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Panel on Economic Development
Meeting on 23 June 2014

Background brief on the draft guidelines for the operation of the relevant sections concerning phthalates control in Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation

Purpose

This paper provides information of the background and Members' views and concerns regarding the draft guidelines provided by the Administration for the industry's reference on the operation of the relevant sections concerning the control on phthalates in the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation.

Background

Toys and Children's Products Safety Ordinance (Cap. 424)

2. The Toys and Children's Products Safety Ordinance (Cap. 424) ("the Ordinance") provides for safety standards and requirements for children's toys and 12 classes of children's products. A person commits an offence if he manufactures, imports or supplies toys or children's products that do not comply with any of the safety standards and requirements provided in the Ordinance. The 12 classes of children's products are babies' dummies, baby walking frames, bottle teats, bunk beds for domestic use, carry cots and similar handled products and stands, child safety barriers for domestic use, children's cots for domestic use, children's high chairs and multi-purpose high chairs for domestic use, children's paints, children's safety harnesses, playpens for domestic use, and wheeled child conveyances, as well as their packaging.

Toys and Children's Products Safety (Amendment) Ordinance 2013

3. On 18 December 2013, the Legislative Council ("LegCo") passed the Toys and Children's Products Safety (Amendment) Ordinance 2013 ("the Amendment Ordinance") which seeks to –

- (a) expand the definition of "children's product" in the Ordinance to cover, in addition to the 12 classes of children's products, other products that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under four years of age and that contain any plasticized material; and
- (b) make other amendments to the Ordinance, in particular, to enable regulations to be made to control the concentration of six types of phthalates in certain toys and children's products.

4. The six types of phthalates are DEHP, DBP, BBP, DINP, DIDP and DNOP¹, which are chemicals commonly added to polyvinyl chloride products to improve their flexibility and durability. There are public concerns over the possible health hazards posed to children by phthalates that may be contained in plasticized materials in toys and children's products. According to the Administration, the main issue is over chronic exposure to these phthalates. As these phthalates in polyvinyl chloride products could leach out during periods of mouthing and migrate through saliva into the body, the Administration considers that from the precautionary perspective, children's exposure to sources of these phthalates, especially products which can be put into the mouth, should be avoided as far as possible. Advanced economies such as the European Union, the United States, Canada and Singapore have imposed concentration limits on these six types of phthalates in certain toys and children's products.

Toys and Children's Products Safety Regulation (Cap. 424B)

5. The Toys and Children's Products Safety Regulation (Cap. 424B) ("the Safety Regulation"), made under the Ordinance, requires identification information (on the name, trade or other identification mark and the address of the manufacturer, importer or supplier) to be legibly marked in a conspicuous position on a toy or children's product, its packaging, a label affixed to its packaging or a document enclosed in its packaging. The Safety Regulation also requires that, where a toy or children's product or its packaging is marked with, or where a label affixed to or a document enclosed in its packaging contains, any warning or caution with respect to its safe keeping, use, consumption or disposal, such warning or caution shall be legible and placed in a conspicuous position on

¹ DEHP means di(2-ethylhexyl) phthalate (also known as bis-(2-ethylhexyl) phthalate or diethylhexyl phthalate), DBP means dibutyl phthalate, BBP means benzyl butyl phthalate, DINP means diisononyl phthalate, DIDP means diisodecyl phthalate, and DNOP means di-n-octyl phthalate.

the toy or children's product, its packaging, a label affixed to its packaging or a document enclosed in its packaging.

Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation

6. To ensure that Hong Kong's regulatory regime is on par with those in advanced economies in protecting children from exposure to phthalates and prevent Hong Kong from becoming the dumping ground for non-compliant products, the Administration has proposed to impose similar controls on the concentration of the above six types of phthalates in certain toys and children's products, by way of making the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation ("the Additional Safety Requirements Regulation") under the Ordinance as amended by the Amendment Ordinance.

7. The Additional Safety Requirements Regulation is made by Secretary for Commerce and Economic Development under the new section 35 of the Ordinance to impose additional safety standards or requirements for toys and children's products (other than their packaging) in addition to the existing requirements under the Safety Regulation. The major provisions are summarized below –

- (a) sections 5 and 6 set out the requirements on, respectively, identification marking and warning or caution for toys. Sections 10 and 11 set out the requirements on, respectively, identification marking and warning or caution for children's products. In addition to the requirements as provided under the Safety Regulation, these provisions permit the identification marking and warning or caution to be put on a label affixed to a toy or children's product; and
- (b) sections 7 and 13 specify the control on the concentration of Class 1 phthalates (which cover BBP, DBP or DEHP) in, respectively, toys and children's products. Sections 8 and 14 specify the control on the concentration of Class 2 phthalates (which cover DIDP, DINP or DNOP) in, respectively, toys and children's products capable of being entirely placed into mouth of child under four years of age. Sections 9 and 15 specify the control on the concentration of Class 2 phthalates in toys and children's products, respectively, capable of being partly placed into mouth of child under four years of age.

8. The Additional Safety Requirements Regulation will into operation on 1 July 2014.

Relevant views and concerns of Members

9. In examining the Toys and Children's Products Safety (Amendment) Bill 2013, the Bills Committee noted the Administration's intention to make subsidiary legislation on the control of phthalate control following the enactment of the Bill. Some members have expressed the view that the Administration should consult the trade, particularly the small and medium enterprises of the toy manufacturing sector, and take into account their views in proposing the implementation date of the proposed phthalate control. The Administration agreed to take on board members' views.

10. During the deliberation of the Subcommittee formed to study the Additional Safety Requirements Regulation, members requested that guidelines should be drawn up to provide technical guidance on the operation of the Additional Safety Requirements Regulation for the trade's reference. The Administration agreed with the Subcommittee's request. The aspects to be covered by the guidelines may include the scope of application of the Additional Safety Requirements Regulation, illustrative examples showing how a toy or children's product would be considered as "can be placed into the mouth", testing methods available, and how testing certificates produced by the trade would be handled, etc. The Subcommittee has requested the Administration to brief the Panel on Economic Development on the draft guidelines after they have been drawn up.

Latest development

11. The Administration will brief the Panel on the draft guidelines for the operation of the relevant sections concerning the control on phthalates in the Additional Safety Requirements Regulation at the meeting on 23 June 2014.

Relevant papers

12. The links to the relevant papers are as follows –

Legislative Council Brief for Toys and Children's Products Safety (Amendment) Bill 2013

http://www.legco.gov.hk/yr12-13/english/bills/brief/b23_brf.pdf

Report of the Bills Committee on Toys and Children's Products Safety (Amendment) Bill 2013

<http://www.legco.gov.hk/yr12-13/english/bc/bc56/reports/bc561218cb2-507-e.pdf>

Legislative Council Brief for Toys and Children's Products Safety (Amendment) Ordinance 2013 (Commencement) Notice, Toys and Children's Products Safety Regulation (Repeal) Regulation and Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation

http://www.legco.gov.hk/yr13-14/english/subleg/brief/17-19_brf.pdf

Report of the Subcommittee on Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation, Toys and Children's Products Safety Regulation (Repeal) Regulation and Toys and Children's Products Safety (Amendment) Ordinance 2013 (Commencement) Notice

<http://www.legco.gov.hk/yr13-14/english/hc/papers/hc0328cb2-1208-e.pdf>

Legal Service Division Report on Subsidiary Legislation Gazetted on 14 February 2014

<http://www.legco.gov.hk/yr13-14/english/hc/papers/hc0221ls-26-e.pdf>

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