

LEGISLATIVE COUNCIL BRIEF

Dutiable Commodities Ordinance (Chapter 109)

DUTIABLE COMMODITIES (AMENDMENT) REGULATION 2003

INTRODUCTION

A At the meeting of the Executive Council on 27 May 2003, the Council **ADVISED** and the Chief Executive **ORDERED** that, under section 6(1) of the Dutiable Commodities Ordinance, the Dutiable Commodities (Amendment) Regulation 2003, at **Annex A**, should be made.

JUSTIFICATIONS

Problems with the existing provisions

B 2. Regulation 66(b) of the Dutiable Commodities Regulations (the Regulations) prescribes specific standards of quality for certain liquors, including western spirits, fortified wine and certain categories of commonly traded Chinese-type spirits (the detailed prescribed specific standards are set out in Regulation 66(b), which forms part of **Annex B**). Those spirits which do not conform to the specific standards prescribed for them in the Regulations cannot be traded in Hong Kong. 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 provisions cannot be kept up-to-date and exhaustive, restricting trade in Chinese-type spirits.

Removing prescribed standards for Chinese-type spirits

3. Because of the problem as set out in paragraph 2 above, we propose that the prescriptions concerning Chinese-type spirits in the Regulations should be deleted. The effect of this proposal is that all types of Chinese-type spirits may be supplied and sold in Hong Kong. This helps to eliminate unnecessary restrictions on the trade.

4. The prescribed standards for western spirits and wines are working well and there is no need to repeal them. The liquor trade has suggested that the existing standards for western spirits and wine are in line with internationally recognised standards, and would help prevent substandard products from entering the market and boost consumer confidence. The trade has suggested that the standards should be retained.

Introducing alcoholic strength label

5. Duties are assessed on the basis of the alcoholic strength of liquor. If we remove the prescriptions, which define alcoholic strength, in the Regulations for Chinese-type spirits as proposed in paragraph 3 above, 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.

6. We propose to add a new provision in the Regulations requiring all liquors imported into or manufactured in Hong Kong for the local market to bear labels by the time duty is assessed that set out their alcoholic strengths. With this requirement, C&ED would be able to assess the duty payable efficiently. Sampling and laboratory analysis by the Government Chemist to determine alcoholic strength will only be conducted in cases of doubt. The labelling requirement will reduce the time required for inspection, duty assessment and hence processing of application for duty payment by traders.

7. This labelling requirement is proposed to apply to all liquors including western spirits, wine, beer and Chinese-type spirits and not just the last type because of the need to ensure equal treatment and enhance overall enforcement. The labelling requirement is also in consumers' interest.

8. We propose to exempt any liquor from the labelling requirement where the person possessing the liquor imports the liquor in his luggage, and where the alcoholic strength cannot be ascertained with reasonable diligence from the manufacturer. Liquor imported into or manufactured in Hong Kong before or within 12 months after the Amendment Regulation comes into force will be exempted from the requirement.

9. We propose that if a liquor imported into or manufactured in Hong Kong for the local market is without a label at the time duty is assessed or if the label falsely describes the alcoholic strength, the importer or manufacturer of the liquor in Hong Kong commits an offence. A statutory defence of no knowledge, no reason to suspect and reasonable diligence is provided. The offender shall be subject to a maximum fine of level 5 or \$50,000.

Transitional arrangements

10. To allow time for importers and local manufacturers to make preparations, we propose that the entire Dutiable Commodities (Amendment) Regulation 2003 (Amendment Regulation) will commence operation on a date to be appointed by the Secretary for Financial Services and the Treasury, and that the labelling requirement will take effect only 12 months after the commencement date.

Compliance Cost

11. According to the trade and the C&ED's survey, almost all imported liquors in bonded warehouses or on sale in retail outlets already have labels specifying their alcoholic strength. The trade also informs us that in general the proposed labelling requirement would not increase the compliance cost. As far as we know, all our major trading partners in liquors have labelling requirement on alcoholic strength for their exported liquor. Compliance cost, if any, would be very insignificant according to the trade.

OTHER OPTIONS

12. There is a need to introduce the Amendment Regulation to remove the existing prescribed standards for Chinese-type spirits because they prohibit trade.

THE AMENDMENT REGULATION

13. The main provisions are -

- (a) **clause 6** repeals the prescribed standards for Chinese-type spirits in regulation 66(b)(v);
- (b) **clause 7** introduces the requirement for every container containing liquor that is imported into or manufactured in Hong Kong for the local market to be labeled, by the time duty is assessed, with its

alcoholic strength. It provides for exemption from the requirement, provides a 12-month grace period for the requirement, and introduces the penalty and defence for the local importer or manufacturer who imports or manufactures liquors that bear no label or a label falsely describing the alcoholic strength; and

- (c) **clauses 2 to 5** are consequential amendments pursuant to the repeal of regulation 66(b)(v) and related updates to the existing legislation in the light of market developments.

B The existing provisions being amended are at **Annex B**.

LEGISLATIVE TIMETABLE

14. The legislative timetable will be -

Publication in the Gazette	30 May 2003
Tabling at the Legislative Council	11 June 2003

IMPLICATIONS OF THE PROPOSAL

- C 15. The proposal has economic, financial and civil service implications as set out at **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the existing binding effect of the Dutiable Commodities Ordinance. It has no productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

16. C&ED has consulted the major liquor trade associations, including the Hong Kong and Kowloon Provisions, Wine and Spirit Dealers' Association, the Hong Kong and Kowloon General Association of Liquor Dealers and Distillers, the Hong Kong Food, and Drink and Grocery Association, as well as the major traders. The respondents strongly supported the removal of the prescribed standards for Chinese-type spirits as this would facilitate trade. There was also general support for the proposed labelling requirement, as it would serve to protect consumer interests and enhance efficiency in duty collection. A few individual traders had expressed concern about the labelling requirement as their existing stock might not meet the requirement, and the penalty clause. We have addressed their concerns by providing

an exemption for persons who are in possession of manufactured or imported liquors before the Amendment Regulation comes into force, and a defence for those who did not know, had no reason to suspect and could not with reasonable diligence have ascertained that the labelling requirement was not complied with. These traders have now expressed agreement to the proposed labelling requirement.

17. We consulted the Legislative Council Panel on Financial Affairs on 19 July 2002. There is general support from Members for the proposed removal of prescribed standards for Chinese-type spirits as well as the labelling requirement.

PUBLICITY

18. We will issue a press release today and the Amendment Regulation will be published in the Gazette on 30 May. A spokesman will be available to answer media and public enquiries.

BACKGROUND

19. Liquors consumed locally are subject to payment of a duty under the Ordinance. Section 6(1)(b) of the Ordinance provides that the Chief Executive in Council may by regulation prescribe or provide for standards of quality for dutiable commodities. Regulation 66 of the Regulations (**Annex B**) prescribes the standards of quality for liquors, the purpose of which is to facilitate enforcement of duty collection.

20. In regulation 66(a), it is required that all intoxicating liquors shall possess the aroma and flavour natural to liquor of their type. Apart from this general requirement, detailed standards are provided in regulation 66(b) for certain liquors, namely western spirits, fortified wine and certain categories of commonly traded Chinese-type spirits, i.e. rice spirit, millet spirit, and molasses spirit or sugar spirit, or spirit made from an admixture of molasses and sugar. The specific standards cover alcoholic strength, name, ingredients, production method, etc. As for other liquors, such as beer, non-fortified wine and a variety of other Chinese-type spirits, regulation 66 has not set out any detailed standards.

21. It is an offence under section 17(5) of the Ordinance to sell, advertise, supply or possess for these purposes any dutiable goods which do not conform with the standards prescribed in the Regulations, including regulation 66, as goods meeting

those standards. A liquor which bears a name covered by regulation 66(b) of the Regulations must meet the other standards prescribed for liquor of that name. For example, as the range of alcoholic strength prescribed for Mow Toi is 50% - 70%, a Mow Toi which has alcoholic strength of 38% may not be supplied and sold in Hong Kong. A Mow Toi of alcoholic strength of 38% may be supplied and sold in Hong Kong if the name is changed.

22. There is currently no requirement in the Ordinance for liquors to be labeled with alcoholic strength. Under the existing arrangement, when there is a liquor brand which is imported for the first time and in suspicious cases, C&ED will have to send the liquor for laboratory analysis to verify the importer's declaration regarding alcoholic strength and applicable duty rate. In most other cases, the standards prescribed in Regulation 66(b) will be the main deterrent as importers selling, advertising, supplying or possessing liquors not conforming with the standards are liable to an offence under section 17(5). When the prescribed standards for Chinese-type spirits are removed, there is no other way apart from laboratory analysis to ensure the importers do not falsely declare. A penalty-tied labeling requirement will fill the gap. C&ED can also 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.

ENQUIRIES

23. Enquiries may be directed to Miss Erica Ng, Principal Assistant Secretary for Financial Services and the Treasury, at 2810 2370.

Treasury Branch
Financial Services and the Treasury Bureau
28 May 2003

**DUTIABLE COMMODITIES (AMENDMENT)
REGULATION 2003**

(Made by the Chief Executive in Council under section 6(1)
of the Dutiable Commodities Ordinance (Cap. 109))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

**2. Packing of goods and quantities in
which goods may be imported,
exported or moved**

Regulation 5(a)(i) of the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) is repealed and the following substituted -

"(i) liquor 8 L
or".

3. Fermentation

Regulation 58(4) is amended by repealing "as specified in regulation 66(b)(v)".

4. Certificates of origin for imported liquors

Regulation 63(1) is amended by repealing ", except any spirit specified in regulation 66(b)(v),".

5. Method of determining quality of liquors

Regulation 65(1) is repealed and the following substituted -

"(1) The quality of any liquor shall be determined by the Government Chemist by one of the following methods -

- (a) analysis;
- (b) a certificate of origin produced in response to a requirement under regulation 63; or
- (c) both analysis and a certificate of origin."

6. Standards of quality for certain liquors

Regulation 66(b)(v) is repealed.

7. Regulation added

The following is added immediately after regulation 67 -

"67A. Labelling of liquor for local consumption

(1) Every container containing liquor that is imported into or manufactured in Hong Kong for local consumption shall -

- (a) (if the liquor is imported into Hong Kong and not removed to a warehouse) at the time before the liquor is removed from the ship, aircraft, train or vehicle on which it is imported;
- (b) (if the liquor is manufactured in Hong Kong and not removed to a warehouse) at the time before the liquor is removed from the premises on which it is manufactured; or

- (c) (if the liquor is in a warehouse and not removed for export or to another warehouse) at the time before the liquor is removed from a warehouse,

as the case may be, bear a label on which is printed the alcoholic strength, or the range of alcoholic strength, of the liquor.

- (2) The label referred to in subregulation (1) shall -

- (a) include the information needed which is printed legibly in English letters, Chinese characters, Arabic numerals or the symbol "%", or any combination of them, unless the Commissioner otherwise authorizes in writing to be in other languages;
- (b) be securely affixed to or be part of the container; and
- (c) be so placed as to be clearly visible.

- (3) Subregulation (1) does not apply to a container of liquor imported into Hong Kong by -

- (a) a person who imports the liquor for his own use and in his baggage; or
- (b) an importer of the liquor who is unable to obtain the information needed for the label because the manufacturer of the liquor has ceased operation.

(4) Subregulation (1) does not apply to a container of liquor imported into or manufactured in Hong Kong for local consumption, on or before, or within 12 months after, the date of commencement of the Dutiable Commodities (Amendment) Regulation 2003 (L.N. of 2003).

(5) The Commissioner may, on application made in writing or in the form of an electronic record, in relation to liquor imported into or manufactured in Hong Kong for local consumption, in writing or in the form of an electronic record waive the requirement in subregulation (1) if the Commissioner is satisfied that the applicant cannot, with reasonable diligence, ascertain the alcoholic strength, or the range of alcoholic strength, of the liquor from the manufacturer.

(6) If liquor is imported into or manufactured in Hong Kong for local consumption, the container of which -

- (a) does not bear a label as required by subregulations (1) and (2); or
- (b) bears a label which falsely describes the alcoholic strength, or the range of alcoholic strength, of the liquor,

then the importer or manufacturer in Hong Kong, as the case may be, of the liquor commits an offence and is liable on conviction to a fine at level 5.

(7) In proceedings for an offence under subregulation (6)(a) or (b), it is a defence for the person charged to

prove that he did not know, had no reason to suspect, and could not with reasonable diligence have ascertained, that -

- (a) the container did not bear a label as required by subregulations (1) and (2); or
- (b) the alcoholic strength, or the range of alcoholic strength, on the label was false."

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

This Regulation amends the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) -

- (a) to remove the standards of quality prescribed for rice spirit, millet spirit and molasses or sugar spirit or spirit made from an admixture of molasses and sugar; and
- (b) to require every container of liquor imported into or manufactured in Hong Kong for local consumption

to bear a label stating clearly the alcoholic strength, or the range of alcoholic strength, of the liquor for the purpose of assessment of duty.

Chapter:	109A	DUTIABLE COMMODITIES REGULATIONS
-----------------	-------------	---

Regulation:	5	Packing of goods and quantities in which goods may be imported, exported or moved
--------------------	----------	--

Except with the written permission of the Commissioner- (L.N. 452 of 1996)

- (a) goods shall be imported, exported or moved only in securely closed containers, in each of which there shall be not less than-
 - (i) liquor, except as herein provided-
 - either 8 L
 - or any spirit specified in regulation 66(b)(v)
 - in jars (L.N. 452 of 1996) 18 L
 - or
 - (ii) tobacco-
 - cigarettes 2000
 - or cigars 200
 - or other manufactured tobacco 1.5 kg in weight
 - or unmanufactured tobacco 15 kg in weight
 - or
 - (iii) hydrocarbon oil 40 L.
- For the purpose of this paragraph, these quantities may be either in 1 container or in 2 or more containers completely enclosed in a larger container: but containers which are merely bound or fastened together shall be deemed to be separate containers, and shall be entered as such in all permits and shipping documents;
- (b) identical goods shall be packed in equal quantities in identical containers;
 - (c) different goods shall not be packed in the same container.
- (L.N. 6 of 1970; L.N. 189 of 1982; L.N. 294 of 1982; L.N. 7 of 1987)

Regulation:	58	Fermentation
--------------------	-----------	---------------------

(1) Except with the written permission of the Commissioner, all material put on to ferment shall be distilled immediately upon the expiration of the periods set out in the following table- (L.N. 452 of 1996)

TABLE

TIME WITHIN WHICH MATERIAL IS TO BE FERMENTED

Sugar or molasses or an admixture of both	Millet	Rice
4 days	10 days	21 days

- (2) Time shall commence to run-
 - (a) in the case of sugar or molasses or an admixture of sugar and molasses, from the first mixing of the sugar or molasses or the admixture with mother mash or other ferment approved by the Commissioner;

- (b) in the case of rice, from noon on the day on which the steamed rice is mixed with yeast; and
 - (c) in the case of millet, from the first mixing of millet with yeast cake.
- (3) No methods of accelerating fermentation shall be employed without the prior consent of the Commissioner.
- (4) In the case of the manufacture of rice spirit as specified in regulation 66(b)(v) from the fermented mash of rice, the distiller shall declare to the Commissioner the type of yeast, method of fermentation and raw materials used and shall enter that method, raw materials and yeast in the record prescribed by regulation 61(1). (L.N. 452 of 1996)
- (5) The distiller shall report to the Commissioner any change in the type of yeast, raw materials or method of fermentation used as soon as practicable thereafter.
(L.N. 6 of 1970; L.N. 294 of 1982; L.N. 7 of 1987)

Regulation:	63	Certificates of origin for imported liquors
--------------------	-----------	--

PART VIII

SALE

Certificates of origin and standards of quality for liquors

- (1) The Commissioner may require any imported intoxicating liquor for which a standard of quality is prescribed, except any spirit specified in regulation 66(b)(v), to be accompanied by a certificate (hereinafter in these regulations called a certificate of origin) from the place where the liquor was made certifying the type, nature and quality of that liquor. (L.N. 294 of 1982; L.N. 7 of 1987; L.N. 452 of 1996)
- (2) Certificates of origin for brandy, whisky and rum shall contain such analytical and other particulars as will enable the liquor to be readily identified.
- (3) In these regulations, "certificate of origin" (產地來源證) includes any certificate, in whatever form, which satisfies the above definition, and includes a certificate of age.

Regulation:	65	Method of determining quality of liquors
--------------------	-----------	---

- (1) The quality of any liquor shall be determined by the Government Chemist as follows-
- (a) in the case of any spirit specified in regulation 66(b)(v), upon analysis; (L.N. 452 of 1996)
 - (b) in the case of other liquor, in his discretion-
 - (i) upon analysis; or
 - (ii) upon a certificate of origin required by regulation 63; or
 - (iii) upon both such analysis and such certificate.
- (2) The higher alcohols in spirit shall be determined by such method of analysis as the Government Chemist thinks fit. (L.N. 157 of 1974)

Regulation:	66	Standards of quality for certain liquors
--------------------	-----------	---

The following standards of quality are prescribed-

- (a) for all intoxicating liquors, every such liquor shall possess the aroma and flavour natural to liquor of its type;
- (b) for spirits-
 - (i) all spirits shall contain such proportions, if any, of volatile acidity, aldehydes, furfural, esters and higher alcohols as are natural to spirits of their type;
 - (ii) brandy: the spirit obtained by the distillation of wine of grapes in the manufacture of which no additional sugar has been added, or a mixture of such spirits, that has been aged in an oak receptacle for at least one year or in an oak cask with a capacity of less than 1000 L for at least 6 months and contains an alcoholic strength of not less than 36% by volume at 20 °C ;
cognac: brandy made in the Cognac region of France from grapes grown therein;
 - (iii) whisky: the spirit obtained by distillation from a mash of cereal grains saccharified by the diastase of malt or other natural enzyme and fermented by the action of yeast, with or without the addition of flavouring or caramel, that has been aged in wood for at least 3 years and contains an alcoholic strength of not less than 40% by volume at 20 °C ;
 - (iv) rum: the spirit distilled direct from fermented sugar cane products, with or without caramel, that may be flavoured with fruit or other botanical substances or flavouring, in such a manner that the distillate possesses the taste, aroma and characteristics generally attributed to rum and contains an alcoholic strength of not less than 37.5% by volume at 20 °C , and also includes mixtures solely of such distillates;
 - (iva) gin: the spirit obtained by the re-distillation of suitably rectified grain spirit, with or over juniper berries, with or without other aromatic botanical substances, with or without sugar, and with an alcoholic strength of not less than 37.5% by volume at 20 °C ;
 - (ivb) vodka: the spirit produced from fermentation of grains or potatoes that, after reduction of strength, has been so distilled or treated with charcoal or other processes so as to be without distinctive character, aroma, taste, or colour, and with an alcoholic strength of not less than 37.5% by volume at 20 °C ;
 - (v) rice spirit, millet spirit and molasses or sugar spirit or spirit made from an admixture of molasses and sugar: intoxicating liquors obtained by the distillation of the fermented mash of rice, molasses, sugar, millet or an admixture of molasses and sugar up to and including a strength of alcohol by volume at 20 °C of 58% for spirit made from rice, molasses or sugar or both, and 70% for spirit made from millet-
 - rice spirit-Liu Pun (料半),
Sheung Ching (雙蒸),
Sam Ching (三蒸) or
Sei Ching (四蒸);
 - molasses or sugar spirit or spirit made from an admixture of molasses and sugar-
 - To Liu Pun (土料半),
 - To Sheung Ching (土雙蒸),
 - To Sam Ching (土三蒸) or
 - To Sei Ching (土四蒸);
 - millet spirit-Mow Toi (茅台),
Ko Leung (高粱),

Sai Fung (西鳳),
Tai Kook (大麴) or
Fan Chow (汾酒).

If for sale, its strength in alcohol by volume at 20 shall not be less than-

(i)	Liu Pun or To Liu Pun	22%.
(ii)	Sheung Ching or To Sheung Ching	27%.
(iii)	Sam Ching or To Sam Ching	36%.
(iv)	Sei Ching or To Sei Ching	48%.
(v)	Mow Toi, Ko Leung or Tai Kook	50%.
(vi)	Sai Fung or Fan Chow	60%.

(c) for wines-

- (i) port: the fermented expressed juice of grapes grown in the Alto Douro district in the north-east of Portugal, shipped from Oporto, and wine of similar characteristics from other countries or districts, which contains not less than 15% of alcohol by volume at 20 ;

Port shall be free from added colouring matter and preservatives other than alcohol and shall contain not less than 15% of alcohol by volume at 20 ;

- (ii) sherry: the fermented expressed juice of the grape, the produce of Jerez (or Xeres) de la Frontera, shipped from Cadiz in Spain, and wine of similar characteristics from other countries or districts which contains not less than 15% of alcohol by volume at 20 ;

Sherry shall be free from added colouring matter and preservatives other than alcohol and shall contain not less than 15% of alcohol by volume at 20 .

(L.N. 6 of 1970; L.N. 188 of 1982; L.N. 7 of 1987; L.N. 452 of 1996)

Economic implications

The proposal to delete the prescriptions regarding Chinese-type spirits in the Regulations will allow all types of Chinese-type spirits to be supplied and sold in Hong Kong. This will eliminate an unnecessary trade restriction and improve the business environment.

Financial and Civil Service Implications

2. The proposal to require all liquors to be labelled with alcoholic strength will reduce C&ED's efforts in taking samples for ascertaining alcoholic strength and the number of samples requiring examination by Government Chemist for the purpose of duty assessment. This will lead to a notional saving in staff cost of \$0.25 million a year.