

## **LEGISLATIVE COUNCIL BRIEF**

### **AIR CARGO TRANSHIPMENT (FACILITATION) BILL 2000**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 7 March 2000, the Council ADVISED and the Chief Executive ORDERED that the Air Cargo Transhipment (Facilitation) Bill 2000, at Annex A, should be introduced into the Legislative Council, to provide for the relaxation of import and export control on a number of categories of articles brought into and taken out of Hong Kong as air transhipment cargo.

#### **BACKGROUND AND ARGUMENT**

2. The Chief Executive announced in his 1999 Policy Address our determination to further develop Hong Kong into an international and regional air cargo hub. We need to provide the conditions to facilitate this development. In the process, we have listened closely to the plans being developed by the air cargo industry for a substantial expansion of their air cargo transhipment business in Hong Kong. In particular, there are express cargo operators looking into the setting up of their regional express cargo hubs in Hong Kong. We consider that a suitable environment for the hub operation, which is characterized by a smooth flow of massive volumes of air transhipment cargo within a short period of time, should be created.

3. Specifically, the concept of a hub involves de-consolidating different consignments of air transhipment cargo destined for different countries arriving on board incoming flights, sorting and re-consolidating them at the airport, and then placing them on board connecting flights according to their respective end destinations within a very tight time frame. In so doing, the airlines can pool their resources and maximize the

use of their airlift capacity. For express cargo operators with a number of dedicated flights under their deployment, they use the hub operation to complete the whole process of de-consolidation, sorting and re-consolidation within about a 3-hour time span during the night for service delivery the following day.

4. At present, air transshipment cargo going through Hong Kong are treated as both "import" and "export"; those which require licences for "import" and/or "export" are accordingly subject to licensing control during air transshipment.

5. Government is committed to maintaining stringent controls against illegal diversion or smuggling of air transshipment cargo into Hong Kong. The restricted areas of the Airport and its cargo terminals, where the operations of air cargo transshipment are held, are kept under tight security control and placed under close surveillance by the Customs and Excise Department. All cargo manifests have to be submitted to the Department before or at the arrival of the flights and no cargo is released for import or re-export without Customs clearance. We therefore believe that the risk of illegal diversion of the cargo in air transshipment is low and there is a case for reviewing the licensing requirements for the articles concerned without compromising the integrity of our trade controls.

6. Accordingly, we have conducted a thorough examination of the present arrangements and concluded that -

- (a) There is a need to maintain licensing requirements for certain categories of air transshipment cargo for trade, public health, safety and internal security reasons. Examples are hazardous wastes, narcotic drugs, infectious materials such as germs and human remains, explosives and sensitive strategic commodities. Licensing control is often necessary to track the movement of such cargo worldwide for prevention of proliferation and where relevant our controlling measures are drawn up in line with international obligations that Hong Kong has signed up to.
- (b) Relaxing the import/export control over certain

miscellaneous categories of non-sensitive air transshipment cargo would not pose threats to our controls. These include-

- dutiable commodities such as alcoholic liquor and tobacco
- radiocommunication transmitting apparatus
- pharmaceutical products and medicines
- optical disc mastering and replication equipment
- rice
- left hand drive vehicles
- outboard engines
- pesticides
- food materials such as colouring matter and preservatives
- meat and animal products
- marine fish
- smokeless tobacco products
- ozone depleting substances

In relaxing the import/export control for the air transshipment of such cargo, we will institute adequate safeguard measures to guard against their unauthorized movement. If any such air transshipment cargo is removed from the Airport and brought to anywhere else in Hong Kong, it would be deemed that the relevant import control provisions had been breached and the importer would be held liable to the respective penalty provisions under the existing laws. Details of the Customs control at the Airport together with our risk assessment and additional safeguards to be implemented are set out at Annex B.

- (c) Hong Kong is determined to maintain the integrity and effectiveness of our controls to deter the illegal diversion of strategic commodities. Having regard to this strong policy commitment, we propose to implement a Transshipment Cargo Exemption Scheme to give due facilitation to air transshipment of less sensitive strategic commodities. Under this Scheme, legitimate air carriers and their agents could seek exemption of individual licensing requirements under the close monitoring of the Director-General of Trade. Details of the Scheme are set out at Annex C.

C

## THE BILL

7. The Bill is in the form of an omnibus bill and seeks to give effect to the proposed changes set out in paragraphs 6(b) and (c) above. It contains no substantive provisions of its own and carries legislative amendments to four ordinances and 15 regulations as set out in Schedules 1 to 9 to the Bill.

8. In a similar manner, these legislative amendments first seek to create in the respective ordinances or regulations a definition for "air transshipment cargo" which means transshipment cargo that is both imported and exported in an aircraft and which remains at all time within the cargo transshipment area of the Airport. Depending on the nature of the existing control or the type of article involved, the Bill further seeks to -

- (a) **Where import/export of an article requires a licence, permit or certificate (except dutiable commodities and strategic commodities)**

**Schedules 1** (all except Sections 3, 9 and 10), **2, 4** (Sections 9 and 10), **5, 6, 7, 8 and 9** to the Bill amend the import/export control provisions in the respective ordinances or regulations to the effect that such provisions will not apply if an article is brought into and subsequently taken out of Hong Kong as air transshipment cargo or air

transit cargo (if not exempted under the existing legislation). If, however, an article is removed from the cargo transshipment area of the Airport, the article is deemed to have been imported at that time and to have been imported by the person who brought the article into Hong Kong as air transshipment cargo, and it becomes subject to the normal licensing requirements on that basis.

**(b) Where import of an article is prohibited**

**Schedule 4** (all except Sections 9 and 10) to the Bill amends the import prohibition provisions in the respective regulations to the effect that such provisions will not apply if an article is brought into and subsequently taken out of Hong Kong as air transshipment cargo. If, however, an article is removed from the cargo transshipment area of the Airport, the article is deemed to have been imported at that time and to have been imported by the person who brought the article into Hong Kong as air transshipment cargo, and it becomes subject to the normal import prohibition on that basis.

**(c) For dutiable commodities**

**Schedule 3** to the Bill amends the permit requirements for the movement of dutiable commodities within the cargo transshipment area to the effect that such requirements will not apply if the dutiable commodities are brought into and subsequently taken out of Hong Kong as air transshipment cargo and allows a person to have in his possession, custody or control dutiable commodities for handling as air transshipment cargo within the cargo transshipment area.

**(d) For strategic commodities**

**Schedule 1** (Section 3, 9 and 10) to the Bill provides that -

- (i) the Director-General of Trade may exempt a person from licensing requirements with respect to the

transshipment by air of any strategic commodities set out in the First Schedule to the Import and Export (Strategic Commodities) Regulations except the items set out in the Second Schedule to the same Regulations;

- (ii) the Director may impose conditions upon any exemption so made; and
- (iii) any person who is so exempted but fails to comply with any such condition under the exemption commits an offence.

9. The legislative amendments in the Bill also seek to provide in the relevant ordinances or regulations a defence of "reasonable diligence" for a person charged with any import or export offence in relation to air transshipment cargo arising from the fact that such cargo has been removed from the cargo transshipment area.

#### **LEGISLATIVE TIMETABLE**

10. The legislative timetable for the Bill will be -

Publication in the Gazette	10 March 2000
First Reading and commencement of Second Reading debate	15 March 2000
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

#### **BASIC LAW IMPLICATIONS**

11. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

12. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

## **FINANCIAL AND STAFFING IMPLICATIONS**

13. The removal of the licensing requirement will reduce the workload of a number of departments responsible for the issue of the licences. However, as the number of these licences issued each year is small, any savings arising from the implementation of the proposal should be negligible. The Customs and Excise Department will introduce additional safeguards to guard against any possible abuses and will absorb any additional workload generated from within its existing allocation. There is no requirement for additional resources for the implementation of the Transshipment Cargo Exemption Scheme.

## **ECONOMIC IMPLICATIONS**

14. The introduction of the Bill will be a timely and strong message to the international community reaffirming the Government's intention to further develop Hong Kong into an international and regional air cargo hub. The trade facilitative measures are expected to directly bolster trade in air transshipment cargo and indirectly stimulate investment interests in the development of air cargo hubs and logistics services in Hong Kong.

## **ENVIRONMENT IMPLICATIONS**

15. There is no environmental implication arising from the Bill.

## **PUBLIC CONSULTATION**

16. The key players of the air cargo industry have been consulted on

the outline of the Bill and their responses are favourable. Our major trading partners have been informed of the proposal through their local consulates. The Legislative Council Panel on Trade and Industry was also consulted on 15 February 2000. Their comments have been taken into account in the Bill.

## **PUBLICITY**

17. This Legislative Council brief and a press release will be issued on 9 March 2000. A spokesman will be available to handle enquiries.

## **ENQUIRIES**

18. Any enquiries on this brief should be directed to Mr Y.K. TAM, Assistant Secretary for Trade and Industry, at 2912 8578 or by facsimile at 2541 3191.

Trade and Industry Bureau

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## AIR CARGO TRANSHIPMENT (FACILITATION) BILL 2000

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## **Customs Control and Additional Safeguards at the Airport**

### **Legal framework of Customs control**

All cargo is subject to Customs examination at any point of entry into or exit from Hong Kong [s.17BA(1)(b) of Customs and Excise Service Ordinance] and Customs has established clearance procedures for import and export cargo at all control points, including the Airport. These procedures which may vary at different control points, are carefully balanced in order not to cause undue delay to the trade. The purpose of the control is twofold: to prevent smuggling and detect contraband, such as dangerous drugs, pirated articles, and counterfeit goods, and to ensure that the importation and exportation of goods are in accordance with licensing requirements.

2. Goods imported into or exported from Hong Kong, except for articles in transit, must be recorded in a manifest. It is a serious offence to import or export unmanifested cargo, which carries a maximum penalty of a fine of \$2,000,000 and imprisonment for 7 years [s.18 of the Import and Export Ordinance]. In the context of air cargo, the manifest is to be furnished by the airlines to airport Customs when the carrier is entering or leaving Hong Kong [s.15 of the Import and Export Ordinance]. For goods under licensing control, the required licence has to be produced to Customs for inspection for the purpose of cargo clearance.

3. In addition, the importer or exporter of an article (not being an exempted article) has to lodge to Customs an import or export declaration within 14 days after the importation or exportation of the article [Reg. 4 & 5 of Import and Export (Registration) Regulations].

### **Procedures of air cargo clearance**

4. Before or at the arrival of the flights, the airlines are required to furnish a paper manifest showing the particulars of all cargo on board

the carrier, including transshipment cargo, to Customs as a formal submission for cargo clearance. They do this in advance by transmitting electronic cargo data to the Customs computer system - the Air Cargo Clearance System (ACCS) - for early processing by Customs.

5. Customs then screen through the cargo data received from the airlines to select consignments for different types of action that are needed for the purpose of cargo clearance, ranging from documentary checking to physical examination of the cargo. The selection process is normally completed within 45 minutes after submission of the paper manifest and the airlines and cargo operator are informed of the consignments selected and Customs actions needed through the computer. Cargo not being selected are allowed to be released to the consignees free of Customs control while those selected are kept in the storage system of the cargo terminal until being cleared by Customs, either on fulfillment of documentary checking or after physical examination.

6. Customs also board transitting flights on a selective basis to check manifests and air waybills of transit cargo on board to ensure licensing requirements imposed on certain types of strategic commodities are being complied with. If necessary, suspicious consignments are selected for examination.

7. For export cargo, the airlines are required to produce the manifests of selected flights and shipping documents of selected consignments for checking. As a result of this documentary checking, certain consignments are selected for examination. This apart, Customs also conduct random checks to select export cargo for examination at the cargo reception points or inside of the cargo terminals. Cargo not selected are allowed to be taken for re-export free of Customs control while those selected are kept securely in the cargo terminal pending submission of application by the airlines for approval of re-export. Such applications are normally made three hours before the departure of the exporting flight with the support of relevant documents including air waybill, appropriate licences and proof of export arrangement. If necessary, suspicious consignments are examined before approval for re-export.

8. In case the connecting flight departs in less than 3 hours, transshipment is usually done directly at the apron without the cargo being temporarily stored inside the cargo terminal. The airline can request for apron transfer under similar application procedures as mentioned above.

#### **Integrity of control system for air transshipment**

9. The existing design of the Airport upholds the integrity of the control system. Air transshipment cargo is either transferred from one aircraft to another directly at the apron, or temporarily stored in the cargo terminals awaiting arrangement for reloading onto a departing flight. The cargo terminals in the Airport are strategically located. They have an interface with the Airport Restricted Area and are designated as Tenant Restricted Areas to be placed under tight security control and Customs surveillance. Unauthorized entry into the storage area and tampering of the cargo are heavily guarded against.

10. Furthermore, the Customs cargo clearance system at the Airport renders additional protection. It is a strict Customs requirement that no cargo is released for import or re-export without Customs clearance and special approval has to be obtained from Customs for change of cargo status to import before any cargo originally declared as transshipment can be taken out of the Airport. The control of cargo movement is assisted by the ACCS, which is capable of capturing all consignment data through direct linkage with the cargo operators. There is also regular deployment of Customs patrol within the cargo terminals and at their exits to prevent unauthorized release of cargo. Under the existing arrangement, the chance of transshipment cargo being illegally diverted is considered to be remote, and the risk should be well within an acceptable level.

#### **Additional safeguards at the Airport after the passage of the Bill**

11. The facilitation to be provided by the Bill is based on the integrity of existing Customs control at the Airport and should impose no added risks to the control system. Notwithstanding that, Customs will implement additional safeguards to prevent abuse of the proposed facilitation on licensing requirements and minimize the risk of illegal diversion or proliferation of controlled items. Such additional safeguards

include special deployment of officers to handle air transshipment cargo, such as surprise pre-shipment checks and post shipment verification. The ACCS will be further enhanced in terms of capacity and functionality to keep track of the movement of air transshipment cargo into and out of Hong Kong and sophisticated equipment, such as mobile X-ray vans and portable contraband detectors will be procured for on-site inspection of air transshipment cargo.

Ends.

**Transshipment Cargo Exemption Scheme  
for Less Sensitive Strategic Commodities**

Hong Kong is determined to maintain the integrity and effectiveness of our controls to deter the illegal diversion of strategic commodities. Having regard to this strong policy commitment, we propose to implement a Transshipment Cargo Exemption Scheme to give due facilitation to air transshipment of less sensitive strategic commodities. The arrangement is modeled on the existing Transshipment Cargo Exemption Scheme which covers pharmaceutical products, reserved commodities and pesticides.

2. Under the proposed Scheme, air carriers and their respective appointed agents have to register with the Trade Department in accordance with specified registration criteria. These include, undertakings to: (i) maintain up-to-date books and records in respect of the transshipment cargo of strategic commodities; (ii) ensure that the cargo concerned would remain in their physical custody and in the Airport restricted area; (iii) render assistance and co-operation to authorized officers to inspect consignments held in their custody and relevant books and records; (iv) produce movement details of the cargo upon request, etc. Failure to comply with the exemption conditions will result in their exemption facilities being withdrawn and prosecution under the law.

3. Those who are registered under the Scheme are entitled to the licensing exemption facilities, i.e. no import/export licence is required for the air transshipment of strategic commodities which remain within the confines of the Airport area. The scope of exemption would cover strategic commodities on the air-to-air transshipment mode, which are covered by a through air waybill issued at the original port of loading, and which remain within the confines of the Airport restricted area except for onward flights. The product scope would include strategic commodities detailed in Schedule 1 to the Import and Export (Strategic Commodities) Regulations except sensitive items such as specified munitions, nuclear related materials, encryption equipment as listed in Schedule 2 to the Regulations and which are currently already subject to licensing control even if they are in transit through Hong Kong. The licensing requirements for the import and export of strategic commodities other than air-to-air transshipment will not be affected by the Scheme.

Ends