



**Greenpeace's Submission to
The Bills Committee on Waste Disposal
(Amendment) Bill 2005
Legislative Council
HKSAR**

26th July 2005

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Hong Kong: Transit of Electronic Waste

Hong Kong has been transit of electronic waste (e-waste) though the HKSAR government has allegedly been making effort to stop the transboundary trade of the waste associated with Hong Kong:

- According to the Port Import Export Services (PIERS), the United States alone exports more than 4,000 tonnes of e-waste such as computer scraps and defective monitors to Hong Kong from January to July in 2004.¹
- From 2001 to 2003, at least 13 cases of illegal importing of e-waste to Hong Kong from countries like the United States, the Netherlands, and Japan are caught and eventually convicted in Hong Kong courts.²
- In 2004, 24 illegal cases of illegal importing or exporting of e-waste were caught and convicted in Hong Kong courts.³
- Most of the e-waste in Hong Kong is re-exported to the Mainland China according to our investigation and government's figures.^{4 5}

¹ Please note that exporters submit information to the PIERS on a voluntary basis. Put another way, the data from the company only represents part of the whole e-waste export from the United States to Hong Kong.

² Greenpeace's Communication with the Environmental Protection Department (EPD) on 16th September 2004.

³ Greenpeace's Communication with the EPD on 25th May 2005.

⁴ See Greenpeace, 《香港：電子毒物自由港？》，2003, chpt 3, <http://www.greenpeace.org.hk/chi/one_article.adp?campaign_id=39&article_id=608>.

⁵ According to the *Monitoring of Solid Waste in Hong Kong 2003* written by the EPD and communications between Greenpeace and the EPD on 22/3/2005, out of 33000 tonnes of 'recycled' electrical and electronic appliances, 29000 tonnes of them were being exported to other countries, mainly Mainland China and Pakistan, for 'recycling'.

1. International Obligations: The Basel Convention and Its Amendment

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention) is a global treaty addressing hazardous waste such as e-waste. It was adopted in 1989, and entered into force in 1992. It is primarily concerned with the generation, trans-boundary movements, and the disposal of hazardous waste. In the main, the Convention requires State Parties:

- to reduce generation and trans-boundary trade of hazardous waste; and
- to ban export of hazardous waste unless (a) prior informed consent is received from State of import; ⁶ and (b) the waste will be environmentally sound managed (ESM). ⁷

The Amendment to the Convention (the Basel Ban) was adopted in 1994 and, in essence, bans the export of hazardous waste from members of the EU, the OECD and the Liechtenstein to all other State Parties of the Convention. ⁸

China is a party to both the Basel Convention and the Basel Ban. The Convention is applicable to Hong Kong Special Administrative Region (HKSAR), and the HKSAR government has reportedly adopted administrative measure to implement the Basel Ban since 1998. ⁹

⁶ See the Basel Convention, Article 6 (3).

⁷ ESM is defined as: “Environmentally sound management of hazardous wastes or other wastes” means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes”. See the Basel Convention, Article 2(8).

⁸ See the official web site of the Secretariat of the Basel Convention:
<<http://www.basel.int/pub/baselban.html>>.

⁹ See the official web site of the Environmental Protection Department:
<http://www.epd.gov.hk/epd/english/environmentinhk/waste/guide_ref/guide_wiec_c.html>.

2. Problems: the Hong Kong Laws

The Waste Disposal Ordinance (WDO), Chapter 354 of the Laws of Hong Kong, is the local legislation incorporating the Basel Convention. It supposedly implements the requirements of the Convention on import and export of hazardous waste including e-waste.

Greenpeace believes that the WDO contains 3 main problems. We need to address them in the proposed harmonization of the existing WDO with the Basel Ban.

First, the WDO fails to reflect the 'hazardous waste' covered under the Basel Convention in its application of the Basel Ban.

The WDO stipulates that import or export of:

‘any waste of a kind specified in the Sixth Schedule, unless the waste is uncontaminated and is imported for the purpose of a reprocessing, recycling or recovery operation or the reuse of the waste; or

any waste of a kind specified in Seventh Schedule, or not specified in the Sixth Schedule’¹⁰

requires permit issued by the Environmental Protection Department, i.e. subjected to control.

However, a closer look at the Sixth Schedule and the Seventh Schedule of the WDO reveals that certain hazardous wastes, particularly waste electrical and electronic assemblies or scrap (A1180 wastes under Annex VIII of the Basel Convention) are omitted.

‘Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc) and reclaimed electronic components suitable for base and precious metal recovery’,¹¹ if uncontaminated, is not subject to control according to the WDO. However, among the waste electrical and electronic assemblies or scrap, only ‘glass waste from cathode-ray tubes and other

¹⁰ The WDO, Section 20A(1a) & (1b) and 20B (1a) & (1b).

¹¹ The WDO, Sixth Schedule, Entry GC020.

activated glasses' is put under Seventh Schedule and subject to control.

¹²

In contrast, the Basel Convention has clearly stated e-waste should be considered as hazardous waste:

'Waste electrical and electronic assemblies or scrap containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or contaminated with Annex I constituents (e.g., cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they possess any of the characteristics contained in Annex III' should be subject to control. ¹³

Under the Basel Ban, export of waste listed above from members of the EU, the OECD and the Liechtenstein to all other parties of the Convention should be banned.

With the existing WDO, the HKSAR is allowed to easily pick and choose the wastes it wants the Basel Ban to apply, even to the extent of ignoring hazardous waste listed in the Basel Convention.

Second, the WDO fails to synchronize definitions with the Basel Convention.

By comparing the WDO with the Basel Convention, it is not difficult to notice that the WDO fails to give clear definitions to 3 crucial terms in the control of transboundary movement of hazardous waste: namely, 'contamination', 'waste', and 'reprocessing, recycling or recovery operation or the reuse of the waste'.

Definition of Contamination

The Annex III of the Basel Convention provides a list of hazardous characteristics:

- Explosive;

¹² The WDO, Seventh Schedule, Entry AB040.

¹³ The Basel Convention, Annex VIII, Entry A1180.

- Flammable Liquids;
- Flammable Solids;
- Substances or wastes liable to spontaneous combustion;
- Substances or waste which, in contact with water emit flammable gases;
- Oxidizing;
- Organic Peroxides;
- Poisonous (Acute);
- Infectious substances;
- Corrosives;
- Liberation of toxic gases in contact with air or water;
- Toxic (Delayed or chronic);
- Ecotoxic;
- Capable, by any means, after disposal, or yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

The WDO's definition of 'contamination' or 'hazardous' is not totally in synchronized with the Basel Convention.

Under the WDO, Section 20I, waste is regarded as 'contaminated' if it is contaminated by a substance to an extent which:

- significantly increase the risk to human health, property or the environment associated with the waste;
- prevents the reprocessing, recycling, recovery or reuse of the waste in an environmentally sound manner.

In the Seventh Schedule of WDO, 'contaminated waste' means that the substance referred to is present to an extent which 'renders the waste hazardous' or 'renders the waste not suitable for submission to a reprocessing, recycling or recovery operation or for reuse'.

Obviously, there is inconsistency between the WDO and the Basel Convention in the definition of 'contamination/hazardous'. This is important because under the WDO, Section 20A and 20B, import or export of any waste of a kind specified in the Sixth Schedule, unless the waste is uncontaminated and is imported for the purpose of a reprocessing, recycling or recovery operation or the reuse of the waste requires permits

issued by the EPD. As a consequence, there is a possibility that waste that should be regarded as hazardous and its transboundary movement be subject to control under the Basel Convention is treated as 'uncontaminated' and free of control under the WDO.

Definition of Waste

The Basel Convention defines 'waste' as substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.¹⁴

The definition of 'waste' under the WDO is clearly not compatible with that of the Basel Convention: Under WDO, Section 2, waste is narrowly defined as 'any substances or article which is abandoned and includes animal waste, chemical waste, household waste, livestock waste, street waste and trade waste'.

In fact, in a recent conviction case related to e-waste trade, the HKSAR Magistrate Court ruled that the meaning of 'waste' should be given a broader purview in order to reflect the original purpose of the legislation in controlling the import of hazardous waste.¹⁵

Definition of Reprocessing, Recycling or Recovery Operation or the Reuse of the Waste

The Annex IV of the Basel Convention clearly defines 'operations which may lead to resource recovery, recycling reclamation, direct re-use or alternative uses'. In contrast, the WDO provides no such clear definitions and guidelines for these operations. Consequently, hazardous waste like e-waste may be easily imported into and exported from Hong Kong by illegal traders in the name of, for example, recycling.

In addition, the Annex IX of the Basel Convention clearly stipulates that as far electrical and electronic assemblies (including printed circuit boards, electronic components and wires) are concerned, only those which are destined for direct reuse, and not for recycling or final disposal should not

¹⁴ The Basel Convention, Article 2.1.

¹⁵ See the official web site of the EPD:

<http://www.epd.gov.hk/epd/english/news_events/press/press_050715a.html>.

be subject to control.¹⁶ Reuse is clearly defined as repair, refurbishment or upgrading but not major reassembly. However, the WDO is much less stringent: those assemblies destined for reprocessing, recycling, recovery or reuse are free from control.

Third, the WDO fails to control hazardous waste from entering the Mainland China.

There is also a prominent gap between the WDO and the Mainland China's related legislation.

The Mainland China has enacted laws controlling the import of a wide range of hazardous waste. The range includes the waste listed in the National Catalogue of Hazardous Wastes;¹⁷ and also that specified in a number of national regulations.¹⁸ However, it is obvious that the range of hazardous waste subject to control under the WDO is comparatively much narrower.

¹⁶ See the Basel Convention, Annex IX, Entry B1110.

¹⁷ See: <<http://www.zhb.gov.cn/eic/650495276838027264/20030415/1037640.shtml>>

¹⁸ See Announcement 55/2004, promulgated by the Ministry of Commerce, the General Administration of Customs, and the State Environmental Protection Administration on 27th October 2004, <<http://jds.mofcom.gov.cn/aarticle/zcfb/a/200410/20041000297114.html>> or <<http://wirmc.sepa.gov.cn/fwjkg1/289074801081843712/20041116/3058.shtml>>

4. Greenpeace's Suggestions

- A. Tighten the control on electronic waste by:
- Redefine item GC020 of Sixth Schedule of the WDO, in accordance with B1110 of the Annex IX of the Basel Convention.
 - Add to the Seventh Schedule of the WDO A1180 of the Annex VIII of the Basel Convention.
 - Incorporate a testing system in the control of the import and export of electronic waste or scrap
 - The import or export of waste or scrap consisting of printed circuit boards unless the boards contain less than 0/5%(w/w) of lead and leach less than 1(mg/L) of lead in a TCLP leachate test (and are free of other hazardous constituents) should be subjected to control. ¹⁹
 - Regard as hazardous wastes which are “*defined by the Basel Convention in its provisions and relevant annexes, and those considered under the laws and regulations of the Mainland China, and of wastes of a kind specified in the Seventh Schedule of the WDO*”
- B. Synchronize the following terms used in the WDO with the Basel Convention:
- Use the Basel Convention's Annex III characteristics to define “contaminated” in the WDO;
 - Use the Basel Convention's article 2.1 to define “waste” in the WDO;
 - Use the Basel Convention's Annex IV to define “disposal operations” and “reprocessing, recycling or recovery operation or reuse” in the WDO
- C. Synchronize the controlled waste list used in Hong Kong with that in the Mainland China
- D. List of proposed Ninth Schedule – Export Countries
- The proposed structure of the Ninth Schedule is legally cumbersome, considering that the enumeration under the Basel Ban consists of group of countries under multilateral agreements with the exception of the Liechtenstein. Thus, if there are new members of either the OECD or the EU, then the proposed WDO will immediately be deficient, and may require a cumbersome legislative process to

¹⁹ See the Department of the Environment and Heritage, Australian Government: <<http://www.deh.gov.au/settlements/chemicals/hazardous-waste/publications.html#information>>.

amend the Ninth Schedule.

- We suggest that the Ninth Schedule simply mirror the listing of the Basel Ban (Decision III/1) or include the phrase “*member countries of the Organization for Economic Cooperation and Development or the European Union*” at the end of the enumeration.