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**Paper for the House Committee meeting  
on 27 June 2003**

**Report of the Subcommittee on  
Dutiable Commodities (Amendment) Regulation 2003**

**Purpose**

1. This paper reports on the deliberations of the Subcommittee on Dutiable Commodities (Amendment) Regulation 2003.

**Background**

2. Liquors consumed locally are subject to payment of a duty under the Dutiable Commodities Ordinance (Cap. 109) (the Ordinance). Regulation 66(b) of the Dutiable Commodities Regulations (the principal Regulations) prescribes the specific standards of quality for certain liquors, including western spirits, fortified wine and certain categories of commonly traded Chinese-type spirits. The specific standards cover name, alcoholic strength, ingredients, production method, etc. Those spirits which do not conform to the specific standards prescribed for them in the regulation cannot be traded in Hong Kong.

3. In the case of Chinese-type spirits, new production methods and types are constantly evolving in response to market development and consumer demand. There are also no commonly accepted standards for most of the Chinese-type spirits. Prescribing the standards has become problematic as the prescription provision cannot be kept up-to-date and exhaustive, restricting trade in Chinese-type spirits.

**The Amendment Regulation**

4. The Amendment Regulation aims to amend the principal Regulations to remove the standards of quality prescribed for Chinese-type spirits to eliminate unnecessary restrictions on the trade. The effect of this is that the all types of Chinese-type spirits may be supplied and sold in Hong Kong.

5. As regards the prescribed standards for western spirits and wines, the Administration, having consulted the liquor trade, considers that the existing standards for western spirits and wines should be retained as they are in line with internationally recognised standards, and would help prevent substandard products from entering the market and boost consumer confidence.

6. To facilitate the assessment of duties payable for liquors, the Amendment Regulation provides that unless otherwise exempted, every container of liquor imported into or manufactured in Hong Kong for local consumption is required to bear a label stating clearly the alcoholic strength, or the range of alcoholic strength, of the liquor. In the event of non-compliance with this labelling requirement, the importer or manufacturer in Hong Kong, of the liquor commits an offence and is liable on conviction to a fine at level 5 (\$50,000).

7. The Amendment Regulation will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette. The provisions relating to labelling of liquors will take effect 12 months after the commencement of the Amendment Regulation. This, according to the Administration, will allow time for importers and local manufacturers to make the necessary preparations.

### **The Subcommittee**

8. At the House Committee meeting on 6 June 2003, members agreed to form a Subcommittee to study the proposed Regulation. Under the chairmanship of Hon SIN Chung-kai, the Subcommittee held one meeting on 17 June 2003. The membership list of the Subcommittee is at **Appendix**.

### **Deliberations of the Subcommittee**

9. The Subcommittee is in support of the policy objective of the Amendment Regulation, i.e. to remove unnecessary restrictions on the liquor trade. The Subcommittee also agrees to the need to introduce a labelling requirement to facilitate duty assessment upon removal of the prescribed standards of quality for Chinese-type spirits. In scrutinizing the Amendment Regulation, the Subcommittee has in particular studied the implementation and enforcement aspects of the proposed labelling requirement.

### **Offence under new regulation 67A(6)**

10. It is proposed that if the labelling requirement in the new regulations 67A(1) and (2) are not complied with or if a label falsely describes the alcoholic strength, the importer or manufacturer of the liquor in Hong Kong commits an offence under the new regulation 67A(6). The offender shall be liable to a maximum fine at level 5.

11. The Subcommittee has noted from the Administration's response to a query of the legal adviser to the Subcommittee that the new regulation 67A(6) may be construed as creating a strict liability offence. The Administration explains that while the offence in question is not “truly criminal” in character, the labelling requirement relates to an issue of social concern, namely, to raise and to protect revenue. The creation of strict liability will be effective to promote the objects of the provisions by encouraging greater vigilance to prevent the commission of the prohibited act – greater vigilance would be encouraged by not requiring the prosecution to prove knowledge on the part of the offender relating to the label. The Prosecution however will still bear the burden of proving whether the labelling requirements are complied with and whether the information in the labels falsely describes the alcoholic strength.

12. The Administration also points out that new regulation 67A(7) provides a statutory defence of no knowledge, no reason to suspect and reasonable diligence. Such a defence would advance the legislative objective by permitting it to be attained without convicting blameless persons.

#### Duty assessment during the 12-month grace period for the labelling requirement

13. According to the Administration, upon removal of the prescribed standards of quality for Chinese-type spirits set out in regulation 66(b)(v) of the principal Regulations, the Customs and Excise Department (C&ED) will no longer be able to gauge the alcoholic strength and hence the duty payable for Chinese-type spirits by reference only to their name. To facilitate duty assessment, a new provision is proposed in the Amendment Regulation to require all liquors imported into or manufactured in Hong Kong for the local market to bear a label stating clearly the alcoholic strength, or the range of alcoholic strength, of the liquor by the time duty is assessed. On the other hand, to allow time for importers and local manufacturers to make preparations, the Amendment Regulation provides that the labelling requirement will take effect 12 months after the commencement date of the Amendment Regulation.

14. Members have raised concern on how the alcoholic strength and hence the duty payable will be assessed during this 12-month grace period. In this respect, the Administration advises that under the existing requirements, traders have to declare in their dutiable commodities permit, inter alia, the type and alcoholic strength of their liquor for the purpose of duty payment. C&ED conducts risk-based sampling of liquor for laboratory analysis to verify the alcoholic strength. Currently, samples are collected for the majority of liquors declared with alcoholic strength below 30% and liquors in suspicious cases. Duty assessment during the 12-month grace period will be akin to what C&ED is currently doing; there will be no need for either the traders or C&ED to undertake additional work for duty assessment during the 12-month grace period. After the labelling requirement takes effect, C&ED can shorten the processing time for import applications as they can visually inspect imported liquors to pick out suspicious cases, and can save the time for laboratory tests.

### Duration of the grace period

15. As regards the duration of the grace period, the Administration advises that during its consultation with the trade, the trade welcomed the 12-month grace period, as such a lead time would be necessary for importers to place a request for manufacturers to make these labels and for manufacturers to prepare them.

### Liability to seizure and forfeiture in the event of non-compliance with the labelling requirement

16. Sections 12 and 48 of the Ordinance confer on members of the Customs and Excise Service the powers of seizure and forfeiture of goods for offences or suspected offences under the Ordinance. Taking note of these provisions, the Subcommittee has examined under what circumstances liquors imported into or manufactured in Hong Kong would be liable to seizure or forfeiture in the event of non-compliance with the proposed labelling requirement. Members are in particular concerned that there may be cases of improper labelling or lack of labelling which do not involve a breach of other statutory requirements under the Ordinance or other legislation, but even in these non-compliance cases, the liquor would be liable to seizure or forfeiture in the course of enforcement action, hence causing substantial financial losses to the importer or manufacturer concerned.

17. According to the Administration, by virtue of the power under section 12 of the Ordinance, any member of the Customs and Excise Service may, without warrant, seize, remove and detain any goods in respect of which he has reasonable cause to suspect that an offence against the Ordinance has been committed. In the event of non-compliance with the proposed labelling requirement in the Amendment Regulation, liquor imported into or manufactured in Hong Kong may be subject to seizure under the section. However, pursuant to section 48(2A) of the Ordinance, C&ED may, on payment of any duty payable, restore seized liquor to the traders within 30 days of seizure. Furthermore, upon hearing of any forfeiture proceedings under section 48A of the Ordinance, the court may, under section 48A(7), order that liquor be restored to the traders subject to any condition that may be specified in the order.

18. The Administration further advises that for cases involving only the labelling offence but not other offences under the Ordinance or other legislation, C&ED's intention is to restore the seized liquor to the traders for supply to the market at the earliest possible opportunity after the conclusion of related court proceedings, payment of duty for the goods involved and rectification or addition of labels. C&ED will not restore the seized liquor unless traders have rectified the labels or added labels in the case of lack of labelling as required by law. The Administration considers that this requirement for non-complying traders to rectify the labels or add labels will not lead to significant compliance cost, as the vast majority of the liquors in the bonded warehouses and retail outlets in Hong Kong is already labelled.

### Liquors exempted from the labelling requirement

19. Taking note of the provisions under new regulations 67A(3) and 67A(5) on exemptions from the labelling requirement, the Subcommittee has sought information on the possible extent of exemption amongst the liquors consumed locally and how the duty will be assessed for liquors exempted from the labelling requirement.

20. The Administration advises that according to a survey conducted by C&ED, 98% of all liquors in the bonded warehouses (i.e. after import or manufacture) and in retail outlets in Hong Kong already carry labels with descriptions of their alcoholic strength. The other 2% do not have any labels because, for example, the liquor was imported many years ago when it was not a standard requirement to require liquor for export to bear a label. If the importer of such liquor is unable to obtain the information needed for the label because the manufacturer of the liquor has ceased operation, it is exempted from the labelling requirement in the new regulation 67A(3). If a trader cannot, with reasonable diligence, ascertain the alcoholic strength from the manufacturer, regulation 67A(5) provides that the Commissioner of Customs and Excise may waive the labelling requirement for the liquors on application. In such circumstances, C&ED will draw samples of the liquors to ascertain the alcoholic strength for the purpose of duty assessment.

### Applicability of the labelling requirement to commercial micro-breweries

21. The new regulation 67A(1) prescribes the time at which the liability for a liquor container to bear a label would be triggered. Members note that the Administration does not intend to apply the labelling requirement to home-brewed liquor, nor to commercial micro-breweries where the liquor is brewed and consumed on the spot. The Administration's position is that as liquors brewed at home and at the said commercial micro-breweries are for immediate consumption at home/the breweries, the labelling requirement should not be triggered. This intention has been adequately reflected in the proposed new regulation 67A(1). The Administration also advises that as far as C&ED is aware, there are currently no commercial micro-breweries in Hong Kong. The Administration does not intend to apply the labelling requirement to commercial micro-breweries, even if there are any in Hong Kong in future.

### Level of penalty

22. The Subcommittee has made an attempt to compare the proposed penalty for non-compliance with the labelling requirement, i.e. a maximum fine at level 5 (\$50,000), with the penalty for other labelling-related offences of comparable gravity. The Administration has found it difficult to make direct comparison with the penalties for other labelling offences in the law because the labels serve different purposes. To illustrate this point, the Administration has cited the example of an offence committed under regulation 5 of the Food and Drugs (Composition and Labelling) Regulations, where the penalty is a fine at level 5 and imprisonment for 6 months. This regulation

aims to ensure food safety, which cannot be directly compared to the proposed labelling requirement on alcoholic strength, which aims to facilitate duty assessment.

### **Conclusion**

23. The Subcommittee considers that it has completed the scrutiny of all aspects of the Amendment Regulation. The Subcommittee recommends that the Amendment Regulation be supported.

### **Advice sought**

24. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1  
Legislative Council Secretariat  
26 June 2003

**Subcommittee on  
Dutiable Commodities (Amendment) Regulation 2003**

**Membership list**

<b>Chairman</b>	Hon SIN Chung-kai
<b>Members</b>	Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP Hon CHAN Kam-lam, JP  (Total: 3 Members)
<b>Clerk</b>	Ms Anita SIT
<b>Legal Adviser</b>	Miss Connie FUNG