

立法會
Legislative Council

LC Paper No. CB(1)644/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/12/1

Bills Committee on Product Eco-responsibility (Amendment) Bill 2013

**Minutes of seventh meeting
held on Friday, 8 November 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Dr Hon Kenneth CHAN Ka-lok (Chairman)
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan, JP
Hon WU Chi-wai, MH
Hon CHAN Han-pan
Hon KWOK Wai-keung
Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Tony TSE Wai-chuen

Members absent : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Gary FAN Kwok-wai

Public Officers attending : **For item I**
Mr Albert LAM, JP
Deputy Director of Environmental Protection (2)
Environmental Protection Department

Mr Samson LAI
Assistant Director of Environmental Protection
(Waste Management Policy)
Environmental Protection Department

Miss Selina LAU
Senior Government Counsel
Department of Justice

Miss Libera CHENG
Senior Administrative Officer
(Waste Management Policy Division)
Environmental Protection Department

Clerk in Attendance : Ms Miranda HON
Chief Council Secretary (1)1

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Mr Ken WOO
Senior Council Secretary (1)5

Action

I. Meeting with the Administration

(LC Paper No. CB(1)223/13-14(01) — List of follow-up actions
arising from the meeting on
22 October 2013

LC Paper No. CB(1)223/13-14(02) — Administration's response to
CB(1)223/13-14(01)

LC Paper No. CB(1)269/13-14(01) Submission from Greeners
Action (Chinese version only)

Relevant papers

LC Paper No. CB(3)540/12-13 — The Bill

File Ref: EP CR 9/150/20 Pt.24 — Legislative Council Brief

Action

- LC Paper No. LS47/12-13 — Legal Service Division Report
- LC Paper No. CB(1)1171/12-13(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- LC Paper No. CB(1)1171/12-13(04) — Background brief prepared by the Legislative Council Secretariat)

The Bills Committee deliberated (index of proceedings attached at the **Annex**).

2. Members agreed to continue discussion at the next meeting to be held on Friday, 29 November 2013, at 10:45 am.

II. Any other business

3. There being no other business, the meeting ended at 12:05 pm.

Council Business Division 1
Legislative Council Secretariat
30 December 2013

Bills Committee on Product Eco-responsibility (Amendment) Bill 2013

**Proceedings of the seventh meeting
on Friday, 8 November 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000305 – 000717	Chairman Administration	The Administration's response to members' views and concerns raised at the meeting of the Bills Committee on 22 October 2013 (LC Paper No. CB(1)223/13-14(02)).	
000718 – 001525	Chairman Mr Vincent FANG Administration	<p>Discussion on whether exemption should be granted to all "temperature-controlled food" across the board (paragraph 6 of LC Paper No. CB(1)223/13-14(02) referred).</p> <p>Mr Vincent FANG's views that –</p> <p>(a) the Product Eco-responsibility (Amendment) Bill 2013 ("the Bill") should grant exemption to plastic shopping bags ("PSBs") distributed for carrying all types of food items for reason of food hygiene and avoidance of confusion; and</p> <p>(b) it would not make much difference in the number of PSBs distributed if exemption was granted to all food items.</p> <p>The Administration's response that –</p> <p>(a) since the same type of food items might be packaged in different ways, whether a food hygiene concern existed would depend more on the packaging method than the food type. Based on the outcome of the consultation on the extension of the Environmental Levy Scheme on Plastic Shopping Bags ("the extended Scheme"), the Bill proposed that food hygiene exemption should not be granted if a food item was already contained in airtight packaging; and</p> <p>(b) exempting PSBs distributed for carrying "temperature-controlled food" would widen the scope of exemption provided under the Bill, as PSBs distributed for carrying food items that were temperature-controlled,</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>irrespective of their packaging, would then be exempted. The Administration's preliminary study had found the proposal to grant exemption to all "temperature-controlled food" feasible. However, there could be different views on such exemption as PSBs claimed for some food items, such as canned soft drink, might just be out of convenience. Subject to the decision of the Bills Committee, the Administration would prepare Committee Stage amendments ("CSAs") accordingly for the Bills Committee's consideration.</p>	
001526 – 002302	Chairman Mr WU Chi-wai	<p>Mr WU Chi-wai –</p> <p>(a) considered that there was a genuine need for the distribution of PSBs for carrying frozen/chilled food. He would support that CSAs be moved by the Administration to exempt PSBs used for carrying "temperature-controlled food"; and</p> <p>(b) explained the rationale of the CSAs to be proposed by him requiring that a retailer which had three or more retail outlets in Hong Kong, or had at least one retail outlet in Hong Kong with a retail floor area of not less than 100 square metres, should submit to the Government quarterly returns setting out the number of PSBs distributed by all of the retailer's registered retail outlets. Such a reporting requirement could be removed subject to a review on the effectiveness of the extended Scheme at an appropriate time.</p> <p><i>(Post-meeting note: An information note provided by Mr WU Chi-wai on his proposed CSAs was tabled at the meeting and subsequently circulated to members vide LC Paper No. CB(1)280/13-14(01) on 11 November 2013.)</i></p> <p>The Chairman urged members to submit their CSAs, if any, as soon as possible to the Bills Committee to allow sufficient time for deliberation.</p>	

Time marker	Speaker	Subject(s)	Action required
002303 – 002849	Chairman Assistant Legal Adviser 10 ("ALA10") Administration	<p>In response to ALA10's enquiries, the Administration advised that –</p> <p>(a) it was agreeable to the suggestion of repealing the proposed section 1(3)(b) in Schedule 2 of the Bill because so far it had not identified any food packaging method that appeared to be capable of satisfying the conditions specified in that section, and the said clause was initially provided to serve a "catch-all" purpose rather than referring to any specific real-life example;</p> <p>(b) PSBs used for carrying food items that were held in a fixed-shape container with cling film wrapping (such as sushi) would be exempted from the PSB charge as such packaging was not airtight; and</p> <p>(c) the means of packaging would not be relevant to the consideration for granting exemption to "temperature-controlled food".</p>	
002850 – 003127	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO stressed the important functions of PSBs in ensuring food hygiene and helping to keep the temperature of frozen/chilled food. She asked whether food items which were needed to be kept at a temperature of four degree Celsius or lower, such as fresh milk and yogurt, would be exempted under the proposed exemption for "temperature-controlled food".</p> <p>The Administration responded that subject to the Bills Committee's view, the Administration would propose that PSBs distributed for carrying foodstuffs that were in a chilled or frozen state would be exempted from the PSB charge.</p>	
003128 – 003640	Chairman Ir Dr LO Wai-kwok Administration	<p>Ir Dr LO Wai-kwok's view/enquiry that –</p> <p>(a) it would not be practical to spell out each and every type of food for food hygiene exemption purposes; and</p> <p>(b) whether a grace period would be put in place upon the commencement of the extended Scheme during which the law would not be enforced so as to enable members of the public to be familiarized with the new requirements.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration noted the suggestion of providing a grace period and stated that extensive publicity and education programmes would be launched on the extended Scheme upon passage of the Bill. It would allow sufficient time for the trade to get prepared before the commencement of the extended Scheme. Advice would be given to retail trades and enforcement actions would be carried out as appropriate.</p>	
003641 – 005952	<p>Chairman Mr Vincent FANG Administration ALA10</p>	<p>Mr Vincent FANG's views/enquiry that –</p> <p>(a) some food items could not be carried conveniently even though they were packed airtight, such as candies which were now commonly packed airtight individually. Not granting any exemption to such food items would cause inconvenience to both the public and retailers. Food hygiene exemption should thus be granted across the board to cover all types of food, except canned food and food items that were safely and properly packaged; and</p> <p>(b) whether considerations would be given to granting any exemption with respect to PSBs made of recycled materials from the PSB charge.</p> <p>The Administration's response that –</p> <p>(a) the legislative intent of the Bill was to promote the culture of "bring your own bag" ("BYOB"). The "inconvenience" highlighted in the above example relating to the carriage of candies could in fact be dealt with easily through BYOB; and</p> <p>(b) the PSB charge would apply to all plastic bags that fell under the meaning of PSBs provided in Schedule 1 of the Product Eco-responsibility Ordinance (Cap. 603), except those exempted under Schedule 2.</p> <p>ALA10 referred to her question raised at the meeting of the Bills Committee on 22 October 2013 regarding whether a plastic bag distributed for holding small pieces of snacks that had already been contained in airtight packaging would be exempted from the PSB</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>charge.</p> <p>The Administration's response that –</p> <p>(a) under the proposal, a seller would not need to collect from its customers the PSB charge if the plastic bag distributed was not regarded as a PSB under the proposed section 1(1)(d) in Schedule 2 for food hygiene purposes, or under the proposed section 1(1)(e) in Schedule 2 for reason that the bag formed part of the goods concerned; and</p> <p>(b) if a plastic bag was specifically designed to contain loose pack candies for the purpose of weighing and payment, it could be regarded as different from a typical plastic bag distributed for general purposes and should fall under the proposed section 1(4)(a) in Schedule 2 as a bag "specifically designed" for the purpose, and should thus be exempted from the PSB charge.</p>	
005953 – 010540	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong expressed disappointment at the Bill which in his view might cause inconvenience to the public and the business community. He also doubted the effectiveness in enforcement on account of the unclear criteria for exemption.</p> <p>The Administration responded that it had made reference to the experience of the Mainland and overseas cities in implementing similar producer responsibility schemes. It would stage enhanced publicity to promote the wider coverage of the extended Scheme and publicize the implementation details before enforcing the new requirements under the extended Scheme.</p>	
010541 – 011057	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE –</p> <p>(a) sought clarification on the difference between the English and Chinese versions of the proposed section 1(1)(d) in Schedule 2 where there was no Chinese equivalent of "an item" as in the English version; and</p> <p>(b) asked whether plastic bags distributed at medical clinics for carrying smaller packs of drugs would be exempted from the PSB</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>charge.</p> <p>The Administration's response that –</p> <p>(a) there was no difference between the English and Chinese versions. The Interpretation and General Clauses Ordinance (Cap. 1) provided that "words and expressions in the singular include the plural and words and expressions in the plural include the singular". The inclusion of "an item" in the English version of the proposed section 1(1)(d) was to provide a quantifier to make grammatical sense; and</p> <p>(b) plastic bags distributed on ground of medical consultation satisfied the proposed section 1(4)(d) in Schedule 2 and would thus be exempted from the PSB charge. In fact, the medicine dispensed with medical consultation was not regarded as a retail activity. Plastic bags distributed under such circumstances were therefore not subject to the Environmental Levy Scheme on Plastic Shopping Bags which regulated the distribution of PSBs in the retail sales of goods.</p>	
011058 – 011217	Chairman Administration	<p>Clause-by-clause examination of the Bill (Marked-up copy of the Bill (LC Paper No. CB(1)1171/12-13(01))</p> <p><u>Clauses 19 and 20</u></p> <p>Members raised no query.</p>	
011218 – 011308	Chairman	Date of next meeting	
011309 – 011858	Chairman ALA10 Ms Cyd HO	<p>ALA10 gave advice on the "justification test" for assessing the "constitutionality" of the proposed "dual" system as highlighted in the Administration's paper (LC Paper No. CB(1)112/13-14(01)).</p> <p>Ms Cyd HO –</p> <p>(a) requested the Legal Service Division ("LSD") to prepare a note to comment on the relevant part of the above LC Paper; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) said that she would not propose CSAs to the Bill as previously indicated because her proposed CSAs would be in line with those to be proposed by Mr WU Chi-wai.</p> <p><i>(Post-meeting note: An information note prepared by LSD on the above (LC Paper No. LS17/13-14) was circulated to members on 27 November 2013.)</i></p>	

Council Business Division 1
Legislative Council Secretariat
30 December 2013