

(18)

From: [REDACTED]@britishbrandsgroup.org.uk]
Sent: 22 March 2013 15:01
To: [REDACTED]
Cc: [REDACTED] Andrew Layton; [REDACTED]@a-cg.com; [REDACTED]
Subject: Standardised "plain" packaging - illicit trade implications
Attachments: Packaging Presentation (APPPG) 0213.pdf
Follow Up Flag: Follow up
Flag Status: Completed

Dear [REDACTED]

Following Wednesday's valuable meeting with the Alliance for Intellectual Property, you asked for further information on standardised "plain" packaging and its implications for illicit trade.

In short, as you will understand, there is no hard evidence in this area. Such a policy is as yet untried and insufficient time has elapsed since Australia introduced the measure to understand its effects.

What we do already know however are some of the factors that are likely to come into play and it is these that we urge policymakers to consider and assess. We hope of course though that policymakers will abide by their own guidelines for evidence-based policy making in any event.

At the meeting, I indicated that there are both supply- and demand-side factors that are likely to increase levels of illicit trade.

On the supply side, the significant simplification of production that comes with standardisation will act in favour of the counterfeiter, making it easier, more profitable and potentially attracting new players to the illicit market. The illicit supply chain already has distribution networks in place to reach consumers and we maintain that these do not exercise age controls as retailers selling legitimate product are required to do. Any growth in trade through illicit retail channels as a result of this policy would therefore lead to the opposite result to the one intended.

One of the best reports in this area is one delivered recently by UK packaging manufacturers to the All Party Parliamentary Packaging Group and I attach this. This conveys the complexity of manufacturing and materials of differentiated packs, and the fact designs change, representing obstacles to counterfeiting. These would disappear were plain packaging introduced.

[REDACTED] is sending [REDACTED] the promised report by Transcrime, which assesses the implications of plain packaging on illicit trade, and the recent circular to the Minister for IP and others, which I understand she will cc to you.

Under a policy of "plain" packaging, tobacco products would look essentially the same and we consider it reasonable to assume that consumers will increasingly believe products to be largely the same. This is likely to fuel price-focused competition and make it harder for consumers to distinguish between genuine and fake, two of the demand-side factors to be considered. (We believe price and retail channel rather than packaging may well become the main ways for consumers to suspect a product to be fake).

Were differentiated, full colour packs to be as influential with consumers as supporters of the "plain" packaging policy purport, then it is logical to anticipate a growth in imports of such packs from countries where such designs are still permitted. We are unclear about such effects but for those convinced of the appeal of coloured packs per se, continued demand for the 'original' packaging is a logical corollary.

The potential appeal to consumers of the illicit retail channel is important to assess when anticipating trends

[REDACTED]

in illicit trade. You may therefore be interested in a study by SKIM [\[link\]](#), commissioned by Philip Morris, which assesses whether illicit channels may become more appealing when products in the legitimate market look the same.

The counter arguments, as I understand them, are that packs are already easy to counterfeit so plain packs will make no difference. The attached report to the APPPG addresses that point well. It is also argued that covert anti-counterfeiting measures will be unaffected. This I understand to be correct but these only work when the specific pack is subject to security scanning. You will know better than I the number of tobacco packs that are security scanned each year. If the illicit market grows and scanning activity remains unchanged (a reasonable assumption in light of resources available for enforcement), the result will be a growth in consumer access to fakes.

We do not presume to tell Government how to regulate tobacco products. All we urge is that factors such as these are explicitly taken into account and rigorously assessed, in the absence of hard evidence. If this is not undertaken (and it is currently largely absent from the Impact Assessment as the DoH itself admits), the policy risks incurring negative unintended consequences.

I have covered here the illicit trade aspects of the policy, as that was our discussion on Wednesday. There are also other likely market effects (I will send you something on this shortly) and of course implications for IP, including TRIPs compliance, and world trade. You will know, for example, that Australia's legislative move is being challenged at the World Trade Organization.

I am copying [REDACTED] ACG on this email since she is also involved in this consultation and has expertise in this field. If we can help any further on the points I have raised, please do not hesitate to let me know.

Best wishes
[REDACTED]

British Brands Group

100 Victoria Embankment, London EC4Y 0DH

www.britishbrandsgroup.org.uk

British Brands Group is the trading name of The Brands Group Limited, a company limited by guarantee incorporated in England and Wales. Registration number 5660494. Registered Office as above.

[REDACTED]