

Bills Committee on Product Eco-responsibility Bill

Summary of deputations' views
(as at 11 March 2008)

Subject/Clause	Organization/individual	Concern/View	Administration's responses/ proposed amendments
General	Seiyu (Shatin) Co Ltd Green Council (LC Paper No. CB(1) 837/07-08(01)) Greeners Action Green Sense (LC Paper No. CB(1) 837/07-08(02)) Christians for Eco-concern (CEC) (LC Paper No. CB(1) 837/07-08(06)) Advisory Council on the Environment (ACE) (LC Paper No. CB(1) 837/07-08(05)) Green Power (GP) Democratic Party (DP) (LC Paper Nos. CB(1) 837/07-08(07) and CB(1) 902/07-08(01)) Consumer Council (CC) (LC Paper No. CB(1) 837/07-08(08)) The Conservancy Association (CA) (LC Paper No. CB(1) 879/07-08(01)) Mr YAU Wing-kwong, Tai Po District Council member (LC Paper No. CB(1) 837/07-08(10)) Friends of the Earth (HK) (FOE) (LC Paper No. CB(1) 837/07-08(11)) Democratic Alliance for Betterment and Progress of Hong Kong (DAB) (LC Paper No. CB(1) 879/07-08(03))	Supported the Bill	The Administration noted the support from organizations and individuals.

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	<p>Hong Kong Plastic Bags Manufacturers' Association (HKPBMA) (LC Paper No. CB(1) 837/07-08(03))</p>	<p>The Administration had failed to take into account the recommendations of Government's consultancy report on Producer Responsibility Schemes (PRS). Supported the implementation of a voluntary PRS on plastic bags coupled with incentives for recycling rather than a mandatory one</p>	<p>In formulating the Administration's proposal, the Administration has made reference to the Consultancy Study by GHK, as well as the views of the Legislative Council, the Advisory Council on the Environment, the major stakeholders and the public at large.</p> <p>The Administration's proposal to introduce an environmental levy in phases, coupled with voluntary reduction efforts, is generally in line with GHK's recommendation.</p> <p>The Administration's voluntary efforts on plastic shopping bag reduction have started in as early as 1993. Yet, the indiscriminate use of plastic shopping bags remains a serious and visible environmental problem as of today. The public demand more concrete and forceful actions.</p> <p>The Administration very much supports the recovery and recycling of plastic shopping bags. Both the 3-coloured recycling bin scheme and the "source separation of domestic waste" programme collect plastic shopping bags for recycling. It will further work with retailers, plastic bag manufacturers and green groups to better facilitate the recovery and recycling of plastic shopping bags.</p>

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	<p>Green Manufacturing Alliance (GMA) (LC Paper No. CB(1) 837/07-08(04))</p> <p>Hong Kong Retail Management Association (HKRMA) (LC Paper No. CB(1) 837/07-08(09))</p>	<p>Had reservation on the implementation of the Bill. Consideration should be given to specify the thickness of plastic bags to be supplied to facilitate re-use/recycling</p> <p>A voluntary rather than a mandatory PRS should be implemented. Concerned about the "switching effect" of the Bill as consumers might use other bags instead of plastic bags which were equally damaging to the environment</p>	<p>The objective of the proposed environmental levy on plastic shopping bags is to reduce their indiscriminate use through an economic incentive. The Administration does not plan to regulate the thickness of plastic shopping bags at this stage.</p> <p>The Administration's voluntary efforts on plastic shopping bag reduction have started in as early as 1993. Yet, the indiscriminate use of plastic shopping bags remains a serious and visible environmental problem as of today. The public demand more concrete and forceful actions.</p> <p>The Administration is mindful of the risk of "switching" to other single-use carriers, such as paper bags. It has, therefore, proposed a phased approach by first introducing the environmental levy at "prescribed retailers". Given the nature of the products offered by these retailers and the shopping habits of Hong Kong people, the risk of "switching" to other single-use carriers at these retailers is considered low.</p> <p>Yet, the Administration will closely monitor the situation, and address any side effects that may arise.</p>

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	<p>The Hong Kong Institution of Engineers (HKIE) (LC Paper No. CB(1) 837/07-08(12))</p>	<p>Collecting levy at retailing level was both scientifically incorrect and burdensome given the administrative work involved. PRS on plastic shopping bags would unlikely bring a significant benefit to environmental protection. The curb on plastic bag use may not necessarily help reduce solid waste if people switch to use other bags</p>	<p>The objective of the proposed environmental levy on plastic shopping bags is to reduce their indiscriminate use through an economic incentive. The Administration considers that an environmental levy at the retail level would be most effective in addressing the problem of indiscriminate use.</p> <p>The Administration is mindful of the risk of “switching” to other single-use carriers, such as paper bags. It has, therefore, proposed a phased approach by first introducing the environmental levy at “prescribed retailers”. Given the nature of the products offered by these retailers and the shopping habits of Hong Kong people, the risk of “switching” to other single-use carriers at these retailers is considered low.</p> <p>Yet, the Administration will closely monitor the situation, and address any side effects that may arise.</p>

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Scope of control	<p>Greeners Action</p> <p>HKPBMA</p> <p>DP, CC, DAB</p> <p>HKRMA</p>	<p>PRS should not be confined to the six products set out in the Bill but should be extended to include other products such as foam boxes</p> <p>The Bill should include PRS on all forms of packaging and not only plastic bags</p> <p>Supported the application of PRS to the other five types of products set out in the Bill</p> <p>PRS on plastic bags should cover all retail outlets with exemptions only on grounds of hygiene</p>	<p>The six types of products as proposed in the “Policy Framework for the Management of Municipal Solid Waste (2005-2014)” are provided in the purpose clause of the Bill as examples of different types of products that may be regulated. The purpose clause does not confine itself to an exhaustive list of products on which PRSs may be introduced in future.</p> <p>The PRS on plastic shopping bags is the first scheme under the Bill. PRS's on packaging may be added to the regulatory regime as and when appropriate.</p> <p>The Administration is working closely with the relevant trades to develop voluntary PRS's for other products. It will review from time to time the need to introduce mandatory PRS's based on the effectiveness of the voluntary schemes.</p> <p>The Administration is mindful of the risk of “switching” to other single-use carriers, such as paper bags. It has, therefore, proposed a phased approach by first introducing the environmental levy at “prescribed retailers”. Given the nature of the products offered by these retailers and the shopping habits of Hong Kong people, the risk of “switching” to other single-use carriers at these retailers is considered low.</p>

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			<p>Yet, the Administration will closely monitor the situation, and address any side effects that may arise.</p>
	<p>Green Council</p> <p>ACE</p> <p>FOE</p> <p>HKIE</p>	<p>The proposed PRS is mainly focused on the post production/consumption phase of product life cycle. A more effective product eco-responsibility strategy with emphasis on "eco-design" and "green purchasing" should be considered</p> <p>PRS should be reviewed in a year's time when consideration should be given to extending the scheme to other retail outlets</p> <p>Priority should be given to introducing PRS on electronic equipment, including lightings</p> <p>It would be more beneficial to extend the scope of control to include plastic bottles which account for a bigger portion of plastic in terms of weight</p>	<p>The Administration has long adopted a green procurement policy. The Stores and Procurement Regulation requires all bureaux and departments to take into account "green" considerations in procurement. Mandatory "green" specifications have also been developed for a series of commonly used products. Such specifications are being reviewed from time to time.</p> <p>The Administration has undertaken to review the scheme after one year of implementation to consider how it could be extended to other retailers.</p> <p>The Administration is actively pursuing voluntary PRS's on waste electrical and electronic equipment (WEEE). It has launched a territory-wide computer recycling programme in January 2008. The programme is funded by some 20 computer suppliers. It will also shortly launch a PRS on fluorescent lamps which is again funded by the trade.</p> <p>The objective of the proposed environmental levy on plastic shopping bags is to reduce their indiscriminate use through an economic incentive. Nevertheless, the Administration very</p>

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			<p>much supports the recovery and recycling of all plastic materials, including plastic bottles and plastic shopping bags. Both the 3-coloured recycling bin scheme and the "source separation of domestic waste" programme collect plastic materials for recycling.</p>
Use of levy	<p>Green Council, Greeners Action, GMA, CC</p> <p>HKPBMA, CEC</p> <p>DP</p> <p>HKIE</p>	<p>Levy collected should be used to fund environmental education and other environmental initiatives</p> <p>Levy should be used to set up a fund to improve the environment and to facilitate waste recycling</p> <p>Levy should not become part of Government revenue but should be used to reduce other Government charges, particularly those affecting the livelihood of needy families, as well as to improve the environment and facilitate waste recycling</p> <p>Levy should be used to subsidize the recyclers to recycle plastic bottles. Funds should be set up to support development of cost-effective solutions in the sorting, cleaning and recycling of plastic bottles</p>	<p>The objective of the proposed environmental levy on plastic shopping bags is to reduce their indiscriminate use through an economic incentive. It has never been the Administration's intention to raise revenue through the environmental levy. In fact, the fewer plastic shopping bags the public use, the less revenue the environmental levy generate.</p> <p>As suggested by the Advisory Council on the Environment, it would not be desirable to associate the environmental levy with the funding of environmental protection initiatives. This could risk generating public misconception that they are contributing towards environmental protection by paying the environmental levy, which would defeat the very purpose of the environmental levy.</p> <p>The Administration is firmly committed to environmental protection. As pledged in the Policy Address and approved by the</p>

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Recycling	<p>HKPBMA</p> <p>Green Sense, GMA, FOE, DAB</p>	<p>Used plastic bags can be broken down and recycled for use as raw materials for manufacture of plastic bags and other plastic products. Used plastic bags could be exchanged for new plastic bags at retail outlets to facilitate recycling</p> <p>More efforts should be made to facilitate recycling, including plastic shopping bags</p>	<p>The Administration would explore with major retailers on how best to promote the recovery of plastic shopping bags, including the feasibility of providing collection bins at their retail shops to facilitate the public to recover plastic shopping bags for recycling.</p> <p>In addition to the 3-coloured recycling bin scheme and the "source separation of domestic waste" programme, the Administration is also supporting the recycling industry through the EcoPark and the Environment and Conservation Fund.</p>
Clause 2 Purposes of the Ordinance	Green Council	Clause 2(2) to be amended by adding "income collected through deposit-refund schemes and the application of recycling fees and environmental levies should be allocated and used to subsidize local infrastructure for resource and waste management"	Clause 2 is the purpose clause of the Bill, and clause 2(2) lists out examples of the possible schemes and measures that may be implemented through the Bill. The Administration considers it unsuitable to elaborate such schemes and measures restrictively in the purpose clause because the list there is not meant to be exhaustive.
Clause 9 Providing false information	HKRMA	The provision of information that is "false" or "intended to mislead" should be an indictable offence under clause 9(1). However, the provision of information that is "incorrect" or "misleading" (except where there is an intention to mislead) should not be an indictable offence with six months imprisonment	All the proposed offences in the Bill are summary offences, not indictable offences.

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Clause 9(3)	HKRMA	There may not be a need for this clause as the omission of “material particular” from a record, document or information will constitute an offence under clause 9(1). The phrase “material particular” should not be subject to interpretation since a contravention under clause 9(3) is an indictable offence with six months imprisonment	The Administration considers it clearer to make the omission of material particular a separate offence so as to avoid any argument that an omission may not amount to the provision of false, incorrect or misleading information. Moreover, it is more appropriate to adopt clause 9(4) as the line of defence to a charge of omission, i.e. the person charged did not know and could not with due diligence have ascertained the material particular in question.
Clause 13 Appeals	HKRMA	The phrase “or deregistration” under clause 13(2)(a) should be deleted for the reason set out in the comments to Clause 17(1)	The Administration considers that registration and deregistration at the level of retail outlets is necessary to ensure the effective enforcement of the scheme. Hence, provision for deregistration is required to be retained.
Clause 17 Interpretation of Part 3	HKRMA	<p>The definitions on “qualified retail outlet” and “registered retail outlet” under clause 17(1) should be deleted because registration should be required for each “registered retailer”, but <u>not</u> for each retail outlet. Clauses 17(2), (6) and (7) should also be deleted for the same reason as registration and de-registration should not be required for each retail outlet</p> <p>Registration fees should not be payable by “prescribed retailers” because part of the revenue collected from the levy should be used to offset the administration costs of</p>	The Administration considers that registration and deregistration at the level of retail outlets is necessary. This is to let the public know whether a particular retail outlet is subject to the environmental levy. The Administration also needs to know the location of the relevant qualified retail outlets for enforcement purposes, e.g. to spot-check whether customers are given free plastic shopping bags at retail outlets that are subject to the levy. It is also necessary that returns should be outlet-based for audit purposes.

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		the Government.	There is no requirement on the payment of registration fee in the Bill.
Clause 18 Levy on plastic shopping bags	HKRMA	Clause 18(1) should be amended to require that any amendments to Schedules 1, 2 and 3 should only be made after consultation with ACE <u>and</u> the LegCo Panel on Environmental Affairs	It has long been an established practice that the Administration would consult the relevant LegCo Panel on legislative proposals.
Clause 19 Restrictions on provision of plastic shopping bags by, and registration of, prescribed retailers	HKRMA CC HKRMA	<p>Clause 19(1) should be amended to require that any amendments to Schedules 4 should only be made after consultation with ACE <u>and</u> the LegCo Panel on Environmental Affairs</p> <p>Clause 19(3) as drafted seems to suggest that the registration of prescribed retailers is voluntary</p> <p>The term “may” in the second line of clause 19(3) should be changed to “must” whereas the phrase “a qualified retail outlet of...” in the third line should be deleted and replaced by “the store brand names of the retail outlets operated by...” for the reason as set out in the comments to Clause 17(1)</p>	<p>It has long been an established practice that the Administration would consult the relevant LegCo Panel on legislative proposals.</p> <p>A “prescribed retailer” is not required to apply for registration in respect of a “qualified retail outlet” that does not provide “plastic shopping bags” to which the Bill applies.</p> <p>A “prescribed retailer” is not required to apply for registration in respect of a “qualified retail outlet” that does not provide “plastic shopping bags” to which the Bill applies. The Administration considers that registration at the level of retail outlets is necessary for the reasons given in responses to comments on Clause 17(1) above.</p>

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		<p>Clause 19(4) needs to be re-drafted since all plastic bags can be “easily turned into a plastic shopping bag” under the current definition on “plastic shopping bags” because it is easy to put a hole in a plastic bag.</p> <p>As it is an offence for a prescribed retailer who fails to ensure that no plastic bags, or nothing that can be easily turned into a plastic shopping bag, is provided directly or indirectly to a customer from a qualified retail outlet of that retailer unless the outlet is a registered retail outlet, consideration should be given to deleting the phrase “or indirectly” as the meaning is unclear. The phrases “qualified” and “unless the outlet is a registered retail outlet” should also be deleted for the reason as set out in the comments to Clause 17(1)</p>	<p>It is necessary to include the reference to something “that can be easily turned into a plastic shopping bag” in order to prevent retailers from circumventing the law by providing at cashiers certain bags that originally do not fall within the definition of “plastic shopping bag” but on which holes can be made easily after checking out.</p> <p>It is necessary to include the reference to “indirectly” in order to prevent retailers from circumventing the law by, for example, providing free plastic shopping bags to a third person who subsequently hands over the bags to customers.</p>
<p>Clause 21 Display of certificate of registration</p>	<p>HKRMA</p>	<p>The phrase “each registered retail outlet of that retailer” in clause 21(1) should be deleted and replaced by “the store brand names operated by that retailer”</p> <p>The phrase “certificate of registration” in clause 21(2) should be deleted and replaced by the term “notice” whereas the phrase “of the registered outlet to which the certificate relates” should be deleted</p>	<p>As the Administration considers that registration at the level of retail outlets are necessary for the reasons given in responses to comments on clause 17(1) above, that the requirements in clauses 21(1) and (2) should be maintained.</p>

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		<p>and replaced by “at each retail outlet that the registered retailer operates confirming that the retail outlet is operated by a registered retailer”</p> <p>The phrase “certificate of registration at a place that is not a registered retail outlet to which the certificate relates; or” in clause 21(3)(a) should be deleted and replaced by “notice confirming that the retail outlet is operated by a registered retailer at a retail outlet that is not operated by a registered retailer.”</p> <p>Clause 21(3)(b) should be deleted because only “notices” should be provided at retail outlets and not “certificates of registration” for the reason as set out in the comments to Clause 17(1)</p>	
<p>Clause 22 Duty of registered retailers to charge for plastic shopping bags</p>	<p>HKRMA</p>	<p>As a contravention under clause 22(1) constitutes an offence, the phrase “or indirectly” in the second line should be deleted as the meaning is unclear</p> <p>The term “registered” in clause 22(1)(a) should be deleted</p>	<p>It is necessary to include the reference to “indirectly” in order to prevent retailers from circumventing the law by, for example, providing free plastic shopping bags to a third person who subsequently hands over the bags to customers.</p>
<p>Clause 23 Returns and payment of levies</p>	<p>HKRMA</p>	<p>The phrase “or each registered retail outlet of the retailer” in clause 23(1) should be deleted for the reason set out in the comments to Clause 17(1)</p>	<p>If returns are not to be made in respect of each registered retail outlet, it will be very difficult for the Administration to monitor the retailers’ compliance. Bearing in mind that some retailers have hundreds of retail outlets, the</p>

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		<p>Retailers should be consulted prior to the release of the regulations relating to the information which retailers are required to submit with the returns under clause 23(1)(c). HKRMA would request that registered retailers should only be obliged to keep the scan records relating to the number of plastic bags distributed by it (and <u>not</u> the number/weight in stock, acquired, and damaged/lost)</p>	<p>Administration will not be able to identify any particular outlet for detailed audit and examination if returns on individual outlets are not available.</p> <p>The Administration has been consulting the retail trade about the regulatory scheme of the environmental levy and will take their views into account as far as possible in formulating the regulations. The information on number of plastic shopping bags in stock and acquired is essential for cross-checking the retailers' returns. The scan records themselves will not provide evidence as to whether plastic shopping bags are provided for free without scanning.</p>
<p>Clause 25 Assessment notice</p>	<p>HKRMA</p>	<p>The word "21st" in clause 25(4) should be deleted and replaced by "30th"</p>	<p>The Administration considers compliance within 21 days to be reasonable.</p>
<p>Clause 26 Defence to offences</p>	<p>Green Council</p> <p>HKRMA</p>	<p>Definition of "due diligence" is inadequate and should be refined and elaborated.</p> <p>The term "reasonable" should be added before the words "due diligence"</p>	<p>"Due diligence" is a common law expression and has been widely used in legislation without further definition.</p> <p>The term "reasonable due diligence" is rarely used in legislation, and the Administration does not recommend adopting such an expression in this Bill.</p>
<p>Clause 27</p>	<p>HKRMA</p>	<p>Regulations issued by the Secretary under this Clause should be issued only after consultation with the ACE and the LegCo Panel on Environmental Affairs.</p>	<p>It has long been an established practice that the Administration would consult the relevant LegCo Panel on legislative proposals.</p>

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		Clause 27(a) should be deleted for the reason set out in the comments to Clause 17(1)	
Schedule 1 Section 1(1)	HKRMA	<p>The definition needs to be reviewed because it is an offence under Clause 19(4) to provide to customers plastic bags that can “be easily turned into a plastic shopping bag”. All plastic bags can be “easily turned into a plastic shopping bag” because it is easy to put a hole in a plastic bag. It is pointed out that in Ireland, there is an exemption for plastic bags that are used solely to contain certain product types (i.e fresh fish, fresh meat, fresh poultry, fruit, nuts or vegetables). HKRMA proposes that a similar definition should be used in Hong Kong. Otherwise, bags that are used to keep fruit and vegetables for hygiene or ventilation reasons (i.e grapes, carrots) will be subject to the levy because they have handles or holes</p>	<p>It is necessary to include the reference to something “that can be easily turned into a plastic shopping bag” in order to prevent retailers from circumventing the law by providing at cashiers certain bags that originally do not fall within the definition of “plastic shopping bag” but on which holes can be made easily after checking out.</p> <p>Regarding the second point on plastic bags for fresh fish, fresh meat etc. The Administration's scheme has taken this into account as plastic bags provided by retailers to contain these products are usually without handles.</p>

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Schedule 2 Plastic bags which this Ordinance does not apply	Green Council HKRMA	<p>The exemption of plastic bags "sealed before the goods are supplied" might stimulate an inappropriate and undesired shift to and surge in the application of such packaging</p> <p>The term "\$5.00" in section (1)(b) should be deleted and replaced by "\$2.00"</p> <p>The phrase "the retailer concerned" in section 1(c)(ii) should be deleted and replaced with "a retail outlet" because retailers may have production facilities that are not located at retail outlets</p>	<p>The Administration considers that plastic bags sealed before goods are supplied as part of packaging, and should not be regulated under the context of plastic shopping bags. Section 1(c)(ii) has therefore been provided to clarify this intention.</p> <p>The Administration notes that most non-woven bags currently for sale at "prescribed retailers" are priced at \$5 or above. It is concerned that if the threshold is set too low, lesser quality non-woven bags would proliferate and turn into another problem of indiscriminate use.</p>
Schedule 4	HKRMA	<p>The term "qualified" in sections 1(1)(a) and (b) should be deleted for the reason set out in the comments to clause 17(1)</p> <p>Section 1(2) should be deleted to ensure that the proposed scheme has coverage that is broader than 4% of the retail outlets in Hong Kong.</p> <p>Section 1(3) must be amended. It is not appropriate to deem a franchiser to be the person who carries on the business for the purposes of certain offences committed under this Bill. If a franchisee commits an offence under Clauses 19(4), 21(2), 22(1) and 22(5), the franchiser should not be held criminally liable for the actions of</p>	<p>The Administration considers that registration at the level of retail outlets is necessary for the reasons given in responses to comments on clause 17(1) above.</p> <p>Section 1(2) defines a qualified retail outlet of the "prescribed retailers" to whom the first phase of the levy scheme is applied. If it is considered necessary to extend the scheme to other retailers in future, the Secretary may amend the Schedule 4 under clause 19(2).</p> <p>In practice, the franchisers of local retail outlet chains usually exercise material management control over the franchisees'</p>

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		<p>franchisees. If the franchiser is an off-shore company, it is not feasible for the franchiser to be the "prescribed retailer"</p> <p>The definitions on "drink", "food", and "medicine" under section 2 should be deleted</p>	<p>operation of the outlets, such as the supply of plastic shopping bags and specific products that are allowed to be sold at the outlets and their price, etc. via franchise agreement. As such, the Administration considers that a franchiser under such arrangement should be regarded as the person who carries on the retail business for the purposes of the Bill. The franchiser may take civil action against the franchisee for non-compliance with the franchise agreement.</p> <p>The definitions of "drink", "food" and "medicine" are included to clarify the categorization of different items for the purposes of Schedule 4 concerning the meaning of "prescribed retailer" and "qualified retail outlet".</p>