

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance
(Chapter 60)

IMPORT AND EXPORT (STRATEGIC COMMODITIES) REGULATIONS (AMENDMENT OF SCHEDULES 1 AND 2) ORDER 2010

INTRODUCTION

The Director-General of Trade and Industry (DGTI) has made the Import and Export (Strategic Commodities) Regulations (Amendment of Schedules 1 and 2) Order 2010 (“the Order”) to amend Schedules 1 and 2 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G) (“the Regulations”) to reflect the latest changes in respect of commonly traded strategic commodities adopted in the international non-proliferation regime control list as well as to relax the control over transit and air-transhipment of information security products. The Order is at Annex A.

Annex A

JUSTIFICATIONS

2. The Regulations enable Hong Kong to impose licensing control on the import, export, transhipment, and in some cases, transit of strategic commodities. The licensing system is administered by the Trade and Industry Department (TID) and enforced by the Customs and Excise Department.

3. Schedule 1 to the Regulations sets out the strategic commodities under control, which include materials, equipment, software and technology capable of being used for both industrial and military purposes. The Schedule has been drawn up on the basis of the control lists adopted by various international non-proliferation regimes and convention, i.e. the Wassenaar Arrangement (WA), the Australia Group,

the Missile Technology Control Regime, the Nuclear Suppliers Group, and the Chemical Weapons Convention. The Administration follows closely developments in the international scene with regard to the control over strategic commodities. The Schedule is under regular review and, where appropriate, is amended to take into account the latest updates adopted by relevant international regimes and convention. The last amendment of Schedule 1 to the Regulations came into effect in February 2010.

4. Schedule 2 to the Regulations sets out those “more sensitive” products covered in Schedule 1, including certain munitions, all nuclear-related materials and equipment, and information security products (commonly known as encryption devices). They are subject to tighter control over transit and air-transshipment under section 2 of the Regulations.

5. Under section 6B of the Import and Export Ordinance (Cap. 60), DGTI may, by order published in the Gazette, replace the Schedules to the Regulations or amend them to add or remove an article or class of articles to or from the Schedules to the Regulations.

THE ORDER

6. The Order amends Schedule 1 to the Regulations to reflect the recent revisions adopted by WA (which governs controls over dual-use industrial goods) to some commonly traded strategic commodities. The revisions mainly relax the control over certain items in three groups of common dual-use strategic goods, i.e. electronics, computers, and telecommunications and information security products. The major changes include removal of control over certain goods which incorporate or use cryptography and fulfill either condition of (a) not having the primary functions of information security (e.g. those items for printing, business automation, manufacturing processing, transportation management, etc.); or (b) being produced specifically for entertainment, mass commercial broadcast, digital rights management, or medical records management.

7. We take the opportunity to make textual and editorial revisions to Schedule 1 to the Regulations. These changes do not affect the substance of the control list.

8. The Order also amends Schedule 2 to the Regulations to relax the control over transit and air-transshipment of information security products by removing such items from the Schedule. In effect, it means that -

- (a) encryption devices would no longer fall under the “more sensitive” group for strategic trade control, although they are still subject to the general control for items covered in Schedule 1;
- (b) pursuant to section 2(2)(a) of the Regulations, encryption devices in transit through Hong Kong would no longer require a licence; and
- (c) pursuant to section 2(2)(b) of the Regulations, encryption devices would no longer be debarred from the Air Transshipment Cargo Exemption Scheme. In other words, air-transshipments of encryption devices would be eligible for licence exemption if they fulfill all the terms and conditions of the Scheme.

9. Having regard to the views of local trading and logistics sectors, developments of the cryptographic technology and practices of major trading partners, the Administration considers it appropriate to relax the control over transit and air-transshipment of information security products/ encryption devices. While it will facilitate the trading and logistics sectors in arranging transit and air-transshipment of encryption devices through Hong Kong, the integrity and effectiveness of the strategic trade control system will not be compromised.

LEGISLATIVE TIMETABLE

10. The Order will be gazetted on 30 April 2010 and tabled at the Legislative Council on 5 May 2010.

11. We plan to bring the Order into effect on 14 June 2010 upon gazettal of the commencement notice on 11 June 2010. This is to ensure that the trade will be relieved from the licensing requirements for the strategic commodities otherwise controlled, and reap the benefit of the trade facilitation measures, at the earliest opportunity.

IMPLICATIONS OF THE PROPOSAL

Annex B

12. The Order has economic implications as set out in Annex B. The Order is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the Regulations. It has no financial, civil service, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

13. The amendments made by the Order are technical in nature. Public consultation is considered not necessary. Briefings have been conducted for trade representatives and they generally welcome the amendments.

PUBLICITY

14. A press release will be issued when the Order is published in the Gazette on 30 April 2010. TID will promulgate the amendments to the Schedules through trade circulars, general advisory service and its web portal on the day of gazettal. A spokesman will be available for answering media enquiries.

ENQUIRIES

15. For any enquiries on this brief, please contact Mr. Billy AU, Principal Trade Officer of the TID, at 2398 5554.

Trade and Industry Department
28 April 2010

**IMPORT AND EXPORT
(STRATEGIC COMMODITIES) REGULATIONS
(AMENDMENT OF SCHEDULES 1 AND 2) ORDER 2010**

A copy of the captioned order is attached.

IMPORT AND EXPORT (STRATEGIC COMMODITIES) REGULATIONS (AMENDMENT OF SCHEDULES 1 AND 2) ORDER 2010

(Made by the Director-General of Trade and Industry under section 6B of
the Import and Export Ordinance (Cap. 60))

1. Commencement

Subject to section 6B of the Ordinance, this Order comes into operation on a day to be appointed by the Director-General of Trade and Industry by notice published in the Gazette.

2. Strategic commodities

(1) Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G) is amended, in the Dual-use Goods List, in Category 3, in 3A001(b)(1), in Note 2, in the English text, by repealing “non-“space qualified”” and substituting “non-“space-qualified””.

(2) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3A001(b)(1)(a)(4)(c), in the English text, by repealing ““space qualified”” and substituting ““space-qualified””.

(3) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3A001(b)(8)(b), by repealing “density”.

(4) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3A001(b), by adding –

“(11) “Frequency synthesiser” “electronic assemblies” having a “frequency switching time” from one selected frequency to another as specified by any of the following:

- (a) Less than 312 ps;
- (b) Less than 100 μ s for any frequency change exceeding 1.6 GHz within the synthesised

- frequency range exceeding 3.2 GHz but not exceeding 10.6 GHz;
- (c) Less than 250 μ s for any frequency change exceeding 550 MHz within the synthesised frequency range exceeding 10.6 GHz but not exceeding 31.8 GHz;
 - (d) Less than 500 μ s for any frequency change exceeding 550 MHz within the synthesised frequency range exceeding 31.8 GHz but not exceeding 43.5 GHz;
 - (e) Less than 1 ms within the synthesised frequency range exceeding 43.5 GHz;

N.B.:

For general purpose “signal analysers”, signal generators, network analysers and microwave test receivers, see 3A002(c), 3A002(d), 3A002(e) and 3A002(f) respectively.”.

(5) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3A001(e)(4), in the English text, by repealing ““space qualified”” and substituting ““space-qualified””.

(6) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3A002(a)(3)(b), in the English text, by repealing ““space qualified”” and substituting ““space-qualified””.

(7) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3A002(a)(3), in the Note, by repealing “control” and substituting “apply to”.

(8) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, by repealing 3A002(b) and the Note.

(9) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, by repealing 3A002(e) and substituting –

“(e) Network analysers having any of the following:

- (1) Maximum operating frequency exceeding 43.5 GHz and output power exceeding 31.62 mW (15 dBm);
- (2) Maximum operating frequency exceeding 70 GHz;”.

(10) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3A002(g)(1), in the English text, by repealing ““Space qualified”” and substituting ““Space-qualified””.

(11) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3A002(g)(3), in the English text, by repealing “Non-“space qualified”” and substituting “Non-“space-qualified””.

(12) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, by repealing 3B001(c) and substituting –

“(c) Anisotropic plasma dry etching equipment having all of the following:

- (1) Designed or optimized to produce critical dimensions of 65 nm or less;
- (2) Within-wafer non-uniformity equal to or less than 10% 3σ measured with an edge exclusion of 2 mm or less;”.

(13) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, by repealing 3B001(e) and the Note and substituting –

“(e) Automatic loading multi-chamber central wafer handling systems having all of the following:

- (1) Interfaces for wafer input and output, to which more than two functionally different ‘semiconductor process tools’ specified by

3B001(a), 3B001(b), 3B001(c) or 3B001(d) are designed to be connected;

- (2) Designed to form an integrated system in a vacuum environment for 'sequential multiple wafer processing';

Note:

3B001(e) does not apply to automatic robotic wafer handling systems specially designed for parallel wafer processing.

Technical Notes:

1. For the purpose of 3B001(e), 'semiconductor process tools' refers to modular tools that provide physical processes for semiconductor production that are functionally different, such as deposition, etch, implant or thermal processing.
2. For the purpose of 3B001(e), 'sequential multiple wafer processing' means the capability to process each wafer in different 'semiconductor process tools', such as by transferring each wafer from one tool to a second tool and on to a third tool with the automatic loading multi-chamber central wafer handling systems."

(14) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3C002(d), by adding at the end –

“Technical Note:

Silylation techniques are defined as processes incorporating oxidation of the resist surface to enhance performance for both wet and dry developing.”.

(15) Schedule 1 is amended, in the Dual-use Goods List, in Category 3, in 3C002(e), by repealing the Technical Note.

(16) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, by repealing 4A001(b) and the Note and substituting –

“(b) Deleted;”.

(17) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, in 4A001(b), by adding at the end –

“*N.B.*:

See Category 5, Part 2 for electronic computers and related equipment performing or incorporating “information security” functions.”.

(18) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, in 4A003(b), by repealing “0.75” and substituting “1.5”.

(19) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, in 4A003(g), by repealing everything before the Note and substituting –

“(g) Equipment specially designed for aggregating the performance of “digital computers” by providing external interconnections that allow communications at unidirectional data rates exceeding 2.0 Gbyte/s per link;”.

(20) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, in 4A003(g), in the Note, by repealing “control” and substituting “apply to”.

(21) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, in 4D, by repealing the Note and substituting –

“*Note*:

The status of “software” for the “development”, “production”, or “use” of equipment described in other Categories is dealt with in the appropriate Category.”.

(22) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, in 4D001(b)(1), by repealing “0.1” and substituting “0.25”.

(23) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, by repealing 4D003 and the Note and substituting –

“4D003 Deleted;”.

(24) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, in 4D003, by adding at the end –

“*N.B.*:

See Category 5, Part 2 for “software” performing or incorporating “information security” functions.”.

(25) Schedule 1 is amended, in the Dual-use Goods List, in Category 4, in 4E001(b)(1), by repealing “0.1” and substituting “0.25”.

(26) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, in Note 1, by repealing “The control status of components, “lasers”, test” and substituting “The status of components, test”.

(27) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, in Note 1, by adding at the end –

“*N.B.*:

For “lasers” specially designed for telecommunications equipment or systems, see 6A005.”.

(28) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, by repealing 5B001(b)(1) and the Technical Note.

(29) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, by repealing 5B001(b)(3).

(30) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, by repealing 5D001(d)(1) and the Technical Note.

(31) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, in 5D001(d)(2)(b), by adding “or” at the end.

(32) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, by repealing 5D001(d)(3).

(33) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, in 5E001(c)(1), by repealing “15” and substituting “50”.

(34) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, in 5E001(c)(1), by repealing the Technical Note and substituting –

“Technical Note:

For telecommunications switching equipment, the “total digital transfer rate” is the unidirectional speed of a single interface, measured at the highest speed port or line.”.

(35) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 1, in 5E001(c)(3), by adding “and having a switching time less than 1 ms” after ““optical switching””.

(36) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in Note 1, by repealing “control”.

(37) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in Note 2, by repealing “control” and substituting “apply to”.

(38) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in Note 3, by repealing “control” and substituting “apply to”.

(39) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in Note 3(e), in the Chinese text, by repealing “提供予出口國有關主管當局，以確定上文(a)至(c)段所述” and substituting “供出口國有關主管當局查閱或提供予出口國有關主管當局，以確定上文(a)至(c)段所描述”.

(40) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in the Notes, by adding –

“4. Category 5 – Part 2 does not apply to items incorporating or using “cryptography” and meeting all of the following:

(a) The primary function or set of functions is not any of the following:

(1) “Information security”;

(2) A computer, including operating systems, parts and components of the computer;

(3) Sending, receiving or storing information (except in support of entertainment, mass commercial broadcasts, digital rights management or medical records management);

(4) Networking (includes operation, administration, management and provisioning);

(b) The cryptographic functionality is limited to supporting their primary function or set of functions;

(c) When necessary, details of the items are accessible and will be provided, upon request, to the appropriate authority in the exporter’s country in order to ascertain compliance with conditions described in paragraphs (a) and (b) above.”.

(41) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in 5A002(a), by repealing everything before 5A002(a)(1) and substituting –

“5A002 “Information security” systems, their equipment and components, as follows:

- (a) Systems, equipment, application specific “electronic assemblies”, modules and integrated circuits for “information security”, as follows, and their components specially designed for “information security”:

N.B.:

For Global Navigation Satellite Systems (GNSS) receiving equipment containing or employing decryption, see 7A005.”.

(42) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in 5A002(a), in the Note, by repealing Note (a) and the N.B. and substituting –

“(a) Smart cards and smart card ‘readers/writers’ as follows:

- (1) A smart card or an electronically readable personal document (e.g., token coin, e-passport) that meets any of the following:
- (a) The cryptographic capability is restricted for use in equipment or systems excluded from 5A002 by Note 4 in Category 5, Part 2 or paragraphs (d), (e), (f), (g) and (i) of this Note, and cannot be reprogrammed for any other use;
- (b) Having all of the following:
- (1) It is specially designed and limited to allow protection of ‘personal data’ stored within;
- (2) Has been, or can only be, personalized for public or

- commercial transactions or individual identification;
- (3) Where the cryptographic capability is not user-accessible;

Technical Note:

‘Personal data’ includes any data specific to a particular person or entity, such as the amount of money stored and data necessary for authentication.

- (2) ‘Readers/writers’ specially designed or modified, and limited, for items specified by (a)(1) of this Note;

Technical Note:

‘Readers/writers’ include equipment that communicates with smart cards or electronically readable documents through a network.”.

- (43) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in 5A002(a), in the Note, by repealing Note (b) and substituting –

“(b) Deleted;”.

- (44) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in 5A002(a), in the Note, by repealing Note (c) and substituting –

“(c) Deleted;”.

- (45) Schedule 1 is amended, in the Dual-use Goods List, in Category 5, in Part 2, in 5A002(a), in the Note, by repealing Note (h) and substituting –

“(h) Deleted;”.

(46) Schedule 1 is amended, in the Definitions of Terms, in the definition of “Personalized smart card”, by repealing “智慧卡)” and substituting “智能卡)”.

(47) Schedule 1 is amended, in the Definitions of Terms, in the definition of “Space qualified”, by repealing ““Space qualified” (太空級)” and substituting ““Space-qualified ” (太空級)”.

3. Schedule 2 amended

(1) Schedule 2 is amended, in paragraph 1(b), by adding “and” at the end.

(2) Schedule 2 is amended by repealing paragraph 1(c).



Director-General of Trade and Industry

23 April 2010

Explanatory Note

This Order revises Schedules 1 and 2 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G) to reflect the latest changes in international regime control list for certain strategic commodities as well as to relax the control over transit and air-transshipment of information security products.

ECONOMIC IMPLICATIONS

The relaxation of control over certain items in the three groups of common dual-use strategic goods, i.e. electronics, computers, and telecommunications and information security products, as well as the relaxation of transit and air-transshipment control over information security products will be welcome by the local trading and logistics sectors as they are relieved from the burden of applying for import and export licences. This will help raise operational efficiency and indirectly lower the cost of operation. External trade will also be facilitated as the products involved in the relaxation exercise are commonly traded in Hong Kong.