

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance (Chapter 60) Import and Export (General) Regulations (Amendment of Schedules 1 and 2) Order 2020

INTRODUCTION

The Director-General of Trade and Industry (“DGTI”) has made the Import and Export (General) Regulations (Amendment of Schedules 1 and 2) Order 2020 (“Amendment Order”), as set out at **Annex A**.

JUSTIFICATION

2. Mercury is a naturally occurring heavy metal which is highly toxic. Owing to its unique physical and chemical properties, mercury has been used in various products and processes for a very long time. Once released, mercury stays in the environment in various forms and can be transported in the atmosphere to places at a distance. It can be bioaccumulated in the ecosystems and poses a serious threat to human health and the environment.

3. Recognising its harmful effects, the United Nations Environment Programme developed the Minamata Convention on Mercury (“the Convention”), which is an international legally binding treaty¹ with the objective to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. The People’s Republic of China (“PRC”) is one of the Parties to the Convention which entered into force on 16 August 2017. Pursuant to Article 153 of the Basic Law², the Central People’s Government

¹ The full text of the Convention can be downloaded from the link:
<http://mercuryconvention.org/Portals/11/documents/Booklets/COP1%20version/Minamata-Convention-booklet-eng-full.pdf>

² Article 153 of the Basic Law stipulates that the application to the HKSAR of international agreements to which the People’s Republic of China is or becomes a party shall be decided by the Central People’s Government, in

(“CPG”) sought the views of the Government of the Hong Kong Special Administrative Region (“HKSAR”) and decided that the Convention would apply to Hong Kong.

4. The Convention contains provisions to impose restrictions and control on a range of activities, processes, industries and products where mercury is sourced, used, released or emitted. The Convention addresses direct mining of mercury and its export and import; use of mercury in mercury-added products and manufacturing processes; emissions to the atmosphere; releases to land and water; safe storage of mercury as well as disposal of mercury waste.

5. Some obligations under the Convention are enforceable under the existing administrative and regulatory frameworks or there is *de facto* compliance in Hong Kong. These obligations are summarised at **Annex B**. However, there are four obligations of the Convention that are not enforceable under the existing regulatory or administrative frameworks of Hong Kong:-

- (1) to restrict import and export of mercury and mercury mixtures³;
- (2) to prohibit the manufacture, import and export of mercury-added products required to be phased out by the Convention, prevent the incorporation into assembled products of the said mercury-added products, and discourage the manufacture and distribution in commerce of mercury-added products not covered by any known use of mercury-added products prior to the date of entry into force of the Convention for the PRC (i.e., prior to 16 August 2017);
- (3) to phase out or restrict manufacturing processes in which mercury or mercury compounds are used; and
- (4) to store mercury, mercury mixtures and certain mercury compounds in an environmentally sound manner.

accordance with the circumstances and needs of the HKSAR, and after seeking the views of the Government of the HKSAR.

³ Article 3 of the Convention restricts the import and export of “mercury”. Under Article 2 of the Convention, “mercury” is defined as meaning elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6). For the purpose of Article 3 of the Convention, mercury includes mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight. Thus Article 3 of the Convention restricts the import and export of elemental mercury and mercury mixtures.

6. It is necessary to put in place new legislation, and/ or to amend existing legislation to fulfil the obligations as set out in paragraph 5 above. The Government commissioned a study in 2015 to consult the relevant trade associations and stakeholders on compliance with the requirements of the Convention. The study findings indicate that there is no business in Hong Kong that relies heavily on the use of mercury, and there are widely available mercury-free alternatives for most of the mercury-added products in the market. Given that the spirit of the Convention is to minimise, if not eliminate, the international supply and trading of mercury, there is a need to impose statutory control on the import and export of mercury trading activities in Hong Kong.

THE PROPOSAL

7. In order to control the import and export of mercury trading in Hong Kong as soon as possible, we propose to amend Part 1 of Schedule 1 to the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (“IE(GR)”) by adding “elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6), other than that contained in and forming part of a manufactured article”⁴ to the list of scheduled articles for import into Hong Kong. We also propose to add “elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6), other than that contained in and forming part of a manufactured article” to the list of scheduled articles in Part 1 of Schedule 2 to the IE(GR) to restrict its export to all places outside Hong Kong.

8. Under our proposed amendment to the IE(GR), “elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6), other than that contained in and forming part of a manufactured article” will become a scheduled article specified in Schedule 1 and Schedule 2 to the IE(GR) and be subject to the respective import and export licensing control. Import and export licences will be administered by the Environmental Protection Department (“EPD”) and issued by the Director of Environmental Protection (“DEP”) at his sole discretion under the delegated authority vested with DGTI under section 3(9) of the Import and Export Ordinance (Cap. 60) (“IEO”). Before issuing a licence, DEP will

⁴ Chemical Abstracts Service registry number is a unique numerical identifier assigned by the Chemical Abstracts Service to every chemical substance. It is a system accepted among the trade and industry universally for identification of chemicals.

consider whether the use of the mercury will be allowed under the Convention, whether the mercury will be stored in an environmentally sound manner, whether the source of the mercury is allowed under the Convention in the case of an import licence, and whether the import of mercury is agreeable to the importing side in the case of an export licence in order to comply with the requirements under the Convention. These factors for consideration will be stated in the application guidelines to be issued by EPD. In respect of law enforcement, the Customs and Excise Department (“C&ED”) will assist EPD in detecting illegal import or export of mercury at entry/exit points. EPD will take over all cases detected by the C&ED for follow-up actions, including investigation, prosecution and disposal actions for any seized mercury.

9. To ensure full compliance with all obligations of the Convention, a new piece of legislation will be put in place to allow effective implementation of the Convention in a holistic manner. The new piece of legislation, proposed to be named the Mercury Ordinance, will restrict the import and export of mercury and mercury mixtures, prohibit the manufacture, import and export of mercury-added products required to be phased out by the Convention, prohibit the incorporation into assembled products of the said mercury-added products, and prohibit the manufacture and sale of mercury-added products not covered by any known use of mercury-added products prior to 16 August 2017, phase out or restrict manufacturing processes in which mercury or mercury compounds are used, as well as restrict the storage of mercury, mercury mixtures and certain mercury compounds. As the Mercury Ordinance will control the import and export of mercury and provide the legal basis for a licensing regime, we will include in the Mercury Bill a consequential amendment to repeal “elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6), other than that contained in and forming part of a manufactured article” in Part 1 of Schedule 1 and Part 1 of Schedule 2 to the IE(G)R when the Mercury Ordinance comes into operation. We envisage that the licensing operation of the import and export of mercury under the Mercury Ordinance would be similar to that as under IE(G)R.

THE AMENDMENT ORDER

10. The Amendment Order amends Part 1 of Schedule 1 and Part 1 of Schedule 2 to the IE(G)R to reflect the changes referred to in paragraph 7 above.

LEGISLATIVE TIMETABLE

11. We will publish the Amendment Order in the Gazette on 12 June 2020 and table it at the Legislative Council for negative vetting on 17 June 2020. The Amendment Order will come into operation on 1 November 2020.

IMPLICATIONS OF THE LEGISLATIVE AMENDMENT

12. The Amendment Order is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Import and Export Ordinance (Cap. 60). The Amendment Order has financial or civil service implications as it will create additional workload for both the C&ED and EPD. As mentioned in paragraph 8 above, the C&ED will conduct inspections at entry/exit points to detect illegal import or export of mercury, and EPD will administer the import and export licensing system and conduct follow-up enforcement work of all detected cases of mercury. The two departments will try to absorb the additional financial and civil service inter alia requirements as far as possible, and will seek additional resources in accordance with the established mechanism if necessary.

PUBLIC CONSULTATION

13. To prepare for the implementation of the Convention in Hong Kong, EPD conducted a series of consultations with members of the public and relevant trades and stakeholders in mid- to late 2018. The scope and the details of the regulatory approach, including the strategy of licensing control on the import and export of mercury, were set out in the consultation document issued by EPD in August 2018. The consultation document can be downloaded from the link below:

https://www.epd.gov.hk/epd/sites/default/files/epd/english/resources_public_policy/files/Mco_Annexes_Eng_v1.pdf

14. The consultation document was sent alongside a survey form to more than 500 stakeholders including major trade associations, relevant trade sectors, foreign

chambers of commerce in Hong Kong, relevant professional institutions, academia and religious institutions, etc. A list of the different categories of stakeholders consulted is at **Annex C**. In parallel, EPD hosted a series of consultation meetings, including two public consultation forums and a number of dedicated consultation meetings with the major trade associations and specific trade sectors. The need to impose control on mercury trading to fulfil the requirements of the Convention was generally well received at the consultation fora, and respondents of the survey generally supported the Government to introduce statutory import and export control over mercury under a licensing framework.

15. The Government met with the major trade associations including the Hong Kong General Chamber of Commerce, the Chinese General Chamber of Commerce, the Chinese Manufacturers' Association of Hong Kong, the Federation of Hong Kong Industries and the Hong Kong Chinese Importers' & Exporters' Association. Noting that the Convention is an international convention and that our major trading partners have become Parties to the Convention, the trade associations generally held the view that the legislative proposal, including the regulation of import and export of mercury under licensing control to align with international practices, should not create any undue burden on the trade.

16. The Government consulted the Advisory Council on the Environment at its meeting on 8 July 2019 on the implementation strategy and the legislative proposal for implementing the Convention in Hong Kong. The Council supported Government's proposal to establish statutory control on mercury trading in Hong Kong.

17. We discussed the implementation strategy of the Convention and the proposed amendment to the IE(G)R at the meeting of the Legislative Council Panel on Environmental Affairs on 25 May 2020. The Panel supported the proposed amendment.

PUBLICITY

18. Upon gazettal of the Amendment Order, we will issue a press release to inform the public the commencement date of the legislative amendment, which is 1 November 2020.

ENQUIRIES

19. For enquiries about this brief, please contact Mr. Larry Chan, Senior Environmental Protection Officer of EPD, at 2594 6502.

Environmental Protection Department

June 2020

Import and Export (General) Regulations (Amendment of Schedules 1 and 2) Order 2020

(Made by the Director-General of Trade and Industry under regulation 7(1)
of the Import and Export (General) Regulations (Cap. 60 sub. leg. A))

1. Commencement

This Order comes into operation on 1 November 2020.

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 and 4.

3. Schedule 1 amended

Schedule 1, Part 1—

Add

“11. Elemental mercury (Hg(0), Chemical Abstracts
Service registry number 7439-97-6), other than that
contained in and forming part of a manufactured
article.”.

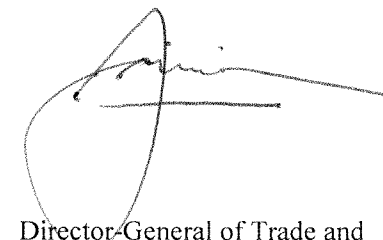
4. Schedule 2 amended

Schedule 2, Part 1—

Add

“10. Elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6), other than that contained in and	All places outside Hong Kong.”.
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forming part of a
manufactured article.



Director-General of Trade and
Industry

3 June 2020

Explanatory Note

This Order amends the Import and Export (General) Regulations (Cap. 60 sub. leg. A) by adding a new item “elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6), other than that contained in and forming part of a manufactured article” (*pure mercury*) to Part 1 of Schedules 1 and 2 to the Regulations.

2. The effect of the amendment is that, except under certain circumstances, a person who, on or after 1 November 2020, imports pure mercury without an import licence, or exports it to any place outside Hong Kong without an export licence, is liable for an offence under section 6C(2) or 6D(3) (as the case may be) of the Import and Export Ordinance (Cap. 60).

**List of Obligations under the Minamata Convention on Mercury
Enforceable under the Existing Administrative and Regulatory Frameworks
in Hong Kong**

Obligations	Existing Administrative and Regulatory Frameworks
(a) restrict mercury mining; and (b) control the use of mercury in artisanal and small-scale gold mining	<ul style="list-style-type: none"> ● All mines in Hong Kong are property of the Government. ● The Mining Ordinance (Cap. 285) effectively controls all prospecting and mining activities in Hong Kong. ● Based on mineral resources record, mercury has not been identified in Hong Kong, nor is there any reasonable prospect for gold mining.
(c) phase down the use of dental amalgam	<ul style="list-style-type: none"> ● The dental profession, the academia and the Government have agreed to take on board the recommended measures in the Convention to phase down the use of dental amalgam^{Note}.
(d) control emissions of mercury and mercury compounds to the atmosphere	<ul style="list-style-type: none"> ● The Air Pollution Control Ordinance (Cap. 311), coupled with the use of best environmental practices by relevant sources, can effectively control mercury emissions from existing sources and new sources which fall within the source categories as listed in the Convention.
(e) control releases of mercury and mercury compounds to land and water	<ul style="list-style-type: none"> ● The Water Pollution Control Ordinance (Cap. 358), which sets out the effluent standards of discharges to all types of environmental waters, effectively controls releases of mercury and mercury compounds to water. The Waste Disposal Ordinance (Cap. 354)

^{Note} The Convention requires Parties to take measures to phase down the use of dental amalgam, which shall include two or more of the measures listed by the Convention. A “Consensus Statement on the Minamata Convention on Mercury and Phase Down of Dental Amalgam in Hong Kong” was jointly promulgated by the Department of Health, the Dental Council of Hong Kong, the Faculty of Dentistry of the University of Hong Kong, the College of Dental Surgeons of Hong Kong and the Hong Kong Dental Association, which can be downloaded from the following link:- https://www.dh.gov.hk/english/main/main_ds/files/consensus_statement.pdf. The recommendations made under the Statement include three of the measures listed by the Convention.

Obligations	Existing Administrative and Regulatory Frameworks
	effectively controls the releases of mercury and mercury compounds, which are regarded as chemical waste, to land.
(f) manage mercury wastes in an environmentally sound manner	<ul style="list-style-type: none"> ● Mercury waste is categorised as chemical waste under the Waste Disposal Ordinance (Cap. 354), which effectively controls its import, export, transboundary movement and disposal.

List of Major Categories of Stakeholders Consulted

Category of Stakeholder Groups / Associations / Institutes
1. Academia
2. Biocides in Painting and Coating Products
3. Building Materials
4. Chemical and Pharmaceutical Products
5. Chemical Waste Collectors
6. Chinese Medicine Trade and Practitioners
7. Construction
8. Consulate-General
9. Cosmetics
10. Electrical and Electronic Products and Related Services (Electronics and Telecommunication Equipment included)
11. Existing and Expired Hazardous Chemicals Control Ordinance Permit Holders
12. Foreign Chambers of Commerce
13. Government Funded and Statutory Organisations
14. Laboratories
15. Local Chambers of Commerce
16. Machinery
17. Metals
18. Non-Government Organisations / Green Groups

Category of Stakeholder Groups / Associations / Institutes
19. Utility Services
20. Professional Bodies
21. Religion
22. Trade (Import and Export Trade included)