

For discussion on
20 December 2005

Legislative Council Panel on Commerce and Industry

Import and Export (General) (Amendment) Regulation 2005 and Import and Export (Fees) (Amendment) Regulation 2005

Purpose

This paper seeks Members' views on the proposals to amend the Import and Export (General) Regulations and the Import and Export (Fees) Regulations in order to simplify the registration requirement for, and to reduce the fees involved in, the implementation of the Kimberley Process Certification Scheme (KPCS) in Hong Kong.

Background

2. The Kimberley Process (KP) is a negotiating forum originated from discussions in the United Nations General Assembly regarding rebel activities in some parts of Africa. It seeks to stop trade in conflict diamonds¹ from fuelling armed conflicts, activities of rebel movements and illicit proliferation of armament. The KPCS for rough diamonds was launched on 1 January 2003.

3. Participation in the KP is limited to sovereign states. Currently there are 69 participants in the KP, including the People's Republic of China (PRC), the European Community and the United States. Hong Kong has been participating in the KP as a designated Importing and Exporting Authority of the PRC. The implementation arrangements for the KPCS in Hong Kong were discussed by the Panel in November 2002 (ref. CB(1)216/02-03(03)).

4. To implement the KPCS in Hong Kong, the Import and Export (General) (Amendment) Regulation 2002 (hereafter referred to as the General

¹ Conflict diamonds means rough diamonds used by rebel movements or their allies to finance conflicts aimed at undermining legitimate governments, as described in relevant United Nations Security Council resolutions, and as understood and recognised in the relevant United Nations General Assembly Resolutions.

Regulation) and the Import and Export (Fees) (Amendment) Regulation 2002 (hereafter referred to as the Fees Regulation) came into operation in 2003.

5. The General Regulation provides for -
- (a) a registration scheme for any person who carries on a business of importing, exporting, buying and selling or carrying of rough diamonds; and
 - (b) certification control on the import and export of rough diamonds.

6. The registration scheme enables the Government to better monitor the movements of rough diamonds within Hong Kong. The certification control prevents imports of rough diamonds from, or exports of rough diamonds to, a non-KP participant.

7. The Fees Regulation prescribes fees payable for registration as a rough diamond trader and for issue of an import or export certificate for rough diamonds.

The Review

8. The Government has reviewed the implementation of the KPCS in Hong Kong to identify areas where we can further facilitate the trade while maintaining the integrity of the control system.

Registration Requirement on Owners

9. Registration is an integral part of the rough diamond control system so that the movement and transaction of rough diamonds can be traced. Regulation 6DB of the Import and Export (General) Regulations provides that any person who carries on a business of “importing, exporting, buying, selling or carrying” of rough diamonds is required to register as a rough diamond trader with the Director-General of Trade and Industry (DGTI) and contravention of the requirement is an offence. At present, the provision on “carrying” of rough diamonds mainly captures owners of vessel, aircraft or vehicle, couriers, freight forwarders and other transportation companies (e.g. security companies).

10. We have reviewed the registration requirement on the “carrying” of rough diamonds by an “owner of a vessel, aircraft or vehicle” (owner) as

defined in section 2 of the Import and Export Ordinance (Cap 60) (the Ordinance). Under this section, an owner means -

- (a) the registered owner and any person holding himself out to be the owner thereof;
- (b) any person acting as agent for the owner in connexion with the handling of cargo carried in or on the vessel, aircraft or vehicle;
- (c) any person to whom the vessel, aircraft or vehicle has been chartered or hired; and
- (d) any person having for the time being the control or management of the vessel, aircraft or vehicle.

11. Under sections 7, 8, 10 and 11 of the Ordinance, certain obligations are imposed on an owner when prohibited articles are imported or exported on his vessel, aircraft or vehicle. In the case of rough diamonds, a prohibited article under import and export licensing control, an owner's obligations include –

- (a) not to release or accept rough diamonds imported or to be exported unless there is a valid import or export licence (i.e. a KP Import or Export Certificate) for the shipment (sections 7 and 10); and
- (b) to deliver to DGTI the import or export licence for the shipment together with the manifest of the vessel, aircraft or vehicle on which the goods were imported or exported (sections 8 and 11).

Failure to fulfill the obligations shall be liable on conviction to a fine and imprisonment.

12. We consider that the obligations imposed upon an owner in paragraph 11 above should suffice for the effective monitoring of the import and export of rough diamonds into and out of Hong Kong carried by an owner for the purpose of the KP. There is no overriding need for a trader registration requirement on an owner who is also a carrier. We propose to lift this requirement which should relieve the owner from incurring compliance costs.

13. A party involved in the carrying of rough diamonds but is not an owner is not subject to sections 7, 8, 10 and 11 of the Ordinance. Such a carrier will thus not be covered under the proposed registration exemption.

14. The registration requirement for an owner who, apart from carrying, also carries on the business of importing, exporting, buying and selling of rough diamonds will also continue. This is to facilitate the tracing of the transactions of rough diamonds effectively.

Refund

15. At present, each registration as a rough diamond trader is valid for a period of two years. With the lifting of the registration requirement for an owner-cum-carrier suggested in paragraph 12 above, we propose to amend the Import and Export (Fees) Regulations to empower DGTI to refund, upon approval of an application, the initial registration and renewal fees for the part of service not yet rendered to an owner.

Revision of Fees

16. It is the Government's policy to set fees on a cost recovery basis. The current registration and renewal fees for rough diamond traders and for issue of KP Import and Export Certificates were set on the basis of estimated costs. DGTI and the Commissioner of Customs and Excise have conducted a costing review, based on which we propose to reduce all the above fees to their full cost recovery level.

Legislative Amendments

17. To implement the proposals in paragraphs 12, 15 and 16 above, we propose to amend the Import and Export (General) Regulations and the Import and Export (Fees) Regulations as follows -

- (a) Lifting the rough diamond trader registration requirement for owners –

Amend the Import and Export (General) Regulations to exempt a person only carrying on a business of carrying rough diamonds and, who -

- i. is owner of a vessel, aircraft or vehicle as defined in section 2 of the Ordinance; and
 - ii. is subject to the requirements under sections 7, 8, 10 and 11 of the Ordinance,
- from the rough diamond trader registration requirement.

(b) Refund arrangement –

Amend the Import and Export (Fees) Regulations to empower DGTI to refund the part of the initial registration or registration renewal fee upon approval of the application following the lifting of the rough diamond trader registration requirement for an owner in paragraph 17 (a) above. We also propose to set out the detailed refund arrangements as follows –

- i. if the refund is approved during the registrant's first year of initial registration or registration renewal, the unutilized fee of HK\$275 (being the administrative cost calculated for the second year of the initial or renewed registration) will be refunded; or
- ii. if the refund is approved during the registrant's second year of initial or renewed registration, the pro-rata unutilized fee, calculated based on 365 days a year and the remaining days of the second year, will be refunded.

(c) Revision of fees –

Amend item 15 of the Schedule to the Import and Export (Fees) Regulations to implement the new fees as follows -

	Existing Fees (HK\$)	Proposed Fees (HK\$)
Initial Registration (Biennial)	840	660
Registration Renewal (Biennial)	595	435
Import Licence	175	160
Export Licence	200	170

Consultation

18. We have consulted nine relevant trade associations² and they all welcomed the proposals in general.

Legislative Timetable

19. We propose to submit the relevant amendment regulations for negative vetting by the Legislative Council in early 2006.

Commerce and Industry Branch Commerce, Industry and Technology Bureau December 2005

² The consultation document was issued to the following nine relevant trade associations in July 2005: Diamond Federation of Hong Kong, China Limited (DFHK), Carrier Liaison Group (CLG), Hong Kong International Courier Association, Hongkong Association of Freight Forwarding and Logistics Limited, Hong Kong Sea Transport & Logistics Association, Hong Kong Cargo-Vessel Traders' Association Limited, Hong Kong Jewellers' & Goldsmiths' Association, Hong Kong Jewellery & Jade Manufacturers Association and Hong Kong Jewelry Manufacturers' Association. Meetings were held with two of them, DFHK and CLG, in August 2005.