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**Bills Committee on  
Trade Descriptions (Amendment) Bill 2004**

**Background brief**

**Purpose**

This paper sets out the background of the Trade Descriptions (Amendment) Bill 2004.

**Background**

Existing legislative provisions

2. At present, the origin marking of goods is regulated by the Trade Descriptions Ordinance (TDO) (Cap. 362). For the purpose of determining the origin of goods, section 2(2)(a) of TDO contains a general deeming provision which provides that goods are deemed to have been manufactured in the "country" in which they last underwent substantial transformation. Section 2(2)(b) and section 2(2A) of TDO empowers the Commissioner for Customs and Excise (C,C&E) and the Director-General for Trade and Industry (DGTI) to make Orders and Notices respectively to specify other special origin-marking requirements. Thus far, with the exception of watches, piece-knitted garments and textile made-up articles, the origin marking requirements for all other goods has been in accordance with the "last substantial transformation" principle set out in section 2(2)(a).

3. The wording of the deeming provisions under sections 2(2)(a) of TDO makes reference to "country" only. Likewise, the wording of section 2(2)(b) allows C,C&E to make Orders in respect of "countries" only. The reference to "country" or "countries" only in these sections is problematic because there may be circumstances in which the deeming provisions need to be applied to a "place" instead of a "country", or where C,C&E needs to specify the "places", instead of the "countries", of manufacture or production of goods in the Orders.

Implementation of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)

4. Pursuant to the CEPA signed between the Government of the Hong Kong Special Administrative Region and the Central People's Government on 29 June 2003, the Mainland has agreed, inter alia, to eliminate tariffs on imported goods from Hong Kong by phases provided these goods meet the relevant origin requirements. The first phase of CEPA (CEPA I) took effect on 1 January 2004 and the second phase (CEPA II) is scheduled to be implemented on 1 January 2005. About 1,000 Hong Kong products are eligible for zero tariff under the two phases of CEPA.

5. While the existing origin rules are adopted for most of the products as the CEPA origin rules, the relevant origin requirements for watches and piece-knitted garments are different. To enable watches and piece-knitted garments for export under CEPA to bear a Hong Kong origin marking, C,C&E made the Trade Descriptions (Country of Origin)(Watches)(Amendment) Order 2003 (the 2003 Amendment Order) and DGTI made the Trade Descriptions (Place of Manufacture)(Piece-Knitted Garments) Notice in October 2003.

6. A Subcommittee was formed to scrutinize the two pieces of subsidiary legislation. On examining the 2003 Amendment Order, members queried whether section 2(2)(a)(i) could apply to watches under CEPA because Hong Kong is a "place" and not a "country" as stipulated in the said section. On that occasion, the Administration's explanation was that reference should also be made to the definition of "trade description" in section 2(1) of TDO. "Trade description" is defined to mean an indication, direct or indirect, and by whatever means given, of any of the matters specified in that definition, including, under paragraph (h), the "place or date of manufacture, production, processing or re-conditioning". The Administration took the view that no offence relating to "false trade description" would be committed under TDO if these watches are marked as "made in Hong Kong" because Hong Kong is a place within China.

7. Although members of the Subcommittee did not object to the two pieces of subsidiary legislation in order that the eligible products could benefit from zero tariff under CEPA I starting from 1 January 2004, they urged the Administration to critically review the relevant provisions to see whether they could be improved so as to remove any doubt which might arise. (The Subcommittee's report under LC Paper No. CB(1)308/03-04 has been re-circulated to members of the Bills Committee separately). The Administration have accordingly conducted the review and introduced the Bill.

**The Bill**

8. The Bill seeks to amend section 2 of TDO and the Trade Descriptions (Country of Origin) (Watches) Order (Cap. 362 sub. leg. D) so that the origin of goods is expressed in those provisions by reference to a place, instead of a country. The Bill also proposes to repeal the reference to "or country" in relation to the manufacture of the goods in section 24A of TDO.

## **Consultation**

### Industry consultation

9. According to the Administration, the Textiles Advisory Board and the Trade and Industry Advisory Board have been consulted and have agreed to the proposal.

### Consultation with Panel

10. At the meeting of the Panel on Commerce and Industry on 10 May 2004, the Administration informed the Panel that legislative amendments would be introduced to effect the changes of the reference to "country" in relation to manufacture of goods in the TDO. Noting that the proposed amendments could facilitate the implementation of CEPA and provide greater flexibility in the application of the relevant provisions in the TDO, the Panel expressed support in principle for the Administration to introduce the Bill.

## **Need for consequential amendments**

11. It has been noted that reference to "country" of origin or manufacture still appears in many other ordinances and in the following pieces of subsidiary legislation made under TDO :

- (a) Trade Descriptions (Country of Manufacture) (Piece-Knitted Garments) Order made on 15 October 2004 (L. N. 157 of 2004); and
- (b) Trade Descriptions (Country of Manufacture) (Textile Made-up Articles) Order made on 19 November 2004 (L.N. 186 of 2004)

12. In this connection, the Commerce, Industry and Technology Bureau has advised that other relevant Bureaux have been consulted on the need to make similar amendments to the ordinances under their purviews. The view of the Bureaux concerned is that the references to "country of origin" in the other ordinances and subsidiary legislation are not relevant to the origin marking of goods governed by the TDO but serve specific purposes in the context of their respective legislative regimes for their specific policies. Hence, they consider that similar amendments to the expression "country of origin" in their respective ordinances and subsidiary legislation are not necessary. The Bureaux further

indicate that should there be a need to make such amendments in future, they will take them forward through separate exercises, in the light of policy considerations under their purviews.

13. As regards the two Orders mentioned in paragraph 11 above, the Administration has indicated that to achieve consistency, it will propose consequential amendments to the Bill and move the necessary Committee Stage Amendments to replace the reference to "country" by "place" in the two Orders made by C,C&E.

Council Business Division 1  
Legislative Council Secretariat  
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