

立法會
Legislative Council

LC Paper No. CB(2)171/06-07

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/04

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005**

**Minutes of the 43rd meeting
held on Monday, 26 June 2006 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** :
- Hon Andrew CHENG Kar-foo (Chairman)
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon Fred LI Wah-ming, JP
 - Hon Howard YOUNG, SBS, JP
 - Dr Hon YEUNG Sum
 - Hon Emily LAU Wai-hing, JP
 - Hon Tommy CHEUNG Yu-yan, JP
 - Hon Vincent FANG Kang, JP
 - Hon LI Kwok-ying, MH
 - Hon Alan LEONG Kah-kit, SC
 - Dr Hon KWOK Ka-ki
 - Hon WONG Ting-kwong, BBS
- Members absent** :
- Hon Albert CHAN Wai-yip (Deputy Chairman)
 - Hon LEE Cheuk-yan
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon Abraham SHEK Lai-him, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Dr Hon Joseph LEE Kok-long
 - Hon LEUNG Kwok-hung
 - Hon Albert Jinghan CHENG
 - Hon KWONG Chi-kin
- Public Officers attending** :
- Mrs Ingrid YEUNG
 - Deputy Secretary for Health, Welfare and Food (Health)
 - Ms Julina CHAN

Principal Assistant Secretary for Health, Welfare and Food
(Health)

Ms TO Kit-lai, Priscilla
Principal Assistant Secretary for Commerce, Industry and
Technology (Commerce and Industry) 3

Dr Cindy LAI
Acting Deputy Director of Health

Miss Shandy LIU
Senior Government Counsel
Department of Justice

Mr CHONG Ka-ning, Alan
Government Counsel
Department of Justice

Mr CHEUNG Kam-fai, Peter, JP
Deputy Director of Intellectual Property
Intellectual Property Department

Ms PANG Shuk-fan, Fanny
Assistant Director of Intellectual Property (Registration) (Ag.)
Intellectual Property Department

**Clerk in
attendance** : Ms Doris CHAN
Chief Council Secretary (2) 4

**Staff in
attendance** : Miss Monna LAI
Assistant Legal Adviser 7

Miss Mary SO
Senior Council Secretary (2) 8

Miss Jenny HO
Legislative Assistant (2) 9

I. Meeting with the Administration

(LC Paper Nos. CB(2)901/05-06(03), CB(2)1726/05-06(01) to (02), CB(2)1897/05-06(01), CB(2)1976/05-06(01), CB(2)2406/05-06(01) to (02), CB(2)2434/05-06(04), CB(2)2456/05-06(01), CB(2)2467/05-06(03), CB(2)2469/05-06(02) to (03), CB(2)2511/05-06(01) and CB(2)2542/05-06(01))

The Bills Committee deliberated (Index of proceedings at **Annex**).

2. The Administration was requested to provide the following information in writing -

- (a) what were the 73 existing registered cigarette brand names containing the proscribed term and their dates of registration; and
- (b) which of the brand names referred to in (a) above had paid the duty in the first five months of this year and in the past three years respectively.

3. The Administration was also requested to provide the following -

- (a) a paper explaining why it considered it necessary to exempt unregistered trademarks or trade names and well-known trademarks from section 10(3) of the Smoking (Public Health) Ordinance (Cap. 371); and
- (b) a paper setting out the proposed Committee Stage amendments to be moved by the Administration to facilitate members' discussion at the next meeting.

4. Dr YEUNG Sum suggested and members agreed that the Bills Committee should write to seek the view of the World Health Organization (WHO) on whether the latest grandfathering-cum-notation approach was in compliance with the WHO Framework Convention on Tobacco Control.

II. Date of next meeting

5. The Bills Committee would next meet on 27 June 2006 at 2:30 pm.

6. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the 43rd meeting of the
Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005
on Monday, 26 June 2006 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 – 001053	Chairman Admin Dr YEUNG Sum	Opening remarks The Administration informed the Bills Committee that it would not take over the Committee Stage amendments (CSAs) from members to prohibit sale of cigarettes to people in school uniform	
001054 – 001413	Admin Chairman	Draft CSAs proposed by the Administration to add a "grandfathering and notation" provision to clause 11 as well as a new Schedule 5A to exempt the grandfathered brands from <u>section 10(3) of the Smoking (Public Health) Ordinance</u> (LC Paper No. CB(2)2542/05-06(01)) Draft CSAs to clause 11 – Offences under Part III	
001414 – 001548	ALA7 Admin	Whether the prohibition under the amended section 10(3) of the Smoking (Public Health) Ordinance (the Ordinance) would go beyond the requirements of Article 11 1(a) of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC)	
001549 – 002123	Dr YEUNG Sum Admin	Whether the proposed "grandfathering and notation" approach provided under new Schedule 5A was able to meet the requirements of the WHO FCTC	
002124 – 002406	Mr Vincent FANG Admin	Indication of tar and nicotine yields on the packets and on the retail containers of cigarettes	
002407 – 002630	Dr YEUNG Sum	The Democratic Party expressed grave concern about the Administration's comments that the adoption of the "grandfathering and notation" approach in allowing existing tobacco brand names to continue to use the proscribed term on their packets or retail containers after the enactment of the Bill was able to meet the requirements of the FCTC	
002631 – 002821	Admin Chairman	Draft CSAs to clause 19 – Regulations and Orders	
002822 – 003304	Admin Dr YEUNG Sum Ms Emily LAU	Draft new Schedule 5A - Exemption from section 10(3) of the Ordinance The Bills Committee report should set out the commencement dates of various provisions of the Bill The Secretary for Health, Welfare and Food should include in his speech during the resumption of Second Reading debate on the Bill how the Administration intended to take forward the implementation of smoking ban in public transport interchange	

Time marker	Speaker	Subject	Action required
003305 – 003407	Dr YEUNG Sum Admin	The Intellectual Property Department had since 3 March 2006 ceased to process application for registration of a trademark in respect of a tobacco product containing the proscribed term	
003408 – 004106	Admin Mr Tommy CHEUNG Chairman	Draft new Schedule 5A - Exemption from section 10(3) of the Ordinance Number of application for registration of a trademark in respect of a tobacco product containing the proscribed term between January 2006 and prior to 3 March 2006	
004107 – 004652	Dr KWOK Ka-ki Admin Chairman	Number of existing cigarette brand names, registered and otherwise, containing the proscribed term Reason why the prohibition of the use of the proscribed term on the packet or retail container of tobacco products was not implemented once the People's Republic of China had signed and ratified the FCTC in October 2005 Appeal against the decision of the Registrar of Trade Marks for refusal of registration The Administration was requested to provide the 73 registered cigarette brand names containing the proscribed term and their dates of registration	✓ (Admin to provide the information in writing)
004653 – 005052	Mr Tommy CHEUNG Admin	The Administration was also requested to provide information on which of the 73 registered cigarette brand names containing the proscribed term had paid the duty in the first five months of this year and in the past three years respectively	✓ (Admin to provide the information in writing)
005053 – 011041	Mr Alan LEONG ALA7 Admin	Urged the Administration to re-consider the proposal of providing a cooling off or transitional period during which the offence under section 10(3) of the Ordinance (as amended by clause 11 without the proposed "grandfathering and notation" provision) would not be enforced so that the owners of the affected trademarks might take legal proceedings to test the constitutionality of the amended section 10(3) Of the 226 cigarette products which had paid the tobacco duty during the first five months of the year, the brand name of 153 of which were not registered. Among these 153 unregistered brand names, 45 contained the proscribed term Queried the justification for exempting unregistered trademarks or trade names and well-known trademarks from section 10(3) of the Ordinance	
011042 – 011348	Dr YEUNG Sum Chairman	Requested to seek the views of WHO on whether allowing existing brand names of tobacco products containing words, such as "light" and "mild", to continue to be used on their packet or retail container was in compliance with the WHO FCTC.	
011349 – 011659	Dr KWOK Ka-ki	Reiterated his opposition to the proposed "grandfathering and notation" approach to clause 11	

Time marker	Speaker	Subject	Action required
011700 – 012113	Mr Tommy CHEUNG Chairman ALA7	Supported the of the introduction of the proposed "grandfathering and notation" approach to clause 11	
012114 – 012150	Ms Emily LAU Chairman	Supported writing to WHO seeking its view on whether the latest grandfathering-cum-notation approach was in compliance with the WHO FCTC.	
012151 – 012930	Admin Dr KWOK Ka-ki	Expressed concern that cigarette brand names such as, "Salem Lights", would be exempted from section 10(3)	
012931 – 013540	Mr Tommy CHEUNG Chairman Admin	Suggested to defer the date of resumption of Second Reading debate on the Bill to the next legislative session if the Bills Committee could not complete its scrutiny of the Bill in time for the Bill to resume such at the Council meeting on 12 July 2006 The Administration was requested to provide a paper explaining why it considered necessary to exempt unregistered trademarks or trade names and well-known trademarks from section 10(3) of the Ordinance	✓ (Admin to provide the paper)
013541 – 013658	Dr YEUNG Sum	Opposed deferring the date of resumption of Second Reading debate on the Bill to the next legislative session	
013659 – 013859	Ms Emily LAU	Supported resuming Second Reading debate on the Bill at the special Council meeting on 2 August 2006 if necessary	
013900 – 014110	Mr Tommy CHEUNG	No intention to delay the enactment of the Bill	
014111 – 014510	Dr KWOK Ka-ki ALA7	Supported resuming Second Reading debate on the Bill at the special Council meeting on 2 August 2006 to obtain more legal opinions on the proposed "grandfathering and notation" provision as well as WHO's views on the matter	
014511 – 014809	Mr Tommy CHEUNG Chairman Dr YEUNG Sum	The letter to WHO should be tabled for members' consideration at the next meeting to be held on 27 June 2006 before issuance	✓ (Clerk to provide the draft letter)
014810 – 015937	Mr Alan LEONG Admin	Suggested to only introduce the "notation" provision to clause 11 of the Bill, in order not to delay the enactment of the Bill	
015938 – 020022	Dr YEUNG Sum Chairman	The Democratic Party would not support the introduction of the "grandfathering and notation" provision to clause 11 of the Bill	
020023 – 020042	Ms Emily LAU	Urged the Administration to give notice to resume Second Reading debate on the Bill as planned	
020043 – 020354	Chairman Admin Dr YEUNG Sum	The Administration was requested to provide a paper setting out the proposed CSAs to be moved by the Administration to facilitate members' discussion at the next meeting	✓ (Admin to provide the paper)