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Paper for the House Committee meeting on 13 November 2009

**Report of the Subcommittee on
Ozone Layer Protection (Products Containing Scheduled Substances)
(Import Banning) (Amendment) Regulation 2009**

Purpose

This paper reports on the deliberations of the Subcommittee on Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) (Amendment) Regulation 2009 (the Subcommittee).

Background

2. In the 1970s, scientists have found that there is a large-scale depletion of the ozone¹ layer. To ensure recovery of the ozone layer, the international community has signed the Montreal Protocol on Substances that Deplete Ozone Layer (Montreal Protocol) in September 1987 to virtually eliminate, according to certain timelines, the production and use of nearly 100 chemicals that have ozone depleting properties.

3. The Montreal Protocol was extended to Hong Kong in 1987. To enable Hong Kong to meet its obligations under the Montreal Protocol, the Ozone Layer Protection Ordinance (Cap. 403) (principal Ordinance) and its subsidiary legislation were enacted to control the import and export of ozone depleting substances (ODS). Through a quota and licensing system, the import for local consumption of ODS, including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, hydrobromofluorocarbons, was banned in accordance with the phasing-out schedules stipulated by the Montreal Protocol. The only type of ODS that can still be imported to Hong Kong for local consumption is hydrochlorofluorocarbons (HCFC).

¹ Ozone is a special layer of oxygen in the atmosphere, which protects all life on earth against harmful ultraviolet radiation.

4. At the 11th and 12th Meetings of the Parties to the Montreal Protocol held in 1999 and 2000 respectively, it was agreed that Non-Article 5 Parties, whose requirements with which Hong Kong should comply, should develop and implement a strategy for the management of CFC-containing metered dose inhalers (MDIs)², including options for eventual elimination of the use of CFC-containing MDIs. At the 19th Meeting of Parties to the Montreal Protocol held in September 2007, Parties reached an agreement to accelerate the phasing out of HCFCs. The requirements for the Non-Article 5 Parties are to curtail by 2010 the consumption of HCFCs by 75% of the baseline level of 1989 instead of the original 65%, and to advance the completion of the phasing out from 2030 to 2020.

The Amendment Regulation

5. The Amendment Regulation seeks to -

- (a) amend and expand in phases the definition of “controlled product” under the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) Regulation (Cap. 403 sub. leg. C) (principal Regulation) to facilitate the banning of products containing certain scheduled substances, including HCFCs, in phases from 1 January 2010 to 1 January 2020;
- (b) revise the definition of “controlled product” to ban the import of MDIs and other aerosol products containing certain scheduled substances;
- (c) extend the banning of products containing certain scheduled substances, including CFCs and HCFC-22, from any country, irrespective of whether it is bound by the terms of the Montreal Protocol;
- (d) extend the definition of “portable fire extinguisher” to cover those containing other fully halogenated CFCs, HCFCs, and bromochloromethane (BCM);
- (e) increase the penalties for an offence under the principal Regulation to a fine of \$1,000,000 and imprisonment for two years; and
- (f) make clear that the banning control does not include those products in the course of transshipment or are imported solely for export.

² Metered dose inhalers are small, pressurized aerosol devices that deliver a measured dose of an aerosolized drug into a patient’s airway for inhalation into the lungs for the treatment of asthma and chronic obstructive pulmonary disease.

The Subcommittee

6. At the House Committee meeting held on 26 June 2009, Members agreed to form a Subcommittee to study the Amendment Regulation. Under the chairmanship of Hon Audrey EU Yuet-mee, the Subcommittee has held four meetings. The membership list of the Subcommittee is in **Appendix I**. Apart from examining the Regulation with the Administration, the Subcommittee has also invited views from the trade and interested parties. A list of the eight groups which have given views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

7. The Subcommittee supports in principle the Amendment Regulation which enables Hong Kong to fulfill its international obligation. In the course of deliberation, members have examined issues relating to banning the import of products containing HCFCs, banning the import of other products containing ODS, banning the import of portable fire extinguishers containing other fully halogenated CFCs, HCFCs and BCM, increasing the penalties for import of certain products, and banning control not applicable to products in the course of transshipment or are imported solely for export.

Banning the import of products containing HCFCs

8. In Hong Kong, virtually all HCFCs are used as refrigerants. To ensure full compliance with the accelerated phasing-out programme, there is a need to cut the demand for HCFCs by banning the import of refrigeration, air-conditioning and other products containing HCFCs as refrigerants. Among others, HCFC-22 accounts for about 98.3% of the total HCFC consumption. Given that non-ozone depleting alternatives for HCFC-22 are readily available, the Administration proposes to first phase out products containing HCFC-22 on 1 January 2010 to maximize the reduction effectiveness. Taking into account the need for more time to allow suppliers to prepare for sourcing and importing HCFC-free room air-conditioners, it is decided to defer the banning of split type and window type (termed as “single package type” in the Amendment Regulation) room air-conditioners to 1 July 2010 and 1 July 2012 respectively, after consultation with the trade.

9. While agreeing that the Amendment Regulation is formulated out of a good cause, some members note that the Administration has only consulted importers and exporters but not maintenance contractors, the latter of whom have expressed concern about maintenance of conventional air-conditioners if the import of HCFC-22 is banned. The Administration’s explanation is that as the Amendment Regulation aims to ban the import of controlled products, which would not have impact on the maintenance contractors, only importers and exporters have been consulted. Besides, the import of HCFC-22 would not be banned before 2020 according to the phasing-out schedule. Banning the import of new HCFC-22 products would decrease the demand for HCFC-22 and thus

facilitate sufficient supply of HCFC-22 for maintenance contractors to service the existing equipment to ensure that their business would not be affected. In the light of members' concern, the Administration would step up publicity efforts and address any other concerns the concerned trades might have.

10. The Subcommittee has noted a deputation's view that unlike split type and single package type room air-conditioners (defined as having a rated cooling capacity not exceeding 7.5 kilowatts), which would be phased out by 1 July 2010 and 1 July 2012 respectively, other types of air-conditioners would need to be phased out by 1 January 2010. Such an arrangement may cause confusion to the trade and the public. In this connection, the Subcommittee has examined the feasibility of deferring the deadline for other types of air conditioners to 1 July 2010 in tandem with those split type room air-conditioners.

11. According to the Administration, the definition of "room air-conditioner" in the Amendment Regulation is consistent with that in the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) (EELPO), and its adoption was proposed by the trade represented by the deputation. During consultation, the trade has only expressed concern that suppliers need more time to set up production lines for HCFC-free room air-conditioners and not other types of air-conditioners. Taking into account the trade's view, the banning of split type and single package type room air-conditioners is deferred to 1 July 2010 and 1 July 2012 respectively. Moreover, as the same definition of EELPO is adopted in the Amendment Regulation, there should not be any confusion to the trade and the public. The Administration therefore holds the view that the phasing-out programme should only be reviewed if there is a problem in the trade-wide supply of HCFC-free air-conditioners. If this is only a problem of individual suppliers, the extension will be unfair to other complying suppliers. At the Subcommittee's request, the Administration has provided a copy of the notes of meeting setting out the key points of discussion with the trade on the proposal on banning of import of equipment using HCFC on 21 November 2008.

12. In view of the ozone depleting property of HCFC-22, members have pointed out the need to ensure proper disposal of air-conditioners containing HCFC-22 to prevent the release of these chemicals to the atmosphere. They consider that the Administration's input is essential in the recycling of HCFC-22 as this would require technical know-how. According to the Administration, it is examining the feasibility of introducing a mandatory producer responsibility scheme on waste electrical and electronic equipment under the Product Eco-Responsibility Ordinance (Cap. 603). Subject to public consultation later this year, the Administration will consider whether the proposed scheme would cover air-conditioners. Due consideration will also be given to handling HCFC-22 recovered from air conditioners collected under the scheme in an environmentally sound manner. Meanwhile, the Administration has consulted the trade and is finalizing a code of good practice to help the trade to recover HCFC-22 from the existing air conditioners. A leaflet will be prepared to help increase public awareness in this respect.

Banning the import of other products containing ODS

13. The Subcommittee has enquired about the need to extend the banning of products containing certain scheduled substances from any country, irrespective of whether it is bound by the terms of the Montreal Protocol. According to the Administration, the extension will prevent Hong Kong from becoming a dumping ground of these products.

Banning the import of portable fire extinguishers containing other fully halogenated CFCs, HCFCs and BCM

14. The Subcommittee has noted a deputation's concern on the rationale for banning the import of portable fire extinguishers containing other fully halogenated CFCs, HCFCs and BCM. The Administration's explanation is that while the use of these chemicals in portable fire extinguisher is rare, it could not rule out such possibility in future. For sake of completeness, opportunity is taken to ban the import of portable fire extinguishers containing these chemicals.

Increasing the penalties for import of certain products

15. Some members have questioned the rationale for increasing the penalty for an offence to import certain products from a fine of \$200,000 to \$1,000,000 and to imprisonment for six months to two years. According to the Administration, the proposed increase aims to bring the penalty provisions in line with that for an offence to import HCFC without a licence under the principal Ordinance. The Administration has also consulted the trade which has indicated support for the increase in penalty as this would help deter smuggling of non-compliant controlled products.

Banning control not applicable to products in the course of transshipment or are imported solely for export

16. Some members have opined that the Administration should also extend the ban to products in the course of transshipment or are imported solely for export to demonstrate its commitment to protecting the ozone layer and addressing global warming. Other members however have expressed concern that the proposed extension would affect the logistics industry, which would have no knowledge on whether the goods in transshipment/re-export contain scheduled substances.

17. The Administration's explanation is that under the Montreal Protocol, developing countries will not be required to start phasing out HCFC until 2015, and complete the phasing-out programme by 2030. Therefore, it is fully acceptable for them to import HCFC-containing air-conditioners. As for some developed countries, depending on their own banning schedules for HCFC-containing air-conditioners and progress of their legislative amendments, some of them (such as the United States and Australia) are still allowing the import of these air-conditioners under certain conditions.

Amendments to the Regulation

18. Neither the Administration nor the Subcommittee has indicated intention to amend the Amendment Regulation.

Recommendation

19. The Subcommittee supports the moving of the resolution on the Regulation on 2 December 2009.

Advice sought

20. Members are requested to note the deliberations and recommendation of the Subcommittee.

Prepared by
Council Business Division 1
Legislative Council Secretariat
12 November 2009

**Subcommittee on
Ozone Layer Protection (Products Containing Scheduled Substances)
(Import Banning) (Amendment) Regulation 2009**

Membership list

Chairman	Hon Audrey EU Yuet-mee, SC, JP
Members	Hon Vincent FANG Kang, SBS, JP Hon WONG Ting-kwong, BBS, JP Hon KAM Nai-wai, MH Hon Cyd HO Sau-lan Hon Tanya CHAN

(Total : 6 Members)

Clerk	Miss Becky YU
Legal Adviser	Miss Kitty CHENG
Date	10 July 2009

Appendix II

List of organizations which have made written and/or oral representations to the Subcommittee

- (a) Consumer Council
- (b) Green Council
- (c) Hong Kong Chinese Importers' and Exporters' Association
- (d) Hong Kong & Kowloon Electrical Appliances Merchants Association Ltd.
- (e) The Association of Registered Fire Service Installation Contractors of Hong Kong
- (f) The Chartered Institution of Building Services Engineers (Hong Kong Branch)
- (g) The HK Federation of Electrical & Mechanical Contractors Ltd
- (h) The Real Estate Developers Association of Hong Kong