

立法會
Legislative Council

LC Paper No. CB(2)3005/05-06
(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 38th meeting
held on Thursday, 15 June 2006 at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** :
- Hon Andrew CHENG Kar-foo (Chairman)
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon LEE Cheuk-yan
 - 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
 - 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 Fred LI Wah-ming, JP
 - Hon Abraham SHEK Lai-him, JP
 - Hon LI Fung-ying, BBS, 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)

Dr Cindy LAI
Acting Deputy Director of Health

Mr MUI Kei-fat, Llewellyn
Senior Government Counsel
Department of Justice

Mr WONG Hing-hong, Peter
Senior Assistant Solicitor General
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

Mr Ken WONG
Legislative Assistant (2) 8

I. Meeting with the Administration

(LC Paper Nos. CB(2)2406/05-06(01) to (02))

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

2. The Administration was requested to provide the following in writing -
 - (a) whether the grandfathering provision to allow existing tobacco trademarks containing misleading words to continue to be used had

been passed by the legislature in Taiwan;

- (b) what were the implications during the legal proceedings should Japan Tobacco take the Government to court if clause 11 was passed in the present form;
- (c) what was the possible impact on the protection of intellectual property in view of the Australian case referred to in the letter from the Legal Service Division of the Legislative Council to the Administration dated 6 June 2006 (LC Paper No. CB(2)2406/05-06(02)); and
- (d) why the Administration considered there was a serious risk if clause 11 of the Bill was passed in the present form.

II. Dates of next meetings

- 3. The Bills Committee would next meet on the following dates -
 - (a) 16 May 2006 immediately after the House Committee meeting.
 - (b) 19 June 2006 at 5:30 pm; and
 - (c) 22 June 2006 at 8:30 am.
- 4. There being no other business, the meeting ended at 10:34 am.

Council Business Division 2
Legislative Council Secretariat
8 September 2006

**Proceedings of the 38th meeting of the
Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005
on Thursday, 15 June 2006 at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 – 000214	Chairman	Introduction	
000215 – 002713	Admin	The Administration's response to the letter from the Assistant Legal Adviser of the Legislative Council (LegCo) dated 6 June 2006 regarding the justifications for introducing a "grandfathering and notation" provision to clause 11 of the Bill (LC Paper No. CB(2)2406/05-06(01))	
002714 – 003142	Mr Martin LEE ALA7 Mr Tommy CHEUNG Dr YEUNG Sum	Suggested to defer discussion of LC Paper No. CB(2)2406/05-06(01) to the next meeting to allow more time for members and ALA7 to study the paper which was tabled at the meeting	
003143 – 003426	Chairman	Resumption of Second Reading debate on the Bill at the special Council meeting on 2 August 2006 might be necessary	
003427 – 003624	Dr KWOK Ka-ki	Supported deferring discussion of LC Paper No. CB(2)2406/05-06(01) to the next meeting Expressed opposition to the Administration's proposal of introducing a "grandfathering and notation" provision to clause 11 of the Bill	
003625 – 003853	Dr YEUNG Sum Chairman	Resumption of Second Reading debate on the Bill should stick to 12 July 2006 as far as possible	
003854 – 004344	Mr Tommy CHEUNG Chairman	Expressed regret at the habitual late submission of papers by the Administration Proposed to hold more meetings to enable resumption of Second Reading debate on the Bill on 12 July 2006	
004345 – 004748	Dr YEUNG Sum Admin Chairman	When the Administration would provide all the outstanding draft Committee Stage amendments for members' consideration The Administration's stance on introducing a "grandfathering and notation" provision to clause 11 of the Bill was not new, and was made known to members in LC Paper No. CB(2)1897/05-06(01) submitted to the Bills Committee in February 2006	
004749 – 004848	Mr Vincent FANG	Supported deferring discussion of LC Paper No. CB(2)2406/05-06(01) to allow more time for members to study the contents of the paper	
004849 – 005921	Dr YEUNG Sum Dr KWOK Ka-ki Ms Emily LAU Mr Tommy CHEUNG Mr WONG Ting-kwong Chairman	Holding additional meetings to enable resumption of Second Reading debate on the Bill on 12 July 2006	

Time marker	Speaker	Subject	Action required
005922 – 013922	ALA7	Letter dated 6 June 2006 from LegCo Legal Service Division to the Administration on the possible impact of the adoption of the “grandfathering” approach on a trade mark registered in Hong Kong under the Trade Marks Ordinance (Cap 559) and an unregistered trade mark used in Hong Kong (LC Paper No. CB(2)2406/05-06(02)) Preliminary response to LC Paper No. CB(2)2406/05-06(01)	
013923 – 013949	Chairman	Inviting questions from members	
013950 – 014106	Dr KWOK Ka-ki	ALA7 was requested to point out to members which issues raised in her letter dated 6 June 2006 to the Administration had not been addressed by the Administration in LC Paper No. CB(2)2406/05-06(01)	
014107 – 014321	Dr YEUNG Sum Admin	The Administration undertook to provide a response in writing on whether the grandfathering provision to allow existing tobacco trademarks containing misleading words to continue to be used had been passed by the legislature in Taiwan	✓ (Admin to provide a written response)
014322 – 014503	Dr KWOK Ka-ki Chairman Mr WONG Ting-kwong	Suggested that the Secretary for Justice should attend the next meeting to answer questions from members on the proposed amendments to clause 11 of the Bill	
014504 – 015308	Admin	Reiterated justifications for the proposed amendments to clause 11 of the Bill	
015309 – 015422	ALA7	Response to Administration’s justifications	
015423 – 015540	Chairman Ms Emly LAU Mr Tommy CHEUNG	Proposed dates of next meetings	
015541 – 015919	Ms Audrey EU	The Administration was requested to provide a paper on the implications during the legal proceedings should Japan Tobacco take the Government to court if clause 11 was passed in the present form	✓ (Admin to provide the paper)
015920 – 020006	Dr YEUNG Sum	The Administration was requested to respond to the possible impact on the protection of intellectual property in view of the Australian case referred to in LC Paper No. CB(2)2406/05-06(02)	✓ (Admin to provide the paper)
020007 – 020045	Dr KWOK Ka-ki	The Administration was requested to provide a paper detailing why it considered there was a serious risk if clause 11 was passed in the present form	✓ (Admin to provide the paper)
020046 – 020147	Chairman Ms Emily LAU Dr KWOK Ka-ki	Dates of next meetings	