



**BRITISH AMERICAN
TOBACCO
AUSTRALASIA**

**British American Tobacco Australia
Submission on the Tobacco Plain Packaging Bill 2011**

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PLAIN PACKAGING EXECUTIVE SUMMARY

British American Tobacco Australia (BATA) welcomes the opportunity to provide our submission with respect to the exposure Draft of the Tobacco Plain Packaging Bill 2011 ("the Bill").

For reasons outlined in our submission, BATA is opposed to the introduction of plain packaging as we believe there are significant legal obstacles to its implementation and that the policy is not supported by real evidence.

Following is a summary of BATA's objections to the Bill, and to plain packaging more broadly.

Plain Packaging faces significant legal obstacles and issues

Plain packaging is legally complex and may infringe various legal rights relating to international trade and intellectual property laws, resulting in potential costs to government and the tax payer.

The Government's power to introduce plain packaging is constrained by law, not only by the general principles of public law, but also by international law, including the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Technical Barriers to Trade Agreement.

No real-world evidence that plain packaging will result in a reduction in smoking prevalence

There is no real world data to demonstrate that the plain packaging of tobacco products will be effective in discouraging youth initiation, encouraging cessation by existing smokers, or increasing the salience of health warnings.

Indeed, a recent report by Deloitte (May 2011) found that packaging laws have not directly reduced smoking, and calls into question whether plain packaging will achieve government health objectives.

The Report assessed 27 countries, covering a period of 14 years¹, and suggested that governments consider the extent to which plain packaging will deliver policy objectives in advance of any implementation, further suggesting that Governments consider potential intended and unintended impacts of plain packaging.

Plain Packaging should be properly considered by governments before further action

As is demonstrated in our submission, the Bill is the result of a rushed policy, where due diligence and proper investigation – including a formal Regulatory Impact Statement (RIS) process - were not undertaken.

¹ Tobacco Packaging Regulation, An international assessment of the intended and unintended impacts – May 2011

To this end further investigation into the policy and its implications is needed before the Bill can proceed to the parliament.

The UK Government recently said. *"we must review the evidence and draw up an impact assessment on the costs and additional public health benefits of policy options. We will, as well, explore the competition, trade and legal implications, and the likely impact on the illicit tobacco market of options around tobacco packaging. While similar measures are currently being considered actively by a number of Governments around the world, we must be sure about the impacts of policy options in the legal and trading circumstances of tobacco control in this country. Only after this work, and gathering views and evidence from public consultation, will we be in a position to know whether, or how, to proceed."*²

Plain Packaging has been considered and not pursued by other Governments

Previously Canada and the UK considered plain packaging and decided not to pursue this measure due to the lack of evidence and legal hurdles. More, recently France, Sweden, Denmark and Poland have told the European Union that they do not support plain packaging.

Concerns with Plain Packaging are shared globally by businesses and business groups

To date there have been two recent legislative reviews in relation to plain packaging - in Australia and the UK. In both reviews, groups from Retailers, to Intellectual Property groups, to Think Tanks all raised their concerns around the unintended consequences around plain packaging.

Plain Packaging will give rise to Unintended Consequences

Not only will the intentions of the Bill not be met, but the introduction of plain packaging will potentially give rise to numerous significant unintended consequences. These include:

- illegal tobacco growth;
- lost tobacco tax revenues;
- costs for governments;
- significant legal obstacles;
- compensation costs for governments;
- cost burdens on small retailers; and
- cheaper and more accessible tobacco.

Plain Packaging could lead to an increase in Illegal Tobacco Trade

A range of commentators, including the Australian Government, recognise that plain packaging could lead to an increase in illicit trade.

² Secretary of State for Health Mr Andrew Lansley written Ministerial statement to House of Commons 9 March 2011

Plain packaging would more easily facilitate counterfeiting and smuggling, and thus the distribution of products through unregulated, untaxed criminal networks which are more readily accessible to underage and vulnerable smokers, while at the same time making policing the illicit trade in tobacco significantly more difficult.

It would be far easier for counterfeiters to replicate a government mandated standard packet design than to copy the designs used on current tobacco packaging. This would also most likely result in a broader network of manufacturers of illegal tobacco.

The inevitable consequence of plain packaging is the commoditisation of the appearance of tobacco product packaging, making it difficult for adult consumers to identify and recognise their preferred tobacco products. This would clearly undermine the value of manufacturers' trademarks and destroy the goodwill built up over many years in consumer brands. Thus, plain packaging will frustrate brand identification and consumer choice, making smuggled branded product more acceptable to consumers relative to expensive generic products.

The Bill is unworkable as presently drafted

The implementation timings proposed by the Bill are unable to be met by the legitimate tobacco manufacturing industry. There are a number of significant operational matters that the Government must take into account lest it causes massive disruption to the cigarette market in Australia.

The final details of how the Bill will operate, that is the regulations, will not be finalised until after 1 January 2012, meaning that legitimate tobacco manufacturers would have, at best, 120 days to overhaul their manufacturing process, order and make relevant new machinery and train workers on new equipment.

At a minimum, a 9-12 month preparation period is required with a further 12 month flush through period to ensure the legitimate market can adapt to the new regulatory regime.

Recommendation

Given the legal and regulatory concerns outlined above, BATA believes that attention should be paid to policy areas which are likely to measurably contribute towards reducing the public health impacts of tobacco use and ensuring that youth do not have access to tobacco products.

We also recommend effective regulations, set out below, that are based on research conducted both in Australia and internationally, on our expertise as a tobacco manufacturer and distributor and our experience in working with governments on the development of tobacco policy and regulation.

To this end we believe the Federal Government should focus on the following core areas:

- 1 More highly targeted education programmes especially aimed at preventing young people from taking up smoking;
- 2 Nationally consistent retail laws to assist with business certainty and to mitigate against the negative impacts and unintended consequences;
- 3 Closer engagement and cooperation amongst retailers, tobacco manufacturers, key regulatory decision maker and public health advocates through the establishment of a Federal Tobacco Consultative Forum;
- 4 A nationally consistent, integrated government approach to the pricing of products; and;
- 5 An increase in attention and resourcing and enforcement of the laws to prevent the trade of illegal tobacco by criminal syndicates.

1. INTRODUCTION

1.1 BATA and the Australian Tobacco Market

With approximately 45.6 percent of the legitimate cigarette market³, BATA is the country's leading tobacco company. We manufacture and distribute cigarettes and roll-your-own tobacco and distribute pipe tobaccos and cigars. Our brands include Winfield, Benson & Hedges, Dunhill, Pall Mall and Holiday.

Our company currently employs over 1,100 people, with operations in every Australian state and territory, and our federal tax contribution alone is approximately \$4.5 billion annually.

Indirectly, tobacco accounts for almost 50,000 jobs in the retail sector alone.

1.2 BATA supports evidence-based and proportionate regulation

There is no question that smoking tobacco can cause serious and fatal disease, including lung cancer, emphysema, chronic bronchitis and heart disease.

While the only way to avoid the risks of smoking is not to smoke, a real world view suggests that a large number of people will continue to choose to smoke even though they are aware of the risks. As a result tobacco should be regulated and regulated sensibly.

Building on a reputation as a responsible tobacco manufacturer, BATA has participated in the development of some key regulatory initiatives in Australia, such as our active involvement in the drafting of a standard for the measurement of cigarette extinction propensity.

The Office of Best Practice Regulation (OBPR) advocates thorough consultation in the development of regulatory proposals and the review of existing regulations to ensure that both those affected by the regulation and the Regulator have a good understanding of the issues under consideration.

This ensures there is a clear understanding of all regulatory options to address a given problem, and possible administrative and compliance mechanisms, and associated benefits, costs and risks⁴. For this reason, good regulatory practice dictates that tobacco manufacturers should be included in the consultation process to develop effective tobacco regulation. BATA is therefore surprised that the Government has published the Bill in the absence of any meaningful consultation with the tobacco industry in Australia nor has it conducted a thorough RIS process.

To ensure that any further regulation is workable, achievable and evidence based, it is important that tobacco manufacturers and retailers are part of the policy making process,

³ BAT exchange of sales 2010 FY share source: PWC/AC Nielsen 2011)

⁴ OBPR website, "Effective Consultation and Effective Regulation" (on line)

otherwise such measures are likely to bring with them serious unintended consequences which may undermine public health objectives. For these reasons, BATA requests that the Government reconsiders the introduction of the Bill into Parliament.

2. LEGAL BARRIERS TO MANDATING PLAIN PACKAGING

BATA opposes the introduction of plain packaging as it is effectively a ban on using valuable intellectual property assets. It also amounts to a taking of business goodwill as reflected in the value of brands that have been established over time.

There are significant domestic and international barriers to the introduction of plain packaging which demand serious consideration. The following is an outline of those significant barriers.

2.1 Plain packaging violates Australian domestic law

The legislative ability of the Federal Government to introduce a mandatory plain packaging regime is constrained by the limits of power imposed by the Constitution. Section 51 (xxxi) of the Constitution provides that property, which includes intellectual property, may only be acquired on "just terms". The Bill, by prohibiting the ownership and use of intellectual property on tobacco packaging without compensation, falls foul of the Constitutional guarantee thereby violating domestic law.

Acceptance of BATA's position that plain packaging is contrary to Australian law can be found in the records of the Department of Health itself. In 1995, the Department of Health, in answer to the Senate Committee set up to look into plain packaging for tobacco products, noted that the introduction of plain packaging "*was not consistent with current Commonwealth Government policy*" and that implementation of such a policy "*is shaped by major legal and Constitutional impediments to such action*"⁵.

Insofar as trade marks are concerned, IP Australia, in a brief to the Australian Government on 13 April 2010, noted that "*trade mark owners are given a broad exclusive right to use their mark. IP Australia considers that plain packaging of tobacco products, if implemented, would impinge on this right*"⁶.

Further support for the proposition that plain packaging violates Australian law can be found in the statements of the Australian Institute of Patent and Trade Mark Attorneys in its submission that plain packaging, would amount to a direct contravention of section 20 of the Trade Marks Act 1995 which affords a trade mark owner the exclusive right to use its registered mark. It would also have the effect of depriving a trade mark owner of its personal property (see section 21 of the Trade Marks Act)⁷.

2.2 Breaches of International Treaties — Paris Convention

Plain packaging is incompatible with the rules of the Paris Convention, to which Australia is a signatory.

5 Department of Health response given to the Senate Inquiry into the Tobacco Industry and the Costs of Tobacco-Related Illness sent to Senator John Herron under cover of letter dated 23 October 1995

6 (Info brief B10-1473, prepared by IP Australia, to Parliamentary Secretary cc Minister 13 April 2010)

7 Australian Institute of Patent and Trade Mark Attorneys' submission to the Senate Inquiry into Plain Tobacco (Removing Branding from Cigarette Packs) Bill 2009, dated 23 February 2010

Whilst the signatories to the Paris Convention are at liberty to prohibit or restrict the use of certain products, this cannot be done by restricting the use and registration of trade marks.

2.3 Breaches of International Treaties — TRIPS

Plain packaging requirements are also likely to place Australia in breach of its obligations under the World Trade Organisation (WTO) Agreement, on the Trade-Related Aspects of Intellectual Property Rights (TRIPs). The TRIPs Agreement incorporates and expands, amongst other things, the minimum standards of trade mark protection provided for under the Paris Convention.

Under the TRIPS Agreement, all Member States are obliged to comply with the material provisions of the Paris Convention in its latest version. The introduction of a plain packaging regime would be inconsistent with Australia's obligations under the TRIPS Agreement.

2.4 Breaches of International Treaties — GATT

The proposed plain packaging scheme would be contrary to the General Agreement on Tariffs and Trade (GATT) as it would prohibit the import of branded tobacco products not conforming to the plain packaging requirements.

2.5 Breaches of International Treaties — TBT Agreement

Australia is also a signatory to the WTO Agreement on Technical Barriers to Trade (TBT). As a result Australia must ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. Technical regulations include regulations about symbols, packaging, marking or labelling requirements of a product.

The ultimate effect of legislation mandating plain packaging would be to ban, not only the use, but ownership of intellectual property and would result in Australia acting inconsistently with its obligations under the TBT.

The fact that mandatory plain packaging legislation has the potential to breach Australia's obligations under the TBT has in fact been recognised by Australia, when it sent its notification to the WTO TBT Committee at the time of release of the Bill.

2.6 Serious ramifications can flow from breaches of Australia's Treaty obligations

Breaches of international agreements are subject to international dispute procedures and also may have adverse consequences for Australia's international reputation. Equally a breach of an international obligation would expose Australia to the risk of a WTO Panel which could not only diminish Australia's international stature and reduce its negotiating ability in other international fora but could also lead to retaliatory counter-measures by other WTO members.

Furthermore, the uncertainty created by any attempted extinguishment by the Government of valuable intellectual property may deter other businesses from investing in Australia. In this regard, Australia was identified in submissions to the United States Trade Representative (USTR) in relation to its "Special 301" report, which highlights countries that fail to protect companies' investments in intellectual property. In this regard it should be noted that the United Kingdom Government recently stated that it must "carefully examine" the evidence base regarding plain packaging, and "give weight to the legal implications of restrictions on packaging for intellectual property rights and freedom of trade".

The Australian Government's proposal to introduce plain packaging of tobacco would be detrimental to Australia's international reputation on intellectual property matters. This point was made by the Chamber of Commerce of the United States, which wrote to Australian lawmakers and stated that in its view, *"the plain packaging proposal appears to disregard established international norms of intellectual property, particularly trademark law, which is a cornerstone of corporate identity and consumer information" and that "a move to mandate generic packaging would establish a bad precedent for companies from both of our countries"*⁸.

The international obligations referred to above are fundamental to the effective international protection of all trade marks (and related IP rights) and their commercial value. Accordingly, a breach of those principles will clearly call into doubt the commitment of Australia to an effective IP regime which promotes and rewards innovation and value creation.

2.7 FCTC does not impose any obligation to introduce plain packaging

One of the justifications given by the Government for proceeding with the Bill is that it is a 'necessary' part of Australia's international obligations under the Framework Convention on Tobacco Control (FCTC).

The WHO FCTC does NOT impose an obligation on national governments to introduce plain packaging.

FCTC obligations on packaging and labelling are set out in Article 11 of the treaty, which obliges Member States to implement certain measures within three years from the entry into force of the Convention, including to ensure that packaging and labelling are not misleading. Article 11 neither authorizes nor obliges Member States to restrict or prohibit the use of trade marks as is envisaged by the Bill. Indeed the proposed prohibition on use of intellectual property such as trade marks is not contemplated anywhere in the FCTC.

While the Guidelines for Elaborating Articles 11 and 13 of the FCTC may recommend plain packaging, these Guidelines propose recommendations which are non-binding on national governments. Further, it was emphasised that no Party was obligated to recommend plain packaging; all parties had to consider legal obstacles to plain packaging; and that there is a need for further research to establish an evidence base.

⁸ Tobacco Label Fight Heats Up, the Australian Financial Review, 21 January 2010

Also, whilst Article 2 of the FCTC provides that Member States may implement measures beyond those required by the Convention the Article states that any such measures should be "in accordance with international law". The FCTC's reach is fettered by the legal requirements of its signatories.

3. EVIDENCE

3.1 The Bill is not supported by real evidence.

Despite calls from retailers and the industry, the Federal Government has not released any real or credible evidence to date that the Bill will achieve the public health objectives of discouraging youth initiation, encouraging cessation by existing smokers or increasing the salience of health warnings.

3.2 Concerns around lack of evidence.

During the 1990's, certain governments considered plain packaging as a tool to reduce smoking prevalence. However, as noted in 1997 by the Australian Government, the evidence was limited, "...there is no international experience of the effect of generic packaging on consumer behaviour. In addition, there is limited primary research on the potential effect of generic packaging or the factors underlined or relevant to the uptake and cessation of tobacco consumption."⁹

In June 2010 a Senate Estimates Committee question on notice asked the Department of Health "What is the estimated reduction in smoking rates from the plain packaging measure?"

The Department drafted a response that, "This figure has not been calculated. As no other countries have implemented plain packaging for tobacco products, the actual impact on smoking behaviour is not able to be calculated at this stage."¹⁰

Documents released under Freedom of Information laws show the Government's plain packaging proposals are ill-thought through and not based on sound evidence.

Two days before the then Prime Minister and Federal Health Minister Roxon announced their plain packaging plans (29th April 2010) emails show that the Health Department had not provided Health Minister Roxon's office with any real evidence proving that plain packaging would work.

Two weeks prior to the plain packaging announcement, IP Australia stated that "this is not the first time government has considered the issue of plain packaging. A Senate Report in 1995 concluded that there was insufficient evidence to demonstrate the efficacy of generic packaging in achieving health policy objectives and recommended further investigation. IP Australia is unaware of any subsequent evidence that establishes that the public interest would be better served by plain packaging"¹¹

9 The Australian government response to the report of the Senate Committee Affairs Reference Committee September 1997 at 30

10 Answers to Estimates Questions on Notice Health and Ageing Portfolio Budget Estimates 2009-10, 2 or 3 June or 4 June 2010

11 Info brief B10-1473 prepared by IP Australia to parliamentary Secretary cc Minister, 13 April 2010)

Furthermore, Ms Harman from the Department was asked about modelling at Senate Estimates on Wednesday 20 October 2010. Senator Fierravanti-Wells asked Ms Harman *"your answer is it is not possible to quantify the reduction. Is that Health's view, that you are not able to quantify the reduction that will be generated by the measure"* to which Ms Harman replied *"specifically from that plain packaging measure, yes."*¹²

In May 2011, the position has not changed. For example, when faced with questions regarding the evidence base in support of plain packaging, Australian Health Minister Roxon stated that evidence regarding the potential efficacy of the plain packaging measure "doesn't exist".

A recent report by Deloitte¹³ found that packaging laws have not directly reduced smoking, and calls into question whether plain packaging will achieve stated government health objectives.

The report assessed 27 countries covering a period of 14 years¹⁴ and suggested that governments consider the extent to which plain packaging will deliver policy objectives in advance of any implementation.

The Deloitte Report casts doubt over the effectiveness of tobacco packaging laws and suggested that governments consider potential intended and unintended impacts of plain packaging.

Similarly, BATA notes that the Consultation Paper does not invite comments on the proposed changes to, and increase in, size of the graphic health warnings (GHW's). It appears that these changes will be introduced by way of regulations under the Australian Consumer Law. As with the plain packaging proposal itself, the Government has not provided evidence supporting an increase in the size of GHW's currently on pack. The fact is that there is no credible evidence that increasing the size of health warnings on packs will be effective.

There is ample real world evidence to test predictions regarding smoking prevalence rates in relation to GHW's. In addition to the Deloitte study, a UK Department of Health study in 2010 reviewed the effects of the UK Government's implementation of GHW's and made a number of significant findings that the establishment of GHW's on cigarette packaging in England had not had any impact on smoking prevalence, on aggregate cigarette consumption or salience of health warnings¹⁵.

In Canada, the empirical evidence shows that the change in health warnings in 2001 (from a 25% text health warning to 50% GHW's front and back) has not altered the smoking behaviour of Canadians¹⁶.

12 Senate Hansard Community Affairs, 20 October 2010

13 Tobacco Packaging Regulation, An international assessment of the intended and unintended impacts – May 2011

14 IBID

15 UK Department of Health's Study from 2010 "Evaluating the Impact of Picture Health Warnings on Cigarette Packets"

16 Environics Research Group "The Health Effects of Tobacco and Health Warning Messages of Cigarette Package" Wave 1 to Wave 13, Surveys of Adults and Adults Smokers and Surveys of Youth 2001-2007)

After a lengthy consultation process, NZ, introduced regulations requiring that 30% of the front and 90% of the back of cigarette packages be covered in GHW's from February 2008. The Ministry of Health for New Zealand, relying on several surveys, placed its official estimate of current smoking prevalence amongst those aged 16-64 in 2008 at 21%¹⁷. The latest figures available after the implementation of GHW's are from the New Zealand Tobacco Use Survey 2009 that found that the prevalence of smoking for the same group for 2009 was also 21%¹⁸.

17 New Zealand Ministry of Social Development, the Social Report (2010) at 30

18 New Zealand Ministry of Health Tobacco Use in New Zealand: Key Findings from the 2009 New Zealand Tobacco Use Survey (2010) at 15

4. POLICY-MAKING PROCESS

The fact that no real evidence can be provided to support the claims made in support of plain packaging is due in part to the poor policy making process which resulted in the Bill.

Given this is the first time anywhere in the world that a draft bill for plain packaging has been released, it is more than concerning that a full scale RIS has not and will not be conducted on this particular piece of legislation prior to its drafting or passage.

Instead, it is BATA's understanding that only a draft RIS was prepared by the Health Department, but prepared with no consultation with the Industry, retailers and possibly other relevant Departments. Perhaps not surprisingly, then, this draft RIS was subsequently rejected by the OBPR.

The OBPR reviewed the draft RIS and responded by informing the Health Department that *"as discussed, the RIS does not satisfy the Australian Government's best practice regulation requirements."* The letter went onto say *"the OBPR is required to report this matter as non-compliant in the Best Practice Regulation Report"*¹⁹.

Failure to prepare a full-scale RIS with the involvement of all impacted players is a significant omission; the true impact of this measure cannot be fully thought through or debated without it. Further, it will not allow the assumptions on which the Bill is made to be tested or exposed to scrutiny. In light of this, the unintended consequences of the Bill, or potential consequences well-known to the industry, retailers and other impacted parties, but not considered by the Health Department due to a lack of consultation, including consequences to Australian taxpayers, will most likely be significant.

4.1 Robust review of plain tobacco packaging needed

It is important to note that plain packaging is currently under review in the United Kingdom where the Health Minister recently stated that *"we must review the evidence and draw up an impact assessment on the costs and additional public health benefits of policy options. We will, as well, explore the competition, trade and legal implications, and the likely impact on the illicit tobacco market of options around tobacco packaging."*

He went onto say that *"while similar measures are currently being considered actively by a number of Governments around the world, we must be sure about the impacts of policy options in the legal and trading circumstances of tobacco control in this country. Only after this work, and gathering views and evidence from public consultation, will we be in a position to know whether, or how, to proceed."*²⁰

Tobacco regulation needs to be realistic and it needs to be workable. It should therefore reflect the legal rights of legitimate tobacco companies, which produce a legal product and should be allowed to conduct their legitimate business in a responsible manner. To this end, BATA requests that the Australian Government undertakes a proper RIS.

¹⁹ Letter from Radmila Ristic of the OBPR to Penny Marshall of the Health Department, 4 May 2010

²⁰ Secretary of State for Health Mr Andrew Lansley written Ministerial statement to House of Commons 9 March 2011

5. PLAIN PACKAGING REJECTED BY OTHER GOVERNMENTS

Although mooted as a world first, plain packaging has been considered but not adopted by many governments.

Previously Canada and the UK considered plain packaging and decided not to pursue this measure due to the lack of evidence and legal hurdles.

More recently France, Sweden, Denmark, Lithuania and Poland have come out in opposition to the plain packaging of tobacco products.

Not only countries, but international business organisations also have genuine and serious concerns about moves towards plain packaging.

In its submission to the Senate's inquiry into the Fielding Bill on Plain Packaging the US Chamber of Commerce stated that such moves could have significant economic consequences for Australia as *"...trademarks are such a critical asset of multinational businesses today that companies may decide to forego opportunities and investments in Australia if they do not have confidence that their trademarks and dress will be protected. Indeed, such commercial opportunities as now exist in Australia could be substantially diminished if companies are forced to commoditize their products and compete solely on the basis of price rather than on the quality and reputation their trademarks represent."*²¹

Concerns have also been raised about consumer rights and the ability of consumers to exercise their choice when purchasing a legal product. In their submission to the same Senate inquiry, The Institute of Patent and Trade Mark Attorney's of Australia stated that *"plain packaging would make it very difficult to distinguish one brand from another, thus limiting consumers' ability to make informed decisions to buy the product of their choice."*²²

The National Foreign Trade Council also warned that *"by preventing the use of trademarks (apart from the name in plain typeface), the Bill would actually deprive consumers of important information about the product such as whether the product is filtered, and the taste, flavour and quality of the product"*²³.

From the international field The Washington Legal Foundation warned decision makers that *"if adult consumers are seeking out cigarettes that are not stale or otherwise substandard, it ill behooves public officials to seek to deceive consumers into believing that such cigarettes are not available. So long as cigarettes remain a legal product, consumers who choose to use them ought to be permitted to receive information that allows them to differentiate among available products based on quality."*²⁴

21 Chamber of Commerce of the United States of America Submission to Senate Inquiry into Fielding Bill February 26, 2010

22 Institute of Patent and Trademark of Australia Submission to Senate Inquiry into Fielding Bill February 23, 2010

23 National Foreign Trade Council to Submission to Senate Inquiry into Fielding Bill February 23, 2010

24 The Washington Legal Foundation Submission to Senate Inquiry into Fielding Bill February 26, 2010

Further as recently as 20 April 2011, the International Chamber of Commerce in a letter to the Australian Minister for Trade observed that plain packaging *“by eroding the means of asserting intellectual property rights (IP), the measure proposed would restrain trade, hamper consumer choice and safety, subvert trademark and IP laws and increase counterfeiting and illicit trade while encouraging lower priced legal and illegal commerce in tobacco products”*.

6. UNINTENDED CONSEQUENCES

6.1 Waste of taxpayers' money in legal fees

There is a significant risk that given the ill thought through nature of the Government's plain packaging proposal and subsequent Bill, taxpayers' dollars could be wasted on legal fees.

A confidential briefing note, obtained through FOI, indicates the Government is prepared to spend millions of taxpayer dollars defending their experimental policy in the face of lawsuits brought by the tobacco industry.

A note, from 18 February 2010 from the Department of Health, suggests that the Government has budgeted \$4.8 million to implement the legislation and that this figure "does not include legal costs, estimated to be \$10+ million"²⁵.

6.2 Possible compensation

As previously stated, the idea of plain packaging is not new and was considered – and rejected – by the Australian Government in the mid 1990s. One of the reasons given for not proceeding with the policy was concern that plain packaging could lead to significant compensation for tobacco companies.

A spokesperson for the then Health Minister, Carmen Lawrence, said that "Unfortunately it is just not feasible" the spokeswoman said. "We would have to buy the tobacco companies trademarks and that would cost us hundreds of millions of dollars"²⁶.

Whilst the amount of any compensation would ultimately be a question for the Courts, some commentators have put a compensation figure in the vicinity of \$3 billion.

6.3 What will the impact of plain packaging be on the price of cigarettes?

There is a real danger that a result of the Bill may be cheaper cigarettes which in turn is likely to lead to increased sales and consumption of cigarettes.

In their Draft Regulatory Impact Statement, the Health Department warned that plain packaging could result in lower cigarette prices, stating that "*smokers could face lower costs of purchasing cigarettes – and higher health impacts and costs associated with higher rates of consumption – if plain packaging leads manufacturers to disinvest in branding and compete solely on price, driving tobacco prices down.*"²⁷

Such warnings are consistent with those from industry groups who made submissions during the Senate Inquiry into the Fielding Bill.

25 Health Reform Briefing note sent under cover of email dated 18 February, 2010 from Georgie Harman to Jake Matthews

26 The Sydney Morning Herald, Monday 24th July 1995

27 Department of Health and Ageing Regulation Impact Statement Plain packaging of Tobacco Products April 2010

The Property Rights Alliance warned that *"by denying companies to compete on the basis of logo/trademark differentiation, consumers will be unable to differentiate products in any meaningful manner other than on price. As such, the Bill will result in some cigarette manufacturers choosing to compete on the basis of price, leading to a fall in tobacco prices. As such, it is submitted that the bill might have the counter-intuitive effect of potentially increasing tobacco consumption²⁸."*

The impact that such a measure could then subsequently have on consumption was raised by the American Legislative Exchange Council who said that plain packaging *"could lead to an increase in tobacco use. The brown matte packaging and standard typeface mandated in this bill, would likely occasion an uptick in counterfeit cigarettes, as it is easier to manufacture "plain-packaged" products. The competition from contraband cigarette companies as well as an inability to differentiate their products from others on the market will force legitimate tobacco companies to lower their prices'.*

The Council went onto say that *"while there is no established correlation between plain packaging and a reduction in cigarette use, there is a correlation between low cigarette prices and increased tobacco consumption. As noted above, plain packaging will likely lead to more counterfeit cigarettes, and while there is no evidence that trademarks "mislead and deceive consumers," there is much evidence that contraband products often do. Plain packaging legislation will undoubtedly result in larger numbers of counterfeit cigarettes being distributed putting consumers at greater risk from entirely unregulated illicit products²⁹."*

6.4 Possible damage to Australian exports

BATA manufactures products for New Zealand and other South Pacific countries. The Bill appears to be drafted broadly to cover all products manufactured in Australia and would thus capture the products BATA makes for export. This has the effect of Australia mandating the packaging requirements for products sold in other sovereign nations. This is directly at odds with the position of the Health Minister. As recently as 26 May 2011, the Health Minister stated on the *Lateline* program on ABC TV that *"ultimately the laws that other countries make for their countries is a matter for them"*.

Further, this will put products manufactured in Australia at a distinct competitive disadvantage and could ultimately lead to the loss or closure of this export market.

6.5 Significant impact on illegal tobacco trade

Removing branding and pack complexity as proposed by the Bill will make counterfeiting easier and frustrate the ability of consumers, retailers and regulatory authorities to detect illegal product.

There is strong agreement that there is an illicit trade problem in Australia. According to media reports, *"Rod Moodie, chairman of the Preventative Health Taskforce, which*

²⁸ The Property Rights Alliance Submission to Senate Inquiry into Fielding Bill February 22, 2010

²⁹ The American Legislative Exchange Council Submission to Senate Inquiry into Fielding Bill February 23, 2010

*recommended the increased excise and plain packaging labeling, says it [illegal tobacco] accounts for about 12 per cent of tobacco use in Australia*³⁰.

Since that time, the quantity, availability and impact of illegal tobacco on the market has increased in Australia, with a recent Deloitte report finding that taxpayers are losing out on almost \$1.1 billion in excise revenue³¹.

The Report estimated that 2.68 million kilograms of illegal tobacco products were sold in Australia during 2010, equivalent to 15.9% of the total legal tobacco market and further found that the illegal tobacco market has grown nearly 150% in just three years, from 6.4% of the total market in 2007 to 15.9% in 2010³².

The statistics should come as no surprise: pricing is what attracts people to the illegal tobacco market; the Deloitte Report revealed that lower price was a key reason 60% of people bought illegal tobacco products. Illegal tobacco is sold cheaper because sellers of illicit tobacco pay no excise duty to the Government. Further, illicit products are wholly unregulated and often carry no health warnings.

The illicit trade in tobacco products should give rise to another concern for Government: organised crime gangs – who are importing loose leaf tobacco, counterfeit and contraband cigarettes – are now the fourth largest tobacco player in Australia just behind Imperial Tobacco which holds 17% of the legal market³³.

The link between organised crime and illicit tobacco was recently made by the the Australia Crime Commission who highlighted in its 2011 report on organised crime that “*Organised crime networks have been linked to the importation of counterfeit cigarettes and loose tobacco.*”³⁴

6.6 Cigarettes – not just packs – subject to counterfeit

Deloitte also found a significant shift in the tobacco black market from packaging to cigarettes, with nearly 60% of illegal cigarettes now sold in unbranded boxes, up from only 25% the previous year.

What is concerning is that the Bill proposes the removal of branding from cigarettes. Not only does this present significant manufacturing issues, which are explored later in this document, but such a policy could result in a potential windfall for counterfeiters as cheap unbranded cigarettes become more popular.

6.7 Tobacco counterfeiting – a serious world wide problem

The issue of cigarette counterfeiting is not unique to Australia and is indeed a significant international problem that would be made worse if legislation like the Bill is passed.

³⁰ The Age, April 30th 2010

³¹ Deloitte, Illicit Trade of Tobacco In Australia, February 2011

³² Ibid

³³ Ibid

³⁴ Australian Crime Commission Organised Crime in Australia 2011

The Business Action to Stop Counterfeiting and Piracy (BASCP) and the International Chamber of Commerce wrote in a submission to the Senate Fielding Bill inquiry that plain packaging “would increase the prevalence of counterfeit goods in the market because counterfeit products will become easier to make, distribute and sell. Further, plain packaging enables the counterfeit industry to ‘adopt’ brand imagery: both counterfeiters and contraband operators would assume, correctly, that plain packaging would result in a significant increase in demand for illicit products in particular amongst sections of society that many regulatory measures seek to protect most. It would further reduce brand owners’ ability to take action against such activity³⁵.”

The Institute of Patent and Trade Mark Attorneys of Australia stated that “efforts to combat counterfeit trade hinge upon the maintenance of a principled, balanced and coherently articulated system of national and international treaties, laws and regulations, particularly in regards to trademarks and related intellectual property rights. Plain packaging would make both counterfeiting and smuggling more attractive. This presents the risk of an uncontrolled market for illegal products, potentially undermining the intention of plain packaging legislation to reduce smoking by instead leading to a prevalence of cheaper counterfeited or smuggled items³⁶.”

The National Foreign Trade Council Inc believe that “... the requirement to use simple brown matte packaging and standard typeface will make it easier to manufacture and distribute counterfeit and contraband products, thereby increasing consumer confusion.” “In addition, plain packaging likely will cause an increase in the production and distribution of counterfeit products by making it easier to copy the packaging in a manner that is not discernible to the typical consumer³⁷.”

Finally, The Washington Legal Foundation stated in a submission that “there is every reason to believe that adoption of plain packaging would cause the counterfeiting problem to sky-rocket; the existence of elaborate trademarks is one of the best controls on counterfeiting currently in place³⁸.”

Concerns about the impact plain packaging could have on illicit trade is shared, it would appear, by the Federal Department of Health. In the Department’s draft RIS it stated that:

“Manufacturers, importers, distributors and retailers of tobacco products, as well as the Australian Taxation Office, Australian Customs and Boarder Protection Service, the Australian Government more broadly, taxpayers and smokers would all be affected by any changes to the trade in illicit tobacco products generated by the move to plain packaging.

- *Manufacturers, importers, distributors and retailers could lose business to the illicit trade if plain packaging made counterfeit easier.*

35 ICC and BASCAP Submission to Senate Inquiry into Fielding Bill (no date provided)

36 Institute of Patent and Trademark of Australia Submission to Senate Inquiry into Fielding Bill February 23, 2010

37 The National Foreign Trade Council Inc. Submission to Senate Inquiry into Fielding Bill February 23, 2010

38 The Washington Legal Foundation Submission to Senate Inquiry into Fielding Bill February 26, 2010

- *The efforts of the Australian Taxation Office and the Australian Customs and Border Protection Service to collect tobacco excise and customs duty could be affected by the design of plain packaging*
- *Government revenue could be put at risk if the design of plain packaging made counterfeiting of tobacco easier and enforcement efforts less effective.*
- *Smokers health could potentially be put at greater risk if they consume counterfeit products.³⁹*

39 Department of Health and Ageing Regulation Impact Statement Plain packaging of Tobacco Products April 2010

7. UNWORKABLE NATURE OF THE BILL AS PRESENTLY DRAFTED

BATA is opposed to the introduction of plain packaging for the issues outlined in sections 1-6 above. However, in the event that the Government disregards BATA's position and insists on proceeding with the Bill, there are a number of operational matters that the Government must take into account lest it causes massive disruption to the cigarette market in Australia. Some of these operational matters are highlighted below.

7.1 Commencement provisions are unrealistic

The implementation timings proposed by the Bill are unable to be met by the legitimate tobacco manufacturing industry.

All businesses, regardless of the products that they make, need certainty to plan. Such certainty is unavailable to tobacco manufacturers as, if the current timings in the Bill are to be adhered to, the details of how the Bill will operate— i.e. the regulations – will not be finalised until after 1 January 2012.

This would mean that legitimate tobacco manufacturers would have, at best, approximately 120 days to overhaul their manufacturing process, order and make operational relevant new machinery and train workers on those machines.

Insofar as timing is concerned, the Consultation Paper summarises the commencement dates of the various parts of the Bill as follows:

- *On 1 January 2012, the preliminary provisions of the legislation; the power to make regulations specifying plain packaging requirements; and the provisions that allow the authorised investigative and enforcement officer roles to be established will commence.*
- *On 20 May 2012, the offences relating to importing, packaging and manufacturing non-compliant tobacco products, and tobacco products in non-compliant packaging will commence, along with investigation and enforcement powers of authorised officers.*
- *On 1 July 2012, the offences relating to selling and purchasing non-compliant tobacco products and tobacco products in non-compliant packaging commence.*

In circumstances where the power to make regulations are not scheduled to commence until 1 January 2012, it is not possible for BATA to fully prepare for the transition (including making all of the necessary business arrangements) until some time after 1 January 2012.

To highlight this concern, the process to just prepare new artwork for all our cigarettes, roll your own ("RYO") and cigar lines can take up to 12 months.

For the reasons detailed below, BATA's best estimate at present is that it (and its related companies) would require at least 9 months after detailed regulations are received, but

more likely closer to 12 months to make all of the necessary arrangements for the implementation of plain packaging. This estimate could change depending on the eventual content of the regulations but it would be extremely onerous for the Government to allow any shorter period.

By way of juxtaposition, when the Federal Labor Government proceeded with the Reduced Fire Risk (RFR) regulations, far more workable implementation timelines were given.

To quote from the ACCC *"on the information available to it, the ACCC is satisfied that 18 months is a reasonable lead-in time for commencement of the proposal. While a shorter period would not cause problems for some manufacturers/importers, it clearly does for others. An 18 month lead in period was provided for compliance with the Trade Practices (Consumer product Information Standards) (Tobacco) Regulations 2004 and has been widely accepted as reasonable by many overseas jurisdictions"*⁴⁰

Under the proposed timelines there is a flush through period of approximately 6 weeks. This flush through time is unworkable and will result in substantial unnecessary finished goods write-offs because BATA products have a 12 month shelf life.

To underscore this point, BATA understands that there are approximately 35,000 outlets that sell tobacco products in Australia. BATA has a direct relationship with approximately 11,000 outlets. It is BATA's experience that just single brand pack changes can take many months to flush through the entire market. To assume a total industry pack change will take less than twelve months to effect is unrealistic.

Based on the above we would therefore be requiring 9 – 12 months of preparation for plain packaging (post detailed regulations for the entire tobacco category have been received) and a further 12 month flush through period to ensure that we do not have write off materials or finished product unnecessarily. In total, timings in the vicinity of 20 - 24 months are realistic.

7.2 Costs are extensive and go beyond compliance requirements

It should be understood that the costs of complying with the Bill cannot be limited to the physical requirements needed to meet compliance.

In the event that a company could not meet the timelines and therefore found itself in an out of stock situation until such a time when it was able to comply and produce product into the market then these lost sales should also be factored into the cost of compliance.

Further, any period where the market cannot be supplied with legitimate product only serves to facilitate the already rapid expansion of the illegal tobacco market in Australia.

Also, these consequences will not only be felt by manufacturers, but also by consumers who will be forced to seek out illegal products as well as retailers many of whom rely substantially on tobacco sales for their livelihood.

⁴⁰ Page 26 Regulatory Impact Statement, Reduced Fire Risk Cigarettes.

7.3 Tobacco industry consultation is needed

In its present form, the Bill does not address a significant number of areas that we would need validated through regulations. Our need to understand what the requirements of the Bill will be for these areas means we would need on-going consultation that will enable us to work through these issues.

Examples of areas we would need to consult on include:

- Will the dimensions for cigarettes be mandated? If so, what are the specifications?
- What are the proposed design features for packaging for other tobacco products (OTP's) for example RYO and cigars?
- What will the new GHW's look like?
- When will they be made available?
- What will the rotation be?
- How many sets will there be?
- Will we be provided with image artwork folders and images for GHW's like we did for the GHW regime that came into effect in 2006? Past experience indicates that we need to liaise with the suppliers for these files and images.
- Can we still use GHW stickers rather than printing on packaging where printing is not a simple exercise (eg on cigar boxes)?
- What are the exact specifications for opening and dimensions of packs?
- What will be the grams per square metre (GSM) of the cardboard used on packs?
- What are the details of the Bill's 'Cost recovery' proposals?
- What is the exact pantone of "dark olive brown"?
- What are the exact specifications for pack elements and design features, including foils bundling?
- What will the regulations specify as the "manufacturer's details"?

It appears from the consultation paper that there will be further consultation in the latter part of 2011 on OTP's. If the Government's intention is to have a delayed introduction for OTP's but not for cigarettes it needs to consider the serious distortion that this will have on market dynamics. This is because some manufacturers have a more dominant market share of OTP's in the overall tobacco market. Put another way, a staggered introduction will provide an unfair Government mandated advantage for some companies over others. The public benefit in favouring one part of the tobacco market over the other part is not clear.

Ongoing consultation will help to minimise the impact of unintended consequences associated with the legislation

7.3.1 Consumer Information

Because of the health risks of smoking we support the provision of meaningful and accurate consumer information about our products. Similarly adult tobacco consumers need to be able to have access to information that allows them to choose their taste and strength they prefer.

A significant concern about plain packaging is that it restricts consumers' rights to have information regarding their product, and to be able to satisfy themselves that their product is legitimate.

Consumers should have a right to information about their product especially when all other lines of communication have been outlawed. Similarly, manufacturers need to be able to publish key product facts (such as provenance, taste characteristic, product change).

Also, the consumer hotline and its placement on the side of the packaging should be maintained. Failure to do so would so hamper the ability of consumers to lodge complaints related to any issues regarding their purchase as to effectively remove it altogether.

7.3.2 Product traceability

Maintaining traceability on the packaging is extremely important when considering duty of care requirements, for instance in situations that require a product review or product recall.

There are two traceability business practices employed by us presently and we want to be able continue using. These are 'Julian date codes' and application of best before dates. Julian date codes are embossed on the bottom of our packaging thereby allowing the identification of date of manufacture, time and shift or production. Further 'best before' date are applied on packaging either through printing on packaging or lasering or through the application of some other means also supports the traceability requirements.

7.3.3 Retailer navigation

There is no doubt that should the Bill become law, there will be a significant amount of consumer and retailer confusion at the point of sale given that all packaging will look almost identical.

A possible solution to minimise such confusion is to move the brand and variant details to the top of front face of the packaging and increase the font size.

Further the application of a small coloured circle / square that features the existing brand colour variant placed beside the brand variant name (i.e. on the top, bottom and front of pack) is necessary to assist retailers by providing support for staff identification of products when servicing customers or undertaking inventory management given the number of different variants per brand. Also, it will give consumers confidence that they have got what they have paid for.

7.3.4 Product Design

Cigarette development and manufacture is a complex process. Seemingly inconsequential changes can have quite significant unintended consequences for the

construct and design of tobacco products. BATA would be concerned if the Government were to mandate changes to cigarette design without a proper understanding of the issues involved. A flavour of the complexity of the manufacturing process can be gained from a quick review of Appendix A which details the differences of BATA's product portfolio solely in terms of dimensions.

The Government needs to understand the possible unintended consequences of all of the changes that it is proposing to mandate. For example, if the Government were to mandate that sticks were to be all-white so that there is no visible separation between a filter and cigarette rod, (clearly permissible under the language of the Bill), then it will create a situation where people, not knowing where the filter starts, will smoke into the cellulose acetate filter which gives rise to a number of issues including health impacts and fire risks.

It is also concerning that the Bill proposes to ban the branding of sticks. Such a move brings with it significant manufacturing complexity as the issue of mixing brands is a very serious concern. For example, when every stick is identical, the task of readily determining when the production of one product line stops and the other starts becomes increasingly more difficult.

When every single cigarette stick and packet looks the same (as a result of no marking on cigarette stick and similarity of packaging) then the risk that consumers will end up smoking different products than what they were expecting increases substantially. This would also lead to significant consumer confusion as consumers will have no assurance that they are getting the right product for the premium paid.

For these reasons and in spite of the prohibition of their use discussed in the Bill's Consultation Paper, inclusion of brand and variant name (eg. Winfield Blue) on the stick must be permitted.

7.3.5 Manufacturing

The Bill states that the product and packaging specifications will be mandated. Government needs to consider carefully the consequences of making changes to packaging and products without a full understanding of this process.

Even small mandated specification changes to cigarettes can lead to dimension issues on the packaging. In fact a change to the cigarette can result in changes to the packaging the product is housed in. This could mean that there will be a need to make modifications to the machinery that produces the cigarette.

Any changes made to existing base materials such as paper or board rigidity may not be compatible with current machinery. Significant problems such as the sourcing and testing of new material, reconfiguring and testing production runs (all of which would impact on BATA's ability to comply within the Government's proposed timeline) must be taken into consideration.

In the event that specifications mandated are outside of the permissible range of BATA's machines then we will not be able to produce products. We will be required to either

purchase change parts to modify our existing machinery or we will be required to purchase new machinery altogether.

Such changes would require the reconfiguration of the permissible range of BATA's machinery followed by machinery testing requirements and the training of our workers all of which will impact on our ability to comply with any proposed timings.

New change parts could cost millions of dollars and take 2 years or longer to finalise. This is because once orders have been placed with cigarette machine suppliers,

- those parts need to be manufactured,
- they then need to be delivered to our factories, they then need to be assembled, followed by the required runnability testing and
- training of employees on how to operate machinery prior to machine being fully operational.

Purchasing new machinery is even more complex, more time consuming and more costly. Such a process could not be started until the regulations under the Bill have been finalised (some time in 2012). This only underscores the sheer impossibility of the Government's proposed timeline.

Also in the absence of certainty and adequate lead times to allow for transition we will be forced to duplicate our manufacturing processes. This will have a significant impact on our business from both a cost and timing perspective.

In addition to the manufacturing complexities described above we will also be forced to modify our internal manufacturing processes, be required to invest in expensive technology (eg material scanning devices) and also introduce new training processes within our factories.

7.3.6 Distribution to Retail

Experience with Graphic Health Warnings and RFR has shown us that the implications do not cease at the point of manufacture but are carried all the way through the supply chain until the point of sale.

Below we have identified some examples of areas that will need to be reviewed as a result of the Bill. The list below is not exhaustive but designed to give the Government a view of issues the industry will need to work through during each stage of product being shipped from factory to point of sale:

- Once production has been completed, product is loaded onto pallets to ship stock from factory. In the event of mandated specifications exceeding variance ranges, then palletisation stacking will need to be reviewed to ensure that OH&S requirements continue to be met at logistics suppliers / customer dock delivery points.
- Logistic suppliers receiving plain packaging product will need to review their business order picking processes as different coloured packaging will no longer be available in a plain packaging environment. When every pack looks the

same, just consider how much more time will be needed to ensure the correct product has been picked for each delivery.

- In store / warehouse time to manage order drop offs, verify products and deal with product returns will also be increased as the assistance now provided by the different colours will no longer be available. More care and attention and therefore more time will be spent on ensuring what has been ordered is what has been delivered (given all packaging will be olive brown with limited brand family / variant recognition cues) between store owners / delivery docks and logistics suppliers delivering product .
- It is almost certain that new barcodes will be needed on all packaging as a result of the Bill. This will require back office modifications (to I.T. systems) as well as create administrative requirements flowing onto suppliers and customers. The reason being is that once new barcodes are obtained, application and testing protocols amongst all our customers that use product scanning systems will be needed.
- During the flush through period where product is being shipped to the retail environment, whether it be direct to store or warehouses, product slot issues will need to be worked through as will management of out of stocks and potential changes within merchandising units. By way of example it can take up to 3 hours per site to modify the product within the merchandising unitary of an outlet. Should specifications be mandated that are outside of existing tolerance ranges then these issues may be exacerbated.

Given that the uncertainty produced by the Bill will impact upon the consumer product design, manufacture and distribution to retail, BATA urges the Government to enter into detailed consultation to work through the myriad of issues referenced above and to establish realistic timelines for the implementation of plain packaging to ensure the Australian cigarette market is seamlessly supplied with legitimate product through any transition and implementation periods.

Appendix A

Cigarette Specification Dimensions:

Material Description	Cigarette Length	Cigarette Circumference	Filter Length
B&H 20/200 Classic RED	83.0	24.60	22.0
B&H 20/200 Fine GREY	83.0	24.60	27.0
B&H 20/200 Smooth HP DARK BLUE	83.0	24.60	27.0
B&H 20/200 Smooth SP DARK BLUE	83.0	24.60	27.0
B&H 25/200 Classic RED	83.0	24.60	22.0
B&H 25/200 Fine GREY	83.0	24.60	27.0
B&H 25/200 Rich PURPLE	83.0	24.60	22.0
B&H 25/200 Smooth DARK BLUE	83.0	24.60	27.0
B&H 25/200 Subtle SKY BLUE	83.0	24.60	27.0
B&H 25/200 Ultimate WHITE	83.0	24.60	27.0
B&H 25/250 Classic RED DF	83.0	24.60	22.0
B&H 25/250 Fine GREY DF	83.0	24.60	27.0
B&H 25/250 Rich PURPLE DF	83.0	24.60	22.0
B&H 25/250 Smooth DARK BLUE DF	83.0	24.60	27.0
B&H 25/250 Subtle SKY BLUE DF	83.0	24.60	27.0
B&H 25/250 Ultimate WHITE DF	83.0	24.60	27.0
B&H 2x25 Classic RED TP	83.0	24.60	22.0
B&H 2x25 Fine Grey TP	83.0	24.60	27.0
B&H 2x25 Smooth DARK BLUE TP	83.0	24.60	27.0
Cambridge 35/210 Full BLUE	83.0	24.60	22.0
Cambridge 35/210 Smooth GREY	83.0	24.60	22.0
Craven A 25/200 Filter	83.0	24.60	22.0
Craven A 25/200 Gold	83.0	24.60	22.0
Holiday 22/176 Blue	83.0	24.60	22.0
Holiday 22/176 Gold	83.0	24.60	22.0
Holiday 22/176 Grey	83.0	24.60	27.0
Holiday 22/176 Red	83.0	24.60	22.0
Holiday 25/200 Blue	83.0	24.60	22.0
Holiday 25/200 Cool Blast	83.0	24.60	27.0
Holiday 25/200 Cool Chill	83.0	24.60	27.0
Holiday 25/200 Cool Frost	83.0	24.60	27.0
Holiday 25/200 Gold	83.0	24.60	22.0
Holiday 25/200 Grey	83.0	24.60	27.0
Holiday 40/200 Cool Blast	83.0	24.60	27.0
Holiday 40/200 Cool Chill	83.0	24.60	27.0
Holiday 40/200 Cool Frost	83.0	24.60	27.0
Holiday Kings 20/200 Blue	83.0	24.60	22.0
Holiday Kings 20/200 Gold	83.0	24.60	22.0
Holiday Kings 20/200 Green	83.0	24.60	22.0

Holiday Kings 20/200 Grey	83.0	24.60	27.0
Holiday Kings 30/180 Blue	83.0	24.60	22.0
Holiday Kings 30/180 Gold	83.0	24.60	22.0
Holiday Kings 30/180 Green	83.0	24.60	22.0
Holiday Kings 30/180 Grey	83.0	24.60	27.0
Holiday Kings 30/180 Purple	83.0	24.60	27.0
Holiday Kings 30/180 Red	83.0	24.60	22.0
Holiday Kings 50/200 Blue	83.0	24.60	22.0
Holiday Kings 50/200 Gold	83.0	24.60	22.0
Holiday Kings 50/200 Green	83.0	24.60	22.0
Holiday Kings 50/200 Grey	83.0	24.60	27.0
Holiday Kings 50/200 Purple	83.0	24.60	27.0
Holiday Kings 50/200 Red	83.0	24.60	22.0
Kool 20/200 Filter Menthol	83.0	24.60	22.0
Pall Mall 20/200 Amber	83.0	24.60	27.0
Pall Mall 20/200 Blue	83.0	24.60	27.0
Pall Mall 20/200 Menthol	83.0	24.60	27.0
Pall Mall 20/200 Red	83.0	24.60	22.0
Pall Mall 25/200 Amber	83.0	24.60	27.0
Pall Mall 25/200 Blue	83.0	24.60	27.0
Pall Mall 25/200 Green	83.0	24.60	27.0
Pall Mall 25/200 Krystal Blast	83.0	24.60	27.0
Pall Mall 25/200 Krystal Storm	83.0	24.60	27.0
Pall Mall 25/200 Red	83.0	24.60	22.0
Pall Mall 25/250 Amber DF	83.0	24.60	27.0
Pall Mall 25/250 Blue DF	83.0	24.60	27.0
Pall Mall 25/250 Green DF	83.0	24.60	27.0
Pall Mall 25/250 Red DF	83.0	24.60	22.0
Pall Mall 26/208 Amber	83.0	24.60	27.0
Pall Mall 26/208 Blue	83.0	24.60	27.0
Pall Mall 26/208 Green	83.0	24.60	27.0
Pall Mall 26/208 Red	83.0	24.60	22.0
Pall Mall 2x25 Amber TP	83.0	24.60	27.0
Pall Mall 2x25 Blue TP	83.0	24.60	27.0
Pall Mall 2x25 Green TP	83.0	24.60	27.0
Pall Mall 2x25 Red TP	83.0	24.60	22.0
Pall Mall 30/180 Amber	83.0	24.60	27.0
Pall Mall 30/180 Blue	83.0	24.60	27.0
Pall Mall 30/180 Green	83.0	24.60	27.0
Pall Mall 30/180 Red	83.0	24.60	22.0

Pall Mall 40/200 Amber	83.0	24.60	27.0
Pall Mall 40/200 Blue	83.0	24.60	27.0
Pall Mall 40/200 Green	83.0	24.60	27.0
Pall Mall 40/200 Krystal Blast	83.0	24.60	27.0
Pall Mall 40/200 Krystal Storm	83.0	24.60	27.0
Pall Mall 40/200 Red	83.0	24.60	22.0
Pall Mall Slims 20/120 Amber	84.0	21.36	22.0
Pall Mall Slims 20/120 Blue	84.0	21.36	22.0
Pall Mall Slims 20/120 Green	84.0	21.36	22.0
Pall Mall Slims 20/120 Purple	84.0	21.36	22.0
Pall Mall Slims 20/120 Red	84.0	21.36	22.0
Pall Mall Slims 20/120 Silver	84.0	21.36	22.0
Rothmans 20/200 KS Filter	83.0	24.60	22.0
Rothmans 25/200 KS Filter	83.0	24.60	22.0
Stradbroke 40/200 Blue	83.0	24.60	22.0
Stradbroke 40/200 Cool Menthol	83.0	24.60	27.0
Stradbroke 40/200 Grey	83.0	24.60	27.0
Stradbroke 40/200 Menthol	83.0	24.60	27.0
Stradbroke 40/200 Orange	83.0	24.60	22.0
Stradbroke 40/200 Red	83.0	24.60	22.0
Stradbroke 40/200 Ultimate Menthol	83.0	24.60	27.0
Stradbroke 40/200 Yellow	83.0	24.60	27.0
Wills 35/210 Fine Flavour	83.0	24.60	27.0
Wills 35/210 Smooth Flavour	83.0	24.60	27.0
Winfield 20/200 Blue	83.0	24.60	22.0
Winfield 20/200 Gold	83.0	24.60	27.0
Winfield 20/200 Menthol	83.0	24.60	22.0
Winfield 20/200 Red	83.0	24.60	22.0
Winfield 20/200 Silver	83.0	24.60	27.0
Winfield 20/200 Sky Blue	83.0	24.60	27.0
Winfield 20/200 Ultimate	83.0	24.60	27.0
Winfield 25/200 Blue	83.0	24.60	22.0
Winfield 25/200 Gold	83.0	24.60	27.0
Winfield 25/200 Menthol	83.0	24.60	22.0
Winfield 25/200 Red	83.0	24.60	22.0
Winfield 25/200 Silver	83.0	24.60	27.0
Winfield 25/200 Sky Blue	83.0	24.60	27.0
Winfield 25/200 Ultimate	83.0	24.60	27.0

Winfield 25/250 Blue DF	83.0	24.60	22.0
Winfield 25/250 Gold DF	83.0	24.60	27.0
Winfield 25/250 Menthol DF	83.0	24.60	22.0
Winfield 25/250 Red DF	83.0	24.60	22.0
Winfield 25/250 Silver DF	83.0	24.60	27.0
Winfield 25/250 Sky Blue DF	83.0	24.60	27.0
Winfield 25/250 Ultimate DF	83.0	24.60	27.0
Winfield 2x25 Blue TP	83.0	24.60	22.0
Winfield 2x25 Gold TP	83.0	24.60	27.0
Winfield 2x25 Red TP	83.0	24.60	22.0
Winfield 2x25 Silver TP	83.0	24.60	27.0
Winfield 2x25 Sky Blue TP	83.0	24.60	27.0
Winfield Optimum 25/200 Charged	83.0	24.60	27.0
Winfield Optimum 25/200 Clear	83.0	24.60	27.0
Winfield Optimum 25/200 Night	83.0	24.60	27.0
Winfield Optimum 25/200 Sky	83.0	24.60	27.0
Winfield Optimum 2x25 Clear TP	83.0	24.60	27.0
Winfield Optimum 2x25 Night TP	83.0	24.60	27.0
Winfield Optimum 2x25 Sky TP	83.0	24.60	27.0
Dunhill 20/200 Distinct Blue I	83.0	24.60	27.0
Dunhill 20/200 Grey Refined I	83.0	24.60	27.0
Dunhill 20/200 Red Premier I	83.0	24.60	27.0
DUNHILL 25/200 DARK GREEN Chilled I	83.0	24.60	27.0
DUNHILL 25/200 BLUE Distinct I	83.0	24.60	27.0
DUNHILL 25/200 GREY Refined I	83.0	24.60	27.0
DUNHILL 25/200 LIGHT GREEN Frosted I	83.0	24.60	27.0
DUNHILL 25/200 RED Premier I	83.0	24.60	27.0
DUNHILL 25/200 WHITE Infinite I	83.0	24.60	27.0
Dunhill 25/250 Chilled DK GREEN DF I	83.0	24.60	27.0
Dunhill 25/250 Distinct BLUE DF I	83.0	24.60	27.0
Dunhill 25/250 Frosted LT GREEN DF I	83.0	24.60	27.0
Dunhill 25/250 Infinite WHITE DF I	83.0	24.60	27.0
Dunhill 25/250 Premier RED DF I	83.0	24.60	27.0
Dunhill 25/250 Refined GREY DF I	83.0	24.60	27.0
Dunhill 2x25 Distinct BLUE TP I	83.0	24.60	27.0
Dunhill 2x25 Infinite White TP I	83.0	24.60	27.0
Dunhill 2x25 Premier RED TP I	83.0	24.60	22.0
Dunhill 2x25 Refined GREY TP I	83.0	24.80	27.0

Dunhill Fine Cut 20/200 Burgundy I	94.0	23.40	27.0
Dunhill Fine Cut 20/200 Navy I	94.0	23.40	27.0
Dunhill Fine Cut 20/200 White I	94.0	23.40	27.0
Dunhill International 20/200 Blue I	94.0	24.60	27.0
Dunhill International 20/200 Red I	94.0	24.60	27.0
Dunhill International 20/200Menthol I	94.0	24.60	27.0
Dunhill Essence 20/200 Red I	83.0	16.96	27.0
Dunhill Essence 20/200 Gold I	83.0	16.96	27.0
Dunhill Top Leaf 20/200 I	94.0	24.60	27.0
Kent 20/200 Futura BLUE I	83.0	24.60	27.0
Kent 20/200 Infina WHITE I	83.0	24.60	27.0
Kent 20/200 Neo SILVER I	83.0	24.60	27.0
Kent M-Tek 20/200 Futura GREEN I	83.0	24.60	27.0
Kent M-Tek 20/200 Infina WHITE I	83.0	24.60	27.0
Kent M-Tek 20/200 Neo SILVER I	83.0	24.60	27.0
State Express 555 20/200 GOLD I	83.0	24.60	22.0
Vogue 20/200 Menthe I	99.0	16.96	30.0
Vogue 20/200 Bleue I	99.0	16.96	30.0

Packet Specification Dimensions:

PRODUCT NAME	PACKET				OUTER (Board or FOW)				SHIPPER				PALLET									
	WIDTH	HEIGHT	DEPTH	C.CONFIG.	WIDTH	HEIGHT	DEPTH	Packs Per Carton	WIDTH	HEIGHT	DEPTH	C.CONFIG.		With Pallet	Without Pallet	Width / Depth	VOL	CONFIG				
												Rows x Pack	Outlets Per Shipper					Shippers Per Layer	Layers Per Pallet	No of Shippers		
20/120 SLIMS	49	88	20	7*6*7	120	50	88	6 X 1	6	265	364	502	4 X 5 X 4	80	2324	2184	1170	3.18	8	6	48	
20/200 SOFT PACK	55	88	22	7*6*7	275	90	44	5 X 2	10	234	362	555	4 X 5 X 2	40	3036	2896	1170	4.16	6	8	48	
20/200 B&H WITH BOARD	55	88	22	7*6*7	281	90	46	5 X 2	10	240	454	282	5 X 5	25	2410	2270	1170	3.30	16	5	80	
20/200 SQUARE WITH FOW	55	88	22	7*6*7	281	90	46	5 X 2	10	240	450	282	5 X 5	25	2390	2250	1170	3.27	16	5	80	
20/200 BEVEL WITH FOW	55	87	20	7*6*7	281	90	46	5 X 2	10	243	446	282	5 X 5	25	2370	2230	1170	3.24	16	5	80	
22/176 SQUARE WITH FOW	71	88	23	8*9*5	90	73	190	8 X 1	8	272	368	570	3 X 3 X 5	45	2348	2208	1170	3.21	8	6	48	
25/200 B&H WITH BOARD	71	88	23	8*9*8	90	73	190	8 X 1	8	272	368	570	3 X 3 X 5	45	2348	2208	1170	3.21	8	6	48	
25/200 OPTIMUM WITH BOARD	71	88	23	8*9*8	90	73	190	8 X 1	8	272	368	570	3 X 3 X 5	45	2348	2208	1170	3.21	8	6	48	
25/200 BEVEL WITH FOW	71	87	23	8*9*8	90	73	190	8 X 1	8	272	368	570	3 X 3 X 5	45	2348	2208	1170	3.21	8	6	48	
25/250 SQUARE WITH BOARD	71	88	23	8*9*8	92	235	74	10 X 1	10	276	372	473	2 X 5 X 3	30	2000	1860	1170	2.74	8	5	40	
30/180 SQUARE WITH FOW	66	88	30	8*7*8*7	89	60	196	6 X 1	6	300.5	447	397	5 X 5 X 2	50	2375	2235	1170	3.25	8	5	40	
30/180 BEVEL WITH FOW	66	87	30	8*7*8*7	89	60	196	6 X 1	6	300	447	397	5 X 5 X 2	50	2375	2235	1170	3.25	8	5	40	
35/210 SQUARE WITH FOW	72	88	31	9*8*9*9	90	66	174	6 X 1	6	225	361	375	2 X 4 X 3	24	2305	2166	1170	3.16	15	6	90	
35/210 SQUARE WITH FOW	72	88	31	9*8*9*9	90	78	120	6 X 1	6	225	361	375	2 X 4 X 3	24	2306	2166	1170	3.16	15	6	90	
40/200 SQUARE WITH FOW	69	88	37	8*8*8*8*8*	89	70	182	5 X 1	5	281	362	552	3 X 4 X 4	40	2312	2172	1170	3.16	8	6	48	
50/200 SQUARE WITH FOW	80	88	40	10*10*10*10*10	89	92	164	4 X 1	4	246	359	331	12 X 2	24	2294	2154	1170	3.14	13	6	78	
IMPORTED																						
30/200 DUNHILL WALERUS	56	88	22	7*6*7	282	47	89	5 X 2	10	240	454	282	5 X 5	25	2410	2270	1170	3.30	16	5	80	
30/200 DUNHILL WALERUS	67	88	24	7*2*7*2*7	89	201	68	8 X 1 X 1	8	283	424	360	2 X 3 X 5	30	3632	3392	1170	4.83	8	8	64	
PACK RAT																						
30/200 SQUARE WITH BOARD	55.1	85.2	22.4	7*6*7	282	67	47	5 X 2	10	243	283	436	5 X 5	25								
30/200 SQUARE WITH POLY	55.1	85.2	22.4	7*6*7	283	68	48	5 X 2	10	243	283	436	5 X 5	25								