

For discussion
On 20 November 2007

**LEGISLATIVE COUNCIL PANEL
ON COMMERCE AND INDUSTRY**

**Proposed amendments to
the Import and Export (Registration) Regulations
(Cap. 60 Sub. Leg. E)**

Introduction

This paper seeks to brief Members on a legislative proposal to clarify an ambiguity concerning exemptions of import/export declaration charges for specified items identified in regulation 8 of the Import and Export (Registration) Regulations (Cap. 60 Sub. Leg. E) (“the Regulations”).

Background

2. The Import and Export Ordinance (the Ordinance) (Cap. 60) and its subsidiary legislation provide a legislative framework for, inter alia, the regulation and control of the import of articles into Hong Kong and the export of articles from Hong Kong. Under regulations 4 and 5 of the Regulations (*Annex A*), a person who imports, exports or re-exports any article other than an exempted article¹ is required to lodge with the Commissioner of Customs and Excise an import/export declaration relating to such article.

3. Regulation 8(1) of the Regulations (*Annex B*) stipulates that a person who lodges an import/export declaration is required to pay an import/export declaration charge. Currently, for non-food items, the declaration charge for the imports and exports is 50 cents for the first

¹ Under regulation 3, there are articles exempted from the requirement of lodging import/export declaration and thereby exempted from the declaration charge under regulation 8 of the Regulations.

\$46,000 of the value of goods declared and 25 cents for each additional \$1,000 or part thereof and rounded up to the nearest 10 cents.

Textual inconsistency

4. Regarding the import/export declaration charge of aircraft parts and accessories for the repair or maintenance of aircraft as well as the import declaration charge of the articles for the repair and maintenance of freight containers, our policy intent is that no such charges shall be payable by the relevant airlines and transportation companies. It has come to our attention that regulation 8(3) (*Annex B*), which provides exemption of declaration charges for certain articles imposed under regulation 8(1), is ambiguous as to its scope of exemption. The chapeau of regulation 8(3) reads as "[n]o charge shall be payable under [regulation 8(1)(c)] by - ". Paragraphs (a) and (b) of regulation 8(3) provide that the goods to be exempted from the declaration charges imposed under regulation 8(1)(c) are -

- (a) aircraft parts or accessories imported or exported by air transport undertaking for the repair or maintenance of its aircraft; and
- (b) articles imported by transport undertaking for the repair and maintenance of its freight containers.

However, regulation 8(1)(c) imposes declaration charges only in respect of export declaration for articles for which the origin country code refers to the Hong Kong Special Administrative Region. It is therefore unclear as to whether the scope of exemption in regulation 8(3), as read in conjunction with regulation 8(1)(c), would cover the import and export of the aircraft parts or accessories specified in paragraph (a) and the import of the articles specified in paragraph (b) of regulation 8(3).

5. The policy intent is to exempt all import and export declaration charges in respect of aircraft parts and accessories mentioned in paragraph (a) of regulation 8(3) irrespective of their origin and the import declaration charges for articles for the repair and maintenance of freight containers mentioned in paragraph (b) of regulation 8(3). Amendments

to regulation 8(3) are therefore necessary to better reflect the policy intent.

6. To provide certainty to the trade as to whether the relevant declaration charges for items referred to in paragraph 4(a) and (b) above are exempted or not during the current period, the Administration has given approval under section 39A of the Public Finance Ordinance (Cap. 2), as a temporary measure pending the approval of the legislative amendment, to waive these charges and have advised the trade of this arrangement.

The Amendment Regulation

7. We propose that the Chief Executive in Council should make, under section 31(1) of the Ordinance (*Annex C*), a regulation to amend regulation 8(3) to exempt the declaration charges payable in respect of the import and export of aircraft parts or accessories described in the existing paragraph (a) of regulation 8(3) no matter whether they are of Hong Kong origin; and the declaration charges in respect of the import of the articles described in the existing paragraph (b) of regulation 8(3).

8. Subject to the necessary approvals, we aim to bring the proposed amendments into effect in February 2008.

Advice sought

9. Members are invited to note the above legislative proposal.

Commerce and Economic Development Bureau
November 2007

Annex A

Chapter: 60E	Title:	IMPORT AND EXPORT (REGISTRATION) REGULATIONS	Gazette Number:	L.N. 33 of 2003
Regulation:4	Heading:	Import declarations	Version Date:	11/04/2003

- (1) Every person who imports any article other than an exempted article shall lodge with the Commissioner an accurate and complete import declaration relating to such article using services provided by a specified body, in accordance with the requirements that the Commissioner may specify. (L.N. 322 of 1999)
- (2) Every declaration required to be lodged under paragraph (1) shall be lodged within 14 days after the importation of the article to which it relates.
- (3) Only one declaration is required in respect of imported articles that-
- (a) were imported under one bill of lading or air waybill; or
 - (b) (i) have item code numbers with identical first 4 digits;
(ii) were imported in the same ship, vehicle, train or aircraft; and
(iii) were consigned from the same country. (L.N. 384 of 1987)
- (3A) Notwithstanding paragraph (2), where articles-
- (a) are imported on a frequent and regular basis;
 - (b) have a value not exceeding \$1000 for each consignment; (L.N. 46 of 1984)
 - (c) have an identical code number; and
 - (d) are consigned from the same country,
- a monthly declaration may, with the prior approval of the Commissioner, be lodged not later than the 7th day of each month, setting out particulars of every such article imported during the previous month.
- (3AA) Notwithstanding paragraph (3), a separate declaration shall be lodged in respect of food items specified in Appendix I of the Imports and Exports Classification List. (L.N. 384 of 1987)
- (3B) Subject to paragraphs (3) and (3A), a separate declaration shall be lodged under paragraph (1) in respect of each article imported.
- (4) (Repealed L.N. 322 of 1999)

(5) Any person who, in contravention of the provisions of paragraph (1), knowingly or recklessly lodges any declaration with the Commissioner that is inaccurate in any material particular shall be guilty of an offence and shall be liable on summary conviction to a fine of \$10000. (L.N. 260 of 1983)

(6) Every person who, being required to lodge a declaration under paragraph (1), fails or neglects, without reasonable excuse, to do so using services provided by a specified body within the period specified in paragraph (2), or, where he has such excuse, fails or neglects to lodge such declaration in such manner as soon as is practicable after the cessation of such excuse, shall be guilty of an offence and shall be liable on summary conviction to a fine of \$1000, and, commencing on the day following the date of conviction, to a fine of \$100 in respect of every day during which his failure or neglect to lodge the declaration in that manner continues. (L.N. 33 of 2003)

(7) The Commissioner may, on the lodgement of any import declaration that is incomplete in any respect, refuse to accept the declaration until it is completed in every respect and upon such refusal the declaration shall be deemed not to have been lodged with the Commissioner. (L.N. 322 of 1999)

Chapter:	60E	Title:	IMPORT AND EXPORT (REGISTRATION) REGULATIONS	Gazette Number:	L.N. 33 of 2003
Regulation:	5	Heading:	Export declarations	Version Date:	11/04/2003

(1) Every person who exports or re-exports any article other than an exempted article shall lodge with the Commissioner an accurate and complete export declaration relating to such article using services provided by a specified body, in accordance with the requirements that the Commissioner may specify. (L.N. 322 of 1999)

(2) Every declaration required to be lodged under paragraph (1) shall be lodged within 14 days after the exportation of the article to which it relates.

(3) Only one declaration is required in respect of exported articles that- (L.N. 297 of 1998; L.N. 90 of 1999 and 44 of 1999 s. 3)

(a) were exported under one bill of lading or air waybill; or

(b) (i) have item code numbers with identical first 4 digits;

(ii) were exported in the same ship, vehicle, train or aircraft; and

(iii) were consigned to the same country. (L.N. 384 of 1987)

(3A) Notwithstanding paragraph (2), where articles-

- (a) are exported on a frequent and regular basis;
- (b) have a value not exceeding \$1000 for each consignment;
(L.N. 46 of 1984)
- (c) have an identical item code number; and
- (d) were consigned to the same country,

a monthly declaration may, with the prior approval of the Commissioner, be lodged not later than the 7th day of each month, setting out the particulars of every such article exported during the previous month. (L.N. 294 of 1982)

(3AA) Notwithstanding paragraph (3), a separate declaration shall be lodged in respect of clothing items exported. (L.N. 23 of 1976)

(3B) Subject to paragraphs (3) and (3A), a separate declaration shall be lodged under paragraph (1) in respect of each article exported.

(4) (Repealed L.N. 322 of 1999)

(5) Any person who, in contravention of the provisions of paragraph (1), knowingly or recklessly lodges any declaration with the Commissioner that is inaccurate in any material particular shall be guilty of an offence and shall be liable on summary conviction to a fine of \$10000. (L.N. 294 of 1982; L.N. 260 of 1983)

(6) Every person who, being required to lodge a declaration under paragraph (1), fails or neglects, without reasonable excuse, to do so using services provided by a specified body within the period specified in paragraph (2), or, where he has such excuse, fails or neglects to lodge such declaration in such manner as soon as is practicable after the cessation of such excuse, shall be guilty of an offence and shall be liable on summary conviction to a fine of \$1000 and, commencing on the day following the date of conviction, to a fine of \$100 in respect of every day during which his failure or neglect to lodge the declaration in that manner continues. (5 of 1971 s. 13; L.N. 33 of 2003)

(7) The Commissioner may, on the lodgement of any export declaration that is incomplete in any respect, refuse to accept the declaration until it is completed in every respect and upon such refusal the declaration shall be deemed not to have been lodged with the Commissioner. (L.N. 322 of 1999)

Annex B

Chapter: 60E	Title:	IMPORT AND EXPORT (REGISTRATION) REGULATIONS	Gazette Number:	L.N. 22 of 2007
Regulation:8	Heading:	Charges payable on lodgement of declarations	Version Date:	09/02/2007

(1) Every person who lodges an import declaration under regulation 4(1) or an export declaration under regulation 5(1) shall pay-

- (a) in respect of an import declaration relating to an article or articles specified in Appendix I of the Imports and Exports Classification List, a charge of 50 cents, irrespective of the value of the article or the aggregate value of the articles specified in the declaration;
- (b) in respect of any other import declaration-
 - (i) where the value of the article or the aggregate value of the articles specified in the declaration does not exceed \$46000, a charge of 50 cents;
 - (ii) where the value of the article or the aggregate value of the articles specified in the declaration exceeds \$46000, a charge calculated at the rate of 50 cents for the first 46000 dollars' value and 25 cents for each additional 1000 dollars' value or part thereof and rounded up to the nearest 10 cents;
- (c) in respect of any export declaration for articles for which the origin country code refers to the Hong Kong Special Administrative Region-
 - (i) where the value of the article or the aggregate value of the articles specified in the declaration does not exceed \$46000, a charge of 50 cents;
 - (ii) where the value of the article or the aggregate value of the articles specified in the declaration exceeds \$46000, a charge calculated at the rate of 50 cents for

the first 46000 dollars' value and 25 cents for each additional 1000 dollars' value or part thereof and rounded up to the nearest 10 cents; and

(d) in respect of any export declaration for articles other than those referred to in subparagraph (c)-

(i) where the value of the article or the aggregate value of the articles specified in the declaration does not exceed \$46000, a charge of 50 cents;

(ii) where the value of the article or the aggregate value of the articles specified in the declaration exceeds \$46000, a charge calculated at the rate of 50 cents for the first 46000 dollars' value and 25 cents for each additional 1000 dollars' value or part thereof and rounded up to the nearest 10 cents. (L.N. 322 of 1999)

(1A) For the purposes of paragraph (1)(c), the origin country code shall be determined in accordance with the Hong Kong Electronic Data Interchange Implementation Instructions for Import/Export Declarations. (L.N. 322 of 1999)

(2) The charge under paragraph (1) in respect of every import declaration and export declaration shall be paid in the manner agreed by the Government and the specified body whose services are used for lodging the declaration. (L.N. 322 of 1999)

(2A) (Repealed L.N. 322 of 1999)

(2B) Until the full amount of the charge is paid the declaration is deemed not to have been lodged with the Commissioner. (L.N. 544 of 1995)

(3) No charge shall be payable under paragraph (1)(c) by- (L.N. 322 of 1999)

(a) an air transport undertaking operating air services on international or regional routes in respect of a declaration lodged by it relating solely to aircraft parts or accessories imported or exported for the purpose of being-

(i) used in the repair or maintenance of aircraft owned or chartered by such undertaking and operated by it on any international or regional air route; or

(ii) given in non-profitable exchange for any other aircraft part or accessory to any other similar air transport undertaking for a similar use,

and which are used for such purpose or so exchanged and used;

(b) a transport undertaking operating sea or air freight transport services on international or regional routes in respect of a declaration lodged by it relating solely to articles imported for

the purpose of being used in the repair and maintenance of freight containers operated by that undertaking in the transport of goods by sea or air on its international or regional routes and which is so used. (L.N. 23 of 1976; 66 of 2000 s. 3)

(4) No charge shall be payable under paragraph (1)(b), (c) or (d) in respect of a declaration relating to gold bars within the meaning of the Imports and Exports Classification List. (L.N. 22 of 2007)

Chapter: 60	Title:	IMPORT AND EXPORT ORDINANCE	Gazette Number:	L.N. 40 of 2003
Section: 31	Heading:	Power to make regulations	Version Date:	11/04/2003

PART VII

REGULATIONS

(1) The Chief Executive in Council may make regulations for all or any of the following purposes- (Amended 66 of 2000 s. 3)

- (a) prohibiting the import and export of any article;
- (b) prohibiting the import and export of any article except under and in accordance with the terms and conditions of a licence;
- (c) providing for the issue of licences to import or export any article;
- (ca) empowering the Director to exempt any person from any requirement to obtain a licence to import or export any prohibited article; (Added 50 of 1984 s. 2)
- (cb) prescribing any article or a class or description of an article the import or export of which except under and in accordance with a licence is prohibited under this Ordinance; (Added 62 of 1993 s. 13)
- (d) prescribing conditions to be observed by any person before or after the issue of an import licence or an export licence;
- (e) imposing upon owners of ships, aircraft and vehicles, masters of ships, commanders of aircraft and persons in charge of vehicles such obligations in respect of manifests, bills of lading, air waybills, air consignment notes and such other similar matters as may be necessary for carrying into effect the provisions of this Ordinance;
- (f) imposing other conditions or restrictions on the import or export of any article;
- (g) imposing conditions or restrictions on any cargo placed in or on any vessel, aircraft or vehicle for the purpose of import or

export;

(h) controlling the examination and storage of articles imported or exported or about to be imported or exported;

(i) requiring any person importing or exporting any article to give any specified information in respect of the article before or after it has been imported or exported;

(ia) empowering the Commissioner or the Director to specify any form or requirement for giving information required to be given to the Commissioner or the Director respectively in respect of any imported or exported article; (Added 30 of 1995 s. 11. Amended 24 of 2002 s. 2)

(j) regulating the movement within Hong Kong of any article which has been or is intended to be imported or exported or otherwise dealt with under the provisions of this Ordinance;

(ja) providing for the imposition of conditions in the discretion of the Commissioner on the carriage of articles prescribed by the regulations or by the Director in accordance with the requirements of this Ordinance on or by vessels in the waters of Hong Kong including activities incidental to the transportation on land of the articles to the vessels and loading of such articles on to such vessels and for the issue of licences by the Commissioner to regulate all such activities; (Added 22 of 1991 s. 11. Amended 1 of 1994 s. 16)

(k) providing for the issue of certificates in respect of the importing, exporting, producing, processing, manufacturing and composition of any article and for conditions which may be attached to such certificate;

(l) providing for the issue of certificates in respect of preferential customs tariffs and for conditions which may be attached to such certificate;

(m) providing for the registration of any person applying for the issue of any licence or validated production notification, or any person required to lodge a production notification or any other document under this Ordinance, or any combination thereof, and for conditions which may be attached to such registration; (Amended 37 of 1999 s. 6)

(n) providing for the registration of any person importing, exporting, manufacturing, processing, storing, distributing,

selling or dealing with any article in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof, and for the conditions which may be attached to the registration of any such person; (Amended 37 of 1999 s. 6)

(o) providing for the registration of any premises-

(i) in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof; or

(ii) connected with the importing, exporting, manufacture, processing, storage, distribution, sale or other dealing with any article in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof, and prescribing any condition upon the registration of such premises; (Amended 37 of 1999 s. 6)

(p) providing for the cancellation, revocation or suspension for any period of the registration of any person where the Director is satisfied that the person so registered has contravened any condition of any licence, validated production notification or other document issued under this Ordinance; (Amended 37 of 1999 s. 6)

(q) providing for the imposition and administration of quota controls in respect of the import or export of any article;

(r) providing for the sale or transfer of any quota and for the conditions under which any quota may be sold or transferred;

(s) providing for the registration of any person involved in any dealing with an article on which any quota control is imposed and the transfer of any such registration from one person to another;

(t) requiring importers, exporters, carriers, owners and manufacturers to furnish to the Director or any other specified

public officer information for the purpose of compiling statistics of trade with any person or body of persons, corporate or unincorporate, carrying on business or other activities outside Hong Kong; (Amended 23 of 1998 s. 2)

(u) prohibiting or controlling the publication or disclosure of information or particulars furnished to the Commissioner or the Director, an authorized officer, an appointed officer or a member of the Customs and Excise Service under this Ordinance;

(ua) controlling the use of a security device issued by a specified body for authenticating information to be sent for the purposes of this Ordinance using services provided by a specified body; (Added 30 of 1995 s. 11)

(ub) prohibiting the unauthorized sending of information for the purposes of this Ordinance by a specified agent on behalf of a person using services provided by a specified body; (Added 30 of 1995 s. 11)

(v) providing for the verification of any particulars or information required to be furnished by any person under this Ordinance;

(w) providing that any person who fails to submit any document or furnish any information to the Commissioner or the Director or other specified public officer within a prescribed period of time shall be liable to pay a prescribed sum of money, which sum shall be a civil debt due to and recoverable by the Government; (Amended 66 of 2000 s. 3)

(x) prescribing fees to be collected by the Commissioner or the Director in respect of any matter arising under this Ordinance and generally to prescribe the mode and time of payment of such fees;

(y) empowering the Director to determine the form of any licence and any undertaking required under this Ordinance;

(z) providing that the Director-General of Trade and Industry may, by notice published in the Gazette, amend the Schedule to any regulation made under this Ordinance, other than a Schedule or a part of a Schedule referred to in section 6B(1) or 6F; (Amended L.N. 292 of 1989; 1 of 1994 s. 16; L.N. 173 of 2000)

(za) requiring any person to whom a licence has been issued to keep such records or documents as may be prescribed or as the Director may determine; (Added 3 of 1973 s. 3)

(zb) providing for any matter required or permitted by Part IIA to be prescribed by or provided for in the regulations; (Added 37 of 1999 s. 6)

(zc) without prejudice to the generality of paragraph (z), specifying any matter referred to in paragraph (zb) in a Schedule to any regulation made under this Ordinance, and providing that the Director-General of Trade and Industry may, by order published in the Gazette, amend that Schedule; (Added 37 of 1999 s. 6. Amended L.N. 173 of 2000)

(zd) empowering the Director to determine a process to be the process of manufacturing any specified textiles for the purposes of the definition of "production" in section 6AA(1); (Added 37 of 1999 s. 6)

(ze) empowering the Director to specify a particular as material for the purposes of the definition of "material particular" in section 6AA(1); (Added 37 of 1999 s. 6)

*(aa) levying, with or without exception or exemption, a charge on persons or any category of persons who furnish particulars pursuant to any regulation made under this section, and prescribing the amount or method of ascertaining the amount of such charge and the mode and time of payment thereof; (Amended 30 of 1995 s. 11; 24 of 2002 s. 2)

(ab) imposing or providing for the imposition of a pecuniary penalty, recoverable civilly, on any person who, being required under any regulation made under this Ordinance to lodge a declaration with the Commissioner in connexion with the import or export of any article, fails to lodge such a declaration or fails to lodge such a declaration within a prescribed period of time;

(ac) empowering the Commissioner to waive the payment of any pecuniary penalty imposed under regulations made under paragraph (ab) and to refund any such pecuniary penalty which has been paid;

(ad) empowering the Director to require an applicant for a licence to deposit with him, before the issue of a licence, such sum of money as the Director may specify;

(ae) providing for the forfeiture to the Government by a magistrate of all or any of the sum of money deposited under regulations made under paragraph (ad); (Amended 66 of 2000 s. 3)

(af) prescribing any thing which is to be or may be prescribed under this Ordinance; and

(ag) generally for the better carrying out of the provisions and purposes of this Ordinance. (Amended L.N. 294 of 1982)

(1A) Regulations made for the purposes of subsection (1)(x) or (aa) may provide that any fee or charge payable in connection with information that is sent using services provided by a specified body shall be paid in such manner as may be agreed between the Government and the specified body. (Added 24 of 2002 s. 2)

(2) Subject to subsection (3), regulations made under this section may provide that a contravention of any such regulation shall be an offence and may prescribe penalties therefor.

(3) Regulations made under this section may prescribe that a contravention or breach thereof shall be punishable by a fine not exceeding \$500000 and imprisonment for a term not exceeding 2 years. (Amended 60 of 1980 s. 5)

(4) No regulation made under paragraph (aa), (ab), (ac), (ad) or (ae) shall come into operation until it has been approved by resolution of the Legislative Council.

Note:

*** The amendment to paragraph (aa), as introduced by section 11 of the Import and Export (Amendment) Ordinance 1995 (30 of 1995), was repealed by section 2 of the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) before the commencement of the amendment.**