December 4, 2015

Department of Health and Wellness
Attention: Manager, Environmental Health
2nd Floor, Sullivan Building
PO Box 2000
Charlottetown, PE C1A 7N8

VIA EMAIL: envhealth@ihis.org

Re. Public consultation on proposed regulations under the Tobacco and Electronic Smoking Device Sales and Access Act

I would like to take this opportunity to share with you National Smokeless Tobacco Company’s (NSTC) comments on the development of regulations to prohibit the sale of flavoured tobacco products in PEI as outlined in Deputy Minister Michael Mayne’s correspondence of October 7, 2015.

NSTC is concerned that a prohibition on the sale of flavoured smokeless tobacco products is not reasonable tobacco regulation and does not recognize individual adult consumer preferences. Given the extremely high price point of NSTC’s smokeless tobacco products, a provincial prohibition on retail visibility of tobacco products, low reported youth usage numbers, and the relatively small sales compared to all other tobacco products, NSTC believes that smokeless tobacco products as a category should be exempt from any proposed prohibition on the sale of flavoured tobacco products in PEI.

In this letter I will provide background information about NSTC, explain why smokeless tobacco products should be exempt from the proposed regulations, and outline our concerns with the government’s current “flavouring agent” approach to restricting the sale of tobacco products.

About NSTC

NSTC is the Canadian distributor of smokeless tobacco products sold in Canada under the brand names of Copenhagen® and Skoal®. Smokeless tobacco is used orally and is not smoked, and has been in Canada since at least 1913. At NSTC we pride ourselves on being a leader in responsibly providing smokeless tobacco products to adult tobacco consumers. One of our mission goals is to help reasonable tobacco regulation succeed by supporting the development and implementation of regulations that improve public health and recognize individual adult consumer preferences.

NSTC’s products are for adults only. We believe that children should not use any tobacco product and we take our responsibility seriously by supporting and participating in programs to help reduce the underage use of tobacco products. We support initiatives and actions by the PEI government to help prevent underage access to tobacco products.

As of November 2015, NSTC distributes 14 individual smokeless tobacco products across different sizes (14, 23, and 34 gram cans), forms (long cut, fine cut, and pouches), and tobacco varieties.
It is important to understand the actual sales of smokeless tobacco products when making regulatory decisions affecting these products. NSTC’s products represent a small component of total tobacco sales in Canada. For the year ended December 31, 2013, smokeless tobacco sales accounted for 0.5 percent of all tobacco sold in Canada.¹ Our products retail in PEI for approximately $22.49 plus sales tax.²

**Flavoured Tobacco Products**

Smokeless tobacco products come in a wide range of flavour varieties, some which have a distinguishable dominant flavour or aroma other than tobacco. Such flavour varieties are not new; some flavour varieties of smokeless tobacco products – including peach and apple-flavoured snuff – have patents that date back to the 1800s. There is a long history of adult consumer interest in smokeless tobacco products with characterizing flavours. NSTC believes that any regulation of flavoured tobacco products should take into account the history of flavours within each tobacco category and requires a thorough understanding of the manufacture of smokeless tobacco products.

Smokeless tobacco is a complex product with a long history of adult usage in the Canadian marketplace. The manufacture of smokeless tobacco is unique and distinct from that of many other tobacco products, involving fermentation or heat treatment processing of tobacco coupled with ingredients that provide the desired adult tobacco consumer product attributes. Specifically, it must be recognized that the use of flavour additives in a smokeless tobacco product does not necessarily mean that the product is flavoured or has a characterizing flavour.

Failing to recognize the unique attributes of individual tobacco products with respect to “flavouring agents” could have the unintended consequence of prohibiting tobacco products that have the dominant flavour of tobacco, but which contain ingredients that individually might be defined as a “flavouring agent” (though those ingredients do not result in a characterizing flavour). NSTC believes that no tobacco product should be determined to be flavoured solely based of the presence of additives or flavourings.

**Specific Comments on the Proposed Regulation**

1. **Exemption for smokeless tobacco products**

NSTC recommends that smokeless tobacco products be provided with a categorical exemption to the proposed restrictions. Given the extremely high price of NSTC’s smokeless tobacco products in PEI, a prohibition on retail visibility of tobacco products, low reported youth usage numbers, and the relatively small sales of smokeless tobacco compared to all other tobacco products, it is clear that there is no demonstrated basis for a ban on the sale of flavoured smokeless tobacco products in the province. In considering this exemption, the government should review and analyze data contained in the Canadian Tobacco, Alcohol and Drugs Survey and related tobacco use surveys.

The Canadian Tobacco, Alcohol and Drugs Survey (CTADS, formerly known as the Canadian Tobacco Use Monitoring Survey – CTUMS) suggests a low prevalence of smokeless tobacco use among youth and young adults. Specifically, CTADS reports that in 2013, 1% of Canadian youth (15-19) reported past 30-day use of smokeless tobacco.³ These rates remain unchanged from 1999 (the first year CTADS/CTUMS addressed the topic).

Additional data on youth usage of tobacco products is available in the Youth Smoking Survey (YSS), administered every two years by the University of Waterloo’s Propel Centre for Population Health Impact on behalf of Health Canada. The survey is representative of over 2.5 million Canadian youth in grades 6-12 and collects information on a variety of youth behaviours, including tobacco use.

---

¹ Source: Health Canada Wholesale Sales Data, 2013. (2013 is the last full-year data currently available)
² NSTC SRP, November 2015
Flavoured smokeless tobacco product use was not assessed in the 2012-2013 YSS. Health Canada states “[B]ecause of low prevalence of use recorded in the previous cycle (1.5%), information on past 30-day flavoured smokeless tobacco use was not collected in the 2012-2013 cycle.”

In 2009, the federal government introduced Bill C-32, the Cracking Down on Tobacco Marketing Aimed at Youth Act. This federal legislation banned the sale of flavoured cigarettes, cigarillos, and blunt wraps and established a common standard across all provinces for regulating flavoured tobacco products. This standard is enforced by Health Canada as Health Canada is in the best position to analyze tobacco product ingredients, sales, and youth usage data and to make determinations on the variety of tobacco products available for sale in Canada. Appropriately, Bill C-32 does not ban the sale of flavoured smokeless tobacco products, a tobacco segment that simply has not shown to be of significant youth appeal. Updates to the federal restrictions announced earlier this year expanded the range of cigars covered by federal legislation, but maintained an exemption for smokeless tobacco products.

Last year, the government of Manitoba passed legislation restricting the sale of flavoured tobacco products with a legislative exemption for snuff, chewing tobacco, and pipe tobacco.

The government of PEI should take into account these precedents in considering regulation of flavoured smokeless tobacco products.

2. Defining “flavouring agents”

NSTC proposes that PEI’s regulation be clarified by adding language explicitly stating that a product should not be considered a flavoured product simply because of the use of additives. Alberta regulation 201/2014 amending Alberta regulation 240/2007 (November 2014) specifically states that:

“No tobacco product shall be determined to have a characterizing flavour solely because of the use of additives or flavourings.”

Furthermore, NSTC recommends that PEI consider language included in amendments to Ontario Regulation 48/06 (O.Reg 336/15 amending O.Reg 48/06, November 2015):

“(F)lavouring agent” means one or more artificial or natural ingredients contained in any of the component parts of a tobacco product, as a constituent or an additive, that impart a distinguishing aroma or flavour other than tobacco either before or during the consumption of the tobacco product.

As outlined above, it must be recognized that the use of flavour additives in a smokeless tobacco product does not necessarily mean that the product is flavoured or has a characterizing flavour.

3. Proposed effective date

In determining an effective date for the proposed restrictions, the government should consider an adequate “sell-through” period for wholesalers and retailers of smokeless tobacco products.

Smokeless tobacco is a moist, freshness-dated product with a shelf life of between four and six months, depending on the variety. Wholesalers may maintain an inventory of several weeks and the retailers they ship to may maintain an inventory of between four and six months, depending on the product.

Without an adequate implementation timeframe and clarity on exemptions for any specific tobacco products, considerable inventory could end up being unsaleable at wholesale and retail resulting in significant business loss. When the federal government passed Bill C-32, the sell-through period for
retailers was 270 days following Royal Assent. With passage of the bill occurring some four months before Royal Assent, the time provided for industry to effectively plan was considerable.

Should any restrictions be made final in PEI, NSTC recommends that the proposed implementation date be six months following promulgation of the regulation.

**Conclusion**

Tobacco products come in a wide range of flavour varieties, some of which have a distinguishable dominant flavour or aroma other than tobacco. Such flavour varieties are not new; some flavour varieties of smokeless tobacco products have patents that date back to the 1800s. The CTADS demonstrates extremely low reported youth usage of smokeless tobacco products in Canada.

PEI’s proposed flavoured tobacco product restrictions are unfair to adult smokeless tobacco consumers and are unfair to the retailers who sell flavoured tobacco products. Smokeless tobacco products should be considered for exemption. PEI’s proposed regulation should also be clarified to define “flavouring agents” and recognize that the use of additives does not necessarily mean that a tobacco product is flavoured or has a characterizing flavour.

Thank you for the opportunity to contribute to this important policy review.

Should you have any further questions or require any follow-up, please contact Jeremy Adams, NSTC’s Director of Government and Corporate Affairs. Mr. Adams can be reached at jeremy.e.adams@nstco.ca or 647-294-6399.

Sincerely,

J.F. Turcotte
President
National Smokeless Tobacco Company Limited