

9th August 2012

**Finnish Tobacco Industries' Federation's response to the Department of Health's
Consultation on Standardised Packaging of Tobacco Products.**

Introduction:

Finnish Tobacco Industries' Federation (FTIF) is association for two tobacco companies that operate in Finland. FTIF's two current member companies are: British American Tobacco Finland Ltd and Imperial Tobacco Finland Ltd.

FTIF's Response to the Consultation

FTIF supports Option 1: do nothing (i.e. maintain the status quo for tobacco packaging).

1. Flawed Process

The Department of Health's (*DH's*) process does not meet the Government's required standards:

- The Consultation on Standardised Packaging of Tobacco Products (the **Consultation**) and Impact Assessment (**IA**) are part of a flawed policy-making process. The process shows that the DH has abandoned its commitment to Better Regulation principles and is seeking to advance policy despite them.
- The decision to consult at this time in these circumstances reinforces FTIF's concern that the DH may well have already decided to introduce standardised packaging, whatever the evidence shows. Internal DH documents show it has sought evidence presuming standardised packaging will be effective.
- The DH is not giving its own regulatory measures a chance to work, ignoring HM Government's regulatory reform agenda. The DH has said it has to show that standardised packaging will have an effect in achieving any of the stated public policy objectives over an above that of existing measures, but cannot do so.

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- The DH has set the tests in such a way to achieve the desired outcome. This is contrary to Better Regulation principles and cannot hide the fundamental lack of evidence to justify standardised packaging.

The IA is inadequate to support the introduction of a measure such as standardised packaging. Even the Regulatory Policy Commission (RPC) has classified the IA as 'Amber', meaning it has "areas of concern that should be corrected". This is perhaps unsurprising when, in its recent report Improving Regulation March 2012, the RPC specifically criticises the performance of the DH in producing balanced and robust Impact Assessments:

"The most common flaw in these IAs was that analysis of wider economic impacts was incomplete. For example, tobacco IAs tended to provide a full analysis of benefits, but failed to estimate the full economic costs to producers and retailers."

In summary, the IA fails to adequately assess:

- The costs associated with implementing standardised packaging to manufacturers, both direct costs and those associated with the competitive effect of such a measure. The measure represents a restraint of free trade and amounts to a deprivation of manufacturers' most valuable assets; their brands.
- The impact on adult consumers' rights to product choice, product information and fair competition.
- The impact on retailers from (i) creating additional costs and unnecessary time-wasting by making everyday activities such as retailing, re-stocking and stock-taking much more onerous than necessary, to (ii) the impact on smaller retailers by shifting the competitive advantage significantly towards larger retailers.
- The impact standardised packaging would have on undermining innovation.
- The Government's own 'One In One Out' policy - by proposing legislation that will have additional costs on business, before the full costs of the previously enacted Display Ban' regulations have yet to be realised.

2. FTIF is categorically opposed to standardised packaging

FTIF considers that only Option 1— no change — is appropriate and wishes to emphasise its opposition to standardised packaging.

FTIF agrees that minors should not smoke and that smoking must be a matter for informed adult choice. FTIF's member companies only market their products to adult smokers.

A. Misunderstanding of Role of Packaging

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The consultation is based upon a series of assumptions and assertions that are wrong, and which have the effect of incorrectly defining the debate regarding tobacco packaging. Adult smokers use packaging to identify, obtain information about and choose tobacco products, easily and without confusion.

Tobacco packaging and pack labelling is not a predictor of youth smoking. The considerable body of evidence and research which exists on the predictors for smoking initiation does not substantiate any link between packaging and youth uptake. Even when the DH itself has previously identified "trigger factors" for smoking by minors, packaging was not one of them. Instead the DH linked youth smoking initiation to a complex range of socio-economic factors including age and gender, home life, peer pressure, truancy and exclusion from school. The Consultation is, however, concerned with packaging from this perspective. As a result of this flaw, standardised packaging will not reduce youth smoking.

Furthermore, FTIF rejects the notion of reducing the "appeal" (or "attractiveness") of tobacco packaging as a valid public policy objective, and considers that it adds nothing to the need to identify and assess a relevant policy rationale. "Appeal" per se fails established criteria for issue definition in terms of it being a regulatory goal or objective: it is lacking in any evidential foundation and is inherently uncertain and arbitrary.

Finally, the DH must recognise that changes to packaging and pack labelling regulation engage fundamental legal, economic and commercial rights of tobacco product manufacturers and consumers. These include the right of manufacturers to brand their packaging and pack labelling in accordance with principles of the market economy and competition policy, their property right in their brands (including trademarks, goodwill and brand equity), their rights to communicate product information to their consumers, and their right to conduct their business (including the free movement of goods within the EU).

B. Standardised packaging will be disproportionate, will unjustifiably affect the rights of stakeholders and is likely to have unintended consequences.

Packaging and pack labelling are fundamental to the operation of a market economy in legal tobacco products, consumer choice, innovation, product information and brand value.

Packaging and pack labelling are also fundamental to consumer choice in a competitive market. Manufacturers, retailers and consumers must be able to identify and distinguish products, without confusion. This is an essential function of packaging, pack labelling and trade marks. Mandating standardised packaging would infringe legally protected rights of manufacturers and consumers. If it could be adopted at all, such a measure would represent an extraordinary attempt to deprive the FTIF's members of their most valuable assets. It is wrong for any liberal democracy and free market economy to go this far.

Moreover, standardised packaging would have a serious, negative impact by:

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- creating consumer and retailer confusion in the supply chain and at point of sale;
- exacerbating illicit trade (already up to £3.1bn per year - £8.5m per day – is lost to the Treasury) as counterfeit products will become easier to make, distribute and sell. Standardised packaging will make the work of HM Revenue and Customs, the UK Border Agency and Trading Standards harder when identifying illicit products. The increase in illicit and counterfeit tobacco products across the UK could result in increasing access to products for those societal groups the DH is most concerned with protecting, including minors. Illicit traders don't care who they sell to – and frequently target children. A study carried out by Tobacco Control groups in the North of England concluded that 14 and 15 year olds were twice as likely to buy illicit products than adults. This concern is also echoed in current government policy :

"The availability of illegal tobacco products undermines public health objectives and impacts on the health of both individuals and wider communities;

circumventing health labelling requirements and age of sale restrictions....

Unregulated distribution networks associated with smuggling make tobacco more accessible to children and young people and perpetuates health inequalities across socio-economic groups" [HMRC Tackling Tobacco Smuggling Strategy 2011];

- diminishing contributions to the economy, including loss of efficiencies and business to suppliers, wholesalers, retailers, ink manufacturers, designers and packaging suppliers, and other costs caused. The tobacco industry directly employs over 5,700 people in the UK, and indirectly supports a further 66,000 British jobs in retailing, distribution, packaging, warehousing, design and marketing, wholesaling and many other businesses. The threats posed to British business are serious. They range from the effective 'commoditisation' of tobacco as a product for wholesalers and retailers, with inevitable consequences to turnover; to unworkable protocols for wholesale and distributors, particularly those that operate across national boundaries; to loss of innovation, investment and sophisticated anti-counterfeiting technology, for packaging supply chain companies.
- causing serious and unnecessary damage to competition in the market because standardised packaging will very probably result in an increased focus upon price as one of the most important remaining dimensions of competition, barriers to new market entrants will be increased and consumer switching will be reduced;
- possibly encouraging young people to take up smoking as an act of rebellion (the DH raised this as an issue in its 2008 Future of Tobacco Control consultation, but fails to consider the point in this Consultation);
- have implications for any business that creates wealth for the UK economy through IP, brands and trade marks. That is why organisations such as the Anti-Counterfeiting Group, the British Brands Group, Business Europe, the CBI, The Institute of Trade Mark Attorneys, and the International Chamber of Commerce are opposed to it. Standardised packaging will make the UK the European 'testing ground' for whether standardised packaging breaches national and international intellectual property laws.

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C. There is a lack of an evidence base for standardised packaging.

There is no evidence that clearly and credibly demonstrates the effectiveness of standardised packing in relation to achieving any of the stated public policy objectives. This lack of conclusive evidence extends to the issue of youth initiation.

The UK Government decided in 2008, after the Future of Tobacco Control consultation, not to proceed with plain packaging as the evidence is "speculative" and "needs to be developed" before regulatory action should be taken. This remains the position in 2012.

The objectives of the DH seek to change smoking behaviour but the DH has no behavioural evidence to rely on. The evidence it does have – including a "Systematic Review" which is systematic in name only – is unreliable and unconvincing. Grouping together individually unreliable consumer surveys does not change the fact that the component parts are flawed. Not only do none of the 37 studies reviewed in the Systematic Review consider how standardised packaging might change smoking behaviour generally none of these studies consider how standardised packaging may change the smoking behaviour of the specific population groups identified in the Equality Impact Assessment as been more likely to smoke.

The DH is forced to try and justify standardised packaging using the "best guess" and "subjective views" of its preferred group of individuals to predict a quantitative change in smoking behaviour. This is not a reliable proxy for actual behavioural evidence in a public policy context. This future panel of un-named experts side-steps Better Regulation requirements.

The materials relied on are so weak that the DH's IA can only say that there are "plausible scenarios" under which standardised packaging "could be effective". This falls short of what the DH is required to show – there is no "robust and compelling" case that standardised packaging will work.

Mandated "standardised packaging" as a regulatory tool is wholly disproportionate to the purported public policy objectives it seeks to address. There are alternative, and less restrictive, means of achieving the same objectives.

3. Infringement of Legal Rights

Standardised packaging will, in short, be inconsistent with legal rights, including:

- the harmonised European and international system of trade mark protection under Directive 2008/95/EC, Council Regulation (EC) Number 207/2009, the WTO Agreement on the Trade Related aspects of Intellectual Property ("TRIPS"), and the Paris Convention for the Protection of Industrial Property which, inter alia, prohibit the imposition and restrictions on the registration and use of the trade marks based on the nature of the goods.
- the harmonised European and international system of protection for other Intellectual Property Rights including, inter alia, patents and design rights;

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- the right both to property and to the freedom of communication protected by the European Convention on Human Rights and the EU Charter on Fundamental Rights; and
- the principle of free movement of goods within the EU, as protected by Article 34 of the Treaty on the Functioning of the European Union.]

4. Alternative Solutions

The DH should assess and evaluate existing legislation and other, less restrictive and more proportionate options. These could include making proxy purchasing of tobacco illegal; as it is for alcohol and is already the case in Scotland. FTIF believes that reducing minors' access to cigarettes is a far more effective public health intervention.

Minors' access to tobacco can also be further reduced by clamping down on the illicit market in tobacco (and not fuelling it further through policy initiatives like standardised packaging) as the illicit market is another major source of tobacco for under 18s, as noted in HMRC's 2011 "Tackling Tobacco Smuggling" strategy.

Paavo Heiskanen - senior adviser

Tupakkateollisuusliitto ry - Finnish Tobacco Industries' Federation

paavo.heiskanen@yti.fi

9th August 2012

From: [REDACTED]
Sent: 09 August 2012 20:00
To: Tobaccopacks
Subject: In support of tobacco plain packs

To UK Health Minister Andrew Lansley,

I fully support efforts in the UK to require ~~all~~ tobacco products to be sold in plain packs.

Research shows that selling plain packs one of the simplest ways to discourage young people from picking up the deadly habit.

Plain packs have popular backing in the UK. Recent polling shows that 84% of UK adults believe that children should not be exposed to any tobacco marketing, and 68% support plain packaging vs 21% who are opposed.

I call on you to stay firm against the Big Tobacco lobby and champion the plan to make cigarettes uncool for teenagers by selling them in plain, non-branded packs.

I am the mother of a boy of 13 who along with his friends smoke !!!! They think Brands are cool !

--
[REDACTED]
United Kingdom

Note: I [REDACTED] sent you this message as part of an Avaaz campaign to support plain packs in the UK http://www.avaaz.org/en/our_lungs_vs_sam/?reply. To respond, please e-mail reply+plainpacks@Avaaz.org

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From: [REDACTED]
Sent: 09 August 2012 15:35
To: Tobaccopacks
Subject: In support of tobacco plain packs

To UK Health Minister Andrew Lansley,

- I fully support efforts in the UK to require ~~all tobacco products to~~ be sold in plain packs.
- Research shows that selling plain packs one of the simplest ways to discourage young people from picking up the deadly habit.
- Plain packs have popular backing in the UK. Recent polling shows that 84% of UK adults believe that children should not be exposed to any tobacco marketing, and 68% support plain packaging vs 21% who are opposed.
- I call on you to stay firm against the Big Tobacco lobby and champion the plan to make cigarettes uncool for teenagers by selling them in plain, non-branded packs.

In fact I think you should make tobacco illegal. It does more harm and cost the NHS more than does alcohol and cannabis combined!

--
[REDACTED]
United Kingdom

Note: [REDACTED] sent you this message as part of an Avaaz campaign to support plain packs in the UK http://www.avaaz.org/en/our_lungs_vs_sam/?reply. To respond, please e-mail reply+plainpacks@Avaaz.org

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[REDACTED]

From: [REDACTED]
Sent: 14 June 2012 09:53
To: Tobaccopacks
Subject: Consultation on the standardised packaging of tobacco products

Response from : Hampshire fire and rescue service
Subject: Consultation on the standardised packaging of tobacco products
Author: Station Manager [REDACTED]
Date: 13th June 2012

Summary: Hampshire fire and rescue service would recommend that 'Fire safety' messages are considered as part of the standardised packaging of tobacco products. Therefore, as part of the consultation favour option 3: 'A different option for tobacco packaging to improve public health'.

Reasoning for option 3: Fires from smoking materials is one of the most significant challenges facing Fire and rescue services in the UK. Indeed, in 2007 Greenstreet Berman produced a report on human behaviour in fatal fires, this identified that 49% of the 535 **fatal fires** analysed nationally, were caused by the careless disposal of smoking materials.

National statistics: More recent national statistics published by the Department for Communities and Local Government (DCLG) provided the following information on fires involving smoking materials in 2010-11:

1, Out of 35505 dwelling fires with casualties (injuries or fatalities), the source of ignition was caused by smoking materials in 2748 (7%) instances.

2, Within these 2748 instances there were 96 fatalities.

Hampshire statistics: Hampshire fire and rescue service statistics show that since April 2009, the total number of fires where the source of ignition was recorded as 'smoking materials' is 628. Of these, 477 were accidental of which 377 (79%) involved the careless or negligent handling of smoking materials. A total of 45 casualties arose from these instances of which 8 were fatalities.

Communities and local government research paper 4/2009 'Quantative exploration of the impact of the fire kills media campaign' shows that the fire safety messages do have a positive impact on fire deaths, hence, Hampshire fire and rescue service would like to propose that 'Fire Safety' messages should be considered as part of the standardised packaging of tobacco products. This will help to remind smokers of the risk of fire and could reduce the number of incidents started by smoking materials. Statistics show that smokers are a high risk group and so this type of fire safety campaign would be accurately targeted.

Kind Regards
[REDACTED]

[REDACTED]
Community Fire Safety - Vulnerable Groups
[REDACTED]
[REDACTED]
[REDACTED]

Hampshire Fire and Rescue Service Headquarters
Leigh Road

British Heart Foundation Project – NHS Hartlepool/Hartlepool Borough Council

SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS

To tobaccopacks@dh.qsi.gov.uk

We are a small team involved in a BHF funded project with an aim of raising awareness of coronary heart disease prevention amongst children and young people between the ages of 7 and 14. As the issue of tobacco use is such a major part of this project we would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation. We believe this will reduce the attractiveness of tobacco use.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism.

Based on this level of harm to individuals, communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former "low tar" brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

We believe that it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through innovative, colourful packaging in a similar way to breakfast cereals, energy drinks or confectionary.

There is high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We call for Government action to adopt this measure and help to make smoking history for more children in the North East.

British Heart Foundation Project, NHS Hartlepool/Hartlepool Borough Council

INSERT ORGANISATION NAME

SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS

To tobaccopacks@dh.gsi.gov.uk

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We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

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[REDACTED]

From: [REDACTED]@gmail.com
Sent: 19 June 2012 10:18
To: Tobaccopacks
Subject: Plain packaging of tobacco products

Tobacco Packs DoH Tobacco Packs DoH

I support the plain, standardised packaging of tobacco products to protect our children.

I confirm I do not have any links with or receive funding from the tobacco industry.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Consultation on Standardised Packaging of Tobacco Products *IoD Consultation Response: Department of Health*

Tobacco Packs Consultation
Department of Health
7th Floor
Wellington House
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London
SE1 8UG

09 August 2012

Consultation on Standardised Packaging of Tobacco Products **IoD Consultation Response: Department of Health**

Dear Sir/Madam,

The Institute of Directors (IoD) welcomes this opportunity to comment in response to the consultation document "*Standardised Packaging of Tobacco Products*" issued by the Department of Health (DH) on 16 April 2012.

About the IoD:

The IoD was founded in 1903 and obtained a Royal Charter in 1906. It is an independent, non-party political organisation of approximately 40,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 80% of FTSE 100 companies and 60% of FTSE 350 companies have IoD members on their boards, but the majority of members, some 72%, comprise directors of small and medium-sized enterprises, ranging from long-established businesses to start-up companies. IoD members' organisations are entrepreneurial and resolutely growth orientated. Over half of members export. They are at the forefront of flexible working practices and are fully committed to the skills agenda.

Summary Response:

The IoD rejects the Department's proposal for standardised packaging of tobacco products on the basis of four key concerns:

- (1) The creation of a damaging precedent when the Government acts to destroy an industry's accumulated and legally acknowledged intellectual property.
- (2) The inappropriateness of radical action while the UK Government is still rolling out another significant regulatory requirement for the industry - a nationwide retail display ban on tobacco products.
- (3) The regulatory cost to business of the proposed packaging changes and its significant impact on the Prime Minister's desire to achieve an overall de-regulatory balance.
- (4) The weakness of the Department of Health's analysis of the regulatory impacts of the proposal - particularly on business.

General Points:

The IoD recognises that the Government has an understandable desire to act in matters regarding the protection of public health. The IoD also recognises that smoking has a significant impact on the health and wellbeing of UK citizens, with commensurate financial impacts on businesses and employers.

The IoD also acknowledges the economic contribution of the tobacco industry, which, according to the Office for National Statistics' most recent figures, employs some 5,000 people in the UK.¹ Cogent, a Science Industry body, estimates that the industry indirectly supports 66,000 jobs elsewhere in the economy.²

The tobacco sector contributes just over £2bn Gross Value Added to the UK economy, at nearly seven times the GVA per employee of the manufacturing sector as a whole.³ The marketing and manufacturing of packaging is worth £66m alone.⁴ In the financial year 2009-10, the Treasury received over £8.8bn in tobacco taxation revenue, excluding VAT.⁵

There is a long and as yet unresolved debate around the appropriate public policy balance between societal and health consequences of smoking versus the desire to respect individual choice. Indeed, the fiscal consequences of smoking are also open to debate, with factors such as employment, taxation and public healthcare costs all factors worthy of consideration.

The IoD cites these discussions to recognise their existence, but also (in responding to this consultation) to demonstrate that it takes no organisational view of these long-standing debates. The IoD has therefore chosen to respond on the impacts of standardised packaging of tobacco products.

The IoD will not be responding to the specific questions set out in the consultation, but will instead contribute a short summary of its position and concerns with the Government's proposals.

Intellectual Property:

The protection of Intellectual Property (IP) is a central component of a developed and well-functioning capitalist economy. Indeed, the 2012 International Property Rights Index⁶ finds that the UK's present regime is positioned a competitive 11th in world rankings. This indicator, which is based upon an analysis of the legal and political environment, physical property rights and intellectual property rights, demonstrates that the UK has a significant competitive advantage over many other international business environments.

Moreover, the present Government's desire to further improvement and reform in the field of IP is to be welcomed. The recent Independent Review of IP and Growth, chaired by Professor Ian Hargreaves, delivered some welcome recommendations that should further strengthen the country's position.

The Government's proposals for standardised packaging make no allowance for future product development. Whilst it may be reasonable to consider all tobacco products to be similarly harmful, such a blanket approach to product design has the potential to cause consumer detriment in the long run. If in the future it is possible to develop tobacco products that are less harmful to consumers, then it follows that it would be appropriate for any difference in risk profile to be obvious to potential consumers. Standardised packaging would make discrimination on the basis of health effects almost impossible.

¹ Office for National Statistics, *Annual Business Survey 2010 – Revised Results* (June 14, 2012).

² Cogent Industry Estimate.

³ Office for National Statistics, *Annual Business Survey 2010 – Revised Results* (June 14, 2012).

⁴ Ibid.

⁵ UK Parliament, *Hansard*, C384W (October 27, 2010).

⁶ <http://www.internationalpropertyrightsindex.org>.

If the Government were to proceed with its proposals for standardised packaging the IoD feels certain that this would have a destabilising effect on the investment decisions of many foreign-owned companies (including those outside the tobacco industry). The IoD suspects that product development, investment, marketing and advertising of products in areas such as confectionary and alcoholic beverages would be affected as businesses contemplate potential regulatory creep from tobacco into other product ranges. It would be a reasonable reaction to the threat of IP destruction for companies to withdraw from their present efforts to reinforce and further develop brands that may yet be abolished. Should such behaviour be replicated across a wider base of companies it could have profound effects on businesses operating in the UK's creative industry sector.

Concurrent Regulatory Approaches - Retail Display Ban:

The Government is currently phasing in the introduction of a complete retail display ban on tobacco products. The policy was developed for many of the same societal benefits that the present consultation seeks to address. The possibility of a display ban as well as new standardised packaging requirements is a 'belt and braces' approach to policy-making. Due to the law of diminishing returns, the benefits of this proposed policy are likely to be a great deal smaller than those estimated under the display ban.

The IoD does not believe the Government has presented any evidence regarding the need for such a swift move to additional regulation. The retail display ban has not yet been fully implemented and the outcomes of the policy have yet to be assessed against estimations made in the original Impact Assessment. Since the proposals for standardised packaging seek to address many of the same factors as the display ban, it surely follows that the retail display ban should be thoroughly implemented and assessed before embarking on more aggressive regulatory impositions.

De-Regulation:

The Prime Minister stated in April 2011 that he wanted this Government to be the first "in modern history to leave office having reduced the overall burden of regulation, rather than increasing it."⁷

The Government's current position on 'One In One Out' (OIOO) stands at a cumulative reduction in burdens of £848 million. While the Government is to be applauded for the fact this figure is presently deregulatory, one single measure of significant value could reverse the position. Albeit a sizeable sum, £848 million is, in regulatory terms, a 'knife-edge'.

The proposal to enforce standardised packaging would be a significant regulatory burden on business, imposing additional costs. Looking at the Impact Assessment for the ban on display of tobacco products, it is easy to imagine that the impact of standardised packaging could impose a business burden of hundreds of millions of pounds – a regulatory imposition that could have a profound impact on the Government's OIOO figure.

If the Government is serious about reducing burdens on business in a way that is perceptible, desires to regulate in areas such as tobacco packaging do need to be reined in. Indeed, the IoD considers this proposed area of intervention to be one of a small number of key 'litmus tests' of the Government's commitment to a de-regulatory agenda.

⁷ "Letter from the Prime Minister on cutting red tape," published at <http://www.number10.gov.uk/news/letter-from-the-prime-minister-on-cutting-red-tape/>.

It should also be noted that although the subject is – inevitably and properly – of considerable interest to the Department of Health, the regulation of the tobacco industry is precisely that – the regulation of a legal business community. As such, the IoD feels that the Government should give consideration to the most appropriate ministerial responsibility for the industry's regulation and suggest that it would be more appropriate for these responsibilities to be transferred from the existing department (Department of Health) to the Department for Business, Innovation and Skills. This would have the additional benefit of ensuring that the responsible department was able to consult and engage with the industry it proposes to regulate, rather than the present situation where the Department of Health refuses to engage with this stakeholder community.

Impact Assessment and One In, One Out:

The Department's OIOO analysis, as set out in the preliminary Impact Assessment (IA) accompanying this consultation, is extremely poor. The lack of monetisation is a genuine concern for such a radical and far-reaching proposal. Even accepting that the process of consultation might render these figures possible in the final IA, the lack of consideration given to business impacts is very concerning.

The present IA states that: "[the] Impacts we [the Department of Health] identify as being relevant for OIOO are: any costs to retailers; loss of profits to tobacco companies consequent upon switching to lower price brands net of saving of expenditure on brand maintenance." However, the Department goes on to state "Loss of profits to tobacco companies due to reduced consumption of cigarettes is an indirect effect (as agreed for display) and out of scope for OIOO."

While the IoD is content to leave the methodological approach to calculating direct and indirect costs to the Government and the Regulatory Policy Committee to determine, the absence of consideration (for OIOO purposes) of key factors is very concerning. These include, but are not limited to, the:

- commercial impact on packaging companies/employment;
- loss of profits and health impacts due to increased consumption of counterfeit products;
- commercial impact on product design companies/employment;
- investment and development behaviour of companies outside tobacco (in light of the UK Government's IP intervention); and
- future packaging usage to differentiate between more and less harmful products

Conclusion:

In summary, the IoD are very concerned by the Government's approach and encourage the Department to withdraw its proposals to regulate in this area. Thank you once again for inviting the Institute of Directors to participate in this consultation.

Yours sincerely,



Head of Regulatory Affairs
Institute of Directors

From: [REDACTED]@imperial.ac.uk>
Sent: 06 August 2012 20:03
To: Tobaccopacks
Cc: [REDACTED]@cancer.org.uk
Subject: International Association for the Study of Lung Cancer supports plain packaging for all tobacco products

Dear Sir / Madam,

The International Association for the Study of Lung Cancer (IASLC) is the only global organisation representing all clinicians and researchers involved in combating the scourge of lung cancer and other thoracic malignancies. The UK has the largest membership of the IASLC in Europe. As President of the IASLC I am writing to acknowledge the efforts of successive UK governments in Tobacco Control and to express our support for introducing the plain packaging of tobacco products into the UK.

Other countries around the globe have already accepted that such a move is vital if we are to combat the subtle efforts of the tobacco companies to enrol future generations of addicts. Evidence clearly shows that putting cigarettes in plain, standardised packs makes the pack less attractive and health warnings more prominent to children.

There is no reasonable doubt that advertising and promotion increase the likelihood that adolescents smoke. Packaging is an important part of this – it is designed to be attractive and communicate the “personality” of a brand. Packs can act as “badge products” and an extension of a person’s identity. Therefore, plain packaging needs to be part of a comprehensive approach to reducing smoking amongst young people.

Internal documents from the tobacco industry show how they value packaging as an important promotional tool, and how it has grown in importance for them as other forms of advertising have been restricted. Plain packaging is needed to close the loop hole of packaging. The tobacco industry says plain packs will increase smuggling – but the existing packs are already so easy to forge they use covert markings to discriminate them from illicit packs. The crux of the issue should be public health. Smoking remains the largest preventable cause of cancer. Overall, 100,000 deaths are caused by tobacco each year in the UK. Eight in 10 smokers start by the age of 19 – the beginning of an addiction that kills one in two of its long term users. Protecting children from tobacco marketing is crucial. This is also a measure that has strong public support, as well as the support of key health organisations and charities across the UK, such as Cancer Research UK, and globally such as the World Health Organisation (WHO) and the IASLC.

I welcome this consultation on the issue and sincerely hope for a positive outcome that sees plain packaging being introduced to the UK as soon as possible.

Yours faithfully,

[REDACTED],
Emeritus Professor of Thoracic Surgery, National Heart and Lung Institute, Imperial College,
Honorary Consultant in Thoracic Surgery, Royal Brompton Hospital, London.
President, International Association for the Study of Lung Cancer.

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From: [REDACTED].org.uk>
Sent: 12 July 2012 11:49
To: Tobaccopacks
Subject: SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS

FROM: INVOLVE NORTH EAST

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14. In a survey of 3389 Newcastle secondary school pupils in 2011, the average age of starting to smoke was just 12 years old. 15% of 15 year old pupils reported that they were already regular smokers. (NHS North of Tyne and Newcastle City Council (2011). The Health Related Behaviour of Secondary School Pupils in Newcastle (2011)).

Smoking still remains the largest cause of premature death, disease and health inequalities in the Newcastle, killing 410 adults over the age of 35 years each year and costing at least ££23.86 m each year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism. (Brunel University (2012). Economics of Tobacco Control. Brunel University. And London School of Economics, "An Economic Analysis of the Cost of Employee Smoking borne by Employers" www.freshne.com/News-and-Events/Press/Article/money-going-up-in-smoke-smoking-costs-north-east-businesses-70m-a-year-110609)

Based on this level of harm to individuals, communities and the city of Newcastle, we believe standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former "low tar" brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

We believe that it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through innovative, colourful packaging in a similar way to breakfast cereals, energy drinks or confectionary.

There is high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We call for Government action to adopt this measure and help to make smoking history for more children of Newcastle.

Yours sincerely


Chief Executive



Involve North East the new name for Community Action on Health
26 Hawthorn Terrace
Newcastle upon Tyne
NE4 6RJ

Telephone: 

Website: www.involvene.org.uk
www.healthsignpostdirectory.org.uk

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From: [REDACTED]@parliament.uk>
Sent: 09 August 2012 12:52
To: Tobaccopacks
Cc: MACDONALD, Mark
Subject: Consultation response
Attachments: tobacco packaging consultation.docx
Importance: High

I recently undertook an 'econsultation' of my online panel of more than 1500 constituents, whom I regularly invite to vote on a topical matter and let me know their views. In July I decided to invite their views on the current government consultation and proposals on plain tobacco packaging and would like to submit the results here to the consultation.

303 constituents responded to my econsultation. 226 were supportive of plain tobacco packaging and 77 were against the proposals.

Some of the main arguments given in support of the proposals included:

- Smoking should be made as unglamorous as possible to put off young people in particular.
- Commercial competition between tobacco companies would be suppressed, leading to a reduction in other types of advertising, and a general loss of power and revenue for tobacco companies.
- Bright colours and attractive colours are said to attract consumers so removing these would be beneficial.

Some of the main arguments given against the proposals included:

- Other drugs are sold in plain packaging yet people still seek them out and get addicted – why should tobacco be any different?
- Existing hard-hitting warnings do an effective job already.
- An unregulated black market would be created, further risking health and financing crime

This result shows clear support for plain tobacco packaging amongst respondents, with many constituents calling upon the Government to bring forward legislation as soon as possible.

However, others were worried about the potential for an unregulated black market which could lead to poor quality products and exploitation. I hope Ministers can provide reassurance for those worried about the potential impact of plain packaging should the Government decide to go ahead with its proposals.

A selection of my constituents' comments, both for and against plain tobacco packaging, is attached and I would be grateful if they could be considered as part of the Government's consultation on the matter.

Yours sincerely,

Jo Swinson MP



Jo Swinson MP

East Dunbartonshire

Tel: [REDACTED]

Email: [REDACTED]@parliament.uk

Web: www.joswinson.org.uk



Please consider the environment before printing

Whilst Jo Swinson MP will treat as confidential any personal information which you pass on, she will normally allow staff and authorised volunteers to see it if this is needed to help and advise you. Jo Swinson MP may pass on all or some of this information to agencies such as the DWP, the Inland Revenue, or the local Council if this is necessary to help with your case. She may also wish to write to you from time to time to keep you informed on issues which you may find of interest. Please let her know if you do not wish to be contacted for this purpose.

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Comments in favour of plain tobacco packaging:

██████████ - We both feel strongly that plain packaging would cut down on youngsters trying to impress their friends with whatever brand of cigarette, we believe that education is the right way forward, taking primary 7 age pupils and first year secondary pupils into cancer wards would have a huge impact, my own experience was as a trainee nurse many years ago, one of our tutors inhaled the cigarette smoke and then exhaled into a white hankie, the resulting black mark was sufficient to put me off then and ever since.

██████████ - I don't think it will make much difference, but anything is worth trying. A black market is worrying from the point of view of tax avoidance, but it would probably increase the price - which would be good.

██████ - As an ex-tobacco-addict I think anything that can be done to reduce their sales is a wonderful idea.

██████████ - I would also like to see a pre-emptive ban on including anything other than cigarettes in the package and on designing distinctive-looking cigarettes. These are to prevent any possible differentiation between products.

██████████ - Yes, anything that takes the glamour away from a habit that causes so much ill health & such an unnecessary drain on NHS resources.

██████████ - Tobacco is a killer. Smoking causes avoidable suffering to many people, including those who do not smoke, and costs the health service and the country huge amounts of money. Forget the business consequences; the companies are well aware they sell a product that kills people and yet they are permitted to carry on their business. This is insanity and a gross dereliction of political duty in not doing more to curb the sale of the product.

██████████ - I agree such a proposal should be implemented. It would to some extent reduce the 'cool' element to producing a cigarette package, dull looking and the same as everyone else's. No kudos in that

Anon - When I first smoked-(age about 16!) I was definitely influenced by the packaging of cigarettes. Looking back now it was completely illogical but clearly the manufacturers knew what they were doing.

██████████ - There are so many reasons why the promotion and sale of tobacco products should be restricted it is incredible that any sane individual could disagree with this step. It is so inconceivable that in our 'enlightened' times that it should be permissible to supply to the general public a substance which administers a cocktail of proven carcinogens and toxins, made palatable only by an addictive narcotic, and which emits acrid and toxic smoke and fumes in the vicinity, to the detriment of others.

██████████ - Plain tobacco packaging - absolutely. If someone wants to smoke and ruin their health then make it as unglamorous as possible. They should also be subjected to the sight of tobacco ridden lungs and the sound of a smokers cough in the morning (sorry, I know that's a bit off the agenda but I remember well a film at school which showed exactly that and it was very offputting).

██████████ - A definite 'Yes' on this particularly unhealthy habit - there are more and more 'school children' still taking up this practice as can be witnessed in the vicinity most schools in our own particular areas and I'm sure this will be a similar pattern throughout the UK as a whole. It therefore should and must be discouraged in every way possible - anything that may help could be a definite bonus of some sorts for much 'healthier' future generations - The serious pitfalls of this have been

well proven and documented over many years of investigations/examinations, but alas - apparently to no avail in some walks of life !!!

██████████ - Younger people who are drawn to the brightly coloured and marketing orientated packaging will not be quite so interested any more, making it less likely that they will start smoking. Even if this is only a marginal decrease in probability it will still make a big difference.

██████████ - Of course I would prefer to see smoking made illegal (like heroin and other drugs) but in the mean time plain packaging would be an advance.

██████████ - As a doctor I see many smoking related diseases and I believe that plain packaging will be the next step to improve public health.

██████████ - Branded tobacco products undoubtedly have the ability to attract customers. One example was the Marlboro cowboy, used to make the brand appealing to men i.e. it's manly to smoke. Pathetic but it worked. Plain packaging removes this "buy me" attraction and is therefore worth pursuing. I accept that it may attract counterfeiters but fake products are already a concern in various commercial product ranges so it's nothing new. Avoidance of Fake products can usually be avoided by using reputable retailers.

██████████ - As a senior GP partner of over 25 years standing I would support anything which would discourage people from smoking as I see the long term damage it does in my everyday work.

Comments against plain tobacco packaging:

██████████ - Whilst I would thoroughly encourage a campaign to discourage smoking in the ways mentioned, I do have doubts about enforcing plain packaging. If for cigarettes, then where else could it lead? Crisp packets, fizzy drinks, alcohol, anything deemed dangerous for health? Freedom of choice and expression should be guarded as far as possible and the most effective way of helping people make sensible choices is through education.

██████████ - I do not agree with the proposal that tobacco products should be sold in plain standardised packaging. It is not clear to me that the benefits, if any, would be demonstrably significant given the ability of humans to find ways around such attempts to restrict their behaviour, the prohibition of alcohol in the USA in the 1920s being a case in point.

██████████ - I totally disagree with the principal of this proposed approach. It is a very authoritarian approach which seems to be the way with many policies nowadays. I feel that further educating the young ones and the public about the dangers of smoking is the democratic way forward. Everyone should have a choice of what they want to buy and this approach sets a dangerous precedent. Does this mean this proposal could be extended to other things we are told are bad for us e.g. alcohol, certain foods etc.

██████████ - I smoked in my youth and starting had nothing to do with the packaging but more to do with peer pressure. This is just more un-necessary legislation.

██████████ - Living in a democracy, means having the freedom to choose - even if it means a wrong or foolish choice can be made.

██████████ - In my view the "plain tobacco packaging" is a complete waste of time and money and the resources could be put to better use. I strongly believe that education at school level with even the rather dramatic viewing of a clean lung compared to one that has been a smoker may hit the spot. Most people know of somebody that has a cancer and again education of people that pupils may

know and respect may work. I do not think that plain package will make any difference and may in fact start a curiosity factor.

██████████ - While tobacco is a legal product, manufacturers should be freely permitted to chose their own design of packaging. I seriously doubt if ever anybody as started smoking just because they saw a fancy cigarette pack. There are many other influences to encourage people to smoke. The design of the package merely influences their choice of brand. People now are far better educated as to the health dangers of smoking, but yet some still start. I am an ex-smoker, I have been there, but the design of the packaging never caused me to start or to continue. Packaging may have influenced my choice of brand, but knowledge of the brand name let me know what to buy.

██████████ - I don't smoke and I very much disapprove, but I think there are other more important priorities, this is interference in free choice and enterprise, and is increasing red tape.

[REDACTED]

From: [REDACTED] (Assembly Member) <[REDACTED]@Wales.gov.uk>
Sent: 13 June 2012 09:32
To: Tobaccopacks
Subject: Response to Plain Packs Consultation

Dear Sir/Madam,

I wish to add my support to the introduction of plain packaging on tobacco products as part of the current public consultation exercise.

During my time as Member of Parliament for Cardiff North, I tabled a Private Member's Bill to transfer the relevant powers to the National Assembly to introduce a ban on smoking in public places. The Bill, which did not become law, helped provide momentum in the on-going debate that eventually led to smoke-free workplace laws coming into effect across Wales in April 2007. That ban has led to far fewer non-smoking adults reporting being regularly exposed to other people's smoke, with rates halving from 66% in 2005/6 to 33%, just five years after the ban was introduced. The Welsh Government has also launched other initiatives, including a recent ban on the sale of tobacco from vending machines and an advertising campaign to encourage parents and other carers to keep their cars smoke free.

Around 14,000 young people aged 11-15 take up smoking each year in Wales and I believe that stopping tobacco companies from using packaging in their brand and marketing strategies would be a natural extension to the Welsh Government's attempts to discourage smoking amongst children.

Should plain packaging be introduced in the United Kingdom, it will allow health warnings to become bigger and more eye-catching. The young people who have discussed this issue with me, firmly believe this will help discourage their peers from becoming addicted to smoking. The change would help reduce the attractiveness of tobacco packaging and improve the impact of health warnings. It would also help combat the subtle colouring and marketing techniques so often associated with cigarette brands and image. The introduction of plain packaging in Australia later this year, the first country to do so, reinforces the need for action in the UK.

Ideally, any ban should be introduced uniformly across the various UK administrations to minimise confusion and anomalies in law enforcement. Full consideration must also be given to the likely tobacco industry response to tightening the law so that, for example, any increase in social media marketing or growth in electronic cigarettes is contained.

I welcome this consultation and hope it will lead to progress being made in reducing the attractiveness of cigarette packaging and in turn improving the health and well being of the people of Wales and other parts of the United Kingdom.

Yours sincerely,

[Redacted signature]

STC 7

[Redacted name] AM

ST&T

Assembly Member for Cardiff North



[Redacted text]

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SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS

To @gsi.gov.uk

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism.

Redcar & Cleveland has approximately 26,000 smokers in total with equates to approximately 227 deaths per year attributed to smoking.

Based on this level of harm to individuals, communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former “low tar” brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people’s exposure to smoke from tobacco products.

We believe that it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through innovative, colourful packaging in a similar way to breakfast cereals, energy drinks or confectionary.

There is high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We call for Government action to adopt this measure and help to make smoking history for more children in the North East.

[REDACTED]
Youth Development Officer



Contact: S Lodge
Telephone: [REDACTED]
Fax: [REDACTED]
E-mail: [REDACTED]
Website: www.lancaster.gov.uk
Our Ref: letch390
Your Ref:

**Health and Housing
Services**

[REDACTED]
Head of Health and Housing

Town Hall
Marine Road
MORECAMBE
LA4 5AF

Tobacco Packs Consultation - by email
Department of Health
7th floor
Wellington House
133 - 155 Waterloo Road
LONDON
SE1 8UG

28th June 2012

Dear Sir/Madam

Re Standardised Packaging of tobacco Products

On 13th June 2012, Members of Lancaster City Council debated a motion put forward by the Cabinet Member for Health and Housing, Councillor Karen Leytham. This motion called for the introduction of legislation for standardised packaging of tobacco products to protect children and young people from tobacco marketing.

This motion was supported by Members on the basis that they recognise

- That smoking tobacco can cause serious and fatal disease, and that the only way to avoid the risks is not to smoke.
- That smoking is an addiction of childhood, with the vast majority of smokers starting before they are 18 years old.
- That approximately 13,000 people in *the North West* die from a smoking related disease every year.
- That with advertising bans in place, tobacco manufacturers have increasingly focused on packaging design to make their products more appealing
- That published, peer reviewed scientific research is clear that plain packs are less attractive especially to young people, strengthen the impact of health warnings, and make packs less misleading to consumers.

Members resolved to request that the Secretary of State brings forward legislation to introduce standardised packaging for tobacco products.

I would therefore like to submit this letter in response to the consultation to register Lancaster City Council's support for standardised packaging.

Yours faithfully

[REDACTED]

[REDACTED]

Head of Health & Housing (on behalf of the Chief Executive)

Lord Street & Grosvenor

Children's Centre

Every child matters in the Bolton family



Tobacco Packs Consultation
Department of Health
7th Floor Wellington House
133-155 Waterloo Road
London SE1 8UG

Via email to [redacted]@nhs.uk

4th July 2012

Dear Sir/Madam,

DH Consultation on standardised packaging of tobacco products

I write on behalf of my Children's Centre in response to the above consultation. As a Children's Centre we regularly see and support many parents of pre-school age children and their families locally. A key role of our Children's Centre is to support the health improvement of families and the health and wellbeing of children. A significant proportion of the parents visiting our centre do smoke and we provide educational activities and support for them to both quit and to protect their children from secondhand smoke by moving right outside to smoke when at home.

The consultation on plain tobacco packaging is welcomed and we would support the introduction of it as a measure to prevent more children and young people from starting to smoke. It is saddening to learn that most smokers start as children and that in the North West, of those who try smoking, 83 per cent do so before they are aged 14. This is shocking. Whilst parental smoking and peer pressure are clearly factors in young people taking up smoking, we believe the brightly coloured packaging does play a part – children are attracted to these just like other brands, especially as they become teenagers.

We will play our part in helping parents who want to quit to do so with NHS support, and to educate about the dangers of secondhand smoke on their young families, but our work and the work of others in the NHS and Local Government to help protect families from the harm caused by smoking needs to be continued throughout their young lives – any policy that will impact on young peoples smoking, like the introduction of plain, standardised cigarette packaging, is one we will support.

We call on you to take forward this policy and improve the lives of our children and young people everywhere.

Kind regards,

[REDACTED]

From: [REDACTED]@effem.com> on behalf of [REDACTED]
[REDACTED]@effem.com>
Sent: 02 July 2012 10:05
To: Tobaccopacks
Cc: [REDACTED]
Subject: Plain packaging consultation
Attachments: Plain packaging consultation_290612.docx

Dear Sir/Madam,

Please find attached the submission of Mars, Incorporated and its related entities (together "Mars") in response to your consultation on the plain packaging of tobacco products.

While Mars has no connections with the tobacco industry, we are concerned with both the legal and consumer knock-on effects which the introduction of plain packaging could have in the UK, in particular in the food and non-alcoholic beverage industries in which Mars operates.

As well as depriving brand owners of their intellectual property rights without compensation, in the food and non-alcoholic beverages industries the introduction of such legislation would lead not only to consumer confusion (as to both origin and quality), but also to a significant increase of counterfeit products and hence negatively impact on consumers' health and safety.

If laws regarding plain packaging are to be introduced at all, Mars submits that this should only be done after a very careful analysis of robust empirical data to demonstrate that, in the particular industry involved, there is a crucial and pressing need to protect the public's health and that no other viable solution is available to address that need.

Best regards,

Senior MPM/Regional Trademark Counsel, Europe, Russia & CIS



World
Trademark
Review

LEGAL, DEPT. MARS, INCORPORATED

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MARS

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Mars Chocolate UK Limited registered in England and Wales. Registration number: 6649982. Registered Office: 3D Dundee Road, Slough, Berkshire SL1 4LG

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MARS

chocolate

By email: dh.gsi.gov.uk

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29 June 2012

Dear Sir/Madam,

CONSULTATION ON THE PLAIN PACKAGING OF TOBACCO PRODUCTS

On behalf of Mars, Incorporated and its related entities (together "Mars"), I am writing to express Mars' concerns regarding the Government's expressed intentions to consider introducing mandatory plain packaging of tobacco products in the United Kingdom.

In short, although Mars has no direct or indirect link with the tobacco industry, nor any desire to have such a link, Mars is concerned with both the legal and consumer knock-on effects which the introduction of plain packaging could have in the UK, in particular in the food and non-alcoholic beverage industries in which Mars operates.

If laws regarding plain packaging are to be introduced at all, Mars submits that this should only be done after a very careful analysis of robust empirical data to demonstrate that, in the particular industry involved, there is a crucial and pressing need to protect the public's health and that no other viable solution is available to address that need.

1. Deprivation of property rights without compensation

From a legal perspective, the introduction of mandatory plain packaging would effectively deprive brand owners of their property rights without compensation.

In the context of the Australian Government's legislation, currently under challenge before the High Court of Australia, it is clear that brand owners have lost not only their registered trade marks, but also unregistered trade marks (including goodwill in the get-up of packaging), copyright works, registered designs and patents. No compensation has been offered

If such were to be introduced in the UK it would strip many brand owners' intellectual property rights of any substance, and render them vulnerable to revocation for non-use. Given the overwhelming value of trade marks and other rights for brand owners, in particular those which have been used for many decades and which have come to be uniquely associated in the minds of consumers with that brand owner, the failure to provide any compensation appears manifestly unjustified. Mars therefore submits that any proposed legislation should be extremely carefully considered, and used as a last resort only if no other viable options are available to meet the

public health needs identified. The issue of compensation to brand owners should also be addressed.

2. Policy concerns beyond plain packaging

Moreover, if the UK Government were to introduce such legislation in relation to tobacco products based on a "public protection" rationale, Mars is concerned that this would set a precedent enabling the Government to take action well beyond the labelling of packaging. In relation to intellectual property, patents for pharmaceuticals could be compulsorily acquired by the Government and used for disease outbreaks and software could be used without the payment of royalties on the basis of a necessity for defence purposes. Beyond the realm of intellectual property, one can see that land or other property could also be taken based on the same rationale.

3. Concerns with extension to other industries

Mars is concerned that the introduction of mandatory plain packaging in the tobacco industry would also set a key precedent for the application of similar legislation to other industries, including the food and non-alcoholic beverage industries in which Mars operates.

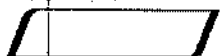
There have been recent developments in the UK to fight obesity. Mars takes the issue of obesity very seriously and is committed to **promoting a healthy, active lifestyle** and regular exercise. Indeed, Mars has changed the recipe of its MARS bar to significantly reduce the amount of saturated fat and also recently decided to reduce the size of all its chocolate bars to a maximum of 250 calories per bar. Mars is a responsible corporate entity with strong ethical values and will continue to work closely with the government on the obesity issue and implement changes to its products as required.

Against this background, Mars considers that there is no crucial and pressing industry-wide need to protect the public's health by way of plain packaging – individual manufacturers who are not helping the Government address the obesity issue can be targeted by a range of other means. Moreover, certainly there is no robust empirical evidence to show that the likely effect of the introduction of such legislation in the chocolate, other food and non-alcoholic beverage industries would be to the public's benefit.

4. Issues in the food and non-alcoholic beverage industries

Mars appreciates that plain packaging legislation attempts to help consumers address health concerns. However, non-verbal trade marks, whether logos, shapes, colours, sounds or other associated get-up elements used in the food and non-alcoholic beverage industries are also a tool to help *protect* consumers' health and safety. Indeed, these trade marks enable **consumers to identify the manufacturer** of the purchased goods and thus identify the *quality* of the products bought (distinguishing, for example a high quality organic product made in the UK from a low price product manufactured in a country which does not have the same health standard as in the European Union). Brand imagery on packaging therefore performs primarily a differentiation function. There is no evidence that on-pack designs prompt purchase or consumption.

For example, consumers have learnt to associate the "SNICKERS parallelogram"



with our SNICKERS product range.

Similarly, consumers associate Mars' round-ended bar with three waves on the top shape and associated get-up with our famous coconut confectionery BOUNTY. A visual of Mars' famous BOUNTY bar and get-up can be seen below:



Another example is the red background with floating chocolate balls associated by consumers with our famous MALTESERS brand.

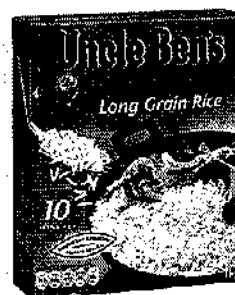


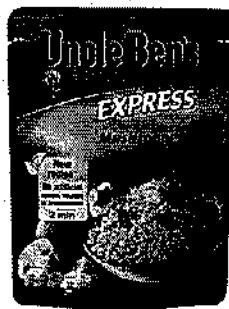
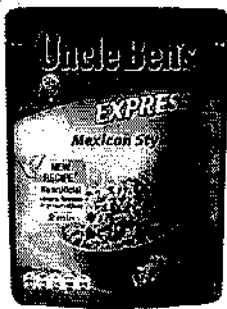
Mars has also been using a distinctive shade of orange (equivalent to Pantone 21C) ("UNCLE BEN'S Orange") for many years to distinguish its UNCLE BEN'S line of food products globally and registered several trade marks having effect in the European Union in combination with



other elements. By way of example, we own Community trade mark no 10 072 619. During this time, UNCLE BEN'S has achieved a growing success and today is unquestionably associated with the colour orange. Furthermore, Mars has made a very substantial investment of time and effort in the development of strong and distinctive packs for its UNCLE BEN'S range featuring its distinctive UNCLE BEN'S Orange shade as a background. The consistent use of the trade mark UNCLE BEN'S Orange ensures that consumers will – from a mere glance at the shelves – identify the UNCLE BEN'S branded products.

Some of our UNCLE BEN'S products can be seen below (see <http://www.unclebens.co.uk/>):





Mars has invested a significant time and effort in securing these brands and get-up protections to ensure consumer will not be confused as to the origin of the products they buy. Of course, Mars has thereby acquired a significant reputation and goodwill for its products. This has been a success as we have evidence showing **consumer recognition**. This evidence showing consumers' association of these key visual elements with our brands cannot be ignored.

To conclude, we are very concerned by the potential introduction of plain packaging as the consequences would be dramatic not only for brand owners, but also consumers. Ultimately, allowing plain packaging would not only lead to **consumer confusion** as to both origin and quality, but almost certainly result in a **significant increase of counterfeit products** (as counterfeiters would easily be able to replicate plain packaging featuring only a word element).

Moreover, allowing plain packaging would impact on consumers' **health and safety**. Indeed, when buying Mars products, the consumer has the guarantee that the products are manufactured in accordance with our health and safety standards and with the best ingredients (for example only with 100% cocoa butter chocolate).

Mars submits that all of these important considerations must be carefully balanced against any alleged public benefit to be achieved by introducing plain packaging in the food and non-alcoholic beverage industries. As things stand, there are no robust empirical studies on the impact of plain packaging on consumption of food or non-alcoholic beverages. The likely harm arising from such a policy has also not been assessed.

5. Conclusion and recommendations

Mars is concerned with both the legal and consumer knock-on effects which the introduction of plain packaging could have in the UK, in particular in the food and non-alcoholic beverage industries in which Mars operates.

As well as depriving brand owners of their intellectual property rights without compensation, in the food and non-alcoholic beverages industries the introduction of such legislation would lead not only to consumer confusion (as to both origin and quality), but also to a significant increase of counterfeit products and hence negatively impact on consumers' health and safety.

If laws regarding plain packaging are to be introduced at all, Mars submits that this should only be done after a very careful analysis of robust empirical data to demonstrate that, in the particular industry involved, there is a crucial and pressing need to protect the public's health and that no other viable solution is available to address that need.

Please do not hesitate to contact us should you have any questions on this submission.

Best regards,

[REDACTED]
Senior MPM/Regional Trademark Counsel, Europe, Russia & CIS

LEGAL DEPT. MARS, INCORPORATED

T: +44 [REDACTED] M: +44 [REDACTED]

E: [REDACTED]@effem.com



County Durham and Darlington

Our Reference
Your Reference

Public Health Directorate
Appleton House
Lanchester Road
Durham
DH1 5XZ

Direct line [REDACTED]
Main number [REDACTED]
Fax [REDACTED]
E-mail [REDACTED]@nhs.net

18 July 2012

To [REDACTED]@nhs.uk

RE SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS

The maternity matters group of County Durham and Darlington is committed to developing a high quality, safe and accessible maternity service that provides a choice guarantee for women. This ensures that all women have choice around the type of care that they receive, together with improved access to services and continuity of midwifery care and support.

We would therefore like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism. Within County Durham the cost is estimated to be £21 million a year and smoking attributable deaths in County Durham are higher than the north east average.



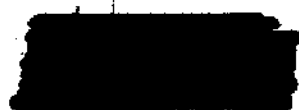
Based on this level of harm to individuals, our communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former "low tar" brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

Having seen these cigarette packaging the AAP believes it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through these innovative, colourful packaging, similar to the way breakfast cereals, energy drinks or confectionary are marketed.

There is within the AAP high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We therefore call for Government action to adopt this measure and help to make smoking history for our children.

Yours faithfully



**Acting Consultant in Public Health
Chair of the Maternity Matters Group**



Mereside Primary School and Children's Centre

Langdale Rd
Blackpool

██████████ (School)
██████████ (Children's Centre)
██████████

Headteacher: ██████████

Deputy Headteacher: ██████████

Centre Leader: ██████████

Tobacco Packs Consultation
Department of Health
7th Floor Wellington House
133-155 Waterloo Road
London SE1 8UG

Via email to ██████████@si.gov.uk

13th July 2012

Dear Sir/Madam,

DH Consultation on standardised packaging of tobacco products

I write on behalf of my Children's Centre in response to the above consultation. As a Children's Centre we regularly see and support many parents of pre-school age children and their families locally. A key role of our Children's Centre is to support the health improvement of families and the health and wellbeing of children. A significant proportion of the parents visiting our centre do smoke and we aim to provide educational activities and support for them to both quit and to protect their children from second hand smoke by choosing to smoke outside when at home.

The consultation on plain tobacco packaging is welcomed and we would support its introduction as a measure to prevent more children and young people from starting to smoke. Whilst parental smoking and peer pressure are clearly factors in young people taking up smoking, we believe the brightly coloured packaging does play a part – children are attracted to these just like other brands, especially as they become teenagers. 83% of people who try smoking do so before they turn 14 and we support any action that ensures they cannot be targeted by advertising at this young age.

We will play our part in helping parents who want to quit to do so with NHS support, and to educate about the dangers of second hand smoke on their young families. Our work and the work of others in the NHS and Local Government protecting families from the dangers of tobacco smoke can only be effective if we have outside support – any policy that will impact on young peoples smoking, like the introduction of plain, standardised cigarette packaging, is one we will support.

We call on you to take forward this policy and improve the lives of our children and young people everywhere.

Yours sincerely

██████████
Mereside Children's Centre Manager



**Sure Start
Children's Centres**





MICHAEL FALLON MP
Sevenoaks & Swanley

House of Commons
London
SW1A 0AA

17th April 2012

Anne Milton MP
Parliamentary Under-Secretary of State
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS



Dear Anne

I am writing to submit my views to the Department of Health's consultation on standardised tobacco packaging.

I am concerned that standardised packaging for tobacco products will increase the scope for fraud. The Treasury is already losing around £3 billion a year from tobacco that has evaded UK duty, a figure which might well increase following the introduction of plain packaging.

A Sub-Committee of the Treasury Select Committee examined this matter in some detail in 2005. As a member of that Sub-Committee, I visited China, the largest source of counterfeit cigarettes destined for the UK, to see the illicit tobacco industry in operation. The Committee also received evidence from HMRC and tobacco companies.

The Committee concluded that the counterfeit tobacco industry had advanced to such a stage where its participants could respond adeptly to the changing regulatory requirements in foreign markets: the counterfeiters were able to adapt their products when required. I am, therefore, concerned that the flow of contraband tobacco will increase following the introduction of standardised packaging. I believe that fraudsters will find it easier as a result of this measure to produce illicit tobacco products.

The Committee also argued that HMRC were not devoting sufficient resources to countering the illegal tobacco trade. For example, paragraph 51 of our report noted the following:-

We were surprised to learn during our visit to China ... that there was only one UK Customs officer, based in Hong Kong, to cover the whole country. We were

website www.michaelfallonmp.org.uk

also surprised to discover that until our visit there had been no meetings between UK Customs and the State Tobacco Monopoly Administration, the agency charged with tackling cigarette counterfeiting in China.

Since the report was published in 2005, I do not believe that HMRC has adequately addressed the Committee's concerns. For instance, I am not aware of a significant increase in the number of HMRC officers devoted to the frustrating of the unlawful tobacco trade from China. Given the nature of the counterfeit tobacco trade, I do not think that this is the right moment to introduce plain packaging. I would encourage you to read the Committee's report, a copy of which I enclose with this letter.

Any decision by the Department must be evidenced-based. There is, at the moment, a paucity of evidence in this area. There is no guarantee that the introduction of plain packaging will have the outcome intended. Plain packaging has not been implemented anywhere in the world, apart from Australia at the end of this year. Surely it would make more sense to see how this experiment works first, before introducing a similar measure in the UK.

I do not believe that the Department should legislate to introduce plain packaging for tobacco products. I hope that this view is incorporated into the Department's final proposal.

With all best wishes,

7 May 2011



MICHAEL FALLON

7 June 2012

SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS

The Mid Durham Area Action Partnership (AAP) would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation. Mid Durham AAP is one of 14 partnerships throughout County Durham that have been set up to work with various partners and local residents to address local issues together.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism. Within County Durham the cost is estimated to be £21 million a year and smoking attributable deaths in County Durham are higher than the north east average.

Based on this level of harm to individuals, our communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former "low tar" brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.

Cont.....

- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

Having seen these cigarette packaging the AAP believes it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through these innovative, colourful packaging, similar to the way breakfast cereals, energy drinks or confectionary are marketed.

There is within the AAP high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We therefore call for Government action to adopt this measure and help to make smoking history for our children.

Yours faithfully

A black rectangular redaction box covering the signature of the Mid Durham AAP Chair.

Mid Durham AAP Chair



SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS

To education@hqi.gov.uk

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

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- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

We believe that it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through innovative, colourful packaging in a similar way to breakfast cereals, energy drinks or confectionary.

There is high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We call for Government action to adopt this measure and help to make smoking history for more children in the North East.


Student Wellbeing Officer
Middlesbrough College



MORRISONS

Tobacco Packs Consultation
Department of Health
7th Floor
Wellington House
133 - 155 Waterloo Road
London
SE1 8UG

[\[REDACTED\]gsi.gov.uk](http://www.gsi.gov.uk)

August 2012

Consultation on standardised packaging of tobacco products

Morrisons

1. Wm Morrison Supermarkets plc ("Morrisons") welcomes the opportunity to respond to the Department of Health's consultation on tobacco packaging.
2. We have limited our response to our areas of expertise, and do not intend to challenge the evidence base in relation to standardised packaging.
3. Morrisons is the UK's fourth largest food retailer by market share, with 477 stores across the UK. We are also food manufacturers, making us the second largest fresh food manufacturer.
4. We have tobacco kiosks in all our stores, and also in our petrol station shops. We therefore have many years experience in the retailing of tobacco, as Morrisons began in 1899.

Summary

5. Whilst we support any action the Government might take to improve the health of the nation, we believe standardised packaging will lead to an increase in counterfeit goods, and consequently an increase in smuggling in to the UK.
6. The sale of counterfeit product deprives Her Majesty's Government of tax income, and puts at further risk the health of smokers who cannot be sure of the quality of the cigarettes they consume.
7. As the consultation specifically asks about the costs to retailers - we believe standardised packaging would have a significant impact on the workload of our colleagues.
8. Already, our colleagues have experienced an increased workload in dealing with the workings of the tobacco display which makes locating tobacco products more difficult. Tobacco products in standardised packaging combined with a tobacco display ban would clearly add a layer of complexity and difficulty for shopfloor colleagues. Anything in the

retail environment which adds to transaction times, always has a knock-on effect in terms of cost. These costs inevitably risks being passed on to all customers, not just those who choose to purchase tobacco products.

9. **We prefer option three.** We believe that a more suitable solution would be the immediate extension of the tobacco display ban to all retail stores selling tobacco products in the UK.

Tobacco Display Ban

10. As of 6th April 2012, we introduced a ban on the display of tobacco in all our stores along with all other large food retailers. The BRC estimate that these changes cost retailers approximately £16m.
11. We agree therefore with the Food Director of the BRC who said:
"Having just forced large retailers to spend almost £16 million refitting stores to hide tobacco products the Government is now confirming it's considering legislation on packaging. That (is) completely against the Government's own better regulation principles. If a decision is taken to go ahead with standardised packaging, concealing products from view in shops becomes irrelevant." (13 April 2012) Andrew Opie, Food Director, British Retail Consortium (BRC)
12. The tobacco display ban was a significant undertaking for multiple retailers and suppliers, and the impact of that project on business should not be underestimated. It involved significant training on processes and operations, as well as a detailed ongoing solution for the maintenance of equipment.
13. However, now that retailers and suppliers have a workable solution to the display ban, we believe it would be prudent to extend that display ban to all retailers selling tobacco products. The introduction of standardised packaging at the same time as a display ban on tobacco creates duplication and goes against the principles of better regulation.

Counterfeit Product

14. We know from experience as retailers that the illicit trade in tobacco products is already a serious problem in the UK.
15. HMRC currently estimate that 16% of the market for cigarettes, and 50% of the market for hand-rolling tobacco, is illicit (HMRC, Measuring Tax Gaps, September 2011, pages 25-26). HMT therefore already loses up to £3.1 billion a year in revenue from the illicit trade in tobacco products (ibid).
16. The Government clearly needs to be mindful of the effects of standardised packaging on illicit trade. We believe that standardised packaging will worsen the illicit trade in tobacco products, making it easier to counterfeit substandard product that can so often be of danger to smokers.

17. Public health officials have repeatedly expressed concern that smokers can be exposed to greater health risks by consuming an illicit product. The "Dodgy Cigs" campaign, jointly run by DoH and HMRC, has warned that:

"Often manufactured in backstreet factories with no regulations or quality control, cheap cigarettes and tobacco can contain bugs, rat droppings or any other old muck lying around on the floor. Many Dodgy Cigs have also been found to contain much higher levels of cancer-causing chemicals including arsenic and cadmium" ("What goes into dodgy cigs is criminal", http://www.dodgycigs.co.uk/index.php?option=com_content&view=article&id=51&Itemid=2)

18. It is common sense that standardised packs are cheaper and easier to fake than branded ones. A standardised pack removes the need to keep up with manufacturers' changing pack designs. As grocery retailers, we understand how often major brand owners across the store change their packaging. Part of the reason they do this is to ensure that counterfeit or indeed 'copycat' versions of their products are more difficult to create.

Conclusion

19. We are always willing to support initiatives that help our customers improve their health and lifestyle. That is why we have been pleased to support the NHS in distributing 'Quit Kits' through our pharmacies.
20. It is also why we have signed up to so many areas of the Government's responsibility deal. It is also why we have launched our NuMe range of products which in turn support the calorie reduction pledge.
21. In this case however, we believe that standardised packaging will have unintended consequences for customers who will lose confidence in which tobacco products are genuine and which are fake.
22. It will also have unintended consequences for HMRC who will lose the tax income because of the increase in illicit tobacco.
23. Most importantly, following so soon on the back of the tobacco display ban for large stores, we believe this would demonstrate poor regulation and a duplication of existing measures – without giving those measures the chance to work.
24. Supporting the idea of an 'Option Three' we suggest that instead of standardised packaging, the tobacco display ban should immediately be extended to cover all retailers selling tobacco products.

We would be pleased to expand further on any of the points raised above.

From: [REDACTED]
Sent: 10 August 2012 11:00
To: Tobaccopacks
Subject: Supporting plain packaging of cigarettes

To UK Health Minister Andrew Lansley,

I support the proposal to require tobacco products to be sold only in plain packaging. Young people are still taking up smoking and there is evidence that the younger a person is when they start smoking, the more difficult it is to give up. Branded packaging is a factor in encouraging young people to smoke. We must protect the younger generation from the mistakes of previous generations. Please make sure that the legislation to enforce plain packaging becomes law.

With regards

[REDACTED]
United Kingdom

Note: [REDACTED] sent you this message as part of an Avaaz campaign to support plain packs in the UK http://www.avaaz.org/en/our_lungs_vs_sam/?reply. To respond, please e-mail reply+plainpacks@Avaaz.org

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless in partnership with MessageLabs. (CCTM Certificate Number 2006/04/0007.)

DH users see Computer virus guidance on Delphi under Security in DH, for further details. In case of problems, please call the IT support helpdesk.

10 July 2012

Tobacco Packs Consultation
Department of Health
7th Floor
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133-155 Waterloo Road
London
SE1 8UG

Email: [REDACTED] gov.uk



Heart Foundation
ABN 98 008 419 761

Level 12, 500 Collins Street
Melbourne VIC 3000

Telephone [REDACTED]
Facsimile [REDACTED]

For heart health information
[REDACTED]
www.heartfoundation.org.au

Consultation on standardised packaging of tobacco products

The National Heart Foundation of Australia welcomes the opportunity to make a submission as part of the consultation on standardised packaging of tobacco products.

We are pleased that the British Government is looking at standardised packaging of tobacco products and strongly encourage legislative change to require standardised, or plain, packaging of all tobacco products.

The Heart Foundation is a charity dedicated to reducing death and suffering from the leading killer of Australians, cardiovascular disease (CVD).¹ Smoking causes heart disease, stroke and peripheral vascular disease. About 12% of all cardiovascular deaths in Australia - and 10% per cent globally - are caused by tobacco consumption.^{2,3}

With the gradual increase in restrictions on the advertising of tobacco, the tobacco industry has become increasingly reliant on the cigarette pack itself to advertise and promote its products.

The tobacco industry's use of colour, novelty packaging and other imagery enables it to target particular market segments and convey brand character. Colour and imagery are also used to misleadingly convey relative brand strength and quality.⁴

A comprehensive ban on the advertising and promotion of tobacco products, including through use of the pack itself, is essential to any comprehensive approach to reducing the harm caused by tobacco.

The plain packaging of cigarettes, as it is known in Australia, would eliminate the tobacco industry's ability to promote smoking and brand personality through the pack, reduce rates of smoking initiation and consumption, enhance the effectiveness of pack warnings and remove the pack's ability to mislead and deceive consumers.

Research shows that plain packaging is likely to:

- make health warning messages on packs more prominent and enhance recall;⁵

¹ Australian Institute of Health and Welfare, *Cardiovascular Disease Australian Facts 2011*, 2011

² Australian Institute of Health and Welfare, *Heart, Stroke and Vascular Diseases Australian Facts 2004*

³ International Tobacco Control, World Health Organisation and World Heart Federation, *Cardiovascular harms from tobacco use and secondhand smoke: Global gaps in awareness and implications for action*, 2012

⁴ The joint submission of the Cancer Council and Heart Foundation to the House of Representatives Health and Ageing Committee inquiry into plain packaging, 2011

- reduce the link between cigarette branding and 'false beliefs' of different levels of health risks associated with each brand/product;⁵
- reduce youth smoking⁷ and decrease smoking uptake by youth;⁸
- remove positive association with cigarette brands and image;⁹ and
- increase the incidence of people quitting.¹⁰

On this basis, we strongly advocated for plain packaging in Australia and urge the UK to implement similar legislation.

Plain packaging was also a recommendation of the Australian Government's National Preventative Health Taskforce. The Taskforce recommended that all forms of advertising and promotion of tobacco products, which included promotion through packaging, should cease.

The introduction of plain packing in Australia was the result of a considerable amount of commitment by researchers, government officials, public health experts and others. This included considering the social, political, legal, trade and importantly - health impacts of this legislation.

A detailed evidence document was produced by the Cancer Council of Australia to support our call for plain packaging in Australia. I have attached a copy of this document for your information.

International obligations should also be considered when looking at the move to plain packaging. Plain packaging regulations are necessary to implement the United Kingdom of Great Britain and Northern Ireland's obligations under Article 13 (tobacco advertising, promotion and sponsorship) of the World Health Organisation's Framework Convention on Tobacco Control, which requires a 'comprehensive ban of all tobacco advertising, promotion and sponsorship'. Plain packaging will also help the Government to meet its obligations under Article 11 (packaging and labelling of tobacco products) of the FCTC.

On April 19, 2012, the New Zealand Government announced that it will conduct a consultation on plain packaging. This move, along with that of the British Government is highly commendable.

⁵ Goldberg ME. The Effect of plain packaging on response to health warnings. *American Journal of Public Health*, 1999.

⁶ Hammond, D. et al. Cigarette pack design and perceptions of risk among UK adults and youth. *SRNT*, Dublin, 28 April 2009. The study (which is yet to be published) found that 75% of adult smokers incorrectly believed there was a difference in health benefits between brands. Similar findings were apparent from the children surveyed who have grown up during an era when most forms of tobacco advertising have been banned including the use of misleading health claims (such as 'light' and 'mild') since 2003. The study also found that adult smokers and children were much less likely to perceive any difference in terms of health risk when plain packs were used.

⁷ Centre for Health Promotion. Effects of plain packaging on the image of tobacco products among youth. Prepared for the Canadian Cancer Society, November 30, 1993. Centre for Behavioural Research in Cancer "Adolescents reactions to cigarette packs modified to increase extent and impact of health warnings" in Health Warning and Content Labelling on Tobacco Products. Report prepared for the Ministerial Council on Drug Strategy Tobacco Task Force (Melbourne: Anti-Cancer Council of Victoria, 1992).

⁸ Goldberg ME, Kindra G, Lefebvre J, Liefeld J, Madill-Marshall J, Mattohardjono N, et al. When packages can't speak: Possible impact of plain and generic packaging of tobacco products. Expert Panel Report, Ottawa, Canada: Health Canada; 1995 p 158.

⁹ Wakefield M, Germain D, Durkin, S. How does increasingly plainer cigarette packaging influence adult smokers' perceptions about brand image? An experimental study, Centre for Behavioural Research in Cancer, the Cancer Council Victoria, 30 September 2008, p 3

¹⁰ Goldberg ME, Kindra G, Lefebvre J, Liefeld J, Madill-Marshall J, Mattohardjono N, et al. When packages can't speak: Possible impact of plain and generic packaging of tobacco products. Expert Panel Report, Ottawa, Canada: Health Canada; 1995

Plain packaging is sensible and much needed reform and should be part of any comprehensive approach to tobacco control.

Finally, we work closely with the Cancer Council of Australia through our joint Tobacco issues Committee. As such, we and commend to you the submission by Cancer Council Victoria.

The Heart Foundation does not have any direct or indirect links to, or receive funding from, the tobacco industry.

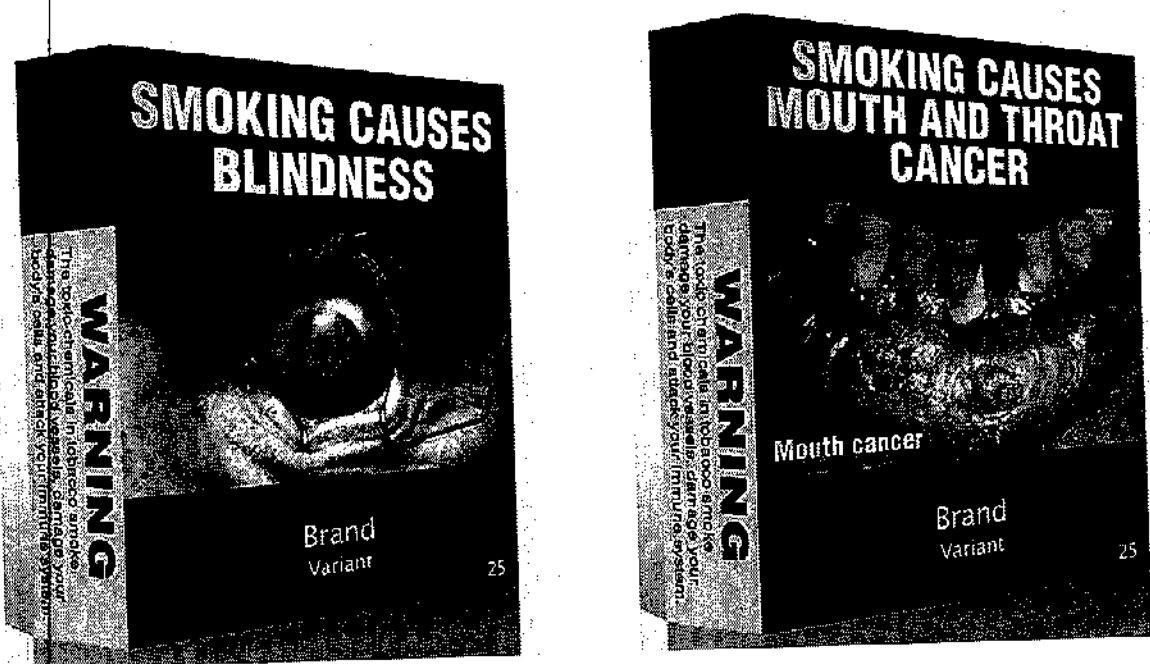
We are keen to assist with any further details you may require. Our contact officer is [REDACTED]
[REDACTED] National Director – Government Relations, email:
[REDACTED] [\[REDACTED\]@heartfoundation.org.au](mailto:[REDACTED]@heartfoundation.org.au).

Yours sincerely

[REDACTED]

[REDACTED]
Chief Executive Officer - National

Plain packaging of tobacco products: a review of the evidence



Proposed design of plain cigarette packaging.

Source: Commonwealth of Australia (2010). Public consultation on plain packaging of tobacco products.

Prepared by Quit Victoria, Cancer Council Victoria, May 2011

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1. Executive summary

This paper presents the findings of research over two decades and across five countries on the topic of plain packaging. It includes the results of 24 published experimental studies which have examined the likely impact of plain packaging on young people and current smokers (Section 5)¹. It also summarises the results of research papers that analyse industry arguments about barriers to legislation resulting from international law and trade agreements (Section 7).

The main findings from this compilation of literature are as follows:

- In a worldwide environment of increasing prohibition of tobacco advertising and sponsorship, the cigarette pack has become the key marketing tool employed by the tobacco industry to attract and retain customers. (Section 3)
- The tobacco industry uses cigarette pack technologies and innovations in design to communicate particular attributes about each brand and by extension the personality and social status of its users. (Section 4)
- Current pack colours and imagery can dilute the impact of graphic health warnings. (Section 5.2.1)
- Unregulated package colouring and imagery contribute to consumers' misperceptions that certain brands are safer than others. Removing colours from cigarette packs and misleading terms such as 'smooth', 'gold' and 'silver' would reduce false beliefs about the harmfulness of cigarettes. (Section 5.2.2)
- Adults and adolescents perceive cigarettes in plain packs to be less appealing, less palatable, less satisfying and of lower quality compared to cigarettes in current packaging. Plain packaging would also affect young people's perceptions about the characteristics and status of the people who smoke particular brands. (Section 5.2.3)
- Plain packaging featuring larger graphic health warnings (75% front of pack) will both reduce the appeal of the pack and strengthen the impact of the warnings. (Section 5.2.4)
- British American Tobacco has claimed that the legislation will not be effective, pointing to the results of an international analysis it has commissioned (and provided data for) on the impact of health warnings on sales. Health warnings have a different objective to plain packaging and monthly variations in sales data are not an appropriate indicator of effectiveness. In any case the data on which this analysis is based is highly selective and the specifications of the modelling incorrect in at least one important respect. (Section 7.1).
- The Alliance of Australian Retailers alleges that plain packaging would damage retailer business, increasing transaction time at the counter due to difficulties in differentiating between brands. The AAR suggests that as a result, customers would switch to discount outlets. However, any loss of convenience at retail outlets will apply equally to discount and convenience outlets. Measures including labelling of the containers where packs are stored and brand names printed on packs in a clear font style and size would assist retailers to quickly identify and retrieve particular brands. (Section 6.3 and 7.2)
- The tobacco industry claims plain packaging represents an acquisition of intellectual property and as such is prohibited under the terms of various international trade agreements. The industry has suggested the Australian Government would be forced to compensate the industry

¹ V3 19.05.11. We intend to add to this review results of several more studies that we are informed are close to publication.

in billions of dollars. Papers by experts in constitutional and trademark law on the other hand suggest that international agreements permit governments to restrict use of trademarks to protect public health. They advise that plain packaging will not be an acquisition of intellectual property, as the Government does not intend to use the logos or brand imagery; it will simply be restricting the use of these marketing tools on cigarette packages. If Courts were to rule that restriction of use of trademarks was an acquisition of property, then the legislation has been drafted to allow the use of trademarks with limitations. (Section 7.3)

- Plain packaging has been carefully considered and researched in Australia and overseas for some 20 years, but contrary to claims by tobacco companies it has *not* been abandoned as a policy option. The paper provides links to statements by parliamentarians in New Zealand, France, the United Kingdom and the European Union, which are all either undertaking public consultation on plain packaging or have named plain packaging among proposals for future tobacco control strategies. (Section 7.4)
- Companies have claimed that the legislation will reduce price and competition in the market. Opinions of industry analysts about the likely effects on competition are mixed. As pointed out by Deloitte MCS, future governments have open to them the option of further increasing excise and customs duty on tobacco products should average prices of tobacco products fall. (Section 7.5)
- Tobacco industry claims that plain packaging will increase illicit trade are exaggerated and misleading. The industry's estimation of the current size of the illicit market in Australia (15.9%) is based on one very small survey (949 people) with a very low response rate. The Government's National Drug Strategy Household Survey of more than 23,000 people suggests that only about 0.2% of Australians (1.2% of smokers) use unbranded tobacco products 'half the time or more'. The Australian Government's draft plain packaging legislation specifies that anti-counterfeiting markings will be permitted on plain packaging, and the Australian Taxation Office and the Australian Customs and Border Protection Service should and no doubt will continue to vigorously pursue technologies and other surveillance and enforcement strategies to prevent the evasion of excise and customs duty in this country. (Section 7.6)

In summary there are strong grounds for believing that current packaging glamourises smoking and that tobacco products packaged in a standardised colour, typeface and form would:

- improve the effectiveness of health warnings
- reduce misconceptions about relative harmfulness of various brands and
- reduce the overall appeal of smoking

The intensity of opposition to plain packaging legislation by tobacco companies suggests that tobacco industry executives believe that such measures *will* reduce sales and company profits.

2. Introduction

Tobacco products are unique among consumer items in that they cause the premature death of every second long-term user. While it is impractical to ban the purchase of a product that so many people find so difficult to quit, governments the world over have accepted that it is unethical to encourage use of tobacco and appropriate to legislate to prevent all forms of its promotion. Despite the efforts of governments to comprehensively discourage smoking, innovation in packaging has resulted in continuing promotion of tobacco products.

On the 29th April 2010 the Australian Government announced^[1] two of its major responses to the recommendations^[2] of its Preventative Health Taskforce^[3] which had set out a comprehensive package of measures to 'make Australia the healthiest country by the year 2020'. A proposal to mandate plain packaging for all tobacco products sold in Australia was the centrepiece of the Government's response. Plain packaging recognises Australia's commitment as a signatory to the World Health Organization Framework Convention on Tobacco Control^[4] and has been widely applauded by health agencies both in Australia and internationally. It has also been vigorously opposed by the tobacco industry which has commissioned a number of reports that set out its objections to the proposal.

This paper compiles and wherever possible provides electronic links to more than 130 publications relevant to the topic of plain packaging. It briefly summarises discussion of packaging in the marketing literature (Section 3) and documents numerous examples of increasing reliance by the tobacco industry on packaging as a marketing tool (Section 4). These are drawn both from trade press and from internal company documents released as part of settlement of legal action between tobacco companies and attorneys general in the United States under the terms of which all company documents—both historical and contemporary, both in the US and in overseas subsidiaries—are released on a continuing basis.ⁱⁱ It summarises the findings of 24 published studies conducted to carefully and systematically test and quantify the likely impact of plain packaging (Section 5). It records the reactions of various expert groups to the Australian Government's announcement about plain packaging (Section 6). Finally it describes research relevant to some of the major arguments against plain packaging, providing links to submissions by tobacco companies and others opposing such legislation as well as research papers that analyse industry arguments about various unintended consequences it envisages for retailers and government (Section 7).

ⁱⁱ These have been comprehensively catalogued by several US universities and are easily searchable online. See <http://legacy.library.ucsf.edu/H>

3. Packaging in the marketing mix

Packaging 'act(s) as a promotional tool in its own right.'

Palmer A. The product. In Palmer, AJ, eds, In: Principles of marketing. 2000 (p215).[5]

The 'product package is the communication life-blood of the firm' or the 'silent salesman' that reaches out to customers.'

Underwood and Ozanne (p208).[6]

'... if you smoke, a cigarette pack is one of the few things you use regularly that makes a statement about you. A cigarette pack is the only thing you take out of your pocket 20 times a day and lay out for everyone to see. That's a lot different than buying your soap powder in generic packaging.'

Brown and Williamson employee(p5).[7]

The concept of a mix of marketing functions was conceived by Professor Neil Borden of the Harvard Business School. Perhaps the best known definition of this mix is that proposed by McCarthy who talked of the four Ps of marketing.[8] Packaging differentiates brands, being particularly important in homogenous consumer products such as cigarettes.[9]ⁱⁱⁱ Colours and typeface have long been known to elicit particular responses in consumers, often shaped by strong social and cultural forces. Imagery and symbols also exert powerful effects, linking desirable attributes with particular brands. The world's most popular cigarette brand, Marlboro,[10] can readily be identified through its iconic red chevron. Sociologically, a symbol acts as a stimulus eliciting a particular response based on people's understanding of meaning. The heraldic coats of arms on Benson and Hedges packs for instance is an abstract wordless symbol that imparts notions of status and attested quality.[11]

With the increasing prevalence of tobacco advertising and sponsorship bans throughout the world, the pack has fast become the most important promotional vehicle for reaching potential and current smokers.[12] [13] [14] [15] [16] [17] [18]

The Government of Norway introduced what was the world's most comprehensive ban on advertising in 1975, and yet a qualitative study conducted in 2003 of young adult Norwegian smokers aged 18–23 (born five to ten years after the ban came into place) highlights how the tobacco industry continues to market to this demographic through persuasive cigarette pack design. The study showed how cigarette brands and cigarette package designs gave meaning to personal characteristics, to social identity and to positions in hierarchies of status. In the young smokers' accounts, brands appeared to add 'an extra dimension to the social meaning of smoking in their daily life'.[19]

More recently several nations have banned the open display of tobacco products in retail locations. These jurisdictions have reasoned:

'Power walls and counter top displays are highly visible and eye-catching. They present an unavoidable and unfortunate spill of promotional imagery and product reminders to vulnerable consumers including young people, former smokers ... and smokers of all ages who are trying to quit'(p8).[20]

ⁱⁱⁱ Portions of this material are drawn from: Freeman B, Chapman S and Rimmer M. Review: the case for the plain packaging of tobacco products. Addiction 2008;103:580–90. Available from http://tobacco.health.usyd.edu.au/assets/pdfs/tobacco-related-papers/Addiction_generic.pdfH

With removal of point of sale as an opportunity for promotion, British American Tobacco and Philip Morris[21] have predicted that, in the future, pack design alone will drive brand imagery.[22] Unless governments impose further restrictions on packaging, bans on the retail display of tobacco will encourage a further shift in industry investment towards innovative pack design, with the pack functioning as the only remaining vehicle for product promotion.

Unique among industries, the tobacco industry has long claimed that it has no interest in attracting new customers (i.e. non-smokers) but is interested only in stimulating brand-switching and in maintaining brand loyalty in current customers.[23] However internal industry documents candidly acknowledge the vital importance of attracting new (predominantly young) smokers.[22] [24] [25] [26] [27] [28] These documents confirm that companies have invested heavily in pack design in order to communicate specific messages to specific demographic groups including young people.[18] [22] In the early 1990s a presenter addressing marketing staff at Philip Morris remarked that smokers:

'are ready for change' and 'once exposed to innovative {packaging} especially young adults see their current packaging as dated and boring'(p2).[29]

The presenter went on to encourage...

'Packs aimed at younger women should be 'slick, sleek, flashy, glittery, shiny, silky, bold'(p9).[29]

Pack design doesn't just communicate the 'personality' of a cigarette brand to the smoker... it also allows smokers to project these characteristics to others when they handle and display the package throughout their daily routines.[18] Just as designer clothing, accessories and cars serve as social cues to style, status, values and character, so too can cigarette packs signify a range of attributes about users. As 'badge products', cigarettes can reinforce the characteristics conjured by brand image.[18] [7] [30] [31] [32] [33] This behaviour not only affects the single consumer but also exerts a powerful effect on their friends, associates and even casual contacts. Consumer theory and research has demonstrated that incidental brand encounters (ICBEs) powerfully affect buying patterns in ways in which the consumer is not fully aware. A series of four studies by Ferraro, Bettmand and Chartrand published in the Journal for Consumer Research in 2008 for instance found that repeated exposure to simulated ICBEs:

'increases choice of the focal brand among people not aware of the brand exposure, that perceptual fluency underlies these effects and these effects are moderated by perceivers' automatic responses to the type of user observed with the brand.'(p729). [34]

4. Recent trends in cigarette packaging

In the early 1900s before the advent of television and radio, collectable cigarette cards were a major form of in-pack promotion.[35] Restrictions on advertising of tobacco through the mass media have prompted manufacturers to a contemporary return to the package as the primary source of promotion.

'If your brand can no longer shout from billboards, let alone from the cinema screen or the pages of a glossy magazine ... it can at least court smokers from the retailer's shelf, or from wherever it is placed by those already wed to it.' (p17)[13]

Many articles in the tobacco industry trade magazine, *World Tobacco*, in recent times have urged manufacturers to use packaging as an advertising tool[36] [37] [38] [14] [15] [16] [17] and advances in printing technology have enabled manufacturers to take promotion through packaging to a whole new level. Recent developments include printing of on-pack imagery on the inner frame card,[39] outer film and tear tape,[14] and the incorporation of holograms, collectable art, metallic finishes,[40] multi-fold stickers,[16] photographs, and retro images in pack design.[41] [42] [43]

'With the uptake of printed inner frame cards what we will increasingly see is the pack being viewed as a total opportunity for communications—from printed outer film and tear tape through to the inner frame and inner bundle. Each pack component will provide an integrated function as part of a carefully planned brand or information communications campaign' (p37).[39]

Innovations in cigarette packaging include not just embellishments to the pack, but also the incorporation of design features on cigarettes themselves.

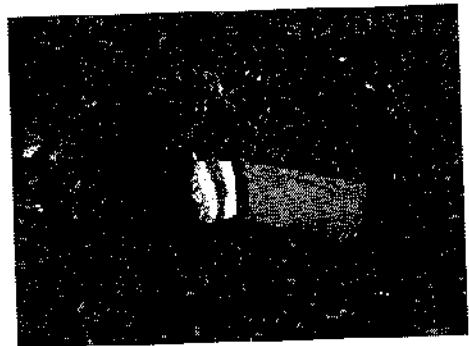


Figure 1 A cigarette printed with the colours of the Dutch soccer team
Source: Raf de Ryck (private collection)

Examples of innovation in packaging in Australia include the following:

- During 2000–02 a series of subtle changes to cigarette packs and trademarks were observed on both Benson & Hedges and Winfield cigarette packs.[44] When researchers called the company to enquire about the changes, an employee said they were 'playing with the logo because we can't do any advertising any more' (p154).[44]
- In February 2006, one month prior to the adoption of picture-based warnings on tobacco packages, Peter Stuyvesant cigarettes were being sold in 'trendy retro-style tins' which, unlike soft packets of cigarettes with on-pack printed warnings, had health warning stickers that were easily peeled off (p151)[45] (Figures 2 and 3). Retailers reported that the tins were very popular with younger smokers.

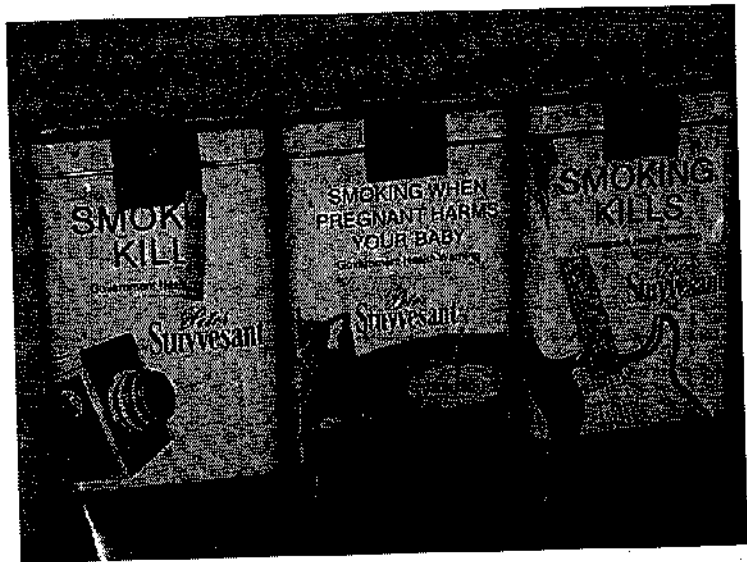


Figure 2 Peter Stuyvesant cigarettes packed in a tin container with a removable warning
Source: Quit Victoria



Figure 3 Another Peter Stuyvesant tin
Source: Quit Victoria

- British American Tobacco Australia (BATA) introduced split Dunhill packs in October 2006.[46] The pack could be split along a perforated line to create two mini packs, easily shared between two smokers perhaps unable to afford a full pack (Figure 4). Once split, one of the two packs did not bear the mandatory graphic health warning.[47]^{iv}

^{iv} BATA removed the packets from the market when it was found to be in breach of tobacco product labelling laws.

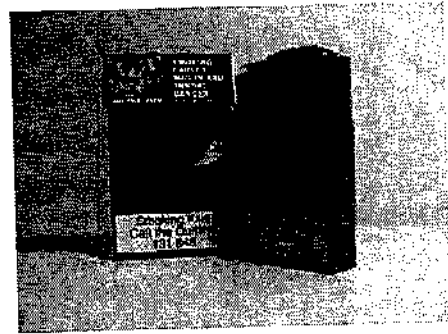


Figure 4 Split package of Dunhill cigarettes
Source: Quit Victoria

- When the descriptive terms 'light' and 'mild' were prohibited, and cigarette tar yields were scheduled to be replaced with qualitative information about harmful constituents, the industry responded by developing colour-coded packages with new terms: 'Now your Horizon customers can get their favourite brand in an exciting new look pack. With new descriptors and clearer numbers all our packs are much easier to identify. Research proves that your customers will find the new pack more appealing and a lot easier to recognize' (p214).[48]

Legislation mandating plain packaging that covered all aspects of the design of sticks and every part of the pack (including inserts, cardboard and cellophane wrap) would effectively standardise the appearance of all brands of tobacco products, greatly reducing the status-signalling role and appeal of cigarettes.[49]

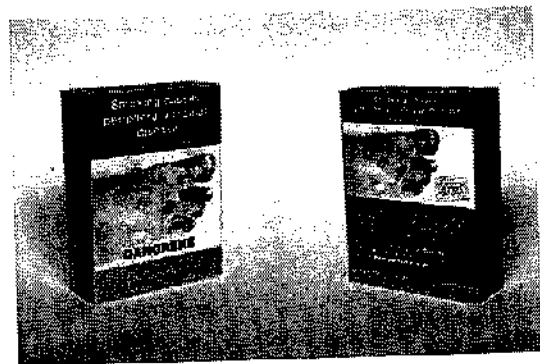


Figure 5 An example of cigarettes in proposed plain packaging as proposed by health groups in 2010
Source: VicHealth Centre for Tobacco Control

5. Results of research into the effects of plain packaging

As plain packs have never been legislated, evidence about their possible impact necessarily derives from experimental studies where subjects have typically been presented with both branded and mocked-up plain packs and asked about associations and preferences.

5.1 History of international research on plain packaging

In 1995 an expert panel provided to the Canadian Department of Health a comprehensive review of the likely effects of plain packaging entitled *When Packages Can't Speak: Possible Impacts of Plain and Generic Packaging of Tobacco Products*. [50]

To that time, four sets of studies had been conducted on plain packaging of cigarettes:

- the so-called Marlboro study (Trachtenberg, 1987)[51]
- the New Zealand study set (Beede and Lawson, 1992[52, 53]; Beede et. al., 1991[54])
- the Australian study (Centre for Behavioural Research in Cancer, 1992)[55] and
- the University of Toronto study (Centre for Health Promotion, 1993)[56].

The expert panel found that all four studies produced some evidence to support the hypothesis that plain and generic packaging made cigarettes less attractive and appealing. No comparable study providing contrary evidence was known to exist.[50]

The research objectives of the Canadian expert panel were:

- to assess the potential impact of plain and generic packaging of cigarettes on the likelihood of smoking uptake;
- to assess the potential impact of plain and generic packaging of cigarettes on the recognition and recall of health warning messages on cigarette packages;
- to assess the potential impact of plain and generic packaging of cigarettes on the likelihood of cessation of smoking;
- to evaluate alternative designs for plain and generic packaging of cigarettes in terms of their potential impact on the uptake or cessation of smoking; and
- to project possible industry responses to plain and generic packaging by examining historical evidence and theory of competition regarding the actions of companies in industries characterized by increasing commoditization.

To tackle these five overall objectives, the Expert Panel conceived, conducted and analysed findings of a battery of six different studies employing five methodological approaches.[50]

Study	Method
1) National Survey of adolescents	Survey - direct questioning / within-subject design
2) Word Image Survey	Survey - direct questioning / within-subject design
3) Visual Image Experiment	Experiment - direct questioning / within and between-subject design
4) Recall and Recognition Experiment	Experiment - direct questioning / between-subject design
5) Conjoint Experiment	Experiment - indirect questioning / within-subject design
6) Analysis of Industry Effects	Analysis of precedents of industry competitive & strategy activities in commodity industries

The national survey of adolescents showed that teenagers were highly aware of cigarette brands. Around 90% were able to recognize the two major Canadian brands even when brand names were

removed from packaging, with teenagers who were experimenting with smoking on average able to recognise 2.9 brands and regular/frequent teenage smokers 5.9. For all brands, 'package approaches' were the first thing mentioned by the majority of respondents who correctly identified the brand as methods by which companies promoted awareness of brands. While teenagers rarely admit to the likelihood of promotional strategies affecting them, a surprisingly large proportion reported that having cigarettes available only in plain packaging would bother them a lot (23.8%). Many respondents believed that having cigarettes available only in plain and generic packages would have an effect on the number of teenagers who would start smoking. More than one third (35.8%) believed that a few less would start smoking and 13.5% believed that a lot fewer would start smoking. Almost forty percent (38.2%) believed that plain packaging would prompt more teenagers to stop smoking.

The word image survey aimed to assess the associations teenagers made about products and about smokers through comparing the packaging of a popular and less well-known brand to plain packaging. The current, branded packaging was associated with a more positive image than the plain white packaging. The researchers concluded that while plain packaging would not prevent cigarettes from being used to convey an image of being a teen smoker, packaging cigarettes in plain and generic packages would reduce the abilities of brands to differentiate themselves from each other and therefore the ability to link personal image with the brand. To the extent that teens attempt to use a particular cigarette brand as a badge of their own self-image, a particular brand would become a less useful instrument.[50] [57]

The visual image experiment showed that teens are much less likely to associate specific brands with specific types of people when packs are plain, and even less so when plain packs also featured a photo of a lung.[50] The researchers conclude that

Denuding cigarette packages of major elements of their brand markings (other than their name) appears to limit teenagers' capacity to associate specific images with specific brands. Under these circumstances, these brands lose their badge value and self-defining characteristics. When these characteristics represent key motivators in teenagers' decisions to smoke, then it seems reasonable to conclude that plain and generic packaging can be a useful strategy in attempting to demarket cigarettes to teenagers because it would make it more difficult to build or maintain brand equity.(Section 6.3.4, p 101)

The recall and recognition experiment found that at least one warning, 'Smoking can kill you,' was better recalled when it was on the plain package where the rest of the package had fewer 'competing' messages. The teens favourite brand, du Maurier, was recalled less when it was in a plain package as opposed to the familiar red package.

Conjoint analysis is a multivariate technique used specifically to understand how consumers develop preferences for products and services based on the simple premise that consumers evaluate the utility of a product or service idea (real or hypothetical) by combining the separate amounts of utility provided by each attribute. While price was found to be the most important contributor to decisions about smoking, researchers concluded that plain packaging would also influence decisions about uptake of smoking and quitting.

On the basis of a detailed analysis of the findings of all five of these studies—see chart 1, pages 152–155, the expert panel concluded:

Virtually all the findings of these five studies converge on the following conclusions. Plain and generic packaging of tobacco products (all other things being equal), through its impact on image formation and retention, recall and recognition, knowledge, and consumer attitudes and perceived utilities, would likely depress the incidence of smoking uptake by non-smoking teens, and increase the incidence of smoking cessation by teen and adult smokers. This impact would vary across the population. The extent of change in incidence is impossible to assess except through field experiments conducted over time.[50] p158

Since the Canadian expert review, further research has been conducted in Canada,[58] [59] [60] [61] [62] [63] the United States,[64] Australia,[65] [66] [67] [68] the United Kingdom[69] New

Zealand[70] and across countries.[71] This research has focussed on the effects of plain packaging on awareness, recall and impact of health warnings,[53] [55] [61] on perceptions of riskiness of tobacco products,[62] [69] [71] and on the appeal of brands and products.[52] [54] [58] [65] [66] [67] [70] [68] [63] [64] [68]

5.2 Summary of results of research by theme

In a review of evidence on the effects of plain packaging conducted up to 2009 Hammond concludes:[72]

The evidence indicates three primary benefits of plain packaging: increasing the effectiveness of health warnings, reducing false health beliefs about cigarettes, and reducing brand appeal especially among youth and young adults. Overall, the research to date suggests that 'plain' packaging regulations would be an effective tobacco control measure, particularly in jurisdictions with comprehensive restrictions on other forms of marketing.

The following four sections summarise the findings of studies to date—both before and since Hammond's review— that have examined these major potential benefits of plain packaging.

5.2.1 Effects of plain packaging on effectiveness of health warnings

Plain pack research shows consistently that pack brand imagery distracts from and therefore reduces the impact of health warnings. Students have an enhanced ability to recall health warnings on plain packs.[53] [61] Health warnings on plain packs are seen as being more serious than the same warnings on branded packs, suggesting that brand imagery diffuses the overall impact of health warnings.[60] A multi-country tobacco survey examining the effectiveness of warnings showed that smokers in Canada, who were at the time of the study exposed to large, picture-based warnings, were significantly more likely to report thinking about the health risks of smoking, to stop from having a cigarette, and to think about quitting because of the health warnings.[73] The same study also showed that the larger and more prominent a health warning, the more likely it was to be recalled. Plain packaging would enable the warning size to be further increased and allow for additional information elaborating on warnings and about smoking cessation to be printed on packs.

5.2.2 Effects of plain packaging on perceptions of harmfulness

Unregulated package colouring and imagery contributes to consumer misperceptions that certain brands are safer than others.[18] [21] [62] [74] The colour of packs is also associated with perceptions of risk and brand appeal: compared with Marlboro packs with a red logo, Marlboro packs with a gold logo were rated as lower health risk by 53% and easier to quit by 31% of adult smokers in a UK study.[69] A study of 8243 smokers from the US, the UK, Canada and Australia in 2006 similarly found that smokers of 'gold, silver, blue or purple brands were more likely to believe that their own brand might be a little less harmful' compared to smokers of red or black brands.[71] Researchers in both studies concluded that removing colours from packs (plain packaging), as well as terms such as 'smooth' 'gold' and 'silver' would significantly reduce false beliefs.

5.2.3 Effects of plain packaging on appeal of product

The appeal of tobacco products can be understood in terms of the appeal of the pack or more broadly as perceptions about the sensory appeal of the product (in terms of taste, smoothness etc) or more broadly still in terms of the types or characteristics of people likely to use particular brands.

An Australian study published in 2008 involving more than 800 adult smokers examined the effects of the appeal of tobacco products of progressively reducing the amount of pack branding design information. As illustrated in Figure 6 below, the plainest packs were seen as less attractive (brand/pack characteristic), smokers of the packs were seen as significantly less stylish and sociable

(smoker characteristic) and the cigarettes in the packs were thought to be less satisfying and of lower quality (sensory perception).[66]

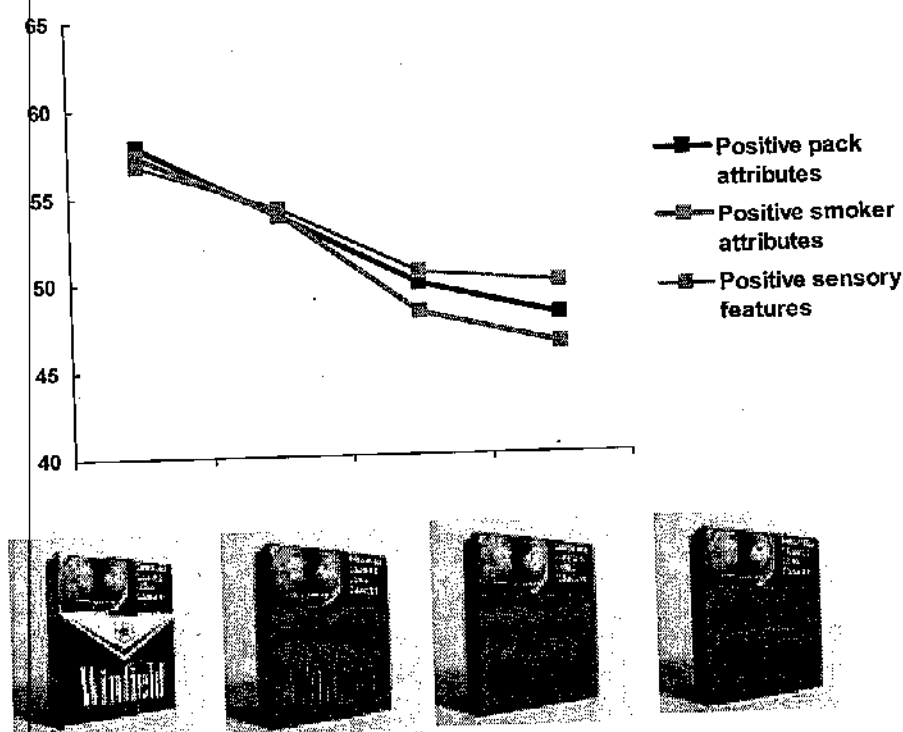


Figure 6 Level of attractiveness of increasingly plainer tobacco packaging

Source: Wakefield MA, Germain D and Durkin SJ. How does increasingly plainer cigarette packaging influence adult smokers' perceptions about brand image? An experimental study. *Tobacco Control* 2008;17:416–21.[66]

A similarly designed study involving adolescents published in 2009 found that progressively removing brand elements such as colour, branded fonts and imagery from cigarette packs, resulted in adolescent smokers seeing packs as less appealing, having more negative expectations of cigarette taste and rating attributes of a typical smoker of the pack less positively.[67]

A Canadian study (results of which were published in papers on line in March 2011[63] and a US study published in April 2011[64]) examined the effects of removal of brand imagery on young female smokers aged 18 to 25 years. Participants were asked to view images of female-oriented brands

- as currently packaged
- in the same packs with brand names but without descriptors and
- in plain white packs once again with brand names but without descriptors.

They were then asked to rate each pack for appeal, taste, health risks and tar levels. In the Canadian study, the highest-rated female pack, *Capri Cherry*, was rated 'more appealing than other brands' by almost 67% of participants. The researchers found that removing descriptors and colours from packs substantially reduced the appeal of female-oriented brands for female smokers: for example, the appeal of *Capri Cherry* fell from 67% to 17% among women who viewed plain packs without the word 'Cherry'. Plain packs were also associated with significantly fewer positive characteristics than fully branded packs, including glamour, being slim, popular, attractive and sophisticated. Of

particular note, young women in the plain pack condition were significantly less likely to believe that smoking helps people stay slim compared to participants in the no descriptors condition.[63] Findings were similar in the US study. Among smokers who requested a pack at the end of the study, female branded packs were three times more likely to be selected than plain packs. Researchers concluded:

'Plain packaging and removing descriptors such as 'slims' from cigarette packs may reduce smoking susceptibility among young women.' [64]

5.2.4 Combined effect of plain packaging and health warnings

Is it possible that the appeal of tobacco products could be reduced simply by increasing the size of health warnings rather than by removing branding elements through plain packaging?

As outlined above, plain packaging undermines the positive image of brands, increases the negative aspects of brand image and reduces positive taste expectations. And as has been found in extensive research on the effect of health warnings, larger health warnings are more noticeable, memorable and therefore more likely to elicit cessation-related attitudes and behaviours^v. An Australian study funded by the National Health and Medical Research Council, results of which were presented at the 2011 meeting of the Society for Research in Tobacco and Nicotine specifically explored the question of whether removing the colour and design features of packaging was more effective than increasing the size of health warnings in reducing the appeal of brands.[68] The study found that once packs were plain, increasing the size of the front-of-pack health warnings from 30% to 70% or more did not further reduce brand appeal. While other research indicates that larger health warnings are likely to be more noticeable and memorable to consumers, in this study plain packaging was much more effective than increasing the size of health warnings in reducing the appeal of the brand.

Given the dual objective of

- a. *preventing companies from packaging tobacco products in a way that increases their appeal particularly to young people and*
- b. *informing consumers as effectively as possible about the health risks of smoking,*

what then is the optimal size of health warnings on cigarettes in plain packaging?

A New Zealand study published in Tobacco Control in 2010 provides some guidance here.[70] The study examined the combined effects of health warnings and plain packaging on the likelihood of young adults 18 to 30 years engaging in behaviours known to be linked to cessation. Smokers in this study were asked which pack they would be most and least likely to choose each time they were repeatedly presented with four cigarette packets featuring different branding and warning size combinations. Packs with the greatest number of branding elements were still preferred even when the warnings were increased from 30 to 50%. However they were less likely to be chosen with a 75% warning. Plain packets with 75% health warnings were significantly more likely to elicit stronger cessation-linked intentions (to reduce the amount smoked; increase quit attempts; increase help-seeking to quit) than were branded packs with a 30% front-of-pack warnings.

^v See <http://www.smoke-free.ca/warnings/Research.htm> for a detailed compilation of evidence.

6. Expert responses to the proposal for plain packaging

On the 7th April 2011 the Australian Government released a consultation paper[75] and draft exposure legislation for the Tobacco Plain Packaging Bill 2011[76] prior to scheduled consideration of the bill in the winter session of the Australian Parliament.[77]

6.1 Health sector response to proposed legislation

The Government's announcement about its intention to introduce plain packaging received overwhelming support from the health sector, with spokespeople describing the announcement as 'the most important national development in tobacco control since tobacco advertising was banned in the '90s'[78] and commenting that it was 'difficult to exaggerate the importance' of such reforms.[79] [80]

On release of the exposure bill, Professor Mike Daube, President of the Public Health Association of Australia remarked:

'The tobacco industry has responded to this move more ferociously to anything in tobacco control in 20 years and I think that sends out a signal, if the tobacco industry is so worried about it, then we've got to be on the right track.'[81]

Professor of public health and former editor of the British Medical Journal's *Tobacco Control* Simon Chapman commented:

'I think it's impossible to underestimate the global importance of this announcement. I can't think of any other consumer good anywhere in the world where governments have said this is entirely how you must package this product for consumers, and I think that's really appropriate because the number of people who are killed by tobacco every year globally and in Australia is astronomical.'[82]

Outgoing director of the Cancer Council Victoria and President of the International Union Against Cancer Professor David Hill stated:

'There is no greater barometer to the likely success of a proposed tobacco control initiative than the response of the tobacco industry...I commend the Australian government for its courage in tackling this vital public health issue and I urge all members of Parliament to take this opportunity to save the lives of thousands of young Australians by passing this legislation. It is time to say enough.'[83]

New Zealand Associate Health Minister Tariana Turia responded to the Australian release of draft legislation on 7 April 2011 stating:

'We are very supportive of today's announcement by Australian health minister Nicola Roxon and it is my expectation that New Zealand will inevitably follow their lead and look to introduce the plain packaging of tobacco products.'[84]

Cynthia Callard, Executive Director of Physicians for a Smoke-Free Canada remarked:

'The benefits of plain and standardized packaging for tobacco products are well established. This is a health measure supported at the international level by the World Health Organization's global public health treaty, the Framework Convention on Tobacco Control.'[85]

6.2 Financial market response

While health groups and experts praised the move, financial markets appeared to view the legislation as a big risk for industry profitability. Investment bank, Citigroup, immediately issued a statement expressing the view that plain packaging was the 'biggest regulatory threat to the industry, as packaging is the most important way tobacco companies have to communicate with the consumer and differentiate their products.'[86] In January and March 2011 it continued to warn investors about the threat posed by packaging reforms.[87, 88]

6.3 Tobacco industry response

Imperial Tobacco stated at the time of the Government's announcement that it would 'make every effort to protect its brands and associated intellectual property and including, if necessary, take legal action.'^[89] , and repeated this position on the release of the draft legislation.

'Plain packaging has not been introduced in any country in the world and there is no evidence to support the government's claim that this will reduce smoking,' the company said in a statement.^[90]

Presumably in anticipation of the legislation, Philip Morris International launched an entire website^{vi} dedicated to plain packaging months prior to the announcement. The website features video interviews with retailers from Australia and the UK, an animated clip on why plain packaging will fail, and pages promoting the views that plain packaging won't work, violates trademark rights and will increase illicit trade. In response to the release of draft legislation, a spokesman for Philip Morris told AAP that plain packaging would:

'fuel the illicit trade in tobacco products.' 'We'll continue to oppose plain packaging in every way possible because of those serious issues that the government hasn't taken into account when pursuing this policy'.^[90]

British American Tobacco's website also includes a position statement on plain packaging.^[91] In addition to arguing that such legislation would not be effective, BAT claims:

'Generic packaging would make it harder to prevent smuggled and counterfeit products entering a market, eroding government tax revenue and disrupting efforts to tackle the illegal trade in tobacco products that plays a significant role in funding international crime and terrorism'.

In response to the Government's release of the exposure bill, a BAT Australasia spokesperson stated that such legislation will result in claims for compensation that would be borne by taxpayers.^[92]

Extensive requests under Freedom of Information legislation

In October 2010 the Australian Senate Estimates Committee was informed that an unnamed tobacco company had made at least 19 requests through Freedom of Information provisions for information about Government deliberations on plain packaging going back to 1992.^[93]

Alliance of Australian Retailers

In addition to their direct representations about the proposed legislation, British American Tobacco Australia, Philip Morris and Imperial Tobacco Australia also collaborated to fund a mass-media counter-campaign by the Alliance of Australian Retailers, an organisation established shortly before the commencement of the 2010 election campaign. The aim of the campaign was to stop the introduction of plain packaging.^[94] Advertisements featuring portrayals of concerned retailers saying that plain packaging wouldn't work and would damage their business appeared in newspapers, on television and radio.^{vii} Days after the launch of the campaign, several major retailers withdrew their support for the Alliance. Retailer Woolworths revoked its membership of the Australasian Association of Convenience Stores (AACS) over the campaign and demanded that its \$15,000 in annual fees be returned.^[95] The AACS which includes companies Caltex, Shell, BP and Coles withdrew its support after Coles (which chairs the board of the AACS) objected to having been misled about the nature of the campaign.^[95]

^{vi} [Hhttp://www.plain-packaging.com](http://www.plain-packaging.com)

^{vii} The ads can be viewed here: [Hhttp://australianretailers.com.au/latestnews.html](http://australianretailers.com.au/latestnews.html)

On 10 September 2010, ABC television program *Lateline* revealed the contents of leaked internal documents, e-mails and contracts which showed the full extent of tobacco industry influence on the Alliance of Australian Retailers campaign.[96] On the day the Alliance was formed it received funds from Imperial Tobacco Australia (\$1 million), British American Tobacco Australia (\$2.2 million) and Philip Morris (\$2.1 million). Documents also showed that Philip Morris Australia sought from the lobbying and public relations firm, the Civic Group, advice and assistance for a campaign to stop plain packaging laws during the federal election. The Victorian Health Promotion Foundation (VicHealth) and the Public Health Association of Australia responded by calling on the Australian Government to legislate for complete bans on all tobacco industry advertising and to force tobacco companies to release full details of lobbying, political donations and marketing plans and budgets.[97]

7. Research relevant to major industry arguments against plain packaging

Health groups argue that the harmfulness and addictiveness of tobacco products is sufficient to warrant restriction of all forms of promotion. Packaging is clearly a form of promotion and therefore should not be allowed. However, plain packaging has been vigorously opposed by tobacco companies on each occasion that the idea has been proposed.^{viii}

Industry arguments against plain packaging have included firstly that there is a lack of evidence that it would result in reduced smoking; secondly that it would be difficult for retailers resulting in loss of sales to discount outlets; thirdly that such legislation would breach international agreements concerning intellectual property and that for this reason the idea has been abandoned by all the countries that have previously considered it; that it and finally that it would facilitate illicit trade.

Research relevant to each of the industry's major claims about unintended consequences is described below.

7.1 Won't work

As indicated in Section 4 above, plain packaging has not yet been introduced anywhere in the world, so conclusions about its likely effectiveness have to be based on knowledge about the effects of packaging in general, and studies testing the reactions of respondents exposed to different packaging options under experimental conditions.

On the 4th May 2011, British American Tobacco released a report[98] prepared for it by consulting firm Deloitte described as an independent assessment of the effects of regulation of packaging on tobacco consumption. This detailed 98-page report[99] purports to assess the direct impact of what was termed 'pack space appropriation' on consumption of tobacco products, and also to describe a number of unintended consequences of such legislation.

The Deloitte report argues that legislation mandating health warnings has not been effective because it has failed to reduce the consumption of tobacco products in Australia and therefore that plain packaging legislation is also unlikely to be effective. It bases this assessment on the results of two analyses:

- i. an econometric analysis of consumption patterns in a number of countries that have introduced health warnings and
- ii. an event study looking at monthly-level consumption data following introduction of improved warnings in Australia.

Consumption is *not* an appropriate indicator of the effectiveness of health warnings which should only be conceived as one necessary but not a sufficient contributor to what prompts individuals to take up or stop smoking. In any case, a major error in the assumed timing of introduction of the Australian warnings undermines confidence in the validity of conclusions drawn from the Deloitte modelling—rotating health warnings were first introduced in Australia in 1987 not 1990.

Tucked away in Section 2.2.1 of Appendix B is a disclosure that indicates just how selective the data is that BAT has provided Deloitte for its analysis:

Monthly brand-level consumption data for Australia has (sic) been provided by Nielsen. Since actual consumption volumes are not available, actual duty-paid

^{viii} For a compilation of responses by tobacco companies to each of the various government inquiries see <http://www.smoke-free.ca/plain-packaging/industry-response.htm>

shipment volumes have been used for analysis. Due to data limitations, notable brands with the most consistent data have been selected. Monthly volumes have been converted to a quarterly series for structural analysis. Deloitte. 2011,[99] page 71

Deloitte's finding that sales of a selection of BAT products (the only products included in the analysis) did not decline more steeply than usual over particular periods does not prove that the market as a whole did not decline over those same periods. Interestingly, government data on all dutied tobacco products do in fact tell a somewhat different story, with total *per capita* weight of tobacco products subject to excise and customs duty declining more than what would be predicted by the trend-line following the introduction of the first three sets of warnings on cigarette packaging in Australia—refer Figure 7.

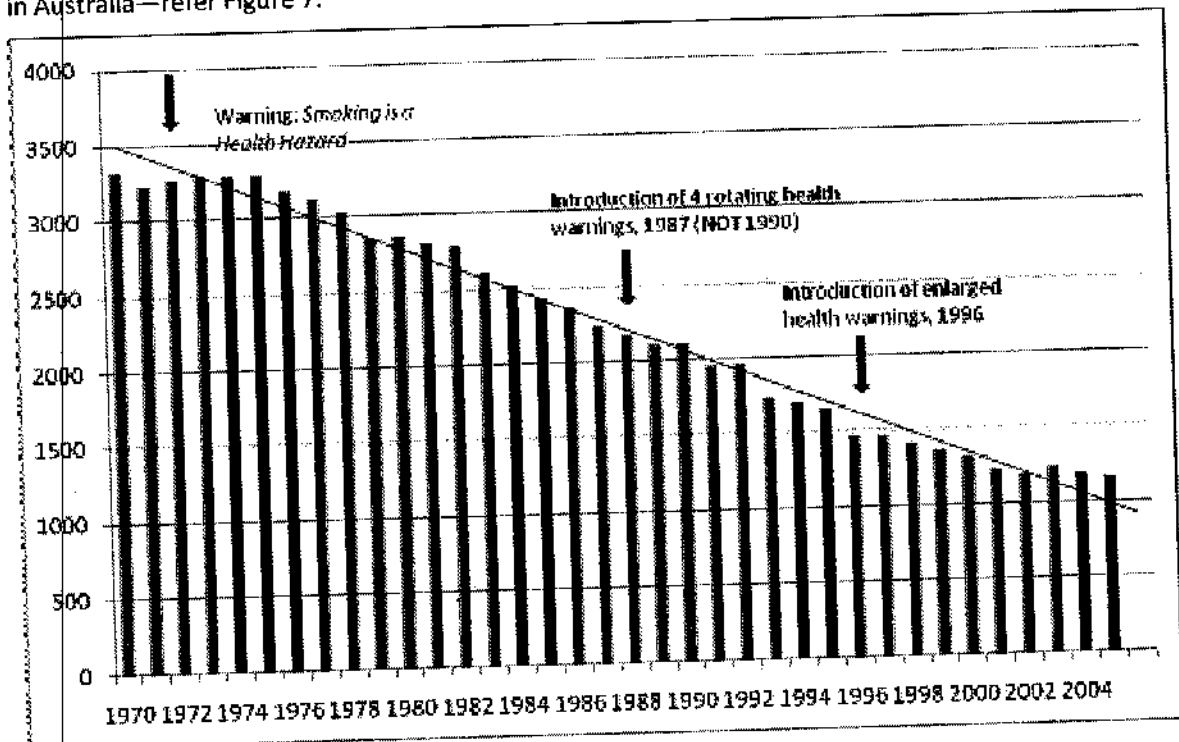


Figure 7 Excise and customs duty receipts Australia 1970 to 2005*—grams per person aged 16+ yrs

Sources:

Overseas Trade, ABS Catalogue no 78 8535 5, 1958-59 to 1962-63, Table 33 p793 1963-64 to 1967-8, Table 35, p 1050, 1968-69 to 1972-3, Table 32 p632; 1972-73 to 1976-77, Table 22 p 112.
Excise data for Australian Tobacco Products, supplied by John Broweleit, ABS Dec 1994, and Zigmont Mackinosis, June 96 and Sept 96
Excise data for Australian tobacco products, supplied by International Trade Section, Australian Bureau of Statistics, March and Sep 1998.
Import clearance data for Australian Tobacco Products, 1981/2 to 1993/4, supplied by John Broweleit, International Trade, ABS Feb 1995, and Michael Ashly, Sept 1996
Customs data for Australian tobacco products, supplied by International Trade Section, Australian Bureau of Statistics, September and September, 1998
Population data from ABS Australian Demographic Statistics from Catalogue 3101.0

*Last year for which excise data has been published—see AIHW 2007[100]

A large body of research has demonstrated that enhanced consumer information on tobacco packets have made warnings more noticeable and have increased awareness of the health risks of

smoking in Australia[101] [102] [103] [104] [105] [106] [107-109] [110] Canada, [111, 112] and the UK.[113]^{ix}

As outlined in Section 5 above, there are strong grounds for believing that current packaging glamorises smoking and that plain packaging would improve the effectiveness of health warnings, reduce misconceptions about relative harmfulness of various brands and reduce the overall appeal of tobacco products in terms of perceived attractiveness of the pack, expectations about and experience of taste and perceptions about the kinds of people believed to be likely to use particular brands. The effects could be expected to be particularly strong among young people establishing their identity and image among their peers.

Senior staff of tobacco companies are not required to be expert in or spend time on the analysis of public policy out of academic interest. They do however have a fiduciary duty to company shareholders. Anyone paid on the basis of sales or in part with share parcels would have a personal financial interest in company sales and profitability. The intensity of opposition to plain packaging and improved health warnings by tobacco companies—and the time and money companies have invested in efforts to delay their introduction[115]— suggest that tobacco industry executives *do* believe that such measures will accelerate reductions in sales and company profits.

7.2 Will be difficult for retailers

The Alliance of Australian Retailers has stated that plain packaging would make it more time-consuming for retailers to find cigarette packets when customers come in to make a quick purchase. With an erosion of convenience to the purchaser, the Alliance fears that more customers would turn to cheaper discount outlets.

Deloitte acknowledges that small to medium retailers believe that plain packaging will result in a shift in business to larger outlets. This argument ignores the fact that small retailers will still be located more conveniently to smokers than will large retailers. It also ignores the fact that staff in supermarkets and tobacconists will face exactly the same challenges in identifying and selecting stock. As Deloitte points out in its review of research on possible unintended consequences of plain packaging legislation, commentators such as the UK Department of Health have pointed out that stock management could be assisted and transaction times minimised through use of branded bulk containers and alphabetical ordering.

The draft legislation released by the Government[75] proposed that the brand name be large enough to be seen by retailers.

7.3 Represents an acquisition of intellectual property

The major objection to plain packaging by tobacco companies internationally is the idea that it represents an acquisition of intellectual property and as such would be prohibited under the terms of various international trade agreements, a theme covered in all the submissions by companies to government inquiries.[116]

One of the most vocal opponents of the proposed legislation in Australia has been the Institute of Public Affairs. The Institute has received widespread media coverage for its views that plain

^{ix} In May 2009 the International Tobacco Control Policy Evaluation Project released a comprehensive assessment of the impact of health warnings internationally. The ITC Project is an ongoing international study that now covers 19 countries around the world.

114. Fong GT, Cummings KM, Borland R, Hastings G, Hyland A, Giovino GA, et al. The conceptual framework of the International Tobacco Control (ITC) Policy Evaluation Project. *Tobacco Control* 2006;15(suppl. 3):iii3-iii11. Available from: http://tc.bmjournals.com/cgi/content/abstract/15/suppl_3/iii3

packaging legislation is equivalent to acquiring the intellectual property of tobacco companies and that the Government would be forced to compensate tobacco companies to the tune of '\$3 billion dollars annually.'[117]

The \$3b mentioned in the Institute's report appears to be very roughly calculated based on the amount of total turnover of sales of tobacco products in Australia less Government tax revenue. It assumes that the Government would have to compensate not just for profits forgone but for the total value of sales. It makes no attempt to net off the costs of production and distribution which would of course no longer be incurred if products were no longer sold. In any case, the Institute's views about government liability were quickly dismissed, with one senior law expert from Monash University commenting that this line of argument was:

'so weak, it's non-existent. There is no right to use a trademark given by the World Trade Organization agreement. There is a right to prevent others using your trademark but that does not translate into a right to use your own trademark.'[118]

The Institute's arguments were also comprehensively rebutted in a seminar organised by the Intellectual Property Research Institute of Australia.[119] As explained at the seminar and expanded on in an article in the Australian Intellectual Property Law Bulletin, governments are permitted to amend their intellectual property laws to protect public health. Plain packaging does not equate to acquiring the intellectual property of tobacco companies. Governments do not intend to use the logos and tobacco companies will still maintain full rights to their logos and brand imagery; they will simply no longer be able to use these marketing tools on cigarette packages.[120]

In an article by an investigative journalist in 2003[121] a spokesperson for the Institute of Public Affairs was reported as confirming that the Institute received funding from British American Tobacco and Philip Morris.[122]

The draft legislation proposes that in the event (which the Government considers unlikely) that preventing the use of trademarks is found to be contrary to Section 51 (xxxi) of the Constitution, then trademarks would be allowed but would have to conform to restrictions (for instance on size and placement) that would be specified in regulations.

7.4 Has been considered and the idea abandoned in other countries

The idea of plain packaging was first conceived in Canada in the late 1980s after tobacco control groups considered testimony in a legal challenge to Canadian legislation banning tobacco advertising during which an Imperial Tobacco executive agreed that smokers were generally unable to discriminate between brands when blind-tested and that packaging was vital.[123]

'It's very difficult for people to discriminate blind-tested. Put it in a package and put a name on it, then it has a lot of product characteristics' (p1).[123]

This corroborated an earlier comment made by a British American Tobacco official that 'one of every two smokers is not able to distinguish in blind (masked) tests between similar cigarettes ... for most smokers and the decisive group of new, younger smokers, the consumer's choice is dictated more by psychological, image factors than by relatively minor differences in smoking characteristics' (p5).[124]

Proposals for plain packaging were put to and considered by governments on several occasions over the following two decades*. On each occasion the proposals have been vigorously opposed with dire warnings about legal action. A major report by Canadian group Physicians for a Smokefree Canada has documented extensive information about efforts by the tobacco industry to pursue the

* See Timeline by Physicians for a Smokefree Canada, [Hhttp://www.smoke-free.ca/plain-packaging/history.htm](http://www.smoke-free.ca/plain-packaging/history.htm)

trademark issue as a key plank of a global strategy to oppose plain packaging.[125] While this strategy was successful in forestalling legislation in New Zealand in 1993 and Canada and Australia in 1995, the report notes...

What the companies did not tell the Australian Senate was that 2 years previously they had sought and received advice that they had 'no basis for any legal challenge' and that the British government had told them they 'did not have a case.' Nor did they mention that their arguments had been soundly refuted by WIPO only months earlier.(p 23)[125]

For the full analysis, see <http://www.smoke-free.ca/plain-packaging/documents/2009/packagingphoneyipclaims-june2009-a4.pdf>

In the wake of increased scrutiny of these legal arguments[125] and following the Australian Government's announcements, several countries are re-examining proposals for plain packaging.

In November 2011 the UK Health Secretary Andrew Lansley issued a policy document suggesting that 'the government will look at whether the plain packaging of tobacco products could be an effective way to reduce the number of young people taking up smoking and to help those who are trying to quit smoking.' [126] On 9 March 2011, the UK government released a tobacco control plan which repeated its statement of intention to consider plain packaging. Healthy Lives, Healthy People: A Tobacco Control Plan for England [127]

'We will consult on options to reduce the promotional impact of tobacco packaging, including plain packaging, before the end of 2011.' [127] p 22

In its response to the report of the Maori Affairs Committee which some months previously had recommended plain packaging,[128] the New Zealand Government stated on the 14th March 2011:

'The Government is monitoring Australia's progress on its proposal to legislate for plain packaging of tobacco products in 2012, and will consider the possibility of New Zealand aligning with Australia. New Zealand Government officials have commenced discussions with respective Australian counterparts on the possible alignment. An initial report back to Cabinet is due by 30 June 2011.' [129] p.7-8

Belgium's Health Minister has also recently expressed support for plain packaging. In response to a question in parliament he stated:

'With plain packaging, only the brand name is displayed in a standard format. The impact of such labelling to reduce the attractiveness [130] and increase the impact of health warning messages, especially for young new smokers, has been shown in several studies. ...I continue to support such measures, including at the European level.' (unofficial translation) Transcript of remarks [131]

And in December 2010 French parliamentarian, Yves Bur, introduced a bill to implement plain packaging.[132]

7.5 Will reduce price and competition in the tobacco market

The Deloitte international report[99] provides a useful review of the reports commissioned on this topic by Philip Morris and Japan Tobacco International. The Philip Morris-sponsored study by LECG consulting concluded that plain packaging will lead to price competition and as a result lower prices across the whole market.[133] This would occur due to reduced product differentiation and the entry of unbranded products. The Europe Economics study by contrast predicted that prices would fall only for premium brands, with growing and niche brands likely to be hit the hardest. Little information is available internationally about what happens to consumption of tobacco products when prices fall. This has been a rare occurrence over the past four decades. LECG's estimate of an increase of between 2.6% and 16.6% in sales (assuming a 4.8% to 19.2% fall in prices) appears to be assuming price sensitivity of between +0.54 and +0.86%. This is substantially higher than the

accepted estimates of prices sensitivity in the event of price *increases* which range between about – 0.3 and – 0.5%[134] and would appear to be an estimate based on brand shifting rather than the likely effects across a whole market. That is, while it is plausible that sales of a particular brand might increase by 3% if it becomes 5% cheaper and if its competitors remain at the same price, it does not follow that sales of all products would increase by 5% if all products became 3% cheaper. This is particularly so in an environment which increasingly limits opportunities for smoking. Reductions in prices are likely to be most severe in premium brands which are commonly smoked by less price-sensitive smokers. The Europe Economics study[135] concluded that while the short term impact was likely to be lower prices, in the longer term prices could increase as ‘market power and loss of innovation effects began to dominate’ Deloitte[99] p 42.

Whatever happens, as Deloitte acknowledges, price reductions could easily be offset by the Government further increasing excise and customs duties on tobacco products.

7.6 Will facilitate illicit trade

Several companies have argued that plain packaging would facilitate illicit trade and increase use of illicit products among minors.[91]

Between the 20th and early May 2011 the Alliance of Australian Retailers (AAR) ran A4-sized advertisements in several Australian newspapers warning that illicit tobacco products were “being smoked by children as young as 14 years old”; that 15.9% of tobacco products used in Australia are illicit (that is products on which neither excise or customs duty has been paid); and that revenue forgone on these products would amount to over \$1.1b—see Figure 8.

The claims about teenage smoking are based on data from the National Drug Strategy Household Survey[136] which found in 2007 that 4.5% of teenagers aged 14 to 19 years reported having ever tried illicit tobacco products. It should be noted however that fewer than 1% (+/- 50%) indicated that they used it “half the time or more”. The figures quoted in the report relate to 14–19 year olds as a group. Prevalence of use for teenagers of each age (14, 15, 16 and so on) cannot be determined from examination of the report. Detailed examination of the data file on which the report was based however shows that only 1.2% of 14-year-olds reported ever having tried unbranded loose tobacco. Most importantly, examination of that file reveals that **no 14-year-olds at all reported currently smoking unbranded loose tobacco.**

Not only is the claim in the first of the advertisements depicted in Figure 8 outrightly false, it is also disingenuous. Sales of cigarettes to school-children have certainly declined over the last 20 years, however it is notable that in 2008 almost 12% of students aged 12 to 15 years who regularly smoked, reported that they acquired their last packet of cigarettes by purchasing it from a retailer such as a supermarket, milk bar, petrol station or convenience store—i.e. one of the sorts of stores that the AAR represents! Almost 15% of 14-year-olds reported that it would be “easy” or “very easy” for them to buy cigarettes from such retailers.[137]

The estimate of the proportion of tobacco products used in Australia that are illegal (used in the second advertisement depicted in Figure 8) is based on a report prepared for the three major tobacco companies by Deloitte,[138] a report which has been heavily criticised by several public health specialists who argue that it is simply not credible that one in every seven cigarettes in Australia comes out of an unmarked plastic bag. The response rates for the survey on which the report is based appears to be only around 25%, substantially lower than the very high percentages of people who typically agree to take part in surveys sponsored by government or charitable agencies. The total estimated amount of tobacco smoked appears to be calculated by looking at the amount purchased by those who exclusively smoke illicit tobacco and applying this figure to *all* users. And yet results of the National Drug Strategy Household Survey indicate that most people who have ever used illicit tobacco products no longer use them, and many that do still use them only use them occasionally. While the Deloitte estimates of the average quantity of illicit tobacco used are such

that all (100%) of the 15.7% of smokers who purchased illicit tobacco in the last year were using on average 25 illicit cigarettes each day for 365 days of the year, the Government's National Drug Strategy Household Survey in 2007[136] found that only 0.2% of Australians^{xi}—that equates to 1.2% of current smokers—used illicit tobacco products half the time or more. Even allowing for illicit users smoking somewhat more than average, this would make illicit tobacco about 2–3% of the total market—substantially lower than the 15.9% being touted by BAT and the Alliance of Australian Retailers.

^{xi} Refer to Table 4.2 on page 26 of the report at [Hhttp://www.aihw.gov.au/publications/index.cfm/title/10674H](http://www.aihw.gov.au/publications/index.cfm/title/10674H)

14

year olds smoking?

Highly effective control networks are required to bring the level of 14 year olds smoking down to the level of 14 year olds smoking in 1990. The federal government is taking action to reduce the level of 14 year olds smoking to the level of 14 year olds smoking in 1990. The federal government is taking action to reduce the level of 14 year olds smoking to the level of 14 year olds smoking in 1990.

18+

AAPI

15.9%

illegal

15.9% of the population is illegal. The federal government is taking action to reduce the level of 15.9% of the population to the level of 15.9% of the population in 1990. The federal government is taking action to reduce the level of 15.9% of the population to the level of 15.9% of the population in 1990.

18+

AAPI

\$1.12

billion

lost taxes in 2010

The federal government is taking action to reduce the level of 1.12 billion lost taxes in 2010. The federal government is taking action to reduce the level of 1.12 billion lost taxes in 2010. The federal government is taking action to reduce the level of 1.12 billion lost taxes in 2010.

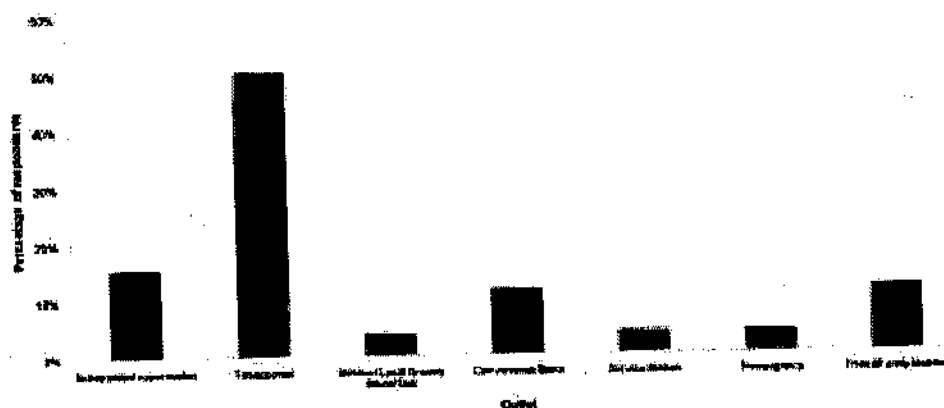
18+

AAPI

Figure 8 Advertisements placed in Melbourne Age and other Australian newspapers, 20th April to early May 2011

The third AAR advertisement shown in Figure 8 states that “\$1.12b of federal tobacco excise tax revenue was lost because organised criminal networks smuggled and sold illegal tobacco including counterfeit cigarettes”. Based on data from the National Drug Strategy Household Survey about the frequency of use among those who still use unbranded tobacco products, the revenue forgone would be more like \$100m. The Deloitte report from which this estimate is drawn indicated that people smoking chop chop and other unbranded tobacco products were no longer buying it from local markets as had been the case some years ago, but were now predominantly buying it from ordinary tobacco retailers. No respondents to the survey reported purchasing product from informal dealers; 70% of respondents reported that they purchased illicit tobacco ordinary retailers including those the AAR represents and, most frequently, specialist tobacconists (50%)—see Figure 9. If use of illicit tobacco is as widespread as the tobacco industry claims, then Australian retailers including those represented by the AAR must be purchasing at least 12% of the products they sell from ‘criminal gangs’.

Figure 9: Identified major supply outlets for unbranded tobacco products (2009-2010)



Source: Roy Morgan Research 2009, Roy Morgan Research 2010

Source: report by Deloitte, commissioned by BATA Ltd, Philip Morris Ltd and Imperial Tobacco Australia Ltd, Supply of Illicit Tobacco, 2011, p22

Draft legislation released by the Australian Government[75] specifies that anti-counterfeiting measures would be allowed on packs including alphanumeric codes, covert markings and forensic-level differentiation of the content of the cardboard and other material.

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