PROHIBITION DOES NOT WORK

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Re: 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

Dear Sir or Madam,

Prohibition Does Not Work (PDNW) appreciates the opportunity to comment on the Socialist Republic of Viet Nam's proposed amendments to the Law on Prevention and Control of Tobacco Harms.

PDNW is an international network of experts, think tanks and civil society organizations examining the consequences of prohibitionist policies and advancing evidence-based approaches to tobacco harm reduction based on rigorous research, data, and science. Our work has examined the consequences of nicotine prohibition and excessive restrictions across Australia, Brazil, Mexico, Bangladesh, Germany and Europe, with a particular focus on illicit trade, organized crime, consumer safety, enforcement failure and the displacement of lawful commerce into black markets.

We strongly support appropriate measures to prevent underage nicotine use, establish product standards, protect consumers and reduce the enormous burden of smoking-related disease. With close to half of adult males in Viet Nam smoking combustible cigarettes, easily the leading preventable cause of death in the Republic, the goal to reduce this incidence numbers is a worthy one. However, the proposed categorical prohibition of e-cigarettes, heated tobacco products (HTPs), nicotine pouches and broadly defined future nicotine products would not achieve those objectives. **It would do something very different: it would abolish the legal market while leaving the underlying market intact, create significant economic, law enforcement, and black market problems, and lead to more people smoking and dying as a result.**

The international evidence on this point is no longer speculative. Wherever governments have prohibited reduced-risk nicotine products, or regulated them to the point that a viable legal market cannot operate, consumer demand has persisted. Trade has continued. The principal change has been on who controls that trade. Licensed importers, accountable manufacturers and regulated retailers are displaced by smugglers, informal vendors, anonymous online sellers and, in the worst cases, organized criminal networks.

For this reason, we urge the Government of Viet Nam to substantially revise the draft law and replace categorical prohibition with a differentiated, risk-proportionate regulatory framework based on international best practices and research. E-cigarettes, heated tobacco products and tobacco-free nicotine pouches are materially different products to combustible tobacco and should be regulated according to their individual characteristics and risk profiles, with strict age controls, product standards, licensing, traceability, proportionate taxation and strong enforcement against illegal commercial suppliers.

Viet Nam's draft is particularly sweeping. It would prohibit not merely retail sale, but also the production, storage, transportation, transit, possession and use of e-cigarettes, HTPs and other newly defined nicotine products. Yet, combustible cigarettes would remain legal and subject to licensing and retail controls.

This creates an extraordinary regulatory inversion. The product category responsible for the overwhelming burden of tobacco-related death, combustible cigarettes, would remain legally available. Adults would, however, be prohibited from lawfully obtaining non-combustible alternatives that can be regulated, tested and subjected to age restrictions.

There is no coherent public-health justification for making cigarettes the easiest effective nicotine product for an adult smoker to obtain legally.

Nor is the choice facing Viet Nam between these products existing and not existing. The experience of other countries demonstrates that the realistic choice is between a market that is lawful, visible, taxable and regulated, and a market that is illegal, opaque, untaxed and far harder to control.

Prohibition turns lawful trade into illicit trade

PDNW's international research has repeatedly documented what happens after governments close legal nicotine markets. Australia provides perhaps the starkest warning. Despite years of increasingly severe restrictions, 93.2 percent of Australian vapers were already obtaining their products illegally in 2022-23. Following further restrictions, legal sales have collapsed to an estimated one in every 1,700 vape transactions. PDNW estimates the illicit vapour market at approximately AUD $1-2 billion annually. Australia's own medicines regulator has reported more than 10 million vapes being sold through the black market every month.

This is no longer a minor compliance problem. Organized criminal syndicates have established sophisticated importation and distribution networks. More than 200 arson attacks and firebombings, together with targeted killings and violent intimidation, have been linked to competition over the illicit tobacco and vapour trade. Australian Border Force officials have themselves acknowledged the basic enforcement reality that prohibiting a product at the border will not, by itself, prevent its entry.

Brazil demonstrates the same failure under an outright national ban. Despite every lawful e-cigarette sale being prohibited, Brazil has had as many as 2.9 million users and a market worth more than US $1 billion. Approximately three quarters of sales were estimated to take place through online vendors in 2024. Large seizures have not eliminated supply because they have not eliminated demand. Instead, the trade has become embedded in smuggling routes and criminal networks, with proceeds linked to money laundering and other illegal activity.

Mexico offers an even more severe warning. After more than a decade of prohibition, its illicit vapour market is estimated at between US $658 million and US $1.39 billion. Adult use has increased dramatically rather than disappeared. Criminal cartels, including groups already involved in narcotics trafficking, have moved into vapour distribution and used threats, extortion, arson and existing smuggling infrastructure to control the market. Academic estimates suggest that a regulated market could instead generate between US $240 million and US $370 million in annual government revenue.

Nicotine pouches produce the same result. Germany's de facto prohibition has not stopped Germans from using them. PDNW's *Nicotine Pouches in Germany* found that as many as 1.4 million consumers were using pouches supplied through an unregulated market. Illegal sales reached an estimated 444 million pouches worth more than US $114 million in 2024. More than 1,300 online channels supplied products, while most sales continued to take place offline. Products containing as much as 150 mg of nicotine per pouch remained available precisely because illegal sellers are not bound by regulatory limits or product standards.

PDNW's work on Bangladesh likewise demonstrates why prohibition is particularly dangerous in markets where cross-border, courier and online distribution can adapt quickly. India's 2019 prohibition did not make vapour products unavailable. Subsequent research found them available from hundreds of online sources and from 18.6 percent of surveyed physical retailers, while a single enforcement operation recovered products worth approximately US $7.5 million. Courier networks, informal retail and social-media distribution continued outside meaningful regulatory oversight.

Even substantially narrower prohibitions produce the same displacement effect. Our earlier research on flavour restrictions found that 28.3 percent of surveyed consumers said they would seek their preferred products through the black market if flavours were prohibited, while 17.1 percent said they would return to smoking. The lesson is important for Viet Nam: if partial restrictions can divert significant demand into illegal supply, a categorical prohibition of entire product classes should be expected to have a considerably greater effect. The evidence across radically different countries, cultures and legal systems therefore points in the same direction. **A ban does not stop trade. It changes the trader.**

Prohibition means surrendering the tools that make regulation possible

PDNW also respectfully submits that this is not simply an argument about illegal sales, but an argument about the state's capacity to govern a market. A legal importer can be licensed. A shipment can be declared to customs. A manufacturer can be identified. Products can be tested. Ingredients and nicotine content can be verified. A batch can be traced and recalled. Tax can be collected. A retailer can be inspected. Age-verification compliance can be audited. An operator that breaches the rules can lose its license. None of these ordinary mechanisms work effectively once the entire market has been criminalized.

Professor Sinclair Davidson's PDNW report, *When Regulation Becomes Prohibition: Black Markets, Enforcement Failure, and Vape Restrictions*, examines Australia, Brazil, Belgium, the Netherlands and Denmark. Its central finding is that prohibition-style regulation shifts economic activity from lawful businesses into informal and illicit networks while simultaneously imposing new costs through enforcement, criminality, lost tax revenue, lost legitimate profits and reduced consumer welfare. Professor Davidson estimates recurring annual regulatory-failure costs of AUD $12-20 billion in Australia, R$3-15 billion in Brazil, €250 million-€1.2 billion in Belgium, €500 million-€3 billion in the Netherlands and DKK 250 million-1.5 billion in Denmark.

The fiscal losses matter, but the deeper problem is the loss of administrative control. Legal markets are information systems. They tell regulators what is being imported, by whom, in what quantities, from which manufacturer and through which retailers. Prohibition destroys that visibility. Customs enforcement becomes an endless process of attempting to intercept undeclared shipments after lawful trade channels have been closed. Viet Nam should not voluntarily convert a manageable regulatory and customs problem into a permanent interdiction problem.

Prohibition also creates worse conditions for protecting young people

PDNW shares the Government's objective of preventing underage access. But youth protection is an argument for enforceable regulation, not for handing the market to sellers who are already breaking the law. Illegal sellers lack the motivation and incentives to prevent youth access that exist in the legal market, and the evidence from countries that have pursued prohibition very clearly demonstrates this.

This distinction is visible in the countries that have pursued prohibition. Australia reached a 14.5 percent current vaping rate among 14-to-17-year-olds in 2023 despite having one of the developed world's most restrictive legal access systems. In Brazil, 8.7 percent of 14-to-17-year-olds reported vapour use despite a total ban, and researchers found illicit products marketed with precisely the bright colours, cartoon imagery and youth-oriented branding that legal regulation could prohibit. Germany's illicit pouch market likewise demonstrates the weakness of prohibition as an age-control policy. Third-party age verification was effectively absent from the illegal online market, while products and marketing that would be restricted in a regulated market remained readily accessible to minors.

The proposition that banning lawful sales will protect minors therefore fails a basic real-world test. Prohibition removes the businesses that can be compelled to verify age and leaves supply with businesses that cannot.

<u>The draft ignores the continuum of risk and that different products should not be treated as though they are identical</u>

The most serious public-health flaw in the proposed law is that it treats fundamentally different nicotine products as though they present equivalent risks.

The overwhelming harm from smoking comes from combustion and the thousands of chemicals produced when tobacco is burned, not from nicotine itself, which while highly addictive is not classified as a carcinogen, and is associated with an equivalent health effect itself to caffeine: "People smoke for the nicotine, but die from the tar". Removing combustion therefore eliminates thousands of deadly toxicants responsible for smoking-related disease. This is the basic scientific principle behind tobacco harm reduction and why e-cigarettes, heated tobacco products and nicotine pouches can play an important role in helping adult smokers move away from cigarettes.

For e-cigarettes, the evidence is particularly well established. Multiple reviews by the United Kingdom's Government and the UK Royal College of Physicians, which are considered the most extensive meta-analyses of the medical literature, have concluded that vaping exposes users to only a small fraction of the risks of smoking, commonly estimated at up to 95 percent less harm. The independent Cochrane Collaboration, considered the "gold standard" of medical literature reviews, has meanwhile found high-certainty evidence that nicotine e-cigarettes help more people quit smoking than conventional nicotine-replacement therapies such as patches and gum. As such, for a smoker who switches completely from cigarettes to a substantially lower-risk product, the potential reduction in lifetime health risk is enormous.

Similarly, heated tobacco products eliminate combustion and substantially reduce exposure to many harmful constituents compared with cigarettes. Tobacco-free nicotine pouches go further still: there is no combustion, no inhalation and no tobacco leaf. This is precisely why these products cannot rationally be placed into the same regulatory category as combustible cigarettes and prohibited indiscriminately.

The real-world evidence is equally important. The Tholos Foundation, a partner organization of Prohibition Does Not Work, examined the experiences of Japan and Sweden in its report *Safer Nicotine Works*. These two countries provide powerful examples of what happens when smokers are allowed access to alternatives that they are actually willing to use.

Japan had struggled for years to accelerate reductions in smoking. Between 2003 and 2017 its smoking rate fell by less than two percentage points, from 21.6 percent to 19.8 percent. Following the introduction and widespread adoption of heated tobacco products, however, the decline accelerated sharply. Cigarette sales fell by 32 percent in the five years after HTPs entered the market, while the rate of decline in cigarette sales trebled. In just two years, from 2017 to 2019, Japan achieved a greater reduction in smoking prevalence than it had during the previous fourteen years. This was overwhelmingly a process of substitution: smokers were not suddenly abandoning nicotine altogether; they were replacing combustible cigarettes with a substantially lower-risk product.

Sweden provides an even more striking example. As *Safer Nicotine Works* documents, Sweden has long allowed smokers access to oral nicotine alternatives and more recently established a separate legal framework for tobacco-free nicotine pouches. Between 2012 and 2022, its smoking rate more than halved, from 11.4 percent to 5.6 percent (it has since fallen further, to the point Sweden is now effectively the world's first smoke-free nation), even while overall nicotine consumption remained broadly stable. In other words, Sweden did not achieve its extraordinary public-health results by eliminating nicotine use. It achieved them by changing how nicotine was consumed, moving consumers away from cigarettes and towards non-combustible products. A result of this was that Sweden now has the lowest rates of lung and cardiovascular disease in Europe.

It also demonstrates why consumer choice between different reduced-risk products is not a peripheral commercial issue but a public-health necessity. There is no single alternative that works for every smoker. Some smokers switch successfully through vaping, others through heated tobacco products, others through pouches or traditional oral nicotine. A government that removes entire categories of alternatives does not simply reduce the number of nicotine products on shop shelves. It removes potential exit routes from smoking, and with Viet Nam's high smoking rates, it is a public health imperative the government pursue policies that would reduce them. This draft does the opposite.

<u>Sensible taxation offers revenue and reinforces harm reduction</u>

Prohibition also unnecessarily eliminates one of the Government's most useful policy tools: excise taxation. A legal market provides tax revenue to governments, not just through excise taxes but income, sales, and all other taxes associated with a legal market. These are all absent from the illicit market.

Importantly, good tax policy should reinforce rather than contradict the hierarchy of risk. A March 2026 analysis published in the International Monetary Fund's *Finance & Development* magazine warned that simply increasing excise rates will eventually cause consumers to shift towards untaxed or illicit alternatives. It identified three principles for effective health taxation: covering relevant products, aligning tax rates with potential health harm, and cooperating across borders to reduce evasion and smuggling. The analysis specifically addresses e-cigarettes, heated tobacco products and nicotine pouches, noting that many of these products reduce exposure to toxicants compared with smoking and that lower tax rates are consequently appropriate.

That has direct relevance to Viet Nam in that while it speaks of excessive taxation not prohibition, the arguments for a legal and regulated market are even stronger.

<u>Serious concerns under the WTO Agreement on Technical Barriers to Trade</u>

Article 2.2 of the WTO Agreement on Technical Barriers to Trade, to which Viet Nam is bound, recognizes the protection of human health as a legitimate regulatory objective, but requires technical regulations not to be more trade-restrictive than necessary to achieve that objective, taking account of the risks that non-fulfilment would create. It is clear that this draft fails that test.

A categorical prohibition is the most trade-restrictive regulatory instrument available. It does not establish conditions for lawful market access; it eliminates lawful market access altogether.

While prohibition may in some circumstances be permitted under WHO rules, this is only the case when less trade-restrictive alternatives cannot achieve these objectives.

As detailed in this submission, these alternatives plainly exist. They include product authorization, licensed importation and distribution, product testing, ingredient standards, nicotine limits based on product-specific evidence, health warnings, age verification, advertising and marketing controls, restrictions on online sales, traceability, proportionate taxation and substantial penalties for unlawful commercial supply.

In proposing this draft law, the government has not provided any evidence whatsoever that a regulated market with such policies would fail to achieve its objective. Nor has the government assessed the trade impact that will occur after prohibition. The correct counterfactual is not a world in which banned products disappear. It is the experience already observed elsewhere: undeclared imports, misdescribed parcels, cross-border purchasing, social-media sales, informal retail, counterfeit products and increasingly sophisticated smuggling networks. A proper trade-impact assessment must count that illicit trade, together with the customs and enforcement resources required to police it. The government has failed to do so.

The export-only exception exposes a fundamental inconsistency

The proposed treatment of grandfathered export manufacturing also demonstrates a level of hypocrisy in the government's proposal. By preserving a pathway for certain pre-2025 investment projects to manufacture electronic devices for e-cigarettes and heated tobacco products in Viet Nam solely for export, while denying domestic adults' lawful access to those product categories, the government undercuts its entire rational for this proposal.

If Viet Nam is capable of licensing, supervising, tracing and regulating manufacturing activity for export, then the Government has already demonstrated that regulatory control of this industry is possible – and there is therefore no evident reason why comparable tools cannot be applied to tightly controlled domestic supply.

At minimum, the export exception demonstrates that prohibition is not being adopted because regulation is administratively impossible. Viet Nam already contemplates regulation where the destination market is foreign. That regulatory capacity should be used to construct a lawful domestic framework as well.

Undefined future-product prohibitions create unnecessary uncertainty

PDNW also wishes to respectfully submit our concerns by the wording of elements of this proposal specifically the very open-ended broad residual category capturing "other new tobacco products" and other nicotine-containing products, which would appear to prohibit technologies that do not yet exist.

An automatic ban on undefined future products means that new products can be excluded from lawful commerce before regulators have examined them and their appropriateness, not to mention creating significant uncertainty as to how novel products may be treated in the future. This prohibition on products possibly decades away from invention defies every principle of sound public health policy. A preferable approach would be to establish a transparent authorization pathway where new categories would be evaluated before entering the market and judged based on data and evidence.

Viet Nam should retain the power to prohibit a genuinely dangerous product. It should not presume that every future innovation warrants prohibition before that product has even been invented.

Recommendations

PDNW strongly urges the Government of Viet Nam to withdraw the categorical prohibition provisions and establish a differentiated legal framework for e-cigarettes, heated tobacco products and tobacco-free nicotine pouches. Each category should be separately defined and regulated according to its product characteristics and risk profile.

Such a framework, according to international evidence, could establish strict age-of-sale requirements, enforceable age verification, ingredient and manufacturing standards, accurate nicotine labelling, licensed importers and retailers, batch and supply-chain traceability, and strong penalties for unlicensed commercial supply.

Similarly, excise policy should reflect relative harm while keeping lawful products commercially viable against illicit alternatives and customs authorities should be given identifiable legal import channels and product classifications rather than being required to police a market in which every shipment is automatically contraband.

Finally, the Government should narrow the undefined future-product provisions, publish its assessment of less restrictive alternatives, conduct a comprehensive illicit-trade and enforcement impact analysis, and explain the regulatory and public-health rationale for the export-only manufacturing exception.

Conclusion

PDNW appreciates the Government of Viet Nam's intention to pursue ambitious public health goals. However, policies should be judged on results, not on intentions. The international evidence is overwhelming that would this draft law be enacted, the results would be disastrous.

Australia has spent years tightening restrictions only to create a billion-dollar illicit market and violent criminal competition. Brazil banned vapour products and now has millions of users supplied by a market worth more than US $1 billion. Mexico has handed a lucrative product category to cartels. Germany prohibited legal nicotine-pouch sales and created a market of more than a million consumers supplied outside effective regulation. India prohibited e-cigarettes and continues to find them online, in shops and in major smuggling seizures.

Everywhere prohibition has been tried, it has failed. In contrast, regulated legal markets as found in Sweden have been a spectacular success. Viet Nam should follow the evidence, adopt practices proven to have worked, and not repeat the expensive policy failures of prohibition. Millions of lives depend on it.

Sincerely,

Tim Andrews
Global Spokesman
Prohibition Does Not Work

Cc:

(1) Office of the Government
- *Department of Science, Education, Culture and Social Affairs*
- *Department of International Relations*

(2) Ministry of Health
- *Medical Service Administration*
- *Department of Legal Affairs*
- *Department of International Cooperation*

(3) Ministry of Foreign Affairs
- *Department of Americas*
- *Department of Economic Affairs*

(4) US Embassy
- *Economic Section*