Comments on Viet Nam WTO TBT Notification G/TBT/N/VNM/432
Draft Law Amending and Supplementing Certain Provisions of the Law on Preventing and Combating the Harmful Effects of Tobacco ("draft law")
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TPA appreciates the opportunity to submit comments in accordance with the World Trade Organization's Committee on Technical Barriers to Trade notification process regarding the Draft Law Amending and Supplementing Certain Provisions of the Law on Preventing and Combating the Harmful Effects of Tobacco**.** TPA is a non-profit, non-partisan organization based in the United States dedicated to educating the public through the research, analysis, and dissemination of information on the government**'**s effects on the economy.

TPA's comments draw on academic research and regulations in jurisdictions outside of Viet Nam and are offered in support of Viet Nam's public health objectives and with full recognition of the Government's sovereign right to regulate tobacco and nicotine products. The purpose of this submission is to encourage a regulatory framework that is evidence-based, proportionate, enforceable, and protective of both public health and adult consumers.

1. Product-specific evidence should support product-specific measures

The draft law would prohibit a wide range of products, including e-cigarettes, heated tobacco products, nicotine pouches, and other nicotine-containing products, while continuing to regulate conventional cigarettes through a licensing and retail-control framework.

These products differ substantially in composition, method of use, toxicant exposure, and enforcement concerns. Prohibition applied across all categories should therefore be supported by product-specific scientific and regulatory evidence. The relevant question is not whether Viet Nam may regulate these products. Rather, it is whether the same prohibition is justified for products with significantly different characteristics and risk profiles.

2. Prohibition is the most restrictive regulatory option

A complete prohibition is the strongest regulatory intervention available to the State. Before adopting such a measure, it is important to demonstrate why less restrictive alternatives would be insufficient to achieve the same public health objectives.

Possible alternatives could include product notification requirements, manufacturing and import licensing, minimum-age enforcement, product standards, nicotine limits where appropriate, restrictions on advertising, promotion, and sponsorship, traceability systems and market surveillance.

A regulated framework would not mean deregulation. On the contrary, it could provide the Government with stronger oversight of product quality, supply chains, retail channels, and youth access. Prohibition risks losing control of the market entirely and handing it to illicit traders and criminal gangs.

3. The draft creates a regulatory imbalance

The draft preserves lawful access to conventional combustible cigarettes under a licensing framework while imposing prohibitions on heated tobacco products, nicotine pouches, and other newly defined products which are widely recognized as presenting far lower public health risks.

This distinction requires clear justification. If combustible cigarettes can be controlled through licensing, age restrictions, retail controls, and enforcement mechanisms, it is not self-evident why non-combustible or tobacco-free alternatives cannot be subject to the same safeguards.

A coherent public health framework should explain why the products with the greatest health burden remain available under regulation, while other categories are prohibited outright.

4. Smoke-free objectives are relevant to non-combustible products

The draft law emphasizes the right of all people to live and work in an environment free from tobacco smoke. This is an important objective and should be fully supported.

However, products that do not generate tobacco smoke raise different regulatory questions from products that involve combustion. Nicotine pouches are tobacco-free oral products and do not produce smoke. Heated tobacco products heat tobacco rather than burn it and therefore do not generate smoke.

This does not mean that such products should be unregulated. It means that a smoke-free objective may support a differentiated approach that distinguishes between products that produce tobacco smoke and products that do not.

5. Adult consumer protection favors regulated lawful access

The draft law would remove lawful domestic access to these products while consumer demand will continue to exist. Experience in many regulated markets shows that prohibition does not eliminate demand. Instead, it can shift demand to informal, online, counterfeit, or cross-border channels.

Unregulated channels generally provide weaker age verification, weaker product-quality controls, weaker traceability, and less accountability.

From a consumer-protection perspective, a regulated lawful market with strict age restrictions, product standards, licensing, and enforcement may provide stronger public health protection than a prohibition that leaves demand to be addressed through enforcement.

6. Nicotine pouches warrant separate assessment

Nicotine pouches should not simply be absorbed into a broad residual category of "other new tobacco products." To the extent that they are tobacco-free products, they differ from conventional tobacco products, e-cigarettes, and heated tobacco products in composition and how they are used.

A separate legal category would allow Viet Nam to adopt targeted rules on ingredients, nicotine limits, packaging, warnings, age verification, retail licensing, marketing restrictions, and market surveillance.

If the Government concludes that nicotine pouches should be prohibited, that conclusion should be supported by evidence specific to that category and by an explanation of why targeted regulation would be insufficient.

7. The export-only exemption

The draft preserves an exception for certain pre-2025 investment projects manufacturing electronic devices for e-cigarettes and heated tobacco products solely for export, while prohibiting domestic adult access to regulated alternatives.

This creates an important question of regulatory consistency. If Viet Nam can supervise export-oriented manufacturing through Government regulation, including licensing, inspection, traceability, and compliance controls, then it appears that the State possesses the regulatory capacity to oversee these products.

It would therefore be helpful for the Government to explain why similar controls could not be adopted for a strictly regulated domestic authorization framework.

8. Broad future-product language may create legal uncertainty

The residual wording covering "other nicotine-containing products" may capture products that are not yet developed, not yet marketed, or not yet individually assessed.

A more consistent approach would define product categories clearly and establish a transparent assessment pathway for future products, including evidence submission, product standards, consultation, monitoring, and reasoned regulatory decisions.

Such an approach would preserve Viet Nam's ability to restrict products where justified, while avoiding automatic prohibition of undefined future categories.

9. Considerations

In light of the above, we respectfully request that the Medical Service Administration consider the following points before the draft law is finalized.

Product-specific scientific evidence does not support a complete prohibition of lower risk nicotine products, nor does it support prohibiting alternatives to combustible tobacco as a distinct category.

Viet Nam should conduct a thorough comparative assessment of combustible cigarettes, heated tobacco products, e-cigarettes, and nicotine pouches with respect to risk profile, use patterns, youth-access risk, and enforcement feasibility.

Prohibition is an overstep when compared with targeted regulation and would introduce a plethora of unintended consequences. It would be worth fully investigating less restrictive regulatory alternatives. The Government should assess the likely impact of prohibition on illicit trade, counterfeit products, and cross-border informal supply.

The Viet Nam Government should also consider the position of adult smokers who may otherwise continue using combustible cigarettes. For transparency, the scientific evidence, regulatory impact analysis, and other assessments relied upon by the Government should be published prior to adoption of the law and stakeholders should have a meaningful opportunity to comment on regulations, product standards and enforcement rules before they take effect.

Conclusion

We respectfully encourage the Medical Service Administration to reconsider whether a differentiated regulatory framework could better achieve Viet Nam's public health objectives than a categorical prohibition of all newly defined nicotine product categories.

Smoke-free nicotine products have the potential to significantly reduce smoking in Viet Nam and should be viewed as a beneficial innovation for public health rather than a threat. We urge the government to depart from its current posture toward tobacco harm reduction and embrace these reduced-risk opportunities instead. Thank you for the opportunity to provide comments on this important legislative proposal.