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CB(1) 1032/07-08(02)

10 March 2008

Ms Kitty Cheng
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong
[Fax: 2877 5029]

Dear Ms. Cheng,

Product Eco-responsibility Bill

Thank you for your letter of 3 March.

2. In designing the regulatory framework of the Product Eco-responsibility Bill (PER Bill), we have taken into account the views of the Members of the Legislative Council (LegCo) Panel on Environmental Affairs (EAP). In particular, we note that Members had concerns over an “umbrella” legislative approach if the primary legislation would only consist of a list of regulation-making provisions while all regulatory measures of individual producer responsibility schemes (PRS’s) would be set out in subsidiary legislation. If such an approach were adopted, Members considered that sufficient time should be allowed for the LegCo to scrutinize the subsidiary legislation and a positive vetting procedure should be contemplated. It was also suggested at least one PRS regulation should be submitted together with the PER Bill (paragraphs 9 to 15 of the minutes of the LegCo EAP meeting of 26 April 2006).

3. In the light of Members’ views, we embarked on the preparatory work for the PRS on plastic shopping bags as the first scheme under the PER Bill. We also *modified* our legislative approach to address Members’ concern. While it remains our intention to implement PRS’s for a variety of products through the PER Bill as indicated in the “purpose” clause, we will no longer rely upon subsidiary legislation alone to introduce individual PRS’s. Instead, we would incorporate major regulatory measures of individual PRS’s in the

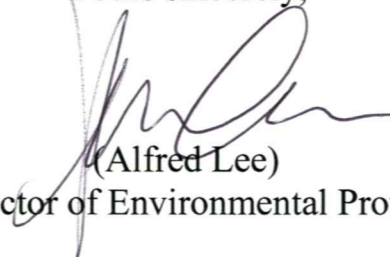
PER Bill itself. In the case of plastic shopping bags, we have set out in Part 3 of the PER Bill the fundamental provisions for introducing the proposed environmental levy on plastic shopping bags, including the definition of "plastic shopping bags", the definition of "prescribed retailers" and their major obligations. Under this *modified* legislative approach, the subsidiary legislation under the PER Bill would only set out the operational details of individual PRS's, such as the procedure for registration, records required to be kept, etc.

4. The *modified* legislative approach has earlier been set out in the LegCo EAP Paper on "A Proposal on an Environmental Levy on Plastic Shopping Bags" (CB(1) 1666/06-07(17)). We consider the *modified* legislative approach the best means to address Members' concern over LegCo's scrutiny role on individual PRS's, as the essential regulatory measures of each new PRS are to be added to the primary legislation through an amendment bill. Any such amendment bill must be given three readings for its passage by the LegCo, thus obviating the need for any additional triggering mechanism. As we propose that the subsidiary legislation would mainly deal with procedural matters and operational details under the *modified* legislative approach, adopting the positive vetting procedure for such implementational regulations does not appear to be warranted.

5. While the Bills Committee is now scrutinizing the PER Bill, which contains the major regulatory measures of the PRS on plastic shopping bags, we are in parallel liaising with major retailers to work out the operational details. If the PER Bill can be enacted before LegCo's summer recess of 2008, we would endeavour to submit the regulation on plastic shopping bags to the LegCo for scrutiny in the second half of 2008.

6. We hope the above has addressed your inquiries. Please feel free to contact the undersigned if we could be of further assistance.

Yours sincerely,



(Alfred Lee)

for Director of Environmental Protection

c.c.

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