

Legislative Council Panel on Commerce and Industry

Origin marking of goods under the Trade Descriptions Ordinance

Introduction

Origin marking of goods is regulated by the Trade Descriptions Ordinance (TDO) (Cap. 362). The basic principle used in the TDO for determining the origin of goods is the “last substantial transformation” principle, i.e. the origin of goods should be where the goods last underwent a treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture. In cases where the “last substantial transformation” principle is not appropriate, the TDO provides for the making of orders by the Commissioner of Customs and Excise (C,C&E) to specify the country where the goods in question have been manufactured. The TDO also provides for the making of notices by the Director-General of Trade and Industry (DGTI) to specify the place where goods subject to a scheme of import or export control have been manufactured. However, there is at present no specific provision in the TDO which provides for the place of manufacture to be specified for goods which are not subject to a scheme of import or export control.

Background

Legislative framework

2. The TDO prohibits the application of false trade descriptions to goods to protect consumers. Section 2 of the TDO provides that “trade description” means “an indication, direct or indirect, and by whatever means given, of any of the matters specified in that definition with respect to any goods or parts of goods, including place or date of manufacture, production, processing or re-conditioning”. Under the TDO, origin marking of goods is not mandatory but where such marking is used, it must not be false or misleading.

3. In determining the origin of goods, the “last substantial transformation” principle is set out in **section 2(2)(a)** which provides that –

“for the purposes of the Ordinance, goods shall be deemed to have been –

- (i) manufactured in the country in which they last underwent a treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture; or
- (ii) produced in the country in which they were wholly grown or mined.”

4. Notwithstanding the general deeming provision in section 2(2)(a), the TDO also provides that C,C&E and DGTI may respectively make orders and notices to specify the origin marking requirements in the following circumstances –

- (a) **section 2(2)(b)(i)** empowers C,C&E to specify by way of order in relation to any description of goods what treatment or process is to be regarded for the purposes of the Ordinance as resulting or not resulting in a permanent and substantial change in shape, nature, form, utility of the basic materials used in their manufacture;
- (b) **section 2(2)(b)(ii)** empowers C,C&E to specify by way of order in relation to any description of goods, different parts of which were manufactured or produced in different countries, or of goods assembled in a country different from that in which their parts were manufactured or produced, in which of those countries the goods are to be regarded for the purposes of the Ordinance as having been manufactured or produced; and

- (c) **section 2(2A)** empowers DGTI to specify by way of notice in relation to any description of goods (being goods that are subject to a scheme of import or export control specified in the notice) the place in which the goods are to be regarded as having been manufactured or produced for the purposes of the Ordinance.

Orders and Notices made in the past

5. Thus far, with the exception of watches and piece-knitted garments, the origin marking requirement for all other goods has been in accordance with the “last substantial transformation” principle set out in section 2(2)(a). In 1990, the Trade Descriptions (Country of Origin) (Watches) Order was made by C,C&E to specify the country in which the movement of a watch is manufactured or produced is to be regarded as the country in which the watch has been manufactured. In 1991, the Trade Descriptions (Place of Manufacture) Notice was made by DGTI to specify that the place where the knitting of yarn into knit-to-shape panels takes place is to be regarded as the place where the piece-knitted garments for export to the US market, which are subject to a scheme of export control, have been manufactured.

6. Under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), the origin rules for watches and piece-knitted garments are different from those specified under the Order and Notice mentioned in paragraph 5 above. In order to enable watches and piece-knitted garments meeting the CEPA origin rules and for export to the Mainland under CEPA to bear a Hong Kong origin marking, C,C&E and DGTI made respectively an amendment order and a new notice to specify that when these two categories of goods meet the CEPA origin rules and are for export from Hong Kong to the Mainland under CEPA, they should be regarded as having been made in Hong Kong. A copy of the Information Paper issued to the Legislative Council Panel on Commerce and Industry explaining the amendment order and the new notice is at Annex.

Review of origin-marking related provisions

7. Following that amendment exercise, we have carefully reviewed the TDO's existing origin marking-related provisions and detected certain limitations. As pointed out in paragraphs 4(b) and 4(c) above, an order by C, C&E under section 2(2)(b)(ii) can only specify the "country" of manufacture, and a notice by DGTI under section 2(2A) for specifying the "place" of manufacture can only be made in respect of goods subject to a scheme of import or export control. There is no specific provision in the TDO providing for the "place" of manufacture to be specified for goods which are not subject to any scheme of import or export control.

8. We foresee that circumstances may arise in future requiring us to specify the "place" of manufacture for goods which are not subject to any scheme of import or export control, e.g., a further expansion in the list of goods which may enjoy CEPA benefits to include new categories of goods for which the CEPA rules of origin do not follow the "last substantial transformation" principle. Hence, we propose that the TDO should be amended to cater for such circumstances.

9. In addition, our review also shows that different terms are being used in the TDO when the origin of goods is referred to. In some provisions, the word "place" is used (e.g. section 2, section 2(2A)), whilst in other provisions the word "country" is used (e.g. section 2(2)(a), section 2(2)(b)(ii)). This may cause confusion and is not satisfactory.

Proposal

10. To cover the circumstances cited in paragraph 8 above, we propose that the word "country" in section 2(2)(b)(ii) should be replaced by the word "place" whenever the former appears. After such amendment, C,C&E may make orders to specify the place of manufacture of goods, irrespective of whether the goods are subject to a scheme of import or export control.

11. To remove the inconsistency in terminology referred to in paragraph 9 above, we propose to replace “country” by “place” whenever the origin of goods is referred to in the TDO.

Public consultation

12. We have consulted the Trade and Industry Advisory Board and the Textiles Advisory Board on our proposals. Members of the two Boards have not raised any comment.

Legislative timetable

13. We are now preparing an amendment bill to give effect to the two proposed sets of amendment. Subject to Members’ views, we plan to introduce the bill into the Legislative Council in the last quarter of this year.

Commerce, Industry and Technology Bureau
May 2004

**Information Paper for the
Legislative Council Panel on Commerce and Industry**

**Origin marking of watches and piece-knitted garments
for export under the Mainland and Hong Kong
Closer Economic Partnership Arrangement (CEPA)**

Purpose

This paper informs Members of the making of the Trade Descriptions (Country of Origin) (Watches) (Amendment) Order 2003, at Annex A, and the making of the Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Notice, at Annex B, under the Trade Descriptions Ordinance (TDO) (Cap. 362). The Amendment Order and the Notice seek to amend the existing origin marking requirements for watches and piece-knitted garments as stipulated by the TDO to allow watches and piece-knitted garments which have been exported, or are intended to be exported, from Hong Kong to the Mainland under CEPA to bear Hong Kong origin marking.

Origin Marking Requirements under the TDO

2. S.2(2)(a)(i) of the TDO stipulates that, for the purposes of the Ordinance, goods shall be deemed to have been manufactured in the country in which they last underwent a treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture. It is an offence under the Ordinance if a person applies a false trade description to any goods or supplies, possesses or exports such goods.

3. Notwithstanding the above principle, watches and piece-knitted garments are subject to special requirements as follows –

- (a) for watches, the Trade Descriptions (Country of Origin) (Watches) Order was made in 1991 to specify that the country in which the movement of a watch is manufactured or produced is to be regarded as the country in which the watch has been manufactured, instead of where the last step of major transformation takes place; and

- (b) for piece-knitted garments for export to the US market, the Trade Descriptions (Place of Manufacture) Notice was made in 1991 to allow such goods to bear a Hong Kong-origin marking if the knitting of yarn into knit-to-shape panels takes place in Hong Kong, instead of mandating the origin marking based on the last step of major transformation (i.e. the stitching/linking of knit-to-shape panels into garment), irrespective of whether the manufacture from knit-to-shape panels takes place in Hong Kong.

CEPA Origin Rules

4. From 1 January 2004, goods of Hong Kong origin meeting the CEPA origin rules in 273 Mainland product codes¹ will enjoy zero tariff. The CEPA origin rules for watches and piece-knitted garments are set out in the table below.

	CEPA origin rules
Watches	<ul style="list-style-type: none">• Assembly of component parts and accessories into watch, testing, time adjustment and quality control in Hong Kong, and fulfilling a 30% value-added requirement.
Piece-knitted garments	<ul style="list-style-type: none">• Either "knitting of yarn into knit-to-shape panels" or "linking/stitching of knit-to-shape panels into garment" is done in Hong Kong.

These origin rules are different from the existing origin marking requirements in the TDO explained in paragraphs 3(a) and 3(b) above, and may thus give rise to the following problems -

- (a) watches which fulfill the CEPA origin rules cannot be marked "Made in Hong Kong" under the existing TDO requirements but have to be marked as made in the country in which the movements of the watches have been manufactured; and

¹ CEPA adopts the Mainland product codes for product classification. Among the 273 product codes, two product codes are for watches while 20 are for piece-knitted garments.

- (b) piece-knitted garments which fulfill the CEPA origin rule by having had the "knitting of yarn into knit-to-shape panels" taken place in Hong Kong cannot be marked "Made in Hong Kong" under the TDO if they are not intended for export to the US².

The Amendment Order and the Notice

5. In order to enable manufacturers to mark their goods as "Made in Hong Kong" in the circumstances set out in paragraphs 4(a) and 4(b) above and to guard against wrong origin marking in respect of exports of watches and piece-knitted garments to the Mainland to enjoy zero tariff under CEPA –

- (a) the Commissioner of Customs and Excise has made the Amendment Order at Annex A to amend the Trade Description (Country of Origin) (Watches) Order by inserting an exception clause to the effect that the Order shall not apply to watches that have been exported, or are intended to be exported, from Hong Kong to the Mainland under CEPA and are qualified for zero tariff under CEPA; and
- (b) the Director-General of Trade and Industry has made the Notice at Annex B to specify that in relation to piece-knitted garments that have been exported or are intended to be exported from Hong Kong to the Mainland under CEPA, are qualified for zero tariff under CEPA, and are made from knit-to-shape panels knitted in Hong Kong, the piece-knitted garments are to be regarded as having been manufactured or produced in Hong Kong.

6. The Amendment Order and the Notice will take effect from 1 January 2004 to tie in with the implementation date of CEPA. They will be published in the Gazette on 24 October 2003 and tabled at the Legislative Council meeting on 29 October 2003 for the negative vetting procedures.

² For those piece-knitted garments of which the "linking/stitching of knit-to-shape panels into garment" takes place in Hong Kong, they are covered by TDO's origin marking requirement in accordance with where the last step of major transformation takes place.

Conclusion

7. Members are invited to note the purpose of the Amendment Order and the Notice and the legislative timetable set out in paragraphs 5 and 6 above.

Commerce, Industry and Technology Bureau
October 2003

**TRADE DESCRIPTIONS (COUNTRY OF ORIGIN)
(WATCHES)(AMENDMENT) ORDER 2003**

(Made under section 2(2)(b)(ii) of the Trade
Descriptions Ordinance (Cap. 362))

1. Commencement

This Order shall come into operation on 1 January 2004.

2. Specification of country of origin of watches

Section 2 of the Trade Descriptions (Country of Origin)(Watches) Order
(Cap. 362 sub. leg. D) is amended –

- (a) by renumbering it as section 2(1);
- (b) by adding –

"(2) Subsection 1) does not apply to any watch that has been exported, or is intended to be exported, from Hong Kong to the Mainland under the Mainland and Hong Kong Closer Economic Partnership Arrangement and that is qualified for a zero tariff under the Arrangement.

(3) In this section –

"the Mainland" (內地) means any part of China other than Hong Kong, Macau and Taiwan;

"Mainland and Hong Kong Closer Economic Partnership Arrangement" (內地與香港關於建立更緊密經貿關係的安排) means the Mainland and Hong Kong Closer Economic Partnership Arrangement entered into between the Central People's Government and the Government of the Hong Kong Special Administrative Region and signed on 29 June

2003 (including the annexes signed on 29 September 2003), as amended from time to time."



Commissioner of Customs and Excise

22 October 2003

Explanatory Note

This Order amends the Trade Descriptions (Country of Origin)(Watches) Order (Cap. 362 sub. leg. D) for the purpose of allowing locally assembled watches that have been exported, or are intended to be exported, from Hong Kong to the Mainland of China under the Mainland and Hong Kong Closer Economic Partnership Arrangement to be marked as being of Hong Kong origin.

**TRADE DESCRIPTIONS (PLACE OF MANUFACTURE)
(PIECE-KNITTED GARMENTS) NOTICE**

(Made under section 2(2A) of the Trade
Descriptions Ordinance (Cap. 362))

1. Commencement

This Notice shall come into operation on 1 January 2004.

2. Application

(1) This Notice applies to any piece-knitted garments that –

have been exported, or are intended to be exported, from
Hong Kong to the Mainland under the Mainland and Hong
Kong Closer Economic Partnership Arrangement;
are qualified for a zero tariff under the Arrangement;
are made from knit-to-shape panels knitted in Hong Kong;
and
are subject to a scheme of export control under the Import
and Export Ordinance (Cap. 60).

(2) In this section –

"the Mainland" (內地) means any part of China other than Hong Kong, Macau
and Taiwan;

"Mainland and Hong Kong Closer Economic Partnership Arrangement" (《內地
與香港關於建立更緊密經貿關係的安排》) means the Mainland and
Hong Kong Closer Economic Partnership Arrangement entered into
between the Central People's Government and the Government of the Hong
Kong Special Administrative Region and signed on 29 June 2003
(including the annexes signed on 29 September 2003), as amended from
time to time.

3. Place of manufacture

The piece-knitted garments to which this Notice applies are to be regarded for the purposes of the Ordinance as having been manufactured or produced in Hong Kong.



Director-General of Trade and Industry

22 October 2003

Explanatory Note

This Notice specifies Hong Kong as the place of manufacture of piece-knitted garments to which the Notice applies.