

立法會
Legislative Council

LC Paper No. CB(1)533/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/14/2

**Bills Committee on Promotion of Recycling and Proper Disposal
(Product Container) (Amendment) Bill 2015**

**Minutes of fourth meeting
held on Monday, 11 January 2016, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Ir Dr Hon LO Wai-kwok, SBS, MH, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon Gary FAN Kwok-wai
Hon CHAN Chi-chuen
Hon KWOK Wai-keung
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WU Chi-wai, MH
Dr Hon Kenneth CHAN Ka-lok

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

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

Dr Alain LAM
Principal Environmental Protection Officer
(Waste Management Policy)
Environmental Protection Department

Miss Elaine NG
Senior Government Counsel
Department of Justice

Clerk in Attendance : Ms Angel SHEK
Chief Council Secretary (1)1

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Doris LO
Senior Council Secretary (1)1

Action

I. Confirmation of minutes

(LC Paper No. CB(1)364/15-16 — Minutes of the meeting held on
30 November 2015)

The minutes of the meeting held on 30 November 2015 were confirmed.

II. Meeting with the Administration

Matters arising from previous meetings

(LC Paper No. CB(1)270/15-16(02) — List of follow-up actions
arising from the meeting on
30 November 2015

Action

- LC Paper No. CB(1)384/15-16(01) — Administration's response to the views provided by organizations/individual at the meeting held on 30 November 2015 or in their submissions
- LC Paper No. CB(1)384/15-16(02) — List of follow-up actions arising from the meeting on 15 December 2015
- LC Paper No. CB(1)407/15-16(01) — Administration's response to the issues raised at the meeting on 15 December 2015)

Relevant papers

- (LC Paper No. CB(3)829/14-15 — The Bill
- File Ref: EP CR 9/150/35 Pt.4 — Legislative Council Brief
- LC Paper No. LS86/14-15 — Legal Service Division Report
- LC Paper No. CB(1)79/15-16(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- LC Paper No. CB(1)79/15-16(05) — Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)79/15-16(02) — Assistant Legal Adviser's letter dated 14 September 2015 to the Administration
- LC Paper No. CB(1)79/15-16(03) — Administration's reply to Assistant Legal Adviser's letter dated 14 September 2015
- LC Paper No. CB(1)79/15-16(04) — Assistant Legal Adviser's letter dated 23 October 2015 to the Administration

Action

LC Paper No. CB(1)196/15-16(02) — Administration's reply to Assistant Legal Adviser's letter dated 23 October 2015

LC Paper No. CB(1)196/15-16(01) — List of follow-up actions arising from the meeting on 30 October 2015

LC Paper No. CB(1)270/15-16(01) — Administration's response to the issues raised at the meeting on 30 October 2015)

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

Follow-up actions to be taken by the Administration

Definitions

"Beverage", "glass container" and "regulated article"

3. Further to the Administration's responses stated in LC Paper Nos. CB(1)270/15-16(01) and CB(1)407/15-16(01) in respect of the definition of "beverage" with reference to the food category system under the Codex Alimentarius ("Codex") and given that the definition formed part of the legal basis to determine whether a person had the legal obligation to comply with certain requirements and that failure to comply with any such requirement constituted an offence, the Administration was requested to –

Admin

- (a) provide, for certainty purpose, specific criteria in the definition of "beverage" instead of merely defining the term to mean "every type of drink and includes water" as drafted in the Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Bill 2015 ("the Bill"); and consider whether to stipulate in the Bill any reference to the Codex for determining whether a product fell under the said definition;
- (b) explain whether certain products would be regarded as "beverage" under the Bill and hence subject to payment of the recycling levy in the following cases –

Action

- (i) beverage concentrates (which might be sold in various forms such as syrup/liquid/jelly/powder/solid for drinking after adding water) vis-à-vis ready-to-drink products already diluted with water;
- (ii) a product, such as beauty supplements like collagen drink, which might fall into a classification other than beverages under the Codex, but was marketed and sold by the registered supplier as a beverage; and
- (c) address a member's concern that unless a clear definition of "beverage" could be made, reconsider expanding the proposed mandatory PRS to cover glass containers other than glass beverage containers simultaneously.

4. In the light of the proposed definition of "regulated article" which meant an article constituted by (a) a product (i.e. beverage) (*as specified in column 2 of Part 2 of Schedule 6 proposed to be added to the Product Eco-responsibility Ordinance (Cap. 603)*), and (b) a container (i.e. glass container, whether in the form of a bottle jar or otherwise) (*as specified in column 3 of the aforesaid Part 2 of Schedule 6 opposite to the product*) containing that product, and airtight and sealed by machine or with the aid of a tool, the Administration was requested to –

Admin

- (a) review whether the definitions/usages of "container/glass container" under the proposed definitions of "regulated article" and "container waste" and in column 3 of Part 2 of Schedule 6 proposed to be added to Cap. 603 under the Bill were consistent; and
- (b) reconsider whether it was necessary to provide a definition for "glass containers" under the Bill, and if it was considered necessary, whether the definition would specify for regulatory purpose the materials of other component parts of the glass containers, such as the lids.

Admin

5. The Administration was requested to provide references of the definitions of or descriptions relating to "beverages", "containers" and "glass containers" in local legislation.

"Consume"

6. In the light of the proposed definition of "consume" which meant, in relation to a regulated article, "(a) use the product constituting part of the article; or (b) abandon the article", and given that "product", as specified in

Action

Admin

column 2 of Part 2 of Schedule 6, referred to "beverage", and in other words, a container was not regarded as a "product" under the Bill, the Administration was requested to clarify whether it was the policy intent not to regard using the container but not the product as a kind of consumption under the said definition.

Other issues

Admin

7. The Administration was requested to –
- (a) provide an assessment to be supported by relevant statistics as appropriate, on the possible switching of containers for holding beverage products, in particular non-alcoholic beverages, from glass containers to containers of other materials (e.g. plastic bottles or paper cartons) by beverage suppliers upon implementation of the mandatory PRS; and
 - (b) provide an estimation on how long it would take to process an application for registration as a registered supplier of regulated articles, and whether the Administration would expedite the processing of such applications under special circumstances, for example, where a supplier originally imported certain regulated articles into Hong Kong solely for export and thus initially had not applied for registration as a registered supplier, but subsequently had to distribute the regulated articles in Hong Kong instead due to cancellation of the export order concerned.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)510/15-16(02) on 29 January 2016.)

III. Any other business

Date of next meeting

8. The Chairman reminded members that the next meeting of the Bills Committee had been scheduled for Tuesday, 2 February 2016, at 10:45 am.
9. There being no other business, the meeting ended at 12:43 pm.

**Bills Committee on Promotion of Recycling and Proper Disposal
(Product Container) (Amendment) Bill 2015**

**Proceedings of the fourth meeting
on Monday, 11 January 2016, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000240 - 000330	Chairman	The minutes of the meeting held on 30 November 2015 (LC Paper No. CB(1)364/15-16) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000331 - 000420	Chairman	Opening remarks	
000421 - 002008	Chairman Administration	The Administration briefed members on its responses to the issues raised at the meetings of the Bills Committee held on 30 November and 15 December 2015 (LC Paper Nos. CB(1)384/15-16(01) and CB(1)407/15-16(01)) respectively.	
002009 - 002736	Chairman Mr Gary FAN Administration	<p>Regarding the sufficiency of outlets for the waste glass containers recovered under the mandatory producer responsibility scheme on product containers which initially covered glass beverage containers ("the mandatory PRS"), Mr Gary FAN enquired about –</p> <p>(a) any policy or incentives to encourage the use of construction materials manufactured with recycled glass in public and private works projects; and</p> <p>(b) whether the Administration would assist the recycling trade in developing markets for recycled glass materials outside Hong Kong, including the Mainland.</p> <p>The Administration responded that –</p> <p>(a) waste glass materials of around 50 000 tonnes recovered under the mandatory PRS each year could be absorbed by local public works projects;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) pursuant to the green procurement policy, works departments were encouraged to accord priority to using construction materials manufactured with recycled glass in public works projects, subject to an adequate supply of such materials. With the gradual increase in the supply of such materials under the mandatory PRS, the Administration would consider mandating the use of such materials in public works projects when appropriate;</p> <p>(c) the recycling levy ("the levy") collected under the mandatory PRS would cover the costs for collection and treatment of waste glass, thus enhancing the cost competitiveness of construction materials manufactured with recycled glass. Further, the Building Environmental Assessment Method ("BEAM") Plus certification recognized by the Hong Kong Green Building Council, which was one of the prerequisites for the granting of gross floor area concessions for certain green and amenity features in development projects, would also provide incentives to private developers to use such materials in their projects; and</p> <p>(d) while exporting construction materials manufactured with recycled glass to markets outside Hong Kong was constrained by high shipping costs, some recyclers had indicated that there were credible markets in South East Asia countries for using waste glass cullet for manufacturing new glass containers.</p>	
002737 - 003310	Chairman Mr CHAN Chi-chuen Administration	<p>On Mr CHAN Chi-chuen's enquiry, the Administration responded that –</p> <p>(a) whether a product would be subject to payment of the levy would not be affected by the type of retail outlets at which they were sold; and</p> <p>(b) to assist beverage suppliers in registration and submission of returns under the mandatory PRS, relevant guidelines, e.g. a product list comprising beverage products subject to the recycling levy</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>could be prepared and updated from time to time in conjunction with the trade. Besides, the Administration would also establish a mechanism such that the trade could seek advice on whether a new product should be regarded as beverage in case of doubt.</p>	
003311 - 004233	<p>Chairman Mr Tony TSE Administration</p>	<p>Mr Tony TSE expressed concern about the lack of emphasis of the mandatory PRS on involving public participation particularly in waste reduction through the reuse of glass beverage containers, which should be more beneficial to the environment than turning waste glass into recycled materials.</p> <p>The Administration reiterated that –</p> <p>(a) unlike the Environmental Levy Scheme on Plastic Shopping Bags ("PSBs") which aimed at reducing indiscriminate use of PSBs through imposing a levy on consumers, the mandatory PRS was developed along the "polluter pays" principle with a primary aim of recovering the full PRS costs incurred for the collection and treatment of waste glass beverage containers; and</p> <p>(b) the Administration supported the reuse of glass beverage containers and had devised relevant measures in this regard. Apart from the exemption arrangements proposed under the Bill to encourage registered suppliers to recover/reuse their glass beverage containers, the Administration would specify in the tender documents of glass management contractors that they might accord priority to sourcing outlets for reusing the waste glass containers they had recovered.</p> <p>The Chairman pointed out that glass containers were chemically non-hazardous and would cause less impact on the environment, particularly comparing to PSBs. He considered it appropriate to facilitate recycling of waste glass beverage containers for producing reusable resources.</p>	

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004234 - 004644	Chairman Mr Christopher CHUNG Administration	<p>Mr Christopher CHUNG expressed concern over the effect of charging the levy at suppliers' level which might force some beverage suppliers to switch to containers made from other materials which might cause more serious environmental problems.</p> <p>The Administration responded that under its assessment, the mandatory PRS would not cause significant "switching effect", given that –</p> <p>(a) the majority of beverages held in glass containers were alcoholic beverages for which glass containers were generally preferred for preservation of product quality; and</p> <p>(b) local manufacturers of non-alcoholic beverages (e.g. milk, soft drinks) which had recovery/reuse plans for the glass containers of their beverages would be granted levy exemption subject to certain conditions.</p> <p>At Mr CHUNG's request, the Administration agreed to provide an assessment on the possible switching of containers for holding beverage products, in particular non-alcoholic beverages, upon implementation of the mandatory PRS.</p>	Admin (paragraph 7(a) of the minutes refers)
004645 - 011520	Chairman Mr Christopher CHUNG Ms Cyd HO Assistant Legal Adviser 10 ("ALA10") Administration	<p>Discussion on whether certain types of products would be regarded as "beverage" under the Bill. Further to the discussion, the Administration undertook to –</p> <p>(a) provide, for certainty purpose, specific criteria in the definition of "beverage" instead of merely defining the term to mean "every type of drink and includes water" as drafted in the Bill, and consider whether to stipulate in the Bill any reference to the Codex for determining whether a product fell under the said definition;</p> <p>(b) explain whether certain products would be regarded as "beverage" under the Bill –</p>	Admin (paragraphs 3(a), (b) & (c) of the minutes refer)

Time marker	Speaker	Subject(s)	Action required
		<p>i) beverage concentrates (sold in various forms for drinking after adding water) vis-à-vis ready-to-drink products already diluted with water;</p> <p>ii) a product which might fall into a classification other than beverages under the Codex, but was marketed and sold by the registered supplier as a beverage; and</p> <p>(c) address Ms Cyd HO's concern that unless a clear definition of "beverage" could be made, the Administration should reconsider expanding the proposed mandatory PRS to cover glass containers other than glass beverage containers simultaneously.</p> <p>At the requests of Ms Cyd HO and ALA10, the Administration undertook to –</p> <p>(a) review whether the definition/usage of "container/glass container" under the proposed definitions of "regulated article" and "container waste" and in column 3 of Part 2 of Schedule 6 proposed to be added to the Product Eco-responsibility Ordinance (Cap. 603) under the Bill were consistent; and</p> <p>(b) reconsider whether it was necessary to provide a definition for "glass containers" under the Bill, and if it was considered necessary, whether the definition would specify for regulatory purpose the materials of other component parts of the glass containers, such as the lids.</p> <p>At members' request, the Administration agreed to provide references of the definitions of or descriptions relating to "beverages", "containers" and "glass containers" in local legislation.</p>	<p>Admin (paragraphs 4(a) & (b) of the minutes refer)</p> <p>Admin (paragraph 3(b)(ii) of the minutes refers)</p>

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<p>Clause-by-clause examination of the Bill (The Bill [LC Paper No. CB(3)829/15-16])</p>			
<p>011521 - 011816</p>	<p>Chairman Ms Cyd HO Administration</p>	<p>Long title</p> <p>Ms Cyd HO queried why in the Long Title it was stated that the Bill was to provide for the collection of a recycling levy on "the containers of certain products", without specifying "glass beverage containers".</p> <p>The Administration explained that the Bill sought to provide for a legal framework which would allow for future expansion of the scope of the mandatory PRS to cover containers holding products other than beverages. As such, a general description of "the containers of certain products" was used in the Long Title.</p> <p>Part 1 – Preliminary</p> <p><u>Clause 1 – Short title and commencement</u></p> <p>Members raised no queries.</p>	
<p>011817 - 012244</p>	<p>Chairman Ms Cyd HO ALA10 Administration</p>	<p>Part 2 – Amendments to Product Eco-responsibility Ordinance</p> <p><u>Clause 2 – Product Eco-responsibility Ordinance amended</u></p> <p><u>Clause 3 – Section 2 amended (purposes of this Ordinance)</u></p> <p><u>Clause 4 – Section 3 amended (interpretation)</u></p> <p>Clause 4 would be revisited at the next meeting to take into account the Administration's written response in relation to the definition of "regulated article" raised earlier at the meeting.</p> <p><u>Clause 5 – Section 4 amended (prescribed products to which Part 2 applies)</u></p> <p><u>Clause 6 – Section 5 amended (general provisions as to regulations made under this Ordinance)</u></p> <p>Members raised no queries.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>On ALA10's enquiry, the Administration affirmed that it would take into account any amendments made to Cap. 603 and the Waste Disposal Ordinance (Cap. 354) under the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 ("the EE Bill"), and brief members on any corresponding/consequential Committee Stage amendments ("CSAs") to the present Bill accordingly in due course.</p>	
<p>012245 - 013724</p>	<p>Chairman Ms Cyd HO ALA10 Administration</p>	<p><u>Clause 7 – Part 4 added</u></p> <p><u>Part 4 – Regulated Articles</u></p> <p><u>Division 1 – Interpretation</u></p> <p><i>Proposed section 31 – Interpretation of Part 4</i></p> <p><i>"supplier"</i></p> <p>On the Chairman's enquiry, the Administration explained that in the context that the levy was not collected at the retail level, it was clear that any acts relating to the selling of regulated articles including providing service for transporting the articles within the territory of Hong Kong by logistics companies would not be subject to the payment of the levy.</p> <p>On Ms Cyd HO's enquiry, the Administration clarified that an individual who directly purchased, whether or not through an online website, any quantity of regulated article(s) from a manufacturer operating outside Hong Kong for personal use was not liable to pay the levy in respect of the article(s) concerned.</p> <p><i>"consume"</i></p> <p>It was noted that the proposed definition of "consume" referred to a regulated article, and that "regulated article" was constituted by a "product" and a "container" as respectively specified in Schedule 6. It was also noted that beverage was the only product that was specified in Schedule 6. In other words, a container was not regarded as a "product"</p>	<p>Admin (paragraph 6 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>under the Bill. In the light of the above, the Administration was requested to clarify, in respect of the definition of "consume", whether it was the policy intent not to regard using the container but not the product as a kind of consumption.</p>	
013725 - 014049	<p>Chairman Ms Cyd HO ALA10 Administration</p>	<p><u><i>Division 2 – Registration of Suppliers</i></u></p> <p><i>Proposed section 32 – Prohibition of carrying on business of distributing regulated articles without registration</i></p> <p><i>Proposed section 33 – Registration of suppliers</i></p> <p><i>Proposed section 34 – Cancellation of registration</i></p> <p>On ALA10's enquiry, the Administration affirmed that a supplier who had imported a regulated article into Hong Kong solely for export would not be regarded as distributing the article in Hong Kong, and hence did not necessarily have to register as a registered supplier in respect of the article concerned.</p> <p>At Ms Cyd HO's request, the Administration agreed to provide an estimation on how long it would take to process an application for registration as a registered supplier of regulated articles, and whether it would expedite the processing of such applications under special circumstances, for example, where a supplier originally imported certain regulated articles into Hong Kong solely for export and thus initially had not applied for registration as a registered supplier, but subsequently had to distribute the regulated articles in Hong Kong instead due to cancellation of the export order concerned.</p>	<p>Admin (paragraph 7(b) of the minutes refers)</p>
014050 - 015137	<p>Chairman Administration</p>	<p><u><i>Division 3 – Obligations of Registered Suppliers</i></u></p> <p><i>Proposed section 35 – Registered supplier must pay container recycling levy</i></p> <p><i>Proposed section 36 – Registered supplier must submit returns</i></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><i>Proposed section 37 – Registered supplier must submit annual audit report</i></p> <p><i>Proposed section 38 – Recovering container recycling levy by assessment notice</i></p> <p>Members raised no queries.</p>	
015138 - 015912	<p>Chairman Ms Cyd HO ALA10 Administration</p>	<p><u><i>Division 4 – Regulations</i></u></p> <p><i>Proposed section 39 – Secretary may make regulations for Part 4</i></p> <p><u><i>Division 5 – Supplementary Provisions</i></u></p> <p><i>Proposed section 40 – Exemptions for registered supplier with container waste reduction plan</i></p> <p><i>Proposed section 41 – Secretary may amend Schedule 6</i></p> <p>ALA10 asked whether the decisions of the Director of Environmental Protection to be made under the proposed sections 33 and 34 of Cap. 603 regarding the registration of suppliers and cancellation of registration would be specified as appealable matters under the regulation to be made under proposed section 39(1). The Administration reiterated that it would propose corresponding/consequential CSAs to the Bill as applicable having taken into account the amendments made under the EE Bill.</p> <p>In connection with the procedure of consulting the Advisory Council on the Environment before making regulations and amending Schedule 6 to be added to Cap. 603, as respectively specified in proposed sections 39(1) and 41(1), the Chairman asked whether it was not uncommon to state such a consultation procedure in the legislation. The Administration replied that there were similar provisions under Cap. 603 in respect of the making of subsidiary legislation concerning the Environmental Levy Scheme on PSBs.</p> <p>On the Chairman's enquiry, the Administration stated that it would not</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>specify the exact number of times of reusing the glass beverage containers by a registered supplier for granting exemption under the proposed section 40. Rather, it would grant exemption based on whether a registered supplier could demonstrate an environmentally sound reuse/recycling plan for the glass beverage containers.</p> <p>On Ms Cyd HO's enquiry, the Administration confirmed that the regulation to be made under the proposed section 39(1) and the subsidiary legislation for amending Schedule 6 for the purpose of expanding the scope of the mandatory PRS would be subject to positive vetting by LegCo.</p>	
015913 - 020032	Chairman Administration	Date of next meeting	