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**Paper for the House Committee meeting
on 14 November 2003**

**Report of the Subcommittee on
Trade Descriptions (Country of Origin)(Watches)
(Amendment) Order 2003 and Trade Descriptions
(Place of Manufacture) (Piece-Knitted Garments) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Trade Descriptions (Country of Origin) (Watches) (Amendment) Order 2003 (the Amendment Order) and Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Notice (the Notice).

Background

2. On 29 June 2003, the Government of the Hong Kong Special Administrative Region and the Central People's Government reached an agreement on the main parts of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) and signed the CEPA on the same day. After three months' consultation, the two sides signed the six Annexes to CEPA on 29 September 2003 which set out the implementation details.

Existing origin marking requirements

3. Section 2(2)(a)(i) of the Trade Descriptions Ordinance ("TDO") (Cap. 362) stipulates, inter alia, that for the purposes of the TDO, 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.

4. Notwithstanding the above provision, watches and piece-knitted garments are currently subject to certain special requirements. For watches, the Trade Descriptions (Country of Origin)(Watches) Order made in 1990 (the 1990 Order) specifies that the country in which the movement of a watch is manufactured or produced is to be regarded as the country in which the watch has been manufactured. As regards piece-knitted garments for export to the United States, the Trade Descriptions (Place of Manufacture) Notice made in

1991 allows such goods to bear a Hong Kong-origin marking if the knitting of yarn into knit-to-shape panels takes place in Hong Kong, irrespective of whether the manufacture from knit-to-shape panels into piece-knitted garments takes place in Hong Kong.

CEPA origin rules

5. Under CEPA, the Mainland has agreed, inter alia, to eliminate tariffs on imported goods of Hong Kong origin by phases. For this purpose, the two sides have reached an agreement on the rules of origin applicable to these products. Starting from 1 January 2004, products under 273 Mainland product codes imported from Hong Kong which meet the rules of origin requirement under CEPA will enjoy zero tariff. Clocks, watches and garments are among these products covered in the initial phase. While for most of the products, the Mainland has accepted Hong Kong's existing origin rules as the CEPA origin rules, the relevant rules for watches and piece-knitted garments are as follows:

Product	CEPA origin rules
Watches	Assembly of component parts and accessories into watch, testing, time adjustment and quality control carried out in Hong Kong, and fulfilling a 30% value-added requirement.
Piece-knitted garments	Either "knitting of yarn into knit-to-shape panels" or "linking/stitching of knit-to-shape panels into garment" is done in Hong Kong.

6. The Administration has advised that out of the products covered in the initial phase, legislative amendments are only required for the marking of the place of manufacture for watches and piece-knitted garments.

The subsidiary legislation

7. To enable manufacturers to mark their goods as "made in Hong Kong" to enjoy zero tariff under CEPA, the Amendment Order and the Notice have been made to amend the existing origin marking requirements for watches and piece-knitted garments to allow watches and piece-knitted garments which have been exported, or are intended to be exported, from Hong Kong to the Mainland under CEPA to bear the Hong Kong origin marking. The Amendment Order and the Notice have been gazetted on 24 October 2003 and will take effect on 1 January 2004.

The Subcommittee

8. At the House Committee meeting on 31 October 2003, Members agreed to form a subcommittee to examine the Amendment Order and the Notice. The membership list of the Subcommittee is at the **Appendix**. Under the chairmanship of Hon HUI Cheung-ching, the Subcommittee has held one meeting with the Administration to discuss the subsidiary legislation.

Deliberations of the Subcommittee

9. Members agree in general that necessary legislation for implementing CEPA should be enacted without delay to enable the products which meet the CEPA origin rules to enjoy zero tariff with effect from 1 January 2004. They have not raised any query on the Notice. However, they have expressed concern about whether the Amendment Order in its current form is sufficiently clear and whether it will give rise to enforcement problems.

The Amendment Order

10. The Amendment Order seeks to dis-apply the 1990 Order to those watches which have been exported, or are intended to be exported, from Hong Kong to the Mainland and are qualified for zero tariff under CEPA (the CEPA watches). According to the Administration, for the purpose of CEPA, if the key processes in the manufacture of watches such as assembly of components and accessories into watch, testing, time adjustment and quality control are carried out in Hong Kong and the 30% value-added requirement is met, then, these watches can be marked as "manufactured in Hong Kong" if they are exported to the Mainland under CEPA.

11. In response to members' concern about the legal basis for the Amendment Order, the Administration has explained that the assembly of component parts and accessories, 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 the manufacture of watches. As such, watches which comply with the CEPA origin rules by having these key processes conducted in Hong Kong would also satisfy the requirements for country of origin stipulated under section 2(2)(a)(i) of TDO, and can therefore be marked as being of Hong Kong origin.

12. In this connection, members have queried whether section 2(2)(a)(i) can apply to CEPA watches because Hong Kong is a "place" and not a "country" as stipulated under the said section. In clarification, the Administration has submitted to the Subcommittee that reference should also be made to the definition of "trade description" in section 2(1) of TDO. "Trade description" is defined to mean an indication, direct or indirect, and by whatever means given, of any of the matters specified in that definition, including, under paragraph (h), the "place or date of manufacture, production, processing or re-conditioning". The Administration has further advised that

the legislative intent of TDO is to prohibit "false trade description" to be applied to goods. "False trade description" as defined under section 2(1) of TDO includes a trade description which is false to a material degree. As far as the CEPA watches are concerned, since their assembly, testing, time adjustment and quality control are conducted in Hong Kong and the 1990 Order does not apply to them, the Administration takes the view that no offence relating to "false trade description" would be committed under TDO if these watches are marked as "manufactured or produced in Hong Kong" because Hong Kong is a place within China.

13. Notwithstanding the Administration's explanation, members remain concerned about the combined effect of the deeming provision in section 2(2)(a)(i), the definitions of "trade description" and "false trade description" under TDO, as well as the Amendment Order. Members also note the Subcommittee legal adviser's remark that so far, there has not been any decided court case which may indicate that the Administration's analysis would be accepted by court. Nevertheless, neither is there any court case which would suggest that the Administration's analysis would not be accepted. Members are gravely concerned as to whether the new requirement provided under the Amendment Order and related existing provisions in the TDO will give rise to any loophole or opportunity for illegal circumvention, such as the malpractice of marking watches exported to the Mainland under CEPA as being "manufactured in Hong Kong" when in fact the key manufacturing processes were carried out in other parts of China.

14. The Administration has also explained the scope of the CEPA watch that "has been exported, or is intended to be exported, from Hong Kong to the Mainland" and confirmed that the enforcement departments (mainly the Customs and Excise Department (C&ED) and the Trade and Industry Department (TID)) do not envisage any special enforcement problems arising from the new CEPA origin rules. On procedural safeguards, watches claiming zero tariff under CEPA, like other products for export to the Mainland, must be accompanied by a Certificate of Hong Kong Origin-CEPA issued by the TID or one of the Government Approved Certification Organizations on being satisfied that all the relevant origin requirements are met. Addressing members' worry that watches whose key manufacturing processes are conducted in other parts of the Mainland are marked as "manufactured in Hong Kong" and exported to the Mainland, the Administration has advised that such misrepresentation may constitute an offence of applying a false trade description on goods under existing section 7 of TDO and is liable to prosecution by C&ED.

15. While members agree that the necessary legal basis should be in place in time for eligible products to benefit from zero tariff under CEPA starting from 1 January 2004, they have cast doubt on the efficacy of making an Amendment Order to dis-apply the existing Order to certain goods and whether this approach is indeed the best way to provide for the origin of the products. As CEPA is subject to an ongoing process of refinement with further scope for tariff preference, members have urged the Administration to critically review

the relevant provisions in TDO and its subsidiary legislation with a view to devising a better approach to deal with necessary legislative amendments.

16. The Administration has reiterated that the Amendment Order will provide the necessary legal basis for the origin of CEPA watches. Nevertheless, it agrees to examine members' views, including the legislative approach, in due course. On the Administration's undertaking that it will look into the issue, members have indicated that they will not seek to amend the Amendment Order. The Panel on Commerce and Industry will keep in view the Administration's review and follow up where appropriate.

The Notice

17. The Notice is made to specify that in relation to piece-knitted garments which have been exported or are intended to be exported from Hong Kong to the Mainland under CEPA, which are qualified for zero tariff under CEPA and which are made from knit-to-shape panels knitted in Hong Kong, then, the piece-knitted garments are to be regarded as having been manufactured or produced in Hong Kong. Members have not raised any query on the Notice.

Other concerns related to implementation of CEPA

18. While welcoming CEPA and its direct and indirect economic spin-offs for Hong Kong, some members have called upon the Administration to take active steps to ensure that the implementation of CEPA will genuinely benefit Hong Kong's economy, in particular the creation of more job opportunities for the local workforce. One of the suggestions is that the enforcement departments should make reference to membership of the Mandatory Provident Fund Scheme to verify the employment status of the employees of manufacturers applying to TID for factory registration and certificate of origin for export products, so as to ensure that the staff concerned have not been engaged on an ad-hoc basis just to fulfil the requirements for certification. Members also consider that the progress of CEPA, notably the CEPA origin rules, should be widely publicized for the benefit of local manufacturers seeking to access the Mainland market.

19. On benefits to the local economy, the Administration refers to the 30% value-added requirement under the CEPA origin rules for products such as watches and clocks. As the formula for calculating the value-added percentage will take into account the costs of product development (e.g. design development, intellectual property rights etc.) incurred in Hong Kong, it is believed that this will encourage more high value-added activities to be undertaken in Hong Kong. The Administration has also assured members that it will not slacken its inspection and enforcement efforts. Meanwhile, a publicity programme has been launched and seminars and briefings are arranged from time to time for various trade-related bodies.

Recommendation

20. The Subcommittee does not seek to amend the Amendment Order and the Notice which will take effect on 1 January 2004 to tie in with the implementation date of CEPA.

Advice sought

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

Council Business Division 1
Legislative Council Secretariat
13 November 2003

**Subcommittee on Trade Descriptions (Country of Origin) (Watches)
(Amendment) Order 2003 and Trade Descriptions
(Place of Manufacture) (Piece-Knitted Garments) Notice**

Membership list

Chairman Hon HUI Cheung-ching, JP

Members Hon Mrs Selina CHOW LIANG shuk-ye, GBS, JP
Hon CHAN Yuen-han, JP
Hon SIN Chung-kai
Hon Miriam LAU Kin-ye, JP

(Total : 5 Members)

Clerk Miss Polly YEUNG

Legal Adviser Miss Monna LAI

Date 6 November 2003