

Submission No. 34
(Plain Packaging Bill)
A.O.C. Date: 25/07/2011



INQUIRY INTO TOBACCO PLAIN PACKAGING

Submission to the Health and Ageing Committee

House of Representatives

Parliament of Australia

Canberra

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London and Washington DC

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INTRODUCTION

This submission argues against the introduction of “plain packaging” for tobacco products on two grounds:

1. such a requirement violates regulatory best practices in that it is *not* supported by reliable evidence; and
2. such a requirement violates intellectual property treaties to which Australia is a party.

The submission is divided into two parts. Part 1 highlights: 1) how plain packaging runs afoul of intellectual property rights; and 2) how the weight of the scientific evidence fails to show that plain packaging will reduce smoking initiation, reduce smoking prevalence and consumption, increase changes in smoking behaviour as a result of health warnings, and increase cessation.

Part 2 focuses on the issue of health warnings, in that one of the claims advanced in favour of plain packaging is that it will result in favourable changes in smoking behaviour due to the fact that these graphic health warnings (GHW) will appear on a plain package without the “distractions” of tobacco trademarks. This submission argues that the empirical evidence about health warnings in general - and GHW specifically - fails to support this claim.

PART 1

THE WTO & INTELLECTUAL PROPERTY RIGHTS

The basic legal framework for international trade relations, including intellectual property, is currently found in the WTO and in various annexes to the Agreement. With respect to intellectual property rights, the most important of these are Trade Related Aspects of Intellectual Property Rights (TRIPS), the General Agreement on Trade and Tariffs (GATT), the Technical Barriers to Trade Agreement (TBT), and the General Agreement on Trade in Services (GATS). While the Paris Convention was ratified by virtually all countries and expanded and revised several times, it did not incorporate TRIPS (in Article 2) into the trademark rights of the Paris Convention while addressing the issues of enforcement and dispute settlement.

The basic purpose of TRIPS is contained in the preamble, which notes that there is a “need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual

