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RESPONSE OF BATSM SINGAPORE TO THE PUBLIC CONSULTATION PAPER ON PROPOSED TOBACCO-CONTROL MEASURES IN SINGAPORE

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1. INTRODUCTION

1.1 This submission by British American Tobacco Sales & Marketing ("**BATSM**") Singapore (the "**Response**") responds to the *Public Consultation Paper on Proposed Tobacco-Control Measures in Singapore*, published by the Ministry of Health on 5 February 2018 (the "**Second Consultation**").

1.2 BATSM Singapore is a member of the BAT group of companies and is responsible for the importation, distribution and sale of tobacco products in Singapore. BATSM Singapore has an approximate 18.8% share of the Singapore market. BATSM Singapore currently supplies 10 brands in Singapore, including brands such as Dunhill, Lucky Strike, Pall Mall and Viceroy.

1.3 BATSM Singapore responded to the Government's 2016 *Public Consultation on Potential Tobacco Control Policies* (the "**First Consultation**"), in its response dated 29 March 2016. **A copy of BATSM Singapore's response to the First Consultation is appended to this Response as Annex 1.**

1.4 As set forth in our prior submission and as explained and updated in detail below, BATSM Singapore is strongly opposed to the introduction of standardised packaging and 75% graphic health warnings ("**GHWs**") (together, the "**SP Proposal**"). We believe that the SP Proposal is disproportionate, ineffective and not in line with Singapore's international obligations. It represents an incursion of unprecedented proportions into the rights of commercial actors engaged in the lawful supply of products. Furthermore, the SP Proposal is fundamentally flawed in that it would not achieve its stated objectives. Standardised packaging and enlarged GHWs have led in Australia, and will lead in Singapore, to unintended consequences that would adversely impact the public, business, Singapore's reputation as an international trading hub and the Government. Reliable and probative data of more than four years of application of the measure in Australia now exists. **It is essential that the Government consider this real-world data from Australia, which demonstrate that the SP Proposal would not work. The data show that standardised packaging and enhanced GHWs have failed to deliver any of their anticipated benefits in Australia. There is no reason to believe the result would be different in Singapore.**

1.5 A response to the specific questions in the Second Consultation is provided in section [6] of this Response. However, BATSM Singapore first sets out the most comprehensive and up-to-date empirical analysis of data from Australia which demonstrates that standardised packaging and enhanced GHWs have not worked. We also reiterate the detrimental impact that the SP Proposal will have on Singapore's existing trading environment. A proper, objective consideration of these points, along with the additional information provided in our prior submission and below, can only lead to the conclusion that there is no reliable evidence to support the SP Proposal, that the proposal is unjustified and that it will lead to unintended

consequences. In line with this evidence, our considered view is that the Government should not proceed with the SP Proposal.

2. EXECUTIVE SUMMARY

BATSM Singapore is strongly opposed to the SP Proposal on a number of grounds as set out in our response to the First Consultation and further explained in this Response.

2.1 **Standardised Packaging does not work.** Standardised packaging and enlarged GHWs have now been in place in Australia for more than 5 years. The objective "*real-world*" post-implementation data from Australia demonstrates that there has been no impact on the rate of decline of smoking or the number of daily smokers since the implementation of standardised packaging and enhanced GHWs in Australia. Indeed, the most recent 2016 government data from the Australian National Drug Strategy Household Survey shows that for the first time in decades there was no statistically significant decline in smoking prevalence in Australia following the introduction of standardised packaging and enhanced GHWs. More recently, the Australian Bureau of Statistics released data showing that the expenditure on tobacco products increased by 2.6% in Q4 2017 compared to Q4 2016, which is the first increase since 2004.[1] Thus, there have been a number of unintended consequences that undermine the public health objectives, including a relative reduction in the price of cigarettes, and increases in downtrading and illicit tobacco sales. The Second Consultation, by stating at page 26 that "*the Government notes that any impact of standardised packaging on smoking prevalence may only be observable in the longer term*", appears to suggest that the Government believes a long period is required to see the effects of standardised packaging and that the "*real-world*" data after four years of implementation of standardised packaging is insufficient. On this point, it is important to stress that daily smokers in Australia through these four years interacted with standardised packaging and enlarged GHWs several times a day, every day, for four years but remain unaffected by the purported benefits of standardised packaging and enlarged GHWs and continue to smoke. There is therefore no reason to believe that daily smokers in Australia will significantly reduce in the longer term due to standardized packaging and enlarged GHWs. Analysis of initial data from the UK and France, where standardised packaging has only recently been implemented, similarly indicates that standardised packaging has had no statistically significant impacts on consumption in the UK or in France; and no statistically significant impacts on prevalence in the UK.[2] Importantly, in November 2017, Agnès Buzyn, the Minister

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1 "5206.0 - Australian National Accounts: National Income, Expenditure and Product, Dec 2017", available at http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5206.0Dec%202017?OpenDocument.

2 Europe Economics (2017), TPD2 and Standardised tobacco packaging – What impacts have they had so far?, at http://www.europe-economics.com/publications/tpd2_and_standardised_tobacco_packaging_-_impact_on_prevalence_and_consumption_in_france_and_the_uk_1.pdf.

of Health of France, stated in Parliament that "*we know that plain packaging does not lead smokers to stop smoking*".[3] In this regard, we would propose that the Government commission an independent third-party expert who is qualified to review the most comprehensive datasets available on the Australian implementation of standardised packaging, which BATSM is willing to provide upon the Government's request. Such analysis of the data that underlies the Viscusi and Dryden Reports, which are discussed below, would provide the Government a clear view on the lack of efficacy of standardised packaging, which is more informative than reviews of the literature or simple critiques of data analyses.

2.2 **The SP Proposal would have a detrimental impact on Singapore's reputation as an international trading centre**. The SP Proposal would represent a fundamental shift in Singapore's attitude towards intellectual property ("**IP**") rights and the protection of fair competition. Adopting the SP Proposal would diminish the reputation of Singapore as an international trading centre that supports and protects intellectual property and investment. Its implications would also extend beyond the tobacco industry. Industries that sell other consumer products which are perceived to pose health risks would consider that in time they will also become targets for similar extreme policies. If the Government's actions damage property rights or it does not protect property to the greatest possible extent envisaged by the law, as would be the case if the SP Proposal is adopted, then Singapore's status as an international centre for investment will be diminished. Further, the SP Proposal is likely to negatively impact fair competition in the Singaporean market place. The removal of brand communication through trademarks and other intellectual property will likely increase competition based solely on price, with the result that consumers may choose to downtrade to cheaper products. At the same time, the lack of avenues to communicate about products tends to cement the market in favour of large manufacturers versus smaller ones, while also increasing the barriers to entry for new potential entrants into the market.

2.3 **The Proposals would also potentially violate Singapore's international obligations under World Trade Organization ("WTO") Agreements**, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights ("**TRIPS Agreement**"), the Agreement on Technical Barriers to Trade ("**TBT Agreement**"), and the General Agreement on Tariffs and Trade 1994 ("**GATT**"). Furthermore, investments in Singapore are protected under bilateral investment treaties ("**BITs**") with a number of countries, and these BITs obligate parties to provide a minimum level of protection. The Proposals may be liable to breach these treaties, which would negatively impact Singapore's reputation as an international trading centre and potentially expose the Government to challenges in international fora. In this context, the Government of Singapore may be well advised to await the conclusion of the ongoing WTO

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3 Unofficial translation of the official parliamentary record of 29 November 2017: "*Or, celui-ci [le paquet neutre], nous le savons, ne permet pas aux fumeurs d'arrêter de fumer*". See http://www.assemblee-nationale.fr/15/cri/2017-2018/20180075.asp#P1118000.

disputes over Australia's plain packaging measure. The Panel Report in these disputes has not yet been released, and the likelihood of an appeal is high, given historical trends in WTO dispute settlement. Further, as discussed below, statistics on WTO disputes show that Complainants are often successful in at least one claim and that appeals are quite common. The Government should consider the eventual resolution of this dispute before implementing its own similar regulations.

2.4 **BATSM Singapore's responses to the questions in the Second Consultation are, in summary:**

2.4.1 In response to **Question 1**, reliable and probative data of four years of application of standardised packaging in Australia demonstrates that the SP Proposal would not contribute to reducing smoking prevalence and improving public health over and above existing tobacco control measures. This empirical evidence of the actual effect of the measure on behaviour is the only reliable way to test the effectiveness of the measure. The studies relied upon by the Government do not and cannot justify the SP Proposal for a number of reasons, including that they pre-date and/or fail to consider the post-implementation empirical data from Australia on smoking rates and consumption. The actual real-world data from Australia must be preferred to the evidence on intermediate outcomes relied on in the Second Consultation which is not capable of determining whether standardised packaging would reduce smoking.

2.4.2 In response to **Question 2**, BATSM Singapore is of the view that the SP Proposal will fail to meet any of the objectives referred to in this question. Furthermore, the fundamental question to be addressed by the Government in deciding whether or not to introduce the SP Proposal is the one asked at Question 1 – i.e., would the proposal reduce smoking rates. As explained in our response to Question 1, the actual real-world data from Australia demonstrates that the SP Proposal would not work.

2.4.3 BATSM Singapore has not offered a response to **Questions 3 and 4**, as it is of the view that the SP Proposal would not work for the reasons discussed in this Response and our response to the First Consultation. BATSM Singapore reserves its rights to comment further on the SP Proposal in the future.

2.4.4 In response to **Question 5**, BATSM Singapore recommends that the Government should reconsider its existing regulations that prohibit "imitation tobacco products", including electronic nicotine delivery systems ("**ENDS**") (e.g. e-cigarettes). Tobacco harm reduction is a critical component of the World Health Organization ("**WHO**") Framework Convention on Tobacco Control ("**FCTC**"), which Singapore is a party to, and which the Government relies upon as a supporting basis for

introducing the SP Proposal. Singapore should consider following the increasing number of governments and other public health bodies that have recognised the potential of ENDS to contribute to public health strategies, and who are now actively supporting ENDS as part of their tobacco harm reduction activities, and encouraging smokers to switch to ENDS. As we have previously commented in other contexts, such consideration of the prohibition of ENDS in Singapore must follow internationally recognized best regulatory practices, including proper time for a regulatory impact assessment in the Singaporean context. Reasonable regulation of ENDS, as practiced by scores of jurisdictions around the world stands as a less restrictive, more beneficial public policy as compared to Singapore's current outright ban on these products and the SP Proposal.

In addition to our proposal on ENDS, we believe that the Government should consider implementing the following alternative regulatory measures, which would more effectively reduce smoking prevalence:

(A) Implementing more targeted youth education programmes;

(B) Increasing measures to prevent the trade of illicit tobacco, which includes a consistent tax policy;

(C) Greater enforcement of existing laws forbidding retailers to sell to minors and/or the implementation of additional age verification measures;

(D) Exploring the use of more targeted warnings to address any perceived information deficits; and

(E) Using existing laws to address claims that particular trademarks used on tobacco packaging mislead consumers.

2.4.5 In response to **Question 6**, BATSM Singapore maintains that the SP Proposal would fail to achieve its policy objectives for cigarettes and other tobacco products, and as such, the policy should not apply to cigarettes or non-cigarette tobacco products, such as cigarillos, ang hoon, and roll-your-own tobacco.

2.4.6 In response to **Question 7**, BATSM Singapore submits that the SP Proposal would likely have serious adverse consequences which undermine the Government's public health objective, including:

(A) Implications for international trade and investment;

(B) Exacerbation of the illicit trade problem in Singapore;

(C) Stimulating price competition, leading to downtrading to cheaper products, which may lead to an increase in consumption; and

(D) Distorting competition and raising barriers to entry.

2.4.7 In response to **Question 8,** BATSM Singapore reiterates that the SP Proposal should be abandoned for the reasons set out in this Response and in our Response to the First Consultation.

3. STANDARDISED PACKAGING DOES NOT WORK

A. *The data of the actual effect of standardised packaging on behaviour is the only reliable evidence against which to test the efficacy of the SP Proposal.*

3.1 The Second Consultation states that the ultimate objective of the SP Proposal is to contribute to promoting public health through the reduction of smoking prevalence in Singapore. Question 1 also rightly acknowledges the need for the SP Proposal to contribute to reducing smoking prevalence and improving public health *"over and above"* existing tobacco control measures. The efficacy of the measure and whether it is justified must therefore be assessed by reference to how the measure affects actual smoking behaviour. Indeed, there cannot be any justification for the extreme interference with property and other rights caused by the SP Proposal if it cannot be shown to have any public health benefit by reducing smoking prevalence.

3.2 Standardised packaging and enlarged GHWs have now been in place in Australia for more than 5 years. In these circumstances the empirical evidence of the actual effect of the measure on behaviour is the only reliable way to test the effectiveness of the measure.

3.3 The Government cannot continue to rely on pre-implementation predictive survey data and post-implementation survey data from Australia that merely seeks to measure the impact of standardised packaging on "intermediate outcomes", in circumstances where there is four years of available real-world data from Australia against which to assess the actual impact of the measure on behaviours. Irrespective of whether the measure has actually had an effect on the relevant intentions and beliefs, empirical evidence of the actual effect of the measure on behaviour is the only reliable way to test the effectiveness of the measure.

3.4 The pre-implementation predictive survey data and post-implementation survey data on "intermediate outcomes" which are relied on by the Government cannot answer the question of whether the SP Proposal is likely to cause an increase or a decrease in smoking so as to demonstrate the efficacy of the measure. This is because by its very nature, none of the pre-implementation predictive survey data provides actual evidence of changes in smoking behaviour, namely changes in initiation or quitting. The pre-implementation research only seeks to predict the impact of standardised packaging, largely by using outcome measures involving downstream psychosocial variables such as perceptions relating to the appeal and harm of tobacco products and attention to the health warning, and self-reported beliefs and intentions regarding future behaviours.

3.5 The limitations of this data are acknowledged in the literature relied on by the Government, including:

3.5.1 By the U.K. Public Health Research Consortium in their systematic review of the literature in 2012 (the **"Stirling Review"**), where they stated:

"*It is also worth noting that findings regarding smoking-related attitudes, beliefs and behaviour from both the surveys and qualitative studies in the review are reliant upon self-report. Without any form of validation (such as validating reported changes in cigarette consumption) these have quite weak predictive validity. A common argument is that plain packaging research can never truly replicate real market conditions and, as such, the suggested impacts on consumption, cessation and uptake are so far speculative*".[4]

3.5.2 By Sir Cyril Chantler in his review undertaken for the UK Government where he stated that:

"*Several of the primary research studies in the Stirling Review aimed to test whether participants believed that standardised packaging would change their purchasing behaviour. Some of the studies (and further studies conducted since) have used an increasing range of methods that approximate behavioural outcomes including experimental auctions, eye-tracking, and naturalistic study designs. However, the authors were cautious about drawing overall conclusions about smoking behaviour, given the well-known weakness of stated intentions in predicting behaviour. This caution is justified, and to that extent the findings are essentially indirect and "speculative"*."[5]

3.6 Accordingly, the evidence of the actual impact of the implementation of a policy measure (i.e., post-implementation evidence) is of considerably greater value than research that seeks to predict the impact of a measure before it was implemented. Empirical evidence on the effects of an implemented measure is more valuable than attempting to predict the impact of a policy before implementation (or forecasting effects).

3.7 The post-implementation survey data from Australia that track the actual changes in individual perceptions, attitudes and behaviours before and after the implementation of standardised packaging in Australia provide more meaningful information than does the pre-implementation predictive survey data of short-term responses to hypothetical packaging that has not been implemented. However, the data that assesses the impact of standardised packaging on certain downstream psychosocial variables or "*intermediate outcomes*" is an

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4 C. Moodie, et al., "Plain Tobacco Packaging: A Systematic Review," (Centre for Tobacco Control Research, University of Stirling, 2012), p. 89.

5 Standardised packaging of tobacco, Report of the Independent Review undertaken by Sir Cyril Chantler, (April 2014) at p. 29, para 4.21.

insufficient basis on its own to evaluate the effectiveness of standardised packaging. As with the pre-implementation studies, almost none of these studies examine actual behavioural outcomes, but instead merely ask about people's perception of the aesthetics of standardised packaging and their expectations of how standardised packaging will affect smoking-related intentions and perceptions.

3.8 The fact that evidence on downstream psychosocial variables or precursors to behaviour is an insufficient basis to evaluate the effectiveness of tobacco control policies is confirmed by the U.S. Court of Appeals decision in *R.J. Reynolds Tobacco Co. v. Food and Drug Admin.*[6] Commenting on the U.S. Food and Drug Administration's reliance on this type of evidence to support the claim that graphic warnings will advance its interest in reducing the number of Americans who smoke, the Court stated as follows (emphasis added):

> "*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, Proposed Rule at 69,532, and FDA might be correct that intentions are a "necessary precursor" to behavior change, Final Rule at 36,642, <u>it is mere speculation to suggest that respondents who report increased thoughts about quitting smoking will 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</u>. 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", Proposed Rule at 69,532. 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. See id. 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.*"
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> **A copy of this judgment, the FDA's Final Rule and the Experimental Study (which are further discussed at paragraphs [2.13-2.21] of our Response to the First Consultation) are attached to this Response, respectively, as Annexes 2, 3 and 4.**

3.9 These observations apply equally to the pre-implementation predictive survey data and the post-implementation survey data from Australia that attempts to show that standardised

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6 *R.J. Reynolds Tobacco Co.* v. *Food and Drug Admin.*, 696 F.3d 1205 (D.C. Cir. 2012).

packaging will work by reference to the impact of standardised packaging on certain downstream psychosocial variables or *intermediate outcomes*. **None of the evidence on intermediate outcomes is capable of determining whether standardised packaging has reduced smoking.**

3.10 It follows from the explanation above that **the empirical data of the actual effect of the measures on behaviour is the only reliable evidence against which to test the efficacy of the measure. Reliable and probative data of four years of application of the measure in Australia now exists. This data must be preferred to conclusions based on studies of intentions and perceptions when assessing the efficacy of the SP Proposal.**

B. The "real-world" data from Australia demonstrate that the SP Proposal would not work.

3.11 Standardised packaging and enlarged GHWs have now been in place in Australia for more than five years. In these circumstances the empirical evidence of the actual effect of the measure on behaviour is the only reliable way to test the effectiveness of the measure.

3.12 The following section of our response updates and extends the analysis from paragraphs [1.26]-[1.50] of our response to the First Consultation. In particular, we present two new expert reports by Professor Viscusi[7] and Compass Lexecon (Mr Dryden).[8] These are new reports which include extended and new analysis which is the most extensive and up to analyses of the Australian data that is available. The Government in its Second Consultation and the commissioned Chia/Miller Report comments on prior reports by Professor Viscusi and Compass Lexecon (Mr Dryden). We respond to those comments further at paragraphs [3.36-3.41] below, which we submit are misconceived and are a wrongful basis to not consider the reports. However, at this stage we reiterate that the new reports provided with this Response provide new and extended analysis that was not previously provided. **We also note that the datasets used in Professor Viscusi and Mr Dryden's new reports submitted with this Response may be provided to the Government for its review in relation to its assessment of the SP Proposal, subject to the protection of the confidential nature of the data. Accordingly, the Government may wish to commission an independent third-party expert who is well equipped to consider the relevant data from Australia as presented by these reports to assess the lack of efficacy of standardised packaging.**

3.13 The up-to-date data from Australia presented below and in the new expert reports by Professor Viscusi and Compass Lexecon (Mr Dryden), includes:

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7 Viscusi, W.K, (2018) An assessment of the effect of Australian Plain Packaging regulation: analysis of Roy Morgan research data, CITTS data, and NTPPTS data.

8 Neil Dryden, (2017) The effects of standardised packaging: an empirical analysis.

3.13.1 An overview of the most recent 2016 government data from the Australian National Drug Strategy Household Survey ("**ANSDHS**").

3.13.2 An extension and update of Professor Viscusi's previous empirical analysis which:

(A) Analyses the Roy Morgan Single Source ("**RMSS**") data, a nationally representative, repeated cross-sectional survey of Australians aged 14 and over. This is the most comprehensive data on smoking prevalence available in Australia, and the dataset presented in the report of Dr. Tasneem Chipty, "*Study of the Impact of the Tobacco Plain Packaging Measure on Smoking Prevalence in Australia*" (24 January 2016) (the "**Chipty Report**"), which was commissioned by the Australian Department of Health (the "**ADH**") and is the only econometric analysis of data that is relied upon in the Australian Government's Post Implementation Review Report of the Australian Tobacco Plain Packaging Act 2011 ("**TPP Act**") published in 2016 (the "**Australian PIR Report**"). Professor Viscusi's analysis includes data from January 2001 to December 2016 (thus providing 4 years of data in the post-standardised packaging period, which is a longer time period than in any published study, including 15 more months of data in the post-standardised packaging period than analyzed in the report of Dr. Chipty);

(B) Extends his previous analysis of the Cancer Institute Tobacco Tracking Survey ("**CITTS**") data from February 2009 to June 2016 (thus providing 3 ½ years of data in the post-standardised packaging period, which is a longer time period than in any published study);

(C) Reviews and comments on the Australian RMSS data presented in the report of Dr. Tasneem Chipty and the paper by Diethelm and Farley (2015),[9] which are relied on in the Second Consultation; and

(D) Reviews the Australian Government's Post Implementation Review Report of TPP Act published in February 2016, which is relied on in the Second Consultation.

A copy of Professor Viscusi's expert report is provided with this Response as Annex 5.

3.13.3 An update and extension of Mr Neil Dryden's previous analysis of the impact of standardised packaging on price, consumption and downtrading, which constitutes

[9] Pascal A Diethelm, Timothy M Farley, "Refuting tobacco-industry funded research: empirical data shows a decline in smoking prevalence following the introduction of plain packaging in Australia," Tob. Prev. Cessation 2015;1(November):6 http://dx.doi.org/10.18332/tpc/60650.

the most up-to-date and extensive analysis of the Australian consumption data. Mr Dryden's expert report:

(A) Updates and extends his previous analysis of the retail sales data regarding cigarettes from January 2009 to December 2016 for Australia, and from January 2008 to December 2016 for New Zealand (thus providing four years of data in the post-standardised packaging period, which is a longer time period than any published study); and

(B) Presents an alternative empirical analysis on the effect of standardised packaging on cigarette consumption using Australian only data.

A copy of Mr Dryden's expert report is provided with this Response as Annex 6.

3.14 As outlined below, the evidence from Australia shows that, four years after the introduction of standardised packaging:

3.14.1 There has been no acceleration in the long-term smoking rate decline since standardised packaging was introduced;

3.14.2 Standardised packaging has not increased the effectiveness of health warnings;

3.14.3 Standardised packaging is associated with a relative reduction in the prices of cigarettes, an increase in the consumption of cigarettes, and an acceleration in the shift from premium to non-premium brands in Australia; and

3.14.4 There has been a 15% increase in illegal tobacco since the introduction of standardised packaging.

3.15 Given that standardised packaging has failed to achieve any of its objectives in Australia, it cannot be considered that it would be any more effective if it is adopted by the Singapore Government.

There has been no increase in the rate of decline of smoking in the Australian population

3.16 The Australian Government, like the Singapore Government, said that standardised packaging was required to reduce smoking rates. However, in the four years following the introduction of standardised packaging in Australia, there has been no increase in the rate of decline of smoking in the Australian population.

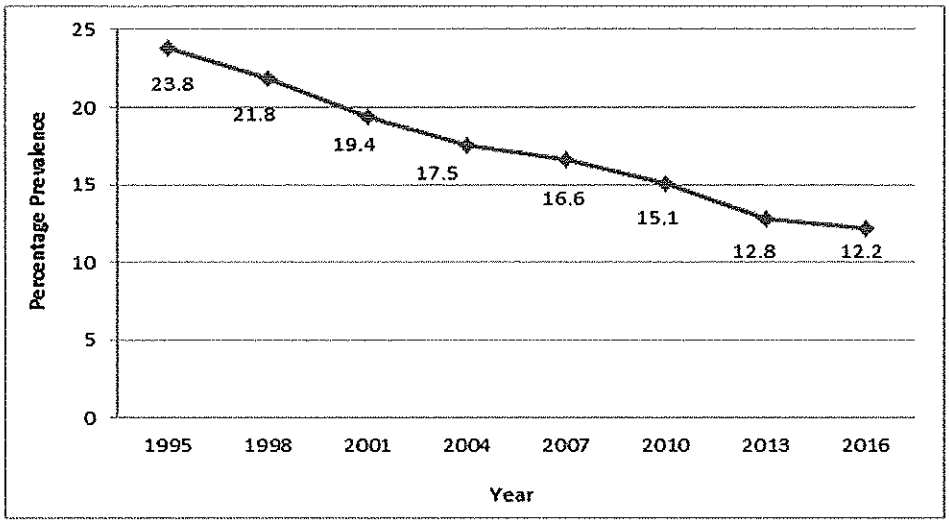
3.17 This lack of any observed impact on the long-term rates of smoking in Australia can be seen in a number of different data sources.

Australian National Drug Strategy Household Survey

3.18 The ANDSHS is an Australian Government national survey. The data from the most recent 2016 survey shows that while smoking prevalence rates had been declining steadily since

1995, for the first time in more than two decades, the daily smoking rate did not significantly decline over the most recent three-year period following the introduction of standardised packaging (falling from 12.8% in 2013 to 12.2% in 2016, which was not statistically significant).[10] Accordingly, this data provides no evidence of an additional effect from standardised packaging.

Daily smokers aged 14 years or older 1995-2016 (per cent)



RMSS Smoking Prevalence Data

3.19 As noted above, BAT has commissioned a new expert report from Professor Kip Viscusi, Distinguished Professor of Law, Economics and Management, Vanderbilt University Law School, Nashville, United States, analysing the impact of standardised packaging in Australia, dated January 2018. Professor Viscusi provides analysis of the RMSS data up to December 2016, thus providing four years post-implementation data which is the most up-to-date data analysis that is available. His analysis leads to the conclusion that the tobacco packaging changes introduced in Australia in 2012, which included standardised packaging and enlarged GHWs on tobacco packaging, have had a zero effect on smoking prevalence rates in Australia. He concludes that:

> "*the estimated statistical association of the 2012 Packaging Changes with smoking prevalence rates is zero. Instead, my analysis of the RMSS data found that the decline in smoking prevalence rates in Australia is a continuation of past nonlinear time trends, overall economic trends such as the general Australian consumer price index, and influences such as rising cigarette prices, and is not significantly related to the adoption of the 2012 Packaging Changes. The only sound conclusion based*

[10] Australian Government, "National Drug Strategy Household Survey 2016 – Detailed Findings" (2013), p. 7. Available at: https://www.aihw.gov.au/reports/australia-s-health/australia-s-health-2016/data. See also http://www.theaustralian.com.au/news/nation/more-smokers-lighting-up-despite-everincreasing-taxes/news-story/190014e7306548c49fc372dabb5a0555.

on this evidence is that the 2012 Packaging Changes are not associated with any change in smoking prevalence rates".[11]

3.20 As noted above, Professor Viscusi also reviews and comments on the analysis of Australian RMSS data presented in the report of Dr. Tasneem Chipty and the paper by Diethelm and Farley (2015) which are relied on in the Second Consultation. Professor Viscusi finds significant deficiencies in both analyses. These include Dr Chipty failing to control for the continuous nature of tax increases, using a linear trend when the time trend is not linear, and failing to include a cigarette price variable in her model. Professor Viscusi concludes that *"[a]s a result of these shortcomings, the report of Dr Chipty provides no sound evidence in support of the efficacy of plain packs policies*".[12]

3.21 When Professor Viscusi corrects for these errors, he also finds that the effect of the Australian standardised packaging changes in Australia on smoking prevalence rates cannot be distinguished from a zero effect. Professor Viscusi states:

> "*Properly specified multivariate regression analyses that corrects for the flaws in Dr. Chipty's analysis demonstrates that the estimated effect of the 2012 Packaging Changes on the smoking prevalence rate cannot be distinguished statistically from zero. As noted above, I also extended Dr. Chipty's data period with an additional 15 months of data through to December 2016 and found that the impact of the 2012 Packaging Changes on smoking prevalence rates cannot be distinguished statistically from zero for this longer time period as well*".[13]

3.22 With regards to the article by Diethelm and Farley (2015), Professor Viscusi explains that the article lacks scientific validity for several reasons, including: (i) the authors had no original data, but instead relied on estimates of monthly averages inferred from a figure in a working paper by Kaul and Wolf; (ii) their analysis includes no controls in the model for individual characteristics and changes in the sample composition that may have occurred over time; (iii) the article also omitted other key determinants of smoking prevalence rates, including cigarette prices; and (iv) the nonlinear nature of the smoking prevalence rates before the advent of standardised packaging is not taken into account. Professor Viscusi states: "[t]*he*

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11 Viscusi, W.K, (2018) An assessment of the effect of Australian Plain Packaging regulation: analysis of Roy Morgan research data, CITTS data, and NTPPTS data, at p. 21, ¶17.

12 Ibid., p. 11, ¶8.a.iv.

13 Ibid, at p.12 ¶8.a.vi. Expert analysis undertaken by Dr Lilico, the Principal and Chairman at Europe Economics, also calls into question the reliability of the conclusion reached in the Chipty Report. Dr Lilico's analysis finds two earlier statistically significant breaks in the smoking prevalence series, which, when introduced into models based on the data he has considered, have the effect of removing the impact reported by Dr Chipty. In his time series models, both with and without additional economic factors, there is no such impact. In other words, there becomes no basis for suggesting that there was a statistically significant decline in Australian smoking prevalence since the introduction of standardised packaging. See Dr A. Lilico, Europe Economics, (August 2016), "Analysis of the Chipty Report's conclusions regarding packaging changes and smoking prevalence in Australia", available at http://www.jti.com/how-we-do-business/key-regulatory-submissions/.

deficiencies I cited are not minor limitations nor matters of a difference of opinion, but are fundamental problems that make it inappropriate to rely on their study."[14]

Smoking consumption data

3.23 As noted above, BAT has also commissioned a new expert report from Mr Neil Dryden of Compass Lexecon, dated 10 October 2017, analysing the impact of standardised packaging on price, consumption and downtrading. Mr Dryden is Executive Vice President at Compass Lexecon, an economic consulting firm.[15]

3.24 Mr Dryden analyses the impact of standardised packaging in Australia on cigarette consumption, cigarette prices, and downtrading by using New Zealand (where standardised packaging had not been introduced) as a benchmark comparator.[16] This analysis, known as "*difference-in-differences*" ("**DID**"), is more robust than other statistical methodologies for analysing the effects of standardised packaging on cigarette consumption, because it is able to isolate the effect of the relevant variable, i.e. standardised packaging, from the effect of other confounding factors.[17] Mr Dryden's analysis includes data up to and including December 2016, i.e., four years after the full implementation of standardised packaging in Australia, which is a longer time period than in any published study.

3.25 Mr Dryden's empirical analysis shows that:

3.25.1 Standardised packaging is associated with an increase in the per capita consumption of cigarettes in Australia relative to the consumption that would have prevailed had standardised packaging not been implemented, i.e., relative to the counterfactual. In particular, standardised packaging is associated with an increase in per capita cigarette consumption (relative to the counterfactual and up to December 2016) of 3.1%-3.5%, when control variables such as prices, excise taxes and income per capita are expressed in local currencies; and an increase of 2.2%-3.0% when these variables are expressed in purchasing power parity ("**PPP**").

3.25.2 Standardised packaging is associated with a reduction in the average retail price paid by consumers for cigarettes in Australia relative to the counterfactual. In particular, standardised packaging is associated with a decrease in the average price paid by consumers (relative to the counterfactual and up to December 2016) of 2.0-2.6%.

3.25.3 While consumers have been shifting from premium to non-premium brands ('downtrading') in Australia since at least 2009, the adoption of standardised

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14 Ibid, at p.13 ¶8.b.
15 Neil Dryden, (2017) The effects of standardised packaging: an empirical analysis.
16 Ibid at 4.14ff for Mr Dryden's rationale of why New Zealand is a good comparator for Australia.
17 Ibid at 4.7ff.

packaging is associated with a significant acceleration of this downtrading trend.

These results are reliable across a large set of robustness checks.

3.26 Mr Dryden also provides alternative empirical analyses on the effect of standardised packaging on cigarette consumption using Australian only data, similar to approaches that have been adopted by other authors for estimating the effect of standardised packaging in Australia.[18] Although Mr Dryden considers that these alternative analyses are carried out in a less rigorous framework, the results are consistent with those of his DID analysis, and indicate that standardised packaging is associated with an increase in cigarette consumption. Mr Dryden concludes that these analyses yield results that are "*consistent with those of my DID analysis, and indicate that standardised packaging is associated with an increase in cigarette consumption per capita relative to the counterfactual.*"[19]

The proportion of daily smokers has not changed

3.27 In his expert report, Professor Kip Viscusi also reviewed the data from two key surveys on Australian smokers' beliefs and behaviours before and after the advent of the standardised packaging policy which are relied on in a number of the studies that have been published following the implementation of standardised packaging in Australia, i.e. the CITTS and the National Tobacco Plain Packaging Tracking Survey ("**NTPPTS**"). As noted above, this post-implementation this survey data from Australia that track the actual changes in individual perceptions, attitudes and behaviours before and after the implementation of standardised packaging provide more meaningful information than the pre-implementation predictive survey data of short-term responses to hypothetical packaging that has not been implemented.

3.28 Professor Viscusi's analysis of the CITTS data from February 2009 to June 2016 (providing 3½ years of data in the post-standardised packaging period, which is a longer time period than in any published study) shows that, after the implementation of standardised packaging in Australia:

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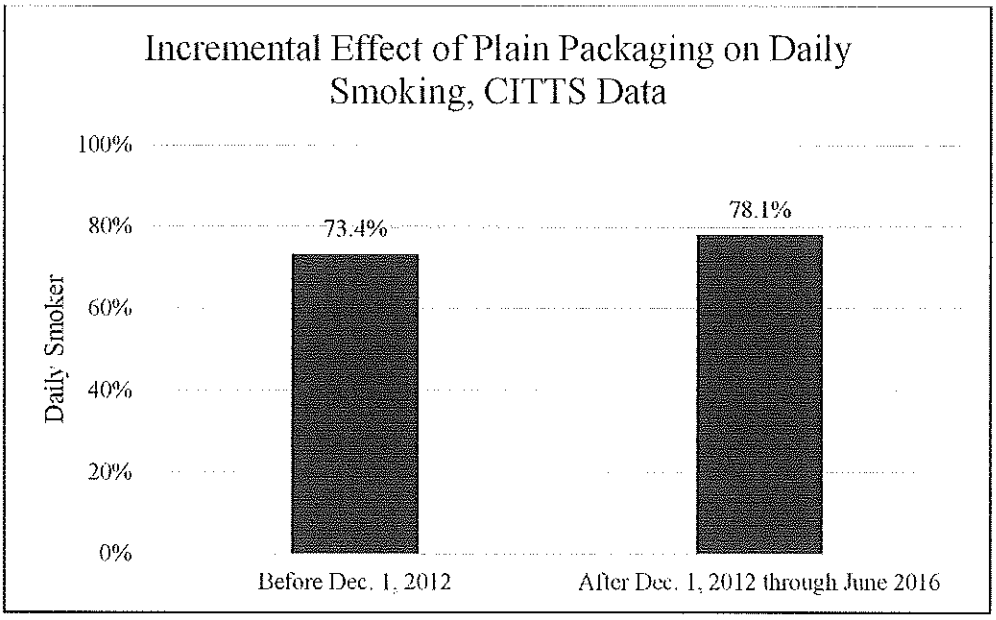
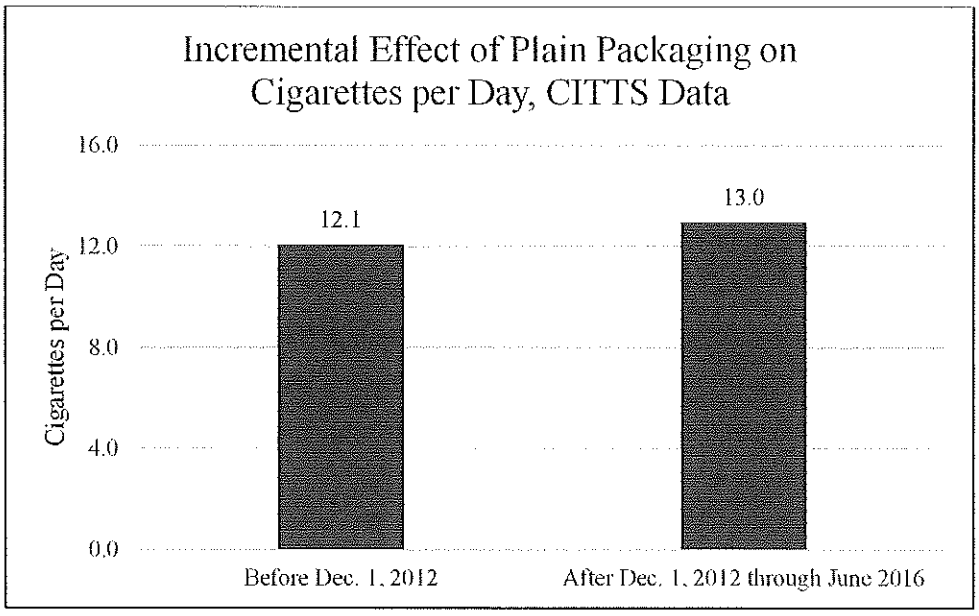
18 For example in the report by Dr Chipty which is relied upon by the Australian Government for its Post Implementation Review, which is discussed in paragraphs [3.20-3.21] and [6.3] below.

19 Neil Dryden, (2017) The effects of standardised packaging: an empirical analysis at 5.5.

- There has been an increase in the intensity of smoking behaviour by those surveyed, with more smokers reporting that they are daily smoking;[20] and



- The number of cigarettes smoked per day by those surveyed increased.[21]



3.29 Analysis of the NTPPTS data presented by Professor Viscusi also demonstrates that since the implementation of standardised packaging in Australia, there has been no statistically significant change in the number of cigarettes smoked per day.[22]

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20 Viscusi, W.K, (2018) An assessment of the effect of Australian Plain Packaging regulation: analysis of Roy Morgan research data, CITTS data, and NTPPTS data, p. 43, ¶43.

21 Ibid, p. 43, ¶42.

22 Ibid, p. 51, ¶54.

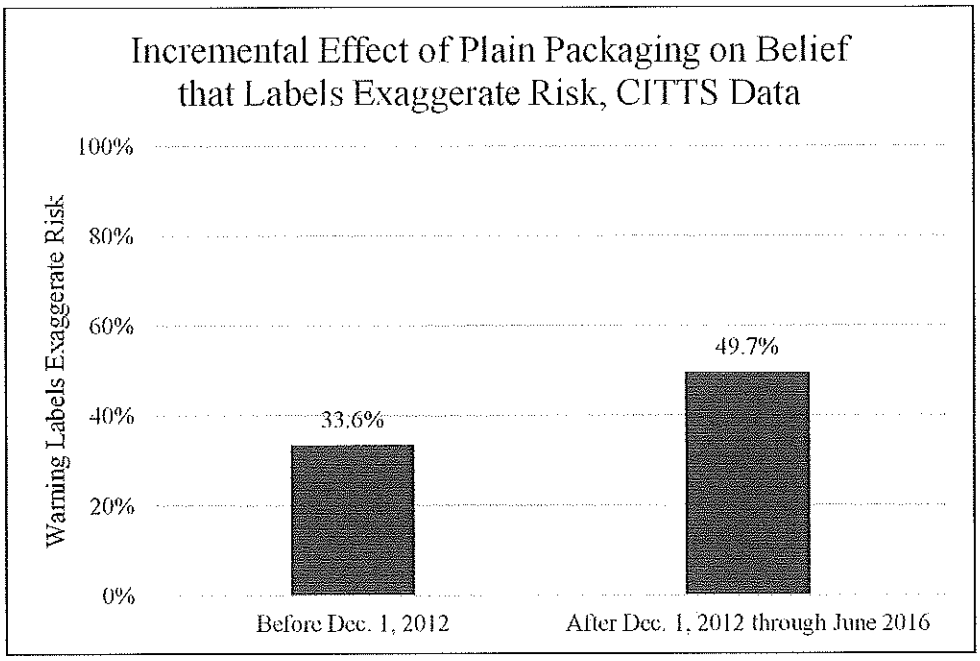
3.30 Professor Viscusi also reports that in a study of the NTPPTS data undertaken by Scollo et al. (2015),[23] the authors similarly did not find that standardised packaging had had any impact on consumption.[24] The authors state that:

> *"Among daily cigarette smokers, there was no change in consumption between pre-[plain packaging] and the transition phase or [plain packaging] year 1 period...Nor was any change detected when mean daily consumption was analysed among regular smokers...Mean daily consumption also did not change from the pre-[plain packaging] to subsequent two phases among current smokers...Furthermore consumption did not change from pre-[plain packaging] to the subsequent two phases among current smokers of brands of any market segment...".*[25]

The implementation of standardised packaging has not increased the efficacy of GHWs

3.31 Analyses of the CITTS and NTPPTS data presented by Professor Viscusi also demonstrate that the implementation of standardised packaging in Australia has not increased the effectiveness of GHWs. Professor Viscusi's analysis of the CITTS data shows that after the implementation of standardised packaging in Australia there is a statistically significant increase in whether smokers believe that:

- health warnings exaggerate the health effects of smoking;



23 Scollo, M., et al., "Changes in Use of Types of Tobacco Products by Pack Sizes and Price Segments, Prices Paid and Consumption Following the Introduction of Plain Packaging in Australia," (2015) *Tobacco Control* pp. ii66-ii75.

24 Ibid, p. ii66.

25 Ibid, p. ii73.

- the government pesters people too much about smoking risks;
- the health effects of smoking are exaggerated; and
- smoking is only harmful to heavy smokers.[26]

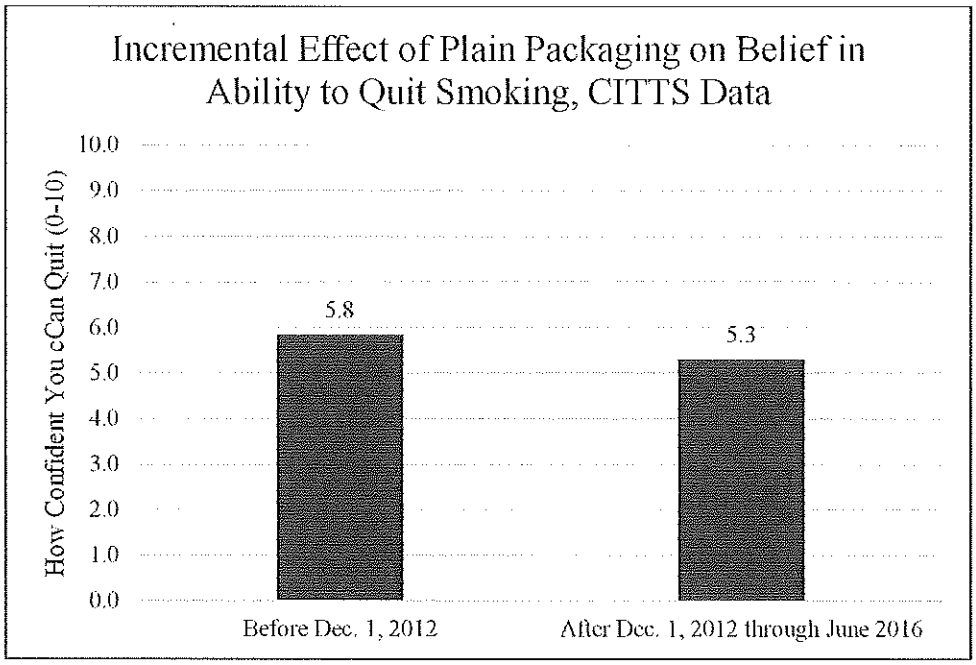
3.32 Professor Viscusi's analysis of the NTPPTS data also shows that after the implementation of standardised packaging in Australia there has been no statistically significant impact on beliefs regarding:

- the harmfulness of cigarettes; and
- the impact of smoking on respondents' own health.[27]

The introduction of standardised packaging has not encouraged smokers to stop smoking

3.33 Professor Viscusi's analysis of the CITTS and NTPPTS data also indicates that standardised packaging has not increased quit-related behaviours. Professor Viscusi's analysis of the CITTS data shows that after the implementation of standardised packaging in Australia:

- respondents rate it significantly more difficult to quit both in terms of how difficult it would be to quit and how difficult they thought it would be to quit;
- respondents are significantly less confident that they can quit; and



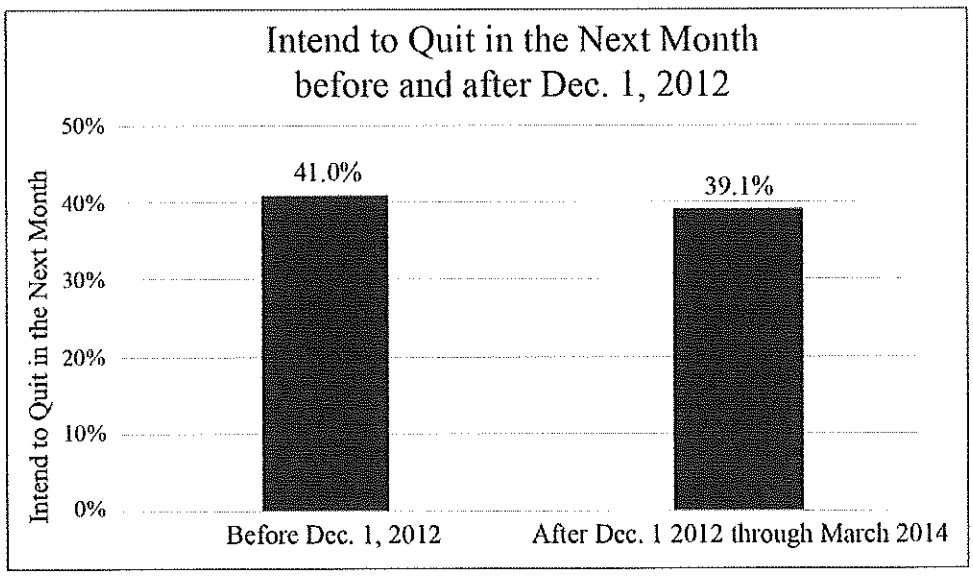
26 Viscusi, W.K, (2018) An assessment of the effect of Australian Plain Packaging regulation: analysis of Roy Morgan research data, CITTS data, and NTPPTS data, p. 47, ¶47.

27 Ibid, p. 57, ¶67.

- there were no statistically significant effects of standardised packaging on the perceived difficulty of the last quit attempt or confidence that they can stay as quitters.[28]

3.34 Professor Viscusi's analysis of the NTPPTS data also shows that after the implementation of standardised packaging in Australia there is:

- a decline in respondents' rating of the importance of quitting;
- a decrease in respondents' intention to quit in the next month;



- no change in the fraction of respondents who have ever attempted to quit smoking;
- no statistically significant difference in the number of days since respondents' last quit attempt; and
- a statistically significant decrease in smokers stubbing out their cigarette after thinking about the harms of smoking.[29]

3.35 Professor Viscusi's analysis is corroborated by analysis of the NTPPTS data undertaken by Davidson and de Silva who found that the evidence drawn from the NTPPTS does not support the efficacy of the standardised packaging policy.[30] Davidson and de Silva conclude that:

> "*The Australian plain packaging policy has failed to meet its stated objectives. The [NTPPTS] research project commissioned to establish whether the policy had met*

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28 Ibid, p. 46, ¶45.
29 Ibid, p. 53-54, ¶58-63.
30 Davidson, S. & de Silva, A., "Stubbing Out the Evidence of Tobacco Plain Packaging Efficacy: An Analysis of the Australian National Tobacco Plain Packaging Survey" (2016).

its stated objectives fails on a number of criteria including independence, transparency, replication and rigour".[31]

The Government in the Second Consultation did not objectively assess and wrongly rejected the analyses and conclusions of the previous expert reports of Professor Viscusi and Mr Dryden.

3.36 The Second Consultation, at page 36, briefly refers to and dismisses prior expert reports of Professor Viscusi and Mr Dryden that were submitted by BATSM Singapore with its response to the First Consultation. The Government-commissioned Chia/Miller Report also criticises previous reports by Professor Viscusi. As explained below, these criticisms of the prior reports of Professor Viscusi and Mr Dryden are misconceived and are an inappropriate basis to dismiss the reports.

3.37 The Chia/Miller Report purports to review a prior report by Professor Viscusi commissioned by British American Tobacco Norway to review the literature on standardised packaging, dated June 2015.[32] As noted, this report reviews the literature relied on to promote standardised packaging. Professor Viscusi's main criticism of the literature is that invariably, the studies are experimental studies using a survey methodology and do not address impacts on smoking prevalence rates. As Professor Viscusi explains, surveys are problematic for a number of reasons and cannot replace naturalistic or experimental studies that track actual behaviour. Professor Viscusi also raises a number of specific limitations of the studies which mean that they cannot provide a sound basis to conclude that standardised packaging would be effective in increasing risk awareness or reducing smoking behaviour. As Professor Viscusi points out, the limitations of this evidence have been acknowledged, including in the Stirling Review[33] and in an Expert Panel Report for Health Canada which states:

> "*The study of consumer behaviour is limited by methodological concerns about validity and reliability. Virtually all consumer behaviour research is conducted in a contrived environment with simulated purchases, or through vignettes describing product decisions. The results may approximate real consumer behaviour but probably would not replicate it.*"[34]

The point of difference between Professor Viscusi and other reports that promote standardised packaging (including the Chia/Miller Report) is that Professor Viscusi does not accept that methodological flaws and limitations of the literature can be disregarded. As

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31 Ibid, p. 12.

32 Viscusi (2015) 'An Assessment of the Likely Effect of Plain Packaging on Warnings Efficacy', available at https://www.regjeringen.no/no/dokument/dep/hod/hoeringer/hoeringsdok/2015/horing-av-forslag-til-innforing-av-standardiserte-tobakkspakninger-og-gjennomforing-av-tobakkskonvensjonen-artikkel-5.3-i-norge/Download/?vedleggId=b84be9bd-0c56-4f97-a995-646f18bf768f.

33 See para 3.5 above.

34 Expert Panel Report for Health Canada, *When Packages Can't Speak: Possible Impacts of Plain and Generic Packaging on Tobacco Products*, p. 2 (1995).

Professor Viscusi states: "[c]*ounting studies and the direction of the results does not certify the soundness of the experimental procedures, the relevance of the experimental effects to likely policy impacts, the statistical significance of the results, or the magnitude of the results*".[35]

3.38 However, as noted above, the Government cannot, in any event, continue to rely on pre-implementation predictive survey data and post-implementation survey data from Australia that merely seeks to measure the impact of standardised packaging on "intermediate outcomes". Rather, the real-world data from Australia covering four years of implementation is available against which to assess the actual impact of the measure on behaviours. These data show that standardised packaging and enhanced GHWs have failed to deliver any of its anticipated benefits in Australia.

3.39 The Chia/Miller Report also purports to review a prior report by Professor Viscusi that analyses CITTS data and NTPPTS data that was submitted by BATSM Singapore with our response to the First Consultation. However, the Chia/Miller Report does not undertake any substantive consideration of the report, but merely adopts selective statements from a judgment of the UK High Court to recommend that the report should not be relied on. The Chia/Miller Report notes that the UK High Court judgment states that the CITTS data did not provide evidence on general smoking prevalence. However, the Chia/Miller Report does not note that the CITTS dataset provides information on the behaviours of smokers and recent quitters – clearly an important group, given that one of the stated aims of standardised packaging is to encourage smokers to quit and to not relapse. The Chia/Miller Report also notes comments made in the UK High Court judgment regarding criticisms made in relation to Professor Viscusi's analyses by other witnesses in the proceeding. However, the Chia/Miller Report fails to note that the UK High Court judgment also records that Professor Viscusi responded to Professor Hammond's criticisms, rejecting them.[36] In his response, Professor Viscusi explains that the criticisms that are made are misleading and falsely represent the evidence that he has presented. **A copy of Professor Viscusi's response to the criticisms made of his analyses in the UK High Court proceeding is provided with this Response as Annex 7.**

3.40 Furthermore, as noted above, the new report of Professor Viscusi that is submitted with this Response provides new and extended analysis that was not previously provided. Also, the datasets used in Professor Viscusi's (and Mr Dryden's) new reports submitted with this Response may be provided to the Government for its review in relation to its assessment of the SP Proposal, should it advise that it requires them. Accordingly, the Government is well

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35 Viscusi (2015) 'An Assessment of the Likely Effect of Plain Packaging on Warnings Efficacy', para. 33.

36 R (British American Tobacco and others) v Secretary of State for Health [2016] EWCA Civ 1182, para. [387].

equipped to consider the relevant data from Australia as presented by these reports to assess the lack of efficacy of standardised packaging.

3.41 There is no substantive consideration of Mr Dryden's prior report. The Second Consultation merely raises two comments: firstly, it is said that while the report finds a drop in prices, recommended prices actually increased in Australia post-standardised packaging; and secondly, it is claimed that New Zealand has a more aggressive approach to tax increases than Australia so it is not an appropriate comparison. Both of these points are misconceived and demonstrate a lack of adequate consideration or understanding of My Dryden's analyses. Mr Dryden accounts for prices (which include the impact of tax increases) in his analyses, so the fact that the tax increases were not the same between Australia and New Zealand during the relevant period is fully accounted for in the analysis and therefore has no impact on New Zealand being an appropriate comparator. We also note that in Mr Dryden's new report provided with this Response, he provides an additional analysis of the Australian only data (without the use of New Zealand as a comparator) which confirms his analysis. In regard to the drop in prices, Mr Dryden's analyses finds that standardised packaging in Australia is associated with a reduction in prices relative to the counterfactual (i.e. New Zealand) – so standardised packaging is associated with a reduction in prices compared to the scenario with no standardised packaging. The fact that absolute prices in Australia went up doesn't undermine this finding. What it means is that prices (which were impacted by successive large tax increases in Australia) would be expected to have gone up more in the absence of standardised packaging. Accordingly, the Government wrongly dismissed Mr Dryden's previous report and failed to adequately and objectively review the report. Furthermore, these reasons cannot be used as a basis for failing to assess Mr Dryden's new expert report submitted with this Response.

4. THE SP PROPOSAL WOULD IMPERMISSIBLY EVISCERATE INTELLECTUAL PROPERTY RIGHTS AND BE DETRIMENTAL TO SINGAPORE'S REPUTATION AS AN INTERNATIONAL TRADING CENTRE

As set forth in our prior submission and as further explained below, the SP Proposal would eviscerate IP rights and tarnish Singapore's reputation as one of the leading international trading centres in the world. As such the implementation of the SP Proposal would disincentivise manufacturers of other consumer products from investing in Singapore.

4.1 The SP Proposal would eviscerate Intellectual Property Rights

4.2 As discussed in paragraph [1.1] of our response to the First Consultation, trademarks are vital to manufacturers, serving to:

4.2.1 distinguish their goods from similar products;

4.2.2 indicate a product's source or origin;

4.2.3 distinguish products from competitor products;

4.2.4 symbolize a product's quality and features and provide a 'guarantee' of quality to consumers;

4.2.5 facilitate effective competition (by enabling manufacturers to uniquely identify and differentiate their products other than on the basis of price alone); and

4.2.6 enable market penetration and facilitate local and international trade.

4.3 Trademarks are also crucial to the effective operation of the global economy, providing "*the legal framework underpinning [consumer] confidence*", and playing "*an important role in preventing market failure*".[37]

4.4 The Government of Singapore clearly recognises the importance of intellectual property, including trademarks, which is reflected in its almost unrivalled reputation for protecting intellectual property to date. The website of the Government's Intellectual Property Office acknowledges that "[i]*nternational surveys consistently rank Singapore's IP regime as one of the best in the world*" and notes that Singapore is ranked:

4.4.1 Fourth in the world and top in Asia for the best intellectual property protection in the World Economic Forum's Global Competitiveness Report 2015/2016;

4.4.2 Top in Asia for its intellectual property environment in the U.S. Global Intellectual Property Center's International IP Index 2015;

4.4.3 Third in the world under the Bloomberg 2018 Innovation Index; and

4.4.4 Seventh most innovative nation in the world and top in Asia under the Global Innovation Index 2017, which ranks countries' innovation performance, and first in the world on the Innovation Input Sub-Index of the Global Innovation Index 2017, which gauges elements in the national economy that enable innovation activities.[38]

4.5 We note that Singapore was also ranked second in the world under the 2018 Index of Economic Freedom, which assesses, *inter alia*, rule of law and the degree by which the law protects private property, and regulatory efficiency and business freedom. Singapore currently ranks 98.4 out of a maximum 100 points for protection of property rights, and 90.9 out of a maximum 100 points for business freedom.[39]

4.6 The extensive ban on advertising and sponsorship of cigarettes in Singapore to-date coupled with the recent implementation of the retail display ban means that the limited space available on cigarette packs for trademarks is the only tool manufacturers have to identify and differentiate their products from other competitive offerings. **The SP Proposal will**

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37 World Intellectual Property Report 2013: Brands – Reputation and Image in the Global Marketplace. Available at http://www.wipo.int/edocs/pubdocs/en/intproperty/944/wipo_pub_944_2013.pdf.

38 See http://www.ipos.gov.sg/MediaEvents/SingaporesIPRanking.aspx accessed on 13 February 2018.

39 See https://www.heritage.org/index/country/singapore.

altogether eliminate the effective use of trademarks and, in doing so, destroy their value. As a result, decades of investment in brands and their related trademarks, along with their inherent goodwill, will be lost.

4.7 As discussed at paragraphs [1.6-1.7] of our previous response to the First Consultation, brands including trademarks play an important role in the cigarette market, and their erosion or elimination changes the nature of the market. In general, markets without brands become price-driven commodity markets, which may have adverse consequences that undermine the Government's objectives, including an increase in consumption and the illicit trade.

4.8 The SP Proposal could also disincentivise industries that sell other consumer products[40] which are perceived to pose health risks from investing in Singapore, as they may consider that in time they will also become targets for similar policies. Such industries could include the alcohol, confectionery, savoury snacks, and sugary drinks industries, which have been identified as 'at risk' industries for standardised packaging legislation. Indeed, an increasing number of campaigners are calling for standardised packaging to be extended to other sectors.[41]

4.9 A recent report by Brand Finance, a leading international independent brand valuation and strategy consultancy, analysed the potential impact of a standardised packaging policy on eight major brand owners: AB InBev, The Coca-Cola Company, Danone, Heineken, Mondelez International, Nestlé, PepsiCo, and Pernod Ricard.[42] Between them, these firms control 1,242 brands, 907 of which are used to market alcohol, confectionery, savoury snacks, and sugary drinks. A before-and-after analysis of the brand strength of each of the 907 brands owned by these eight firms indicates a loss to enterprise value of $186.7 billion. The contribution of the analysed brands to their parent companies would fall 33.9% from $551.0 billion to $364.3 billion, seeing overall enterprise value fall 16.5%. An extrapolation of the results to all major alcohol and sugary drinks brands points towards a potential loss of $293 billion for the beverage industry globally.

4.10 Proceeding with the SP Proposal based on the evidence set out in the consultation, which is acknowledged as being limited and mixed, and without having proper regard to the actual

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40 We note that 31.9% foreign direct investment in Singapore in 2015 was in the wholesale & retail trade and manufacturing industries. See https://en.portal.santandertrade.com/establish-overseas/singapore/foreign-investment.

41 Several studies have been published in the last two years that advocate for standardised packaging and/or GHWs for alcohol and sugary product packaging. See, for example, Al-Hamadani et al., (2017) Alcohol warning label perceptions: Do warning sizes and plain packaging matter?; Kersbergen et al., (2017) Alcohol consumers' attention to warning labels and brand information on alcohol packaging: Findings from cross-sectional and experimental studies; and Bollard et al., (2016) Effects of plain packaging, warning labels, and taxes on young people's predicted sugar-sweetened beverage preferences: an experimental study. See also comment by Dr. Judith Mackay, advisor to the WHO, who has called for tobacco-style warnings to be extended to alcohol. See http://www.ias.org.uk/What-we-do/Alcohol-Alert/June-2017/Graphic-cancer-warnings-on-alcohol-could-cut-drinking.aspx.

42 Brand Finance, Plain Packaging Brand Impact Analysis, December 2017, available at: http://brandfinance.com/images/upload/brand_finance_plain_packaging_report.pdf.

data from Australia that demonstrates that the measure does not work (as set out above), will send a message to other industries that the Government is not supportive of IP rights and is prepared to act against them without reliable evidence. By adopting standardised packaging, the Government would also compromise its ability to credibly oppose similarly misconceived regulatory initiatives that may be adopted by foreign governments to the detriment of Singapore's food and beverage exporters. Other industries have also been adversely affected by the introduction of standardised packaging in other countries. For example, the effect in the UK on the packaging industry has been dramatic, with the closure of three manufacturing plants producing printed tobacco packaging.[43]

4.11 The Ministry of Health in its consultation document does not sufficiently address how its SP proposal would maintain Singapore's traditionally "*strong commitment to intellectual property rights*". The document claims that it will ensure that the SP proposal will be consistent with international obligations, yet it does not provide any consideration of the impact of the SP Proposal on IP rights nor does it assess the value of the IP rights that will be destroyed by the SP Proposal.

4.12 The standardisation of tobacco product packaging and the removal of the tobacco industry's brands and intellectual property through the SP proposal (which the consultation document ignores) have not been sufficiently justified. A move to impose such a regulatory initiative on tobacco products may lead to an increased demand for similar initiatives for other products. Singapore's reputation as an international trading centre will be damaged and other legal and productive Singapore industries will suffer.

5. THE SP PROPOSAL MAY PLACE THE SINGAPORE GOVERNMENT POTENTIALLY IN BREACH OF ITS INTERNATIONAL OBLIGATIONS

5.1 As discussed at paragraphs [1.55-1.72] of our response to the First Consultation, the SP Proposal may likely violate Singapore's international obligations under WTO Agreements and BITs. This would further diminish Singapore's reputation as an international trading centre, and would act as a deterrent to foreign companies looking to invest in Singapore.[44] We note that the Government has not addressed the arguments we raised in our response to the First Consultation, but has simply stated that it has "*carefully considered the above comments and* [is] *of the view that the SP Proposal would be consistent with Singapore's international obligations*". Again, this is an insufficient basis on which to proceed. The Government should fully explain the basis upon which it believes that the SP Proposal would be consistent with Singapore's international obligations to inform stakeholders and allow

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43 The failure of plain packaging | Mike Ridgway, available at: https://www.packagingnews.co.uk/features/comment/soapbox/failure-plain-packaging-mike-ridgway-03-01-2018.

44 We note that under the 2018 Index of Economic Freedom, Singapore is currently ranked at 90 and 85 out of a possible maximum of 100 points for trade and investment freedom respectively.

them to respond. This is required to ensure transparency and a fair process. In this respect, it is also important to recall that Article 2.2 of the TBT Agreement requires that countries "ensure" that technical regulations do not operate as "unnecessary obstacles to trade". This requires that the Government fully assess the impact of a proposed regulatory measure on its international obligations. This is also in line with internationally accepted principles of Better Regulation, such as those defined by the Organization for Economic Co-operation and Development and the Asia-Pacific Economic Cooperation ("**APEC**") of which Singapore is a member. The APEC paper "Supporting the TBT Agreement with Good Regulatory Practices" recommends that analysts demonstrate in a regulatory impact assessment that each option meets the TBT criteria and that trade experts, authorities and those who possess specific expertise such as assessing trade restrictiveness and potentially discriminatory provisions, should be included in most consultation opportunities.

5.2 Accordingly, we reiterate the submissions made in our response to the First Consultation and call on the Government to provide a full response and to allow stakeholders to thereafter respond to the Government's position.

5.3 As the Government will also be aware, the dispute settlement proceedings before the WTO initiated by a number of countries against Australia in respect of its standardised packaging measure are still ongoing. The claims include, among other things, that Australia's standardised packaging law violates the TBT Agreement and the TRIPS Agreement. We understand that an initial ruling by the WTO Panel is not expected before the end of the second quarter in 2018, and given the potential of an appeal, it may take until 2019 for the WTO Appellate Body to issue a final ruling in the dispute.

5.4 In this context, it is important to note that statistics on WTO disputes indicate that, since 1995, Complainants have been successful on at least one claim of violation in 90% of all disputes, and that close to 70% of all panel reports have been appealed to the Appellate Body. Given the likelihood of a decision on the legality under international law of standardised packaging in the near future, we again urge the Government to wait for the outcome of these proceedings before moving forward with the SP Proposal.

6. SUBSTANTIVE RESPONSE TO QUESTIONS

RESPONSE TO 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.

6.1 As discussed at section [2.4.7] above, reliable and probative data of four years of application of standardised packaging in Australia demonstrate that the SP Proposal would not

contribute to reducing smoking prevalence and improving public health over and above existing tobacco control measures. This empirical evidence of the actual effect of the measure on behaviour is the only reliable way to test the effectiveness of the measure.

6.2 The majority of the evidence that the Government is seeking to rely upon to justify the SP Proposal is pre-implementation predictive survey data and post-implementation survey data from Australia that merely seeks to measure the impact of standardised packaging on 'intermediate outcomes', such as appeal, awareness of health warnings and stated intentions and predictions about behaviour. However, this evidence (even putting aside the mixed outcomes) does not demonstrate any impact on smoking behaviours.

6.3 The Second Consultation fails to substantively assess the critical issue of whether the SP Proposal would affect smoking behaviour. Instead the Second Consultation merely asserts that "*the data pertaining to the Australian experience generally 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 in the longer term*". However, as discussed in our response to the First Consultation, but not addressed in the Second Consultation, the Australian PIR Report on its standardised packaging measure is flawed and shows that standardised packaging is ineffective. In addition, as noted above, Professor Viscusi in his new report also pointed out significant deficiencies in the analysis carried out by Dr Chipty that was featured in the Australian PIR Report. These include Dr Chipty failing to control for the continuous nature of tax increases, for using a linear trend when the time trend is not linear, and for failing to include a cigarette price variable in her model. Professor Viscusi concludes that "[a]*s a result of these shortcomings, the report of Dr Chipty provides no sound evidence in support of the efficacy of plain packs policies*". Furthermore, the analysis of data in the Australian PIR Report is not up to date and excludes key datasets. The analyses provided in the new expert reports of Professor Viscusi and Mr Dryden submitted with this Response provide the most up to date and complete analysis of the key datasets from Australia. These analyses must be preferred to the limited and incomplete analyses provided in the Australian PIR Report.

6.4 Even assuming that surveys which only consider downstream psychosocial variables or precursors to actual behaviour were relevant, the Government cannot ignore evidence that demonstrates that standardised packaging has not been effective on these measures as well. As noted above, Professor Viscusi's analysis of the CITTS data and the NTPPTS data, which is the most extensive analyses of the data to date, found that there is consistent evidence indicating an unfavorable association of the standardised packaging changes in Australia with a number of so called intermediary metrics (e.g., increasing the efficacy of health warnings) even setting aside issues pertaining to the efficacy of these intermediate variables in predicting actual smoking behaviours. Professor Viscusi also found that the

published articles on these data cannot be relied on as being accurate or a complete assessment of the data.

6.5 Professor Viscusi concludes that "*there is no sound basis for the* [Australian] *PIR's conclusion*". He states that "[t]*he PIR's reference to "all this evidence" is especially inappropriate because the cited studies did not report all the evidence from the NTPPTS and CITTS datasets, but only the selected results that provide the most favorable perspective on the performance of plain packs. In addition, as noted above, my extended analysis of the RMSS data and the CITTS data, which is the most extensive data analysis undertaken to date (and includes 15 months of additional data to the analysis undertaken by Dr Chipty), confirms that there is no support for the conclusion that Plain Packaging has been effective. The 2012 Packaging Changes have a zero statistical association with smoking prevalence rates, which further demonstrates that the conclusion reached in the PIR is unjustified*".[45]

6.6 It is no answer for the Government to claim that more time is needed to see an impact. No one has suggested that five years is not long enough to see any impact. Furthermore, researchers have also observed an expected wear out effect of the new packaging.[46] Given the absence of any effect to date, the probability of any longer-term effects on smoking behaviour is entirely speculative and cannot be justified.

6.7 The Chia/Miller Report and Ang/Lee Report commissioned by the Government similarly do not provide an adequate basis for introducing the SP Proposal.

6.8 The Chia/Miller Report reviews prior (old) reports on the evidence but does not provide any new analysis. The Chia/Miller Report relies on the Australian PIR Report but again simply adopts the views expressed in the Australian PIR Report without engaging in any substantive assessment of the evidence itself. As regards the other reports that are relied in the Chia/Miller Report, these reports rely on weak predictive survey data and impacts on 'intermediate outcomes' which, as explained above, cannot establish if standardised packaging will actually contribute to reducing smoking prevalence. In particular:

6.8.1 The Stirling Review, which was prepared in 2012 and updated in 2013 (before any substantive period of standardised packaging actually being in place in Australia) acknowledges that there is no direct evidence establishing that standardised packaging would contribute to improving public health by reducing the uptake of

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45 Viscusi, W.K, (2018) An assessment of the effect of Australian Plain Packaging regulation: analysis of Roy Morgan research data, CITTS data, and NTPPTS data, p.17, ¶12.

46 For example, Zacher, M. et al. (2015) *Personal pack display and active smoking at outdoor café strips: assessing the impact of plain packaging 1 year post implementation.* Tob Control. 2015 Apr; 24(Suppl 2); ii94-ii97, found that "[c]*hanges in pack orientation that were observed early post-PP were not sustained 1 year post-PP. These findings may indicate that the use of external cases became more of a nuisance over time and/or that the salience of the larger front-of-pack GHWs and impact of the removal of reassuring brand imagery decreased over time (reducing smokers' motivation to conceal the packs); a wear-out effect that would be expected.*" pp. ii96-ii97. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4392187/pdf/tobaccocontrol-2014-051826.pdf.

smoking or improving quit rates. The majority of the Stirling Review instead considers the evidence in relation to whether standardised packaging would contribute to reducing the appeal of branded cigarette packages relative to unbranded packages; increasing the salience of warnings; and improving perceptions of product harm and strength. This evidence does not demonstrate any impact on smoking behaviours, nor does it establish an information deficit or any misperceptions about the health risks associated with cigarettes. To the limited extent that the Stirling Review addresses the critical issue of whether standardised packaging would affect smoking behaviour, it only states that "*the studies in this review show that plain packaging* ***is perceived by*** *both smokers and non-smokers to reduce initiation among non-smokers and cessation-related behaviours among smokers.*" The perceptions of individuals, which the Stirling Review acknowledges as being mixed, are not predictive of actual behaviour. Indeed, the Stirling Review expressly cautions against the use of this evidence, stating that "[s]*ome caution is required in interpreting these findings, as expressed smoking-related intentions are not always predictive of future smoking behaviour...and perceptions of the impact of a future policy measure on the behaviour of others are of course subjective.*" The Stirling Review also notes numerous limitations of the studies reviewed.

6.8.2 The Chantler Report relies on the standardised packaging literature reviewed in the Stirling Review, which is acknowledged to be "*relatively modest*", subject to "limitations due in particular to constraints on study design" and "*the findings are essentially indirect and "speculative"*".[47] It is also acknowledged that the evidence relies on stated intentions which are generally weak predictors of behaviour.[48] However, it is claimed that the evidence has some strength because of its consistency of results on intermediate outcomes and because it points in a single direction. But this does not overcome the limitations of the studies in demonstrating the impacts of standardised packaging on actual smoking behaviours. Consistent results from studies that uniformly have the same methodological problems provide zero confidence in any conclusion except, perhaps, that the research designs were flawed in consistent ways. The qualitative analysis (Annex E of the Chantler Report) also confirms that the studies provide no evidence about the impact of standardised packaging on actual smoking. The analysis states:

(A) Overall the papers are satisfactory (in terms of the qualitative material) for inclusion in a Narrative Synthesis or Thematic Review (Chantler Report Annex E, page 56);

[47] Chantler Report at p. 29, para 4.21 and p38, para 6.2.
[48] Chantler Report at p. 5, para 14.

(B) The findings are therefore descriptive (and not predictive) (Chantler Report Annex E, page 56); and

(C) My conclusions are that, in the absence of strong experimental or quantitative analyses of actual behaviour, the qualitative research reviewed provides a reasonable summary of attitudes and perceptions regarding plain packaging (Chantler Report Annex E, page 57).

However, given that there is now four years of reliable and probative data on the application of standardised packaging in Australia which demonstrates that standardised packaging has not worked (i.e. the strong quantitative analyses of actual behaviour now exists), there is no basis for relying on the "attitudes and perceptions regarding plain packaging".

6.8.3 The Hammond Report focusses upon selected evidence and ignores other contrary evidence, including empirical data from Australia and, in any event, was prepared four years ago, in March 2014. The Hammond Report asserts that the "[m]*ost compelling*" evidence to support standardised packaging is that "*plain packaging has increased calls to state Quitlines* [in Australia], *and may have increased rates of smoking cessation*".[49] This ignores the reality that the study relied on reports that the number of calls to the Quitline had returned to the level prior to the introduction of plain packaging within six months.[50] In addition, the Hammond Review overlooks the actual experience in Australia, where the CITTS has found that the percentage of respondents who agree that graphic warnings encourage smokers to quit decreased with the introduction of plain packaging. This is consistent with CITTS data indicating that smokers in fact are finding it harder to quit following the introduction of standardised packaging. Finally, we note that by the Government's own standards (discussed at page 35 of the Second Consultation), the Hammond Report should be accorded limited weight. The Hammond Report was neither published nor peer-reviewed, and Associate Professor Hammond is not "independent", as he is a renowned advocate of tobacco control, and a strong proponent of standardised packaging.[51] As the Government asserts that the lack of peer review and publication is a ground for dismissing expert reports that do not support standardised packaging, it must then likewise consider it in respect of reports that are supportive of the measure. We urge the Government to undertake a careful review of all the evidence related to

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49 Hammond D, "Standardized packaging of tobacco products: evidence review. Prepared on behalf of the Irish Department of Health" March 2014, at 43, available at http://health.gov.ie/wp-content/uploads/2014/06/2014-Ireland-Plain-Pack-Main-Report-Final-Report-July-26.pdf.

50 Young JM *et al.* (2014). Association between tobacco plain packaging and Quitline Calls; a population based, interrupted time-series analysis. Medical Journal Australia. 200 (1): 29-32.

51 See, for example: http://davidhammond.ca/projects/tobacco-control/.

the SP proposal with an objective view on the most effective and proportionate tobacco control measures.

6.8.4 As acknowledged by the Government at page 37 of the Second Consultation, the Cochrane Review confirms that there is no reliable evidence that standardised packaging has reduced smoking, because the studies reviewed were of low "grade". The Cochrane Review identifies only *five* studies that are relevant to changes in tobacco use prevalence. As regards these studies:

(A) Only one study actually assessed smoking prevalence, and this study was graded as "*low quality*", meaning that the authors had limited confidence in the study and that "[t]*he true effect may be substantially different from the estimate of the effect*". Moreover, this study is subject to other limitations not discussed by the Cochrane Review, including that the study only concerned one year of data post the implementation of standardised packaging in Australia, which further undermines its quality. The additional support for this study, which the Cochrane Review seeks to draw from Dr Chipty's Australian PIR Report, is also disingenuous. In particular, this report is unpublished and therefore falls outside the protocol of the review, and the Cochrane Review also ignores the substantial criticisms that have been made of the Australian PIR Report.[52]

(B) The remaining 4 studies relate to cigarette consumption which the authors noted produced mixed outcomes. In addition, these studies were graded "*very low quality*", meaning that the authors had very little confidence in the study conclusions and "*the true effect is likely to be substantially different from the estimate of effect*".

(C) There were no studies on cessation or relapse prevention. There were also no studies on the impact of standardised packaging on smoking uptake, the key primary outcome for non-smokers.

6.9 The Government relies on the conclusion of the Cochrane Review that "*standardised packaging may reduce smoking prevalence*". However, this must be considered in the context of the review where it found no reliable evidence that standardised packaging has reduced smoking and the Cochrane Review did not consider the analysis of the up-to-date empirical data from Australia which shows that standardised packaging has not worked.

6.10 The Ang/Lee Report provides no new analysis, but simply relies on selected evidence without setting out any criteria for the selection of the studies relied on or assessment of the quality and strength of the studies. This report is simply a narrative argument to support

[52] See paragraphs [3.36-3.41] and [6.3] above.

standardised packaging, and does not provide any objective assessment of the evidence. Again, it is also notable that this report is neither peer reviewed nor published, which are grounds that the Government has relied on to dismiss expert reports that do not support standardised packaging. The Ang/Lee Report relies on general advertising literature and examples that are unrelated to packaging or the realities of the tobacco market in Singapore. It is not credible to assert that branded packaging has the same effect as advertising when Singapore bans advertising for tobacco products, and bans vending machine sales as well as a retail display of products. These restrictions mean that there can be no synergy between branded packaging and advertising and promotion instruments; and the branding on packaging in Singapore is already severely limited by the requirement to display 50% GHWs. The Ang/Lee Report does not provide any conclusion that standardised packaging would impact on actual behaviour, but merely states that it is encouraging that the results of several longitudinal studies "*converge toward the same general conclusions as earlier survey-based or experimental studies conducted in the lab*" and that several other studies "*provide further evidence for the potential desirable effects of standardised packaging in discouraging tobacco use. Nonetheless, further empirical studies that involve more rigorous research methodologies along with objective measures (e.g., actual cessation or attendance of cessation programmes, reduced sale of cigarettes) would lend stronger support)*". 'Encouraging' results and 'potential desirable effects' is in an insufficient basis for introducing excessive regulatory measures, such as the SP Proposal, which would result in the decimation of the trademarks and branding of manufacturers of a legitimate product.

RESPONSE TO QUESTION 2

Do you agree that the SP Proposal has the potential to achieve one or more of the five objectives set out above* [i.e. (a) Reduce the attractiveness of tobacco products; (b) eliminate the effects of tobacco packaging as a form of advertising and promotion; (c) Reduce the ability of the packaging of tobacco products to mislead about the harmful effects of smoking (including on the relative harmful effects between products); (d) Increase the noticeability and effectiveness of health warnings; and (e) Better inform smokers and non-smokers of the risks associated with tobacco use.]*? 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.)

6.11 BAT does not believe that standardised packaging would have any of the effects referred to in this question – on the contrary there is a real risk that standardised packaging would generate a "forbidden fruit" effect that would increase the appeal of tobacco products to youth. The fundamental question to be addressed by the Government in deciding whether or not to introduce standardised packaging is the one asked at Question 1 – i.e., would standardised packaging change smoking behaviours so as to reduce smoking rates. As

discussed at section [2.4.7] above, reliable and probative data of four years of application of standardised packaging in Australia demonstrates that the SP Proposal would not work.

(a) **Reduce the attractiveness of tobacco products**

6.12 There is no reliable evidence that standardised packaging would have any effect on the appeal of cigarette smoking itself. Research relied on to support standardised packaging only evaluates the comparative appeal between branded and standardised packs, not tobacco products or smoking itself. Asking people to compare branded packs to standardised packs is the wrong question.

6.13 While Professor Viscusi in his analysis of the CITTS and NTPPTS data found that standardised packaging was associated with a decrease in the appeal of the pack, he notes that this shift has not translated into any discernible changes in risk beliefs or behaviour.

6.14 As discussed at paragraph [6.17] below, it is also clear from numerous studies that factors other than branded packaging are the real drivers of smoking initiation. The studies relied on to support standardised packaging do not examine the influence of any of these well-recognised drivers of smoking initiation or address how standardised packaging would impact on them.

6.15 In fact, there is a real risk that standardised packaging would generate a "forbidden fruit" effect that would promote youth initiation. While proponents of tobacco control often speculate that standardised packaging restrictions might help de-normalise cigarette smoking, especially for youth, the opposite effect is possible as adolescents tend to gravitate toward a product that is "off limits" to them. For example, Sussman, et al., (2010) found that adolescents who believed that society views smoking as inappropriate for youth were significantly more likely to smoke than those who did not. Standardised packaging could generate this effect especially among youth and young adults who may rebel against such restrictions.

(b) **Eliminate the effects of tobacco packaging as a form of advertising and promotion**

6.16 This objective is based on the incorrect assumption that tobacco packaging is synonymous with advertising. As noted above, it is not credible to assert that branded packaging has the same effect as advertising when:

6.16.1 Singapore bans advertising for tobacco products, and bans vending machine sales as well as a retail display ban. These restrictions mean that there can be no synergy between branded packaging and advertising and promotion instruments; and

6.16.2 The branding on packaging in Singapore is already severely limited by the requirement to display 50% GHWs.

6.17 The SP Proposal would not work in Singapore because tobacco packaging is not a relevant factor that influences smoking behaviour. The real and universally accepted drivers of

smoking initiation include factors such as parental influences, risk preferences, peer influences, socioeconomic factors, access and price.[53] These factors do not include product packaging.

(c) Reduce the ability of the packaging of tobacco products to mislead about the harmful effects of smoking (including on the relative harmful effects between products)

6.18 Consumers are not misled about the harmful effects of smoking. As noted in our response to the First Consultation and as confirmed in the Phase 1 study conducted by the Health Promotion Board of Singapore, public awareness in Singapore about the risks of smoking cigarettes is effectively universal.

6.19 These levels of awareness exist with branded packaging. Accordingly, it is clear that branded packaging does not neutralise consumers' existing awareness of the risks of smoking, prevent consumers from seeing and assimilating the health warnings, or mislead consumers about the harmful effects of smoking. The studies relied upon to support standardised packaging do not establish that any branded cigarette packs are viewed as risk free.

6.20 The concern that risks are not internalised or personalised by the individual do not justify standardised packaging, even if they are correct. Standardised packaging cannot be expected to increase consumers understanding of the risks when it does not provide consumers with any new information. Indeed, as Professor Viscusi's analysis of the CITTS data and NTPPTS data shows, standardised packaging is not associated with a beneficial impact on risk beliefs, including that there was no statistically significant impact on beliefs regarding the harmfulness of cigarettes, or the impact of smoking on respondents' own health.[54]

(d) Increase the noticeability and effectiveness of health warnings

6.21 The suggestion that the SP Proposal could have any such impact is misguided for the following reasons:

6.21.1 As discussed in BAT's response to the First Consultation and above, there is no information deficit regarding the risks of smoking in Singapore;

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53 See, e.g., "Smoking, drinking and drug use among young people in England in 2012" Editor: E Fuller, London: National Centre for Social Research, (2013); US Government and Human Services, "Preventing tobacco use among young people: A report of the Surgeon General" (1994) (summarizing approximately 160 studies on the subject of the psychosocial risk factors associated with underage tobacco use); see also US Government and Human Services. "Preventing tobacco use among youth and young adults: A report of the Surgeon General" (2012), at Ch. 4 (reinforcing findings of 1994 Surgeon General's report with added emphasis on individual cognitive processes).

54 Viscusi, W.K, (2018) An assessment of the effect of Australian Plain Packaging regulation: analysis of Roy Morgan research data, CITTS data, and NTPPTS data, p. 57, ¶65.

6.21.2 Repeated or more granular information about the risks of smoking does not influence smoking rates or consumer behaviour; and

6.21.3 More prominent warnings do not have an impact on smoking behaviours.

6.22 This is underscored by the analyses of the CITTS and NTPPTS data presented by Professor Viscusi (discussed at paragraphs [3.27-3.35] above), which demonstrate that following the implementation of standardised packaging, there has been a statistically significant increase in whether smokers believe that:

6.22.1 Health warnings exaggerate the health effects of smoking;

6.22.2 The government pesters people too much about smoking risks;

6.22.3 The health effects of smoking are exaggerated; and

6.22.4 Smoking is only harmful to heavy smokers.[55]

6.23 Professor Viscusi notes that, in an environment where there is awareness of the risks of smoking, "*there is no beneficial role for increased warnings where they are not providing any new information, as is the case with the 2012 Packaging Changes. Bolder warnings do not convey unknown information and telling people something that they already know in* ***bold*** *letters or* ***LARGE TYPE FACE*** *or with increased graphics does not change that. There is no empirical evidence that "shouting" works in increasing behavioural compliance in this context, and it can have the opposite effect*".[56]

(e) **Better inform smokers and non-smokers about the risks associated with tobacco use**

6.24 As discussed at paragraph [6.18] above, there is there is no information deficit regarding the risks of smoking in Singapore.

6.25 Moreover, as discussed at paragraph [6.22] above, analysis of the CITTS and NTPPTS data indicate that the SP Proposal would not impact smokers' beliefs, and could instead frustrate the efficacy of GHWs.

6.26 To the extent that the Government is concerned about any specific information deficits about the risks associated with tobacco use (despite the well-established nature of the public's awareness of these risks), it can remedy these concerns through focussed warning messages that would provide the appropriate, purportedly "unknown" information to targeted populations.

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55 Viscusi, W.K, (2018) An assessment of the effect of Australian Plain Packaging regulation: analysis of Roy Morgan research data, CITTS data, and NTPPTS data, p. 46, ¶47.

56 Ibid, ¶75.

RESPONSE TO 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).

6.27 BATSM Singapore's view is that the SP Proposal would not work for the reasons set out in this Response. As such, BATSM Singapore offers no response to this question at this time, but reserves its rights to do so in the future.

RESPONSE TO 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).

6.28 BATSM Singapore's view is that the SP Proposal would not work for the reasons set out in this Response. As such, BATSM Singapore offers no response to this question at this time, but reserves its rights to do so in the future.

RESPONSE TO 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).

6.29 The Government should reconsider its existing regulations that prohibit "imitation tobacco products", including electronic nicotine delivery systems ("ENDS") (e.g. e-cigarettes) and tobacco heating products (THPs). Tobacco harm reduction is a critical component of the WHO FCTC, to which Singapore is a party and upon which the Government relies as a supporting basis for introducing the SP Proposal. Singapore should follow suit of the increasing number of governments and other public health bodies that have recognised the potential of ENDS to contribute to public health strategies, and are now actively supporting ENDS as part of their tobacco harm reduction activities, encouraging people who do not want to stop smoking to switch to ENDS. Reasonable regulation of ENDS, as practiced by scores of jurisdictions around the world stands as a less restrictive, more beneficial public policy as compared to Singapore's current outright ban.

Harm Reduction

6.30 The preamble to the FCTC states that Parties are "[d]*etermined to promote measures of tobacco control based on current and relevant, scientific, technical and economic considerations*". Article 1(d) FCTC defines "*tobacco control*" as "*a range of supply, demand and* ***harm reduction strategies that aim to improve the health of a population by***

eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke" (emphasis added). Accordingly, signatories to the FCTC are obliged to consider harm reduction strategies as part of a tobacco control strategy.

6.31 The findings of the 2007 report of the UK Royal College of Physicians ("**RCP**"), one of the oldest and most prestigious medical societies in the world, were unequivocal: "*In this report we make the case for harm reduction strategies to protect smokers. We demonstrate that smokers smoke predominantly for nicotine, that nicotine itself is not especially hazardous, and that* ***if nicotine could be provided in a form that is acceptable and effective as a cigarette substitute, millions of lives could be saved***".[57]

6.32 A growing number of Governments and other public health bodies have actively supported ENDS as part of their harm reduction activities, encouraging people who do not want to stop smoking to switch to ENDS. For example:

6.32.1 In August 2016, the RCP released a comprehensive analysis of nicotine and e-cigarettes in its report "*Nicotine without smoke: Tobacco harm reduction*". In this report, the RCP recommend that "*in the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking in the U.K*".[58] Commenting on the report, the RCP stated that the "*public can be reassured that e-cigarettes are much safer than smoking*". The RCP also stated that e-cigarettes are not a gateway to smoking; that use is confined almost exclusively to those who are using or have used tobacco; that vaping does not "*normalise*" smoking; that there is no evidence that non-smokers and teens are drawn to e-cigarettes and will end up smoking as a result; and that for many people e-cigarettes are an effective smoking-cessation tool. The report suggests that e-cigarettes may be about 95% less hazardous than cigarettes.[59]

6.32.2 A July 2016 guidance document on the use of e-cigarettes in public places and workplaces published by PHE also concluded that "[b]*ased on the international peer-reviewed evidence, e-cigarettes carry a fraction of the risk of cigarettes and have the potential to help drive down smoking rates and improve public health*".[60]

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57 Royal College of Physicians. Harm reduction in nicotine addiction: helping people who can't quit. A report by the Tobacco Advisory Group of the Royal College of Physicians. London, United Kingdom; 2007 (emphasis added).

58 Royal College of Physicians. Nicotine without smoke: Tobacco harm reduction. London: RCP, 2016, https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0.

59 See https://www.rcplondon.ac.uk/news/promote-e-cigarettes-widely-substitute-smoking-says-new-rcp-report.

60 See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534586/PHE-advice-on-use-of-e-cigarettes-in-public-places-and-workplaces.PDF.

6.33 In November 2017, the British Medical Association ("**BMA**") released its report entitled, "E-cigarettes: Balancing Risks and Opportunities",[61] which included the following observations:

6.33.1 "There are clear potential benefits to [e-cigarette] use in reducing the substantial harms associated with smoking, and a growing consensus that they are significantly less harmful than tobacco use".

6.33.2 "Given that e-cigarettes are now the most popular device used in attempts to quit smoking, and that many people have used them to successfully quit tobacco use, they have significant potential to support [BMA's ambition of a tobacco-free society], and help reduce tobacco-related harm".

6.33.3 "It is the tar and other toxins in tobacco smoke, rather than nicotine, that are responsible for most of the harm associated with smoking".

6.33.4 "Unlike cigarette smoking, e-cigarette use does not involve combustion, and while some of the toxicants present in tobacco smoke have been detected in e-cigarette aerosol, they are present at levels which are much lower".

6.34 More recently, in February 2018, PHE issued its "Evidence review of c-cigarettes and heated tobacco products",[62] which goes beyond its 2015 findings on the comparative safety of vaping products, and draws the following key conclusions:

6.34.1 "Vaping poses only a small fraction of the risks of smoking and switching completely from smoking to vaping conveys substantial health benefits over continued smoking. Based on current knowledge, stating that vaping is at least 95% less harmful than smoking remains a good way to communicate the large difference in relative risk unambiguously so that more smokers are encouraged to make the switch from smoking to vaping. It should be noted that this does not mean e-cigarettes are safe".[63]

6.34.2 "To date there have been no identified health risks of passive vaping to bystanders".[64]

6.34.3 "Despite some experimentation with these devices among never smokers, e-cigarettes are attracting very few young people who have never smoked into regular use".[65]

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61 British Medical Association, "E-cigarettes: Balancing Risks and Opportunities", 2017, available here: https://www.bma.org.uk/collective-voice/policy-and-research/public-and-population-health/tobacco/e-cigarettes.

62 Public Health England, Evidence review of e-cigarettes and heated tobacco products, February 6, 2016, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679262/Evidence_review_of_e-cigarettes_and_heated_tobacco_products_2018.pdf.

63 Ibid, p. 20.

64 Ibid, p. 19.

65 Ibid, p. 13.

6.34.4 "Recent estimates of additional quitters resulting annually from the availability of e-cigarettes, using the same dataset but two different methods, resulted in similar figures within the range of 16,000-22,000...While caution is needed with these figures, the evidence suggests that e-cigarettes have contributed tens of thousands of *additional* quitters in England".[66]

6.35 In a significant response to the mounting scientific evidence, in July 2017, the U.S. Food and Drug Administration announced a shift from its previous regulatory position that e-cigarettes (defined as "tobacco products" in its governing legislation) should be treated in the same way as tobacco cigarettes, towards a new regime recognizing the harm reduction potential of vaping products. The FDA stated:

> "To make certain that the FDA is striking an appropriate balance between regulation and encouraging development of innovative tobacco products that may be less dangerous than cigarettes, the agency is also providing targeted relief on some timelines described in the May 2016 final rule that extended the FDA's authority to additional tobacco products".[67]

6.36 Canada and New Zealand are also recent examples of governments that have moved to make e-cigarettes available to consumers, recognising the potential harm reduction benefit of these products.

6.37 Of course, we recognise that vaping products are not completely devoid of health risks. However, based on the evidence to date, including the known chemistry and toxicology of vapour, the risks of e-cigarette products that are manufactured to robust quality and safety standards are likely to be substantially less than traditional combustible products; and they have a significant potential for harm reduction.

6.38 As we have mentioned in our response dated 10 July 2017 to the Public Consultation on Proposed Amendments to the Tobacco (Control of Advertisements and Sale) Act, a possible precursor to developing a framework to allow for the commercialisation and proper regulation of ENDS and THPs would be to consider preparing a Regulatory Impact Statement ("**RIS**") as was done by New Zealand's Ministry of Health. This RIS provided "*an analysis of options to regulate e-cigarettes and e-liquid as consumer products, as well as an analysis of high-level options for the regulation of emerging tobacco and nicotine-delivery products*".[68]

6.39 Accordingly, we strongly urge the Government to reconsider its position on the new generation of alternative products (such as e-cigarettes and THPs) and consider their potential to contribute to public health, rather than introducing extreme measures such as

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66 Ibid, pp.113-114.

67 FDA Press release, July 28, 2017, available at https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm568923.html.

68 See http://www.health.govt.nz/system/files/documents/pages/ris-regulation-of-e-cigarettes-and-emerging-tobacco-and-nicotine delivery-products.pdf.

standardised packaging which cannot be shown to have any demonstrable public health benefit.

Alternative regulatory measures

6.40 In addition, the Government could also deploy the following alternative regulations to more effectively reduce smoking prevalence:

6.40.1 **Implementing more targeted youth education programmes** aimed at preventing young people from taking up smoking. A significant body of research, including research by the Nobel prize-winning economist James Heckman, establishes that early childhood interventions that affect personality traits and cognitive skills supportive of health can be effective policy tools in preventing unhealthy behaviour, such as smoking.[69]

6.40.2 **Increasing measures to prevent the trade of illicit tobacco, which includes a consistent tax policy**. As discussed at paragraph [6.42.2-6.42.5] below, illicit tobacco is a problem in Singapore. Illicit tobacco undermines public health by supplying tobacco products to minors; increasing smoking prevalence through the supply of cheap products; and exposing consumers to unregulated products with no controls on hygiene standards and ingredients, or compliance with other product regulation including ceilings on tar and nicotine levels. As also discussed below, taxation policy has well-known links to illicit trade and maintaining a policy of gradual tax increases while avoiding excise shocks can help to avoid exacerbating illicit trade flows. Experience with planned approaches to tobacco taxation in countries such as Germany and New Zealand have seen revenues rise at the same time as consumption has fallen.[70] Accordingly, we see it as vitally important that the Government refrain from implementing policies, such as the SP Proposal, which would create conditions that encourage the illicit trade, and that it establishes stronger border controls and effective enforcement of laws to combat the illicit trade.

6.40.3 **Greater enforcement of existing laws forbidding retailers to sell to minors and/or the implementation of additional age verification measures.** The Government has taken actions to reduce under age access to tobacco products by

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69 Heckman J. "Skill formation and the economics of investing in disadvantaged children" Science, 312(5782), 1900-1902 (2006); Feeny T. "The case for investing in early childhood. A snapshot of research by Professor James Heckman (University of Chicago, USA) and Dr. Richard Tremblay (University of Montreal, Canada)", (April 2006).

70 International Tax & Investment Center, "Assessing the Benefits of a Long-Term Approach to Tobacco Tax Policy", Special Report March 2016, pp. 5-6, 15-16, 18-19.

raising the minimum legal age.[71] However, effective enforcement of these restrictions is required for them to be effective.

6.40.4 **Exploring the use of more targeted warnings to address any perceived information deficits.** To the extent that the Government is concerned about any specific information deficits about the health risks of smoking (despite the well-established nature of the public's awareness of these risks).

6.40.5 **Using existing laws to address claims that particular trademarks used on tobacco packaging mislead consumers.** The Government should not be introducing additional regulation when there is already regulation that can be enforced, such as existing protections against misleading communications on the packaging of tobacco products.[72] Such regulations are sufficient to address the types of allegedly misleading elements intended to be addressed by standardised packaging, while also respecting the choices and rights of adults who choose to use tobacco products and allowing tobacco manufacturers, as a part of a legal industry, to communicate with consumers.

RESPONSE TO 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.

6.41 BATSM Singapore does not believe that the SP Proposal would achieve its policy objectives for cigarettes and other tobacco products, and as such, the policy should not apply to cigarettes or non-cigarette tobacco products, such as cigarillos, ang hoon and roll-your-own tobacco.

RESPONSE TO 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.

6.42 The SP Proposal would likely have serious adverse consequences which undermine the Government's public health objective, including the following:

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71 We note that the Government has implemented legislation to raise the minimum legal age for smoking to 19 on 1 January 2019, and then progressively every January until 2021, when the minimum legal age will be raised to 21.

72 Tobacco (Control of Advertisements and Sale) Act (Cap. 309), Consumer Protection (Fair Trading) Act (Cap. 52A), Consumer Protection (Trade Descriptions and Safety Requirements) Act (Cap. 52).

International trade and investment implications:

6.42.1 As discussed at section [4] and [5] above, the SP Proposal would have significant implications for international trade and on Singapore's existing and potential trading partners. There are few greater barriers to market entry than requiring traders to divest themselves of valuable IP rights as a precondition to trading in the Singapore market. The SP Proposal would send a very powerful negative message to international traders and investors. As discussed above, the implications are particularly broad given the very real threat of its extension to other industries, such as the alcohol, confectionery, savoury snacks, and sugary drinks industries. Intellectual property is an important part of investment policy, and the SP Proposal would signal to international traders and investors that Singapore is no longer a place where IP rights would be protected to the highest degree.

Exacerbating the illicit trade problem in Singapore

6.42.2 The illicit trade is already a problem in Singapore. The latest International Tax and Investment Centre and Oxford Economics report on the illicit tobacco trade in 14 selected Asian markets estimated that 12% of total consumption in Singapore in 2016 was illicit, representing consumption of an estimated 372 million illicit cigarettes, and a loss in tax of an estimated SGD 143 million in 2016/17 from illicit consumption.[73] This data is in line with the results of an Empty Pack Survey ("**EPS**") conducted in two waves each year since 2008, which is commissioned by the Tobacco Association of Singapore and conducted by an international market research agency. The full-year results from this survey estimate an illicit share of the market of about 12-15% over the period of 2014-17. We note that a recent report by the Economist Intelligence Unit, which was commissioned by the European Chamber of Commerce in 2016, scored Singapore only seventh (in joint place with Taiwan) out of 17 Asian countries for its ability to prevent the illicit trade.[74] Moreover, based on the agency's analysis of press releases by Singapore Customs and the Immigration & Checkpoints Authority, seizures of illicit cigarettes almost doubled in 2017 from 2016.

6.42.3 Further, a well-known link between taxation policy and illicit trade must be considered in tackling the problems of illicit tobacco trade. When excise or other tax levels are increased suddenly and sharply, the resulting "excise shock" often leads to a spike in illicit trade. This effect occurs due to the impact that tax and price increases have on consumers' ability and desire to pay for a premium product.

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73 See http://illicittobacco.oxfordeconomics.com/media/Singapore_2017.pdf.

74 See http://perspectives.eiu.com/economic-development/illicit-trade-environment-index/white-paper/illicit-trade-environment-index-data-workbook. See associated media: https://www.voanews.com/a/singapore-illicit-trade/3547194.html.

As consumers are priced out of the market for premium tobacco products, they increasingly turn to lower priced alternatives, and in some cases to the illicit market which often has the cheapest products. The Tobacco Association's EPS reveals that this circumstance was seen in Singapore, as the large excise increases up until 2005 led to a rise in illicit trade to a level of about 30% share of the market – more than double the current levels. It is thus important that the Government maintain its consistent excise tax policy as it counters illicit trade with effective regulation, which would not include the SP Proposal.

6.42.4 A potential consequence of a worsening illicit trade problem is the heightening of national security risks. Against a backdrop of growing security threats from international and regional terrorist groups, an increase in smuggling activities could invariably raise national security risks as "the same methods of concealment used by contraband smugglers may be used by terrorists to smuggle arms and explosives to carry out attacks in Singapore".[75]

6.42.5 The Government has dismissed claims that the SP Proposal would exacerbate the illicit trade in Singapore on various grounds. We address each of these in turn:

(A) The Government refers to a systematic review of the evidence regarding the effects of standardised packaging on illicit tobacco use by Haighton et al., (2017).[76] However, we note that this review acknowledged that "[t]*here were few studies examining tobacco standardized packaging and illicit trade and those that were available were generally not of high quality*".

(B) The Government states that there were "*no increases in reported purchases of illicit cigarettes or increases in the availability of illicit cigarettes as at one year after the introduction of the plain packaging measure in Australia*". However, we note that a 2017 KPMG report shows that the volume and market share of illegal tobacco in Australia has increased significantly since the introduction of standardised packaging. The report demonstrates that from 2012 to 2016, annual illegal volumes increased by 300,000 kilograms, resulting in an increase of over 15% in illegal tobacco's market share – from 11.5% in 2012 to 13.5% in 2016.[77] The KPMG Report, is the most comprehensive, timely and consistent (in terms of employing the same methodology over time) estimate that is available from Australia. Accordingly, it provides important information on

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75 Immigration & Checkpoints Authority Press Release, 16 October 2017, https://www.ica.gov.sg/newsdetail/14405_20180119142605.

76 Haighton et al., (2017) *Standardized packaging and illicit tobacco use: A systematic review.*

77 KPMG, "Illicit Trade in Australia: 2016 Full Year Report", (20 March 2017), available at https://home.kpmg.com/content/dam/kpmg/uk/pdf/2017/04/Australia-illict-tobacco-Report-2016.pdf.

the increase in illicit trade in Australia following the implementation of standardised packaging.

(C) The Government claims, and the Tobacco Association's EPS confirms, that the prevailing form of illicit tobacco in Singapore is contraband (i.e. genuine but duty-unpaid) cigarettes, rather than counterfeit cigarettes. The Government further states that "[g]*iven Singapore's relatively small market size compared to the rest of the region...there is no compelling reason to believe that this situation is likely to change even with the introduction of standardised packaging*". However, as discussed at paragraph [1.113] of our response to the First Consultation, the SP Proposal would remove the incentive to pay premiums for products that no longer look or feel premium. This would drive prices down across all cigarette market segments, and would confer a competitive advantage to those able to supply the lowest cost product – i.e. the illicit trader. Thus, the SP proposal would likely strengthen the market in all illicit products, especially contraband though potentially also counterfeits, which have not been a major source of illicit trade until now.

Stimulating price competition leading to downtrading to cheaper products, which may in turn lead to an increase in consumption

6.42.6 The SP Proposal would remove all trademarks and other branding from packs, except for standardised and inconspicuous word marks. As a result, premium tobacco products would lose their distinctiveness. Consumers would be deprived of essential information concerning product origin and quality that allows them to distinguish among products in the market and would increasingly focus on price alone. This would encourage consumers to downtrade to cheaper products and the illicit market.

6.42.7 Standardised packaging prevents manufacturers from being able to differentiate their products and would make the packages all look the same. Without the ability to differentiate or offer the quality and value attributes created by trademarks and the brands they represent, tobacco products would become increasingly standardised and manufacturers would only be able to compete on price. As such, price competition, which is already extremely vigorous in the tobacco market, would become even more intense leading to further price reductions.

6.42.8 The impact of reduced prices is likely to increase in consumption, especially among price-sensitive consumers, as tobacco products become more affordable. This would undermine the public health objective of reducing smoking prevalence.

6.42.9 By implementing measures that distort competition, standardised packaging would also betray domestic policy to facilitate fair competition, as inferred from the Competition Act.

6.42.10 As noted at paragraph [3.25] above, Mr Dryden's empirical analysis of the standardised packaging data found that:

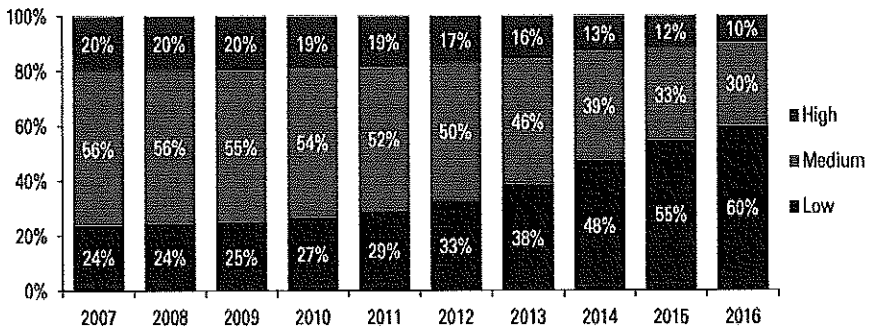
(A) Standardised packaging is associated with a reduction in the average retail price paid by consumers for cigarettes in Australia relative to the counterfactual. In particular, standardised packaging is associated with a decrease in the average price paid by consumers (relative to the counterfactual and up to December 2016) of 2.0-2.6%.

(B) Standardised packaging is associated with an increase in the per capita consumption of cigarettes in Australia relative to the consumption that would have prevailed had standardised packaging not been implemented.

(C) Standardised packaging is associated with acceleration in 'downtrading' (i.e. the shift from premium to non-premium brands) in Australia.[78]

6.42.11 This acceleration in downtrading to low-priced cigarettes in Australia following the introduction of standardised packaging is also confirmed by analysis undertaken by KPMG which shows that since 2012 the market share of low-priced cigarettes has increased by 27% to 2016:[79]

Figure 2.2.2b: Market share of manufactured cigarettes by price category, 2007 – 2016[2][3]



6.42.12 Considering the recent budget announcement in February 2018 to raise the tobacco excise by 10%, standardised packaging would further exacerbate the downtrading trend which was observed following the previous 10% hike in tobacco excise in 2014.

Distorting competition and raising barriers to entry

78 Neil Dryden, (2017) The effects of standardised packaging: an empirical analysis, at 2.7.

79 KPMG, "Illicit Trade in Australia: 2016 Full Year Report", (20 March 2017), at p.11. Available at https://home.kpmg.com/content/dam/kpmg/uk/pdf/2017/04/Australia-illict-tobacco-Report-2016.pdf.

6.42.13 Manufacturers of existing brands with relatively small market shares would be placed at a considerable disadvantage relative to manufacturers of existing higher-selling brands. Small or new entrant manufacturers would not, of course, enjoy the considerable economies of scale (in both manufacture and distribution) enjoyed by the larger existing manufacturers, and would also have little opportunity or incentive, given the restrictions on brand communication, to enter (or maintain a presence in) a market which would, over time, move towards a lower priced, low-margin commodity market.

RESPONSE TO QUESTION 8

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

6.43 **BATSM Singapore reiterates that the SP Proposal should be abandoned, for the reasons set out in this Response and in our Response to the First Consultation.**

6.43.1 The SP Proposal would not be effective in reducing smoking prevalence. The objective "*real world*" post-implementation data from Australia demonstrates that there has been no impact on the rate of decline of smoking or the number of daily smokers since the implementation of standardised packaging and enhanced GHWs in Australia. There is no basis to assume that the outcome would be any different in Singapore.

6.43.2 The Government has not considered relevant evidence and relies on insufficient and unreliable evidence that fails to make the crucial link between packaging and any reduction in smoking.

6.43.3 Adopting the SP Proposal would diminish the reputation of Singapore as an international trading centre which supports and protects intellectual property and investment.

6.43.4 The SP Proposal would also have significant other adverse consequences such as incentivising the illicit trade, lowering prices and thereby increasing smoking, reducing government revenue, and harming small business.

6.43.5 The SP Proposal is disproportionate, ineffective and not in line with Singapore's international obligations. It would constitute a wholesale expropriation of BAT's valuable intellectual property, and would potentially breach several international agreements.

6.43.6 The SP Proposal is manifestly disproportionate. The Government cannot demonstrate that standardised packaging is a necessary, adequate and proportionate measure when considered against the real-world evidence from Australia highlighting the failures of the standardised packaging policy.

Accordingly, any decision to implement the SP Proposal would be manifestly inappropriate.

6.43.7 There a number of alternative evidence-based options that are proportionate, effective, workable and can achieve public health objectives.

6.44 BATSM Singapore also reserves its rights to provide further comments on the SP Proposal.

7. CONCLUSION

7.1 For the reasons set out above, BATSM Singapore believes that the Singapore Government should not proceed with the SP Proposal.