT)(No. 2) REGULATION 2003

RESOLVED that the Import and Export (General)(Amendment)(No.

2) Regulation 2003, published in the Gazette as Legal
Notice No. 93 of 2003 and laid on the table of the
Legislative Council on 9 April 2003, be amended -

(a) in section 3, by repealing "取得" and substituting

"領取";

(b) in the Chinese text, in section 4, in the new
regulations 6A(2), 6BA(2), 6BC(2) and 6BE(2), by
repealing "在根據第(1)(a)款自登記紡織商收到" and
substituting "自登記紡織商收到第(1)(a)款所指的";

(c) in section 7, in the new Eighth Schedule -

(i) in the Chinese text, in regulations
6A(2), 6BA(2), 6BC(2) and 6BE(2), by
repealing

"在根據第(1)(a)(i)款自登記紡織商收到" and substituting "自登記紡織商收到第(1)(a)(i)款所指的";

- (ii) in regulations 6B(3)(a)(i) and (3)(b)(ii)(A) and 6BD(3)(a)(i) and (3)(b)(ii)(A), by repealing "certified copy or certified extract of the manifest of the importing vessel, aircraft or vehicle" and substituting "copy or extract of the manifest of the importing vessel, aircraft or vehicle, duly certified by the import carrier";
- (iii) in regulations 6BB(3)(a)(i) and (3)(b)(ii)(A) and 6BF(3)(a)(i) and (3)(b)(ii)(A), by repealing "certified copy or certified extract of the manifest of the exporting vessel, aircraft or vehicle" and substituting "copy or extract of the manifest of the exporting vessel, aircraft or vehicle, duly certified by the export carrier".