

January 9, 2017

Clerk to Panel on Health Services
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Panel Chairman and Members,

Hong Kong United Against Illicit Tobacco (HKUAIT) would like to take this opportunity to outline our views on the proposed "*Health Warnings on Tobacco Products Packets and Retail Containers*" under agenda item III of the Panel on Health Services Meeting, to be held on Tuesday, 17 January 2017.

The illicit tobacco trade remains a significant political and socio-economic issue in Hong Kong – nearly 1 in 3 cigarettes are of illicit origin. Based on the recent public opinion survey results done by Ipsos Hong Kong in December 2016, public calls for Government to take action at tackling illicit tobacco is at an all-time high at 92%¹.

HKUAIT recognises that Hong Kong's illicit tobacco incidence has been on a steady decline and notes that according to the "*Asia Illicit Tobacco Indicator 2015*"², total illicit consumption has decreased from 35.9% in 2012 to 29.1% in 2015. In support of this positive trend, HKUAIT strongly urges members of the Panel on Health Services to raise concerns against any legislative proposal that could negatively impact the downward illicit tobacco trend.

HKUAIT firmly believes that the proposed "*Health Warnings on Tobacco Products Packets and Retail Containers*" is an example of a legislative proposal with unintended consequences, including a potential proliferation of illicit and counterfeit cigarettes into Hong Kong.

Our reasons are as follows:

- As consumer demand for "branded" tobacco products (i.e. tobacco products with no/minimum health warnings), excessive graphic health warnings encourage smuggling of illicit tobacco products with no or minimal graphic health warning to increase;
- Larger graphic health warnings, if implemented alongside a new requirement to insert tar and nicotine levels on side panels, could further reduce available space to print security and authentication features resulting in a less secure supply chain, lower production costs for counterfeiters, and an environment that facilitates illicit trade.

¹ "Hong Kong: Illicit Trade Survey Results"

² "*Asia Illicit Tobacco Indicator 2015*" measures illicit tobacco amongst 17 Asian countries including Australia, Brunei, Cambodia, Hong Kong, Indonesia, Laos, Macao, Malaysia, Myanmar, New Zealand, Pakistan, Philippines, Singapore, South Korea, Taiwan, Thailand, and Vietnam.



全港反走私大聯盟
HK UNITED AGAINST ILLICIT TRADE

- International experience shows that when a country continues to place regulatory burdens on legal tobacco products whilst there is a flourishing illegal market, incentives for consumers to purchase illegal products increase.

Together with the lack of empirical evidence supporting the claim that larger graphic health warnings will lead to a reduction in smoking prevalence, HKUAIT is convinced that there are more effective ways than increasing the size of graphic health warnings to support the Government's health policy objectives and communicate the health risks associated with smoking.

For your further review, we are enclosing a letter written to Dr. Ko Wing-man, Secretary for Food and Health (ref: July 26, 2016) which details our full views and concerns.

HKUAIT welcomes the opportunity to engage in dialogue and we look forward to verbally communicating our concerns at the Panel on Health Services meeting scheduled on January 17, 2017.

We remain at your disposal for any further information you might require.

Yours sincerely,

Jeff Herbert
Advisor, Hong Kong United Against Illicit Tobacco

Encl.:

1) HKUAIT letter to Dr. Ko Wing-man, Secretary for Food and Health on the proposed "*Health Warnings on Tobacco Products Packets and Retail Containers*" dated July 26, 2016

CC: Prof. Hon Joseph LEE Kok-long, SBS, JP
Dr. Hon Pierre CHAN



全港反走私大聯盟
HK UNITED AGAINST ILLICIT TRADE

July 26 2016

Dr. Ko Wing-man, BBS, JP
Secretary for Food and Health
Food and Health Bureau, Government Secretariat
The Government of Hong Kong Special Administrative Region
The People's Republic of China
18/F, East Wing, Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Dr. Ko Wing-man,

Hong Kong United Against Illicit Tobacco (HKUAIT) would like to take this opportunity to outline our views on the proposed "*Health Warnings on Tobacco Products Packets and Retail Containers*" (ref: FH CR 3/3231/15).

HKUAIT is an advocacy organisation established primarily to tackle the serious problems arising from illicit trade in Hong Kong. It represents a cross-section of society, supported by almost 20 different community organisations, small business groups, trade associations and individuals who are affected by the illicit trade of goods.

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, particularly small and medium-sized local businesses. Illicit trade in tobacco also adversely influences Hong Kong's economic growth and reputation. In 2014, illicit trade accounted for 28% (or 1.3 billion cigarettes) of total cigarette consumption, costing the government HK\$2.5 billion in foregone tax revenue. This figure also represents a 29.5% excise tax loss as a percentage of potential total excise tax revenue.

According to the "*Asia-16: Illicit Tobacco Indictor 2014*"¹ Oxford Economics report, Hong Kong ranks in the top 4 highest illicit consumption markets. 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.

HKUAIT strongly supports the Hong Kong Special Administrative Region (HKSAR) Government's authority to regulate in the public's interest. While we reiterate our commitment to evidence-based and

¹ "*Asia-16: Illicit Tobacco Indictor 2014*" measures illicit tobacco amongst 16 Asian countries, including Australia, Brunei, Cambodia, Hong Kong, Indonesia, Laos, Macao, Malaysia, Myanmar, Pakistan, Philippines, Singapore, South Korea, Taiwan, Thailand, and Vietnam.



measurable regulations that protect the health of each and every Hong Kong resident, HKUAIT believes that the proposed 85% graphic health warning will not achieve a reduction in smoking prevalence. Moreover, we see a high risk of enlarged graphic health warnings further aggravating the flow of illicit and counterfeit cigarettes into Hong Kong, as these are easy to counterfeit and can confuse a purchaser. This will in turn increase criminal undertakings, including posing a higher risk of youth involvement in organised crime activities.

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 incentivised by consumer demand for “branded” tobacco products. In some countries, illicit trade will be further proliferated if the proposed 85% graphic health warning is implemented alongside a requirement to insert tar and nicotine levels on side panels. Such is the case in Hong Kong. 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 historic levels. International consulting firm, KPMG estimates that the tobacco black market grew by more than 17% in the first year of plain packaging and continued to grow to 14.5% of total consumption in 2014².

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 several anti-illicit cigarette campaigns over the last year, resulting in several high-value seizures. However their fight is unequal. 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

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/>



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 organised in small networks"* and that *"counterfeit, drugs and tobacco traffics are an absolute priority of customs."*

An open public consultation is paramount to developing robust public health policy

HKUAIT would like to recall that a submission was presented to the Legco Panel on Health Services, ahead of the special meeting on July 6, 2015. With reference to the proposal concerning health warnings on tobacco products, we take note that in closing the special meeting, *"the Chairman suggested and members agreed that the Administration should revert to the Panel on how it would take forward the legislative proposals after communicating with the tobacco industry and the relevant stakeholders having regard to their concerns over the legislative proposals."* Accordingly, we express our concern that the current proposed *"Health Warnings on Tobacco Products Packets and Retail Containers"* (ref: FH CR 3/3231/15) was developed without public consultation, and that stakeholders, such as ourselves, were not adequately consulted.

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 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 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.

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 http://www.unifab.com/images/Rapport-A-Terrorisme-2015_GB.pdf



全港反走私大聯盟
HK UNITED AGAINST ILLICIT TRADE

HKUAIT urges the HKSAR Government to reconsider the legislative proposal “*Health Warnings on Tobacco Products Packets and Retail Containers*” (ref: FH CR 3/3231/15), conduct a comprehensive public consultation with all stakeholders involved, and focus on enforcing existing legislation.

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

Yours sincerely,

Jeff Herbert
Advisor, Hong Kong United Against Illicit Tobacco

CC: Professor Sophia Chan, Undersecretary for Food and Health