

**立法會**  
**Legislative Council**

LC Paper No. LS10/03-04

**Paper for the House Committee Meeting  
on 31 October 2003**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 24 October 2003**

**Date of Tabling in LegCo** : 29 October 2003

**Amendment to be made by** : 26 November 2003 (or 17 December 2003 if extended by resolution)

**PART I AMENDMENTS UNDER PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE (CAP. 132)**

**Public Health and Municipal Services Ordinance (Cap. 132)**

**Food Adulteration (Artificial Sweeteners) (Amendment) Regulation 2003 (L.N. 225)**

**Food and Drugs (Composition and Labelling) (Amendment) Regulation 2003 (L.N. 226)**

Food Adulteration (Artificial Sweeteners) (Amendment) Regulation 2003 (L.N. 225)

The Food Adulteration (Artificial Sweeteners) Regulations (Cap. 132 sub. leg. U) ("the Regulations") are made under section 55(1A) of the Public Health and Municipal Services Ordinance (Cap. 132) ("the Principal Ordinance") to restrict the sale, consignment, delivery or importation of any artificial sweetener for human consumption or any food intended for human consumption containing any artificial sweetener except those specified in the Schedule to the Regulations.

2. This Amendment Regulation:

- (a) changes the citation of the Regulations to Sweeteners in Food Regulations;
- (b) replaces all references of "artificial sweetener" in the Regulations by "sweetener";
- (c) substitutes the existing Schedule by a new Schedule containing four additional permitted sweeteners; and

- (d) makes consequential amendments to the definition of "sweetened" in and the First Schedule to the Preservatives in Food Regulations (Cap. 132 sub. leg. BD).

3. Members may wish to refer to the LegCo Brief (File Ref: HWF(F) 5/1/8/1) issued by the Health, Welfare and Food Bureau in October 2003 for further information.

4. This Amendment Regulation shall come into operation on 19 December 2003.

Food and Drugs (Composition and Labelling) (Amendment) Regulation 2003 (L.N. 226)

5. The Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W) ("the Regulations") are made under section 55(1) of the Principal Ordinance to make provisions for the standards of composition, marking and labelling of foods, drugs and prepackaged food. Schedule 3 to the Regulations requires that an additive constituting one of the ingredients of a prepackaged food shall be listed by its specific name or by the appropriate category ("Category") or by both name and Category.

6. This Amendment Regulation:

- (a) replaces the Category of "Artificial sweetener" with "Sweetener"; and
- (b) allows as a transitional arrangement an additive constituting an ingredient of a prepackaged food listed under the old Category of "Artificial sweetener" to continue to be sold until 18 June 2005.

7. Members may wish to refer to the LegCo Brief (File Ref: HWF(F) 5/1/8/1) issued by the Health, Welfare and Food Bureau in October 2003 for further information.

8. This Amendment Regulation shall come into operation on 19 December 2003.

## **PART II COMMENCEMENT NOTICES**

### **Chinese Medicine Ordinance (Cap. 549)**

**Chinese Medicine Ordinance (Cap. 549) (Commencement) (No. 2) Notice 2003 (L.N. 227)**

**Chinese Medicine (Fees) Regulation (Cap. 549 sub. leg. E) (Commencement) (No. 2) Notice 2003 (L.N. 228)**

**Chinese Medicines Regulation (Cap. 549 sub. leg. F) (Commencement) (No. 2) Notice 2003 (L.N. 229)**

9. The Chinese Medicine Ordinance (Cap. 549) ("the Principal Ordinance") was enacted by the Legislative Council in July 1999 to provide a statutory framework for the regulation of the practice, use, trading and manufacture of Chinese medicine in Hong Kong. Its provisions have come into operation in several batches. The first batch relating to the setting up of the Chinese Medicine Council of Hong Kong became effective on 6 August 1999. The second batch came into operation on 16 August 2000 to implement the statutory regime of registration and listing of Chinese medical practitioners. The third batch governing the use of the title of Chinese medicine practitioner registered or listed under the Principal Ordinance became effective on 1 March 2002. The fourth batch providing for the regulatory framework for Chinese medicines under which all wholesalers and retailers of Chinese herbal medicines as well as wholesalers and manufacturers of proprietary Chinese medicines are subject to licensing control came into operation on 30 April 2003.

10. This is the fifth batch of the provisions of the Principal Ordinance to come into operation. Such provisions together with the relevant provisions of the Chinese Medicine (Fees) Regulation and the Chinese Medicines Regulation provide for the regulatory framework for registration of proprietary Chinese medicines.

Chinese Medicine Ordinance (Cap. 549) (Commencement) (No. 2) Notice 2003 (L.N. 227)

11. By this Notice given under section 1(2) of the Principal Ordinance, the Secretary for Health, Welfare and Food ("the Secretary") appoints 19 December 2003 as the date on which sections 120 to 128, 130, 162, 163, 167 and 175 of the Principal Ordinance, which govern the application, variation and renewal of registration of proprietary Chinese medicines and consequential amendments, shall come into effect.

Chinese Medicine (Fees) Regulation (Cap. 549 sub. leg. E) (Commencement) (No. 2) Notice 2003 (L.N. 228)

12. By this Notice, the Secretary appoints 19 December 2003 as the day on which items 12, 13, 16, 17 and 18 of the Schedule to the Chinese Medicines (Fees) Regulation, which set out the respective fees payable for application, variation and renewal of registration of proprietary Chinese medicines, shall come into operation.

Chinese Medicines Regulation (Cap. 549 sub. leg. F) (Commencement) (No. 2)

Notice 2003 (L.N. 229)

13. By this Notice, the Secretary appoints 19 December 2003 as the day on which sections 15 and 38 and Schedule 3 to the Chinese Medicines Regulation, which stipulate the requirements for registration and the certificate of sale of proprietary Chinese medicine, shall come into operation.

**Public Health and Municipal Services Ordinance (Cap. 132)  
Harmful Substances in Food (Amendment) Regulation 2001 (L.N. 148 of 2001)  
(Commencement) Notice 2003 (L.N. 230)**

**Public Health (Animals and Birds) Ordinance (Cap. 139)  
Public Health (Animals and Birds) (Chemical Residues) Regulation (Cap. 139  
sub. leg. N) (Commencement) Notice 2003 (L.N. 231)**

14. A subcommittee was formed on 29 June 2001 to scrutinise the Harmful Substances in Food (Amendment) Regulation and the Public Health (Animals and Birds) (Chemical Residues) Regulation. Members supported the two regulations and the Administration accepted and moved a number of minor amendments suggested by the subcommittee.

15. This is the last phase implementation of the two regulations. The substances referred to L.N.s 230 and 231 are the same. Members may wish to refer to the LegCo Brief (File Ref: HWF(F)(CR)6/12/16) issued by the Health, Welfare and Food Bureau in October 2003 for further information.

Harmful Substances in Food (Amendment) Regulation 2001 (L.N. 148 of 2001)  
(Commencement) Notice 2003 (L.N. 230)

16. The Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF) prohibits the importation, consignment, delivery, manufacturing or sale, for human consumption, of the food specified in its First Schedule to the Regulations ("the Schedule") which contains substances in greater concentration than is specified in the Schedule.

17. By this Notice, the Director of Food and Environmental Hygiene appoints 31 December 2003 as the date on which the remaining items in the Schedule, which have not yet come into operation, shall come into operation.

Public Health (Animals and Birds) (Chemical Residues) Regulation (Cap. 139 sub.  
leg. N) (Commencement) Notice 2003 (L.N. 231)

18. By this Notice, the Secretary for Health, Welfare and Food appoints 31 December 2003 as the date on which the remaining items in Schedules 2 and 3 to the Public Health (Animals and Birds) (Chemical Residues) Regulation (Cap. 139 sub. leg. N) ("the Schedules"), which have not yet come into operation, shall come into

operation.

19. A food animal farmer or a food animal trader who supplies food animals or milk containing substances exceeding the maximum residue limits specified in the Schedules commits an offence.

**Prevention of Child Pornography Ordinance (Cap. 579)**  
**Prevention of Child Pornography Ordinance (31 of 2003) (Commencement)**  
**Notice 2003 (L.N. 232)**

20. The Prevention of Child Pornography Ordinance (Cap. 579) ("the Ordinance") was enacted by the Legislative Council on 10 July 2003 to:

- (a) create offences of making, producing, publishing, importing, exporting, distributing, advertising and possessing pornography that depicts children under the age of 16;
- (b) create an offence for any person who uses, procures or offers another person who is under the age of 18 for making pornography, or for a live pornographic performance, in which that other person is pornographically depicted; and
- (c) extend the application of certain sexual offence provisions to acts committed against children outside Hong Kong and prohibiting the making of any arrangement relating to commission of those acts and advertisements for such arrangement.

21. Section 9 of the Prevention of Child Pornography Bill ("the Bill") provides for the forfeiture of child pornography and other things seized which are suspected to be relating to child pornography. In the deliberation of the Bill, in response to members' query raised on the forfeiture of proceeds of offences of child pornography, the Administration does not consider it justified to propose inclusion of child pornography offences in Schedule 1 of the Organized and Serious Crimes Ordinance ("OSCO"). However, the Administration will keep the situation under review and propose amendments to Schedule 1 of OSCO when the situation so warrants. The Administration also undertook to carry out publicity on the key contents of the Bill. The Administration has subsequently advised the Clerk to the Bills Committee that the publicity programme will be launched on 1 December 2003.

22. By this Notice, the Secretary of Security appoints 19 December 2003 as the date on which the Ordinance shall come into operation.

**PART III SUBSIDIARY LEGISLATION MADE UNDER TRADE**  
**DESCRIPTIONS ORDINANCE (Cap. 362)**

**Trade Descriptions (Country of Origin) (Watches) (Amendment) Order 2003 (L.N. 233)**

**Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Notice (L.N. 234)**

23. L.N.s 233 and 234 are made in order that the watches assembled and tested in Hong Kong and piece-knitted garments made from knit-to-shape panels knitted in Hong Kong which comply with the origin rules under the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") can be marked as being of Hong Kong origin under the Trade Descriptions Ordinance. We have written to the Administration to clarify L.N. 233 (Annex A and C) and its reply (Annex B) is enclosed with this report.

24. Under CEPA, the Mainland and Hong Kong Governments have agreed on the rules of origin for 273 Hong Kong products to qualify for zero tariff with effect from 1 January 2004. The Panel on Commerce and Industry was briefed on the arrangements under CEPA at its meetings on 30 June 2003 and 13 October 2003.

25. Members may wish to refer to an information note (Ref: LC Paper CB(1)178/03-04(01)) issued by the Commerce, Industry and Technology Bureau in October 2003 to members of the Panel on Commerce and Industry and copied to all other non-Panel members for further information.

26. The two L.N.s shall come into operation on 1 January 2004.

Encl

Prepared by

LAI Shun-wo, Monna  
Assistant Legal Adviser  
Legislative Council Secretariat  
28 October 2003

**Annex A**

LS/S/4/03-04  
2869 9370  
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Secretary for Commerce, Industry  
Post

By Fax (2537 7566) and By

and Technology  
Commerce, Industry and Technology Bureau  
(Attn: Mr Gordon LEUNG, Prin AS (CI) 5)  
Rooms 1507-9  
One Pacific Place  
88 Queensway  
Hong Kong

28 October 2003

Dear Mr LEUNG

**Trade Descriptions (Country of Origin) (Watches) (Amendment)  
Order 2003 ("the Amendment Order") (L.N. 233 of 2003)**

We refer to your letter dated 28 October 2003.

It appears that:

- (a) the Amendment Order only takes out a watch that has been exported, or is intended to be exported, from Hong Kong to the Mainland under the Mainland and Hong Kong Closer Economic Partnership Arrangement and that is qualified for a zero tariff under the Arrangement ("the Watch") from the ambit of the Trade Descriptions (Country of Origin) (Watches) Order (Cap. 362 sub. leg. D);
- (b) section 2(2)(a)(i) of the Trade Descriptions Ordinance (Cap. 362) ("the Ordinance") does not apply to the Watch as Hong Kong is a place and not a country; and
- (c) it remains doubtful whether the Watch can satisfy the trade description requirements under the Ordinance and be marked as "manufactured or produced in Hong Kong" if it is not wholly manufactured or produced in Hong Kong.

Please also note that the word "producted" in line 2 of section 2 of the Order should be "produced". Please amend the Order accordingly.

It is appreciated that your reply in both Chinese and English could reach us by close of play, 29 October 2003.

Yours sincerely

(Monna LAI)  
Assistant Legal Adviser

c.c. LA



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Your Ref: LS/S/4/03-04

Our Ref: S/F to CIB CR 62/47/1/5

28 October 2003

Ms Monna Lai  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legislative Council Building  
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By Fax: 2877 5029

Dear Ms Lai,

**Trade Descriptions  
(Country of Origin) (Watches) (Amendment) Order 2003  
("the Amendment Order") (L.N. 233 of 2003)**

Thank you for your letter of 27 October 2003.

The CEPA origin rules stipulate that in order to be qualified as being of Hong Kong origin, watches must fulfill the following two requirements –

the assembly of component parts and accessories into watches, testing, time adjustment and quality control must be conducted in Hong Kong; AND

fulfilling a 30% value-added requirement.

In the manufacture of watches, the assembly of component parts and accessories into watches, testing, time adjustment and quality control are regarded as the last treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture. Watches which comply with the CEPA origin rule by having the assembly of component parts and accessories into watches, testing, time adjustment and quality control conducted in Hong Kong, therefore, satisfy the requirements for country of origin stipulated under section 2(a)(i) of the Trade Descriptions Ordinance and can be marked as being of Hong Kong origin.

Yours sincerely,



( Gordon Leung )  
for Secretary for Commerce, Industry and Technology

LS/S/4/03-04  
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Secretary for Commerce, Industry  
and Technology  
Commerce, Industry and Technology Bureau  
(Attn: Mr Gordon LEUNG, Prin AS (CI) 5)  
Rooms 1507-9  
One Pacific Place  
88 Queensway  
Hong Kong

By Fax (2537 7566) and By Post

27 October 2003

Dear Mr LEUNG

**Trade Descriptions (Country of Origin) (Watches) (Amendment) Order 2003  
("the Amendment Order") (L.N. 233 of 2003)**

I am scrutinising the legal and drafting aspects of the subsidiary legislation and have the following comments:

Section 2(2)(a)(i) of the Trade Description Ordinance (Cap. 362) ("the Ordinance") provides that for the purposes of the Ordinance, goods shall be deemed to have been manufactured in the country in which they last underwent a treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture.

Section 2(2)(b) of the Ordinance provides that the Commissioner of Customs and Excise may by order specify -

- (i) in relation to any description of goods, what treatment or process is to be regarded for the purposes of the Ordinance as resulting or not resulting in a permanent and substantial change in shape, nature, form or utility of the basic materials used in their manufacture; and
- (ii) in relation to any description of goods different parts of which were manufactured or produced in different countries, or of goods assembled in a country different from that in which their parts were manufactured or produced, in which of those countries the goods are to be regarded for the purposes of the ordinance as having been manufactured or produced.

The Trade Descriptions (Country of Origin) (Watches) Order (Cap. 362 sub. leg. D) ("the Order") provides that for the purposes of the Ordinance, the country in which the movement of a watch was manufactured or produced is to be regarded as the country in which the watch has been manufactured or produced.

The Amendment Order proposes that the Order will not apply to any watch that has been exported, or is intended to be exported, from Hong Kong to the Mainland under the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") and that is qualified for a zero tariff under the Arrangement ("the Watch").

Please clarify whether the Watch, which complies with the CEPA origin rules, also satisfies the requirements for country of origin under the Ordinance and therefore can be marked as being of Hong Kong origin.

It is appreciated that your reply in both Chinese and English could reach us by close of play, 28 October 2003.

Yours sincerely

(Monna LAI)