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5 July 2006

Dr Douglas William Bettcher  
Coordinator, WHO Framework Convention on Tobacco Control Office  
Room 5183  
Tobacco Free Initiative  
World Health Organisation  
CH-1211 Geneva 27  
Switzerland

Dear Dr Bettcher

### **Smoking (Public Health) (Amendment) Bill 2005**

On behalf of the Bills Committee formed to study the Smoking (Public Health) (Amendment) Bill 2005, I am writing to seek the view of the World Health Organization 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 is in compliance with the WHO Framework Convention on Tobacco Control (FCTC).

The Smoking (Public Health) (Amendment) Bill 2005 was introduced into the Legislative Council of the Hong Kong Special Administrative Region (HKSAR) on 11 May 2005. The Bill seeks to, among other things, increase the controls on the packaging and labelling of tobacco products.

Presently, section 10(3) of the Smoking (Public Health) Ordinance (Cap. 371) prohibits the sale of cigarettes which have on their packet or retail container a brand name which includes words implying that the cigarettes have a low tar yield, such as “light” and “mild”. However, the prohibition does not apply if the cigarettes have been determined to have a tar yield of 9 milligrams or less. Clause 11 of the Bill amends that section to expand the prohibition so that it covers the sale of all cigarettes regardless of their tar yield.

The Government has now proposed to introduce a “grandfathering and notation” provision to clause 11 of the Bill to allow words such as “light” and

“mild” to be used on the packet or retail container of any tobacco product having a tar yield of 9 milligrams or less if these words, prior to the publication of the Amendment Ordinance in the Gazette, are, or are part of the -

- (i) trademarks that have been registered under the Trade Marks Ordinance (Cap. 559) in respect of tobacco products; or
- (ii) unregistered trademarks that have been used continuously in the retail sale of tobacco products in Hong Kong; or
- (iii) trademarks that have been well known in respect of tobacco products in Hong Kong.

These grandfathered brands are also required to bear a notation, in a prescribed form on the packet or retail container, that they are not less harmful to health than other tobacco products.

To assist Members in considering the proposed amendments to clause 11, the Bills Committee wishes to seek WHO’s view on whether the proposed amendments are in compliance with the FCTC. For your easy reference, a copy of the Bill, the proposed amendments to clause 11, and a diskette containing soft copies of other relevant papers are attached.

As the Bills Committee aims to complete its scrutiny of the Bill in September 2006, I should be most grateful if you would let us have your response by the end of August 2006.

With best regards,

Yours sincerely,

(Andrew CHENG)  
Chairman  
Bills Committee on Smoking  
(Public Health) (Amendment) Bill 2005

c.c Mr Burke Fishburn, Regional Coordinator, Tobacco Free Initiative  
Dr York CHOW, Secretary for Health, Welfare and Food (w/o encl.)

## Smoking (Public Health) (Amendment) Bill 2005

### List of relevant papers

No.	Paper No.	Subject
1.	LC Paper No. <u>CB(2)2660/04-05(04)</u>	<u>Submission from Baker &amp; McKenzie (solicitors acting for Japan Tobacco Inc.) in relation to the proposed amendments to section 10(3) of the Smoking (Public Health) Ordinance (Cap. 371)</u>
2.	LC Paper No. <u>CB(2)901/05-06(03)</u>	<u>The HKSAR Government's response to the submission from Baker &amp; McKenzie on behalf of Japan Tobacco Inc.</u>
3.	LC Paper No. <u>CB(2)2092/05-06(08)</u>	<u>Further submission from Japan Tobacco Inc. on descriptor regulations</u>
4.	LC Paper No. <u>CB(2)2467/05-06(01)</u>	<u>Letter from Japan Tobacco (Hong Kong) Limited responding to the HKSAR Government's proposal to grandfather existing trademarks (with notation) in respect of tobacco products</u>
5.	LC Paper No. <u>CB(2)1897/05-06(01)</u>	<u>A paper provided by the HKSAR Government on the justifications as to why further provisions have to be introduced to clause 11 of the Smoking (Public Health) (Amendment) Bill 2005 (the Bill)</u>
6.	LC Paper No. <u>CB(2)2406/05-06(02)</u>	<u>Letter dated 6 June 2006 from the Legal Service Division of the Legislative Council (LegCo) Secretariat to the HKSAR Government regarding the possible impact of the proposed amendments to section 10(3) of the Smoking (Public Health) Ordinance on a trademark registered in Hong Kong under the Trade Marks Ordinance (Cap. 559) and an unregistered trademark used in Hong Kong</u>
7.	LC Paper No. <u>CB(2)2406/05-06(01)</u>	<u>The HKSAR Government's reply to the letter from the Legal Service Division of the LegCo Secretariat dated 6 June 2006</u>
8.	LC Paper No.	<u>The HKSAR Government supplementary reply's to the</u>

	<u>CB(2)2456/05-06(01)</u>	<u>letter from the Legal Service Division of the LegCo Secretariat dated 6 June 2006</u>
9.	LC Paper No. <u>CB(2)2467/05-06(03)</u>	<u>Letter dated 19 June 2006 from the Legal Service Division of the LegCo Secretariat to the HKSAR Government responding to LC Paper No. CB(2)2406/05-06(01)</u>
10.	LC Paper No. <u>CB(2)2563/05-06(01)</u>	<u>Letter dated 24 June 2006 from the Legal Service Division of the LegCo Secretariat to the HKSAR Government on the proposed amendments to clause 11 of the Bill</u>
11.	LC Paper No. <u>CB(2)2563/05-06(02)</u>	<u>Full set of proposed Committee Stage amendments to the Bill to be moved by the HKSAR Government</u>