

For discussion on
28 November 2022

Legislative Council Panel on Economic Development

Enhancing the Control and Regulation for Transshipment of Alternative Smoking Products

INTRODUCTION

This paper consults Members on the legislative proposal to enhance the control and regulatory regime relating to the transshipment of alternative smoking products (“ASPs”) from the Mainland via Hong Kong to other overseas markets through refining the existing legislation.

BACKGROUND

Current position and challenges

2. Hong Kong is a premier logistics hub in Asia and gateway for trade between the Mainland and the rest of the world. Our strategic location, excellent connectivity, state-of-the-art infrastructure, sound legal system, high-quality service providers, competitive tax regime, and status as an international business and financial centre give Hong Kong its competitive edge. Hong Kong International Airport (“HKIA”) has been the world’s busiest international cargo airport since 1996. The Central Government has also indicated support to Hong Kong in enhancing its status as an international aviation hub and international trade centre under the National 14th Five-Year Plan and the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area (“GBA”).

3. In 2021, HKIA handled five million tonnes of total cargo throughput, which accounted for about 42%, or about HK\$4,340 billion, of the total value of Hong Kong’s external trade. As a major pillar to Hong Kong’s economy, the trading and logistics industry accounts for around one fifth of our GDP and provides more than 600,000 jobs.

4. Hong Kong is well known for its inter-modal connectivity, which is key to our status as one of the most efficient and reliable logistics hubs in the region. The Chief Executive’s Policy Address 2022 also mentions our direction to promote high value-added modern logistics

development through reinforcing inter-modal transport by integrating air, sea and land transport to strengthen the key role played by Hong Kong in the logistics chain of the GBA.

5. However, the air cargo and logistics industry has been facing increasing challenges, such as the sapping global economic growth and the continual disruptions to cross-boundary land transport. While our air cargo performance has sustained throughout the COVID pandemic over the past two years, ***from May to October 2022, air cargo volume of HKIA recorded a significant decline by 18% on average compared with the same period last year.***

6. As revealed from our review of the latest situation with reference to the relevant trade figures on air cargo transshipment, the significant drop was partly due to the loss of inter-modal ASP transshipment from the Mainland, amongst other factors. With the Mainland being a major ASP manufacturing location in the world and Hong Kong as one of the most important transshipment hubs, the majority of ASPs from the Mainland used to be transhipped overseas via Hong Kong. In fact, ASP transshipment represents a significant portion of our total air cargo volume. ASP shipments, especially their vapouring equipment with battery inside, contribute to tens of thousands tonnes of export air cargo every month from the GBA to the United States, Europe, North East Asia and the Middle East. According to the logistics trade, about 470 companies out of about 1 470 companies (i.e. about one-third) in freight forwarding business are involved in ASP transshipment, handling almost 330 000 tonnes of ASP transshipment and related products per year.

Proposed new measure in resuming air cargo volume

7. In order to rescue the decline in air cargo volume which is crucial to the overall trade development, we should, amongst other measures, facilitate the inter-modal ASP transshipment on the premise that it would not in any way compromise the risks of ASP leakage into the local market. In view of the emergence of ASPs and their associated health risk, the Government has introduced legislative amendments through the Smoking (Public Health) (Amendment) Ordinance 2021, which bans the import, manufacture, sale, distribution and advertisement of ASPs (including electronic cigarettes, heat-not-burn products and herbal cigarettes). The legislative amendment came into effect on 30 April 2022.

8. Under the amended Smoking (Public Health) Ordinance (Cap. 371), it is an offence to import ASPs to Hong Kong, unless the ASPs concerned are *articles in transit* or *air transshipment cargos* as defined in the Import and Export Ordinance (Cap. 60)¹. In other words, transshipment of ASPs from the Mainland via Hong Kong in certain modes, such as transshipment by way of import into Hong Kong by sea or land and export by air (i.e. sea-to-air and land-to-air inter-modal transshipment), is prohibited.

9. While it remains the Government's stance to prohibit ASPs from entering into the local market due to its harmful nature, we notice that the ban of the inter-modal ASP transshipment has caused a substantial economic loss to our air cargo transshipment business and the overall economy of Hong Kong. In particular, air cargo export (including, among other things, inter-modal ASP transshipment) dropped by 22% during the same period. This has dealt a heavy blow to Hong Kong's logistics industry. If the situation continues, Hong Kong's position as an international aviation hub under the National 14th Five-Year Plan would be seriously undermined.

10. The ban on inter-modal ASP transshipment also had a knock-on effect on other transshipment products. The high-density nature of ASP equipment is vital for cargo consolidation. With the loss of these heavy products, freight forwarders encountered difficulties in arranging transshipment of other less heavy goods through consolidation in Hong Kong, resulting in a loss of other transshipment products as well.

11. In order to maintain Hong Kong's position as a leading international aviation and logistics hub while ensuring that our policy on importation ban on ASPs would be duly preserved, the Government plans to refine the existing control and regulatory regime for ASP transshipment by making use of the following new regulatory framework to provide for inter-modal transshipment in a controlled and secure manner.

¹ According to section 2 of Cap. 60 –

Article in transit (過境物品) means an article which — (a) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong.

Air transshipment cargo (航空轉運貨物) means transshipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transshipment area of Hong Kong International Airport.

REGULATING INTER-MODAL TRANSHIPMENT OF ASP

Sea-to-air transhipment

12. As part of its effort to better serve the GBA air cargo market, the Airport Authority Hong Kong (“AAHK”) is developing sea-air inter-modal cargo transhipment between HKIA and Dongguan. AAHK has started to use the Sea-Air Transhipment Facilitation Scheme since early-2022 to facilitate the cross-boundary air-cargo transhipment through sea-to-air inter-modal processes. The pilot scheme of the above inter-modal transhipment operations has been running smoothly since its implementation.

13. This Sea-Air Transhipment Facilitation Scheme seeks to provide a new way in facilitating sea-to-air ASP transhipment without compromising the need to guard against leakage of ASPs into the local market during the transhipment process. Under the Scheme, “sea-to-air” transhipment cargo would undergo aviation security screening in HKIA Logistics Park in Dongguan before being transported by sea to HKIA. The cargo will remain on the incoming vessel and upon reaching the airport, be immediately brought into the HKIA restricted/enclosed area under surveillance within which the cargo will remain at all times until departure for onward transhipment by air to overseas destinations. The whole transhipment process is under secured conveyance and subject to a control regime agreed by the Customs and Excise Department (“C&ED”).

Land-to-air transhipment

14. According to the information provided by the logistics industry, ASPs and related products manufactured in the Mainland used to be transported to Hong Kong via land transport and then transhipped through the HKIA to other places. Having considered the importance of land-to-air transhipment to Hong Kong’s air cargo and logistics industry, the Government will continue to work with the industry in devising a dedicated control scheme to enable the secured operations of land-to-air inter-modal transhipment of ASPs. The provisions proposed in the current exercise will allow for the future resumption of land-to-air transhipment of ASP subject to the finalisation of a dedicated control regime.

LEGISLATIVE PROPOSALS

15. Noting that there is already an exemption regime for articles in transit or air transshipment cargos under the existing legislation, we propose to refine such exemption regime to clearly state in our law that inter-modal transshipment of ASPs via both sea-to-air mode and land-to-air mode as mentioned in paragraphs 12 to 14 above would be allowed subject to a set of control and monitoring measures as agreed by the Commissioner of Custom and Excise to meet the industry's genuine operational needs and at the same time, to prevent the leakage of ASPs into the local market. The following legislative proposal is recommended –

Legislative approach

16. We propose to add a new Part in the Import and Export Ordinance (Cap. 60) to provide for the prohibition on the import of ASPs; the existing exemption for air-to-air and sea-to-sea ASP transshipment; the exemption for inter-modal ASP transshipment which could fulfil the specific exemption conditions (see below) (as well as certain other existing exemptions such as exemption for persons in transit and exemption for Government Chemists); and the enforcement powers of officers concerned. The Smoking (Public Health) Ordinance (Cap. 371) will be amended consequentially to remove the existing provisions relating to the prohibition of ASP import. This could provide a more comprehensive control and regulation of ASP transshipment via Hong Kong under the Import and Export Ordinance (Cap. 60).

Exemption Conditions

17. The above legislative proposal will only allow ASPs to be transhipped overseas via Hong Kong but not for import for local consumption. It is important to put in place a robust control and monitoring regime to minimise the potential risks of leakage into the black market during the course of transshipment. In this regard, we propose that any ASP transshipment via either sea-to-air mode or land-to-air mode shall be subject to the following exemption conditions to be set out in the law –

- (a) As transshipment cargo, the ASPs shall be consigned on a ***through bill of lading*** or a ***through air waybill*** from a place outside Hong Kong to another place outside Hong Kong;
- (b) during the transfer process in Hong Kong, the ASPs have to be

directly transferred upon entry to the specified cargo handling area inside the HKIA via *designated routing* subject to monitoring;

- (c) all ASPs shall be *stored and transported in a secured manner* during the whole transfer process until reaching the specified cargo handling area inside the HKIA for unloading under security control and supervision, so as to avoid any unauthorised removal of ASPs from either vessels or vehicles during the transshipment process; and
- (d) upon being unloaded from the arrival conveyances, all ASPs will be immediately *delivered into the restricted areas of HKIA* and will remain therein at all times until being brought onboard the departing flights for export.

18. In addition to the above conditions, the transshipment process has to be subject to other specific control and monitoring measures as required by the Government, such as provision of advance cargo information, application of designated seal(s)/e-lock on the container, tracking of the conveyance by GPS equipment, etc. to ensure its compliance with the exemption conditions and to avoid leakage into the local black market. The Government will engage the industry in reviewing their inter-modal transshipment operations so as to be compliant with the requirements for the exemption conditions.

Enforcement and Penalty

19. In future, C&ED can rely on the statutory powers to be provided for under the amended Cap. 60 to take enforcement actions against any non-compliance of exemption conditions imposed on ASP transshipment via sea-to-air and land-to-air transfers. We will keep in view the need to suitably adjust the penalty level of ASP import² with reference to other similar enforcement mechanisms to enhance the deterrent effect against any potential leakage.

CONSULTATION

20. The Government has been in liaison with different stakeholders including the logistics and air cargo industry, medical and health sector, as well as the education sector on the legislative proposals to refine the

² Under section 15DA(4) of Cap. 371, a person who imports an ASP commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

ASP transshipment regime including the proposed control and monitoring measures. A meeting with representatives of various industry associations (including Hong Kong Logistics Association, The Chamber of Hong Kong Logistics Industry, Hong Kong Sea Transport and Logistics Association, Hong Kong Association of Freight Forwarding and Logistics Limited (“HAFFA”), Hong Kong Association of Aircargo Truckers Limited and Hong Kong Air Cargo Carrier Liaison Group) was held in early-September 2022 to discuss the subject.

21. At the meeting, all industry representatives strongly advocated for refinement of the current regime. Amongst others, HAFFA emphasised the pressing need to resume the land-to-air transshipment urgently, in addition to sea-to-air transshipment, to avoid further deterioration of the transshipment business via Hong Kong, which had not only affected the logistics trade but also the overall economy of Hong Kong. The trade also indicated that they would comply with the exemption conditions as well as other control and monitoring measures required by the Government.

22. In addition to the industry associations, Members of the Hong Kong Logistics Development Council also considered it important to resume ASP transshipment quickly to address the dire situation faced by the logistics and air cargo industry which has been severely hit by the disruption to the global supply chain due to the pandemic and other global economic factors.

23. The Government is fully aware of the concern of the medical and health groups as well as the education sector about the possible change in regulation and the sectors are worried if there would be potential leakage of ASPs into the local market during the transshipment process. We will therefore introduce a robust control and monitoring mechanism with enhanced enforcement and penalty as highlighted in paragraphs 17 to 19 above with a view to effectively regulating the inter-modal transshipment of the ASPs for the protection of public health. The exemption conditions will be reviewed from time to time to ensure the conditions imposed would not be exploited by any parties. The Government would actively reach out to the relevant sectors to alleviate their concerns and to reinforce the Government’s commitment in enforcing the import ban of ASPs as well as studying the way forward in tobacco control.

LEGISLATIVE TIMETABLE

24. In view of the urgency to alleviate the impact on the transshipment business brought by the ban on inter-modal ASP transshipment, we aim at introducing the legislative amendments into the Legislative Council in early-2023.

ADVICE SOUGHT

25. Members are invited to comment on the legislative proposals set out in this paper.

Transport and Logistics Bureau
November 2022