

## Interpretations

<b>J.Y. Interpretation</b>	NO. 577
<b>Date</b>	2004/5/7
<b>Issue</b>	Is Article 8, Paragraph 1, of the Tobacco Product Labeling Act unconstitutional in providing that the amount of nicotine and tar contained in a tobacco product shall be labeled in Chinese on the package?
<b>Holding</b>	<p>Article 11 of the Constitution protects the freedom of active expression and passive omission of the people. The scope of protection includes expressions of subjective opinions and statements of objective facts. Being a means to provide subjective information of a product, product labeling constitutes a type of commercial speech and shall fall within the scope of protection provided to freedom of speech by the Constitution. However, to advance other substantial public interests, the government may adopt some more restrictive means through legislation to serve the government objective by requiring product suppliers to provide material product information.</p> <p>To improve the health of the people, the government shall promote health care and devote attention to social warfare programs such as Medicare. Article 8, Paragraph 1, of the Tobacco Product Labeling Act provides that the amount of nicotine and tar contained in the tobacco product shall be labeled in Chinese on the package. Article 21 of the said Act provides sanctions on the violative tobacco product suppliers who fail to comply with their statutory duty of disclosure. Such a legal duty to disclose imposed upon the tobacco product suppliers constitutes a restriction on the freedom of passive omission by compelling them to provide material product information. However, this duty of disclosure is not only helpful in providing consumers with material product information but also sufficient to achieve the government objective in safeguarding the health of the people, and is therefore consistent with the principle of necessity and the provisions set forth in both Articles 11 and 23 of the Constitution.</p> <p>Although requiring the tobacco product suppliers to provide product information on the tobacco product package constitutes a restriction on their property rights, such product labeling nevertheless is a social duty imposed upon the tobacco product suppliers because the labeling concerns the health of the people and provides the necessary information regarding the content of the product. Since the restriction on the tobacco product suppliers' property rights incurred from such social duty is minor and tolerable, it is consistent with the constitutional provisions providing protection to the property rights of the people. The stipulations of Article 8, Paragraph 1, of the Tobacco Product Labeling Act prescribing the elements of the governing acts and Article 21 of the said Act prescribing the governing object and the violative legal consequences, are sufficient to determine the governing object, applicable scope and effectiveness of the regulations. The prescription of governing object, governing acts and the violative legal consequences set forth in the said Act are definite and unequivocal, and are thus consistent with the definite and unequivocal principle of law in rule-of-law nations. In addition, with regard to various kinds of foods, tobacco products and liquor products, comparisons of these products are difficult to make because different products cause different harmful effects to the human body and are thus regulated differently under different areas of law promulgated by the legislators within their discretion. It is therefore consistent with the equal protection of law guaranteed by Article 7 of the Constitution.</p>
<b>Reasoning</b>	<p>Article 11 of the Constitution protects the freedom of active expression and passive omission of the people. The scope of protection includes expressions of subjective opinions and statements of objective facts. Being a</p>

means to provide subjective information of a product, product labeling constitutes a type of commercial speech helpful to consumers in making their rational economic choices. If a product labeling is to promote lawful trading and its content is not false or misleading, it has the same function of promoting self-realization as other types of speech by providing information and helping people to form opinions. Such product labeling shall fall within the scope of protection provided to freedom of speech by Article 11 of the Constitution and is recognized and upheld by J.Y. Interpretation No. 414. However, to provide consumers with truthful and complete information and to prevent any misleading information or deception caused by the content of product labeling or to advance other substantial public interests, the government may adopt some more restrictive means through legislation to serve the government objective by requiring product suppliers to provide material product information.

Administrative regulations often prescribe the elements of the governing acts and the violative legal consequences separately. However, to determine the governing object, applicable scope and effectiveness of the regulations, both the elements of the governing acts and the violative legal consequences must be jointly evaluated. Article 8, Paragraph 1, of the Tobacco Product Labeling Act prescribes the elements of the governing acts while Article 21 of the same Act prescribes the governing object and the violative legal consequences. By taking both the elements of the governing acts and the violative legal consequences into consideration, it is evident that the governing objects of the said Act are tobacco product manufacturers, importers and sellers. These suppliers have a legal duty to indicate in Chinese on the package labeling the amount of nicotine and tar contained in the tobacco product. If such suppliers fail to include the amount of nicotine and tar on the labeling in violation of the Tobacco Product Labeling Act, the competent authority may impose an administrative fine between NT\$100,000 and NT\$300,000 on any of them with discretion and order them to recall all tobacco products to ratify the omission within a specified time period. If tobacco product manufacturers, importers and sellers fail to comply with the administrative order before the deadline, the competent authority may order them to cease the manufacture or importation of the tobacco products for six months to one year. The competent authority may also confiscate all of the violative tobacco products from the tobacco product suppliers and destroy them. The prescription of governing object, governing acts and the violative legal consequences set forth in the Tobacco Product Labeling Act are definite and unequivocal, and are thus consistent with the definite and unequivocal principle of law in a rule-of-law nation.

To improve the health of the nationals, the government shall promote health care and devote attention to social welfare programs such as Medicare. The significance of the public health is evident by the provisions set forth in Article 157 of the Constitution and Article 10, Paragraph 8, of the Amendments to the Constitution. Article 8, Paragraph 1, of the Tobacco Product Labeling Act, which was promulgated on March 19, 1997, and went into force on September 19 of the same year, provides that the amount of nicotine and tar contained in the tobacco product shall be indicated in Chinese on the package label. Article 21 of the same Act provides that any tobacco product supplier who violates the provisions set forth in Article 7, Paragraph 1, and Article 8, Paragraph 1, of the said Act or any tobacco product supplier who engages in the prohibited acts prescribed in Article 7, Paragraph 2, of the said Act, shall receive an administrative fine between NT\$100,000 and NT\$300,000 and be ordered to recall all tobacco products to ratify the omission within a specified time period. If such suppliers fail to comply with the administrative order before the deadline, the competent authority may order them to cease the manufacture or importation of the tobacco products for six months to one year. The competent authority may also confiscate all of the violative tobacco products from the tobacco product suppliers and destroy them. The prescription set forth in the Tobacco Product Labeling Act is a legal duty imposed by the government on the tobacco product suppliers to provide material subjective information of a product on the product label. Such a legal duty to disclose imposed upon tobacco product suppliers constitutes a restriction on the freedom of passive omission by compelling them to provide material product information. However, this duty of disclosure helps consumers to properly understand the content of tobacco products. In addition, disclosing the amount of a certain constituent in the tobacco products will help consumers to realize and to be alert to the potential danger caused by smoking. It will also help consumers to make a rational and informed purchase by considering the harmful effect caused by smoking. This duty to

disclose the material product information imposed upon the tobacco product suppliers is sufficiently helpful to achieve the government objective of safeguarding the health of the people. While holding all levels of government agencies and schools responsible for anti-smoking education is a less restrictive means, such compulsory education is less effective to achieve the government objective in comparison with the duty to disclose material product information imposed upon the tobacco product suppliers. The imposition of duty to disclose upon such suppliers is therefore consistent with the principle of necessity. Furthermore, to advance the substantial public interests in providing consumers with necessary product information and safeguarding the health of the people, the imposition of duty to disclose upon the tobacco product suppliers does not compel them to provide personal information or express a specific supporting view or to require them to disclose trade secrets. The imposition of duty to disclose upon the tobacco product suppliers merely requires them to provide objective constituent information which they can easily obtain and is therefore not more extensive than is necessary. Furthermore, considering the physical harm caused by the addiction to tobacco products, for the purpose of compelling the tobacco product suppliers to strictly comply with the duty of disclosure, the government has imposed upon a violator a considerable administrative fine in Article 21 of the Tobacco Product Labeling Act without first requiring the violator to ratify the omission within a specified time period. In comparison with a direct administrative order requiring the tobacco product manufacturers, importers and sellers to cease the manufacture or importation of the tobacco products for six months to one year, the imposition upon a violator of a considerable administrative fine without first requiring the violator to ratify the omission within a specified time period is considered a relatively effective and mild means. Moreover, to achieve the purpose of anti-smoking legislation, requiring the tobacco product manufacturers, importers and sellers among the entire tobacco industry to provide material product information on the tobacco product package is considered a reasonably necessary and proper means. Thus, while Article 21 of the Tobacco Product Labeling Act has imposed a restriction on the tobacco product suppliers' freedom of passive omission to serve significant public interests in safeguarding the health of the people and providing necessary trade information to consumers, the more restrictive means adopted by the government to serve the ends is in proportion to the public interests served. The restriction proscribed in Article 21 of the said Act is therefore reasonably necessary to serve the public interests and is consistent with the provisions set forth in both Articles 11 and 23 of the Constitution.

Although requiring the tobacco product suppliers to provide product information on the tobacco product package constitutes a restriction on their property rights, such product labeling nevertheless complies with the principles of good faith dealing and information transparency because the labeling concerns the health of the people and provides the necessary information regarding the content of the product. The duty to disclose product information on the tobacco product package is a social duty imposed upon the tobacco product suppliers in exchange for the property rights. Because the restriction on tobacco product suppliers' property rights incurred from such social duty is minor and tolerable, it is consistent with the Constitutional provisions providing protection to the property rights of the people. In addition, the newly promulgated and implemented regulation is generally inapplicable to events that occurred prior to the implementation. This is the ex post facto principle which bans ex post facto laws that have retroactive punitive effect. The so-called "event" means all legal facts which meet the statutory requirement; the so-called "occurred" means all legal facts must have been realized in reality. The duty of disclosure and legal liability prescribed in Article 8, Paragraph 1, and Article 21 of the Tobacco Product Labeling Act is only applicable to the tobacco product labeling events that occurred after the promulgation and implementation of the said Act. Neither Paragraph 1 of Article 8 nor Article 21 of the Tobacco Product Labeling Act imposes the duty of disclosure upon the tobacco product suppliers prior to the promulgation and implementation of the said Act. Since the Tobacco Product Labeling Act cannot be retroactively applied to the tobacco product suppliers, it can hardly be claimed that their property rights are infringed because of the retroactive application of the said Act. With regard to some prior individual information such as the manufacturing time, importation time, or distribution time of the prescribed tobacco products relevant to the statutory requirements under the newly promulgated Tobacco Product Labeling Act, if the legislators consider that such information shall be protected, the legislators shall premise such protection on the public interests to include some provisional exemptions or deferments of application in the said Act.

However, to require those tobacco products which have already entered the distribution channel but not yet been sold to comply with the labeling disclosure requirement before the implementation of the Tobacco Product Labeling Act, it will incur unforeseeable detriment to the tobacco product suppliers' property rights. Thus, to protect the reliance interests of the people, the legislators are obligated to include some transitional provisions in the said Act for those tobacco products which have already entered the distribution channel but not yet been sold. Article 30 of the Tobacco Product Labeling Act, which includes a transitional provision, provides that the said Act shall be implemented six months after the promulgation. This transitional provision saves the tobacco product suppliers from immediate legal detriment incurred by the change of law. The six months' transitional period is too short to defeat the legislative intent to safeguard the health of the people. Therefore, the transitional provision set forth in Article 30 of the Tobacco Product Labeling Act complies with the reliance interest protection principle. With regard to various kinds of foods, tobacco products and liquor products, comparisons of these products are difficult to make because different products cause different harmful effects to the human body and are thus regulated differently under different areas of law promulgated by the legislators within their discretion. It is therefore consistent with the equal protection of law guaranteed by Article 7 of the Constitution.

' Translated by Li-Chih Lin, Esq., J.D.

Interpretation