

Amendments to Import and Export (General) Regulations

(Cap. 60, sub. leg. A)

Legislative Proposals

February 2013

Consultation Document

Chapter 1 Introduction

1.1 The Government cares about babies' health and has been promoting the merits of breastfeeding in order to encourage its adoption by parents. Where breastfeeding is not feasible, infant formula milk is the only processed foodstuff which wholly fulfils the nutritional requirements of infants during the first months of life until the introduction of appropriate complementary feeding¹. We also understand that some parents still prefer powdered milk, and have therefore paid particular attention to its safety and supply.

1.2 The Government has been closely monitoring the supply of powdered milk in the local market, so as to ensure that the needs of infants and young children in Hong Kong are met. We note that recently, even though major suppliers of powdered milk 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 milk were still out of stock at the retail level and that response of hotlines of certain suppliers was relatively slow.

1.3 The Government announced a series of measures to combat parallel trading activities on 1 February. The Customs and Excise Department and their Shenzhen counterparts have further strengthened enforcement efforts by launching a joint anti-smuggling operation against parallel trading of daily commodities, especially powdered milk. In addition, the MTR Corporation Limited has implemented new measures to maintain order in stations and reduce the nuisance caused to passengers by parallel traders. Such measures will help stabilising the supply of powdered milk for infants and young children in Hong Kong.

Proposals to amend the Import and Export (General) Regulations (Cap. 60, sub. leg. A)

1.4 We consider that the recent supply chain failure in relation to powdered milk is closely related to parallel trading activities. The huge demand of parallel traders

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

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

often leads to shortage of certain brands of powdered milk at certain retail outlets.

1.5 To combat the problem of parallel traders diverting large quantities of powdered milk away from the supply chain in Hong Kong, the Government proposes to amend the Import and Export (General) Regulations (Cap. 60, sub. leg. A) (the Regulations) to prohibit the export of powdered formula for infants and young children under the age of 36 months from Hong Kong except with a licence issued by the relevant authority. Having regard to the need of those departing from Hong Kong for powdered formula for personal use, our preliminary proposal is that not more than a total net weight of 1.8 kg of powdered formula for infants and young children under the age of 36 months may be carried by each person aged 16³ or above. In general, the net weight of a can of powdered formula is 0.9 kg. This means that each person may bring two cans with them (see paragraph 3.6 below).

1.6 This consultation document sets out the Administration's legislative proposals on the amendments to the Regulations. Your views on the proposals in this document are welcome.

³ The minimum legal age for getting married in Hong Kong is 16.

Chapter 2 Local Situation

2.1 At present, there are more than 120 products of infant formula and follow-up formula for sale in Hong Kong. Since Hong Kong does not produce infant formula or follow-up formula products, we rely on the importation of formula products to meet all local demands. During the period from January to November 2012, Hong Kong imported a total of 40 million kg of powdered formula for infants and young children, of which around 38 million kg was to meet local demands, while the other 2 million kg was for re-export⁴.

2.2 The Food Safety Ordinance (Cap. 612) requires any person who carries on a food importation business to register with the Director of Food and Environmental Hygiene (DFEH) as a food importer. At present, there are about 500 importers of “Infant/follow-up/growing-up formula and baby food” on the register. Food importers who have already registered or have obtained a licence under other ordinances⁵ are exempted from the registration requirement. Under the Food Safety Ordinance, a person who imports food (including “Infant/follow-up/growing-up formula and baby food”) in the course of business 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 seller of the food; (c) the place from where the food was imported; (d) the total quantity of the food; and (e) a description of the food.

⁴ Source: Census and Statistics Department

⁵ Listed in Schedule 1 of the Food Safety Ordinance

Chapter 3 The Proposals

3.1 We propose to amend the Regulations to prohibit the export (including mailing) of powdered formula for infants and young children under the age of 36 months from Hong Kong except with a licence issued by the relevant authority.

Licensing system

3.2 It is provided in section 6D(1) of the Import and Export Ordinance (Cap. 60) 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.

3.3 We propose to amend the Regulations by including powdered formula for infants and young children under the age of 36 months as an item of specified articles in the second column of Schedule 2, and stipulating that an export licence must be obtained from the Director-General of Trade and Industry for any person to export such articles (unless otherwise provided in the legislation (see paragraphs 3.5 to 3.7 below)).

3.4 As mentioned in Chapter 2, Hong Kong does not produce infant formula or follow-up formula products. As a result, all local demands are met by imports and all re-exports come from imports. Since all Hong Kong food importers, including importers of “infant/follow-up/growing-up formula and baby food”, must register with DFEH in accordance with the Food Safety Ordinance, 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 and baby food” who have registered under the Food Safety Ordinance or those exempted under section 4(3)(a) of the Food Safety Ordinance from registration requirement under Part 2 of the Ordinance. On application, applicants are required to submit import documents to prove that the batch of powdered formula concerned is directly imported from other places by the applicants. Since the existing Food Safety Ordinance has stipulated that a person who imports food in the course of business must keep import documents, we believe that this requirement would not create a substantial additional administrative burden for importers.

Exemption arrangements

3.5 Currently, shipping companies, airlines and freight forwarders registered under the Transshipment Cargo Exemption Scheme of TID are, subject to certain conditions, exempted from the licensing requirements under the Import and Export Ordinance in respect of certain types of transshipment cargo⁶. We propose that such exemption arrangements be applicable to the present amendments to the Regulations.

3.6 Having regard to the need of those departing from 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 16⁷ or above. In general, the net weight of a can of powdered formula is 0.9 kg. This means that each person may bring two cans. The purpose of inserting the age limit is to prevent children from being used to carry such powdered milk.

3.7 In relation to the above exemption arrangements, we consider it necessary to introduce further measures to prevent parallel traders from abusing such exemption by making multiple journeys to Hong Kong within the same day to enjoy the exemption repeatedly. We propose that the exemption should only be applicable to a person on his first departure from Hong Kong within a 24-hour period.

Penalties

3.8 Any person who contravenes section 6D(1) of the Import and Export Ordinance (see paragraph 3.2 above) in respect of any article specified in the second column of Part 1 of Schedule 2 to the Regulations shall be guilty of an offence and shall be liable on conviction to a fine of \$500,000 and to imprisonment for two years.

⁶ 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.

⁷ In Hong Kong, the present minimum age for getting married is 16 years of age.

3.9 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 he did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article.

Implementation timetable

3.10 We plan to submit the proposed legislative amendments to the Executive Council in February. If approved, we intend to implement the new provisions as soon as possible.

Chapter 4 Advice Sought

4.1 The proposals put forward in Chapter 3 are highlighted as follows:

- (a) the Regulations should be amended by including powdered formula for infants and young children under the age of 36 months as an item of specified articles listed in the second column of Schedule 2, and stipulating that an export licence must be obtained from TID for any person to export powdered formula for infants and young children under the age of 36 months to any places outside Hong Kong (unless otherwise provided in the legislation);
- (b) TID will in general only issue export licences to importers of “infant/follow-up/growing-up formula and baby food” registered under the Food Safety Ordinance or those exempted under section 4(3)(a) of the Food Safety Ordinance from registration requirement under Part 2 of the Ordinance. On application, applicants are required to submit import documents to prove that the batch of powdered formula concerned is directly imported by the applicants from other places;
- (c) powdered formula for infants and young children under the age of 36 months should be included in the existing Transshipment Cargo Exemption Scheme of TID, under which registered shipping companies, airlines and freight forwarders are, subject to certain conditions, exempted from export licensing requirements in respect of certain types of transshipment cargo; and
- (d) exemption from the licensing requirement should be allowed whereby each person aged 16 or above can carry out of Hong Kong not more than a total net weight of 1.8 kg of powdered formula for infants and young children under the age of 36 months. Such exemption should only be applicable to a person on his first departure from Hong Kong within a 24-hour period.

4.2 The Government welcomes views on the legislative proposals. Please send your views by mail, facsimile or e-mail to the Food and Health Bureau on or before 18 February 2013:

Food and Health Bureau
18/F, East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

(Re: Amendments to Import and Export (General) Regulations (Cap. 60, sub.
leg. A))

Fax number: (852) 2136 3282
E-mail address: fhbenq@fhd.gov.hk
Enquiry telephone number: (852) 3509 8706

4.3 The Government will fully consider the views received before finalising the details of the legislative proposals.

4.4 It is voluntary for any member of the public to supply his/her personal data upon providing views on the consultation document. Any personal data provided with a submission will only be used for the purpose of this consultation exercise.

4.5 The submissions and personal data collected may be transferred to the relevant Government bureaux, departments or agencies for purposes directly related to this consultation exercise. The relevant parties receiving the data are bound by such purposes in their subsequent use of such data.

4.6 The names and views of individuals and organisations which put forth submissions in response to the consultation document (senders) may be published for public viewing after completion of the consultation exercise. The Food and Health Bureau may, either in discussion with others or in any subsequent report, whether privately or publicly, attribute comments submitted in response to the consultation document. We will respect the wish of senders to remain anonymous and/or keep the views confidential in relation to all or part of a submission; but if no such wish is indicated, it will be assumed that the sender can be named and his/her views be published for public information.

4.7 Any sender providing personal data to the Food and Health Bureau in the submission will have the right of access and correction with respect to such personal data. Any request for data access or correction of personal data should be made in writing to the contact specified in paragraph 4.2 above.