

The process towards passage of the *Tobacco Control Act* in Guyana



**Kesaundra Alves LL.B, LL.M
Attorney-at-Law**

HISTORIC DAY!



Passage of Tobacco Control Bill 2017 on 27th July, 2017

Letter from DEMTOCO to Parliamentarians



DEMERARA TOBACCO

April 22, 2016

Hon. Dr. George A. Norton MP
Minister of Public Health
Ministry of Health
Brickdam
GEORGETOWN

Dear Dr. Norton

We write to formally request that you, as a legislator within the Parliament, review in a very detailed way the Draft Tobacco Control Bill that will shortly be presented to you for your consideration and ultimate approval.

We would like to state from the outset that we are not opposed to tobacco regulations, but we do believe that laws need to be balanced, practical and enforceable.

We believe the Bill in its current form is draconian and may have unintended

P.O. Box 11262
Georgetown
Guyana
96 Carrichall Street,
South Camminghall,
Georgetown, Guyana
Telephone: (592) 225-1982
Fax: (592) 226-9122

There are several other examples, which we are attaching for your ease of reference - where the proposed Bill goes way beyond what is reasonable and just, and against what would constitute a balanced piece of legislation that is practical and enforceable.

In the following analysis and in addition to those raised above, we have included all the issues that we consider need to be reviewed and revised. We have also highlighted some aspects where the scope is not clear, inaccurate or incomplete and depending on the possible interpretations could have as a result a draconian Bill with negative consequences not only for the company, but for the average citizen, businesses and retailers.

We urge you to review this Bill in detail and undertake the changes that you in your wisdom believe will make it a fair, balanced and ultimately progressive law.

In closing, we recommend that the full bill be placed before a Select Committee of the Parliament where it can be properly reviewed by the Members and full consideration be given to ALL the issues which will make it ultimately, a more balanced and good piece of legislation.

Appendix 1

Display Ban

Draft Proposal:

18.(2) Without prejudice to the generality of the subsection (1), no person shall - c) display any tobacco advertising, promotion, or sponsorship content, including tobacco product display at retail points of sale;

Our views:

- Product display enables retailers to communicate product availability to consumers; this is necessary for fair brand competition among manufacturers. Display bans would:
 - distort competition among tobacco companies by inhibiting new product launches and new market entrants.
 - Increase the illicit tobacco trade by driving legal tobacco sales 'under the counter'.
 - Potentially lead to increased price competition, resulting in adult smokers down-trading to cheaper brands - or cheap illegal cigarettes - and thus increasing tobacco consumption.
- Disproportionately penalise small retailers as they derive a large portion of their revenue from tobacco products. They would be:

We believe the Bill, in its current form, is draconian and may have unintended consequences causing greater harm to society, engendering illicit trade, spurring organized crime, and ultimately robbing the government of its genuine revenues.

We further believe that the Draft Bill does not reflect the collective interests of all stakeholders and appears to be solely intended to punish smokers and to destroy our legitimate business, other businesses such as; bars, restaurants, hotels, etc. It limits even the pack size of the product that can be commercialized in the market by eliminating the 10's version which already exists.

WHO World No Tobacco Day Award 2018 – Ministry of Public Health



Key Components of Tobacco Control Legislation

- Establishes a National Tobacco Control Council with Gov't and civil society
- Ban on smoking in indoor public places and workplaces, public transportation, vehicle transporting minor, and specified outdoor spaces
- Complete ban on TAPS including point of sale display
- Ban on sale of single cigarettes
- Ban on sale to and by minors; no vending machines; vendor and purchaser to be in same location
- Ban on toy and candy tobacco products
- Ban on sales in health care, educational, sports, recreational facilities; Gov't buildings

Key Components of Tobacco Control Legislation

- Prescribed rotating pictorial and text health warnings on a minimum of 60 % of the top portion of tobacco products' packaging and labelling
- Tobacco Products' Packaging and Labelling Regulations passed. Tobacco Industry must comply by 25th February, 2019.



Cigarette package in Jamaica

Key Components of Tobacco Control Legislation

- Strong Article 5.3 related provisions – Protection of tobacco control policies/laws from tobacco industry interference
- Prohibitions that apply to electronic delivery systems: smoke-free spaces and ban on TAPS.

Building the case for Tobacco Control

CARICOM Commitment

- “We, the Heads of Government of the CARICOM declare our commitment to pursue immediately a legislative agenda for passage of the legal provisions related to the International Framework Convention on Tobacco Control.” **Port of Spain Declaration 2007**
- Trinidad and Suriname had passed comprehensive tobacco control laws; Barbados banned smoking in indoor public places; Jamaica has laws for smoke-free spaces and packaging and labelling of tobacco products; Cayman Islands has laws banning smoking in indoor public places.

Human Rights & SDGs



- Target 3.a within Sustainable Development Goal 3 requires the “strengthening the implementation of the WHO Framework Convention on Tobacco Control in all countries” – necessary to meet the target under SDG 3 of reducing by one third by 2030, premature mortality from non-communicable diseases.
- The right to highest attainable standard of health - death, disease, disability caused by tobacco use and SHS are entirely preventable; Governments have a mandate to protect the health and wellbeing of their populations.
- Children’s rights; Workers’ rights; Equality.



Evidence

GYTS – CARIOM Prevalence Rates (current use of tobacco products)

Antigua & Barbuda 2009:	20.1%
The Bahamas 2009:	16.4%
Barbados 2011:	14.1 %
Belize 2008:	18.3%
Dominica 2009:	25.3%
Grenada 2009:	16.7%
Guyana 2010:	20.9%
Haiti 2005:	19.7%
Jamaica 2010:	28.7%
Saint Kitts & Nevis 2010:	9.2%
Saint Lucia 2011:	20.7%
Saint Vincent 2011:	19.4%
Suriname 2009:	19.2%
Trinidad & Tobago 2011:	18.4%

The economics of tobacco

Cost to society

Research commissioned by ASH has shown that the total cost to society (in England) is approximately £12.9 billion a year.⁵ This includes the cost to the NHS of treating diseases caused by smoking in England which is approximately £2 billion a year.⁵ Other costs include:

- loss in productivity due to premature deaths (£3bn)
- cost to businesses of smoking breaks (£5bn)
- smoking-related sick days (£1bn)
- social care costs of older smokers (£1.1bn)
- costs of fires caused by smokers' materials (£391m)

Tobacco taxation

The Treasury received £9.5 billion in revenue from tobacco duties in the financial year 2013-2014 (excluding VAT).¹⁵ This amounts to about 2% of total Government revenue. Including VAT, total tobacco revenue is around £12.3bn annually.¹⁶ The price of a pack of 20 premium brand cigarettes currently costs around £7.98, of which £6.17 (77%) is tax.

The Process

- Grant from Bloomberg Initiative/CTFK
- Specimen legislation from CTFK & T&T Act
- Establishment of special Bloomberg Tobacco Control Project in MoH
- Technical Working Group chaired by the Minister of Health with members from Health, Trade, Finance, Education
- Involvement of Ministry of Legal Affairs
- Integration of tobacco control into school health and workplace health, launch of smoke-free workplaces
- Launch of smoke-free workplaces

The Process

- Roll out of PR campaign
- Intensive media and Govt and NGO stakeholder training facilitated by PAHO
- Consultations with stakeholders (NGOs/CSOs -health, business, labour, sports transportation, consumer rights, human rights, and the general public)
- Political will: Consistent pressure by PAHO/WHO; Exposure of former Minister of Public Health to COP7; Presidential Commission on NCDs; Engagement of Opposition MPs
- Look for allies and champions
- Collaboration and support within CARICOM

Challenges

- Initially, no collective political will
- Poor civil society engagement
- Smokers in high political office
- Ministers of Trade/Business/Finance worried about appearing antagonistic toward the private sector, loss of revenue
- TI held their own consultations – tried to debunk health effects of tobacco consumption & SHS, etc
- TI has easy access to MPs in small societies

Challenges

- TI fought for participation in process, corporate advertising, designated smoking areas
- TI filled press with lies and misinformation: non-employment of TI workers by Gov't; reduced tax revenue; business will suffer; ban on vending; ban on smoking everywhere
- Enforcement in homes – domestic workers
- TI attempting to buy more time to remain in a state of non-compliance

- **Article 5 .3 WHO FCTC** protection of tobacco control and public health policies from commercial and other vested interests of the tobacco industry.

Key stakeholder says excluded from drafting new tobacco legislation

NOVEMBER 29, 2015 | BY **KNEWS** | FILED UNDER **NEWS**

– *claims tax increases will only amplify illicit trade*

By *Jeanna Pearson*

A key stakeholder in the tobacco trade, Demerara Tobacco, claims that the company has been excluded from the consultation process for the drafting of the new tobacco legislation, which is expected to be tabled early next year.

In an interview with Kaieteur News, Managing Director Mauraine Argyle-Kirton said it was disturbing that the company was not included in the consultation sessions. "Unfortunately and disturbingly, Demerara Tobacco has not been consulted despite many consultations on the Bill over the years," she stated, stressing that the company has not laid eyes on its content as yet.

She asserted that despite many attempts to have engagement with the Public Health Ministry, the company did not gain a single meeting. She questioned why legislation that is so important to Guyana's economy and public health, should be managed so "confidentially."

The last time the company tried to gain an audience with the minister was last month, she said.



Mauraine Argyle-Kirton

“Mrs Amanda Cavill de Zavaley, the recent Chairman of DEMTOCO: the Company has dealt with similar issues in other countries and would be able to absorb such effects and take corrective action.”

MoPH meets with TI



Christopher Brown, Head of Corporate Regulatory Affairs at Carreras Jamaica Ltd

What now?

- Attain human and other resources for implementation
- Activate National Tobacco Control Council
- Train enforcement officers: police and customs officers, health inspectors, officers with the Bureau of Standards, Occupational Safety and Health Authority, EPA
- Produce a Tobacco Control Strategy
- Raise public awareness
- Sensitise employers, business owners, vendors, transportation service providers etc who are expected to comply with the laws