

CHAPTER 2

Customs and Excise Department

**Customs and Excise Department:
Enforcement work of
the Consumer Protection Bureau**

**Audit Commission
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CUSTOMS AND EXCISE DEPARTMENT: ENFORCEMENT WORK OF THE CONSUMER PROTECTION BUREAU

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PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 The Government attaches importance to safeguarding the rights and interests of consumers. The primary objectives of consumer protection are to ensure that products and services procured by consumers are safe, the quality is up to their expectation, and the contract terms are fair. The Commerce and Economic Development Bureau (CEDB — Note 1) has the overall policy responsibility for consumer protection. The Customs and Excise Department (C&ED) is responsible for the enforcement of the consumer protection legislation. The Consumer Council is responsible for protecting and promoting consumer interests.

The Consumer Protection Bureau

1.3 *Scope of responsibilities.* To safeguard the interests of consumers, the **Consumer Protection Bureau (CPB)** under the **Trade Controls Branch** (Note 2) of the C&ED is responsible for the enforcement of the following consumer protection legislation:

- (a) *Weights and measures.* The Weights and Measures Ordinance (Cap. 68) makes provisions with respect to units and standards of measurement, and the accuracy of weighing or measuring equipment used for trade. It gives consumers greater protection against fraudulent or unfair trading practices in connection with goods supplied by weight or measure, including pre-packed goods;
- (b) *Toys and children's products.* The Toys and Children's Products Safety Ordinance (TCPSO — Cap. 424) provides for safety standards for toys and children's products manufactured, imported or supplied for local consumption to ensure that the products are reasonably safe;

Note 1: *In July 2002, the policy bureau responsible for consumer protection changed from the then Economic Services Bureau to the then Economic Development and Labour Bureau. In July 2007, following the reorganisation of the Government Secretariat, the CEDB took over the policy responsibility.*

Note 2: *The Trade Controls Branch comprises five bureaux, namely the CPB, the Closer Economic Partnership Arrangement and Transshipment Controls Bureau, the General Investigation and Systems Bureau, the Trade Inspection and Verification Bureau, and the Trade Investigation Bureau.*

- (c) **Consumer goods.** The Consumer Goods Safety Ordinance (Cap. 456) imposes a statutory duty on manufacturers, importers and suppliers of consumer goods to ensure that the consumer goods they supply for local consumption are reasonably safe. A general safety requirement is introduced in the Ordinance for compliance by manufacturers, importers and suppliers of consumer goods; and
- (d) **Precious metals.** The Trade Descriptions (Marking) (Gold and Gold Alloy) Order (Cap. 362 sub. leg. A) and Trade Descriptions (Marking) (Platinum) Order (Cap. 362 sub. leg. C), under the Trade Descriptions Ordinance (Cap. 362), require that articles of gold, platinum and their alloys supplied in the course of trade or business must bear a mark of the fineness of gold or platinum content. All articles of gold, platinum and their alloys sold must be accompanied by invoices or receipts. Traders and suppliers are required to display prominently a notice specifying the legal requirements at the point of supply.

1.4 **Organisation and resources.** As at 31 December 2008, the CPB had an establishment of 72 trade controls officers and 12 general grade staff. Under the CPB, there are three divisions. Two divisions are responsible for enforcing consumer protection legislation and one division (i.e. the Trade Controls Prosecution Division) is responsible for administering prosecution matters for the Trade Controls Branch (including allegations of offences contravening the consumer protection legislation). An organisation chart of the CPB is at Appendix A. In 2008-09, the estimated expenditure on consumer protection was \$33.7 million.

1.5 **Spot checks and investigations.** To detect non-compliance with the consumer protection legislation, the CPB conducts **spot checks** on the accuracy of weights and measures; the safety of toys, children's products and consumer goods; the fineness of precious metals; and the display of precious metals marking notices. In addition, the CPB conducts in-depth **investigations** in response to specific information from various sources (e.g. media reports), and to follow up non-compliance detected in its spot checks. In 2008, the CPB conducted about 3,700 spot checks and 1,300 investigations.

1.6 **Procedural guidelines.** The C&ED has issued a **Trade Controls Work Manual** and a **Trade Controls Code of Practice** to guide staff of the Trade Controls Branch in performing their duties. The Work Manual provides a consolidated reference on operational procedures, forms and instructions which are to be applied uniformly throughout the Trade Controls Branch. The Code of Practice provides a system of procedures for investigations of the Trade Controls Branch, and for subsequent administrative and prosecution actions.

1.7 **Management information systems.** The C&ED has two major computerised systems for administering spot checks and investigations of the CPB, namely, the Trader Information Management System (TIMS — Note 3) and the Case Processing System (CAPS — Note 4). TIMS is mainly used for capturing data of spot checks and subsequent follow-up actions. CAPS is used for processing data relating to intelligence work, investigations, prosecution and disposal of seized items.

Audit review

1.8 The Audit Commission (Audit) has reviewed the enforcement work of the CPB of the C&ED. The review has focused on the following areas:

- (a) planning and monitoring of spot checks (PART 2);
- (b) monitoring of investigations (PART 3);
- (c) updating of safety standards for toys and children's products (PART 4);
- (d) publicity of consumer protection legislation (PART 5); and
- (e) performance measurement (PART 6).

1.9 Audit has found room for improvement in the above areas and has made recommendations to address the issues.

Acknowledgement

1.10 Audit would like to acknowledge with gratitude the full cooperation of the staff of the C&ED and the CEDB during the course of the audit review.

Note 3: *TIMS was implemented in 2005 to converge several standalone trader information systems to provide a consolidated data repository for better data sharing.*

Note 4: *CAPS was implemented in 2001. It helps the C&ED monitor the processing of investigation cases.*

PART 2: PLANNING AND MONITORING OF SPOT CHECKS

2.1 This PART examines the planning and monitoring of spot checks conducted by the CPB, and suggests measures for improvement in the following areas:

- (a) work plans for spot checks (paras. 2.3 to 2.13); and
- (b) time standards for spot checks (paras. 2.14 to 2.19).

Objectives of spot checks

2.2 To enforce the consumer protection legislation (see para. 1.3), the CPB conducts spot checks on retailers who supply goods by weight or measure. It also conducts spot checks on retailers selling toys and children's products, general consumer goods, and gold and platinum articles. The objectives of conducting spot checks are:

- (a) to detect unsafe products in the market (including festive toys for Mid-Autumn Festival, Halloween, Christmas and Lunar New Year);
- (b) to verify the accuracy of weighing and measuring equipment used by traders, and to detect offences in relation to the supply of short-weighted goods (see Photograph 1);
- (c) to verify traders' compliance with the provisions of the marking orders for articles of precious metals (see Photograph 2); and
- (d) to deter traders from contravening the provisions of the consumer protection legislation.

Appendix B shows a flowchart of the spot check procedures.

Photograph 1

Accuracy of weights and measures



Source: C&ED records

Remarks: A C&ED officer using a reference standard to check the accuracy of a spring balance

Photograph 2

Fineness of precious metals



Source: C&ED records

Remarks: A C&ED officer using a portable gold tester to check the fineness of a gold article

Work plans for spot checks

2.3 According to the Trade Controls Work Manual, the CPB has to prepare work plans for spot checks: on the safety of toys, children's products and consumer goods; and on the fineness of precious metals and display of marking notices. The types of products selected for spot checks should be based on the information collected from a variety of sources, including the following:

- (a) results of investigations conducted by the CPB;
- (b) media reports;
- (c) surveys and analyses conducted by the Consumer Council;
- (d) safety news released by overseas enforcement agencies and product safety organisations; and
- (e) studies and researches conducted by medical, health and other relevant professional bodies.

2.4 In addition to conducting planned spot checks, the CPB also conducts ad hoc spot checks on products where safety concerns have emerged, based on sources such as overseas recall news and media reports.

2.5 From 2004 to 2008, the number of spot checks conducted by the CPB remained quite stable, at around 3,500 to 3,700 a year. Appendix C shows the details.

Audit observations and recommendations

Planning of spot checks

2.6 ***No work plan for spot checks on weights and measures.*** In 2008, out of 3,700 spot checks conducted by the CPB, 770 (21%) were on the accuracy of weights and measures (see Appendix C). However, no work plan was prepared and, unlike the other categories, there is no such requirement in the Trade Controls Work Manual (see para. 2.3). In Audit's view, the C&ED needs to prepare work plans for spot checks on the accuracy of weights and measures, and to include such a requirement in the Trade Controls Work Manual. This will help ensure that the spot checks are properly planned and resources efficiently deployed.

2.7 ***No work plan for spot checks on precious metals.*** As indicated in paragraph 2.3, the Trade Controls Work Manual requires work plans to be prepared for spot checks on various enforcement areas, including precious metals. However, Audit found that no work plan was prepared for spot checks on the fineness and display of marking notices of precious metals. The C&ED needs to remind its staff to comply with the Trade Controls Work Manual in this regard.

2.8 ***No work plan for spot checks on two types of children's products.*** From 2005 to 2008, the C&ED prepared 16 quarterly work plans for spot checks on the safety of children's products. Audit found that, of the 13 types of children's products specified in the TCP SO (Note 5), two (i.e. baby nests and bunk beds for domestic use) were not included in these work plans, and there was no documented reason for not including them. To enforce the legislation of toys and children's products, Audit considers it necessary for the C&ED to remind its staff of the need to plan for an adequate coverage of all children's products specified in the TCP SO, and document the reasons if any product types are not covered.

2.9 ***Documentation of work plan.*** In the quarterly work plans for spot checks on the safety of toys, children's products and consumer goods, the following information is documented:

- (a) types and possible hazard of products under spot checks;
- (b) purposes/justifications of the spot checks;
- (c) target retail outlets;
- (d) duration and manpower requirement of the spot checks; and
- (e) number of test purchases and estimated cost.

However, the justifications (such as news concerning safety released by overseas product safety organisations) for selecting the types of toys and children's products were not documented. In Audit's view, such information is useful for the prioritisation of activities and allocation of resources, and for future reference.

Note 5: *These products are: babies' dummies; baby nests; 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.*

Work plans not followed

2.10 According to the work plan for spot checks for the first quarter of 2007, emphasis should be placed on low-end products distributed in areas like Sheung Shui or Tin Shui Wai. In the event, five exercises (covering 232 spot checks) were conducted in that quarter. Audit found that, in one of those exercises (covering 40 spot checks), none of the spot checks was conducted in Sheung Shui or Tin Shui Wai, and there was no documented reason for not doing so.

2.11 In Audit's view, a work plan should be adhered to unless there is a strong reason for departure. Where departure is justified, the justifications should be documented and reviewed by supervisors of an appropriate level.

Audit recommendations

2.12 To improve the planning and conduct of spot checks, Audit has ***recommended*** that the Commissioner of Customs and Excise should:

- (a) prepare work plans for spot checks on the accuracy of weights and measures, and include such a requirement in the Trade Controls Work Manual;
- (b) remind his staff to prepare work plans for spot checks on precious metals in compliance with the Trade Controls Work Manual;
- (c) in planning spot checks, remind his staff of the need to cover all children's products specified in the TCPSO as far as practicable, and document the reasons if any product types are not covered;
- (d) clearly document in the work plans the justifications for selecting the types of products to be checked; and
- (e) remind his staff to adhere to the work plans in carrying out spot checks and, where departure is justified, ensure that the justifications are documented and reviewed by supervisors of an appropriate level.

Response from the Administration

2.13 The Commissioner of Customs and Excise agrees with the audit recommendations and has taken steps to implement them. Regarding the two types of products mentioned in paragraph 2.8, he has said that:

- (a) baby nests are rarely found in the Hong Kong market and, hence, there is no practical need to test them. Also, the relevant standards institute has already withdrawn the test standard for baby nests. The C&ED has proposed to delete this item from the prescribed children's product list in the coming legislative amendments (see also para. 4.9); and
- (b) following Audit's enquiry in late 2008, an arrangement was made with the Government Laboratory for testing bunk beds.

Time standards for spot checks

2.14 To help ensure that spot checks are completed on a timely basis, the Trade Controls Work Manual sets out the following time standards for completing and evaluating spot checks on each enforcement area (i.e. weights and measures, toys and children's products, consumer goods and precious metals):

- (a) ***Completion of spot check.*** An investigation officer should complete a spot check and submit a full report with recommended action within one week after the commencement of action; and
- (b) ***Evaluation of spot check.*** The supervisor concerned should evaluate the recommended action within three days upon the completion of the spot check.

Audit observations and recommendations

Compliance with time standards

2.15 Audit examined the case files of a sample of 120 spot checks completed in 2008 to review their compliance with the time standards. The results indicated that, of these 120 spot checks:

- (a) 48 (40%) were not completed within the time standard of one week. On average, the time taken to complete these spot checks exceeded the time standard by 14 days. In one case, the excess was 65 days; and
- (b) 87 (73%) were not evaluated within the time standard of three days. On average, the time taken to evaluate these spot checks exceeded the time standard by 17 days. In one case, the excess was 38 days.

2.16 The above audit findings highlight the need for the C&ED to step up measures to ensure that spot checks are completed and evaluated efficiently. To this end, the management reporting functions of TIMS (see para. 1.7) will need to be enhanced, because at present it cannot compile statistics to help monitor the progress of spot checks against the time standards.

TIMS not updated

2.17 Furthermore, Audit found that the data in TIMS were not up-to-date. For example, in respect of 107 spot checks, Audit's enquiries revealed that the cases had long been concluded, although they were still recorded in TIMS as outstanding at the time of audit (i.e. 5 January 2009).

Audit recommendations

2.18 **Audit has recommended that the Commissioner of Customs and Excise should:**

- (a) **compile statistics of the actual time taken to complete and evaluate the spot checks;**
- (b) **closely monitor the progress of spot checks against the time standards set out in the Trade Controls Work Manual, and document the reasons for non-compliance;**
- (c) **step up measures (including enhancing the management reporting functions of TIMS) to ensure that spot checks are completed and evaluated efficiently; and**
- (d) **take steps to ensure that the data in TIMS are up-to-date.**

Response from the Administration

2.19 The **Commissioner of Customs and Excise** agrees with the audit recommendations. He has said that:

- (a) the C&ED has taken measures to closely monitor compliance with the time standards; and
- (b) having regard to the increased complexity of the cases, the C&ED is of the view that the time standards specified in the Trade Controls Work Manual have become outdated. The C&ED will consider revising the time standards taking into account its operational needs.

PART 3: MONITORING OF INVESTIGATIONS

3.1 Investigation of non-compliance with the consumer protection legislation is an important element of the C&ED's work on consumer protection. This PART reports the audit findings and suggests improvement measures in the following areas:

- (a) monitoring of investigation cases conducted by the CPB (paras. 3.2 to 3.17);
- (b) testing of liquefied petroleum gas dispensers (paras. 3.18 to 3.23); and
- (c) store management of test samples (paras. 3.24 to 3.28).

Investigations conducted by the Consumer Protection Bureau

Sources of information

3.2 The CPB conducts investigations in response to information from various sources (i.e. media reports, and complaints received by the C&ED or referred by the Consumer Council). Investigations are also conducted to follow up cases of non-compliance detected in the spot checks. If the results of investigations confirm that there is non-compliance with the consumer protection legislation, the C&ED will impose administrative sanctions (Note 6), and/or initiate legal proceedings against the suppliers. Appendix D shows a flowchart of the investigation procedures.

Increase in complaints and investigations

3.3 With growing public concerns over consumer rights in recent years, there has been an increase in the number of complaints received by the C&ED relating to the four enforcement areas referred to in paragraph 1.3. In 2004 the number of complaints was 540, whereas by 2008 the number had increased to 1,180 (i.e. by 119%). The complaints about weights and measures accounted for 79% of the complaints received in 2008.

3.4 Resulting partly from the increase in complaints, the number of investigations completed by the C&ED also increased from 1,030 in 2004, by 26%, to 1,300 in 2008. The majority of the investigations (51%) were on suspected offences relating to weights and measures.

Note 6: *Administrative sanctions may include the issuance of warning notices, prohibition notices and recall notices.*

Time standards for investigations

3.5 To help ensure that investigations are completed on a timely basis, the Trade Controls Work Manual sets out the time standards for completing and evaluating investigations, as follows:

- (a) an investigation has to be completed (Note 7) within three months from the commencement of investigative action, or three weeks before expiry of the time limit for proceedings (Note 8), whichever is the earlier; and
- (b) an investigation has to be evaluated (Note 9) within one month from the completion of the investigation, or one week before expiry of the time limit for proceedings, whichever is the earlier.

Actual time taken for completing and evaluating investigations

3.6 Audit analysed the actual time taken for about 2,800 investigation cases that were completed and evaluated between January 2006 and October 2008. The results revealed that:

- (a) 828 cases (i.e. 30%) were not completed within the time standard. On average, these cases exceeded the time standard by 74 days. In one case, the excess was 619 days; and
- (b) 248 cases (i.e. 9%) were not evaluated within the time standard. On average, these cases exceeded the time standard by 25 days. In one case, the excess was 368 days.

Note 7: *An investigation is regarded as completed when the Investigation Officer submits a full report to the Unit Head for evaluation.*

Note 8: *For toys, children's products, consumer goods and precious metals, prosecution for an offence should be initiated within three years from the date of commission of the offence, or within one year from the date of discovery of the offence, whichever period expires first. For weights and measures, prosecution should be initiated within six months from the date of commission of the offence.*

Note 9: *An investigation is regarded as evaluated after the Unit Head and Division Head have reviewed the case and referred it to the Head of the CPB.*

Increase in outstanding investigation cases

3.7 As the number of complaints increased, so did the number of outstanding investigation cases. The number of outstanding cases increased by 44% during the period 2004 to 2008. As at 31 December 2008, there were 667 outstanding cases.

3.8 Since 13 October 2008, the C&ED has temporarily redeployed ten staff (Note 10) to the CPB to help clear the outstanding cases. Before the staff redeployment, as at 12 October 2008, there were 629 outstanding cases. Audit conducted an ageing analysis of the outstanding cases. The results indicated that:

- (a) investigative action for 503 (80%) cases had not yet commenced. These included 175 cases that had remained inactive for over 90 days, counting from the dates when authorisation was given for their commencement; and
- (b) investigative action for 126 (20%) cases had commenced. These included 21 cases in which more than 90 days had elapsed since the commencement of investigative action.

3.9 Upon Audit's enquiry, the C&ED indicated that it would conduct a progress review on the outstanding cases in March 2009, to determine whether there was a need to continue with the temporary staff redeployment.

Audit observations and recommendations

Risk assessment

3.10 Given the substantial increase in the number of complaints in recent years (see para. 3.3), the CPB needs to monitor the situation more closely to ensure that complaints are promptly investigated. In this connection, the CPB may need to develop a more structured approach to help identify and assess potential violations of consumer protection legislation.

Note 10: *The ten staff (i.e. one Senior Trade Controls Officer and nine Trade Controls Officers) were redeployed to the CPB to form an additional unit for a period of 5.5 months (from 13 October 2008 to 31 March 2009).*

Time standards not met

3.11 As indicated in paragraph 3.6, there were many cases in which the time standards were not met for completing or evaluating investigations. Audit found that the C&ED did not make sufficient use of the database of CAPS to compile statistics for monitoring compliance with the time standards. The C&ED needs to step up measures to monitor its investigations.

Clearance of outstanding cases

3.12 The building up of outstanding cases in recent years is a matter of concern (see para. 3.7). While Audit welcomes the temporary staff redeployment to tackle the problem (see para. 3.8), the C&ED needs to monitor more closely the clearance of outstanding investigation cases on a regular basis.

Data in CAPS not updated

3.13 Audit notes that data in CAPS were not updated on a timely basis. For example, according to CAPS, as at 12 October 2008, the C&ED had not commenced action on eight investigations, although more than nine months had elapsed counting from the dates when authorisations were given for the investigations. Audit's enquiries revealed that the investigative action had already commenced, but CAPS was not updated with the relevant data.

Supervisory checks

3.14 According to the Trade Controls Work Manual, the Unit Heads of the CPB are required to conduct supervisory checks on officers engaged in investigating duties. In 2008, a total of 91 supervisory checks were conducted. Audit analysis revealed that:

- (a) of the 91 supervisory checks, 88 (97%) were related to toys, children's products and consumer goods;
- (b) only 3 supervisory checks were related to weights and measures, despite the fact that about half of the investigations conducted in 2008 were in this category; and
- (c) no supervisory checks were conducted on investigations relating to precious metals.

3.15 In Audit's view, the C&ED needs to conduct sufficient supervisory checks on investigations relating to weights and measures, as well as precious metals.

Audit recommendations

3.16 **Audit has recommended that the Commissioner of Customs and Excise should:**

- (a) **develop a more structured approach to help identify and assess potential violations of consumer protection legislation;**
- (b) **step up measures to monitor the timeliness of the CPB's investigative action, and make better use of CAPS to manage compliance with the time standards;**
- (c) **closely monitor the clearance of outstanding investigation cases on a regular basis and, where necessary, take appropriate action to expedite the clearance;**
- (d) **take action to ensure that the data in CAPS are up-to-date; and**
- (e) **conduct sufficient supervisory checks on investigations relating to weights and measures, as well as precious metals.**

Response from the Administration

3.17 The **Commissioner of Customs and Excise** agrees with the audit recommendations and will take steps to implement them.

A case about liquefied petroleum gas dispenser

3.18 *Testing of liquefied petroleum gas (LPG) dispensers.* Due to the lack of expertise and equipment in checking the accuracy of LPG dispensers at gas stations, in April 2008, the C&ED contracted out the testing of LPG dispensers to a contractor. The contractor is required to provide equipment and testing service for checking the accuracy of the LPG dispensers during the contract period. To provide an independent counter-checking control, the Government Laboratory verifies the test results of the LPG dispensers submitted by the contractor.

3.19 **Case particulars.** In May 2008, a C&ED officer (assisted by the contractor) conducted an investigation on the accuracy of the LPG dispensers at a gas station. The test results indicated that, in respect of one LPG dispenser, the discrepancy slightly exceeded the maximum permissible limit of 1% (Note 11). The test results were subsequently verified by the Government Laboratory in accordance with the agreed procedure. However, the gas station asked its own contractor to conduct an immediate cross-checking inspection in the presence of the officer. The inspection results indicated a discrepancy that fell within the maximum permissible limit. The C&ED decided to take no further action.

3.20 **Audit's enquiry.** Upon enquiry, in January 2009, the C&ED informed Audit that in deciding to take no further action, the C&ED's considerations were as follows:

- (a) the test report produced by the gas station's contractor was read by the responsible Chemist from the Government Laboratory who "verbally told the case officer that it was in order". The benefit of the doubt was therefore granted to the gas station concerned; and
- (b) after weighing the evidence in hand, including the test report of the gas station's contractor and the "verbal comment" from the Chemist, the Unit Head considered that there was a possible dispute on the accuracy of the LPG dispenser.

Audit observations and recommendation

3.21 Audit notes that in making the decision to take no further action, the C&ED has relied, to some extent, on the "verbal comment" of the responsible Chemist. Given the weight of the Chemist's advice, Audit considers that a written confirmation should have been obtained to support the decision.

3.22 **For similar cases in future, Audit has recommended that the Commissioner of Customs and Excise should require the case officers to obtain written confirmations from the responsible Chemists, before decisions are made to take no further action.**

Note 11: *According to the International Organization of Legal Metrology, the maximum permissible limit is 1%.*

Response from the Administration

3.23 The Commissioner of Customs and Excise agrees with the audit recommendation.

Store management of test samples

3.24 In the course of spot checks and investigations, samples of suspected unsafe products are purchased by the C&ED. They are then passed to the Government Laboratory for testing. Tested samples returned from the Government Laboratory are kept in the C&ED's storerooms. The CPB keeps manual records of the quantity, movement and location of the samples for each spot check or investigation.

3.25 According to the Trade Controls Code of Practice, if the tested samples are found to have complied with the legislation, they should be disposed of at an interval of not less than once a year in accordance with the Stores and Procurement Regulations.

Audit observations and recommendations

3.26 Audit found that the C&ED did not conduct disposal exercises in accordance with the Stores and Procurement Regulations. According to the manual records of tested samples, as at September 2008, 431 samples had been kept for over 3 years. These samples had passed the Government Laboratory's tests, and the cases concerned had been concluded long ago.

3.27 **Audit has *recommended* that the Commissioner of Customs and Excise should:**

- (a) **remind his staff to conduct disposal exercises for tested samples in accordance with the Stores and Procurement Regulations; and**
- (b) **consider computerising the store records to enhance efficiency.**

Response from the Administration

3.28 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that the C&ED has reminded its staff to conduct disposal exercises for tested samples, and will take steps to computerise the store records.

PART 4: UPDATING OF SAFETY STANDARDS FOR TOYS AND CHILDREN'S PRODUCTS

4.1 This PART examines the progress of updating the safety standards for toys and children's products, and suggests measures for improvement.

Safety standards for toys and children's products

4.2 The TCPSO came into operation on 1 July 1993. The TCPSO requires products designed for children to comply with the safety standards set out in the Ordinance. To avoid increasing business cost unnecessarily and to promote trade, the Government has decided not to introduce its own safety standards. Instead, the TCPSO adopts commonly accepted international standards for compliance by traders of toys and specified children's products.

Safety standards for toys

4.3 The TCPSO encompasses all products and materials that are designed as toys for children. According to the TCPSO, no person shall manufacture, import or supply a toy unless it complies with each and every applicable requirement contained in one of the following three sets of safety standards for toys:

- (a) the International Voluntary Toy Safety Standard established by the International Committee of Toy Industries;
- (b) the European Standard EN71 established by the European Committee for Standardization; and
- (c) the ASTM F963 established by the American Society for Testing and Materials.

Safety standards for children's products

4.4 In the Schedule of the TCPSO, specific safety standards are stipulated for 13 types of children's products commonly used in Hong Kong (see Note 5 to para. 2.8). Children's products not specified in the TCPSO are required to comply with the general safety requirement under the Consumer Goods Safety Ordinance (i.e. the goods must be reasonably safe and meet reasonable safety standards published by a standards institute for that particular product).

Safety standards last updated in 1997 and 1998

4.5 The TCPSO safety standards for **toys and children's products** were last updated in 1997 and 1998 respectively. Since then, the first set of TCPSO safety standard, namely the International Voluntary Toy Safety Standard (see para. 4.3(a)), has become obsolete in its entirety (Note 12). In addition, newer versions of the other TCPSO safety standards have been issued by the standards institutes concerned to cater for product changes arising from technological developments and customer demands (Note 13). Consequently, the TCPSO safety standards are not on a par with the present relevant international standards.

Progress in updating of safety standards

4.6 In July 2000, the then Economic Services Bureau (see Note 1 to para. 1.2) started to draft amendments to the TCPSO. In May 2003, the then Economic Development and Labour Bureau (EDLB — see Note 1 to para. 1.2) sought the views of the then Panel on Economic Services of the Legislative Council on the proposed amendments to:

- (a) update the safety standards for toys and children's products;
- (b) delete or replace obsolete safety standards for toys;
- (c) streamline the legislative process for updating the safety standards for toys; and
- (d) address the concern of traders regarding the requirement to comply with the three sets of safety standards for toys.

4.7 Panel members supported the proposed amendments. The then EDLB agreed to seek the Panel's advice on the approach after consulting the Department of Justice.

Note 12: *According to the advice of the International Committee of Toy Industries in 2001, the International Voluntary Toy Safety Standard had become obsolete because it had not been updated since its issuance in 1987.*

Note 13: *An example concerns the safety standards for baby walking frames. Under the European Standard EN1273, one of the safety standards for baby walking frames was revised to impose more stringent safety requirements on the following: materials; construction requirements for opening, edges, decals, cords, seats and wheels; performance requirements on folding mechanisms; and instruction for use. However, a similar revision has not been made in Hong Kong.*

4.8 From 2003 to 2005, the introduction of the amendment bill was deferred several times due to competing priorities. In July 2006, the C&ED issued a Consumer Protection Circular to traders promulgating a transitional arrangement, pending amendments to the TCPSO safety standards. Under this transitional arrangement, when enforcing the TCPSO, the C&ED would give serious consideration to situations where traders could prove that their products complied with the newer versions of the relevant safety standards issued by the standards institutes (Note 14), particularly when such safety requirements were not lowered.

4.9 From July 2006 to July 2008, the then EDLB and subsequently the CEDB, and the C&ED consulted traders and the related associations on the approach to be adopted for the legislative amendments of the safety standards. During this period, legal advice on the proposed amendments was sought. After receiving the legal advice in July 2008, the CEDB revisited the outstanding issues. In December 2008, the CEDB issued further instructions to the Law Draftsman to revise the amendment bill. Appendix E shows a chronology of the key events up to December 2008.

Audit observations and recommendation

4.10 The TCPSO safety standards for toys and children's products, last updated in 1997 and 1998 respectively, are not on a par with the present relevant international standards. Given the importance of protecting children from potentially unsafe toys and products, Audit is of the view that the legislative amendments need to be introduced as soon as possible. In this regard, Audit notes that it is the CEDB's plan to introduce the legislative amendments in the 2009-10 legislative session.

4.11 **Audit has recommended that the Secretary for Commerce and Economic Development should introduce the legislative amendments as soon as possible.**

Response from the Administration

4.12 The **Secretary for Commerce and Economic Development** agrees with the audit recommendation. She has said that the CEDB has speeded up the preparatory work for the legislative amendments, and will introduce them by late 2009.

Note 14: *Among these standards, the ISO 8124 Series of Standards (Safety of Toys) established by the International Organization for Standardization was taken as the newer version of standards for the International Voluntary Toy Safety Standard.*

PART 5: PUBLICITY OF CONSUMER PROTECTION LEGISLATION

5.1 This PART examines the work of the CPB in publicising consumer protection legislation, and suggests measures for further improvement.

Publicity programmes

5.2 According to the 2008-09 Controlling Officer's Report (COR), the C&ED will continue to launch, or participate in, publicity programmes to promote traders' and public awareness of the consumer protection legislation. Publicity efforts in 2007 and 2008 included the following:

- (a) distributing pamphlets to traders and the public;
- (b) holding press conferences and issuing press statements on relevant matters;
- (c) organising seminars for traders on the safety of toys, children's products and consumer goods; and
- (d) giving comments on relevant articles to be published in the "CHOICE" magazines of the Consumer Council.

5.3 The Logistics Support Unit of the CPB is responsible for organising consumer protection seminars (Note 15) for the business community. The aim is to promote awareness of the safety of toys, children's products and consumer goods, and help traders understand their obligations in complying with the relevant legislation.

Audit observations and recommendations

5.4 **Publicity campaigns.** In May 1990, the C&ED launched a publicity campaign, through announcements in the public interest (APIs), for the newly set up Weights and Measures Complaint Hotline. Since then, no APIs have been launched on the consumer protection legislation. In Audit's view, the C&ED may need to organise more publicity campaigns to promote public awareness.

Note 15: *These are two-hour seminars conducted by C&ED officers. The seminars cover the enforcement strategies for regulating safety issues of the products concerned. The seminars also cover the traders' roles and their responsibilities under the TCPSO and the Consumer Goods Safety Ordinance.*

5.5 ***Seminars for traders.*** From 2006 to 2008, the C&ED organised 11 seminars for department stores, small and medium entities, and chain shops. Audit found that the Logistics Support Unit did not take further steps to invite other traders to participate in the seminars, although some of the traders originally invited had declined the invitation. For example, out of 14 companies invited to participate in a seminar held in July 2007, only two accepted the invitation. To improve participation, Audit considers that the C&ED needs to extend the invitation to other traders, when the response from the traders originally targeted indicates a low participation rate.

5.6 **Audit has *recommended* that the Commissioner of Customs and Excise should:**

- (a) **in collaboration with the Consumer Council, consider organising more publicity campaigns, through APIs and other publicity channels (e.g. the C&ED website), to promote public awareness of the consumer protection legislation; and**
- (b) **improve participation of the consumer protection seminars, by extending the invitation to other traders when the response from the traders originally targeted indicates a low participation rate.**

Response from the Administration

5.7 The **Commissioner of Customs and Excise** agrees with the audit recommendations and will take steps to implement them.

Response from the Consumer Council

5.8 The **Chief Executive, Consumer Council** welcomes the audit recommendation in paragraph 5.6(a) and will collaborate with the C&ED in publicity campaigns.

PART 6: PERFORMANCE MEASUREMENT

6.1 This PART examines the performance measurement for the enforcement work of the CPB, and suggests areas for further improvement.

Guidelines on performance measurement

6.2 Performance management, including setting performance targets/indicators and their reporting, helps enhance government performance, transparency and accountability. According to the Guidelines issued by the Financial Services and the Treasury Bureau, Controlling Officers should:

- (a) focus more on targets when developing performance measures;
- (b) indicate the extent to which the department's operational objectives are being achieved. In general, outcome measures/indicators are preferred; and
- (c) provide unit cost or productivity indicators to indicate the extent to which the department is achieving, for example, a greater level of output with a less than corresponding increase in the levels of input. Ratios of output to provision and output to staff are likely to be most informative.

Audit observations and recommendation

Performance targets

6.3 In the 2008-09 COR, the C&ED did not set performance targets on the enforcement work of the CPB. In Audit's view, setting targets help motivate performance and improve accountability. It also provides stakeholders with a yardstick to help them assess the performance of the CPB.

Outcome and productivity measures

6.4 In the 2008-09 COR, the C&ED only reported the number of spot checks, the number of seizure cases, and the value of seizures for each enforcement area (i.e. weights and measures; toys and children's products; consumer goods; and precious metals). These performance indicators measure outputs but not outcome or productivity. In other words, they do not inform stakeholders how efficiently and effectively the CPB has carried out its enforcement work.

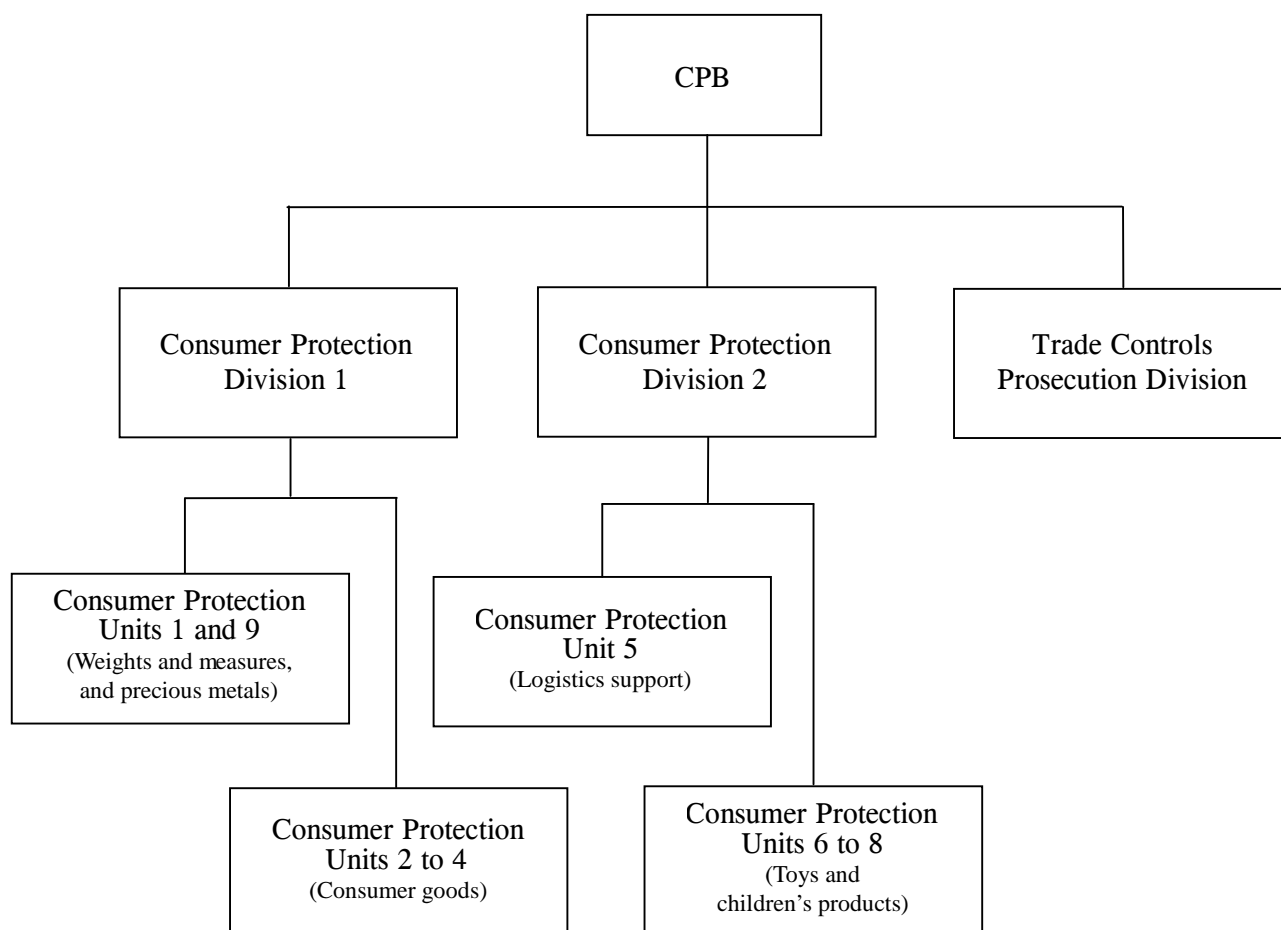
Audit recommendation

6.5 To enhance performance reporting in the COR, Audit has *recommended* that the Commissioner of Customs and Excise should consider setting performance targets for the CPB, and developing performance indicators that measure the outcome and productivity of its enforcement work.

Response from the Administration

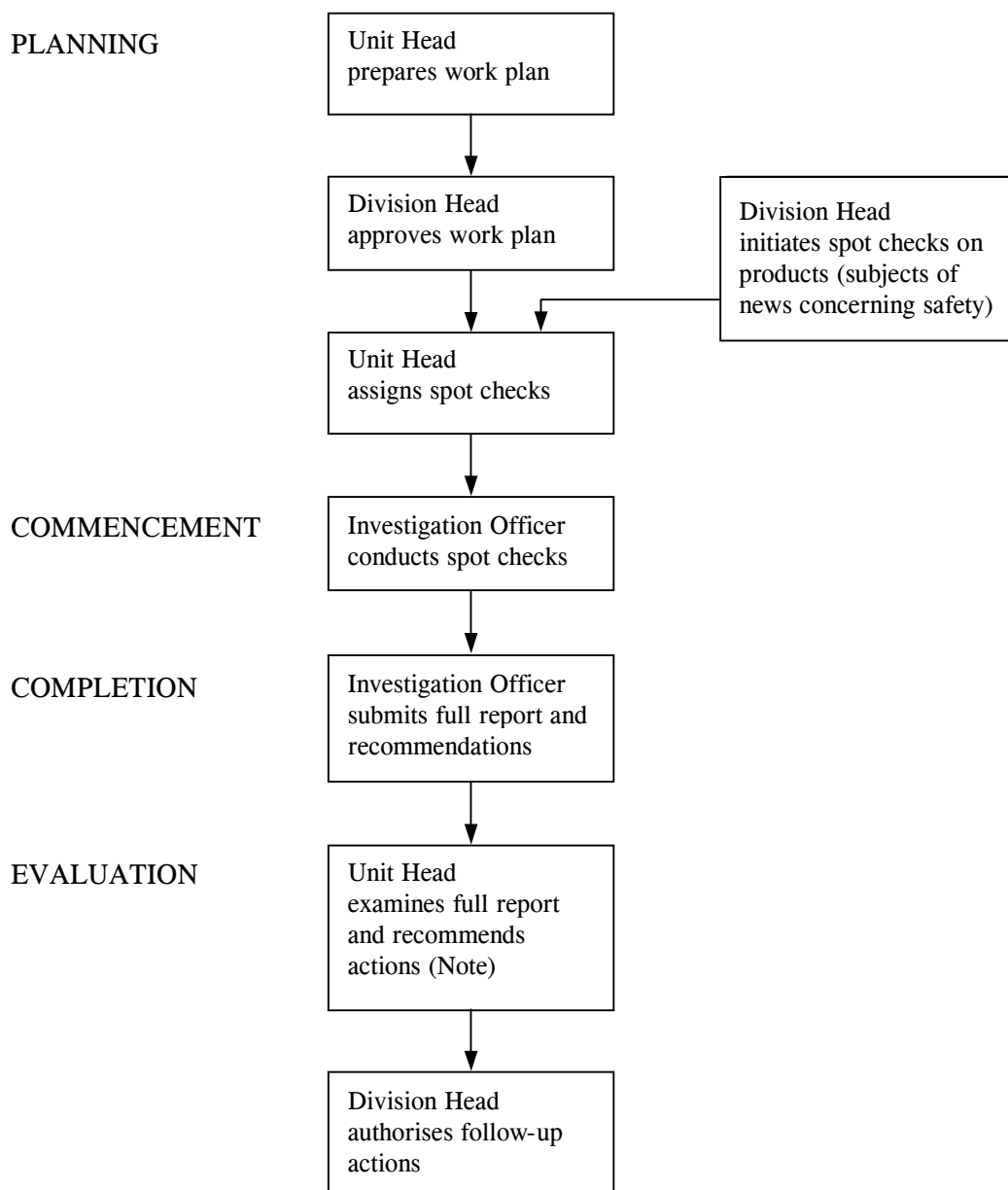
6.6 The Commissioner of Customs and Excise agrees with the audit recommendation and will take steps to implement it.

**Consumer Protection Bureau
Organisation chart
(31 December 2008)**



Source: C&ED records

Flowchart of spot check procedures



Source: C&ED records

Note: Actions may include a follow-up investigation, issue of a warning notice, issue of a prohibition notice, issue of a recall notice, closure of file (i.e. no further action required) and disposal of tested samples.

Appendix C
(paras. 2.5 and 2.6 refer)

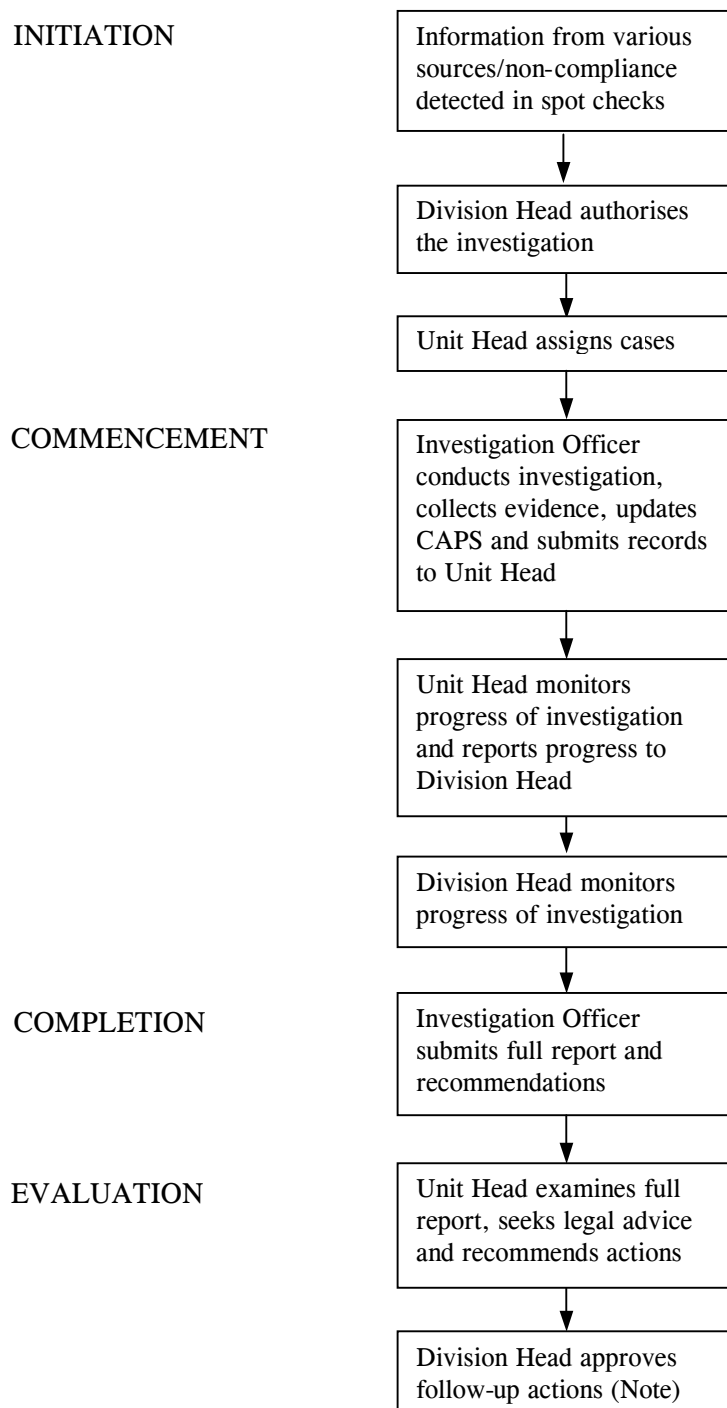
**Spot checks conducted
(2004 to 2008)**

Nature	2004	2005	2006	2007	2008	
	(Number)	(Number)	(Number)	(Number)	(Number)	(Percentage)
Weights and measures	605	604	600	600	770	21%
Toys and children's products	1,470	1,538	1,508	1,478	1,456	40%
Consumer goods	1,528	1,417	1,353	1,362	1,345	37%
Precious metals	82	81	80	85	85	2%
Total (say)	3,685 (3,700)	3,640 (3,600)	3,541 (3,500)	3,525 (3,500)	3,656 (3,700)	100%

Source: C&ED records

Remarks: During the period, the number of spot checks remained quite stable, at around 3,500 to 3,700 a year.

Flowchart of investigation procedures



Source: C&ED records

Note: Actions include prosecution, administrative sanctions, recovery of expenses of enforcement, disposal or modification of unsafe products, and closure of file (i.e. no further action required).

Chronology of key events regarding updating of safety standards

Date	Event
July 2000	The then Economic Services Bureau started to draft amendments to the TCPSO.
July 2002	The updating exercise of the TCPSO was withheld, pending the result of a case contravening the requirement of the safety standards stipulated in the TCPSO.
January 2003	The updating exercise was resumed after the case was settled.
May 2003	The then EDLB briefed members of the then Panel on Economic Services on its plan to update the relevant safety standards stipulated in the TCPSO and its proposal to simplify the legislative process.
July 2003	The then EDLB planned to introduce a Toys and Children's Products Safety (Amendment) Bill in the 2003-04 legislative session.
October 2003	The plan did not proceed due to competing priorities.
July 2004	The then EDLB planned to introduce the amendment bill in the 2004-05 legislative session.
September 2004	The amendment bill was placed on a waiting list for introduction in the 2004-05 legislative session, pending a review of its readiness (in terms of drafting and other preparatory work).
February 2005	After reviewing the latest legislative programme, the then EDLB considered that there was no urgency in introducing the amendment bill in the 2004-05 legislative session. The amendment bill was deferred to the 2005-06 legislative session.
July 2005	The then EDLB planned to introduce the amendment bill at the end of 2005. The plan did not proceed due to competing priorities.

Appendix E
(Cont'd)
(para. 4.9 refers)

Date	Event
July 2006	The C&ED issued a Consumer Protection Circular on the transitional arrangement pending amendments to the safety standards stipulated in the TCPSO.
July 2006 to July 2008	The then EDLB and the C&ED consulted traders and the related associations on the approach for the legislative amendments of the safety standards for toys and children's products. Legal advice was sought on the proposed amendments.
December 2008	The CEDB issued further instructions to the Law Draftsman to revise the amendment bill. The CEDB planned to introduce the legislative amendments in the 2009-10 legislative session.

Source: CEDB and C&ED records

Acronyms and abbreviations

APIs	Announcements in the public interest
Audit	Audit Commission
C&ED	Customs and Excise Department
CAPS	Case Processing System
CEDB	Commerce and Economic Development Bureau
COR	Controlling Officer's Report
CPB	Consumer Protection Bureau
EDLB	Economic Development and Labour Bureau
LPG	Liquefied petroleum gas
TCPSO	Toys and Children's Products Safety Ordinance
TIMS	Trader Information Management System

