SWITZERLAND
INTERNATIONAL
CHAMBER OF COMMERCE
The world business organization

Ministry of Health
College of Medicine Building
16 College Road
Singapore 169854
Attn.: Director, Epidemiology and Disease
Control Division

By email: tobacco_control@moh.gov.sg

14th March 2018

Response to the Ministry of Health's Public Consultation on the potential adoption of Standardised Packaging

Dear Madam, dear Sir,

ICC Switzerland constitutes a body of the International Chamber of Commerce (ICC). It was founded in 1922 as one of the first ICC chapters. As of 2017, ICC - the World Business Organization is the only private organization with full observer status at the UN General Assembly. Members include in particular international trading companies, international or specialized law firms, chambers of commerce, as well as major economic associations. On behalf of Swiss companies, ICC Switzerland provides access to the activities of the World Business Organization, informs about global economic developments, influences these from a Swiss point of view, and promotes positions taken by the international business community towards Swiss politics.

We work towards preserving entrepreneurial freedom for all businesses, continuously improving global competitiveness in manufacturing, services and research, as well as promoting sustained growth as a prerequisite for a high level of employment. We are convinced that a reliable protection of intellectual property is crucial for a favorable business environment. We deem that these principles serve business in Singapore as well.

We refer to the press release by the Ministry of Health (MoH) on 5 February 2018 of its "Public Consultation on Standardised Packaging and Enlarged Graphic Health Warnings for Tobacco Products" which announce, among other things, that the Ministry of Health will be seeking the public's views up until 16 March 2018 on the potential adoption of standardised packaging (also known as "plain packaging") in Singapore. This follows on from a similar exercise undertaken by the MoH in early 2016.

We suggest, not to pursue the approach for plain packaging further. In fact, ICC has published a paper on labelling and packaging measures impacting on brand assets. This paper explains potential effects of

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plain packages approaches and requests that such activities have to be based on scientific research. These conditions are not fulfilled.

1 Considerations in Detail

1.1 Direct or indirect restrictions on branding can have a broad impact on economy

ICC fully supports national and international policy objectives to improve public health and consumer safety and is committed to collaborative approaches to achieve these goals. In parallel with industry initiatives supporting these goals, international organizations and a growing number of countries are considering or implementing labelling and packaging measures which directly or indirectly restrict the use of branding features for a broad range of products and sectors.

Direct restrictions can range from partial to total bans on the use of logos, brand names, designs, colours, images or words, and may proscribe the use of specific colours or font sizes. Indirect restrictions obscure or restrict the use of branding by requiring the inclusion of mandatory elements in a specified size and/or style, reducing the visibility or available space for branding and other product information.

Often predicated on specific policy objectives, such measures also have a potentially broad impact in areas such as international trade, competition, consumer protection, intellectual property and innovation. Therefore, a broad basis of academic research would be needed before implementing a "standardized packaging" concept.

1.2 Examples of difficulties in regard of plain packaging in Australia

Whereas the Consultation claims that plain packaging was a success in Australia, the official data over the last five years shows the averse:

The results of the Post-Implementation Review[i] that were released by the Australian Government in early 2016 are ambiguous at best. On the one hand, the Government claims that *"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".* On the other hand, the government acknowledges that it was impossible to analyse the full effect of plain packaging, as a number of regulatory measures (e.g. larger health warnings and tax increases) had come into force simultaneously.

Interestingly, the most recent official data from Australia, which was dismissed by the Singaporean government, reveals that the long-term decline in smoking prevalence has come to a halt after plain packaging was introduced: *"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)"*.[ii]

1.3 Plain packaging for tobacco products would set a precedent for a similar measure to be applied across a whole range of other consumer products

1.4 Plain packaging would infringe intellectual property rights

Trademarks play a number of roles, including distinguishing the goods of one enterprise from those of another; symbolizing the quality, the goodwill and the reputation associated with the product and its manufacturer; promoting innovation by facilitating the introduction of new products within brand families and informing, reassuring and protecting consumers. Proposed regulations that limit or prohibit the use of words, figurative elements, colours or other terms that are intended to differentiate one product from its competitors, obviously preclude the ability of the trademark to fulfil its main functions. Furthermore,

they reduce manufacturers' incentives to invest in quality and new products and lead to a simple price based competition.

1.5 Plain packaging would worsen illegal trade in Singapore

Standardized packaging opens up opportunities for illegal trade, since counterfeiters would be able to reproduce packs with minimum effort, based on a uniform design mandated by the government. Standardized products would stimulate both the demand and the supply of illicit trade products. Indeed, sophisticated printing technologies with the use of colors and 'stylized elements' increases the complexity of producing counterfeit packs. In a standardized packaging environment, counterfeit operational agents, for example customs, may have to resort to more resource-intensive and time-consuming tools to assess the authenticity of a product and to detect fakes.

Plain packaging would have a serious and widespread negative impact on retailers and on consumers

The experience in Australia shows that plain 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.[iii] These concerns were also echoed by retailers in countries that considered the introduction of the measure.[iv]

2 Conclusion

In light of the detrimental consequences of plain packaging highlighted in the foregoing paragraphs, we encourage the Singapore Government - in its capacity as a supporter of free trade and of intellectual property rights - not to implement such a far-reaching and damaging regulation.

We request at a minimum that the Singapore Government delay any consideration of plain packaging until after the final outcome of the WTO Dispute, inclusive of any appeal to the WTO Appellate Body, and strongly encourage it to carefully review the effectiveness of plain packaging also in France, the United Kingdom and Ireland - as well as assess any further data emanating from Australia - before proceeding further with any plans to implement such a restrictive and detrimental policy in Singapore.

attachment: ICC discussion paper on labelling and packaging measures impacting on brand assets

Yours sincerely

Thomas Pletscher
Secretary General

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[i] See the Post-Implementation Review, Tobacco Plain Packaging, 2016, available at: http://ris.dpmc.gov.au/2016/02/26/tobacco-plain-packaging/.

[ii] See the National Drug Strategy Household Survey (NDSHS) at: https://www.aihw.gov.au/reports/illicit-use-of-drugs/ndshs-2016-key-findings/contents/summary.

[iii] See via: Australian retailers also claim that their revenues are being *"devastated"* by more than 600 organized crime-backed illegal cigarette and tobacco shops costing up to USD 4 billion a year in lost profits and taxes. See at: http://www.afr.com/news/policy/tax/600-illegal-tobacco-shops-are-devastating-retailers-industry-warns-20170831-gy7w7a.

[iv] See at: http://www.cbc.ca/news/canada/prince-edward-island/acsa-cigarette-plain-packs-1.4087287.