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**From:** [REDACTED]  
**Sent:** 07 July 2014 05:20  
**To:** Tobacco Packaging  
**Subject:** International submission  
**Attachments:** Report title page.docx; 2014 Sub.docx; Plain packaging consultation.docx

Dear UK Dept of Health,

In New Zealand, our Smokefree Coalition has suggested to it's membership to forward recent submissions made to our government about cigarette plain packaging on to you as the UK contemplates a similar regime.

Attached are copies of submissions made from late 2012 and March 2014. As you can tell, these submissions endorse international enactment of such regimes.

Yours sincerely,

[REDACTED]


[REDACTED]

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The conceptual application of economic principles to functioning of  
the human body and tobacco plain packaging law.

Report for the Parliamentary Health Select Committee

  
March 28, 2014

## Contents

Executive Summary	2
Introduction	3
Discussion	5
Actions are the basis of commentary	10
Economic terms – expansion	17
Research excerpts	18-19
Summary	20
Conclusion	21
Recommendations	23
References / Bibliography	24

## Executive Summary

The New Zealand Parliament passed the Smokefree Environments (Tobacco Plain Packaging) Amendment Bill on February 11<sup>th</sup> (one month post the 50<sup>th</sup> anniversary of the 1964 Surgeon-General's report), and called for submissions to the Health Select Committee by Friday 28<sup>th</sup> March 2014.

Initial public feedback to this Committee was made in October 2012, and Cabinet agreed to the introduction of plain packaging for cigarettes in February 2013. An announcement was made in December 2013 that the government would initiate legislation and seek further public submissions after a first reading in Parliament in early 2014. A plain packaging regime was one of the recommendations of the 2010 Maori Affairs Select Committee. Enactment of the New Zealand legislation is subject to the outcome of legal challenges by tobacco companies to the Australian government's plain packaging law (which took effect in December 2012).

New Zealand is a ratifying party to the WHO Framework Convention on Tobacco Control (FCTC), which serves as the basis for plain packaging law. As of March 2014, 177 nations have ratified this treaty, and New Zealand is one of several countries interested in the concept.

What is significant about early 2014 is that it is 50 years since the Luther Terry's Surgeon-General's report into Smoking and Health. This deserves mention as a landmark event.

This report is made in the context of a governmental prerogative to balance trade requirements with the responsibility to preserve the public health of citizens. On this basis, the report favours a plain packaging regime for New Zealand.

The key premise the report wants the committee to consider: that the physiological systems within human beings themselves constitute factors of production (in the context of an executive desire to 'grow the economy'; preserve New Zealand's trading status internationally, and acceptance of a standard description about the nature of tobacco harm).

## Introduction

Limitations to this report: There are numerous potential themes that could be discussed in relation to tobacco plain packaging, and sources to refer to. This report acknowledges the committee have many submissions to review, and has refrained from citing these other sources in the body of the report. These have all been included in a backdated reference/bibliography list, as the stance this report takes is based upon their contribution.

This report takes a stance in support of plain packaging for tobacco products, and disputes the tobacco industry stance against the proposal on the basis of intellectual property and trade arguments. The plain packaging concept has a relative nature, in that it will not address the tobacco epidemic in its entirety, though is a definitive step in the right direction, consistent with calls for greater education.

The support for plain packaging accounts for opposition arguments, and suggests that implementation of this measure will instead be consistent with sound economic policy, on the basis that *the physiological systems themselves constitute factors of production*. The report argues that this is more than a metaphor.

Contemporary culture uses expressions such as 'grow the economy' and 'health of the economy'. In the context of discussions about a plain packaging law for New Zealand, this report seeks to consider how basic economic principles relate to the functioning of the human body. The benefit of such consideration is that a decision to proceed with a plain packaging regime is supported by a consistency with the manner in which the human body functions over time.

A reason for this focus stems from an observation that tobacco cannot contribute to economic growth without undermining quality of life and causing loss of human life. This is the standard description: *'Tobacco is the only legally available product that when used as the manufacturer intends, kills half of its users'* (For example, see the 2011 Vanguard documentary *Sex, lies and cigarettes* where this is repeated). A prevailing mindset that originates with the industry (influential though questionable), is that 'everyone knows how harmful smoking is'\*. Variations on this expression are often repeated whenever tobacco is the topic of discussion (usually in the media, but face to face discussion also).

\*This is what tobacco industry representatives told the 2010 Maori Affairs Select Committee. The implication of accepting this statement without question is that the burden of responsibility now lies with the consumer. This renders the statement questionable.

The expression 'Health of the economy' is one where the concept of health is applied to how the economy functions. But instead, what if the comparison went in the other direction, and economic principles and concepts were applied to health? This is possible to do using a few basic concepts from the lexicon of economic thought. Along with *Factors of production*, two of the accepted primary concepts are *Specialisation*, and *Division of Labour*.

(Heilbroner, 1996) provides one example of comparison by quoting William Stanley Jevons (1835-1882). While it raises circulation of wealth to the same level as circulation of blood, this report is premised upon a reverse theme. It is noted for example, that circulation of either blood or wealth is an example of *distribution* ('The process of moving goods and services from producers to final consumers, via a network..' (p. 121):

"After reading well over one thousand economic writings of earlier date than 1734 I would put Cantillon's analysis of the circulation of wealth, trite as it may appear, on the same level of priority as Harvey's study of the circulation of the blood" (p.34)

A 1941 statement by the physiologist Walter Cannon (1871-1945), who coined the term 'homeostasis', and 'saw the self-regulation of the body as a requirement for the evolutionary emergence and exercise of intelligence, and further placed the idea in a political context', is worth mentioning also:

"What corresponds in a nation to the internal environment of the body? The closest analogue appears to be the whole intricate system of production and distribution of merchandise".  
(Wikipedia)

This summary of his work details how he authored the 1932 book *Wisdom of the Body*, developed Claude Bernard's (1813-1878) concept of the *milieu interieur*, and 'presented four tentative propositions to describe the general features of homeostasis':

1. Constancy in an open system, such as our bodies represent, requires mechanisms that act to maintain this constancy.
  2. Steady-state conditions require that any tendency toward change automatically meets with factors that resist change.
  3. The regulating system that determines the homeostatic state consists of a number of cooperating mechanisms acting simultaneously or successively
  4. Homeostasis does not occur by chance, but is the result of organized self-government.
- (Wikipedia)

Regarding the urban legend about *The Warship and the Lighthouse*, Wikipedia state:

There appears to be no evidence that the event actually took place, and the account is implausible for several reasons... Other speakers have often used it simply as a parable teaching the dangers of inflexibility and self-importance, or the need for situational awareness.

Black, Hashimzade and Myles (2009) define regulation as 'a rule individuals or firms are obliged to follow; or the procedure for deciding and enforcing such rules'. The tobacco industry stance can be likened to the warship, whilst the 'milieu interieur' (internal environment) is like the lighthouse, on the basis that external regulations of either a political and commercial nature have to respect its pre-existing independence and manner of operation, and base their policies around this. The effect of not doing so means that personal well-being is undermined.

The economic concept of *Stability Conditions* resembles homeostasis: 'the conditions for a system to tend to revert to its original position after a disturbance' (Black et al, 2009). The author hopes that members of the committee and other readers can see the comparison.

How does the outcome of real (sustainable) economic growth result without use of systems that tobacco consumption negates? How can it, if it is as bad as the standard description states?

## Discussion

*The prevalence of the corporation in America has led men of this generation to act, at times, as if the privilege of doing business in corporate form were inherent in the citizen; and has led them to accept the evils attendant upon the free and unrestricted use of the corporate mechanism as if these evils were the inescapable price of civilized life, and, hence to be borne with resignation (Judge Louis Brandeis)*

Tobacco companies seek to legitimise their existence and oppose greater regulation by appealing to trade rules in response to the plain packaging legislation. Yet trade rules have to acknowledge factors of production that allow economic activity to occur and be sustained. Tobacco is inconsistent with this, due to the detrimental effects that result from consumption. As tobacco manufacturers go about their [filthy rotten] business, they are relying on physiological systems their own products negate.

At the 2010 Maori Affairs Select Committee hearings, industry representatives (whose company has the largest NZ market share) were put this question by MP Hone Harawira:

"For decades your company said there was no link between cancer and smoking. When did your company first know that your product was harmful?"

*I think if you go back into the 1964 Surgeon-General's report ... where it's been widely acknowledged since then by both governments and the industry that smoking causes ... can cause significant disease since that time.*

"And since that time your company's known that your product causes cancer, 1964?"

*We are aware of serious diseases that come with the use of our product, yes.*

"Assuming that 4000 New Zealanders die a year from cigarettes since 1964, you're saying that you've known since 1964 that your product was harmful to, causes cancer to, and leads to the death of people. That's what, what's four times forty? 160,000 people, and you still say that you're okay with it being sold as a legal product? You don't carry any accountability for that loss? That's a lot of people".

*We operate ... we operate under the laws of the government, and society's expectations have changed, and society's attitudes towards smoking have changed over history. If you go back into the fifties and sixties, and you look up until 1990, and the Smokefree Environments Act was introduced, it was actually part of New Zealand's policy through the Department of Agriculture, to promote the support and help manage the growth of the tobacco industry. We've operated within the legal framework of this company while we've been here (ASHORG NZ, YouTube).*

He did say 'company', not country. There are several other points worth expanding upon in this response, but an initial emphasis can be placed on the first question. This is what Dr Luther Terry said fifty years ago as he announced the report:

*Out of this long and exhaustive deliberation, the committee has reached the overall judgement that cigarette smoking is a health hazard of sufficient importance to the United States to warrant remedial action. This overall judgement was supported by many converging lines of evidence, as well as by data indicating that cigarette smoking is related to high death rates and a number of disease categories.*

*More specifically, the committee states on page sixty-one of the report and I quote: "In view of the overwhelming evidence from many sources, it is a judgement of the committee that cigarette smoking contributes substantially to mortality from certain specific diseases and to the overall death rate"*

Student from Newton South High School, Massachusetts, 1964:

*"I look at the report as maybe a spark that sets off the flame. I think that now is the time to do something which we've been wanting to do all along. I think that if the objective of this report isn't continually repeated and stressed that it may die out and people will just forget about it"*

Senator Maurine Neuberger (D, Oregon), 1964:

*"It's a pretty cynical attitude if we don't take a certain amount of consideration that the health and welfare of 190 million Americans is at stake"*

(Highlights of 1964 Surgeon-General report, Center for the Study of Tobacco and Society, YouTube).

The 'everybody knows' expression has to include manufacturers themselves. They have spoken in absolute terms, as if to say there is universal awareness of the extent of harm caused by their products. In fact, when appearing before the 2010 Maori Affairs Select Committee, their representative stated 'complete awareness' on the part of consumers. Answering the question "Do you accept any ethical or moral obligations for these deaths, 600 of which every year are Maori?", he responded:

*We understand that smoking carries ... smoking tobacco, the use of tobacco carries significant risk. At the end of the day there is complete awareness of the risks of tobacco, there are government health warnings on the product and at the end of the day, it is our contention that adult consumers make an adult choice in relation to the lifestyle they want to do (emphasis added).*

(ASHORG NZ Pt 6, YouTube)

The problem with this stance is that regardless of the extent of knowledge of tobacco harm, manufacturers are not the ones who take steps to warn the consumers about this. This is a point made by the journalist Philip Hilts in his book *Smokescreen*:

*I think it helps to get to the heart of the matter by listening to what the company people say. They say that people are aware of the hazards and habit-forming properties of smoking. By making this argument, they show that they are aware it would be wrong to push cigarettes if people were unaware of the risks. They acknowledge by this statement that smokers must be told. But who tells them? Not tobacco companies: in fact they work very hard to prevent people from believing in the hazards and the addiction.*

*So, until they work to inform people themselves, they may not accept credit for the fact that smokers do know something about the hazards. ... More important, the companies must themselves tell smokers what the risks are, or they have no right to sell the product. This is not a radical point: business in all civilised nations is conducted with this understanding. Deception, or silence in the face of hazards is not permitted. It is not okay to say someone else has informed the public. So you as the manufacturer need not do it. This is the center of the issue (Hilts, 1996, p. 218).*



In fact, even when the existing pictorial warnings were mooted over 5 years ago (the ones they now cite), tobacco manufacturers opposed these on similar grounds to their current opposition. The important point is that the people targeted by them as consumers cannot rely on manufacturers to warn of the harm (as they are meant to), and there is sufficient evidence that cigarettes are deliberately engineered to create and sustain addiction in the end-consumer. (See Robert Proctor's *Golden Holocaust*). This is a key reason why their claims to legitimacy as a business must be contested.

Another point is in their use of language – Dr Terry said 'certain specific diseases'. The industry use the expressions 'serious harm' and 'serious risk of serious disease' without providing specifics. The reason why 'society's expectations have changed, and society's attitudes towards smoking have changed over history' is because our understanding about the specific extent of tobacco harm has grown in the 50 years since. An example of this is the 2014 report, which detailed an updated set of complications arising out of tobacco consumption.

The historian Proctor introduces two contrasting concepts on the nature of 'informed choice':

*Common knowledge* – 'industry legal term used to claim that everyone has always known about the hazards of tobacco, so that people have only themselves to blame for whatever illnesses they contract'. Also called 'universal awareness' (2012, p. 683).

*Open Controversy* – a main pillar in the doubt mongering project, the main idea here is that no-one has ever been able to prove that tobacco is hazardous: the controversy remains 'open' and in need of 'more research'. Paired with 'Common Knowledge' in the industry's legal defence strategy (2012, p. 686).

If committee members keep in mind what their Maori Affairs counterparts were told in 2010 whilst reviewing the website of this company, they will find an example of this doublespeak in the statement: 'There is more to our industry than the controversy that surrounds its products'. How can there be a 'controversy' if there is 'complete awareness' as they claim?

It is necessary to ask: What is wrong with them?

Hilts discusses a book entitled 'The Nazi Doctors':

*Lifton writes that the organisation helps individuals live with themselves, it aids the distancing and numbing that each individual must do internally to remain in the group. It helps each make the consequences of their acts unreal, which they must be. Along with it comes the 'deamplification of language – with its attendant numbing, denial and derealisation...'*

*In tobacco, the distancing euphemisms are crucial, not so much to defend themselves against outside, but to comfort themselves against the harsh effect of plain language descriptions of what they are doing. Things that cause disease become things that are 'biologically active', nicotine becomes 'satisfaction'. The rank bitterness that indicates how much nicotine a smoker becomes 'its impact'. Addiction is just a 'habit'. Toxic chemicals are merely 'controversial compounds'. Children are 'the youth market'.*

*These make it easier. But the center of their accommodation was their willingness to put down the deceipts of the past and the excesses of the current lawyers as being something like the activity of a radical fringe...*

*...I am satisfied if I can keep my own work honest – so in the companies most are all right with themselves if they can believe that whatever nonsense was done before, now everyone knows how things work, and all is above board (Hilts, 1996, p. 217).*

Health = 'Whole', therefore refers to a value, a measure, and a capacity for achievement. It relates to the economic concept of *utility*, 'which explains how pleasure is derived from the consumption of commodities' (Heilbroner, 1996, p.209). This definition has to account for the long-term implications of tobacco use, but demonstrates how existing designs mask what are really commodities: 'a standardised good, which is traded in bulk and whose units are interchangeable' (Black et al, 2009).

Discussing utility, this author states:

"Under expert guidance, the reader discovers that the sturdiest principles of economics reside not in mathematical equations but in wide-ranging and stimulating appraisals of the behaviour of individuals within their social contexts and society" (1996, endpaper).

Health is a decisive factor in economic growth, whereas tobacco negates systems which can legitimately be claimed as (physiological) factors of production. In fact, when opponents to greater tobacco regulation use the tax argument (the amount of revenue relative to what's spent on treatment), what can be kept in mind is the effects of consumption impose their own 'physiological duty', with significant implications for productivity. What else is 'everybody knows..' meant to mean?

*Specialisation* 'concentration on providing particular types of goods and services, and relying on others to provide what one does not produce. This occurs at all levels' (total and partial) (Black et al, p. 423). *Division of labour* - 'the system by which different members of any society do different types of work. This has two advantages: it allows individuals to specialise on types of work at which they have a comparative advantage, and to acquire specialised skills' (Black et al, p. 122).

In relation to functioning of the human body, these concepts entail consideration of 11 major systems and their component parts. These concepts usually refer to activities that occur outside the human body with all these systems operating in unison, and the component parts of the external economy. This report asks the reader to consider *how these concepts apply inside the human body*, (if the ideal is a vibrant, efficient, sustainable growing economy).

These systems are affected by the conditions mentioned in the updated Surgeon-General's report:

The 2004 report concluded that smoking affects nearly every organ of the body, and the evidence in this report provides even more support for that finding. A half century after the release of the first report, we continue to add to the long list of diseases caused by tobacco use and exposure to tobacco smoke. This report finds that active smoking is now causally associated with age-related macular degeneration, diabetes, colorectal cancer, liver cancer, adverse health outcomes in cancer patients and survivors, tuberculosis, erectile dysfunction, orofacial clefts in infants, ectopic pregnancy, rheumatoid arthritis, inflammation, and impaired immune function. In addition, exposure to second-hand smoke has now been causally associated with an increased risk for stroke (Lushniak/USDHHS, 2014, iii).

If the tobacco industry dispute these findings, that means their defence of 'complete awareness' is meaningless, because there is significant variation in population understanding of the extent of tobacco harm. If however, they accept these findings as true, then surely that demonstrates an opposition to plain packaging on the grounds of trade rules pales by comparison with a need to address this harm. On a related topic: is it not intriguing that in the same breath they cite the importance of education programmes? How can there be 'complete awareness' if there is a need for education? This expression/mindset is highly questionable. Education is required, and one example of that is through the enhanced health warnings under a plain packaging regime (which should also reflect the additional understanding gained since).

The following exchange took place in the 2010 Maori Affairs Select Committee hearings, with a question from the late Parekura Horomia, who asked the industry representatives what they would do to prevent a repeat of youth uptake of smoking observed throughout the 1960's and 70's:

*I think in our submission we talk about the education for family and peer education through schools, controlled through a government programme, is a key element.*

PH: "No, not government. Would you finance that?"

*Well, taxation on tobacco is..*

PH: "No, no. My question is: would your company, the profits that you make, put your money where your mouth is, and support that?"

*We believe it's the government's role to educate*

PH: "I believe it's yours".

(ASHORG NZ Pt 4, You Tube)

The responses made to the initial question come from an industry representative who later contradicts himself by claiming there is 'complete awareness of the risks of tobacco'. Hilts (1996, pp. 98-99) deals with marketing and selling to children, quoting an industry rep who says: "speak to them or in any way try to get in their minds". This author goes on to discuss the issue:

*This is the vulnerability of tobacco companies – it is what makes nightmares for tobacco executives. They imagine some severe program which severely limits children who might think of starting. It would be the end of the tobacco heyday for them.*

*They are aware that, whatever denials they make, they must worry about which children start smoking, when and why they start, whether they might want to quit, and what they want in a cigarette. Yet they must carry out this most important mission for the future of the industry without public visibility. They must market to children, yet must deny it, under oath if necessary.*

**Actions are the basis of commentary.**

If there is a universal awareness of the extent of tobacco harm (as noted, a prevailing mindset that originates with the tobacco industry), then to accept this at face value means also to include the tobacco manufacturers among this acceptance. Not only do they have this awareness (as consumer protection statutes require them to), but they continue to deliberately manipulate the constituents of cigarettes to create and sustain addiction in the end consumer, domestically and internationally.

This practice necessitates questioning why, because the New Zealand government have to account for this conduct in setting tobacco-related legislation. There is a quote from Thomas Jefferson, most likely in reference to debates about an earlier form of slavery: *I have never been able to conceive how any rational being could propose happiness to themselves from the exercise of power over others.*

Part of the answer may lie in the content of the following (15 minute) radio programme. The purpose of including it in this report is to consider whether this disregard the industry have for human welfare and public health is due to wealth addiction (a separate form of dependency):

*Radio New Zealand 'Counterpoint'* (2 March 2014).

Wayne Brittenden (opening 5 minutes).

Discussion of concept: Wealth addiction /excessive inequality

The role of the mega-rich in creating inequalities as a possible case of 'wealth addiction'.

People with this display many characteristics of addiction.

- "Total preoccupation with their next fix"

- "Readiness to ride roughshod over everyone and anything in order to get it".

- "For wealth addicts each money rush is the same as a high. They just can't stop accumulating the stuff".

- "Like all addicts, the true wealth addict has little empathy for fellow beings".

- "Allowing wealth addicts the opportunity to have a hand in writing legislation is like giving drug addicts the keys to the pharmacy" (*Authors note: resembles the 'fox in charge of henhouse' expression, and why there are legitimate concerns about the Trans-Pacific Partnership.*)

- "Not all detractors are envious: some are just appalled".

Cites: *New York Times* article by Sam Polk – who successfully quit money chasing.

Remaining 10 minutes: Interview with Dr Gary Kohls, Specialist in Mental Health, Duluth MN.

(Interviewer: Finlay McDonald).

FM: "Is it right to talk about money chasing as an actual addiction?"

GK: *Yeah. It certainly meets a lot of the criteria for what defines addiction: Dependency on getting high or having your reward system met, a sort of a dopamine surge studied in animals – that the neurotransmitter dopamine, which is the thing you get from cocaine or amphetamines: a sudden high, and acquiring wealth and competing against your competitors is a way to get high. Wealth addiction is probably similar to gambling addiction – that feeling of a need to get your needs satisfied by achieving some sort of goal.*

FM: “You do get the impression that for some people, too much is not enough, and that even though they’re extremely comfortably off, they still want to keep going?”

GK: *I think. I’m sure you and I have trouble understanding that. I certainly do. I recall thinking during the economic crash, 2008 – a story of a German multi-billionaire, whose fortune went from \$8 billion to \$4 billion and he committed suicide.*

FM: “Yeah, you could say that’s a pathological loss of perspective, couldn’t you?”

GK: *It’s pretty certain, yes.*

FM: “I mean it’s sort of emblematic or symbolic of the economic model in itself that growth, endless growth is the engine room of modern capitalism.”

GK: *And so is greed.*

FM: “Yeah, so one must feed off the other, one requires the other almost”.

GK: *Yeah, it seems like it. My area of expertise is in prescription drug addiction. There are so many of these psychotropic drugs that are addicting, cause people to be dependent upon them. And one of the unrecognised things is that when people go through withdrawal after having quit the drug – that means they were addicted to it, even if they may not have felt all that good, maybe they weren’t getting the dopamine highs.*

*Having gone off the drug, that means they have to keep taking it. That’s typical for the psycho-stimulants, the Ritalin, the Cocaine, the Wellbutrin, even the surge in re-uptake inhibitors like Prozac and Zoloft have an amphetamine-based molecule. They are all having some effect on the dopamine system as well.*

FM: “I’m probably drawing a slightly long bow here, but could you imagine an Alcoholics or Narcotics Anonymous 12-step programme being applicable to our friends the wealth addicts?”

GK: *Well, I’m sure that would help. The 12-step programme does a lot of counselling. I think counselling is important – looking at the person’s ethics, how close they are to being sociopaths, psychopaths – who tend to have no conscience, no remorse for cheating, or lying, or doing shady business deals like hedge fund managers are cheating somebody and they won’t admit it. A 12-step programme would get to the essence on their lack of ethics.*

(brief discussion on how the concept of wealth addiction applies to less wealthy people)

FM: “Hypothetically, if a client walked into your office and said ‘Dr Kohls, I’m addicted to money’, what would be your first approach?”

GK: *I'd certainly take a good thorough history of their childhood, their ethical training, even their diet, what drugs they had perhaps been using in the past (cites earlier example of Sam Polk, as having been on drugs before his wealth addiction and later got in touch with his conscience with help from his Psychiatrist wife). I would use non-drug programmes, and also would assess conscience/ethics.*

Comment (GK) on Golden Rule: *Thinking people know there is something truthful about this.*  
(Author's note: Why? Because the principle of exchange is the essence of this).

Remembering that these new findings of the Surgeon-General's 2014 report are on top of existing conditions tobacco is implicated in, a desire to proceed with addicting and poisoning the population (internationally), and challenging sovereign governments over their public health laws despite these findings is suggestive of a psychopathic disregard for human welfare.

This interview resembles the 2003 movie *The Corporation*, which makes a similar comparison based upon industry conduct at the expense of human life. The New Zealand government have to account for this in their deliberations about plain packaging:

Narrator: to determine the kind of personality that drives the corporation to behave like an externalising machine, we can analyse it, like a psychiatrist would a patient. We can even formulate a diagnosis on the basis of typical case histories of harm inflicted on others selected from the universe of corporate activities.

Personality Diagnostic Checklist: WHO ICD 10/DSM IV

Callous unconcern for the feelings of others

Incapacity to maintain enduring relationships

Reckless disregard for the safety of others

Deceitfulness: repeated lying and conning others for profit

Incapacity to experience guilt

Failure to conform to social norms with respect to lawful behaviours

(Achbar, Abbott, and Bakan, 2003)

Radio NZ interview with Debbie Bayer, psychotherapist/counsellor (23 February 2014)

(Interviewer: Richard Langston).

- (DB) Addiction is a 'neurological disease'. "We need to drop the stigma and recognise that people with addictions have a brain disease. They don't just lack willpower" (Quote from Nora Volkow - director of US National Institute for Addiction and Abuse).
- Question (RL) re: the chemical nature of an addict's brain. Answer (DB): 'this provides what confuses people about addiction and leads people to relapse'.

- Three parts to addiction: 1) Tolerance – that the brain builds up and requires it use more and more to get the same result. 2) Dependence – that the addict's brain develops, where the brain is damaged through drug use. The pathways change, and the amount of neurotransmitters produced by the brain change in reaction to presence of the drug (including tobacco). 3) "What we need to talk more and more about in the public conversation is addiction itself". In this lies the circuits and the neurotransmitters that with very little triggering, will reactivate the addiction even though the person has been away from the drug and is no longer consuming.
- RL: "Is the importance of not blaming the addict what you wanted to get across?"  
DB: "It doesn't help – if it did, we'd recommend it. Need to consider a different way of responding to people they come across that are addicted to substances".
- RL: "Your point is that an addict's brain is different?"  
DB: "Yes. Research backs this up – that done since around 1995 shows that the brain of an addict is predisposed to this loss of judgement. There are abnormalities in the pre-frontal cortex (frontal lobe) and use of the drug further damages this area and two other areas".
- RL: "You make the point that stress, withdrawal for an addict is the equivalent of stress, and that stress builds up to the point where the addict cannot make a rational decision. They are sort of compelled to lapse".  
DB: "Yes. I was unknowingly coalescing three areas of research into one for the purposes of speaking to a lay audience – but the stress produces cortisol in the system, and that cortisol activates two areas of the brain: the reward centre and locus coeruleus at the base of the brain that produces adrenaline. So the cortisol activates the reward centre, which produces dopamine and this part of the brain that's at the base that produces adrenaline stimulates the addiction pathways that creates cravings that you and I can't even imagine – not like anything we have ever experienced".

On the topic of trade rules, it is noted that the tobacco industry is threatening legal action against the New Zealand government if it proceeds with plain packaging. These threats are to be regarded as an intended 'chilling effect', particularly with concerns about the investor-state dispute settlement (ISDS) under the Trans Pacific Partnership (TPP) being negotiated.

*The aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiffs lawyers... To paraphrase General Patton, the way we won these cases was not by spending all of RJR's money, but by making that other son of a bitch spend all of his (Hilts, 1996, p. 197).*

This quote from an industry lawyer is relevant because it describes the contemporary reasoning behind these threats. For the New Zealand government to hold off enacting the legislation whilst it awaits the outcome of the Australian proceedings carries the implication that the government has been intimidated to a certain extent, and favoured legal arguments that side with the industry. This allows the manufacturers more time to addict, poison and kill greater numbers of people.

It would be preferable if our government considered the international benefits of standing with Australia on plain packaging, by listening to legal advice that accounts for trade agreements and still endorse a plain packaging regime. This will provide example to other nations considering the measure, and help to arrest a global pandemic of tobacco-related illness.

Article 2.2 of the Technical Barriers to Trade states "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to, or with the effect of creating unnecessary obstacles to international trade". Physiological systems are factors of production upon which economic growth depends. Plain packaging is a necessary obstacle to the influence of an industry whose products undermine systems vital to economic activity. It meets this criteria, and is therefore warranted. Another perspective on this is to say that due to the effects of tobacco consumption, the tobacco industry are in breach of this TBT Article, because they cause unnecessary obstacles to international trade. Their own expression: "Everybody knows how harmful smoking is.."

The article continues "For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create". A sovereign government seeking to eliminate the substantial harm wrought by tobacco on New Zealand society has a legitimate objective. The measure for this is a smokefree society (less than 5% smokers).

Non-fulfilment of this objective means more preventable illness and premature death, plus New Zealand would fail to meet its international expectations under the FCTC. To allow such a carcinogenic scenario to remain echoes Sen. Maurine Neuberger's 'pretty cynical attitude' comment.

TBT Article 2.2 continues:

"Such objectives are, inter alia, national security requirements; the prevention of deceptive practices; protection of human health or safety.. In assessing such risks, relevant elements of consideration are, inter alia, available scientific and technical information, related processing technology or intended end uses of products" (Ministry of Health, 2004).

How does the *utility* of consumption relate to the last line about 'intended end uses of products'? The oft-repeated standard description of tobacco is *the only legally available product that when used as the manufacturer intends, kills half the users.* 'Available scientific and technical information' includes the existing documented harm upon which this standard description is based. It's observed that this refers to the supply side of the equation – independent of consumer agency, tobacco manufacturers *know*.

Even as they dispute contemporary evidence regarding the effectiveness of plain packaging, that contrasts with their intention to attract new customers by way of the existing designs whilst downplaying the harm their products cause. There is credible, authentic research (see Bibliography) that shows plain packaging will be effective in reducing smoking.

The content of the following presentation (Radio NZ, 20 Oct 2013 *Where Ideas Come From*) is included to help support the premise upon which this report is based. Once again, this report asks the reader to consider how these concepts apply to internal human functioning:



Science writer Matt Ridley:

*The habit of exchanging one thing for another – it's a unique human feature... As Adam Smith said, no man ever saw a dog make a fair exchange of a bone with another dog.*

*The gains from trade are only going to grow. And this is one of the beauties of exchange because it actually creates the momentum for more specialisation which creates the momentum for more exchange and so on.*

Question: Can you explain why you measure prosperity in terms of time?

*This was an insight that occurred to a lot of people in the economics profession. This is what economic growth is. It's a reduction in the amount of time to fulfil a need. So I think the real measure of how well off you are is how long you have to work to fulfil a need, or indeed a luxury. The difference between a need and a luxury becomes blurred. Artificial light twenty years ago was a luxury, today it's pretty well a necessity. And that's how we fit so much consumption into our lives – by reducing the amount of time it takes to earn it.*

*We all know a little bit. None of us knows the whole. And what we've done in human society, through exchange and specialisation is we've created the ability to do things we don't even understand.*

*(Quotes judge Louis Brandeis: 'Sunlight is the best disinfectant' re: transparency and bad ideas).*

Relating this definition of economic growth ('reduction in the amount of time to fulfil a need') to the effects of tobacco consumption helps to demonstrate why physiological systems are factors of production, upon which economic terms such as 'productivity' and 'efficiency' depend.

The heart and lungs take up physical space, therefore have material value. If these traditional associated conditions caused by tobacco (emphysema, heart disease and lung cancer) are considered, the systems involved are made more inefficient and less productive through consumption, with the outcome that it takes the individual more time to fulfil a need.

If the above definition of economic growth is accepted, then so must the opposite: that economic stagnation is characterised by more time to fulfil a need. This is what happens when these systems are compromised by smoking. This is what the concept of 'informed choice' is premised upon: that 'everybody knows' and accepts these specific implications. Of course, the traditional associations of tobacco harm are not absolute, and the concept of informed choice must be expanded to include these additional detrimental effects on personal well-being.

It is worth noting that at the end of the 2010 Maori Affairs Select Committee hearings, the tobacco industry representative was heard to say: "Thank you. Thanks for your time". The same comment was repeated by a pro-industry US spokesman at the end of an Australian interview on this subject. Both figures do not really comprehend how central time is to this discussion. Nor do the retailers complaining that plain packaging will slow down service times. A hospital notice board carries a quote from Steve Jobs: *Your time is too limited to be spent living someone else's life.*

The primary emphasis on the value of time must be given to those people who receive a tobacco-related diagnosis, with efforts given to preventing these events from occurring.

There is a classic 1 minute piece of satire from comedian John Clarke, part of a Quit campaign in 2002:

[Head honcho – tobacco company, solemn look, staring straight at camera]

“Hello. With a great deal of evidence now linking cigarettes to cancer, to addiction, to emphysema, to heart disease, and to premature death, I want you, the Australian public, to hear directly from me, what we at my tobacco company are doing to take responsibility for this very, very serious problem.

“Effective immediately, we will be introducing a total nationwide product recall. Every one of our cigarettes will be withdrawn from sale wherever it is in Australia, and will remain withdrawn from sale until we can guarantee the Australian public that our product poses absolutely no threat to your health. Because if there’s one thing we here are very concerned about, it’s your health”

[looks away from camera, and bursts out laughing..].

In August 2013, the NZ company Fonterra launched an international recall of whey protein products after a contamination scare at their Hamilton factory. News reports at the time stated the scare was traced back to a ‘dirty pipe’ at the factory. Parliamentary debates at the time touched on how important it was for MP’s to treat the issue as transcending political boundaries, and seek cross-party cooperation to protect New Zealand’s trading reputation, because consumption of the products threatened the health of the end-consumer.

Contrast this with tobacco. Are we likely to see them issuing a product recall with the same urgency as Fonterra were required to? What is true is that tobacco manufacturers pose a clear and present danger to the health of the end-consumer because they (knowingly) sell millions of ‘dirty pipes’ every day. Why are so-called ‘informed’ people so accepting of their malignant presence in society, despite the legal status of cigarettes? Perhaps because acknowledging the existence of information is not the same as comprehending it, but this passes for ‘informed’. It is necessary to account for time as a variable, since tobacco harm occurs by stealth (ie., over time), and effects do not manifest immediately.

*It’s one of the most shameful things this country ever did was to export disease, disability and death by selling our cigarettes to the world. What the companies did was shocking, but what was even more appalling was that our own government made it possible – C. Everett Koop (CSTS, YouTube).*

*Furthermore industry has known about this, and have attempted to trivialise these risks...if I take a gun and shoot you, that’s criminal. If I expose you to some chemicals which knowingly are going to kill you, what difference is there? The difference is that it takes longer to kill you – Samuel Epstein, M.D. (Achbar, et al, 2003).*

Unless otherwise stated, the following definitions of economic terms are from the *Oxford Dictionary of Economics* (Black et al, 2009). This report seeks to apply them to internal human functioning (in the context of a desire to increase economic growth), and demonstrate that the comparison is beyond a metaphor – these systems as a collective whole constitute an economy in its own right, which deserves recognition when enacting this legislation. The expression ‘Health is Wealth’ maintains its validity.

This Human Economy has its own examples of division of labour, regulation, distribution, exchange, and efficiency (and other economic terms traditionally applied to processes outside the body).

This economy is based upon other forms of currency, including: energy, identity, attention, plus the factor of time. These can all be exchanged for some form of return, and their use entails some form of risk. The predominant theme: money is not the only form of currency, but tends to receive greater attention (by its material nature) due to its greater capacity for measurement over these other forms.

*Factors of production* are defined as ‘any resource used in the production of goods or services’ and state these are broadly classified into three main groups: labour (human services), capital (man-made), and land (natural), and ‘each of these can be subdivided in various ways’.

The systems we rely on to survive, be active and industrious and to fuel economic growth therefore meet their definition, and the characteristic of subdivision. If all of these systems and their processes constitute their own ‘economy’ (Gk. *Oikos*, household management), then productivity ‘the amount of output per unit of input’ is achieved not only by a ‘firm, industry or country’, but by these systems working in combination within human beings. The authors expand the definition: ‘this may be per unit of a particular factor of production, or ‘total factor productivity’ may be measured, which involves ‘aggregating the different factors’. This alludes to a combined effectiveness, or ‘synergy’.

The fact that vital health measures (eg., heart rate, blood pressure, weight, temperature..etc) can be quantified endorses the premise of this report, independent of the contemporary definition of ‘economy’. The systems that make up this ‘economy’ are vital to trade, and therefore take precedence over an agenda to (knowingly) engineer and sell a deadly product.

Given that the heart & lungs (and all the other systems tobacco negates) take up physical space, they have material value. For example then, why isn’t the *exchange* of oxygen for carbon dioxide in the deepest levels of lung tissue and *distribution* to/from working tissue regarded as an economic process? The *division of labour* concept is inherent in this specialised physiological activity.

*Externality* ‘the effect of a transaction between two individuals and a third party who has not consented to, or played any role in the carrying out of that transaction’ (Friedman, cited in Achbar et al). This term has several applications to discussions about the effects of tobacco. It relates to manufacturers passing off responsibility onto end-consumers, and the flow-on effects for families and other people. The epidemiological concept of ‘burden of disease’ is an example of externality.

It also applies *within* the person who develops a smoking-related illness, since there are systems affected independent of those involved in the smoking behaviour. It applies to both direct smoking, and the effects of second-hand smoke. Brief exposures are small debits on the overall account. Ben Franklin: *Beware of little expenses. A small leak will sink a great ship.*

Observation (in response to industry argument that 'plain packaging won't work'):

There is no evidence that filters work, but that doesn't stop the industry from using them. As others have stated, these are nothing more than a gimmick:

*In spite of the fact that the cigarette filter does not reduce any of the health risks whatsoever, more than 95% of the persons who smoke... buy filtered brands in the false belief that they are safe – yet this bill will not ban the filter – the biggest and longest running scam of big tobacco.*

(Alan Blum M.D. 2007 testimony to US Senate Committee, CSTS, You Tube)

Some examples of authentic, trustworthy research on the topic (in contrast to the basis for tobacco industry arguments opposed to plain packaging) include the following:

*This study concluded that pack imagery has significant effects on an individual's perception of the cigarette product and encourages trial smoking, and in highly competitive or restricted environments, the pack acts an advertisement that creates or reinforces brand imagery.*

Wakefield M., C. Morley, J.K. Horan, and K.M. Cummings. 2002. The cigarette pack as image: New evidence from tobacco industry documents. *Tobacco Control* 11 Suppl. 1: i73-180 (cited in NCI, 2008).

*The colours and designs of cigarette packages continue to reinforce the notion that some brands are less harmful. The hue and density of the colours applied within a brand family follow a natural spectrum of intensity, with the lightest colours matched to the 'lightest' brand.*

Gauvin, G. 2001. Putting an end to deception: a report to the Canadian Minister of Health. Ottawa, ON: Ministerial Advisory Council on Tobacco Control (cited in NCI, 2008).

*Beyond the issue of perceiving products as light or mild, tobacco packaging has been shown in general to both reinforce brand imagery and reduce the impact of health warnings. Conversely, when fewer brand image cues appear on the packaging, adolescents are able to recall non-image health information more accurately.*

*Plain packaging limits the ease with which consumers associate particular images with cigarette brands and significantly influences smoking behaviour. Thus, packaging not only plays a role in product branding but can also be used effectively in policy interventions to counter the desirability of smoking (NCI, 2008, p. 108).*

*Results: Plain packaging of all tobacco products would remove a key remaining means for the industry to promote its products to billions of the world's smokers and future smokers. Governments have required large surface areas of tobacco packs to be used exclusively for health warnings without legal impediment or need to compensate tobacco companies.*

*Conclusions: Requiring plain packaging is consistent with the intention to ban all tobacco promotions. There is no impediment in the FTC to interpreting tobacco advertising and promotion to include tobacco packs. Freeman, B., S. Chapman, and M. Rimmer, (2008)*

*Results: Compared with current cigarette packs with full branding, cigarette packs that displayed progressively fewer branding design elements were perceived increasingly unfavourably in terms of smokers' appraisals of the packs, the smokers who might smoke such packs, and the inferred experience of smoking a cigarette from these packs.*

*For example, cardboard brown packs with the number of enclosed cigarettes displayed on the front of the pack and featuring only the brand name in small standard font at the bottom of the pack face were rated as significantly less attractive and popular than original branded packs. Smokers of these plain packs were rated as significantly less trendy/stylish, less sociable/outgoing and less mature than smokers of the original pack. Compared with original packs, smokers inferred that cigarettes from these plain packs would be less rich in tobacco, less satisfying and of lower quality tobacco.*

*Conclusion: Plain packaging policies that remove most brand design elements are likely to be most successful in removing cigarette brand image associations.*

Wakefield, M.A., D. Germain, and S. J. Durkin (2008)

*Plain packs that feature large graphic health warnings are significantly more likely to promote cessation among young adult smokers than fully or partially branded packs. The findings support the introduction of plain packaging and suggest use of unbranded package space to feature larger health warnings would further promote cessation.*

Hoek, J., C. Wong, P. Gendall, J. Louviere, and K. Cong (2011).

*International trade and investment law is complex but contains sufficient flexibilities to enable countries to achieve public health goals through regulation such as Australia's mandatory plain tobacco packaging (Tania Voon, cited in Cancer Council Victoria, 2012)*

## Summary

Principle of exchange: the trade of one good or asset for another. *The most basic form of economic activity* (Black et al, 2009, emphasis added).

Cigarette packets have been defined 'the last bastion of tobacco advertising', 'mobile billboards', and 'badge products'. The existing designs mask a sinister reality about the products, and their capacity for harm. Speaking in economic terms, this report states that every interaction is an example of the exchange principle, and our use of language ('pay' attention, and memory 'banks') endorses the use of economic principles beyond material applications only.

If we accept that a value exists between perception and reality, then a *legitimate objective* is for civil society to *add value* in the minds of citizens by reducing the difference between these two. This is a deliberate use of a trade term applied to human cognition, to emphasise industry opposition to plain packaging is hollow and self-serving.

It is often stated that if youths do not start smoking by 25 years of age, they are unlikely too. This heuristic principle has a comparison to the economic principle of *Opportunity cost*: 'the cost of something in terms of an opportunity forgone. It is best given by the benefits that could have been obtained by choosing the best alternative opportunity' (Black et al, 2009).

The implication of accepting that 'everybody knows' the extent of tobacco harm, is that tobacco industry conduct and influence globally is legitimised, and their ability to continue means that consumption grows, with the subsequent detriment they downplay, and overlook.

This report endorses plain packaging, on the basis that the concept of informed choice is complex and multi-faceted, and the existing images on cigarette packets are examples of deception to encourage youth initiation, especially in under-regulated nations. New Zealand has an opportunity to set an example for other nations to follow suit by standing firm with Australia on this law.

The way to think of Plain Packaging is: a measure to demonstrate 'the plain truth' about tobacco, and to enable citizens (especially youths) to see cigarettes for what they are (enhance perception). The existing 'pretty pictures' prevent that (intent: deception), while enhanced health warnings assist that.

The intent behind the existing designs & images is to attract new young smokers, so even before any research findings are discussed, it's a fair to conclude that preventing their use (by legal means) will ensure this method is effective, contrary to what tobacco manufacturers claim.

If 'prevention is better than cure', then it is necessary for the target market to account not just for the products, but their origins, and the malicious intent with which they are manufactured & distributed.

## Conclusions

The structures and systems contained within the human person themselves constitute factors of production upon which economic growth is dependent. The processes occurring within human beings constitute an economy in its own right, independent of, but influenced by the 'external' economy. This is considered to be a legitimate reality, beyond metaphor. Other key economic concepts have application to the internal functioning of human beings. Those mentioned are an initial comparison only, for conceptual purposes.

Trade law provides for measures that protect public health, and compatible with the Framework Convention on Tobacco Control. On the contrary, submitting to industry opposition to plain packaging on the basis of trade law/IP law does not fulfil New Zealand's responsibilities under the FCTC.

The New Zealand government have to account for the tobacco industry's international conduct and influence in the context of the plain packaging discussion, and the current decision to delay enactment until the Australian government case is resolved. This decision has the implication that significantly more people will be affected whilst there is a delay, plus a sovereign (supposedly civil-minded) government are catering to the desires of an industry responsible for significant international detriment.

In economic terms, every interaction is an example of the principle of exchange, and that a given value exists between perception and reality. The public health task with regard to tobacco, is to bring the two together. If the perennial call "It's my choice!" is to be given the respect it deserves, the focus has to include not just the product, but consumer understanding of the origins. Traditional emphasis has been on the product only, and this is not enough.

### Notes:

- Concepts of Tolerance, Withdrawal and Dependence contain economical themes (Example: Radio NZ interview with Debbie Bayer 23 February 2014).
- Ré: 'Informed choice'. "Everybody knows how harmful it is" is an expression in absolute terms that is inconsistent with calls for greater education. It implies that every person (irrespective of age or education level), understands the complexities of all the influences on the status of tobacco in society (eg., biochemistry, industry agenda, physiology, neuroscience, marketing techniques, tobacco constituents, trade law...) It is safe to summarise this expression as false, and little more than a device for manufacturers to pass off responsibility onto the end consumer.
- Use of the term 'habit' in the media is an example of why it is false. More appropriate terms are 'addiction' and 'dependency'. Dr Charles LeMaistre (1964 Report Committee member): *I felt this was so clearly addicting regardless of what the definition was. That it was really quite unfair to the issue to call it just a habit. A year after we finished this report the World Health Organisation changed the definition of addiction so that nicotine fitted beautifully under it. Today it is the most addicting substance in the world* (Tobacco Wars, YouTube).

- Actions are the basis of commentary. While the NZ government are holding off enacting the plain packaging law, they are catering to the preferences of an industry whose products cause significant global detriment, especially in nations too poor to effectively deal the consequences (and have taken litigation against a neighbouring sovereign state despite the industry role in this global detriment). The time delay is also an opportunity for these people to addict and poison millions more if left unchecked.
- Re: Intellectual property. The contribution of specialist researchers to various reports (into the nature of tobacco harm) since the 1964 Surgeon-General's report is a variation on the concept of IP. These people have invested significant amounts of time, energy and expertise into this topic. Their stance deserves greater recognition than opposition to plain packaging on the grounds the industry have invested significant amounts into their IP, because these researchers are authorities on the nature and extent of tobacco harm.
- Giving precedence to industry arguments re: trade law and IP carries the significant implication that significant loss of value occurs in the form of these specialist's contribution. (This applies also to industry researchers whose work was destroyed, hidden, or now is included in released industry documents).
- A threat of tobacco smoke to productivity exists, especially among lower paid workers, who rely on their health to derive an income. If each person possesses a capacity for health, then brief exposures are like small debits on the overall account. *Beware of little expenses...etc* (Ben Franklin). This applies whether the exposure is by direct consumption, or incidentally through second-hand smoke. If 'everybody knows...' then steps to address tobacco harm would be supported, and exposures would cease.



## Recommendations

Dispute tobacco industry claims to legitimacy, on the basis that they have not taken authentic steps to warn consumers of the dangers of consuming these products. Instead, they have deliberately manipulated constituents and public opinion to preserve their [malign] global influence on society.

Disregard their threat of litigation, and set a date to follow Australia's lead on plain packaging in the ANZAC spirit. Refuse to be intimidated by their legal threats to a sovereign government seeking to enact *pro bono publico* legislation. This will serve as inspiration to other nations who are contemplating a plain packaging regime, and arrest a global tobacco pandemic.

View the FCTC as having precedence over commercial trade laws (on the basis that the internal systems negated by tobacco consumption are themselves factors of production upon which growth depends).

Instead of allowing United States corporate influence to dictate what New Zealand should do with our public health law, smaller economies such as New Zealand can lobby President Obama to ratify the FCTC (to ensure the US lives up to the American ideals of 'freedom', 'liberty' and 'independence' which are inconsistent with addiction). This can be respectfully done with reference to his concept of *The Audacity of Hope*, which is based upon reclaiming American ideals.

Regarding the WHO Framework Convention on Tobacco Control (FCTC): to enhance their perceptions of historical and ongoing conduct, target smokers perceptions of industry manufacturers. This is consistent with the FCTC duties under section 5.3, which states "in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law" (WHO). The Maori Affairs Select Committee (2010) acknowledge this duty, and under the headline 'holding the tobacco industry accountable' recommend:

*We strongly believe that innovations in tobacco control should place financial, ethical, and legal pressure primarily on the tobacco industry (p. 5).*

To deal with covert marketing, under the heading 'reducing the appeal of tobacco', they recommend:

*Initiation of a counter-marketing campaign to denormalise the tobacco industry and tobacco products, to better inform all New Zealanders of past and ongoing industry practices and strategies (p. 25, emphasis added).*

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**Proposal to introduce plain packaging of tobacco products in New Zealand:**

**Consultation document 7.1 General consultation questions**

1. *Overall, do you support or oppose the proposal to introduce plain packaging of tobacco products in New Zealand, as outlined in this consultation document?*

I support the proposal as outlined:

A plain-packaging regime for tobacco products means tightly regulating every aspect of their appearance in order to prevent any form of tobacco marketing, promotion or advertising occurring on tobacco products and tobacco product packaging (Consultation, p. 2).

Plain packaging of tobacco products requires tight regulatory control on all aspects of the appearance of tobacco products, and includes increasing the size of existing mandatory health warnings on tobacco packaging. Brand names would be permitted only in printed form in a prescribed type font and maximum size (Cabinet paper, 28 June 2012, #3).

The packets have been described as 'mobile mini-billboards', and that's what they are. The expression "You cannot not communicate" applied to this discussion suggests that everything said and done has an effect, and that there's nothing neutral about the capacity of existing packaging to attract new smokers. Opposition to plain packaging has cited the display ban as if this were enough, yet this argument does not account for the influence the packaging has once outside the retail setting.

2. *Do you agree that plain packaging of tobacco products has the potential to:*

- *reduce the appeal of tobacco products?*
- *increase the effectiveness of health warnings on tobacco packaging?*
- *reduce the ability of tobacco packaging to mislead consumers about the harmful effects of smoking?*
- *influence the attitudes and behaviours of children and young people?*

I agree that plain packaging has this potential in each area listed, and endorse this option.

Central to this question is the concept of *informed choice*, yet it is doubtful the existing definition of this is adequate enough. It refers to an acknowledgment by potential smokers that health information exists regarding tobacco harm. True informed choice means that their expectations upon commencement (about the effects of consumption) match those held at the diagnosis of a tobacco-related illness.

To repeat an existing mindset that "everybody knows how harmful smoking is" or "they know the risks" (or some variation) implies that these two contexts for personal expectations do match. However, if there are commencing smokers whose understanding (perceptions) of the effects of consumption match the reality, they are a significant minority. If there is a value that exists between perception and reality, the public health goal is to reduce this difference, so as to increase understanding (an example of value). The problem is that too much ignorance passes for informed choice. This is an endorsement of the plain packaging proposals as a means to enable people to see cigarettes for what they are: physiological cluster bombs that operate by stealth.

3. Do you agree that plain packaging of tobacco products would help to:

- discourage young people from taking up smoking?
- encourage people to give up smoking?
- help stop people who have quit smoking from relapse?
- contribute to a reduction in smoking prevalence in New Zealand and reduce people's exposure to second-hand smoke?

I agree that plain packaging would help to produce all of these outcomes.

"tobacco advertising and promotion" means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly" (FCTC Article 1 c).

To demonstrate the influence of colour, I offer the following Rugby World Cup story:

I attended the Ireland v Italy match last October, dressed up in Irish colours. Wearing a replica green Irish jersey, socks, sunglasses, with an Irish flag draped over me, and painted orange & green shamrocks either side of my smile. I also carried a smaller hand-held green flag with an Irish rugby union image on it, plus a drink bottle\* just purchased.

Taking a seat in the North stand amongst the 36,000 strong crowd, I found myself seated next to a girl in her early twenties whose boyfriend had brought her along. Ireland went on to win the match by scoring three converted tries and five penalties for a 36-6 victory, so there was a lot of cheering for them (which I contributed to).

At one stage late in the game, my neighbour wanted to check out who I was supporting, because she thought she heard me say "Go.. Blue!". She was convinced about this. Reflecting on this experience later on, (why she overlooked clues to the alternative?) my theory is that she was thirsty, and all she had really noticed was my drink\*.



Relating this story to plain packaging of cigarettes, it demonstrates the role of colour in consumer behaviour. This legislation seeks to address the harm caused by 'no ordinary products', a reputation that is deserved because this unique capacity cigarettes have to addict consumers and progressively undermine their wellbeing.

Due to this unique capacity, the use of colour (and pack design) as a means of influencing consumer perceptions therefore deserves attention if the goal is to reduce uptake.

4. *If New Zealand does go ahead with plain packaging, is there any reason why a significantly different scheme might be necessary or desirable for New Zealand, compared to the scheme that has been introduced in Australia?*

The Regulatory Impact Statement notes that New Zealand would fulfil its obligations under the TTMRA by implementing plain packaging, and this is preferable to TTMRA purposes than the other two options. The interpretation of 'significantly' means the answer to this question is 'no' (New Zealand packets should largely resemble Australian packets).

Specific to the New Zealand proposals will be the same considerations as for the pictorial warnings implemented in 2008. The Framework Convention Alliance responsible for the FCTC state 'national authorities should specify culturally relevant messages and content for warnings and consumer information, in local languages' (Key issues 3.6, Pack markings).

5. *If adopted, do you think plain packaging of tobacco products might have any unintended or undesirable consequences, such as:*

- *unacceptable implications for consumers (eg, limitations on consumer choice)?*
- *legal implications (eg, implications for freedom of expression under the Bill of Rights Act)?*
- *adverse implications for competition or trade?*

Multinational tobacco companies oppose plain packaging. They have shown themselves willing to fight long and complex legal battles on several fronts and have the financial resources to readily absorb any costs of mounting litigation (Cabinet paper, 29 June, # 31).

It's important to remember that the 'financial resources' this paragraph describes is in proportion to human suffering the industry overlooks. These 'deep pockets' they have to contest more stringent regulations are not the basis of a credible argument, but rather evidence of significant human suffering somewhere in the world that must be addressed. So, if tobacco companies declare a-profit, you know that somewhere in the world human beings (who possess more than material value) have suffered in proportion.

Objections raised to plain packaging have included the prospect that other businesses will face similar prospects for their brands (the thin end of the wedge/slippery slope).

Considerations of policy approaches to tobacco acknowledge one standard description of tobacco as a guideline: *The only legally available product that when used as the manufacturer intends, kills half the users.* What perceptions do other (ie., legitimate) businesses have of the tobacco industry? If the effect on other businesses is going to be raised as an argument for the status quo, the question becomes: 'What constitutes legitimate business?'

A potential unintended (but desirable) consequence is that organisations whose activities serve to enhance the authentic reputation of 'business', might in greater numbers begin to sound the tobacco industry out for their conduct, because this industry deserve the title: "Merchants of Death".

The expression 'unintended consequence' deserves consideration in relation to direct consumption, and also to second-hand smoke exposure. With direct smoking, it is doubtful that consumers intend to produce the illnesses and premature deaths that can result. Their intention is to experience the temporary brain region effects. The by-products of consumption are dependency (internally) and second-hand smoke (externally). These are the 'unintended consequences' of consumption, and it would be extremely rare for a person to directly seek these effects (Contrast this with the existing definition of 'informed choice'). This consideration takes precedence, because *irrespective of government regulation*, the physiological effects of consumption ensure there are limitations imposed on choice (the effect of addiction/dependency). The legal status of cigarettes despite these effects is interpreted as being in place primarily because an outright ban would severely penalise addicted smokers, not as a means of encouraging further sales.

A good template for considering the other two areas raised (legal implications/Bill of Rights; adverse implications for competition or trade) is the 2004 Consultation document produced by the Ministry of Health *Review of the Smoke-free Environments Regulations 1999*. This accounted for similar arguments opposed to labelling changes when pictorial warnings were proposed. In section 1.5, it outlines clauses 7 and 8 of the TRIPS Agreement; sections 5 and 14 of the NZ Bill of Rights Act 1990; the TTMRA; the WTO Agreement on Technical Barriers to Trade (TBT); and the Trade Marks Act 2002. *There are several parts that indicate plain packaging is justified despite objection on these grounds (pp. 8-14).*

Regarding TBT, it presents Article 2.2:

Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such objectives are, inter alia, national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of

consideration are, inter alia, available scientific and technical information, related processing technology or intended end uses of products. [added emphasis] (p. 11).

It continues to state the key questions concern whether the proposed regulation is a 'necessary obstacle to international trade'. If so, whether it is justifiable and 'which option to achieve a legitimate policy objective will be least restrictive on trade' (p. 11).

There are several points on this Article alone.

- 'Inter alia' (among other things) suggests that there can be other legitimate objectives not listed (this list is not exhaustive). Eg., the meaning of 'necessary'.
- It can be argued that since an objective of governments is to 'grow the economy', the systems relied upon for this outcome are themselves factors of production. The effects of tobacco consumption negate this necessary aspect of trade, directly or by second-hand smoke. Brief exposures are small debits on the overall account.
- The fact that vital health measures (eg., heart rate, blood pressure, weight, temperature, etc) can be quantified suggest that all the processes occurring within human beings constitute an 'economy' in their own right, independent of the contemporary definition. The systems that make up this 'economy' are vital to trade, and therefore take precedence over an agenda to sell a deadly product.
- For WTO consideration: there is a value in word meanings. Many words used to form brands are inconsistent with the effects of consumption. This relates to the line in bold about 'deceptive practices', plus suggests that it is tobacco manufacturers who have engaged in expropriation (of the value inherent in these word meanings).
- A key word in economics is 'utility' (function/purpose). How does the utility of consumption relate to the last line about 'intended end uses of products'? The oft-repeated standard description of tobacco is *the only legally available product that when used as the manufacturer intends, kills half the users.*
- What are the work conditions of the poor labourers in developing nations, and what are the effects of the production process on the environment?
- Given the prevalent mindset that 'everybody knows' or is 'generally aware' of the extent of global harm posed by tobacco here in the 21<sup>st</sup> Century, there should be greater support for policies that seek to address that harm.

A presentation by four speakers on Intellectual Property and plain packaging featured Prof. Mark Davison from Monash University, Melbourne. In relation to the Australian plain packaging legislation, he outlines the application of 1) the Constitutional law argument; 2) the WIPO/Paris Convention; and 3) the TRIPS Agreement. It is regarded as an authoritative response to objections about the proposal, since it 'clinically' deconstructs opposition arguments. What is significant is that it predates the Australian High Court decision by 15 months:

<http://www.ipria.org/events/seminar/2010/Tobacco-Seminar/Tobacco%20Seminar.html>

- *unduly adverse impacts on tobacco manufacturers and exporters in developing countries?*

Marty Otanez ([www.fairtradetobacco.org](http://www.fairtradetobacco.org)) (<http://vimeo.com/otanez/videos>)

Below are examples of videos to express the first consideration for impacts on developing countries must be the workers and their families. Repeated themes are nicotine poisoning, child labour, bonded working conditions, detrimental effects of tobacco on land and soil, and the value of alternative crops.

However, the potential adverse effects of plain packaging on tobacco manufacturers and exporters are no argument for withholding of plain packaging to reduce demand.

<http://vimeo.com/48969105> *GASP - Malawi*

<http://vimeo.com/48720005> *Mary Okioma, Speech at 2012 WCTOH.*

<http://vimeo.com/26526976> *Up in smoke, Documentary. (25 minutes)*

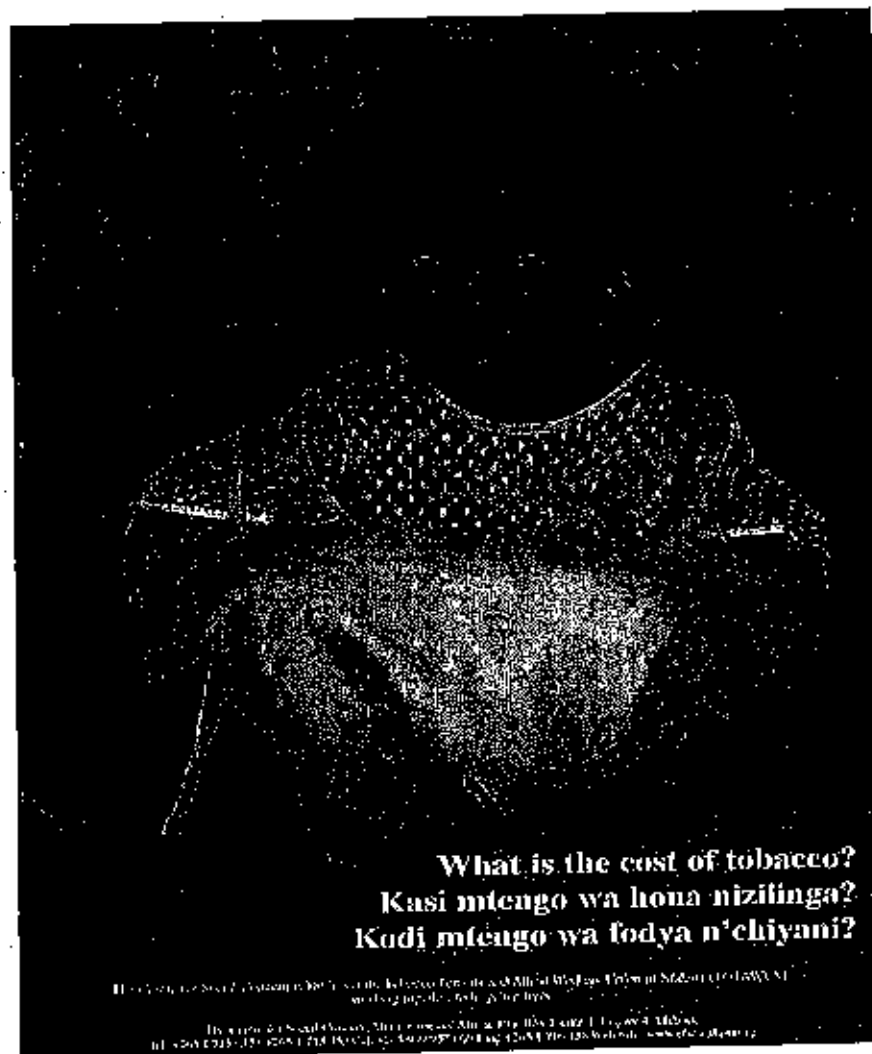


Image: Center for Social Concern Malawi ([www.cfscmalawi.org](http://www.cfscmalawi.org))

At the end of the third video is an interview with Derek Yach, Executive Director of WHO section on noncommunicable diseases. He discusses how the FCTC can assist countries in breaking free of tobacco influence:

*The treaty may allow Malawi to seek additional financial resources to start doing the research required to reduce their dependency on tobacco. We're not saying people should switch tomorrow out of tobacco. We're saying "Let's see demand reduction happen, and let's make sure that countries start looking at sustainable livelihoods for their people."*

The last of the key issues outlined in the FCTC states:

*End all forms of subsidy to tobacco. There is no justification for subsidising any part of the production of tobacco. If there are social needs for subsidising communities based on tobacco farming, any support should be for diversification, infrastructure development or activities that produce public goods (Framework Convention Alliance, 2002).*

Another documentary about the influence of tobacco in Africa is the BBC *This World* *Bannatyne takes on big tobacco* (2008), in which he travels to Mauritius, Nigeria and Malawi. The programme highlights breaches of marketing codes and advertising bans in these countries in a bid to target children. It bears similarities to the *Sex, lies and cigarettes* documentary (See page 9), in that both programmes focus on use of sponsored music concerts where packaging is a central element of stimulating purchases. When challenged about targeting youth this way, both company reps deny this is happening. Of course, these campaigns are inconsistent with FCTC Article 5.3 "to protect policy development from commercial and other vested interests of the tobacco industry" (# 27, RIS).

6. *Are you concerned that a plain-packaging regime might lead to an increase in illicit tobacco trade and related 'black market' or criminal activity? If so, can you provide any evidence to support your concern? For example:*

- *what difference would plain packaging make to the incentives or opportunity for the supply of counterfeit or contraband (ie, smuggled or non-duty paid) cigarettes?*
- *do you have any views as to the adequacy of measures contained in the Australian plain-packaging regime to avoid illicit trade?*
- *do you have any views as to the role the tobacco supply industry itself should play in preventing illicit tobacco trade?*

The Australian Health Minister Tanya Plibersek, responding to a media question (abc.net.au, 15/8/12) about planned further excise increases to counter cut-price cigarettes, stated:

*The first thing I want to say about the tobacco companies arguments about cut-price cigarettes, and about counterfeiting, which is the other argument that they use, is that they just don't stand up to scrutiny.*

*When they talk about cut-price cigarettes, what they're admitting is that they recruit young people, they need to recruit young people. Young people are price sensitive. So they're admitting that their business model is about recruiting new, young smokers. That's what cut-price cigarettes are about.*

*Their other argument about counterfeiting, or illegal importation of cigarettes also doesn't stand up to scrutiny. They released a very questionable report done for them by Deloitte, done for the tobacco industry, that vastly overstated the use of illegal tobacco products in Australia, and any argument that this plain packaging makes it easier to counterfeit cigarettes just doesn't stand up to scrutiny.*

*If you look around the world, there are all sorts of counterfeiting operations going on... they're pretty sophisticated. The fact that this packaging looks like this now doesn't make it easier to counterfeit. We still have allowed information to be put on packs, including things like alphanumeric coding that will show whether the cigarette packets are genuine or not.*

*What you see is a tobacco industry that realises its business model of recruiting young smokers is in trouble, and they reach for any scrawol to criticise measures that further restrict their ability to recruit (11.15 - 12.58)*

The role of the tobacco industry in promoting the black market trade was covered in a 93 minute 2005 documentary *The Tobacco Conspiracy* (Nadia Collet), discussing the industry role in smuggling in Africa (at 1 hour 18 minutes).

A report on this topic supports her findings as they apply to other countries, and also states the following about New Zealand:

There is a paucity of reliable, independently published estimates of the amount of illicit tobacco consumption in New Zealand. The Ernst & Young estimate of 3.3% for illicit tobacco in New Zealand is a high, worst case scenario. Current illicit tobacco consumption is more likely to be between 0.7 to 2.0% in New Zealand. It is crucial to bear in mind that the tax on New Zealand tobacco is amongst the highest in the world and that New Zealand has one of the lowest estimates of illicit tobacco consumption in the world. The lack of land borders with other countries, New Zealand's high levels of co-operation with other countries, the high integrity and efficiency of New Zealand Customs and reducing demand for tobacco has been, and will continue to be, the key to maintaining this low level of illicit consumption (ASH NZ, 2010, p. 14).

The capacity of the New Zealand Customs service also addressed this issue, finding that:

the illicit trade in tobacco and cigarettes "was generally confined to intercepts of one to two cartons - over concession - from passengers arriving into New Zealand and via the mail stream" (Johnston, *NZ Herald*, 1/8/12).

A TVNZ item in early September reported that travellers to Australia would only be able purchase 50 duty-free cigarettes (down from 200), and that travellers to NZ are still able to purchase 200 cigarettes. This is another area *where there should be parity with Australia*. The stated objection to this measure on the grounds that New Zealand would be in breach of overseas treaties and obligations surely misses the point that one of these is the Trans-Tasman Mutual Recognition Agreement (TTMRA), and that Australia has proceeded with this measure despite objections.

The news item summarised the report of the NZ Finance and Expenditure Committee that "we would like to see New Zealand's duty-free concessions reduced substantially". The objections to this measure resemble those to plain packaging: to cite trade agreements pays lip service to the spirit of the FCTC which seeks to address tobacco harm.

<http://tvnz.co.nz/world-news/duty-free-tobacco-limit-slashed-in-australia-video-5056609>

(1/9/12) Accessed 1/9/12.

The set of news items on related topics that appeared after included this one, which discusses tour guides who purchase duty-free cartons and on-sell them.

<http://tvnz.co.nz/national-news/duty-free-cigarettes-under-review-3616528>

(28/6/10) Accessed 1/9/12

*Duty free is an unjustified tax break to travellers, and opens a back door route to the black market by allowing retail access to tobacco products on which the full duties have not been paid*

(Framework Convention Alliance, 2002)

If anything, objections to plain packaging on the grounds it will result in increased black market are really an endorsement of it (since it will standardise packaging between as well as within countries). The more countries who schedule a plain packaging regime (along with other measures), the greater the overall reduction in illicit tobacco. Recent reports have put the number interested in the proposal at 45 countries. Differentiation can still occur since the brand name remains on the packet. There is also a stated argument that smokers tend to be 'brand loyal', so in general they will know what to ask for.

The goal is to reduce smoking prevalence, and this goal applies to other sovereign nations also, who should be able to set health policy free of industry influence (consistent with Article 8 of the TRIPS agreement, and Article 5.3 of the FCTC).

7. Do you have any comments to make on any aspect of the Regulatory Impact Statement that forms part of this consultation?

The RIS states under the problem definition [point 3] that the specific problem it seeks to address 'may be defined as the continued ability of the tobacco industry to use packaging in a way that allows advertising and promotion of tobacco products' (p. 2). I endorse plain packaging as the preferred option to address this problem.

Some questions have been left unanswered. Of these, I note that RIS has addressed them, and accept the conclusions the RIS has drawn.

A predominant concern is the capacity that existing packaging has to act as 'mobile billboards'. There is an educational concept: 'Taking in the culture which surrounds', which speaks of a 'natural dependency'. In this, the developing person is continually interacting with their environment. In terms of economy, this interaction can be viewed as an example of exchange, though it involves more than material factors. Since there are factors of value involved in this exchange, it can be argued this is an economical process. Given that learning drives development, the true nature of environmental factors must be accounted for. The RIS concludes:

Studies have indicated that plain packaging would reduce the likelihood that consumers will be misled about the harmfulness of tobacco products, increase the effectiveness of health warnings, and reduce the appeal of tobacco products and social approval of tobacco use (p. 14).

8. Do you have any other comments on plain packaging of tobacco products that you would like to be taken into account?

'Package' suggests a capacity to carry content (as in 'consultation package'). Health policy on tobacco is therefore seen as a 'package' also, that does not just address material packaging of tobacco, but as a broad approach (under the FCTC) to boost effectiveness of measures applied. The Regulatory Impact Statement (p. 2) uses the expression 'a comprehensive suite of initiatives' to describe the multi-faceted nature of tobacco control. Although the proposal emphasises Articles 11 and 13 of the FCTC, the effective implementation of these will also depend on other parts as well.

I believe it is a necessity for the public to appreciate the FCTC as the background to tobacco legislation; the relationship this has to trade agreements (such as the TPP); and for educational programmes on unethical industry conduct to occur. There are many documented examples of this conduct dating back that could form part of educational programmes funded by tax revenues, and targeted at youth.

24 minutes into the documentary *Sex, lies and cigarettes* (Vanguard, 2010), the presenter visits Persahabatan hospital in Jakarta. The emphasis of the documentary is on the influence of



tobacco marketing and advertising on smoking prevalence in Indonesia, a country with 240 million people, and with a significantly under-regulated market. The reported annual deaths from smoking are given as 400,000 people, a figure expected to quadruple by 2030.

One patient gives the following advice:

*The government should not show us the glamorous people. The government should stop the ads. They have to look at us. All the ads on the street should be destroyed.*

This is an enlightened statement, because it describes a manner in which tobacco marketing allures and attracts new smokers by means of deceptive wording and imagery. Just prior to that, his fellow patient was asked if he was surprised to learn tobacco was bad for his health. He responds: "I didn't know. All I knew was that smoking felt good".

The advice above is applicable in the New Zealand context, because the part about 'ads on the street' resembles the description of existing packaging as 'mobile billboards'.

Also featured is this viewpoint:

*Philip Morris have been masterful in going from country to country arguing that their economy depends upon tobacco, but ignoring the literally billions of dollars in health care costs (Matthew Myers, Campaign for Tobacco-free Kids).*

It is worth mentioning that the industry conduct featured in this documentary treats with contempt the 1997 Jakarta Declaration said to 'offer a vision and focus for health promotion in the 21st Century'. One of the priorities from this is to 'restrict production of and trade in inherently harmful goods and substances such as tobacco and armaments, as well as discourage unhealthy marketing practices' ([www.who.int](http://www.who.int)).

## 7.2 Specific questions relating to impacts on manufacturers, exporters, importers and retailers of tobacco products

I have provided some brief comments. For the remaining questions, I accept the stance of the Regulatory Impact Statement which deals with these issues.

9. *What are the likely impacts that plain packaging would have for manufacturers, exporters, importers or retailers of tobacco products?*

(RIS, page 1, para 6).

Imperial Tobacco Australia packets appeared (September, 2012) with the slogan 'It's what inside that counts' (As one online message observed, the slogan was an excellent message for pregnant women).

While getting Imperial offside with the Australian government for challenging the legislation, it demonstrated the industry have the ability to change to a plain packaging regime in a short period of time. So the New Zealand government should know that time is not a constraint for compliance, based on this conduct.

11. *What would be the additional costs of manufacturing tobacco packaging, including redesigning packs and retooling printing processes, if plain packaging of tobacco products were introduced?*

RIS, page 1, para 5. No greater cost to industry to produce p/p than existing regime.

17. *Would it take longer for tobacco retailers to serve customers, and if so, why and by how much would this occur?*

If retailers choose to stock tobacco, they accept the product-specific aspects that apply. The description 'No ordinary product' refers to the unique capacity tobacco has to kill half of the people who consume it. For this reason, the length of time taken will be considered in relation to people who value their time more due to a tobacco-related diagnosis.

The change in service time would probably take longer initially, but retailers will adapt to the changes and come to know where particular products are situated.

20. *Please outline any ways in which plain packaging might be introduced so as to minimise the costs and/or maximise the benefits of doing so.*

A predominant theme when plain packaging is discussed is the impact of government regulation on the freedoms of ordinary citizens. An observation is that independent of government intervention, the effects of consuming tobacco mean there will be a significant loss of freedom for the person concerned (the effect of addiction). The contemporary definition of 'informed' is premised upon an understanding this outcome will happen.

Opposition to tighter laws around tobacco are often framed as if there were only two parties involved (smokers and the government). As a means of minimising costs and maximising benefits, it is worthwhile to provide education on the third key party involved: the tobacco industry, and their role in producing this loss of freedom. It is important for citizens to know the background to the plain packaging legislation is the FCTC which stems from a need to address harm produced by this industry globally.

*Just as we cannot work towards a solution for malaria without understanding the behaviour of its vector, the mosquito, so must we understand the product and the tobacco industry, if our solutions to the health problems they create are to be effective*

- Dr. Gro Harlem-Brundtland (2000).

The week of the nationwide display ban, TV3's *60 minutes* on focused on New Zealand's approach to tobacco regulation with the synopsis: 'We all know that smoking is bad for our health, so much so that the government is looking to make New Zealand smoke free by 2025'. The programme featured this industry hypothesis about the 2025 goal:

*"Is a smokefree New Zealand thirteen years from now really realistic? Frankly, we don't think so" (2.37)*

*"Will you ever get to a situation where there's not a smoker left in New Zealand? Frankly, I just don't think that's realistic. There will always be some people who want to smoke" (16.10) (Philip Morris representative).*

Putting aside the fact 'Smoke-free NZ' refers to less than 5% of the population, and that this hypothesis overlooks the 'aspirational' nature of the 2025 goal, it can still be contrasted with this comment given by WW2 concentration camp survivor Viktor Frankl (@ 7.52).

Interviewer: "Dr Frankl, I'm going to ask you now, as you know this country is going through a very difficult time, we have an economic recession, people have become insolvent, are without jobs, the political future is far from settled. Do you have a message for us that could give us hope and meaning?"

*You see, the only message I can deliver is the principle that I have adapted...adopted. I well remember through all the days I had to spend in Auschwitz. The statistical evidence that my chance to survive Auschwitz was 29:1, and I have the feeling that it was like that. And still I applied the philosophy of Sir Karl Popper, which in its nucleus means that you cannot prove any hypothesis - the only thing you can do is falsify it. Show that it is not valid, that it is not tenable. And without knowing his philosophy (I only met him for the first time a couple of years ago), I applied his theory in as much as I told myself:*

*"Viktor, your chances are very, very low. Small. Probably you will be sent to the gas chambers. And still, there's nobody who can guarantee me, and convince me, with 100% certainty, that I shall not survive but end in the gas chamber. As long as I have no guarantee that I will have to die within the next day, I continue behaving and acting, as if I were spared this fate.*

The reason for including this excerpt is to demonstrate that the 2025 goal is no more unrealistic than this. The industry stance above is like the hypothesis that cannot be proven, but can be falsified, and shown to be not valid or tenable.

To paraphrase Thoreau: "In the long run, we hit only what we aim at. Therefore, though they should fail immediately, we had better aim at something high".

What is for certain is that an honest attempt to attain the Smokefree 2025 goal is way more realistic than arguments that seek to maintain the status quo.

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EL08

# JAPAN INTELLECTUAL PROPERTY ASSOCIATION

Asahi-Seimei Otemachi Bldg. 18F,  
6-1, Otemachi 2-Chome  
Chiyoda-ku, Tokyo 100-0001 JAPAN



Tel: 81 3 5205 1433  
Fax: 81 3 0205 3301

July 8, 2014

To Department of Health

Re: JIPA Comments on the "Draft Regulations for the Standardized Packaging of Tobacco Products"

We, the Japan Intellectual Property Association ("JIPA"), are a private user organization established in Japan in 1938 for the purpose of promoting intellectual property protection, with about 800 major Japanese companies as members. When appropriate opportunities arise, we offer our opinions on the intellectual property systems of other countries and make recommendations for more effective implementation of the systems. (<http://www.jipa.or.jp/english/index.html>)

Having learned that the "Draft Regulations for the Standardized Packaging of Tobacco Products", published by UK Department of Health in June 2014, we would like to offer our opinions as follows. Your consideration on our opinions would be greatly appreciated.

JIPA again thanks UK Department of Health for this opportunity to provide these comments and welcomes any questions on them.

Sincerely, yours;

Chairperson of the Trademark Committee  
Japan Intellectual Property Association  
Asahi Seimei Otemachi Bldg. 18F  
6-1 Otemachi 2-chome Chiyoda-ku Tokyo, 100-0004  
Japan

**JIPA Comments on the "Draft Regulations for the Standardized Packaging of Tobacco Products"**

JIPA has closely and carefully examined the proposed Draft Regulation, publicized by UK Department of Health in June 2014, under the title of "Draft Regulations for the Standardized Packaging of Tobacco Products". JIPA hereby presents its comments on this proposed Draft Regulation.

- JIPA has serious concerns on the UK Government's plan to introduce standardized packaging for tobacco products to the extent of the intellectual rights protections.
- Trademark is essentially used to identify various products or services marketed by that business and to distinguish those goods and services from those produced or rendered by others, resulting to have following fundamental functions such as: identifying the origin or ownership of a product; guaranteeing the quality of a product; and advertising and promotion of a product. The standardized packaging regulations may cause difficulties to consumers in differentiating a product from another; thereby aforesaid fundamental function of trademarks will be prejudices.
- To be more precise, we have concerns that the tobacco standardized packaging may cause unintended negative consequences, namely encouraging the proliferation of counterfeit products manufactured by illicit traders and promoting a likelihood of consumer confusion of purchasing unwanted products and/or counterfeit products based on their false recognition of such brands.
- Therefore JIPA urges UK Government to carefully reconsider the tobacco standardized packaging taking into account our opinions set out above.

\*\*\*\*\*

(EOD)



ECMA

## EUROPEAN CIGAR MANUFACTURERS ASSOCIATION

Department of Health  
Standardised Tobacco Packaging Consultation  
PO Box 1126  
CANTERBURY CT1 9NB  
United Kingdom  
By e-mail: TobaccoPackaging@dh.gsi.gov.uk

Tilburg, 18 July 2014

Re.: ECMA response to the consultation on the introduction of regulations for standardised packaging of tobacco products ("the consultation paper")

Dear Sir, Madam,

I am writing to you on behalf of the European Cigar Manufacturers Association (ECMA) with regard to the above noted consultation paper. ECMA is the trade association of cigar manufacturers in the Member States of the European Union. ECMA members together account for over 90% of the cigars produced in the European Union.

ECMA rejects standardised packaging of any legal consumer good, including tobacco products. Standardised packaging is disproportionate and is not supported by any clear evidence about its positive impact on public health. No evidence has emerged from Australia showing that standardised packaging of tobacco products has changed the smoking prevalence since its introduction. The Australian measure is still subject to a legal challenge under the World Trade Organisation agreements. If introduced, standardised packaging of tobacco products would set a destructive precedent across other consumer goods, alongside its serious negative impacts on market dynamics and legitimate trade in the United Kingdom.

Notwithstanding the above, ECMA welcomes the exclusion of specialist tobacco products such as cigars from the standardised packaging proposal due to their low rates of use, particularly by young people. According to paragraph 5.10 of the consultation paper, "data show that the prevalence of cigar and pipe smoking in England is much lower than cigarette and hand-rolling tobacco smoking and that a very small number of children and young people use this type of tobacco. In 2011, 18% of people aged 16-19 years smoked cigarettes, but 0.2% of this age group smoked cigars and 0.1% smoked pipes. Today, almost all cigar smokers are male and over 25 years of age. Pipe smokers tend to be male and over 20 years of age".





ECMA

In addition ECMA would like to add that, according to the most recent special Eurobarometer report on tobacco dated May 2012, throughout the EU cigars are rarely used by smokers, only 2% reporting that they use cigars on a daily or weekly basis. In the United Kingdom cigars are smoked even less frequently: 0% of smokers reported to smoke cigars on a daily basis and only 1% of smokers reported to smoke cigars on a weekly basis (see the attached factsheet "Eurobarometer 77.1 Results for the UK").

Yours sincerely,



Secretary General

EL 39

**From:** [REDACTED]  
**Sent:** 25 July 2014 09:22  
**To:** Tobacco Packaging  
**Cc:** [REDACTED]  
**Subject:** Response to consultation on standardised packaging  
**Attachments:** GM letter response.pdf; SPRegsASHdraftresponse.pdf

To Whom it May Concern

The Royal College of Radiologists is content to support the response of Action on Smoking & Health (ASH) to the consultation on standardised packaging for tobacco products.

I attach a letter from the President confirming this, along with a copy of ASH's response.

These documents will also be sent by post.

I trust that this is in order, but please let me know if any further information is required.

With Regards,

[REDACTED]  
[REDACTED]

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The Royal College of Radiologists

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*From the Office of the President*

25 July 2014

Department of Health  
Standardised Packaging Tobacco Consultation  
PO Box 1126  
Canterbury  
CT1 9NB

*By email: [tobaccopackaging@dh.gsi.gov.uk](mailto:tobaccopackaging@dh.gsi.gov.uk)*

Dear Sir/Madam

**Consultation on the introduction of regulations for  
standardised packaging of tobacco products**

I enclose a copy of the response from Action on Smoking and Health (ASH) to the  
aforementioned consultation.

The College is in full support of ASH's response to this consultation, and has no additional  
comments to make.

With kind regards,

Yours sincerely

  
  
President  
[president@rcr.ac.uk](mailto:president@rcr.ac.uk)

Enc

# Consultation on the introduction of regulations for standardised packaging of tobacco products

## Response from Action on Smoking and Health

1. ASH (UK) is a health charity working towards the elimination of harm caused by tobacco. ASH receives core funding from the British Heart Foundation and Cancer Research UK and project funding for work to support implementation of the Tobacco Control Plan for England from the Department of Health.

### Consultation Question 1: Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

2. ASH believes that standardised packaging should be introduced if the available evidence supports the conclusion that the introduction of standardised packaging would be likely to:
  - Lead to a reduction in the numbers of young people starting to consume tobacco; and
  - Together with other policy initiatives, contribute significantly over time to a reduction in smoking prevalence rates.
3. The Chantler Review, rightly, reported that the evidence does indeed support this conclusion. As Sir Cyril Chantler stated in his covering letter to the Secretary of State: *"it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking" and "the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time in the uptake and prevalence and thus have a positive impact on public health."*
4. We welcome the response of Jane Ellison MP, Minister for Public Health, to the Chantler Review. She said that the report found standardised packaging was *"very likely to have a positive impact" on public health. She went on to say: "In the light of the report and the responses to the previous consultation in 2012, I am minded to proceed with introducing regulations to provide for standardised packaging,"* and that she wished to *"proceed as swiftly as possible"*. She also reported that the Government's Chief Medical Officer, Dame Sally Davies, had written to her supporting the conclusions of the Chantler Review and the introduction of standardised packaging.<sup>1</sup>
5. We therefore consider that the case for standardised packaging has been made, and that the Government should lay Regulations on standardised packaging, under Section 94 of the Children and Families Act, before Parliament as soon as possible. Given that notification to the European Union of the intended Regulations will take six months, there is now only a short time available to do this before the 2015 General Election.
6. The Government should resist efforts by the tobacco industry and its surrogates to delay production of the final Regulations. In this consultation response we review some of the industry's arguments in response to the Chantler Review and show them to be either weak or entirely without foundation.

<sup>1</sup> House of Commons Hansard 3rd May 2014: Col 1018 et seq

**Consultation Question 2: Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?**

**Illicit Tobacco Trade: General**

7. A principal tobacco industry argument against standardised packaging has been that it will inevitably lead to an increase in the illicit tobacco trade. There is no good reason to accept this argument, since there is no plausible mechanism of action, and indeed evidence published since the 2012 consultation suggests that it is false.
8. There is no plausible mechanism of action because all the key security features on existing packs of cigarettes would also be present on standardised packs. These include coded numbering and covert anti-counterfeit marks. Jane Ellison, Parliamentary Under-Secretary of State for Health, said in a November 2013 Parliamentary debate that: *"I am grateful to those hon. Members who have made the point that if we were to adopt standardised packaging, it would not mean plain packaging. Approaches such as anti-smuggling devices could be built into standardised packaging, if we choose to go down that route."*<sup>2</sup>
9. The production costs of illicit cigarettes (including packaging) are very low. In Paraguay costs can be as low as 5 US cents a pack, a Jin Ling pack in Kaliningrad or a Chinese counterfeit pack may cost about 20 cents a pack to produce. Counterfeiters are also able to produce quality and apparently genuine packaging at low prices in a short time. It follows that outside packaging is a very poor indicator of whether a pack of cigarettes is licit or illicit.<sup>3</sup> The only obvious circumstances in which external packaging could be useful in this respect is precisely if standardised packaging is introduced – which would of course enable easy visual identification of "cheap white" brands (ones with no licit market in the UK) and diverted licit brands (where the first destination market was in a country without standardised packaging, and the product has been diverted into illicit channels).
10. Number codes will develop further into an international standard system because of the requirements of Article 15 of the revised EU Tobacco Products Directive and Article 8 of the Illicit Trade Protocol, a subsidiary treaty under the WHO Framework Convention on Tobacco Control, to which the UK is a Party.
11. Article 15 of the Tobacco Products Directive states that: *"Member States shall ensure that all unit packets of tobacco products are marked with a unique identifier. In order to ensure the integrity of the unique identifier, it shall be irremovably printed or affixed, indelible and not hidden or interrupted in any form, including through tax stamps or price marks, or by the opening of the unit packet."*<sup>4</sup>
12. Article 8.3 of the Illicit Trade Protocol states that: *"With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form*

<sup>2</sup> Hansard: backbench business debate. 7 November 2013 column 477

<sup>3</sup> Joossens L. *Smuggling, the Tobacco Industry and Plain Packs* Cancer Research UK, Nov. 2012

<sup>4</sup> Text of the revised EU Tobacco Products Directive: Article 15

*part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party".<sup>5</sup>*

13. It should be noted that Philip Morris International has developed a coding system called "Codentify", which the company has licensed for free to JTI, IT and BAT. The four tobacco multinationals have set up a "Digital Coding and Tracking Association", based in Zurich. According to PMI, the system is based on unique twelve digit codes, which enable enforcement authorities to determine key information including: date, time, factory and line of production and intended target market. Since the codes are based on a secure algorithm, it is claimed that it would be a simple matter to identify "fake" codes on illicit packaging. PMI's promotional material claims that "Codentify" ... "makes the leap into the digital age and can meet the demands of governments that want to improve tax revenue collection, the robustness of verification processes and supply chain security ... When it comes to protecting government tax revenues, securing the supply chain and fighting illicit trade, Codentify offers a highly advanced, secure and cost-effective solution for the 21st century".<sup>6</sup>
14. Codentify (or any of a number of other systems that are not proprietary to the tobacco industry) could be used on standardised packs as readily as on branded ones. It is clear that the tobacco industry is promoting contradictory messages depending on which issue it is addressing: on the one hand it claims to have a robust coding system which enables it to identify counterfeit products, and on the other to claim that pack design is vital in combatting illicit trade.
15. Not surprisingly therefore Andrew Leggett, Deputy Director for Tobacco and Alcohol Strategy at HM Revenue and Customs has said about standardised packaging that "we're very doubtful that it would have a material effect (on counterfeiting and the illicit trade in tobacco)".<sup>7</sup> This conclusion was supported by the House of Commons Home Affairs Select Committee, in its report on the illicit tobacco trade published in June 2014. The Committee reported that: "We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging."<sup>8</sup>

#### **illicit Tobacco Trade: Australia**

16. The tobacco industry has repeatedly claimed that the level of illicit trade in Australia has increased since, and as a result of, the introduction of standardised packaging. For example, BAT told investors in March 2014 that total illicit activity in Australia had risen by more than 30 per cent since the introduction of standardised packaging.<sup>9</sup>
17. These claims were examined during the Chantler Review and shown to be unsupported, a fact that was effectively admitted during Review meetings with representatives of the tobacco

<sup>5</sup> Text of the Illicit Trade Protocol: Article 8.3

<sup>6</sup> 19 [http://www.pmi.com/eng/documents/Codentify\\_E\\_Brochure\\_English.pdf](http://www.pmi.com/eng/documents/Codentify_E_Brochure_English.pdf)

<sup>7</sup> Oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on 24th July 2013.

<sup>8</sup> Home Affairs Select Committee First Report on Tobacco Smuggling: paragraph 44

<sup>9</sup> Plain packaging making 'no impact' on Australian smokers, say tobacco chiefs: The Australian 4th March 2014

industry in Australia.<sup>10</sup> The Australian Government and customs officials have also rejected tobacco industry claims that illicit trade in Australia has risen since the introduction of standardised packaging.<sup>11</sup> In March 2014 the *Sydney Morning Herald* reported that there had been only one seizure of counterfeit plain packs since December 2012.<sup>12</sup>

18. In response to this article, the paper was contacted by Sonia Stewart, the former Head of Corporate Affairs & Legal for Imperial Tobacco Australia, who has now left the industry. In her job at IT Australia she had "commented numerous times in the media during 2011-2013 about the anticipated impact of plain packaging", claiming for example that "the legislation will make the counterfeiters' job both cheaper and easier by mandating exactly how a pack must look".<sup>13</sup> She wrote to the paper that "based on these figures from Australian Customs authorities, there doesn't appear to be any evidence that plain packaging itself has caused an increase in tobacco smuggling." She added: "Imperial Tobacco did expect to see an increase in tobacco smuggling because of plain packaging, but based on the figures from Australian Customs it looks like those predictions were simply wrong."<sup>14</sup>

#### Tobacco Consumption in Australia

19. The tobacco industry has also claimed that tobacco consumption in Australia has risen since the introduction of standardised packaging. Again, independent evidence does not support this proposition.
20. In November 2013 a study by the consultancy firm London Economics, funded by Philip Morris, reported that since the introduction of plain packaging in Australia their survey showed no statistically significant change in smoking prevalence. This report has been sharply criticised by, among others, the Cancer Council of Victoria, since:
- The report used an online survey panel, which was not representative of the general population (for example, the panel's smoking prevalence rate was higher than the Australian average)
  - The survey had a sample size of 5,000, which could only demonstrate statistical significance if smoking prevalence rates had fallen by around two percentage points in less than a year, which would be a sharper decline than has ever been recorded in such a short period in the history of tobacco control policy. To measure a statistically significant decline of, for example half a percentage point, would have required a sample of around 90,000.
21. The tobacco industry in Australia has reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013,<sup>15</sup> and the industry and its front groups in the UK have claimed that this showed standardised packaging was not working. Although the industry reported a small (0.28%) increase in sales year on year, they did not report the increase in the Australian

<sup>10</sup> Chantler Review, Notes-of-Australia-based-meetings: see for example exchange with Mark Connell of BAT Australia, page 38pp

<sup>11</sup> See p.48 of the Explanatory Memorandum to the Australian Excise Tariff Amendment (Tobacco) Bill 2014 and p.6 of Sir Cyril Chantler's report.

<sup>12</sup> Amy Corderoy, "Tobacco industry claims on impact of plain packaging go up in smoke," *Sydney Morning Herald*, 12 March 2014, accessed April 2014

<sup>13</sup> Australia cigarette plain packaging law upheld by court: BBC Business News Online, 15 August 2012

<sup>14</sup> Sonia Stewart, Unpublished Letter to the *Sydney Morning Herald*, 12 March 2014

<sup>15</sup> Labor's plain packaging falls as cigarette sales rise: The Australian, 6 June 2014

population between 2012 and 2013. Adjusted for population, tobacco sales per person by their measure of consumption would in fact have fallen, from 920.4 per person in 2012 to 906.9 in 2013.<sup>16</sup>

22. The Australian Government's Department of Health has released figures showing that total consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products:
- \$5.135 billion in September 1959;
  - \$3.508 billion in December 2012 (when standardised packaging was introduced); and
  - \$3.405 billion in March 2014.
23. This is supported by figures from the Australian Treasury showing that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced. Clearances are an indicator of tobacco volumes in the Australian market.<sup>17</sup>
24. In June 2014, Professor Ashok Kaul of the University of Saarland and Professor Michael Wolf of the University of Zurich published research funded by Philip Morris International, purporting to show that smoking prevalence had not been reduced in Australia by standardised packaging legislation in the first year since its implementation.<sup>18</sup> Even if this analysis were correct, it would be largely irrelevant, since the primary purpose of the legislation is to discourage young people from starting to smoke, and thus contribute to reducing smoking prevalence rates over an extended period of time. A one year effect, even if the Kaul and Wolf methodology was adequate, would be unlikely to show up clearly in monthly prevalence data that is affected by a range of factors, including other tobacco control policies, seasonality, and unstable monthly estimates (some monthly sample sizes in the survey data set used by Kaul and Wolf are substantially smaller than others).

#### Other Evidence from Australia

25. Young JM et al, University of New South Wales and Cancer Institute New South Wales, reported in January 2014 that the introduction of standardised packaging in Australia in 2012 was associated with a sharp rise in the number of calls to the Quitline New South Wales service.<sup>19</sup> Statistical modelling to screen out the impact of other factors on the number of calls (such as health advertising campaigns, changes in price, etc) suggested that the number of calls to Quitline NSW rose by 75% from the week before standardised packs were first introduced in the Australian market to four weeks later.
26. Wakefield M et al, Cancer Council Victoria, Annenberg School for Communication Pennsylvania and South Australian Health and Medical Research Institute University of Adelaide, reported in 2013 that smokers in Australia were less willing to display their packs in public and smoke in outdoor areas since plain packaging was introduced. Researchers counted patrons, smokers and tobacco packs at cafes, restaurants and bars with outdoor seating for several months both before and after the introduction of standardised packaging. They found that pack display on

<sup>16</sup> Is Smoking Increasing in Australia? Guardian Datablog, 6 June 2014

<sup>17</sup> Tobacco facts and figures: Australian Department of Health, 19 June 2014

<sup>18</sup> The (Possible) Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis: University of Zurich Department of Economics, Working Paper no 165

<sup>19</sup> Young JM et al. Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis Medical Journal of Australia 2014



tables declined by 15% after plain packaging, which was mostly due to a 23% decline in the percentage of patrons who were observed smoking. The study also found that the declines in pack display and patrons observed smoking were stronger in venues where children were present.<sup>20</sup>

27. Tobacco retailers in the UK have suggested that the introduction of standardised packaging means that it will take longer to serve customers and so convenience stores will lose custom. However, Wakefield M et al have reported that: *"retailers quickly gained experience with the new plain packaging legislation, evidenced by retrieval time having returned to the baseline range by the second week of implementation and remaining so several months later. The long retrieval times predicted by tobacco industry funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate"*.<sup>21</sup>

**Consultation Question 3: Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?**

28. ASH welcomes the draft regulations, which we consider, with the exception of the exclusion of specialist tobacco products as discussed below, are comprehensive and fit for purpose.
29. However, we believe that the regulations should also apply to specialist tobacco products including cigars and cigarillos. While we note the explanation for their exclusion is their low rate of use by young people, we consider that it sets an unhelpful example if any smoked tobacco products are excluded from the regulations, since this might be interpreted as endorsement of the idea that they are in some way less harmful to health.
30. It is not clear why the regulations do not specify the size of cigarette or tobacco packets. In the Australian regulations, the dimensions are stipulated, and we suggest that this may be useful in preventing any attempt to circumvent the intent of the regulations by introducing an element of branding.

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<sup>20</sup> *Addiction*, 109: doi: [10.1111/add.12466](https://doi.org/10.1111/add.12466)

<sup>21</sup> Wakefield M, Bayly M, Scollo M. Product retrieval time in small tobacco retail outlets before and after the Australian plain packaging policy: real-world study: *Tobacco Control* doi:10.1136/tobaccocontrol-2013-050987.

**Consultation Question 4: Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?**

31. For the reasons stated above we do not agree with the inclusion in "other key non-monetised costs" of "possible losses from a potential increase in consumption of illicit product and/or product legitimately bought outside the UK".
32. We do not understand the rationale for including "lost consumer surplus" as an unquantified potential cost of standardised packaging. In paragraph 21, this is defined as "the loss of the ability of those who continue to smoke to gain the intangible benefit associated with smoking a particular brand that only the packaging of that brand, as it is currently available, can produce". We note that no attempt is made to describe the alleged "intangible benefit", for the very good reason, we would suggest, that it is illusory.
33. In economic theory, consumer surplus is usually defined as the difference between the total amount that consumers are willing and able to pay for a good or service and the total amount that they actually do pay. If, in practice, standardised packaging were to lead to some brand switching by consumers, from high price to low price cigarette brands, or if the tobacco industry were to respond to the introduction of standardised packaging by cutting prices, this should be dealt with quickly by additional increases in tobacco taxation, above those currently required by the duty escalator.
34. Standardised packaging was introduced in Australia in conjunction with larger health warnings, and a sustained mass media campaign which, on a per capita basis cost the equivalent of £33.7 million a year in the UK. Australia is also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, starting in December 2013.<sup>22</sup>
35. Tobacco control policies must be pursued in parallel and not serially if they are to have their best possible effect in reducing prevalence rates. It is therefore important that the UK Government gives careful thought to how to maximise the public health benefits of standardised packaging, by:
- funding a sustained mass media campaign around the time that standardised packaging comes into effect
  - ensuring that stop smoking services are adequately funded in every locality
  - supporting enforcement through adequate funding of trading standards departments, regional partnerships against illicit trade, and work on illicit trade by HMRC and the Border Agency
  - considering tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price cutting, and
  - considering further levies on the industry, based on local sales data, and designed to fund stop smoking services and other tobacco control initiatives, and health costs caused by tobacco consumption.

<sup>22</sup> <http://www.abc.net.au/news/2013-06-01/government-to-raise-6-billion-from-cigarette-tax-increase/4657244>

## Conclusions

36. Standardised packaging is backed by the Smokefree Action Coalition, which is an alliance supported over 250 organisations including medical Royal Colleges and other medical organisations, health and children's charities, the Chartered Institute of Environmental Health, the Trading Standards Institute and others.<sup>23</sup> The consensus of medical professionals, public health and other relevant experts is that it would make an important positive contribution to reducing the harm caused by tobacco consumption.
37. Standardised packaging is also popular with the public. A poll on the issue by YouGov, conducted for ASH in March 2014, found that overall 64% of adults in Great Britain were in favour of standardised packaging. There was majority support across age groups, genders and social classes.<sup>24</sup> It is clear that most people believe that this policy, combined with other tobacco control initiatives, is an important way to prevent the next generation of young people from starting to smoke.
38. Section 94 of the Children and Families Act 2014 was passed overwhelmingly in both the House of Lords (nem con) and House of Commons (24 MPs voted against), following a strong cross-Party campaign in support of the policy. It therefore demonstrably has majority support in Parliament.
39. Opposition to standardised packaging has been driven and financed by the tobacco industry, which requires young people to start smoking in large numbers every year, as its previous consumers quit or die prematurely from smoking-related disease.<sup>25</sup>
40. Following the six week consultation on the draft regulations, the Government will then have to notify the European Union of the draft Regulations, under the Technical Standards and Regulations Directive 98/34/EC. This process can take up to six months.<sup>26</sup> Therefore, time is now short if Parliament is to get the opportunity to vote on the Regulations before the General Election. If this opportunity were now to be missed, it would be widely understood as a public health disaster and as suggesting that the tobacco industry still has excessive influence at the heart of Government.

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23 Smokefree Action Coalition

24 The poll total sample size was 12,269 adults. Fieldwork was undertaken by YouGov between 5th and 14th March 2014. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+). Respondents were shown what a standard pack could look like, including larger health warnings as in Australia.

25 The pro-smoking group FOREST, which receives virtually all its funding from the tobacco industry, have hired the marketing agency Kreate to collect "digital signatures" for the "Hands off Our Packs" petition to the Prime Minister. Kreate describes itself as "an experiential agency that specialises in the delivery and staffing of face-to-face experiences". Agencies have also been commissioned directly by BAT to run a six week, "anti-plain packs roadshow", aiming to sign up 100,000 people to oppose plain packs. The company is reported to have allocated £500,000 to the activity. Over 100 people a day will be working on this campaign. ASH recommends that consultation responses generated in this way should be regarded by the Government as constituting a single response on behalf of the tobacco industry.

EL 42

**From:** [REDACTED]  
**Sent:** 25 July 2014 14:26  
**To:** Tobacco Packaging  
**Subject:** Response to Consultation on Standardised Packaging for Tobacco Products  
**Attachments:** Standardised packaging WDFG response FINAL July 25 SCANNED.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Sir/Madam,

I attach for your attention WDFG UK Ltd's response to the Department of Health's 'Consultation on the introduction of regulations for standardised packaging of tobacco products'.

Please note that figures included in this document to support our views are commercially sensitive and we therefore ask for our response not to be made public. We note the comments on page 22 of the Consultation document and would wish to be informed should you receive a request for disclosure under the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004 so that we may make a case for non-disclosure.

A signed copy of WDFG UK Ltd's response has been posted to you.

Please do not hesitate to contact me if you have any questions regarding WDFG's submission.

Yours sincerely,

[REDACTED] Business Relations and External Affairs Director

[REDACTED]  
4 New Square | Bedford Lakes | Middlesex | TW14 8HA | United Kingdom  
[www.worlddutyfreegroup.com](http://www.worlddutyfreegroup.com)



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Department of Health Standardised Packaging Consultation  
PO Box 1126  
Canterbury CT1 9NB

July 25th, 2014

Ref: Standardised Tobacco Packaging Consultation 2014

Dear Sirs,

**FIGURES WHICH APPEAR IN THIS SUBMISSION ARE COMMERCIALY CONFIDENTIAL AND THEIR DISCLOSURE WOULD BE PREJUDICIAL TO WDFG'S COMMERCIAL INTERESTS**

World Duty Free Group (WDFG) is one of the world's leading travel retailers, operating mainly in airports and with a broad geographical reach. It has operations in 21 countries with sales of € 2,078.6 m (£1,764.6 m) in 2013. 46% of its sales are generated in the UK. WDFG is proud to operate at 20 airports<sup>1</sup> in the UK, generating direct revenue for UK airports in excess of £30m from tobacco sales alone.

In the UK beauty is WDFG's largest product category at 55% of sales; tobacco accounts for 7.4% of sales and the category is declining. Cigarettes, which account for 75% of tobacco sales (by value), are only sold to passengers flying to destinations outside the European Union (duty free) and are highly regulated. To place WDFG's sales into a UK domestic market context, total UK quantities of cigarettes released for home consumption (2012) were 40,444 million sticks<sup>2</sup> compared with 320 million sold at WDFG's UK Export Shops in the same year – less than 1% of the official UK market, the figures for which do not take into account the 9% market share of cigarettes bought in the UK domestic market which are thought to be illicit<sup>3</sup>.

WDFG has a history of working constructively with Government to address to find solutions which recognise the specificity of this unique retail channel and welcomes the opportunity to respond to this consultation.

**Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?**

The Chantler Review is written and based upon observations, research and surveys published prior to the full implementation of The Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 (the "Regulations"). The Regulations allow special measures for specialist tobacconists, and for 'bulk tobacconists', including airport shops selling tobacco duty free, in minimum carton sizes, and only to customers with a boarding card for a destination outside the European Union ('Export Shops'). The duty free industry worked with Government to design a specific response to the Government's objectives on the basis of detailed evidence about the unique retail channel served by Export Shops. This evidence, accepted in 2010, has been ignored under the current proposal. In summary, the evidence presented and accepted then, and still valid today is that:

- Export Shops, unlike High Street shops, are only accessible to passengers leaving the UK and in possession of a valid boarding pass

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- Tobacco is only sold to those passengers whose boarding pass proves that they are leaving the European Union, and must be exported intact
- Passports or national ID carried by each passenger facilitate age checks
- A significant proportion of passengers are foreign nationals (at Heathrow Airport 30.6%) for whom English is not their first language and who select their purchases based on brand recognition. In respect of 'standardised packaging' we further add that for many passengers their language is not based on the Roman script and they will therefore be even less able to select when brand names are only written in standardised Roman script
- The proportion of young people frequenting airports is very small and, pursuant to airport regulations, all under 16s are accompanied by an adult family member or airline representative
- Export Shops generate much-needed income for UK airports which contributes significantly to investment in airport infrastructure and to keeping airfares down
- Export Shops compete for business against (a) airlines departing from the same airport premises, however airlines are not subject to product display regulations and will not be required to introduce standardised packaging (b) airport retail stores on transferring in the EU (e.g. at Amsterdam Schiphol or Frankfurt) or outside the EU (e.g. at Dubai or Singapore) or at one of an increasing number of airport arrival duty free stores from Oslo to Buenos Aires – neither display regulations nor standardised packaging will apply in any of these stores

Therefore, the Tobacco Display Areas (TDAs), whereby tobacco would be displayed for self-service at Export Shops within an enclosed unit accessible to customers aged 18 and over, and not visible from outside the unit, were agreed with the Department of Health in 2010 as a proportionate response to meeting Government objectives whilst allowing UK airport stores to compete against their competitive field (airlines and other airports). In compliance with Scottish law, TDAs have already been installed at 'large' stores (280sqm+) in Scottish airports and are currently being installed at airports in England & Wales and the remaining small stores in Scottish airports in anticipation of the April 2015 full compliance date. The cost to our company of installing these TDAs, equipping them with till points and staff is approaching £2.5 million; it involves redesign and merchandising the whole store in many cases. TDAs will entail further staffing costs of £1 million per annum.

The Chantler Report does not take into account the impact on the visibility of, and access to, tobacco that TDAs will have, nor the economic impact on Export Shops and on airport revenues of (a) TDAs and (b) standardised packaging on an unequal playing field where all other competitors will face neither restriction. In fact the effect of requiring UK Export Shops to stock tobacco in standardised packaging will simply be to shift sales from Export Shops at UK airports, with the consequent loss of revenue to UK airports, to the benefit of airlines and airports where tobacco is sold in branded packets (and which often does not even feature health warnings). UK airport Export Shops compete with over 100 airlines flying from the UK, and with 600 major airports, all of which (except Australia) have a commercial offer with branded tobacco packaging.

We therefore consider the inclusion of Export Shops in the newly proposed regulations (the Proposed Regulations) to be disproportionate.

Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

Since the last consultation was published, nationals from China, Russia, Thailand and the Middle East have continued to increase their spending power and grow in importance as customers of duty free retail stores. These countries and regions have one thing in common; they do not use the Roman alphabet. A significant proportion of visitors to the UK from these countries/regions cannot read English. Such customers rely heavily

upon the branding of tobacco products in order to identify the product they require, as a guarantee of product authenticity, and can be culturally averse to requesting assistance.

The use of branding is an important method of communicating with customers from different nationalities that have difficulty communicating in English. Where such branding is not available to communicate to passengers for whom English is not their first language, they will delay their purchase until they find the product they recognise at the next retail opportunity during their journey.

**Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?**

EU Directive 2014/40/EU (the "Directive") provides at Article 24(2) that any additional measures which are introduced by a Member State over and above the requirements of the Directive must be proportionate. UK retailers, both in the travel retail sector and otherwise, have recently installed - or are in the process of installing - TDAs or closed storage units in line with the 2010 Regulations. Particularly given the spirit of the original agreement, and the cost and time that UK Export Shops have spent implementing TDAs, we would argue that requiring Export Shops to sell plain packaged tobacco products is a totally disproportionate measure. The EU Tobacco Products Directive (EU Directive 2014/40/EU) contains a provision (Article 24(2)) which requires Member States to ensure that any measures they introduce which exceed the requirements of the Directive are proportionate. The proposals drafted by the UK Government with regard to Export Shops do not appear to be proportionate which may give rise to a challenge to the UK Government's proposals.

As in the 2010 Regulations, the Proposed Regulations make express exemptions for specialist tobacconists, recognising that they are distinct from High Street tobacco retailers and supermarkets. In the 2010 Regulations an exemption was also granted to "bulk tobacconists", including Export Shops, on the basis that they are also distinct from High Street tobacco retailers and supermarkets given the unique nature of this particular market channel where under HMRC Export Shop law duty free tobacco is not available to consumers located in the EU and cannot be placed on the EU market as products must be exported to a Non EU country. In light of this precedent and given the global competitive environment of UK airport Export Shops, an exemption should again be granted.

**Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?**

No impact assessments appear to have been made on the specific Export Shops channel.

It is the stated policy of the UK government that it wishes to reduce smoking in England and the United Kingdom ([www.gov.uk/government/policies/reducing-smoking](http://www.gov.uk/government/policies/reducing-smoking)). Pursuant to HMRC's Export Shops Notice (197A Excise Goods: Export Shops), airport duty free retailers are prohibited from selling duty free tobacco products to anyone travelling within the United Kingdom or the EU. It is therefore by necessity the case that all tobacco products sold by an airport duty free retailer must be taken out of the EU and in all likelihood will be consumed outside of the UK. As drafted, the draft Bill will only affect outbound duty free sales of tobacco products - such products shall, however, only be consumed outside of the EU.

- The effect of requiring UK Export Shops<sup>W</sup> at airports to stock plain tobacco packaging would be to shift sales from the UK to competing channels (airlines) and markets (outside the UK) where tobacco is sold in branded packets.
- The requirement for standardised packaging to apply to products sold in Export Shops at airports would result in a reduction of the range of products available to consumers. Export Shops stock products specific to the international customer base found at airports; these products are often not available on the domestic market in the United Kingdom. If the manufacturers are required to provide these non fiscal marked 'for export only' products in standardised packaging the cost to print such packaging for such a limited market would be prohibitive and they will no longer supply the UK Export Shops further reducing the competitive retail offer of UK airports.

- No impact assessment has been carried out on the potential impact of the draft Bill on either Export Shop retailers or UK airport revenues. Nor has any consideration been given to the TDA measures currently being undertaken by Export Shops, arrived at in discussion with Government, which were devised to meet Government objectives whilst maintaining some UK airport competitiveness. Considerable investment in these stores is being made, yet to display standardised packaging inside them would again leave UK Export Shops at a significant competitive disadvantage.

### Conclusion

In conclusion, WDFG believes that the Government has already recognised the unique nature of the airport channel and found a workable solution for Export Shops in the 2010 Regulations to allow the channel to remain competitive whilst meeting Government objectives. The current proposals on standardised packaging take no account of the specificity of the market, its competitive field and airport retail's broader contribution to the UK's transport infrastructure. No impact assessment has been carried out.

We consider that the inclusion of Export Shops in the legislation on standardised packaging is disproportionate and would urge the Government to re-consider and make special provision for Export Shops on the basis of the arguments already accepted in 2010.

Yours faithfully,

[Redacted signature]

Business Relations & External Affairs Director

Aberdeen, Belfast City, Birmingham, Bournemouth, Bristol, East Midlands, Edinburgh, Exeter, Gatwick, Glasgow, Heathrow, Humberside, Leeds Bradford, Liverpool, Luton (tax paid fashion store only), Manchester, Newcastle, Southampton, Stansted.

i) Statistical Bulletin Tobacco duties HMRC p.38 Table 2.11

ii) Report by All Party Parliamentary Group on Smoking and Health 2013 (Executive Summary)

iii) The Excise Goods (Export Shops) Regulations 2010: Regulation 6.1 & 6.2



EL43

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 25 July 2014 11:24  
**To:** Tobacco Packaging  
**Cc:** [REDACTED]  
**Subject:** Standardised packaging consultation - Answer from J.Cortès Cigars NV  
**Attachments:** 201407 - JC response UK standardised packaging consultation.pdf; 201407 - JC Response - Eurobarometer factsheet UK.pdf

Dear Sir/Madam,

Please find attached our answer to the standardized packaging consultation that your are organizing. We appreciate the fact that there was a hearing where we could participate.

Yours sincerely,  
[REDACTED]

**J. Cortès Cigars**  
Pannenbakersstraat 1  
8550 Zwevegem  
Belgium  
Tel.: +32 56 759400  
Fax: +32 56 759246

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Department of Health  
Standardised Tobacco Packaging Consultation  
PO Box 1126  
CANTERBURY CT1 9NB  
United Kingdom  
By e-mail: TobaccoPackaging@dh.gsi.gov.uk

Zwevegem, 25 July 2014

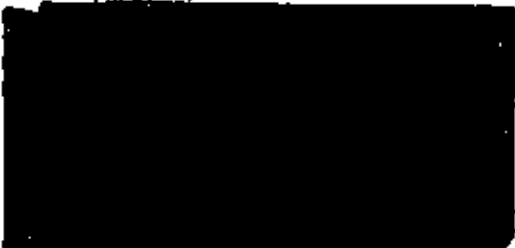
Re.: J.Cortès Cigars NV response to the consultation on the introduction of regulations for standardised packaging of tobacco products ("the consultation paper").

Dear Sir, Madam,

I am writing to you on behalf of J.Cortès Cigars NV ("J.Cortès") with regard to the above noted consultation paper. J.Cortès is a family owned cigar manufacturer that makes over 500 million cigars and is based in Zwevegem, Belgium.

J.Cortès welcomes the exclusion of specialist tobacco products such as cigars from the standardised packaging proposal due to their low rates of use, particularly by young people. According to paragraph 5.10 of the consultation paper, "data show that the prevalence of cigar and pipe smoking in England is much lower than cigarette and hand-rolling tobacco smoking and that a very small number of children and young people use this type of tobacco. In 2011, 18% of people aged 16-19 years smoked cigarettes, but 0.2% of this age group smoked cigars and 0.1% smoked pipes. Today, almost all cigar smokers are male and over 25 years of age. Pipe smokers tend to be male and over 20 years of age".

In addition J.Cortès would like to add that, according to the most recent special Eurobarometer report on tobacco dated May 2012, throughout the EU cigars are rarely used by smokers, only 2% reporting that they use cigars on a daily or weekly basis. In the United Kingdom cigars are smoked even less frequently: 0% of smokers reported to smoke cigars on a daily basis and only 1% of smokers reported to smoke cigars on a weekly basis (see the attached factsheet "Eurobarometer 77.1 Results for the UK").

  
Managing Director  
of J.Cortès Cigars NV



J. Cortès Cigars n.v. | Pannenbakkersstraat | | B-8552 Zwevegem-Moen | Belgium  
Tel.+32 (0)56 75 94 00 | Fax+32 (0)56 75 92 46 | info@jcortes.com | www.jcortes.com

BTW/VVA BE0405450102 | RPR Kortrijk | IBAN BE89 2850 2479 8085 | BIC GEBABEBB

EL45

Roma, 28 July 2014

Prot.6826

**Indirizzo email:** [TobaccoPackaging@dh.gsi.gov.uk](mailto:TobaccoPackaging@dh.gsi.gov.uk)

**Indirizzo postale:** Department of Health Standardised Tobacco Packaging Consultation  
PO Box 1126  
CANTERBURY  
CT1 9NB

Agemos - the Italian association of tobacco distributors - welcomes the opportunity to contribute to the public consultation on the UK draft regulation on standardised packaging of tobacco products.

Our association followed with interest the political and regulatory debate around the review of the tobacco product directive, which finally entered into force on May 19, 2014 as directive 2014/40/EU. This directive achieved the important goal of harmonizing several areas where there were substantial differences between the Member States' laws, regulations and administrative provisions on the manufacture, presentation and sale of tobacco and related products.

Indeed, during the debate on directive 2014/40/EU, all attempts to introduce standardised packaging among the measures to be adopted by Member States was rejected both by the European Parliament and by the EU Council of Ministers.

In Agemos' opinion, standardised packaging not only does not work as a measure to improve public health, but it has also the potential to disrupt the legal tobacco market, with the likely side-effect of boosting the illicit trade of tobacco products.

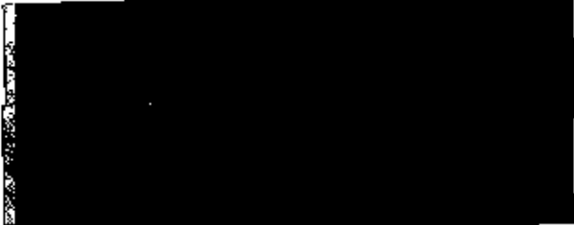
In concrete terms, data from Australia shows that the so called "plain packaging" is ineffective and it is not contributing to improve the public health objectives. Indeed, in Australia - as reported by a KPMG study ("Illicit Tobacco in Australia", full year report) - the illicit trade of tobacco products rose from 11.8% in 2012 to 13.9% in 2013. We do believe that a pack without logo, trademarks, colors and any other distinctive element would be easier to counterfeit.

In addition, the potential implementation of the standardised packaging in the UK is likely to distort the legal market of tobacco products as well as the free circulation of goods within the EU, with branded products legally marketed in a EU member state unable to be exported in the UK. We do believe that this kind of observations was also taken into account by the European institutions when they decided not to include plain packaging in the directive 2014/40/EU.

We wish the UK Department of Health would rather focus on the adoption of the already stringent regulation established under directive 2014/40/EU, which sets tough requirements in terms of packaging and information to consumers, but does not allow standardised packaging.

Yours sincerely,

President



EL46

**From:** [REDACTED]  
**Sent:** 28 July 2014 09:01  
**To:** Tobacco Packaging  
**Cc:** [REDACTED]  
**Subject:** [REDACTED]

To Whom It May Concern,

Czech Confederation of Industry of the Czech Republic would like to submit the below views as part of the public consultation on the introduction of regulations for standardised packaging of tobacco products in the UK.

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

The Chantler review focuses on the impact of branding on tobacco consumption, but does not reflect upon the fundamental fact that brands represent essential aspects of intellectual property, the protection of which is guaranteed by all national, European as well as international legislation such as the Charter of Fundamental Rights of the European Union, the TRIPS Agreement or the Paris .

The proposal for standardized packaging could thus be seen as posing a considerable challenge to the core principles of their protection. The logos of brands that the proposal de facto bans carry a rather significant economic value. It is very difficult to imagine that there could be a piece of legislation forbidding companies from using their own properties, introduced in other business sectors.

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardized packaging, that you wish to bring to our attention?

Both within the European as well as the international arena, the UK continues to be a leading advocate of sound regulatory standards, pushing for evidence based, effective approach to policy making in order to avoid any potential business impediment.

We do believe that the evidence emerging in connection with the standardized packaging from Australia, currently the only country with this type of legislation in force, is in a sharp contrast with the above mentioned standards. Australia is currently being challenged by several countries for breaching the WTO rules with regards to free trade and intellectual property protection. The same standards the UK has always been strongly defending.

Furthermore, Indonesia has announced that it would consider retaliation measures against Australia with regards to its wine exports. As the Czech Republic has a very export oriented economy, the Confederation of Industry follows this case very closely, because under the EU rules we are all part of one trading block and therefore are exposed to the same risks.

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?

We would like to draw your attention to the fact that the proposal for standardized packaging is in a breach of the Treaty on the Functioning of the European Union that sets the rules for the free movement of goods within the Internal Market. No Member State is allowed to ban products that is legal in other member countries.

Although the new Tobacco Product Directive that has recently entered into force, harmonizes the size of health warnings on the cigarette packs, it does not ban logos. The UK proposal therefore goes far beyond the adopted EU-wide compromise, therefore weakening the setting of common rules across Europe, thereby impeding the Internal market.

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

The impact assessment points out that the UK can benefit from the experience of Australia. However, there is no conclusive evidence from Australia itself so far that would support the assumption that the introduction of standardized packaging would lead to considerable reduction in tobacco consumption.

This is further supported by the fact that the Australian legislation is currently being challenged under the WTO as mentioned above on the grounds that it constitutes a barrier to trade without delivering tangible health benefits.

Please note that the Confederation of Industry of the Czech Republic counts amongst its members also the representatives of the tobacco value chain.

Confederation of Industry of the Czech Republic  
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## Consultation on the introduction of regulations for standardised packaging of tobacco products

### Response from Smoke Free Hartlepool Alliance

1. Hartlepool's Smoke Free Alliance is one of 12 local authority-led tobacco control alliances in the North East working to deliver comprehensive activity at regional and local levels and to influence action nationally in order to support smokers to quit, prevent young people from starting to smoke and to protect people from tobacco-related harm.
2. During the 2012 consultation on standardised tobacco packaging, 129 organisations in the region called for packs to be standardised, including all 12 local authorities – Hartlepool Borough Council being one of these expressing very strong support.

#### Consultation question 1: Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

3. We welcome the findings of the Chantler Review, particularly the impact that standardised tobacco packaging could have on uptake of smoking among young people
4. Smoking is the leading cause of health inequalities. The richest smokers die earlier than the poorest non-smokers as found in Gruer et al (2009)<sup>1</sup> who concluded that the scope for reducing health inequalities related to social position is limited unless many smokers in lower social positions stop smoking. Health inequalities are a major issue for the people of Hartlepool with the prevalence of smoking being much higher in our most disadvantaged communities – this has to be tackled.
5. Tobacco use is the leading cause of premature death and preventable disease. In the North East, 5,500 deaths every year occur as a result of tobacco use. In Hartlepool this relates to around 159 deaths a year in adults aged 35 and over.
6. Around 9,000 young people in the North East start to smoke every year and we need to do all we can to ensure that this number reduces to negligible levels. Repeated surveys of North East smokers have found the average age of trying cigarettes and starting to smoke to be 15.
7. We particularly welcome Chantler's dismissal of tobacco industry scaremongering about the alleged impact of standardised packaging on the illicit tobacco trade. Chantler is not convinced by the tobacco industry's argument that standardised packaging would increase the illicit market, especially in counterfeit cigarettes. Recent figures from

<sup>1</sup> <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2645845/>

Australia have also indicated that the illicit market has not increased since the introduction of the measure and that tobacco use is at an all-time low<sup>2</sup>.

8. Given that notification to the European Union of the intended regulations will take six months, there is now only a short time available to do this before the 2015 General Election.

**Consultation question 2: Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?**

9. A considerable amount of new information on the potential effectiveness of standardised packaging since has emerged since the previous consultation in 2012. Fresh, which is the North East of England's comprehensive tobacco control programme, commissioned by all 12 local authorities in the region has undertaken work to get the views of local people in the North East on the issue with their findings outlined below.
10. Support for standardised packaging is at an all-time high with 69% of people in the North East in favour<sup>3</sup> and only 9% opposing. Nationally, public support is equally high, and perhaps surprisingly more smokers support standard packs (32%) than oppose (30%) with the remainder ambivalent or undecided. Our experience of talking to smokers on this issue suggests most smokers are very keen for their children not to start.
11. Further measures to regulate tobacco are popular with the public – only 12% of people in the North East think the government is doing too much to tackle smoking<sup>4</sup>.
12. There is still a worrying lack of awareness about the impact that smoking has on health. Research gathered during the development of the 'Don't be the 1' campaign suggests that 90% of North East smokers underestimate the risk that smoking kills one in two of all long term smokers. When informed of the true risk<sup>5</sup> 65% admitted they find the true risk worrying and 43% said it is "very worrying."
13. 82% of smokers in the North East wish they had never started and 68% say they would like to be able to quit.
14. Fresh submitted the results of focus groups of smokers and non-smokers aged 18-24 during the original consultation, during which examples of Australian standardised packs were rated as likely to be most harmful and less attractive than standardised packs, with many young people feeling their greatest potential lay in dissuading young experimenters, occasional smokers and non-smokers (the stated aim of the policy rather than existing adult smokers). Discussions with young people since then has revealed further the potential impact standardised packs could have, including this film featuring two young female smokers from Gateshead, Tyne and Wear comparing examples of Australian standardised packs with current branded cigarettes. Quotes from the young smokers included:

*"It tells you... like more what it can actually do to you. They've [branded packs] just got like... little pictures on the back that you can't see when you're buying them."*

<sup>2</sup> <http://www.health.gov.au/Internet/main/publishing.nsf/Content/tobacco-kff>

<sup>3</sup> YouGov 2014

<sup>4</sup> YouGov 2014

<sup>5</sup> "The Doctors Study" (Doll R, Peto R, Wheatley K, Gray R, Sutherland I. Mortality in relation to smoking: 40 years observations on male British doctors. British Medical Journal 1994; 309:901-911).

*"It'll probably make us want to quit smoking... like I'd probably try more than what I ever have."<sup>6</sup>*

15. In Australia, research has shown that social norms in smoking behaviour are already beginning to change as a result of the implementation of standardised packaging. There has been a sharp rise in the number of calls to the Quitline New South Wales service<sup>7</sup> and that smokers are less willing to display their packs in public or to smoke in outdoor public places particularly where children are present<sup>8</sup>.
16. Figures released by the Australian government in July have shown adult smoking rates have fallen by a massive 15% since December 2012 when standardised packaging was introduced<sup>9</sup>. Before its implementation, daily smoking prevalence stood at 15.1% and has now fallen to 12.8%. The survey was conducted before the Australian Government's tobacco tax increases in December 2013, ruling out price as the primary reason for the dramatic fall in smoking during this 12-month period. Standardised packaging is the only major policy change over this time period and is therefore the most likely reason for the significant fall in smoking prevalence.

#### **Tobacco industry opposition to standardised packaging - misusing data on illicit tobacco**

17. The tobacco companies are spending considerable efforts in opposing any moves towards the introduction of standardised tobacco packaging. In the North East, JTI entered into a partnership arrangement with the Evening Chronicle newspaper (part of the Trinity Mirror media group) which featured three weeks' worth of JTI-funded advertising on illegal tobacco and published a series of articles generated by the company. Fresh was able to counter the misinformation provided by JTI and clearly outline that the illicit market is on a sustained long-term decline, that there is no evidence that standardised packaging would lead to an increase in the illicit trade and that all tobacco – legal or illegal – will kill one in two of its long term users.
18. The tobacco industry repeatedly claims that consumption of illicit tobacco will be increased by policies such as higher tax to reduce smoking and restricting tobacco promotion to reduce youth uptake, even though official figures show the illegal tobacco market has in fact decreased in the UK as a result of the introduction of such measures over a number of years. In November 2013 the chair of the Public Accounts Committee accused tobacco multinationals of deliberately oversupplying European markets, with the tobacco smuggled back into the UK. Committee Chair Margaret Hodge said:

*"The supply of some brands of hand-rolling tobacco to some countries in 2011 exceeded legitimate demand by 240 per cent. HMRC must be more assertive with these manufactures. So far it has not fined a single one of them."*

19. The tobacco industry also claims that standardised tobacco packaging will be cheaper to counterfeit. In fact, the production costs of illicit cigarettes, including packaging, are

<sup>6</sup> <http://www.youtube.com/watch?v=R1AEH4Pemlw>

<sup>7</sup> <https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based>

<sup>8</sup> <http://onlinelibrary.wiley.com/doi/10.1111/add.12466/abstract>

<sup>9</sup> <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/>



very low, at around 20 US cents a pack<sup>10</sup>. Counterfeiters are able to produce quality and apparently genuine packaging at low prices in a short time, therefore outside packaging is a very poor indicator of whether a pack of cigarettes is licit and illicit. Furthermore, if standardised packaging was introduced, enforcers would easily be able to identify counterfeit and smuggled branded packs and illicit white packs.

20. Robust international tracking and tracing mechanisms to tackle the illicit tobacco trade will be developed are required through Article 15 of the revised EU Tobacco Products Directive and Article 8 of the WHO FCTC Illicit Trade Protocol. Caution must be urged against governments adopting the tobacco industry-promoted Codentify<sup>11</sup> coding system which purports to enable enforcement authorities to determine key information to establish authenticity or to detect counterfeit tobacco products. There are some acknowledged limitations of Codentify from the industry, including: the inability to easily differentiate between authentic and counterfeited codes when two identical codes are detected; the visibility of the codes allowing ease of falsification; and the lack of a system for independent audits. In fact, this system is even more fundamentally flawed for three key reasons<sup>12</sup>: first, Codentify does not require the establishment of a database in order to store the codes which identify the products nor shipment information thus making it difficult to establish the point at which products enter the illicit market; second there is no link between the codes placed on the packs and the cartons, which would require enforcement authorities to scan all packs within the cartons to determine authenticity as opposed to only the cartons; thirdly, Codentify is put forward as a potential replacement to tax stamps on cigarette packs. However, this is problematic as the use of tax stamps are supported by legislation and any changes to this would require delegation of power to the industry creating the potential for real danger, given that the industry has benefited from tax avoidance.
21. A briefing from the Tackling Illicit Tobacco for Better Health Partnership on the tobacco industry and their tactics in using illegal tobacco arguments to oppose tobacco control measures can be found here: <http://www.illegal-tobacco.co.uk/wp-content/uploads/2014/03/Illegal-Tobacco-The-facts-about-the-Tobacco-Industry-V3-28-05-14.pdf>
22. HMRC estimated that in 2000 about 1 in 5 cigarettes smoked in the UK were smuggled, costing over £3 billion a year in lost tax revenue. The proportion of HRT that was smuggled in 2000 was as high as 60%. However, HMRC data suggests that by 2012/13 (the latest year for which this information is available) the illicit market in cigarettes had fallen to around 9% of the UK market, and in HRT to around 36% of the market with an associated revenue loss of £2 billion<sup>13</sup>.
23. A report commissioned jointly by the four transnational tobacco companies (British American Tobacco, Imperial, JTI and Philip Morris International)<sup>14</sup> provides estimates on the scale and development of the illicit cigarette market in Europe and reports that consumption of counterfeit and contraband *declined* in the UK by 6.2% despite other industry data suggesting an increase.

<sup>10</sup>

[http://www.cancerresearchuk.org/prod\\_consump/groups/cr\\_common/@nre/@pol/documents/generalcontent/smuggling\\_fullreport.pdf](http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/smuggling_fullreport.pdf)

<sup>11</sup> [http://www.pmi.com/eng/documents/Codentify\\_E\\_Brochure\\_English.pdf](http://www.pmi.com/eng/documents/Codentify_E_Brochure_English.pdf)

<sup>12</sup> <http://tobaccocontrol.bmj.com/content/early/2013/04/26/tobaccocontrol-2012-050796.full>

<sup>13</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/249543/131009\\_Publication\\_of\\_Tobacco\\_Tax\\_Gap\\_estimates\\_2012-13.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249543/131009_Publication_of_Tobacco_Tax_Gap_estimates_2012-13.pdf)

<sup>14</sup> [http://www.pmi.com/eng/media\\_center/media\\_kit/Documents/SUN%20Report%202013.pdf](http://www.pmi.com/eng/media_center/media_kit/Documents/SUN%20Report%202013.pdf)

24. The experience from England shows that comprehensive regional illicit tobacco programmes change the social norms around illicit tobacco, reducing the size of the illicit tobacco market, reducing the proportion of smokers buying illicit tobacco and increasing the public's likelihood to report intelligence. For example, in the North East between 2009 and 2013, following partnership development, three bursts of social marketing activity and enhanced intelligence and enforcement models:
- the proportion of smokers buying illicit tobacco had dropped from 24% to 17%
  - the size of the illicit tobacco market had shrunk from 15% to 9%
  - the proportion of smokers who buy illicit tobacco believing that 'everybody does it' shrunk from 45% to 28%
  - the proportion of adults who are uncomfortable with the illicit tobacco trade rose from 57% to 70%<sup>15</sup>.
25. A major Trading Standards survey in the North West of England has shown that fewer young children are accessing illicit tobacco products. Between 2011 and 2013 there were reductions in:
- the proportion of young people who have bought cigarettes from sellers such as neighbours, car boots and ice-cream vans from 42% to 27%
  - the proportion of young people who have bought fake cigarettes, down from 28% to 22%
  - the proportion of young smokers who have ever bought single cigarettes, from 67% to 49%<sup>16</sup>.

#### **Tobacco industry opposition to standardised packaging – misinformation from Australia**

26. Further examples of misinformation include the release of misleading figures on tobacco consumption in Australia where standardised packs have been introduced. In November 2013, a study by the consultancy firm London Economics, funded by Philip Morris, reported that since the measure was introduced, there had been no significant change in smoking prevalence<sup>17</sup>. However, the study used an online survey panel which was not representative of the general population and had a higher than average smoking prevalence, and the sample size used was not sufficient to determine statistically significant changes<sup>18</sup>.
27. More recently, statistics from Australia were released in June 2014 claiming that cigarette sales had increased in Australia since the introduction of standardised packaging. A number of these articles appeared in one key newspaper in Australia that had opposed standardised packs, which then picked up coverage in national newspapers in England. However, figures from the Australian Bureau of Statistics (ABS) show that in March 2014 tobacco consumption in the country was the lowest ever recorded. Analysis in Australia suggests these statistics had been completely misreported. The recent figures released by the ABS show that total consumption of tobacco and cigarettes is currently the lowest ever recorded, dropping from \$3.508bn in

<sup>15</sup> [http://www.illegal-tobacco.co.uk/wp-content/uploads/2014/03/NE\\_Illicit\\_Tobacco\\_Report\\_key\\_findings.pdf](http://www.illegal-tobacco.co.uk/wp-content/uploads/2014/03/NE_Illicit_Tobacco_Report_key_findings.pdf)

<sup>16</sup> [http://tobaccofreeutures.org/wp-content/uploads/2013/08/8353\\_TSNW-Young-Persons-Alcohol-Tobacco-Report\\_130605\\_V3.pdf](http://tobaccofreeutures.org/wp-content/uploads/2013/08/8353_TSNW-Young-Persons-Alcohol-Tobacco-Report_130605_V3.pdf)

<sup>17</sup> <http://london-economics.co.uk/wp-content/uploads/2013/11/London-Economics-Report-Australian-Prevalence-Final-Report-25-11-2013.pdf>

<sup>18</sup> [http://www.cancervlc.org.au/downloads/tobacco\\_control/2013/Critique\\_by\\_Cancer\\_Council\\_Victoria\\_on\\_report\\_by\\_PMI\\_26.11.13.pdf](http://www.cancervlc.org.au/downloads/tobacco_control/2013/Critique_by_Cancer_Council_Victoria_on_report_by_PMI_26.11.13.pdf)

December 2012 (when standard packs were introduced) to \$3.405 billion in March 2014<sup>19</sup>. After population growth is taken into account tobacco sales per person have continued to decrease from 920.4 cigarettes in 2012 to 906.9 in 2013<sup>20</sup>. The Commonwealth Treasury has further advised that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when standardised packaging was introduced. Accusations have been made that this was a deliberate tactic designed to influence ministers in the UK.

28. Tobacco retailers in the UK, often backed by tobacco-funded organisations, have suggested that the introduction of standardised packaging means that it will take longer to serve customers and that convenience stores will lose custom. However, research in Australia<sup>21</sup> has shown that *“retailers quickly gained experience with the new legislation... The long retrieval times predicted by tobacco industry-funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate.”*

**Consultation question 3: Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?**

29. The comprehensive draft regulations are broadly welcomed by the Alliance particularly in terms of the stipulated colour of tobacco packets; the minimum number of cigarettes or minimum weight of hand rolling tobacco that a packet can contain; the reassurance that these regulations will not affect other labelling requirements for tobacco products such as health warnings and fiscal marks; the scope of the regulations across the UK; the clarity of the regulations in relation to their impact on trade mark protection; the scope to include the changes required for Directive 2014/40/EU.
30. However there are some issues with the draft regulations that we would like to see addressed.
31. The draft regulations apply only to cigarettes and hand-rolling tobacco. We believe that the regulations should also apply to specialist tobacco products including cigars, cigarillos and ‘blunts’. The rationale for this exclusion is low rates of use, particularly by young people, and the provision is made that that the regulations could be extended if young people become increasingly attracted to these types of tobacco. Our view is that this opportunity should not be missed to highlight to young people the dangers of these products before consumption increases and that the regulations should be extended now to include specialist tobacco products rather than when these products have become a problem so that there is a level playing field.
32. The draft regulations do not propose requirements relating to the size or length of cigarettes. Evidence in the North East shows that young women in particular are attracted to slim cigarettes therefore regulations should be included to stipulate a minimum size of cigarette. This would also prevent any opportunity for slim cigarettes to be repositioned as cigarillos thereby becoming exempt from regulations given their specialist tobacco products status (unless this exemption is removed as recommended).
33. The draft regulations do not propose requirements relating to the size of cigarette or tobacco packets. Instead, the only stipulation in terms of size is ‘cuboid’ and this is open to interpretation. This is a real concern and a potential weakness in the regulations.

<sup>19</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff>

<sup>20</sup> <http://www.theguardian.com/society/datablog/2014/jun/06/is-smoking-increasing-in-australia>

<sup>21</sup> <http://tobaccocontrol.bmi.com/content/early/2013/05/25/tobaccocontrol-2013-050987.abstract>

Dimensions should be provided to ensure consistency and to prevent the tobacco manufacturers from determining the size themselves and using it as a means of product differentiation. In Australia, the minimum dimensions for a 20 pack of cigarettes are stipulated as follows and we recommend the UK government follows this model:

***Physical features of cigarette packs***

*The dimensions of a cigarette pack, when the flip-top lid is closed, must not be:*

- (a) height — less than 85 mm or more than 125 mm; and*
- (b) width — less than 55 mm or more than 82 mm; and*
- (c) depth — less than 20 mm or more than 42 mm.*

34. The draft regulations allow two forms of opening – flip top lid or shoulder box hinged lid. Tobacco manufacturers often use the means of opening their packets as a marketing tool, e.g. sideways sliding packs, therefore the regulations should stipulate that only one type of opening should be used in order to prevent distinctions between brands. In Australia, only a flip top lid opening is permitted and we recommend the UK government follows this model.

35. In the draft regulations there is a proposal at 10.3(e), which prohibits packaging that ‘resembles a food or cosmetic container.’ This could lead to confusion and is a very broad term. For example some cosmetic products are contained in cuboid outer wrappers e.g. perfumes. Specifying the pack size as above would remove the need for this clause.

36. The requirements prevent packaging from producing a noise or scent but do not prohibit any smell arising from a permitted additive. Tobacco manufacturers will be innovating packaging now to ensure they can work around these regulations therefore we feel that any scent other than that which normally arises from tobacco products should be prohibited. This is particularly relevant for menthol cigarettes which, under the directive 2014/40/EU, have an exemption until 2020. The development of capsule cigarettes shows that the tobacco industry is still innovating in this area.

37. The requirements only apply to retail packaging of tobacco products and not packaging that is used only within the tobacco trade, for example for stock management in a warehouse or wholesale premises. It would be preferable for the requirements to apply to all tobacco packaging to avoid any potential confusion over definitions of warehouses.

38. To aid enforcement of the regulations, it would assist if images of the packages, currently in Appendix C of the consultation document, were placed in the body of the regulations. A similar approach is used in other legislation that has specific labelling or presentation requirements, for example the regulations on pack health warnings.

39. Local authority Trading Standards officers will be tasked with enforcing this legislation. Trading Standards departments are playing an increasing role in public health and in tobacco control in particular. We feel therefore that it is important that the UK government invests in this vital service and provides it with the leadership and powers it needs to sustain this vital function.

**Consultation question 4: Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?**

**General comments**

40. We welcome the overall recommendations of the consultation-stage impact assessment particularly its statement that the implementation of standardised tobacco packaging is worth pursuing now and that the cost of delaying a decision is too great in public health terms.
41. We welcome the decision to review the policy after five years which will allow time for early impacts to become clear although it needs to be borne in mind that long term impacts such as reduced youth uptake, reductions in smoking prevalence and improvements in public health will take many years to manifest.
42. We understand the difficulty of apportioning value to certain outcomes from interventions but there are some statements within the impact assessment that are particularly difficult to accept including:

*"an additional benefit [of implementing standardised packaging] is the possible enhancement of price competition between tobacco companies and the potential for accelerated product innovation to exploit other avenues for product differentiation."*

*"consumer surplus [identified as a cost] represents the loss of the ability of those who continue to smoke to gain the intangible benefit associated with smoking a particular brand that only the packaging of that brand, as it is currently available, can produce."*

The reality is that all cigarettes, regardless of brand or price, will kill one in two of its long-term users. Making products more affordable or more attractive cannot be judged to be a benefit.

43. We support any effective measures to maintain the costliness of tobacco in particular adjusting rates on tobacco duty above those currently required by the duty escalator, given that price is the single most effective policy lever for reducing smoking prevalence available to governments. Peto (2013)<sup>22</sup> has recommended an approach to taxation that would have a significant impact on consumption: tripling inflation-adjusted specific excise taxes on tobacco which would approximately double the average price of cigarettes (and more than double prices of cheaper brands) which would reduce consumption by about a third and actually increase tobacco revenues by about a third. We can fully expect the tobacco industry to respond to standardised packaging by dropping prices to make smoking more affordable.
44. The impact assessment considers the potential costs that may arise through increases in the demand for and the supply of illicit tobacco. However, we draw the consultation team's attention to:
- the findings of Chantler who is not convinced that standardised packaging would increase the illicit market and found no evidence that standardised packaging is easier to counterfeit.
  - evidence from Australia which has shown there to be no increase in the illicit tobacco trade since the measure was introduced while tobacco consumption has fallen
  - the conclusion of the Home Affairs Committee inquiry into tobacco smuggling which recommended that any risks in this area could be mitigated by increasing enforcement action

<sup>22</sup> <http://www.nejm.org/doi/full/10.1056/NEJMr1308383>

- Peto's view<sup>23</sup> that use of specific excise taxes on tobacco (rather than ad valorem taxes), stronger tax administration, and practicable controls on organised smuggling can limit the problem. Even with some smuggling, large tax increases can substantially reduce consumption and increase revenue especially if supported by better tax enforcement
- the impact that health-related social marketing can have on reducing smoking at population level and, in turn, reducing the illegal tobacco market, as seen in the North East, North West and South West where the illicit tobacco market share has reduced significantly

45. The impact assessment also considers the costs for retailers and states that, anecdotally, the profit margins on the sale of tobacco may be relatively low. John McClurey, elected member for Gateshead Council and independent retailer in Newcastle, maintains that:

*"most traders rely less and less on tobacco profits since the gross profit is so small. I make as much profit from a pack of chewing gum as a £6 pack of cigarettes. What my customers save by quitting or never starting to smoke, they can spend on other things. That means more money into the local economy."*

46. Standardised packaging was introduced in Australia on conjunction with larger health warnings and sustained mass media campaign, the equivalent of which would cost £33.7 million a year in the UK. Australia is also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years from December 2013.
47. Tobacco control policies must be comprehensive and complementary if they are to achieve maximum possible impact therefore consideration by the government must be given to the following areas if the public health benefits of standardised packaging are to be realised:
- Funding a sustained mass media campaign to support the implementation of standardised packaging
  - Ensuring that stop smoking services are funded adequately
  - Supporting and investing in efforts to reduce the supply of and demand for illicit tobacco through partnerships between health and enforcement based on the model of the Tackling Illicit Tobacco for Better Health Partnership<sup>24</sup>
  - Considering tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price-cutting
  - Considering further levies on the tobacco industry based on local sales data and designed to fund broad tobacco control and health costs caused by tobacco consumption.
48. The benefits of introducing standardised packaging identified in the Impact assessment far outweigh the costs, many of which can be quantified at a Hartlepool level:
- Overall, the main smoking related diseases are conservatively estimated to cost the NHS in Hartlepool around £3.77 million per year.
  - The cost of smoking-related hospital admissions in Hartlepool is calculated to be £2.26 million per year.

<sup>23</sup> <http://www.nejm.org/doi/full/10.1056/NEJMr1308383>

<sup>24</sup> [www.illegal-tobacco.co.uk](http://www.illegal-tobacco.co.uk)

- In Hartlepool an additional £1.09 million is lost to the local economy each year through increased levels of absence from work from smokers compared to their non-smoking counterparts which accounts for just over 12,200 additional lost days of productivity per year.

EL 48

VdR Verband der deutschen Rauchtobakindustrie e.V.  
German Smoking Tobacco Association

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Department of Health  
Standardised Packaging Tobacco Consultation  
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Canterbury  
CT1 9NB

United Kingdom



28.07.2014  
Ma/ARH

### Consultation for Plain Packaging in the United Kingdom

Dear Sir,  
dear Madam,

may we kindly introduce ourselves as the German Smoking Tobacco Association (VdR). Based in Germany with a prior interest in the European market and any international aspect of the industry we represent manufacturers, importers, and exporting companies of roll-your-own tobacco (300 brands), pipe tobacco (approx. 700 brands), cigar and cigarillos (importers), traditional chewing- and nasal tobaccos producing companies (approx. 100 brands). We mainly represent small and medium-sized and family-owned companies. Most of them deal with niche products. We represent them towards the German and European legislator and authorities as well as towards politicians, international think tanks and tobacco related scientific boards.

We very much appreciate the opportunity to be able to submit our response on the draft regulations on standardised packaging of tobacco products in the United Kingdom.

#### We would like to make the following comments:

The ban on trademarks as registered to be affixed on the packages violates the requirements arising from the TRIPS agreement. May we cordially propound that according to the TRIPS-agreement the use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as a use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. A trademark serves as a "badge of origin" which has been repeated by the European Court of Justice.

As we understand the draft regulation, proper non-use of a tobacco trade mark is assumed if or to the extent that any provision of the Plain Packaging regulations causes the non-use of a registered trade mark for the purposes of section 46(1) of the Trade Marks Act 1994.



However, that insertion does not solve the problem that:

- tobacco products are discriminated although manufactured, distributed and sold legally;
- trade marks cannot be used as registered and do not serve its function as "badge of origin" as ruled by the European Court of Justice many times irrespective of a proper use pursuant to the Trade Mark Act 1994;
- the combination of display ban and plain packaging for tobacco products literally cement the market for old tobacco products which distort competition and violates the principle of proportionality of the proposed measure.
- the introduction of plain packaging will increase illicit trade: illicit products will most likely not fulfil the requirements of the strict regime of ingredients and additives (see Article 5 - 7 of the Tobacco Product Directive 2014/40/EU) and thereby puts consumers of those products in jeopardy;
- How is the customer supposed to exercise his/her right to free choice when it is impossible to identify the products to be purchased?

Based on our aforementioned objections, we would kindly like to ask you to reconsider the draft and scrutinize the legal implications, especially legally binding agreements in the area of intellectual property rights and European Union law.

In case questions may arise, please do not hesitate to contact us at any time.

Yours sincerely,

A large black rectangular redaction box covering the signature of the sender.

Managing Director



To Whom It May Concern,

We would like to take the liberty to convey the concerns of the Federation of the Food and Drink Industries of the Czech Republic related to the intention of the UK Government to introduce standardized packaging for tobacco products.

- 1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?**

In our view, the Chantler review underestimates the importance of trademarks, thus runs a risks of ignoring important aspects related to intellectual property rights protection. Although the proposal as it currently stands gives the right to register trademarks, the right to use them is withdrawn. The logos and trademarks that the draft regulation proposes to ban represent a significant economic value. Banning them means expropriating them, which could have serious legal consequences.

The protection of intellectual property rights is firmly embedded within both national and international legislation. As far as we are concerned there have been legal proceedings initiated against Australia under the WTO with regards to its plain packaging legislation, saying it is a barrier to trade and restricts intellectual property.

Corresponding with our core mission, in the Federation we believe that brand differentiation exists to facilitate consumer choice, information and convenience. Branding on packaging covers all aspects of pack design that distinguish one product from another. Limiting the ability to brand goods means restricting essential elements of free trade, let alone undermining the notion of private property ownership.

- 2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardized packaging, that you wish to bring to our attention?**

We are deeply convinced that a policy designed to make tobacco less accessible to youth could actually end up having the opposite effect – by increasing the black market and making the products cheaper. There are important „lessons learnt“ from Australia in this respect, such as the surge in the cigarettes black market since the standardized packs were introduced as shown by the findings of 2013 KMPG study.

- 3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?**

We would like to draw your attention also to the fact that the Tobacco Product Directive, harmonizing regulatory standards across the whole of the EU, came to force only a few months ago on May 19<sup>th</sup>, 2014. The UK's ambition would jeopardize this harmonization and undermine the free movement of goods within the EU Internal Market by departing from agreed common rules.

- 4. Are you aware of any further evidence or information which would improve the assumptions or estimates.**



**POTRAVINÁŘSKÁ  
KOMORA  
ČESKÉ REPUBLIKY**

Federation of the food and drink industries  
of the Czech Republic

It has not yet been empirically proven that implementation of standardized packaging guarantees a reduced consumption. Experiences from states in which standardized packaging of tobacco products has been implemented demonstrates the contrary. Overall, it can be said that standardization of unit packages of tobacco products, even in terms of their colour and appearance of any brand or manufacturer markings, significantly facilitates the counterfeiting of tobacco product packaging, as it simplifies the production of imitation brand-name cigarettes since the only reproduced element is basically a written description using a single font.

We would be very grateful to you if you could factor the above mentioned facts in your considerations.

In order to comply with the requirements of the public consultations and the rules set by the FCTC, we would like to declare that as a result of the fact that tobacco products are regulated within the foodstuffs legislation in the Czech Republic, the Federation of the Food and Drink industries has links with this sector of the industry.

Best regards

president

EL 70



Department of Health Standardised Tobacco Packaging Consultation  
PO Box 1128  
CANTERBURY CT1 9NB  
United Kingdom

By email: TobaccoPackaging@dh.gsl.gov.uk.

30th July 2014

Dear Department of Health:

**RE: Consultation on draft regulations for standardised packaging of tobacco products**

My name is Mukesh Vithani and I am the Trading Director at Dhamecha Foods Limited. Dhamecha has 7 cash and carry depots across London, in Wembley, Barking, Enfield, Croydon, Watford, Hayes and Lewisham. Our customers are independent retailers who rely on tobacco sales for a large percentage of their turnover. We have in excess of 10,000 customers.

Dhamecha is opposed to the Government's proposals for plain packaging of tobacco products. Since the last consultation on this subject in 2012, the EU has passed a new Tobacco Products Directive, which will ban packs of 10, small pouches of RYO and menthol products and introduce 65% health warnings on both sides of the pack. If these measures are to be introduced, then they should be implemented and reviewed to see if they are effective, before any further ideas are introduced. The display ban also only comes into effect for most of our customers next year (2015). It seems sensible to wait to see what happens as a result of this before implementing the next policy. This Government said it would reduce regulation, and yet we are seeing more and more regulation piled on small businesses with each passing year.

The draft Regulations published with this consultation provide an exemption for packaging used in the trade. This is an impractical suggestion as many tobacco outlets are bundles of packs wrapped in clear plastic and the packs have to be in plain packaging anyway, so we can't see that there would be an advantage for cash and carry businesses like ours. In any event, it is going to make it more difficult for our customers to manage their stock and it will take longer to serve customers as it will be impossible to tell one SKU apart from another. This is not something we can support – if it hurts our customers' businesses, eventually it hurts ours too.

Many of our customers speak English as a second language and in some cases do not read English well. How are they supposed to be able to tell the brands apart without colours and branding to help them? This policy has not been well thought through from the perspective of these business owners.

Finally, I am very concerned about the impact of this policy on the influx of black market products that are already proving to be a major issue for our business. Plain packaging will make it easier for smugglers to bring in illegal product which they will sell on the cheap, undercutting our legitimate businesses.

I would be very happy to provide further information or take you on a tour of our depot. Please contact me to arrange a meeting.

Yours sincerely

A large black rectangular redaction box covering the signature area.

EL 12  
EL 72

British Medical Association  
0300 123 1233 bma.org.uk



BMA House, Tavistock Square, London, WC1H 9JP  
T 020 7383 6755  
E robert.wilson@bma.org.uk

Department of Health  
Standardised Tobacco Packaging Consultation  
PO Box 1128  
Canterbury  
CT1 9NB

Dear Sir

29 July 2014

### Consultation on standardised packaging of tobacco products

The British Medical Association (BMA) is a voluntary professional association and an independent trade union which represents doctors and medical students from all branches of medicine throughout the UK. With a membership of over 153,000 we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession, and promote the achievement of high quality health care.

The Association welcomes the opportunity to respond to this consultation on the introduction of standardised packaging of tobacco products. Reducing the prevalence of tobacco use remains a significant public health priority and the BMA has a long history of supporting comprehensive tobacco control measures. This includes the publication of the following reports: *Forever cool: the influence of smoking imagery on young people* (2008), and *Breaking the cycle of children's exposure to tobacco smoke* (2007).<sup>1,2</sup> These reports recognise the importance of coordinated efforts to discourage children and young people from starting to smoke, which typically occurs before the age of 18.<sup>1</sup>

The BMA strongly supports legislation to introduce standardised packaging of tobacco products. As highlighted in *Forever cool: the influence of smoking imagery on young people*, branded packaging represents one of the last marketing tools by which tobacco use is normalised and glamorised among children.<sup>1</sup> There is strong evidence that liveried packages reinforce brand image and encourage youth smoking.<sup>3,4,5</sup> Standardised packaging therefore has an important role to play, as part of wider tobacco control measures, in reducing the appeal and uptake of smoking among young people. The BMA believes this is a proportionate measure that will result in significant public health gains in the long term.

Our responses to the specific questions set out in the consultation document are as follows.

#### **Question 1: Do you have any observations about the report of the Chantier Review that you wish to bring to our attention?**

The BMA agrees with the conclusions of the independent Chantier Review, that the available evidence supports the introduction of standardised packaging for tobacco products. As highlighted in the review, there is strong evidence that liveried packaging reinforces brand image and encourages smoking amongst young people.<sup>3,4</sup> It is therefore highly likely that the introduction of standardised packaging would serve to reduce the rate at which children take up smoking.

The Chantler Review summarises the best available evidence on the effectiveness of standardised packaging, which together indicate that it would: reduce the appeal of cigarettes and smoking; enhance the salience of health warnings on packs; and address the use of packaging elements that mislead smokers about product harm.<sup>3</sup> Whilst the Chantler Review acknowledges limitations to the evidence currently available, the BMA supports the assertion that standardised packaging, in conjunction with current tobacco control measures, will lead to an important reduction over time in the uptake and prevalence of smoking. Emerging evidence (summarised below) continues to support the positive impact standardised packaging will have on reducing tobacco use.

**Question 2: Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?**

Since the previous Department of Health consultation on standardised packaging for tobacco products in 2012, evidence has continued to emerge, reaffirming the potential effectiveness of this measure in reducing the prevalence of smoking.

Australia introduced standardised packaging – in conjunction with enlarged graphic health warnings for tobacco products – in 2012, with the intention of achieving a 'reduction in youth uptake'.<sup>6,7</sup> Although these measures are designed to achieve a sustained reduction in tobacco use over the long-term, data are already emerging that suggest standardised packaging may be having an effect on smoking prevalence. Consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products, adjusted for population growth.<sup>8</sup> The Australian National Drugs Strategy Household Survey further indicated a significant fall in the number of daily smokers following the introduction of standardised packaging – from 15.1 per cent in 2010 to 12.8 per cent in 2013.<sup>9</sup> Emerging evidence also suggests that smoking behaviours have changed since the introduction of standardised packaging in Australia: assessments made before and after the introduction of standardised packaging indicate a significant reduction in the number of people observed smoking, and in people openly displaying cigarette packs.<sup>10,11</sup> It is highly likely that lowering the visibility of smoking will contribute to reduced uptake.<sup>11</sup> An additional benefit of standardised packaging may be to encourage smoking cessation; data indicate a sustained increase in calls to the Australian national smoking cessation helpline since the introduction of standardised packaging and enlarged graphic health warnings.<sup>12</sup> Recent evidence from the UK has demonstrated that standardised cigarette packages are perceived, by smokers, to be significantly less appealing and less motivating to buy than branded packs.<sup>13</sup>

**Question 3: Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?**

The BMA welcomes the draft regulations set out in the consultation, and agrees that the proposed tobacco packaging would be sufficiently unappealing to have the desired impact on tobacco uptake and use. Alongside standardised packaging, the BMA supports an increase in the size of graphic health warnings on tobacco products to cover 65 per cent of the external front and back surface, as required by the revised EU Tobacco Products Directive 2014.<sup>14</sup>

Legislation on standardised packaging in Australia covers all tobacco products.<sup>6</sup> The BMA believes that regulations in the UK should do the same. Although – as the consultation acknowledges – very few children and young people use specialist tobacco products, including cigars and pipes, their use is associated with a substantial risk of harm.<sup>15</sup> Extending regulations on standardised packaging to cover all tobacco products would ensure the significant risk to health of using these products is not underestimated, and that they are not wrongly seen as 'safer alternatives' to cigarette smoking.<sup>16</sup> It would also provide a consistent message about the need to reduce tobacco-related harm.

**Question 4: Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?**

The BMA agrees that – as set out in the impact assessment – standardised packaging of tobacco products will result in significant health benefits.

The impact assessment raises concerns over the potential for standardised packaging to facilitate an increase in the consumption of illicit tobacco. The BMA agrees with the findings of the Chantler Review that, providing HMRC's currently effective actions on tackling illicit tobacco continue, there is no reason to believe that such an increase will occur.<sup>3</sup> The proposals for standardised packaging include all the necessary markings and features required to assist with the identification of genuine products. As highlighted in the Chantler Review, customs data from Australia show no significant increase in illicit tobacco following the introduction of standardised packaging.<sup>3,17</sup>

I hope that you find our submission to the consultation useful – please do not hesitate to contact us for more information if required. We look forward to hearing the outcomes of your consultation.

Yours faithfully



Policy Director

- <sup>1</sup> British Medical Association (2008) *Forever cool: the influence of smoking imagery on young people*. London: British Medical Association.
- <sup>2</sup> British Medical Association (2007) *Breaking the cycle of children's exposure to tobacco smoke*. London: British Medical Association.
- <sup>3</sup> Report of the Independent review undertaken by Sir Cyril Chantler (2014) *Standardised packaging of tobacco*. London: Willmans Lea.
- <sup>4</sup> Centre for Tobacco Control Research (2012) *The packaging of tobacco products*. Stirling: Centre for Tobacco Control Research.
- <sup>5</sup> McNeal J U & Ji M F (2003) Children's visual memory of packaging. *Journal of Consumer Marketing* 20: 400-27.
- <sup>6</sup> Australian Government Department of Health (2014) *Introduction of tobacco plain packaging in Australia*. Canberra: Department of Health (Available at: [www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-plain](http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-plain))
- <sup>7</sup> Lavery A, Watt H, Amott D et al (2014) Standardised packaging and tobacco-industry-funded research. *The Lancet* 383: 1384.
- <sup>8</sup> Australian Government Department of Health (2014) *Tobacco key facts and figures*. Canberra: Department of Health (Available at: [www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-key-facts-figures](http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-key-facts-figures))
- <sup>9</sup> Australian Institute of Health and Welfare (2013) *National drugs strategy household surveys: key findings*. Canberra: Australian Institute of Health and Welfare (Available at: [www.aihw.gov.au/alcohol-and-other-drugs/ndshs/](http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/))
- <sup>10</sup> McNeil A, Brose L & Hlitchman S (2014) Commentary on Zacher et al (2014) Emerging behavioural impact of packaging changes in Australia: time for action elsewhere. *Addiction* 109: 704-5.
- <sup>11</sup> Zacher M, Bayly M, Brennan E et al (2014) Personal tobacco pack display before and after the introduction of plain packaging with larger pictorial health warnings in Australia: an observational study of outdoor café strips. *Addiction* 109: 653-62.
- <sup>12</sup> Young J, Stacey I, Dobblins TA et al (2014) Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis. *The Medical Journal of Australia* 200(1): 29-32.
- <sup>13</sup> Brose L, Chong C, Aspinall E et al (2014) Effects of standardised cigarette packaging on craving, motivation to stop and perceptions of cigarettes and packs. *Psychology and Health* 29(7): 849-60.
- <sup>14</sup> Directive 2014/40/EU of the European Parliament and of the Council (03.04.14)
- <sup>15</sup> Baker F, Ainsworth S, Dye J et al (2000) Health risks associated with cigar smoking. *Journal of the American Medical Association* 284(8): 735-40.
- <sup>16</sup> Centers for Disease Control (2013) *Fact sheet – cigars – smoking and tobacco use*. Atlanta: Centers for Disease Control.
- <sup>17</sup> Australian Customs and Border Protection Service (2013) *Annual report 2012-2013*. Canberra: Australian Customs and Border Protection Service.



ELUB

**From:** [REDACTED]  
**Sent:** 04 August 2014 10:24  
**To:** Tobacco Packaging  
**Subject:** Participation to the consultation on Standardized Packaging  
**Attachments:** Consultation Standardized packaging.pdf

Dear Madame/Sir,

please find attached the reply by Unindustria to the public consultation launched by the UK Department of Health on the introduction of a standardised packaging for tobacco products.

Being the biggest industrial association of the Confindustria system (which is the Italian national industrial association) for geographical extension and the second in terms of associates, Unindustria is very worried about the above mentioned UK initiative, which would heavily impact the intellectual property and trade rights of the tobacco industry.

Best regards,

[REDACTED]  
**UNINDUSTRIA**  
UNIONE DEGLI INDUSTRIALI E DELLE IMPRESE  
ROMA • FROSINONE • LATINA • RIETI • VITERBO

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Rome, 31st July 2014

Department of Health  
Standardised Tobacco Packaging  
Consultation  
PO Box 1126  
CANTERBURY  
CT1 9NB

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**Subject: Participation to the consultation on Standardized Packaging**

Unindustria is the association of manufacturers and companies based in Rome, Frosinone, Latina, Rieti and Viterbo. It is the biggest industrial association of the Confindustria system (which is the Italian national industrial association) for geographical extension and the second in terms of associates. Since last year, Unindustria has been following the regulatory evolutions of the tobacco sector, which brought to the approval of directive 2014/40/EU of 3<sup>rd</sup> April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products.

Unindustria participates with interest to the consultation started by the UK Department of Health on the 26<sup>th</sup> June 2014 on the introduction of a standardized packaging for tobacco products. This proposal is highly worrying for the Italian tobacco chain operators, because it violates the intellectual property rights protected by European and international law and because it will have negative impacts on the European tobacco chain and on the tobacco industry in particular.

In fact, standardized packaging deprives the trademark owner of the possibility to use it for the reason it is protected, which is to communicate the quality and origin of a product and to distinguish it from similar ones manufactured by other operators.

In addition, standardized packaging violates some EU fundamental rules, such as article 1 of the Protocol of the European Convention on Human Rights ("Protection of Property") and article 17 of the European Union Charter on Fundamental Rights ("Property Rights") and it would significantly damage the free circulation of goods among EU Member States, which is protected by article 34 of the Treaty on the Functioning of the European Union.

J..

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Unindustria thinks also that the standardized packaging is not compatible with some international rules. More specifically, it breaches the World Trade Organisation (WTO) treaties TBT (on technical barriers to trade) and TRIPS (on the protection of intellectual property), based on which Australia – first country in the world to introduce plain packaging in its legislation – is currently subject to a dispute against other WTO Member States.

It is quite self-evident that standardized packaging fosters illicit trade, damaging all tobacco chain operators, from growers to retailers and all workers of the sector. In fact, according to the KPMG study "*Illicit tobacco in Australia*" (October 2013), smuggling has been growing since the introduction of standardized packaging in the country. What is more, other figures coming from Australia show that this measure hasn't brought any public health benefit.

Finally, it must be underlined how the possible introduction of plain packaging by an EU Member State would re-open a discussion on tobacco products regulation which has been recently closed at European level by the approval of directive 2014/40/EU. Actually, the EU Commission itself excluded the standardized packaging from its proposal due to the huge perplexities expressed by the European Parliament (see JURI and ENVI opinions and the plenary vote) and by many Member States both in the EPSCO Council of the 21<sup>st</sup> June 2013 and through several opinions by national Parliaments on the subsidiarity and proportionality of the directive proposal.

Unindustria would really appreciate the decision by the Department of Health not to proceed with the presentation of the draft law on standardized packaging to the UK Parliament and to evaluate other measures which are less restrictive in terms of industry trade freedoms and property rights and of proven effectiveness in terms of health objectives.

Best regards,



~~EL96~~  
EL96

## Consultation on the Introduction of regulations for standardised packaging of tobacco products



Response from the British Lung Foundation Wales

1. One person in five in Wales is affected by lung disease. The British Lung Foundation (BLF) is the UK's lung charity working to champion respiratory health by: offering support to all those affected by lung disease, campaigning for greater awareness and positive change in the nation's lung health, and funding vital research, so that new treatments and cures can help save lives. The BLF does not receive any funding from the tobacco industry.
2. Smoking is the leading cause of avoidable death in Wales. The average age at which a person aged 15 who smokes first started is 12 years old, and 8 out of 10 people start before the age of 19.<sup>1</sup> Every day in Wales more than a classroom full of young people (11-15 years of age) who have never smoked before try smoking.<sup>2</sup>

### Consultation Questions:

Q1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

3. The BLF welcomed the outcome of the review conducted by Sir Cyril Chantler, which analysed all existing evidence on the effectiveness of standardised packaging of tobacco products as an intervention to reduce long-term smoking rates. Sir Cyril met with a variety of stakeholders on both sides of the debate and travelled to Australia before he came to the conclusion that standardised packaging should be implemented in the UK. The Government must now keep its promise and act on Sir Cyril's recommendation.
4. Standardised packaging for tobacco products would produce a long-term decline in smoking rates by reducing the appeal of the branding and marketing of tobacco products to children and young people. In his report, Sir Cyril states: *"Although the number of children taking up smoking has been falling since the 1990s, an estimated 207,000 children aged 11-15 still take up smoking each year in the United Kingdom. If this rate were reduced even by 2%, for example, it would mean 4,000 fewer children took up smoking each year, greatly improving their health outcomes."*

<sup>1</sup> Public Health Wales Observatory, *Tobacco and Health in Wales*, June 2012

<sup>2</sup> Tobacco Control Action Plan for Wales. Available from:  
<http://www.senedd.assemblywales.org/documents/s4255/Tobacco%20Control%20Action%20Plan.pdf>

5. Tobacco is a deadly and addictive product, killing half of its long-term users. The BLF believes that even a small reduction in children taking up smoking would be worthwhile if it helped to bring down long-term smoking rates and de-normalised the habit over time. Furthermore, children are not able to make an informed choice about the dangers of their future addiction and therefore any policy which would help to protect children from a life-long addiction to tobacco should be favoured. Standardised packaging is currently the best proposal available to prevent the next generation from becoming addicted to tobacco products.
6. Evidence suggests that people who started smoking younger, tend to be heavier smokers later on, and are therefore at higher risk of developing smoking-related diseases. Among current heavy smokers (20 cigarettes or more per day), 58% started smoking regularly before they were 16 years of age compared with 44% of current moderate smokers (10-19 cigarettes a day) and 35% of current light smokers (under 10 cigarettes a day).<sup>3</sup>
7. In his report, Sir Cyril found that standardised packaging is likely to be very effective at changing smoking behaviour: *"I see the importance of Stirling [Review] as being the consistency of its results on appeal, salience and perceptions of harm, most notably that standardised packaging is less appealing than branded packaging. This evidence is direct and not reliant on stated intentions. Evidence from other spheres shows a strong non-conscious link between appeal and subsequent behaviour regardless of stated intentions. I therefore conclude that, by reducing its appeal, standardised packaging would affect smoking behaviour."*
8. Standardised packaging has been shown to be popular with the public. A poll on the issue by YouGov in March 2014, found that overall 66% of adults in Wales were in favour of standardised packaging, with majority support across age groups, genders and social classes.<sup>4</sup>
9. Standardised packaging has been shown to have overwhelming support in the UK Parliament, with Section 94 of the Children and Families Act 2014 having passed in the House of Lords and House of Commons, where only 24 MPs voted against the legislation. In Wales, a Legislative Consent Motion was passed in the National Assembly for Wales allowing provisions of the Bill to apply in Wales. The Motion received widespread cross-party support with 50 Assembly Members voting in favour, with only 1 voting against, and 3 abstentions<sup>5</sup>.
10. Opposition to standardised packaging has been driven and financed by the tobacco industry, which needs young people to start smoking in large numbers every year, to replace previous consumers lost through quitting or dying prematurely from smoking-related disease.

<sup>3</sup> Chapter 1 – Smoking, General Lifestyle Survey Overview - a report on the 2011 General Lifestyle Survey.

<sup>4</sup> The poll total sample size was 1,099 adults. Fieldwork was undertaken by YouGov between 5th and 14th March 2014. The survey was carried out online. The figures have been weighted and are representative of all Welsh adults (aged 18+). Respondents were shown what a standard pack could look like, including larger health warnings as in Australia.

<sup>5</sup> [http://www.assemblywales.org/docs/rop\\_xml/140121\\_Plenary\\_Votes.xml#195\\_0007\\_000\\_182649](http://www.assemblywales.org/docs/rop_xml/140121_Plenary_Votes.xml#195_0007_000_182649)

11. Following the six-week consultation on the draft regulations, the Government will then have to notify the European Union of the draft regulations. Since this process can take up to six months, it is paramount that regulations are laid before Parliament as quickly as possible to give an opportunity for a vote to take place on the regulations before the General Election. If this opportunity were now to be missed, it would be widely accepted as a public health disaster and as suggesting that the tobacco industry still has excessive influence at the heart of Government.

Q2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

#### Tobacco consumption in Australia

12. The policy of introducing standardised packaging for all tobacco products is designed to be a long-term strategy, which aims to produce a decline in smoking rates over time, as fewer children and young people take up smoking.
13. However, recently published evidence from the Australian Government's National Drugs Strategy Household Survey, shows that smoking rates have dropped by 15% between 2010 (when smoking prevalence stood at 15.1%) and 2013 (when prevalence dropped to 12.8% of the general population). This indicates that the removal of branding seems to have had a wider effect than just on children and young people, also perhaps encouraging existing smokers to quit. This large 24,000-person survey was conducted in Autumn 2013 but finished before the introduction of tax rises on 1st December. It therefore measured a large drop in smoking rates after the introduction of standardised packaging for tobacco products, but did not include the effect of new higher tobacco duties.
14. In contrast, London Economics consultancy published a study in November 2013 showing that there was no statistical change in the number of smokers in Australia since the introduction of standardised packaging.<sup>6</sup> This study was funded by Phillip Morris International and has been widely criticised for its methodology. For instance, the online survey panel was not deemed to be representative of the general population and the survey sample size of 5,000 was too small to show smaller declines in smoking prevalence for the size of the Australian population.<sup>7</sup>
15. It is also worth noting that the policy of introducing standardised packaging for tobacco products is designed to be a long-term strategy, which aims to produce a decline in smoking rates over time, as fewer children and young people get addicted to smoking.

<sup>6</sup> An analysis of smoking prevalence in Australia, London Economics consultancy, November 2013.

<sup>7</sup> Cancer Council Victoria, Comments of the Philip Morris funded London Economics report "An analysis of smoking prevalence in Australia: final", 2013, Cancer Council Victoria: Melbourne.

16. The tobacco industry in Australia has also reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013.<sup>8</sup> Although the industry reported a small (0.28%) increase in sales year on year, they did not report the increase in the Australian population between 2012 and 2013. Adjusted for population, tobacco sales per person by their measure of consumption would in fact have fallen, from 920.4 per person in 2012 to 906.9 in 2013.<sup>9</sup>
17. However, the Australian Government's Department of Health figures show that the total consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products. It was \$3.508 billion in December 2012 (when standardised packaging was introduced) and \$3.405 billion in March 2014.<sup>10</sup>
18. This is further supported by figures from the Australian Treasury showing that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced.<sup>11</sup>
19. An Australian study published in January 2014 showed that the introduction of standardised packaging in Australia in 2012 was associated with a sharp rise in the number of calls to the Quitline New South Wales service.<sup>12</sup> Even when adjusted for other factors, such as health advertising campaigns happening at the time and changes in price of cigarettes, the number of calls to Quitline NSW rose by 75% between the week before standardised packs were first introduced and four weeks later.
20. Another Australian study reported in 2013 that smokers in Australia were less willing to display their packs in public and smoke in outdoor areas since plain packaging was introduced. Researchers counted numbers of smokers and tobacco packs displayed openly at cafes, restaurants and bars with outdoor seating for several months both before and after the introduction of standardised packaging. They found that pack display on tables declined by 15% after standardised packaging was introduced, which was mostly due to a 23% decline in the percentage of patrons who were observed smoking. The study also found that the declines in pack display and patrons observed smoking were greater in venues where children were present.<sup>13</sup>

### Importance of a package of measures

<sup>8</sup> Kerr, C. Labor's plain packaging fails as cigarette sales rise: *The Australian*. 6 June 2014

<sup>9</sup> Is Smoking Increasing in Australia?: *Guardian Datablog*. 6 June 2014

<sup>10</sup> Tobacco key facts and figures, Department of Health, Australian Government (last checked on 22 July 2014)

<sup>11</sup> Tobacco facts and figures: Australian Department of Health. 19 June 2014

<sup>12</sup> Young JM et al. Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis *Medical Journal of Australia* 2014; 200: 29-32

<sup>13</sup> Zacher, M et al. Personal tobacco pack display before and after the introduction of plain packaging with larger pictorial health warnings in Australia: an observational study of outdoor café strips *Addiction*, 2014; 109: 653-663 - doi: [10.1111/add.12466](https://doi.org/10.1111/add.12466)

21. It is vital that standardised packaging is implemented together with other tobacco control measures, as part of a comprehensive strategy, to ensure that it is most effective at bringing smoking rates down. Wider measures such as tobacco taxation increases and awareness raising campaigns need to accompany the implementation plan. Other measures could include better supporting enforcement of illicit tobacco trade by the Border Agency and HMRC.
22. In Australia, standardised packaging was introduced in conjunction with other measures, including larger health warnings and a sustained mass media campaign. Australia also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, which started in December 2013.<sup>14</sup>
23. The current *Tobacco Control Action Plan for Wales* aims to achieve a decrease in smoking to 16% by 2020. It is vital that standardised packaging forms part of a comprehensive package of measures to ensure that this target is met, and we welcome the Minister's recent commitment to doing so through the range of initiatives proposed in the Public Health (Wales) Bill, and the announcement that the Welsh Government is going to press ahead and ban smoking in cars carrying children. It is worth noting however, that other countries such as Scotland and Ireland, which have similar adult smoking rates, have set much more ambitious targets to reduce smoking to less than 5% by 2034 and 2025 respectively.<sup>15</sup>
24. The BLF welcomes the implementation date for the regulations in May 2016 to coincide with a package of measures falling out of the EU Tobacco Directive, which were passed earlier this year.

#### Arguments on illicit trade

25. The tobacco industry has put forward several arguments about why standardised packaging will not work in practice. One of these is the possible increase of illicit supply of tobacco. However, given that all the key security features will be the same on standardised packaging as on current branded packs, it is highly unlikely that illicit trade would be affected by the introduction of standardised packaging. Furthermore, a further set of security measures, such as unique identifiers, coded numbering and anti-counterfeit marks, are due to be introduced from May 2016 as part of the implementation of the EU Tobacco Products Directive.
26. A number of official comments suggest that the effect of standardised packaging on illicit trade is likely to be non-existent. The HMRC stated that standardised packaging is "not going to create any new risks" on illicit tobacco and Andrew Leggett, Deputy Director for HM Revenue and Customs, has expressed strong doubts about any material effects of standardised packaging on illicit trade.<sup>16</sup>

<sup>14</sup> News article, 1 Aug 2013, ABC News website.

<sup>15</sup> CREATING A TOBACCO-FREE GENERATION, A Tobacco Control Strategy for Scotland, The Scottish Government, Edinburgh 2013.

<sup>16</sup> Oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on 24th July 2013.



27. Furthermore, the Home Affairs Select Committee report on Tobacco Smuggling concluded: *"We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging."*<sup>17</sup>

**Q3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?**

28. The BLF welcomes these draft regulations as drafted, with the exception of the exclusions attached to specialist tobacco products.

29. The reason given for excluding specialist tobacco products from standardised packaging regulations is the low number of young people using these products. However, smoking cigars, cigarillos, beedis and pipes produces similar ill health for both the principal user and those around them. All tobacco products should be included in the regulations for standardised packaging to avoid any possible loopholes or of the impression that products excluded from regulations are somehow less harmful. A full definition of exactly which tobacco products are 'specialist' should also be included for clarity of the regulations.

30. With regards to the enforcement of the regulations, the BLF agrees that there should be no upper limit for fines imposed on those who breach the regulations. However, we believe there should be minimum fine amounts. This will ensure that there are good incentives for compliance with the law. Minimum fines should be set at varying and proportionate levels to ensure they are high enough to be of consequence to individuals, organised groups and to corporations. A corporation or organised group may be selling branded packs in much larger quantities than an individual and there needs to be recognition given to the severity of the breach.

31. We believe that further details need to be provided on how these regulations will apply to corporations and enterprises, and in particular how cases will be dealt with where there is a director or senior person liable for the breach, rather than the corporation itself.

**Q4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation stage impact assessment?**

#### Illicit trade and cross border shopping

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<sup>17</sup> Home Affairs Select Committee First Report on Tobacco Smuggling: paragraph 44

32. For the reasons stated in answer to Q.2, above, we do not believe that the evidence justifies inclusion of "possible losses from a potential increase in consumption of illicit product and/or product legitimately bought outside the UK".
33. The UK previously introduced a major change in packaging and labelling in advance of the rest of Europe by introducing coloured picture warnings on packs from 1 October 2008. This change to pack design in fact led to a decline in both cross border shopping and illicit trade over the period between introduction and full implementation from October 2008 to September 2010.<sup>18</sup> The Impact Assessment document acknowledges that cross border shopping rates are mostly influenced by external factors such as the £/€ exchange rate and the number of passenger journeys (point 131). Therefore, just as with graphic warnings, standardised packaging is unlikely to have a significant impact.

**Contacts:**

For further information please contact:

  
Communications Officer  
British Lung Foundation Wales


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<sup>18</sup> Table 6 – Historic Clearances, Tobacco Bulletin – November 2013, HM Revenue and Customs.

EL97

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 04 August 2014 11:33  
**To:** Tobacco Packaging  
**Subject:** Standardising tobacco products packaging

Dear Sir,  
Take this silly idea no further

[REDACTED]

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EL98

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 04 August 2014 11:39  
**To:** Tobacco Packaging  
**Subject:** standardised packaging

In the light of the Australian experience with the above packaging, it seems to me to be illogical to waste so much time and money on an Issue that will put so much more income to illicit trading. Even now, valuable amounts of income from tobacco sales are already lining the pockets of illicit traders. Tobacco products are already providing the Government with serious income. Why change that situation?

[REDACTED]

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**RCN response to Department of Health consultation on the introduction of regulations for standardised packaging of tobacco products**

1. With a membership of more than 415,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the UK Governments, the UK Parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations. The RCN is also a member of the Smoke Free Action Coalition.
2. The RCN responded to the previous consultation on standardised packaging for tobacco products in 2012<sup>1</sup> indicating clear support for this legislation.
3. Smoking is the single biggest cause of preventable illness and premature death in the UK. Nurses see firsthand the harmful effects of smoking and the RCN supports policy initiatives, including standardised packaging for tobacco products, which seek to reduce the prevalence of smoking among the population.
4. The cost to the NHS of treating people with smoking related illnesses is approximately £1.5 billion per annum. The findings of the Chantler review show that there is 'strong evidence that exposure to tobacco advertising and promotion increases the likelihood of children taking up smoking' and Chantler states that 'branded packaging contributes to increased tobacco consumption.'<sup>2</sup>
5. Since the publication of the Chantler review, figures released by the Australian government for the period 31 July to 31 December 2013 show that adult smoking rates decreased by 15%, during which standardised packaging was the only major policy change.<sup>3</sup> This suggests standardised packaging to be a key factor in reducing smoking prevalence among adults. The RCN therefore believes that standardised packaging should be introduced at the earliest possible opportunity.
6. A study into the association between tobacco plain packaging and Quitline calls since standardised packaging was introduced in Australia found a sustained increase in calls. Specifically, the study revealed a 78% increase in the number of calls to Quitline associated with the introduction of standardised packaging.<sup>4</sup> In addition, a study by the University of Newcastle found since the introduction of plain packaging in Australia,

<sup>1</sup> Royal College of Nursing, 2012. Available at [http://www.rcn.org.uk/data/assets/pdf\\_file/0011/462809/37.12\\_Standardised\\_Packaging\\_of\\_Tobacco\\_Products\\_consultation.pdf](http://www.rcn.org.uk/data/assets/pdf_file/0011/462809/37.12_Standardised_Packaging_of_Tobacco_Products_consultation.pdf)

<sup>2</sup> Chantler C, 2014, Standardised packaging. Available at <http://www.kcl.ac.uk/health/10035-TSO-2901853-Chantler-Review-ACCESSIBLE.PDF>

<sup>3</sup> Australian Government, 2014. National Drugs Strategy Household Surveys. Available at: <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/>

<sup>4</sup> Young, JM, 2014. Association between tobacco plain packaging and Quitline calls: a population-based, interrupted, time-series analysis, *Medical Journal of Australia*. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/24438415>

participants could no longer differentiate between different brands and thought the quality of the tobacco had deteriorated.<sup>5</sup> There is a clear case for introducing standardised packaging and there should not be any further delay in doing so.

7. The regulations must apply to all tobacco products, including cigars and cigarillos. To not do so may give the impression that these products are less harmful than cigarettes.
8. The requirement to notify the European Union of the intended legislation will take six months and the RCN believes the regulations should be laid before the UK Parliament immediately to ensure the necessary arrangements can be agreed in good time before the 2015 General Election.

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<sup>5</sup>Gullaumier A, 2014. Tobacco health warning messages on plain cigarette packs and in television campaigns: a qualitative study with Australian socioeconomically disadvantaged smokers; *Health Education Research*; Available at <http://her.oxfordjournals.org/content/early/2014/06/25/her.cyu037.abstract?sid=b08f8210-41cc-4856-8b19-4bf6f4134302>