

Smoking (Public Health) (Amendment) Bill 2005
Submission to the Bills Committee, Legislative Council, Hong Kong
on the proposed Committee Stage amendments (CSAs) to the Bill.
Dr Judith Mackay
Senior Policy Advisor, TFI, WHO
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I would like to focus on 3 CSAs from the perspective of Hong Kong's obligations under the Framework Convention on Tobacco Control (FCTC): grace periods, smoking rooms and descriptors.

1. Grace period for smoke-free areas

There are no delay clauses recommended in the FCTC on Article 8, in keeping with the recognition of the harmfulness of smoking..

FCTC Article 1: Guiding principles of the FCTC states (a) the need to take measures to protect all persons from exposure to tobacco smoke;

FCTC Article 8: Protection from exposure to tobacco smoke

1. Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.
2. Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.

2. Smoking rooms

- a) The World Bank, endorsed by WHO, has stated: [¹]

The goal should be a completely smoke-free workplace. **There is no safe level of exposure to ETS. Ventilation cannot “clear the air” and protect workers from exposure.** Enclosed smoking rooms may be used as a transitional arrangement, but should be phased out as quickly as feasible. Furthermore, provision of well-ventilated smoking rooms can be costly.

b) WHO has stated:

“Separately ventilated smoking rooms do not protect those who have to work in them, let smoke into nonsmoking areas when the door opens and closes, are very expensive to install and are difficult to enforce.”^[ii]

New Zealand has rejected smoking rooms: ^[iii]

The smoking rooms issue. The draft of the bill under consideration in 2002 contained provision for smoking rooms. This proposal was opposed strongly by health groups, for they saw it as an expensive move that would embed smoking as a permissible behaviour and put the voluntary smoke-free status achieved in many workplaces at risk. These smoking rooms required cleaning, and therefore involved worker health issues.

3. Use of terms such as “light” and “mild”

FCTC Article 11: Packaging and labelling of tobacco products

Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that:

- (a) tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term,

descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as “low tar”, “light”, “ultra-light”, or “mild”;

The Western Pacific Regional Office of WHO has specifically commented about this issue in Hong Kong:

“We are extremely concerned about this issue.

Research on the tobacco industry's own documents, as well as careful monitoring of their activities reveals that the tobacco industry continues to put profits before life; its own expansion before the health of future generations; its own economic gain ahead of the sustainable development of struggling countries. Now, as nations have begun to fight back with a global strategy, and some countries begun to turn the course of the epidemic, tobacco companies continue to launch new weapons in the form of products disguised to appear less harmful and more attractive.

The "light", "mild" and "low tar" cigarette campaigns that were so effective in keeping customers, gaining new ones, and undermining tobacco control in the 20th century have continued into the 21st century. Tobacco companies continue reassuring health concerned smokers by offering with their new products the illusion of safety. They continue to take their old and new customers to more insidious levels of deception by promoting and selling new products disguised under healthier names, fruity flavours or more attractive-looking packaging, while still disingenuously insisting that the terms "light", "mild" and "low tar" as well as "cool", "clean", "ice" are simply descriptions of taste and not marketing ploys. Honest accurate information on tobacco product ingredients, toxicant deliveries, and health effects is scarce for many of these products.

Fortunately, tobacco control professionals learnt valuable lessons about the tobacco industry approaches from the experiences and successes as well as failures of 20th century tobacco control efforts. Global public health also has the strength of the combined forces of the United Nations and its Member States through the World Health Organization's Framework Convention on Tobacco Control – the WHO FCTC, a powerful tool to combat tobacco and the challenging approaches of its industry. It is also why the WHO Member States stipulated in WHO FCTC Article 11 that countries take appropriate action to ban tobacco product packaging and labeling that is "misleading, deceptive, or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign..." Countries specifically included the term "mild" as well as "low tar", "light", and "ultra-light" in Article 11. We note that such action is required within three years of entry into force. We also note that China is now a Party to the WHO FCTC, and that the Convention entered into force for China in January 2006.”

At least 32 countries are known to have specifically banned the misleading “light” and “mild” descriptors for cigarettes. This includes 32 countries in the European community, and 7 other countries: Australia, Brazil, Iceland, Israel, Norway, Venezuela, Switzerland.

The idea of a “grandfathering” clause is illogical: the rationale of the law is to protect consumers against misleading descriptors, but this aim is not achieved by allowing some such descriptors to continue. It also creates a non-level playing field among the tobacco companies in that new cigarettes introduced into the market are unable to use these terms. This could create a false image that newer cigarettes are more harmful.

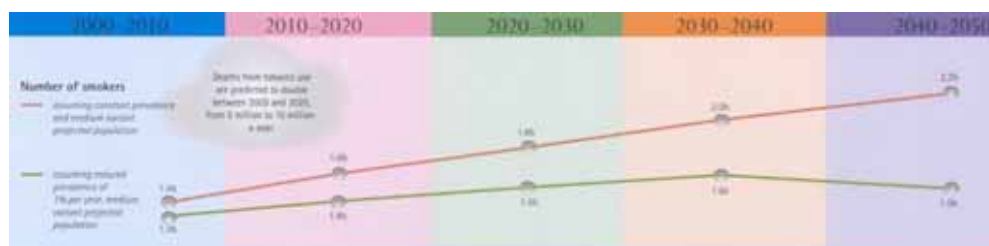
The way forward

Since the deliberations started on this Bill, I have written two books: an update and second edition of The Tobacco Atlas, and a new Cancer Atlas.

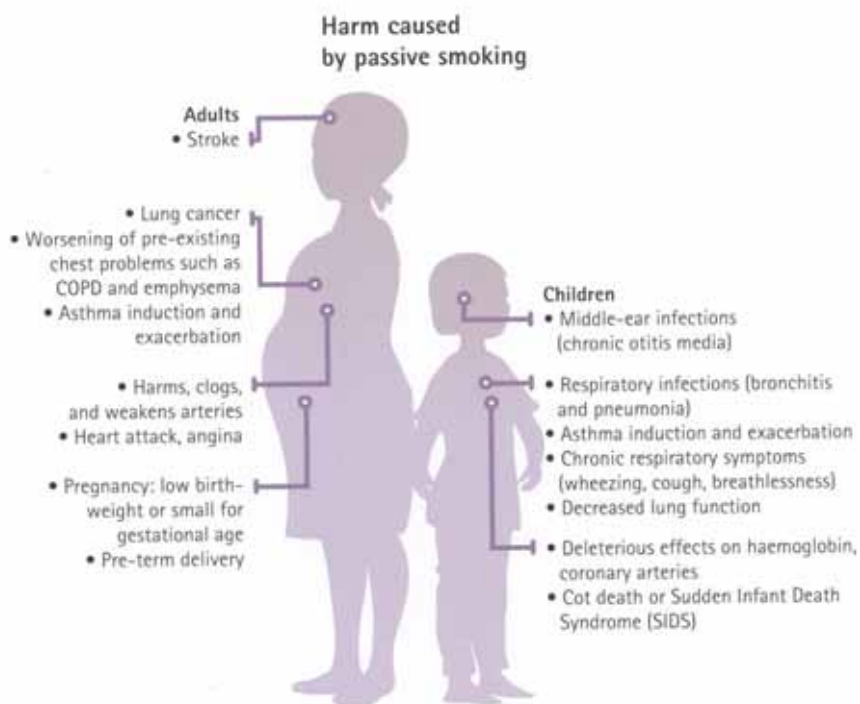
From data collected for these atlases, I would like to highlight just three points:

1. The future predictions for tobacco use

The number of smokers in the world is predicted to rise from the current 1.3 billion to 1.6 billion by 2030, principally due to increase in the world's population; this means that no tobacco companies or tobacco workers will be out of job for decades to come



2. The evidence on passive smoking has become even more certain



3. Action against tobacco use is global and unstoppable



The FCTC has been signed by 168 countries, and ratified by 127 countries, 18 more than when this map went to press.

Some Legislative Council members have questioned the knowledge and authority of WHO, and the requirement that the FCTC places upon Hong Kong. I would like to remind members that international treaties are collective products of member states, which collate and act upon the best available global scientific evidence.

As with the travel advisory when Hong Kong had cases of SARS, or international standards for immunization programmes, Hong Kong has a long and honourable history of observing, and abiding by, these international standards.

The WHO Framework Convention on Tobacco Control (FCTC) places governments under international obligation to curb tobacco use, by implementing tobacco control laws, taxation policies and programmes. The Vienna Convention, Article 26, states that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” China, including Hong Kong and Macau, has ratified the FCTC, which entered into force in January 2006 and is thus now in effect.

The issue was raised during the FCTC negotiations as to whether interim goals should be proposed, for example, creating partial no-smoking areas, or banning advertising but not other tobacco promotion. This was firmly rejected, as member states believed the time had come to take unequivocal and stronger action on tobacco, and not to compromise public health.

ⁱ <http://www.wpro.who.int/NR/rdonlyres/347D7C4C-0B2B-4599-8A02-C9B5CABE47E3/0/smokefreeworkplaces.pdf>

ⁱⁱ <http://www.paho.org/English/AD/SDE/RA/measures.htm#Smoke%20Free%20Environments>

ⁱⁱⁱ http://www.who.int/tobacco/training/success_stories/TfiR3hrNZf.pdf