

**REF: MOH/BOARDS/13/1/150 VOL 1 (83)**  
**MOH/BOARDS/13/1/150 VOL 1 (85)**

18<sup>th</sup> February 2021

Sen. Mutahi Kagwe, EGH  
The Cabinet Secretary  
Ministry of Health  
Afya House, Cathedral Road  
Nairobi

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Dear Sir,

**RE: NICOTINE POUCHES 'LYFT' SOLD IN KENYA**

We acknowledge receipt of your letter dated 21<sup>st</sup> January 2021 directing that LYFT oral nicotine pouches in Kenya should be regulated under the provisions of the Tobacco Control Act 2007 (the "Act"), Tobacco Control Regulations 2014 (the "Regulations") and other applicable laws.

In addition, we acknowledge receipt of the letter dated 9<sup>th</sup> February 2021 from the Tobacco Control Board which requires compliance with the provisions of the Act and Regulations with immediate effect and specifically the requirement to comply with packaging and labeling requirements within 21 days from 9<sup>th</sup> February 2021.

Given that the manufacture, distribution and sale of our Lyft oral nicotine product had been temporarily ceased from the market since October 2020, we are grateful for the guidance provided and your cognizance of our manufacturing investment and contribution to the Government's Big Four Agenda.

More importantly, in line with the public health agenda, and given the reduced risk profile of oral nicotine pouches versus combustible products, we believe that LYFT oral nicotine pouches can play a key role in further reducing the smoking incidence in Kenya by encouraging current smokers to switch to lower risk alternatives.

Towards this end, it is our view that we have an opportunity to work together to create a sustainable regulatory framework within the Tobacco Control Act in order to achieve our common goal of addressing the health impacts caused by smoking and make the product category commercially viable. This will be achieved by:

1. Review and amendment of the Act and Regulations

- The Act and Regulations need to be amended to create the relevant legal framework for nicotine products separate from conventional cigarettes and tobacco containing products. Given the difference in composition of oral nicotine pouches as well as fact there is no combustion involved, the regulation of oral nicotine pouches should reflect the significantly reduced risk profile and potential net public health benefit supported by credible peer-reviewed science; As an example:-
  - The current Graphic Health Warnings labelling and packaging requirements under the Act are not suitable for oral nicotine products like LYFT given that there is no combustion as such, pictures of diseased lungs for example are inappropriate.
  - Given its reduced harm potential, it would be important to avail relevant and factual information to smokers that could help them use less harmful alternatives, address misinformation and any concerns.

## 2. Product Standards

- Development, implementation and enforcement of product standards to regulate specifications of the product, ingredients and nicotine ceilings to ensure products placed on the market meet the highest levels of quality and safety and adhere to well-known product certification standards.

## 3. Sustainable Fiscal Framework

- Reference is made to the classification guidance from the Kenya Revenue Authority (KRA) for LYFT™ nicotine pouches on 18<sup>th</sup> December 2020 (enclosed for your reference) classifying Lyft under HS Code 3824.99.90 of the EAC CET 2017, subject to World Customs Organisation (WCO) harmonisation revisions in 2022 where it will be classified under subheading 2404.91.
- In line with the above timeline, the excise framework for LYFT should reflect the significantly reduced risk profile of oral nicotine pouches like LYFT and:
  - Have a specific category definition.
  - Be wholly specific at an excise duty rate of KSh. 530 per 1000 pouches (per mille) which is 16% of the current cigarette excise duty rate for filtered cigarettes.
  - To be implemented in 2022 in line with the WCO revision when it shall be classified under subheading 2404.91

## 4. LYFT Stocks

- We currently have the equivalent of 400,000 cans of LYFT stock worth approximately KSh. 33 million which we are unable to sell and run the risk of expiring as we are unable to meet your packaging and labelling compliance deadline of 21 days. The established precedence for the implementation of new changes under the Act has been 9 – 12 months. We therefore request adequate transition period of a minimum of 9 months to enable us sell our current stock and if needed, meet further consumer demand to prevent further losses.

## 5. Transition framework

- In lieu of the above, we propose a transition framework of 9 – 12 months. We in turn commit to sell LYFT in age-verified outlets with age-verifiable mechanisms, not at self-service and with robust over the counter safeguards.

We look forward to discussing the above proposals with you and request for a meeting at your earliest convenience

We look forward to your response.

For: British American Tobacco Kenya plc



Crispin Achola  
Managing Director



Cc:

1. Susan Mochache, CBS  
Principal Secretary  
Ministry of Health
2. Dr. (Eng.) Karanja Kibicho, CBS  
Principal Secretary  
Ministry of Interior and Coordination of National Government
3. Dr. Fred Siyoi  
Chief Executive Officer  
Pharmacy and Posions Board
4. Prof. Wilfred Lesan  
Chairman  
Tobacco Control Board
5. Kepha M. Ombacho, PhD, FAIPH, EBS  
Secretary  
Tobacco Control Board
6. James Githii Mburu  
Commissioner General  
Kenya Revenue Authority

C & BC/HQ/11

18<sup>th</sup> December 2020

M/S BRITISH AMERICAN TOBACCO (K) LIMITED  
P.O. BOX 30000-00100  
NAIROBI

Dear Sir,

**RE: CLASSIFICATION GUIDANCE – LYFT NICOTINE POUCHES**

Reference is made to your appeal on classification of the above-mentioned product.

Following the submission of the classification request to the World Customs Organization (WCO), the WCO Secretariat has issued classification guidance on **LYFT NICOTINE POUCHES**, stating in pertinent part:

*'Looking at the composition of the "LYFT", the Secretariat considers that no identical or even similar product is covered by heading 21.06. "LYFT" cannot be regarded as mixture of a kind used in the preparation of human foodstuffs and is not valued for its nutritional qualities. For this reason, the Secretariat considers that the "LYFT Polar mint" is not excluded from Chapter 38 by virtue of Chapter Note 1 (b), and it would tend to classify it in heading 38.24, subheading 3824.99, by application of General Interpretative Rules 1 and 6.'*

In this regard, as guided by the WCO Secretariat's opinion, the LYFT nicotine pouches are classifiable in **HS Code 3824.99.90** of the EAC CET 2017.

Further to this, Tariff Ruling Referenced C&BC/HQ/14 and dated 13<sup>th</sup> August, 2020, is hereby revoked.

**Please note that as at January 2022 , this product will be classifiable in the new heading 24.04, subheading 2404.91, as per the guidance issued by the WCO Secretariat and in line with the approved HS 2022 amendments.**

Yours faithfully,



**P. Ahago (Mrs.)**  
**Ag. COMMISSIONER CUSTOMS & BORDER CONTROL**

cc: **Commissioner General**  
**Deputy Commissioner, Revenue & Regional Coordination**  
**Deputy Commissioner, Policy & International Affairs**  
**Deputy Commissioner, Risk Management Division**