

LCQ4: Enforcement of law governing alternative smoking products

Following is a question by the Hon Lai Tung-kwok and a reply by the Acting Secretary for Health, Dr Libby Lee, in the Legislative Council today (May 24):

Question:

The Smoking (Public Health) (Amendment) Ordinance 2021 (the Ordinance), which has come into operation since April 30, 2022, is enforced by the Tobacco and Alcohol Control Office (TACO) of the Department of Health. The Ordinance prohibits the import, promotion, manufacture, sale or possession for commercial purposes of alternative smoking products (ASPs). In this connection, will the Government inform this Council, since the coming into operation of the Ordinance:

(1) of the respective numbers of cases involving the import, promotion, manufacture, sale and possession for commercial purposes of ASPs detected by TACO, together with the number of such cases successfully prosecuted and the penalties handed down by the court (set out in a table); whether it has evaluated the effectiveness of TACO's relevant law enforcement efforts;

(2) of the details of TACO's work on curbing the online sale and promotion of ASPs, and whether it has evaluated the effectiveness of such work; and

(3) of the number of spot checks proactively conducted by TACO in the market; the number of cases involving the sale of ASPs found during such spot checks, together with the quantity and value of the products seized; and the number and details of similar cases referred by other law enforcement agencies to TACO for follow-up actions?

Reply:

President,

My consolidated reply to the three parts of the question raised by the Hon Lai Tung-kwok is as follows:

Established in 2001 and formerly known as the Tobacco Control Office, the Tobacco and Alcohol Control Office (TACO) of the Department of Health (DH), a principal enforcement unit under the Smoking (Public Health) Ordinance (Cap. 371), is mainly responsible for enforcement of the statutory requirements regarding no smoking areas, restrictions on the sale of tobacco products, as well as prohibitions on tobacco advertisement and promotion. The TACO also acts as a principal enforcement agency of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600). Since the enactment of the Smoking (Public Health) (Amendment) Ordinance 2021 (Amendment Ordinance) in 2022, to better cope with the increasing workload on tobacco control, the TACO has been actively recruiting additional staff in recent years for handling,

investigating and prosecuting all smoking-related offences. At present, there are about 171 frontline enforcement staff in the TACO. From January to December 2022, the TACO conducted over 35 150 inspections and issued 6 296 fixed penalty notices for smoking offences.

Under the Amendment Ordinance which came into effect on April 30, 2022, no person may import, promote, manufacture, sell, or possess for commercial purposes alternative smoking products (ASPs), including electronic smoking products, heated tobacco products and herbal cigarettes. Since the implementation of the Amendment Ordinance, the TACO has maintained close co-operation and communication with the Customs and Excise Department (C&ED) in enforcing the law against offences related to the import of ASPs. The TACO's duty includes general inspection, law enforcement, prosecution, complaints handling, and verification of ASPs. On the other hand, the C&ED is responsible for the interception of illegally imported ASPs in passengers, cargoes and parcels on the import level, including at airport, land borders, ports, maritime areas, railway and ferries. Cases that are intercepted by the C&ED will be referred to the TACO for follow-up actions.

The enforcement priority of the TACO after the enactment of the Amendment Ordinance is to combat the retail outlets of ASPs in the market and eliminate the face-to-face channels for selling ASPs in the market. Prior to the enactment of the Amendment Ordinance, the TACO had conducted large-scale inspections and acquired that there were about 200 retail outlets of ASPs at that time. We are closely monitoring the list. The TACO has conducted over 670 inspections at the relevant retail outlets after the enactment and no violation has been found.

On import cases, from April 30, 2022 to March 31, 2023, the TACO received 934 referrals from the C&ED, and laid 131 summons to the offenders, of which 41 cases were convicted in the court with a fine ranging from \$1,000 to \$6,000. Of the remaining cases, 202 cases either occurred within the first three months of the grace period for enforcement of the ban, or were initiated by passengers who declared possession of the prohibited article to the C&ED and disposed proactively; hence, no prosecution was instituted for these cases. Another 254 cases showed no evidence upon investigation to support further follow-up or were deemed as having insufficient evidence after seeking legal advice from the Department of Justice (DoJ), and hence no prosecution was taken. The remaining 347 cases are still being processed, with most of them are pending for the issuance of summonses.

As for in-town enforcement, the TACO investigates into and follows up with complaints or referrals from other departments, such as covert inspections, test purchases and co-operation with other law enforcement departments, i.e. joint operations. From April 30, 2022 to March 31, 2023, the TACO received 518 complaints and referrals on suspected sale or possession for commercial purposes of ASPs and issued 15 summonses to offenders. These included two convicted cases involving possession for commercial purposes of ASPs and 234 cases where no prosecution was made due to insufficient evidence upon investigation or after seeking legal advice from the DoJ. Around 20 450 ASPs valued at over \$180,000 were seized by the TACO in these cases. The remaining 276 cases are still being processed.

The TACO has also assigned designated staff to regularly conduct online surveillance and follow-up of complaints in respect of the online sale of ASPs. TACO staff will carry out test purchase to investigate into the online sale of ASPs, and assistance will be sought from relevant organisations for removing illegal online content. From April 30, 2022 to March 31, 2023, more than 670 pages/accounts of social media platforms or local websites were removed. Despite the success of the crackdown on physical retail outlets, we have observed a shift to online sales of ASPs. The TACO will strengthen the monitoring and follow-up of online sales of ASPs, and will continue to work with the C&ED to combat the illegal imports of ASPs, in particular the cross-border online sales.

Figures of the DH's enforcement in relation to ASPs are detailed in Annex.

Admittedly, the TACO is currently facing certain challenges in enforcing the ban on ASPs due to the limitations from the prevailing legislation, such as the requirement to prove possession for commercial purposes or the inability to trace the consignee on the relevant shipping documents when the TACO officers seized the ASPs in the market. With the Amendment Ordinance having been in effect for over a year, the public has had a reasonable period of time to handle the ASPs purchased prior to the effective date of the ban and there is currently no channel to acquire ASPs legally. The Government will examine to further strengthen and tighten the relevant legislation, including to consider introducing a total ban on the possession of ASPs, in order to change the smoking habit of the general public. The Government will launch a consultation document on tobacco control strategies next month to listen to the public views.

Thank you, President.