

立法會
Legislative Council

LC Paper No. CB(2)2979/05-06

(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 45th meeting
held on Thursday, 6 July 2006 at 8:30 am
in Conference Room A of the Legislative Council Building**

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

Dr Henry KONG
Acting Assistant 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)2542/05-06(01), CB(2)2563/05-06(01) to (03), CB(2)2593/05-06(02), CB(2)2658/05-06(01) to (02) and CB(2)2667/05-06(01))

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

2. The Administration was requested to provide in writing information on when the “notation” approach on the package of any tobacco product was adopted in Japan and Mexico, and whether such adoption was made before or after they had signed the WHO Framework Convention on Tobacco Control.

3. The Administration was also requested to provide the outside legal opinions

obtained by the Department of Justice on clause 11 of the Bill.

4. The Administration undertook to provide a reply to the Assistant Legal Adviser of the Legislative Council's letter dated 24 June 2006 prior to the next meeting.

II. Dates of next meetings

5. The Bills Committee would next meet on the following dates -

- (a) 20 July 2006 at 10:45 am;
- (b) 31 July 2006 from 9:00 am to 1:00 pm; and
- (c) 1 August 2006 from 9:00 am to 1:00 pm.

There being no other business, the meeting ended at 10:32 am.

Council Business Division 2
Legislative Council Secretariat
1 September 2006

**Proceedings of the 45th meeting of the
Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005
on Thursday, 6 July 2006 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 – 000606	Chairman	Opening remarks	
000607 – 001826	Admin Chairman Mr Tommy CHEUNG Ms Emily LAU	List of 71 registered marks in respect of cigarettes containing the prohibited words such as “mild” and “light”	
001827 – 003103	Ms Emily LAU Chairman Admin	Letter dated 27 June 2006 from the Administration to the Bills Committee expressing the view that there was no need for the Bills Committee to seek the views of the World Health Organization (WHO) on whether the introduction of a “grandfathering and notation” provision to clause 11 of the Bill was in compliance with the WHO Framework Convention on Tobacco Control (FCTC)	
003104 – 004001	Mr Martin LEE Admin	Disagreed that the prohibition of the use of misleading descriptors on the package of any tobacco product would amount to a de facto deprivation and hence result in the Government having to make monetary compensation to the affected parties	
004002 – 005331	Mr Vincent FANG Chairman Mr Tommy CHEUNG Clerk Mr WONG Ting-kwong	Queried the need and appropriateness for the Bills Committee to seek WHO’s views on whether the introduction of a “grandfathering and notation” provision to clause 11 of the Bill was in compliance with the FCTC The revised letter to WHO should be circulated to seek members’ comments before issuance	
005332 – 010328	Ms Emily LAU Admin ALA7	Whether the adoption of “grandfathering and notation” approach was unprecedented The Administration undertook to provide information on when the “notation” approach on the package of any tobacco product was adopted in Japan and Mexico, and whether such adoption was made before or after they had signed the FCTC	✓ (Admin to provide a written response)
010329 – 010841	Dr KWOK Ka-ki Admin	Opposed the introduction of a “grandfathering and notation” provision to clause 11 of the Bill	
010842 – 011709	Mr Alan LEONG Admin	Considered it entirely appropriate for the Bills Committee to write to seek WHO’s views on whether the introduction of a “grandfathering and notation” provision to clause 11 of the Bill was in compliance with the FCTC Urged the Administration to reconsider the proposal of providing a cooling off period during which the offence under section 10(3) of the Smoking (Public Health) 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)	

Time marker	Speaker	Subject	Action required
011710 – 012249	Mr Martin LEE Admin	Disagreed there was a serious risk if clause 11 was passed in the present form. The Administration should not move amendments to grandfather the existing trademarks containing the prohibited words in order to safeguard public health	
012250 – 012618	Mr Tommy CHEUNG ALA7	Considered the adoption of the “grandfathering and notation” approach acceptable, in view of the need to comply with Article 105 of the Basic Law	
012619 – 012951	ALA7 Mr Tommy CHEUNG	Queried whether the use of administrative means by the Intellectual Property Department to reject application for registration of a trademark in respect of tobacco product containing the prohibited words such as “light” and “mild” since March 2006 would stand in the court, should the applicant concerned take legal action against the Department on the refusal	
012952 – 013608	Ms Emily LAU Admin	The Administration should not move amendments to clause 11 in order to safeguard public health, as chances that the Government would lose to the affected trademark owners in a court case might not be high	
013609 – 014212	Dr KWOK Ka-ki Mr Tommy CHEUNG Admin	Reasons for proposing the adoption of the “grandfathering and notation” approach was to meet the requirements of the Basic Law and Hong Kong’s international intellectual property legal obligations	
014213 – 014910	Mr Martin LEE Chairman Administration	The Administration was requested to provide the outside legal opinions obtained by the Department of Justice on clause 11 of the Bill The Administration undertook to provide a reply to ALA7’s letter dated 24 June 2006 prior to the next meeting	✓ (Admin to provide the legal opinions) ✓ (Admin to provide a written response)
014911 – 015116	Mr Tommy CHEUNG Chairman Admin	Considered the adoption of the “grandfathering and notation” approach acceptable,	
015117 – 015425	Mr Martin LEE Admin	Questioned whether prohibition of the use of words such as “mild” and light” on the package of any tobacco product would amount to a deprivation	
015426 – 015717	Mr Albert CHAN	Considered the adoption of “grandfathering and notation” approach acceptable	
015718 – 015722	Chairman Ms Emily LAU Mr Albert CHAN Dr KWOK Ka-ki Mr Tommy CHEUNG	Dates of next meetings	