For discussion
16 November 2004

Legislative Council Panel on Commerce and Industry

Origin marking of textile made-up articles under the Trade Descriptions Ordinance

Purpose

This paper seeks Members' views on the legislative amendments required to align the origin marking requirements under the Trade Descriptions Ordinance (TDO) (Cap. 362) with the revised Hong Kong origin rules and the CEPA origin rules in respect of textile made-up articles.

Background

Origin marking requirements under the TDO

2. One of the purposes of the TDO is to prohibit false trade descriptions from being applied to goods. Under the TDO, origin marking of goods, being a type of trade description, is not mandatory but where such marking is used, it must not be false or misleading.

3. For the purpose of determining the origin of goods, section 2(2)(a)(i) of the TDO stipulates that goods are 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. This is commonly known as the "last substantial transformation principle".

4. To cater for special origin marking needs, the TDO also empowers the Commissioner for Customs and Excise (C,C&E) and the Director-General for Trade and Industry (DGTI) to make orders and notices respectively in the following circumstances –

(a) C,C&E to specify by way of order 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, utility of the basic materials used in their manufacture [section 2(2)(b)(i) of TDO];

(b) C,C&E to specify by way of order 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 [section 2(2)((b)(ii) of TDO]; and

(c) DGTI to specify by way of notice in relation to any description of goods (being goods that are subject to a scheme of import or export control specified in the notice) the place in which the goods are to be regarded as having been manufactured or produced for the purposes of the Ordinance [section 2(2A) of TDO].

Hong Kong origin rules for textile made-up articles

5. The term "textile made-up articles" is loosely used to refer to a wide variety of textile products including scarves, shawls, mufflers, mantillas, veils, handkerchiefs, babies' diapers and napkins, bags, sacks, bedsheets, curtains, pillow covers, etc. These products fall under 70 HS[1] Code numbers.

6. Before 2001, the Hong Kong origin rule for all textile made-up articles was "manufacture from fabric and the principal processes were cutting of fabric and sewing of cut pieces into products". This origin rule was in line with the last substantial transformation principle as spelt out in the general deeming provision for determining origin of goods under section 2(2)(a)(i) of the TDO.

[1] HS is the shortened form of Harmonized Commodity Description and Coding System, which classifies goods in international trade in terms of HS Codes.

7. After a review conducted in 2001 by the Trade and Industry Department (TID), the Hong Kong origin rule for textile made-up articles was revised from "cutting of fabric and sewing of cut pieces into products" to "**either** fabric forming **or** cutting of fabric and sewing of cut pieces into products". The rule was so revised because both "fabric forming" and "cutting of fabric and sewing of cut pieces into products" can be considered as principal manufacturing processes which can transform substantially the form and utility of the basic materials used in manufacture. The revision would also facilitate Hong Kong's exports to different markets. Hence, the Hong Kong origin rules for textile made-up articles are as follows -

	Product	Origin Criterion	Principal Process of Manufacture
(a)	Textile made-up articles manufactured from yarn	Manufacture from yarn	Weaving or knitting
(b)	Textile made-up articles manufactured from fabric	Manufacture from fabric	Cutting and sewing of cut pieces into products

8. For those "textile made-up articles manufactured from yarn", origin rule (a) will enable textile made-up articles with yarn woven or knitted in Hong Kong to be regarded as originating from Hong Kong because the principal process of manufacture, i.e. the fabric forming process, has already been done in Hong Kong. Subsequent processes including fabric finishing and/or cutting and sewing are considered as subsidiary processes which can be carried out elsewhere under the Outward Processing Arrangement (OPA). The OPA requirements provide proper administration of the origin rules for the concerned products.

9. The Textiles Advisory Board and the Certification Co-ordination Committee were consulted on the revision of the origin rules for textile made-up articles in March and May 2001 respectively, and they raised no objection.

10. Whilst legal advice confirmed that the formulation of the "either/or" origin rules mentioned in paragraphs 7 and 8 above are not contrary to section 2(2)(a)(i) of the TDO, it was suggested that in the long term, the revised rules should be covered by an order to be issued by the C,C&E under section 2(2)(b) of the TDO to achieve greater clarity to avoid any dispute or legal challenge. In view of the very small volume of trade in textile made-up articles (as an illustration, the number of

Certificates of Origin (COs) issued for such articles constituted only some 0.4% of all COs issued for textile products in the years 2001 to 2003), a C,C&E order under section 2(2)(b) of the TDO had not yet been made. However, the abolition of global textile quotas from January 2005 may encourage manufacturers and traders to manufacture or trade more textile made-up articles in/through Hong Kong. We consider it appropriate now to make a C,C&E order under section 2(2)(b) of the TDO to achieve greater clarity and certainty regarding the application of the TDO to such articles.

CEPA origin rules for textile made-up articles

11. Four textile made-up articles have been included in the first and second batch of CEPA goods eligible to enjoy zero import tariff in the Mainland. The origin rules for these textile made-up articles are set out below -

Product	Manufacturing Process
Textile made-up articles with HS Code. No. 63025110 and 63025190	Weaving or knitting of fabric
Textile made-up articles with HS Code. No. 63029300	Either (a) "weaving or knitting of fabric" or (b) "cutting of fabric and sewing of cut pieces into products"
Textile made-up articles with HS Code. No. 63039200	Cutting of fabric and sewing of cut pieces into products

12. The last substantial transformation principle for determining origin of goods in section 2(2)(a)(i) of the TDO may not allow textile made-up articles fulfilling the CEPA origin rule of "weaving or knitting of fabric" in Hong Kong to bear a Hong Kong origin marking. We need to make subsidiary legislation under the TDO to achieve clarity in providing for the application of Hong Kong origin marking to textile made-up articles fulfilling the concerned CEPA origin rule.

Legislative proposal

13. Following the announcement on 27 October 2004 in respect of the agreed origin rules for goods eligible to enjoy zero import tariff under CEPA II, we have been working closely with the Department of Justice to finalize the amendments required to align the origin marking requirements under the TDO with the revised Hong Kong origin rules and the CEPA origin rules for textile made-up articles. Specifically, we propose that the following two legal instruments should be made -

(a) a C,C&E order to be made under section 2(2)(b)(ii) of the TDO, to the effect that, for textile made-up articles, the country in which either the "fabric formation" or the "cutting and sewing" is done is the country in which the concerned articles are regarded as having been produced, but such an order should not apply to the textile made-up articles covered by a new DGTI notice to be made as per paragraph (b) below ; and

(b) a DGTI notice to be made under section 2(2A) of the TDO, to the effect that, the notice should apply to those textile made-up articles which are covered by CEPA and are eligible to enjoy zero import tariff for export to the Mainland under CEPA; and that for these goods, they should be regarded as having Hong Kong origin.

14. The reason for having to make two instead of one instrument is that with the making of the C,C&E order in paragraph 13(a) above, traders may choose to label their products that are specified in the order either according to where forming of the fabric used in the manufacture of the products took place or according to where cutting of the fabric and sewing of the cut pieces into product took place. In other words, if forming of the fabric used in the manufacture of such products was done in, say Italy, while cutting of the fabric and sewing of the cut pieces into product were done in Hong Kong, the trader may, if he wishes to apply origin marking to his products, apply either a "Made in Italy" label or a "Made in Hong Kong" label. It is our policy intent that this flexibility should apply only to textile made-up articles not for export to the Mainland under CEPA because the spirit of CEPA is to allow goods from Hong Kong fulfilling the rules of origin agreed between the Mainland and Hong Kong to enjoy preferential treatment for import to the Mainland. It would be against the spirit of CEPA to allow such goods to bear origin marking which suggests that they are not of Hong Kong origin.

Legislative timetable

15. Subject to Members' endorsement of the legislative proposal, we plan to publish the proposed C,C&E order and DGTI notice in the Gazette at the earliest opportunity on 19 November 2004 so that the concerned manufacturers/traders will have as much lead time as possible to prepare for their businesses. To tie in with the implementation date of

CEPA II, the proposed order and notice will have to take effect on 1 January 2005. Given these time constraints, the 28th day of the normal negative vetting period will fall on 22 December 2004 when there is no Legislative Council sitting. However, Members may, if there is such a need, move amendments to the proposed C,C&E order and DGTI notice or extend the negative vetting period on 1, 8 or 15 December 2004. Should the Legislative Council resolve to extend the negative vetting period until 12 January 2005, the proposed order and notice would come into operation earlier than the expiry of the extended negative vetting period.

Conclusion

16. Members are invited to comment on the above legislative proposal.

Commerce, Industry and Technology Bureau
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