



The Chairman
Panel on Health Services
Legislative Council
Legislative Council Complex 1
Legislative Council Road Central
Hong Kong

10 January 2017

Dear Sir,

85% Graphic Health Warnings on Tobacco Packs (“the Proposal”)

We refer to the Government’s discussion paper of CB(2) 386/16-17(05), and note that the Government has re-submitted the Proposal to the Panel of Health Services of the Legislative Council for consideration in December 2016. We are astonished to the Government’s move and its blanket disregard to the significant number of opposing public submissions to the Proposal.

We are strongly opposed to the Proposal as there is no justification or need for introducing the 85% Graphic Health Warnings (“GHWs”). Hong Kong already has one of the lowest smoking prevalence in the world, and the Government has not produced any reliable evidence that increasing the size of GHWs in Hong Kong will effectively reduce smoking prevalence. Further, in re-submitting the Proposal, the Government has not considered, let alone addressed, the numerous problems of the Proposal that the industry had previously raised (see the attached submissions of 23 June 2015 and 13 July 2016), including but not limited to:-

1. consumers’ right on product information;
2. illicit tobacco;
3. the impracticality of the Proposal;
4. the deprivation of intellectual properties; and
5. procedural impropriety.

The Government has to-date failed to address the industry’s concerns on the practical implementation issues of the Proposal, including the issue of authenticity seals and features of cigar products being covered by GHWs, the sealing issue of soft pack cigarettes, the display difficulties for many 3D and pack shot trademarks and the problems with moving the nicotine/tar indications to the side panel. All of these issues have important bearing on the tobacco industry’s legitimate interests, the customers’ right on product information and the illicit tobacco trade situation in Hong Kong.



In fact, it is well known that Hong Kong has a very serious problem of illicit tobacco trade. *The Asia Illicit Tobacco Indicator 2015: Hong Kong*¹ states illicit incidence in Hong Kong rose to 29.1% which was 1.1pp higher than that estimated in 2014 making it one of the top 5 countries/territories in Asia for illicit trade consumption. Nonetheless, the Government has turned a blind eye on these data and plainly failed to properly examine and address the impact of enlarging GHWs on illicit trade in Hong Kong. The Government only conveniently responded that there was no such illicit trade concern in Hong Kong without citing any local data or statistics to support its claim.

With respect to the impracticality of the Proposal, the 6 months' grace period is plainly proposed with a lack of the basic knowledge of how our industry operates – only the printing and manufacturing processes will take more than 6 months and this does not include time required for the long port to port transportation, custom clearance and stock depletion processes (see table below). Yet, a media reported that the Government would only consider extending the 6 months' grace period if it is not a delaying tactic employed by the tobacco industry. We have much regret to this groundless allegation and the Government's ignorance on our operations.

Procedure	Estimated time required (minimum)
Packaging re-design on over 200 Stock Keeping Units ("SKUs") to accommodate the proposed changes on the GHWs requirements The Hong Kong cigarette market has more than 200 Stock Keeping Units whose packs would need to be redesigned. This is a laborious and complicated process, which would involve liaising with various internal and external parties and carrying out quality control checks on all of the SKUs. Some of our members estimate that this part of the process alone will take at least 3 months.	At least 3 months
Printing and manufacturing from various sourcing countries Some of our members would need to coordinate with overseas printing houses on issues such as designing new printing moulds, carrying out printing trials and making adjustments as necessary. Further, finished goods would need to be shipped into Hong Kong from a number of different manufacturers and countries, including Singapore, Malaysia, South Korea, Indonesia, Brazil and Germany.	At least 6 months

¹ www.oxfordeconomics.com/publication/download/270433



<p>Delivery of finished goods from overseas factories to Hong Kong and clearance from overseas' customs</p> <p>For example, the shipping times from Indonesia and Germany are around 40 and 55 days port to port respectively.</p>	<p>At least 1 month</p>
<p>Depletion of current stock with GHWs based on existing requirements</p> <p>Time to exhaust current stock of SKUs bearing the existing 50% GHWs, and launch the new cigarette packs with the larger GHWs. For example, one of our member's safety stock level is 8 weeks taking into account the time required for international manufacturing and shipping.</p> <p>Otherwise, massive product recall would be necessary, leading to wasted costs and lost sales could ensue without adequate time for stock transition.</p>	<p>At least 2 months (a longer period may be required if there will be excise increase in the interim period as stock clearance will be much slower)</p>
<p>Total Period</p> <p>(Please note that a longer period may be required if other events occur such as bad weather, industrial strike and duty increase. Further, package redesign can only commence upon receipt of the trial high resolution adobe illustrator artwork file (otherwise known as ".ai" file) from the Government, not the publication</p>	<p>At least 12 months</p>

Finally, the Proposal clearly restricts the use of our members' trademarks and designs. With no evidence on its effectiveness having been presented by the Government, such encroachment on intellectual properties is against the proportionality principles laid down by the recent Court of Final Appeal's judgement of *Hysan Development Company Limited & Ors v Town Planning Board*² and the international conventions that protect intellectual properties and free trade. This is a deprivation of private property against the Basic Law. We have repeatedly raised this concern to the Government via various written and verbal submissions. However, no substantial response has ever been received, nor even a courtesy reply to all of our submissions from the Government in the past 17 months since our first submission of June 2015. We are particularly concerned with the Government's bureaucratic statement at the briefing session on 23 November 2016 that any query for the encroachment on our members' trademarks and designs should be directed to the Government's Intellectual Property Department. The Government is a unity and the responsibility of ensuring the Proposal is within lawful limit is that of the proposing department but not that of the ordinary people.

As a responsible government, we expect the Government would only propose proportionate measures for effectively reducing smoking prevalence after it has properly and sufficiently

² FACV 21/2015



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assessed the impact of the Proposal from all aspects including the industry's perspectives as well as all data and statistics available (whether international or local studies). However, not only no proper public consultation or regulatory impact assessment on the Proposal has been undertaken by the Government to-date since the Proposed was first introduced in May 2015, but also the Government has not even provided us with any substantive reply to resolve the daunting concerns raised in our previous submissions. This is not only against the Government's own policy as laid down in its "Be the Smart Regulator"³, but also against the Basic Law and the Government's international obligations.

For the foregoing reasons, we are strongly opposed to the Proposal and request the Government to refrain from implementing the problematic Proposal.

Yours faithfully,



Chairperson, Tobacco Association of Hong Kong

³ <http://theme.gov.hk/en/theme/bf/smart/>