

**THE IMPACT OF AUSTRALIA'S DRAFT REGULATION ON TOBACCO
PLAIN PACKAGING BILL 2011 IN CIGARETTES
AND OTHER TOBACCO PRODUCTS**

The following communication, dated 7 June 2011, is being circulated at the request of the delegation of Indonesia.

I. INTRODUCTION

1. As a tobacco and cigarette producing country, Indonesia is concerned about the draft regulation which standardizes all tobacco packaging to show only a brand name and variant, along with health warnings and other government mandated information or markings, in specified locations, without any symbols, logos or design features of all tobacco products which are sold in Australia.
2. Indonesia recognizes Australia's objective to control tobacco use to protect public health, but would like to submit its concerns and request clarification on a number of issues.

II. CONCERNS

3. Requiring tobacco products to be sold in standardised, plain packaging is an extreme measure that reduces the ability of tobacco brand owners from effectively branding and differentiating their products. New tobacco brands from Indonesia would face yet another barrier in gaining market access against brands that are already popular in Australia. Currently, the law prohibits using tobacco trademarks on anything other than tobacco packages and trade communications. It is unlawful to do *anything* which gives publicity to or promotes smoking, tobacco products, or tobacco brands. With all cigarette advertising already banned, new brands entering Australia will find it virtually impossible to sell them in Australia.
4. Further, by eliminating the value of branding, the economic value of Australia's WTO market access commitment in the tobacco sector will be significantly diminished.
5. It is our view that the public health benefits of standardised, plain packaging needs to be more fully demonstrated. As plain packaging is a novel measure, it is also uncertain whether this measure would reduce tobacco consumption at the population level, rather than at the level of individual brands. Against this negative impact on new entrants to Australia's market for tobacco products, there are arguably other tobacco control measures that are less trade restrictive.
6. For the above reasons, we believe that the implementation of the Plain Packaging Bill may present an unnecessary barrier to trade contrary to the WTO Technical Barriers to Trade (TBT) Agreement Article 2.2. We would therefore like to pose the following questions to better understand the justification of the proposed measure.

III. QUESTIONS

- (a) Issue 1: In notifying this measure to the TBT Committee, Australia recognizes that the proposed measure will result in barriers to trade.
- (i) Has Australia quantified the trade impact of this new measure?
 - (ii) If so, can Australia provide the TBT Committee with a trade impact study?
 - (iii) If not, can Australia satisfy the Committee that the impact of the measure on developing Members will not be negative as compared to developed Members?
- (b) Issue 2: Australia states that the proposed measure is necessary and contributes to Australia's health objectives on the basis of the opinion of the Preventive Health Taskforce.
- (i) Did Australia, or the Taskforce, examine any studies on the impact of plain packaging other than those listed in the Consultation paper and if so which ones?
 - (ii) To the extent that studies showing outcomes different from the studies listed in the Consultation Paper were examined, how did Australia weigh and measure the material impact of the different evidence?
 - (iii) If Australia did not consult other studies, to what extent can it be confident that the proposed measure is necessary and will contribute to Australia's policy objectives?
 - (iv) Since the drafting of the Consultation Paper, has Australia taken into consideration any other studies showing the material contribution of the proposed measure?
 - (v) Did Australia examine the material contribution of existing measures to the achievement of its health policy objectives or how the implementation of existing measures could or should be improved?
- (c) Issue 3: WTO Members must ensure that technical regulations are not applied if they have the effect of creating unnecessary obstacles to international trade or discriminate against imports.
- (i) Has Australia considered alternative measures and to what extent were those alternative measures weighed against the measures proposed on the basis of trade restrictiveness?
 - (ii) Has Australia taken steps to ensure that there will be no discrimination as between local and imported tobacco products, not only in relation to cigarettes but other tobacco products on a like product by like product basis?
 - (iii) Has Australia examined the extent to which the proposed limitation on the use of brands will have an impact on trade in the different like products covered by the proposed measure?

- (d) Issue 4: The TBT Agreement contains non-discrimination provisions that act in conjunction with the GATT to maintain conditions for healthy competition between imported and domestic products.
- (i) To what extent has Australia examined the potential freezing of market share due to restrictions on the use of brands on both imported and domestic tobacco products in the context of maintaining open competition?
- (e) Issue 5: Australia has joined with the EU, Mexico, the United States, Chile, Argentina, and New Zealand in questioning in the TBT Committee Thailand's proposals on pictorial health warnings on alcoholic beverages. Australia expressed concern that Thailand did not have sufficient scientific evidence to justify the measures being proposed and had not considered less trade-restrictive, less costly, and less burdensome alternatives. Yet, Australia's proposed tobacco measure foresees a substantial expansion of the cigarette packaging space devoted to pictorial health warnings on the use of tobacco.
- (i) Is Australia in a position to distinguish its position in relation to pictorial health warnings on alcoholic beverages from its proposals on tobacco?
- (ii) Does Australia consider that the same rules and concerns apply to its plain packaging proposal and to Thailand's proposals on pictorial health warnings on alcoholic beverages?
- (iii) Did Australia consider less trade-restrictive measures for tobacco labeling?
- (iv) Is Australia in a position to distinguish the impact of the proposed measures from already implemented measures?
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