

Vaping - An inquiry into reducing rates of e-cigarette use in Queensland

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ASIAN CONSULTANCY ON TOBACCO CONTROL
亞洲反吸煙諮詢所

Riftswood, 9th milestone,
DD 229, Lot 147,
Clearwater Bay Road,
Sai Kung, Kowloon, Hong Kong.

Email: [REDACTED]

4 April 2023

Committee Secretary
Health and Environment Committee
Parliament House
George Street, Brisbane Q 4000
HEC@parliament.qld.gov.au

I would like to submit the experience of Hong Kong's ban on E-cigarettes, Heated Tobacco Products and Herbal Cigarettes that came into effect in Hong Kong on 30 April 2022. The law may be found at: <http://www.gld.gov.hk/egazette/pdf/20212543/es12021254339.pdf>

The rationale for the HK ban included:

1. Ingredients unknown and varied.
2. Accumulating evidence of harm (noting cigarettes 100 years and evidence still accumulating).
3. These products were a gateway for youth.
4. These products offered little or no help in quitting combustible cigarettes.
5. Where permitted, there was appalling advertising, promotion and sponsorship.
6. The danger of re-normalizing tobacco use, just as cigarette prevalence is falling.
7. This is the 3rd attempt by the industry to mislead with so-called 'safer products' (previously filters and low tar).
8. Many countries are struggling to cope with combustible tobacco epidemic, and can't cope with another add-on epidemic.
9. Growing number of countries now banning E-cigarettes.
10. Hong Kong was able to reduce combustible cigarette prevalence (currently 9.5%) without the use of these new products.

I am attaching a review of the ban written by our previous Secretary for Health and myself, which includes details of the expected tobacco industry interference.

Yours sincerely,

[REDACTED]

Dr Judith Mackay, SBS, OBE, JP, FRCP(Edin), FRCP(Lon). Dr h.c. (Shue Yan Univ), Dr h.c. (Edin Univ)

Director, Asian Consultancy on Tobacco Control, Hong Kong



Success and challenge of banning new tobacco products: Hong Kong's experience

Sophia Chan and Judith Mackay

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About the authors:

Sophia Siu Chee Chan, PhD (HK), MPH (Harvard), MEd (Manchester), PRDHCE (Nursing)(HK), DNA (HK), RTN, RN, RSCN, FFPH(RCP)(UK), FAAN

Professor Sophia Chan is currently Professor in Nursing and Senior Advisor to the President's Office at the University of Hong Kong. Professor Chan was the former Under Secretary for Food and Health (2012-2017) and Secretary for Food and Health (2017-2022).

Judith Longstaff Mackay, SBS, OBE, JP, MBChB (Edin), FRCP (Edin), FRCP (Lon)

Dr Judith Mackay is a Special Adviser to the Global Center for Good Governance in Tobacco Control/Knowledge Hub on WHO FCTC Article 5.3, a Senior Policy Adviser to the World Health Organization, and Director of the Asian Consultancy on Tobacco Control.

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About SEATCA

SEATCA is a multi-sectoral non-governmental alliance promoting health and saving lives by supporting ASEAN countries to accelerate and effectively implement the evidence-based tobacco control measures contained in the WHO Framework Convention on Tobacco Control. Acknowledged by governments, academic institutions, and civil society for its advancement of tobacco control in Southeast Asia, the WHO bestowed upon SEATCA the World No Tobacco Day Award in 2004 and the WHO Director-General's Special Recognition Award in 2014. SEATCA is an official NGO Observer to the WHO FCTC Conference of Parties and a co-initiator of the Global Center for Good Governance in Tobacco Control (GGTC).

For more information, visit: www.seatca.org
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Background

New or emerging tobacco products

Since the early 2000s tobacco and vaping companies have developed newer nicotine and tobacco products, including e-cigarettes, heated tobacco products, and nicotine pouches.[1]

Some of these products contain tobacco, while others do not. Regardless of their tobacco content, they are still harmful and still contain tobacco-derived nicotine or synthetic nicotine, which is addictive. These products are attractive to children and teens with their colourful packaging and pleasing flavours.

Global situation regarding bans and regulations (see Resources at end of document)

Only a handful of countries in the world have embraced the use of e-cigarettes. These include the USA, England, and New Zealand. On the other hand, the 40 or so countries that have enacted bans on e-cigarettes have done so because there are unacceptable gaps in scientific knowledge and too many unanswered questions about the ingredients, effects, and impact on public health, especially in low- and middle-income countries,[2] which are still struggling with the existing combustible-cigarette epidemic and do not want to introduce an additional and new form of tobacco into their markets.[3,4]

In addition to outright bans, in more than 80 countries that permit the sale of e-cigarettes, there are regulations and restrictions around cross-border sale venues, access, or other restrictions. In addition, 42 countries regulate nicotine and/or other contents of e-cigarettes.[5] Such laws and regulations relate to minimum age of sale; bans on e-cigarette advertising, promotion and sponsorship; child safety packaging, pack warnings and labelling requirements; product regulation such as nicotine levels, safety, ingredients or flavours; taxation; bans except as medical products; and bans on vaping in smoke-free areas.[6,7,8]

Regarding heated tobacco products (HTPs), more than 30 countries have implemented legislation under existing or new laws, banning sales and imports.[9]

Harm reduction has a historical place in public health, as in methadone maintenance in heroin addiction, or the wearing of safety belts in cars, or the use of condoms. The concept of harm reduction regarding tobacco is therefore very tempting for smokers, health professionals and politicians. Unfortunately, this is a one-sided view of a much more complex public health problem.[10]

Rationale for bans on new tobacco products

Unknown ingredients: The many different ingredients in a wide range of vape products are not disclosed and therefore not known. They have a different risk profile from conventional tobacco products. Some contain nicotine, and some not. Studies in Hong Kong and elsewhere have shown that labelling is often misleading; for example, labels stating they contain no nicotine where they do, and vice versa.[11]

Known harm: These products cause harm to all ages, especially youth. These harms include addiction, cancer, immune, mental, oral, reproductive, respiratory and cardiovascular effects, and a significant risk to pregnant women and their unborn child, as the products damage the growing foetus.[12,13] Heated tobacco products contain tobacco and expose users to toxic emissions, many of which cause cancer and are harmful to health.[14]

Vaping greatly increases the risk of catching COVID-19 and also leads to worse health outcomes, even in youth vapers. A study at Stanford University in the USA found that adolescent vapers were up to seven times more likely to catch COVID-19 than non-vapers. Concern has also been raised about COVID-19 being transmitted by exhaled vape clouds,[15] or users transmitting COVID-19 through shared use of the waterpipe.

More information on harm will come. Conventional cigarettes have been on the market for over 100 years and evidence on their harm is still accumulating, so there will be more data on the harm of these new products in the future.[16]

Gateway effect: Social science studies and meta-analyses report, and the World Health Organization has warned, that e-cigarettes act as a gateway to children and adolescents later taking up conventional cigarettes.[17,18,19] The first report in Asia was published in 2019 on 13,000 students in Taiwan, China – teen vaping doubled the odds of youth taking up cigarette smoking two years later.[20]

Unhelpful for smoking cessation: With already-cigarette smokers, e-cigarettes encourage continuation and dual use, and longer studies show they are not helpful in aiding smokers to quit smoking.[21,22] A 2021 meta-analysis of 64 papers on the topic concluded: “As consumer products, in observational studies, e-cigarettes were not associated with increased smoking cessation in the adult population.”[23]

Renormalization of tobacco: The new trendy products also “re-normalize” tobacco use in society, just as cigarette prevalence is falling in most countries. Many users don’t realize they include embedded software, designed to monitor smoking behaviour.[24]

Genie out of the bottle: Once these products become established in societies, they will be almost impossible to eliminate.

WHO FCTC: The Seventh and Eighth sessions of the Conference of the Parties to the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) held in 2016 and 2018 agreed that Parties should apply regulatory measures either to restrict or prohibit, as appropriate, the manufacture, importation, distribution, presentation, sale and use of e-cigarettes[25] and heated tobacco products[26] respectively, as appropriate to their national laws and public health objectives.

Tobacco industry interference

The international tobacco companies have been interested in new forms of tobacco for decades.[27] They began buying existing e-cigarette brands and developing their own e-cigarette products from 2012.[28]

There should be scepticism about tobacco-industry claims over the new products. The industry has previously misled governments, the public health community and its customer-smokers by stating that filtered and low tar cigarettes were “safer,” yet this turned out to be a deception.[29]

Advertising of these new products, for example in the USA, is reminiscent of the atrocious cigarette adverts in the 1960s and 1970s. What the industry says is that their products help quitting and harm reduction in established smokers. Yet what they do is promote to children and youth as trendy products.[30]

The Tobacco Industry Interference Indexes document the behaviour of the industry in obstructing tobacco control policy in general, and also with regard to the new tobacco products.[31]

The Hong Kong experience: a ban on importation, manufacture, distribution, promotion and sale

HK SAR Government Perspective

Since the Smoking (Public Health) Ordinance was enacted in 1982, the HKSAR government has adopted a progressive and multi-pronged approach including legislation, taxation, education and smoking cessation services, aligned with the WHO FCTC and the WHO's MPOWER measures to reduce the use of tobacco and the harm it causes to public health. The smoking prevalence in Hong Kong has gradually reduced from 23.3% in 1982 to 9.5% in 2021,[32] marking the first time on record that the percentage dropped to a single digit.

Professor Sophia Chan, in her capacity as Secretary for Food and Health, announced in May 2022: “It is an important milestone in Hong Kong’s tobacco control effort that the smoking prevalence rate has dropped to single digits, but yet we cannot afford complacency.”

The Government has committed to the target of reducing smoking prevalence further to 7.8% by 2025 as part of a strategic action plan to prevent and control noncommunicable diseases in Hong Kong. The target will require ambitious measures to reduce cigarette use, but also to prevent any new tobacco products from entering the local market. Putting an end to emerging alternative smoking products is an essential but just one step in Hong Kong’s tobacco control efforts.

In 2018, the Chief Executive of the HK SAR announced in her Policy Address that, in order to safeguard the health of the public, the Government is determined to make strenuous efforts in tobacco control. In recent years, the emergence of e-cigarettes and other new smoking products has posed new health risks and challenges. Often packaged as less harmful substitutes with promotion tactics targeted at youngsters and non-smokers, these products open a gateway to the eventual consumption of conventional cigarettes. The fact is: all these new smoking products are harmful to health and produce second-hand smoke. There is also a lack of sufficient evidence to prove that these products can help quit smoking. The public may underestimate the harmful effects of these products and eventually endorse the smoking image and relevant behaviours once again.

Since the Government proposed to legislate for the regulation of e-cigarettes and other new smoking products in the middle of 2018, the medical professions, education sector, parents and many members of the public have expressed concerns about the adoption of a “lesser-than-total ban” regulatory approach for the issue. They are worried that allowing the sale of e-cigarettes and other new smoking products despite restrictions in the market will not be adequate to protect public health, and will bring about very negative impacts on children and adolescents in particular. After weighing the pros and cons of a regulatory approach as opposed to a full ban, the Government decided to submit proposed legislative amendments and introduced the Smoking (Public Health) (Amendment) Bill 2019 (“the Bill”) into the Legislative Council (LegCo) in February 2019 to prohibit the import, manufacture, sale, distribution and advertisement of alternative smoking products, including e-cigarettes, heated tobacco products and herbal cigarettes.

The Bill was gazetted on 15 February 2019 and introduced by the Food and Health Bureau (FHB) to the LegCo for the first and second readings on 20 February 2019. A Bills Committee was then formed on 1 March 2019 to review the Bill. A public hearing was held by the Bills Committee to collect views from stakeholders and the general public. However, the bills scrutiny work could not be completed after eight meetings, hence it was discontinued on 2 June 2020 and the Bills Committee was dissolved on 3 July 2020, the end of the year’s legislative session. However, due to the severe COVID-19 epidemic situation, the Chief Executive in Council decided to postpone the 2020 LegCo General Election, originally scheduled for September 2020, for a year to September 2021, in order to protect public safety and public health as well as ensure elections are conducted openly and fairly. The Sixth LegCo continued to discharge duties and a new Bills Committee was formed on 16 October 2020 to start the scrutiny work afresh.

The Bills Committee then held seven meetings to study and scrutinize the Bill. It also received 67 written submissions from 151 organizations and individuals. While Committee members had a unanimous view that a full ban should be imposed on e-cigarettes, debate on the draft amendments was mainly around HTPs. Many members suggested a total ban on all tobacco products including HTPs, but some members were of the view that HTPs should not be fully banned but should be subject to a regulatory regime similar to that of conventional cigarettes. Officials from FHB presented scientific evidence and carefully answered all questions raised by the Bills Committee regarding

HTPs. After almost three years since the Bill was first introduced to LegCo, the LegCo resumed consideration of the Bill. The third reading of the Bill was passed on 21 Oct 2021 by the LegCo with 32 votes in favour, 3 votes against and 2 abstentions. The Bill legislates to prohibit the import, manufacture, sale, distribution and advertisement of alternative smoking products (ASPs), including e-cigarettes, HTPs and herbal cigarettes.

With the Smoking (Public Health) (Amendment) Ordinance 2021[33] coming into effect on 30 April 2022, the new law prevents the ASPs from taking root in local markets and cultivating a new generation of young smokers. The passing of the Bill and the enactment of the Ordinance mark a significant milestone in Hong Kong's tobacco control work and a major achievement in public health. But the legislative process had experienced twists and turns, and the passing of the Bill was a result of the collective effort of the government, the legislators, researchers, civil society, the medical professions and the general public.

Academia in Hong Kong has a long partnership with HKSAR to monitor the use of tobacco products in the population. According to consecutive school-based surveys conducted by the School of Public Health of the University of Hong Kong, the number of Hong Kong primary 2 to 4 students who ever used e-cigarettes increased from 2.9% in 2016-2017 to 4.5% in 2017-2018, an increase of 55%.[34] The daily user of e-cigarettes or HTPs among secondary 1 to 6 students was 0.3% in 2018-2019, while the percentages of those who ever used e-cigarettes and HTPs were 7.7% and 2.3% respectively.[35] Among the ever e-cigarettes and ever HTPs users, 58.4% and 83.0% ever smoked. Because of these alarming survey results, in the light of the rapid rise in the use of ASPs in overseas countries and the compelling evidence on health risks of ASPs, HKSAR Government was determined to take firm actions to ban, not just regulate, all ASPs.

The ban on ASPs is consistent with the provisions of WHO FCTC, the application of which has been extended to Hong Kong since 2006.

Enforcement

The Hong Kong law[36] contains many specific clauses on enforcement. It gives powers of enforcement to inspectors of the Tobacco and Alcohol Control Office of the Department of Health and officers of Customs and Excise Department. The fines for individual users of ASPs for using ASPs in statutory no-smoking areas are the same as fines for illegal use of conventional cigarettes. However, any persons convicted of importing, manufacturing, selling, or distributing these prohibited products is subject to a maximum fine of \$50,000 (USD 6,500) and prison terms of up to a maximum of 6 months.

Since the Ordinance 2021 came into operation on 30 April 2022, Hong Kong Customs has conducted a special enforcement operation to combat smuggling of ASPs at source. Within one month after the implementation, Hong Kong Customs dealt with 46 related cases and seized around 360,000 products with an estimated market value of HK\$10 million[37] (approximately USD 1.3 million). Also, the majority of incoming travellers, who had ASPs, voluntarily declared them at customs. The enforcement operation

further proved that the Ordinance is feasible and practicable. The HKSAR government will continue to take stringent enforcement action to safeguard the population's health.



The government recognised the principle that all forms of tobacco use are harmful. Passage of the Bill and implementation of the Ordinance were just a start. The HKSAR government will continue to study and refer to foreign experience to prevent new smokers from smoking initiation and strengthen the efforts in smoking cessation.

Professor Chan further announced that the Government will take reference to experiences from other places and actively carry out the formulation of the Tobacco Endgame, provide a timetable and roadmap, and launch a comprehensive tobacco control strategy to safeguard public health. In order to achieve the long-term goal of eliminating tobacco hazards, four major strategies were highlighted, including:

- (1) a further reduction of public exposure to second-hand smoke;
- (2) curtailing the attractiveness of smoking products;
- (3) eliminating the harm of smoking products to the next generation such as increasing the age of legal purchase of cigarettes and other ways of attaining a smokefree generation; and
- (4) strengthening smoking cessation services.

The Department of Health also launched the "Quit in June" campaign, in collaboration with the Hospital Authority, District Health Centres/District Health Centre Expresses, the Hong Kong Council on Smoking and Health and other medical institutions in assisting people to quit smoking and promoting tobacco-free life.

The Government will continue to further reduce the smoking prevalence rate in Hong Kong proactively through multi-pronged approach, including legislation, taxation, health education and co-operation with community partners to take forward more focused smoking cessation services, so as to safeguard the health of Hong Kong citizens. Given the Government has determined to strengthen district-based primary healthcare services, and has set up District Health Centres/District Health Centre Express in each of the 18 districts in Hong Kong in the last term of Government, with a focus of NCD prevention and its modifiable risk factors, including smoking cessation, it is more timely than ever to embark on a strategic plan in tobacco control and to empower individuals, families and communities in taking a preventive health approach to protect their own health.

In October 2022, the Chief Executive announced his latest Policy Address 2022 and reiterated the target to lower the smoking prevalence of Hong Kong to 7.8% by 2025,

and to prepare a roadmap on tobacco control in early 2023 to gather the public's views on further reducing smoking prevalence. We are confident that with the strong support from the medical and health professionals, academia, and general public, the Government will embark on a comprehensive tobacco control strategy and formulate a timetable and roadmap for the "tobacco endgame" to advance the goal of a smoke-free Hong Kong.

Tobacco industry interference in Hong Kong

The government recognised there was extensive and intense lobbying of legislators by the tobacco industry and its allies to prevent the ban on new tobacco products. In fact, the industry has a decades-long reputation of attempting to subvert tobacco control policy in Hong Kong. Several legislators openly support the tobacco industry, including one who brazenly said in the Legislative Council that he was the voice of the tobacco industry in LegCo.[38]

The tobacco industry attempted to exert its influence on the legislators and government officials, providing information packages to legislators and using different arguments to object to the bill, such as claiming the new products were a safer choice, or that they helped smoking cessation.

In addition to the usual newspaper vendors, the industry also engaged unconventional stakeholders to support its claims, such as those in the creative and advertising fields, press and media, young people, think tanks etc. It used multiple channels, writing articles in newspapers, TV programmes and deputations to create an impression that many people thought the Government's bill was not a good idea. Philip Morris's media campaign included writing letters to the press and initiating a TV debate [39] to create heated discussion in the media.

The industry also asked its stakeholders to send to the Government "template" letters objecting to the Government's bill, as it knew the Government would need to report the number of responses received. It also wrote on the Government Official social media platform and took the opportunity to smear the health minister on all fronts.

A US think tank, R Street Institute, funded by Altria, owner of Marlboro brand in the USA, sent a letter to the Hong Kong government and legislators, calling on both not to ban e-cigarettes or HTP,[40] similar to tactics directed at legislators and the FDA in 2019 in the Philippines.[41,42]

A 'whynotregulate.hk' campaign was launched by The Vape Shop Hong Kong [43] in an attempt to thwart an outright ban, with posters and banners all over Hong Kong.

Philip Morris even threatened to shut down facilities in Hong Kong if the ban went through, stating it would cause unemployment.[44]

During the bill scrutiny, the tobacco industry also bombarded the Government with legal documents, questions, accusations from lawyers, and more, which ate up staff's time and energy. The industry-friendly legislators also asked multiple difficult questions

that required the Government to answer and provide details and translation. These tactics exhausted the Government staff, making the process of bill scrutiny very painful. One veteran lawmaker in Hong Kong stated that he had never witnessed such an intensity of lobbying in the Legislative Council on any topic, health or otherwise.

The role of civil society

Various key Hong Kong groups mobilised to support the government. These included the Hong Kong Council on Smoking and Health,[45] Clear the Air,[46] the Asian Consultancy on Tobacco Control, and organisations mentioned above. In addition to the support to the Government's bill, the HKU School of Nursing and School of Public Health published over 21 papers and provided the necessary data to support the Government during the passage of the Bill.[47,48]

In addition to the medical and health professionals, the Government also received strong support from the Federation of Parent-Teacher Associations and Lok Sin Tong Benevolent Society, which conducted a series of surveys, showing that a vast majority of parents (82%) and young people (90%) supported the ban on all ASPs. The survey conducted by the Committee on Home-School Co-operation among more than 100 primary and secondary schools and kindergartens in various districts in Hong Kong showed that 75% of participating parents not only supported the ban on the import, manufacture and sale of ASPs but also the ban on use of the ASPs.[49] In spite of the tobacco industry's objection, the wide support from the public laid a solid foundation for the passing of the Bill.

Members of the international public health community offered support, supplying information, writing letters to the press, etc.

Strategic actions included:

- Seminars with international experts.[50]
- Press conferences and press releases.[51]
- Articles in the media.[52,53]
- TV debates with industry.[54]
- Pro-ban rallies outside Legislative Council.
- Appeals to the Legislative Council members, such as a letter coordinated by HK COSH and co-signed by about 100 HK organisations.[55]
- Research, both international and in Hong Kong. [56]
- Signature campaign – 100,000 signatures collected by COSH.
- Parents' survey – showing they did not want these new products on market.[57]
- Teacher organisations similarly supported the ban.[58]
- Countering of industry claims.

On 15 August 2021, the then Secretary for Food and Health received a letter from the Asian Consultancy on Tobacco Control pointing out that several members of the Legislative Council Bills Committee who were obstructing the bill had close, including financial, connections with the tobacco industry.

“Very few, if any, legislators seem to understand their obligations under World Health Organization Framework Convention on Tobacco Control (WHO FCTC) Article 5.3, to which Hong Kong, through China, is a Party. In the past, responses from both LegCo Members and the LegCo have focussed on monetary payments, but Article 5.3 goes well beyond just financial remuneration:

Article 5.3. In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.

WHO specifically includes all three branches of government in the WHO FCTC Guidelines for Implementation of Article 5.3:[59]

The guidelines are applicable to government officials, representatives, and employees of any national, state, provincial, municipal, local, or other public or semi/quasi-public institution or body within the jurisdiction of a Party, and to any person acting on their behalf. Any government branch (executive, legislative and judiciary) responsible for setting and implementing tobacco control policies and for protecting those policies against tobacco industry interests should be accountable.”

Conclusion/Summary

Countries around the world are facing the challenge of new tobacco products accompanied by intense opposition and lobbying by the tobacco and vaping industries. The battle to ban new tobacco products in Hong Kong extended over several years, and no country can expect an easy or smooth passage of such a ban. In the face of considerable opposition from the tobacco companies, and even from a few well-known pro-vape advocates,[60,61] the HK Government stood up to the tobacco industry, and acted in the interests of public health, especially young people. Simply put, the conclusion of the Hong Kong government was that new tobacco products do not protect public health.[62]

Resources

Status of laws and regulations on E-cigarettes [63]

WHO FCTC. Information note on classification of novel and emerging tobacco products. 15 March 2019. https://untobaccocontrol.org/impldb/wp-content/uploads/Info-Note_Novel-Classification_EN.pdf

Hong Kong Law: Smoking (Public Health) (Amendment) Ordinance 2021. Ord. No. 39 of 2021. <http://www.gld.gov.hk/egazette/pdf/20212543/es12021254339.pdf>

E-cigarettes

The Institute for Global Tobacco Control at Johns Hopkins University publishes the E-cigarette Policy Scan website, which contains a directory of information relating to the regulation of e-cigarettes around the world.

<https://www.globaltobaccocontrol.org/en/policy-scan/e-cigarettes>

The Global Center for Good Governance in Tobacco Control (GGTC) publishes information on e-cigarette regulation.

E-cigarette Ban & Regulation: Global Status as of February 2022.

<https://ggtc.world/library/e-cigarette-ban-regulation-global-status-as-of-february-2022>

The Campaign for Tobacco-Free Kids publishes detailed, up to date information at country level in a searchable database on the Tobacco Control Laws website.

https://www.tobaccocontrolaws.org/legislation/finder/#_location-ecig

For State Parties to the WHO Framework Convention on Tobacco Control (FCTC) progress towards implementation of relevant articles, including newer products, is detailed in the FCTC implementation database (<https://untobaccocontrol.org/impldb/>).

Heated tobacco products

Comprehensive report on research and evidence on novel and emerging tobacco products, in particular heated tobacco products, in response to paragraphs 2(a)–(d) of decision FCTC/COP8(22) - Report by the World Health Organization to the Conference of Parties to the WHO Framework Convention on Tobacco Control. Technical Document FCTC/COP/9/9. 23 July 2021.

https://untobaccocontrol.org/downloads/cop9/main-documents/FCTC_COP9_9_EN.pdf

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