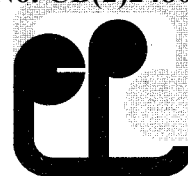


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16 August 2005

Miss Monna LAI
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Miss LAI,

Waste Disposal (Amendment) Bill 2005 (The Bill)

I refer to your letter dated 3 August 2005, which has raised the following questions relating to the Basel Ban -

- (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 ?

2. Before responding to your specific questions, I wish to provide some background information as follows -

- The Basel Convention (the Convention) is applicable to Hong Kong since China is a Party to the Convention, and the Convention is extended to the Hong Kong SAR.
- At the Third Meeting of the Conference of the Parties in 1995, it was proposed to incorporate the Basel Ban (the Ban) into the Convention as the new Article 4A. The Ban seeks to regulate export of hazardous wastes from Annex VII countries (i.e. countries of the EU, OECD and Liechtenstein), but it does not impose any obligation on "non-Annex VII" countries to prohibit the import of such wastes.
- The Ban has to be ratified by three-fourths of the Parties before the new Article 4A comes into force.

- As China is not an Annex VII country, the Ban (even when it has entered into force) would not impose any binding obligation on China including Hong Kong in regulating import of hazardous wastes from Annex VII countries. Nevertheless, China supported and ratified the Ban on 1 May 2001, which also applied to the HKSAR.

3. Hence, the proposed new section 20A(4)(e) actually reflects the more stringent measure adopted by Hong Kong to prohibit the import of hazardous wastes from Annex VII countries into Hong Kong. The policy intent is to send a strong signal to the international community regarding Hong Kong's commitment and collaborative effort to enforce the Basel Ban, regardless of whether or not the new Article 4A of the Convention has come into force. In this connection, please note that Article 4(11) of the Convention provides that "nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order better to protect human health and the environment".

4. Response to your specific questions is set out below -

Questions (a) (b) and (c)

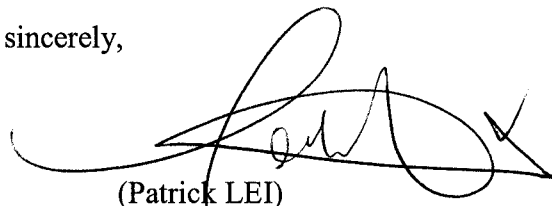
For the reasons stated in paragraph 2 above, even when the Ban has come into force, it does not require a "non-Annex VII" country to prohibit the import of hazardous waste to that country. It only requires an Annex VII country not to export hazardous waste to a non-Annex-VII country. Therefore, the Ban does not impose any obligation upon China and Hong Kong to prohibit the import of such waste.

The obligations under S.20A(4)(f) refer to the applicable requirements under the Convention to control import of hazardous wastes into Hong Kong while the obligations under S.20(B)(4)(g) refer to the applicable requirements under the Convention to control export of hazardous wastes from Hong Kong.

Question (d)

The commencement of the new provisions relating to sections 20A & 20B and Schedule 9 of the Bill does not have to tie in with the commencement of the Ban (i.e. the new Article 4A of the Convention) for the reasons stated in paragraphs 2 and 3 above.

Yours sincerely,



(Patrick LEI)

For Director of Environmental Protection

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