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Secretary for Health, Welfare and Food  
Health, Welfare and Food Bureau  
(Attn: Mrs Ingrid YEUNG, DS(H)2)  
19/F, Murray Building  
Garden Road  
Hong Kong

By Fax (2840 0467) and By Post

19 June 2006

Dear Mrs YEUNG

**Smoking (Public Health) (Amendment) Bill 2005 (“the Bill”)**

I refer to the Administration’s Supplementary Reply to the Assistant Legal Adviser’s Letter of 6 June 2006 received by me at 12:30pm today and have the following preliminary comments:

Paragraph 14 states that “It cannot therefore be assumed that the European version of the proportionality test would be applicable to the Compensation Rule under BL105”.

Please note that my views in pages 5 to 10 are on the issue of whether there is deprivation of property under Basic Law Article 105 and based on the Administration’s legal principles which I concur.

The Undertaking to the Australian Competition and Consumer Commission (“the commission”) given for the purposes of Section 87B of the Trade Practices Act 1974 by Imperial Tobacco Australia Limited on 3 November 2005 is mentioned to give information to Members of the Bills Committee on what the Australian Commission considers as “misleading or deceptive”. The Canadian case is mentioned to illustrate the principle of proportionality. Both are not mentioned for the issue of deprivation of property under Basic Law Article 105.

It is appreciated that your reply in both Chinese and English could reach us as soon as possible.

Yours sincerely

(Monna LAI)  
Assistant Legal Adviser