1. Short-fills

The issue of 0-nicotine product regulation and ‘short-fills’ has been raised by the Committee in recent evidence sessions of the e-cigarettes inquiry. The UKVIA would like to submit the following points related to this issue, that can only be adequately addressed by the industry itself.

- These e-liquids (which have come to be known as ‘short-fills’) are being manufactured and sold (in 60 and 100ml bottles) with the sole intention and purpose that they then be mixed with high strength, non-flavoured nicotine ‘shots’ (sold in 10ml bottles) and subsequently be used for vaping (this is colloquially known as ‘shake and vape’). Because these ‘short-fills’ contain no nicotine, they are subject to none of the requirements of notification, provision of ingredient information and testing data and bottle size limits (10ml max) under the Tobacco and Related Product Regulations 2016 (‘TRPR’).

- The UKVIA is gravely concerned that there are now e-liquids on the market which contain untested levels of ingredients and/or contain ingredients which are prohibited under the TRPR.

- Several of our members have conducted tests on some of these products from manufacturers who are not members of the UKVIA. Their laboratories have recently tested a range of short-fills and found 2, 3-Pentanedione/Acetylpropionyl (ingredients that are banned under TRPR, due to potential consumer risks) in a number of samples above the limit of detection. In terms of consumer protection and public health, the risks are self-evident. The UKVIA is happy to share the detail of the results with the Committee on request.

- The Netherlands and France have already incorporated 0-nicotine products into the same testing regulation as nicotine containing ones.

- Currently no UK regulatory body has specific oversight of 0-nicotine containing liquids. The MHRA has no powers to incorporate 0-nicotine containing liquids into the notification process, and the Department of Health has no plans to expand their powers in this regard.

2. World Customs Organisation recategorization

The World Customs Organisation (WCO) is currently considering a proposal from Australia which would cause e-liquids (the liquid used by vaping products) to be included within the tobacco classification of the harmonised customs code. The UKVIA believes that it would be wholly inappropriate for e-liquids to be classified in the same chapter as tobacco products. Vaping products do not contain tobacco and the proposal risks setting a precedent that e-cigarettes should be regulated in the same way to tobacco products. This does not match the UK’s public health priorities.

- E-liquids are currently classified under Chapter 38 of the Harmonized Commodity Description and Coding System (HS System) as “Miscellaneous chemical products”. Given the content of e-liquids, in particular the lack of tobacco, we consider it appropriate that they continue to be classified within this section. This was previously supported by classification opinions issued by the WCO and adopted by WCO signatories including the EU and the United States.

- The proposal by Australia, if accepted, would see e-liquids re-classified in the HS System as “Tobacco and manufactured tobacco substitutes” under Chapter 24. The matter is currently being considered by the Harmonized System Committee (HSC) for
implementation in 2022. We understand the HSC will meet to decide on this matter in June 2018.

- Australia's reasoning for submitting this proposal is purportedly a desire to facilitate the collection of statistics on the importation of emerging products. However, there are already ways for individual countries to achieve this objective without altering the classification of e-liquids. It is important to note that vaping products are subject to an extremely restrictive regulatory regime in Australia; it is currently illegal to sell vaping products containing nicotine. This is entirely at odds with the UK's decision to embrace vaping as a less harmful alternative to smoking.

- There is a real risk that the proposal by Australia, whilst made on seemingly innocuous grounds, could lead to the taxation of e-liquids and in future e-cigarettes in a similar way to tobacco products. The public health community in the UK has been very clear that vaping is a significant public health opportunity that could help millions of smokers reduce or stop smoking. It is therefore crucial that regulatory and taxation policies continue to differentiate between tobacco products and vaping products, including by ensuring the price of vaping products is able to remain attractively lower than cigarettes to encourage smokers to switch.

- The UK is viewed internationally as a standard bearer for health policy in this area, and as having a world leading vaping industry, recategorization at WCO level could compromise this position.

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