

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance
(Chapter 60)

Import and Export (General)(Amendment) Regulation 2013

INTRODUCTION

At the meeting of the Executive Council on 22 February 2013, the Council ADVISED and the Chief Executive ORDERED that the Import and Export (General) (Amendment) Regulation 2013 (the Amendment Regulation), at Annex A, should be made.

A

JUSTIFICATIONS

2. Hong Kong relies on the importation of powdered formula for infants and young children under 36 months (powdered formula) to meet all local demands. The total amount of such import was largely steady at the level of 15 million kg per annum from 2006 to 2008. Since then, demand has shot up, with the amount of import reaching 40 million kg in 2012 (up to November) representing a 190% increase. During the same period, the amount of re-export was about 2 million kg per annum, and the growth in the number of births in Hong Kong was only about 17%. On the basis of these figures, we believe that, over the past years, a large amount of powdered formula has been consistently diverted through parallel trading activities to satisfy the demand of Mainland parents. Local retailers also reported heavy sales of such products to visitors from the Mainland.

3. The Government has been promoting the merits of breastfeeding in order to encourage its adoption by parents. Where breastfeeding is not

feasible, powdered formula is the only processed foodstuff which wholly fulfils the nutritional requirements of infants during the first months of life until the introduction of complementary feeding¹. For young children above 6 months of age, we understand that some parents may still rely heavily on powdered formula as the diet for their children under the age of 36 months. To protect the health of infants and young children under the age of 36 months, it is necessary to ensure a safe and stable supply of powdered formula.

4. We have been closely monitoring the supply of powdered formula in the local market. Recently, even though major suppliers of powdered formula have enhanced their services, emphasised that they had sufficient stock in hand, and had put in place stringent measures to combat the malpractices of some retailers², many local parents still complained that individual brands of powdered formula were still out of stock at the retail level and that the hotlines of certain suppliers set up to enable local parents to order powdered formula were not responding properly.

5. It is clear that the recent supply chain failure in relation to powdered formula is closely related to parallel trading activities. The huge demand of parallel traders often leads to serious shortage of certain brands of powdered formula at certain retail outlets.

6. The Government announced a series of measures to combat parallel trading activities on 1 February. The Customs and Excise Department (C&ED) and their Shenzhen counterparts have stepped up enforcement efforts by launching a joint operation against parallel trading of daily commodities with emphasis on powdered formula. In addition, the MTR Corporation Limited has implemented new measures to reduce the nuisance caused to passengers by parallel traders. In addition, the Government has been urging powdered formula suppliers to increase their supply and improved their supply chain management to enable local parents to procure powdered formula. A special hotline has been set up by the Government as from 1 February 2013 to help relieve the pressure on the hotline of seven major brands of powdered formula. These measures have helped stabilise the supply of powdered formula in Hong Kong shortly before the Chinese New Year.

¹ Complementary feeding is normally introduced at 6 months of age.

² In January 2013, major suppliers of powdered formula issued 77 warnings to these retailers and restricted supply to 27 retailers. Besides, supply to 11 retailers has been suspended.

THE PROPOSAL

7. The problem of parallel traders diverting large quantities of powdered formula away from the supply chain in Hong Kong is likely to re-emerge at least in the short to medium term. To combat this problem, we consider it necessary to regulate the export of powdered formula from Hong Kong. We propose to amend the Import and Export (General) Regulations (Cap. 60, sub. leg. A) (the Regulations) to prohibit the export of powdered formula from Hong Kong except with a licence issued by the Director-General of Trade and Industry (DGTI).

Export licensing system

8. We propose to amend the Regulations by including powdered formula³ as an item of specified articles in the second column of Schedule 2 so that an export licence must be obtained from DGTI issued under section 3 of the Import and Export Ordinance (Cap. 60) (the Ordinance) to export such articles (unless otherwise provided in the legislation).

Eligibility for obtaining export licences

9. We propose to issue export licences to facilitate legitimate trading activities. Hong Kong does not produce powdered formula. All demands for powdered formula are met by imports.

10. Since all Hong Kong food importers, including importers of “infant/follow-up/growing-up formula (for babies up to 36 months)”, must register with the Director of Food and Environmental Hygiene in accordance with the Food Safety Ordinance (Cap. 612), we propose that the Trade and Industry Department (TID) should in general issue export licences only to importers of “infant/follow-up/growing-up formula (for babies up to 36 months)” who have registered⁴ under the Food Safety

³ Section 3 of the Amendment Regulation defines powdered formula as “*powdered formula* (配方粉) means a substance in powder form that —

(a) is or appears to be for consumption by a person aged under 36 months; and

(b) is or appears to be milk or milk-like substance in powder form to satisfy wholly or partly the nutritional requirement of a person aged under 36 months;”.

⁴ At present, there are about 460 importers of “Infant/follow-up/growing-up formula (for babies up to 36 months)” on the register.

Ordinance or those importers of “infant/follow-up/growing-up formula (for babies up to 36 months)” exempted under section 4(3)(a)⁵ of the Food Safety Ordinance from the registration requirement under Part 2 of the Food Safety Ordinance. We believe that these are importers who should be eligible for obtaining export licences under our proposal.

11. TID would require applicants to submit import documents to prove that the batch of powdered formula concerned is directly imported from other places. Since the existing Food Safety Ordinance has stipulated that a person who imports food in the course of business must keep record of acquisition of imported food⁶, the requirement to submit import documents would not impose an additional burden on importers.

Exemption arrangements

Transit/Transshipment Cargo

12. Carrier, courier or freight forwarder do not need to obtain an export licence in respect of a consignment of powdered formula in transit⁷ or as air transshipment cargo⁸, provided that the consignment of powdered formula satisfies the relevant provisions set out in the Import and Export Ordinance (please refer to footnote 7 and 8).

⁵ These are persons who have already registered or have obtained a licence under other Ordinances, for example, food business licence holders under the Food Business Regulation (Cap.132X). As the Government already possesses their information, they have been exempted from the registration requirement as a trade facilitation measure.

⁶ According to section 22(1) of the Food Safety Ordinance (Cap. 612), “A person who, in the course of business, imports food must record the following information about the acquisition of the food –

- (a) the date the food was acquired;
- (b) the name and contact details of the person from whom the food was acquired;
- (c) the place from where the food was imported;
- (d) the total quantity of the food;
- (e) a description of the food.

⁷ Under the Import and Export Ordinance (Cap. 60), an article in transit means an article which is brought into Hong Kong solely for the purpose of taking it out of Hong Kong and remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong.

⁸ Under the Import and Export Ordinance (Cap. 60), air transshipment cargo means an article that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transshipment area of the Hong Kong International Airport.

13. Currently, shipping companies, airlines and freight forwarders registered under the Transshipment Cargo Exemption Scheme⁹ of TID are, subject to certain conditions, exempted from the import and export licensing requirements under the Ordinance in respect of certain types of transshipment cargo¹⁰. This is a trade facilitation measure. We propose that such exemption arrangements be applicable to the present exercise.

Personal Use

14. Having regard to the need of those leaving Hong Kong for powdered formula for personal use, our proposal is that not more than a total net weight of 1.8 kg of powdered formula may be carried by each person aged 16¹¹ or above. According to our market research, the maximum net weight of a can of powdered formula is 0.9 kg. With an allowance of 1.8 kg, this means that each person may bring two cans. For an infant under 6 months who has to rely on powdered formula as the sole source of food, two cans would normally be sufficient for two weeks. We consider the allowance of 1.8 kg reasonable. The purpose of inserting the age limit is to prevent children from being used to carry such powdered formula in parallel trading activities.

15. In relation to the 1.8 kg exemption arrangements, it will be necessary to introduce further measures to prevent parallel traders from abusing such exemption by making multiple journeys to Hong Kong within the same day. We propose that the exemption should only be applicable to a person on his/her first departure from Hong Kong within a 24-hour period.

16. We are mindful that the 24-hour period restriction may cause inconvenience in some exceptional cases. For example, a person leaving Hong Kong may have left Hong Kong one or more times in the last 24 hours

⁹ The Transshipment Cargo Exemption Scheme was introduced pursuant to Regulation 6(1)(b) and Regulation 6(2) of Import and Export (General) Regulations (Cap. 60A).

¹⁰ Under the Import and Export Ordinance, transshipment cargo means any imported article that:

- a. is consigned on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong; and
- b. is or is to be removed from the vessel, aircraft or vehicle in which it was imported and either returned to the same vessel, aircraft or vehicle or transferred to another vessel, aircraft or vehicle before being exported, whether it is or is to be transferred directly between such vessels, aircraft or vehicles or whether it is to be landed in Hong Kong after its importation and stored, pending exportation.

¹¹ In Hong Kong, the minimum age for getting married is 16.

and is travelling with him / her an infant or young child under 36 months who may require the consumption of powdered formula amidst the cross-border travelling.

17. We therefore suggest to provide an exception to allow a person (aged 16 or above) leaving Hong Kong, who left Hong Kong one or more times in the last 24 hours, to carry powdered formula, provided that (i) he / she travels with an infant or young child aged under 36 months; (ii) the powdered formula is in an unsealed container; and (iii) the quantity does not exceed a reasonable quantity for consumption by the infant or child during the travelling time from the Hong Kong point of exit to the next point of entry in a place outside Hong Kong.

Penalties

18. Section 6D(1) of the Ordinance provides that no person shall export any article specified in the second column of Schedule 2 to the Regulations to the country or place specified opposite thereto in the third column of that Schedule except under and in accordance with an export licence issued under section 3 of the Ordinance. Any person who contravenes section 6D(1) of the Ordinance in respect of any articles specified in the second column of Part 1 of that Schedule shall be guilty of an offence and shall be liable on conviction to a fine of \$500,000 and to imprisonment for two years.

19. Section 10 of the Ordinance provides that the owner of a vessel, aircraft or vehicle shall not accept any prohibited article for export on the vessel, aircraft or vehicle unless an export licence has been issued in respect of the articles. Any person who contravenes this provision shall be guilty of an offence and shall be liable on conviction to a fine of \$500,000 and to imprisonment for one year. It shall be a defence if the defendant proves that the defendant did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article.

Implementation

20. The Amendment Regulation will commence on 1 March 2013. With the gazettal of the Amendment Regulation on 22 February 2013, it will provide the legal basis for TID to start processing applications for export licence from traders on the same day and have the first batch of licences issued on 1 March 2013.

21. On enforcement, C&ED will adopt a multi-pronged approach by stepping up actions at boundary control points and enhancing intelligence collection, while at the same time continue to maintain close communication with customs authorities in the Mainland and conduct joint operations as necessary. At land, rail and ferry control points, C&ED will need to substantially strengthen its export inspection regime and adopt a risk-based approach in examining passengers and goods.

22. There will be publicity including television and radio Announcement in the Public Interest on what conduct will attract criminal liability under the Amendment Regulation. C&ED will also take appropriate measures to draw the attention of travellers to the consequences of a contravention by posting sufficient notices about the offence at boundary control points. Likewise, TID will take similar measures in relation to traders and carriers.

OTHER OPTIONS

23. We have examined the option of listing powdered formula as a reserved commodity under the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations. (Cap. 296A), and are of the view that the Import and Export (General) Regulations are more suitable for our purpose. Existing control scheme under Cap. 296A imposes control not only on export but also on import as well as the level of stock to be maintained by stockholders of the concerned goods. The main problem we face is that the imported powdered formula has been diverted away from Hong Kong in large quantities through parallel trading activities, causing a short supply of individual brands of powdered formula for local consumption. As it is not necessary at this stage to control import and the stock level, the proposed amendments to the Import and Export (General) Regulations are more appropriate to achieve our policy objective.

THE AMENDMENT REGULATION

24. The Amendment Regulation seeks to amend the Regulations to prohibit the export of powdered formula to all places outside Hong Kong, except under an export licence or an exemption. Section 3 adds a definition of “powdered formula” and section 5 adds powdered formula to Part 1 of the Schedule of articles prohibited from export. Section 4 adds provisions for the exceptions described in paragraphs 14 to 17.

LEGISLATIVE TIMETABLE

25. The legislative timetable is as follows -
- | | |
|--|------------------|
| Extraordinary Gazettal | 22 February 2013 |
| Tabling at Legislative Council
for negative vetting | 27 February 2013 |
| Commencement of the Amendment
Regulation | 1 March 2013 |

IMPLICATIONS OF THE PROPOSAL

B

26. The proposal has economic, financial, civil service and World Trade Organisation implications as set out in Annex B. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Amendment Regulation does not affect the current binding effect of the Ordinance. It has no productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

27. We conducted a public consultation from 7 February 2013 till 18 February 2013. We held a trade consultation session on 7 February 2013. The public supports the proposal in general but some retailers argued that the proposal would not be consistent with the free market principle.

28. At the close of the public consultation period, we have received a total of 50 submissions with 35 from individuals and 15 from organisations. About half of the submissions from individuals are supportive of the legislative proposal. Some individuals as well as parents with children living in the Mainland object to the proposal. As regards submissions from organisations, the Hong Kong General Chamber of Pharmacy Limited (港九藥房總商會) proposes to postpone the enactment of the Amendment Regulation. The Hong Kong Retail Management Association expresses reservation on the proposal on the grounds that it is not consistent with the free trade policy. Two major powdered formula suppliers object to the proposal while another expresses reservation. The Consumer Council supports the proposal as it will stabilise the supply of powdered formula.

PUBLICITY

29. A press release will be published and a spokesperson will be made available to answer any press enquiries.

ENQUIRIES

30. Any enquiries on this brief may be addressed to Mr Jeff Leung, Principal Assistant Secretary for Food & Health (Food)1 at 3509 8925.

Food and Health Bureau
22 February 2013

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance
(Chapter 60)

Import and Export (General)(Amendment) Regulation 2013

- Annex A - Import and Export (General)(Amendment) Regulation 2013
- Annex B - Implications of the Proposal
- Annex C - List of Abbreviations

Import and Export (General) (Amendment) Regulation 2013

(Made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60))

1. Commencement

This Regulation comes into operation on 1 March 2013.

2. Import and Export (General) Regulations amended

The Import and Export (General) Regulations (Cap. 60 sub. leg. A) are amended as set out in sections 3, 4 and 5.

3. Regulation 2 amended (interpretation)

Regulation 2—

Add in alphabetical order

“*powdered formula* (配方粉) means a substance in powder form that—

- (a) is or appears to be for consumption by a person aged under 36 months; and
- (b) is or appears to be milk or milk-like substance in powder form to satisfy wholly or partly the nutritional requirement of a person aged under 36 months;”.

4. Regulation 6 amended (application and exemption)

After regulation 6(1C)—

Add

“(1D) Section 6D(1) of the Ordinance does not apply to powdered formula (whether of the same composition

and whether in one or more containers) that is exported in the accompanied personal baggage of a person aged 16 or above leaving Hong Kong—

(a) if—

- (i) the person did not leave Hong Kong in the last 24 hours; and
- (ii) the formula does not exceed 1.8 kg in total net weight; or

(b) if—

- (i) the person left Hong Kong one or more times in the last 24 hours;
- (ii) the person is leaving Hong Kong together with a person aged under 36 months (*child*); and
- (iii) the formula is in an unsealed container and does not exceed a reasonable quantity for the child’s consumption during the travelling time from a point of exit in Hong Kong to the next point of entry in a place outside Hong Kong.”.

5. Schedule 2 amended

Schedule 2, Part 1, after item 8—

Add

“9.	Powdered formula.	All places outside Hong Kong.”.
-----	-------------------	---------------------------------

COUNCIL CHAMBER

2013

Clerk to the Executive Council

Explanatory Note

The object of this Regulation is to amend the Import and Export (General) Regulations (Cap. 60 sub. leg. A) to prohibit the export of powdered formula (as defined under a new definition) to all places outside Hong Kong, except under an export licence or an exemption.

2. The prohibition covers all substances in powder form that are or appear to be for consumption by a person aged under 36 months (*child*), and are or appear to be milk or milk-like substances in powder form to satisfy wholly or partly the nutritional requirement of a child (*powdered formula*).
3. To allow a reasonable quantity for personal use, the prohibition does not apply to powdered formula not exceeding 1.8 kg in total net weight that is exported in the accompanied personal baggage of a person leaving Hong Kong. However, the person must be aged 16 or above who did not in the last 24 hours leave Hong Kong.
4. In addition, provisions are made to cater for the need of children leaving Hong Kong together with a person aged 16 or above who left Hong Kong one or more times in the last 24 hours. The prohibition does not apply to powdered formula, not exceeding a reasonable quantity for the children's consumption during the travelling time from a point of exit in Hong Kong to the next point of entry in a place outside Hong Kong, that is exported in the accompanied personal baggage of such a person. However, the formula must be in an unsealed container.

Implications of the Proposal

Economic Implications

The proposal serves to meet a social need by helping to ensure that the local demand for powdered formula can be met. However, through limiting the amount of powdered formula which can be taken out of Hong Kong, it will have some impact on the business of individual wholesalers and small dispensaries and medicine/cosmetic shops with powdered formula as a key source of sales. Yet relative to the size of the total retail market in Hong Kong, the impact should not be significant in overall terms.

World Trade Organisation (WTO) Implications

2. According to the WTO General Agreement on Tariffs and Trade, Members shall not institute or maintain any prohibitions or restrictions, other than duties, taxes or other charges, on the export of any products. However, export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member is expressly allowed as an exception. Should other WTO Members challenge that the measure amounts to an export restriction forbidden by the WTO, we may invoke the exception provision. We will review the operation of the measure from time to time. We will also cover the WTO angle in the review to ensure on-going compliance with the WTO requirements.

Financial and Civil Service Implications

3. To implement the 24-hour restriction, C&ED officers at Customs control points would need to verify the number of times a departing passenger has left Hong Kong. The Immigration Department (ImmD) would need to enhance the existing computer system to develop an online enquiry function for C&ED officers to verify whether a departing passenger has left Hong Kong within the last 24 hours through designated computer workstations.

4. In order to strengthen its export inspection regime, C&ED will need to deploy additional staff at the nine land, rail and ferry control points.

Since the potential workload is evolving, the situation will be reviewed in due course.

5. C&ED and ImmD would absorb any additional financial and civil service resources incurred from the implementation of the proposed measures as far as possible and, if necessary, seek additional resources in accordance with the established mechanism.

6. On the issue of whether fees should be charged for processing applications under the proposed export licence system, the existing policy is that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the goods or services including licences issued under regulatory schemes. However, the proposed export licence system imposes a new requirement on exporters to apply for an export licence when exporting powdered formula. This would in fact impose an extra responsibility on the part of exporters to help the Administration achieve the policy objective of tackling parallel trading, thereby ensuring a stable supply of powdered formula in Hong Kong. It is neither a trade facilitation measure nor a measure to help Hong Kong or the trade to fulfil any international obligation. It is therefore considered not reasonable to charge application fees under the proposed export licence system.

7. In fact, there are cases where fees are not charged for processing licence applications. For example, TID administers the Rice Control Scheme pursuant to the authority conferred by the Reserved Commodities Ordinance (Cap. 296). Under the Rice Control Scheme, TID imposes an obligation on the registered rice stockholders to keep a certain level of reserved stock of rice at any time in order to ensure that Hong Kong has adequate supply of rice to meet the need of Hong Kong people. TID provides free services for registration as a rice stockholder, registration of a rice storage place, and processing application for rice import or export licences. The Reserved Commodities Ordinance does not empower TID to impose any fee for such services.

8. While it is difficult to assess the number of export licences for powdered formula to be processed and the level of fees to be charged, we expect that the volume would not be huge and the fees to be collected would be minimal. In any event, any additional workload arising from the new arrangements would be absorbed by TID within its existing resources.

9. Having regard to the policy objective of the proposed export licence system, the precedent quoted in paragraph 7 above, we propose that, except for recovering the cost of the forms, no fees be charged for processing applications under the proposed export licence system.

LIST OF ABBREVIATIONS

C&ED	-	Customs and Excise Department
DGTI	-	Director-General of Trade and Industry
ImmD	-	Immigration Department
Powdered formula	-	Powdered formula for infants and young children under 36 months
The Amendment Regulation	-	Import and Export (General) (Amendment) Regulation 2013
The Ordinance	-	Import and Export Ordinance (Cap. 60)
The Regulations	-	Import and Export (General) Regulations (Cap. 60, sub. leg. A)
TID	-	Trade and Industry Department
WTO	-	World Trade Organisation