

立法會
Legislative Council

LC Paper No. LS165/02-03

**Paper for the House Committee Meeting
on 3 October 2003**

**Legal Service Division's Further Report on
Import and Export (Facilitation) Bill 2003**

At the House Committee meeting on 30 June 2003, members decided to defer the decision on the Import and Export (Facilitation) Bill 2003 pending our further report on its technical aspects. Members may recall that the Bill seeks to remove or relax the import, export and transportation control on television sets, video cassette recorders, video cassette players, air conditioners and refrigerators, poultry carcasses and poultry products, left hand drive vehicles and outboard engines exceeding 111.9 kilowatts, marine fish, ozone depleting substances, optical disc mastering and replication equipment and radiocommunications transmitting apparatus. We have sought clarification from the Administration on two technical points and have no further comments on the drafting aspects. The correspondence exchanged with the Administration is attached for Members' perusal.

2. Subject to Members' views on the policy aspects of this Bill, the Bill is ready for resumption of its Second Reading debate.

Encl.

Prepared by

HO Ying-chu, Anita
Assistant Legal Adviser
Legislative Council Secretariat
25 September 2003

Direct Line : 2918 7577

Our Ref. L/M (3) to CIB/BSPU CR 2/60/1 VIII

Your Ref LS/B/39/02-03

25 July 2003

Ms Anita Ho
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central

Fax No.: 2877 5029

Dear Ms Ho,

Import and Export (Facilitation) Bill 2003

Thank you for your letter of 11 July expressing your comments on the captioned Bill. We have consulted the Department of Justice and our response is set out below for your consideration –

Section 2 to Schedule 2

The Import and Export Ordinance (Cap. 60) provides exemptions for articles in transit and articles that are air transshipment cargo (see section 6A(3)). In the new section 8(5) proposed to be added to the Telecommunications Ordinance (Cap. 106), reference is made to an exemption under the new section 9B in which “article in transit” is a set that contains the subset of radiocommunications transmitting apparatus in transit. This explains that “article” is the subject matter upon which an import or export is based.

The expression “if such apparatus is an article” serves to illustrate the above relationship. If the words are omitted, the sentence structure may become simpler but the purpose behind those words can not be achieved.

Section 5 to Schedule 2

In our view, the question of inconsistency does not arise. Notwithstanding that “in or on the vessel or aircraft” is used in the definition of “article in transit” of Cap. 60, which definition is proposed to be adopted in Cap. 106, the new section 9C(1)(b)(i) and (ii) makes no reference to “article in transit” at all. It should be noted that the phrase “in or on”, followed by different modes of transportation, has been used in the English text of many Ordinances and the Chinese version, depending on contexts, are different.

In the Chinese version of new section 9C(1)(b)(i) and (ii), it is beyond doubt that “之上” includes the meaning of “之內”. There is no change in the scope of meaning in the Chinese version by adding “之內或” before “之上”. By adding “之內或”, no additional meaning will be introduced to cover a situation that has not already been covered. In the circumstances, we do not consider it appropriate to propose an amendment.

Please feel free to let us know if you have any further comments on the Bill.

Yours sincerely,

(Francis Ho)
for Secretary for Commerce, Industry & Technology

L/M(3) in CIB/BSPU CR 2/60/1
LS/B/39/02-03
2869 9209
2877 5029

Secretary for Commerce, Industry and Technology
(Attention: Mr Gordon Leung, PAS(CI)7)
Commerce, Industry and Technology Bureau
15/F One Pacific
88 Queensway
Hong Kong

11 July 2003

BY FAX

Fax No. : 2537 7566
Total no. of page : (1)

Dear Mr Leung,

Import and Export (Facilitation) Bill 2003

On the legal and drafting aspects of the above Bill, I have the following comments:-

Section 2 to Schedule 2

2. Under the new section 8(5), "no licence shall be required for possession of radiocommunications transmitting apparatus if such apparatus is an article the import or export of which is exempted under section 9A, 9B or 9C". What purpose do the words "if such apparatus is an article" serve? Would it be simpler if the words are to be omitted?

Section 5 to Schedule 2

3. In the definition of "article in transit", the Chinese version of "in or on the vessel or aircraft" reads as "船隻或飛機之內或之上", but in new section 9C(1)(b)(i) and (ii), the same phrase is only rendered as "船隻或飛機之上". Is there any special reason for this inconsistency?

4. I would appreciate it if you could let me have a reply in both English and Chinese languages at your earliest convenience.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

c.c. Department of Justice (Attn: Miss Lonnie NG, SGC)