

立法會
Legislative Council

LC Paper No. CB(2)2978/05-06
(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 44th meeting
held on Tuesday, 27 June 2006 at 2:30 pm
in the Chamber 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 Audrey EU Yuet-mee, SC, JP
 - Hon Vincent FANG Kang, JP
 - Hon LI Kwok-ying, MH
 - Hon Alan LEONG Kah-kit, SC
 - Hon LEUNG Kwok-hung
 - Dr Hon KWOK Ka-ki
 - Hon WONG Ting-kwong, BBS
 - Hon Albert Jinghan CHENG
- 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
 - Dr Hon Joseph LEE Kok-long
 - 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

Miss Shandy LIU
Senior 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 Maggie CHIU
Legislative Assistant (2) 4

Miss Jenny HO
Legislative Assistant (2) 9

I. Meeting with the Administration
(LC Paper Nos. CB(2)2542/05-06(01) and CB(2)2563/05-06(01) to (03))

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

2. At the request of the Bills Committee, the Administration undertook to provide a list of registered trademarks in respect of cigarette products containing the proscribed words and find out which of them had paid the tobacco duty during the first five months of this year and had not paid the same duty in the past three years respectively.

3. Members agreed that the draft letter to seek the view of the World Health Organization (WHO) on whether the grandfathering-cum-notation approach was in compliance with the WHO Framework Convention on Tobacco Control should be forwarded to members for comments before issuance.

4. Members further agreed not to support the date of resumption of Second Reading debate on the Bill at the Council meeting on 12 July 2006 proposed by the Administration, for the following reasons -

- (a) the complete sets of the Administration's proposed Committee Stage amendments (CSAs) in English and Chinese were only provided to the Bills Committee on 26 June 2006. The Bills Committee did not have time to go through the CSAs and would not be able to do so before the deadline for giving notice of CSAs on 3 July 2006;
- (b) the Administration's proposed CSAs to clause 11 of the Bill to give effect to its "grandfathering and notation" approach to allow existing trademarks of tobacco products containing misleading words, such as "mild" and "light", to continue to appear on the packets or retail containers of their products together with a notation were only provided to the Bills Committee on 23 June 2006. In view of the very controversial nature of the proposed amendments, members needed more time to consider the Administration's proposal and whether there were alternative solutions; and
- (c) the Bills Committee wished to seek the view of the WHO as to whether the Administration's "grandfathering and notation" approach referred to in paragraph 4(b) above was in compliance with the requirements of the WHO Framework Convention on Tobacco Control.

A paper reporting on the view of the Bills Committee on the proposed date of resumption of Second Reading debate on the Bill would be submitted for the House Committee meeting on 30 June 2006.

II. Date of next meeting

5. The date of next meeting to be advised.

6. There being no other business, the meeting ended at 4:55 pm.

**Proceedings of the 44th meeting of the
Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005
on Tuesday, 27 June 2006 at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 – 000547	Chairman	Introduction	
000548 – 000729	Mr Tommy CHEUNG Chairman Clerk	Draft letter to seek clarification from the World Health Organisation (WHO) on whether the introduction of a “grandfathering and notation” provision to clause 11 of the Bill was in compliance with Article 11 of the WHO Framework Convention on Tobacco Control (FCTC) should be circulated to members for comments before issuance	✓ (Clerk to prepare the draft letter)
000730 – 001719	Admin Mr Tommy CHEUNG ALA7 Mr Vincent FANG	Continue discussion on the draft Committee Stage amendments (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 section 10(3) of the Smoking (Public Health) Ordinance (LC Paper No, CB(2)2542/05-06(01)) Section 2 of new Schedule 5A – Exemption for certain trade marks and trade names on packet or retail container of cigarettes	
001720 – 001842	Dr KWOK Ka-ki Chairman	Letter to WHO on whether the introduction of a “grandfathering and notation” provision to clause 11 of the Bill was in compliance with Article 11 of the FCTC	
001843 – 002030	Admin	Section 3 of new Schedule 5A - Exemption for certain trade marks and trade names on retail container of specified tobacco products	
002031 – 003036	Admin Dr KWOK Ka-ki Mr Albert CHENG ALA7 Mr Vincent FANG	Section 4 of new Schedule 5A - Requirements specified in relation to registered trade mark The Administration undertook to provide a list of registered trademarks in respect of cigarettes containing the proscribed words and find out which of them had paid the tobacco duty during the first five months of this year and had not paid the same duty in the past three years respectively. Reason why it was not desirable to make the “grandfathering” provision retrospective	✓ (Admin to provide a written response)
003037 – 005501	Mr Albert CHENG Admin ALA7 Mr Tommy CHEUNG Chairman	Validity of turning down the applications for registration of trademarks containing the proscribed words in respect of tobacco products by the Intellectual Property Department (IPD) since 3 March 2006 Expressed concern that the grandfathering approach would turn the existing registered tobacco brand names containing the proscribed words, which had not been genuinely used in Hong Kong by the owner, into valuable commodities as these brand names could be sold to others for use on tobacco products after the enactment of the Bill Mechanism adopted by the IPD in revoking the registration of a trademark	

Time marker	Speaker	Subject	Action required
005502 – 010825	Dr KWOK Ka-ki Admin ALA7	Urged the Administration to abort the proposal of introducing a “grandfathering and notation” provision to clause 11	
010826 – 011221	Mr Vincent FANG	Registered tobacco brand names which had not been genuinely used in Hong Kong by the owner for a continuous period of three years prior to the enactment of the Bill should not be exempted from section 10(3) after the enactment of the Bill	
011222 – 011724	Mr Tommy CHEUNG Chairman	The Liberal Party opposed the proposal of resuming Second Reading on the Bill at the special Council meeting on 2 August 2006	
011725 – 012129	Dr KWOK Ka-ki	Reiterated his opposition to the “grandfathering” approach of allowing existing tobacco brand names containing the proscribed words to continue to be used after the enactment of the Bill	
012130 – 012545	Admin	The WHO FCTC did not impose an absolute ban on the use of the words such as “light” and “mild” on the packet or retail container of tobacco products. It was up to each Member State to come up with the most effective means, in accordance with its own national law and local circumstances, to prevent the public from being misled that tobacco products with packets or retailer containers incorporating such words are less harmful to health than other tobacco products.	
012546 – 013315	Mr Alan LEONG Admin	Suggested to take out the proposed CSAs to clause 11 for the time being, so as to enable the Bill to resume Second Reading debate at the Council meeting on 12 July 2006	
013316 – 013619	Mr Albert CHENG Admin	Echoed the view that registered tobacco brand names which had not been genuinely used in Hong Kong by the owner for a continuous period of three years prior to the enactment of the Bill should not be exempted from section 10(3) after the enactment of the Bill	
013620 – 014304	Chairman and members Admin	Proposed date of resumption of Second Reading debate on the Bill	
014305 – 014559	ALA7 Admin Chairman	Power to refuse application for registration of a trademark by the IPD	
014600 – 015035	Mr Albert CHENG Chairman Admin	Reiterated the concern that the grandfathering approach would turn the existing registered tobacco brand names containing the proscribed words, which had not been genuinely used in Hong Kong by the owner, into valuable commodities as these brand names could be sold to others for use on tobacco products after the enactment of the Bill	
015036 – 015629	Dr KWOK Ka-ki Admin ALA7	Suggested to take away clause 11 to enable the Bill to resume Second Reading debate at the Council meeting on 12 July 2006	
015630 – 015930	Mr Tommy CHEUNG Chairman	Suggested to resume Second Reading debate on the Bill in October 2006 to allow more time for members to scrutinise the Bill	

Time marker	Speaker	Subject	Action required
015931 – 021229	Mr Albert CHENG Admin Chairman Mr Alan LEONG Dr KWOK Ka-ki	Justifications for introducing the proposed “grandfathering and notation” provision to clause 11	
021230 – 021740	Mr Tommy CHEUNG	Expressed concern about the need to seek WHO’s view on the compliance of the proposed “grandfathering and notation” provision to clause 11 with the FCTC	
021741 – 022136	Chairman Ms Emily LAU Admin Mr Fred LI Mr Tommy CHEUNG Dr KWOK Ka-ki	Agreed to resume Second Reading debate on the Bill at the Council meeting on 18 October 2006 to allow more time for members to go through all the CSAs; to consider the controversial “grandfathering and notation” approach and whether there were alternative solutions; and to seek WHO’s views on the aforesaid approach A paper would be submitted for the meeting of the House Committee on 30 June 2006 reporting the view of the Bills Committee on the proposed date of resumption of the Second Reading debate on the Bill	✓ (Clerk to prepare the paper)

Council Business Division 2
Legislative Council Secretariat
1 September 2006