

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance (Chapter 60)
Protection of Non-Government Certificates of Origin Ordinance (Chapter 324)

IMPORT AND EXPORT (AMENDMENT) BILL 1999
PROTECTION OF NON-GOVERNMENT CERTIFICATES OF
ORIGIN (AMENDMENT) BILL 1999
IMPORT AND EXPORT (GENERAL) (AMENDMENT)
REGULATION 1999
EXPORT (CERTIFICATES OF ORIGIN) (AMENDMENT)
REGULATION 1999
IMPORT AND EXPORT (FEES) (AMENDMENT)
REGULATION 1999

INTRODUCTION

At the meeting of the Executive Council on 1 June 1999, the Council ADVISED and the Chief Executive ORDERED that-

- A
- (a) the Import and Export (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council, to strengthen the legal basis of the Production Notification (PN) arrangement;
- B
- (b) the Protection of Non-Government Certificates of Origin (Amendment) Bill 1999, at Annex B, should be introduced into the Legislative Council, to enable the Government Approved Certification Organisations to handle applications for Certificates of Origin (CO) using information technology such as Electronic Data Interchange (EDI); and
- C
- D
- E
- (c) the Import and Export (General) (Amendment) Regulation 1999 at Annex C, the Export (Certificates of Origin) (Amendment) Regulation 1999 at Annex D, and the Import and Export (Fees) (Amendment) Regulation 1999 at Annex E, should be approved in principle, to be referred back to Members to be made after the Bills have passed into law.

BACKGROUND AND ARGUMENT

Production Notification Arrangement

2. Trade Department (TD) promulgates a set of origin rules for determining Hong Kong origin in respect of individual products for the purpose of issuing COs. COs are normally applied to facilitate customs clearance of consignments in the importing countries or to support the export licence applications for restrained textiles exported to certain countries. Apart from TD, there are five Government Approved Certification Organisations (GACOs) authorised by Government for issuing COs. These are The Hong Kong General Chamber of Commerce; The Indian Chamber of Commerce, Hong Kong; The Federation of Hong Kong Industries; The Chinese Manufacturers' Association of Hong Kong and The Chinese General Chamber of Commerce. Pursuant to the Export (Certificates of Origin) Regulations under the Import and Export Ordinance, any manufacturer engaging in production activities for export purposes who wants to apply for COs must register with the Director-General of Trade (DGT) and comply with the factory registration requirements set out therein.

3. In July 1996, Hong Kong's origin rules for cut and sewn garments were revised to align with the corresponding changes to origin rules made by our major trading partners. Under the revised origin rule, it is necessary to conduct real-time checks on the manufacturing process of the cut and sewn garments to ascertain the Hong Kong origin status of the final products. The PN arrangement was introduced on 1 July 1996 as a result. Under the current arrangement, manufacturers of cut and sewn garments for export to the restrained markets (i.e. markets where Hong Kong has signed bilateral textiles agreements, namely the US, the European Union and Canada) are required, by way of their factory registration undertakings, to notify TD of the production details through the lodging of PN within 3 working days prior to the commencement of the production. This is to enable Customs and Excise Department (C&ED) officers to conduct real-time checks on the manufacturing process to ensure compliance with the Hong Kong origin rules. Since its introduction, the PN arrangement has proven to be an effective mechanism in enforcing the revised origin rules for cut and sewn garments and enhancing our surveillance over illegal transshipment activities.

Justifications for Making PN a Statutory Document

4. Currently, the legal backing of the PN arrangement is derived from the general powers of DGT under the Import and Export Ordinance and the relevant subsidiary legislation. This is not entirely satisfactory from an enforcement angle. We therefore propose to amend the Import and Export Ordinance and its subsidiary legislation, the Import and Export (General)

Regulations, to strengthen the legal basis of PNs. The amendments would enhance C&ED's enforcement capability and facilitate prosecution. The exercise would also demonstrate to our trading partners our determination in upholding the integrity of our control system over export of textiles to restrained markets.

Electronic Submission of PNs and COs

5. To improve the efficiency and competitiveness of our business community, Government has been taking the lead in implementing EDI services for key Government trade-related documents and hence building the critical mass required. In this connection, the Government has entered into an agreement with Tradelink Electronic Commerce Limited (Tradelink) for the latter to provide EDI services. Such services have now been introduced for Restrained Textiles Export Licences (RTEL) and Import and Export Declarations. We intend to enable the submission of PNs and the applications for COs via EDI as our next step.

6. At present, the Import and Export Ordinance provides for the submission of applications for licences, including COs, to TD in paper form as well as via EDI. In turning PNs into a statutory document, the Import and Export Ordinance will need to be amended to provide for the EDI and paper submission of PNs to TD. Separately, the Protection of Non-Government Certificates of Origin Ordinance provides for the submission of CO applications to the five GACOs in paper form only. It is also necessary to amend this latter Ordinance to provide for the submission of CO applications through EDI to the GACOs.

Fees

7. The existing fee level for each application for CO in paper form is \$159 as provided for in the Import and Export (Fees) Regulations, whilst no fee is charged for PNs as there is no statutory basis for doing otherwise. We propose that a new fee item for PNs should be created in the Import and Export (Fees) Regulations once it is made a statutory requirement. A new fee item will also need to be introduced for the applications of COs via EDI.

8. In determining the fee level for PNs, we have taken into consideration that for a typical shipment of cut and sewn garments, traders will be required to submit both PNs and COs, and therefore pay for both applications. We propose that the aggregate fee chargeable for the submission of a PN and a CO in paper form should not be higher than the present rate of \$159 of making a paper application for CO. This is possible as a result of the cost savings achieved through streamlining of operations and procedures over the years. To encourage migration to the EDI service and in line with previous practice adopted for introducing EDI

service for RTEL, we further propose a fee structure where the combined fees to the Government and Tradelink for the electronic submission of PNs and COs should not be higher than the paper submission. This would mean that a trader who only needs to obtain a CO for the export of his textiles products will benefit from a lower CO fee, while there will be no increase in trader's cost even if he is required to submit both CO and PN. The proposed fee levels also enable the traders to absorb the processing charges to be collected by Tradelink for the EDI service without any additional financial burden. Based on this rationale, we propose to amend the Import and Export (Fees) Regulations to provide for the collection of the following fees:

	\$
Where the application is made on paper:	
CO	110
PN	49
Where the application is made via EDI:	
CO	95*
PN	34*

* **Note** This excludes the processing fees (\$15) to be charged by Tradelink. Together with the EDI processing charges to be charged by Tradelink, the total fee payable for paper and electronic submissions will be the same.

9. The existing fee item for factory registration under the Import and Export (Fees) Regulations applies to factories registered with TD for CO applications. We propose to make it a statutory requirement for factories to register with TD before lodging PNs and to pay the factory registration fee as the existing requirement is implemented by administrative means only. We therefore also need to amend the Import and Export (Fees) Regulation to extend the current statutory factory registration fee to factories subject to the PN arrangement.

THE BILLS

(A) The Import and Export (Amendment) Bill 1999

10. The Import and Export (Amendment) Bill 1999 at Annex A contains statutory provisions for the PN arrangement, which aims at strengthening the enforcement and preserving the integrity of the export control system for textiles.

11. **Clause 3** adds the proposed Part IIA relating to the PN arrangement. The provisions prescribe the scope of the PN arrangement, the duty of a textile manufacturer to comply with the PN requirements, DGT's power to issue, revoke and suspend validated PNs, and his power to request applications for other trade documents like licences and COs to be supported by PNs. The proposed section 6AB(4) and (5) provides transitional arrangements for the existing PN arrangement which is operated by means of undertakings under the Export (Certificates of Origin) Regulations.

12. **Clauses 4 and 5** amend sections 20 and 21 to provide C&ED officers with enforcement powers relating to matters covered by PNs.

13. **Clause 7** amends section 36 to create new offences in respect of PNs, including the giving of false or misleading information, and the failure to lodge a PN or to comply with the conditions for the issue of validated PNs.

(B) The Protection of Non-Government Certificates of Origin (Amendment) Bill 1999

14. The Protection of Non-Government Certificates of Origin (Amendment) Bill 1999 at Annex B enables the GACOs to handle applications for COs using information technology such as EDI.

15. **Clause 3** adds the provisions relating to the authentication and authorisation of information sent to GACOs through EDI, the persons to be held responsible for the validity of such information, the duty of security device holders to prevent the unauthorised use of security devices, and the duty of specified agents to obtain authorisation from those persons on whose behalf any information is sent through EDI. Proposed sections 6B and 6C under **clause 6** set out the provisions relating to the offences and penalty for breaching those duties provided for in the proposed sections 2B and 2C at **clause 3**.

16. **Clauses 4 and 5** amend sections 3 and 4 to allow a CO to be issued and revoked through EDI. **Clauses 7 and 8** amend sections 7 and 8 to cater for offences involving documents issued or information furnished using EDI.

THE REGULATIONS

(A) Import and Export (General) (Amendment) Regulation 1999 (Annex C)

17. **Section 2** adds the new Part IA, which supplements the provisions in the proposed Part IIA of the Import and Export Ordinance on the PN arrangement. Matters required or permitted by the principal Ordinance to be prescribed in the regulations are specified in the new Fifth Schedule at **section 6**. Such matters include the types of garments, their manufacturing processes and destination countries that are subject to, and the exemptions from, the PN requirements.

18. **Section 3** adds the new Part IIIA, which empowers DGT to set up a register containing the particulars of persons eligible to be issued with, or required to lodge with DGT, documents such as licences and PNs, in respect of textiles under the Import and Export Ordinance. The registration requirements are modelled on those relating to the existing register for CO applicants maintained by DGT under the Export (Certificates of Origin) Regulations.

19. **Section 4** adds the new regulations 6F and 6G to create offences for making or giving false statement or information and for failing to keep the required records in connection with the new registration requirements.

(B) The Export (Certificates of Origin) (Amendment) Regulation 1999 (Annex D)

20. **Section 2** provides for the issue of COs using EDI. The offence for giving false statement is amended at **section 3** to cater for cases where information is given by electronic means.

(C) Import and Export (Fees) (Amendment) Regulation 1999 (Annex E)

21. **Section 3** provides for the fees levels for COs and PNs where the applications are made on paper and via EDI as explained in paragraphs 7 and 8 above.

PUBLIC CONSULTATION

22. The Textiles Advisory Board has been consulted. It welcomes the legalisation of the PN system and the provision of EDI services for PNs and COs. It has no objection to the proposed fees.

BASIC LAW IMPLICATIONS

23. The Bills and Regulations are consistent with Article 117 of the Basic Law which provides that the HKSAR may issue its own certificates of origin for products in accordance with prevailing rules of origin.

HUMAN RIGHTS IMPLICATIONS

24. The Department of Justice advises that the amendments are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

25. The amendments will not affect the current binding effect of the Ordinances and Regulations.

FINANCIAL AND STAFFING IMPLICATIONS

26. The introduction of the PN system in July 1996 has led to a considerable increase in workload in TD for the implementation of the system and in C&ED for the enforcement of the system. Both TD and C&ED have been able to absorb the increase in workload within their existing resources. The fee proposal will not have material impact on the total revenue of TD. The proposed legislative amendments do not have additional financial and staffing implications for the Government.

ECONOMIC IMPLICATIONS

27. The strengthening of legal status of the PN system will enhance enforcement and uphold the integrity of our export control system which will in turn help to ensure the access to overseas markets of legitimate exports from Hong Kong. With the delivery of EDI services for PN and CO, traders will benefit from the reduced time in preparing trade documents, thus enhancing their productivity and competitive edge in the market. At a macro level, it will also help Hong Kong keep pace with other leading trading centres in the world in the use of electronic commerce.

LEGISLATIVE TIMETABLE

28. The legislative timetable will be-

Publication in the Gazette	4 June 1999
First Reading and Commencement of Second Reading Debate	16 June 1999
Resumption of Second Reading Debate, Committee Stage and Third Reading	to be notified

PUBLICITY

29. A press release will be issued when the Bills and Regulations are published in the gazette on 4 June 1999. A spokesman will be available for answering media enquiries.

ENQUIRIES

30. Enquiries may be directed to Miss Linda Leung, Assistant Secretary for Trade and Industry, on 2918 7453 (Fax: 2877 5650).

Trade and Industry Bureau
June 1999

IMPORT AND EXPORT (AMENDMENT) BILL 1999

**PROTECTION OF NON-GOVERNMENT CERTIFICATES OF ORIGIN
(AMENDMENT) BILL 1999**

IMPORT AND EXPORT (GENERAL) (AMENDMENT) REGULATION 1999

EXPORT (CERTIFICATES OF ORIGIN) (AMENDMENT) REGULATION 1999

IMPORT AND EXPORT (FEES) (AMENDMENT) REGULATION 1999

Annexes

- Annex A: Import and Export (Amendment) Bill 1999
- Annex B: Protection of Non-Government Certificates of Origin
(Amendment) Bill 1999
- Annex C: Import and Export (General) (Amendment) Regulation 1999
- Annex D: Export (Certificates of Origin) (Amendment) Regulation 1999
- Annex E: Import and Export (Fees) (Amendment) Regulation 1999

A BILL

To

Amend the Import and Export Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Import and Export (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Trade and Industry by notice in the Gazette.

2. Interpretation

Section 2 of the Import and Export Ordinance (Cap. 60) is amended by adding -

"production notification" (生產通知書) means a notification required to be lodged under section 6AB(1);

"reference number" (編號) -

- (a) in relation to a production notification, means the reference number assigned to the notification under section 6AB(2) (d);
- (b) in relation to a validated production notification, means the reference number assigned to the notification under section 6AC(2);

"validated production notification" (認可生産通知書) means a production notification validated under section 6AC(1);".

3. Part added

The following is added -

"PART IIA

PRODUCTION NOTIFICATION OF CERTAIN TEXTILES FOR EXPORT

6AA. Definitions and application of this Part

(1) In this Part -

"issue" (發出、發給), in relation to any document, includes issue by using services provided by a specified body;

"material particular" (要項), in relation to a production notification, means a particular -

(a) required under section 6AB(2) to be included in the notification;
and

(b) prescribed by the regulations as material for the purposes of this definition;

"permitted period" (准許期間) means the period prescribed by the regulations for the purposes of this definition;

"production" (生産), in relation to any specified textiles, means the process of manufacturing those textiles as prescribed by the regulations for the purposes of this definition;

"the regulations" (規例) means the regulations made under section 31;

"specified textiles" (指明紡織品) means any textiles prescribed by the regulations for the purposes of this definition.

(2) This Part shall not apply to specified textiles except specified textiles that are produced for export to a country or place prescribed by the regulations for the purposes of this section.

(3) The regulations may make provision for the purposes of exempting from this Part any specified textiles to which this Part would otherwise apply.

(4) A reference number of a production notification or validated production notification may be assigned by using services provided by a specified body.

6AB. Lodging of production notification

(1) A person shall not commence the production of any specified textiles (whether by himself or through any other person) unless he lodges with the Director a notification in respect of those textiles within the permitted period, or within such other period as the Director may, at his discretion, allow in a particular case.

(2) A production notification shall -

- (a) be in such form and include such particulars and declarations as the Director may specify;
- (b) be lodged with the Director on paper or using services provided by a specified body;

- (c) be lodged in accordance with such other requirements, and attach or contain such other information, as the Director may determine; and
- (d) be assigned a reference number by the Director.

(3) If there is any change in a material particular included in a production notification lodged by a person under subsection (1), the person shall inform the Director of the change by notice in writing or by using the services provided by a specified body -

- (a) immediately if the notification is not a validated production notification;
- (b) if the notification is a validated production notification, within 14 days of the change but, in any case, before applying for a licence in respect of the specified textiles to which the notification relates.

(4) Where but for this subsection a person would be required to comply with subsection (1) in relation to any textiles, then the person is not required to comply with that subsection -

- (a) if the person complies with an undertaking given -
 - (i) in relation to the textiles; and
 - (ii) under regulation 8(3) of the Export (Certificates of Origin) Regulations (Cap. 60, sub. leg.) and that is

comparable to the requirement of subsection (1);
and

- (b) until the expiration of 30 days after the commencement of this section.

(5) A person does not have to comply with the undertaking referred to in subsection (4) (a) in relation to any textiles on and after the day on which the person complies or is required to comply with subsection (1) in relation to the textiles, and, accordingly, regulation 12(2) (c) of the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg.) does not apply to the undertaking to the extent the undertaking relates to the textiles.

6AC. Validation of production notification

- (1) The Director shall validate a production notification if -
 - (a) it complies with section 6AB(2); and
 - (b) the Director is satisfied that the person who lodged the notification -
 - (i) has complied or will comply with the declarations made in the notification; and
 - (ii) is or will be capable of complying with the conditions, if any, that the Director is minded to impose under section 6AD(1) on the notification.

(2) The Director shall validate a production notification by assigning to the notification a reference number and endorsing that number on the notification.

(3) The Director shall issue a validated production notification to the person who lodged the notification with the Director.

(4) The Director may require an application for a licence in respect of any specified textiles to be supported by a validated production notification relating to those textiles.

6AD. Director's discretion in respect of validated production notifications

(1) The Director may issue a validated production notification subject to such conditions specified or referred to in the notification as he may see fit to impose.

(2) The Director may cancel a validated production notification at the request of its holder.

(3) The Director may revoke or suspend a validated production notification if it appears to him that -

(a) a condition imposed on, or a declaration made in, the notification has not been complied with; or

(b) false or misleading information has been given in connection with the validated production notification.

(4) The Director may serve notice of the cancellation, revocation or suspension of a validated production

notification on its holder and such holder shall, in the absence of evidence to the contrary, be deemed to be served with the notice if it -

- (a) is delivered to the holder personally, or in the case of a partnership, to a person apparently concerned with the management of, or apparently employed by, the partnership;
- (b) is addressed to the holder and left at or forwarded by registered mail to him at his usual or last known place of abode or business; or
- (c) is sent to the holder using services provided by a specified body.

(5) The holder of a validated production notification that has been cancelled, revoked or suspended shall immediately surrender to the Director the validated production notification and all its copies issued to him by the Director.

(6) No person shall use a validated production notification that has been cancelled, revoked or suspended, or quote its reference number, for any purpose in connection with the export of the specified textiles to which the notification relates.

(7) A person who contravenes subsection (5) or (6) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 3 months.

(8) The Director may delegate any of the powers and duties conferred or imposed on him by this Part to any appointed officer."

4. General powers of members of Customs and Excise Service, etc.

Section 20 is amended -

(a) in subsection (1) -

(i) in paragraph (a), by repealing everything after "occupied by" and substituting -

"a person who -

(i) has been registered under this Ordinance;

(ii) has lodged a production notification with the Director;

(iii) has been issued with a validated production notification; or

(iv) is the holder of a licence;"

(ii) in paragraph (c) -

(A) in subparagraph (i), by adding ", production notification or validated production notification" after "licence";

(B) by adding -

- "(ib) any document or information relating to any licence or validated production notification, or to any production notification, declaration or other document required to be lodged, delivered or provided to the Commissioner or Director in connection with the requirements of this Ordinance;
- (ic) the reference number of any production notification or validated production notification;"
- (iii) in paragraph (d), by repealing "or of any record or document" and substituting ", production notification or validated production notification, or of any record, document or information";
- (iv) in paragraph (da), by repealing "or any record or document referred to in paragraph (c)" and substituting ", production notification or validated production notification, or to any

record, document or information referred to in paragraph (c),";

- (v) in paragraph (e), by repealing "may be issued" and substituting "or validated production notification may be issued or any production notification has been lodged";
- (b) in subsection (2) (a), by adding "or validated production notification" after "licence".

5. Special powers of the members of the Customs and Excise Service, etc.

Section 21 is amended -

- (a) in subsection (3), by repealing "has been issued" and substituting "or validated production notification has been issued or a production notification has been lodged";
- (b) in subsection (4), by adding ", production notification, validated production notification" after "licence" where it twice appears.

6. Power to make regulations

Section 31(1) is amended -

- (a) in paragraph (m), by adding "or validated production notification, or any person required to lodge a production notification or any other document under this Ordinance, or any combination thereof," after "licence";

- (b) in paragraph (n), by repealing "may be issued" and substituting "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,";
- (c) in paragraph (o) -
 - (i) in subparagraph (i), by repealing "may be issued" and substituting "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";
 - (ii) in subparagraph (ii), by repealing "may be issued" and substituting "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";
- (d) in paragraph (p), by adding ", validated production notification or other document issued under this Ordinance" after "any licence";
- (e) by adding -
 - "(zb) providing for any matter required or permitted by Part IIA to be prescribed by or provided for in the regulations;

- (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 may, by order published in the Gazette, amend that Schedule;
- (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);
- (ze) empowering the Director to specify a particular as material for the purposes of the definition of "material particular" in section 6AA(1); "

7. Offences in respect of licences, production notifications, etc.

Section 36 is amended -

(a) in subsection (1) -

(i) in paragraph (b), by repealing "or";

(ii) in paragraph (c) -

(A) by adding "production notification," before "declaration";

(B) by repealing "this Ordinance," and substituting "this Ordinance; or";

- (iii) by adding -
 - "(d) any particulars or information provided to the Director, an authorized officer or member of the Customs and Excise Service in connection with the requirements of this Ordinance,";
- (b) by adding -
 - "(1A) A person who fails to comply with -
 - (a) any provision of section 6AB; or
 - (b) any condition imposed on a validated production notification,commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.";
- (c) in subsection (2) (a), (b) and (c), by adding "or validated production notification" after "licence";
- (d) by adding -
 - "(3) Any person who furnishes or causes to be furnished to another person a production notification that -
 - (a) he knows or has reason to believe may be lodged with the Director for validation; and

(b) has been signed by him in blank or with the material particulars incomplete, commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.

(4) For the purpose of this section, "material particular" (要項), in relation to a production notification, means material particular as defined in section 6AA(1)."

8. Offences by directors, partners, etc.

Section 36A is amended -

- (a) by renumbering it as section 36A(1);
- (b) by adding -

"(2) Where an offence under section 36 committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any other partner of the partnership or any person concerned in the management of the partnership, that other partner or the person concerned in the management of the partnership commits the like offence."

Explanatory Memorandum

The object of this Bill is to amend the Import and Export Ordinance (Cap. 60) to make statutory provisions for the Production Notification (PN) arrangement, which aims at strengthening the enforcement and preserving the integrity of the export control system for textiles.

2. Clause 3 adds the proposed Part IIA relating to the PN arrangement. The proposed section 6AA provides for the definitions of the terms used in, and the scope of application of, that Part. Under the proposed section 6AB, before a person commences production of certain specified textiles, he is required to lodge with the Director-General of Trade ("the Director") on paper or by electronic data interchange, for validation purposes, a PN containing, inter alia, the particulars of the production. The proposed section 6AB(4) and (5) provides transitional arrangements for a similar PN arrangement presently being operated by means of undertakings under the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg.).

3. A PN will be validated by the Director if he is satisfied, inter alia, that the declarations made in it will be complied with. The Director may impose conditions on a validated PN, require an application for documents like licences and certificates of origin to be supported by the validated PN, and cancel, revoke or suspend the validated PN under certain circumstances (proposed sections 6AC and 6AD). Failure to surrender to the Director a validated PN that has been cancelled, revoked or suspended, or using that PN in connection with textile export, is made an offence (proposed section 6AD(5), (6) and (7)).

4. Clauses 4 and 5 amend sections 20 and 21 to provide members of the Customs and Excise Service and other authorized officers with enforcement powers relating to matters covered by a PN.
5. Clause 6 amends section 31 to enable the Chief Executive in Council to make regulations to -
 - provide for detailed requirements relating to the PN arrangement; and
 - empower the Director, inter alia, to amend those requirements if placed in a Schedule to the regulations.
6. Clause 7 amends section 36 to create new offences in respect of PNs, including -
 - giving of false or misleading information;
 - failure to lodge a PN as required or to comply with a condition imposed on a validated PN;
 - forging, or altering without authorization, a validated PN;
 - furnishing to another person a production notification signed in blank or with material particulars incomplete.
7. Clause 8 adds a new subsection to section 36A to, inter alia, make a partner in a partnership criminally liable if he consents to the commission of an offence under section 36 by another partner.

A BILL

To

Amend the Protection of Non-Government Certificates of Origin Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Protection of Non-Government Certificates of Origin (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Trade and Industry by notice in the Gazette.

2. Interpretation

Section 2 of the Protection of Non-Government Certificates of Origin Ordinance (Cap. 324) is amended by adding -

""security device" (保安裝置) means a device issued to a person by a specified body for the purpose of authenticating information to be sent using information technology services provided by the specified body;

"services provided by a specified body" (指明團體所提供的服務) means information technology services for the transmission of information to and from an approved body under this Ordinance, provided by a specified body;

"specified agent" (指明代理人) has the same meaning as in section 2 of the Import and Export Ordinance (Cap. 60);

"specified body" (指明團體) has the same meaning as in section 2 of the Import and Export Ordinance (Cap. 60);".

3. Sections added

The following are added -

"2A. Authorization of information

(1) Where information received by an approved body was sent using services provided by a specified body, evidence which shows that the information was authenticated by the use of a security device is, in the absence of evidence to the contrary, proof that the person issued with the security device by the specified body -

- (a) furnished the information; or
- (b) made a statement or declaration contained in the information.

(2) Where information received by an approved body was sent using services provided by a specified body through a specified agent who has obtained an authorization in accordance with section 2C, a person named in the information as the one who furnished the information or who made a statement or declaration contained in the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who -

- (a) furnished the information; or
- (b) made the statement or declaration contained in the information.

2B. Safekeeping of security device

A person who has been issued with a security device -

- (a) shall not authorize or suffer any other person to use; and
- (b) shall take all reasonable steps and exercise due diligence in preventing any other person from using,

the device for authenticating information to be sent to an approved body under this Ordinance using services provided by a specified body.

2C. Duty of specified agent

A specified agent shall not send any information on behalf of a person using services provided by a specified body unless the specified agent has obtained from the person an authorization in writing to do so."

4. Power to issue certificates

Section 3(3) is repealed and the following substituted -

"(3) A certificate of origin shall be -

- (a) issued on paper or using services provided by a specified body;
- (b) in such form as the approved body issuing the certificate may specify; and
- (c) subject to such conditions as the approved body may endorse in the certificate."

5. Discretion to refuse to issue or to revoke certificates of origin

Section 4 is amended -

- (a) in subsection (3), by adding "or by notice sent using services provided by a specified body," after "registered post,";
- (b) in subsection (4), by adding "issued on paper" after "surrender the certificate or copy".

6. Sections added

The following are added -

"6A. Certificate of record of information sent using services provided by specified body

- (1) A document purporting -
 - (a) to be a copy of the record of any information sent using services provided by a specified body and produced from the computer systems of an approved body; and
 - (b) to be certified by a person authorized by the approved body for such a purpose,

shall be admitted as evidence in any proceedings under this Ordinance before a court or magistrate on its production without further proof.

(2) Where a document is produced and admitted as evidence under subsection (1) -

- (a) the court or magistrate before which it is produced shall, until the contrary is proved, presume -

- (i) that it was certified under subsection (1) (b);
 - (ii) that the document is a true copy of the record of information so sent; and
 - (iii) that the record was duly made at the time referred to in the document; and
- (b) the document is evidence of the contents of the information sent by the sender using the services provided by the specified body.
- (3) Where a document is produced and admitted as evidence under subsection (1), the court or magistrate may, if it or he thinks fit, on its or his own motion or on the application of any party to the proceedings, summon the person who certified the document and examine him as to its subject matter.

6B. Offences relating to the use or keeping of a security device

Where a person who has been issued with a security device contravenes section 2B(a) or (b), he commits an offence and is liable to a fine at level 5 and to imprisonment of 6 months.

6C. Offence by specified agent

A specified agent who contravenes section 2C commits an offence and is liable to a fine at level 3."

7. Offences in relation to certificates of origin

Section 7 is amended -

- (a) in subsection (1) (g), by adding ", whether on paper or using information technology services, that is" before "likely to mislead";
- (b) in subsection (2) (a), by adding "or any information given, whether verbal or in writing or otherwise," after "in any declaration made".

8. Liability of company, directors, etc.

Section 8(1) is amended by adding ", or any information furnished by using services provided by a specified body," after "where a document".

9. Powers and obstruction of authorized officers

Section 10 is amended by adding -

- "(4) An authorized officer may -
 - (a) require any information which he reasonably suspects relates to an offence which has been, or may have been, committed under this Ordinance that is -
 - (i) contained in a computer in, on or accessible from the premises, place, vessel, aircraft or vehicle entered or boarded under this section; or

- (ii) contained in any device found in or on the premises, place, vessel, aircraft or vehicle entered or boarded under this section and which is capable of being retrieved on a computer, to be produced on a computer in or on the premises, place, vessel, aircraft or vehicle in a visible and legible form, and examine the information;
 - (b) require any information described in paragraph (a) to be produced in a form in which it can be taken away and in which it is either visible and legible or capable of being retrieved on a computer; and
 - (c) take away the copy so produced under paragraph (b).
- (5) Any person who -
- (a) obstructs an authorized officer in the exercise of any power or the performance of any duty conferred or imposed on authorized officers by this Ordinance; or
 - (b) fails to comply with any requirement, direction or demand given or made by an authorized officer in the exercise or performance of any such power or duty,

commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months.

(6) Any person who knowingly makes a false report, or furnishes any false or misleading information, to any authorized officer in exercising or performing his powers or duties under this Ordinance commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months."

Explanatory Memorandum

This Bill amends the Protection of Non-Government Certificates of Origin Ordinance (Cap. 324) ("the principal Ordinance") to enable the approved bodies under the principal Ordinance to handle applications for certificates of origin using information technology such as electronic data interchange.

2. Clause 2 defines the terms used in the new provisions. The expressions "specified body" and "specified agent" as defined in the Import and Export Ordinance (Cap. 60) are adopted as the same companies authorized to provide information technology services under the principal Ordinance.

3. Clause 3 sets out the provisions relating to the use of information technology services provided by a specified body. Proposed section 2A deals with how the provider of information is established in cases where the information sent to an approved body is authenticated by a security device, and where such information is sent through a specified agent. It is an offence for a person issued with a security device to authorize its use by others, and for a specified agent to send information on behalf of

a person without his written authorization (proposed sections 2B and 2C at Clause 3, and proposed sections 6B and 6C at clause 6).

4. Clauses 4 and 5 amend sections 3 and 4 to allow a certificate of origin to be issued and revoked using services provided by a specified body.

5. Clause 6 also adds the proposed section 6A, which enables certificates of records of information sent using services provided by a specified body and produced from an approved body's computer systems to be admissible as evidence in court proceedings.

6. Clauses 7 and 8 amend sections 7 and 8 to cater for offences involving documents issued or information furnished using information technology services.

7. Clause 9 amends section 10 to confer powers on authorized officers of the Customs and Excise Department to require information to be produced from computers and to take away copies so produced. New offences are also created, including those for furnishing false information to and obstructing an authorized officer in performing his duties under the principal Ordinance.

IMPORT AND EXPORT (GENERAL) (AMENDMENT) REGULATION 1999

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

1. Commencement

This Regulation shall come into operation on the commencement of the Import and Export (Amendment) Ordinance 1999 (of 1999).

2. Part added

The Import and Export (General) Regulations (Cap. 60 sub. leg.) is amended by adding -

"PART IA

PRODUCTION NOTIFICATION OF CERTAIN TEXTILES FOR EXPORT

2A. Matters prescribed for purposes of Part IIA of the Ordinance

(1) The textiles specified in the second column of Part I of the Fifth Schedule are prescribed for the purposes of the definition of "specified textiles" in section 6AA(1) of the Ordinance.

(2) The processes specified in the third column of Part I of the Fifth Schedule are prescribed in relation to the specified textiles opposite those processes in the second column of that Part for the purposes of the definition of "production" in section 6AA(1) of the Ordinance.

(3) The countries and places specified in Part II of the Fifth Schedule are prescribed for the purposes of section 6AA(2) of the Ordinance.

(4) The period specified in Part III of the Fifth Schedule is prescribed for the purposes of the definition of "permitted period" in section 6AA(1) of the Ordinance.

(5) The particulars specified in Part IV of the Fifth Schedule are prescribed as material for the purposes of the definition of "material particular" in section 6AA(1) of the Ordinance.

2B. Exemption from Part IIA of the Ordinance

Part IIA of the Ordinance does not apply to the specified textiles prescribed in Part V of the Fifth Schedule."

3. Part added

The following is added after Part III -

"PART IIIA

REGISTRATION IN RESPECT OF IMPORT AND EXPORT OF TEXTILES

5AA. Interpretation of this Part

In this Part -

"applicant" (申請人), in relation to a relevant document, means the person who applies for the issue of, or is required to lodge with the Director, the relevant document under the

Ordinance;

"relevant document" (有關文件) means -

- (a) an import or export licence in respect of textiles;
- (b) a production notification;
- (c) a validated production notification; or
- (d) any other document issued by, or required to be lodged with, the Director in respect of the import or export of textiles under the Ordinance.

5AB. Power to maintain register

(1) The Director may maintain a register in such form as he may determine containing the names, addresses and business of those persons who are -

- (a) approved by the Director or an appointed officer as being eligible to be issued with a relevant document; or
- (b) required to lodge a relevant document with the Director under the Ordinance.

(2) The Director may, before issuing or receiving a relevant document, require the applicant to be registered under paragraph (1).

(3) Where the applicant is required under paragraph (2) to be registered under paragraph (1), he may be registered for such

period not exceeding 12 months as the Director considers appropriate on payment of the prescribed fee.

(4) The Director may enter in, refuse to enter in, delete from or restore to the register maintained under paragraph (1) the name of any person.

(5) The Director may publish the name and address of any person whose name is entered in, deleted from or restored to the register.

5AC. Method of making application and power to call for evidence in support

(1) Any person or group of persons who wish to be entered upon the register maintained under regulation 5AB or who wish to be issued with or lodge a relevant document shall apply to the Director in such manner and in such form as the Director may determine.

(2) For the purposes of registration or continuation of registration or the issue or lodging of a relevant document, the Director or an appointed officer may require an applicant to maintain or to furnish in such form as he may provide such records or information as he may specify relating to the manufacture, processing or production and sale of goods by such applicant whether or not such goods have been exported or are to be exported and whether or not such goods are included or have been included or are to be included on any relevant document.

(3) As a condition precedent to registration and as a condition of continuation of registration the Director may require an applicant to give such undertaking as to the conduct of his business as the Director may require.

5AD. Restrictions on publication of information obtained under regulation 5AC

(1) No person shall publish any information obtained by the Director or an appointed officer under regulation 5AC which information discloses the identity of any person or the nature of any goods manufactured, processed, produced, sold or exported by any person, unless the Director gives permission for publication of the information.

(2) The Director shall not give permission for the publication of any information under paragraph (1) unless-

- (a) publication is limited to the name and address of the person identifiable by the information or to whom the information relates and the fact that he is engaged in the manufacture, processing, production, sale or exportation of a particular product, and is made for the purpose of replying to a trade inquiry; or
- (b) in the opinion of the Director, such publication is desirable for the purposes of -
 - (i) enforcing a provision of these regulations;

- (ii) investigating a suspected offence against these regulations; or
 - (iii) investigating a suspected offence in respect of a relevant document, or an application for or use of it; or
 - (c) the person identifiable by the information or to whom the information relates consents in writing to publication of the information.
- (3) This regulation is subject to any provisions in any other Ordinances that allows the release of information for purposes permitted under those Ordinances.

5AE. Records to be kept and inspection

- (1) Without prejudice to regulation 5AC(2), a person whose name is entered in a register maintained under regulation 5AB shall keep -
- (a) accurate and up-to-date records containing particulars of -
 - (i) wages paid to his employees;
 - (ii) purchases of materials used in the manufacture, processing or production of any article;
 - (iii) the use of any such materials;
 - (iv) the daily production of articles manufactured, processed or produced by him;

- (v) sales of articles manufactured, processed or produced by him or another person for him and his stock of such articles;
 - (vi) any work, being work consisting of the manufacture, processing or production of any article, being carried out for him by another person; and
 - (vii) cash and bank receipts and payments;
 - (b) purchase invoices of raw materials and components used in the production of the article specified in a relevant document; and
 - (c) such other records and documents as the Director may require.
- (2) The record containing particulars of wages paid to employees shall contain an acknowledgment by each employee of the receipt of his wages.
- (3) Any record kept under paragraph (1) shall be retained by such person for not less than 2 years after it is made."

4. Sections added

The following are added -

"6F. Offences

- (1) Any person who -
 - (a) makes or gives or causes to be made or given any statement, which he knows or has reason to

believe to be false or misleading in a material particular, in any declaration or any information whether verbal or in writing or otherwise required by the Director or an appointed officer under these regulations;

- (b) makes or gives or causes to be made or given any statement or information, which he knows or has reason to believe to be false or misleading in a material particular, in respect of any document -
 - (i) that is required to be maintained or furnished under regulation 5AC; or
 - (ii) that he knows or has reason to believe may be used in support of an application for registration under regulation 5AC;
- (c) is in breach of an undertaking or part of an undertaking given under regulation 5AC;
- (d) contravenes any requirement under regulation 5AE; or
- (e) makes in any record kept under regulation 5AE(1) any statement that he knows or has reason to believe to be false or misleading in a material particular,

commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.

(2) Where a person convicted of an offence under these regulations is a company, every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(3) Where an offence under these regulations committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any other partner of the partnership or any person concerned in the management of the partnership, that other partner or the person concerned in the management of the partnership commits the like offence.

6G. Liability of principals

(1) Any person who authorizes another person (hereinafter referred to as the agent) to act for him in relation to anything required to be done under any of these regulations shall be liable for the acts and omissions of the agent, and may accordingly be prosecuted for any offence committed by the agent with respect to any such act or omission in the same manner as if he had himself committed the offence, but shall not be sentenced to imprisonment unless he actually consented to the commission of the offence.

(2) Nothing in this regulation shall relieve the agent from liability to prosecution."

5. Amendment of Schedules

Regulation 7 is amended by repealing "or the Fourth Schedule" and substituting "the Fourth Schedule, or the Fifth Schedule".

6. Schedule added

The following is added -

"FIFTH SCHEDULE

[regs. 2A, 2B & 7]

PART I

"SPECIFIED TEXTILES" AND "PRODUCTION" FOR PURPOSES OF SECTION 6AA(1)
OF THE ORDINANCE

Item	Specified textiles	Processes of manufacture
1.	Cut-and-sewn garments, which mean garments that are cut and sewn, or otherwise assembled, from fabrics.	Such assembling operations of such parts of the garments as the Director may determine for entitling the garments to a certificate of Hong Kong origin under the certification of origin or export licensing system administered by the Director.

PART II
COUNTRIES OR PLACES FOR PURPOSES OF
SECTION 6AA(2) OF THE ORDINANCE

1. Canada
2. Member states from time to time of the European Union
3. United States of America

PART III
"PERMITTED PERIOD" FOR PURPOSES OF SECTION 6AA(1)
OF THE ORDINANCE

On or before the day on which production of the specified textiles commences, but not earlier than 3 working days before that day.

(1) In this Part, "working day" (工作天) means any day other than a general holiday, a gale warning day or a black rainstorm warning day.

(2) In paragraph (1), "gale warning day" (烈風警告日) and "black rainstorm warning day" (黑色暴雨警告日) have the same meanings as in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

PART IV
"MATERIAL PARTICULAR" FOR PURPOSES OF SECTION 6AA(1)
OF THE ORDINANCE

1. Name, address and registration number of the manufacturer.
2. Name, address and registration number of the subcontractor.
3. Product descriptions.
4. Quantity of products.
5. Category number of products.
6. Destination country.
7. Descriptions and sources of component parts.
8. Production order number.
9. Buyer's order number or reference number or mark specifically assigned to identify the purchasing transaction in respect of the particular consignment in question.
10. Local subcontracting arrangement.
11. Commencement and completion dates of production.
12. Place of production.
13. Other particulars from time to time specified by the Director for the purpose of enabling him to determine whether or not a production notification should be validated.

For the purposes of items 1 and 2, "registration number" (登記編號) means the number by which the manufacturer or subcontractor is registered under Part IIIA of these regulations or regulation 7 of the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg.).

PART V

SPECIFIED TEXTILES EXEMPTED FROM PART IIA OF THE ORDINANCE

1. Consignment of specified textiles consisting solely of samples that -
 - (a) are of the same style; and
 - (b) do not exceed 60 pieces in quantity.
2. Consignment of specified textiles consisting solely of samples that -
 - (a) are of the same style; and
 - (b) are intended to be distributed free of charge for the purpose of advertising those garments; and
 - (c) do not exceed 120 pieces in quantity.
3. Specified textiles that are -
 - (a) exported in the personal baggage accompanying a person leaving Hong Kong and are for the personal use of that person; or
 - (b) exported as part of the provisions required for consumption or use by the crew or passengers of the vessel, aircraft or vehicle on which the textiles are carried, and are in each case in a quantity that is reasonable having regard to the purpose for which they are exported."

Clerk to the Executive Council

COUNCIL CHAMBER

1999

Explanatory Note

This Regulation amends the Import and Export (General) Regulations (Cap. 60 sub. leg.) in consequence of the Import and Export (Amendment) Ordinance 1999 (of 1999).

2. Section 2 adds the new Part IA, which supplements the provisions in Part IIA of the principal Ordinance relating to the Production Notification (PN) arrangement in respect of certain specified textiles for export. Matters required or permitted by the principal Ordinance to be prescribed in the regulation are specified in the new Fifth Schedule (at section 6), such as the types of textiles, their manufacturing processes and destination countries that are subject to, and the exemptions from, the PN requirements. Section 5 amends regulation 7 to enable the Director-General of Trade ("the Director") to amend the new Fifth Schedule by order published in the Gazette.

3. Section 3 adds the new Part IIIA, which enables the Director to maintain a register containing the particulars of persons eligible to

be issued with, or required to lodge with the Director, documents such as licences, PNs and validated PNs, in respect of textiles under the Import and Export Ordinance (Cap. 60). The registration requirements are modelled on those relating to the existing register maintained by the Director under the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg.). The Director may require a person applying for registration to provide records or information relating to the manufacture and sale of his goods and to give undertaking as to the conduct of his business; but provisions are made to restrict the publication of the information obtained. A registered person is also obliged to keep various records and documents relating to the production and other matters of his daily operation.

4. Section 4 adds regulations 6F and 6G to create offences for making or giving false statement or information and for failing to keep the required records in connection with the new registration requirements. Offences committed by directors, partners, principals, etc., are also included.

EXPORT (CERTIFICATES OF ORIGIN) (AMENDMENT) REGULATION 1999

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

1. Commencement

This Regulation shall come into operation on the commencement of the Protection of Non-Government Certificates of Origin (Amendment) Ordinance 1999 (of 1999).

2. Power to issue certificates

Regulation 6(1) of the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg.) is amended by adding "on paper or using services provided by a specified body" after "certificate of origin".

3. Offences

Regulation 12(2) (a) is amended by adding "or otherwise" after "in writing".

COUNCIL CHAMBER

Clerk to the Executive Council

1999

Explanatory Note

This Regulation amends the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg.) to enable the Director-General of Trade to issue certificates of origin using information technology such as electronic data interchange. The offence for giving false statement is also amended to cater for cases where information is given by electronic means.

IMPORT AND EXPORT (FEES) (AMENDMENT) REGULATION 1999

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

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Trade and Industry by notice in the Gazette.

2. Prescribed fees and manner of payment

Regulation 2(2) of the Import and Export (Fees) Regulations (Cap. 60 sub. leg.) is amended -

- (a) by repealing "and 4" and substituting ", 4(a) and 14";
- (b) in subparagraph (a) -
 - (i) by adding "or lodgement" before "is made";
 - (ii) by adding "or production notification" before "; or";
- (c) in subparagraph (b), by adding "or lodgement" before "is made".

3. Scale of fees

The Schedule is amended -

- (a) by repealing item 4(a) and substituting the following -

- "4. (a) Application for the issue of a certificate of Hong Kong origin, certificate of processing or of any other certificate mentioned in item 5 other than a generalized preference certificate -
 - (i) where the application is made on paper (Form TIC 185) 110
 - (ii) where the application is made using services provided by a specified body 95";
- (b) in item 12, by repealing "approved as eligible to receive a certificate under" and substituting "under Part IIIA of the Import and Export (General) Regulations (Cap. 60 sub. leg.) or regulation 7 of";
- (c) by adding -
 - "14. Fee payable when a production notification is lodged -

- (a) where the production notification is lodged on paper (Form TRA 579) 49
- (b) where the production notification is lodged using services provided by a specified body 34".

Clerk to the Executive Council

COUNCIL CHAMBER

1999

Explanatory Note

This Regulation amends the Import and Export (Fees) Regulations (Cap. 60 sub. leg.) in consequence of the Import and Export (Amendment) Ordinance 1999 (of 1999) and the Import and Export (General) (Amendment) Regulation 1999 (L.N. of 1999).

2. The Regulation provides for the fees payable on the lodging of production notifications on paper or using information technology services, and on registration of people under Part IIIA

of the Import and Export (General) Regulations (Cap. 60 sub. leg.).

3. The Regulation also sets different fee levels on applications made on paper and those made via electronic data interchange for the issue of other export documents.