ICC MALAYSIA
INTERNATIONAL CHAMBER OF COMMERCE
The world business organization

16 March 2018

Ministry of Health
College of Medicine Building
16 College Road
Singapore 169854

Attn.: Director, Epidemiology and Disease Control Division

Dear Sir,

Public Consultation on Proposal to Introduce Standardised Packaging of Tobacco Products in Singapore

We refer to the above.

We understand that the Singapore's Ministry of Health (MoH) is conducting a public consultation on standardised packaging for tobacco products and seeking the public's views up until 16 March 2018 on the potential adoption of standardised packaging (also known as "plain packaging") in Singapore.

We write to provide our views on the proposed standardised packaging for tobacco products.

International Chamber of Commerce Malaysia (ICC Malaysia)
ICC Malaysia is part of the International Chamber of Commerce (ICC), a world business organization, whose global network comprises over 6 million companies, chambers of commerce and business associations in more than 100 countries. In Malaysia, we represent the interest of the Malaysian business community and our members comprise companies, corporations involved in international trade business activities as well as chambers of commerce, industry/professional organisations. Many of our members will of course have business or other interests in Singapore having regard to the strong bilateral trade relationship between our two nations.

ICC Malaysia's views on the proposed standardised packaging
ICC Malaysia recognizes the aim of the Singapore's Ministry of Health in proposing standardised packaging for tobacco products. However, reducing the ability of manufacturers to distinguish their products through the use of branding and to provide other product information has broad implications. Unnecessarily restrictive measures, particularly when they relate to packaging and labelling, broadly distort competition and can have the following negative consequences for consumer protection, innovation, intellectual property rights, and trade.

1. Decrease consumer choice and confidence
Limiting branding and the communication of key product information detracts from consumers' ability to easily identify, compare, and differentiate between products from different manufacturers, making it more difficult for consumers to make informed purchasing decisions and identify the product most appropriate to their needs.

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The association of a product with a particular brand puts responsibility on the manufacturer to ensure that the product has consistent quality and characteristics and creates a relationship of trust between the consumer and the brand. Restrictions on the use of branding features may undermine a critical element of accountability and responsibility on which consumers depend to identify the product most appropriate to their needs and make the best choices in the marketplace.

The right to communicate information about goods and services offered to consumers is an extension of the right to freedom of expression which is subject to constitutional or legal protection in many jurisdictions and recognized internationally.

2. Risk of counterfeit, contraband and unsafe products

When consumers cannot recognize trusted brands by their distinctive logos, packaging, and design elements, contraband and imitation or counterfeit products may enter the market more easily, giving rise to certain risks.

For some types of products, the risk of confusion between products in the marketplace arising from the above or due to lack of distinctive branding can have serious consequences for consumer health and safety. A reduced ability to distinguish goods and services through branding features may also facilitate unfair competitive practices which aim to deliberately mislead consumers.

3. Undermine innovation and investment

Manufacturers innovate to offer better quality and new features to improve their products and attract consumers. These innovative features are generally communicated to consumers in the marketplace through branding and product information on labels and packaging and in marketing, which allow the product to differentiate itself from competing products.

Reducing manufacturers' ability to differentiate their products from those of competitors through branding and product information will also reduce their incentive to invest in innovation and product quality, as their ability to communicate innovative features in the marketplace will be reduced.

In addition, when the capacity to distinguish goods in the market through branding and other product information is diminished, price becomes the primary basis for competition rather than quality and innovation. This forces manufacturers to focus on lowering the price of their goods to compete, rather than investing in innovation or improving quality. Such effects lower the overall value of products to consumers, which can harm economic growth and employment. Reduced innovation in turn deprives consumers of the improved choice and quality stimulated by active innovation in a product sector.

Branding features such as words and terms, colours, images, logos, and designs can be subject to trademark or other types of intellectual property (IP) rights, which provide the legal guarantees on which investments in innovation and brand value are based. IP rights are provided for by national legislation in recognition of the important role they play in stimulating innovation, competition and investment, and in protecting the consumer. Directly or indirectly restricting the IP owner's ability to use brand-related IP assets undermines this critical role.

4. Reduce and distort competition

Decreasing the ability of producers to use branding to distinguish between products and services in the marketplace has a broad impact on the competitive process that is crucial to well-functioning markets. Increasing limitations on branding reduces competition and distorts market dynamics by inciting price-based competition and creating barriers for new market entrants, which have a greater need than incumbents to establish their brand identity.

5. Restrict cross-border trade

While labelling and packaging requirements are permitted under WTO rules, measures that restrict or prohibit the use of trademarks on packaging can be highly trade-restrictive by adversely impacting on competitive opportunities for the products to which they apply. The trade-restrictive impact of some measures can fall disproportionately on imported products, which may have a greater need than domestic brands to establish brand identity, potentially rendering their effect discriminatory in favour of domestic production[1]. When measures are disproportionately restrictive when weighed against their effectiveness, and their costs for the consumer, the producer and the competitive process, manufacturers may forego selling in some markets to avoid detriment to their brand or prohibitively high costs for manufacturing country-specific packaging, especially in smaller markets.

In view of the above, ICC Malaysia urges Singapore's Ministry of Health to give careful consideration of the potential impacts of the proposed standardised packaging and reconsider the proposal.

Yours sincerely,

TAN SRI ALBERT CHENG
Chairman

[1] *Potentially trade restrictive labelling and packaging measures implemented by a number of countries on a broad range of products have been reviewed at the WTO during the last years, including at meetings of the WTO Committee on Technical Barriers to Trade (TBT). For a detailed analysis of the specific measures, views expressed by WTO members on the consistency of these measures with international trade rules, and the range of industries and products to which these measures apply see the Minutes of the TBT Committee meetings, for example 4-6 November 2015 and 9-10 March 2016, at https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm.*

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