

LEGISLATIVE COUNCIL BRIEF

Trade Descriptions Ordinance
(Chapter 362)

TRADE DESCRIPTIONS (AMENDMENT) BILL 2012

INTRODUCTION

A At the meeting of the Executive Council on 29 November 2011, the Council ADVISED and the Chief Executive ORDERED that the Trade Descriptions (Amendment) Bill 2012 (“the Bill”), at Annex A, should be introduced into the Legislative Council.

JUSTIFICATIONS

Arrangements/Agreements of Trade Liberalisation

2. In the 2006-07 Policy Address, the Chief Executive foreshadowed that we would seek to enter into more economic and trade arrangements with our trading partners (hereinafter referred to as “arrangements/agreements of trade liberalisation” (“ATLs”)) so that our goods and services may gain access to external markets under more favourable conditions.

3. Further to the two ATLs¹ that Hong Kong had forged with the Mainland and New Zealand respectively, we signed an ATL with the European Free Trade Association² (EFTA) in June 2011. We will continue to pursue more ATLs with our trading partners in future.

Existing Rules of Origin under the Trade Descriptions Ordinance

4. ATLs in general cover, among others, commitments on the reduction or removal of tariffs for goods. For a product to enjoy such preferential treatment, it should be “originated” (such as being manufactured/produced) in a place to which the ATL applies. For each type of products, detailed rules for conferring such a status (i.e. “rules of origin”) are usually set out in individual ATLs.

¹ They are (a) the Mainland and Hong Kong Closer Economic Partnership Arrangement; and (b) the Hong Kong, China - New Zealand Closer Economic Partnership Agreement.

² The European Free Trade Association States comprise Iceland, Liechtenstein, Norway and Switzerland.

5. Provisions for determining the place of origin of goods are currently specified in the Trade Descriptions Ordinance (“the Ordinance”). They serve the following policy objectives -

- (a) helping to ensure that the description of places of origin of goods originated in Hong Kong for export to other economies is intact; and
- (b) protecting the interest of Hong Kong consumers by ensuring that the claimed places of origin of imported goods are accurate.

The place of origin is one type of trade description. Application of false trade descriptions to goods as well as the sale/import/export of such goods are criminal offences under the Ordinance³.

6. Under the existing Ordinance, goods are considered to have originated in a certain place where the last process that substantially changes the materials used takes place. This is commonly referred to as the “last substantial transformation” rule⁴. For the ATLs that we have signed with the Mainland and New Zealand, the rules of origin therein are generally consistent with the “process-based” principle currently specified in the Ordinance.

Alternative “Value-based” Rules

7. As for our ATL with the EFTA States, apart from the “process-based” rules of origin, it contains an alternative set of rules of origin for conferring preferential tariff treatment. The rules are generally based on the proportion of the “enhancement in value” attributable to the place(s) to which an ATL applies⁵. Measured against the total value of the finished products, this “enhancement” needs to fulfill a certain percentage requirement, which may be different for individual categories of goods. They are hereinafter referred to as “value-based” rules.

8. The alternative set of “value-based” rules of origin provides added flexibility for our traders to claim tariff concessions. The more likely beneficiaries are products which undergo in Hong Kong processes that add high value (such as assembly in tandem with product design), relative to the costs of the materials used for producing the goods. As an illustration, under the ATL with the EFTA States, woven garments bound for these States would be able to enjoy preferential tariff treatment even if our traders do not carry out the “last

³ The maximum penalties are a fine of \$500,000 and imprisonment for five years.

⁴ In the Ordinance, there is another “process-based” rule whereby goods are considered to have originated from a place if they are wholly grown or mined there. This, referred to as the “wholly grown” rule, is mainly applicable to natural products and hence much less relevant to goods “originated” from Hong Kong.

⁵ The value of the goods in question may be “enhanced” in a place as a result of costs incurred in that place for processing/manufacturing the goods, such as material, labour, overhead, logistics and other services such as design etc. Any profit may also be taken into account.

substantial transformation” process in Hong Kong⁶, so long as 40% (or more) of the value of the final product is attributable to the processing steps done in Hong Kong.

Need for Legislative Amendments

9. Provisions in the Ordinance that form the basis for determining the place of origin of goods would need to be broadened, in order to bring the “value-based” rules on board. Apart from the ATL with the EFTA States, similar “non-process-based” rules may also be adopted in ATLs that Hong Kong would possibly sign with other economies in future.

10. If the Ordinance is not amended, Hong Kong traders marking or describing goods for export under ATLs as having a Hong Kong origin pursuant to the “value-based” rules may contravene the Ordinance if the goods do not satisfy the existing “process-based” rules in the legislation.

Key Proposals in the Bill

11. There are two key provisions in the Bill. They –

- (a) provide for the **“value-based” concept** on top of the existing “process-based” concept, and allow flexibility to accommodate possible future changes or refinements (paragraphs 12 to 14 below); and
- (b) provide traders with a link to details of the rules of origin under individual ATLs by means of a Schedule specifying the relevant ATLs (paragraphs 15 and 16 below).

(A) “Value-based” Concept

12. The “value-based” concept may be presented in different ways and evolve over time. At the moment, the concept is in general expressed in ATLs by way of either -

- (a) a formula that puts a cap on the value attributable to places other than those to which an ATL applies, against the total value of the goods. Our ATL with the EFTA States adopts this approach⁷; or

⁶ In this case, the “last substantial transformation” process is assembly, i.e. sewing of woven cut-pieces/component parts into garment.

⁷ For the ATL with the EFTA States, most of the goods would be considered as having “originated” from Hong Kong (or the EFTA States as the case may be) if the value of the materials procured from places other than Hong Kong and the EFTA States accounts for no more than 60% of the manufacturer’s selling price of the goods.

- (b) a formula that gives a floor to the value attributable to the relevant places to which an ATL applies, against the total value of the goods. Under such a formula, the aggregate enhancement in value of the goods attributable to the relevant places to which an ATL applies, as a proportion of the total value of the goods, should meet a minimum threshold stipulated for the goods concerned in the ATLs. This is used in some ATLs elsewhere and may be used in ATLs that Hong Kong would possibly sign in future.

We propose incorporating both into the Bill.

13. Individual ATLs may provide for different rules of origin which may include the “process-based” concept, “value-based” concept, or a combination of both. Different goods within the same ATL may also be subject to different sets of rules of origin. The Bill provides room to allow such flexibility.

14. Variations to the above mainstream rules under either concept in ATLs could not be ruled out. For example, it is possible that a process other than the last one that substantially transforms the materials used would qualify the finished product for preferential tariff treatment. Also, a new “value-based” formula other than the two mentioned in paragraph 12 above may appear in future. We suggest taking a forward-looking approach in the Bill to allow for such possible variations in future.

(B) Reference to ATLs

15. Traders will make reference to individual ATLs for details relating to rules of origin to establish the eligibility of their goods for preferential tariff treatment. Such details may include the following -

- (a) definitions and interpretation of terms used;
- (b) the different rules that may apply to different types of goods, including the qualifying step(s) under the “process-based” concept, as well as the calculation formula(e) and exact percentage threshold(s) under the “value-based” concept; and
- (c) other requirements that may affect the fulfillment of the qualifying rules, such as the added safeguards that become applicable if the goods are transhipped through a third place before importing into an ATL economy.

16. For certainty and transparency, the Bill provides that the Trade and Industry Department (“TID”) will allow public access to the full text of the prevailing individual ATLS. In fact, TID has been providing such information through its official website. As before, TID will issue trade circulars to provide traders with details of the relevant provisions as well as guidelines on how to satisfy the preferential tariff requirements. TID will also provide a hotline for handling specific enquiries or questions from traders. Briefings may be organised as necessary. TID will make similar arrangements if there are substantive amendments to the provisions relating to rules of origin in the ATLS in future.

Law Enforcement

17. The exact detailed arrangements for Hong Kong exporters to claim tariff concessions would depend on individual ATLS. In the case of the ATL with the EFTA States, exporters are required to complete a self declaration of origin. No certificates of origin are required. In enforcing the provisions in the Bill, C&ED would, in line with the present arrangements for the other ATLS, assist in carrying out verification of the origin declarations upon request by the customs authorities of the EFTA States, and may make investigation on receipt of specific information on suspected offences. C&ED may request the production of documents to demonstrate that the exporting goods fulfill the rules of origin under the ATL with the EFTA States. The documents required are no more than those usually kept by the business sector in a normal business environment⁸.

OTHER OPTIONS

18. Other than introducing amendments to the Ordinance, there is no alternative that allows Hong Kong traders to benefit from the alternative rules of origin with certainty and ease.

THE BILL

19. The main provisions of the Bill are as follows -

- (a) **Clause 4** adds a new section 2A, which contains provisions on rules of origin (covering both the “process-based” and “value-based” concepts) for goods qualified for preferential tariff treatment under the relevant ATLS (which can be bilateral, regional and multilateral ATLS). Possible deviations or refinements are allowed for under section 2A(2)(c) and (d); and

⁸ The documents include production records, workers’ wages records, and invoices of materials used in manufacturing the products.

- (b) **Clause 8** adds a new Schedule 1 to specify the relevant regional or international ATLS⁹. The Schedule may be amended by the Secretary for Commerce and Economic Development as necessary by notice published in the Gazette.

20. The opportunity has also been taken to amend the Chinese text of the existing section 2(2) of the Ordinance to align with that of the new section 2A (clauses 3(2) and 3(3) refer).

LEGISLATIVE TIMETABLE

21. The legislative timetable is as follows –

Publication in the Gazette	24 February 2012
First Reading and commencement of Second Reading debate	29 February 2012
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

B 22. The proposed legislative amendments have economic and sustainability implications as set out in Annex B. Enforcement of the amendments will not require additional financial and manpower resources. It has no environmental and productivity implications. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

23. We have consulted the major industry associations representing the producers and traders of our major exports to the EFTA States and elsewhere¹⁰. They fully support the proposed legislative amendments which would provide added flexibility for them to tap the business opportunities offered by ATLS. They hope to see the enactment of the amendments as soon as possible so that they could reap the benefits offered by the ATL with the EFTA States early. We have also kept the major chambers of commerce informed of the legislative proposal.

⁹ The present schedule in the Bill has not only set out our overall ATL with the four EFTA States, but also the bilateral agricultural agreements that we signed with individual EFTA States at the same time. The latter agreements were separately signed because of EFTA States' diverse interests and sensitivities in the agricultural sector. Our agricultural agreement with Switzerland also covers products of Liechtenstein.

¹⁰ The manufacturing sectors consulted include jewellery, watches and clocks, textiles, electronic and electrical as well as plastic products.

24. When consulted on 19 July 2011, the LegCo's Panel on Commerce and Industry supported the legislative amendments. They urged the Government to strive to enter into more ATIs to provide better business opportunities for our industry. This is in line with the Administration's policy to pursue more ATIs with our trading partners. The Panel also suggested that more detailed information on "value-based" rules of origin be provided to help the industry familiarise themselves with the new concept. As indicated in paragraph 16 above, TID will make suitable arrangements accordingly.

PUBLICITY

25. We will issue a press release. A spokesman will also be available to answer enquiries.

ENQUIRIES

26. Any enquiries on this Brief may be addressed to Mr Edward Yu, Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) at telephone number 2810 2903.

Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
22 February 2012

A BILL

To

Amend the Trade Descriptions Ordinance to broaden the rules for determining the place of manufacture or production of goods to cater for goods qualified for preferential tariff treatment under regional or international trade agreements or arrangements, and to make minor textual amendments.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Trade Descriptions (Amendment) Ordinance 2012.

2. Trade Descriptions Ordinance amended

The Trade Descriptions Ordinance (Cap. 362) is amended as set out in sections 3 to 8.

3. Section 2 amended (interpretation)

(1) Section 2(1)—

Add in alphabetical order

“*Secretary* (局長) means the Secretary for Commerce and Economic Development;”.

(2) Section 2(2), Chinese text—

Repeal paragraph (a)

Substitute

“(a) 就本條例而言 —

(i) 貨品如在某地方經過最後處理或加工，而該項處理或加工對該貨品製造中使用的基本物料的

形狀、性質、結構或效用，產生永久和重大的改變，則須當作在該地方製造；或

(ii) 貨品如整個生長或開採過程在某地方，則須當作在該地方生產。”。

(3) Section 2(2)(b)(i), Chinese text—

Repeal

“該等貨品製造時所使用的基本物料在形狀、性質、結構及效用上出現永久與重大的改變”

Substitute

“該貨品製造中使用的基本物料在形狀、性質、結構及效用上產生永久與重大的改變”。

(4) After section 2(2A)—

Add

“(2B) Subsections (2) and (2A) do not apply to specified goods, as defined in section 2A(1), that are covered by section 2A(3).”.

4. Section 2A added

After section 2—

Add

“2A. Special provisions for place of manufacture or production under certain trade agreements or arrangements

(1) In this section—

date of entry into force (生效日期), in relation to a trading partner place under a scheduled trade arrangement, means the date specified in column 4 of Schedule 1 corresponding to the place and the arrangement;

scheduled trade arrangement (表列貿易安排) means a regional or international trade agreement or arrangement specified in column 2 of Schedule 1;

specified goods (指明貨品), in relation to a trading partner place under a scheduled trade arrangement, means any goods that are—

- (a) qualified for preferential tariff treatment, as between the place and Hong Kong, under the arrangement; and
- (b) subject to rules, specified in the arrangement, for determining the place of manufacture or production of the goods;

trading partner place (貿易夥伴地), in relation to a scheduled trade arrangement, means a place to which the arrangement is applicable, other than Hong Kong, specified in column 3 of Schedule 1 corresponding to the arrangement.

(2) The rules referred to in paragraph (b) of the definition of *specified goods* in subsection (1) (*rules of origin*) may be—

- (a) rules based principally on—
 - (i) the place in which the goods 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; or
 - (ii) the place in which the goods were wholly grown or mined;
- (b) rules based principally on—
 - (i) a maximum percentage of the value of the goods attributable to places other than Hong Kong or a trading partner place under the relevant scheduled trade arrangement; or
 - (ii) a minimum percentage of the value of the goods attributable to Hong Kong or a trading

partner place under the relevant scheduled trade arrangement;

- (c) rules of a kind described in paragraph (a)(i) or (ii) or (b)(i) or (ii) or any combination, with or without modifications; or
 - (d) any other rules.
- (3) In relation to a trading partner place under a scheduled trade arrangement for the time being in force as between the place and Hong Kong, if, on or after the relevant date of entry into force, any specified goods are—
- (a) exported or intended to be exported to the place in accordance with the arrangement; or
 - (b) imported from the place in accordance with the arrangement,

then the rules of origin for the goods, specified in the arrangement for the time being in force as between the place and Hong Kong, apply for the purpose of determining the place of manufacture or production of the goods under this Ordinance.

- (4) The Secretary may by notice published in the Gazette amend Schedule 1.
- (5) The Director-General of Trade and Industry is to make available at his or her office all scheduled trade arrangements for inspection, free of charge, by the public during normal office hours.”.

5. Section 3 amended (special provisions applicable to goldware)

(1) Section 3(1), English text—

Repeal

“extend”

Substitute

“extent”.

(2) Section 3(2)(a)—

Repeal

“Schedule 1”

Substitute

“Schedule 1A”.

6. **Section 13B amended (if price does not include basic accessories, purchaser to be informed before payment)**

Section 13B(4)—

Repeal

“for Commerce and Economic Development”.

7. **Schedule 1 renumbered (table)**

Schedule 1—

Renumber the Schedule as Schedule 1A.

8. **Schedule 1 added**

Before Schedule 1A—

Add

“Schedule 1

[s. 2A]

Scheduled Trade Arrangements

Column 1	Column 2	Column 3	Column 4
Item	Trade arrangement	Trading partner place	Date of entry into force
1.	Free Trade Agreement between the EFTA States and Hong Kong, China signed on 21 June 2011	Iceland Principality of Liechtenstein Kingdom of Norway Swiss Confederation	A date in accordance with Article 11.8 of the Agreement A date in accordance with Article 11.8 of the Agreement A date in accordance with Article 11.8 of the Agreement A date in accordance with Article 11.8 of the Agreement
2.	Agreement on Agriculture between Hong Kong, China and Iceland signed	Iceland	A date in accordance with Article 9 of the Agreement

Column 1	Column 2	Column 3	Column 4
Item	Trade arrangement	Trading partner place	Date of entry into force
	on 21 June 2011		
3.	Agreement on Agriculture between Hong Kong, China and the Kingdom of Norway signed on 21 June 2011	Kingdom of Norway	A date in accordance with Article 9 of the Agreement
4.	Agreement on Agriculture between Hong Kong, China and the Swiss Confederation signed on 21 June 2011	Swiss Confederation Principality of Liechtenstein	A date in accordance with Article 9 of the Agreement A date in accordance with Article 9 of the Agreement”.

Explanatory Memorandum

The object of this Bill is to amend the Trade Descriptions Ordinance (Cap. 362) (*principal Ordinance*) to broaden the rules for determining the place of manufacture or production of goods to cater for goods qualified for preferential tariff treatment under regional or international trade agreements or arrangements.

2. Clause 1 sets out the short title.
3. Clause 3 amends section 2 of the principal Ordinance to add a new definition of *Secretary* and to add a new subsection (2B) to provide that certain goods are subject to different rules of origin. It also improves the Chinese text of section 2(2) of the principal Ordinance.
4. Clause 4 adds a new section 2A to the principal Ordinance, which contains special provisions on rules of origin in relation to goods qualified for preferential tariff treatment under regional or international trade agreements or arrangements.
5. Clauses 5 and 6 make minor amendments to sections 3 and 13B of the principal Ordinance.
6. Clause 7 renumbers the existing Schedule 1 to the principal Ordinance and clause 8 adds a new Schedule 1 to specify the relevant regional or international trade agreements or arrangements. The new Schedule 1 may be amended by the Secretary for Commerce and Economic Development by notice published in the Gazette.

ECONOMIC IMPLICATIONS

The proposed legislative amendments provide added flexibility for Hong Kong traders to tap the business opportunities offered by the tariff concessions under ATLS as more goods may be benefited. The “value-based” rules may also facilitate the development of the related service sectors in Hong Kong, such as product design, testing and certification, and various professional, business and logistics services. These are conducive to the development of higher value-added activities in Hong Kong, and strengthening of Hong Kong’s role as an international trade centre and business hub.

SUSTAINABILITY IMPLICATIONS

2. The proposed legislative amendments would to some extent help support the development of the industrial sector. Products that undergo in Hong Kong processes that add high value, relative to the cost of the materials used for producing the goods, would more likely benefit from the “value-based” rules. This is in line with the long term development of Hong Kong’s competitive edges in the relevant areas. The proposed addition of the “value-based” rules in the Ordinance aligns our regulatory framework with the emerging practice adopted by other economies (such as the EFTA States). This enables our traders to take advantage of the growing business opportunities so created, and help to sustain the economic development of Hong Kong.