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2877 5029

Environmental Protection Department
Waste Management Policy Division
Waste Policy Group
Waste Policy Section (2)
(Attn: Mr David HA,
Sr Env Protection Offr (Waste
Policy)2)
45/F, Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

By Fax (2318 1877) and By Post

3 August 2005

Dear Mr HA

Waste Disposal (Amendment) Bill 2005 (“the Bill”)

I refer to your letter dated 24 June 2005 and have the following comments on your reply relating to the Basel Ban:

Paragraphs 9 and 10 of the LegCo Brief of the Bill state that:

“9. In 1995, the parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal agreed to ban the export of hazardous waste from state-members of the Organization for Economic Cooperation and Development, European Community and Liechtenstein to other states (known as the Basel Ban). The objective is to reduce the environmental impact caused by the movement of hazardous waste from developed countries to developing countries.

10. The People’s Republic of China is a Party to the Basel Convention. Since 1998, DEP has been implementing the Basel Ban in Hong Kong administratively by exercising his power to approve or refuse the issue of permits for the importation of waste. We now

propose to set out the Basel Ban in clear terms in the Ordinance. This would send a strong signal to the international community regarding Hong Kong's commitment to enforcing the Basel Ban.”

You have confirmed that “Hong Kong is not a party to the Basel Convention. However, China is a party to the Convention, and its application has been extended to the Hong Kong Special Administration Region.”.

To implement the policy intent expressed in paragraphs 9 and 10 of the LegCo Brief, the Bill proposes to add:

(I) New sections 20A(4)(e) and (f)

S 20A(4) The waste disposal authority shall not issue a permit under this section for the import of any waste unless he is satisfied-

(e) in the case of waste of a kind specified in the Seventh Schedule, that the waste is not exported from a state that is listed in Schedule 9; and

(f) that the issue of such permit is not in breach of Hong Kong's obligations under The Basel Convention.

(II) New section 20B(4)(g)

S 20B(4) The waste disposal authority shall not issue a permit under this section for the export of any waste unless he is satisfied-

(g) that the issue of such permit is not in breach of Hong Kong's obligations under The Basel Convention.

Section 1(3) of the Bill provides that the new provisions relating to sections 20A and 20B and Schedule 9 (states included in Annex VII of the Basel Convention) shall come into operation on the day on which the Bill is enacted and published in the Gazette.

Doubt arises as to whether the drafting of the Bill reflects the policy intent expressed in paragraphs 9 and 10 of the LegCo Brief. The Basel Ban enunciated in Decision III/1 adopted by the third meeting of the Conference of the Parties to the Basel Convention in 1995 is as follows:

“Decision III/1 Amendment to the Basel Convention

The Conference

...

3. Decides to adopt the following amendment to the Convention:

...

Insert new Article 4A:

1. Each Party listed in Annex VII shall prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII.

2. Each Party listed in Annex VII shall phase out by 31 December 1997, and prohibit as of that date, all transboundary movements of hazardous wastes under Article 1(1)(a) of the Convention which are destined for operations according to Annex IV B to States not listed in Annex VII. Such transboundary movement shall not be prohibited unless the wastes in question are characterised as hazardous under the Convention.

Annex VII

Parties and other States which are members of OECD, EC, Liechtenstein

The amendment is not yet in force.”.

As China is not a party listed in Annex VII and the new Article 4A is not in force, please clarify:

- (a) whether the Basel Ban is binding on China and Hong Kong?
- (b) what are Hong Kong's obligations under the Basel Ban?
- (c) the difference between Hong Kong's obligations under the Basel Ban and Hong Kong's obligations under the Basel Convention as referred to in the proposed sections 20A(4)(f) and 20B(4)(g) of the Bill?
- (d) whether there will be any time gap between the respective commencement dates of the new Article 4A of the Basel Convention and the new provisions relating to sections 20A and 20B and Schedule 9 of the Bill?

It is appreciated that your reply in both Chinese and English could reach us by close of play, 10 August 2005.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

c.c. DoJ (Attn: Ms. Fanny IP, SALD)