

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-

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| 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