

PHILIP MORRIS
INTERNATIONAL INC.

800 WESTCHESTER AVENUE, RYE BROOK, N.Y. 10573-1301 • (914) 328-8000

WILLIAM H. WEBB
PRESIDENT AND CHIEF EXECUTIVE OFFICER

May 5, 1994

The Standing Committee on Health
House of Commons
Ottawa, Ontario K1A 6A6
Canada

Dear Sirs:

Philip Morris International Inc. appreciates the opportunity to be heard on the important issue of plain packaging being considered by the Standing Committee on Health. We wish to make clear our opposition to any form of cigarette plain packaging. Any resulting legislation would be an unprecedented and unjustified taking of our valuable trademarks and related investments in Canada for which we would pursue our legal remedies, including claims for compensation of hundreds of millions of dollars. I have attached hereto for your reference (i) a copy of the legal opinion of Carla A. Hills, who as United States Trade Representative, negotiated the North American Free Trade Agreement ("NAFTA") and the recently signed intellectual property provisions of the General Agreement on Tariffs and Trade ("GATT"), and (ii) the Annual Report of Philip Morris Companies Inc. for 1993.

By way of background, Philip Morris is the world's largest consumer goods manufacturer, employing over 170,000 people worldwide. The attached Annual Report illustrates the scope and strength of Philip Morris' trademarks worldwide. Its current operations in Canada consist of Kraft General Foods Canada, the largest Canadian packaged food manufacturer and distributor, a 20% interest in Molson breweries and a 40% interest in Rothmans Benson & Hedges Inc. ("RBH"). Kraft General Foods Canada employs over 4,700 Canadians, has 11 manufacturing facilities across the country, and has over 100 major brands in the market.

Philip Morris obtained its interest in RBH through the 1986 amalgamation of its 100% owned Benson & Hedges (Canada) Inc. subsidiary with Rothmans of Pall Mall Limited. Under the terms of the amalgamation, PM contributed the Benson & Hedges trademark and other valuable brand trademarks to RBH and received 40% stock equity in the company, as well as proportionate representation on the Board of Directors and other fundamental rights. In addition to the trademarks owned by RBH, Philip Morris owns directly in Canada some of its most valuable cigarette trademarks, including Merit, Parliament, Virginia Slims and Basic.

The proposed plain packaging legislation would deprive RBH of its most valuable assets. The value of fixed assets of cigarette companies pales in comparison to the value of their trademark rights. Cigarette companies cultivate their trademarks, both tradenames and tradedress (colors, logos, package design), to establish

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distinctive brand identities, which enable consumers to differentiate one product from another and identify with an individual product. These efforts at differentiation are not intended to attract new smokers, but are intended to differentiate our products from those of our competitors and offer consumers a choice. The brand identity is established by the combination of the word and design trademarks. If either of these trademarks is removed from the packaging, the brand identity and consumer appeal will be fundamentally impaired. The proposed legislation would constitute a clear taking of these valuable assets.

Historically, the Canadian cigarette market has been separate from the U.S. market, with Canadians smoking Canadian made cigarettes and Americans smoking U.S. made cigarettes. The fundamental idea underlying NAFTA is to create a single North American market in which goods are marketed without restriction as to national origin. In time we would hope to develop our U.S. brands in the Canadian market. However, plain packaging would make it virtually impossible to establish the brand recognition among Canadian consumers necessary to penetrate the Canadian market. No similar obstacle exists for the Canadian tobacco companies to expand their brands into the U.S. portion of the "unified" NAFTA market. This is not permissible under NAFTA (or GATT).

Any Canadian plain packaging proposal would be unprecedented. No other country in the world has such legislation, even though virtually every country has some form of tobacco regulation. As the owner of the world's most valuable trademarks, Philip Morris vigorously defends its trademarks throughout the world from any sort of infringement. In this instance, the proposed action by the Canadian Government would be a violation of NAFTA as well as GATT. The attached opinion of Carla Hills makes clear that any plain packaging proposal would violate the NAFTA and GATT prohibitions against government actions which impose special requirements that encumber the use of a trademark and reduce its functions as an indication of source. These intellectual property protections were negotiated under her supervision as United States Trade Representative. Her opinion further indicates that Philip Morris would have the right immediately to seek compensation through a private action for the expropriation of its valuable assets, which we value in the hundreds of millions of U.S. dollars.

On a broader level, with the increasing globalization of commerce, Philip Morris is making significant worldwide investments in its various food, beer and tobacco operations. If Canada adopts legislation in total disregard of internationally recognized trademark rights, this would be a significant consideration in any new investment decisions. Although the current proposal is directed at tobacco products, we and each other international consumer goods company which has developed valuable trademarks associated with consumer products that the Government might find objectionable, e.g. high fat and cholesterol foods, sodas, candy bars, beer and other alcoholic beverages, will be reluctant to allow its trademarks to be subject to a Government which would expropriate these valuable property rights in disregard of its international treaty obligations.

The proposed plain packaging is all the more troubling given the complete lack of

credible evidence that would support any public purpose for the proposal. In these hearings the Canadian Health Department has acknowledged that it does not know of any proof that plain packaging will reduce tobacco consumption. The Health Department indicated that it is conducting a study of its own which will not be complete until December, long after the Committee's deadline to report. As the submission by the Canadian Tobacco Manufacturers Council to the Committee clearly indicates, the only results that can be predicted with confidence to result from plain packaging would be an increase in smuggling and counterfeit manufacture, and consumer confusion over product source and quality. Moreover, the industry is still in the process of changing its packaging to comply with the Tobacco Products Control Act at a cost of approximately \$20 million for Phase I and \$30 million for Phase II. The effectiveness of the Control Act's requirements has yet to be tested, which makes it all the more inadvisable for the Canadian Government to adopt even more restrictive legislation which is in violation of international trade, will impose significant financial penalties on the Canadian Government and will dissuade other consumer packaged goods companies from investing in Canada.

For the above reasons, we would request that the Standing Committee on Health refrain from making any proposal for plain packaging legislation.

Very truly yours,

William H. Kelly