ENVIRONMENT

CLIENT ALERT

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ENVIRONMENTAL – E-WASTE TRANSPORTATION PERMIT

Last Friday the Federal Environmental Agency ("IBAMA") published Ordinance No. 24/2019 ("Ordinance"), which specifies the hypotheses of mandatory obtainment of the Permit to Transport Hazardous Goods ("Permit") to interstate transportation of non-recoverable hazardous e-waste.

Based on the Ordinance:

(i) The Permit is mandatory for interstate transportation of non-recoverable hazardous e-waste, deriving from the disassembly and de-characterization of electronic products in the disassembling unit or processing, treatment and/or recycling unit;

(ii) Non-recoverable e-waste are classified as e-waste that, once all available and economically viable technological treatment and recovery possibilities, including disassembling, de-characterization and recycling, are concluded, can only be subject to landfilling;

(iii) The Permit is not required to transport e-products and their discarded components, e-waste and non-hazardous non-recoverable e-waste within take-back systems, as long as its non-hazardous characteristics is proven by a technical assessment grounded on Brazilian Standardization Rule NBR 10,004 ("NBR").

The Ordinance partially solved the discussion regarding hazardousness of e-waste, as it provides that e-waste is not hazardous exclusively during the first phase of transportation within the take-back system.

Between the collection point and the disassembling/sorting warehouse, e-waste (supposedly in good conditions and 'in full') returned by consumers are not considered hazardous.

PRACTICE AREA
Environment

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However, once e-waste is merely disassembled (segregated in parts and pieces), such parts and pieces become hazardous. For such parts and pieces to be considered non-hazardous, each and every batch of them shall be analyzed by the NBR methodology (which should never be applicable to such kind of 'waste', as it was designed to classify waste from industrial production plants that would be sent to landfills).

Considering that within a take back system the proof of hazardousness of parts and pieces for each and every batch is unfeasible (besides being legally incorrect), IBAMA opens the discussion on hazardous classifications for the same parts and pieces that:

(i) are in the assembling lines of electronic products;

(ii) generate scrap from the assembling lines;

(iii) are in the technical assistance (maintenance) shops (the Ordinance indicates that maintenance shops are excluded from the definition of disassembling warehouse - item IV, art. 2º - however, the Ordinance only encompasses IBAMA's power to regulate interstate transportation of hazardous waste within take back systems; thus, the hazardousness classification discussion remains).

IBAMA's position to classify as hazardous the disassembled used parts and pieces of electronic products (e-waste) within take back systems (considering that they would only not be hazardous if every and any batch is tested according to the NBR) is absolutely contrary to the rational foreseen in the OECD Decision to which Brazil adhered in 2017 (Decision C(92)39/FINAL – Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations – "Decision").

According to the Decision, parts and pieces of e-waste shall be classified within the Green List (which means, not subject to any kind of authorization, i.e., not hazardous) as long as they are destined for recycling/recovery. The grounds of the Decision are simple and rational: recycling process shall be promoted and simplified; if e-waste is destined to recycling, we ensure that precious metals are recovered and reinserted in the market (circular economy), reducing the need for mineral extraction and preventing contamination derived from inadequate final destination/disposal.

Veirano's environmental team is highly experienced on the subject and is available to provide further clarification.

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