



May 17, 2017

Clerk to Subcommittee on Smoking (Public Health) (Notices) (Amendment) Order 2017
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Honourable Members of the Subcommittee on Smoking (Public Health) (Notices) (Amendment) Order 2017,

Hong Kong United Against Illicit Trade (HKUAIT) would like to take this opportunity to outline our views on the "*Smoking (Public Health) (Notices) (Amendment) Order 2017*" (Ref: L.N. 66 of 2017).

The distribution, sale and consumption of illicit goods, including illicit tobacco, remains a significant political and socio-economic issue in Hong Kong. Counterfeit tobacco products violate national and international intellectual property laws, while the ongoing contraband trade of tobacco negatively impacts on our local community.

Illicit trade in tobacco adversely influences Hong Kong's economic growth and reputation. In 2015, illicit trade accounted for 29.1% (or 1.5 billion cigarettes) of total cigarette consumption, costing the government HK\$2.9 billion in foregone tax revenue. This figure also represents a 30.9% excise tax loss as a percentage of potential total excise tax revenue.¹

Accordingly, HKUAIT is committed to standing firmly behind measures which decrease the level of illicit tobacco, and voicing concerns against regulations which might further exacerbate the already dire illicit tobacco trade in Hong Kong.

Illicit trade is an unintended consequence of an 85% graphic health warning

Global examples indicate that excessive graphic health warnings have unintended consequences. A drastic surge in illicit trade is one such consequence, particularly as counterfeiters and smugglers are incentivized by consumer demand for "branded" tobacco products. In Hong Kong, illicit trade will most likely be further proliferated if the proposed 85% graphic health warning is implemented alongside a requirement to insert tar and nicotine levels on side panels. Viewed together, available space for tobacco manufacturers to print security and authentication features is further reduced, resulting in a less secure supply chain and facilitating illicit trade.

A global example of how illicit tobacco flourished after the implementation of excessive graphic health warnings can be found in Australia. Following the implementation of a high tobacco tax together with excessive health warning size (75%) and plain packaging, illicit tobacco sale and consumption reached

¹ Oxford Economics, International Tax and Investment Center, 2016, Asia Illicit Tobacco Indicator 2015, May 17 2017, <http://www.oxfordeconomics.com/asia-illicit-tobacco>



historic levels. International consulting firm, KPMG estimates that the tobacco black market grew by more than 17% in the first year of plain packaging².

The booming illicit tobacco trade in Australia, a country with no land borders and strong maritime controls, has been widely reported in the media. Indeed, on December 2, 2015, the Parliamentary Joint Committee on Law Enforcement (Committee) initiated an inquiry into illicit tobacco. Pursuant to the Committee's functions set out by the *Parliamentary Joint Committee on Law Enforcement Act 2010*, the Committee was tasked with examining the use and consequences of illicit tobacco in Australia, including the importation of contraband, counterfeit, and unbranded tobacco as well as domestically-grown illicit tobacco.

Illicit trade is an international issue which paves the way for increased criminal activities

HKUAIT commends the Hong Kong Customs and Excise Department for conducting anti-illicit cigarette campaigns, resulting in high-value seizures. However, the illicit trade of tobacco remains a serious political, economic and criminal issue for Hong Kong, and its trading partners. Globally, the World Health Organization estimates that 1 in every 10 tobacco products consumed is illicit.³ In Europe alone, the annual turnover of illicit tobacco products is estimated to be between EUR 7.8 billion (HK\$66.71 billion) to EUR 10.5 billion (HK\$89.81 billion), which is higher than the nominal GDP of nearly one-quarter of the world's sovereign nations.⁴

Illicit trade is a global criminal issue, worsened by extreme measures such as excessive graphic health warnings due to the limited space for the application of security and authentication features, and the increased ease of counterfeiting. In 2009, the International Consortium of Investigative Journalists reported that the Taliban militant group, in addition to trafficking heroine, profits also from illicit tobacco. Estimates indicate that revenue from illicit cigarette *“trade accounts for as much as 20% of funding for militant groups in this region, second only to heroin production”*.⁵ In January 2016, a report released by the Union des Fabricants (UNIFAB)⁶ presented links between counterfeit cigarettes and terrorism financing. Following, H el ene CROCQUEVIEILLE, General Director of Customs and Indirect Rights (France) reiterated that *“counterfeit can finance criminals (...), terrorist activities organized in small networks”* and that *“counterfeit, drugs and tobacco traffics are an absolute priority of customs.”*

Global evidence points to an increase in illicit trade following excessive regulations. In the case of Hong Kong, illicit trade is likely to be compounded because of Hong Kong's geographically vulnerable location, and given the ease of smuggling counterfeit and contraband cigarettes across the Hong Kong – Mainland China border. Again, the ability to print security and authentication features will be largely diminished

² KPMG, Illicit tobacco in Australia, 2014 Full Year Report, March 30, 2015, http://www.pmi.com/eng/media_center/media_kit/Documents/KPMG%20Report%20FY%202014%20-%20Illicit%20tobacco%20in%20Australia.pdf

³ <http://www.wpro.who.int/mediacentre/releases/2015/20150531/en/>

⁴ OECD, 2015, Illicit trade: converging criminal networks, April 18 2015, <http://www.oecd.org/gov/risk/charting-illicit-trade-9789264251847-en.htm>

⁵ *ibid*

⁶ UNIFAB, Our Publications News, http://www.unifab.com/images/Rapport-A-Terrorisme-2015_GB.pdf



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when the current regulation of inserting tar and nicotine levels on side panels is combined with 85% graphic health warnings.

In short, illicit tobacco trade will increase if government regulations create conditions that aid it. This in turn will lead to greater Government revenue loss, less product control, an increase in Customs and Excise Resources spent on combatting the problem and a major increase in funds for syndicated and organized crime groups.

To strike a more balanced approach between protecting public health and potentially exacerbating the illicit trade situation in Hong Kong, HKUAIT submits that the Subcommittee considers the guidelines on health warnings provided for in the DIRECTIVE 2014/40/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (usually referred to as the EU Tobacco Product Directive or the "EU TPD").

HKUAIT welcomes the opportunity to engage in dialogue, and remains at your disposal for any further information you might require.

Yours sincerely,

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