

香港特別行政區政府
工商及科技局
工商科

香港金鐘道八十八號
太古廣場第一期二十九樓



CB(1)1390/04-05(01)

COMMERCE AND INDUSTRY BRANCH
COMMERCE, INDUSTRY AND
TECHNOLOGY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

LEVEL 29, ONE PACIFIC PLACE
88 QUEENSWAY
HONG KONG

Tel No. : 2918 7577
Fax No.: 2537 7725

Your Ref:CB1/BC/4/04
Our Ref: S/F to CIB CR 62/47/1/5

26 April 2005

Miss Polly Yeung
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

By Fax: 2877 5029

Dear Miss Yeung,

Bills Committee on Trade Descriptions (Amendment) Bill 2004

I refer to the discussions at the first meeting of the captioned Bills Committee held on 1 December 2004 and the letter from the Hon. Wong Ting-kwong dated 4 February 2005 to the undersigned and copied to all Members of the Bills Committee.

Application of section 24A of the Trade Descriptions Ordinance (Cap. 362)

2. Some Committee Members were concerned that the amendments in the Bill to section 24A of the Trade Descriptions Ordinance (Cap. 362) (the TDO) may result in a situation where any inconsistency in the degree of geographical detail applied to a piece of goods as trade description and the degree of geographical detail contained in the concerned evidence will give rise to possible prosecution, even though the two geographical descriptions in the trade description and the evidence, when taken together, do not factually constitute a false trade description, e.g. while the goods were marked "Made in Shenzhen" the evidence shows that the goods were imported from China.

3. To clarify the application of section 24A of the TDO in the light of the amendments introduced by the Bill, the Administration intends to introduce Committee Stage Amendments (CSAs) to the Bill. The draft CSAs to this effect are attached at Annex (see clause 3 therein).

Alternative drafting approaches

4. The Bill seeks to increase the flexibility of applying sections 2(2)(a) and 2(2)(b)(ii) of the TDO by replacing references to “country”/“countries” therein by “place”/“places”. We have adopted this drafting approach because we take the view that the common meaning of “place” is capable of referring to any level of geographical descriptions, including but not limited to “country”. The use of the term “place” can therefore provide traders with flexibility in the application of origin marking to goods so long as such marking does not constitute a false trade description. It should also be noted that the term “place” is being used in the definition of “trade description” in section 2, and in section 2(2A) of the TDO, and that under these provisions, the term “place” is intended to carry no limitation on the level of geographical descriptions as well.

5. The Administration has examined the alternative drafting approaches suggested by Members, and considered that the current approach can best achieve the objective of the Bill while preserving the intended flexibility in governing the application of origin marking on goods under the TDO.

Consistency with international agreement, convention, or other local legislation

6. One of the purposes of the TDO is to provide a local legislative regime that governs the application of trade descriptions to goods. Provisions for this purpose (including those being amended by the Bill and the draft CSAs) were not enacted to implement any international convention or agreement.

7. In the course of preparing the Bill, we have consulted relevant Bureaux on the need to amend references to “country of origin” in other Ordinances. The concerned Bureaux consider that these references are not relevant to the origin marking of goods governed by the TDO and amendments for such purpose are not necessary. The relevant Bureaux further indicate that if there should be a need to amend “country of origin” in the concerned Ordinances in future, they will take forward such

amendments through separate exercises, in the light of policy considerations under their purview.

8. The fact that the “國家、地區或地方” formula is adopted in the Trade Marks Ordinance (Cap. 559), the Registered Designs Ordinance (Cap. 522), the Patents Ordinance (Cap. 514) and the Copyright Ordinance (Cap. 528) is not indicative of any inconsistency either, because these Ordinances aim to provide for an intellectual property protection regime in Hong Kong, the subject matter of which is different from the TDO’s purpose of governing the application of trade descriptions to goods.

9. In view of the foregoing, the Administration considers that the amendments introduced by the Bill and the draft CSAs will not result in inconsistency with any international agreement, convention or other local legislation.

Chinese renditions of “place of manufacture, production, processing and reconditioning”

10. The textual difference between the Chinese renditions of “place of manufacture, production, processing and reconditioning” in the definition of “trade description” in section 2 (i.e. “製造、生產、加工或修復的地點”) and that in section 24A (i.e. “製造、生產、加工或修復的地方”) of the TDO will not affect the operation of the TDO. It is not necessary to amend these Chinese renditions for the purpose of improving the flexibility of applying sections 2(2)(a) and 2(2)(b)(ii) of the TDO.

11. Nonetheless, the Administration is prepared to improve the textual consistency of those provisions in a separate legislative exercise, such as the introduction of a miscellaneous amendment bill or the making of an order under section 4D of the Official Languages Ordinance (Cap. 5).

Yours sincerely,



(Miss Noel Tsang)

for Secretary for Commerce, Industry and Technology

Encl.

cc. C/CE (Attn: Mr Raymond Wong)
DGTI (Attn: Mrs Mabel Yu)
DoJ (Attn: Miss Karen Lee, Civil Division
Mr W L Cheung, Law Drafting Division)

DM #113585/WL Cheung
1st working draft: 17.11.2004 (v1)
1st draft: 18.11.2004 (v2)
2nd draft: 19.11.2004 (v3)
3rd draft: 09.03.2005 (v6)

TRADE DESCRIPTIONS (AMENDMENT) BILL 2004

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce,
Industry and Technology

Clause

Amendment Proposed

Long
title

By adding before the full stop ", the Trade
Descriptions (Country of Manufacture) (Piece-Knitted
Garments) Order and the Trade Descriptions (Country of
Manufacture) (Textile Made-up Articles) Order".

3

By deleting the clause and substituting -

"3. Rule of evidence regarding imported goods

Section 24A is amended -

- (a) by renumbering it as section
24A(1);
- (b) in subsection (1), by repealing
"or country" wherever it appears;
- (c) by adding -

"(2) Notwithstanding
subsection (1), in any
prosecution for an offence
referred to in that

subsection, a trade description which indicates that the goods were manufactured, produced, processed or reconditioned in a place shall not be regarded as false only because of the evidence that the goods were imported from another place, if -

(a) that other place is located within the first-mentioned place; or

(b) the first-mentioned place is located within that other place."."

New By adding -

**"Trade Descriptions (Country of
Manufacture) (Piece-Knitted
Garments) Order**

6. Title amended

The title to the Trade Descriptions (Country of Manufacture) (Piece-Knitted Garments) Order (L.N. 157 of 2004) is amended by repealing "COUNTRY" and substituting "PLACE".

7. Place of manufacture

Section 2 is amended by repealing "country" where it twice appears and substituting "place".

**Trade Descriptions (Country of
Manufacture) (Textile Made-up
Articles) Order**

8. Title amended

The title to the Trade Descriptions (Country of Manufacture) (Textile Made-up Articles) Order (L.N. 186 of 2004) is amended by repealing "COUNTRY" and substituting "PLACE".

9. Place of manufacture or production

Section 4 is amended by repealing "country" where it twice appears and substituting "place".