

(Prepared by Mr. Lenny Tong, S.C.) CB(1)377/04-05(01)

NOTE ON PROPOSED AMENDMENT TO CAP. 362

Existing Provisions

1. There is no definition for either "country" or "place". There is a definition for "convention country" under section 2(1).
2. Section 2(2)(c) provides what is meant by "manufactured" or "produced" in a country.
3. Section 7 makes it an offence for anyone to "apply" a false trade description to any goods.
4. Section 12 prohibits any import or export of goods which bear a false trade description.
5. Section 24A provides that evidence that the goods were imported from a place or country should be *prima facie* evidence that the goods were manufactured, produced, etc. in such place or country.

Effect of Proposed Amendment

6. The proposed amendment is simply to delete all references to "country" and replace the same with "place".

7. The word "place" in ordinary language simply means a space or area. It is imprecise. Without further definition, it is conceivable that goods manufactured or produced in a place be described in trade documents or regarded by local laws or regulations as being manufactured or produced in either:-

- (a) A country without specification as to which "place"; or
- (b) A different "place" from where the goods were actually manufactured or produced (e.g. goods produced in a place between 2 major cities or areas could be easily described as having been produced in either of those 2 cities or areas.).

8. Further difficulty may arise when section 24A is used to prosecute an offender and the evidence produced from a foreign jurisdiction is imprecise as to which part of the country the goods were last manufactured or produced. Alternatively, the country may have different rules and regulations as to what criteria should be applied in determining the "place" at which the goods were last manufactured or produced.

Proposed Amendment

9. All laws must be precise before it can be complied with. This is a basic tenet of the Rule of Law. This requirement is even more stringent when it comes to laws which impose criminal sanction.

10. The above uncertainty or confusion can be easily removed if:-

(a) The word "country" should be replaced by the words "country, or where appropriate, place".

(b) There should be added a definition:

"place" means an area within the country in which the goods were last manufactured or produced as defined under section (2)(a) below;

(c) There should be added a defence:

It shall not be an offence if the goods were described as having been manufactured or produced in a place if that place is within the country where the goods were last manufactured or produced as defined under section (2)(a) above.