

LEGISLATIVE COUNCIL BRIEF

Trade Descriptions Ordinance
(Chapter 362)

**Trade Descriptions Ordinance (Amendment of Schedule 1) (No. 2)
Notice 2018**

**Trade Descriptions (Place of Origin) (Watches) (Amendment) Order
2018**

**Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments)
(Amendment) Order 2018**

**Trade Descriptions (Place of Manufacture) (Textile Made-up Articles)
(Amendment) Order 2018**

INTRODUCTION

The Secretary for Commerce and Economic Development (“SCED”) and the Commissioner of Customs and Excise (“C,C&E”) have respectively made an Amendment Notice (Annex A) and three Amendment Orders (Annexes B to D) under sections 2A(4) and 2(2)(b)(ii) of the Trade Descriptions Ordinance (“TDO”) (Cap. 362) to update the list of scheduled trade arrangements in Schedule 1 to the TDO by adding inter-alia the recently signed Hong Kong, China – Georgia Free Trade Agreement (“HKC-Georgia FTA”); and to align the arrangements through which the origin marking needs under different free trade agreements or arrangements (“FTAs”) are stipulated in the TDO.

Annex A

Annexes B to D

BACKGROUND AND JUSTIFICATIONS

2. The TDO regulates, amongst other things, the trade descriptions of goods including the place of manufacture or production of the goods. Section 2(2)(a) of the TDO stipulates that, for the purposes of the Ordinance, goods shall be deemed to have been manufactured in the place 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 (commonly known as the

“last substantial transformation” principle); or produced in the place in which they were wholly grown or mined.

3. Notwithstanding the general principle in section 2(2)(a), the TDO was amended in 2012¹ to add a new schedule (“Schedule 1”) to specify the regional or international trade agreements or arrangements entered into between Hong Kong and its trading partners (“scheduled trade arrangements”). According to section 2A(3) of the TDO, the rules of origin set out in the scheduled trade arrangements apply to the specified goods covered by such trade arrangements for the purpose of determining the place of manufacture or production of the goods. Pursuant to section 2(2B) of the TDO, the provisions under section 2(2)(a) will not apply to the specified goods that are covered by section 2A(3).

To update the list of scheduled trade arrangements in Schedule 1 to the TDO

4. Under the HKC-Georgia FTA signed on 28 June 2018, a set of preferential rules of origin has been formulated under which preferential tariff treatment is accorded to goods of Hong Kong origin. As foreshadowed in the Legislative Council Brief dated 28 June 2018, to enable Hong Kong traders to apply the preferential rules of origin specified under the FTA, SCED will add the HKC-Georgia FTA to Schedule 1 to the TDO by notice published in Gazette.

5. Taking this opportunity, we propose to update Schedule 1 by adding all other FTAs that we have signed but have yet to be incorporated therein. They are :

- (a) Mainland and Hong Kong Closer Economic Partnership Arrangement (“CEPA”);
- (b) Hong Kong, China – New Zealand Closer Economic Partnership Agreement (“HKC-NZ CEP”); and
- (c) Hong Kong Special Administrative Region and Macao Special Administrative Region Closer Economic Partnership Arrangement (“HK-Macao CEPA”).

¹ The Trade Descriptions (Amendment) Bill 2012 was passed by the Legislative Council on 29 March 2012 and came into force on 5 April 2012.

To align the arrangements through which the special origin marking needs under different FTAs are set out in the TDO

6. At present, for CEPA and HKC-NZ CEP, the origin rules therein are generally consistent with the “last substantial transformation” principle specified in section 2(2)(a) of the TDO. For items with origin rules different from the “last substantial transformation” principle, namely watches, piece-knitted garments and textile made-up articles, their special origin marking requirements are provided for under the Trade Descriptions (Place of Origin) (Watches) Order (Cap. 362D), Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Order (Cap. 362H) and Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) Order (Cap. 362I) made by C,C&E under section 2(2)(b)(ii) of the TDO².

7. As for the HK-Macao CEPA, it was agreed that the existing non-preferential origin rules of Hong Kong be used to establish the origin of Hong Kong products. The general principle in section 2(2)(a) of the TDO therefore applies for products of Hong Kong origin to be exported under the HK-Macao CEPA.

8. As a result of adding CEPA and HKC-NZ CEP to Schedule 1 to the TDO, the current provisions in the C,C&E’s Orders (viz. Cap. 362D, Cap. 362H and Cap. 362I) regarding the special origin marking requirements under these FTAs for watches, piece-knitted garments and textile made-up articles are no longer required and should be repealed accordingly.

9. After the addition of the FTAs set out in paragraphs 4 and 5 above, Schedule 1 would set out all the FTAs that Hong Kong has signed. In particular, in respect of the CEPA and HKC-NZ CEP, greater clarity will be provided as the trade and the public will then not have to make reference to the different Orders made under the TDO or its provisions to understand the special origin marking needs under such FTAs.

² Section 2(2)(b)(ii) of the TDO provides that C,C&E may by order specify the places in which the goods are to be regarded as having been manufactured or produced (for goods of which different parts were manufactured or produced in different places, or for goods of which their parts were manufactured or produced in a place different from where they are assembled) for the purposes of the TDO.

10. Textual amendments are also made to refine the presentation of the Chinese translation of the name of the FTA and side agreements³ signed with the EFTA States (Member States of the European Free Trade Association) as well as the FTA signed with Chile, i.e. items 1-5 of Schedule 1 to the TDO, so as to follow the latest law drafting practice.

THE NOTICE AND THE ORDERS

11. The **Trade Descriptions Ordinance (Amendment of Schedule 1) (No. 2) Notice 2018** adds CEPA, HKC-NZ CEP, HK-Macao CEPA and HKC-Georgia FTA to the list of scheduled trade arrangements in Schedule 1 to the TDO and makes textual amendments to the Chinese text of Schedule 1.

12. Three Amendment Orders namely, **Trade Descriptions (Place of Origin) (Watches) (Amendment) Order 2018**, **Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) (Amendment) Order 2018** and **Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) (Amendment) Order 2018** repeal the relevant sections of Cap. 362D, Cap. 362H and Cap. 362I respectively in the light of adding CEPA and HKC-NZ CEP to Schedule 1 to the TDO.

LEGISLATIVE TIMETABLE

13. The Amendment Notice and Amendment Orders will be gazetted on 5 October 2018 and will be tabled at the Legislative Council for negative vetting on 10 October 2018. They will come into force on 1 January 2019. The plan is to tie in with the implementation of HKC-Georgia FTA, which is expected to come into force in January 2019, subject to completion of the necessary procedures.

³ In addition to the FTA, bilateral side agreements on basic agricultural products were signed with individual EFTA States given their diverse interests.

IMPLICATIONS OF THE PROPOSAL

14. The making of the Amendment Notice and Amendment Orders is in conformity with the Basic Law, including the provisions concerning human rights. The Amendment Notice and Amendment Orders will not affect the binding effect of the TDO.

PUBLICITY

15. The Trade and Industry Department (TID) maintains a designated webpage on the FTAs of which full texts and published leaflets have been uploaded for public information and reference. Copies of the FTAs are also available in TID's office for inspection by the public. Information on application of the preferential rules of origin under the FTAs is also made available to the trade through trade circulars and our dedicated advisory service. For the HKC-Georgia FTA, detailed information on application of the preferential rules of origin will be published before the FTA enters into force.

ENQUIRIES

16. Any enquiry on this brief can be addressed to Ms Winnie Sheh, Principal Trade Officer of TID at 3403 6250 or Mr Y K Mak, Principal Trade Controls Officer of C&ED at 2398 5170.

Commerce and Economic Development Bureau
Trade and Industry Department
Customs and Excise Department
October 2018

**Trade Descriptions Ordinance (Amendment of Schedule 1) (No. 2)
Notice 2018**
**Trade Descriptions (Place of Origin) (Watches) (Amendment) Order
2018**
**Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments)
(Amendment) Order 2018**
**Trade Descriptions (Place of Manufacture) (Textile Made-up Articles)
(Amendment) Order 2018**

ANNEXES

- Annex A - Trade Descriptions Ordinance (Amendment of
Schedule 1) (No. 2) Notice 2018
- Annex B - Trade Descriptions (Place of Origin) (Watches)
(Amendment) Order 2018
- Annex C - Trade Descriptions (Place of Manufacture)
(Piece-Knitted Garments) (Amendment) Order 2018
- Annex D - Trade Descriptions (Place of Manufacture) (Textile
Made-up Articles) (Amendment) Order 2018

Trade Descriptions Ordinance (Amendment of Schedule 1) (No. 2) Notice 2018

(Made by the Secretary for Commerce and Economic Development under section 2A(4) of the Trade Descriptions Ordinance (Cap. 362))

1. Commencement

This Notice comes into operation on 1 January 2019.

2. Trade Descriptions Ordinance amended

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

3. Schedule 1 amended (scheduled trade arrangements)

(1) Schedule 1, Chinese text, item 1, column 2—

Repeal

“《中國香港與歐洲自由貿易聯盟國家於 2011 年 6 月 21 日簽訂的自由貿易協定》”

Substitute

“於 2011 年 6 月 21 日簽訂的《歐洲自由貿易聯盟國家與中國香港的自由貿易協定》(此為“Free Trade Agreement between the EFTA States and Hong Kong, China”的譯名。)”

(2) Schedule 1, Chinese text, item 2, column 2—

Repeal

“《中國香港與冰島於 2011 年 6 月 21 日簽訂的農業協定》”

Substitute

“於 2011 年 6 月 21 日簽訂的《中國香港與冰島的農業協定》(此為“Agreement on Agriculture between Hong Kong, China and Iceland”的譯名。)”

(3) Schedule 1, Chinese text, item 3, column 2—

Repeal

“《中國香港與挪威王國於 2011 年 6 月 21 日簽訂的農業協定》”

Substitute

“於 2011 年 6 月 21 日簽訂的《中國香港與挪威王國的農業協定》(此為“Agreement on Agriculture between Hong Kong, China and the Kingdom of Norway”的譯名。)”

(4) Schedule 1, Chinese text, item 4, column 2—

Repeal

“《中國香港與瑞士聯邦於 2011 年 6 月 21 日簽訂的農業協定》”

Substitute

“於 2011 年 6 月 21 日簽訂的《中國香港與瑞士聯邦的農業協定》(此為“Agreement on Agriculture between Hong Kong, China and the Swiss Confederation”的譯名。)”

(5) Schedule 1, Chinese text, item 5, column 2—

Repeal

“《中國香港與智利於 2012 年 9 月 7 日簽訂的自由貿易協定》”

Substitute

“於 2012 年 9 月 7 日簽訂的《中國香港與智利的自由貿易協定》(此為“Free Trade Agreement between Hong Kong, China and Chile”的譯名。)”

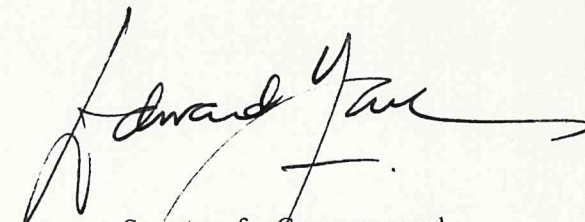
(6) Schedule 1—

Add

- “7. Mainland and Hong Kong Closer Economic Partnership Arrangement (a translation of “《內地與香港關於建立更緊密經貿關係的安排》”) signed on 29 June 2003 (including the annexes signed on 29 September 2003)
- The part of China other than Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan
- A date in accordance with Article 23 of Chapter 6 of the Arrangement
8. Hong Kong, China – New Zealand Closer Economic Partnership Agreement signed on 29 March 2010
- New Zealand
- A date in accordance with Article 4 of Chapter 20 of the Agreement
9. Hong Kong Special Administrative Region and Macao Special Administrative Region Closer
- Macao Special Administrative Region of China
- A date in accordance with Article 34 of Chapter 12 of the Arrangement

Economic Partnership Arrangement (a translation of “《香港特別行政區與澳門特別行政區關於建立更緊密經貿關係的安排》”) signed on 27 October 2017

10. Hong Kong, China – Georgia Free Trade Agreement signed on 28 June 2018
- Georgia
- A date in accordance with Article 2 of Chapter 18 of the Agreement”.


Secretary for Commerce and Economic Development

20 September 2018

Explanatory Note

Schedule 1 to the Trade Descriptions Ordinance (Cap. 362) specifies certain regional or international trade agreements or arrangements. An agreement or arrangement so specified is a *scheduled trade arrangement* for the purpose of section 2A of the Ordinance.

2. Under section 2A(3) of the Ordinance, the rules of origin for goods qualified for preferential tariff treatment under a scheduled trade arrangement apply for the purpose of determining the place of manufacture or production of those goods.
3. This Notice amends that Schedule to add the following arrangements and agreements as scheduled trade arrangements so that section 2A(3) applies—
 - (a) Mainland and Hong Kong Closer Economic Partnership Arrangement signed on 29 June 2003 (including the annexes signed on 29 September 2003);
 - (b) Hong Kong, China – New Zealand Closer Economic Partnership Agreement signed on 29 March 2010;
 - (c) Hong Kong Special Administrative Region and Macao Special Administrative Region Closer Economic Partnership Arrangement signed on 27 October 2017; and
 - (d) Hong Kong, China – Georgia Free Trade Agreement signed on 28 June 2018.
4. The Notice also makes textual amendments to the Chinese text of that Schedule.

Trade Descriptions (Place of Origin) (Watches) (Amendment) Order 2018

(Made by the Commissioner of Customs and Excise under section 2(2)(b)(ii) of the Trade Descriptions Ordinance (Cap. 362))

1. Commencement

This Order comes into operation on 1 January 2019.

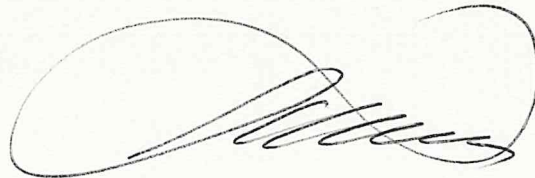
2. Trade Descriptions (Place of Origin) (Watches) Order amended

The Trade Descriptions (Place of Origin) (Watches) Order (Cap. 362 sub. leg. D) is amended as set out in section 3.

3. Section 2 amended (specification of place of origin of watches)

Section 2—

Repeal subsections (2) and (3).



Commissioner of Customs and
Excise

20 September 2018

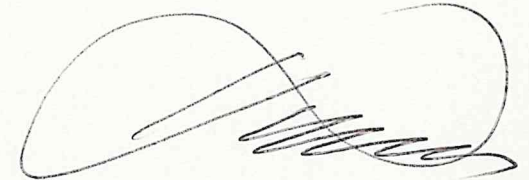
Explanatory Note

Section 2(1) of the Trade Descriptions (Place of Origin) (Watches) Order (Cap. 362 sub. leg. D) (*principal Order*) specifies the place of origin of watches.

2. Section 2(2) and (3) of the principal Order further provides that section 2(1) of the principal Order does not apply to certain watches that have been exported, or are intended to be exported, from Hong Kong under the Mainland and Hong Kong Closer Economic Partnership Arrangement, or under the Hong Kong, China—New Zealand Closer Economic Partnership Agreement.
3. As a result of the amendments to Schedule 1 to the Trade Descriptions Ordinance (Cap. 362) by the Trade Descriptions Ordinance (Amendment of Schedule 1) (No. 2) Notice 2018, the Arrangement and the Agreement become *scheduled trade arrangements* (as defined by section 2A(1) of that Ordinance) and therefore section 2(2) and (3) of the principal Order is no longer needed.
4. The purpose of this Order is to repeal section 2(2) and (3) of the principal Order.

Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) (Amendment) Order 2018

(Made by the Commissioner of Customs and Excise under section 2(2)(b)(ii) of the Trade Descriptions Ordinance (Cap. 362))



Commissioner of Customs and
Excise

1. Commencement

This Order comes into operation on 1 January 2019.

2. Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Order amended

The Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Order (Cap. 362 sub. leg. H) is amended as set out in sections 3 and 4.

20 September 2018

3. Section 2 amended (place of manufacture)

Section 2—

Repeal

“Subject to sections 4 and 5, the”

Substitute

“The”.

4. Sections 4 and 5 repealed

Sections 4 and 5—

Repeal the sections.

Explanatory Note

Sections 4 and 5 of the Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Order (Cap. 362 sub. leg. H) (*principal Order*) specify the place of manufacture of certain piece-knitted garments that have been exported, or are intended to be exported, from Hong Kong under the Mainland and Hong Kong Closer Economic Partnership Arrangement, or under the Hong Kong, China—New Zealand Closer Economic Partnership Agreement.

2. As a result of the amendments to Schedule 1 to the Trade Descriptions Ordinance (Cap. 362) by the Trade Descriptions Ordinance (Amendment of Schedule 1) (No. 2) Notice 2018, the Arrangement and the Agreement become *scheduled trade arrangements* (as defined by section 2A(1) of that Ordinance) and therefore sections 4 and 5 of the principal Order are no longer needed.
3. The purpose of this Order is to repeal sections 4 and 5 of the principal Order.

Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) (Amendment) Order 2018

(Made by the Commissioner of Customs and Excise under section 2(2)(b)(ii) of the Trade Descriptions Ordinance (Cap. 362))

1. Commencement

This Order comes into operation on 1 January 2019.

2. Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) Order amended

The Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) Order (Cap. 362 sub. leg. 1) is amended as set out in sections 3, 4 and 5.

3. Section 2 amended (interpretation)

(1) Section 2, English text, definition of *textile made-up article*—

Repeal the semicolon

Substitute a full stop.

(2) Section 2—

(a) definition of *Hong Kong, China—New Zealand Closer Economic Partnership Agreement*;

(b) definition of *Mainland and Hong Kong Closer Economic Partnership Arrangement*;

(c) definition of *the Mainland*—

Repeal the definitions.

4. Section 4 amended (place of manufacture or production)

Section 4—

Repeal

“Subject to sections 5 and 6, the”

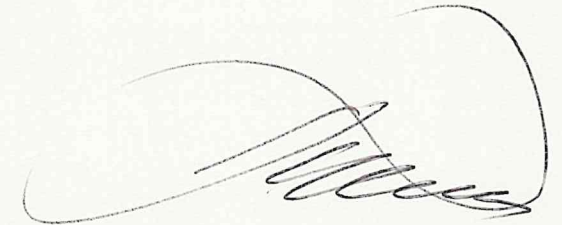
Substitute

“The”.

5. Sections 5 and 6 repealed

Sections 5 and 6—

Repeal the sections.



Commissioner of Customs and
Excise

20 September 2018

Explanatory Note

Sections 5 and 6 of the Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) Order (Cap. 362 sub. leg. 1) (*principal Order*) specify the place of manufacture of certain textile made-up articles that have been exported, or are intended to be exported, from Hong Kong under the Mainland and Hong Kong Closer Economic Partnership Arrangement, or under the Hong Kong, China—New Zealand Closer Economic Partnership Agreement.

2. As a result of the amendments to Schedule 1 to the Trade Descriptions Ordinance (Cap. 362) by the Trade Descriptions Ordinance (Amendment of Schedule 1) (No. 2) Notice 2018, the Arrangement and the Agreement become *scheduled trade arrangements* (as defined by section 2A(1) of that Ordinance) and therefore sections 5 and 6 of the principal Order are no longer needed.
3. The purpose of this Order is to repeal sections 5 and 6 of the principal Order.