



REGERINGSKANSLIET

14 July 2011

Ministry for Foreign Affairs
Sweden
Minister for Trade

Mr John Dalli
European Commission

Uniform and responsible regulation of all tobacco products

Dear Commissioner Dalli

First of all, I would like to thank you for taking your time to discuss the upcoming revision of the Tobacco Products Directive at the Competitiveness Council on 30 May. As you know, the Swedish Government attaches great importance to the revision and I hope we can remain in close contact over the coming months to ensure a fruitful outcome of the revision.

As regards your intervention at the Council and the reference to the Court of Justice, it is correct that the Court in its judgement of 2004 found that the relevant Article in the Directive was not 'manifestly inappropriate'. The Court naturally based its findings on an assessment of scientific evidence available at that time; however, as you know, subsequent scientific developments have been important. We fail to see that the Court's findings in any way give grounds not to review the ban now. The Swedish Government's position is that the ban on snus remains disproportionate.

The advancement of public health can be achieved through less intrusive measures, based on uniform and responsible regulation of all tobacco products.

I believe it is important to underline that Swedish policy is aimed at preventing the use of all forms of tobacco, including snus. It appears that there is no consensus concerning possible health risks, including cancer, connected with snus, nor a possible correlation between the use of snus and other forms of tobacco products. I assure you that the Swedish Government would not propose the elaboration of uniform regulation of all tobacco products if there was any evidence of snus being more dangerous than comparable products.

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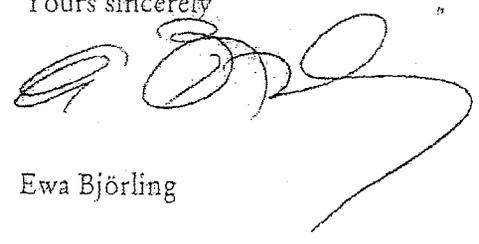
More extensive requirements covering relevant aspects, such as labelling and ingredients, as well as the elaboration of standards for production, would enable us to strike the right balance between public health and the functioning of the internal market.

I fully agree that the revision of the Directive is related to public health and that it is therefore primarily a matter for the EPSCO Council. At the same time, the Directive has the objective of facilitating the functioning of the internal market. The revision therefore clearly merits discussion also in the Competitiveness Council, with its horizontal responsibility for the proper functioning of the internal market. I was happy to note that three colleagues shared this view at the Council on 30 May.

In an annex to this letter, and further to our written submission to the Council, the Swedish Government presents the Commission with further ideas as regards uniform and responsible regulation of all tobacco products. I look forward to continue working with the Commission and colleagues in the Council on this issue.

I am copying colleagues in the Competitiveness Council (Internal Market) and Commissioners Barnier and Tajani on this letter.

Yours sincerely



Ewa Björling

14 July 2011

*Department for the EU Internal Market and Promotion of Sweden
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Uniform and responsible regulation of tobacco products

The Swedish Government welcomes the European Commission's initiative concerning a review of the Tobacco Products Directive (2001/37/EC). The upcoming revision provides the EU with an opportunity to ensure uniform and responsible regulation of all tobacco products in line with both the principle of free movement of goods and good public health – regulation based on scientific facts.

Snus is a traditional Swedish product that has been on the market for over 200 years. Article 8 of the Directive prohibits the sale of Swedish snus within the Union. At the same time, a number of similar, often more hazardous, products are allowed to circulate freely in the internal market, essentially without regulation. Within the framework of the upcoming revision of the Directive, the Swedish Government suggests that the Commission's proposed new Directive should be based on the principle of uniform and responsible regulation of all tobacco products. The following are areas that could be covered by the regulation:

- Thresholds for hazardous substances in tobacco
- Development of standards for measuring the presence of hazardous substances
- Prohibitions on dangerous additives
- Prohibitions on certain other additives
- Development of standards for production, distribution and storage
- Labelling.

Regulation of hazardous substances in tobacco (thresholds)

Concentrations of hazardous substances in tobacco for oral use and other smokeless tobacco products can be kept at a lower level than that of many of the products that are currently circulating in the European market. Sweden proposes that maximum level (threshold) requirements

for hazardous substances in all tobacco products be introduced in the Directive (e.g. for nitrosamines). The WHO has prepared data for similar regulations (see, for instance, WHO *Technical Report Series 955*).

Sweden also proposes that the Directive give European standardisation bodies a mandate to develop a European standard for measuring the presence of hazardous substances.

Regulation of additives/ingredients

Sweden welcomes the regulation of additives envisaged in Article 12 of the current Directive. The WHO FCTC guidelines on additives in tobacco products should be taken into account in a revised Directive. Hazardous additives should be banned in all tobacco products.

Sweden also proposes that neither additives that give the impression that the product has health-promoting properties nor additives that can be associated with energy and vitality should be allowed in tobacco products.

Moreover, Sweden considers that account should be taken of the opportunities to prohibit additives that can entice children and young people to begin using tobacco. It should be noted that there are age limits in Sweden regarding the purchase of tobacco products.

Regulation of production methods, distribution and storage

The production, distribution and storage of tobacco for oral use contain many steps that involve risks comparable with those found in the preparation of food. The WHO recommends keeping smokeless tobacco products refrigerated. Sweden therefore proposes that the Directive give European standardisation bodies a mandate to develop a European standard for production, distribution and storage with the aim of establishing a minimum level for hygienic production. Such a standard could be based on existing standards in other product sectors.

Regulation of tobacco product labelling

Tobacco for oral use can be a perishable product. The WHO recommends that smokeless tobacco products have a date mark. Sweden therefore proposes that such products be labelled with the date of manufacture with the aim of preventing consumers using products unfit for human consumption.

EU accused of obscuring support for snus

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It looked as if Sweden's hopes of getting rid of the export ban on snus were shattered last summer. The European Commission stated that most Member States say 'absolutely no'. But a survey by Swedish newspaper Dagens Nyheter shows that there is actually strong support for allowing snus to be freely sold in the EU.

A majority of Member States are in favour of banning all forms of tobacco for oral use, including snus, the European Commission categorically announced in a press release in July. The statement was based on a 'public consultation' on tobacco legislation. A total of 85 000 replies were received to questions concerning snus, tobacco advertising and the design of cigarette packages.

Shortly afterwards, European Commissioner for Health and Consumer Policy John Dalli informed Ministry of Health and Social Affairs' ministers Göran Hägglund and Maria Larsson that the Commission had already decided to extend the export ban on snus.

But it was only in the autumn that all the replies to the extensive survey were made public. And a review of these shows a completely different result.

More than eight out of ten, or 84 per cent, of the citizens who responded, were in favour of lifting the export ban on snus. The figure among government representatives was 86 per cent, and among industry representatives 74 per cent, in favour of lifting the ban. Only among lobby and non-governmental organisations was there a slight majority – 56 per cent – in favour of extending the ban on snus.

However, the Commission dismisses most of the replies from the 82 000 citizens on the grounds that two-thirds come from Italy and Poland, where tobacco dealers had organised petitions.

But even excluding these two countries, there is still a majority in favour of lifting the export ban on snus, 10–6, when the replies are broken down by country.

The spokesman for Commissioner Dallis, Frederic Vincent, defends the conflicting statement by the Commission, saying that they had only taken account of the government representatives that had replied.

"The report is based on a qualitative analysis of the replies from Member States, i.e. governments and ministries."

However, the Dagens Nyheter survey of the more than 400 replies from this group shows that even among these replies – from parliamentarians, municipalities, public authorities and ministries – a large majority, 71 per cent – are in favour of lifting the export ban. Not even when only EU governments and ministries are counted is there a majority against snus; the results are evenly divided, 3–3.

The Commission's Health Directorate claims that responses have been received from governments by other means as well that support the ban on snus, but refuse to reveal what they are.

Snus manufacturer Swedish Match, which alerted Dagens Nyheter about the contradictory information, accuses the Commission of trying to sweep the issue of snus under the carpet.

"The conclusions drawn by the Commission's Health Directorate from the results are very odd, since they actually show strong support for lifting the export ban," says Vice President for Public Affairs Patrik Hildingsson.

In Sweden, all parties in the Riksdag support the demand that the EU lift the export ban on snus, and Minister for Trade Ewa Björling (Moderate Party) has raised the issue as a violation of the EU's internal market regulations. But the EU ban on snus was introduced for health reasons and it is therefore the task of Minister for Children and the Elderly Maria Larsson (Christian Democrats) to argue Sweden's case in the coming negotiations on tobacco legislation.

However, Ms Larsson's political adviser Ulrik Lindgren says she is keeping a low profile for the time being:

"We are not actively working on the issue," he says.