

New revised People's Republic of China (PRC) Law on the Prevention and Control of Environmental Pollution by Solid Wastes – effective 1st September 2020

Executive summary

The current PRC Law on the Prevention and Control of Environmental Pollution by Solid Wastes (previously revised in 2015) prohibits the import, dumping and disposal of both solid wastes, unless subject to a specific import license, and hazardous wastes. Those solid and hazardous waste products that are currently prohibited from import and those that are subject to an import license are listed in respective catalogues published by competent departments of the PRC - see below. The applicable licensing regime has been in effect in the PRC since 1st August 2011.

A new revision to the PRC Law on the Prevention and Control of Environmental Pollution by Solid Wastes (new Revision), which becomes effective on 1st September 2020, imposes joint and several liability on both the carrier and importer for the return and disposal of the solid waste where the solid waste is prohibited and/or proper license has not been obtained, and significantly increases the fines that can be imposed for violations.

Members should also be aware that the PRC intends to reduce the import of solid wastes during the latter half of 2020 and that all solid wastes will be prohibited from import into the PRC from 1st January 2021. As a result, from this date the licensing regime will no longer be in place for the import of solid wastes.

2020 Revision

The solid wastes that are prohibited from import, dumping and disposal in the PRC and/or are subject to import licensing are set out in catalogues of solid waste products as published and adjusted by the competent departments under the State Council of the PRC in 2017 and 2018. They are annexed to this circular as follows:

- Annex I - Catalogue of Solid Wastes Prohibited from Importation into the PRC and that cannot be imported,
- Annex II - Catalogue of Solid Wastes that can be used as raw materials under Import Restrictions and that can be imported with an Import License of the PRC for Restricted Solid Wastes that Can be Used as Raw Materials, but will be prohibited from import from 1st January 2021,
- Annex III - Catalogue of Solid Wastes that can be used as raw materials and that are not under Import Restrictions. Such solid wastes can also be imported with a license but will be prohibited from import from 1st January 2021. The difference from the solid wastes listed in the Catalogue in Annex II is that the importer of Annex III solid wastes should obtain an Import License of the PRC for Unrestricted Solid Wastes that Can be Used as Raw Materials,
- Annex IV - Catalogue of Hazardous Wastes that are already, and will continue to be, prohibited from importation into the PRC.

The Import Restrictions are subject to the licensing regime that has been in effect in the PRC from 1st August 2011 in accordance with the Administrative Measures for the Import of Solid Waste. Prior to accepting a cargo of solid wastes for carriage to the PRC, carriers should

require the consignor to provide (i) the relevant solid waste import license (ii) the consignee's registration certificates for the import of the solid waste (iii) the registration certificate of any foreign suppliers of the solid waste, and (iv) the certificate of the pre-shipment inspection of the imported solid waste. This licensing regime will be in place until the end of the year when the ban on the importation of all solid wastes will become effective from 1st January 2021.

Previous legislation governing liability for the return and disposal of solid wastes imported by sea into the PRC imposed a liability on the carrier for the return of prohibited solid wastes or the costs for disposing of the waste where the carrier was unable to identify the importer (2015 Revision, Art.78). The new Revision imposes joint and several liability on both the carrier and importer for the return and disposal of the solid waste where the solid waste is prohibited and/or there is a failure to comply with licensing requirements in accordance with the Catalogue of Solid Wastes Prohibited from Importation. The carrier may therefore be liable even where the importer is known. If the carrier and importer refuse to return the solid waste, or do not arrange the return within three months, the competent authorities will take measures against the importer and carrier to return the waste. For solid waste that cannot be returned, or where the Customs decides not to return, the waste will be disposed of by the relevant authorities and the carrier and importer will bear joint and several liability for the costs incurred.

The new Revision also imposes significantly increased fines for violations of the law. Where a carrier transports a prohibited solid waste to be imported into, or transits a hazardous waste through, the territory of the PRC, the new Revision prescribes that a fine may be imposed on the carrier and the importer under the new law of between RMB 500,000 (equivalent to approximately US\$71,000) and RMB 5 million (equivalent to approximately US\$710,000) (Art.115 para.1). This is in addition to an order from the Customs authorities to return the solid wastes to the place of export. The new Revision does not provide that solid waste other than hazardous waste is prohibited from transit through the territory of the PRC. Where a carrier transports such solid waste for transit through the territory of PRC, it is understood that the carrier does not need to report to Customs if the solid wastes (excluding hazardous wastes) are not discharged at Chinese ports. If they are discharged in port but are in transit through the territory of the PRC, then an import license will need to be obtained.

Given the significantly increased fines for violations of the law, Members are recommended to issue a straight bill of lading or a seaway bill when accepting a shipment of solid waste and, when doing so, to ensure that the name of the consignee on any bill of lading or seaway bill is consistent with the name of the importer on the above mentioned import license and registration certificate. In addition, if the Member has any doubts about the shipment, especially where the Member understands that the shipper has previously shipped solid waste to the PRC, they should require the shipper to provide the product's customs code, if the customs code is listed in the above mentioned Catalogues, as well as the import license, registration certificates and pre-shipment inspection certificate.

If the carriage of prohibited solid waste leads to environmental pollution arising from that waste product following discharge in port, an additional fine may be imposed and that will be calculated to correspond with a figure that is between 1:1 and 1:3 times the direct economic loss caused by the pollution damage or, if the incident is deemed to be of a significant nature, 1:3 to 1:5 times the direct economic loss caused by the damage (Art.118). The new Revision does not govern the prevention and control of any such pollution damage to the marine environment arising from the carriage by sea in the waters of the PRC (Art.2) and which is governed by separate legislation in the PRC.

The new Revision does not differentiate where the imported solid waste has been mis-declared by the shipper, but the carrier may contest any fine that is imposed arising from a mis-declaration. According to the Law of Administrative Penalty of the PRC (Art. 27 para.2), no administrative penalty shall be imposed if the import of a prohibitive solid waste is considered to be a minor act and is corrected in a timely manner with no subsequent harmful consequences. The carrier however remains jointly and severally liable with the importer for the return and disposal of the prohibited solid waste.

In the event of a casualty occurring in the territory or the waters of the PRC, it is also possible that any cargoes carried on board the vessel, or the hull and machinery of the vessel itself, may be identified as solid waste (in accordance with the Identification Standard for Solid Wastes – General Rules (GB34330-2017) and will need to be disposed of in accordance with the PRC law. This will depend on whether the cargo and/or the vessel have lost the value of their original use due to any damage caused, and whether the vessel can subsequently be used as raw materials. If any damaged cargo is beyond repair and cannot be re-sold for its original usage, or any part of the vessel's hull or machinery arising from a casualty is subsequently sold for breaking within the PRC, then they are likely to be identified as solid wastes and will need to be disposed of and subject to the supervision of the relevant Customs authority. The legal advice received by the International Group of P&I Clubs suggests that such scenarios will be handled on a case by case basis.

Members trading in this region are encouraged to exercise caution and remain vigilant for any activity which may fall within the scope of the PRC Law on the Prevention and Control of Environmental Pollution by Solid Wastes. Customs are expected to increase the inspections of cargo and the quarantine of the imported solid waste in an effort to enforce the new law. Members are advised to conduct thorough due diligence, carefully checking a request to transport any kind of waste into China in order to avoid being suspected of smuggling and therefore avoid potential fines for violations of the law.

If Members are in any doubt about the requirements imposed by the new Revision, then they should contact the Managers. English¹ and Chinese versions of the new Revision are contained in Annexes V and VI to this circular.

All Clubs in the International Group have issued a similar circular.

¹ The Law of the People's Republic of China on the Prevention and Control of Environment Pollution Caused by Solid Wastes (2020 Revision) is translated by 北大法宝(Chinalawinfo Co., Ltd., which retains exclusive copyright of this translation), available at www.pkulaw.com/english. Due to differences in language, legal systems, and culture, English translations of Chinese law are for reference purposes only. Please use the official Chinese-language versions as the final authority.