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**ESSENTRA**

07 August 2014

Dear Sir or Madam

**RESPONSE TO THE DEPARTMENT OF HEALTH'S CONSULTATION ON THE  
INTRODUCTION OF REGULATIONS FOR STANDARDISED PACKAGING OF TOBACCO  
PRODUCTS**

On behalf of Essentra plc ("Essentra"), I am writing to you in response to the Department of Health's consultation on the introduction of regulations for standardised packaging of tobacco products.

**About us**

Essentra is a FTSE 250 company and a leading international supplier of speciality plastic, fibre, foam and packaging products. Through its four principal operating divisions, Essentra focuses on the light manufacture and distribution of high volume, essential components which serve customers in a wide variety of end-markets and geographies. Headquartered in the UK, Essentra's global network extends to 33 countries and includes c. 5,700 employees (of which around 1,450 in the UK), 42 principal manufacturing facilities (9) and five research & development centres (2).

One of our four principal manufacturing operating divisions – Packaging & Securing Solutions – is a global leading manufacturer and supplier of packaging and brand protection technologies to the tobacco industry, among other end-markets. As such, we fully support the responsible marketing of legally-sold tobacco products according to appropriate legislation, as well as exploring all opportunities to reduce the effect of smoking. We also firmly believe that minors should not smoke, nor should be able to obtain tobacco products.

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In summary, in light of the government's own Better Regulation principles – which state that any regulation must be clear, transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed – **It is our considered opinion that neither the report of the Chantler Review, nor the Department of Health's ("DH") Impact Assessment, provide a sufficient basis for proceeding with the introduction of the standardised packaging of tobacco products.**

### **Observations about the report of the Chantler Review**

We note that, in July 2013, then Public Health Minister, Anna Soubry, stated: *"We are waiting to see how things develop in Australia and, as I say, good laws are based on good, sound evidence. That is the way forward."* However, in our view, the conclusions of the Chantler Review do not represent "good, sound evidence." Rather, they are based upon "likely" behavioural changes which may result from the introduction of plain packaging; as such, they are arguably speculative. We would additionally note that the remit of the Chantler Review was one of public health – It was not to consider the wider implications of such legislation on the wider UK economy, including providers of packaging materials such as our own Company, wholesale business, retailers and the wider supply chain.

We are not aware of any credible evidence that plain packaging *per se* will reduce the prevalence of smoking – not least among young people. Indeed, publications from a number of sources on youth smoking predictors have cited a wide range of causal factors, in particular parental and sibling smoking, with an Expert Panel Report for Health Canada finding that *"practically one hundred per cent. [of young people] said the reason they might start smoking or would smoke is to be cool or fit in"* (*When Packages Can't Speak: Possible Impacts of Plain and Generic Packaging of Tobacco Products, 1995*). In this respect, we would note Sir Cyril's own words that *"it is too early to draw definitive conclusions"* from the introduction of plain packaging in Australia, a country which has actually implemented such legislation.

In the absence of standardised packaging, smoking among young people has nonetheless fallen, to the current level of 4% of under-15s – the lowest figure for a generation. And while there should be a continued focus on reducing this even further, we believe that this should be undertaken through measures aimed at preventing minors' access to tobacco products, as opposed to unproven measures to regulate their appearance, such as:

- Rapid enforcement of the new ban on proxy purchasing for under 18s – as indeed is the case with alcohol, and in Scottish law.



## ESSENTRA

- Supporting local retailers in their role as "gatekeepers" to age-restricted products through such prevention measures as CitizenCard and the "No ID No Sale!" campaign at tills, together with implementing stiff penalties against any retailers selling such products to those underage.

We would also note that the findings of educational initiatives – such as those implemented in Germany – are not considered in either the report of the Chantler Review nor the DH's Impact Assessment (of which more below).

### **New or additional information**

In respect of new information which has been published since the 2012 public consultation into plain packaging, it appears to us that the only credible evidence which can be drawn upon is the experience to date in Australia, which implemented such legislation in December 2012. And in the context of what was an already a downward trend in smoking prevalence, the data which has subsequently become available would not appear to support either a further reduction in that prevalence or a positive behavioural impact. Rather, in the following year, we understand that:

- The illicit market has increased to 13.9% from 11.8%.
- Cigarette volumes have increased for the first time in a decade.
- "Illicit white" brands – such as *Manchester* – have increased significantly, to capture close to a 1.5% share of the market.
- In the period between 2010-2013, underage smoking actually increased, reversing previous declines.

In light of the above – and given that the Australian government itself will not review the policy until December 2014 – we believe that is premature for the UK government to be pressing ahead with such legislation, given its own "sound evidential" criteria for doing so.

Absent the initial findings from Australia, we are not aware that there has been any compelling new or additional information regarding standardised packaging which has come to light since the UK-wide consultation in 2012. And this exercise showed that almost two-thirds of the 600,000+ responses – representing a wide variety of views – were opposed to it, from members



## ESSENTRA

of the public, to retailers, packaging companies, design firms, manufacturers, wholesalers, politicians, employers, employees, business groups, trade unions, the Intellectual Property community, international business, trade associations and the law enforcement community. Indeed, the current consultation on this particular matter is the third in the last six years, with both Labour and Conservative governments having previously rejected the introduction of plain packaging of tobacco products owing to the lack of evidence that it will actually be effective – and we fail to see what has changed in this respect.

However, there have been a number of recent developments in relation to the regulation of tobacco products – many of which have yet to be implemented and fully evaluated, viz:

- The UK Tobacco Display ban, which does not even come into force for smaller businesses until 2015.
- The EU Tobacco Products Directive ("TPD2"), which comes into effect in May 2016.
- The ban on proxy purchasing for under 18s.
- The current consultation on banning smoking in private vehicles carrying passengers under the age of 18.

In light of this number of pieces of legislation in respect of tobacco control, we fail to see why further regulation at this stage is justifiable, nor indeed how it can be possible to determine which (if any) will have been effective, and which have not.

### Comments on draft regulations

As a leading supplier of both packaging and branded security solutions, Essentra has been pleased to submit its views to both the UK and the EU consultations regarding further regulation of tobacco products. And in doing so, we confine our opinions to those aspects which have a direct bearing on our own business or appear to us to be general inconsistencies in findings – we do not seek of comment on areas which are beyond our sphere of reference, such as the potential impact of legislation on brand value, on retailers or on "consumer surplus".



## ESSENTRA

### *The illicit trade*

Despite our submissions and efforts at engaging with the appropriate decision-makers in various recent consultations, we are still concerned that the complexity and sophisticated nature of the packaging industry is still not fully understood – not least as a barrier to counterfeit product. Such sophisticated production – from specialist paperboard to lamination, and from foil stamping to printed tear tape, overwrap film and security technologies – requires substantial investment in specialist machinery and skilled workers. Accordingly, we would strongly dispute such statements, as per para. 129 of the Impact Assessment, as *"There is no evidence that standardised packaging is easier to counterfeit."* Removing the complexity which we and others in the packaging industry provide to brand owners – and, at the same time, publishing a single, prescribed "recipe" – cannot fail to make it more straightforward and economical to counterfeiters, in our view. This is the case, even if complex health warnings, tax stamps etc are incorporated. And in the absence of innovation, brand owners will be prevented from changing their packaging to stay ahead of the illicit trade (as noted in para. 95, *"tobacco companies tend to redesign their brands periodically"*), so once counterfeiters have mastered a plain pack, they will be able to replicate all brands for the long term.

With HMRC estimating that non-UK duty-paid tobacco costs the UK Treasury up to c. £3bn a year, we believe that a more comprehensive and robust assessment of the potential impact on the illicit trade should be undertaken, given that:

- As noted in the Impact Assessment, the illicit market accounts for 9% of cigarettes and 36% of hand-rolled tobacco;
- *"We conclude there is likely to be an increase in the UK duty unpaid segment, but we have no means of quantification";*
- *"We recognise that using an (unquantified) increase in the UK duty unpaid segment for this IA is not ideal ... We will adopt this approach in any future IAs if possible"; and*
- *"... there may be downtrading within the cigarette market or further downtrading to HRT" [hand-rolled tobacco, which – as per the figures above – counts a vastly higher share of illicit trade].*

Indeed, as HMRC has opined (and the Impact Assessment observes in para. 124), the illicit trade largely entails products of an often decidedly inferior quality (which carry their own health



## ESSENTRA

issues), sold to customers without any scruple as to their age (thereby undermining attempts to reduce underage access to tobacco products), and with a view to using the proceeds to fund all manner of other – more sinister - criminal activity.

In this respect, we would note the (unquantified) comment in para. 126 that: *"If the illicit market increased significantly it could significantly increase the cost of a standardised policy."* And, while investment in enforcement actively clearly contributes to reducing the illicit cigarette and hand-rolled tobacco ("HRT") markets, para. 126 omits the role which packaging companies - including our own - have played. Indeed, we understand that the packaging companies which supply the tobacco industry have invested more than £250m in the UK in the past five years in a vast range of complex products and technologies, much of which to ensure that our customers stay one step ahead of the counterfeiters.

Accordingly, to the extent that a potential increase in the illicit trade is acknowledged in the Impact Assessment, we are therefore dismayed that – in respect of the security features which may be required under standardised packaging – the proposals go no further than *"Markings not visible to the naked eye to counter illicit trade in tobacco products or other features to prevent fraud (details would be set out by the government in the future)."*

### ***Inconsistencies & bias***

As stated above, this response is confined to Essentra's sphere of influence as a leading provider of packaging and security solutions to the tobacco industry. That said, we would make the following observations as to other statements in the Impact Assessment:

- First of all, KPMG's report on illicit tobacco in Australia is called into question, as being "Industry funded" and "Inconsistent". Yet, we note (as per para. 146), a quantified estimate of the impact of standardised packaging on smoking behaviour has been based on the findings of a research project undertaken by the Policy Research Unit ("PRU") on Behaviour and Health at the University of Cambridge, which receives research funding through the DH Policy Research Programme. Additionally, the Impact Assessment cites other expert findings in respect of further legislation as to standardised packaging of tobacco products – all of which are accepted as fact, and not challenged.



## ESSENTRA

Essentra seeks to cast no opinion as to the validity or otherwise of third party research into this matter. However, it is our opinion that such expert views should be considered on an equal footing: if one side of the argument's findings are called into question, no more so then should the other's be challenged. As such, we do not believe the Impact Assessment is even-handed in this respect.

In the interest of transparency, we would note that KPMG is auditor – and provider of other services - to Essentra.

- Second, we note certain inconsistencies in the objectives of the rationale for introducing more standardised packaging of tobacco products. This not least relates to "the impact on equally groups" of such regulation. In this respect, on the one hand we note the statement that: *"Smoking is most common among those who earn least ... In 2010, smoking prevalence was more than twice as high among people in routine and manual occupations compared with managerial and professional occupations."* (para. 9). Yet on the other, the Impact Assessment goes on to state (see para. 88 and others) that: *"We therefore expect a more rapid decline in sales of high price than of low price brands because of a greater likelihood of quitting among smokers of high price brands and because of switching from high price to low price brands among those who continue to smoke."* In short, we respectfully find such statements in the Impact Assessment inconsistent with the public health objectives which the proposed legislation is aimed at achieving.

### ***Information not taken into account***

A potential – and considerable – cost of introducing more standardised packaging which is not accounted for in the Impact Assessment is the potential broader loss of investment in the UK. With a sizeable proportion of our principal manufacturing sites and employees located in the UK, Essentra is keen to continue its significant investment in our home market. However, the uncertainty, prevarication and apparent inability of the government to "play by its own rules" regarding Better Regulation unfortunately give the impression that the UK is an increasingly hostile place in which to do business, and one which places little stock on inward investment in skilled manufacturing and jobs or on innovation.

This considered opinion is reinforced by the number of afore-mentioned tobacco control measures which are already in the offing. In particular, with such measures as banning outright



## ESSENTRA

categories of product – from packs containing fewer than 20 cigarette sticks to menthol products – we do not believe that Option 1 of the Impact Assessment: *"Require changes to legislation to bring the UK in line with the European Tobacco Products Directive, to be implemented in 2016"* represents *"essentially a 'do nothing' option"*. Indeed, we have already registered our concerns as to the potential impact on the illicit trade from adopting TPD2 – and we believe that going beyond those requirements will only exacerbate this issue. Additionally, "gold-plating" EU regulation appears to us a contrarian stance to that which the government has previously adopted, making it more difficult for UK companies to gauge the future legislative environment and potentially discouraging further investment.

Ultimately, this protracted and unsubstantiated debate into plain packaging is unhelpful in terms of Essentra's decision-making as to where we choose to locate our business across an international footprint which spans 33 countries – not only that relating to the tobacco industry, but also to the wide array of other end-markets which we serve.

### Other evidence or information

With the emphasis on public health – in particular that of children where *"a 15 year-old living with a parent who smokes is 60 per cent more likely to smoke than one living in a household where no one smokes"* (para. 6) – we are surprised that the role of preventative programmes and education have not been accorded greater priority. Indeed, a summary of the findings from the latest study from the BZgA (Federal Institute for Health Education) in Germany in early 2013, indicated that:

- Only 13% of 12-17 year-olds currently smoke, compared to 28% in 2001 and being the lowest level since the start of the research 30 years ago.
- At the same time, the share of non-smokers has steadily increased. In the current study, 69% of the underage teens stated that they had never smoked at all, whereas it was only 41% in 2001.
- The percentage of young adults, aged between 18 and 25, who smoke is significantly less than two years ago (38% versus 43%).





## ESSENTRA

We note that, since 2003, the BZgA has undertaken a campaign of prevention, with the objective of convincing young people aged 12-17 of the advantages of not smoking. And while structural measures making it more difficult to access tobacco products have contributed (eg, smoking bans in restaurants and – in particular – in schools), it is preventative steps, such as non-smoking campaigns, which are deemed to have been especially successful as a means of reducing the probability of smoking later in life. In particular, the data compiled by the BZgA indicates that such social prevention measures and awareness-raising campaigns have been the most effective tools in preventing young people from smoking, while dissuasive warning labels on cigarette packs have proved to be less so.

In conclusion, given the afore-mentioned Better Regulation principles, and in light of the range of recent tobacco control measures which have either not yet been evaluated or even implemented, we do not believe that there is justification for introducing further regulation at this stage. We would, therefore, urge the government not to proceed, and rather to place greater emphasis on educational initiatives which – particularly in terms of young people – appear to have yielded positive results even in countries which currently have less restrictive legislation of tobacco products than the UK.

I would like to thank you for the opportunity to participate in the consultation process, and for your kind attention to our considered views.

Yours faithfully

Corporate Affairs Director, Essentra plc

EL 32.5



Department  
of Health



Llywodraeth Cymru  
Welsh Government



The Scottish  
Government  
Riaghaltas na h-Alba



Department of  
Health, Social Services  
and Public Safety  
www.dhsspsni.gov.uk

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

**a. Are you responding (required):**

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

**b. Please provide your details and contact information:**

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

**Now go to question f**

**c. Please provide your organisation's details and contact information:**

Name of organisation (required):

City of London Tobacco Control Alliance

Name of person providing submission (required):



Job Title (required):

Director of Public Health

Contact address of organisation (required):

City of London Corporation, Guildhall, PO Box 270, London EC2P 2EJ

Contact email address (required):



Is this the official response of your organisation? (required):

Yes

No

**d. If you are responding on behalf of a business, what type is it?**

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

**e. If you are responding on behalf of an organisation, what type is it?**

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

**f. Does your response relate to (required):**

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

**g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)**

No

Yes (please describe below)

If yes, please describe:

**h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box**

## Consultation questions

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

Time is running short to vote on the standardised packaging regulations before the 2015 general election – failure to do so would represent an enormous missed opportunity for public health.

Smoking prevalence in City of London residents is estimated to be around 11%, although it is known to be twice as high amongst our youngest and most deprived communities (Source: City and Hackney JSNA City Supplement, 2014).

Amongst City workers, around 25% admit to being smokers, which represents one of the highest rates of adult smoking prevalence in the country (Source: PHAST (2012) The public health and primary healthcare needs of City workers, City of London <http://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Pages/the-public-health-and-primary-healthcare-needs-of-city-workers.aspx> )

We are absolutely committed to addressing the significant impact that smoking has on our residents, workers and our local economy. Preventing children from taking up their parents' smoking habit is absolutely key to efforts to achieve this.

We are already taking local action to discourage children and young people from starting to smoke. For example, we are reducing exposure to smoking role models (by introducing smoke-free play areas and piloting smoke free in other areas of our local parks). However, the potential for local action to have an impact on smoking uptake is limited without concerted national action to both reduce the attractiveness of smoking and limit the supply of tobacco to children. We believe that standardised packaging will complement and enhance existing/planned local, national and international tobacco control measures to help achieve these aims.

We therefore support the recommendations in the Chantler report to introduce standardised packaging. A parallel evidence review undertaken on behalf of the Irish Department of Health came to similar conclusions, in particular that the existing evidence points towards plain (standardised) packaging as an effective tool for reducing smoking initiation among youth and young adults. Support for the Chantler recommendations is evident in the response to the review from the UK Government's Minister for Public Health, Jane Ellison MP, who has publicly declared her wish to proceed swiftly with introducing regulations for standardised packaging. The regulations are also supported by the Chief Medical Officer, Dame Sally Davies.

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?

To be successful in achieving a continued reduction in smoking uptake and prevalence, we absolutely endorse the view that standardised packaging must be part of a comprehensive tobacco control strategy which addresses price, demand/attractiveness and availability of tobacco products.

Implementation of standard packaging alongside the EU Tobacco Products Directive (which includes larger health warnings and graphic warnings on the front of packs) will help to maximise the impact of the regulations. We would suggest that other complementary measures are also introduced to enhance and support the introduction of standard packaging regulations, including:

- increased funding for sustained mass media campaigns in advance of standardised packaging coming into effect
- supporting enforcement through adequate funding of trading standards departments, regional partnerships against illicit trade, and work on illicit trade by HMRC and the UK Border Force
- tax rises on tobacco products over and above the existing escalator, to counter possible negative effects of brand-shifting (to cheaper products) or price cutting by the tobacco companies.

Other measures that we believe would strengthen the renewed focus on prevention include mandating the provision of stop smoking services at local level and introducing levies on the tobacco industry to fund (but not deliver) cessation services and other tobacco control initiatives.

Within the City of London, we fund comprehensive smoking cessation services for both residents and workers, as well as piloting innovative approaches to encourage people to quit (for example, issuing Fixed Penalty Notices for smokers dropping smoking-related litter, which can be reimbursed if the smoker goes on to quit within a specified time period; and piloting the use of e-cigarettes as a quitting tool). We fund these initiatives because we know that smoking has a detrimental effect upon both workers and employers within the City, and takes a huge toll on health, productivity and the physical environment of the Square Mile.

We do not accept the arguments of the tobacco industry that standardised packaging will necessarily result in an increase in the illicit tobacco trade, because:

- previous claims (from Australia) have been shown to be unsupported – as uncovered during the Chantler review
- all the key security features on existing packs will also be present on standardised packs – additional markings will also be required under the EU Tobacco Products Directive (including unique identifiers, coded numbering and covert anti-counterfeit marks)

• standardised packaging is likely to increase, rather than decrease, detection of illicit packs as it will be easier to visually identify 'cheap white' brands (with no legal market in the UK) and diverted licit brands (originating from countries without standardised packaging and diverted into illicit channels). Indeed, the House of Commons Home Affairs Select Committee concluded in its report on the illicit tobacco trade (published in June 2014) that, '...we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening of the Government's drive towards introducing standardised packaging.' (<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhaff/200/20002.htm>, para. 44)

We also reject the claims of the tobacco industry that tobacco consumption in Australia has risen since the introduction of standard packaging. These claims are based largely on research funded by the tobacco industry and have been independently criticised for their flawed methods and assertions ([http://www.cancervic.org.au/downloads/tobacco\\_control/2013/Critique\\_by\\_Cancer\\_Council\\_Victoria\\_on\\_report\\_by\\_PMI\\_26.11.13.pdf](http://www.cancervic.org.au/downloads/tobacco_control/2013/Critique_by_Cancer_Council_Victoria_on_report_by_PMI_26.11.13.pdf); <http://tobaccocontrol.bmj.com/content/early/2014/07/07/tobaccocontrol-2014-051734.extract>). According to figures published by the Australian Government's Department of Health, total expenditure on tobacco products actually fell to the lowest level ever recorded within two years of the introduction of standardised packs. The Australian Treasury also reported that tobacco clearances (including excise and customs duty) – an indicator of tobacco volumes – fell by 3.4% in 2013 compared with 2012, when standard packaging was introduced (<http://apo.org.au/research/tobacco-key-facts-and-figures>).

In addition, other evidence from Australia has shown that the introduction of standardised packaging in 2012 was associated with a sharp rise (78%) in the number of calls to smoking cessation services and that this was sustained (<https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based>).

Finally, the predicted negative impact on time taken for retailers to serve customers, and the knock-on risk of losing custom, as a result of plain (standardised) packaging has not materialised in Australia, according to a 2013 study (<http://tobaccocontrol.bmj.com/content/early/2013/05/25/tobaccocontrol-2013-050987.abstract>).

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?

In general, we welcome and accept the draft regulations, with the exception of the exclusion of specialist tobacco products (including cigars, cigarillos and pipes).



The reason given in the consultation document for their exclusion is that prevalence of use is much lower in young people than cigarettes and hand-rolling tobacco. However, their exclusion gives a mixed message about the Government's - and society's - attitude to tobacco products and runs against the grain of striving to change social norms around smoking behaviours. Moreover, waiting for these products to become more popular amongst young people before taking action, as the consultation document implies, is an irresponsible and dangerous strategy.

We would also suggest the following additions, to prevent any subliminal branding by the tobacco companies:

- stipulate the dimensions of the cigarettes and packs (as in the Australian regulations), in particular the sale of 'slim' cigarettes
- prohibit the use of misleading brand variant names such as 'slim', 'natural', 'organic', 'smooth' etc

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?

We have listed below some considerations for the Impact Assessment modelling:

- the impact of standardised packaging on retail sales is likely to be minimal compared to overall (declining) trends in tobacco sales
- similarly, small and independent retailers are facing a general and longer-term decline in sales, which is likely to continue due to causes other than tobacco control measures.

Data should be collected by the Department of Health on trends in tobacco and general sales as part of the evaluation of standardised packaging (and other tobacco control legislation).

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

## **How to get involved in the consultation**

The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

Respondents are encouraged to provide their views online, but responses can be made in any of the following ways:

### **Completing the online form on the Department of Health website at:**

[http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

[1](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

- **Filling in the response form by downloading it at:**

<https://www.gov.uk/government/consultations>

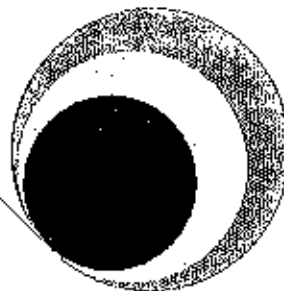
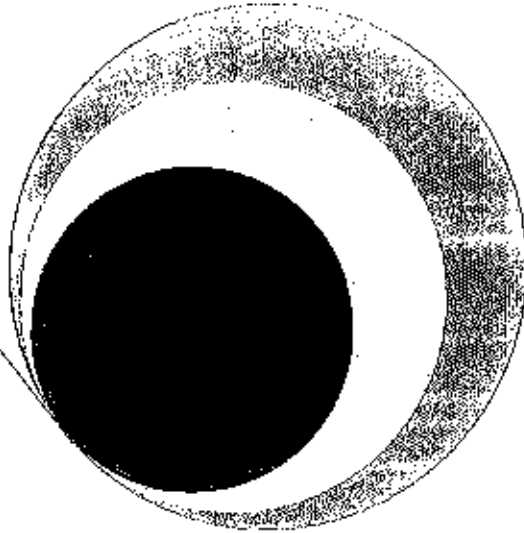
- **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

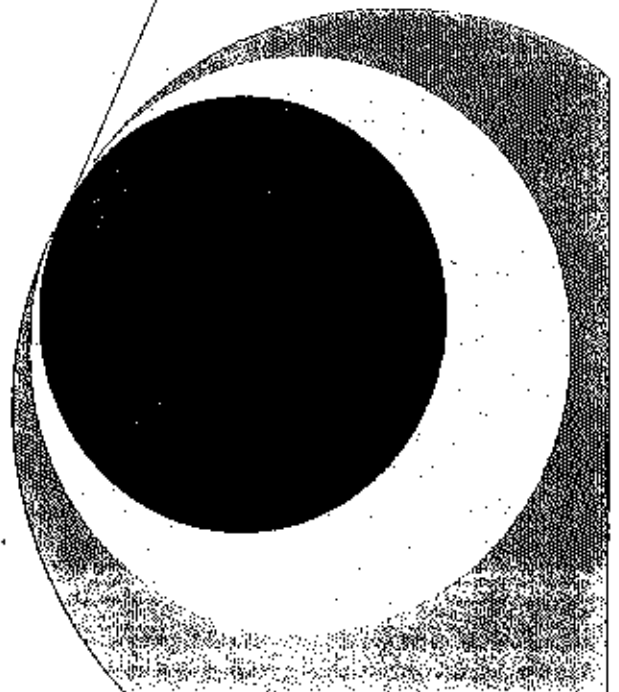
Department of Health  
Standardised Packaging Tobacco Consultation  
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EL326



**INSTITUTE OF TRADE  
MARK ATTORNEYS**

Response to Consultation on the  
introduction of Regulations for  
Standardised Packaging of Tobacco  
Products



07/08/2014



The Institute of  
Trade Mark  
Attorneys

**Department of Health - Consultation on the Introduction of Regulations for Standardised  
Packaging of Tobacco Products**

**INSTITUTE OF TRADE MARK ATTORNEYS**

**COMMENTS OF THE ITMA LAW & PRACTICE COMMITTEE**

**EXECUTIVE SUMMARY**

The Institute of Trade Mark Attorneys [ITMA] is grateful for being given the opportunity to comment on the Consultation under Question 3 of Appendix A. We have no comments under Questions 1, 2 or 4 of Appendix A.

ITMA does not comment on health-related subjects and is nonpartisan on the generality of plain packaging per se; but is greatly concerned that Trade Mark law is stable, cohesive and strong. The proposals in this Consultation in Schedule 4 Sections 14-18 are clear and address a number of issues, especially some of the concerns previously raised over the 1994 Trade Marks Act in Sections 32(2), 5(1) and 10(1). However, tensions remain within Sections 5(2), 5(3), 5(4)a and 10(2) and 10(3) of the Act. Perhaps that has been assessed as an unavoidable consequence. Nonetheless we ask for guidance on these, and for confirmation that the new regulations will be kept under review and might be amended again in the event of unforeseen consequences or unwelcome results. We also ask that the incidence and nature of counterfeiting is regularly monitored with a view to assessing the impact of the new regulation.

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The Institute of  
Trade Mark  
Attorneys

## **DETAILED RESPONSE**

ITMA is the professional body for Trade Mark Attorneys in the UK. It was founded in 1934 and promotes high standards of training, qualification and continued learning in order to ensure that the Trade Mark Attorney profession is able to undertake on behalf of clients all of the work associated with securing and protecting trade marks and other intellectual property rights both in the UK and abroad.

### **1. Introduction**

The ITMA Law and Practice Committee (the "Committee") has been invited to provide comments on the "Consultation on the introduction of regulations for standardised packaging of tobacco products" ("the Consultation") of June 2014, which are new or different from those already submitted in relation to the "Consultation on standardised packaging of tobacco products" of 16 April 2012 ("the 2012 Consultation").

The Committee's previous response was made on 10 July 2012 ("the 2012 Response") and noted that the 2012 Consultation did not contain any specific legal proposals. The fundamental request of ITMA's 2012 Response was that a second consultation should be opened, once more concrete proposals had been developed, to review specific legal issues, so that they could be properly reviewed in detail within the legal community and responses submitted to Government, at a time when further responsive amendment could still be possible.

ITMA is therefore pleased to see the legal proposals in the Consultation, in Part 4, Sections 14, 15, 16 and 17 in particular; and ITMA's comments relate only to these.

### **2. Approach**

Trade Mark Attorneys act for a wide range of stakeholders including brand owners and alleged infringers, manufacturers and importers, licensors and licensees, charities, multinational corporations and SMEs. ITMA members act for Clients on any side of a dispute, and ITMA does not comment on health-related subjects; accordingly, ITMA is nonpartisan on the issue of plain packaging. However, since ITMA members need to be able to advise Clients on any side of a dispute, and since traders need to understand what they can and cannot do under the law of Trade Marks, the law has to be coherent and cogent. It is specifically and only in relation to the Trade Mark legal aspects that ITMA makes these comments.

Much of the Consultation naturally relates to whether the introduction of standardised packaging would reduce the appeal of tobacco products and as such whether it would assist

**In Improving public health.** These issues are clearly outside the remit of ITMA. As such, as stated above, our comments focus only on potential legal implications, with reference to trade mark law.

Trade Mark Law is complex. It involves common law, statutory law (including European Directives and Regulations), and international agreements. It also overlaps with registered and unregistered design law copyright and consumer law. It has evolved over centuries and is robust and cohesive.

### **3. Trade mark use - Sections 2, 5 and 10 of the Trade Marks Act 1994**

The Issue of trade mark use is central to a number of provisions included in the UK Trade Marks Act which would be affected if standardised packaging proposals were introduced. The Consultation disposes of many of these with a clear "but-for" wording, which is very broadly phrased in 16(3) in the "avoidance of doubt" clause. However, tension remains.

In the 2012 Response, ITMA noted a concern under Section 32(3) of the Trade Marks Act, wherein an applicant must have a bona fide intention to use a mark in order to be granted a registration. We asked if an applicant applies to register a logo mark in relation to tobacco, then would they still have a bona fide intention to use the mark if the standardised packaging proposals were adopted? If not, then would the applicant's right to apply be adversely affected? We see that this has been explicitly addressed by Part 4, Section 14 of the draft Regulations.

In the 2012 Response, ITMA noted that under Section 46 of the Trade Marks Act, there has to be genuine use of the trade mark on the goods covered, unless there are proper reasons for non-use, in order for the registration to be safe from attack from third parties. ITMA raised concerns on the basis of the proposed limited exemption for exclusively trade-directed use, as an environment in which a trade mark registration can exist in perpetuity (subject to payment of renewal fees) without any link to the marketplace, which runs against the entire philosophy of trade mark law. On review of the Consultation and in particular the clear and explicit wording of 5.8, which puts the indications on this point in the 2012 document beyond doubt: it now seems that the carve-out of "exclusively trade-directed use" is very much wider and more practically defined than some had expected. We understand that the debranding is to be applied only (for cigarettes) at the levels of the cigarette, the pack and the carton – that is, the three levels of domestic use and the two levels of domestic purchase. We understand that the containers for cartons are not to be debranded – that is, that branding will continue at the retail supply and wholesale supply levels, as well as within specific trade contexts. This means that it is still possible to discuss genuine use on a reasonable basis because so much of the chain still stands. This is sensible.



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The Consultation addresses many issues relating to the simple registration of a mark, as outlined in Section 5/10(1), but there are still uncertainties relating to the reputation attaching to that mark, which depends on its trade and which is envisaged in Section 5/10(2) and especially Section 5/10(3) of the Act. The enforceability and strength of a registration under Section 5/10(1) is dependent only on the identity of the marks and goods/services; but for its enforceability and strength under Sections 5/10(2) and (3), the actual use and perception of the mark in the marketplace is relevant. Clearly this can only be addressed through inference, in the debranded context. This is where there must be an estimate of "what the use would have been and where the rights would have been". This estimate system is still inherent in the new model and is still undesirable because it is based on inference and not reality. There are challenges here.

We understand that the Courts, ultimately, will be addressing outstanding tensions. Of course a Court decision should be the last and not the first point: the more uncertainty can be avoided, the better. Accordingly we would welcome an informal working document, from the UK-IPO, perhaps, to outline its approach in oppositions to address the basic issues:

- Can consumer confusion exist or be presumed to be likely in relation to a market-unused mark? This appears to be the premise of the Consultation, but formal confirmation would be welcomed. This is particularly important when there is a Trade Mark dispute for which the relevant public is the typical consumer who, statistically, will probably not smoke. Will he be deemed to have knowledge of the branding of an unadvertised product which he does not use and cannot see – but which would have been far more prominent, even to non-smokers, before the debranding?
- Can a tobacco trade mark registration hold an enhanced distinctive character or repute if its marketplace use is not permitted?
- Should that registration be presumed to have a high reputation despite its non-use, or should it perpetually retain the reputation it had at the time its use ceased, or would the reputation gradually erode through non-use, or be deemed to have ceased at the point of non-use?

Further, and to repeat our 2012 response, reference is made to Section 2(2) of the Act, which reads "nothing in this Act affects the law relating to passing off". Passing off is a common law right which arises from the use of a mark in relation to particular goods or services such as to create a goodwill, such that the use of that sign (or similar) by another party is liable to constitute a misrepresentation which is damaging to that goodwill. There may be practical questions about assessing goodwill, and the context of misrepresentation, in a debranded market, especially between tobacco goods and nontobacco goods. Is there



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now tension between Section 2(2) and Section 5/10(2) and (3) in the context of a registered, non-used mark, which is immune from revocation?

#### **4. Plain packaging and its implications: Counterfeiting, infringement**

We remain of the view that counterfeiting is likely to increase under the new proposals. No doubt this will be monitored. We ask for confirmation on this point.

#### **5. Summary**

We ask that the effect of the regulations is kept under review, with a possibility of intervention or revision in the event of unforeseen or unwelcome consequences.

The proposals in Sections 14-18 have been drafted with care and these "but-for" wordings, together with the limitation of debranding to the consumer supply point, address many of the concerns raised in the 2012 response. Uncertainty remains, however: guidelines, however informal, would be welcome.

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Institute of Trade Mark Attorneys  
7<sup>th</sup> August 2014



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Standardised Tobacco Packaging Consultation

Department of Health

7th Floor Wellington House

133-155 Waterloo Road

London SE1 8UG

*The Hague, 07 August 2014*

*Our Reference: HVS/BG/EE14-021*

**Re: European Carton Makers Association (ECMA) response to the consultation on the introduction of regulations for standardised packaging of tobacco products**

Dear Sir/Madam,

I am writing to you as President of the European Carton Makers Association (ECMA) in response to the Consultation on the introduction of regulations for standardised packaging of tobacco products. ECMA is the established forum and officially recognised umbrella organisation for national carton associations throughout Europe. Founded in 1960 to promote the interests of one of the most diverse sectors of the packaging industry, ECMA today represents approximately 500 carton producers which account, by volume, for 90 percent of the total European market. The total EU turnover for the sector as a whole is €9 billion and ECMA members employ 45,000 people across Europe, including manufacturing and sales operations in the UK. Further information about ECMA and its members is available at [www.ecma.org](http://www.ecma.org).

As experts in packaging, and as the body whose members will ultimately be responsible to implement any legislated requirements concerning the packaging of tobacco, ECMA has contributed to both the UK Government's Department of Health's 2012 Consultation on the issue of standardised packaging of tobacco products and to the Chantler Independent Review into standardised packaging of tobacco ("The Chantler Report").<sup>1</sup> ECMA's comments to those Consultations remain very relevant to the discussion and are thus incorporated by reference in (and attached to) this submission.

ECMA understands and supports the UK Government's efforts to protect the public health of its citizens. Our concern is that the draft regulations will not contribute to these efforts and in fact risk to undermine them by significantly reducing barriers to counterfeit products.

The Chantler Report reviewed the responses to the Department of Health's Consultation, along with many other sources. It outlined the arguments of parties both opposing and supporting plain packaging and based on the information gathered conclusions were formed. ECMA is pleased that Sir Cyril Chantler considered in some detail the consequences of a plain packaging policy on the illicit market in particular. This is an important examination of these issues which has largely been missing from the debate and, while we disagree with some of his conclusions, we are appreciative that he has moved this discussion forward.

<sup>1</sup> Report of the independent review undertaken by Sir Cyril Chantler, *Standardised packaging of tobacco*, April 2014.



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In these comments, ECMA would like to discuss specific conclusions of the Chantler Report with regard to the illicit market and to counterfeiting in particular. Although the Department of Health prefers the use of the term 'standardized packaging', we see very little to differentiate it's proposals from what is commonly referred to as plain packaging or the policy recently introduced in Australia. For this reason, we consider it more appropriate to reference the term 'plain packaging' and accordingly we do so throughout this submission.

### **Plain Packaging will undermine the UK Government's Health Objectives**

ECMA opposes plain packaging because continuously evolving packaging complexity is the first and best line of defence against counterfeits, a form of illicit trade that is often misunderstood and indeed confused with today's higher profile issue of smuggling. Complexity concerns the different enhanced design features added to a pack that allow differentiation and authentication by consumers and authorities, and includes embossing, debossing, hot foil stamping, and UV Varnish technologies. The removal of these complex features in favour of pack standardisation at low, static levels will open the door to a growing volume of counterfeit production fuelled by:

- Lower barriers to entry for counterfeiters resulting from lower technology hurdles and lower upfront investment costs;
- Increased economic incentives for counterfeits on the market driven by lower input costs for the legitimate industry and higher taxes; and
- Limited capacity to authenticate genuine products making it easier for counterfeit goods to be passed off as genuine product.

Plain packaging thus has three significant negative effects:

- Loss of responsible manufacturing of tobacco cartons - standardisation removes competition lowering industry standards; quality packaging and skilled jobs move to other markets;
- Health risks for consumers - counterfeit products are unregulated and there are no controls over hygiene, ingredient composition or level of toxic materials; and
- Loss to the public purse - Illicit trade already costs the UK an estimated £2 billion per annum and such losses will only increase further with plain packaging.

Importantly, ECMA makes no claim that these negative effects from plain packaging will appear in the UK market immediately. Plain packaging would create a major disruption to current business practices in the market, and it is our belief that as market structures change to adapt to the new realities, so too will the structure of the illicit market change in response.



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**European Commission funded survey shows packaging is not the problem**

The negative effects of plain packaging on industry, on the consumer and on government budgets will be felt despite the fact that evidence compiled by the European Commission suggests that packaging is not the problem. The Special Eurobarometer 385 Report<sup>2</sup>, which was commissioned by the European Commission and formed part of the evidence base of its impact assessment on the revised Tobacco Products Directive, states that:

- 79% of respondents say that peer influence is the most commonly cited reason to start smoking<sup>3</sup>;
- by contrast only 3% cited packaging as a reason to start smoking<sup>4</sup>;
- 1% of respondents indicated that the shape or texture of a pack made consumers think the brand was less harmful than other brands<sup>5</sup>.

On this basis the packaging industry questions whether plain packaging measures are necessary to achieve enhanced health benefits, particularly as the revised Tobacco Products Directive already contains enhanced protections for consumers in respect of misleading packaging and enlarged graphical health warnings on packs.

Sir Cyril Chantler seeks to address this issue in his Chantler Report by making reference to other branded consumer goods where appealing branding does influence consumption, e.g., McDonalds.<sup>6</sup> But these other goods benefit from strong brand advertising which of course is already banned for the tobacco industry. The Report's comments that "Behavioural science shows that we are strongly influenced by our perception of what others do" only serves, in our view, to confirm the findings of the Special Eurobarometer Report that peer pressure is the most significant factor. The Special Eurobarometer Report shows what ordinary people think about these issues and should be accepted as primary, and directly applicable, evidence in this regard.

**There is wide disagreement over the probable effects of plain packaging on the UK market, but illicit trade is a serious issue and adapts to changes in policy.**

While the elimination of illicit trade as an essential component of tobacco control is recognised at global, EU and national level, there is wide disagreement as to whether a plain packaging policy will help or hinder this objective. The Chantler Report reviewed illicit trade issues in terms of whether it is likely that plain packaging would lead to an increase in tobacco consumption. Sir Cyril Chantler concluded:

*"...the risks of price effects undermining the objectives of a standardised packaging policy are small and that the impacts could be readily mitigated through taxation if nevertheless they were to materialise. I am not convinced by the tobacco industry's argument that standardised*

<sup>2</sup> Special Eurobarometer 385 Report, Attitudes of Europeans Towards tobacco, European Commission, May 2012.

<sup>3</sup> Idem at page 69.

<sup>4</sup> Idem.

<sup>5</sup> Idem at page 86.

<sup>6</sup> The Chantler Report at para 3.18 et seq.



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*packaging would increase the illicit market, especially in counterfeit cigarettes. It seems to me that the solution to illicit use is instead, to have an effective enforcement regime, and the enforcement agencies in the UK have already demonstrated that an effective enforcement regime and appropriate sanctions can keep illicit [tobacco products] to low levels, even in a relatively high tax jurisdiction."*<sup>7</sup>

ECMA would like to underline the fact that, as the Department of Health's summary of the responses to its consultation makes clear, the business community was near unanimous that standardised packaging would result in increased illicit tobacco on the market.<sup>8</sup> This view should not simply be written off as the position of the 'tobacco industry' as mentioned above.<sup>9</sup>

The European Commission's Impact assessment on the recently agreed revised Tobacco Products Directive confirms that counterfeit product is already a substantial and growing threat with 8.25 % of all cigarettes sold in the EU illicit (this breaks down as 50% counterfeit, 30% contraband and 20% illicit whites) and this proportion is projected to grow at a rate of 1 per cent every year for the next five years.<sup>10</sup> Interestingly, as the EU has implemented various tobacco control policies, it is witnessing changing market dynamics. In its Communication for a Comprehensive EU Strategy against cigarette smuggling, the Commission notes that the relative share of smuggling of main brands (the Big 4 Tobacco manufacturers that have concluded cooperation agreements with the EU and most Member States) has decreased while counterfeiting, illegal production, and the smuggling of 'illicit whites' is on the rise.<sup>11</sup> It also states that "the EU faces a rising illicit influx of other brands coming from outside the EU as well as increased illicit production and distribution inside the EU".<sup>12</sup> These developments confirm that the illicit market can and will adapt to changes over time.

<sup>7</sup> The Chantler Report at para 5.13.

<sup>8</sup> UK Department of Health, *Summary Report – Consultation on standardised packaging of tobacco products*, July 2013, "There were many replies from businesses and business-related organisations, and almost all of these suggested that standardised packaging would both increase the supply of and demand for illicit tobacco. These respondents said that standardised packaging would be easier to counterfeit, reduce counterfeiter's costs and make it easier for counterfeiters to enter the illicit market. They also believed that standardised packaging would make it more difficult for law enforcement officers to detect counterfeit tobacco, especially as members of the public would be less able to identify when they had been sold counterfeit tobacco....", at page 22.

<sup>9</sup> The House of Commons Home Affairs Committee looked at the question whether tobacco plain packaging would be a boon to counterfeiters and outlines what it calls a split of opinion. It cites a 2012 Study of serving police officers wherein 86% of respondents agreed that plain packaging would make it easier to produce and sell counterfeit cigarettes. It also cites the Trading Standards Institute as suggesting that because counterfeit is detected using a hand held scanner to identify covert markings that plain packaging won't matter to its work. See House of Commons, Home Affairs Committee, *Tobacco Smuggling, First Report of Session 2014-15* at paras 33-36.

<sup>10</sup> European Commission Impact Assessment on the Revised Tobacco Products Directive, page 38.

<sup>11</sup> Communication from the Commission to the Council and the European Parliament, *Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – A comprehensive EU Strategy*, COM (2013) 324 Final, 6 June 2013, page 4.

<sup>12</sup> *Idem*, page 5.



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In the UK, the economic costs of the illicit tobacco trade are estimated to be UK £2 billion per year, including a mid-point estimate for cigarette losses of £1.1 billion and mid-point hand rolling tobacco losses of £900 million, with the illicit market share at 9%.<sup>13</sup> ECMA is unaware of a specific breakdown among the different categories of illicit product in the UK, although it understands the illicit market is also evolving with illicit whites increasingly of significant concern.<sup>14</sup> In 2011, HMRC published a renewed strategy on tobacco smuggling calling for policy and legislative changes and increased enforcement. Pointing to failures to meet seizure targets and increases in revenue losses, the National Audit Office has found HMRC's performance in tackling illicit trade to have been mixed.<sup>15</sup> Responding to questions from the House of Commons Home Affairs Committee, HMRC's Jim Harra addressed this point and concluded that "changes in the profile of smuggling were making it "increasingly challenging" for them to make seizures.<sup>16</sup>

Given the wide disagreement of the effects of a plain packaging policy, and the evolving nature of illicit trade that will adopt to any policy measures, ECMA questions how the UK government can rush forward plain packaging and dismiss such possible risks to its health policy?

### Further Comments on Issues raised in The Chantler Report

#### A. Price effects and consumption

The Chantler Report examines the economic effect of 'down-trading' in Australia and while there is some evidence of this trend, the Report suggests that this is normal and to be expected over time. It does not seem to view this trend as worrisome for increased consumption. Indeed, proponents of plain packaging point to data from the Australian Federal Treasury that shows 3.4% fewer cigarettes were sold in Australia in 2013 as compared to 2012.<sup>17</sup> These statistics however contrast with industry figures that cigarette volumes climbed by 0.3% last year.<sup>18</sup> Moreover, a recent KPMG study concludes that not only are cigarette volumes in Australia marginally higher than in 2013 over 2012, but that the level of illicit consumption grew by 2.1%.<sup>19</sup> Proponents and opponents of plain packaging can and are arguing the correctness of these figures. What is indisputable, however, is that trends in cigarette sales are lower for a number of years, and it is not at all clear if this trend has accelerated or decelerated in 2013 since the implementation of plain packaging. In ECMA's view, it is too early to draw proper conclusions relative to the recent market changes from plain packaging in Australia.

The Chantler Report also examines price reductions from commoditisation and finds that such predictions are exaggerated, at least in the short run. The Report cites as telling evidence that certain product innovations were brought forward prior to the launch of plain packaging and that

<sup>13</sup> HMRC, *Tobacco Tax Gap Estimates, 2012-2013*.

<sup>14</sup> Home Affairs Committee Report at page 3.

<sup>15</sup> National Audit Office, Report by the Comptroller and Auditor General, *HM Revenue & Customs Progress in tackling tobacco smuggling*, 4 June 2013 at page 24.

<sup>16</sup> Home Affairs Committee Report at para 11.

<sup>17</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff>

<sup>18</sup> Kerr, Christian, Creighton, Adam, *The Australian, Plain Wrong? Here are the facts: cheap smokes are on the rise since plain packaging*, June 18, 2014.

<sup>19</sup> KPMG, *Illicit Tobacco in Australia, 2013 Full Year Report*, 3 April 2014 at section 5.2.



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prices have risen faster than tax increases. ECMA views such 'evidence' as subject to differing explanations and believes that UK Government policy should rather focus on the medium to long term. We respectfully disagree with the assessment that in the event plain packaging results in widespread price reductions any necessary mitigation can simply be handled by the tax system.<sup>20</sup> Indeed, a recent study on the tobacco control experience in Canada suggests that high taxes can serve to shift consumption to the illicit market.<sup>21</sup> Moreover, if the solution were as simple as raising taxes, the present review would not be necessary.

What the Chantler Report does not examine sufficiently is changing market structures due to plain packaging. This is where prices fall due to lower barriers of complexity - where input manufacturing costs are eliminated and competition on the legal market then leads to lower prices generally. This is not a short term phenomenon but rather in ECMA's view what will lead to commoditisation and falling prices over time. Of course, lower prices is a real risk to increased consumption so we expect, as suggested in the Chantler Report, that Government would respond by tax hikes. The incentive for counterfeiting arrives not from the market price of the product but the margin, or difference between the cost price and the market price. In this scenario, with low cost prices for easy to produce counterfeits, coupled with high retail prices driven by taxes, the counterfeit market becomes more attractive for criminal enterprises.

Changing market structures takes time, but ECMA considers that increased counterfeiting (in the form of imported or decentralised domestic production) is - over time - the most likely outcome from Australia's tobacco control policies which feature plain packaging and ever increasing tax hikes.

**B. Effective enforcement regime**

The Chantler Report suggests that the solution to illicit trade is an effective enforcement regime.<sup>22</sup> It rightly lauds the successes of HMRC and points to an overall trend in downward illicit trade. ECMA cautions that such success is the result of sustained efforts over time under market structures that include complex packaging which is difficult and expensive to replicate. Last year's uptick in illicit trade figures<sup>23</sup> for the UK shows that even sustained efforts remain difficult, and as a consequence the National Audit Office (and the Home Affairs Committee) has already called on HMRC to review its strategy and operations.<sup>24</sup>

Plain packaging will create market disruption that could introduce many new and unintended challenges to enforcement and the strategies that underlie this effort. Criminal enterprises are profit focused and operate on price points. If prices change in the domestic market, for example driven by decreased manufacturing costs that allow counterfeits to more easily compete with legitimate product, the nature and profile of the current illicit trade phenomenon could change significantly. In ECMA's view, this will create new and different challenges for UK enforcement authorities in addition to those they already face.

<sup>20</sup> The Chantler Report at page 46.

<sup>21</sup> Reason Foundation & Canadian Taxpayers Federation, *The Effect of Cigarette Tax Rates on Illicit Trade: The Lessons Learned in Canada*, Policy Brief 113, January 2014.

<sup>22</sup> See *infra* at footnote 4.

<sup>23</sup> HMRC, Tobacco tax gap estimates, 2012-13 at Table 1.1

<sup>24</sup> Home Affairs Committee Report at paras 10-17.



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### C. 'Counterfeits are so good, plain packaging doesn't matter'

In discussing the likely effects of illicit trade, proponents of plain packaging describe how easily counterfeiters copy legitimate packs and thus claim plain packaging won't make any difference to illicit trade and health policy.<sup>25</sup> Enforcement authorities are often cited as supporting this position.<sup>26</sup> The Home Affairs Committee Report quotes HMRC as stating the introduction of standardised packaging is "not going to create any new risks for them".<sup>27</sup> The Trading Standards Institute is also cited as arguing that counterfeiters are detected by using hand held scanners to identify covert markings and that this won't change under standardised packaging.<sup>28</sup> ECMA's reading of these comments is not that plain packaging won't make any difference to the illicit trade and by extension to health policy, but that the methods employed by the enforcement authorities are not expected to change. ECMA considers this an important distinction which should not be confused in this debate.

Perhaps the most surprising comment to come from the Home Affairs Committee Report is that attributed to Nicholas Ilett of OLAF that "the quality of counterfeits now is so high that it does not make a great deal of difference whether or not packs are plain".<sup>29</sup> While we recognize the sophistication of criminal networks is growing constantly, we do not accept that the sensible response is to remove existing barriers to counterfeit. Such a response would only open the counterfeit market further to less-sophisticated criminals with fewer resources. Complex packaging creates market barriers to entry for counterfeiters by requiring counterfeiters to spend large sums of money to ensure high quality copies. And while investigative agencies often look to what effects plain packaging will have on their own operations, they seemingly fail to consider or appreciate the important role played by the consumer in fighting counterfeits by being able to authenticate legitimate product. Complex packaging also enables this authentication.

### D. Security Features

Whenever counterfeiting is mentioned as an issue, supporters of plain packaging often respond that holograms are the answer and can provide the complexity and authentication necessary to protect consumers. ECMA considers holograms as simply an added element of complexity, but not one that can match the effectiveness of continuously changing pack complexity in protecting consumers. Hologram producers themselves admit that security features will have a 10% impact on the existing illicit trade problem and that it could have an impact 'only to a limited degree'.<sup>30</sup> The best line of defence against counterfeits is continually evolving packaging complexity.

<sup>25</sup> Department of Health, *Summary Report, Consultation on standardised packaging of tobacco products*, July 2013 at page 22.

<sup>26</sup> See Home Affairs Committee Report at paras 32-44 for discussion of Department of Health's public consultation and the question whether standardised packaging would affect the illicit trade.

<sup>27</sup> *Idem*, at para 41. It is interesting to note that HMRC did also admit that standardised packaging could well change the profile of the illicit market. See *infra* discussion under B. Effective Enforcement Regime.

<sup>28</sup> *Idem* at para 36.

<sup>29</sup> *Idem* at para 37.

<sup>30</sup> European Commission staff working document Impact Assessment, page 111



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**E. Australia vs the United Kingdom**

The Chantler Report suggests that it is extremely difficult to use Australia as a test case for plain packaging due to the existence of other simultaneous tobacco control measures.<sup>31</sup> ECMA believes Australia, as the only country to have introduced plain packaging, remains the best test case for plain packaging today. ECMA is not suggesting however that what might work (or not work) in Australia would necessarily be applicable to the United Kingdom. There are many differences including taxation, geography, enforcement laws, tobacco culture and even counterfeit culture that could affect policy success and should be considered in the UK.<sup>32</sup> Nevertheless, Australia remains the only appropriate source for learning and given time the evidence may become clearer than it is today. As such, we would caution the UK government from reaching any pre-mature conclusions based on early reviews in Australia but to allow some time for trends to become evident.

**Conclusion**

It remains ECMA's considered view that plain packaging will have important negative and unintended consequences on UK health policy due to the increased availability of cheaper, unregulated and potentially harmful product becoming more widely available on the market. We believe that policy changes as significant as plain packaging in the UK will meet with a reaction from the illicit market, that this reaction is foreseeable, and it will exacerbate rather than help the illicit trade situation. Removing packaging complexity through plain packaging is thus tantamount to facilitating counterfeit production. Complex packaging should be a central feature of tobacco control policies.

The question remains why the UK Government should take a risk that plain packaging could lead to unintended consequences for both health policy and UK industry at a time when tobacco trends are largely favourable for health policy and the new EU legislation is soon to be implemented.

We believe the UK Government would be well advised to wait for an objective assessment of the merits of plain packaging policies underway in Australia compared with results from the new approach recently adopted under the Tobacco Products Directive in the European Union.

I thank you for your consideration of this issue. ECMA remain available to discuss this matter with you further at your convenience.

Yours sincerely,



**President  
European Carton Makers Association**

<sup>31</sup> See The Chantler Report at page 23.

<sup>32</sup> See also PWC, *Counterfeit goods in the UK – who is buying what and why?*, October 2013 which suggests that the acceptance of counterfeits in the UK is becoming more mainstream, and younger people in general are more comfortable buying fake goods than their older peers.







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Sir Cyril Chantler  
Independent Review Chair  
Plain Packaging Review  
c/o King's College London  
Room 1.2 Hodgkin Building,  
Guy's Campus  
London SE1 1UL

10 January 2014

**Response of the European Carton Makers Association to the Independent Review into  
standardised packaging of tobacco**

Dear Sir Cyril Chantler,

I am writing to you as President of the European Carton Makers Association (ECMA) in response to the Independent Review into standardised packaging of tobacco. ECMA is the established forum and officially recognised umbrella organisation for national carton associations throughout Europe. Founded in 1960 to promote the interests of one of the most diverse sectors of the packaging industry, ECMA today represents approximately 500 carton producers which account, by volume, for 90 per cent of the total European market. The total EU turnover for the sector as a whole is €9 billion. Further information about ECMA and its members is available at [www.ecma.org](http://www.ecma.org).

The present independent review is particularly relevant to ECMA given that its members will ultimately be responsible to implement any legislated requirements concerning the packaging of tobacco. As experts in packaging, and quite apart from the economic hardships such policies could entail for our industry, it is the considered view of ECMA's membership that standardised packaging could have important negative and unintended consequences on UK Health Policy if the production and sale of counterfeit product is not properly addressed. More particularly, standardised packaging risks leading to the increased availability of cheaper, unregulated and potentially harmful product becoming more widely available on the market to the detriment of both tobacco control policies and health policy, particularly for youth. This would of course undermine the very objectives the health policy seeks to bring about in the first place.

ECMA has responded to the UK Government Department of Health 2012 Consultation on the issue of standardised packaging of tobacco products. Much of that discussion is pertinent to the issue at hand and we therefore incorporate that response by reference and ask you to please consider it together with this letter.



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### Review to Address Standardised Packaging

As a preliminary remark, we note the email address for the Review references "Plain Packaging". Plain Packaging must be distinguished from "standardised packaging" which is used in your terms of reference and discussed throughout your method statement. ECMA opposes Plain Packaging such as that introduced in Australia for many reasons, including our belief that by removing packaging complexity – or reducing it to a static level – policy makers are actually facilitating counterfeit production. ECMA in principle also opposes standardised packaging considering its public health benefits as highly uncertain, however, it recognises that its effects on health policy could differ depending on whether packaging complexity is maintained or eliminated. Standardised packaging does not necessarily equate to a removal of all packaging complexity. The current EU compromise text approved by the triologue – Council, European Parliament, European Commission – on 16 December 2013 with regard to the revision of the EU Tobacco Products Directive ("TPD") recognises this issue and seeks to maintain some packaging complexity.

### Is Packaging the Issue?

In your method statement, you frame the issue as whether the introduction of standardised packaging is likely to lead to a decrease in tobacco consumption, and particularly a decrease in the risk of children becoming addicted. The premise here, as with other plain and standardised packaging proposals, is that the packaging attracts youth to begin to smoke. ECMA does not believe that the evidence entirely supports this premise. Indeed, the European Commission's own evidence confirms that packaging is not the real problem. The Special Eurobarometer 385 Report<sup>1</sup>, which is often quoted by the Commission and proponents of plain packaging, states that:

- 79% of respondents say that peer influence is the most commonly cited reason to start smoking (page 69);
- 3% cited packaging as a reason to start smoking (page 69);
- 1% of respondents indicated that the shape or texture of a pack made consumers think the brand was less harmful than other brands (page 34).

ECMA considers that any measures to address the issue should be commensurate with the problem.

ECMA would also note that standardised packaging is not necessary to address misleading packaging issues, such as those often provided as examples in support of restrictive packaging measures. Such matters may be addressed under existing laws or directly as the EU has chosen to do in the proposed TPD.

<sup>1</sup> "Attitudes of Europeans towards tobacco", Special Eurobarometer 385, March 2012;



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### **Standardised Packaging leads to Increased production and supply of counterfeit cigarettes**

Decreasing the consumption of tobacco in the legitimate market is not a health policy victory if the price is higher overall consumption due to a burgeoning counterfeit market. Counterfeiting is a health policy consideration because it will undermine health policy objectives. Too often in the debate over tobacco, the counterfeit issue has been glossed over, dismissed as being well understood or addressed through other policy measures, or confused with smuggled (legal or illegal) product. While both counterfeit and smuggled product are illicit, the enforcement strategies to combat them are different. Neither the impact assessment<sup>2</sup> accompanying the Government's consultation nor the EU's impact assessment accompanying its proposed revision for the Tobacco product Directive adequately addressed this subject.

In ECMA's response to the Department of Health Consultation, ECMA details why standardised packaging will increase the production and supply of counterfeit cigarettes on the market, namely:

- 1) a lowering of barriers to market entry for counterfeiters;
- 2) increased economic incentives for counterfeiters, and
- 3) limits placed on consumers to authenticate legitimate product.

If regulation entails multiple step production processes being reduced to single step processes and manufacturing input costs that add design features and functionality being eliminated, then the price points (economic incentives) for criminal enterprise will become more interesting for criminals.

It has been argued that packaging standardisation is akin to deregulation for industry and therefore should be supported as such by the legitimate industry, i.e. lower costs are good for business. This argument makes no sense from a public health perspective if it facilitates counterfeits. Packaging complexity is the first and best line of defence against counterfeit product. It is the cumulative impact of hi-tech printing, enhanced design features and the constant updating of the package design which pose substantial and expensive barriers to illegal manufacturing. This must not be undermined in any standardised packaging measures.

### **Health Warnings, tracking and tracing measures and holograms are inadequate prevention measures**

ECMA would also like to comment briefly on pictorial health warnings; security measures (e.g., holograms) and tracking and tracing features that are often cited in response to concerns raised about the counterfeiting risks associated with standardised packaging. Pictorial health warnings cannot serve as a deterrent to counterfeits as they pose no barrier to counterfeiters. They can be produced (and re-produced) using low cost printing techniques. Holograms can assist but as a static measure are insufficient alone and can be copied. The European Commission's impact assessment on the proposal for a revision of the Tobacco Products Directive recognises that security features will

<sup>2</sup> Commission staff working document Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council 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, 19 December 2012



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have a 10 % impact on the existing illicit trade problem and that providers of this technology told the Commission that it could have an impact 'only to a limited degree' (p. 111<sup>3</sup>). Tracking and tracing features are a discovery tool that authorities use to investigate contraband where a problem has been discovered. The Commission here also acknowledges that tracking and tracing systems would '...not specifically address the issue of counterfeiting which is important in terms of ensuring a high level of health protection in line with the TPD' (p. 112<sup>4</sup>)

In sum, if standardised packaging acts to reduce packaging complexity then such measures increase the risks that UK health policy will not achieve its objectives. Packaging complexity must be maintained in any policy initiative.

I thank you for your consideration of this issue. ECMA is ready to discuss this matter with you at your convenience should you have questions.

Yours sincerely,



President

European Carton Makers Association

<sup>3</sup> Commission staff working document Impact Assessment, page 111

<sup>4</sup> Commission staff working document Impact Assessment, page 112



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**European Carton Makers Association (ECMA) response to Department of Health consultation on standardised packaging of tobacco products**

ECMA is the established forum and officially recognised umbrella organisation for national carton associations throughout Europe, including the UK. Founded in 1960 to promote the interests of one of the most diverse sectors of the packaging industry, ECMA today represents approximately 500 carton producers which account, by volume, for 90 per cent of the total European market, both tobacco and non-tobacco products. The total EU turnover for the sector as a whole is € 9 billion (£7,2 billion). Further information about ECMA and its members is available at [www.ecma.org](http://www.ecma.org).

ECMA can offer the Department of Health the expertise of its members in the manufacture of tobacco packaging. It is the packaging industry that would ultimately implement a standardised packaging policy. As a consequence, we have a unique perspective that can help the UK Government to make a balanced assessment of the likely consequences of Standardised Packaging.

ECMA supports the Government's efforts to ensure that UK policy protects public health. However, we oppose the possible introduction of standardised packaging<sup>1</sup> as an option because it lacks clear evidence to support claims of public health benefit and also carries significant negative unintended consequences. While the public health benefits of Standardised Packaging are uncertain, we are certain that it would lead to the simplification of the carton manufacturing process to a point where counterfeiting becomes significantly easier and cheaper.

**Inadequate Impact Assessment**

We are concerned that the risk that standardised packaging will increase the supply of dangerous counterfeit tobacco products has not been examined by the Government in sufficient detail. The Impact Assessment, published alongside the consultation document, does not adequately explore the effects of standardised packaging on illicit trade. It is discussed only briefly in paragraphs 75 to 78 of the consultation. This analysis quantifies the impact of a 1 per cent increase in market share of illicit trade, but does not explore the precise impact of a standardised packaging policy on the illicit market.

In fact, we can see from the Impact Assessment that the UK Government has underestimated the role that complexity through branding and functionality of cigarette cartons has as the first line of defence in counterfeiting. In paragraph 78 the impact assessment states that 'it may be argued that standardised tobacco packaging would be easier and cheaper to copy, so increasing the supply of illicit tobacco. Standardised tobacco packs would still need to carry coloured picture warnings as

<sup>1</sup> Option 2 set out in the Department of Health consultation on standardised packaging for tobacco products.



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well as covert markings [ECMA emphasis]'. It is clear from this extract that the Government's analysis assumes that pictorial health warnings on cigarette packaging are a deterrent to counterfeiters. **This is not the case:** Pictorial health warnings pose no real barrier to counterfeiters because they can be produced (and reproduced) using low-cost printing techniques from equipment that is readily available in the market and using four basic print colours only. They are in no way comparable to branding in their complexity and for this reason they cannot be considered an effective anti-counterfeiting measure.

In response to the consultation this letter addresses the questions in the consultation document relevant to the packaging industry, in particular questions 7 (costs of standardised tobacco packaging for manufacturers) and question 11 (unintended consequences of standardised tobacco packaging). The responses to these questions are elaborated in the paragraphs below.

**Standardised Packaging policies will have unintended consequences which will undermine the UK's efforts to protect public health**

Counterfeit cigarettes - an unregulated and untaxed product often manufactured and supplied by international criminal networks - are already a significant problem in the UK. According to HMRC figures, smuggling of cigarettes, including counterfeits, costs the UK in the region of £1.4 billion per year in lost revenue<sup>2</sup>. The impact assessment estimates that the illicit products constitute approximately a 10 per cent market share in the UK.

As an organisation that has substantial expertise in the manufacture of folding cigarette cartons, we are concerned that Standardised Packaging will have the unintended consequence of exacerbating the existing illicit trade problem in the UK. Standardised Packaging will increase the production and supply of counterfeit cigarettes on the market by lowering barriers to market entry, increasing the economic incentive for counterfeit supply, and limiting the capacity for consumers to differentiate between genuine and illicit products.

The result will be more availability of a lower cost, potentially dangerous product which is contrary to various UK policy objectives from consumer health to combating cross-border illicit tobacco trade.

Standardised Packaging will provide the following benefits for counterfeiters:

**1. Standardised Packaging lowers barriers to market entry for counterfeiters.**

A modern cigarette packet is a sophisticated product which forces counterfeiters to overcome costly barriers in order to produce convincing copies. The production process enables hi-tech printing from state-of-the-art equipment using enhanced design features such as embossing, debossing, hot-foil stamping and UV varnish. It also enables hi-tech functionality such as automated creasing, cutting and gluing which can produce unique packaging features such as rounded edges and push up buttons.

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<sup>2</sup> Tackling Tobacco Smuggling - building on our success, A renewed strategy for HMRC and the UKBA, April 2011



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In addition to the constant updating of the overall package design, these features make it more expensive and difficult for illegal manufacturers to make accurate copies which can be passed on to unsuspecting consumers as genuine products. In contrast, Standardised Packaging would keep cigarette package design and functionality static at a level much easier to replicate. Specifically, Standardised Packaging incentivises the counterfeit cigarette trade gifting them two important advantages that they do not currently enjoy:

### **I. Reducing a multiple-step production process to a single step**

- Reducing the number of elements and functionality features on a pack causes the production process to become more simplified. This ultimately takes a highly automated and integrated process using special equipment down to potentially a single inexpensive piece of equipment.
- The level of technical difficulty required to manufacture a Standardised Package simply does not compare to current practice. Specialised production equipment and techniques used to automate systems and enhance print quality like hot foil stamping and embossing, and functionality will be made entirely redundant.
- Today, most tobacco packaging is printed with gravure technology using multiple print towers and spot colours because it offers faster and more consistently higher quality results compared to offset printing. Some specific finishes – like metallic inks and certain structural varnishes - cannot be achieved using offset printing with process colours.

### **II. Lowering the investment required for equipment**

- If the production process becomes simpler, the investment in equipment required to manufacture a standardised or generic pack would be significantly reduced. Without high quality branding, designs and differences in functionality, the expensive gravure technology which is standard in the industry today would not be necessary.
- Normal offset printing is more than capable of delivering a quality standardised pack with graphical health warnings. Offset equipment requires an investment in machinery potentially ten times less than that currently required for gravure technology, meaning it would quickly become the industry standard.
- Counterfeiters will be able to access the offset printing technology at low cost and with relative ease. Additionally, the installation space required for a counterfeit operation will also become many times smaller as the multiple print towers and specialised machinery becomes redundant.

### **2. Standardised Packaging will provide increased economic incentives for counterfeiters in the UK market**

The Organisation for Economic Cooperation and Development in its 2007 report 'The Economic Impact of Counterfeiting and Piracy' sets out the economic incentives that drive counterfeiting:



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*'Counterfeiters and pirates target the supply of products where profit margins are high, taking into account the risks of detection, the potential penalties the size of the markets that could be exploited and the technological and logistical challenges in producing and distributing products'<sup>3</sup>.*

Standardised Packaging will create precisely these economic incentives for counterfeiting. It reduces input costs thereby lowering the barriers to market entry, while high taxation ensures that the average retail price of cigarettes in the UK remains high - low cost and high prices will mean high profit margins. In addition, relatively low enforcement penalties makes counterfeit tobacco production and supply a lower-risk activity compared to other criminal enterprises.

All these factors will make the UK market much more attractive to counterfeiting and increase the likelihood that more sophisticated and organised criminal groups will enter the market. This process would undermine the positive work of the HMRC and UKBA in driving down the illicit cigarette trade.

### **3. Standardised Packaging limits the capacity for consumers to differentiate**

Packaging plays a key role in helping consumers, and others, to authenticate a product. Standardised Packaging will undermine this process by limiting the number of anti-counterfeiting features on a cigarette pack. The more complex the pack's design then the more opportunities a consumer has to identify a flaw in a counterfeit pack. Conversely, if packaging is plain or generic then consumers will have limited opportunity to authenticate a legitimate product or identify a counterfeit product; therefore helping counterfeiters to pass their products off as genuine articles.

The impact of these three points will be a significant increase in counterfeit production and supply onto the UK market. This will lead to three unintended and negative consequences:

#### **Standardised Packaging will undermine responsible cigarette carton manufacturing**

Responsible manufacturing is a critical element of effective tobacco control. Among other things, responsible manufacturers of cigarette cartons:

- 1) operate in a highly regulated environment driven by the public demands on their clients;
- 2) use only food-use approved inks specially approved by their clients and produced by a limited number of high-tech suppliers; and
- 3) operate comprehensive internal tracking systems that trace production from cradle to client and ensure that no surplus or waste materials from the production process can escape onto the market.

Removing competition from the market by mandating Standardised Packaging will result in a lowering of responsible industry standards that will affect tobacco control efforts. In recent years, ECMA members have invested approximately € 200 million (£ 169 million) in sophisticated state-of-

<sup>3</sup> Organisation for Economic Cooperation and Development, 'The Economic Impact of Counterfeiting and Piracy, 2007, page 15.





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the-art equipment and hi-tech processes which under Standardised Packaging will become redundant leaving a simpler, low-tech industry in its place.

ECMA estimates that under a Standardised Packaging regime as much as 30 to 50 per cent of newly-invested machinery becomes redundant. A change of this scale will create significant spare capacity in the carton manufacturing industry leading to industry consolidation and loss of manufacturing jobs across the EU, including in the UK. Meanwhile, the manufacture of folding cigarette cartons will transfer to markets with lower costs and, crucially, lower standards of security and traceability. Responsible manufacturing will be replaced with low-tech automation and increased competition from counterfeits.

### **Standardised Packaging will increase the risk of exposure to dangerous products**

Responsible manufacturers produce products in a highly regulated environment with a restricted supply chain that is subject to safety regulations. Counterfeit cigarettes are produced in an unregulated environment where there are no controls over hygiene, ingredient composition or the level of toxic materials. Instead of food-grade inks, for example, counterfeit packaging uses the cheapest inks available on the market.

Also, it is well documented that counterfeit cigarettes produce higher emissions of toxic heavy metals<sup>4</sup>. Standardised Packaging will increase the volume of these cigarettes in the UK, while simultaneously making it harder for smokers to identify them because genuine packs will be largely indistinguishable without unique design features.

### **Standardised Packaging will further deplete public finances**

Cigarettes are a highly taxed product subject to both VAT and excise duties. As a result, cigarettes contribute a significant amount of money to public funds. According to the Government's own figures, illicit trade costs the public purse an estimated £1.4 billion per year<sup>5</sup>. An increased supply of cheap, easily accessible and hard to distinguish counterfeits will further increase this cost to public funds.

### **Conclusion**

As responsible manufacturers of cigarette cartons, ECMA's members acknowledge and support the Government's public health objectives. However, as packaging experts we know that a Standardised Packaging policy will expose UK consumers to higher volumes of dangerous counterfeit goods. This will result from a growing volume of counterfeit production fuelled by:

- Lower barriers to entry for counterfeiters resulting from lower input costs.

<sup>4</sup> Source and health implications of high toxic metal concentration in illicit tobacco products, *Environmental Science Technology*, 39 (2), pp. 479, 488.

<sup>5</sup> Tackling Tobacco Smuggling – building on our success, A renewed strategy for HMRC and the UKBA, April 2011



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- **Increased economic incentives for counterfeiters on the market attracting organised criminal gangs with established distribution networks.**
- **Limited capacity to authenticate genuine products making it easier for counterfeit goods to be passed off as genuine product.**

This scenario has three significant negative effects:

- **Loss of responsible manufacturing of tobacco cartons in the UK - standardisation removes competition lowering industry standards and quality packaging moves to other markets;**
- **Health risks for consumers - Counterfeit products are unregulated and there are no controls over hygiene, ingredient composition or level of toxic materials; and**
- **Loss to the public purse - illicit trade already costs the UK £1.4billion<sup>6</sup> per annum. This is only likely to increase further with Standardised Packaging.**

Given the significant drawbacks associated with Standardised Packaging, the Government should explore other options.

We would be happy to meet with the Department of Health to discuss the issues raised in this paper in more detail.

Yours sincerely,



President

European Carton Makers Association

<sup>6</sup> Tackling Tobacco Smuggling – building on our success, A renewed strategy for HMRC and the UKBA, April 2011

EL328



Department  
of Health



Llywodraeth Cymru  
Welsh Government



The Scottish  
Government  
Riaghaidas na h-Alba



Department of  
Health, Social Services  
and Public Safety  
www.dhsspsni.gov.uk

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

**a. Are you responding (required):**

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

**b. Please provide your details and contact information:**

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

**Now go to question f**

**c. Please provide your organisation's details and contact information:**

Name of organisation (required):

Name of person providing submission (required):

Job Title (required):

Contact address of organisation (required):

Contact email address (required):

Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

**e. If you are responding on behalf of an organisation, what type is it?**

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

Professional Organisation

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

The Royal College of Midwives is the Professional and Trade Union Organisation representing 95% of all practising midwives in the United Kingdom who work in the National Health Service and HSC in Northern Ireland. In responding to this consultation, the RCM has consulted widely with its senior members, practising midwives who work with pregnant smokers and other key stakeholders with whom we work to promote smoking cessation and protect children from second hand smoke. The RCM is independent in its position on tobacco control and does not receive or seek funding from tobacco related companies.

- h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box

### Consultation questions

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

The Royal College of Midwives supports Sir Cyril Chantler's summary of his review in particular, that "standardised packaging would reduce the rate of children taking up smoking" and that "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"

The Evidence Review prepared by Professor David Hammond for the Irish Department of Health and published in March 2014 supports Sir Cyril Chantler's view that, plain (standardised) packaging will stop young new smokers taking up the habit, denormalise smoking, promote cessation among established smokers and support former smokers to stay quit.

The RCM was encouraged by the Chief Medical Officer's letter of support for Sir Cyril Chantler's view and the Public Health Minister's statement reiterating Sir Cyril's view that standardised packaging was "very likely to have a positive impact" and that she would wish to proceed with introducing regulations to provide for standardised packaging.

These would indicate that the case for standardised packaging is strong and the RCM believes that the government should, as soon as possible, lay Regulations before Parliament on standardised packaging, under Section 94 of the Children and Families Act.

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?

The RCM believes that standardised packaging should not be a stand alone measure for tobacco control, but form part of a package of measures. For example, Australia has experienced increased calls to quitlines and reductions in tobacco use following implementation of plain packaging. These included larger health warnings

on packs, increased taxation of up to 12.5 per cent above inflation compared to the UK's 2 percent above inflation rate and included media and public awareness campaigns.

The RCM supports standardised packaging as an important catalyst that would make a positive contribution to reducing the harm caused by tobacco, prevent young people taking up smoking and prevent premature deaths. This is in line with our partners with whom we work in a variety of forums and initiatives on smoking - these include the Smoke Free Alliance, Medical Royal Colleges, public health experts and mother- to- mother support organisations. The RCM is encouraged by a YouGov poll in March 2014 on behalf ASH which found 64% of adults supporting standardised packaging. Conversely, we are aware that that the opposition to standardised packaging is driven and financed by the tobacco industry as it needs young people to start smoking in large numbers each year to maintain its business and replace the consumers who quit smoking or die prematurely as a result of smoking-related illnesses.

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 RCM welcomes the draft regulations and believes that they are relevant to achieving the aim of preventing young people from starting smoking, especially young females who are coming up to childbearing age. The RCM is concerned about the tobacco industry's strategy of targeting the beliefs about smoking behaviour among young women via its packaging. We know that these beliefs are an important predictor of the uptake of smoking in young women. Standardised packaging could be an important catalyst for stopping and supporting smokers to quit. However, it is important that all tobacco products are included in the regulations and not just cigarettes or hand-rolled tobacco.

Excluding cigars and other tobacco products from the regulations because of a perceived low usage among the young may lead to them being viewed by young people as less harmful to health.

We would urge the government to be bold and in the interest of the public's health, to resist efforts by the tobacco industry to delay or undermine the decision to bring the regulations before Parliament.

A Renewal of the DH Tobacco Control Plan for England for a further period until 2020 is required when it is hoped that standardised packaging will be



implemented. There will be a need for increased funding for public awareness and media campaigns to highlight the public health benefits of implementing standardised packaging.

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 RCM is aware that the tobacco industry's data on illicit tobacco is misleading in many respects, the industry's arguments are weak, without foundation and serve as a distraction to the real issues around protecting young people from taking up smoking. The figures from Australia show a reduction in the consumption of tobacco and cigarettes for the first quarter of 2014 and a drop in tobacco excise duty since 2012.

The RCM sees implementation of plain packaging as a positive step for the the UK to adopt and urges the government to act.

Please see attached appendix for sources and references

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

### **How to get involved in the consultation**

The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

Respondents are encouraged to provide their views online, but responses can be made in any of the following ways:

### **Completing the online form on the Department of Health website at:**

[http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

[1](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

- **Filling in the response form by downloading it at:**

<https://www.gov.uk/government/consultations>

- **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

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

**Consultation on the introduction of Regulations for the standardised packaging of tobacco products**  
**Appendix to Response**

**Acknowledgment, Sources and References**

Smokefree Action Coalition

Action on Smoking and Health – ASH

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Ulucanlar S, Fooks GJ, Hatchard JL, et al. Representation and Misrepresentation of Scientific Evidence In Contemporary Tobacco Regulation: A Review of Tobacco Industry Submissions to the UK Government Consultation on Standardised Packaging PLoS Med. 2014; (3):e1001629.

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Hammond D, Doxey J. Deadly in Pink: the impact of cigarette packaging among young women. Tob Control 2011; 20: 353-360 doi:10.1136/tc.2010.038315

Carpenter CM, Wayne GF, Connolly GN. Designing cigarettes for women: New findings from the tobacco industry documents.

YouGov Poll- 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

**Royal College of Midwives 06 August 2014**

EL329



Department of Health



Llywodraeth Cymru  
Welsh Government



The Scottish Government  
Riaghaltas na h-Alba



Department of  
Health, Social Service  
and Public Safety  
www.dhsspsni.gov.uk

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

a. Are you responding (required):

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

[Redacted] \_\_\_\_\_

Address of respondent (required):

[Redacted] \_\_\_\_\_

[Redacted] \_\_\_\_\_  
uk

Now go to question f

c. Please provide your organisation's details and contact information:

Name of organisation (required):

\_\_\_\_\_

Name of person providing submission (required):

Job Title (required):

Contact address of organisation (required):

Contact email address (required):

Is this the official response of your organisation? (required):

Yes

No

**d. If you are responding on behalf of a business, what type is it?**

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

**e. If you are responding on behalf of an organisation, what type is it?**

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box

### Consultation questions

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

Yes. As usual the authors of the reports have presented the facts and distorted them in a manner that they perceive will help them achieve their objectives. In particular the report believes that effective HMRC border controls will prevent the importation of counterfeit tobacco products, which they manifestly haven't been able to do in the past. I am an individual with no connection to the tobacco industry other than having been a customer for 44 years but I do know that for a long period 'Drum' hand rolling tobacco was the second largest brand in the UK despite the fact that at the time none was imported into the UK legitimately. As to their future efforts they clearly haven't been able to stop the entry of illegal migrants so how can anyone have any confidence whatsoever in their ability to stop the flow of counterfeit products which are very considerably more dangerous than UK produced cigarettes?

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?

No

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?

No

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?

No

Thank you for participating in this consultation.



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### **How to get involved in the consultation**

The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

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- **Posting your response to**

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

EL330

[REDACTED]

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From:  
Sent:  
To:  
Subject:

[REDACTED]

[REDACTED]

e [REDACTED] .uk

7<sup>th</sup> August 2014

Dear Sirs

**CONSULTATION ON THE INTRODUCTION OF REGULATIONS FOR THE  
STANDARDISED PACKAGING OF TOBACCO PRODUCTS**

[REDACTED] tation Response

[REDACTED] is a private firm employing approximately 35 staff and management, some of whom are part time. We trade from 6 shops, and also have an administrative office.

The business trades under a number of trading names as follows:

[REDACTED]

All of the shops are Tobacconists. We only sell tobacco and tobacco related products, and do not sell sweets, drinks or newspapers. Some of our shops sell a considerable quantity of cigarettes and RYO. On average we serve in excess of 6250 customers a week.

Our customers are mainly over 25, and we have a very strict policy of checking proof of age, where appropriate.

[REDACTED]

is:



## RESPONSES TO CONSULTATION QUESTIONS

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

The Chantler Review does not take into account evidence from Australia who introduced Standardised Packaging on 1<sup>st</sup> December 2012. The Australian Government has said they will review the introduction of Standardised Packaging at the end of 2014. The two years being reviewed since the introduction of Standardised Packaging, will give a better indication of the effect of this legislation. The Chantler Review was completed in three months and does not take into account the results from Australia. Surely it would be sensible to see the results of the review in Australia before proceeding with Standardised Packaging.

The Chantler Review did not look at any evidence on specialist tobacco products (cigars and pipe tobacco) so specialist tobacco products should not be included in the draft regulations. There is no evidence in the Chantler Review to convince us that Standardised Packaging will have the impact intended by the legislation. As a result of these points we cannot support the conclusions of the Chantler Review.

In the conclusion to the Chantler report he states:

'Having reviewed the evidence it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking and implausible that it would increase the consumption of tobacco. I am persuaded that branded packaging plays an important role in encouraging young people to smoke and in consolidating the habit irrespective of the intentions of the industry. Although I have not seen evidence that allows me to quantify the size of the likely impact of standardised packaging, I am satisfied that 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 on the uptake and prevalence of smoking and thus have a positive impact on public health'

If we accept that the vast majority of sellers of tobacco products try to abide by the law, the main source of supply to underage smokers is by either sellers of counterfeit and/or smuggled goods, or proxy purchasing. Standardised packaging will make counterfeiting easier. Smuggled and counterfeit products sell for far less than legal products and are therefore more attractive to children, as they do not necessarily have the spending power of adults. They are also purchasing from people who do not care about the law.

We strongly support new laws to prohibit proxy purchasing as long as they are practicable.

The implausibility that smoking may increase, or its decrease slowed with the Standardisation of Packaging, is not supported by some statistics emanating from Australia. Much more time is required to see how these figures settle down.

Chantler suggests that there might be a modest reduction over time in the uptake and prevalence of smoking, with the Standardisation of Packaging, in conjunction with the current control regime.

To date the measures for covering up tobacco products has not been fully implemented, and until these measures have been given time to take effect, it is not known what these measures will achieve. In addition there seems little point in changing the packaging, with all of the problems this will cause, if you cannot see the packaging anyway.

The proposals are disproportionate to the possible modest benefit.

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?

Reports from the introduction of Standardised Packaging in Australia indicate the following

- Tobacco industry volumes are increasing having been declining before December 2012 (InfoView)
- The decline in cigarette smoking since December 2012 has slowed (Industry Survey)
- Illegal tobacco in Australia has increased since December 2012 (KPMG)
- The decline in smoking in Australia has slowed since December 2012 (Roy Morgan)

This evidence so far indicates the introduction of Standardised Packaging in Australia has not had the effect intended by the legislation. Any introduction of Standardised Packaging in the UK should be delayed until the review from Australia after two years of Standardised Packaging is known, and properly considered.

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 welcome the exclusion of Specialist Tobacco Products from the draft regulations. The evidence for this is clear and any call for them to be included would be wrong. We have previously submitted our worries about the introduction of Standardised packaging. The main reasons for not introducing Standardised Packaging on Specialist Tobacco Products are as follows;

- There are so many varieties that manufacturers would have to cut back on choice
- It would be difficult for customers and our staff to find specialist tobacco products when they visit
- There is no need as they do not appeal to children
- They would be easy to counterfeit
- It would make people buy abroad, or on foreign internet sites, and by-pass legitimate British Specialist Tobacconists

Although this exemption is proposed, Part 4 Section 10 of the Draft Regulations in Appendix B would have a very considerable impact on the packaging of Specialist Tobacco Products. These requirements would mean packaging of Specialist Tobacco Products would not have sufficient information for consumers to know what they are buying. Cigars and pipe tobacco have a very large variety of flavours and a great number of their names reflect this. Also a number of pipe tobaccos have different types of tobacco leaves, which give very different characterising flavours, and it is very important these are clear on the packaging to ensure the products are clearly labelled as in other product. Although these proposed regulations are consistent with the Article 13 Tobacco Products Directive (2014/40/EU) the effect on Specialist Tobacco products would be disastrous for the trade. Suppliers of these specialist products have been surveyed and there would be huge costs in repackaging and a number of varieties would disappear from the market. The main effects of these draft regulations would result in:

- Consumers being unaware of what they were buying
- Serving customers would take considerably longer
- Employees would find it difficult to select the correct product
- Brand names would disappear resulting in compensation due to brand owners
- Consumers would purchase the specialist products overseas, on foreign internet sites, and by-pass legitimate British Specialist Tobacconists
- It would be very easy to counterfeit these products

I would ask that Part 4 Section 10 of the Draft Regulations in Appendix B should exclude Specialist Tobacconist Products as the effect would be the same as introducing Standardised Packaging on these products, which these draft regulations are not intended for.

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 final decision whether to introduce Standardised Packaging should be delayed until the review from Australia is known, and properly considered, as this would access the results from two years' experience of this legislation.

The cost in relation to the proposed introduction of Part 4 Section 10 of the Draft Regulations on Specialist Tobacco Products has not been assessed.

The Impact Assessment states that there may be an adverse impact on the illicit trade of tobacco products. If the packaging is made simpler logic indicates that the illicit trade in tobacco products will increase, thus reducing revenue to the Government, increasing adverse health impacts owing to tobacco products which do not comply with legislation and increase smoking in younger people, because the costs of tobacco products are reduced.

Transaction times would increase if the Draft Regulations are introduced and members would lose money with all the increased amount of legislation.

There are also serious Health and Safety, and security fears associated with the introduction of Standardised Packaging.

After consultation with members of my staff the overwhelming view is that:

- a. Transaction times would be slower because it would be more difficult to recognise the product we are selling.
- b. There would be confusion amongst our customers as to whether they are getting the variant they require. (We have experience of variants of some brands being in almost identical packets, and this has led to a lot of confusion)
- c. Lengthy serving times, which usually requires turning your back on the customer, give more opportunity for theft, and attacks on staff.
- d. The removal of any price markings on packets would lead to an increase in price, as price marking does at least show what the price is meant to be.
- e. An increase in price would make counterfeit and smuggled goods being more attractive to smokers.
- f. Any increase in counterfeit and smuggled products would lead to an increase in underage smoking.

During the previous consultation our customers expressed their views on the Standardisation of Packaging. The overwhelming majority were against, and many expressed their objections via card and letter to the Department of Health. I hope that their views are taken into account, as with this very short consultation our customers have not had time to make their views known in writing.

The vast majority of those selling tobacco products try to uphold the law. This includes the super markets, Specialist Tobacconists, CTN's, garages and corner shops. Smugglers and counterfeiters have no such qualms. If we sell tobacco products to underage people, we risk losing our lively hoods; they have no such fear or scruples. How many Counterfeiters and smugglers ask for proof of age?

## CONCLUSION

We would suggest that it would be better to await the review of results of the first two years of Standardised Packaging in Australia before it is considered in the UK. Also Standardised Packaging should be delayed until the result of the full display ban is known. We are facing a huge amount of legislation already and any further regulations would have an adverse impact on our business. The

costs of the legislation we are following over the next few years have been grossly underestimated by various government bodies.

Although Standardised Packaging is not proposed for Specialist Tobacco Products Part 4 Section 10 of the Draft Regulations effectively have the same affect. We request this section of the Draft Regulations is altered so Specialist Tobacco Products are not affected.



This email was received from the Internet and scanned by the Government Secure Intranet anti-virus service supplied by Vodafone in partnership with Symantec.

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

EL331

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

### **Response from Plymouth City Council**

The Office of the Director of Public Health (ODPH) within Plymouth City Council has a vision of supporting the development of healthy and happy communities in Plymouth by using social networks, increasing investment in public health and putting health and wellbeing at the heart of everything we and our partners do.

They have an approach that focusses on the four key behaviors that are associated with the main causes of premature death; these behaviors include smoking tobacco.

Teams within the ODPH include Trading Standards and Environmental Health functions.

The City Council continues to support the introduction of standardised packaging of tobacco products as expressed in our submission to the consultation submitted in August 2012. We have also reviewed submissions made by Smoke Free South West and ASH and fully support them.

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

We have a local tobacco control strategy of coordinating a variety of approaches to reduce the demand and restrict the supply of tobacco. We support the contention in the Chantler review that the introduction of standardised packaging along with other measures would increase the impact of this strategy and lead to a reduction in the uptake of smoking by children.

We also agree that, while the standard of evidence does not include randomised controlled trials, there is reasonable evidence to draw conclusions about the impact of standardised packs. Indeed we would go further, to point out that if policy development were to be limited by a requirement to have RCT evidence behind it, then that policy would be so limited in scope so as to be ineffective in the real world.

#### **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?**

We agree with the conclusions in the Chantler Review in regards to illegal tobacco, in particular that the introduction of standardised packaging would not be likely to lead to an increase in the illicit market. We support the call for maintenance of an effective enforcement regime, which crucially includes operational Trading Standards Officers. Officers in our TS team, who regularly seize illegal tobacco and prosecute offenders,



advise me that they use a variety of indicators of counterfeit packaging that will remain relevant in standardised packs, including covert security measures on the packs, loose tobacco present under the cellophane and gluing methods used. Chantler points out that the wide range of security features will remain in use in standardised packs to ensure that genuine standardised packs are distinguishable from counterfeit packs.

We agree with the point made in the Chantler review that appropriate sanctions are a key part of keeping the use of illicit tobacco products to a low level and would point out that when taking legal action for smuggled (but not counterfeit) tobacco, local authority Trading Standards Officers are currently limited in the scope of offences that they can consider to those involving labelling offences under the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 which carries a maximum penalty on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5000. The sanctions proposed in the draft regulations would enable enforcement action to be taken by local Trading Standards Officers against smugglers of tobacco who are contravening standardised packaging legislation.

Officers also believe that the introduction of standardised packaging could also make it easier to spot and take action to control "cheap white" brands of cigarettes that are sold in non-complying packaging.

**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 agree with the consultation submission made by ASH that standardised pack requirements should apply to all products containing tobacco, including cigars and cigarillos. While we accept that rates of children and young people who smoke cigars is currently very low (para 5.10), we believe that this exemption leaves a loophole that could be used to enable the marketing of these products and allow them to be sold in redesigned packs that target a younger audience effectively.

The Offence in Regulation 20.(1) reads

"A person who produces or supplies a tobacco product in breach of any provision of these Regulations is guilty of an offence."

Reg 2(6) which gives interpretation to the Regulations reads:

"For the purposes of these Regulations a person supplies a tobacco product if, in the course of a business, the person—....."

To prove offence officers must show that a defendant is acting in the course of a business. This is problematic as illegal tobacco products are often not supplied in a traditional manner from a shop or kiosk but rather from someone's home or vehicle. Officers can experience difficulties in proving that someone caught with a small quantity of say 10 or 20 pouches of smuggled tobacco is operating in the course of a business.

It may be suggested that officers' conduct surveillance under RIPA however it is open to question whether surveillance would be proportionate on someone suspected of dealing in low quantities of illegal tobacco products. A test purchase could be attempted but these are not always successful as some sellers are more cautious than others.

We would therefore suggest that the phrase "course of business" and references to business are reviewed.

**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?**

Nothing in addition to the submissions made by ASH and Smoke Free South West.

ANON-RRRB-5YS4-D

EL332



Department  
of Health



Llywodraeth Cymru  
Welsh Government



The Scottish  
Government  
Riaghaltas na h-Alba



Department of  
Health, Social Services  
and Public Safety

www.dhsspsni.gov.uk

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

**a. Are you responding (required):**

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

**b. Please provide your details and contact information:**

Name of respondent (required):

Address of respondent (required):

Contact email address (required):

**Now go to question f**

**c. Please provide your organisation's details and contact information:**

Name of organisation (required):

Response from Smoke Free Northumberland Alliance

Northumberland has the lowest adult smoking prevalence across the North East of England estimated at 16.8% (approximately 43,500 smokers) this figure rises to 26.3% within routine and manual occupations (Fresh, 2013).

Smoke Free Northumberland Alliance (SFNA) operational group is a range of agencies and organisations working in partnership to achieve common goals in relation to tobacco control for the people of Northumberland. Aiming towards a smoke free Northumberland through actions supporting the three most important tobacco control objectives:

1. Reducing health inequalities associated with tobacco use – with particular focus on reducing prevalence in key groups and communities
2. Reducing the smoking prevalence among young people educated in Northumberland
3. Reduce exposure to secondhand smoke in the population of Northumberland

#### References

Action on Smoking and Health (2014) Consultation on the introduction of regulations for standardised packaging of tobacco products. Action on Smoking and Health

British Heart Foundation (2010) Smoking, Shisha and Chewing Tobacco – How To Stop. British Heart Foundation

Chantler, C. (2014) Standardised packaging of tobacco – Report of the independent review undertaken by Sir Cyril Chantler. Sir Cyril Chantler

Department of Health (2014) Consultation on the introduction for standardised packaging of tobacco products. Department of Health

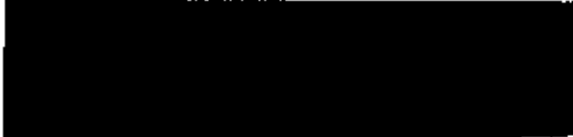
Fresh (2013) Smoking The Facts – Northumberland 2013. Fresh

Gasp (2013) Hookah or Shisha Smoking and Health – Fact File. Gasp

Name of person providing submission (required):

[Redacted Name]

Job Title (required):

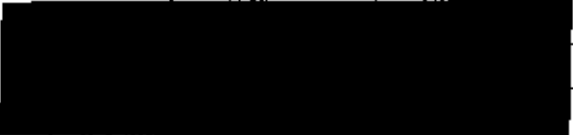


Free Northumberland Alliance

Contact address of organisation (required):

Health Improvement Service, Epsom Drive, Ashington, Northumberland, NE63 8BD

Contact email address (required):



Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

Wholesale tobacco seller

Tobacco manufacturer

Retailer not selling tobacco products

Pharmaceutical industry

Business involved in the design or manufacture of packaging

Other (please provide details below)

If other, please tell us the type of business:

**e. If you are responding on behalf of an organisation, what type is it?**

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- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

**f. Does your response relate to (required):**

- United Kingdom
- England only
- Scotland only
- Wales only
- Northern Ireland only

**g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)**

- No
- Yes (please describe below)

If yes, please describe:

**h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box**

### Consultation questions

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

- 1) SFNA welcomes and endorses the summary findings of the Chantler Review as it supports the Alliance's three tobacco control objectives.

2) Within the United Kingdom smoking is the leading contributor of morbidity and mortality with 1 out of 2 regular long term smokers dying of a smoking related disease.

3) SFNA particularly supports the Chantler Review highlighting the evidence '.....that exposure to tobacco advertising and promotion increases the likelihood of children taking up smoking' (Chantler, 2014):

4) Smoking is a Socially Transmitted Disease that relies heavily on brand image and identity to lure never-smokers and existing smokers in to a potential nicotine addiction which is powerful and difficult to break. SFNA endorses the main aim of standardised packaging which is to reduce the visual identity and appeal of tobacco based products.

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?

1) Whilst SFNA do not have new or additional information since the 2012 consultation we recognise marketing (which can be subliminal) is an important weapon in the arsenal of tobacco industry tactics to allure new and sustaining customers.

2) SFNA endorse the comments submitted by ASH and Fresh.

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?

1) SFNA endorses the draft regulations and welcomes the comments submitted by ASH and Fresh.

2) Whilst supporting the draft regulations SFNA suggest the inclusion of Shisha pipe tobacco and smokeless tobacco products (including dry chewing tobacco, moist oral tobacco/paste and nasal snuff) within the term Specialist Tobacco Products which in itself should be included within the regulations.

3) SFNA are concerned that if Specialist Tobacco Products are omitted from the regulations they could be viewed by the general public as 'safer alternatives' to smoking cigarettes and hand rolling tobacco.

4) SFNA are concerned that if Specialist Tobacco Products are omitted from the regulations the tobacco industry may exploit this potential loophole.



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?

1) The British Heart Foundation (2010) & GASP (2013) state second hand smoke exposure from shisha can pose significant health risks to smokers and never-smokers.

2) SFNA endorses the comments and suggestions made by ASH and Fresh in relation to question 4.

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

## **How to get involved in the consultation**

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

### Response from Public Health Agency Northern Ireland

The Public Health Agency (PHA) is a NHS organisation working towards improvement in public health. The PHA have been tasked by the Department of Health Social Services and Public Safety Northern Ireland (DHSSPSNI) to implement the Ten Year Tobacco Strategy for Northern Ireland (Feb 2012). The ultimate aim is 'to create a tobacco free society'. A Tobacco Strategy Implementation Plan has been developed to achieve the aims and objectives set out in the Ten Year Tobacco Strategy<sup>1</sup>.

The PHA provided a detailed response to the 2012 Consultation on Standardised Packaging. We continue to support the option requiring packaging of all tobacco products to be standardised, in line with Article 13 of the WHO Framework Convention on Tobacco Control, which states countries should "undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship".<sup>2</sup> Branding is a form of advertising covered by this convention.

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

1. Considering the Chantler Review was undertaken to establish if standardised packaging of tobacco is likely to have an effect on public health (particularly in relation to children); the Chantler report concluded that if standardised packaging was introduced, it would have a positive impact on public health; and the PHA aims to "Improve Health and Wellbeing", the PHA believes that standardised packaging should be introduced for public health gain. This is based on the findings from the Chantler review that the introduction of standardised packaging would:
  - (a) Lead to a reduction in the numbers of young people starting to consume tobacco. 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"*
  - (b) Together with other policy initiatives, contribute significantly over time to a reduction in smoking prevalence rates (which have, in Northern Ireland, remained relatively static over the past decade). Sir Cyril Chantler stated in his covering letter to the Secretary of State: *"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*

<sup>1</sup> Department of Health, Social Services and Public Safety. 2012. Ten Year Tobacco Control Strategy for Northern Ireland. Belfast: DHSSPS. [http://www.dhsspsni.gov.uk/tobacco\\_strategy\\_final.pdf](http://www.dhsspsni.gov.uk/tobacco_strategy_final.pdf)

<sup>2</sup> WHO, WHO Framework Convention on Tobacco Control, 2005.

*reduction over time in the uptake and prevalence and thus have a positive impact on public health."*

2. A report by Professor David Hammond for the Irish Department of Health<sup>3</sup> concurs with Sir Cyril Chantler's view. He concluded that,

*"Overall, the existing evidence on plain (standardised) packaging supports four primary conclusions:*

- 1) *Plain packaging will reduce smoking initiation among youth and young adults.*
- 2) *Plain packaging will promote smoking cessation among established smokers.*
- 3) *Plain packaging will support former smokers to remain abstinent.*
- 4) *Plain packaging will help to denormalize tobacco use."*

3. 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>4</sup>
4. 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.
5. The Government should resist efforts by the tobacco industry and its surrogates to delay production of the final regulations.

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<sup>3</sup> Hammond, D. Standardized Packaging of Tobacco Products. Evidence Review. Prepared on behalf of the Irish Department of Health. March 2014.

<sup>4</sup> Hansard. HoC column 1018 et seq. (3rd April 2014)

**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?**

**Standardised packaging needs to be part of a comprehensive strategy**

6. Tobacco control policies need to be comprehensive and based on the WHO MPOWER Framework. The optimum date for implementation of standard packaging would be May 2016 at the same time as implementation of the EU Tobacco Products Directive, which includes updated larger health warnings and graphic warnings on the front of the packs.
7. Standardised packaging was introduced in Australia as part of a comprehensive strategy. This included larger health warnings (75% rather than the 65% in the TPD), mass media campaigns and reducing affordability by increasing taxation. Australia is committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, starting in December 2013<sup>5</sup>, a far higher increase than the current escalator in place in the UK which is only 2% above inflation. The Australian strategy has been very successful with a significant increase in calls to the quitline, and a significant decline in tobacco consumption immediately following implementation of plain packaging.<sup>6</sup> In relation to mass media campaigns it is important to note that new evidence from the UK shows that mass media campaigns are highly effective in reducing smoking prevalence and consumption,<sup>7</sup> that both the negative and positive emotive campaigns used in the UK are effective in this respect<sup>8</sup> and the suspension of campaigns significantly reduced quitting activity (calls to quit lines and use of smoking cessation literature and websites).<sup>9</sup> Despite this, in the UK mass media campaigns are not consistently being screened at a level that would maximise their effectiveness.<sup>10</sup>
8. It is important that the Government gives careful thought to how to maximise the public health benefits of the implementation of standardised packaging, by, for example:
  - Increasing funding for sustained mass media campaigns in advance of standardised packaging coming into effect;

<sup>5</sup> Griffiths E, Cullen S. Smokers stung in Government's plan to raise \$5.3 billion. ABC News, 1 August 2013

<sup>6</sup> Tobacco: Key facts and figures Australian Government, Department of Health

<sup>7</sup> Sims M, Salway R, Langley T, Lewis S, McNeill A, Szatkowski L, Gilmore A. Effectiveness of tobacco control television advertising in changing tobacco use in England: a population-based cross-sectional study *Addiction* 2014; 109: 986–94.

<sup>8</sup> Sims M, Langley T, Lewis S, Richardson S, Szatkowski L, McNeill, Gilmore AB. Effectiveness of tobacco control television advertisements with different types of emotional content on tobacco use in England, 2004–2010. *Tobacco Control*. Published Online First 18 July 2014 doi:10.1136/tobaccocontrol-2013-051454

<sup>9</sup> Langley T, Szatkowski L, Lewis S, McNeill A, Gilmore AB, Salway R, Sims M. The freeze on mass media campaigns in England: a natural experiment of the impact of tobacco control campaigns on quitting behaviour. *Addiction* 2014; 109: 995–1002

<sup>10</sup> Langley T, Lewis S, McNeill A, Gilmore A, Szatkowski L, West R, Sims M. Characterizing tobacco control mass media campaigns in England. *Addiction* 2013;108(11):2001–8

- Public Information Campaigns on tobacco need to be excluded from current Assembly restrictions. Currently, these public health campaigns are classified as advertising and are required to go through a special permissions procedure, leading to a stop start rather than the required sustained approach.
- Making stop smoking services mandatory and ensuring delivery to a high quality standard i.e. The Quality Standards for Stop Smoking Services in Northern Ireland<sup>11</sup>;
- Supporting enforcement through adequate funding of trading standards departments, regional partnerships against illicit trade, and work on illicit trade by HMRC and the UK Border Force;
- Introducing tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price cutting;
- restructuring taxation to minimise the variance in tax between handrolled tobacco and manufactured cigarettes and the taxation between different price categories of manufactured cigarettes.

#### **Illicit Tobacco Trade: General**

9. 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.
10. 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, and additional markings will be required under the EU Tobacco Products Directive. These include unique identifiers, 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>12</sup>
11. The production costs of illicit cigarettes (including packaging which is not standardised packaging) are very low. In Paraguay costs can be as low as 5 US cents a pack, a Jln 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>13</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

<sup>11</sup> Quality Standards for Stop Smoking Services in Northern Ireland, September 2011. PHA.

<sup>12</sup> Hansard: backbench business debate. 7 November 2013 column 477

<sup>13</sup> Joossens L. Smuggling, the Tobacco Industry and Plain Packs Cancer Research UK, Nov. 2012

destination market was in a country without standardised packaging, and the product has been diverted into illicit channels).

12. 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.
13. 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>14</sup>
14. 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 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>15</sup> The Illicit Trade Protocol also specifies that any track and trace system should be fully independent of the tobacco industry.
15. 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>16</sup>
16. 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 it claims that pack design is vital in combating illicit trade. While we do not support the use of a coding system which is proprietary to the tobacco industry as is the case with Codentify, it is certainly the case that this or any other coding

14 Revised EU Tobacco Products Directive: Article 15

15 Text of the Illicit Trade Protocol: Article 8.3

16 Codentify: Protecting Government Revenues, Securing the Supply Chain, Fighting Illicit Trade. PMI

systems independent of the industry could be used on standardised packs as readily as on branded ones.

17. 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>17</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>18</sup>

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<sup>17</sup> Oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on 24th July 2013.

<sup>18</sup> Home Affairs Select Committee First Report on Tobacco Smuggling; paragraph 44



## Illicit Tobacco Trade: Australia

18. 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 introduction.<sup>19</sup>
19. 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 industry in Australia.<sup>20</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>21</sup> In March 2014 the *Sydney Morning Herald* reported that there had been only one seizure of counterfeit plain packs since December 2012.<sup>22</sup>
20. 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>23</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>24</sup>
21. Research in Victoria, Australia found there was no increase in the availability of illicit tobacco in small retail outlets after the implementation of standardised packaging,<sup>25</sup> and despite predictions by the tobacco industry of a marked increase in the sale of counterfeit cigarettes, post-legislation in 2013 only 2.6% of cigarette smokers reported having purchased one or more packets in non-compliant packaging in the past three months.<sup>26</sup>

19 Greenblat, E. Plain packaging making 'no impact' on Australian smokers, say tobacco chiefs: Sydney Morning Herald, 4th March 2014

20 Chantler Review, Notes-of-Australia-based-meetings: see for example exchange with Mark Connell of BAT Australia, page 38pp

21 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.

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

23 Australia cigarette plain packaging law upheld by court: BBC Business News Online, 15 August 2012

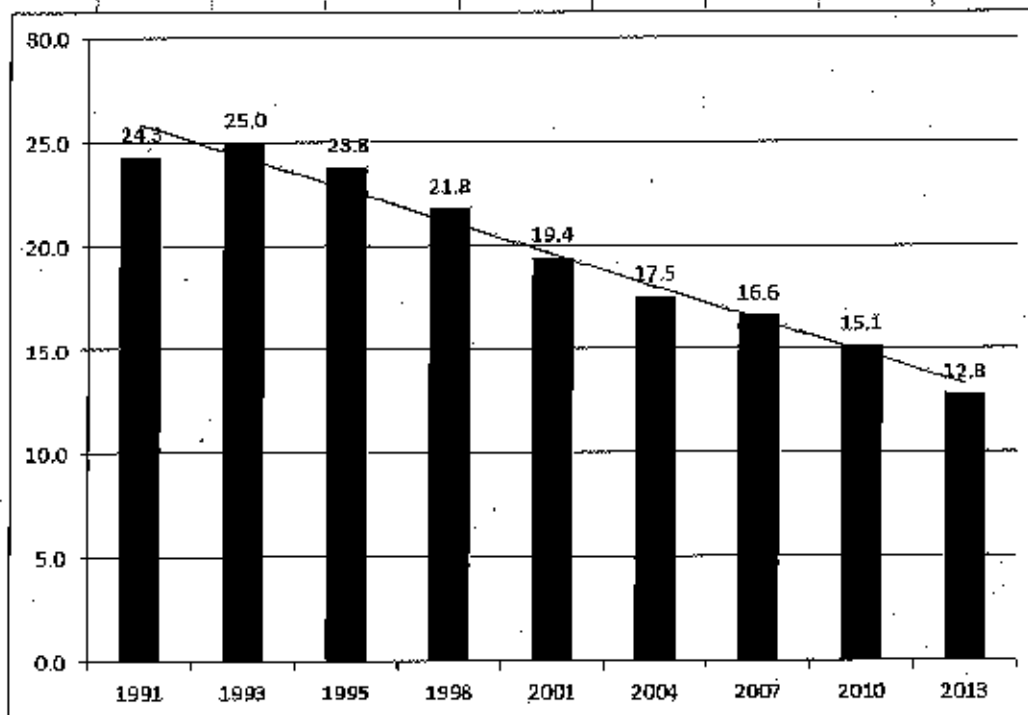
24 Sonia Stewart, Unpublished Letter to the *Sydney Morning Herald*, 12 March 2014

25 Scollo M, Bayly M, Wakefield M. Availability of illicit tobacco in small retail outlets before and after the implementation of Australian packaging legislation. Tobacco Control, published on April 10, 2014 as 10.1136/tobaccocontrol-2013-051353

26 Scollo M, Zacher M, Durkin S, Wakefield M. Early evidence about predicted unintended consequences of standardized packaging of tobacco products in Australia: A cross-sectional study of place of purchase, regular brands and use of illicit tobacco. *BMJ Open*. In Press

## **Tobacco Consumption in Australia**

22. 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.
23. 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 survey was conducted on the mistaken assumption that adult smoking prevalence ought to have markedly declined in the immediate aftermath of the policy's implementation, which was not the assumption underpinning the policy intervention.
  - 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 is not big enough to pick up the sort of declines in smoking prevalence expected from one year to the next. To measure a statistically significant decline of, for example half a percentage point, which is the sort of magnitude one might expect to see over a twelve month period, would have required a sample size of around 90,000.
24. The Australian Institute of Health and Welfare (AIHW) National Drug Strategy Household Survey, released online on 17<sup>th</sup> July, showed that fewer Australians are smoking daily. The daily smoking rate dropped significantly between 2010 and 2013, from 15.1% to 12.8% among people 14 or older. As shown in the graph below this fall was greater than the underlying trend and is evidence that Australia's comprehensive policy approach to tobacco control is working. Importantly, this decline occurred before the large tax increases were introduced and Australian experts therefore suggest it can be attributed to standardised packaging, suggesting it has been effective at reducing smoking prevalence.



Daily smoking adults 14+, National Drug Strategy Household Survey 1991 to 2013

Source: AIHW 2014 <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/2013/data-and-references/>

**Change in daily smoking since previous survey**

|                 |      |       |       |        |       |       |       |        |
|-----------------|------|-------|-------|--------|-------|-------|-------|--------|
| absolute change | 0.70 | 1.20  | 2.00  | 2.40   | 1.90  | 0.90  | 1.46  | 2.34   |
| % change        | 2.9% | -4.8% | -8.4% | -11.0% | -9.8% | -5.1% | -8.8% | -15.5% |

25. Smokers have also reduced the average number of cigarettes they smoke per week—down from 111 cigarettes in 2010 to 96 cigarettes in 2013. And the results show younger people are delaying starting. The proportion of 12-17 year olds who had never smoked remained high in 2013 at 95%, and the proportion of 18-24 year olds who had never smoked increased significantly between 2010 and 2013 (from 72% to 77%). The age at which 14 to 24-year-olds smoked their first full cigarette was almost 16, rising from 14.2 to 15.9 years of age between 1995 and 2013.

26. The tobacco industry in Australia has reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013,<sup>27</sup> and the industry and its front groups in the UK have claimed that this showed standardised packaging was not working. Excise tax must be paid before tobacco products are released for home consumption, but may be paid while stock is still in the warehouse. An analysis by Cancer Council Victoria found that it was evident from the 'bump' in industry monthly sales figures that some pre-stocking did occur prior to the large tax increase in December 2013 which would also have tended to increase sales figures in 2013, with retailers likely to have purchased sufficient stock to cover not

<sup>27</sup> Kerr, C. Labor's plain packaging fails as cigarette sales rise: The Australian, 6 June 2014

just December but some weeks after 1<sup>st</sup> January 2014 as well.<sup>28</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>29</sup>

27. 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.

28. 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>30</sup>

29. 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>31</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)<sup>32</sup>.

### **Other Evidence from Australia**

30. 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

<sup>28</sup> Critique of tobacco industry claims about trends in sales of tobacco products. Cancer Council Victoria.

<sup>29</sup> Is Smoking Increasing in Australia?: Guardian Datablog. 6 June 2014

<sup>30</sup> Tobacco facts and figures: Australian Department of Health. 19 June 2014

<sup>31</sup> The (Possible) Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis: Univeristy of Zurich Department of Economics, Working Paper no 165

<sup>32</sup> Diethelm, P. McKee, M. Tobacco Industry-funded research on standardised packaging: there are none so blind as those who will not see! Tobacco Control; 2014 doi:10.1136/tobaccocontrol-2014-051734

Quitline New South Wales service.<sup>33</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 and a significant increase in calls was sustained over time.

31. Guillaumier A et al, University of Newcastle, Australia, reported in June 2014 that 'following the implementation of plain packaging, perceptions of the quality and taste of cigarettes have changed'.<sup>34</sup>

32. 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 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>35</sup>

33. 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. As the Impact Assessment concludes there is no evidence at all that this is the case from the experience in Australia; indeed transaction times have tended to decline post implementation not increase. Most recently, research published at the end of May, which may not have been taken into account in the IA, reported that the claim that plain packaging would negatively impact on small tobacco retailers by making it harder to locate and retrieve cigarette packs, thereby increasing transaction times, has not eventuated in Australia.<sup>36 37</sup>

## Other industry arguments in the UK

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

<sup>34</sup> Guillaumier A, Bonevski B, Paul C. Tobacco health warning messages on plain cigarette packs and in television campaigns: a qualitative study with Australian socioeconomically disadvantaged smokers. Health Educ Res. 2014; Vol. PubMed PMID: 24966335. Epub 2014/06/27. Eng.

<sup>35</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

<sup>36</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 2013 - doi:10.1136/tobaccocontrol-2013-050987.

<sup>37</sup> Carter, O., Welch, M. Mills, B. Phan, T. Chang, P. BMJ 2013; 346:f106. Plain packaging for cigarettes improves retail transaction times. BMJ 2013; 346:f106.

34. Recent research from the University of Bath examined the relevance and quality of the evidence tobacco companies have cited to support their argument that standardised packaging 'won't work'. This work is consistent with the growing evidence from Australia outlined above which refutes, one by one, the industry's claims that standardised packaging won't work.
35. Research by Hatchard et al. found that tobacco companies cited only 17 research reports directly addressing standardised packaging, of which 14 (82%) were commissioned by or linked to global tobacco companies who have a commercial interest in the policy outcome. Analysis of the independence and publication status of this research showed that its quality is significantly lower than the quality of evidence supporting standardised packaging.<sup>38</sup> The remainder of tobacco companies' evidence (60 research reports) did not address standardised packaging of tobacco products at all.<sup>39</sup>
36. Overall, the University of Bath found that the low quality of tobacco companies' evidence against standardised packaging and its highly misleading critique of the evidence in favour of standardised packaging suggest that their proposition that there is inadequate evidence that standardised packaging will lead to public health benefits is largely without foundation.

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<sup>38</sup> Moodie C, Stead M, Bauld L, McNeill A, Angus K, Hinds K, Kwan I, Thomas J, Hastings G and O'Mara-Eves J. A Plain Tobacco Packaging: A systematic review. Stirling: Public Health Research Consortium; 2012.

<sup>39</sup> Hatchard JL, Fooks GJ, Evans-Reeves KA, et al. A critical evaluation of the volume, relevance and quality of evidence submitted by the tobacco industry to oppose standardised packaging of tobacco products. *BMJ Open*. 2014; (2).

**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?**

37. The PHA 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.
38. 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.

**Regulation 4(7) with respect to pack size**

39. This regulation while prohibiting packs containing less than 20 cigarettes allows manufacturers to compete on number by including more than 20 cigarettes. In Australia this has been a tactic used by the industry and extra cigarettes have been introduced into some brands for the same price as a promotional tool. One way of preventing this would be by mandating that packs 'must contain 20 cigarettes' to prohibit additional cigarettes being included as a promotional tool.

**Regulation 10 with respect to misleading brand names, variants and descriptors**

40. Brand names, brand variant names and brand descriptors will become a more important element of tobacco product promotion once standardised packaging is introduced.
41. Recital (27) of the TPD specifically covers this issue:  
*"Tobacco products or their packaging could mislead consumers, in particular young people, where they suggest that these products are less harmful. This is, for example, the case if certain words or features are used, such as the words 'low-tar', 'light', 'ultra-light', 'mild', 'natural', 'organic', 'without additives', 'without flavours' or 'slim', or certain names, pictures, and figurative or other signs. Other misleading elements might include, but are not limited to, inserts or other additional material such as adhesive labels, stickers, onserts, scratch-offs and sleeves or relate to the shape of the tobacco product itself. Certain packaging and tobacco products could also mislead consumers by suggesting benefits in terms of weight loss, sex appeal, social status, social life or qualities such as femininity, masculinity or elegance. Likewise, the size and appearance of individual cigarettes could mislead consumers by creating the impression that they are less harmful. Neither the unit packets of tobacco products nor their outside packaging should include printed vouchers, discount offers, reference to free distribution, two-for-one or other similar offers that could suggest economic advantages to consumers thereby inciting them to buy those tobacco products."*

42. There is good evidence for example that female-oriented brand descriptors such as "slims" target beliefs about smoking behaviour among young women, and these beliefs are an important predictor of smoking behaviour in this group.<sup>40 41 42</sup>

43. However, the list in Recital (27) is not comprehensive and there is evidence that many other words are also misleading. For example:

- (a) Smooth - population based studies have found that adult smokers perceive 'smooth' as a synonym for 'light'.<sup>43</sup> A UK study found that over half of young people, including non-smokers as young as 12, believed that a cigarette brand labelled as 'smooth' would be less harmful.<sup>44</sup>
- (b) Colour names - such as gold or silver<sup>44</sup> - materials provided by Phillip Morris to retailers indicated that the names 'gold' and 'silver' have been used to replace 'light' and 'ultralight' and 'blue' has been used to replace 'mild'.<sup>45</sup> Prohibiting the use of such colours is not sufficient, if the colour name is allowed to stay then the association will remain. Smokers will continue to believe, erroneously, that products labelled 'gold' and 'silver' are less harmful, even if all products are the same standardised colour.
- (c) Numbers - as many as 80% of Canadian smokers shown packages with different numbers in the name reported that the brand with the lower number delivered less tar and could lower the risk.<sup>46</sup> And a study in the US found that almost 90% of participants reported that a brand with the number '6' in the name would have lower risk than an otherwise identical pack but with the number '10' instead.<sup>47</sup>

44. A requirement to prohibit misleading words or features is set out in Article 13 of the TPD, and is contained within Regulation 10 of the draft regulations on standardised packaging. Regulation 10 does not, however, specify which brand names and variants are prohibited.

45. It is essential that the measures required to ensure that specific brand names and variants which are found to be misleading can be prohibited, including, but not limited to, those set out in recital (27), are transposed into UK legislation.

<sup>40</sup> U.S. Surgeon General. Factors influencing tobacco use among women. In: Surgeon General's Report: Women and Smoking 2001: pp.453-536.

<sup>41</sup> Hammond D, Doxey J. Deadly in pink: the impact of cigarette packaging among young women. *Tob Control* 2011; 20: 353-360 doi:10.1136/tc.2010.038315

<sup>42</sup> Carpenter CM, Wayne GF, Connolly GN. Designing cigarettes for women: New findings from the tobacco industry documents. *Addiction* 2005; 100:837-851.

<sup>43</sup> King B, Borland R. What was "light" and "mild" is now "smooth" and "fine": new labeling of Australian cigarettes. *Tobacco Control* 2005;14(3):214-5.

<sup>44</sup> Hammond D, Dockrell M, Arnott D et al. Cigarette pack design and perceptions of risk among UK adults and youth. *European Journal of Public Health* 2009; 19:631-7.

<sup>45</sup> Hammond, D. Use of Tobacco Marketing Descriptors to Convey Modified Risk. Submission to the US Food and Drug Administration. 2010.

<sup>46</sup> Hammond D, Parkinson C. The impact of cigarette package design on perceptions of risk. *Journal of Public Health* 2009; 31(3):345-53.

<sup>47</sup> Bansal-Travers M, Hammond D, Smith P, Cummings KM. The Impact of Cigarette Pack Design, Descriptors, and Warning Labels on Risk Perception in the U.S. *AJPM* 2011; 40(6): 674-82



Furthermore the responsibility should rest with the industry to demonstrate that any brand names, variants or descriptors are not misleading before they can be put on sale in the UK.

### Review process

46. In Australia in the build up to the legislation tobacco companies engaged in strategies of reassuring customers, re-energising the names of brands, and expanding product ranges to provide extra value for money and retain consumer interest, e.g. menthol capsule cigarettes, packaging re-design, adding bonus cigarettes to packets, changing names so that they are longer and take up more room on plain packets.<sup>48</sup> The Government should monitor such activity and where appropriate review and revise the regulations.

### 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?

47. 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".
48. 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. As shown in table 8 of the IA this did not lead to an increase cross border shopping. Indeed both cross border shopping and illicit trade declined over the period between introduction and full implementation from October 2008 to September 2010. As the IA acknowledges this is because the greatest influence on cross border shopping is down to external factors such as the £/€ exchange rate and the number of passenger journeys and therefore just as with graphic warnings standardised packaging is unlikely to have a significant impact.

### Impact on Retailers

49. Tobacco sales are undergoing long-term decline. At its peak in the 1950s adult male smoking prevalence was 80%.<sup>49</sup> Female smoking prevalence continued to rise and reached a peak of 45% in the mid-1960s.<sup>49</sup> Since then smoking prevalence amongst both men and women has declined significantly and is now under 20% (24% in Northern Ireland) and government policy is designed to sustain and increase this trend. More recent data from HMRC tobacco clearances shows the impact this has had on sales volume with the number of million cigarette sticks cleared for UK sales falling from 94.080 million in 1992/3 to 54.737 million in 2002/3 to 37.932 million in 2012/13, a decline of 30% in the

<sup>48</sup> Scollo, M. Occleston, J. Bayly, M. Lindorff, K. Wakefield, M. Tobacco product developments coinciding with the implementation of plain packaging in Australia. [Tobacco product developments coinciding with the implementation of plain packaging in Australia](#). Tob Control, 2014.

<sup>49</sup> Wald, N. & Nicolaidis-Bouman, A. UK Smoking Statistics (2d ed.). OUP, 1991.

last ten years. (see table below from the HMRC Tobacco Factsheet November 2013). Small retailers have had to adjust to this decline and will continue to have to do so, it is important to note that any impact of standardised packaging will be marginal compared to the overall secular trend.

50. HMRC clearance data also shows the importance of the government's anti-smuggling strategy in supporting retailers. The impact is clearest with respect to hand rolled tobacco (HRT). At its peak the illicit market share of handrolled tobacco was estimated to be over 60%, most recent estimates by HMRC suggest that it has fallen to 36%. This is matched by a growth in the amount of taxed HRT released for consumption which rose 2.8 million kilograms in 2002/3 to 6.2 million kilograms in 2012/13.

## HM Revenue and Customs Tobacco Bulletin - November 2013



### 6 Historic Clearances

| Financial Year | Cigarettes    |          | Cigarettes Total | Other Tobacco Products |       |       | Total |
|----------------|---------------|----------|------------------|------------------------|-------|-------|-------|
|                | Home Produced | Imported |                  | Cigars                 | HRT   | Other |       |
| 1991/92        | 83,382        | 10,134   | 93,496           | 2,107                  | 4,058 | 2,081 | 6,247 |
| 1992/93        | 83,939        | 10,141   | 94,080           | 1,955                  | 3,822 | 2,027 | 7,805 |
| 1993/94        | 67,229        | 7,285    | 74,514           | 1,724                  | 3,161 | 1,785 | 6,670 |
| 1994/95        | 75,442        | 9,735    | 85,177           | 1,679                  | 3,036 | 1,565 | 6,280 |
| 1995/96        | 71,769        | 8,959    | 80,828           | 1,501                  | 2,558 | 1,347 | 5,405 |
| 1996/97        | 71,846        | 8,500    | 81,346           | 1,453                  | 2,204 | 1,221 | 4,877 |
| 1997/98        | 79,976        | 11,707   | 91,683           | 1,548                  | 1,946 | 1,148 | 4,641 |
| 1998/99        | 54,739        | 5,637    | 60,376           | 1,084                  | 1,736 | 918   | 3,738 |
| 1999/00        | 64,443        | 10,466   | 74,929           | 1,399                  | 2,184 | 990   | 4,553 |
| 2000/01        | 26,666        | 5,273    | 31,938           | 970                    | 2,343 | 704   | 4,018 |
| 2001/02        | 45,561        | 5,991    | 51,272           | 818                    | 2,746 | 892   | 4,184 |
| 2002/03        | 48,606        | 6,131    | 54,737           | 982                    | 2,808 | 858   | 4,424 |
| 2003/04        | 52,267        | 4,812    | 57,109           | 988                    | 3,213 | 626   | 4,827 |
| 2004/05        | 47,224        | 4,444    | 51,668           | 778                    | 3,044 | 522   | 4,344 |
| 2005/06        | 47,539        | 4,211    | 52,350           | 744                    | 3,409 | 484   | 4,647 |
| 2006/07        | 41,754        | 4,007    | 45,760           | 645                    | 3,388 | 446   | 4,449 |
| 2007/08        | 42,253        | 3,682    | 45,940           | 569                    | 3,741 | 388   | 4,697 |
| 2008/09        | 39,739        | 3,441    | 43,180           | 504                    | 4,076 | 363   | 4,943 |
| 2009/10        | 44,839        | 4,258    | 49,097           | 555                    | 5,640 | 415   | 6,611 |
| 2010/11        | 42,335        | 3,343    | 45,678           | 466                    | 5,431 | 369   | 6,256 |
| 2011/12        | 39,829        | 2,984    | 42,813           | 456                    | 6,238 | 333   | 7,025 |
| 2012/13        | 35,202        | 2,730    | 37,932           | 421                    | 6,215 | 301   | 6,937 |

51. The impact of underlying trends in sales for independent retailers need to be taken into account too, particularly given the rise of small outlets set up by large retailers in the UK. An economic analysis of the impact of point of sale display legislation in Ireland using AC Nielsen data concluded that no statistically significant change in cigarette pack sales was observed following implementation for the legislation over and above seasonal and underlying trends, and that small and independent retailers are facing a broader and longer-term decline in sales generally which is most likely due to other causes. We would expect to see the same pattern occurring in the UK both as a result of the implementation of point

of sale display legislation and standardised packaging and recommend to DH that such data should be gathered for the UK as part of the evaluation of the impact of the legislation<sup>50</sup>.

52. The Impact Assessment page 28 p.112 states 'anecdotally the profit margins on the sale of tobacco may be relatively low.' This is corroborated by information provided to ASH (UK) by a retailer in Gateshead, John McClurey, a member of the ASH advisory council. According to John McClurey profit margins on cigarettes average around 4.5% compared to profits on other products on sale in his shop which average around 22%. This means that while tobacco currently amounts to around 50% of his sales turnover it is a much smaller proportion of his profits. In fact he estimates that currently tobacco sales only amount to about 20% of his profits with 80% of his profits coming from sale of non-tobacco products. To illustrate the point John McClurey has told us that if a customer buys a packet of chewing gum he makes around 17 pence in profit compared to 14 pence on a price-marked packet of 10 John Player Special. Plus a price-marked pack of 10 JPS cigarettes costs £3.50, while a packet of chewing gum only costs 50 pence, so the customer buying chewing gum as opposed to cigarettes has £3 left over available to spend on other items.
53. For a shop where tobacco only accounts for 20% of turnover, which is the average estimated in the ACS report referenced in the IA, the proportion of profits would be even smaller at around 5% for tobacco compared to 95% for non-tobacco products.
54. Comprehensive data on prices and profit margins is available from wholesalers such as Bookers who can be contacted via their website <https://www.booker.co.uk/help/contactus.aspx>. Data on the proportion of tobacco sales accounted for by different types of outlet is available from AC Nielsen who can also provide data on the trends in sales of tobacco between different types of retailers over time. We recommend that the DH get in touch with Bookers and AC Nielsen for more information.

### **Consumer Surplus**

55. 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 or via stipulating a minimum purchase price.

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<sup>50</sup> Scollo, M., Zacher, M., Durkin, S. Wakefield, M. Early evidence about predicted unintended consequences of standardized packaging of tobacco products in Australia: A cross-sectional study of place of purchase, regular brands and use of illicit tobacco. *BMJ Open*. In Press

56. In point 160 of the IA it is accepted that the theory of consumer surplus is more difficult to apply both 'in principle and practice' to an addictive product like tobacco. The rationale for including "*lost consumer surplus*" as a potential cost of standardised packaging does not stand up to scrutiny. 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.

## Conclusions

57. Standardised packaging is backed by the Smokefree Action Coalition, which is an alliance supported by over 250 organisations including medical Royal Colleges and other medical organisations, health and children's charities such as Cancer Focus NI, the British Heart Foundation and Cancer Research UK, the Chartered Institute of Environmental Health, the Trading Standards Institute and others.<sup>51</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.
58. 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 with only 11% opposed. There was majority support across age groups, genders and social classes.<sup>52</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.
59. 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.
60. 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>53</sup> Furthermore, the claims that the tobacco industry and those it funds have made to oppose the legislation have now comprehensively been shown to be highly misleading and its data highly inaccurate.
61. Anna Gilmore, Professor of Public Health at the University of Bath Department for Health and one of the authors, said:  
*"Standardised packaging aims to prevent the use of packaging as a powerful marketing tool by removing all brand imagery and text. Yet tobacco companies have systematically sought to fabricate doubt over the evidence for standardised packs, just as they manufactured doubt about the health impacts and addictiveness of their products. The scale and consistency of the*

51 Smokefree Action Coalition

52 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.

53 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.

*misrepresentation of the evidence base indicates that any evidence tobacco companies produce, including their responses to public consultations, should be viewed with the utmost scepticism.*<sup>54</sup>

62. We need to act with utmost urgency. 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. 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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<sup>54</sup> University News, [Expert verdict on tobacco industry evidence against standardised packaging](#), University of Bath press release, 25 March 2014

EL336

# A LETTER FROM *Gatwick*

7<sup>th</sup> August 2014

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

### **Gatwick Airport Limited**

Gatwick Airport Limited has a number of Duty and Tax Free stores within the airport, which sell tobacco products to our passengers, and from which we derive revenue. We hence have an interest in proposed changes in regulations from both a commercial and a customer service perspective. We have concerns over the impact of the proposed regulations in both of these areas.

### **Competition**

The Duty Free retail channel is a distinct market that is clearly differentiated from the UK High St. Products are sold for export only; are sold in large pack sizes; and are not to be opened until the customer reaches their final destination. As such, the Duty & Tax Free stores are in competition with retailers in destination airports and with airline on-board flight sales. These competitors will not be subject to the same display regulations, and hence the likely consequence of the standardised packaging is that sales would be deferred from the Duty Free Shops to later in the customer journey with the effect of reducing commercial revenue to UK airports, but without achieving the intended health benefit.

### **Transparency for consumers**

Gatwick Airport serves an international market and as such, many of our customers may not speak English. Removal of branding on tobacco products would hinder the customer's ability to identify the product they require. This impacts on customer service, and again may simply result in the purchase being deferred to later in the customer's journey.

### **Conclusion**

The UK government already recognises the unique nature of the duty free retail channel, and has allowed UK Airport Duty & Tax Free stores to continue to display tobacco products through the creation of bespoke tobacco display areas with effect from 1<sup>st</sup> April 2015. These will ensure that tobacco products are not visible from outside these areas.

We believe that this legislation should be amended so that it does not apply to the travel retail market, as it will damage UK Airports that rely on commercial revenues, and merely defer purchases to the airline or next airport on the journey.

Yours sincerely,



**Business Development Manager, Retail**

**From:** [REDACTED]  
**Sent:** 07 August 2014 22:54  
**To:** Tobacco Packaging  
**Subject:** Consultation on standardised packaging for tobacco

Dear Sir/Madam,

I am writing to you to submit an assessment based on professional opinion, on behalf of my company, to contribute to the Government's consultation on 'standardised' or 'Plain' packaging for tobacco.

Firstly, I must stress that the timing allowed for this submission, which is falling during the summer holiday period, is totally inadequate and seems to me to be a deliberate ploy to reduce the number of people able to respond. As it is I am taking time out of my family summer holiday to submit my response. I know many people have requested an extension and this has been ignored.

I co-founded Path Ltd with two partners over 10 years ago. We are a packaging design consultancy based in London, employing 27 full time branding specialists, packaging designers and digital artworkers and work for numerous clients such as Symingtons, Unilever, SAB Miller, Gillette and JTI who are based in Geneva and Weybridge and Ballymena. We have many years experience of tobacco branding and structural packaging and through this work we have gained significant experience/knowledge around consumer behavior and what influences their purchase decisions when selecting brands. This work represents 60% of our fee income and we are in no doubt that if plain packaging were introduced it would have a dramatic effect on our business and redundancies would be inevitable.

From personal experiences we (Path directors) firmly believe that smoking is a learned habit through observing the act of smoking primarily by family members and peers. As branding and packaging designers we don't believe branded packaging is a decisive factor in this '*learning and take up through observation*' process. Accusations that deliberately attractive and colourful packaging encourage people to take up smoking are at best a guess from the anti smoking camp. Tobacco companies (and their consultancies) do not use any design, printing or packaging techniques that employ different technologies or are more attractive than any techniques employed by other fmcg categories including alcohol, sugar products and food products with a high fat content.

The combination of advertising bans, smoking in public buildings, on pack health warnings and display bans have had a significant effect on the take up of smoking by children, which we welcome. The number of children taking up smoking has reduced to its lowest level on record. The 2013 figures reveal 20% of 11 to 15 year olds said they had tried smoking, HSCIC found. The NHS statistics authority said this was the lowest level recorded since the school pupil survey began in 1982. In 2003, 42% of children polled said they had smoked at least once in the past and now just 3% of pupils admitted to being regular smokers last year, compared to 9% in 2003.

The question for the Government is whether these measures are sufficient to result in a continuing trend of declining smoking rates (which we accept is a positive trend) or do they still feel the need to move to plain packaging even when:



A) The evidence from Australia is that smoking rates are unaffected and indeed Sir Cyril Chantler wrote, in his report on plain packaging, *"There are limitations to the evidence currently available as to the likely effect of standardised packaging of tobacco consumption."*

B) The Government will effectively nullify the intellectual property of UK tobacco brands (currently a legal product) and undoubtedly enter into a hugely expensive process of litigation. Incidentally, the Government's Impact Assessment significantly underestimates the true cost of depriving manufacturers of the value of their brands (IA identifies a brand value of £166m over 10 years).

C) The European TPD2 legislation of increasing pictorial health warnings to 65% front and back of pack and restricted product and structural pack formats has already been passed and will be adopted by member states in 2016. This approach would allow the UK packaging and design industry to continue to work on tobacco branding and therefore retain staff, continue to contribute to the recovery of the UK economy and help the tobacco industry from and its myriad suppliers from having to drastically reduce staff levels.

Finally I would just like to say that this drive to remove branding from tobacco packaging has gone far enough. I believe you now need to start crediting consumers with some intelligence!

They can be very few people in the UK, or in reality the rest of the world who are now not aware of the risks of smoking. The increase in health warning size and style, combined with a public space, workplace and potential 'in car' ban has ensured this. If they make the decision to smoke, knowing that is addictive and potentially harmful, it is at least an informed choice.

As with other products in the FMCG arena, all tobacco brands should have the right to design their packs to achieve some degree of communication and differentiation over competitive brands, within the framework of current health warning guidelines and those proposed by the TPD2 proposals.

I feel a move to plain packaging shows a serious lack of respect to consumers who are more than capable of making an informed decision. Perhaps even more significantly for the packaging manufacturers and design industry and on a very personal level, my company Path, I fear the financial impact will be extremely damaging.

I hope that you will consider these views when making any decision going forward on the issue of tobacco packaging regulation.

Yours sincerely



Path  
3 Northfields Prospect,  
Northfields,  
London  
SW18 1PE



dba member  
Path Ltd is a company incorporated in England & Wales: 4982837. VAT No.:  
832288233

E.L 339

**From:** [Redacted]  
**Sent:** 07 August 2014 16:11  
**To:** Tobacco Packaging  
**Subject:** Chantler Review - Exeter Airport Response

Sirs

The requirement for standardised packaging to apply to products sold at Exeter Airport would result in a reduction of the range of products available to consumers. Considerable investment in our store has been made, yet to display standardised packaging would again leave us at a significant competitive disadvantage.

Given the cost and time that UK tobacco retailers have had to spend implementing tobacco display areas, the fact that the draft Bill will mean that plain packaged tobacco products are to be stored in opaque storage units seems disproportionate.

In the display 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 position that such retailers are in. Following this example and recognising the international environment in which duty free retailers operate, an exemption should again be granted.

The effect of requiring UK Export Shops at airports to stock plain tobacco packaging will be to shift sales from the UK to competing channels where tobacco is sold in branded packets. 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.

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 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.

Regards ...



Exeter International Airport  
Exeter | Devon | EX5 2BD | 01392 354 945



**exeter**  
INTERNATIONAL

EXETER AIRPORT - UK  
EXT (IATA) EGTE (ICAO)



**ZERO HARM**  
MAKE SURE YOU'RE PERSONAL

EL340

**From:** [REDACTED]  
**Sent:** 07 August 2014 17:04  
**To:** Tobacco Packaging  
**Subject:** Objection to proposed plans for plain cigarette packaging

Dear Sir or Madam,

I am taking the unusual step of writing to lodge a complaint about the governments proposed plans to introduce plain cigarette packaging.

**I respectfully ask that you take my concerns on board and immediately stop the proposal to introduce plain packaging on tobacco products.**

There are currently already very many significant controls and restrictions in place with respect to the sale of tobacco. I feel that these currently implemented measures already go far enough and that further action is not necessary and is fundamentally prejudiced and harmful for the following reasons.

1. There are already many controls and restrictions in place with respect to the sale of tobacco - age restrictions; restrictions on advertising and sponsorship; very visible health warnings; significant levels of taxation; onerous restrictions on where tobacco can be smoked; and the recently implemented requirement that tobacco products are not visibly displayed for sale, but hidden from view by retailers. I feel that these constraints go more than far enough to protect potential consumers and any further controls are invasive and unwarranted.
2. Tobacco is being singled out on its own for plain packaging - why not other products such as alcohol? Tobacco has become a convenient pariah for government to blame for a range of problems, and to distract the general public from governments own failings. This is simply prejudiced.
3. The proposals will hit many groups and also livelihoods - consumers, retailers, wholesalers and manufacturers will all be negatively affected by the failure to readily identify brands or to maintain brand identity.
4. In Australia, the illicit trade in illegal tobacco has significantly increased as a direct result of the Australian governments implementation of similar plain packaging proposals. The trade in illegal tobacco is in itself a criminal activity and it supports other criminal activity. Additionally, much illegal tobacco is of poor quality and carries more significant health risks than legitimate branded tobacco products. In short, The Australian experiment has failed and should not be copied in the United Kingdom.

**To conclude, the governments proposals for plain packaging of tobacco products are unnecessary, harmful to individuals, harmful to livelihoods, fundamentally prejudiced and likely to cause greater health problems than to reduce them, as the trade in illegal tobacco will increase. Therefore I am strongly opposed to further controls or restrictions on the sale of tobacco.**

You should also note that I am a non-smoker, and a pensioner who has not previously felt compelled to complain on this topic. However, I feel strongly that enough is enough, and the governments proposals must be blocked.

Yours sincerely,

[REDACTED]

EL341

**From:** [REDACTED]  
**Sent:** 07 August 2014 20:06  
**To:** Tobacco Packaging  
**Subject:** fwd: Standardised Packaging of Tobacco Products.

Sent from my iPad

Begin forwarded message:

[REDACTED]  
Tobacco Products.

Dear Alun,

When I last wrote to you on this topic in 2012, I suggested that the proposal to standardise the packaging of Tobacco Products would do little to reduce consumption and probably increase the trade in illicit Tobacco Products.

From the Australian experience it is now clear that smoking prevalence has not decreased and illicit trade has increased by 20% since the introduction of such packaging and now accounts for 13.9% of total consumption.

If such proposals were to be introduced in the UK it is therefore likely that it would affect consumers, wholesales, retailers and of course Government Revenue. The same health arguments could of course be used in regard to Alcohol and 'unhealthy' foods which lead to irreversible liver and kidney damage, heart and diabetes issues, hypertension with huge NHS costs and significant crime levels. No government would contemplate similar controls on such products, therefore I urge you and other MP's to consider voting against this futile and self defeating proposal.

Yours,

[REDACTED]

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E L342

**From:** [REDACTED]  
**Sent:** 07 August 2014 21:53  
**To:** Tobacco Packaging  
**Subject:** No no no.

Dear Sir

The ongoing persecution of smoking citizens is akin to many of the worst regimes of the last century. Has the government forgotten that its duty is to the very people it wishes to continue persecuting. Smoking is against the law for people under eighteen, advertising is against the law, smoking in the work place is against the law and yet even with outrageous taxation people still want and do smoke. You should all be ashamed that you have fallen for this small group of health puritans. Now we know that people who once gained our respect due to their positions, can be deceptive or over exaggerate or even lie, nothing I hear from any of those sources can be taken as truth. They have truly sold their soul to the devil and now citizens are waking up to the fact they can not be trusted at all  
Yours faithfully

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EL343

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**From:** [REDACTED]  
**Sent:** 07 August 2014 16:05  
**To:** Tobacco Packaging  
**Subject:** Plain Packaging of Cigarettes

## Enough is enough

At what point does a concern for public health become a form of phobia or hysteria?  
At what point do those who campaign against smoking become what Bernard Levin used to call "single-issue fanatics"?  
At what point does a desire to protect smokers from harm become a hatred of those who choose to smoke?  
At what point does the world become so well informed about the dangers of smoking that further publicity become simply a waste of time, effort and money?  
At what point do other, more pressing concerns about public health warrant a switch of precious resources away from tobacco?  
At what point do libertarian concerns about freedom of choice trump those of the anti-smoking lobby?  
At what point do we trust a well-informed public to make up their own minds about whether or not to smoke?

I submit that, with regard to plain packaging, this point was reached some time ago.



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EL 344

**From:** [REDACTED]  
**Sent:** 07 August 2014 15:53  
**To:** Tobacco Packaging  
**Subject:** Consultation response to proposals to introduce standardised packaging for tobacco products

Dear Sir / Madam,

I object to plans to introduce standardised packaging in any shape or form.

It is a misguided idea and the predictable result of government-funded campaign group pressure.

I declare a professional interest in that I work for Imperial Tobacco Limited, which affords me the ability to see the evidence base for what it is; however, I am responding in an entirely personal capacity.

As part of my role, I am working closely with our Australian business (Imperial Tobacco Australia) and have witnessed first-hand the negative impact that plain packaging has had and continues to have on legitimate retailers of tobacco products and illicit trade which has been rising since the introduction of this misguided policy by the former Labour government in 2012.

I find it incredible that compelling real world evidence is being dismissed by Sir Cyril Chantler, the Department of Health as well as by tobacco control groups in favour of speculative assumptions by unprofessional and well-known tobacco control lobbyists whose 'work' does not bear up against even the most basic principles of scientific research and general good conduct.

I would also like to draw your attention to the UK Government's better regulation principles which require the Government to provide a "robust and compelling case" before pursuing any policy decisions. This has not happened.

As a last point, I would question why you continue to ignore the concerns of thousands of legitimate businesses, enforcement authorities, subject experts, the wider public (your voters, no less!) as well as other governments around the world to please a handful of scaremongering fanatics.

Please categorise this as a substantial response; I am happy for it to be published online with my email address redacted.



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Imperial Tobacco Limited and Group Companies

[www.imperial-tobacco.com](http://www.imperial-tobacco.com)

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EL 345

[REDACTED]

**Sent:** 07 August 2014 13:42  
**To:** Tobacco Packaging  
**Subject:** plain packaging

Dear sir or madam,

I am writing to lodge my complaint about the new ruling on plain packaging on cigarettes products. I can not see any benefit on making cigarette companies changing the packaging of there product when in Australia this has been tried and has only served to increase the amount of contraband cigarette products into the country and the packaging had no effect on the sales of cigarettes only the increase in contraband which lessened the tax the country took from the product so who is losing out and who is making a profit, Its PLAIN to see so what's the point, why not just keep them behind shutters as they are at the moment it just makes sense. Just increase the amount of warnings on the packages and fight contraband.

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EL 346.

~~STANDARD~~

**From:** [REDACTED]  
**Sent:** 07 August 2014 12:47  
**To:** Tobacco Packaging  
**Subject:** standardised packaging

I would just like to say that i would not buy a packet of biscuits without knowing the brand name or anything else for that matter you need to trust what you are buying whatever it is

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EL 347

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 07 August 2014 11:58  
**To:** Tobacco Packaging  
**Subject:** tobacco packaging

to the government.

I am a retailer from sandwell in the west midlands, you are against plain packaging because of concerns it could cause an increase in tobacco smuggling which would result in lost sales for retailers like myself.

kind regards

[REDACTED]

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EL348

[REDACTED]

**From:** [REDACTED]  
**Sent:** 07 August 2014 08:58  
**To:** Tobacco Packaging  
**Subject:** standardised packaging

This email is sent on behalf of [REDACTED]

[REDACTED] a former employee of Imperial Tobacco and is strongly against standardised packaging and wanted to participate in the consultation but realised the deadline was too close for her to write a letter and for her view to be counted.

<http://www.fastmail.fm> - Email service worth paying for. Try it for free

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**Written Statement of Trade-related IPR Protection Association (TIPA)  
- Regarding the Consultation on the Introduction of Regulations for Plain Packaging of  
Tobacco Products in the United Kingdom -**

Trade-related IPR Protection Association (TIPA), is a non-profit organization established with the support of the Korea Customs Service to protect intellectual property rights of companies and consumers.

Furthermore, in order to protect intellectual property rights during customs procedure in Korean customs, TIPA carries out customs registration of intellectual property rights - including trademark and design rights - sorting process of EMS goods that violate intellectual property rights, provide education on identifying intellectual property rights for customs officials and regulation on goods that violate domestic intellectual property rights.

Along with other international intellectual property organizations and trade organizations, TIPA expresses its deep concerns over the United Kingdom government's plan to introduce plain packaging on tobacco products and would like to call for a careful consideration on this matter that would excessively limit intellectual property rights.

**1. The fundamental importance of use of trademarks**

Trademarks are signs that are used to distinguish products and services and so guarantee their source and quality to consumers. By definition, trademarks are therefore meant to be used. The World Trade Organisation Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) prohibits WTO Members from - without justification - preventing the use of validly registered trademarks on lawfully available products where these trademarks are not misleading or otherwise inconsistent with public order. The use of, and exclusivity conferred by, a trademark is a necessary corollary of the right to own and register it.

**2. Plain packaging would unjustifiably infringe fundamental legal rights to property and expression that are protected by international intellectual property agreements and laws such as TRIPS.**

More specifically, plain packaging for tobacco products violates the ANNEX 1C of TRIPS

- ① Significantly, Article 20 of TRIPS states that: "The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements."
- ② Under Remark 3 of Articles 3 and 4, TRIPS specifies the scope of protection of intellectual property rights: "For the purposes of Articles 3 and 4, 'protection' shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement."
- ③ Article 15 Paragraph 1 of TRIPS concretely specifies protectable subject matters as, "Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks."

- ④ Moreover, in order to prevent any likelihood of confusion caused by the use of trademark by all third parties excluding the owner of the registered trademark, the owner of a registered trademark has the exclusive right under the Article 16 Paragraph 1. Likewise, it bears emphasis that whilst Article 17 prescribes that members may provide limited exceptions to the rights conferred by a trade mark, such exceptions shall take account of the legitimate interests of the owner of the trademark and of third parties.

On the basis of the above, and by dictating which letters, colours, fonts etc. of the trademarks are allowed to be used, the adoption of plain packaging for tobacco products in the UK would preclude legitimate trademark owners from using their registered trademarks on the very products for which they have been developed, applied and protected, thereby effectively destroying the value of these trademarks and brands, without adequate justification or compensation - all in patent violation of the rights of trademark owners enshrined in the TRIPS agreement. The adoption of plain packaging would furthermore contribute to confusing customers who would no longer be able to recognize the product they want.

As members of WTO, complying with the TRIPS agreement is obligatory and we therefore believe that enforcing such a law grossly violates the agreement.

TIPA is not alone in this view and it should be noted that in the aftermath of the introduction of plain packaging in Australia, five countries which are members of the WTO (the Dominican Republic, Indonesia, Honduras, Cuba and Ukraine) are challenging Australia's plain packaging under the rule of the WTO's dispute settlement system for being in breach of WTO rules, claiming that it infringes the TRIPS agreement as well as other WTO obligations.

### 3. Plain packaging could trigger the further rise of illicit trade in cigarettes in the UK.

If plain packaging is introduced, we fear that this could trigger the further rise of illicit trade in tobacco products in the UK - which has already reached worrisome levels - similarly to what is currently happening in Australia where the rate of illegal tobacco consumption has reached a record high level of 13.9% in 2013 according to a study by KPMG, thereby nullifying the desired effect of the policy which is intended to promote public health by decreasing the smoking rate.

### 4. Conclusion and recommendations.

TIPA is concerned about the negative impact the adoption of plain packaging would have on fundamental legal rights to property and expression that are protected under existing international intellectual property agreements and laws such as TRIPS. TIPA is equally worried that the implementation of such a regulation would further fuel the already high incidence of illicit tobacco products in the UK.

In light of the above, we would strongly recommend that a further thorough review of the UK government's proposal be undertaken before deciding on its implementation.

We would also hope that you take into consideration the extensive opinions and concerns raised by a wide array of organizations on the unintended consequences resulting from the imposition of plain

packaging in Australia, inclusive of its negative impact on intellectual property and trademark rights enshrined in international intellectual property agreements and laws.

We hope that our opinion would be fully considered when your government makes a decision on introducing plain packaging for tobacco products.

Once again, we wish you continued prosperity and success in the future.

Thank you.

4<sup>th</sup> August 2014

Executive Vice Chairman of the Trade-related IPR Protection Association



EL 351

[REDACTED]

[REDACTED]

Sent by e-mail upfront: TobaccoPackaging@dh.gsi.gov.uk  
Original sent by UPS

Our reference: [REDACTED]  
Tel. extension: [REDACTED]  
Fax: [REDACTED]

Department of Health  
Standardised Packaging Tobacco Consultation  
P.O. Box 11260  
CANTERBURY CT1 9NB / UK

Date: 6 August 2014

Dear Sirs,

I write from the position as Managing Director of the [REDACTED] of [REDACTED] a major producer of packaging materials for both the United Kingdom and the European Tobacco market sector.

Within the United Kingdom we operate from [REDACTED] where we have invested heavily since opening a new purpose built factory in 2011 and is now one of the most modern of its type in the U.K. and a leader in Europe. An objective is to supply approximately 35-40% of the factory output to the tobacco market.

The industry, including ourselves, has constantly supported the aims of all Governments to prevent the uptake of smoking by young people. On this point, I would like to promote the activities that take place here in [REDACTED] where I can speak from personal observation and knowledge. The U.K., in contrast to [REDACTED] as a position that constantly introduces more and additional regulations whereas in [REDACTED] an alternative course of action that the U.K. Government has not considered or actively promoted has achieved a reduction in smoking level.

The [REDACTED] Government has a well-established and long-standing national tobacco prevention strategy which focuses particularly on youth smoking prevention and has seen positive results together with a continual decline of smoking by the important 12-17 year age group over a period of time between 2001 and 2011.

The Federal Centre for Health Education [REDACTED] recorded in their report in 2012 that the number of young smokers in this impressionable age group had now reached a record low - seeing a reduction from 27.5% in 2001 to 12.0% in 2011 with during the same time the proportion of children never trying a cigarette reducing from 71.7% to 40.1%.

The regulators in [REDACTED] put strong emphasis on providing education to minors, including hospital visits, helping them resist peer pressure, cultural awareness and also protecting non-smokers by effective smoking bans.

I would state that the current Impact Assessment does not cover this important feature as an alternative course of action. In [REDACTED] we have demonstrated effective tobacco prevention without the need for excessive regulation that will affect all consumers including adults.

[REDACTED]

My other great concern with the Impact Assessment is the lack of detailed information relating to the loss of business to packaging producers which is recorded as a negative impact in the I.A. but is also recorded as a 'cost saving' to business. Both cannot be factually correct and would challenge this assertion within the Impact Assessment document.

The investments my and other businesses have made into the market have produced world class manufacturing companies in the U.K. These will now be threatened in the future with reduced investment and questionable job security for the employees.

Lastly, and finally I would emphasise that my company would like to record that we fully support the need for regulation relating to smoking uptake by young people. We firmly state that this needs to be done by effective regulation, and any decision regarding the introduction of plain packaging must be based on evidence rather than on speculation.

I would request that this further Consultation initiated by Her Majesty's Government in the U.K. takes my views into account when deciding on its future policy.

Yours sincerely,

[Redacted Signature]  
Chief Executive Officer  
[Redacted Name]



EL 352



JAPAN TOBACCO INC.  
JT Bldg. 2-1, Toranomon 2-chome,  
Minato-ku, Tokyo 105-8422, JAPAN  
Phone: 03-3502-3111

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

Email: TobaccoPackaging@dh.gsi.gov.uk.

7th August 2014

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

In response to the Department of Health's request for submissions to its consultation on the introduction of regulations for standardised (also known as 'plain') packaging of tobacco products, please find enclosed the response from Japan Tobacco Inc.


Japan Tobacco Inc. is a leading international tobacco product company. Through its UK subsidiary Gallaher Limited, the JT Group has a long-standing, significant presence in the UK market.

JT seeks dialogue with governments around the world regarding the regulation of its products and the tobacco industry. JT has a right – and an obligation – to express its point of view regarding regulation that affects its products and the industry. In light of this, JT submitted a response to the Department of Health's 2012 consultation on standardised packaging of tobacco products and we again take the opportunity to respond to this latest consultation.

Please note that this response represents the views of Japan Tobacco Inc. Our subsidiary, Japan Tobacco International (JTI), which oversees our international tobacco business, has submitted a separate response.

If you require further information, please do not hesitate to contact me.

Yours sincerely



Senior Vice President  
Chief Corporate, Scientific and Regulatory Affairs Officer,  
Tobacco Business



# JT's response to the UK Department of Health's consultation on the introduction of regulations for standardised packaging of tobacco products

*7 August 2014*

Japan Tobacco Inc. (JT) is a leading international tobacco product company. Its products are sold in over 120 countries and its internationally recognized brands include Winston, Camel, Mevius and Benson & Hedges. With diversified operations, JT is also actively present in the pharmaceutical, beverage and processed food sectors. The company's revenue was JPY 2.400 trillion (GBP 14,009 million\*) in the fiscal year ended 31 March 2014. JT is listed on the first section of the Tokyo Stock Exchange. (\*Translated at the rate of GBP 171.31 per JPY 1, as of March 31, 2014)

## 1. EXECUTIVE SUMMARY AND INTRODUCTION

1.1 JT sets out in this document its response to the UK Department of Health's (*DH*) latest consultation on the plain packaging of tobacco products.

1.2 JT makes this response in support of, and in addition to, the detailed response to the Consultation submitted by its subsidiary, Japan Tobacco International (*JTI*), dated 6 August 2014. JT does not repeat here, but agrees with, *JTI*'s response to the Consultation.

1.3 JT submitted a response to the *DH*'s 2012 consultation on plain packaging of tobacco products. That response was dated 5 July 2012.

1.4 JT is strongly opposed to the plain packaging of tobacco products for all of the reasons contained in *JTI*'s response.

1.5 From the specific perspective of an overseas shareholder that has invested significantly in the UK economy in recent years, JT wishes to reiterate that plain packaging will both:

- infringe legal rights, depriving JT (and other members of the Japan Tobacco Group (the *Group*) of companies) of its most valuable assets; and
- have serious unintended consequences, which have not been adequately assessed or valued in the 2014 IA which forms part of the Consultation. These consequences include increasing opportunities for the criminals behind the illicit trade in tobacco products, and negatively affecting consumers, retailers, competition in the market and the broader UK economy.

1.6 Banning branding through the introduction of plain packaging would make the UK a less attractive place for investment by international businesses like JT and also undermine investor certainty in the UK. This is at odds with the British Prime Minister's recent efforts to promote Britain as an attractive place for foreign investors to do business. Indeed, in his speech at the 2014 World Economic Forum, the Prime Minister stated that: "*Rather than trying to pull up the drawbridge and shut ourselves off from globalisation, we have chosen to embrace foreign investment.*"<sup>1</sup>

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<sup>1</sup> World Economic Forum (Davos) 2014: speech by David Cameron, 24 January 2014. Available at: <https://www.gov.uk/government/speeches/world-economic-forum-davos-2014-speech-by-david-cameron-2>.

## 2. PLAIN PACKAGING UNDERMINES JT'S INVESTMENTS IN THE UK

### JT as an investor in the UK

2.1 JT is the world's third largest global tobacco manufacturer.<sup>2</sup>

2.2 JT acquired all of the non-US tobacco business of RJR Nabisco Inc. in 1999 in a deal valued at US\$7.83 billion (approximately £4.85 billion at the exchange rate at the time)<sup>3</sup> to build its strong international brand portfolio. In 2007, JT acquired the Gallaher group, a leading UK tobacco manufacturer, for £9.4 billion (at the time the largest overseas acquisition ever made by a Japanese company). Since then, JT has continued to invest extensively to strengthen the brand equity of its UK domestic, and international brands, to take market share from competitors including in the UK.

2.3 JT's strategy, by acquiring the Gallaher group in the UK, was to make the most of our assets through a long-term focus on building brand equity on our flagship brands. This acquisition strengthened JT's brand portfolio by adding the *Benson & Hedges*, *Silk Cut*, *Mayfair*, *Sobranie*, *Glamour* and *LD* cigarette brands, as well as a number of other tobacco products including roll-your-own tobacco (*RYO*), also known as hand-rolling tobacco (such as Amber Leaf), cigars (such as Hamlet) and pipe tobacco (such as Condor).

2.4 As demonstrated by these major acquisitions in 1999 and 2007, JT has invested heavily in expanding its international business outside Japan in markets like the UK, with the international tobacco business serving as the profit growth engine of the Group.

2.5 Through its UK subsidiary, the Group continues a long-standing, significant presence in the UK market. It employs over 1,800 people in the UK. It is estimated that between 2007 and 2013 the Group invested approximately £189 million in its Lisnafillan, Northern Ireland, manufacturing site. The Group manufactures product for the UK market in the UK, and outside it, in Germany, Romania and Poland.

2.6 The investment made by the Group in the UK includes: (a) the development and training of its employees in Northern Ireland; (b) payment of annual salaries into the Northern Irish local economy; (c) spending on UK suppliers of packaging materials; (d)

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<sup>2</sup> For further information about JT, please see: <http://www.jt.com/>.

<sup>3</sup> Currency conversion performed using historic exchange rate data for May 1999 from: <http://www.x-rates.com/d/GBP/USD/hist1999.html>.

the construction of new manufacturing and / or R&D facilities; and (e) providing business for a large number of companies in Northern Ireland.

2.7 As the ultimate parent company of the Group, plain packaging is of grave concern to JT. Any adoption of plain packaging will seriously undermine JT's significant investment in the UK over recent years, and could put any future investment by JT in the UK in jeopardy.

#### **Plain packaging deprives manufacturers' assets / damages brand equity**

2.8 Plain packaging unjustifiably infringes fundamental legal rights to property, expression and trade which are protected by UK, EU and international law.

2.9 The 2014 IA concedes that a plain packaging measure would deprive manufacturers (and therefore their shareholders) of the value of their brands (see page 23, paragraph 85: *"tobacco manufacturers who would be deprived of the value of their brands..."* (emphasis added)). However, the 2014 IA fails meaningfully to analyse or quantify the true financial cost of this deprivation.

2.10 JT's brands, including the Group's premium brands in the UK, are central to JT's business and are worth billions of pounds. Moreover, JT continuously strives to enhance the equity of the brands it has developed and / or invested in. The cost-benefit analysis contained in the 2014 IA is totally flawed. It demonstrates a complete lack of understanding of the nature and value of intellectual property rights and as a result completely mischaracterises the true cost of adopting plain packaging.

2.11 Moreover, JT is frustrated that the loss of value to international investors (such as JT) appears to have been completely and deliberately ignored in the 2014 IA's analysis. The 2014 IA arbitrarily eliminates from its calculations 90% of the losses to tobacco manufacturers caused by plain packaging, because it proceeds on the flawed assumption that only *"10% of the profits of multinational tobacco companies are received by UK shareholders."*<sup>4</sup> As explained more fully in JTI's response, this approach is both methodologically unsound and commercially naive.

2.12 The 2014 IA also acknowledges that if the introduction of plain packaging led to a *"...switch, amongst smokers, from higher price to lower price cigarettes (downtrading)...there [will be] losses to multinational companies, many of whose*

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<sup>4</sup> Impact Assessment: Standardised packaging of tobacco products, June 2014, page 24, paragraph 90.

shareholders are located overseas.”<sup>5</sup> If such downtrading occurs, JT’s premium brands, which are central to its brand portfolio, would be significantly damaged. This would seriously undermine JT’s significant investment in the UK in recent years.

2.13 The UK tobacco market is highly competitive. Manufacturers compete and innovate in order to increase market share amongst existing adult smokers. Packaging is one of the essential components of brand competition. Plain packaging will severely damage this competition and therefore undermine our investment in brand equity.

### **3. DAMAGING THE CREDIBILITY OF THE UK AS A PLACE TO DO BUSINESS**

#### **Plain packaging will have unintended consequences**

3.1 Plain packaging has unintended negative impacts, such as infringing fundamental legal rights, reducing investor certainty in the UK, impeding fair competition in the market, causing broader economic detriments and increasing opportunities for the criminals behind the illicit trade of tobacco products. Given these impacts and the absence of an evidence-base showing plain packaging would work, there is no justification for the UK to take it forward.

#### **Plain packaging contradicts other UK policies**

3.2 The UK is meant to be ‘open for business’. Overseas trade and inward investment are recognised as being vital for the UK’s prosperity.<sup>6</sup>

3.3 In March 2013, the UK Government reiterated its commitment to “*boost the UK’s reputation as a place to do business, to broker commercial partnerships and to increase Japanese inward investment in UK companies and projects*” and to ensure that “*the UK continues to be the number one European partner of choice for Japanese inward investment and for scientific collaboration.*”<sup>7</sup>

3.4 In July 2013, the Japanese Government stated that: “*The UK, as a champion of free trade, is a reliable partner for Japan. More than 1,300 Japanese companies have*

<sup>5</sup> *Ibid*, page 24, paragraph 89.

<sup>6</sup> According to the UK Department for Business, Innovation and Skills’ website: “*Overseas trade and inward investment are vital for the UK’s prosperity. Through its trade and investment policies, the government aims to help UK businesses succeed internationally and encourage overseas companies to work with the UK*” (see <https://www.gov.uk/government/organisations/department-for-business-innovation-skills>).

<sup>7</sup> <https://www.gov.uk/government/priority/increasing-business-with-japan>.

*invested in the UK, as part of the single market of the EU, and have created 130,000 jobs, more than anywhere else in Europe.*"<sup>8</sup>

3.5 A January 2014 UK Government document, entitled 'Britain Open for Business: The Next Phase', states: "*We continue to innovate, introducing new initiatives and incentives to make the UK the most attractive business environment for foreign investors and enabling higher value investments.*"<sup>9</sup> In the foreword to that document, the British Prime Minister emphasises: "*...the welcome we extend to those who invest here are critical to securing our country's long term future... Britain is firmly and clearly open for business once again.*"<sup>10</sup>

3.6 Plain packaging disproves this claim and undermines statements about economic growth being the UK Government's top priority.<sup>11</sup> This is the case not only because of the negative effects on retailers and others in the supply chain, but also because plain packaging demonstrates a fundamental disregard for the protection of intellectual property rights, and the investments JT and others have made to establish and develop that property.

3.7 The 'IP crime highlight report', which was published in the UK in June 2014, identified tobacco as the second most common counterfeited item in the UK. As part of his comments on this report, the UK's IP Minister commented: "*The government is committed to supporting these industries and making sure that intellectual property rights are understood and respected.*"<sup>12</sup> There is therefore a serious disconnect between statements such as this, which rightly identifies the importance of protecting intellectual property rights and expresses a commitment to respecting them, and a policy such as plain packaging, which totally undermines any such commitment.

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<sup>8</sup> [http://www.cbi.org.uk/global-future/06\\_chapter03.html](http://www.cbi.org.uk/global-future/06_chapter03.html), at page 64.

<sup>9</sup> <https://www.gov.uk/government/publications/britain-open-for-business-the-next-phase/britain-open-for-business-the-next-phase#securing-export-oriented-foreign-direct-investment>

<sup>10</sup> Emphasis added. See "Britain Open for Business: The Next Phase", 24 January 2014, <https://www.gov.uk/government/publications/britain-open-for-business-the-next-phase/britain-open-for-business-the-next-phase#forewords>. In the same document, the Minister of State for Trade and Investment said: "*The UK has always thrived on openness. We remain committed to promoting free trade around the world, and through our support for exports we will help to deliver on the promise of Free Trade Agreements. We will also aim to secure more investment from companies that will use the UK as a base for exporting*".

<sup>11</sup> According to: <http://www.bis.gov.uk/about>: "[g]rowth is the Government's top priority and every part of Government is focused on it".

<sup>12</sup> <https://www.gov.uk/government/news/government-committed-to-tackling-ip-crime>.

3.8 Plain packaging will damage the reputation and credibility of the UK as a place to do business. If a law is introduced which is disproportionate, ineffective in meeting its objectives and lacking the necessary evidence to justify it, the extent of regulatory burdens for the tobacco sector (as well as other industries) will increase, while investor confidence in the UK will decrease. On 28 March 2014, a number of respected professional representatives (including MARQUES and the European Communities Trade Mark Association) issued a joint statement warning EU Member States against adopting plain packaging measures:

*"It is crucial that the Member States do not send a worrying message to the IP and business community about its commitment to respecting and protecting [intellectual property rights]... This sets a dangerous and alarming precedent for any kind of industry willing to invest in the EU."*<sup>13</sup>

3.9 Domestic and foreign investors will be increasingly concerned that similar measures that have the effect of undermining the protection of intellectual property rights will be adopted in other industry contexts. Were plain packaging to be introduced despite all the points above, it would also lay down a precedent for a whole range of consumer products. This concern was articulated in the following way by MARS in its response to the 2012 Consultation (which the DH has only very recently made available):

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

*As well as depriving brand owners of their intellectual property rights without compensation, in the food and non-alcoholic beverages industries the introduction of such legislation would lead not only to consumer confusion (as to both origin and quality), but also to a significant increase of counterfeit products and hence negatively impact on consumers' health and safety."*<sup>14</sup>

3.10 Moreover, there are currently five countries (with many others joined as third parties) who are challenging Australia's Tobacco Plain Packaging Act at the WTO, claiming that it infringes various international treaty obligations.

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<sup>13</sup> [http://www.ecta.org/IMG/pdf/joint\\_statement\\_plain\\_packaging\\_ie\\_uk\\_march\\_2014.pdf](http://www.ecta.org/IMG/pdf/joint_statement_plain_packaging_ie_uk_march_2014.pdf)

<sup>14</sup> <https://www.gov.uk/government/consultations/standardised-packaging-of-tobacco-products>. There has been additional press reporting on this story, see: <http://www.thetimes.co.uk/tto/business/industries/retailing/article4157181.ece>.



3.11 For all of these reasons, JT believes that plain packaging for tobacco products would cause other international companies to hesitate before investing in the UK.

JT

7 August 2014

EL 353



7 August 2014

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

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

Thank you for the opportunity to submit to the consultation on the introduction of regulations for standardised packaging of tobacco products.

Cancer Council Victoria strongly supports the introduction of standardised packaging as part of the United Kingdom's comprehensive approach to tobacco control and believes that it would make a substantial contribution in the long term to decreasing the more than 100,000 lives lost to smoking related illness in the United Kingdom each year.

Research across a range of measures after the implementation of standardised packaging in Australia has been very positive and indicates that standardised packaging is having the desired effect and none of the tobacco industry's dire predictions have eventuated.

Ireland is set to introduce standardised packaging and we urge the government in the United Kingdom to join them in leading the fight against tobacco caused death and disease in Europe by introducing standardised packaging as soon as possible.

Yours sincerely

  
  
Chief Executive Officer  
Cancer Council Victoria



**Cancer Council Victoria**

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

**7 August 2014**

**Declaration:** We do not have any direct or indirect links to, or receive funding from, the tobacco industry.

**Contact:** [REDACTED] Manager, Tobacco Control Policy, Cancer Council Victoria.

**Email:** [REDACTED]

## Contents

|  |    |
|--|----|
| Summary .....  | 3  |
| 1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention? .....   | 6  |
| 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? ..... | 7  |
| 2.1 Australian smoking prevalence data .....   | 7  |
| 2.2 Research post implementation of plain packaging in Australia .....   | 7  |
| 3. Do you have any comments on the draft regulation, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted? .....                                   | 9  |
| 3.1 Objectives of the regulations .....  | 9  |
| 3.2 Cigars and cigarillos .....  | 9  |
| 3.3 Standardised structure of packs .....  | 11 |
| (a) Height, width and depth of cigarette packaging .....   | 12 |
| (b) Bevelled and rounded edges and alternative lids/openings .....   | 13 |
| (c) Soft packs .....   | 14 |
| 3.4 Brand and variant details .....  | 14 |
| (a) Numbers in brand and variant names .....   | 14 |
| (b) Descriptors within brand and variant names .....   | 15 |
| (c) Position of brand and variant details .....  | 18 |
| 3.5 Brand and variant names on cigarette sticks .....  | 19 |
| 3.6 Dimensions of cigarette sticks .....   | 20 |
| 3.7 Internal packaging and lining .....  | 21 |
| 3.8 Position of text stating brand and variant name .....  | 22 |
| 3.9 Text which gives details about the producer .....  | 23 |
| 3.10 Markings and other features – links to brand or variant .....   | 23 |
| 3.11 Obscuring legislative requirements .....  | 25 |
| 3.12 Windows .....   | 25 |
| 3.13 Origin Marks .....  | 26 |
| 3.14 Sell through period .....   | 26 |
| 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? .....   | 27 |
| APPENDIX - Plain Packaging studies post implementation in Australia .....  | 28 |
| References .....   | 39 |

## Summary

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

We fully support the findings of the Chantler Review.

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?

Several new research papers have been published since the 2012 consultation which we summarise in this document. A full list of these studies and abstracts/ overviews can be found in the **Appendix**.

Data from the most recent National Drug Strategy Household Survey indicates a continuing decline in the prevalence of smoking and consumption of tobacco products in Australia and confirms the value of comprehensive and vigorous public health measures to eliminate the promotion of tobacco and to encourage and support smokers to quit.

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

We make the following recommendations on the draft regulation:

- 3.1 **Objectives of the regulations:** The objectives of the standardised packaging policy should be clearly stated in the body of the regulations or the explanatory materials and should include a reference to the World Health Organization Framework Convention on Tobacco Control.
- 3.2 **Cigars and cigarillos:** The proposed UK regulations should be amended to fully cover all tobacco products, including cigars and cigarillos sold in packs and as individual items.
- 3.3 **Standardised structure of packs:** The proposed UK regulations should be amended to:
  - prescribe height, width and depth dimensions of packaging;
  - prohibit bevelled and rounded edges and only allow cigarette pack lids that are flip top (and not shoulder box hinged lids); and
  - prohibit soft cigarette packs (by mandating rigid cardboard material).
- 3.4 **Brand and variant details:** The proposed UK regulations should be amended to:
  - limit the length (number of letters) of brand and variant names;
  - prohibit the use of numbers (including numerals or words) in brand and variant names;
  - expressly prohibit the word for a colour in a brand or variant name;
  - expressly prohibit the use of descriptors such as "smooth" that have the potential to mislead consumers about product strength and harm;
  - prohibit the use of brand and variant names that suggest enjoyment, social or sexual success, or that otherwise distract from health harms; and
  - prevent the use of brand names that in effect include variant names.
- 3.5 **Brand and variant names on cigarette sticks:** The proposed UK regulations should be amended to prohibit brand and variant names from appearing on sticks and to allow only alphanumeric codes to appear on sticks.

**3.6 Dimensions of cigarette sticks:** The proposed UK regulations should be amended to standardise the diameter and length of cigarette sticks.

**3.7 Internal packaging and lining:** The proposed UK regulations should be amended to

- prohibit white internal packaging and allow only internal packaging that is either:
  - Pantone 448C with a matt finish; or
  - the colour of the packaging material in its natural state; and
- mandate that foil lining and paper backing be of a similar brown colour with matt finish.

**3.8 Position of text stating brand and variant name:** The proposed UK regulations should be amended to specify that brand and variant names appear horizontally on all surfaces.

**3.9 Text which gives details about the producer:** Producer details should be mandated to appear only once and only on an outer surface.

**3.10 Markings and other features – links to brand or variant:** The proposed UK regulations should be amended to prohibit each of the following from (a) being related in any way to the brand or variant name of the tobacco product; and (b) constituting or providing access to tobacco advertising:

- telephone numbers;
- alphanumeric codes;
- automated dots for manufacturing purposes; and
- barcodes.

**3.11 Obscuring legislative requirements:** The proposed UK regulations should be amended to specify that mandated features (such as health warnings etc.) cannot be obscured by the following pack features:

- brand, business, company and variant names;
- adhesive labels;
- tabs for resealing; and
- barcodes.

**3.12 Windows:** Consideration should be given to whether a specific provision prohibiting retailing packaging (other than plastic wrappers) from enabling the contents of packaging to be visible from the outside of the packaging.

**3.13 Origin marks:** Should origin marks be permitted or required, they should be mandated to be either alphanumeric codes or covert marks that appear only once on the packaging.

**3.14 Sell through period:** Further consideration should be given to providing a maximum three month sell through period of non-complaint tobacco packaging.

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?

We have prepared a supplement to this submission, titled: *Recently available data relevant to tobacco industry predictions/claims of negative unintended consequences of the introduction of plain packaging in Australia.*

The supplement compiles data available to date concerning consumer patronage of retail outlets, use of illicit tobacco, recommended and advertised prices of tobacco prices and consumption.

Please note that some information in this supplement is CONFIDENTIAL until it is published until it is published by the relevant journal.

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

We fully support the findings of the Chantler Review.

The Chantler Review provided a full and accurate description of the international experimental literature concerning packaging and the experience of plain packaging legislation so far in Australia. It provided a comprehensive description of the ways in which policy would be likely to affect behaviour through a variety of psychological and sociological pathways. We endorse the findings of the review and its assessments of the effects of the policy to date in Australia as well as its assessment of the validity of industry predictions concerning use of illicit tobacco.



## 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?

### 2.1 Australian smoking prevalence data

The objectives of the *Australian Tobacco Plain Packaging Act 2011* (Cth) (the Act) are to improve public health by:

- discouraging people from taking up smoking, or using tobacco products; and
- encouraging people to give up smoking, and to stop using tobacco products; and
- discouraging people who have given up smoking or who have stopped using tobacco products, from relapsing; and
- reducing people's exposure to smoke from tobacco products; and
- to give effect to certain obligations that Australia has as a party to the Convention on Tobacco Control.

Parliament intends to contribute to achieving these objectives by regulating the retail packaging and appearance of tobacco products in order to:

- reduce the appeal of tobacco products to consumers;
- increase the effectiveness of health warnings on the retail packaging of tobacco products; and
- reduce the ability of the retail packaging of tobacco products to mislead consumers about the harmful effects of smoking or using tobacco products.

The Explanatory Memorandum to the Act notes that through the achievement of the above three points in the long term, as part of a comprehensive suite of tobacco control measures, it is expected that the Act will contribute to efforts to reduce smoking rates.<sup>1</sup>

Australia's comprehensive approach to tobacco control is paying off with a decline in smoking prevalence evidenced in results of its most recent National Drug Strategy Household Survey (NDSHS survey), which showed that smoking declined significantly between 2010 and 2013 (from 15.1 per cent to 12.8 per cent),<sup>2</sup> a record reduction of 15.2 per cent. The average three-yearly percentage decline across the nine surveys since 1991 had been 7.6 per cent, with the previous biggest fall being 11 per cent.

### 2.2 Research post implementation of plain packaging in Australia

Below is a summary of findings from research carried out post implementation of plain packaging in Australia:

- **Product retrieval time** (three studies): The predictions of tobacco industry funded retailer groups that the time taken by retailers to retrieve products at the time of sale would increase, have not been borne out by research. Findings from research to date have found that:
  - Average selection times decreased significantly following implementation of plain packaging, providing modest gains in retailer efficiency;<sup>3</sup>
  - Retrieval time declined as days after plain packaging implementation increased and returned to normal by the second week.<sup>4</sup>
  - The claim that plain packaging would negatively impact small tobacco retailers by making it harder to locate and retrieve cigarette packs, thereby increasing transaction times, has not eventuated in Australia (demonstrated by follow up research undertaken several months after the implementation of plain packaging).<sup>5</sup>

- **Smoking appeal:** Research investigating whether smokers smoking from plain packs had different smoking beliefs and quitting thoughts compared to those smoking from branded packs concluded that the early indication is that plain packaging is associated with lower smoking appeal, more support for the policy and more urgency to quit among adult smokers.<sup>6</sup>
- **Quitline calls:** Research investigating whether the introduction of plain packaging in Australia was associated with a change in the number of calls to the smoking cessation helpline (and comparing this with the impact of the introduction of graphic health warnings in 2006) found a sustained increase in calls to Quitline after the introduction of plain packaging.<sup>7</sup>
- **Personal pack display:** Research examining cigarette pack display, pack orientation and smoking at outdoor venues following the introduction of plain packaging and larger pictorial health warnings in Australia found a decline in pack display. It also found that a small proportion of smokers took steps to conceal packs that would otherwise be visible, with the researchers concluding that both findings were promising outcomes to minimize exposure to tobacco promotion.<sup>8</sup>
- **Tobacco product developments coinciding with the implementation of plain packaging in Australia:** Monitoring of offerings of factory-made cigarettes of all three major tobacco manufacturing companies in Australia revealed five major trends in the 12 months leading up to and following the implementation of plain packaging in Australia:
  - reassurance of product quality to smokers (written guarantees of continuing quality; graphic suggestion of continuing product quality; production of covers);
  - shift of promotional attention to brand and variant names (colour connotations achieved with packaging continued through incorporation of that brand variant name; more evocative names; displacement of brown pack space with lettering);
  - renewed emphasis on value for money (introduction of menthol varieties in 'value' brands; new super-value packs; extra length cigarettes; packs with 'extra' cigarettes);
  - introduction of novel products (menthol hybrids; mint leaf 'fusions'); and
  - rationalisation of product offerings.<sup>9</sup>
- **Availability of chop-chop in Victorian Tobacconists following introduction of plain packaging:** A study assessing the availability of illicit tobacco (known as chop-chop in Australia) from specialist tobacconists in Melbourne following the implementation of plain packaging concluded that the availability of unbranded tobacco appears to be low and shows no signs of increasing in the months following the introduction of plain packaging legislation in Australia.<sup>10</sup>

A full list of these studies and abstracts/ overviews can be found at **Attachment 1**.

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

It is widely recognised that packaging has always been an important tool in marketing tobacco. In light of prohibitions and restrictions on tobacco advertising generally, packaging has become even more critical to the promotion of tobacco.<sup>11</sup> The experience of implementing plain packaging in Australia demonstrates that any gap in packaging standardisation requirements will be exploited by the tobacco industry to distinguish and promote their products. This submission seeks to draw on the Australian experience and relevant research to suggest ways in which the proposed UK regulations can learn from and improve on the Australian model.

#### 3.1 Objectives of the regulations

We endorse the objectives of the proposed UK regulations set out in the consultation report and recommend they be clearly stated within the regulations or the explanatory materials to the regulations.

Object (1)(b) of Australia's *Tobacco Plain Packaging Act 2011* (Cth) indicates that it is to give effect to certain obligations that Australia has as a party to the World Health Organization Framework Convention on Tobacco Control ('FCTC'). The objectives to the UK regulations should include a similar reference relevant to the UK's status as a Party to the FCTC.

**Recommendation 1:** *The objectives of the standardised packaging policy should be clearly stated in the body of the regulations or the explanatory materials and should include a reference to the World Health Organization Framework Convention on Tobacco Control.*

#### 3.2 Cigars and cigarillos

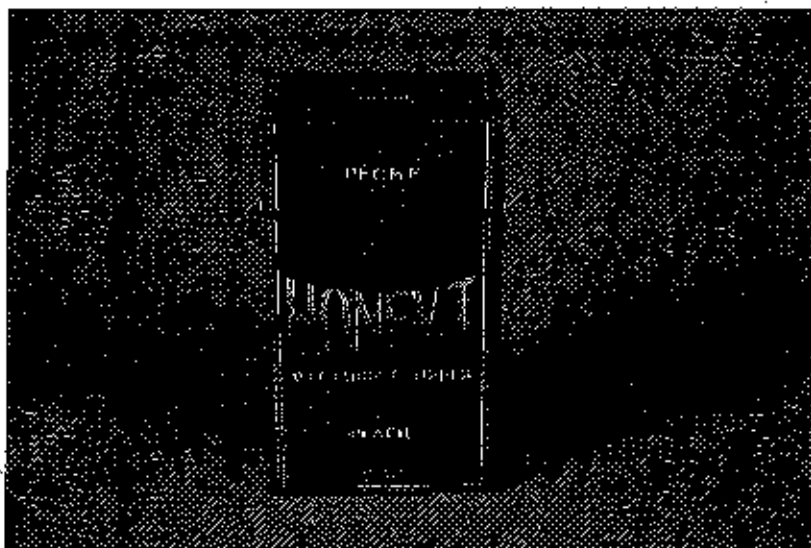
The Australian plain packaging regime<sup>12</sup> covers all tobacco items, including cigars and cigarillos. It is important that the proposed UK regulations be expanded to cover all tobacco products, including cigars and cigarillos sold in packs or as single items. This is because:

- (a) Cigar use is linked to high risks of developing cancers such as cancer of the mouth, throat, larynx and oesophagus, similar to cigarette use.<sup>13</sup> Cigar users should be provided with health information and protected from promotional tactics via standardised packaging requirements, the same as cigarette smokers.
- (b) Standardised packaging of all tobacco products is consistent with the stated objectives of the proposed UK regulations (at 3.5 of the consultation report) – which relate to *all* tobacco products - and is necessary in order to most effectively achieve those objectives.
- (c) United States ('US') based *Campaign for tobacco free kids* reports that tobacco manufacturers are manipulating some cigarette brands to qualify as cigars for the purpose of evading regulations applicable to cigarettes so that those products can be marketed in a manner that appeals to cigarette smokers and young people.<sup>14</sup> Should cigars be exempt from standardised packaging requirements in the UK, this could prompt industry to market cigars or cigarillos in a manner that appeals to both older and younger smokers.<sup>15</sup> For example, *Campaign for Tobacco Free Kids* reports that:

- o "to circumvent the FDA's ban on fruit-and candy flavoured cigarettes that appealed to kids, some cigarette makers have added tobacco to the wrapper and weight to their products so they meet the definition of small or large cigars, despite still being sold in packs of 20 like cigarettes. These products come in various flavours including wild berry, 'Pinkberry' and lemonade".<sup>16</sup>
- o "many cigars, especially flavoured ones, come in shiny, colourful packages that boldly communicate the fruit and candy flavours that appeal to kids".<sup>17</sup>
- o "cheap, flavoured, small cigars that appeal to young people are marketed aggressively and have resulted in high school kids and young adults being twice as likely as their older counterparts to be cigar smokers".<sup>18</sup>
- o "each day, about 3,056 kids under age 18 try cigars smoking for the first time – compared to about 3,650 who try cigarettes. In at least six states – Florida, Georgia, Maryland, Massachusetts, Rhode Island, and Wisconsin – youth cigar smoking now equals or surpasses cigarette smoking".<sup>19</sup>
- o "Although cigarette smoking has been slowly declining in the United States, total U.S. consumption of cigars (i.e., large cigars, cigarillos, and little cigars) has increased dramatically since 1993, reversing a decline that had persisted for most of the 20<sup>th</sup> century".<sup>20</sup>
- o "In the last few decades, sales of little cigars have increased at a much faster rate than all other tobacco products and have accounted for almost all of the growth in the cigar category".<sup>21</sup>

The picture below is an example of branded packs of small cigars from Canada.

Picture 1 – branded Canadian cigars



**Recommendation 2:** The proposed UK regulations should be amended to fully cover all tobacco products, including cigars and cigarillos sold in packs and as individual items

### 3.3 Standardised structure of packs

We recommend that the proposed UK regulations be amended to:

- (a) prescribe height, width and depth dimensions of packs/pouches;
- (b) prohibit bevelled and rounded edges and only allow cigarette pack lids that are flip top (and not shoulder box hinged lids); and
- (c) prohibit soft cigarette packs.

This is because research examining differing pack structures and features of plain packaging concludes that:

- "Pack shape and pack opening affect every smokers' perception of the packs and the cigarettes they contain. This means they have the potential to create appeal and differentiate products";<sup>22</sup> and
- "Packaging appears to both attract young people and mislead them about product strength and relative harm. Innovative pack construction (novel pack shape and method of opening) and the use of colour are instrumental in these effects".<sup>23</sup>

Australian Government research undertaken to assess potential plain packaging design elements for the Australian plain packaging regime ("Australian Government research") concluded that "pack design and size (along with cigarette type) inform various associations: cigarette quality, nicotine content, perceptions of being local or foreign, premium or budget; and masculine or feminine" and that "these associations are commonly used by smokers to differentiate between brands and variants".<sup>24</sup>

Research by Borland et al found (among other things) that, of the differently shaped plain packs used in the study:

- *Attractiveness and quality:* the rounded pack was rated the most attractive and the one with the highest quality of cigarettes. The bevelled pack was rated significantly more attractive than the Standard pack and both more attractive and of higher quality than all the other packs apart from the rounded pack.
- *Distraction from health warnings – pack shape:* The Standard pack was rated as least distracting from health warnings and was significantly lower in distraction compared with the 4 x 5, bevelled and rounded packs.
- *Distraction from health warning – opening:* There was a clear difference in ratings on tendency to distract from warnings. The Standard flip-top opening rated as least distracting and significantly lower than all other pack opening styles.
- *Most preferred packs:* The most preferred packs were the bevelled and rounded packs.<sup>25</sup>

Further, specific pack features such as bevelled and rounded edges, slim configurations and booklet style packs have been identified by the tobacco industry as effective means to communicate product attributes, influence perceptions of reduced product harm/ promote "lighter" products, and to appeal to young people and other distinct consumer groups.<sup>26</sup>

We provide specific feedback on each category below.

**(a) Height, width and depth of cigarette packaging**

The Australian plain packaging regime prescribes maximum and/or minimum dimensions for cigarette packaging (meaning that similar tobacco products can come in different sized packaging).<sup>27</sup> We recommend that the proposed UK regulations improve on Australia's regime by mandating one size for all cigarette packs. The smallest these dimensions should be are the current dimensions of a standard pack of 20 cigarettes (height: 85mm; width 55mm and depth 20mm). We understand that this is consistent with an approach proposed by the relevant committee of the Irish Parliament considering the *Public Health (Standardised Packaging of Tobacco) Bill 2014*.<sup>28</sup> Alternatively, the proposed UK regulations should at the least be amended to provide for minimum and maximum pack dimensions. This is because pack size and shape is used by the tobacco industry to promote products, can affect the display of health warnings and can mislead consumers about the harmful effects of smoking (explained below). Had the Australian plain packaging regime left minimum and maximum pack dimensions unspecified, three key objectives regarding (a) reducing the appeal of tobacco products; (b) increasing effectiveness of health warnings and (c) reducing the ability of packaging to mislead consumers, could have been undermined by tobacco industry strategies to continue promotion through pack size and shape.

**(i) Pack size as a source of promotion**

The tobacco industry has been exploiting pack size and shape as a remaining form of tobacco promotion.<sup>29</sup> For example, Kolnowski and Hammond<sup>30</sup> make the following observations regarding tobacco industry research findings on pack shape (references omitted):

"Packaging with the smallest dimensions were attractive to young adults, irrespective of whether the pack contained 100mm, 120mm, regular or short length cigarettes. Overwhelmingly, packs with slim and thin configurations were appealing to young women" (p. 1161).

The Australian Government research shows pack size adds to the appeal of tobacco products with respondents forming associations with different pack sizes and shapes including masculine and feminine smokers, 'practicality', and 'novelty'.<sup>31</sup> For example, a Vogue Super Slims pack was seen as "solely attractive for females under 25 years old".<sup>32</sup>

**(ii) Pack size can affect the display of health warnings**

The ratio of the height to the width of packs affects the display of the health warnings. Warnings on packs that are substantially wider or narrower in proportion to their height result in substantial distortion of the warnings which reduces the realism of the image.

The minimum size for packs should be large enough:

- to be as least attractive to children as possible;
- to ensure that the warning on the front of the pack is sufficiently large to have the desired impact; and
- to allow a sufficiently large font size for legibility of information required on the side and other surfaces of the pack.

The maximum size for packs should:

- prohibit very tall narrow packs which could be seen as quite an elegant shape;
- prevent the distortion of health warnings that would occur where packs are substantially taller than they are wide, or substantially wider than they are tall;

- ensure that packs don't become so deep that the side of the pack becomes a de facto surface;
- ensure that packs do not become so uncomfortably large to hold that smokers are likely to decant them into smaller containers for daily use.

**(iii) pack shape can mislead consumers about the harmful effects of smoking**

Kotnowski and Hammond make the following observations regarding tobacco industry research into the effects of pack shape on consumer perceptions regarding product strength.

"Industry documents indicate that pack shape has been used to influence health-related perceptions of product 'lightness' and 'reduced tar', including through the use of slim configurations and rounded corners" (p. 1661).

**(b) Bevelled and rounded edges and alternative lids/openings**

Like with pack shape and size, the tobacco industry has been exploiting features like bevelled and rounded edges and pack openings to promote products.<sup>33</sup> Kotnowski and Hammond make the following observations regarding tobacco industry research (references omitted):

- *Positive brand imagery:* "Octagonal, rounded and bevelled packs were consistently perceived as stylish, elegant and classy" (p.1660).
- *Perceptions of added value and premium quality:* "Research documents from Phillip Morris and RJ Reynolds suggested that a high-quality product can be conveyed by changing a flip-top box to a slide opening, octagonal shape or by making the corners bevelled" (p.1661).
- *Perceptions of product taste:* "Other pre-market research from Phillip Morris reported that ratings for smooth taste were increased when rounded corners were added to the Virginia Slims and Merit box".
- *Impressions of appeal – rounded, octagonal or bevelled edges:* "Research documents show that, among smokers, rounded corners were consistently preferred over a traditional box for the brands Virginia Slims, Merit, Parliament, Winston and Benson & Hedges. Further, research demonstrated that rounded corners were particularly liked by females and young adults aged 20-29 years". Other research on Parliament and Benson & Hedges indicated that "octagonal or bevelled-shaped packs appealed more to smokers than traditional rectangular packs" (p. 1662).
- *Impressions of appeal – unique innovations in pack shape:* "Qualitative research consistently showed that the booklet pack had significant appeal among women aged 20-24 years" (p.1662).
- *Influence of pack structure on purchase intent:* "...Exposure to booklet or oval in either graphic design created a desire to try', and in subsequent qualitative research 'most said they would likely buy one pack of Virginia Slims Kings because of the appeal of the unique package structure (booklet) and its inherent benefits'" (p. 1162).
- *Influence of pack design on actual trial:* "In presentation documents, Phillip Morris credited the rounded corner box in 1989 for halting the decline of Multifilter in Italy, and in 1999 Philip Morris confirmed that an increase in Parliament shares was the result of the 100's rounded-corner box launch" (p. 1663).

Survey respondents to the Australian Government research saw the rounded edges of a Du Maurier pack appealing, particularly for men, 'who felt that this would lessen the sharp edges of packs digging into them when being carried in pockets'.<sup>34</sup> Respondents also reported a strong sense of appeal in relation to a Marlboro limited edition pack, solely due to the novel opening mechanism.<sup>35</sup> Similarly, a Dunhill pack that was otherwise considered highly impractical was still somewhat desirable among respondents for its unique opening style.<sup>36</sup>

### **(c) Soft packs**

The proposed UK regulations should be amended to allow cigarette packaging to be rigid and made of cardboard only (apart from glues and lining), therefore prohibiting soft packs. This is consistent with the Australian plain packaging regime. The research discussed above makes clear that the tobacco industry uses alternative pack structures for marketing purposes and that pack structures can influence consumer perceptions regarding various product attributes.

The Australian Government research found that Camel soft packs 'were more likely to be associated with words like 'masculine', 'serious' and 'tough'.<sup>37</sup> Camel soft packs had responses that suggested it has a more 'foreign' association and some respondents felt the camel brand to be appealing as it was somewhat 'exotic' or specifically 'European' in nature.<sup>38</sup>

**Recommendation 3:** *The proposed UK regulations should be amended to:*

- *prescribe height, width and depth dimensions of packaging;*
- *prohibit bevelled and rounded edges and only allow cigarette pack lids that are flip top (and not shoulder box hinged lids); and*
- *prohibit soft cigarette packs (by mandating rigid cardboard material).*

### **3.4 Brand and variant details**

The Australian plain packaging regime allows cigarette packs and cartons to have a brand, business or company name in 14 font with the variant name appearing below in 10 font. The proposed UK regulations are consistent with this and we endorse standardised sizes and fonts and have recommendations that seek to improve on the Australian plain packaging regime.

#### **(a) Numbers in brand and variant names**

The main limitation on brand and variant names for tobacco products sold in Australia exists under court enforceable undertakings pursued by the Australian Competition and Consumer Commission ('ACCC') in 2006. The undertakings entered into with individual tobacco companies prohibit the use of 'descriptors' in brand or variant names – such as "light" and "mild" and "any numbers (including numbers or words) which refer to average levels of machine tested Tar, nicotine, and/or carbon monoxide emitted from cigarettes".<sup>39</sup>

We note that regulation 10(3)(b) of the proposed UK regulations prohibits packaging elements that include any information about the nicotine, tar, or carbon monoxide content of a tobacco product. We recommend that the proposed UK regulations be amended to go further than the ACCC undertakings described above by prohibiting the use of numbers in brand or variant names altogether. This is because, even if a number does not appear in the context of describing nicotine, tar or carbon monoxide content, numbers within brand or variant names can still create connotations regarding product strength no matter how they appear in a brand and variant name.

This is reflected in research.<sup>40</sup>



**(b) Descriptors within brand and variant names**

Plain packaging legislation in Australia places no restrictions or limitations on the naming of brands and continues to allow the use of brand variants. This is despite the fact that research has found that words such as "smooth", "silver" and "gold" are perceived in similar ways to "light" and "mild" descriptors, in the way that such descriptors give rise to perceptions that some products deliver less tar and pose lower health risks compared with full flavour and regular brands.<sup>41</sup> These findings also suggest that descriptive words of colours can result in similar connotations regarding product strength and harm that have been achieved through coloured packaging.<sup>42</sup> This is reflected in the systemic review finding that plain packs without descriptors were perceived as more harmful than packs with descriptors (eg. 'gold' or 'smooth').<sup>43</sup> This means that smokers may continue to erroneously believe that products labelled with descriptive terms such as "gold", "smooth" or "silver" are less harmful even where the packaging colour is standardised.

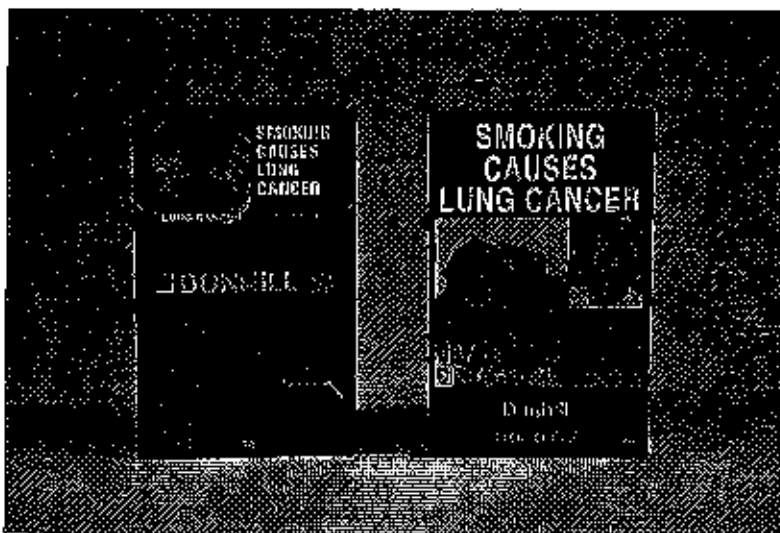
In Australia, tobacco companies have exploited these remaining forms of promotion still available under our plain packaging regime, in three main ways:<sup>44</sup>

- Registering brand names that include a colour (eg. "Marlboro Red", allowing the connotations achieved through previously coloured and branded packs to continue with the inclusion of the word for a particular colour into the brand variant name (see picture 7 below).
- The registration of more evocative names.
- Displacement of brown pack space with lettering.

Leading up to the introduction of plain packaging in Australia, variant names that did not include colour descriptors were extended to include the colours of packaging that were in use prior to the implementation of the legislation. For example:

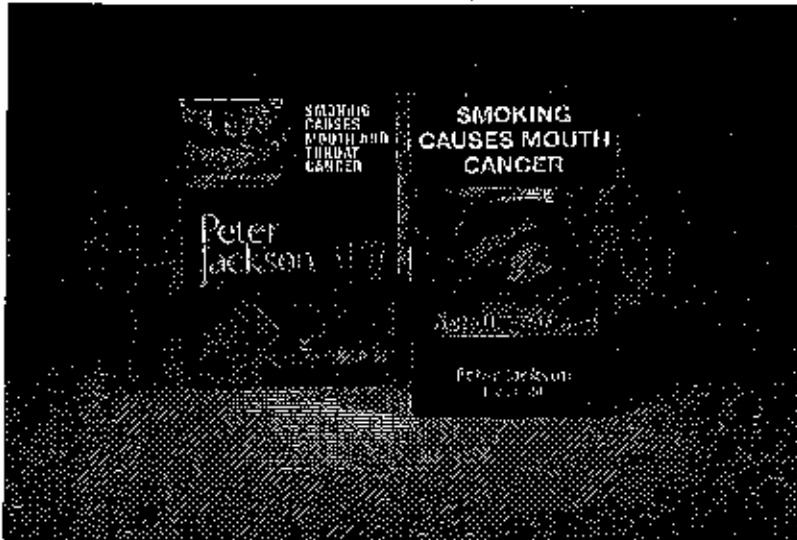
- The formerly blue packaged Dunhill Distinct became Dunhill Distinct Blue.
- Dunhill Infinite, formerly packaged in white, became Dunhill Infinite White.
- Dunhill Premier, once packaged in red, became Dunhill Premier Red.

**Picture 2 – Dunhill "Premier Red" variant extension**



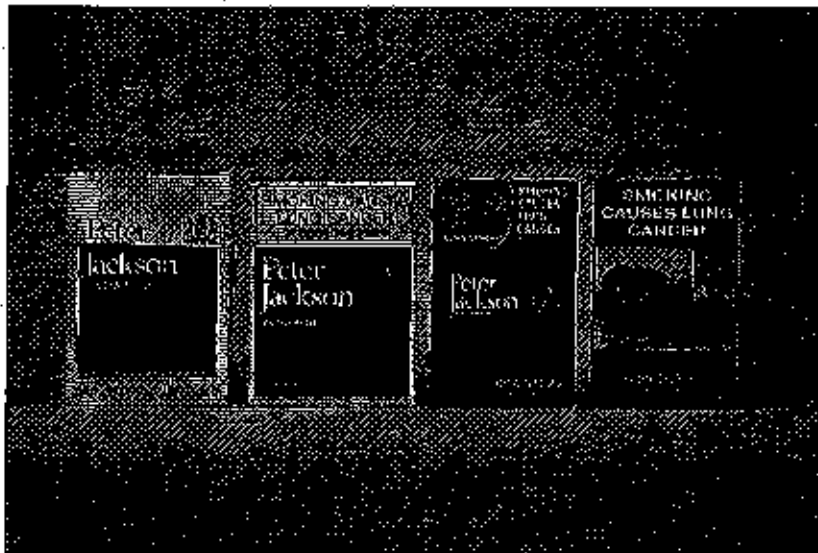
- *Peter Jackson Rich*, which previously had gold packaging has been renamed *Peter Jackson Rich Gold*.

Picture 3 – Peter Jackson “Rich Gold” variant extension



- *Peter Jackson Original* which previously had blue packaging, became *Peter Jackson Original Blue*.

Picture 4 – Peter Jackson “Original Blue” variant extension

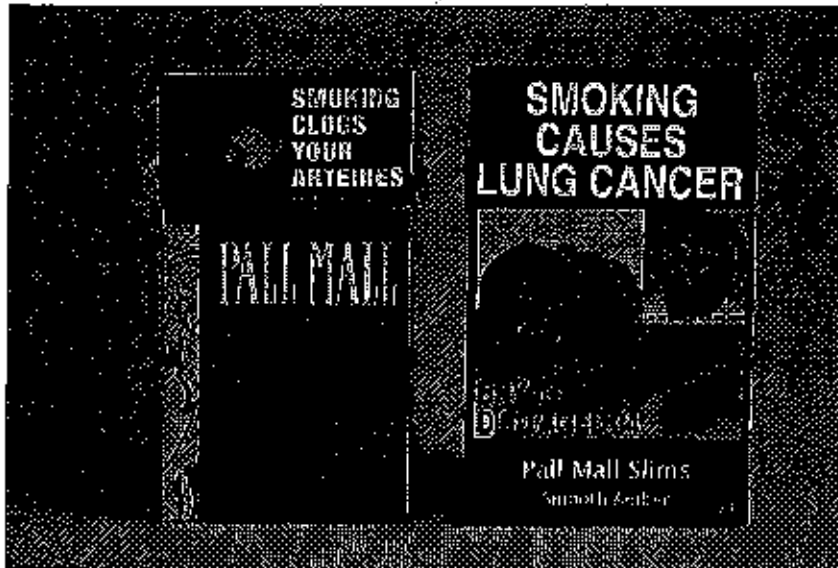


The effect of these modifications is likely to have been the retention of some of the connotations of prestige, tradition, quality, taste, strength and, by association, harm, previously implied by the packaging colour.

Further, in several instances, variant names that already included or implied a pack colour were lengthened to include descriptors that evoked the sensation or feature previously connoted by the colour. For example,

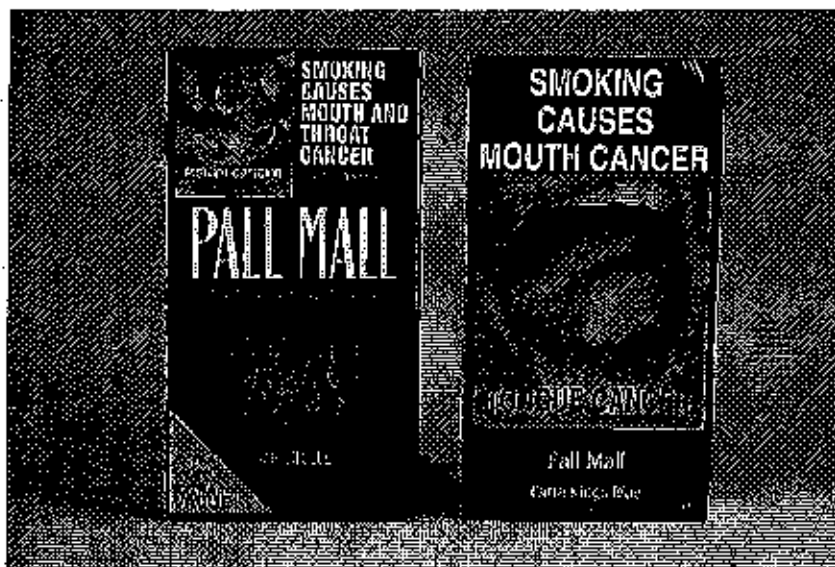
- *Pall Mall Amber* for example became *Pall Mall Slims Smooth Amber*.

Picture 5 – Pall Mall Slims “Smooth” Amber variant extension



- *Pall Mall Blue* became *Pall Mall Rich Blue*.

Picture 6 – Pall Mall “Rich” Blue variant extension



Several new products with unusually long and highly evocative names were also introduced into the market including *Peter Stuyvesant New York Blend* and *Marlboro Silver Fine Scent*

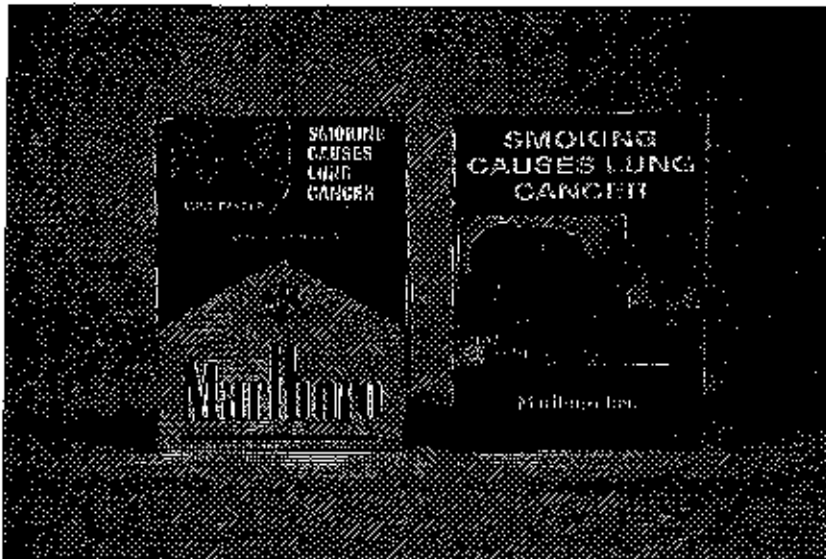
While the legislation has limited the font size in which the brand name and the variant name can be displayed, it placed no limit on the length of (number of characters in) the names. Apart from the pleasant associations they evoke, brand extensions such as *Peter Stuyvesant New York Blend* and long variant names for brands such as *Marlboro Silver Fine Scent* also have the advantage of taking up a very large amount of the brown space on the pack.

We understand that the relevant committee of the Irish Parliament considering the *Public Health (Standardised Packaging of Tobacco) Bill 2014* has proposed a 15 character limit for brand/business and variant names, which would go some way to avoiding registration of longer and descriptive brand names.<sup>45</sup>

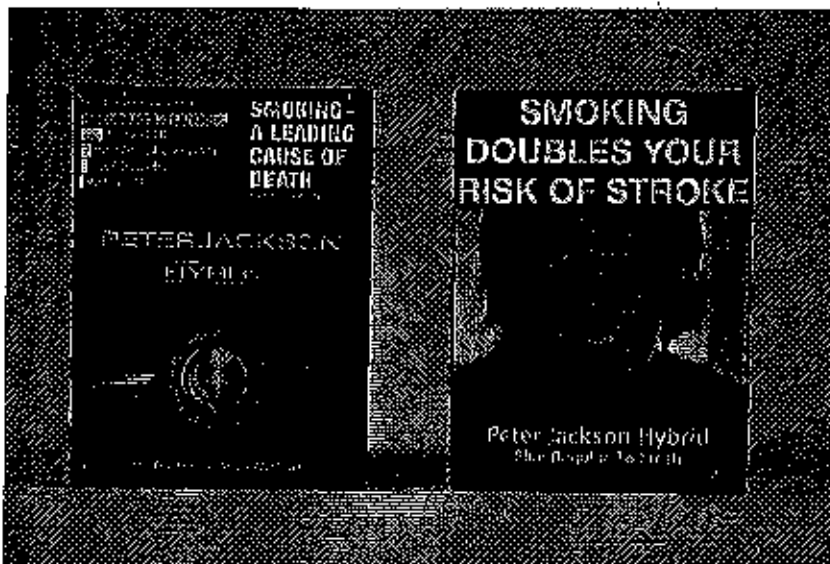
**(c) Position of brand and variant details**

We wish to draw attention to tobacco industry approaches that have sought to undermine and subvert the intention of the regulatory requirement to have brand and variant names appear on two separate lines. In light of Australia's plain packaging requirements, tobacco manufacturers have registered new brand names that include references to names that are typically variant names. This has been undertaken so that, in effect, both brand and variant names can appear on one line in the larger 14 font. For example, the following are now registered as stand-alone brand names:

**Picture 7 - "Marlboro Red" brand extension**

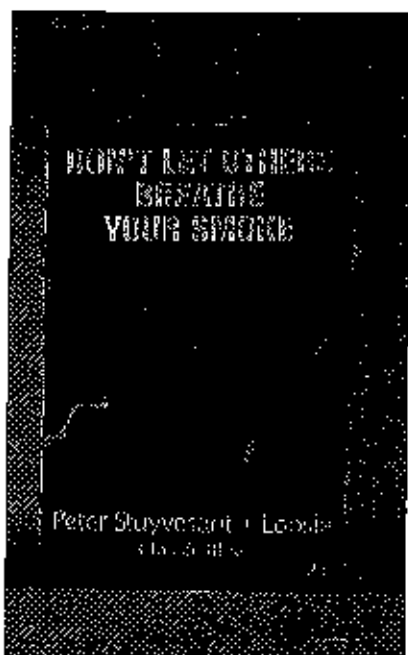


**Picture 8 - "Peter Jackson Hybrid" brand extension**



Brand name extension has also been undertaken to promote a free cigarette in a pack of 21 (for the cost of 20)

Picture 9 - "Peter Sluyvesant + Loosie" brand extension



We recommend that options be explored to prevent tobacco companies from avoiding or subverting the intention of regulatory requirements in this way.

**Recommendation 4:** *The proposed UK regulations should be amended to:*

- *limit the length (number of letters) of brand and variant names;*
- *prohibit the use of numbers (including numerals or words) in brand and variant names;*
- *expressly prohibit the word for a colour in a brand or variant name;*
- *expressly prohibit the use of descriptors such as "smooth" that have the potential to mislead consumers about product strength and harm;*
- *prohibit the use of brand and variant names that suggest enjoyment, social or sexual success, or that otherwise distract from health harms; and*
- *prevent the use of brand names that in effect include variant names.*

### 3.5 Brand and variant names on cigarette sticks

The proposed requirements for the appearance of cigarettes do not reflect best practice for plain packaging. The Australian plain packaging regime does not allow for the brand or variant name to appear on the cigarette and such marks are not necessary for identification of the product by the consumer. It is unlawful for cigarettes to be sold individually and as such identification of the product occurs when a pack is purchased and it is at this point that a brand needs to be identifiable. Because brands can appear on packaging there is no reason why this should be repeated on the cigarette stick themselves. The Australian plain packaging regime allows for manufacturers to print an alphanumeric code on cigarette sticks to assist with the manufacturing process and identification of illicit tobacco. This type of identification should be the only marks allowed on cigarette sticks.

Research by Borland and Sawvas found that "[b]randed sticks were seen as more attractive, higher in quality and strong tasting than non-branding designs, regardless of brand" with "effects stronger for a prestige compared to a

budget brand".<sup>46</sup> The Australian experience demonstrates that alphanumeric codes are sufficient for identifying the product maker; therefore, the inclusion of brand and variant names on cigarette sticks is an unnecessary source of publicity for the products in question.

The Australian Government research found that respondents used the following two criteria across the sample to appraise the appeal or attractiveness of different branding on cigarettes.

- First and most prominent was "known- brand recognition", in that "respondents immediately identified the brands they were familiar with or smoked themselves, and put more attention on these in their responses than those they were less familiar with"; and
- The second criterion (as described by respondents) was the perceived amount of 'effort' that had been put into the branding. That is, those sticks with more design features were more appealing and attractive.<sup>47</sup>

**Recommendation 5:** *The proposed UK regulations should be amended to prohibit brand and variant names from appearing on sticks and to allow only alphanumeric codes to appear on sticks.*

### 3.6 Dimensions of cigarette sticks

The proposed UK regulations should be amended to standardise the diameter and length dimensions of cigarette sticks. The Australian plain packaging regime fails to do this even though research suggests that:

"[c]haracteristics of the cigarette stick affect smokers' perceptions of the attributes of those cigarettes and are thus are a potential means by which product differentiation can occur. A comprehensive policy to eliminate promotional aspects of cigarette design and packaging needs to include rules about stick design".<sup>48</sup>

The Australian Government research findings clearly indicate that "there are strong assumptions and levels of appeal associated with different cigarette sticks" including "different associations with different stick types or sizes". Respondents across the sample "found slim sticks to be very feminine", an association that was more pronounced than with the standard size white tip sticks due to their size/thickness and by the observations respondents had made of who smoked them (for example, "I kind of find the idea of a girl smoking the thin one appealing" and "it's much more effeminate").<sup>49</sup>

We note that, even where specific or minimum/maximum pack dimensions are provided for (as we recommend at 3.3) and/or a minimum pack of 20 is mandated, these measures (either separately or combined) may not prevent the emergence of slim cigarettes. For example, in Australia, British American Tobacco brand *Vouge* complied with minimum pack dimensions, even when supplying slim cigarettes, by including a filler to take up the extra space inside the pack.

Picture 10 – Vouge Bleu 20 with filler



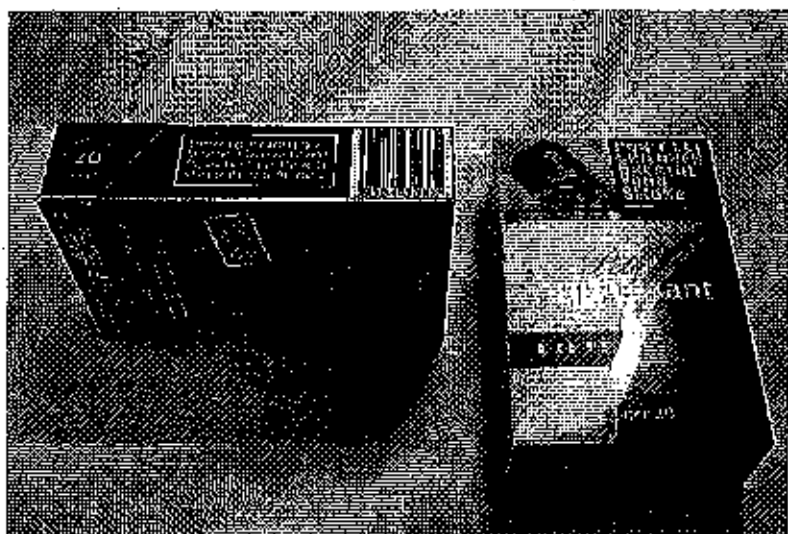
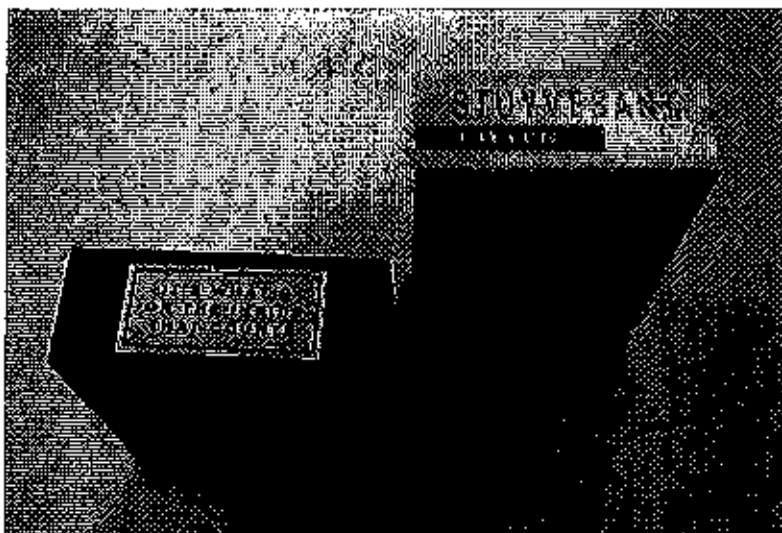
**Recommendation 6:** *The proposed UK regulations should be amended to standardise the diameter and length of cigarette sticks*

### 3.7 Internal packaging and lining

While the Australian plain packaging regime regulates the inside area of tobacco packages, we believe there are aspects of the Australian regime which can be improved upon. The Australian plain packaging regime mandates that each internal finish must be white; compared to the proposed UK regulations which allow internal packaging of cigarettes (r 3(3)) and hand rolling tobacco (r 7(3)) to be white or Pantone 448C with a matt finish. The Australian plain packaging regime and the proposed UK regulations both mandate that the lining of a cigarette pack must be silver coloured foil with a white paper backing.<sup>60</sup>

White coloured packaging has been shown through research on external packaging to give rise to perceptions regarding decreased product strength and harm (among other things).<sup>61</sup> Having the inside of packaging and any linings the same drab, unattractive colour as the outside of the packaging will further reduce the appeal of tobacco and tobacco products. It is inconsistent that the outside of tobacco packaging should look unattractive and provide graphic images of the damage tobacco use can result in, while the inside of packaging where the cigarettes are kept remains pristine, white/silver and clean. This may give the false impression that tobacco use is somehow less damaging than the outside implies and also may provide reassurance to smokers that inside the packaging nothing has changed and therefore their brand affinity is safe. Indeed, in Australia in the lead up to the introduction of plain packaging legislation, Imperial Tobacco, the makers of the Peter Stuyvesant brand, exploited this exact message producing packaging with the slogan 'It's what's on the inside that counts' providing reassurance to smokers that while packs may look different in the future, their known and trusted cigarettes will remain the same:

Pictures 11 and 12 - Peter Stuyvesant brand – 'It's what's on the inside that counts'



**Recommendation 7:** *The proposed UK regulations should be amended to:*

- *prohibit white internal packaging and allow only internal packaging that is either:*
  - *Pantone 448C with a matt finish; or*
  - *the colour of the packaging material in its natural state; and*
- *mandate that foil lining and paper backing be of a similar brown colour with matt finish.*

### 3.8 Position of text stating brand and variant name

The proposed UK regulations are expressed to require brand and variant names:

- to be located at the centre of the relevant surface; and
- where the same surface has a health warning, to be located at the centre of the area of the surface not taken up by the health warning and oriented in accordance with the warning (Cigarettes: schedule 1, items 1(2)(m)-(n); Hand rolling: Schedule 3, items 1(2)(o)-(p)).



We recommend that the orientation be specified as horizontal in each case (ie, for surfaces that do and do not contain a health warning). The Australian plain packaging regime specifies horizontal appearance in this regard which provides appropriate clarity on the required positioning of text.

**Recommendation 8:** *The proposed UK regulations should be amended to specify that brand and variant names appear horizontally on all surfaces.*

### 3.9 Text which gives details about the producer

The proposed UK regulations permit details about the producer to appear only once and on any internal or external surface apart from the front surface of a unit packet or outside packet of cigarettes (Schedule 1, item 3(2)(h)-(i)) or hand rolling tobacco (Schedule 3, item 3(2)(h)-(i)). In comparison, the Australian plain packaging regime requires such information on cigarette packs or cartons (including producer name and address and consumer contact telephone number) to appear only once and on the side outer surface that does not bear a health warning.<sup>52</sup> For other tobacco products, such information must appear only once on the same surface.<sup>53</sup>

We recommend that producer details be mandated to appear only once and on an outer surface. Allowing producer details to be printed on the inside of packaging allows the name of a manufacturer to appear removed from the health warnings relevant to their products.

**Recommendation 9:** *producer details should be mandated to appear only once and only on an outer surface*

### 3.10 Markings and other features – links to brand or variant

The Australian plain packaging regime provides that:

- The consumer contact telephone number cannot (among other things) represent or be related in any way to the brand or variant name.<sup>54</sup>
- Alphanumeric codes cannot (among other things) constitute or provide access to tobacco advertising and promotion or represent or be related to in any way to the brand and variant name.<sup>55</sup>
- Covert marks cannot provide access to tobacco advertising and promotion.<sup>56</sup>
- Automated manufacturing dots cannot (among other things) constitute tobacco advertising and promotion.<sup>57</sup>

We note that it is difficult to envisage every possibility for how markings and other features can be used for promotional purposes. For example, British American Tobacco Australia attempted to use alphanumeric codes to refer to "Australia" and "New York City". The responsible department held discussions with tobacco companies regarding this issue and was advised that "all major tobacco companies in the Australian market are producing cigarette sticks with compliant paper casing and alphanumeric codes as at the end of January 2013".<sup>58</sup>

Picture 13– British American Tobacco Australia – Alphanumeric code linking to "Australia"

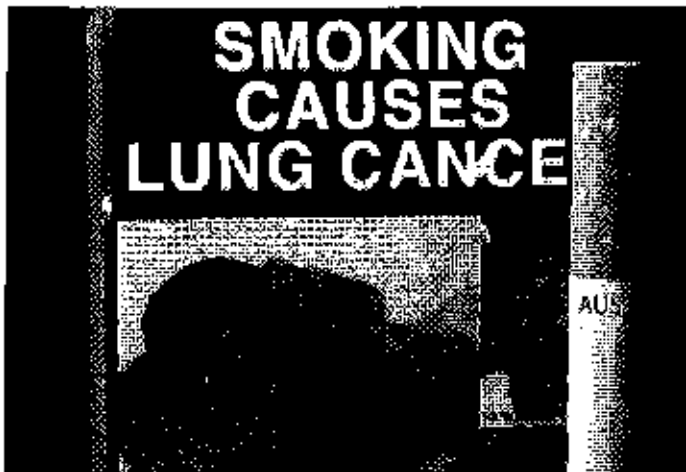
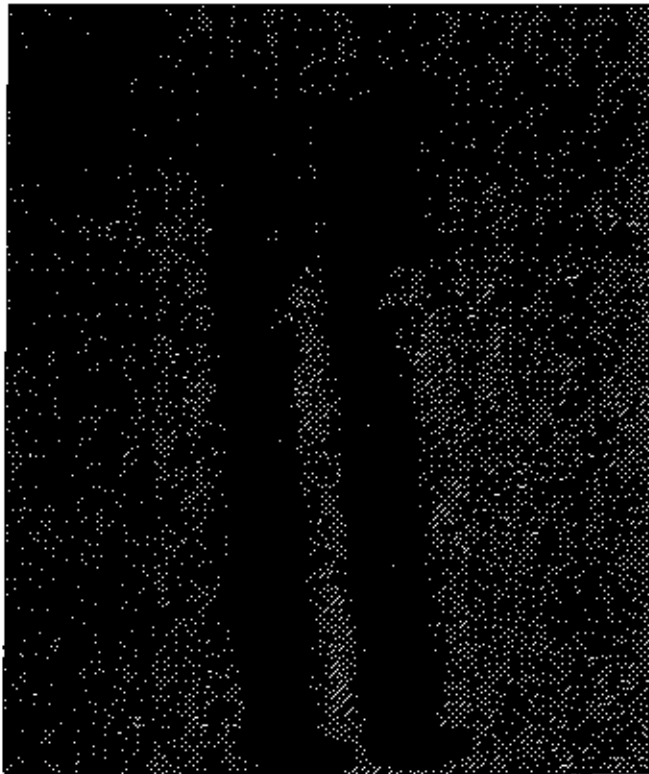


Image: <http://www.abc.net.au/news/2012-11-29/tobacco-producer-reprimanded-for-plain-packaging-breach/4397694>

Picture 14 – British American Tobacco Australia (Pall Mall) – Alphanumeric code linking to "New York City"



**Recommendation 10:** *The proposed UK regulations should be amended to prohibit each of the following from (a) being related in any way to the brand or variant name of the tobacco product; and (b) constituting or providing access to tobacco advertising:*

- *telephone numbers;*
- *alphanumeric codes;*
- *automated dots for manufacturing purposes; and.*
- *barcodes*

### 3.11 Obscuring legislative requirements

The Australian plain packaging regime provides that the following features of packaging cannot be obscured:

- Health warnings
- Fire risk statements
- Trade descriptions
- Measurement marks.<sup>69</sup>

These features cannot be obscured by:

- Brand, business, company and variant names<sup>60</sup>
- Adhesive labels<sup>61</sup> or
- Tabs for re-sealing (where permitted).<sup>62</sup>

We recommend that the proposed UK regulations provide similar prohibitions (extending to barcodes).

**Recommendation 11:** *The proposed UK regulations should be amended to specify that mandated features (such as health warnings etc) cannot be obscured by the following pack features:*

- *brand, business, company and variant names*
- *adhesive labels;*
- *tabs for resealing; and*
- *barcodes*

### 3.12 Windows

The Australian plain packaging regime prohibits retailing packaging other than plastic wrappers from having a cut out area or window that enables the contents of the packaging to be visible from outside the packaging.<sup>63</sup> We recommend considering whether a similarly specific provision is required for the proposed UK regulations in order to prohibit this form of packaging.

**Recommendation 12:** *Consideration should be given to whether a specific provision prohibiting retailing packaging (other than plastic wrappers) from enabling the contents of packaging to be visible from the outside of the packaging.*

### 3.13 Origin Marks

The Australian plain packaging regime permits origin marks to appear as either an alphanumeric code or a covert mark that is not visible to the naked eye, only once on the packaging and (for packs and cartons) only on either the side outer surface that does not bear the health warning or the bottom outer surface of the pack or carton. Should origin marks be included in the UK regulations, we recommend similar positioning be mandated.

*Recommendation 13: Should origin marks be permitted or required, they should be mandated to be either alphanumeric codes or covert marks that appear only once on the packaging.*

### 3.14 Sell through period

We understand that the new European Tobacco Products Directive requires that non-compliant tobacco products manufactured before 20 May 2016 may be sold in Member States until 20 May 2017 (Art 30). While the proposed UK regulations provide for a shorter, 10 month sell through period, the Australian experience demonstrates that it is possible for manufactures and retailers to comply within a much shorter timeframe. In Australia, manufacturers were required to comply with plain packaging requirements by 1 October 2012 with retailers required to comply by 1 December 2012. This left eight weeks for the "wash through" of existing branded packs manufactured prior to 1 October 2012. There was no major issue with compliance within these timeframes by either manufacturers or retailers. We also understand that the New Zealand parliament is considering a proposed six week sell through period for tobacco product distributors and a 12 week sell through period for retailers.<sup>84</sup> We believe it would be possible for standardised packs to be exclusively available far in advance of the 21 March 2017 deadline provided for in the proposed UK regulations.

*Recommendation 14: Further consideration should be given to providing a maximum three month sell through period of non-complaint tobacco packaging.*

**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?**

We have prepared a supplement to this submission, titled *Recently available data relevant to tobacco industry predictions/claims of negative unintended consequences of the introduction of plain packaging in Australia*.

It contains information relevant to numerous assumptions and estimates contained in the impact assessment.

The paper describes data collected in Australia to date relevant to predictions/claims of the tobacco industry of unintended negative consequences in the following areas:

- An increase in serving times for customers in small retail outlets, and a consequent loss of trade in supermarkets
- An increase in use of illicit tobacco
- A collapse in prices of tobacco products as consumers down-trade to low-cost brands or illicit tobacco
- Consequent increases in consumption.

**Please note that some information in this supplement is CONFIDENTIAL until it is published until it is published by the relevant journal.**

## APPENDIX - Plain Packaging studies post implementation in Australia

Extracts from published documents

[References omitted]

### **1. Tobacco plain packaging improves retail transaction times: first real-life data from Australia repudiating tobacco retailer scaremongering.**

Published 19 February 2013 – British Medical Journal

<http://www.bmj.com/content/346/bmj.f1063>

Owen Carler, Matthew Welch, Brennen Mills, Tina Phan and Paul Chang

On 1 December, 2012, Australia aimed to reduce the appeal of cigarettes by implementing mandatory, plain, generic packaging for all tobacco products.(1-2)The UK government is currently considering similar legislation but national retail groups, with generous funding from the tobacco industry, have mounted vigorous opposition campaigns, arguing generically packaged tobacco brands would be virtually indistinguishable on shelves, thereby increasing selection times and errors for tobacco transactions, leading to lost revenue and customers, and ultimately to store closures.(3) Two industry-funded, non-peer-reviewed studies predict transaction times will increase by 15–45 seconds and selection errors by 5–25%.(3-4) costing the sector around £37m each year.(5) In contrast, a scientific, peer-reviewed study simulating 5,200 tobacco transactions suggests selection times are actually quicker for generic than coloured packs (2.92 vs. 3.17 seconds,  $p < .05$ ) and result in fewer selection errors (0.4% vs. 1.5%,  $p < .05$ ) due to consistent labelling.(6) The industry dismisses this study as having 'significant methodological shortcomings' for failing to use experienced retail staff or account for distractions in the real retail environment.(7)

To determine the actual impact of plain packaging on transaction times in Australia, one month before and after 1 December 2012 we timed tobacco transactions at 100 convenience stores, newsagents, petrol stations and supermarkets from 16 suburbs of Perth, Australia. Researchers entered stores and asked for a pre-determined brand of cigarettes from a randomly ordered list of the 17 most popular tobacco brands in Australia.(8) Stopwatches concealed in pockets measured time from request to retailers either electronically scanning or placing requested cigarettes on counter. Researchers then apologised for forgetting their wallets, left stores and noted selection errors. Between October 2012 and January 2013 more tobacco retailers decreased than increased selection times (Wilcoxon Signed Ranks Test:  $n=61$  vs.  $39$ ,  $z=-2.522$ ,  $p < .05$ ) with average selection times decreasing significantly from 8.94 seconds (95% CI 7.63–10.25) to 7.39 seconds (95% CI 6.38–8.40) (one-tailed paired-samples t-test:  $t(99)=1.964$   $p < .05$ ). Selection errors also decreased from 3% to 2% ( $p=NS$ ). These real-life data confirm that generic tobacco packaging actually provides modest gains in retailer efficiency consistent with previous peer-reviewed data, completely contradicting self-interested, tobacco-industry-funded, non-peer-reviewed research. In the face of such evidence, national trade associations in the UK should urgently withdraw their objections to the tobacco plain packaging legislation currently being considered by the UK government—if they sincerely represent the best interests of their members and support the future health of British citizens.

**2. Product retrieval time in small tobacco retail outlets before and after the Australian plain packaging policy: real-world study**

First published online 27 May 2013 – Tobacco Control

<http://tobaccocontrol.bmj.com/content/23/1/70.abstract?sid=a9f20a8b-d9ab-4563-b580-5d63e2d63c23>

Melanie Wakefield, Megan Bayly, Michelle Scollo

**Objective:** We aimed to assess change in cigarette pack retrieval time in small retail outlets following the introduction of plain packaging in Australia in 1 December 2012.

**Methods:** A sample of 303 milk bars, convenience stores, petrol stations and newsagents was selected in four capital cities, stratified by area socioeconomic status. In June and September (baseline months), the first 2 weeks of December 2012, and February 2013, stores were visited by trained fieldworkers who requested a cigarette pack of a pre-determined brand, variant and pack size, unobtrusively recording the time from the end of the request to when the pack was scanned or placed on the counter.

**Results:** In multivariate analysis, December retrieval time (12.43 s) did not differ from June (10.91 s;  $p=0.410$ ) or February (10.37 s;  $p=0.382$ ), but was slower than September (9.84 s;  $p=0.024$ ). In December, retrieval time declined as days after plain packaging implementation increased ( $\beta=-0.21$ ,  $p=0.011$ ), returning to the baseline range by the second week of implementation. This pattern was not observed in baseline months or in February. Sensitivity analyses showed that results were robust to the variability in purchasing circumstances in tobacco retail outlets.

**Conclusions:** 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.

### **3. Introduction effects of Australian plain packaging policy on adult smokers: a cross sectional study**

Published online 22 July 2013 – BMJ Open Journal

<http://bmjopen.bmj.com/content/3/7/e003175.full>

Melanie A Wakefield, Linda Hayes, Sarah Durkin, Ron Borland

**Objective:** To determine whether smokers smoking from packs required under Australia's plain packaging law had different smoking beliefs and quitting thoughts, compared with those still smoking from branded packs.

**Design:** Cross-sectional survey during the roll-out phase of the law, analysed by timing of survey.

**Setting:** Australian state of Victoria, November 2012.

**Participants:** 536 cigarette smokers with a usual brand, of whom 72.3% were smoking from a plain pack and 27.7% were smoking from a branded pack.

**Primary outcome measures:** Perceived quality and satisfaction of cigarettes compared with 1 year ago, frequency of thoughts of smoking harm, perceived exaggeration of harms, frequency of thoughts of quitting, quitting priority in life, intention to quit, approval of large graphic health warnings and plain packaging.

**Results:** Compared with branded pack smokers, those smoking from plain packs perceived their cigarettes to be lower in quality (adjusted OR (AdjOR)=1.66,  $p=0.045$ ), tended to perceive their cigarettes as less satisfying than a year ago (AdjOR=1.70,  $p=0.052$ ), were more likely to have thought about quitting at least once a day in the past week (AdjOR=1.81,  $p=0.013$ ) and to rate quitting as a higher priority in their lives ( $F=13.11$ ,  $df=1$ ,  $p<0.001$ ). Plain pack smokers were more likely to support the policy than branded pack smokers (AdjOR=1.51,  $p=0.049$ ). Branded and plain pack smokers did not differ on measures of less immediate smoking intentions, frequency of thoughts about harms or perceived exaggeration of harms. Appeal outcomes, but not other outcomes, were sensitive to the extent of roll-out, with responses from branded pack smokers approaching those of plain pack smokers, once 80% of survey respondents were smoking from plain packs 1–2 weeks before the December implementation date.

**Conclusions:** The early indication is that plain packaging is associated with lower smoking appeal, more support for the policy and more urgency to quit among adult smokers.



#### **4. Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis**

First published online 13 January 2014 – The Medical Journal of Australia (MJA)

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

Jane M Young, Ingrid Stacey, Timothy A Dobbins, Sally Dunlop, Anila L Dossaix and David C Currow

**Objectives:** To investigate whether the introduction of tobacco plain packaging in Australia from 1 October 2012 was associated with a change in the number of calls to the smoking cessation helpline, Quitline, and to compare this with the impact of the introduction of graphic health warnings from 1 March 2006.

**Design and setting:** Whole-of-population interrupted time-series analysis in New South Wales and the Australian Capital Territory between 1 March 2005 and October 2006 for the comparator, graphic health warnings, and October 2011 and April 2013 for the intervention of interest, tobacco plain packaging.

**Main outcome measure:** Weekly number of calls to the Quitline, after adjusting for seasonal trends, anti-tobacco advertising, cigarette costliness and the number of smokers in the community.

**Results:** There was a 78% increase in the number of calls to the Quitline associated with the introduction of plain packaging (baseline, 363/week; peak, 651/week [95% CI, 523–780/week;  $P < 0.001$ ]). This peak occurred 4 weeks after the initial appearance of plain packaging and has been prolonged. The 2006 introduction of graphic health warnings had the same relative increase in calls (84%; baseline, 910/week; peak, 1673/week [95% CI, 1383–1963/week;  $P < 0.001$ ]), but the impact of plain packaging has continued for longer.

**Conclusions:** There has been a sustained increase in calls to the Quitline after the introduction of tobacco plain packaging. This increase is not attributable to anti-tobacco advertising activity, cigarette price increases nor other identifiable causes. This is an important incremental step in comprehensive tobacco control.

**5. 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**

First published online 25 February 2014 – Addiction

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

Meghan Zacher, Megan Bayly, Emily Brennan, Joanne Dono, Caroline Miller, Sarah Durkin, Michelle Scollo and Melanie Wakefield,

**Aims:** We tested whether prevalence of cigarette pack display and smoking at outdoor venues and pack orientation changed following the introduction of plain packaging and larger pictorial health warnings in Australia.

**Methods:** Between October and April 2011–12 (pre-plain packaging, pre-PP) and 2012–13 (post-plain packaging, post-PP), we counted patrons, smokers and tobacco packs at cafés, restaurants and bars with outdoor seating. Pack type (fully branded, plain or unknown) and orientation were noted. Rates of pack display, smoking and pack orientation were analysed using multi-level Poisson regression.

**Results:** Pack display declined by 15% [adjusted incident rate ratio (IRR) = 0.85, 95% confidence interval (CI) = 0.79–0.91,  $P < 0.001$ ], driven by a 23% decline in active smoking (IRR = 0.77, 95% CI = 0.71–0.84,  $P < 0.001$ ) between phases. The decline in pack display coincided with the full implementation of plain packaging from December 2012, was stronger in venues with children present and was limited to mid and high socio-economic status (SES) areas. The proportion of packs orientated face-up declined from 85.4% of fully branded packs pre-PP to 73.6% of plain packs post-PP (IRR = 0.87, 95% CI = 0.79–0.95,  $P = 0.002$ ). Alternatively, the proportions concealed by telephones, wallets or other items (4.4% of fully branded packs pre-PP and 9.5% of plain packs post-PP; IRR = 2.33, 95% CI = 1.72–3.17,  $P < 0.001$ ) and in an external case (1.5–3.5% of all packs; IRR = 2.79, 95% CI = 1.77–4.40,  $P < 0.001$ ) increased. Low SES areas evidenced the greatest increase in pack concealment and the greatest decline in face-up pack orientation.

**Conclusions:** Following Australia's 2012 policy of plain packaging and larger pictorial health warnings on cigarette and tobacco packs, smoking in outdoor areas of cafés, restaurants and bars and personal pack display (packs clearly visible on tables) declined. Further, a small proportion of smokers took steps to conceal packs that would otherwise be visible. Both are promising outcomes to minimize exposure to tobacco promotion.

**6. Availability of illicit tobacco in small retail outlets before and after the implementation of Australian plain packaging legislation**

First published online 10 April 2014 – Tobacco Control

[http://tobaccocontrol.bmj.com/content/early/2014/04/10/tobaccocontrol-2013-051353.short?q=w\\_tobaccocontrol\\_ahead\\_tab](http://tobaccocontrol.bmj.com/content/early/2014/04/10/tobaccocontrol-2013-051353.short?q=w_tobaccocontrol_ahead_tab)

Michelle Scollo, Megan Bayly, Melanie Wakefield

**Objective:** We aimed to assess change in the availability of illicit tobacco in small mixed business retail outlets following the December 2012 introduction of plain packaging in Australia.

**Methods:** 303 small retail outlets were visited in June and September 2012 (baseline months), and in December 2012 and February, April and July 2013. Fieldworkers requested a particular low-cost brand of cigarettes and then pressed the retailer for an 'even cheaper' brand. The cheapest pack of cigarettes offered was purchased and later examined to assess any divergence from prescribed Australian packaging regulations. The price paid was compared with tax liability and recommended retail price for the particular brand and pack size. In a sub-set of 179 stores, fieldworkers then asked the retailer about availability of unbranded (chop-chop) tobacco.

**Results:** Thirteen (2.2%) of 598 packs purchased pre-plain packaging were either non-compliant with Australian health warnings and/or suspiciously priced. Four packs (1.3%) of 297 met either or both criteria in the December implementation month, and five (0.6%) of 878 did so in the three collection months following implementation. Chop-chop was offered upon enquiry on 0.6% (n=2) of 338 occasions prior to implementation, 0.6% (n=1) of 170 occasions in the December 2012 implementation month, and 0.6% (n=3) of 514 occasions post implementation. The likelihood of a 'positive' response (either an offer to sell or information about where unbranded tobacco may be purchased) did not differ across pre implementation, during-implementation and post implementation waves.

**Conclusions:** Overall, packs judged likely to be illicit were sold in response to requests for cheapest available packs on fewer than one per cent of occasions. Offers to sell unbranded tobacco were rare. No change in availability of illicit tobacco was observed following implementation of plain packaging.

## **7. Tobacco product developments coinciding with the implementation of plain packaging in Australia**

First published online 30 April 2014 – Tobacco Control

<http://tobaccocontrol.bmj.com/content/early/2014/04/30/tobaccocontrol-2013-051509.full>

Michelle Scollo, Jessica Occleston, Megan Bayly, Kylie Lindorff, Melanie Wakefield

As part of our routine surveillance activities, we monitor offerings of factory-made cigarettes of all three major manufacturing companies in Australia—British American Tobacco Australia (BATA), Philip Morris (PM), and Imperial Tobacco Australia (ITA). We examine available trade magazines and undertake monthly checks of products available on-line and in-store. Periodically, we also receive promotional flyers that have been distributed by the manufacturing companies to retailers. From these sources we report five major trends in the factory-made cigarette market in Australia that we discerned in the 12 months leading up to, and following, the implementation of plain packaging: (1) reassurance of product quality to smokers; (2) shift of promotional attention to brand and variant names; (3) renewed emphasis on value for money; (4) introduction of novel products and (5) rationalisation of product offerings. Examples of each of these trends are described below using complementary photographic material.

### **Trend 1. Reassurance of smokers about product quality**

Trend 1.1. Written guarantees of continuing quality

Trend 1.2. Graphic suggestion of continuing product quality

Trend 1.3. Production of covers

### **Trend 2. Shift to promotion through greater attention to the names of brands, brand extensions and variants**

Trend 2.1. Colour connotations achieved with packaging continued through incorporation into the brand variant name

Trend 2.2. More evocative names

Trend 2.3. Displacement of brown pack space with lettering

### **Trend 3. Renewed emphasis on value for money**

Trend 3.1. Introduction of menthol varieties in 'value' brands

Trend 3.2. New super-value packs

Trend 3.3. Extra length cigarettes

Trend 3.4. Packs with 'extra' cigarettes

### **Trend 4. Introduction of novel cigarette types**

Trend 4.1. Menthol hybrids

Trend 4.2. Mint leaf 'fusions'

### **Trend 5. Rationalisation of product offerings**

**Conclusions:** During the months leading up to plain packaging, all three major Australian tobacco manufacturers engaged in strategies of reassuring customers, re-energising the names of brands, and expanding product ranges to provide extra value for money and retain consumer interest. Some of these trends are not unique to Australia, and may have occurred regardless of plain packaging. For instance, bonus cigarettes in packs have been observed in the UK, a country that, like Australia, levies high taxes on tobacco products. Menthol hybrids have emerged in many other markets since 2010. Menthol loading is also a feature now evident in many international markets. The re-engineering of pack design and printing required leading up to 1 December 2012, likely exerted a concertina effect, with manufacturers taking advantage of the last few months of unregulated pack design to accelerate the introduction of such products into the Australian market. Several of the increases in cigarette numbers in packs were introduced coinciding with required changes necessary to comply with the legislation. Changing pack design once would be less costly for companies than changing once to standardise packaging and then again later to add bonus cigarettes.

These observations from Australia may be instructive for other countries contemplating legislation standardising the packaging of tobacco products. Officials in other countries contemplating standardised packaging should be aware of possible industry activity between legislation being proposed, passed and implemented, and consider taking steps to limit those that are likely to be damaging to consumers. Though their use in Australia turned out to be relatively limited and short-lived the production and sale of branded tins and plastic sheafs in the months leading up to implementation—covers that would still be able to be used by consumers after standardised packaging became mandatory—is something that could be specifically banned. Several elements of legislation standardising packaging could be strengthened. A minimum circumference and length for cigarettes would put an end to 'slim' cigarettes which hold considerable appeal to female smokers. Consideration might be given to specifying a standard number of cigarettes in each pack, to limiting the length (number of letters) of brand and brand variant names, and to prohibiting the use of brand variant names suggesting reduced harm, enjoyment, social or sexual success. Beyond restrictions on packaging and labelling (including naming), price-related promotions (including the provision of bonus sticks) should be banned and products should be much more tightly regulated to ban flavourings such as menthol.

### 8. *No lasting effects of plain packaging on cigarette pack retrieval time in small Australian retail outlets*

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<http://tobaccocontrol.bmj.com/content/early/2014/05/30/tobaccocontrol-2014-051683.full>

Megan Bayly, Michelle Scollo, Melanie Wakefield

One of the many claims made by the tobacco industry against Australia's plain packaging legislation was that plain standardised packaging would make it harder for retailers to locate and retrieve packs for customers. The industry argued this would lead to substantially longer transaction times, customer frustration, security issues and, ultimately, loss of trade from smaller convenience to larger discount outlets.

A real-world study of a panel of small retail outlets by our group aimed to investigate this claim. We found only a small, temporary increase in cigarette pack retrieval times immediately following plain packaging implementation on 1 December 2012. By the second week of December 2012, pack retrieval times had returned to levels that were no different to baseline months, as was the case for February 2013.

The pack retrieval protocol was repeated a further two times several months post-implementation in the same panel of stores, as part of a larger tobacco retail monitoring study. The panel of stores was comprised of 303 milk bars, convenience stores, petrol stations and newsagent/tobacco outlets in the major Australian cities of Melbourne, Sydney, Adelaide and Perth. Due to store closures, stores out of stock of the requested pack, or other extraneous interference—such as use of automatic dispensers to locate the pack or interruptions while the retailer was retrieving the pack—pack retrieval recordings were completed in 207 stores in both April and July 2013. Over the six data collection periods from June 2012 to July 2013, pack retrievals were recorded 1266 times in total. Pack retrieval was measured by discreetly recording the time taken from the end of the fieldworker's pack request to when the retrieved pack was placed on the counter or its barcode was scanned, whichever was first.

Average pack retrieval times were calculated adjusting for city, area socio-economic status, and store type. Retrieval times were similar in April 2013 (9.66 s; 95% CI 8.61 to 10.71) and July 2013 (9.27 s; 95% CI 8.34 to 10.20), and were both significantly lower than December 2012 (12.43 s; 95% CI 10.64 to 14.01; April 2013:  $p=0.039$ ; July 2013:  $p=0.013$ ). When aggregated into baseline (June and September 2012;  $n=471$ ), implementation (December 2012;  $n=182$ ) and post-implementation (February, April and July 2013;  $n=612$ ) periods, pack retrieval during implementation (December 2012) was significantly higher than at baseline (10.34 s; 95% CI 9.66 to 11.02;  $p=0.013$ ) and post-implementation (9.76 s; 95% CI 9.15 to 10.37;  $p=0.002$ ), while baseline and post-implementation waves were no different.

These results strengthen findings that plain packaging did not result in substantial delays to consumers at the point of sale in the real world. Retailers quickly adapted to the new packaging, and the brief increase in pack retrieval time that occurred immediately after plain packaging implementation did not persist. Pack retrieval times in 2013, well after plain packaging implementation, were no different to those observed in a fully branded packaging environment.

## 9. Availability of chop-chop in Victorian tobacconists following introduction of plain packaging

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Michelle Scollo, Megan Bayly, Melanie Wakefield

Unbranded tobacco (either loose or pre-rolled into cigarettes) is commonly known in Australia as chop-chop. Questions about use of chop-chop were included in the last three National Drug Strategy Household Surveys. Survey reports show that, of respondents aged 14 and older who had smoked in the past 12 months, 6.1% reported any current use of unbranded tobacco in 2007<sup>2</sup> and 4.9% reported current use in 2010.<sup>3</sup> In 2010, 1.5% of smokers reported that they used unbranded tobacco 'half the time or more'.

About 60% of Australian smokers routinely buy tobacco products from supermarkets, about 20% from milk bars, newsagents and convenience stores, and 15% from tobacconists. Others buy from vending machines, bars or other retail outlets. This is in addition to small numbers of duty-free and internet purchases (personal communication, T Partos, ITC study, Cancer Council Victoria, 2013). Reports by Deloitte consulting company for Australian tobacco companies<sup>1</sup> indicate that tobacconists are the most common source of supply of unbranded tobacco, making up about 50% of purchases in 2010 and 35% in 2011.

Retail audits provide a means to complement data from consumer surveys on availability of illicit tobacco over time in Australia. A study by our group found very low levels of availability of unbranded tobacco in small (mixed business) retailers throughout Australia, with no indication of any increase in the eight months after the introduction of plain packaging. The aim of the present study was to assess the availability of illicit tobacco from specialist tobacconists in Melbourne, Victoria, following the introduction of plain packaging legislation. Fifty-four tobacconists from 16 postcodes in metropolitan Melbourne, stratified by socioeconomic status, were selected from within areas sampled for a national tobacco retail monitoring study. All potentially eligible tobacconists were sampled, defined as those that had 'tobacconist', 'tobacco', or 'cigarettes' in their store name or signage, or were branded as a chain tobacconist.

All 54 stores were open and sampled in each month of the study (February, April and July 2013), yielding 162 enquiries. A trained fieldworker entered each store and, after asking for a cheap pack of cigarettes, went on to enquire about local availability of unbranded tobacco, making sure to always use the words 'chop-chop' in their request. If offered chop-chop, the fieldworker declined to purchase it. The response of the retailer was noted after leaving the store.

Two-thirds of tobacconists indicated that they did not know what chop-chop was, and a further 15% confused it with roll-your-own tobacco. Retailers offered to sell unbranded tobacco on just five (3%) of 162 occasions throughout the three collection months. They provided specific information as to where unbranded tobacco could be found on five occasions (3%) and vague information on a further 10 occasions (6%).

One study limitation was that tobacconists may only be willing to sell illicit tobacco to customers known to them. Five retailers (9%) became suspicious of the fieldworker during the February collection period (which coincided with a time when government inspectors were actively monitoring the implementation of plain packaging legislation). Only three of the 54 retailers were suspicious about the enquiry in April and only two in July. This suggests that the mystery shopper protocol was credible and did not arouse suspicion in most instances. Fines for selling tobacco in packaging non-compliant with new Australian plain packaging legislation<sup>7</sup> are up to \$340,000. Whether such a fine reduces the number of retailers selling illicit tobacco, or simply makes such retailers more cautious about whom they sell it to, the net result is likely to be lower availability to ordinary consumers.

While it is likely that particular tobacconists as well as informal sellers are known by chop chop users to be a source of supply, this study and our companion national study<sup>4</sup> were designed to assess availability for ordinary customers of the retail outlets included in the audits. Results complement information from population surveys which indicate very low incidence of Victorian smokers purchasing such tobacco. We conclude that the availability of unbranded tobacco from tobacconists in Melbourne appears to be low and shows no signs of increasing in the months following the introduction of plain packaging legislation in Australia.



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Recently available data relevant to tobacco industry predictions/claims of negative unintended consequences of the introduction of plain packaging in Australia:

Submission to the UK Department of Health consultation on the introduction of regulations for standardised packaging of tobacco products

A supplement to main  
Cancer Council Victoria submission

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