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Jakarta, 13 March 2018

Our Reference: 674 /BSN/D3-d3/03/2018

To: Singapore Ministry of Health
tobacco_control@moh.gov.sg

Subject: Indonesia Comment Related to Proposed Tobacco-Control Measures in Singapore

Dear Sir/Madam, In regards with public consultation on Proposed Tobacco-Control Measures in Singapore, Indonesia would like to submit comments for your further consideration (as attached).

Kindly acknowledge receipt of this letter.

Thank you.
Best Regards,

Konny Sagala
Head of Centre for Cooperation on Standardization
The National Standardization of Indonesia (BSN)
TBT Notification and Enquiry Point
Email: tbt.indonesia@gmail.com or tbt.indonesia@bsn.go.id

CC to:

1. TBT WTO Singapore Enquiry Point
2. Deputy DG for Research and Cooperation on Standardization, BSN
3. Ambassador/ Permanent Representative of the Republic Indonesia in Singapore
4. Deputy Permanent Representative II / Ambassador of The Republic Indonesia in Geneva, Switzerland
5. Director of Multilateral Cooperation, Ministry of Trade
6. Directorate of Beverages, Tobacco Products and Refresher Material Industry, Ministry of Industry

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Indonesia Comment Related to Proposed Tobacco-Control Measures in Singapore

We are informed that on 5 February 2018, Singapore's Ministry of Health (MoH) announced its "Public Consultation on Standardized Packaging and Enlarged Graphic Health Warnings for Tobacco Products".

As described on the MoH's release on 5 February 2018, titled as "Public Consultation Paper on Proposed Tobacco-Control Measures in Singapore", we have respectfully understood the Singaporean national policy "The Government is committed to reducing the serious harm that smoking causes to individual Singaporeans and to the nation's public health". Basically, Indonesia supports efforts to improve public health through the control of sales of cigarettes and other tobacco products as well as health warnings to consumers about harms of smoking. However, we wish to reiterate concerns about the proposal, which we believe has wide-ranging repercussions globally.

1. **Ambiguous Results of Standardized Packaging in Australia**
   - Australia is the first country in the world to introduce the standardized packaging measure. While on the mentioned consultation paper it is described that Australia succeeded in its standardized packaging of tobacco products, the official data shows a different angle as well;
     - First, the recent official data of Australia[i] shows that the long-term decline in smoking prevalence, which generally happens in countries such as of OECD, seems unlikely to be impacted by the introduction of standardized packaging in Australia.
     - In the Post–implementation Review[ii], it is mentioned, "tobacco plain packaging is achieving its aim of improving public health in Australia", while the government recognizes that it was impossible to analyze the full effect of its standardized packaging since other measures such as excise increases had come into effect in piles.
   - Instead, some data show the negative impact on illicit trade and market dynamics;
     - The level of illicit trade has grown to 13.9% since standardized packaging was introduced in Australia, according to a KPMG's survey[iii].
     - Standardized packaging causes down-trading among the product's prices in Australia, reducing the value of premium brands and the margins for supply chain over the last few years[iv].
   - With these ambiguous results as well, we believe that standardized packaging requirements are not narrowly tailored to meet its legitimate objective, which is required to fulfil in a manner that is not more restrictive than necessary, as stated in the WTO's Agreement on Technical Barriers to Trade ("TBT Agreement").

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2. Accountability on Protection of Trademarks

- As Singapore have fully understood, trademarks are a critical property right for business players, which invest heavily and over years, in order to develop their trademarked brands and their reputations for their high-quality goods or services. Therefore, the rights are protected by national laws and the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement").
- In general, in case that an authority restricted intellectual property rights, there should be necessary accountability by themselves, otherwise such restrictive effects on international trade and intellectual property rights cannot be justified. Unfortunately, we cannot find any satisfactory descriptions about intellectual property rights and international trade on the consultation paper. The paper simply mentions "the SP proposal[v] would be consistent with Singapore's international obligations". In our understanding, there is no critical evidence that "trademarks themselves are harmful to public health" so far.
- Given the important role which trademarks play as valuable intellectual property, introducing standardize packaging could undermine Singapore's efforts to position itself as a global leader on IP, as well as it can be inconsistent with TRIPS Agreement and TBT Agreement.

3. Global Trends on Proposal of Standardized Packaging

- As described before, the four countries (including Indonesia) are challenging the Australian legislation at WTO. Malawi, Nicaragua, Zambia and Zimbabwe consistently raises concerns on Australia's measure at meetings of the WTO[vi]. Denmark and Switzerland questioned the introduction, and Italy opposed the measure as it breaches the IP rights. Germany stated its clear position on not introducing it[vii]. The Swedish government got a strong opposition from the law community on introducing the measure[viii]. Spain, Portugal, Bulgaria and Czech Republic states their opinions to against such proposals by other EU countries[ix].
- The Netherlands[x], Taiwan[xi], Brazil[xii] and Belgium[xiii] earlier considered plain packaging. However they are exploring less restrictive regulatory measures.
- Even the French health minister[xiv] acknowledges the failure of plain packaging in changing smoking behavior.

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4. Conclusion

- We respectfully hope our views on the WTO dispute will be taken into consideration by Singapore. Furthermore, as a participant of Indonesian challenge at WTO, at minimum, we would much appreciate if Singapore waits for any consideration of standardized packaging until the final outcome, inclusive of any appeal to the WTO Appellate Body, of the WTO dispute.
- As you may be aware, Singapore and Indonesia are irreplaceable partners for each other, the international trade between the two nations are valued totally USD 25,794 million. Among these trade, the export value of tobacco from Indonesia to Singapore has reached USD 100 million[xv], which may be impacted by standardized packaging. We respectfully hope Singapore consider this fact and the impact the proposal may have on the trade.
- Indonesia encourages ASEAN members to further enhance regional economic integration since ASEAN is the foundation of Indonesian economic. Indonesia would be grateful for opportunities to work constructively and to seek the regulatory harmonization with Singapore as its closest neighbor and a fellow ASEAN country, in order to mutual sound development of Singapore and Indonesia.

Yours Sincerely

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References

[i] Please refer to the National Drug Strategy Household Survey (NDSHS), page 16 at: https://www.aihw.gov.au/reports/illicit-use-of-drugs/ndshs-2016-key-findings/contents/summary.

[ii] Please refer to the Post-Implementation Review, Tobacco Plain Packaging, 2016 as well as the survey above, available at: http://ris.dpmc.gov.au/2016/02/26/tobacco-plain-packaging/.

[iii] Please refer to KPMG 2016 Full-Year Report "Illicit Tobacco in Australia", March 2017, page 6. Available at: https://home.kpmg.com/content/dam/kpmg/uk/pdf/2017/04/Australia-illict-tobacco-Report-2016.pdf. KPMG has been recognized by Australian public experts as "probably the most appropriate way of collecting that type of information and tracking it over time" (Dr. Tim Beard, the Australian Institute of Health and Welfare (AIHW), Parliamentary Joint Committee on Law Enforcement, illicit tobacco, 4 March 2016, page 33.)

[iv] Please refer to KPMG 2016 Full Year Report, page 11.

[v] The SP Proposal means "the Government's proposal for the introduction of standardized packaging together with enlarged graphic health warnings".

[vi] Please refer via: www.wto.org.

[vii] Please refer more for Denmark at http://www.ft.dk/samling/20161/spoergsmaal/s56/index.htm#tale224; for Switzerland at: https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20143993 ; for Italy at http://www.eunews.it/2015/09/08/governo-pacchetto-di-sigarette-generico-danneggia-made-italy-e-qualita/41274 and for Germany at http://www.genios.de/fachzeitschriften/artikel/LMZ/20140718/keine-plain-packs-in-deutschland-sc/20140718272159.html.

[viii] Please refer at: http://www.regeringen.se/pressmeddelanden/2017/06/regeringen-foreslar-andringar-i-mediegrundlagarna/.

[ix] Please refer at: http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/tris/index_en.htm.

[x] Please refer at: http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2017&num=339.

[xi] Please refer at: http://www.taipeitimes.com/News/taiwan/archives/2017/10/08/2003679946.

[xii] Please refer at: http://istoe.com.br/fumo-ministro-evita-embalagem-padrao/

[xiii] Please refer at: http://www.maggiedeblock.be/2016/11/07/stand-van-zaken-antitabaksmaatregelen-in-parlementaire-commissie-volksgezondheid/

[xiv] The French health minister, Agnès Buzyn, acknowledged that plain packaging: "does not lead smokers to stop smoking" and that it did not contribute to reducing tobacco sales in France. Available at: http://www.assemblee-nationale.fr/15/cri/2017-2018/20180075.asp

[xv] All of these figures is referred at https://comtrade.un.org/; and https://www.iesingapore.gov.sg/