

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance
(Chapter 60)
Reserved Commodities Ordinance
(Chapter 296)

IMPORT AND EXPORT (GENERAL)(AMENDMENT) REGULATION 2005

RESERVED COMMODITIES (CONTROL OF IMPORTS, EXPORTS AND RESERVE STOCKS) (AMENDMENT) REGULATION 2005

INTRODUCTION

A&B At the meeting of the Executive Council on 22 November 2005, the Council ADVISED and the Chief Executive ORDERED that Import and Export (General)(Amendment) Regulation 2005 and the Reserved Commodities (Control of Imports, Exports and Reserve Stocks)(Amendment) Regulation 2005 (“the Amendment Regulations”) at Annex A and Annex B, should be made under section 31(1) of the Import and Export Ordinance (Cap. 60) and section 3(1) of the Reserved Commodities Ordinance (Cap. 296) respectively.

JUSTIFICATIONS

The transitional period

2. To promote electronic commerce, improve efficiency and reduce the use of paper, the Government has since 1997 introduced the Government

Electronic Trading Services (GETS)¹ for the trading community to submit by electronic means a number of official trade-related documents. The services of electronic submission of cargo manifests (EMAN) were launched in April 2003 with the commencement of the Import and Export (Electronic Transactions) Ordinance 2002. To allow time for the affected parties to get ready for the electronic mode of submitting cargo manifests, the Import and Export (Electronic Transactions) Ordinance 2002 includes provisions for a transitional period during which cargo manifests may be submitted in either paper or electronic form (the transitional period). The transitional period began on 11 April 2003 and will end at midnight on a day to be specified by the Commissioner by publishing notices in the Gazette. The Commissioner is empowered by various concerned Regulations to specify different end dates for the transitional period for different modes of transport.

Power to end the transitional period

3. Section 31(1) of the Import and Export Ordinance (Cap. 60) empowers the Commissioner or the Director to specify any requirement for giving information required to be given to the Commissioner or the Director respectively in respect of any imported or exported article. Specifying a date to end the transitional period is a way to specify the requirement for giving the relevant cargo information. It has come to our notice that the cargo manifests² required under the relevant provisions of the Import and Export (General) Regulations (Cap. 60A) are delivered to the Director. Pursuant to section 31(1) of Cap. 60, the power to specify the end date for the transitional period should vest with the Director (not the Commissioner).

4. Section 3(1) of the Reserved Commodities Ordinance (Cap. 296) stipulates that the Director is empowered to specify any requirement for information required to be given to him in respect of any reserved commodity. Specifying a date to end the transitional period is a way to specify the requirement for giving the relevant cargo information. The cargo manifests³ required under the relevant provisions of the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap. 296A) are

¹ GETS refers to the front-end services of collecting data from traders and carriers, validating such data and transmitting them to the Government.

² Manifests required under the relevant provisions of Cap. 60A are those relating to textiles under the Textiles Trader Registration Scheme and those relating to specified articles (i.e. optical disc mastering and replication equipment).

³ Manifest required under the relevant provisions of Cap. 296A are those relating to reserved commodities (i.e. rice).

delivered to the Director. Pursuant to section 3(1) of Cap. 296, the power to specify the end date for the transitional period in relation to the submission of these manifests should vest with the Director (not the Commissioner).

5. Hence, we need to make amendments to the relevant empowering provisions of Cap. 60A and Cap. 296A by substituting the Director for the Commissioner, before notices may be published under these Regulations.

THE AMENDMENT REGULATIONS

6. Regulations 6DAH(3) and 6H(2) of Cap. 60A empower the Commissioner to specify by notice published in the Gazette a date on which the transitional period shall end. The Import and Export (General) (Amendment) Regulation 2005 seeks to amend these provisions by substituting the Director for the Commissioner as the authority to publish the notice.

7. Regulation 26(3) of Cap. 296A empowers the Commissioner to specify by notice published in the Gazette a date on which the transitional period shall end. The Reserved Commodities (Control of Imports, Exports and Reserve Stocks)(Amendment) Regulation 2005 seeks to amend this provision by substituting the Director for the Commissioner as the authority to publish the notice.

C 8. The existing provisions being amended are at Annex C.

LEGISLATIVE TIMETABLE

9. The Amendment Regulations will be published in the Gazette on 25 November 2005. They will then be laid on the table of the Legislative Council (LegCo) for negative vetting on 30 November 2005.

IMPLICATIONS OF THE AMENDMENT REGULATIONS

10. The Amendment Regulations have no economic, environmental, sustainability, financial and civil service implications. They are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effects of the principal

legislation concerned and the regulations being amended.

PUBLIC CONSULTATION

11. We have informed the LegCo Panel on Commerce and Industry of the legislative proposal.

BACKGROUND

12. In the context of preparing the notices to end the transitional period for the submission in either paper or electronic form of air and rail cargo manifests in July 2004, it came to our notice that amendments need to be made to certain empowering provisions in Cap. 60A and Cap. 296A before notices can be made under these Regulations. That notwithstanding, our original plan to mandate the electronic submission of all air and rail cargo manifests starting from July 2004 was not compromised because the Commissioner published a notice to that effect under the Import and Export (Registration) Regulations (Cap. 60E)⁴. We however undertook to amend the relevant empowering provisions in Cap. 60A and Cap. 296A as soon as possible. We so informed LegCo in May 2004 vide the LegCo Brief on the Import and Export Ordinance (Specification of Ending Date Under Section 42) Notice 2004 and the Import and Export (Registration) Regulations (Specification of Ending Date Under Regulation 15) Notice 2004.

ENQUIRIES

13. Enquiries of this brief should be referred to Mr. David Leung, Principal Assistant Secretary for Commerce, Industry and Technology (Commerce and Industry), on telephone number 29187575.

⁴ The notice is the Import and Export (Registration) Regulations (Specification of Ending Date under Regulation 15) Notice 2004 made under Cap. 60E. The Commissioner specified in the notice 16 July 2004 as the end date of the transitional period in respect of all cargoes imported and exported in the air and rail modes. The provisions under Cap. 60A and Cap. 296A provide that the requirements for the manifest to be delivered to the Director under these regulations will be deemed to have been complied with when the manifest required under Cap. 60E is submitted to the Commissioner electronically. In practice, when a carrier discharges his obligation under the relevant regulations of Cap. 60E by submitting an EMAN to the Commissioner, the manifest so submitted is sent by the EMAN system automatically to all concerned departments.

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

**IMPORT AND EXPORT (GENERAL)(AMENDMENT)
REGULATION 2005
RESERVED COMMODITIES (CONTROL OF IMPORTS,
EXPORTS AND RESERVE
STOCKS)(AMENDMENT)REGULATION 2005: ANNEXES**

Annex A :

Import and Export (General)(Amendment) Regulation 2005

Annex B :

Reserved Commodities (Control of Imports, Exports and Reserve Stocks)(Amendment)Regulation 2005

Annex C :

R6DAH and 6H of Import and Export (General) Regulation and R26 of Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulation

**IMPORT AND EXPORT (GENERAL)(AMENDMENT)
REGULATION 2005**

(Made by the Chief Executive in Council under section 31(1) of the Import and Export Ordinance (Cap. 60))

1. Commencement

This Regulation shall come into operation on 25 January 2006.

2. Transitional

Regulation 6DAH(3) of the Import and Export (General) Regulations (Cap. 60 sub. leg. A) is amended by repealing “Commissioner” and substituting “Director”.

3. Transitional provisions apply in respect of specified period

Regulation 6H(2) is amended by repealing “Commissioner” and substituting “Director”.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

Explanatory Note

At present, regulation 6DAH(3) of the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (“principal Regulations”) empowers the Commissioner of Customs and Excise, the Deputy Commissioner of Customs and Excise or any Assistant Commissioner of Customs and Excise (“Commissioner”) to specify a date on which the period for the operation of regulation 6DAH(1) and (2) of the principal Regulations shall end. Regulation 6H(2) of the principal Regulations empowers the Commissioner to specify a date on which the period for the operation of the Eighth Schedule to the principal Regulations shall end. This Regulation amends regulations 6DAH(3) and 6H(2) of the principal Regulations so that the power to specify those dates will be given to the Director-General of Trade and Industry and any Deputy or Assistant Director-General of Trade and Industry.

**RESERVED COMMODITIES (CONTROL OF
IMPORTS, EXPORTS AND RESERVE
STOCKS) (AMENDMENT)
REGULATION 2005**

(Made by the Chief Executive in Council under section 3(1) of the
Reserved Commodities Ordinance (Cap. 296))

1. Commencement

This Regulation shall come into operation on 25 January 2006.

2. Transitional

Regulation 26(3) of the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap. 296 sub. leg. A) is amended by repealing “Commissioner” and substituting “Director”.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

Explanatory Note

At present, regulation 26(3) of the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap. 296 sub. leg. A) (“principal Regulations”) empowers the Commissioner of Customs and Excise, the Deputy Commissioner of Customs and Excise or any Assistant Commissioner of Customs and Excise to specify a date on which the period for

the operation of regulation 26(2) of the principal Regulations shall end. This Regulation amends regulation 26(3) of the principal Regulations so that the power to specify that date will be given to the Director-General of Trade and Industry and any Deputy or Assistant Director-General of Trade and Industry.

Chapter:	60A	IMPORT AND EXPORT (GENERAL) REGULATIONS	Gazette Number	Version Date
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Regulation:	6DAH	Transitional	L.N. 248 of 2003	08/01/2004
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(1) For the purposes of this Part, any provision of regulations 6DAC and 6DAE requiring that a copy or extract of a manifest delivered under those regulations be delivered by using services provided by a specified body shall, in respect of the period specified in paragraph (3), but subject to any determination made under section 32A(2)(a) of the Ordinance or notice published under section 32B(2) of the Ordinance, be construed as requiring that the copy or extract be delivered either in paper form or by using services provided by a specified body.

(2) Where a copy or extract of a manifest is delivered in paper form during the period specified in paragraph (3), the import carrier or export carrier (as the case may be) shall, in addition to complying with other requirements under regulation 6DAC or 6DAE, deliver to the Director such copy or extract duly certified by the import carrier or export carrier (as the case may be) as a true copy or extract of the manifest, failing which the requirements under regulation 6DAC(2)(b)(ii) or 6DAE(2)(b) shall not be regarded as having been complied with.

(3) The period specified for the purposes of paragraphs (1) and (2) is the period beginning with the commencement* of section 4 of Schedule 1 to the Import and Export (Facilitation) Ordinance 2003 (33 of 2003) and ending at midnight on a date to be specified by the Commissioner for the purposes of this paragraph by notice published in the Gazette.

(4) A notice published under paragraph (3) may specify different dates in relation to different classes of persons or information.

(5) A notice published under paragraph (3) is subsidiary legislation.

(Part VB added 33 of 2003 s. 2)

Note:

* **Commencement date: 8 January 2004.**

Chapter:	60A	IMPORT AND EXPORT (GENERAL) REGULATIONS	Gazette Number	Version Date
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Regulation:	6H	Transitional provisions apply in respect of specified period	L.N. 93 of 2003	30/05/2003
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(1) In respect of the period specified in paragraph (2), the Eighth Schedule has effect.

(2) The period specified for the purpose of paragraph (1) is the period beginning with the commencement of the Import and Export (General) (Amendment) (No. 2) Regulation 2003 (L.N. 93 of 2003) and ending at midnight on a date to be specified by the Commissioner for the purposes of this paragraph by notice published in the Gazette.

(3) A notice published under paragraph (2) may specify different dates in relation to different classes of persons or textiles.

(4) A notice published under paragraph (2) is subsidiary legislation.

(L.N. 93 of 2003)

Chapter:	296A	RESERVED COMMODITIES (CONTROL OF IMPORTS, EXPORTS AND RESERVE STOCKS) REGULATIONS	Gazette Number	Version Date
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Regulation:	26	Transitional	L.N. 35 of 2003	11/04/2003
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(1) Any person who at the commencement of these regulations was registered under the Import and Export (Reserved Commodities) Regulations (Cap 60 sub. leg.)* in respect of a reserved commodity shall be deemed to have been registered as a stockholder in that reserved commodity under regulation 13(1)(a). (L.N. 35 of 2003)

(2) Any provision of regulation 5, 6 or 8 requiring that information given under those regulations be given by using a recognized electronic service shall, in respect of the period specified in paragraph (3), but subject to any determination made under section 14(2)(a) of the Ordinance or notice published under section 15(2) of the Ordinance, be construed as requiring that the information be given either in paper form or by using a recognized electronic service. (L.N. 35 of 2003)

(3) The period specified for the purposes of paragraph (2) is the period beginning with the commencement+ of the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003 (L.N. 35 of 2003) and ending at midnight on a date to be specified by the Commissioner for the purposes of this paragraph by notice published in the Gazette. (L.N. 35 of 2003)

(4) A notice published under paragraph (3) may specify different dates in relation to different classes of persons or information. (L.N. 35 of 2003)

(5) A notice published under paragraph (3) is subsidiary legislation. (L.N. 35 of 2003)

Note:

* **Repealed-see 12 of 1978 s. 14.**

+ **Commencement date: 11 April 2003.**