

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance (Chapter 60)

Import and Export (General) (Amendment) Regulation 2011

INTRODUCTION

At the meeting of the Executive Council on 15 March 2011, the Council ADVISED and the Chief Executive ORDERED that the Import and Export (General) (Amendment) Regulation 2011 (the Amendment Regulation), at Annex A, should be made under section 31 of the Import and Export Ordinance (the Ordinance).

A

JUSTIFICATIONS

Existing Textiles Control Arrangements

2. In accordance with the World Trade Organization (WTO) Agreement on Textiles and Clothing, all quotas on textiles products were eliminated globally by 1 January 2005. However, under Mainland China's Accession Protocol to WTO, Mainland China will continue to be subject to two special time-limited provisions. Under them, WTO members may impose special textiles safeguard and product-specific safeguard measures on Mainland textiles products up to December 2008 and December 2013 respectively, if it is determined that increased imports of such products have caused or threatened market disruption to the WTO member's domestic industry.

3. Given the geographical proximity and close economic integration between Hong Kong and the Mainland, Hong Kong has maintained the necessary textiles control arrangements after the global elimination of textiles quotas to safeguard the legitimate interests of Hong Kong's textiles trade. Different licensing requirements have been

applied to “sensitive markets” and “non-sensitive markets” as follows –

- (a) all textiles exports to the United States (US), and textiles imports from and exports to the Mainland (classified as involving “sensitive markets”), are covered by either consignment-specific import/export licences issued by the Director-General of Trade and Industry (DGTI), or notifications lodged by registered traders under the Textiles Trader Registration Scheme (TTRS). In addition, all cut-and-sewn garments produced in Hong Kong for export to the US are subject to the Production Notification (PN) requirement¹;
- (b) all other textiles imports and exports (classified as involving “non-sensitive markets”) are covered by either consignment-specific import/export licences, or comprehensive import or export licences granted to traders to cover multiple shipments in a year; and
- (c) all textiles transshipment to and from any place are covered by notifications lodged under TTRS, consignment-specific import/export licences or comprehensive licences.

Recent Developments

4. Though the special textiles safeguard measures against the Mainland have lapsed, Mainland textiles products remain susceptible to the risk of product-specific safeguard measures. In September 2009, the US President decided to impose precedent-setting product-specific safeguard measures (also known as section 421 safeguard in the US), in the form of duty, on imports of certain passenger vehicle and light truck tires from the Mainland. This may encourage other similar petitions from the textiles sector leading to instigation of safeguard measures against Mainland textiles products. There is hence a need to maintain textiles control arrangements for the “sensitive markets” (viz. exports to the US and imports from/exports to the Mainland) to safeguard Hong

¹ The PN requirement is to ensure that the principal manufacturing process of cut-and-sewn garments is carried out in Hong Kong. Manufacturers producing cut-and-sewn garments intended for export to the “sensitive markets” (currently, the US) are required to lodge PN on the day of or within three working days prior to the commencement of the major assembly work in Hong Kong.

Kong's legitimate trade interests.

5. Apart from the US, there has been no indication that other markets will initiate product-specific safeguard measures against Mainland textiles products. The European Union (EU) was once classified as a "sensitive market" as it initiated special textiles safeguard action and subsequently imposed quotas against Mainland textiles products in 2005. However, it has been reclassified as a "non-sensitive market" since 29 June 2009 following the expiry of the EU quotas and surveillance measures on Mainland textiles products. We also note that genuine textiles transshipment which do not enter into the commerce of Hong Kong are less prone to abuse or circumvention. Hence, there is no compelling need to maintain textiles control arrangements for textiles imports/exports involving "non-sensitive markets" and for textiles transshipment.

Proposed Adjustments

6. We propose the following adjustments to the textiles control arrangements –

- (a) the licensing requirement for textiles import from or export to "non-sensitive markets" be removed; and
- (b) the licensing requirement for all textiles transshipment be removed.

7. We envisage that the proposal will facilitate the textiles trade in the import/export of textiles while not compromising the effectiveness and credibility of the textiles control arrangements in Hong Kong.

OTHER OPTIONS

8. We have considered the option of dispensing with all textiles control arrangements given the global elimination of textiles quotas since 1 January 2005 and the expiry of quantitative restrictions/surveillance measures on Mainland textiles products by the US and EU in end 2008. In view of the risk of the US imposing product-specific safeguard measures against Mainland textiles products and possible circumvention

thereof, we consider that maintaining the current textiles control arrangements with adjustments as proposed in paragraph 6 should serve the wider interest of Hong Kong's textiles trade.

THE AMENDMENT REGULATION

9. The proposed amendments to the Import and Export (General) Regulations (the Regulations) are set out below –

(a) **Regulation 6 of the Regulations**

Regulation 6 stipulates the circumstances under which import/export of certain articles can be exempted from licensing requirement. It will be amended to include exemptions for textiles imports and exports involving “non-sensitive markets” and all textiles transshipment;

(b) **Fourth Schedule of the Regulations**

The Schedule sets out the scope² of TTRS. It will be amended to reflect that TTRS will no longer cover textiles transshipment; and

(c) **References to/provisions relating to TTRS transshipment notification in the Regulations**

Relevant parts of the Regulations set out the obligations of traders and carriers in using TTRS transshipment notifications to cover textiles transshipment. Since textiles transshipment will no longer be subject to licensing requirement, the relevant references/provisions in the Regulations will be removed.

10. Consequential amendments are also required to be made to the Import and Export (Fees) Regulations (the Fees Regulations), which are set out below –

(a) **Schedule to the Fees Regulations**

The Schedule sets out the fees payable under the Fees

² At present, TTRS covers the import and export of textiles from/to the Mainland, the export of textiles to the US, as well as the textiles transshipment to/from all places.

Regulations. It will be amended to remove the reference to transshipment notification from item 13A of the Schedule that sets out the fee payable for delivery of paper notification under TTRS; and

(b) **Reference to TTRS transshipment notification in the Fees Regulations**

Regulation 2(2A) of the Fees Regulations requires that before delivery of a TTRS paper notification under the Regulations, including transshipment notification, a fee shall be paid to DGTI. Since textiles transshipment will no longer be subject to licensing requirement, the relevant reference in Regulation 2(2A) of the Fees Regulations will be removed.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be –

Publication in the Gazette	25 March 2011
Tabling at the Legislative Council	30 March 2011
Commencement	20 May 2011

IMPLICATIONS OF THE PROPOSAL

12. The proposal has economic, financial and civil service implications as set out at Annex B. The proposal is in conformity with the Basic Law, including the provisions concerning human rights and is consistent with Hong Kong's international rights and obligations under the WTO Agreement. It will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation.

13. The proposal has no productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

14. Major textiles trade associations have requested maintaining the

textiles control arrangements in light of the risk of the US instigating product-specific safeguard measures against Mainland textiles products. At its meeting on 3 September 2010, the Textiles Advisory Board supported the proposed adjustments. The Legislative Council (LegCo) Panel on Commerce and Industry discussed the proposed changes to the textiles control arrangements and the consequential legislative amendments at its meeting on 21 December 2010. Members were supportive of the proposal.

PUBLICITY

15. A press release will be issued when the Amendment Regulation is published in the Gazette on 25 March 2011. The Trade and Industry Department will announce the adjustments to the textiles control arrangements through trade circulars and its web portal. A spokesperson will be available for answering media enquiries.

BACKGROUND

16. To modify the textiles control system to cater for the post-2004 era after the global elimination of the textiles quotas under the WTO Agreement on Textiles and Clothing, the Import and Export (General) (Amendment) Regulation 2004 (L.N. 155 of 2004) and the Import and Export (Fees) (Amendment) Regulation 2004 (L.N. 156 of 2004) were made under section 31 of the Ordinance. The post-2004 textiles control system came into effect on 1 January 2005.

17. In view of the imposition of quotas on Mainland textiles products by EU in July 2005, DGTI made the Import and Export (General) Regulations (Amendment of Fourth and Fifth Schedules) Order 2006 (L.N. 4 of 2006) to classify EU as a “sensitive market” starting from 15 March 2006. After the lapse of quotas and surveillance measures on Mainland textiles products by EU in end 2008, DGTI further made the Import and Export (General) Regulations (Amendment of Fourth and Fifth Schedules) Order 2009 (L.N. 68 of 2009) to reclassify EU as a “non-sensitive market” starting from 29 June 2009.

ENQUIRY

18. Any enquiries on the brief should be addressed to Mr J. LUM,

Assistant Director-General (Trade and Industry), on 2398 5138.

Commerce and Economic Development Bureau
March 2011

Import and Export (General) (Amendment) Regulation 2011

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Import and Export (General) (Amendment) Regulation 2011

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

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on 20 May 2011.

Part 2

Amendments to Import and Export (General) Regulations

- 2. Import and Export (General) Regulations amended**
The Import and Export (General) Regulations (Cap. 60 sub. leg. A) are amended as set out in sections 3 to 13.
- 3. Regulation 2 amended (Interpretation)**
 - (1) Regulation 2, definition of *reference number*, paragraph (a)—
Repeal
everything after “import notification”
Substitute
“or export notification under Part VA, means the reference number assigned to it under regulation 6A(2)(a) or 6BA(2)(a) (as the case may be);”.
 - (2) Regulation 2, definition of *transshipment notification*—
Repeal paragraph (a).
- 4. Regulation 6 amended (Application and exemption)**
 - (1) After regulation 6(1)—
Add
“(1A) Section 6C(1) of the Ordinance does not apply to any article of textiles that is—
 - (a) imported from a place other than that referred to in paragraph (a) of the Fourth Schedule; or
 - (b) subject to paragraph (1B), imported as transshipment cargo.

- (1B) If at any time between its import to and export from Hong Kong, an article of textiles imported as transshipment cargo under paragraph (1A)(b) ceases to be transshipment cargo, section 6C(1) of the Ordinance has effect as if paragraph (1A)(b) had not been enacted.
- (1C) Section 6D(1) of the Ordinance does not apply to any article of textiles that is—
- (a) exported to a place other than that referred to in paragraph (b) of the Fourth Schedule; or
 - (b) exported as transshipment cargo.”.

(2) Regulation 6(3D)—

Repeal

“export, import or transshipment”

Substitute

“import notification or export”.

5. Part VA heading amended

Part VA, heading—

Repeal

“IMPORT OR EXPORT OF TEXTILES (AS TRANSHIPMENT CARGO OR OTHERWISE) IN RELIANCE ON EXEMPTION”

Substitute

“**Import or Export of Textiles (otherwise than as Transshipment Cargo) in Reliance on Exemption**”.

6. Cross-heading before regulation 6BC repealed

Cross-heading before regulation 6BC—

Repeal the cross-heading.

7. Regulations 6BC and 6BD repealed

Regulations 6BC and 6BD—

Repeal the regulations.

8. Cross-heading before regulation 6BE repealed

Cross-heading before regulation 6BE—

Repeal the cross-heading.

9. Regulations 6BE and 6BF repealed

Regulations 6BE and 6BF—

Repeal the regulations.

10. Regulation 6C amended (Certain requirements deemed complied with if manifest lodged with Commissioner using services provided by a specified body)

(1) Regulation 6C—

Repeal

“6B(3), 6BB(3), 6BD(3) or 6BF(3)”

Substitute

“6B(3) or 6BB(3)”.

(2) Regulation 6C(b)—

Repeal

“6B(2)(c)(ii), 6BB(2)(c)(ii), 6BD(2)(c)(ii) or 6BF(2)(c)(ii)”

Substitute

“6B(2)(c)(ii) or 6BB(2)(c)(ii)”.

11. Regulation 6E amended (Defence of reasonable diligence)

Regulation 6E(1)—

Repeal

“6BC(4), 6BD(4), 6BE(3), 6BF(4),”.

12. Fourth Schedule amended

- (1) Fourth Schedule, paragraph (a), after the semicolon—

Add

“or”.

- (2) Fourth Schedule, paragraph (b)(ii)—

Repeal

“; or”

Substitute a full stop.

- (3) Fourth Schedule—

Repeal paragraph (c).

13. Eighth Schedule amended (Transitional arrangements arising from Import and Export (General) (Amendment) (No. 2) Regulation 2003)

- (1) Eighth Schedule, first paragraph—

Repeal

“; 6BC, 6BD, 6BE, 6BF”.

- (2) Eighth Schedule, cross-heading before regulation 6BC—

Repeal the cross-heading.

- (3) Eighth Schedule, regulations 6BC and 6BD—

Repeal the regulations.

- (4) Eighth Schedule, cross-heading before regulation 6BE—

Repeal the cross-heading.

- (5) Eighth Schedule, regulations 6BE and 6BF—

Repeal the regulations.

- (6) Eighth Schedule, regulation 6C(1)—

Repeal

“6B(3)(a), 6BB(3)(a), 6BD(3)(a) or 6BF(3)(a)”

Substitute

“6B(3)(a) or 6BB(3)(a)”.

- (7) Eighth Schedule, regulation 6C(1)(b)—

Repeal

“6B(2)(a)(iii)(B), 6BB(2)(a)(iii)(B), 6BD(2)(a)(iii)(B) or 6BF(2)(a)(iii)(B)”

Substitute

“6B(2)(a)(iii)(B) or 6BB(2)(a)(iii)(B)”.

- (8) Eighth Schedule, regulation 6C(2)—

Repeal

“6B(3)(b)(ii), 6BB(3)(b)(ii), 6BD(3)(b)(ii) or 6BF(3)(b)(ii)”

Substitute

“6B(3)(b)(ii) or 6BB(3)(b)(ii)”.

- (9) Eighth Schedule, regulation 6CA, heading, after “**that**”—

Add

“**may be made when**”.

- (10) Eighth Schedule, regulation 6CA(1)—

Repeal

everything after “for an import” and before “, he may”

Substitute

“notification or export notification to be delivered to the Director by using services provided by a specified body as specified in regulation 6A(1)(a)(i) or 6BA(1)(a)(i)”.

- (11) Eighth Schedule, regulation 6CA(1)(a)—

Repeal

“6A(1)(a)(i), 6BA(1)(a)(i), 6BC(1)(a)(i) or 6BE(1)(a)(i)”

Substitute

“6A(1)(a)(i) or 6BA(1)(a)(i)”.

- (12) Eighth Schedule, regulation 6CA(1)(b)—
Repeal
 “import, export or transshipment”
Substitute
 “import notification or export”.
- (13) Eighth Schedule, regulation 6CA(1)(b)(ii)—
Repeal
 “6A(1)(b), 6BA(1)(b), 6BC(1)(b) or 6BE(1)(b)”
Substitute
 “6A(1)(b) or 6BA(1)(b)”.
- (14) Eighth Schedule, regulation 6CA(4), Table, item relating to regulation 6BA(1)(a)(i), after “6BB(2)(a) and (3)(a)”—
Add a full stop.
- (15) Eighth Schedule, regulation 6CA(4), Table—
Repeal
 “regulation 6BC(1)(a)(i) regulations 6BC(1)(a), (2), (3), (4)(a) and (5) and 6BD(2)(a) and (3)(a)
 regulation 6BE(1)(a)(i) regulations 6BE(1)(a), (2) and (3)(a) and 6BF(2)(a) and (3)(a).”.
- (16) Eighth Schedule, regulation 6CB—
Repeal
 “6B(3), 6BB(3), 6BD(3) or 6BF(3)”
Substitute
 “6B(3) or 6BB(3)”.
-

Part 3

Consequential Amendments

- 14. Import and Export (Fees) Regulations amended**
 The Import and Export (Fees) Regulations (Cap. 60 sub. leg. B) are amended as set out in sections 15 and 16.
- 15. Regulation 2 amended (Prescribed fees and manner of payment)**
 Regulation 2(2A)—
Repeal
 “, an export notification or a transshipment notification”
Substitute
 “or an export notification”.
- 16. Schedule amended (Scale of fees)**
 The Schedule, item 13A—
Repeal
 “, an export notification or a transshipment notification”
Substitute
 “or an export notification”.

Explanatory Note

Under sections 6C and 6D of the Import and Export Ordinance (Cap. 60) and the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (*principal Regulations*), the import and export of certain articles are prohibited except under and in accordance with a licence issued under section 3 of that Ordinance. The principal Regulations currently provide for exemptions from the above prohibition in respect of certain articles. The main purpose of this Regulation is to add two more exemptions in respect of textiles by amending the principal Regulations.

2. The first exemption is provided for textiles imported from or exported to a place other than those referred to in the relevant paragraphs of the Fourth Schedule to the principal Regulations. The second exemption is provided for textiles imported or exported as transshipment cargo (section 4).
3. This Regulation also repeals existing provisions in the principal Regulations about import and export of textiles as transshipment cargo under the Textiles Trader Registration Scheme (*TTRS*) (sections 6, 7, 8, 9, 12 and 13). With the new exemption provided for textiles imported or exported as transshipment cargo, it is not necessary for such import and export to be carried out under the TTRS. Textual amendments, which are consequential upon the repeals, are also made to the principal Regulations and the Import and Export (Fees) Regulations (Cap. 60 sub. leg. B).

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Import and Export (General) (Amendment) Regulation 2011

ECONOMIC IMPLICATIONS

The proposed adjustments to the textiles control arrangements will reduce administrative burden and compliance costs arising from the licensing requirements for textiles imports/exports involving “non-sensitive markets” and textiles transshipment. It would have a positive impact on the business environment of Hong Kong.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

2. The proposal will help streamline the textiles licensing arrangements and several posts related to the concerned work will be redeployed to other areas in the Trade and Industry Department.

3. There will be minimal manpower savings in the Customs and Excise Department in connection with its work on enforcement of the textiles control arrangements.

4. The proposal will result in reduction of an annual revenue of about \$1.79 million (based on the actual revenue collected in 2010), of which \$1.23 million relates to the fees on paper Transshipment Notifications under TTRS which will no longer be required, and \$350,000 relating to consignment-specific import and export licences as licences for textiles imports/exports involving non-sensitive markets will no longer be required. The proposal will also result in a reduction in the number of traders registered under TTRS as traders who are currently lodging transshipment notifications only will no longer need to lodge such notifications in future. The annual registration fee foregone is estimated to be around \$210,000.

5. There will be no revenue impact on the lifting of the requirement for Comprehensive Licence as it is currently free of charge.

6. Textiles-related fees and charges are being reviewed and, where necessary, will be revised subject to the Government’s policy.