

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005**

**Administration's response to issues raised
at the Bills Committee meetings
on 4 January, 20 January, 7 February and 10 February 2006**

PURPOSE

This paper sets out the Administration's response to issues raised by the Bills Committee at its meeting on 4 January 2006, 20 January 2006, 7 February 2006 and 10 February 2006.

BACKGROUND

2. At the above meetings, Members raised the following issues and requested the Administration to provide a response in writing -

(a) To find out from those licensed stall hawkers, whose advertising sources were those other than tobacco companies, as to whether their advertisers had agreed to foot the bill for maintaining and renewing their stalls;

ADMINISTRATION'S RESPONSE

3. We have consulted the tobacco industry and they have confirmed with us that they would cease the maintenance and renewal of licensed hawker stalls should the advertising deal be terminated. According to our understanding from licensed stall hawkers, advertisers other than tobacco companies would not foot the bill to maintain and renew their stalls.

(b) Whether display of tobacco products and the use of hardware sponsored by tobacco companies to display tobacco products at licensed hawker stalls would be considered as display of tobacco advertisement;

4. According to section 14(1) of the existing Smoking (Public Health) Ordinance, an advertisement is a tobacco advertisement if it –

- (a) contains any express or implied inducement, suggestion or request to purchase or smoke cigarettes, cigarette tobacco, cigars or pipe tobacco;
- (b) relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of cigarettes, cigarette tobacco, cigars or pipe tobacco; or

(c) illustrates or mentions smoking or cigarettes, cigarette tobacco, cigars or pipe tobacco or their packages or qualities.

5. Section 14(2)(b) provides that the display of any object which includes the name of a tobacco product is deemed to be a tobacco advertisement. Although this deeming provision does not apply to the display of tobacco products, it does not mean that the display of tobacco products can never constitute a tobacco advertisement. The reason is that it remains necessary to consider whether the display is within the scope of section 14(1). In other words, if the display in question contains express or implied inducement or suggestion to purchase a particular brand of cigarettes, that display would fall within the scope of section 14(1) and be deemed as a tobacco advertisement.

(c) why allowing licensed hawker stalls and retailers employing not more than two persons to display tobacco advertisement would run the risk of not meeting the requirements of the comprehensive ban on all tobacco advertising and promotion imposed by Article 13(2) of the World Health Organization’s Framework Convention on Tobacco Control (FCTC); and

6. Under Article 13(2) of FCTC, “each party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship.”

7. At Members’ request, further enquiry was made to the World Health Organization. As we have mentioned in LC Paper No. CB(2)1057/05-06(01), a reply from Mr Burke A. Fishburn, Regional Coordinator – Tobacco Free Initiative of WHO Western Pacific Regional Office, confirmed that there should be a complete ban on direct and indirect tobacco advertisement at licensed hawker stalls and retail outlets in order to fulfill the requirements of the WHO FCTC. Details of WHO’s reply could also be found in the aforesaid paper.

8. We have separately sought advice from the International Law Division of the Department of Justice, as contained in LC Paper No. CB(2)901/05-06(01) and repeated here. According to legal advice, the current exceptions provided for in section 12(2) of the Ordinance run a real risk of falling foul of the comprehensive ban on all tobacco advertising and promotion imposed by Article 13(2) of FCTC, unless it could be demonstrated that the removal of such exceptions is restrained by its constitution or constitutional principles. The legal advice further pointed out that the amendment could be effective on a date not later than the expiry of

the five-year period.

9. In the light of the advice obtained, we have come to the view that in the long run, the exemption for tobacco advertising at these licensed stalls should be removed as a matter of policy.

(d) the Administration was requested to consider expanding the statutory no smoking areas to include parks, country parks, amusement parks, such as Disneyland and Ocean Park, and outdoor playgrounds and sports grounds; and

10. The Smoking (Public Health) (Amendment) Bill 2005 was aimed at protecting the public from the hazards of secondhand smoke in indoor workplaces and public places. With regard to outdoor areas, we believe that there should be public consultation on the matter. The Administration will also need to take a comprehensive approach to it. We are committed to a step-by-step approach to control smoking. We would examine tobacco control in outdoor areas as our next phase after enactment of this Bill.

(e) the Administration was requested to provide information on whether, and if so, which overseas jurisdiction(s) adopted the grandfathering and notation approach in allowing the use of a trade mark on the packet or retail container containing any of the prohibited words that cigarettes contained therein were less harmful to health than others.

11. We understand that Japan and Taiwan has adopted the notation and grandfathering approach respectively. Relevant excerpts of their legislation are attached at [Annex](#) for Members' reference.

Japan – Tobacco Business Law

Final (English translation)

Description and others of the new Health Warning and other statements (Notification “Tsutatsu”)

No.4224

November 19, 2003

To each of the chiefs of the Custom Houses:

Jiro Makino

Director-General of the Financial Bureau

Description and others of the new Health Warning and other statements regulated by Ministry of Finance to call attention to relationship between manufactured tobacco products consumption and health

Recently, the Ministerial Ordinance has been amended with regard to the indication of precautions provided in Paragraph 1, Article 39 of the Tobacco Business Law (hereinafter simply referred to as the “Law”). Please ensure that the provisions of Article 36 and 36-2 of the Ministerial Ordinance that relate to the registration of the Designated Distributors pursuant to Article 11 of the Law and related articles of the Law are treated as follows:

1. Pursuant to the provisions of Paragraph 4, Article 36 of the Ministerial Ordinance, the statements to be displayed clearly, in large text and in a format that can be easily read before and after the container/package is opened shall be displayed as follows:
 - (1) With regard to the statements shown in Appendix 1 and Appendix 2 (for Appendix 2, applies only to the statements in the first column), each sentence shall start on a new line, and the characters in the first sentence shall be clearly larger than those used in the second sentence. If there is a third sentence in any of the statements shown in Appendix 1 and Appendix 2, the characters in that sentence shall be smaller than those used in the second sentence.
 - (2) The characters that constitute the statements shall be clearly distinguishable from the patterns and colors used overall on the container/packaging, and shall be clearly legible.

(3) The statements shall not be printed on sections that will be separated when the package is opened.

(4) The statements in Appendix 1 and Appendix 2 shall be displayed according to the format provided in the Attachment unless there are serious impediments with the shape and other features of the container/package.

2. Whether a word(s) shall be classified as one that could cause misunderstanding shall be determined individually by Tobacco and Salt Industries Office of General Affairs Division, Financial Bureau for each word(s) indicated on containers/packages. However, following are examples of words that could cause misunderstanding.

(1) Adjectives, adverbs, comparatives, nouns and others such as “mild” that create an image of tenderness or softness may cause misunderstanding that the product is less harmful to one’s health compared with other products, not only the instance that those statement may cause misunderstanding to express the particular tobacco product’s nature or state of substances but also actually the statement represent the nature of the nature or state of substances contained in the tobacco product.

Examples: mild, light, tender, mellow, sweet, smooth

(2) Words used to describe the amount of substances contained in the tobacco product or the smoke could cause misunderstanding that the tobacco product is less harmful to one’s health compared with other products, not only the instance that those statement may cause misunderstanding the amount of tar and nicotine is small, but also the statement actually represent the amount of tar and nicotine is small, the particular tobacco product may cause misunderstanding that the amount of the product’s tar and nicotine is smaller than any other tobacco products. Further, such descriptions could also cause misunderstanding that the tobacco product may reduce the risks of a specific or wide range of illnesses. Therefore, such words would fall under the category of a statement that could cause misunderstanding.

Examples : light, low, medium, pianissimo, legeres

(3) The following would be appropriate as a statement prescribed in Article 36-2 that is to be displayed to “prevent misunderstanding among consumers”.

“The term ‘XXX, ...’ in the product name and the term ‘YYY,...’ displayed on this package describing the product’s quality, condition and amount of substances in the smoke, do not mean that this product’s adverse health effects are less than those of other products.”

In addition, in the above statement, statement in (1) or (2) as above should be prescribed for XXX, YYY. However, the above statement can be shortened as necessary in the event there are no words that fall into category of “XXX” or “YYY”.

菸害防制法修正草案條文對照表

行政院衛生署 940121 報院版

修正條文	現行條文	說明
第一章 總則	第一章 總則	本章章名未修正。
第一條 為防制菸害，維護國民健康，特制定本法；本法未規定者， <u>依菸酒管理法、菸酒稅法及其他法令之規定。</u>	第一條 為防制菸害，維護國民健康，特制定本法；本法未規定者，適用其他法令之規定。	現行法所稱之「其他法令」，最主要者當屬菸酒管理法及菸酒稅法，爰修正本條文字，以資明確。
第二條 本法用辭定義如下： 一、菸品：指以菸草為原料加工製成之捲菸、雪茄、菸絲、鼻菸、嚼菸及其他菸草製品。 二、吸菸：指吸食、咀嚼菸品或攜帶點燃之菸品之行為。 三、菸品容器：指包裝菸品之盒、罐或其他容器等。 <u>四、菸品廣告：指以任何形式之商業宣傳、促銷、建議或行動，其直接或間接之目的或效果，將可能導致菸品銷售或促進菸品使用。</u> <u>五、菸品贊助：指對任何事件、活動或個人採取任何形式之捐助，其直接或間接之目的或效果，將可能導致菸品銷售或促進菸品使用。</u>	第二條 本法用辭定義如左： 一、菸品：指以菸草為原料加工製成之捲菸、雪茄、菸絲、鼻菸、嚼菸及其他菸草製品。 二、吸菸：指吸食、咀嚼菸品或攜帶點燃之菸品之行為。 三、菸品容器：指包裝菸品之盒、罐或其他容器等。	一、配合法制體例，酌修序文字。 二、參考 92 年 5 月間世界衛生組織通過「菸草控制框架公約」(FCTC)第一條之定義，增列「菸品廣告」以及「菸品贊助」之定義，確認相關規範原則與範圍。
第三條 本法所稱主管機關：在中央為行政院衛生署；在直轄市為直轄市政府；在縣（市）為縣（市）政府。	第三條 本法所稱主管機關：在中央為行政院衛生署；在直轄市為直轄市政府；在縣（市）為縣（市）政府。 <u>本法規定事項涉及有關機關之職掌者，由中央主管機關會同各有關機關辦理之。</u>	一、第一項未修正。 二、中央主管機關辦理本法規定事項時，如該事項涉及有關機關之職掌，本即應會同各有關機關辦理，無待規定。現行第二項乃屬贅文，法制體例亦不多見，本案既係全案修正，爰予刪除。
第四條 各級主管機關應有專責單位或專任人員，辦理菸害防制有關業務。	第四條 各級主管機關應有專責單位或專任人員，辦理菸害防制有關業務。	未修正。
第二章 菸品健康福利捐之稽徵及菸品之管理	第二章 菸品之管理	配合菸品健康福利捐之稽徵法源增列，修正本章章名。

修正條文	現行條文	說明
		<p>彈性運用於補償健保醫療費用支出、安全準備、弱勢群體健保費及預防保健等用途，惟細部之分配及運作，授權中央主管機關訂定辦法，爰訂定第四項如上。</p> <p>七、鑑於菸品健康福利捐開徵之初即由財政部相關單位執行，基於行政效能考量，其稽徵及處罰仍依相關規定執行之，爰訂定第五項如上。</p>
<p>第五條 販賣菸品不得以下列方式為之：</p> <p><u>一、自動販賣、郵購、電子購物或其他販售者無法辨識購買者年齡之方式。</u></p> <p><u>二、開放式貨架等可由消費者直接取得之方式。</u></p> <p><u>三、每一販賣單位以少於二十支及其內容物淨重低於十五公克之包裝方式。</u></p>	<p>第五條 販賣菸品不得以自動販賣、郵購、電子購物或其他無法辨識購買者年齡之方式為之。</p>	<p>一、鑑於未成年人愈早接觸菸品，其染上菸癮之可能性愈增，故「菸草控制框架公約」之第十六條明定：禁止以直接取得菸品之任何方式販售菸品，以防止未成年人易於取得菸品，爰參考增列第二款如上，原條文修正移列第一款。</p> <p>二、「菸草控制框架公約」同條亦要求各國禁止分支或小包銷售菸品，避免增強未成年人對菸品之可負擔性；惟考量非紙菸類菸品之商品性質，另針對菸品包裝設定重量下限，期在合理限度內規範菸品販售，故參考目前二十支包裝紙菸重量(單支0.92，一包約為18.4克)，爰新增第三款如上。</p>
<p>第六條 (刪除)</p>	<p>第六條 <u>未經中央目的事業主管機關許可之菸品，不得輸入、製造或販賣。</u></p>	<p>一、本條刪除。</p> <p>二、鑑於菸酒管理法已於民國91年1月1日施行，有關菸品之管理，應回歸該法之規定。</p>
<p>第七條 <u>菸品、品牌名稱及菸品容器加註之文字，不得使用淡菸、低焦油或其他誤導</u></p>	<p>第七條 菸品容器最大外表面積明顯位置處，應以中文標示健康警語。</p>	<p>一、「菸草控制框架公約」第十一條規定：菸品包裝和標籤不得以任何虛假、誤</p>

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修正條文	現行條文	說明
<p>、影射吸菸無害健康之用語。</p> <p>菸品容器最大外表面積明顯位置處，應以中文標示吸菸有害健康之警示圖文與戒菸相關資訊。</p> <p>違反前兩項之規定者不得進口。</p> <p>第二項應標示之警示圖文與戒菸相關資訊；其面積及方式，由中央主管機關定之。</p>	<p>前項健康警語及其標示方式，由中央主管機關定之。</p>	<p>導或欺騙或可能對其特性、健康後果、危害或排放物產生錯誤印象的手段進行推銷，包括使用直接或間接產生某一菸品比其他菸品危害較小的虛假印象之任何詞語、描述、商標、圖形或任何其他標誌。其中包括「低菸焦油」、「淡味」、「極淡味」或「柔和」等詞語。爰參照其法例，增列第一項規定如上。</p> <p>二、此外，鑑於菸品包裝上之文字訊息直接影響吸菸者與潛在吸菸者，歐洲聯盟議會於 2001 年通過香菸法案，禁止菸品名稱及用語誤導消費者，以期提升民眾對吸菸危害之認知。本案雖曾引起商標權保障之爭議，然經歐洲法院判定該條文係對於商標權合理的限制。</p> <p>三、為使健康警告標示更為有效地提醒民眾吸菸之危害，參酌加拿大、巴西等國衛生部門之成功經驗，採用鮮明之圖片吸引消費者注意，爰增列菸品除警示文字外，亦應標示警告圖案，原條文第一項修正移列第二項。</p> <p>四、目前海關於查獲不符標示規定之菸品時，由於欠缺禁止其進口之法律依據，故均仍准予進口，為貫徹前二項設計之意旨，爰增列第三項之規定禁止違反前兩項之規定者進口。</p> <p>五、配合「菸草控制框架公約」第十一條所揭禁警圖</p>

修正條文	現行條文	說明
		文不得少於主要可見部分30%，甚至最好超過50%以上之世界趨勢，並使條文文意更臻明確，原第二項移列為第四項，並酌修文字。
<p>第八條 菸品所含之尼古丁及焦油含量，應以中文標示於菸品容器上。</p> <p>前項尼古丁及焦油不得超過最高含量；其最高含量及其檢測方法，由中央主管機關會商有關機關定之。</p>	<p>第八條 菸品所含之尼古丁及焦油含量，應以中文標示於菸品容器上。</p> <p>前項尼古丁及焦油不得超過最高含量；其最高含量及其檢測方法，由中央主管機關會商有關機關定之。</p>	未修正。
<p>第八條之一 菸品製造、進口業者應依中央主管機關規定，申報下列資訊：</p> <p>一、菸品成分、添加物及相關毒物學資料。</p> <p>二、菸品排放物及相關毒物學資料。</p> <p>菸品成分、添加物或其排放物內含有毒物質之相關資訊，中央主管機關應予抽檢並主動公開。</p>		<p>一、本條新增。</p> <p>二、鑑於菸品其他成分及其排放物亦可能造成人體健康之重大危害，參考「菸草控制框架公約」第十規定：每一締約國根據其國家法律採取和實行有效的立法、實施、行政或其他措施，要求菸草製品製造商和進口商向政府當局披露菸草製品成分和排放物的訊息，並應進一步公開披露菸草製品的有毒成分和它們可能產生的排放物訊息。</p> <p>三、為使菸品相關資訊公開透明化，以降低消費者健康危害，在歐盟香菸法案之要求下，英國業已立法要求製造或進口商應於2003年2月開始，每年以品牌為基礎申報菸草成分及相關毒物學資訊。</p>
<p>第八條之二 主管機關對銷售之菸品得派員取樣檢查或檢驗，業者不得規避、妨礙或拒絕。但取樣數量以足供檢查或檢驗之用者為限。</p> <p>前項人員取樣時，應出具身分證明文件及收據。</p>		<p>一、本條新增。</p> <p>二、為解決現行須價購搜證之困難，落實稽查工作之進行，並維護民眾財產權益，爰參照食品衛生管理法及菸酒管理法相關法例，規定直轄市、縣（市）</p>

行政院衛生署召開「菸害防制法修正草案」協調會議紀錄

時間：94年10月6日中午12：00

地點：台大校友聯誼社（台北市濟南路1段2-1號）3A會議室

主持人：侯署長勝茂、侯委員水盛

紀錄：洪怡玲

出席者：

一、立法院

丁守中委員	
王昱婷委員	
林建榮委員	(不克出席)
林耘生委員	(不克出席)
林滄敏委員	(不克出席)
林惠官委員	(不克出席)
吳志揚委員	
吳英毅委員	
李全教委員	(蔡志勇代表出席)
李鎮楠委員	(不克出席)
沈智慧委員	(不克出席)
洪秀柱委員	(不克出席)
洪玉欽委員	(不克出席)
邱鏡淳委員	(不克出席)
黃義交委員	(不克出席)
黃劍輝委員	
張慶忠委員	(不克出席)
陳重信委員	(不克出席)
費鴻泰委員	(不克出席)
蔡正元委員	
蔡錦隆委員	
廖本煙委員	
廖婉汝委員	(不克出席)
郭榮宗委員	(不克出席)
楊瓊瓔委員	(柯俊丞代表出席)
趙永清委員	(不克出席)
潘孟安委員	
謝欣霓委員	(不克出席)
羅志明委員	(蔡志雍代表出席)

顏清標委員 (不克出席)

二、衛生環境及社會福利委員會

王榮璋委員

尹伶瑛委員 (劉沛綺代表出席)

田秋堃委員 (不克出席)

朱俊曉委員

李明憲委員 (洪志杰代表出席)

林育生委員 (不克出席)

林國慶委員 (彭義欽代表出席)

林進興委員 (不克出席)

侯水盛委員

侯彩鳳委員

徐中雄委員 (不克出席)

徐少萍委員

陳秀卿委員 (不克出席)

黃淑英委員

楊宗哲委員 (卓慧倩代表出席)

楊麗環委員 (許明美代表出席)

廖國棟委員

蔡勝佳委員 (不克出席)

盧天麟委員

鍾紹和委員

三、行政機關

財政部國庫署 許組長春安 樓科長美鐘 馬科長小惠

經濟部商業司 陳科長威達

本署副署長 王副署長秀紅

本署藥物食品檢驗局 陳局長樹功 (不克出席)

中央健康保險局 鄧經理世輝

本署國會聯絡組 羅參事木才 李秘書淑芬

本署法規委員會 高參事宗賢 劉科員慧娟

本署國民健康局 吳局長浚明

游主任伯村

藍研究員孝芬

林科長美娜

劉育雯、陳冠文

一、侯署長勝茂致詞：

立法院衛環委員會業於 94 年 10 月 3 日初步完成「菸害防制法修正案」之審查。本次行政院版修正案總計 37 條，通過 15 條、刪除 3 條、保留 22 條。本署業將保留條文分為十四項議題，邀集衛環委員會各委員及各版本(已付委者共 11 版)提案委員進行今日之協商會議。同時，為使本次會議討論結論有助於未來續行審查，本人邀請 貴委員會召集委員侯委員水盛共同主持。

二、侯委員水盛致詞：

本次協商會議期望先就目前各提案委員版本和行政院版之修正條文加以整理歸納，並嘗試凝聚委員共識，俾利未來正式協商會議能更有效率進行。

三、立法院衛生環境暨社會福利委員會保留條文之討論

(註：以下依行政院版修正條文排序)

(一) 第 2 條菸品促銷廣告定義：

決議：本條保留進行協商。

(二) 第 4 條菸捐徵收額度及方式(第 36 條成立基金)

決議：

1. 菸品健康福利捐從量或從價課徵部分保留協商。
2. 未來如採從量課徵，額度以每包徵收 15 元(每千支新台幣 750 元)作為目標；如採從價課徵，則以售價 25%為基準。
3. 同意行政院版本之調整機制：在一定幅度內，主管機關得依評估結果報行政院核定後調高，並應送請立法院備查。
4. 分配比例仍授權由中央主管機關定之。
5. 本修正條文應與菸酒稅法第 22 條修正案協調財政委員會。

→ (三) 第 6 條禁止使用誤導文字(第 24 條罰則、第 35 條過渡期)

決議：第 6 條第 1 項應不溯及既往，加入「但本法修正前之菸品名稱不適用之。」之但書後，同意行政院版條文。

(丁守中委員：在擴大禁菸場所之條文獲得支持之前提下，同意本項決議。)

(四) 第 6 條、第 10 條警示圖文面積及標示(第 24 條罰則、第 35 條過渡期)

決議：

1. 警示圖文面積明定正反面各 50%，但就雪茄等菸品之標示應考量其特殊性，訂出合理可行之規範。
2. 未來販賣場所標示之警圖應避免採用過於恐怖訴求的圖片。

(五) 第 8 條成分、排放物揭露及抽驗(第 25 條罰則)

決議：同意行政院版修正條文。

(六) 第 6 條、第 7 條之警語、焦油及尼古丁標示是否應排除免稅菸品

決議：免稅菸品如於國內販賣即應依法標示中文警語、焦油及尼古丁，但外銷菸品則不用。請衛生署釐清黃劍輝委員所提免稅店是否屬於「境內」之疑義。

(七) 第 10 條販賣場所陳列菸品

決議：同意行政院版修正條文，惟請衛生署未來制定管理辦法時應注意販賣場所之差異，管理之措施應符合比例原則。

(八) 第 11 條營業場所不得免費供應菸品(第 27 條罰則)

決議：同意行政院版修正條文。

(九) 第 15 條、第 16 條全面及部分禁菸場所(第 31 條罰則)

決議：本條保留進行協商。

(十) 第 12 條孕婦吸菸(第 28 條罰責)及第 17 條訓示(未訂罰則)之禁菸場所

決議：第 12 條孕婦吸菸之處罰應取消，私人場所之吸菸行為不應過度介入，但

於第 17 條增列室內場所於孕婦和兒童在場時不得吸菸之訓示規定。

(十一) 第 18 條場所負責人之制止義務(第 32 條罰責)

決議：場所負責人僅具有勸阻義務，刪除本條罰責。

(十二) 第 22 條電視節目、戲劇表演、視聽歌唱及職業運動表演等
不得特別強調吸菸之形象，是否應加列罰責？

決議：同意行政院版修正條文。

(十三) 第 24 條、第 26 條停止製造輸入處分

決議：以高額罰鍰取代停止製造輸入之處分。請衛生署提出合理之罰鍰額度建議。

(十四) 第 37 條施行日期

決議：除菸捐另訂施行日期，其餘修正條文應有較長之宣導期。

四、臨時動議

廖國棟委員：修正條文第 9 條雖經 10 月 3 日委員會審查通過，但因該條等同全面禁止廣告，建議亦併送朝野協商。

決議：同意依議事復議程序處理。

主席裁示：請衛生署與衛環委員會依本次討論共識，協助整理協商版本，以利後續審查及協商。

五、散會(下午二時三十分)