

August 25, 2014

The Rt Hon Theresa May MP
Secretary of State for the Home Department
Home Office
Marsham Street
London SW1P 4DF

Dear Mrs May,

Subject: BASCAP'S concerns regarding the introduction of 'plain/standardised' packaging for tobacco products in the United Kingdom

We write to express our concerns following the announcement on 3 April 2014 that the Government was minded to introduce 'plain/standardised' packaging for tobacco products, subject to a consultation on draft regulations. As you may be aware, this consultation closed on 7th August 2014.

In view of its serious concern that the introduction of 'plain/standardised' packaging will increase the prevalence of counterfeit tobacco products in the United Kingdom and beyond, BASCAP filed a comprehensive response to the Consultation just before it closed. While we hope the Department of Health will now reconsider the implementation of the proposed regulations, we ask for your personal intervention to ensure that they do not become law.

About BASCAP

Business Action to Stop Counterfeiting and Piracy (BASCAP) is an initiative of the International Chamber of Commerce (ICC) that unites the global business community across all product sectors to address issues associated with intellectual property theft and to petition for greater commitments by local, national and international officials in the enforcement and protection of intellectual property rights.

BASCAP supports the protection of public health as an underlying principle. As such, our views pertain to extenuating impacts on intellectual property rights and counterfeiting, and not the health-related aspects of the Government's regulations. Furthermore, we preface our views with the acknowledgement that BASCAP membership comprises, inter alia, companies engaged in the manufacture and sale of tobacco products. Nonetheless, these views are registered on behalf of the cross-sector representation of BASCAP member companies equally concerned about the wider implications of the envisaged legislation.

BASCAP's concerns about 'plain packaging'

In our April 16 2012 submission to the consultation on 'Standardised Packaging of Tobacco Products', BASCAP already expressed deep concern about the introduction of plain packaging for tobacco products. A copy of our submission is enclosed for your reference.

Specifically, BASCAP believes that any restriction to normal use of trademarks and brands through forced plain/standardised packaging would:

- Increase the prevalence of counterfeit goods in the market and reduce brand owners' ability to take action against such activity;
- Increase rather than decrease burdens on already overstretched public agencies working to enforce Intellectual Property Rights (IPR) protections in the face of escalating counterfeiting and piracy throughout the EU and worldwide;
- Compromise and undermine the United Kingdom and the European Union's long-standing IPR policies and the laws and enforcement regimes established to protect them;
- Effectively and disproportionately curtail the use of private intellectual property and facilitate further cascading of similar usurpations of property in other sectors in the future.

Populus Survey of serving police officers

In survey carried out in May 2014, 'Populus' Survey and Research found that 74% of serving police officers in the United Kingdom agreed that introducing plain packaging "enhances and diversifies the risk of illicit tobacco". Significantly, more than 55% of the officers said they believed that plain packaging would turn young smokers towards fake cigarettes.

Petrol Retailers Association Survey

A survey carried out earlier this year by the Petrol Retailers Association (PRA) revealed that 73% of its members believe that illicit trade hurts their business and decreases the annual sales revenue. Two thirds believe the illicit trade is getting worse. Significantly, PRA members believe that plain packaging of tobacco products will fuel the illicit trade and that people will buy cigarettes from the black market.

Sun newspaper investigation

Posing as buyers, investigative journalists, Brian Flynn and Darren Fletcher asked an Indonesian black market trader what he thought of plain packaging. His troubling reply was: "I support the UK government...We will make more money. We can make it cheaper but sell for the same price. It's good for you, good for me." Brian Flynn published his report in the *Sun* edition of 4th June 2014.

Findings from House of Commons Home Affairs Committee on Tobacco smuggling

We believe that our concerns have been borne out by submissions made to the Home Affairs Committee on Tobacco Smuggling, namely:-

- HMRC's assessment that plain packaging could change the profile of the illicit market;
- Reference to HMRC's report *Tackling Tobacco Smuggling-building on success, A renewed strategy for HM Revenue and Customs and the UK Border Agency (2011)* to the effect that tobacco smuggling is associated with organized crime;
- Along with counterfeits, HMRC noted that illicit whites "represent the most significant threat to legitimate trade and tobacco revenues in the UK from large scale organized criminality";
- Illicit tobacco products have public health implications, both because they make smoking more affordable and because many of them are made from unregulated materials;
- According to HMRC, unregulated distribution networks associated with smuggling make tobacco more accessible to children and young people, and perpetuate health inequalities between different social groups.

- Reference to the summary report on the Department of Health Consultation between April and August 2012 that almost all replies from businesses and business-related organizations suggested that standardized packaging would both increase the supply of and the demand for illicit tobacco. It was noted that the respondents to the consultation said that standardized packaging would be easier to counterfeit, reduce counterfeiters' costs and make it easier for counterfeiters to enter the market. They also believed that standardized packaging would make it more difficult for law enforcement officers to detect counterfeit tobacco, especially as members of the public would be less able to identify when they had been sold counterfeit tobacco.

The Australian experience

As you will no doubt be aware, in 2012 Australia became the first country to introduce 'plain packaging' for tobacco products. BASCAP is of the view that the experience of plain packaging in Australia has been counterproductive and indeed has not reduced the prevalence of smoking in Australia. Significantly, in its study carried out after the introduction of plain packaging in Australia, KPMG reported that Australia's illegal tobacco market has actually risen to around 13% since the introduction of plain packaging. Other findings of the KPMG study were:-

- The market share of one illegal brand "Manchester", in get-up similar to the well known MARLBORO brand grew in one year alone from 0.3% to 1.3% of total manufactured cigarette consumption. This was higher than that of legal brands such as CAMEL or KENT;
- Consumption of illegal tobacco products reached record levels growing from 11.8% to 13.3% from June 2012 to June 2013;
- The primary driver of growth in the consumption of illegal tobacco products has been a large increase in the consumption of illegal, branded cigarettes, primarily in the form of contraband;
- The 40% illicit trade in the unbranded tobacco product known as "chop chop" in Australia has declined significantly at the expense of black market branded cigarettes which has increased by 154%;

Furthermore, research conducted by Roy Morgan entitled *The Impact of Plain Packaging on Australian Small Retailers* found:

- 34% of retailers experienced increased frequency of attempted product returns mainly due to customers being given a product they did not request;
- 43% of retailers perceive illicit trade to have a moderate or major impact on their business;
- 33% of small retailers reported having had customers enquire about purchasing illicit tobacco since the introduction of plain packaging.

As part of its "Health Snapshot of 2014", the New South Wales government of Australia conducted a survey which showed that 16.4% of all adults in New South Wales smoke. This was up from 14.7% in 2011; thereby demonstrating that smoking rates have actually increased in spite of plain/standardised packaging.

Since the introduction of plain packaging legislation in Australia, there is now solid data which shows that the black market in illicit tobacco has grown exponentially there and there has been no notable change in consumption trends since the introduction of plain packaging.

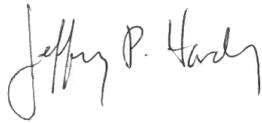
The Australian Customs and Border Protection Service's (ACBPS) Annual Report (2012-2103) reports that tobacco detections nearly doubled (from 45 to 76) between 2011-12 and 2012-13, the total number of cigarettes confiscated reached 200 million cigarettes in 2012-13 versus just 82 million in 2010-11, and, most notably, the duty evaded rose to \$151 million (from \$125 million).

It is to be noted that in January 2014, Australian authorities seized 71 tonnes of illegal tobacco and 80 million cigarettes in a single shipment - the largest seizure in the country's history.

There is also evidence of down trading where customers are switching from more expensive to cheaper brands, with a rise in the market share of cheaper cigarettes from 32% to 37%. Australasian Association of Convenience Stores chief executive Jeff Rogut said: "Talking to members, one of the most common refrains they get from people coming into stores is, 'What are your cheapest smokes?'" and that with the move to lower priced products, "people are coming back more often."

For the reasons highlighted above, we ask that the Government reconsider the proposed plain packaging legislation.

Yours sincerely,



Jeffery Hardy
BASCAP Director
International Chamber of Commerce