



Legco
Subcommittee on Dutiable Commodities
{Exempted Quantities} (Amendment) Notice 2010
6th May 2010

Dear Sir,

We are aware that Legco is receiving submissions at 16.40 hrs this afternoon on the above subject and we are unable to attend at short notice. However we wish the following relevant information to be brought to the attention of the Honourable Subcommittee.

1

The Legco paper relates to most countries having packs of 20 cigarettes. However the recent Australian Government tobacco taxation report Recommendation 75 (weblink below) is highly relevant and needs to be brought to the attention of the Legco members on this important matter:

http://taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/Publications/Papers/Final_Report_Part_2/chapter_e6.htm

RECOMMENDATION 73:

The existing regime for tobacco taxation in Australia should be retained, with the rates of tax substantially increased, depending on further evidence on the costs of harm from tobacco smoking.

RECOMMENDATION 74:

Tobacco excise should be indexed to a broad measure of wages rather than CPI.

RECOMMENDATION 75:

"There should be no duty free allowance on tobacco for international travellers entering Australia."

"Duty free tobacco should be abolished"

The duty free tobacco allowance undermines the objectives of tobacco taxation and involves a significant revenue loss (in the order of A\$200 million per year). There is no reason why international travellers should enjoy a tax concession on cigarettes smoked in Australia."



We point out that Legco is presuming all cigarette packets are 20 sticks whereas people arriving from Australia with legal product will have 24 sticks in the pack if they have removed one.

2

If the arriving passenger is carrying 19 counterfeit cigarettes is that OK ? It is far better to have a zero tolerance as in Singapore (and as proposed in Australia) with prohibits Duty Free tobacco imports. Currently several airlines entering Hong Kong sell cigarettes on board and advertise cigarettes within their inflight magazines which must be curtailed.

3

60-70% of all contraband tobacco seizures in Hong Kong are genuine product.

Hong Kong Customs Department shows that genuine tobacco product contraband seizures in Hong Kong are 60- 70% of all seizures ; this is 40% above the world norm for genuine tobacco product contraband seizures (which is generally 30% overall according to the Framework Alliance of WHO and the Tobacco Atlas. The tobacco companies' own documents at the Legacy online site refer to this as 'general cargo' and 'duty not paid trade'). It is therefore obvious that Duty Free tobacco is a major ready source of contraband in this market that requires additional Government resources to police this illegal action. Please see the self explanatory email from the relevant Hong Kong Customs division commander below. The subcommittee should also consider a recommendation to Government to instigate a mandatory fines system as in the EU whereby any seizures of genuine tobacco product which is duty not paid results in a massive fine on the product manufacturer and consideration of charges against the tobacco executives for excise tax evasion and conspiracy to smuggle contraband. This will force the manufacturing companies to control their supply chain.

The Legco paper (link below) confirms same.

http://www.legco.gov.hk/yr09-10/english/hc/sub_leg/sc07/papers/sc070506cb1-1818-2-e.pdf

"9. Meanwhile, C&ED's statistics show that duty-free cigarettes constitute a source of illicit cigarettes. The WHO's Framework Convention on Tobacco Control therefore requires all member states to seek to reduce the source of duty-not-paid cigarettes and combat the illicit trade of tobacco products."

4

Children would not mind buying packs of duty free cigarettes with one stick removed – in fact it lowers the price to them which is contrary to the intention of Government's tobacco taxation policy.

The Government must learn that allowing exemptions results in pandemonium and failed policy and in the interests of public health and prevention of passive smoking they must use all available means to restrict the available supply of tobacco products which includes banning duty free tobacco here.

It is time for Hong Kong to emulate Singapore and abolish duty free tobacco imports.

Yours faithfully,

8/F Eastwood Centre - 5, A Kung Ngam Village Road - Shaueiwan, Hong Kong

Tel: (852) 2886 2655 Fax: (852) 2565 9537 website: www.cleartheair.org.hk



James Middleton

Chairman anti tobacco committee

www.cleartheair.org.hk

Dear Mr. Middleton,

Thank you for your continuous support to our enforcement against illicit cigarettes and sharing your views with our Senior Inspector Lee Hoi-man in the past. Mr. Lee has been recently posted out and replaced by Mr. Wan Hing-chuen. You may send your precious opinions to him or to me in future.

We are also much grateful for the series of mails on the same subject you sent to this Department during the Lunar New Year Holiday. The relevant materials are very informative and insightful. In response, we would like to let you have our views as follows :

C&ED's effort against illicit cigarette activities

In anticipation of the greater incentive for illicit cigarette activities following the increase in tobacco duty in Feb 2009, we have stepped up enforcement actions by internal redeployment. As a result, there have been increases in number of cases and arrests. However, the total seizure quantity has been dropping. Evidently, our stringent enforcement has cornered the culprits to scale down their operation.

Examination of cigarette seizures

Our operational objective in fighting illicit cigarettes is to protect revenue. Hence, we don't usually examine cigarette seizures in every case. However, for cases of smuggling and distribution in nature with significant seizure quantity, we would invite the trade mark owners to examine the cigarettes. In general, around 30% to 40% are found to be counterfeit. Since the cigarette seizures are intended for local black market, we believe the percentage can adequately reflect the overall situation.

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Control regime on cigarettes

We adopt regulatory control and enforcement strategy against any illicit diversion of the imported or locally manufactured cigarettes. The Department would consistently monitor the situation and suggest to the Policy Bureau more effective measures whenever necessary.

Project Crocodile

“Project Crocodile” (the Project), which started on 1 August 2004, aims to form a united front to combat transnational cigarette smuggling activities. There are now 18 Customs Administrations participating in the project. Over the years, fruitful results have been attained because of the information exchange. The Project is running smooth and is still in force.

Should you have any further opinions, please discuss with me or Mr. HC Wan (e-mail address : andyhui@cleartheair.org.hk) at any time.

Best Regards,

Andy W M Hui

Divisional Commander (Anti-Illicit Cigarette Investigation)

Hong Kong Customs and Excise Department



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Dear Sir,

<http://www.fctc.org/dmdocuments/INB4%20briefing%20duty%20free%20EN.pdf>
http://www.fctc.org/dmdocuments/INB4_briefing_track_EN.pdf



Briefing Note: Fourth Session of the Intergovernmental Negotiating
Body on an Illicit Trade Protocol

Geneva: 14th March to 21st March 2010

DUTY FREE SALES

1. FCA believes that Article 11(bis) should include an obligation on Parties to ban duty-free sales at airports, ports, land border crossings and on ships and airplanes.
2. There is clear evidence that the existence of legal duty-free sales facilitates illicit trade in tax-exempt product, supposedly intended for duty-free stores but in fact diverted into illicit channels. This is accepted even by tobacco multinationals such as BAT¹.
3. Cigarettes marked for duty-free sale may end up as contraband continents away. FCA members have evidence of such sales from stores or street vendors in, for example, the Philippines, Egypt, Iran, Pakistan, India and the Dominican Republic.
4. FCA would ask Parties to resist lobbying from both the tobacco industry and trade associations involved in duty free sales to prevent progress towards ending such sales.
5. In addition to reducing illicit trade, a ban on duty-free sales would also:
 - Increase government revenue, by eliminating untaxed sales
 - Reduce the ability of the tobacco industry to associate tobacco with luxury goods and International travel, and to use duty-free stores as marketing venues
 - Help reduce the social acceptability of tobacco products
 - End a source for relatively inexpensive tobacco products: lower prices increase consumption.

FCA Position

6. FCA supports the inclusion in the protocol of a ban on tax-reduced, tax free, duty-reduced and duty free sales of tobacco and tobacco products. These products are often diverted in large volumes into illicit supply channels.
7. FCA recommends the adoption of the first option proposed in draft Article 11 bis. To strengthen the draft provision, FCA recommends that all duty free, duty-reduced, tax free and tax-reduced sales should be covered, not only duty free sales, and not only sales occurring in free zones. All tax and duty free and tax- and duty-reduced products are at risk of diversion into illicit trade channels. FCA recommends that the prohibition apply to sales to 'international travellers' rather than to all sales, as prohibition of all tax and duty free and tax- and duty-reduced sales within a Party's territory, including, for example, sales in native reservations and on military bases, may not be practicable in all Parties.
8. FCA does not consider that the second and third options proposed in draft Article 11 bis are sufficiently strong and clear to address adequately the problem of large-scale diversion of tax and duty free and tax- and duty-reduced products into illicit supply channels



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Body on an Illicit Trade Protocol

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TRACKING AND TRACING (Article 7)

1. The Framework Convention Alliance strongly supports the establishment of an effective global tracking and tracing regime for tobacco products. Effective action against illicit trade would be greatly assisted if authorities could monitor the movement of lawfully manufactured tobacco products (tracking), and, upon seizure of such products, access information to assist in recreating the movement of products through the supply chain (tracing). The actual system implied by the current draft text of the protocol is more a tracing than a tracking system. Historically, diversion of legally manufactured products has been the main source of supply for the illicit trade. However, the markings used in a tracking and tracing system can also help distinguish legally manufactured from illicitly manufactured product.

What is Tracking and Tracing?

2. Tracking and tracing covers a wide variety of systems used to determine the current and past locations and other information concerning property in transit. An effective tracking and tracing system allows such information to be uploaded, retained and read in a standardised manner.
3. An example of a common application of tracking and tracing is in shipping and delivery businesses such as UPS and FedEx. Other industries using systems with relevant elements of tracking and tracing include the airline industry (where key passenger information can now be read from electronically generated tickets), and the food, chemicals and pharmaceuticals industries.
4. There are several technologies deployed in tracking and tracing systems, which are at various stages of development and standardisation. Technology which could be used in a tracking system under Article 7 include varieties of barcode and data matrix codes. Barcode systems are in very common use, and are generally cheap to apply and to read, although they are relatively restricted in the amount of information that can be stored directly on the product. Data matrix codes are more complex but offer greater security and can hold more information. As the coding and marking technology is evolving very quickly, no specific technology should be made mandatory, but rather global standards should be set subject to future review and improvement.

Confidential and Non-Confidential Information

5. In the tracking and tracing regime for tobacco products proposed under Article 7, some information would be provided in "unique, secure and non-removable" markings on product packaging, so that it can be read and understood by any appropriate law enforcement or customs officer. Such information would include at a minimum location, date and time of manufacture, and intended destination. Other information (for example data about named individuals) would be accessible by law enforcement and customs officers by request to a competent authority in the Party of origin or to the 'global information sharing focal point' at the Convention Secretariat, using the information provided by the unique markings on the product to access database information, for example by making a request for further information to a competent authority in the Party of origin.

FCA Position

6. FCA broadly supports the overall approach taken in Article 7. However, there are a number of areas where we believe the current text needs to be strengthened or clarified. These include the following:

There should be no distinction in Article 7 between those products intended for domestic markets and those intended for export. This distinction would create a major loophole in the Protocol, which would be exploited by illicit traders. The current drafting of Article 7.3 appears contradictory since it requires markings on all "unit packs of cigarettes" manufactured for domestic markets, but on unit packs that are exported only "as soon as technology is available". It should be noted that the Office of the Legal Counsel has commented (paragraphs 12-13 of the report of Drafting Group 1) that there is nothing in Article 15 of the FCTC to support a distinction between products for domestic use and products for export, or to support the exclusion of certain kinds of packages from the tracking and tracing regime.

The tracking and tracing regime should apply to all industrially packaged tobacco products, including for example packaged hand-rolled tobacco, and not only to cigarettes.

An additional subprovision should be included in Article 7.4 to require a record of the name, address and licence number of the manufacturer, and, if the products are imported, the importer. This critical information has been proposed to be required in respect of the first purchaser not affiliated with the manufacturer, and therefore should also be included in respect of the manufacturer and/or importer.

Article 12 of the Protocol (Unlawful conduct including criminal offences) should include as unlawful conduct knowingly dealing in products to which applicable unique identification markings have not been affixed, or on which markings have been defaced, falsified, removed, altered, or otherwise interfered with, as well as providing any material information that is false, misleading or incomplete, or failing to provide required information.

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Where a Party requires additional information linked to unique markings (see paragraph 5 above) this should be possible either through the proposed global information sharing focal point or through direct Party to Party contact.

There needs to be a clear process under Article 7 for future development of the tracking and tracing regime, to require recording of information through the supply chain and not only at the time of manufacture, import or first shipment, to permit additional information to be added, to accommodate improvements in available technology, etc. The Protocol should therefore provide that the Meeting of the Parties to the Protocol should, at its first session, establish a technical committee responsible for making recommendations on the further development and expansion of the regime.

Yours faithfully,

James Middleton

Chairman anti tobacco committee

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Smokefree Coalition - te ohu auahi kore

AUGUST 2007

IT'S TIME TO BAN THE SALE OF DUTY-FREE TOBACCO

DUTY FREE

**CIGARETTES
KILL**

Why should they be discounted for people who leave or enter the country?

The Smokefree Coalition would like to see the sale of duty-free cigarettes and tobacco banned because:

- raising the price of cigarettes through tax is an important deterrent to would-be smokers and there is no reason why the purchase of some cigarettes should be exempt from taxation
- the lower price of duty-free tobacco encourages travellers to buy cigarettes in larger quantities than usual
- allowing the tax-free purchase of cigarettes is a glaring anomaly in the government's approach to tobacco smoking, and a gap in its international commitments.



**TO HELP REDUCE TOBACCO
SMUGGLING WORLDWIDE, NEW
ZEALAND NEEDS TO JOIN WITH
OTHER NATIONS IN ENDING ALL
DUTY FREE SALES**

A worldwide ban on the duty-free sale of tobacco products at borders and airports would greatly diminish the wholesale trade in untaxed cigarettes, which is a primary source of large-scale smuggled tobacco. Such a ban would be effective in curbing smuggling and reducing consumption, including among young people and people of low income - smokers deliberately targeted with smuggled products.¹

¹ statements, conviction evidence, info revealing or less intergovernmental negotiation duly collected on 6 May 2007 from http://india.org/wordpress/index.php?option=com_content&view=article

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ClearTheAir
爭氣行動



THE TAX-FREE SALE OF CIGARETTES ENCOURAGES SMOKING

The World Health Organization states that 'to end all duty-free tobacco sales would be consistent with WHO health policy targets of reducing tobacco use, as tax-free sale makes cigarettes available cheaply.'

A small but significant percentage of tobacco purchases escape taxation because these products are available in duty-free stores. This concession comes across as a government endorsement of cigarette smoking.

THE FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

The FCTC is a World Health Organization initiative signed and ratified by many countries including New Zealand. Under the FCTC there is an obligation to discourage the sale of duty-free tobacco. Article 6 of the treaty states 'Duty-free sales are discouraged. Parties may prohibit or restrict duty-free sales of tobacco products.'



OTHER COUNTRIES ARE CURRENTLY EXPLORING WAYS TO BAN DUTY-FREE TOBACCO PRODUCTS

Several countries are revising their policies on duty-free tobacco products. In Singapore, for example, inbound passengers receive no duty-free tobacco allowance, and duty-free tobacco products are now no longer available to travellers within the European Community.