

Facilitate the import and export of cargo, particularly of transshipment cargo, by amending certain Ordinances to remove or relax restrictions and controls imposed under those Ordinances on the transshipment, transit or carriage of such cargo, and to provide for incidental and connected matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Import and Export (Facilitation) Ordinance 2003.

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

2. Amendment of Import and Export Ordinance

and its subsidiary legislation---(Schedule 1)

The Import and Export Ordinance (Cap. 60) and its subsidiary legislation are amended as specified in Schedule 1.

3. Amendment of Telecommunications

Ordinance---(Schedule 2)

The Telecommunications Ordinance (Cap. 106) is amended as specified in Schedule 2.

4. Amendment of Poultry (Slaughtering for

Export) Regulations---(Schedule 3)

The Poultry (Slaughtering for Export) Regulations (Cap. 139 sub. leg. E) is amended as specified in Schedule 3.

5. Amendment of Marine Fish (Marketing and Exportation) Regulations---(Schedule 4)

The Marine Fish (Marketing and Exportation) Regulations (Cap. 291 sub. leg. A) is amended as specified in Schedule 4.

6. Amendment of Ozone Layer Protection Ordinance and its subsidiary

legislation---(Schedule 5)

The Ozone Layer Protection Ordinance (Cap. 403) and its subsidiary legislation are amended as specified in Schedule 5.

SCHEDULE 1 [s. 2]

Amendment of Import and Export Ordinance

and Its Subsidiary Legislation

Import and Export Ordinance

1. Application of this Ordinance to Ozone Layer

Protection Ordinance

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

(a) in paragraph (a), by repealing "8, 9, 11,";

(b) by adding---

"(aa) in sections 8 and 9 a reference to "import licence" or "licence" is a reference to an import licence or an import and export licence issued under the Ozone Layer Protection Ordinance (Cap. 403);

(ab) in section 11 a reference to "export licence" or "licence" is a reference to an export licence or an import and export licence issued under the Ozone Layer Protection Ordinance (Cap. 403);".

Import and Export (General) Regulations

2. Interpretation

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

(a) by repealing the definitions of "reference number" and "transhipment notification" and substituting---

""reference number" (編號)---

(a) in relation to an import notification, export notification or transhipment notification under Part VA, means the reference number assigned to it under regulation 6A(2)(a), 6BA(2)(a), 6BC(2)(a) or 6BE(2)(a) (as the case may be);

(b) in relation to a transhipment notification under Part VB, means the reference number assigned to it under regulation 6DAA(2)(a);

"transhipment notification" (轉運通知書)---

(a) in relation to textiles, means a transhipment notification in the form approved by the Director and completed by a registered textiles trader in accordance with the conditions imposed under regulation 6(3B);

(b) in relation to specified articles, means a transhipment notification in the form specified by the Commissioner and completed by a person who intends to rely on an exemption under regulation 6(1)(ba).";

(b) by adding---

""specified article" (指明物品) means an article specified in Schedule 9;".

3. Application and exemption

Regulation 6 is amended---

(a) in paragraph (1), by adding---

"(ba) any specified article imported or exported as transhipment cargo, unless otherwise provided in regulation 6AA, being an article in respect of which a transhipment notification has been endorsed by the Commissioner or an authorized officer and the endorsement remains to have effect when the specified article is imported or exported;";

(b) by adding---

"(6) The Commissioner may specify the form of, and the information required to be given in, a transhipment notification in respect of any specified article.".

4. Part VB added

The following is added after Part VA---

"PART VB

Import or Export of Specified Articles as Transshipment

Cargo Exempted from Licensing Requirements

Endorsement by the Commissioner, etc. on

transshipment notification

6DAA. Endorsement on transshipment notification

(1) A person who intends to rely on an exemption under regulation 6(1)(ba) in respect of a specified article to be imported or exported as transshipment cargo shall---

(a) complete a transshipment notification in respect of the specified article; and

(b) deliver the completed notification to the Commissioner for endorsement.

(2) On receipt of a completed notification, the Commissioner or an authorized officer shall as soon as reasonably practicable---

(a) assign a reference number to the notification for the purpose of identifying the notification;

(b) endorse on the notification if---

(i) all information required to be given in the notification has been given; and

(ii) the Commissioner or authorized officer is satisfied that the specified article is transshipment cargo; and

(c) return the notification endorsed under subparagraph (b) to the person referred to in paragraph (1).

Import of specified articles as transshipment cargo

6DAB. Import carrier not to release transshipment cargo without transshipment notification

(1) This regulation applies where a specified article is imported as transshipment cargo in or on any vessel, aircraft or vehicle in reliance on an exemption under regulation 6(1)(ba).

(2) An import carrier shall retain possession of a specified article until he has received a transshipment notification endorsed under regulation 6DAA(2) in respect of the specified article.

(3) Any person who contravenes paragraph (2) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 1 year.

6DAC. Delivery of transshipment notification and manifest to the Director

(1) A person who receives a transshipment notification endorsed under regulation 6DAA(2) shall, within 7 days after the day on which the specified article

to which the notification relates is imported, present the endorsed notification to an import carrier.

(2) The import carrier, on receiving the endorsed notification pursuant to paragraph (1)---

(a) may release the specified article to the consignee; and

(b) shall, within 7 days after receiving the endorsed notification---

(i) deliver it to the Director; and

(ii) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the importing vessel, aircraft or vehicle, which copy or extract shall contain, in addition to the particulars required to be contained in a manifest under paragraph 2 of the Import and Export Manifests Notice (Cap. 60 sub. leg. C), the reference number.

(3) Any person who contravenes paragraph (1) or (2)(b) commits an offence and is liable on conviction to a fine at level 2.

Export of specified articles as transshipment cargo

6DAD. Export carrier not to accept transshipment cargo without transshipment notification

(1) This regulation applies where a specified article is exported as transshipment cargo in or on any vessel, aircraft or vehicle in reliance on an exemption under regulation 6(1)(ba).

(2) An export carrier shall not accept a specified article for export on an exporting vessel, aircraft or vehicle until he has received a transshipment notification endorsed under regulation 6DAA(2) in respect of the specified article.

(3) Any person who contravenes paragraph (2) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 1 year.

6DAE. Delivery of transshipment notification and manifest to the Director

(1) A person who receives a transshipment notification endorsed under regulation 6DAA(2) shall, before the specified article to which the notification relates is exported, present the endorsed notification to an export carrier.

(2) The export carrier, on receiving the endorsed notification pursuant to paragraph (1), shall within 14 days after the day on which the article is exported---

(a) deliver the endorsed notification to the Director; and

(b) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the exporting vessel, aircraft or vehicle, which copy or extract shall contain, in addition to the particulars required to be contained in a manifest under paragraph 3 of the Import and Export Manifests Notice (Cap. 60 sub. leg. C), the reference number.

(3) Any person who contravenes paragraph (1) or (2) commits an offence and is liable on conviction to a fine at level 2.

6DAF. Endorsement on transshipment notification ceases to have effect

(1) If a transshipment notification has been endorsed under regulation 6DAA(2) and any information in the endorsed notification relating to the consignment of the transshipment cargo is rendered inaccurate in a material particular by any change of circumstances, the endorsement on the notification shall cease to have any effect.

(2) Where the endorsement of a transshipment notification ceases to have effect at any time before the specified article to which the notification relates is imported or exported, section 6C or 6D of the Ordinance shall respectively apply.

6DAG. Certain requirements deemed complied with if manifest lodged with Commissioner using services provided by a specified body

The requirements under regulation 6DAC(2)(b)(ii) or 6DAE(2)(b) are deemed to have been complied with if---

(a) regulation 11 or 12 (as the case may be) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg. E) has been complied with in relation to the importing vessel, aircraft or vehicle or exporting vessel, aircraft or vehicle (as the case may be) by the manifest having been lodged with the Commissioner, or with an officer appointed by the Commissioner, using services provided by a specified body; and
(b) the manifest contains the reference number.

6DAH. Transitional

(1) For the purposes of this Part, any provision of regulations 6DAC and 6DAE requiring that a copy or extract of a manifest delivered under those regulations be delivered by using services provided by a specified body shall, in respect of the period specified in paragraph (3), but subject to any determination made under section 32A(2)(a) of the Ordinance or notice published under section 32B(2) of the Ordinance, be construed as requiring that the copy or extract be delivered either in paper form or by using services provided by a specified body.

(2) Where a copy or extract of a manifest is delivered in paper form during the period specified in paragraph (3), the import carrier or export carrier (as the case may be) shall, in addition to complying with other requirements under regulation 6DAC or 6DAE, deliver to the Director such copy or extract duly certified by the import carrier or export carrier (as the case may be) as a true copy or extract of the manifest, failing which the requirements under regulation 6DAC(2)(b)(ii) or 6DAE(2)(b) shall not be regarded as having been complied with.

(3) The period specified for the purposes of paragraphs (1) and (2) is the

period beginning with the commencement of section 4 of Schedule 1 to the Import and Export (Facilitation) Ordinance 2003 (of 2003) and ending at midnight on a date to be specified by the Commissioner for the purposes of this paragraph by notice published in the Gazette.

(4) A notice published under paragraph (3) may specify different dates in relation to different classes of persons or information.

(5) A notice published under paragraph (3) is subsidiary legislation."

5. Defence of reasonable diligence

Regulation 6E(1) is amended by repealing "or 6BF(4)" and substituting ", 6BF(4), 6DAB(3) or 6DAD(3)".

6. Offences

Regulation 6F(1) is amended---

(a) in subparagraph (f), by repealing "or" at the end;

(b) in subparagraph (g), by repealing the comma at the end and substituting "; or";

(c) by adding---

"(h) gives or causes to be given any information, which he knows or has reason to believe to be false or misleading in a material particular, in a transshipment notification under regulation 6DAA(1),".

7. Amendment of Schedules

Regulation 7(2) is amended---

(a) in subparagraph (b), by repealing the full stop and substituting "; or";

(b) by adding---

"(c) amend Schedule 9."

8. First Schedule amended

The First Schedule is amended, in Part II, by repealing items 1 and 2.

9. Second Schedule amended

The Second Schedule is amended, in Part II, by repealing items 1 and 2.

10. Schedule 9 added

The following is added---

"SCHEDULE 9 [regs. 2 & 7]

Specified Articles

Item

1. Optical disc mastering and replication equipment."

Import and Export Manifests Notice

11. Paragraph added

The Import and Export Manifests Notice (Cap. 60 sub. leg. C) is amended by adding---

"1A. Application of this notice to Ozone Layer

Protection Ordinance

In this notice, a reference to---

- (a) "import licence" is a reference to an import licence or an import and export licence issued under the Ozone Layer Protection Ordinance (Cap. 403); and
- (b) "export licence" is a reference to an export licence or an import and export licence issued under the Ozone Layer Protection Ordinance (Cap. 403)."

Export (Prescribed Articles) Regulations

12. Prescribed Articles

The Schedule to the Export (Prescribed Articles) Regulations (Cap. 60 sub. leg. D) is amended by repealing items 1, 2 and 3.

Import and Export (Carriage of Articles) Regulations

13. Prescribed Articles

The Schedule to the Import and Export (Carriage of Articles) Regulations (Cap. 60 sub.

leg. I) is amended by repealing items 1, 2, 3, 4 and 5.

SCHEDULE 2 [s. 3]

Amendment of Telecommunications Ordinance

1. Interpretation

Section 2(1) of the Telecommunications Ordinance (Cap. 106) is amended by adding---

"air transshipment cargo" (航空轉運貨物) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60);

"air transit cargo" (航空過境貨物) means any article in transit that is both imported and consigned for export in an aircraft;

"article in transit" (過境物品) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60);

"cargo transshipment area of Hong Kong International Airport" (機場貨物轉運區) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60);

"radiocommunications transmitting apparatus" (無線電通訊發送器具) means any apparatus or any component part of any apparatus for transmission by radio waves;

"transshipment cargo" (轉運貨物) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60);

"vehicle" (車輛) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60);".

2. Prohibition of establishment and maintenance of means of telecommunications, etc., except under licence

Section 8 is amended by adding---

"(5) Notwithstanding anything contained in subsection (1)(b), no licence shall be required for possession of radiocommunications transmitting apparatus if such apparatus is an article the import or export of which is exempted under section 9A, 9B or 9C."

3. Control of import and export of radiocommunications transmitting apparatus

Section 9 is amended by repealing "apparatus or any component part of any apparatus for transmission by radio waves" and substituting "radiocommunications transmitting apparatus".

4. Application of section 9 to air transit or air transshipment cargo

Section 9A(6) is repealed.

5. Sections added

The following are added---

"9B. Application of section 9 to article in transit

Section 9 does not apply in relation to radiocommunications transmitting apparatus that is an article in transit other than air transit cargo exempted under section 9A.

9C. Application of section 9 to transshipment cargo

(1) Subject to subsection (2), section 9 does not apply in relation to radiocommunications transmitting apparatus that is transshipment cargo other than air transshipment cargo exempted under section 9A if---

(a) not later than one working day before the date of arrival of the apparatus, the Authority is given---

(i) in respect of the apparatus a transshipment notification in such form and containing such information as may be specified by the Authority; and

(ii) such other documents as the Authority may reasonably require in support of the notification; and

(b) the apparatus remains at all times---

(i) in or on the vessel, aircraft or vehicle which carries it into Hong Kong ("the first carrier");

(ii) in or on the vessel, aircraft or vehicle which carries it out of Hong Kong ("the second carrier"); or

(iii) at the place of storage as specified in the transshipment notification ("the place of storage"),

except during the transfer---

(iv) from the first carrier to the second carrier;

(v) from the first carrier to the place of storage; or

(vi) from the place of storage to the second carrier.

(2) Section 9 shall have effect as if subsection (1) had not been enacted if any person---

(a) gives or causes to be given any information, which he knows or has reason to believe to be false, in a transshipment notification; or

(b) gives incomplete information in a transshipment notification."

SCHEDULE 3 [s. 4]

Amendment of Poultry (Slaughtering for Export) Regulations

1. Name of country

The First Schedule to the Poultry (Slaughtering for Export) Regulations (Cap. 139 sub. leg. E) is amended by repealing item 1.

SCHEDULE 4 [s. 5]

Amendment of Marine Fish (Marketing and Exportation) Regulations

1. Interpretation

Regulation 1A of the Marine Fish (Marketing and Exportation) Regulations (Cap. 291 sub. leg. A) is amended---

(a) by repealing the definitions of "air transshipment cargo", "air transit cargo" and "cargo transshipment area of Hong Kong International Airport";

(b) in the definition of "specified fish", by repealing the full stop and substituting a semicolon;

(c) by adding---

"air waybill" (空運提單) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60);

"bill of lading" (提單) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60);

"transshipment cargo" (轉運貨物) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60)."

2. Regulation added

The following is added---

"1B. Power to inspect documents

The Director, any police officer or any manager or public officer authorized by the Director in writing may inspect any document under regulations 2A, 3A and 4BA."

3. Landing of marine fish

Regulation 2(1) is amended by adding "and regulation 2A" after "paragraph (3)".

4. Regulation added

The following is added---

"2A. Landing of marine fish as transshipment cargo

Marine fish that is transshipment cargo may be landed in Hong Kong without a permit if---

(a) the fish is accompanied by a through bill of lading or a through air waybill to indicate that it is transshipment cargo; and

(b) the document referred to in paragraph (a) is produced for inspection when any person referred to in regulation 1B so requests."

5. Regulation added

The following is added---

"3A. Transportation of marine fish as transshipment cargo

Regulation 3 does not apply in relation to any marine fish transported on land or in the waters of Hong Kong that is transshipment cargo if---

(a) the fish is accompanied during transportation by a through bill of lading or a through air waybill to indicate that it is transshipment cargo; and

(b) the document referred to in paragraph (a) is produced for inspection when any person referred to in regulation 1B so requests."

6. Notification of exports of marine fish

Regulation 4 is repealed.

7. Commencement and discontinuance of regulations 4B to 4G

Regulation 4A is amended---

(a) by repealing paragraph (3);

(b) in paragraph (5), by repealing "or of paragraph (3)".

8. Permits required for the export of specified fish

Regulation 4B(1) is amended by adding "and regulation 4BA" after "paragraph (2)".

9. Regulation substituted

Regulation 4BA is repealed and the following substituted---

"4BA. Application to article in transit or transshipment cargo

Regulation 4B(1) does not apply in relation to any specified fish exported as an article in transit or transshipment cargo if---

(a) the fish is accompanied by a through bill of lading or a through air waybill to indicate that it is an article in transit or transshipment cargo, as the case may be; and

(b) the document referred to in paragraph (a) is produced for inspection when any

person referred to in regulation 1B so requests."

10. Regulation added

The following is added---

"4BB. Production of document for inspection

Without prejudice to regulation 4E, the holder of any document specified under these regulations shall produce it to any person referred to in regulation 1B for inspection when the person so requests."

11. Offences

Regulation 5 is amended---

- (a) in paragraph (a), by adding "or" at the end;
- (b) in paragraph (b), by repealing the semicolon and substituting a comma;
- (c) by repealing paragraphs (c) and (d).

SCHEDULE 5 [s. 6]

Amendment of Ozone Layer Protection Ordinance and
Its Subsidiary Legislation

Ozone Layer Protection Ordinance

1. Licence to import or export scheduled substances

Section 6(1) of the Ozone Layer Protection Ordinance (Cap. 403) is amended by repealing everything after "issue" and substituting---

"in respect of a specified consignment of a scheduled substance---

- (a) an import licence to import the scheduled substance ("import licence");
- (b) an export licence to export the scheduled substance ("export licence"); or
- (c) an import and export licence to import and export the scheduled substance ("import and export licence"),

subject to any conditions that the Director may impose."

Ozone Layer Protection (Fees) Regulations

2. Regulation substituted

Regulation 2 of the Ozone Layer Protection (Fees) Regulations (Cap. 403 sub. leg. A) is repealed and the following substituted---

"2. Prescribed fees

The fees set out in the Schedule shall be the prescribed fees for the purposes of the Ordinance."

3. Schedule added

The following is added---

"SCHEDULE [reg. 2]

Prescribed Fees

| Section of the | Fee |
|----------------|-----|
|----------------|-----|

| Item | Ordinance | Matter in respect of which fee is payable | \$ |
|------|--------------|---|---------|
| 1. | Section 5(1) | Registration | 2,805". |
| 2. | Section 6(1) | (a) Issue of an import licence | 940". |
| | | (b) Issue of an export licence | 940". |
| | | (c) Issue of an import and export licence | 1,330". |

Explanatory Memorandum

The purpose of this Bill is to facilitate the import and export of cargo. The Bill seeks to achieve this by amending a number of enactments which contain restrictions and controls on the transshipment, transit or carriage of cargo. (Clauses 2 to 6)

2. Schedule 1 provides for the amendment of the Import and Export Ordinance (Cap. 60) and its subsidiary legislation. 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) as they currently apply, the import and export of certain articles are prohibited except under and in accordance with a licence issued under section 3 of that Ordinance. Existing legislation provides exemptions for articles in transit and articles that are air transshipment cargo. The proposed amendments would have the effect of further replacing the licensing requirement with a transshipment notification system in so far as specified articles are concerned. (Sections 2, 3, 4, 6 and 10 of Schedule 1)

3. The import and export licensing requirements for certain prohibited articles are removed entirely. (Sections 8 and 9 of Schedule 1)

4. The export and carriage licensing requirements for certain articles are removed entirely. (Sections 12 and 13 of Schedule 1)

5. As a result of the proposed amendment to empower the Director of Environmental Protection to issue an import and export licence under the Ozone Layer Protection Ordinance (Cap. 403), consequential amendments are effected to the Import and Export Ordinance (Cap. 60) and the Import and Export Manifests Notice (Cap. 60 sub. leg. C) respectively. (Sections 1 and 11 of Schedule 1)

6. Schedule 2 provides for the amendment of the Telecommunications Ordinance (Cap. 106). Under that Ordinance as it currently applies, the import and export of certain radiocommunications transmitting apparatus ("RTA") are prohibited except under and in accordance with a licence issued under that Ordinance or a permit granted by the Telecommunications Authority. The proposed amendments would have the effect of--

-

(a) removing any doubt that a licence for the possession of RTA is required at any time in between the import and export of RTA as article in transit or transshipment cargo;

(b) extending the current exemption in respect of RTA that is air transit cargo or air transshipment cargo to RTA that is article in transit;

(c) introducing a transshipment notification system for RTA transhipped for cases other than that as covered under the current exemption or as extended under paragraph (b).

7. Schedule 3 provides for the amendment of the Poultry (Slaughtering for Export) Regulations (Cap. 139 sub. leg. E). Under those Regulations as they currently apply, the export of certain carcasses and poultry products to the United States of America are controlled by the issue of an export certificate. The proposed amendment would have the effect of exempting such items from the requirement.

8. Schedule 4 provides for the amendment of the Marine Fish (Marketing and Exportation) Regulations (Cap. 291 sub. leg. A). Under those Regulations as they currently apply, the import of marine fish and export of specified fish are subject to permit requirements. The requirements include a landing permit and a transportation permit issued for marine fish and an export permit issued for specified fish. The proposed amendments introduce the definition of "transshipment cargo" which, couples with other amendments, would have the effect of removing the permit requirements for marine fish imported as transshipment cargo and for specified fish exported as article in transit or transshipment cargo.

9. Schedule 5 provides for the amendment of the Ozone Layer Protection Ordinance (Cap. 403) and its subsidiary legislation. Under that Ordinance as it currently applies, the import and export of ozone depleting substances are prohibited except under or in accordance with a licence issued under that Ordinance. In order to streamline relevant procedures, the Director of Environmental Protection is empowered under this Ordinance to issue an import and export licence in respect of the substances. The proposed amendments would have the effect of relaxing the licensing system by reducing the number of licences required and prescribing a lower fee for an import and export licence.