Submission to the Public Consultation on Proposed Tobacco Control Measures in Singapore

15 March 2018

Japan Tobacco International, a member of the Japan Tobacco Group of Companies, is a leading international tobacco company with operations in more than 120 countries. It is the global owner of both Winston, the number two cigarette brand in the world, and Camel, outside the USA, and has the largest share in sales for both brands. Other global brands include Mevius and LD. With its internationally recognized brand Logic, JTI is also a major player in the e-cigarette market and has, since 2011, been present in the heated tobacco category with Ploom. Headquartered in Geneva, Switzerland, JTI employs close to 40,000 people and was awarded Global Top Employer for four consecutive years. For more information, visit www.jti.com. JT International Tobacco Services (Singapore) Pte Ltd is in the business of importing and distributing tobacco products locally in Singapore and markets Winston, Camel, Mevius and LD, amongst other brands.

1. INTRODUCTION

1.1 JT International Tobacco Services (Singapore) Pte Ltd ***(JTI)*** welcomes the opportunity to respond to the Public Consultation on Proposed Tobacco Control Measures in Singapore ***(the Consultation)***, being considered by the Ministry of Health ***(MoH)***.

1.2 In line with the internationally-accepted principles of Better Regulation of the Organization for Economic Co-operation and Development ***(OECD)***[1] that we support, JTI remains open and transparent in our dialogue with government authorities and offers more rational, proportionate and targeted alternatives where we believe proposed regulations are flawed and are based on speculative evidence.

1.3 JTI's positions on standardised packaging and larger health warnings have been detailed in our 23 March 2016 Response to the Public Consultation on Potential Tobacco Control Policies in Singapore ***(the 2016 Response)***.

1.4 In this document ***(the Submission)***, JTI will focus on the issues that are raised in the context of the Standardised Packaging Proposal ***(the SP Proposal***) and the Consultation Document.

Outline of the Submission

1.5 The Submission addresses the following:

Part 2: Executive summary

***Part 3*:** The flawed rationale for the SP Proposal

***Part 4*:** The flawed evidence to justify the SP Proposal

Part 5: Other considerations

Part 6: There are better alternatives to standardised packaging

Part 7: Questions for consultation

1.6 JTI does not agree with many of the assertions made in the Consultation Document and the materials accompanying it. The fact that JTI does not respond to all of them in the Submission should not be treated as an acceptance of these other assertions.

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[1] JTI is committed to the OECD Better Regulation principles. As a member of the Asia-Pacific Economic Cooperation (APEC), Singapore shares core principles in implementing regulatory reform similar to those held by the OECD, including transparency, non-discrimination and accountability. The APEC Principles also support *"open and competitive markets"* as key drivers of economic efficiency and consumer welfare. See APEC-OECD Integrated Checklist on Regulatory Reform, 2005. See also APEC Good Practice Guide on Public Sector Governance, 2011.

2. EXECUTIVE SUMMARY

2.1 ***"We are taking steps towards standardising tobacco packaging. Australia, France, and the UK have all implemented standardised packaging. We have closely studied the experience of these countries, and see significant value in moving in this direction……".*** The MoH made this statement in March 2017,[2] a year after the Public Consultation on Potential Tobacco Control Policies ended.

2.2 Despite the announcement that a 2nd public consultation would be held to seek additional and more detailed views, this statement appears to indicate that a decision to pursue standardised packaging in Singapore had already been taken.

2.3 Indeed, this 2nd public consultation is no more than an attempt to validate views already held and a consideration of one side, not both sides, of the argument to justify the introduction of a flawed policy.

- The Consultation heavily relies on evidence created by full-time supporters of standardised packaging and takes the World Health Organization's ***(WHO)*** 2016 publication *"Plain Packaging of Tobacco Products: Evidence Design and Implementation"* ***(the WHO Publication)***[3] as a doctrine to determine the "objectives" of the SP Proposal and design the Consultation Document.
- Contrary to the MoH's claim, there has been **(intentionally?)** no consideration of the unequivocal official data emerging from Australia, the UK and France that demonstrate the failure of standardised packaging and larger health warnings.
- Likewise, no attempt has been made to evaluate Singapore's existing and future tobacco control measures and to conduct a cost-benefit analysis of the SP Proposal, which significantly impairs the ability of the MoH to scrutinise the evidence and the impact of these measures.
- Instead, the MoH has commissioned a series of local studies, the findings of which are more a "wish list" created by a handful of individuals. This seriously questions the independence of the local analysis put forward in support of the SP Proposal.
- The fact that the MoH significantly underestimates the negative consequences of standardised packaging also indicates that the Consultation is simply a box ticking exercise and one of the means to mask the inevitable failure of the pre-determined policy.

2.4 **The MoH's *"multi-pronged approach"* is no more than a continued layering of regulations, which purports to demonstrate that Singapore remains at the forefront on tobacco control.** To be seen to be acting seems more important than taking effective measures.

2.5 ***"We know that plain packaging does not lead smokers to stop smoking".*** These words of the French Health Minister, publicly acknowledging the failure of the measure that has been in place in France for more than a year, confirm what JTI has stated from the outset.[4]

2.6 This and other serious concerns should make the Singapore Government think twice and focus on alternative solutions instead.

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[2] Available at: https://www.moh.gov.sg/content/moh_web/home/pressRoom/speeches_d/2017/speech-by-senior-minister-of-state-for-health--dr-amy-khor-at-th.html.

[3] Available at: http://apps.who.int/iris/bitstream/10665/207478/1/9789241565226_eng.pdf?ua=1.

[4] See French Health Minister Agnès Buzyn's November 2017 statement during a parliamentary debate on the Social Security Finance Bill and in response to a Member of Parliament, who questioned her on the efficacy of standardised packaging. Available (in French) at: http://www.assemblee-nationale.fr/15/cri/2017-2018/20180075.asp.

3. THE FLAWED RATIONALE FOR THE SP PROPOSAL

Continued enhancement or continued layering?

3.1 The Consultation acknowledges that tobacco products are highly regulated in Singapore with a wide range of measures introduced in recent years. While some of these measures are still to be implemented (e.g. the progressive increase in the minimum legal age for purchasing tobacco products to 21 years[5]), the MoH is already rushing to introduce another layer of regulation, with no attempt made to evaluate the effectiveness of existing measures.

3.2 It is disappointing that the MoH's so-called *"multi-pronged approach"* is no more than a continued layering of regulations, which purports to demonstrate to the WHO that Singapore remains at the forefront on tobacco control. However, it appears that it is more important to be seen to be doing something, than taking effective measures.

3.3 In its February 2018 press release the MoH highlighted that: *"the Standardised Packaging Proposal would, alongside other existing and future tobacco control measures, operate to contribute towards meeting the Government's obligations under the Framework Convention on Tobacco Control…".*[6]

3.4 Similarly, the Consultation Document echoes: *"Pursuant to our commitment to implement our obligations under the FCTC effectively, and in line with the FCTC Guidelines, the Government must give and is giving strong consideration to the implementation of standardised packaging".*[7]

3.5 The MoH must be well aware that standardised packaging is not a part of the obligations set by the Framework Convention on Tobacco Control ***(FCTC)***. The FCTC guidelines that recommend its consideration constitute a non-binding instrument, which aims to assist Parties in addressing specific issues at national or international level without imposing an obligation. Therefore, the rationale for the SP Proposal under the guise of *"meeting the FCTC obligations"* is questionable at best.

3.6 To reinforce the significance of the guidelines and on the basis of the WHO Publication,[8] the Consultation Document also claims that the FCTC guidelines *"promote best practices and standards among governments in fulfilling their FCTC obligations".*[9] This is wrong as the guidelines for implementation of Articles 11 and 13 that are referred to in the Consultation Document to justify the SP Proposal, and despite claims to the contrary, cannot be based on *"best practices".* **They were adopted in 2008, when no single country had implemented standardised packaging.**

3.7 The Consultation also claims that the SP Proposal would eliminate the advertising and promotional effects of tobacco packaging in Singapore.[10] JTI addresses this allegation, in the context of the "objectives" and evidence review.

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5 See definition of "under-aged person" pursuant to section 2(1) of the Tobacco (Control of Advertisements and Sale) Act (Cap 309).See also: https://www.channelnewsasia.com/news/singapore/legal-age-for-smoking-to-be-gradually-raised-from-18-to-21-9383644.

6 See at: https://www.moh.gov.sg/content/moh_web/home/pressRoom/pressRoomItemRelease/2018/public-consultation-on-standardised-packaging-and-enlarged-graph.html.

7 Section 2.4 of the Consultation Document, p. 10. Available at: https://www.moh.gov.sg/content/dam/moh_web/e-Consultation/PublicConsult_StandardisedPackaging_Tobacco/2018-02-05%20Public%20Consultation%20Paper%20-%20SP.pdf.

8 See at: http://apps.who.int/iris/bitstream/10665/207478/1/9789241565226_eng.pdf?ua=1.

9 Section 2.4 of the Consultation Document, p. 9.

10 Section 2.3 of the Consultation Document, p. 8.

Policy objectives or a means to mask inevitable failure?

3.8 The MoH follows Australia's example in setting so-called objectives, which only represent purported "intermediate outcomes" for the regulatory proposal, to:[11]

- *"Reduce the attractiveness of tobacco products;*
- *Eliminate the effects of tobacco packaging as a form of advertising and promotion;*
- *Reduce the ability of tobacco packaging to mislead about harmful effects of smoking (including on the relative harmful effects between products);*
- *Increase the noticeability and effectiveness of graphic health warnings; and*
- *Better inform smokers and non-smokers of the risks associated with tobacco use".*

3.9 Fully aware that there is no credible evidence that standardised packaging has any effect on actual smoking behaviour, the MoH, like its Australian counterparts, has chosen these intermediate objectives to justify its SP Proposal.

3.10 Indeed, having struggled to justify its standardised packaging policy, Australia later abandoned the objectives originally set by the Tobacco Plain Packaging Act 2011 to "design" a successful outcome for its Post-Implementation Review ***(PIR)*** in order to present the policy as a success.[12]

3.11 It is therefore not surprising that the MoH's preliminary assessment is merely a replication of the Australian PIR's conclusions: *"the Standardised Packaging Proposal would, alongside other existing and future tobacco control measures,..., promote public health through the reduction of the prevalence of smoking in Singapore …".*[13]

3.12 Putting aside these efforts to move the "goalposts" (i.e. to present the SP Proposal as a part of the *"multi-pronged"* approach with a long-term outcome), the stated "objectives" alone cannot justify a ban on branding and larger health warnings. They are insufficiently articulated, not capable of changing smoking behaviour and unnecessarily duplicative of existing regulations.

- Reducing the *"attractiveness"* of tobacco products is not a legitimate self-standing justification for introducing the SP Proposal, as finding an aspect of a product's packaging attractive is not the same as finding the actual product (and its use) attractive. Indeed, standardised packaging may have made tobacco packaging less attractive in Australia, but this does not mean that alone or in combination with other measures it has changed smoking behaviour and/or has led to a reduction in smoking prevalence.
- Branded packaging does not constitute a form of promotional advertising. There are significant differences between the advertising of products and the labelling and design of the pack itself:
    - In marketing theory, packaging is considered as an aspect of the product itself with both functional and informative roles, whereas advertising is a pure promotional tool.[14] This amplifies the differences between branded tobacco packaging and traditional advertising.
    - The FCTC deals separately with the advertising and promotion of tobacco products (Article 13) and the labelling and packaging (Article 11)[15]

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[11] Section 3.1 of the Consultation Document, p. 12-13. See also Section 1.2 of the WHO Publication, p. 8.
[12] See Part 4 of the Submission and JTI's 2016 Response.
[13] The MoH's press release; Section 3.2 of the Consultation Document, p. 13.
[14] See Kotler and Keller, *Marketing Management (14th edition),* 2012, p.368.
[15] For example, Norway's Tobacco Act makes a similar distinction between advertising and branded packaging, since the former is already prohibited.

notwithstanding the efforts of the WHO and tobacco control advocates to conflate branded packaging and advertising.[16]

- Tobacco advertising and promotion is already prohibited in Singapore.[17] Even the ability of branded packaging to communicate and reaffirm information about the products to existing smokers in Singapore has been reduced by a number of regulatory restrictions: the branded area of tobacco packaging is limited by the 50% graphic health warnings,[18] and this is visible only to those who have purchased a pack of cigarettes due to the ban on pack display at point of sale.[19]

It would be, therefore, wrong to introduce a ban on branding on the basis of an exaggerated definition of "advertising" and evidence unrelated to tobacco packaging itself.

- The tobacco products sold by JTI in Singapore do not mislead consumers. In fact, the ban on misleading terms introduced in 2013 prevents the use of misleading packaging for tobacco products.[20] JTI assumes that, with the introduction of such regulation in 2013, the MoH considered that any perception that Singaporean smokers are *"misled about the harmful effects of smoking"* had been appropriately addressed. It is, therefore, not acceptable to introduce a disproportionate ban on branding under the guise of *"reducing the ability of tobacco packaging to mislead about harmful effects of smoking".*

- "Noticing" something, particularly something one knows already - such as a health warning on a tobacco product - does not make it more effective and translate into a change in actual smoking behaviour. **To determine whether standardised packaging works by increasing the effectiveness of health warnings, it would be necessary to demonstrate convincingly not only that it had increased the "visibility", "noticeability" or "prominence" of health warnings, but that it had actually resulted in changes to smoking behaviour** (such as reducing smoking uptake by minors and/or reducing consumption by existing smokers). This was not the case in Australia, as is also confirmed in the Consultation Document: *"Apart from increased awareness of bladder cancer, new requirements for packaging and health warnings did not increase adolescents' cognitive processing of warning information"*.[21] It is notable that the Consultation classifies this analysis among reports and studies that *"do not outweigh the preponderance of evidence supporting*

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16 See for example, the WHO Publication, p. 6.

17 Section 3(1) of the Tobacco (Control of Advertisements and Sale) Act (Cap 309) prohibits any person from *"[publishing] or [causing] to be published, or [taking] part in the publication, in Singapore, of any advertisement (a) containing any express or implied inducement, suggestion or request to purchase or to use any tobacco product or imitation tobacco product; (b) providing a facility for a person accessing the advertisement on the Internet to purchase any tobacco product or imitation tobacco product; (c) relating to any tobacco product or imitation tobacco product or its use in terms which are calculated, expressly or impliedly, to lead to, induce, urge, promote or encourage the use of the tobacco product or imitation tobacco product or (d) mentioning, illustrating or depicting the name or trade name of any person associated or concerned with the manufacture, distribution or marketing of any tobacco product or imitation tobacco product, a brand name of, or trademark relating to, any tobacco product or imitation tobacco product, or any pictorial device commonly associated with a brand name of, or trade mark relating to, any tobacco product or imitation tobacco product."*

18 For the labelling requirements that apply to smoked tobacco products, see Regulation 4(2)(c) of the Tobacco (Control of Advertisements and Sale) (Labelling) Regulations 2012. For small retail packages of smoked tobacco products, see Regulation 5(2)(c) of the Tobacco (Control of Advertisements and Sale) (Labelling) Regulations 2012. For smokeless tobacco products, see Regulation 6(2)(c) of the Tobacco (Control of Advertisements and Sale) (Labelling) Regulations 2012.

19 Section 12A(1) of the Tobacco (Control of Advertisements and Sale) Act (Cap 309) prohibits tobacco retailers from displaying any tobacco product on the premises and must ensure that no customer or member of the public can see the tobacco products from inside or outside the premises.

20 See Regulation 10 of the Tobacco (Control of Advertisements and Sale) (Labelling) Regulations 2012.

21 See Footnote 65 in the Consultation Document: White V, Williams T, Faulkner A, Wakefield M. *"Do larger graphic health warnings on standardised cigarette packs increase adolescents' cognitive processing of consumer health information and beliefs about smoking-related harms?",* Tobacco Control. 2015; 24:ii50–ii57. Available via https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4401340/.

the conclusion that standardised packaging will meet its stated objectives".[22] Yet, the Consultation relies on the findings of the same researcher on the same issue to justify its SP proposal. [23]

- Singapore has one of the lowest smoking rates in the world,[24] and there is a high level of awareness of the health risks of smoking amongst today's public.[25] There are certainly more efficient and less disproportionate means to better inform smokers and non-smokers of the risks associated with tobacco use than those that would deprive legitimate businesses of the value of their brands, impede investments and create ample opportunities for criminal activities in Singapore.

3.13 The ill-defined rationale and objectives jeopardise the credibility of the SP Proposal and suggest that **the Consultation is merely a box ticking exercise and an attempt to mask the inevitable failure of the pre-determined policy.**

Packaging specifications

3.14 The SP Proposal replicates the Australian requirements to standardise tobacco packaging. However, the standardisation of the shape, appearance and the colour[26] of tobacco packaging along with the introduction of larger health warnings have not led to a reduction of smoking prevalence in Australia. In fact, the factual evidence shows that the same number of **smokers continues to buy cigarettes even though they come in "unattractive" packs with more *"noticeable"* health warnings.**[27]

3.15 Likewise, there is no justification to standardise colours on the pack on the basis that the use of certain colours may give the impression that the tobacco product is less harmful than another.[28] By standardising colours and packaging, and removing branding elements from the pack, the Government merely facilitates the production of counterfeit packaging.

4. THE FLAWED EVIDENCE TO JUSTIFY THE SP PROPOSAL

4.1 JTI has analysed the evidence, referred to in the Consultation Document, and the local studies commissioned by the MoH in support of the SP Proposal.

4.2 **The evidence put forward by the MoH does not support the SP Proposal.**

The biased and methodologically flawed "international evidence" in a nutshell

4.3 The Consultation claims that the Government has *"carefully"* considered "*the evidence for and against the effectiveness of the Standardised Packaging Proposal".*[29]

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22 Section 4.4 of the Consultation Document, p. 32.

23 See for example, "Wakefield M." in Footnote 49 against Footnote 65 in the Consultation Document. JTI believes that a credible expert would not express contradictory views on the same issue in different instances.

24 Section 2.2 of the Consultation document, p. 6-7.

25 See, for example, at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4555258/pdf/ijerph-12-08956.pdf.

26 I.e. *"drab dark brown or Pantone 448C",* as mentioned in APPENDIX 2 of the Consultation Document, p. 51.

27 See Part 4 of the Submission.

28 For example, a District Court in Israel considered that the use of colours on tobacco packaging was unlikely to deceive consumers. The judge stated that the use of colours on cigarette packaging "*assists consumers to identify and buy the cigarettes that they wish to smoke... In this way, that accordingly also assists retailers in selling the cigarettes*". See Class Action File 1560-08 *Zvi Numberg et al. v. Philip Morris Products et al.*, judgment of 16 May 2010 (District Court in Tel Aviv-Jaffa, Farago J).

29 See the MoH press release and Section 3.2 of the Consultation Document, p. 13.

4.4 However, the Consultation largely relies on outdated and flawed consumer surveys by full-time supporters of this policy and has ignored the most recent and official data emerging from countries with standardised packaging in place.

4.5 *"The substantial body of international research evidence and studies"* that the Consultation refers to:

- is not independent (most of the studies have been prepared by a small group of researchers, who designed the evidence to support their preferred policy of standardised packaging);[30]
- is partly outdated;[31]
- is methodologically flawed;[32] and

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[30] See, for example, studies conducted by Chapman S; White C; Wakefield M; Moodie C; Hammond D; Durkin SJ; Hastings G; Borland R; Mackintosh A; McNeil A; Cummings KM; Lawson R; Brennan E.

[31] See, for example, Aaker, J.L., & Maheswaran, D. (1997): The effect of cultural orientation on persuasion. Journal of Consumer Research, 24(3), 315-318; Beede, P. et all (1990): The promotional impact of cigarette packaging: A study of adolescent responses to cigarette plain-packs. Department of Marketing, University of Otago, Dunedin, New Zealand; Beede, P., & Lawson, R. (1992): The effect of plain packages on the perception of cigarette health warnings. Public Health, 106(4), 315-322; Bonhomme, J., et all (1988): Marketing research department report: Marlboro Ultra Lights qualitative research. LBC, Philip Morris; Aug 22 1988. Bates: 2043293420/3423. Retrieved from: http://legacy.library.ucsf.edu/tid/pxu83e00; British-American Tobacco Company Limited, & Miller, L. (1986). Principles of measurement of visual standout in pack design. British American Tobacco Records. Retrieved from: https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/fsgv0201; Centre for Health Promotion. (1993). Effects of standardised packaging on the image of tobacco products among youth. Toronto: University of Toronto. Retrieved from: http://legacy.library.ucsf.edu/tid/fuf13d00/pdf; Cummings, K. M. et all (2002): Marketing to America's youth: Evidence from corporate documents. Tobacco Control, 11(Suppl 1), i5– i17. doi: 10.1136/tc.11.suppl_1.i5; Cummings, K. M. et all (2004). What do Marlboro Lights smokers know about low-tar cigarettes? Nicotine & Tobacco Research, 6(Suppl 3), S323-S332; DiFranza, J. R. et all (1994). Tobacco acquisition and cigarette brand selection among youth. Tobacco Control, 3, 334-338. doi: 10.1136/tc.3.4.334; Donovan, R. (1993). Smokers' and non-smokers' reactions to standard packaging of cigarettes. Perth, Australia: University of Western Australia; Goldberg, M.E. et all (1995). When packages can't speak: Possible impacts of plain and generic packaging of tobacco products. Expert Panel Report Prepared for Health Canada. Ottawa: Health Canada. Visual image experiment. Retrieved from: http://legacy.library.ucsf.edu/tid/rce50d00; Goldberg, M.E. et all (1999). The effect of standardised packaging on response to health warnings. American Journal of Public Health, 89(9), 1434–1435; Koten, J. (1980). Tobacco marketers' success formula: Make cigarettes in smokers' own image. Wall Street Journal, 29 February; McBride, C. (1987). A summary of brand imagery studies on Canadian products. Imperial Tobacco Limited Research and Development Division: https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/xpvb0140; Perry, C.L. (1999). The tobacco industry and underage youth smoking: tobacco industry documents from the Minnesota litigation. Archives of Pediatrics and Adolescent Medicine, 153(9), 935-941; Rook, D.W., & Fisher, R.J. (1995). Normative influences on impulsive buying behaviour. Journal of Consumer Research, 22(3), 305-313; Rootman, I., & Flay, B. (1995). A study on youth smoking standardised packaging, health warnings, event marketing, and price reductions key findings. Toronto: University of Toronto, Centre for Health Promotion; Schooler, C. et all (1996). Seventh graders' self-reported exposure to cigarette marketing and its relationship to their smoking behavior. American Journal of Public Health, 86(9), 1216-1221; Underwood, R., & Ozanne, J. (1998). Is your package an effective communicator? A normative framework for increasing the communicative competence of packaging. Journal of Marketing Communications, 4(4), 207-220.

[32] Professor Timothy M. Devinney, a leading expert, has reviewed a number of consumer surveys relied on in the Consultation Document. See, for example, Doxey, J., & Hammond, D. (2011). Deadly in pink: The impact of cigarette packaging among young women. Tobacco Control, Footnote 30 in the Consultation Document, p. 21. With regard to this study, Professor Devinney concludes that it *"suffers from a number of serious methodological flaws, many of which follow directly from the fact that they repeat the same basic form of research method used by Hammond, et al. (2009) and Hammond and Parkinson (2009). Most obviously, the lack of actual behavioural outcomes or incentive compatible measures that represent how individuals would make choices in the broader contexts of purchasing are quite serious. They undermine the relevance of any conclusions drawn about perceptions."* See Professor Devinney (2013). *"Analysis of the European Commission's Proposal to Revise the Tobacco Products Directive as it Pertains to Various Design Restrictions for Tobacco Products*", (p. 30), commissioned by JTI, available at: https://www.jti.com/about-us/our-business/key-regulatory-submissions.
Another example with serious methodological limitations is the *"Stirling Review" (i.e. the "Systematic Review")* that the Consultation largely relies on (see, for example, Footnote 38 in the Consultation Document, p. 22). For example, the Stirling Review is forced, in view of the *"limitations"* of all of the individual studies, to rely upon the consistency demonstrated by the studies. So, while the Stirling Review states that *"there was a consistency in study findings regarding the potential impacts of plain packaging…this consistency can provide confidence about the observed potential effects of plain packaging"*, this defies logic and cannot be correct This is because the studies included in the Stirling Review are batched in an attempt to try and compensate for their individual failings. These surveys (individually or collectively) are incapable of constituting reliable research evidence of the likely impact of standardised packaging on actual smoking behaviour. That is made clear by expert analysis of what those surveys in fact show and of their methodological reliability. For example, Professor Devinney is of the expert opinion that the vast majority of the studies are simply repeated variants of prior studies, many using near identical stimuli, identical

- is based on perceptions, not actual behaviour.[33]

4.6 Moreover, the list of the literature available at the Consultation Document is nearly identical to the list of studies referred to in the WHO Publication.[34] This raises serious doubts about whether the MoH has simply outsourced its review of the evidence instead of performing its own "careful" assessment.

Contradicting allegations

4.7 This Consultation, like the 2016 one before it, relies on allegations and flawed evidence to create a link between branded packaging and smoking behaviour.

4.8 It continues to rely on the "*Standardised packaging of tobacco products. Report of the independent review undertaken by Sir Cyril Chantler"* ***(the Chantler Report)*** in claiming that branded packaging leads to youth smoking initiation: *"The balance of evidence suggests that the appeal of branded packaging acts as one of the factors encouraging children and young adults to experiment with tobacco and to establish and continue a habit of smoking".*[35]

4.9 JTI has previously addressed the obvious shortcomings of the Chantler Report in its 2016 Response (Part 4) with regard to the evidence put forward in support of the alleged link between branded packaging and smoking behaviour.

4.10 Sir Cyril himself confirmed that his findings were based on ***"modest"*** evidence, reflecting only the ***"likely impact"*** of the measure on smoking behaviour (by making reference to surveys of views as to perceptions of future behaviour). As the Chantler Report acknowledges: *"…stated intentions are generally weak predictors of behaviour"*.[36] **The "*likely impact"* is neither a cause nor an effect. It is speculation at best and establishing such a conclusion, which cannot be evidenced or substantiated, requires a huge leap of faith.**

4.11 On the other hand, in stating that adolescents obtain tobacco products *"through older friends and family members who smoke, or supply under-aged youth with tobacco products",*[37] **the Consultation simply acknowledges that tobacco packaging (along with its alleged *"advertising and promotional effects"*) has no influence in the decision to smoke or the act of smoking**.

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survey instruments and identical procedures and in many cases being done by the same or overlapping set of researchers. In his view, while repeating methods is sometimes a good thing when done properly, when there are flaws in the initial research designs (as there are in the case of standardised packaging), all researchers end up doing is finding the same flawed responses. Hence, they can become confident in their false belief that there is a preponderance of evidence for a conclusion when, in reality, all that they are seeing is greater refinement of an erroneous conclusion.
Furthermore, the Stirling Review wrongly presupposes that "consistency" can be used as a proxy for 'correct'. The authors assume that because the study findings appear consistent when taken as a whole, the evidence base must be methodologically sound and reliable (despite the recognition of the limitations of the individual studies).

33 In addition to a vase majority of consumer surveys that are merely based on perceptions and are referred to in the Consultation Document (including the series of local studies), it is notable that not a single study can be pointed to in the Stirling Review, which demonstrates that the standardised packaging is likely to achieve any public health benefits. Of the 54 studies reviewed in the Stirling Review, and its later update, over 30 adopt the methodology of asking respondents to provide their opinions and perceptions on a comparison between a branded pack and a standardised pack.

34 See, for example, APPENDIX 3 of the Consultation Document (p. 52-70) and Endnotes of the WHO Publication (p. 62-71).

35 Section 4.1 of the Consultation Document, Footnote 22, p. 20.

36 See the Chantler Report (2014), Paragraph 14, p. 5. Available at: http://www.kcl.ac.uk/health/10035-TSO-2901853-Chantler-Review-ACCESSIBLE.PDF?utm_source=rss&utm_medium=rss&utm_campaign=standardised-packaging-of-tobacco-report-of-the-independent-review-undertaken-by-sir-cyril-chantler-pdf.

37 Section 2.3 of the Consultation Document, p. 8-9.

4.12 The Consultation therefore validates the observed factors of smoking initiation: *"Peer and family influences, as well as risk minimization, played a key role in smoking initiation and maintenance. While young people were aware of policies that restricted smoking, these did not directly affect their decision to start smoking…."*.[38]

4.13 This observation is supported **by the independent opinion** of Professor Steinberg,[39] a leading expert in the area of adolescent judgment, decision-making and risk-taking, that the decision whether or not to start smoking is influenced by a range of well-documented external factors that have nothing to do with branded packaging.

4.14 This has even been acknowledged by proponents of standardised packaging:

- For example, the key causes of youth smoking in Canada are consistently reported to be factors other than the colour or shape of tobacco packaging. The Canadian Cancer Society identifies as the *"Reasons youth start smoking"*: *"Many young people between the ages of 10 and 18 begin to experiment with smoking due to peer pressure. Young people try smoking to be like others in their peer group or to appear cool and grown up. They also smoke to rebel against authority or to relax in awkward social settings"*.[40]
- Australia's experts in the World Trade Organization's ***(WTO)*** dispute on the Australian standardised packaging legislation, also agreed that *"it is highly improbable that an adolescent who is interested in smoking will decline a cigarette from a friend because of the packaging"* and that *"young people do not pay attention to risk information"*.[41]

4.15 As reiterated by Professor Steinberg: ***"Stopping adolescents from obtaining tobacco products and combatting peer influence by removing tobacco products from peer networks is key".***[42]

Attempts to justify so-called "objectives" on the basis of flawed evidence

4.16 The Consultation attempts to justify the ill-defined objectives of the SP Proposal[43] on the basis of further, flawed studies:

- The studies that the Consultation relies on to demonstrate that standardised packaging will *"reduce the attractiveness of tobacco products"* are consumer surveys that merely seek to demonstrate what the reactions of people to standardised packaging might be, rather than measuring their actual smoking behaviour.[44] Respondents of these studies generally say they find standardised

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38 See M. Subramaniam et all *"Perspectives on Smoking Initiation and Maintenance: A Qualitative Exploration among Singapore Youth"*, Int. J. Environ. Res. Public Health 2015, 12, 8956-8970. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4555258/pdf/ijerph-12-08956.pdf.

39 In relation to Professor Steinberg's 2010 report, the Consultations states that, amongst other reports and studies, it does not *"outweigh the preponderance of evidence supporting the conclusion that standardized packaging will meet its stated objectives"*. See Footnote 66 in the Consultation Document, p. 32. Professor Steinberg further reinforces his views on adolescent smoking behaviour in his 2016 report *"Adolescent Decision-Making and Whether Standardized Packaging Would Reduce Underage Smoking"*, commissioned by JTI Available at: https://www.jti.com/about-us/our-business/key-regulatory-submissions.

40 See at: http://www.cancer.ca/en/cancer-information/cancer-101/what-is-a-risk-factor/tobacco/smoking-and-youth/#ixzz4DbpQ1fwi.

41 See the Integrated Summary of the Dominican Republic's Submissions to the WTO Dispute Settlement Panel, March 2016. Last accessed via: http://mic.gob.do/media/22058/20160323%20-%20DOM%20Integrated%20Executive%20Summary%20(EN).pdf%20.

42 See Professor Steinberg's 2016 report.

43 See Paragraphs 3.8-3.13 of the Submission.

44 See, for example, studies referred to in Footnotes 24-31 of the Consultation Document (e.g. Brose, L.S., Chong, C.B., Aspinall, E., Michie, S., & McEwen, A. (2014). Effects of standardised cigarette packaging on craving, motivation to stop and perceptions of cigarettes and packs. Psychology and Health, 2014; 29(7), 849–860; Doxey, J., & Hammond, D. (2011). Deadly in pink: The impact of cigarette packaging among young women. Tobacco Control, 20(5), 353–360). Most of these studies have been reviewed by Professor Timothy M. Devinney. See his

packaging less attractive (or appealing) than branded packaging. However, any reductions in *"attractiveness"* of tobacco products are only an indication of the respondents' perceptions: they are subjective and often self-reports of future intentions. These studies do not show that reported reductions in *"attractiveness"* have any relevance to the actual decision to start (or continue) smoking. Even the Consultation accepts that these studies merely reflect *"feelings"* and perceptions of individuals.[45]

- The Consultation refers to a selective number of studies to demonstrate that *"standardised packaging eliminates the effects of tobacco packaging as a form of advertising and promotion"*. It relies upon historic industry documents that mostly concern tobacco advertising and marketing activities (which have been banned in Singapore) and, as such, are irrelevant to the problem of whether standardised packaging would be effective in changing smoking behaviour in Singapore.[46]

  Furthermore, the evidence put forward does not justify the contention that branded packaging is advertising due to significant differences between the advertising of products and the labelling and design of the pack itself.[47] **Branding does not promote the generic act of product consumption.** It is only meaningful in differentiating brands for existing smokers. The Consultation fails to recognise the distinction between the decision to start smoking[48] and the choice between different brands of cigarettes for a smoker. These are indeed two very different types of decisions. **It is wrong to introduce a ban on branding on the basis of evidence unrelated to tobacco packaging itself.**

- The Consultation refers to *"a broad range of international evidence from different countries"* in stating that the colours on cigarette packs *"continue to have the effect of misleading consumers as to the relative harmfulness of such tobacco products"*[49] and that standardised packaging has the potential to prevent or reverse these effects. JTI does not agree with the notion that the use of colours on cigarette packs has the effect of misleading consumers as to the relative harmfulness of such tobacco products.[50] Consumer understanding of, and responses to, colour are subjective and vary according to different factors, including consumers' cultural background, gender, socio-economic status, age, education and visual ability. Tobacco products are no different to any other branded consumer good: there is real complexity and variance in the use of colour by JTI and across the tobacco industry.[51] Colours have no correlation to a particular aspect of health or risk. Indeed, the colours used by JTI on its product packaging are not intended to, and

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conclusions in his reports: *"Analysis of Consumer Research Evidence Relied upon in Support of Plain Packaging for Tobacco Products" (updated to 2017),* 2017; "*Analysis of Consumer Research Evidence on the Impact of Plain Packaging for Tobacco Products (Updated to 2014)*", 2014; "*Analysis of Consumer Research Evidence on the Impact of Plain Packaging for Tobacco Products (Updated to 2012)*", 2012, and "*Analysis of Consumer Research Evidence on the Impact of Plain Packaging for Tobacco Products*", 2010. Commissioned by JTI. Available at: https://www.jti.com/about-us/our-business/key-regulatory-submissions.

45 Section 4.2.1 of the Consultation Document, p. 20.

46 See, for example, Kotnowski, K., & Hammond, D. (2013). The impact of cigarette pack shape, size and opening: Evidence from tobacco company documents. Addiction, 108(9), 1658-1668. Section 4.2.2 of the Consultation Document, Footnote 32, p.21. As also stated by Professor Devinney, this study does not generate any consumer survey evidence in relation to standardised packaging. See Professor Devinney's 2014 report (p.131), commissioned by JTI, available at: https://www.jti.com/about-us/our-business/key-regulatory-submissions.

47 See Paragraph 3.12 of the Submission.

48 See Professor Steinberg's reports in relation to youth smoking behaviour. In respect of this issue of adult decision making, see further Professors Ravi Dhar and Stephen Nowlis's report *"Report on Adult Consumer Behaviour and Decision-Making of Cigarette Smokers"*, December 2010, commissioned by JTI. All available at: https://www.jti.com/about-us/our-business/key-regulatory-submissions.

49 Section 4.2.3 of the Consultation Document, p. 22.

50 See also Footnote 28 above.

51 For example, packaging may feature single or multiple colours, various shades/intensities of colours, colour designs, colour backgrounds, etc. Further, colour usage varies across cigarette brand families, across a portfolio of brands, by different manufacturers and by individual market. This distinctiveness helps both the consumer and the shopkeeper quickly locate the product that the consumer wishes to purchase.

do not, communicate any message as to the health risks associated with smoking a pack of cigarettes, relative or otherwise. Consumers in fact take smoking-related health messages from a variety of different sources and media, including on-pack health warnings, and are well aware of the health risks of smoking.

By banning the use of colours and branding elements on the pack, the regulator ultimately facilitates the production of counterfeit packaging.

- In supporting the so-called objectives of *"increasing the noticeability and effectiveness of graphic health warnings"*[52] and *"better informing smokers and non-smokers of the risks associated with tobacco use"*,[53] the Consultation relies on the same sort of hypothetical studies. These studies do not add any value, nor do they indicate that graphic health warnings on plain packs are effective.[54] They rely exclusively on attitudes, opinions and self-reports of possible behaviours. They do not measure the initiation, usage and quitting effects that could justify the policy rationale for introducing such a disproportionate measure.

  The importance of distinguishing between evidence concerning consumer perceptions and evidence of actual changes in their behaviour was also made clear by the US Court of Appeals (DC Circuit) in R J Reynolds Tobacco Co v Food & Drug Administration ***(FDA)***.[55] This case was a challenge to the introduction of graphic health warnings covering 50% of cigarette packaging on the basis that it violated the free speech protection granted by the First Amendment to the US Constitution. When considering whether the FDA had put forward "*substantial evidence*" to show that graphic health warnings would reduce smoking, Judge Brown (giving the opinion of the majority) said: "*FDA has not provided a shred of evidence – much less the "substantial evidence" required by the* [Administrative Procedure Act] - *showing that the graphic warnings will "directly advance" its interest in reducing the number of Americans who smoke. FDA makes much of the "international consensus" surrounding the effectiveness of large graphic warnings, but offers no evidence showing that such warnings have directly caused a material decrease in smoking rates in any of the countries that now require them. While studies of Canadian and Australian youth smokers showed that the warnings on cigarette packs caused a substantial number of survey participants to think — or think more — about quitting smoking, … and FDA might be correct that intentions are a "necessary precursor" to behavior change, …* ***it is mere speculation to suggest that respondents who report increased thoughts about quitting smoking will***

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52 Section 4.2.4 of the Consultation Document, p. 23-24. See, notably, Borland, R., Savvas, S., Sharkie, F., & Moore, K. (2013). The impact of structural packaging design on young adult smokers' perceptions of tobacco products. Tobacco Control, 22(2), 97– 102; Maynard OM, Brooks JC, Munafò MR, Leonards U. Neural mechanisms underlying visual attention to health warnings on branded and plain cigarette packs. Addiction. 2017; 112:662-72; Beede P, Lawson R. The effect of plain packages on the perception of cigarette health warnings. Public Health. 1992; 106(4):315-22; Moodie CS, Mackintosh AM. Young adult women smokers' response to using plain cigarette packaging: a naturalistic approach. BMJ Open. 2013; 3(3): e002402. These studies do not analyse the actual smoking behavior, but merely reflect hypothetical answers of respondents/focus groups.

53 Section 4.2.5 of the Consultation Document, p. 24-25. For, example, a reference is made to a study (Hoek et al. (2011). Effects of dissuasive packaging on young adult smokers. Tobacco Control, 20(3), 183-188) in claiming that these measures in combination *"result in lower level of consumer appeal and demand"*. These are merely perceptions, as the study was released a year before Australia implemented the measure and was unable to determine whether these measures resulted in "lower level of demand". The Australian experience clearly demonstrates that this is not the case. See more in Part 4 of the Submission.

54 For example, the Consultation Document refers to a study conducted in Australia one year after the implementation of standardised packaging and larger health warnings, which states that most smokers first noticed the graphic health warnings when looking at the plain pack /Section 4.2.5, p. 25). See (Footnote 54) Wakefield, M., Coomber, K., Zacher, M., Durkin, S., Brennan, E., & Scollo, M. (2015). Australian adult smokers' responses to standardised packaging with larger graphic health warnings 1 year after implementation: Results from a national cross-sectional tracking survey. Tobacco Control, 24(Suppl 2), ii17–ii25. See the independent views of Professor Devinney in relation to this and other similar studies in his 2017 report.

55 *RJ Reynolds Tobacco Company v Food and Drug Administration US Court of Appeals*, District of Columbia Circuit, 24 August 2012, available at: https://www.cadc.uscourts.gov/internet/opinions.nsf/4C0311C78EB11C5785257A64004EBFB5/$file/11-5332-1391191.pdf .

actually follow through on their intentions. And at no point did these studies attempt to evaluate whether the increased thoughts about smoking cessation led participants to actually quit. *Another Australian study reported increased quit attempts by survey participants after that country enacted large graphic warnings, but found "no association with short-term quit success". … Some Canadian and Australian studies indicated that* ***large graphic warnings might induce individual smokers to reduce consumption, or to help persons who have already quit smoking remain abstinent. … But again, the study did not purport to show that the implementation of large graphic warnings has actually led to a reduction in smoking rates. FDA's reliance on this questionable social science is unsurprising when we consider the raw data regarding smoking rates in countries that have enacted graphic warnings. FDA claims that Canadian national survey data suggest that graphic warnings may reduce smoking rates. But the strength of the evidence is underwhelming, making FDA's claim somewhat misleading"*** (Emphasis added).[56]

It is necessary and right that the population continues to be reminded of the risks of smoking. That said, increasing the "noticeability" of graphic health warnings on tobacco (plain or branded) packaging is not, of itself, capable of justifying a ban on branding, as it does not change behaviour. Nor does it show that larger graphic warnings are more effective.

- To complement the evidence on larger health warnings that JTI presented earlier (Part 5 of the 2016 Response), it is notable that the increase of health warnings in Canada to cover 75% of the pack (the same size proposed by the Singapore Government) has not had any impact on smoking prevalence. According to Euromonitor: *"smoking rates have flatlined after years of steady decline"*[57] since 2012, when larger health warnings were introduced in Canada.
- The most recent statistical analysis, commissioned by JTI, demonstrates that *"the introduction of, and changes to, larger health warnings in both Mexico and Brazil were not associated with a statistically significant reduction in the volume of cigarette sales".*[58]
- Lastly, the most recent government data from Australia clearly demonstrate that the introduction of plain packs with larger health warnings had no effect in deterring smokers from buying and consuming tobacco products.[59]

Indeed, **'noticing' something, particularly something one knows already – such as a health warning on a tobacco product (being on a plain or a branded pack) – does not make it more effective and translate into a change in actual smoking behaviour.**

The Australian experience without key data

4.17 The Consultation claims that the evidence emerging from Australia *"provides good grounds to believe that standardised packaging, working in combination with other tobacco control measures, will be effective in reducing smoking prevalence in Singapore*

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[56] Ibid. See p. 25 of the judgment.

[57] See Euromonitor International *"Tobacco in Canada"*, August 2015. It is notable, that overall smoking prevalence in 2013 was 15%, unchanged from 2012.

[58] See Case Associates *"Statistical analysis of large health warnings on cigarette packs in Mexico and Brazil"*, 2018, commissioned by JTI. Available at: https://www.jti.com/about-us/our-business/key-regulatory-submissions.

[59] See the Australian experience below.

in the longer term"[60]. In reaching this conclusion, it largely relies on the "pre-determined" outcome of the Australian Government's PIR.

4.18 JTI addressed the PIR (along with its obvious shortcomings) in the 2016 Response (Paragraphs 4.21- 4.25) and reiterates that the PIR conclusions are no more than pure speculation.

- Firstly, the PIR largely departs from the requirements of the Australian Government Office of Best Practice Regulation, as it fails to separate the (supposed) effects of standardised packaging from other regulatory measures (including significant tax increases), which came into force during the same period.[61]
- Conversely and based on Dr Chipty's report,[62] the PIR concluded: *"tobacco plain packaging is achieving its aim of improving public health in Australia and is expected to have substantial public health outcomes into the future".*[63] Dr Chipty's report contends that standardised packaging, when considered together with Australia's new and larger health warnings, have together resulted in "*a statistically significant decline in smoking prevalence of 0.55 percentage points over the post-implementation period, relative to what the prevalence would have been without the packaging changes*". [64]
- It is notable, that expert analysis of data used by Dr Chipty, which were made available by the Australian Department of Health in May 2016,[65] indicates that **there becomes no basis for suggesting that there was a statistically significant decline in Australia's smoking prevalence since the introduction of standardised packaging and larger health warnings**.[66]

4.19 Other official data that emerged earlier only reinforce the failure of standardised packaging and other extreme measures in accelerating the existing downward trend of smoking prevalence in Australia, notwithstanding the MoH's efforts to misinterpret these data.[67]

4.20 Perhaps not surprisingly, no single reference was made to the recent data from the National Drug Strategy Household Survey ***(NDSHS)***,[68] which was commissioned by the Australian Government itself (and not "by the tobacco industry", as the Consultation

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60 Section 4.2.6 of the Consultation Document, p. 26.

61 See Post-Implementation Review, Tobacco Plain Packaging, February 2016, p. 4. Available at: http://ris.dpmc.gov.au/2016/02/26/tobacco-plain-packaging/. The PIR concluded that the implementation of standardised packaging, combined with other measures, has begun to reduce smoking rates in Australia. It, however, acknowledged that a number of regulatory measures, including multiple tax increases, had come into force during the same period and, as a result, the full effect of standardised packaging would only be observed in the long term. This conclusion contradicts the requirement of the Australian Government Office of Best Practice Regulation's ***(OBPR)*** to assess the actual public health impact of this measure separately from others. See OBPR's official guidance on conducting PIRs at: http://www.dpmc.gov.au/sites/default/files/publications/017_Post-implementation_reviews_1.pdf.

62 Dr Tasneem Chipty "*Study on the Impact of the Tobacco Plain Packaging Measure on Smoking Prevalence in Australia*", January 2016, made available along with the PIR in February 2016. See Appendix A at: http://ris.dpmc.gov.au/2016/02/26/tobacco-plain-packaging/.

63 See p. 4 of the PIR.

64 See Dr Chipty's report.

65 Data set from Roy Morgan Single Source ***(RMSS),*** which was made available by the Australian Government in May 2016, in response to a Freedom of Information request.

66 Dr Andrew Lilico, a leading economist, reviewed the data as well as the analysis undertaken by Dr Chipty and concluded that, since 2001, there have been two earlier statistically significant breaks, which, when considered, have the effect of removing the impact that was reported by Dr Chipty. See Dr Lilico's report *"Analysis of the Chipty Report's conclusions regarding packaging changes and smoking prevalence in Australia",* August 2016, commissioned by JTI. Available at: https://www.jti.com/about-us/our-business/key-regulatory-submissions.

67 See data by the Australian Bureau of Statistics (http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4364.0.55.001~2014-15~Main%20Features~Smoking~24) and other data in Footnote 58 of the Consultation Document, p. 26.

68 See the NDSHS at: https://www.aihw.gov.au/reports/illicit-use-of-drugs/ndshs-2016-key-findings/contents/summary.

document often claims) and published well before the Consultation. **The NDSHS data demonstrate that after the implementation of standardised packaging along with larger graphic health warnings in 2012, the decline in smoking prevalence has come to a halt between 2013 and 2016:** *While smoking rates have been on a long-term downward trend, for the first time in over two decades, the daily smoking rate did not significantly decline over the most recent 3 year period (2013 to 2016)".*[69] This is a significant failing, completely undermining the whole "evidence" put forward in the Consultation Document in support of the SP Proposal.

4.21 Despite the repeated and sustained attempts by tobacco control advocates to create this evidence, **it is obvious that neither the Australian story nor the out-of-date and flawed consumer research relied upon in the Consultation show that standardised packaging would work in Singapore.**

4.22 Indeed, the Australian experience that has been in place more than five years enables a considerable time to measure the effects of standardised packaging and larger health warnings in order to draw clear conclusions that these measures do not work even in the context of a remarkably comprehensive tobacco control framework.

4.23 **What the Australian story tells is that smokers continue to buy and consume tobacco products,[70] irrespective of "unattractive" packaging and "more noticeable" health warnings.**

4.24 **With due respect, in seeking public response to the Consultation Document, it would have been fair for the MoH to inform the public of the averred shortcomings of the Australian experience.**

What about the UK and France?

4.25 The MoH stated early last year[71] that *"… Australia,* ***France, and the UK*** *have all implemented standardised packaging.* ***We have closely studied the experience of these countries****, and see significant value in moving in this direction…...".* (Emphasis added).

4.26 The Consultation Document however fails to make a single reference to the situation in the UK and France, following their implementation of standardised packaging and larger health warnings.[72]

4.27 The main reason for this omission is probably that data emerging from the early stages of the standardised packaging implementation in the UK and France show a similar picture to Australia:

- Recent data published by the French authorities demonstrate that the number of cigarettes shipped to retailers remained largely unchanged (-0.7%) in 2017, while

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69 Ibid.

70 It has been also reported that tobacco consumption in Australia *"has risen for the first time in more than a decade"*. See more at: https://www.theaustralian.com.au/news/health-science/16bn-up-in-smoke-as-tobacco-use-rises-for-first-time-in-decade/news-story/e73b828e467d48ae091b11702144f84d.

71 Available at: https://www.moh.gov.sg/content/moh_web/home/pressRoom/speeches_d/2017/speech-by-senior-minister-of-state-for-health--dr-amy-khor-at-th.html.

72 France adopted the standardised packaging legislation in December 2015 and, subsequently, as of January 2017, all tobacco products are required to be sold in unbranded packs along with the requirements of Tobacco Products Directive 2014/40/EU that also mandate 65% graphic health warnings.
The UK Parliament adopted the standardised packaging regulations in March 2015, which came into effect in May 2016. As of May 20, 2017, only unbranded packs with larger health warnings are available in the UK.

the amount of roll-your-own and make-your-own tobacco decreased by 5.1% as a result of large excise tax increases in February and November 2017.[73]

- Earlier, in November 2017, the French Health Minister quoted official data, in confirming that standardised packaging did not contribute to reducing tobacco sales in France. At the same time, she also acknowledged that the measure *"does not lead smokers to stop smoking"*.[74]
- These conclusions are in line with the finding of a new analysis, which indicates that the combination of standardised packaging and the revised Tobacco Products Directive 2014/40/EU's ***(TPD2)*** requirements has not had any discernible effect on smoking rates or tobacco sales in the UK and in France.[75]

4.28 **If the MoH had as stated closely studied the actual experience with standardised packaging in France and the UK, it would have learnt that standardised packaging does not work there and concluded that it would have no public health benefits in Singapore.** To be fair and transparent, these learnings should have been reflected in the Consultation Document.

Local "evidence" to support the SP Proposal is biased and self-interested

4.29 The Consultation Document refers to local studies that the MoH has commissioned *"to assess perceptions towards tobacco packaging designs".*[76]

4.30 Indeed and as the Consultation Document indicates, **the local studies are merely a reflection of interviews** conducted among a limited number of people, the findings of which had to be re-designed and crafted:

- Whereas the Consultation document claims that the *"evidence against standardised packaging"* is not independent or peer-reviewed,[77] the MoH commissioned a study from Associate Professor Miller, who has authored some of the studies evaluating the Australian standardised packaging measures and therefore had to recuse herself from reviewing significant part of the literature review.[78] Professor Miller can thus hardly be considered independent (as her previously held views on standardised packaging demonstrate).
- Moreover, the report by Professor Chia and Associate Professor Miller ***(Chia/Miller Report)***[79] is not a piece of primary research. Instead, it is a review of selected

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73 See data published by ***OFDT*** (Observatoire français des drogues et des toxicomanies) regarding the volumes of tobacco products distributed to retailers, as reported by the Customs authorities (Direction Générale des Douanes et Droits Indirectes). Available at: https://www.ofdt.fr/statistiques-et-infographie/tableau-de-bord-tabac/. The increase in the number of cigarettes sold in France, following the implementation of standardised packaging, was also highlighted in media articles, including at: https://www.thelocal.fr/20170502/the-french-smoke-more-since-the-introduction-of-plain-packaged-cigarettes-in-france.

74 See the French Health Minister's November 2017 statement at: http://www.assemblee-nationale.fr/15/cri/2017-2018/20180075.asp.

75 See Dr Lilico's report *"TPD2 and standardised tobacco packaging —What impacts have they had so far?"* Europe Economics, November 2017, commissioned by JTI. Available at: https://www.jti.com/about-us/our-business/key-regulatory-submissions and http://www.europe-economics.com/publications/15/publications.htm. The analysis shows that **there has been no statistically significant impact on prevalence in the UK and no statistically significant impact on consumption in the UK or in France**.

76 Section 4.3 of the Consultation Document, p. 28.

77 Section 4.4 of the Consultation Document, p. 31-35.

78 See, Footnote 24 of the literature review. See also Footnote 16 of the Consultation Document, page 15 ("*The Post-Implementation Review studies had also confirmed the efficacy of standardised packaging in respect of cigars and cigarillos: see **Miller CL**, Ettridge KA, Wakefield M. "You're made to feel like a dirty filthy smoker when you're not, cigar smoking is another thing all together." Responses of Australian cigar and cigarillo smokers to plain packaging. Tobacco Control. 2015; 24(Suppl 2):ii58-ii65.")*

79 Available at: www.moh.gov.sg/proposed-tobacco-control-measures.

consumer surveys, designed to conclude that the SP Proposal would fulfil the stated "objectives".

- The Chia/Miller report is largely based on the findings of the Chantler, Stirling and Hammond reports, as well the PIR conclusions, which are addressed in the Submission and the 2016 Response.
- The Stirling or Systematic Review, which is "systematic" in name only, is inherently biased and self-serving, unable to demonstrate that standardised packaging changes smoking behaviour. On a closer inspection, the Stirling Review suggests (as its authors acknowledge) that the studies reviewed are far from reliable as: "*there are a number of limitations with the plain packaging studies found*".[80]
- It is notable that the Stirling Review does not account for either author or journal partiality. For example, the lead author of the Stirling Review, Dr Crawford Moodie, is reviewing (i) his own work (he authored or co-authored 8 of the 54 studies reviewed) and (ii) the work of a network of scholars with whom he interacts directly and has co-authored many works with. Moreover, the Stirling review extends gratitude to "*Dave Hammond for his contribution to the development of the protocol*" who also authored or co-authored many of the studies reviewed.[81]

- Professor Timothy Devinney, a leading expert in consumer survey studies, has analysed the Stirling Review and other consumer survey research relied on in the Consultation.[82] He concluded that the Stirling Review:
  - did not examine any specific aspect of marketplace related behaviour directly. Instead, its findings rely exclusively on attitudes, opinions and self-reports of possible behaviours, or assumptions that those attitudes are precursor and causes of said behaviours;
  - continued to apply the same flawed methodological approaches; and
  - failed to take into account important related research that could improve and inform both the scientific and policy debate on standardised packaging.
- On the basis of this research, the Chia/Miller Report cannot constitute reliable evidence for introducing such a far-reaching measure in Singapore.
- It is notable that the Chia/Miller Report states that Singapore is similar to Australia in terms of literacy, economic status and comprehensive tobacco control regimes, amongst others, and that the Australian experience would be applicable in Singapore.[83]
- JTI therefore assumes that, **the implementation of the SP Proposal in Singapore will have a similar effect as in Australia, i.e. it might increase the "noticeability" of health warnings and decrease the "appeal" of tobacco packaging, but it will not change actual smoking behaviour and smoking prevalence.** Therefore and as stated above, it would have been fair in seeking public response to the SP Proposal to give the public full disclosure of the failings of the Australian experience.

4.31 The Consultation also relies on another local study conducted by Associate Professors Ang Swee Hoon and Leonard Lee (***Ang/Lee Report***)[84] to claim that the

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[80] See Systematic Review at: http://phrc.lshtm.ac.uk/papers/PHRC_006_Final_Report.pdf, p. 88.
[81] See Systematic Review, Acknowledgements.
[82] See Footnotes 31-33 of the Submission. See also Professor Devinney's reports, commissioned by JTI, at: https://www.jti.com/about-us/our-business/key-regulatory-submissions.
[83] Section 4.2.7 of the Consultation Document, p. 28; Chia/Miller Report, p. 32-35.
[84] Available at: www.moh.gov.sg/proposed-tobacco-control-measures.

introduction of standardised packaging will eliminate the alleged effects of tobacco packaging to promote tobacco use and to justify the "objectives" of the SP Proposal.

4.32 Similarly, the Ang/Lee Report is not a piece of primary research. It is another review of selected consumer surveys on different tobacco control issues. In fact, it concedes: *"it is important to bear in mind that many of the empirical findings discussed in this report involve self-reported attitudes, perceptions, and behavioural intentions, rather than actual behaviour."* [85] Therefore, the report acknowledges that what people say in hypothetical situations does not necessarily translate into actual behavioural change.

4.33 Furthermore, the **Consultation itself admits that the SP Proposal has been put forward without having a complete body of evidence**, when it refers to a study that would be released at a later stage.[86]

4.34 **JTI is deeply concerned that standardised packaging is being forced through in Singapore, relying on so-called evidence from full-time supporters of this policy. The Consultation Document merely presents a one-sided review of the evidence.**

4.35 Indeed, the Consultation appears to be no more than an effort to validate a view that has been arrived at by looking only at one side, not both sides, of the argument. This creates a dangerous precedent that should be of concern to Singaporean people and businesses, especially brand owners.

4.36 In the context of the Consultation, *"a carefully considered evidence-based decision-making"* can lead to only one rational conclusion: not to move ahead with standardised packaging, but to evaluate the measures that have been recently implemented to determine whether those measures stand a better chance at reducing smoking prevalence in Singapore.

4.37 Rather than pushing ahead with the SP Proposal, it is also necessary and right to conduct a longer-term assessment of the effects of standardised packaging in countries that implemented the measure before any decision to progress standardised packaging in Singapore is made.

5. OTHER CONSIDERATIONS

5.1 ***"We are taking steps towards standardising tobacco packaging. Australia, France, and the UK have all implemented standardised packaging. We have closely studied the experience of these countries, and see significant value in moving in this direction……"*** [87] This statement that was made in March 2017 clearly indicates that a decision to pursue standardised packaging in Singapore had already been taken.

5.2 It is therefore not surprising that the Consultation Document presents Australia's failure as a success story (with no single reference to the situation in the UK and France, despite what was announced) and speculates that standardised packaging will work in

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[85] See *Conclusion*, p. 31, Ang/Lee Report.

[86] **The Consultation appears to have pre-determined that the potential (presumably unknown) outcome of the upcoming qualitative study on standardised packaging in relation to non-cigarette tobacco products would not change the state of play!** See Section 4.3 of the Consultation Document, p.31.

[87] See the MoH's press-release at: https://www.moh.gov.sg/content/moh_web/home/pressRoom/speeches_d/2017/speech-by-senior-minister-of-state-for-health--dr-amy-khor-at-th.html.

Singapore because Singapore shares economic, regulatory, cultural and educational similarities with Australia.[88]

5.3 Following the same flawed logic and in the absence of any cost-benefit analysis of the SP Proposal, (despite the claim that the Government has evaluated the major concerns that were raised in relation to the standardised packaging implementation in Singapore), the Consultation Document significantly underestimates the serious problems that risk emerging in Singapore, without any valid justification (and, in some instances with no reasoning at all) to support its views.

5.4 Such a simplistic approach to regulatory reform significantly impairs the ability of the MoH to scrutinise the impact of the SP Proposal in Singapore and is contrary to the principles of Better Regulation, and, for example, the OECD-APEC Integrated Checklist on Regulatory Reform.[89]

5.5 Having relied on factual evidence emerging from Australia, JTI reiterates its views, made known in the 2016 Response (Paragraphs 4.31 - 4.60), that the introduction of standardised packaging in Singapore will, amongst others:

- distort market dynamics and legitimate competition;
- damage brands, as brand owners lose valuable assets, thereby jeopardising the Government's objective to become a global hub for intellectual property and a place for foreign investors to do business;
- worsen the illegal trade in tobacco products and provide ample opportunities to criminals; and
- reduce government tax revenues by accelerating down trading and fueling the illegal trade.

Increase in illegal trade

5.6 Whereas the Consultation acknowledges the existing problem of illegal tobacco in Singapore (that largely consists of contraband products), it significantly underestimates the risk that standardised packaging will lead to a proliferation in illegal trade.

5.7 The Consultation Document simply ignores the relevant factual evidence emerging from Australia, labelling the KPMG analysis as *"non-independent and not well-conducted".*[90] The MoH's views are unfounded, as the methodology adopted in the KPMG analysis has been recognised as *"probably the most appropriate way of collecting that type of information and tracking it over time".*[91]

5.8 While the MoH has taken the view that the current situation of illegal trade is unlikely to change *"due to Singapore's relatively small market size compared to the rest*

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88 See Footnote 83 above.

89 See, for example, http://www.oecd.org/gov/regulatory-policy/41992858.pdf, (p. 18).

90 See p.38 of the Consultation Document in relation to the questioned robustness of the KPMG analysis in evaluating the illegal trade problem in Australia.

91 See Dr. Tim Beard, the Australian Institute of Health and Welfare (AIHW - in charge of the NDSHS), Parliamentary Joint Committee on Law Enforcement, illicit tobacco, 4 March 2016, p. 33.

91 See p. 38tof the Consultation Document in relation to the questioned robustness of the KPMG analysis in evaluating the illegal trade problem in Australia. See Dr. Tim Beard, the Australian Institute of Health and Welfare (AIHW- in charge of the NDSHS), Parliamentary Joint Committee on Law Enforcement, illicit tobacco, 4 March 2016, p. 33.

of the region",[92] it has not provided any valid justification[93] or any analysis to support this view.

5.9 JTI's views that have been elaborated in the 2016 Response (Paragraphs 4.33 – 4.40) remain unchanged: **any implementation of standardised packaging in Singapore is likely to drive the existing levels of illegal trade up exponentially as Singapore remains a "profitable" market for illegal tobacco products, due to the significant illegal activity taking place across its borders**.

5.10 The UK Government has recognized that the: *"Australian experience is unlikely to shed light on the implications of standardized packaging for cross border flows of tobacco"* into other markets.[94]

5.11 Even if one assumed that illegal trade in Australia had not benefitted from standardised packaging, it has been reported that the illegal trade in tobacco is rising exponentially in Australia, in ordinary postal mail alone by 10 to 15 % every year.[95] In the period from June to December 2016 alone, the Australian Border Force ***(ABF)*** seized 145 tonnes of illegal tobacco products from the International Mail Centre in Western Sydney, which equates to AUD 21 million in lost government revenue. Further, it was reported that, in January 2017 alone, the ABF officials seized a record volume of illegal cigarettes and loose tobacco in Sydney, including many products hidden inside fluffy toys, machinery, picture frames and platform shoes. It is notable that many of the seized illegal cigarettes appeared to contain *"metal shavings and even bird droppings",*[96] which presumably create serious health hazards for consumers.[97]

5.12 Moreover, it appears that ever-increasing illegal transactions in Australia's tobacco market have significantly impacted Australian retailers in terms of profit and taxes. They specifically claim that their revenues are being *"devastated"* by more than 600 organised crime-backed illegal cigarette and tobacco shops costing up to AUD 4 billion a year in lost profits and taxes.[98]

5.13 Most recently and following the implementation of standardised packaging in the UK, the first counterfeit 'plain' packs have been uncovered by Retail Express and trading standards departments.[99]

5.14 Therefore, it remains to conclude that **standardised packaging would lead to an increase in illegal trade in Singapore**.

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92 Section 5.1 of the Consultation Document, p.38.

93 For example, the Consultation refers to the "Haighton, C., Taylor, C., & Rutter, A. (2017). Standardised packaging and illicit tobacco use: A systematic review. Tobacco Prevention and Cessation" (See Footnote 87 of the Consultation Document, p. 38) in claiming that standardised packaging **was not likely to result in increased intention to use counterfeit products.**

94 See the UK's 2015 Impact Assessment, p. 78, Paragraph 317.

95 Available at: http://www.dailytelegraph.com.au/news/national/organised-crime-syndicates-smuggling-low-risk-tobacco-leaf-and-cigarettes-into-australia/news-story/81507f303ce6c7005b0f764afc10fe9b.

96 See more at: http://www.abc.net.au/news/2017-02-20/illegal-tobacco-cigarettes-smuggled-into-australia-fluffy-toys/8285470. In relation to lost government revenues, see also at: http://www.dailytelegraph.com.au/news/nsw/illicit-tobacco-imports-ripping-off-aussie-taxpayers-of-at-least-640-million/news-story/e8c1ff8ad04a466c94f4cba17c38e273.

97 See more at: http://www.abc.net.au/news/2017-02-20/illegal-tobacco-cigarettes-smuggled-into-australia-fluffy-toys/8285470.

98 See at: http://www.afr.com/news/policy/tax/600-illegal-tobacco-shops-are-devastating-retailers-industry-warns-20170831-gy7w7a. Similar concerns have been raised by the Canadian Convenience Stores Associations in relation to the standardised packaging proposal that is being debated in Canada. See at: http://www.cstores.ca/files/theccsa/ccsa_tobacco_cannabis_report_nov_22.pdf (p. 5).

99 *"Following a tip-off, Retail Express was sold a plain pack counterfeit of a premium brand by a London newsagent for £10.50. The retailer took a legitimate pack out of the gantry and swapped it out with a fake pack, while processing the card transaction."* See at: https://www.betterretailing.com/first-fake-plain-packs-discovered.

Potential increase in smoking prevalence through down-trading and increased illegal products

5.15 Not only did the Consultation avoid analysing the potential impact of standardised packaging on the competitive environment and consumption in Singapore, it also ignored the factual evidence from Australia, which clearly demonstrates that standardised packaging distorts market dynamics through damaging competition and facilitating "price-driven" product selection.[100]

5.16 The Consultation merely adopts the contentions of the WHO Publication in claiming that down-trading into cheaper products will not increase tobacco consumption and that one of the means to eliminate this problem is to raise tobacco taxes: *"Should "down-trading" occur leading to an increase in the consumption of tobacco products, one way that this occurrence may be addressed would be to raise tobacco taxes".*[101]

5.17 First and foremost, it is unacceptable that the Singapore Government, **being a supporter of free trade and the highest protection of intellectual property,** has chosen to experiment with standardised packaging on the basis of *"wait and see and fix later"* approach. This approach taken by the Singapore Government not only fails to meet the Better Regulation principles, but also the core values on regulatory reform that it shares as an APEC member.[102]

5.18 Secondly, in view of existing problems of illegal trade in Singapore, the "over-consumption" issue would not be fixed through tax increases (despite the recent increase in excise duty for all tobacco products[103] and the replication of Australia's excessive layering of regulations) due to a risk that smokers would switch to cheaper legal brands, and in some cases even to illegal tobacco brands. This would also negatively impact Government tax revenues and, more importantly, undermine the efforts to fight youth smoking and decrease smoking incidence in Singapore.

Other negative effects, including on retailers

5.19 The Consultation underestimates, or even ignores the potential negative impact of standardised packaging on the livelihood of Singaporean retailers, which comprise mainly small businesses. In this regard, JTI notes that the MoH has made no attempt to analyse the effects of the SP Proposal on retailers in Singapore and has chosen to instead rely on the WHO Publication.[104]

5.20 Conversely, JTI's views remain unchanged: standardised packaging risks negatively impacting Singaporean retailers, as transaction times will increase and retail margins will be eroded by further down trading. As tobacco products make up a significant proportion of the turnover of many small retailers, standardised packaging may have significant cash-flow and credit implications for them.

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[100] See Paragraphs 4.27- 4.28 of the 2016 Response. See further KPMG's 2016 Full Year Report, p. 11, available at: https://home.kpmg.com/content/dam/kpmg/uk/pdf/2017/04/Australia-illict-tobacco-Report-2016.pdf.

[101] See the WHO Publication, p. 59, and Section 5.2 of the Consultation Document, p. 39

[102] See APEC-OECD Integrated Checklist on Regulatory Reform (2005) at p 34. See also APEC Good Practice Guide on Public Sector Governance (2011). It requires that regulatory reform be taken in the spirit of transparency, non-discrimination and accountability.

[103] See at: http://www.straitstimes.com/singapore/singapore-budget-2018-10-increase-in-tobacco-excise-duty-for-all-tobacco-products.

[104] See for, example, Wakefield M, Bayly M, Scollo M. *"Product retrieval time in small tobacco retail outlets before and after the Australian standardised packaging policy: real-world study"*. Tobacco Control 2014; 23:70–76, referred to in Footnote 95 of the Consultation Document (p. 40) and Endnote 162 of the WHO Publication (p. 71).

5.21 Further, the potential increase in the illegal tobacco trade in Singapore may undercut retail outlets and increase opportunities for criminal gangs. Indeed, with ever increasing illegal trade, Australia's legitimate retailers *"are losing cigarette sales and paying higher insurance and security costs because they are increasingly the target of armed robberies who are after their regular cigarette stocks because of the lucrative black market."*[105]

5.22 Even if the Consultation ignores the difficulties that the Australian retailers encountered after the implementation of the measure,[106] retailers in other countries that consider the introduction of the measure have also raised similar concerns*: "We're asking our workers to turn their backs on a customer for a longer period of time now to find product which is a health concern……They could be hit over the head or get robbed. The longer you lose eye contact with someone it creates an issue".*[107]

Legal Considerations

5.23 Similarly, the Consultation underestimates other potential negative consequences that the SP Proposal risks having in Singapore with regard to the protection of intellectual property and the protection of trade and investments, which stand high on the agenda of the Government.

- With no reasoning put forward, the Consultation Document merely claims that the SP Proposal would be consistent with Singapore's international obligations in the context of international trade agreements and investment treaties.[108]
- JTI wishes to stress that the WTO dispute on Australia's legislation that examines similar matters is yet to be concluded.[109] Putting forward any statement on the "likely" compatibility of the SP Proposal with Singapore's international trade agreements, whilst the standardised packaging dispute is under review at the WTO, demonstrates a lack of consideration for the WTO Dispute Settlement Process. It is, therefore, inappropriate for Singapore to pre-empt the work of the WTO Panel/Appellate Body before the final ruling has been made.
- Even if, ultimately, the WTO Appellate Body would rule in Australia's favour, the overwhelming evidence from Australia (after the case was filed and heard), as well as the UK and France, would show that while legal under WTO rules, the policy would still fail.

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105 See Paragraph 5.12 of the Submission. See more at: http://www.afr.com/news/policy/tax/600-illegal-tobacco-shops-are-devastating-retailers-industry-warns-20170831-gy7w7a.

106 The experience in Australia does show that standardised packaging creates burdensome conditions for retailers in view of additional costs associated with increased transaction times, customer frustration, inventory management delays and, finally, the increased opportunities for criminal activities. See via: http://www.aacs.org.au/wp-content/uploads/2013/10/Impact-of-Plain-Packaging-on-Small-Retailers-W2-Final-Report.pdf. See also Footnote 96 above.

107 The difficulties related to customer service and longer transaction times with other potential negative consequences have been echoed by the Atlantic Convenience Stores Association in Canada, in relation to the standardised packaging proposal that is progressing in the country: See at: http://www.cbc.ca/news/canada/prince-edward-island/acsa-cigarette-plain-packs-1.4087287. It is notable that the president of the association, who has over 30 years of experience of working in a convenience store, also stated: *"I have never in my lifetime had a non-smoker walk into any of my businesses and go 'Oh, what a pretty orange package. I think I'm going to start smoking today".*

108 See Section 5.7 of the Consultation Document, p. 43

109 The WTO dispute, including the final decision of the Dispute Settlement Panel about the compatibility of the Australian measure with the WTO rules, has not been concluded. Regardless of the outcome of the Panel proceedings, there is likely to be an appeal to the WTO's Appellate Body by the complainants and/or Australia. See, for example, Indonesia's statement at: http://www.thejakartapost.com/news/2017/10/04/economy-brief-ri-fight-wto-s-cigarette-dispute.html.

6. THERE ARE BETTER ALTERNATIVES TO STANDARDISED PACKAGING

6.1 As shown in the Submission, the Consultation Document has failed to provide any appropriate evaluation of the SP Proposal and its effectiveness. This precedent should be of concern to Singaporeans generally, and to brand owners in particular.

6.2 It is necessary and right to create a regulatory framework for tobacco control, which can tackle youth smoking and remind the population of the health risks of smoking. However, the introduction of a measure that adds another layer of regulation with no health benefits, and instead creates damaging consequences (such as an increase in illegal trade and unjustifiable attack on the key assets of legitimate businesses) is not the right policy to pursue.

A growing number of countries remains opposed or questions the efficacy of standardised packaging

6.3 In 2016, **the Danish MoH** questioned the effectiveness of standardised packaging in achieving Denmark's public health goals: *"I will allow myself to call into question the effects of making the bottom part of a cigarette package white, green or blue. We have strict legislation in this area, and we, the government, have passed a bill that enlarges the warning labels on both the back and the front side of cigarette packages, so that the label now has to cover 65 per cent of the package. And therefore, I do not think that the bottom part of the strip will make a big difference in regard to fulfilling the governments' ambition on creating the first Danish smoke-free generation in 2030."* [110] More recently, the Danish MoH confirmed the intention of the Danish Government not to pursue the measure.[111]

6.4 **France's MoH,** after the introduction there of standardised packaging, now admits that it "*does not lead smokers to stop smoking*" and that it did not contribute to reducing tobacco sales in France.[112]

6.5 Following the serious concerns on the impact of standardised packaging on the fundamental principles of the Swedish law,[113] the measure was not included in the proposals for potential constitutional changes that the **Swedish Government** submitted to the Council of Legislation in 2017.[114]

6.6 Standardised packaging has been debated by **Dutch legislators**, but will only be considered if alternative packaging restrictions that the Netherlands Government is currently pursuing would fail.[115]

6.7 Likewise, the proposal to adopt standardised packaging is no longer part of the **Taiwanese MoH's** proposed Amendment to Tobacco Hazards Prevention & Control Act

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[110] See the Danish MoH's statement on standardised packaging, expressed in a political debate on October 7, 2016. Available at: http://www.ft.dk/samling/20161/spoergsmaal/s56/index.htm#tale224.

[111] In October 2017, a member of a parliament called the Minister of Health to an open consultation regarding the attitude of the Government towards the introduction of a branding ban in Denmark. In response, the Minister confirmed that the Government will not to pursue the measure at this point of time. See via: http://www.ft.dk/aktuelt/webtv/video/20171/suu/td.1433952.aspx?as=1#player.

[112] See the French Health Minister's statement at: http://www.assemblee-nationale.fr/15/cri/2017-2018/20180075.asp. See also Paragraph 4.27 of the Submission.

[113] Following the review of potential constitutional changes for introduction of standardised packaging, in September 2016, the Swedish Parliamentary Inquiry Committee reported: *"We have made the analysis that such an arrangement (read: 'plain packs') would go against principles for free competition and freedom of speech (i.e. "restrictions on censorship"). To introduce this you will have to change the Constitution. We do not suggest such an amendment".* See at: http://www.di.se/nyheter/brak-om-snusregler/

[114] See at: http://www.regeringen.se/pressmeddelanden/2017/06/regeringen-foreslar-andringar-i-mediegrundlagarna/.

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

that was subject to a public consultation in 2017. The *"concerns on trademark related regulations"* and *"legal disputes resulted from Australia's implementation of plain packaging policy"* were underscored as the primary reasons for removing it from the proposed amendment.[116]

It is the right time to step back and reflect on better alternatives

6.8 **The introduction of regulation should not be based on surveys that demonstrate people's perceptions, but on hard evidence that the measure will work.**

6.9 Indeed, standardised packaging is not and will not be effective in changing smoking behaviour in terms of smoking initiation and quitting. The Singapore Government should reflect on other, targeted measures that could help achieve public health benefits with no negative consequences for businesses, policy makers and society.

6.10 Public information campaigns and tailored education initiatives that remind people both that smoking is a cause of serious diseases and that they can stop smoking if they are determined to do so can be an efficient means to reduce smoking prevalence and promote quitting.

6.11 Indeed, tobacco sales have been declining in both Japan and Germany, where governments have implemented public information campaigns and tailored education initiatives .[117]

6.12 **The Singapore Government should also focus on targeted government-led public information and education campaigns, instead of progressing disproportionate and extreme measures that form the SP Proposal.**

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[116] See Apple Daily *"Policy U-turn: Indoor Smoking Rooms Allowed. No Surtax for Duty-Free Products",* May 17, 2017 and Liberty Times *"Policy U-turn: Indoor Smoking Rooms Allowed. No Surtax for Duty-Free Products",* May 17, 2017. See also United Daily News *"NGO's THPCA Draft Amendment Passed 1st Reading in Legislative Yuan",* July 25, 2017. See more on Taiwan at: http://www.taipeitimes.com/News/taiwan/archives/2017/10/08/2003679946.

[117] See *Euromonitor International*, sales volume data for Japan from 2003 to 2016. Indeed, a number of anti-smoking campaigns have been held, including the one initiated by the Japanese MoH: *"In addition, smoking cessation treatments have been covered by health insurance since April 2006 and the effect of that is to be evaluated"* (see via: http://www.mhlw.go.jp/english/wp/wp-hw2/part2/p2c1s3.pdf). In May 2006, a *"Manual on Smoking Cessation Support"* was compiled and distributed to promote even more effective support for people to stop smoking. In addition, the Japan Society for Tobacco Control has launched a number of anti-smoking campaigns, such as dispatching doctors and nurses to certain venues to persuade smokers to quit smoking as well as telephone counselling (see via: http://www.jstc.or.jp/modules/activity/index.php). It is also notable that Japanese Circulation Society holds a "no smoking day" on the 22nd of every month to promote its anti-smoking campaign (see via: http://www.j-circ.or.jp/topics/kinen_campaignl.htmhttp://www.j-circ.or.jp/topics/kinen_campaignl.htm. Germany has put in place a number of education programs. In her 2015 *"Drug and Addiction report"*, the Federal Drug Commissioner stated: "*The positive developments that we have achieved in the areas of alcohol and tobacco, for example, make it clear: it is worth the effort to develop prevention program aimed at specific groups and implement them over the longer term*". *"The non-smoking trend in those aged 12 to 17 has continued. In 2014, according to the survey carried out by the Federal Centre for Health Education (BZgA), 10 percent of this group were smokers, representing the lowest recorded level since 1979." "Since 2005, the Federal Centre for Health Education (BZgA) has offered adolescents and young adults a free, interactive online cessation programme to stop smoking as part of the "Smoke-Free" youth campaign. A total of about 12,500 participants have used the online cessation programme until 2015." "There are probably very few prevention projects that have been running for as long as the competition for smoke-free school classes "Be Smart – Don't Start". Since the 1997/98 school year, it has been motivating young people throughout Germany to lead lives that are smoke-free. In the current school year a total of 7,560 school classes with approximately 200,000 pupils are registered…"Be Smart – Don't Start" has contributed to the fact that today significantly fewer adolescents smoke than ten years ago."* See *"Drogen- und Suchtbericht der Bundesregierung 2015"*, available (in German) at: https://www.bundesregierung.de/Content/Infomaterial/BMG/_2827.html.

Impact assessment to inform the decision whether to progress with regulation

6.13 No regulatory measure should progress in the absence of an appropriate assessment of its potential impacts on smoking consumption and prevalence and the unintended consequences it may have. Any such assessment also needs to take into account changes that may have resulted from existing measures and recent policy interventions.

6.14 It is not always possible to define the exact costs and benefits that a regulatory proposal is likely to have, but – if not – it is the responsibility of the regulator to take all reasonable steps to estimate credibly the true value of a given proposal. In doing so, equal regard must be given to both the costs and benefits that are likely to accrue over and above the existing regulatory environment, i.e. the baseline, as well as exploring the costs and benefits of alternative options.

6.15 The importance of conducting this process objectively and with an open-mind is all the more important when controversial and complex measures, such as standardised packaging and larger health warnings, are under consideration.

6.16 A regulator considering standardised packaging should articulate clearly how it expects such a measure to reduce smoking prevalence. This is only possible once the (in) effectiveness of existing measures, and any changes in smoking levels in recent years, are both properly understood.

6.17 This makes it critical, before considering any new regulatory action, that a policy maker first:

- assesses the effectiveness of existing measures – is further regulation (rather than better enforcement of existing ones) actually necessary?
- properly understands if further regulation can deliver a material net benefit to the status quo. It helps avoid the unnecessary 'layering' of regulatory measures (particularly when the Consultation has failed to show that the layering of earlier tobacco control measures has been effective);; and
- determines how pre-existing declines in tobacco consumption and/or prevalence in a country are likely to continue, absent the proposal.

6.18 This is also in line with the internationally accepted principles of Better Regulation that refer to certain practical requirements[118] to be considered by regulators, including:

- the nature and scale of the problem which the regulation seeks to address must be clearly defined;
- the evidence base must be clear and reliable; there must be clear evidence to support the proposal;
- the legislative and other consultative processes should incorporate a regulatory impact assessment in relation to any significant measure; impact assessments must be accurate and complete; and

[118] Professor Martin Cave OBE (an expert in regulatory economics who has specialized knowledge in the design of regulatory policies to achieve economic and also social objectives) identified the OECD Checklist for Regulatory Decision-making's requirement. See Professor Cave's report *"Better Regulation and Certain Tobacco Control Measures"*, November 2010, commissioned by JTI. Available at: https://www.jti.com/about-us/our-business/key-regulatory-submissions. See also: http://www.martincave.org.uk/.

6.19 Indeed, the Singapore Government should have reviewed and evaluated existing legislation (including whether it is being effectively enforced) and other options before making a decision to regulate further.

6.20 **JTI is concerned about the lack of Impact Assessment conducted for the SP Proposal, especially in a context, where existing tobacco control measures have not been evaluated properly and alternatives do not appear to have been considered sufficiently.**

7. QUESTIONS FOR CONSULTATION

7.1 JTI elaborates below its brief answers in relation to the questions set out in the Consultation document.

7.2 Given that JTI does not consider that most of the questions posed are the correct ones to be asking and wrongly presuppose the answer, Part 7 of the Submission is provided for completeness and convenience only. It should not be treated as a stand-alone answer and instead be considered along with JTI's full review of the issues covered by the Consultation, as set out in the Submission, which is intentionally comprehensive, detailed and evidence-based.

Question 1: *Do you agree that the SP Proposal would contribute to reducing smoking prevalence and improving public health over and above existing tobacco control measures? Please cite any relevant studies (specifically, the particular page or part of these studies) or information that support or contradict this.*

JTI's answer: For the reasons stated in the Submission, JTI strongly believes that the SP Proposal will not contribute to reducing smoking prevalence and improving public health, separately or in combination with existing/other measures. Indeed, the most recent official data emerging from Australia and France indicate that the combination of standardised packaging and larger health warnings has not impacted smoking prevalence or had any public health benefits: smokers continue buying and consuming tobacco products in "unattractive" packs with larger and more "noticeable" health warnings. The decision whether or not to start smoking is influenced by a range of well-documented external factors (incl. peer and parental influence) and not by branded packaging. The attitudinal surveys that the Consultation relies on merely reflect perceptions and do not measure the initiation, usage and quitting effects that could justify a policy. It is therefore not surprising that the Consultation Document acknowledges that whatever form and shape the tobacco packaging has (along with its alleged "advertising and promotional effects"), this will not influence the decision to smoke and the act of smoking (Section 2.3 of the Consultation Document). See Part 4 of the Submission for more detail.

Question 2: *Do you agree that the SP Proposal has the potential to achieve one or more of the five objectives set out above? Please cite any relevant studies (specifically, the particular page or part of these studies) or information that support or contradict this. (Please specify which of the above objective(s) you think the SP Proposal may achieve.)*

JTI's answer: Not appropriate, as it asks the wrong question. The stated objectives that rather represent "intermediate outcomes" cannot constitute a valid basis to pursue a regulatory policy. They are insufficiently articulated, not capable of changing smoking behaviour and unnecessarily duplicative of existing regulation. See Paragraphs 3.8-3.13 of the Submission for more detail.

Question 3: *Do you have any suggestion(s) to improve the SP Proposal measure under consideration as set out in Part 3.3.3 of this document? Please cite any relevant studies (specifically, the particular page or part of these studies) or information that support your suggestion(s).*

JTI's answer: For the reasons stated in the Submission, JTI considers that the SP Proposal is neither necessary nor appropriate.

Question 4*: If you do not support the proposal to introduce the SP Proposal, do you have any suggestions to regulate the shape, size and look of tobacco products and packaging to achieve the objectives set out above? Please cite any relevant studies (specifically, the particular page or part of these studies) or information that support your suggestion(s).*

JTI's answer: The shape, size and look of tobacco products are already regulated through a number of regulatory measures that have been introduced over the last years in Singapore. The branded area of tobacco packaging is limited by the 50% graphic health warnings, and this is only visible to those who have purchased a pack of cigarettes due to the ban on display at point of sale. JTI therefore considers that the SP Proposal is neither appropriate nor necessary.

Question 5: *If you do not agree that the SP Proposal should be introduced, what other options do you think should be adopted to reduce smoking prevalence, and the harm it causes? Please cite any relevant studies (specifically, the particular page or part of these studies) or information that support your suggestion(s).*

JTI's answer: For the reasons stated in the Submission and the 2016 Response, JTI considers that the SP Proposal should be withdrawn, and that rational alternative solutions be explored to achieve public health benefits. A number of countries have chosen to implement public information campaigns and tailored education initiatives on smoking and health. Authorities in these countries (including Japan and Germany) have attributed declines in smoking prevalence to these initiatives. The focus of the Singapore Government should therefore be on targeted government-led public information and education campaigns, instead of progressing disproportionate and extreme measures that form the SP Proposal.

Question 6: *If adopted, do you agree that the SP Proposal should be applied to non-cigarette tobacco products such as cigarillos, cigars, ang hoon, and roll-your-own tobacco? Please cite any relevant studies (specifically, the particular page or part of these studies) or information that support or contradict this.*

JTI's answer: Standardised packaging should not be applied to any tobacco product – see previous answers.

Question 7: *If adopted, do you think that the SP Proposal might have any incidental impact in the Singapore context other than matters addressed in answer to the above questions? If so, please elaborate on the possible incidental impact and any evidence in support of the same.*

JTI's answer: Having relied on factual evidence and expert views, JTI strongly believes that the introduction of the SP Proposal will, amongst others:

- distort market dynamics and legitimate competition;

- damage brands, as brand owners lose valuable assets, thereby jeopardising the Government's objective to become a global hub for intellectual property and a place for foreign investors to do business;
- worsen the illegal trade in tobacco products and provide ample opportunities to criminals; and
- reduce government tax revenues by accelerating down trading and fueling the illegal trade.

See the 2016 Response and Part 5 of the Submission for more detail.

Question 8: *Please include any other comments or concerns regarding the SP Proposal that you would like the Government to take into account.*

JTI's answer: JTI is disappointed that this public consultation appears to be no more than an attempt to validate views already held and a means to justify so called "objectives" of a flawed policy. However, we are hopeful that the Singapore Government would ensure that decision-making processes in relation to the SP Proposal are carried out transparently and that the views of JTI and other concerned stakeholders are heard and respected.

JTI

15 March 2018