

LEGISLATIVE COUNCIL BRIEF

TRADE DESCRIPTIONS (AMENDMENT) BILL 2004

INTRODUCTION

A At the meeting of the Executive Council on 19 October 2004, the Council ADVISED and the Chief Executive ORDERED that the Trade Descriptions (Amendment) Bill 2004 (the Bill), at Annex A, should be introduced into the Legislative Council to amend sections 2 and 24A of the Trade Descriptions Ordinance (the Ordinance) so that origin of goods is expressed in those provisions by reference to a place, instead of a country.

JUSTIFICATIONS

2. One of the purposes of the Ordinance is to prohibit false trade descriptions from being applied to goods. Origin marking is a type of trade description and hence is governed by the Ordinance. Under the Ordinance, origin marking of goods is not mandatory but where such marking is used, it must not be false or misleading.

3. For the purpose of determining the origin of goods, section 2(2)(a) of the Ordinance contains a general deeming provision which provides that goods are deemed to have been –

- (a) 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 [section 2(2)(a)(i)]; or
- (b) produced in the **country** in which they were wholly grown or mined [section 2(2)(a)(ii)].

4. In connection with this general deeming provision, the Ordinance 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 special origin-marking requirements in the following circumstances –

- (a) 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 [section 2(2)(b)(i)];
- (b) 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 [section 2(2)(b)(ii)]; and
- (c) 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 [section 2(2A)].

5. The wording of the deeming provisions, i.e. sections 2(2)(a)(i) and 2(2)(a)(ii), makes reference to **country** only. Likewise, the wording of section 2(2)(b)(ii) allows C,C&E to make Orders in respect of **countries** only. There may be circumstances in which the deeming provisions need to be applied to **places** instead of **countries**, or C,C&E needs to specify the **place** of manufacture or production for goods which are not subject to any scheme of import or export control and have different parts manufactured in different places.

6. For instance, under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), every year the Central People's Government and the Government of the Hong Kong Special Administrative Region will consider whether new categories of products should be included to enjoy zero import tariff to the Mainland and, if so, what origin rules should be applied to the new categories of products. Where the CEPA-related origin rules of a new category of products differ

from section 2(2)(a) of the Ordinance, we may need to use the provisions in sections 2(2)(b)(i), 2(2)(b)(ii) or 2(2A) to specify Hong Kong as the place of origin for this category of products. If the category concerned is not subject to import or export control, a Notice under section 2(2A) cannot be made. However, Orders that can be made under section 2(2)(b)(ii) only allows C,C&E to specify the **country** of manufacture.

7. To provide flexibility in the application of sections 2(2)(a) and 2(2)(b)(ii) of the Ordinance, we propose that reference to “country” or “countries” in these provisions should be replaced by “place” or “places”.

8. We have also taken the opportunity to review other provisions of the Ordinance that make reference to “place” or “country” of manufacture of goods. Section 24A relates to offences under the Ordinance in respect of the import of goods to which “a false trade description of the **place or country** of manufacture, production, processing and reconditioning” is applied. The wording of this provision is inconsistent with the definition of “trade description” in section 2 which refers, among others, to “**place** of manufacture, production, processing and reconditioning”. To improve consistency among sections 2(2)(a) and 2(2)(b)(ii) (when amended) and 24A and remove possible doubt in their interpretation, we also propose to amend section 24A by repealing references to “or country”.

OTHER OPTIONS

9. There is no other option to achieve the intended legal effect.

THE BILL

10. The main provisions are -

- (a) **clause 2** amends section 2 of the Ordinance by replacing references to “country” and “countries” by references to “place” and “places” respectively;
- (b) **clause 3** amends section 24A by repealing references to “or country”; and

(c) **clauses 4 and 5** make consequential amendments to the Trade Descriptions (Country of Origin) (Watches) Order.

B The existing provisions being amended are at Annex B.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be -

Publication in the Gazette	29 October 2004
First Reading and commencement of Second Reading debate	10 November 2004
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

12. The proposal has no economic, sustainability, financial and civil service implications. It is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effects of the Ordinance.

PUBLIC CONSULTATION

13. We have consulted the Textiles Advisory Board, the Trade and Industry Advisory Board and the Panel on Commerce and Industry of the Legislative Council. They all agree to the proposal.

PUBLICITY

14. A press release will be issued on 27 October 2004. A spokesperson will also be available to handle media and public enquiries.

BACKGROUND

15. In October 2003, C,C&E made an Amendment Order under section 2(2)(b)(ii) and DGTI made a Notice under section 2(2A) for watches and piece-knitted garments respectively to allow these two products, if they are qualified for export and are to be exported under CEPA, to be marked with Hong Kong origin under the Ordinance.

16. When the LegCo Sub-committee studied the Amendment Order and the Notice, some LegCo Members queried whether the effect of the current wording of section 2(2)(a) of the Ordinance would be that Hong Kong could not be deemed under that provision as a “country” of manufacture for the concerned CEPA goods and hence the goods could not be marked with Hong Kong origin. We explained that under the definition of “trade description” in section 2 of the Ordinance, a trade description might include the **place** of manufacture, production, processing or reconditioning and hence there was no legal impediment for concerned traders to mark the concerned goods with Hong Kong origin if they so wished. In addition, one of the conditions for issuing Certificate of Origin for CEPA goods was that if the trader wished to apply origin markings on goods for export under CEPA, he should mark the goods as “Made in Hong Kong” when the CEPA origin rules were met. However, we agreed that the relevant provisions of the Ordinance should be reviewed to see whether they should be improved. We have accordingly conducted the review and recommend that the Bill be introduced to the Legislative Council.

OTHERS

17. Enquiries on this Legislative Council Brief may be directed to Mr Gordon LEUNG, Principal Assistant Secretary for Commerce, Industry and Technology at telephone number 2918 7575.

Commerce, Industry and Technology Bureau
27 October 2004

A BILL

To

Amend certain expressions in the Trade Descriptions Ordinance that contain a reference to “country” or “countries” and to make consequential amendments to the Trade Descriptions (Country of Origin)(Watches) Order.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Trade Descriptions (Amendment) Ordinance 2004.

2. Interpretation

Section 2(2) of the Trade Descriptions Ordinance (Cap. 362) is amended –

- (a) in paragraph (a)(i) and (ii), by repealing “country” and substituting “place”;
- (b) in paragraph (b)(ii) –
 - (i) by repealing “countries” where it twice appears and substituting “places”;
 - (ii) by repealing “country” and substituting “place”.

3. Rule of evidence regarding imported goods with false trade description

Section 24A is amended by repealing “or country” wherever it appears.

Consequential Amendments

Trade Descriptions (Country of Origin)(Watches) Order

4. Citation amended

Section 1(1) of the Trade Descriptions (Country of Origin)(Watches) Order (Cap. 362 sub. leg. D) is amended by repealing “Country” and substituting “Place”.

5. Specification of place of origin of watches

Section 2(1) is amended by repealing “country” where it twice appears and substituting “place”.

Explanatory Memorandum

The main purpose of this Bill is to amend sections 2 and 24A of the Trade Descriptions Ordinance (Cap. 362) so that origin of goods is expressed in those provisions by reference to a place, instead of a country.

Chapter:	362	TRADE DESCRIPTIONS ORDINANCE	Gazette Number	Version Date
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Section:	2	Interpretation	L.N. 31 of 2003	04/04/2003
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Remarks:

Adaptation amendments retroactively made - see 65 of 2000 s. 3

- (1) In this Ordinance, unless the context otherwise requires-
- "advertisement" (宣傳品) includes a catalogue, a circular and a price list;
- "authorized officer" (獲授權人員) means a public officer appointed under section 14;
- "Commissioner" (關長) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise; (Added L.N. 294 of 1982. Amended 65 of 2000 s. 3)
- "Convention country" (公約國家) means a Paris Convention country or WTO member as defined in section 2(1) of the Trade Marks Ordinance (Cap 559); (Replaced 35 of 2000 s. 98)
- "false trade description" (虛假商品說明) means-
- (a) a trade description which is false to a material degree;
 - (b) a trade description which, though not false, is misleading, that is to say, likely to be taken for such an indication of any of the matters specified in the definition of "trade description" as would be false to a material degree;
 - (c) anything which, though not a trade description, is likely to be taken for an indication of any of the matters specified in the definition of "trade description" and, as such an indication, would be false to a material degree;
 - (d) a false indication, or anything likely to be taken as an indication which would be false, that any goods comply with a standard specified or recognized by any person or implied by the approval of any person if there is no such person or no standard so specified, recognized or implied; or
 - (e) a false indication, or anything likely to be taken as an indication which would be false, that any goods of any class or type-
 - (i) being goods in respect of which duty is payable under the laws of Hong Kong, are supplied free of the duty so payable in respect of that class or type of goods; or (Amended L.N. 272 of 1990)
 - (ii) not being goods in respect of which duty is payable under the laws of Hong Kong, are supplied free of the duty so payable; [cf. 1968 c. 29 s. 3 U.K.]
- "forged trade mark" (偽造商標) has the meaning assigned to it by section 9(3); (Added 35 of 2000 s. 98)
- "goods" (貨品) includes vessel and aircraft, things attached to land and growing crops;
- "goods in transit" (過境貨品) means goods which-
- (a) are brought into Hong Kong solely for the purpose of taking them out of Hong Kong; and
 - (b) remain at all times in or on the vessel or aircraft in or on which they are brought into Hong Kong; (Amended 43 of 1996 s. 2)
- "import" (進口) means to bring, or cause to be brought, into Hong Kong;
- "infringing goods" (侵犯權利貨品) means goods to which-
- (a) a forged trade mark is applied; or
 - (b) a trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied; (Added 35 of 2000 s. 98)

"mark" (標記), when used as a noun, includes a sign capable of distinguishing the goods of one undertaking from those of other undertakings; (Added 35 of 2000 s. 98)

"premises" (處所) includes any place and any stall, vehicle, vessel or aircraft;

"trade description" (商品說明) means an indication, direct or indirect, and by whatever means given, of any of the following matters with respect to any goods or parts of goods, that is to say-

- (a) quantity (which includes length, width, height, area, volume, capacity, weight and number), size or gauge;
- (b) method of manufacture, production, processing or reconditioning;
- (c) composition;
- (d) fitness for purpose, strength, performance, behaviour or accuracy;
- (e) any physical characteristics not included in the preceding paragraphs;
- (f) testing by any person and results thereof;
- (g) approval by any person or conformity with a type approved by any person;
- (h) place or date of manufacture, production, processing or reconditioning;
- (i) person by whom manufactured, produced, processed or reconditioned;
- (j) other history, including previous ownership or use; [cf. 1968 c. 29 s. 2(1) U.K.]

"trade mark" (商標) means-

- (a) a trade mark relating to goods registered or deemed to be registered in Hong Kong under the Trade Marks Ordinance (Cap 559);
 - (b) a certification mark or collective mark relating to goods registered or deemed to be registered in Hong Kong under the Trade Marks Ordinance (Cap 559);
 - (c) a trade mark-
 - (i) registered in a Convention country; and
 - (ii) capable of registration in Hong Kong under the Trade Marks Ordinance (Cap 559) as a trade mark relating to goods;
 - (d) a trade mark-
 - (i) in respect of which an application for registration has been made in a Convention country; and
 - (ii) capable of registration in Hong Kong under the Trade Marks Ordinance (Cap 559) as a trade mark relating to goods; and
 - (iii) in respect of which a period of 6 months has not expired since the date of the application for the registration thereof in a Convention country. (Replaced 35 of 2000 s. 98)
- (2) (a) For the purposes of this 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.
- (b) The Commissioner may by order specify- (Amended L.N. 294 of 1982)
- (i) in relation to any description of goods, what treatment or process is to be regarded for the purposes of this Ordinance as resulting or not resulting in a permanent and substantial change in shape, nature, form or utility of the basic materials used in their manufacture;
 - (ii) 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 this Ordinance as having been manufactured or produced. [cf. 1968 c. 29 s. 36 U.K.]
- (c) This subsection shall not apply to goods which are the subject of a notice published under subsection (2A). (Added 96 of 1991 s. 2)
- (2A) The Director-General of Trade and Industry may by notice in the Gazette specify 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 for the purposes of this Ordinance as having been manufactured or produced, and any such goods shall, for the purposes of this Ordinance, be deemed to have been manufactured or produced in such place. (Added 96 of 1991 s. 2. Amended L.N. 173 of 2000)

(3) For the purposes of this Ordinance, a trade description or statement published in any newspaper, book or periodical or in any film or sound or television broadcast shall not be deemed to be a trade description applied or statement made in the course of a trade or business unless it is or forms part of an advertisement. [cf. 1968 c. 29 s. 39(2) U.K.]

Chapter:	362	TRADE DESCRIPTIONS ORDINANCE	Gazette Number	Version Date
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Section:	24A	Rule of evidence regarding imported goods with false trade description		30/06/1997
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In any prosecution for an offence under this Ordinance in respect of the import of goods to which a false trade description of the place or country of manufacture, production, processing or reconditioning is applied, evidence that the goods were imported from a place or country shall be prima facie evidence that the goods were manufactured, produced, processed or reconditioned, as the case may be, in such place or country.

(Added 2 of 1987 s. 5)

Chapter:	362D	TRADE DESCRIPTIONS (COUNTRY OF ORIGIN) (WATCHES) ORDER	Gazette Number	Version Date
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Paragraph:	1	Citation		30/06/1997
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(1) This order may be cited as the Trade Descriptions (Country of Origin) (Watches) Order.

(2) (Omitted as spent)

(Enacted 1990)

Chapter:	362D	TRADE DESCRIPTIONS (COUNTRY OF ORIGIN) (WATCHES) ORDER	Gazette Number	Version Date
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Paragraph:	2	Specification of country of origin of watches	L.N. 233 of 2003	01/01/2004
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(1) For the purposes of the Ordinance, the country in which the movement of a watch was manufactured or produced is to be regarded as the country in which the watch has been manufactured or produced. (L.N. 233 of 2003)

(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. (L.N. 233 of 2003)

(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. (L.N. 233 of 2003)

(Enacted 1990)