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For the attention of Professor Sophia Chan, JP

Our ref  
6461/12474/31022546  
Your ref  
FH CR 1/3231/19  
Date  
29 April 2020

By email and by hand

Dear Madam / Sir

**Smoking (Public Health) (Amendment) Bill 2019 (the "Bill")**

We act for British-American Tobacco Company (Hong Kong) Limited.

We refer to the Bill and our previous submissions to the Bills Committee dated 8 April 2019 and 21 June 2019. We also refer to our letter to you dated 28 November 2019 and your reply letter dated 15 January 2020 (the "**Reply**").

We regret to learn from the Reply that you maintain your refusal of our clients' request for the Government to conducting laboratory testing of our client's tobacco heating products ("**THPs**") (i.e. *glo* and Neostiks) (the "**Request**"). As mentioned in our letter dated 28 November 2019, the Government's approach in relying on the test results of only one product from a particular manufacturer as the basis for and justification to impose a blanket ban on all other products from a range of different manufacturers (including our client) which affects a number of industries, is plainly unfair and irrational. It is wholly inappropriate, and unfair to our client and other manufacturers, for the Government to have failed to properly consider the health effects of all types of products by testing them before introducing the Bill.

With respect, your explanation for not acceding to our client's Request is misconceived. Our client's Request was not solely intended for the purpose of customs classification and duty assessment under the Dutiable Commodities Ordinance (Cap. 109). As mentioned in our letter dated 28 November 2019, our client requested the Government to conduct testing of the THPs in order to ascertain the substance, composition and potential effects of the particular THPs. The Request was primarily intended to help ensure that the Government conducted a comprehensive

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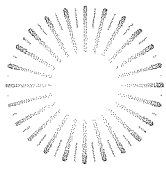
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assessment of all THPs across various manufacturers and brands, such that the Government could take a properly informed view rather than simply relying on the test results relating to only one particular product (i.e. IQOS) in the imposition of a blanket ban against all THPs. Our client maintains its position that it is entirely inappropriate for the Government to have failed to properly consider the health effects of all types of THPs before deciding to impose a blanket ban against all THPs.

Whilst we agree that a comprehensive assessment of health risks of any new tobacco products cannot be determined by laboratory testing alone, the Government should nonetheless conduct laboratory testing of all such products as part of their comprehensive assessment. Needless to say, the Government's own test results will be the most neutral and authoritative evidence regarding the potential health effects of any THPs. As set out in our letter to the Clerk to the Bills Committee on the Smoking (Public Health) (Amendment) Bill dated 21 June 2019 and our letter dated 28 November 2019, there is growing evidence on the harm reduction benefits offered by THPs which we believe the Government has failed to take into account. Conducting laboratory testing of THPs will verify this evidence, which will in turn allow the Government to better assess the factors relating to "scientific evidence" and "potential population impact" (which we agree with you as being relevant factors of your comprehensive assessment) in a fair and objective manner.

Further, pursuant to the guidance titled "Enforcement priorities for Electronic Nicotine Delivery Systems (ENDS) and other deemed products on the market without premarket authorisation" issued by the Food and Drug Administration of the U.S. Department of Health and Human Services in January 2020<sup>1</sup>, removal of popular THPs from a market may be accompanied by an increase in black market versions of these products that may pose additional health and safety risks to consumers beyond those of authentic products. This is because such counterfeit products lack premarket authorisation and "*[a]dditional risks posed by these products include the potential that they contain harmful chemicals or constituents that are not present in other products, that they are manufactured using comparatively poor quality controls, and that they are designed in ways that facilitate modifications by distributors or users – all of which increase the risk of adverse events*". Therefore, a blanket ban against all THPs may pose additional health and safety risks to consumers in Hong Kong, as compared to a regulated market with proper assessment of the health risks of THPs. The proper course for a responsible government is to conduct independent laboratory testing in order to assess the respective health effects of each THP, and to authorise and regulate those THPs which may bring net positive health benefit to consumers in Hong Kong.

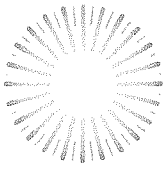
We respectfully urge the Government to properly consider the growing body of evidence on the harm reduction benefits offered by the use of THPs, as set out in our letter to the Clerk to the Bills Committee on the Smoking (Public Health) (Amendment) Bill dated 21 June 2019 (which was also sent to you) and as highlighted in our letter dated 28 November 2019. We also draw your attention to Public Health England's press release dated 4 March 2020 regarding its sixth independent e-cigarette report<sup>2</sup>, in which Public Health England reiterated that regulated e-cigarettes are much less harmful than conventional cigarettes.

We also respectfully urge the Government to conduct laboratory testing of our client's THPs.

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<sup>1</sup> <https://www.fda.gov/media/133880/download>.

<sup>2</sup> <https://www.gov.uk/government/news/false-fears-preventing-smokers-from-using-e-cigarettes-to-quit>. Public Health England is an executive agency of the Department of Health and Social Care, the Government of the United Kingdom.



HERBERT  
SMITH  
FREEHILLS

Date  
29 April 2020  
Letter to  
Secretary for Food and Health

We look forward to receiving your response. If you have any queries in testing our client's THPs, please feel free to contact Mr. Dominic Geiser or Mr. Trevor Ho of our office.

In the meantime, all of our client's rights are reserved, including its right to produce a copy of this correspondence to the Bills Committee at the appropriate time.

Yours faithfully,

*Herbert Smith Freehills*

Cc: Clerk to Bills Committee on Smoking (Public Health) (Amendment) Bill 2019  
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Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
By email and by hand