



The Chair
Standing Committee on Health and Ageing
House of Representatives
Parliament House
Canberra ACT 2600

<p>Submission No. 42 (Plain Packaging Bill) A.O.C. Date: 26/07/2011</p>
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By email: haa.reps@aph.gov.au

22 July 2011

Dear Chair

INQUIRY ON THE TOBACCO PLAIN PACKAGING BILL 2011

Amcor Ltd (Amcor) appreciates the opportunity to provide the attached submission to the House of Representatives Standing Committee on Health and Ageing inquiry on the Tobacco Plain Packaging Bill 2011 (the Bill).

At Amcor, we fully support the objectives of the Bill to improve public health by reducing smoking and its harmful effects. However, we submit that there are a number of significant implications and unintended consequences of the Bill. We are strongly of the view that the Bill will have significant impacts on the level of counterfeit tobacco products available in Australia, which will run contrary to the objectives of the Bill.

About Amcor

Amcor is the world's largest packaging company; supplying packaging products, including tobacco packaging, to the world's largest consumer companies. Headquartered in Melbourne, Amcor operates over 300 sites across 43 countries, employs 35,000 people and has annual sales of approximately A\$14 billion.

As the global leader in consumer packaging Amcor is in a unique position to comment on the potential implications of the Bill as it relates to packaging.

In our attached submission, we have outlined and provide evidence to support our view that moving to a generic approach to tobacco packaging in Australia will result in:

- an increase in the level of counterfeit tobacco in the market, and
- an escalation in the overall level of illicit trade of tobacco products within Australia.

In particular, we consider that these unintended consequences will defeat the purpose of the Bill, as some cigarettes will become cheaper, easier to purchase and access, and ultimately become even more dangerous to public health.

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The unintended consequences of the Bill we have outlined in our submission include the following:

Lower barriers of entry

The move to a generic approach to packaging will lower the barriers of market entry for counterfeiters, as under the conditions in the Bill; there would be only one pack design to replicate. Furthermore, the level of technical difficulty and requirements to produce tobacco packaging will be substantially reduced and upfront investment required for market entry significantly lowered.

Creation of scale in the counterfeit market

The proposed uniform requirement for tobacco packaging will provide the opportunity and incentives for the creation of scale in the counterfeit tobacco market in Australia.

The Australian tobacco market will effectively transition from a market with a large number of brands and distinct product differentiation to a wide open market using a generic pack for all brands.

This will create a single, generic tobacco brand in the Australian market. As a result, the counterfeit tobacco market will become substantially larger in Australia. The parameters for participation in the market will be reduced from the need to recreate multiple pack designs and formats, to only having to recreate one uniform pack design and format.

The combination of reduced barriers of entry and creation of scale will provide a major incentive for both existing and new entrants into the counterfeit tobacco market. Given the relatively high rates of taxation applied to tobacco products, counterfeit tobacco is an extremely lucrative market, in which significant profits can be made. Australia is by far one of the highest-priced markets in the world for cigarettes (ie. Australia's average retail price reaches A\$15.89 per cigarette pack, compared to an estimated global average of \$6.32).

By increasing the opportunity and incentive to create scale that does not exist in the current market, the Bill's capacity to expand the counterfeit tobacco market cannot be underestimated.

Limited capacity to authenticate and differentiate between products

Moving to a generic approach to tobacco packaging will also fundamentally change the role that packaging plays in enabling consumers and others to authenticate and differentiate between tobacco products. As such, we contend that the Bill will reduce the capacity of:

- i. consumers; to verify the product they are purchasing is authentic,
- ii. manufacturers; to include anti-counterfeiting cues, and
- iii. enforcement authorities; to recognise counterfeit tobacco products.

Generic packaging will also ensure that tobacco is seen more as a commodity and hence the key point of difference will become price.

Greater health risk to consumers

Counterfeit cigarettes are not produced under regulated conditions and as such there are no controls over hygiene, ingredient composition or the level of toxic materials. Research from other countries highlights that, unlike legal tobacco products, which are manufactured and sold in compliance with strict regulatory requirements such as health warnings and maximum tar and nicotine levels, illicitly traded products, are produced partly or fully outside of this regulatory framework.

Lost excise revenue

Cigarettes are considered by the World Health Organisation to be the most widely smuggled legal consumer product globally. In Australia, every cigarette packet sold as a counterfeit pack rather than a genuine pack deprives the Commonwealth Government of more than A\$9 in excise tax and GST.

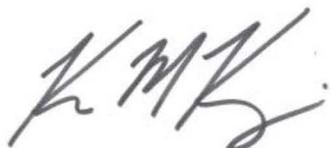
Amcor's recommendation

As experts in consumer packaging, our experience has shown that the most effective way to combat counterfeiting is to ensure that designs and formats are varied, complex and constantly evolving; therefore making packs difficult to reproduce.

If passed in its current form, we believe the Bill will result in a major escalation in the level of counterfeit tobacco products in Australia, with the associated adverse impacts on consumers, and the wider community. As such, Amcor submits that the Tobacco Plain Packaging Bill 2011 should not be adopted and requests your serious consideration of the issues highlighted in our submission to the Committee.

We would welcome the opportunity to discuss our submission with you.

Yours sincerely



Ken MacKenzie
Managing Director and CEO
Amcor Limited

Amcor Limited

Submission to the House
of Representatives
Standing Committee on
Health and Ageing
inquiry on the *Tobacco
Plain Packaging Bill*

22 July 2011

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Executive Summary

At Amcor, we fully support the objectives of the *Tobacco Plain Packaging Bill 2011* to improve public health by reducing smoking and its harmful effects.

However, we submit that there are a number of significant implications and unintended consequences of the Bill. We are strongly of the view that the Bill will have significant impacts on the level of counterfeit tobacco products available in Australia, which will run contrary to the objectives of the legislation.

In this submission, we have outlined and provided evidence to support our view that moving to a generic approach to tobacco packaging in Australia will result in both an increase in the level of counterfeit tobacco in the market and an escalation in the level of illicit trade of tobacco products within Australia. In particular, we believe that this impact will defeat the purpose of the Bill, as some cigarettes will become cheaper, easier to purchase and access, and ultimately become even more dangerous to public health.

The key impacts identified in this submission are as follows:

Lower barriers of entry to the counterfeit tobacco market

The move to a generic approach to packaging will lower the barriers of market entry for counterfeiters, as under the conditions in the Bill; there will be only one pack design to replicate. Furthermore, the level of technical difficulty and requirements to produce tobacco packaging will be substantially reduced. The upfront investment required for market entry will also be significantly lowered should the proposal go ahead.

Creation of scale in the counterfeit market

The uniform requirement for tobacco packaging will provide the opportunity and incentives for the creation of scale in the counterfeit tobacco market in Australia.

The Australian tobacco market will effectively transition from a market with a large number of brands and distinct product differentiation to a wide open market using a generic pack for all brands.

This will create a single, generic tobacco brand in the Australian market. As a result, the counterfeit tobacco market will become substantially larger in Australia. The parameters for participation in the market will be reduced from the need to recreate multiple pack designs and formats, to only having to recreate one uniform pack design and format.

By increasing the opportunity and incentive to create scale that does not exist in the current market, the Bill's capacity to expand the counterfeit tobacco market cannot be underestimated.

Limited capacity to authenticate and differentiate between products

Moving to a generic approach to tobacco packaging will also fundamentally change the role that packaging plays in enabling consumers and others to authenticate and differentiate between tobacco products. As such, we contend that the Bill will reduce the capacity of:

- i. consumers; to verify the product they are purchasing is authentic,
- ii. manufacturers; to include anti-counterfeiting cues, and
- iii. enforcement authorities; to recognise counterfeit tobacco products.

Generic packaging will also ensure that tobacco is seen as a commodity and hence the key point of difference will be price.

Greater health risk to consumers

Counterfeit cigarettes are not produced under regulated conditions and as such there are no controls over hygiene, ingredient composition or the level of toxic materials. Research from other countries highlights that, unlike legal tobacco products, which are manufactured and sold in compliance with strict regulatory requirements such as health warnings and maximum tar and nicotine levels, illicitly traded products, are produced partly or fully outside of this regulatory framework.¹

Lost excise revenue

Cigarettes are considered by the World Health Organisation to be the most widely smuggled legal consumer product globally.² Illicit trade of tobacco products in Australia is already a significant problem and is currently estimated to result in lost excise revenue of approximately A\$1.1 billion annually.³ In Australia, every cigarette packet sold as a counterfeit pack rather than a genuine pack deprives the Commonwealth Government of more than A\$9 in excise tax and GST.

Conclusion

The impact of the changes on the underlying economic incentives for counterfeit tobacco products means that Australia has the potential to mirror the levels of trade and involvement by organised crime in the tobacco market seen internationally. We do not consider the measures currently in place for limiting counterfeit packaging in Australia to be adequate in order to manage or discourage the level of counterfeit tobacco trade. The adoption of a generic approach to tobacco packaging (with the intended aim being that consumers will not perceive any difference between tobacco products or brands) will inevitably change the underlying economic structure of Australia's tobacco market. As outlined herein, if passed, the Bill will result in a major escalation in the level of counterfeit tobacco products in Australia, with the associated adverse impacts on consumers, and the wider community.

As such, we submit that the *Tobacco Plain Packaging Bill 2011* should not be adopted.

¹ International Tax and Investment Center, *'The Illicit Trade in Tobacco Products and How to Tackle It'*, page 3, January 2010

² World Health Organisation 2009b, Report on the global tobacco epidemic, Chapter 16, Geneva

³ Deloitte, *Illicit Trade of Tobacco in Australia*, Melbourne, February 2011

1 Amcor Limited

This section outlines Amcor's experience and role in the global packaging market.

1.1 Introduction

Amcor Limited (Amcor) appreciates the opportunity to provide this submission to the House of Representatives Standing Committee on Health and Ageing inquiry on the Tobacco Plain Packaging Bill 2011 (the Bill).

As the global leader in consumer packaging, and in line with our strong commitment to responsible packaging, we believe that Amcor is in a unique position to advise the Committee on the potential practical implications of the Bill as it relates to packaging.

At the outset, we wish to confirm that we fully support the objectives of the Bill, as it relates to the reduction of tobacco consumption for health reasons, and particularly as it relates to children. However, we believe there are a number of significant implications and serious unintended consequences of the Bill in its current form, which will lead to an increase in counterfeit cigarettes and illicit trade, and further health risks to the public.

This paper provides a short background on consumer packaging, the role of responsible packaging in the retail market, and illustrates the potential impact of the Bill.

Specifically, this submission is set out as follows:

- *Chapter 1: Amcor Limited* – outlines our experience and role in the global packaging market.
- *Chapter 2: Consumer packaging industry* – provides details of how the global packaging market operates and the role it provides in the protection and integrity of a product.
- *Chapter 3: Counterfeiting* – details the international market for counterfeit packaging.
- *Chapter 4: Impacts of the Tobacco Plain Packaging Bill 2011* – illustrates some of the potential impacts of the Bill.
- *Chapter 5: Conclusion* – summarises our overall position on the implications of the Bill.

1.2 About us

Amcor is a global leader in responsible packaging solutions, supplying a broad range of packaging products to enhance the products consumers use in everyday life. Amcor also provides packaging related supplies, offers exclusive capabilities and innovative design services that are at the forefront of the packaging industry.

Founded in Australia almost 150 years ago, Amcor has grown both organically and through complementary acquisitions into a large, multinational manufacturer, operating in 43 countries.

1.3 Our global operations

Amcor has 300 sites globally, with annual sales of approximately A\$14 billion and employs 35,000 people worldwide.

Most Amcor sites specialise in specific sectors of the packaging market. As the world's largest packaging company, we offer customers the highest standards in innovative packaging solutions, reliable service and partnerships built on excellence.

We supply some of the largest consumer companies in the world. Amongst our main products and services are PET plastic containers for beverage applications, glass products, flexible packaging for the food, healthcare and pharmaceutical markets, tobacco packaging, corrugated boxes and a North American distribution business.

Amcor is headquartered in Australia. With a market cap of A\$8.4 billion, Amcor is placed in the top 30 listed companies on the Australian Securities Exchange (ASX). Amcor has approximately 70,000 shareholders, with the majority based in Australia.

1.4 Our Australian operations

Amcor has 47 sites and 16 distribution centres across Australia, and employs 4,700 people. An overview of our operations is shown in Figure 1. An outline of our Australian-based operations is as follows:

- *Amcor Beverage Cans:* Amcor Beverage Cans is a market leader in metal packaging for beverages. It supplies Australian and New Zealand beverage manufacturers with a wide range of can options.
- *Amcor Closure Systems:* Amcor Closures produces plastic and metal closures, including licensed closures, from leading global closure technology providers. It services food and beverage manufacturers throughout Australia and New Zealand, including many of the region's wine makers.
- *Amcor Fibre Packaging:* A leading packaging supplier to food, beverage and industrial manufacturers in Australia and New Zealand, Amcor Corrugated (Fibre) Packaging offers a full service, from design and testing, through to supply chain integration.
- *Amcor Glass:* Based in South Australia, Amcor Glass manufactures premium wine bottles for Australian and New Zealand wineries.
- *Amcor Recycling:* Amcor is one of Australia's largest recyclers of paper and cardboard, providing services including the collection, sorting and recycling of waste from industry, supermarkets and households.
- *Amcor Cartonboard:* Amcor Cartonboard supplies cartonboard from its Petrie Mill in Queensland to packaging manufacturers across Australia and New Zealand.
- *Amcor Fibre Displays:* Amcor Fibre Displays produces high impact point-of-sale (POS) displays from its production centres throughout Australia and New Zealand.
- *Amcor Folding Cartons:* With eight plants across Australia and New Zealand, Amcor Folding Cartons has the widest geographical coverage of any carton manufacturer in the region.
- *Amcor Innovation and Design:* Works with customers to provide innovative packaging and design solutions.
- *Amcor Sack Packaging:* Supplying dairy, cereal, cement and chemical companies globally, this part of the business manufactures bulk bags, holding from 10 to 3500 kg.

- *Ancor Flexibles*: supplies innovative packaging for fresh foods such as meat and bread, processed foods such as confectionery, and wholesale quantities of foods such as bulk fruits, as well as converting and distributing pharmaceutical packaging.

Figure 1: Location of plants and distribution sites across Australia



1.5 Responsible packaging

Social Responsibility is one of Amcor's core values, and we believe in responsible packaging. In the next chapter, we will illustrate how responsible packaging protects products throughout the supply chain and communicates important information about the product. Most relevant to this discussion is the role packaging plays in ensuring the integrity and authenticity of the product.

We submit that the role of responsible packaging must be considered in order to understand the potential impact of the Bill.

2 Consumer packaging industry

This section outlines the role that responsible packaging plays in the protection and integrity of consumer products.

2.1 Introduction

It is indisputable that consumer packaging is an important component of the promotion, sale and marketing of any consumable product, enabling point-of-purchase differentiation in the marketplace. In addition, packaging plays a significant role in the supply of consumable goods, by protecting the contents of packaged goods throughout their supply chain, ultimately ensuring product safety for consumers. Packaging also provides consumers with important product information and finally, packaging ensures that consumers can recognise the authenticity of a product.

2.2 The role of responsible packaging

Responsible packaging performs a range of functions in addition to the marketing of a product. Specifically, it can:

- Physically protect a product as it travels the supply chain, ensuring product safety for consumers.
- Protect the integrity and authenticity of a product.
- Provide information that assists the consumer during selection and use of a product.
- Enhance the product's functionality (eg. child-resistant, senior-friendly products).
- Improve the sustainability of a product and/or its packaging.

The following section outlines these functions in more detail.

2.2.1 Protection of product in the supply chain

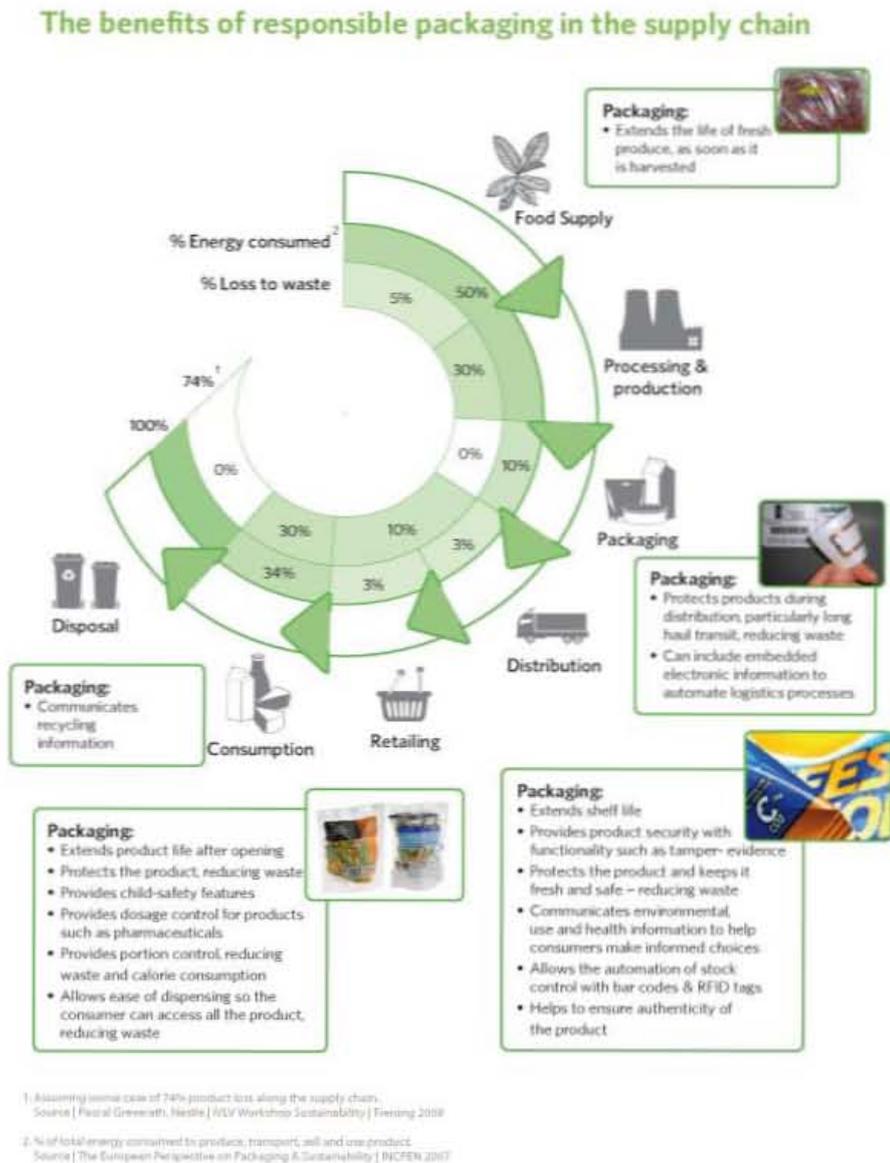
Consumable products travel long distances and pass through a number of critical points along the supply chain. As Figure 2 illustrates, responsible packaging plays a vital role in protecting a product as it completes this journey.

Adequate protection of a product ensures that it is not damaged during transportation. There can be large wastage costs incurred if the investment made in a product is lost. These costs are ultimately passed on to the consumer.

In addition, packaging ensures that the product is safe for use by the end consumer.

Figure 2 illustrates a number of other important functions such as ensuring a product is not tampered with and allowing a product to be tracked.

Figure 2: The benefits of responsible packaging in the supply chain



2.2.2 Integrity of a product

Arguably, the protection of a product's integrity is perhaps the most important function of responsible consumer packaging. In essence, this ensures the supplier, distributor and most importantly, the end consumer have confidence that the product purchased is authentic and not a counterfeit, and that it hasn't been tampered with prior to purchase.

There are a number of features which are used to reassure the consumer that they are purchasing a genuine article. These features can range from unique forms of packaging and shapes, certain graphics which are constantly updated, holograms, raised print and embossing.

Tamper-evident packaging also reassures the consumer the product has not been previously opened adding to its integrity.

2.2.3 Informing consumers

Responsible packaging informs consumers about the details of a product. Such information can include its composition and ingredients and instructions for use. It can also include information relating to identification such as the batch number, and the date of production or expiry. Importantly, packaging can inform consumers of the origin of a product, which supports consumers to make decisions regarding the quality and suitability of a product for their purposes.

In addition, responsible packaging enables the communication of consumer safety information, such as handling procedures and health warnings, if relevant, to be displayed.

2.2.4 Provides functionality

Packaging can provide functional elements that support the supply and use of consumer products. Features such as barcodes and Radio Frequency Identification tags offer cost reductions and improve efficiency through certain parts of the supply chain by automating common processes such as product routing.

Packaging can offer more sophisticated functionality such as changing colour to indicate that a temperature-sensitive product (such as a vaccine), has been exposed to temperatures outside of the specified range.

At point-of-use by consumers, packaging functions such as pouring devices, child-resistant closures and resealing mechanisms, such as zip-locks, allow ease-of-use and consumer protection.

2.2.5 Packaging's sustainability benefits

Responsible packaging reduces waste by protecting products and extending their shelf-life, preserving the resources that are invested in a product.

The Food and Agriculture Organisation of the United Nations released a report in May 2011 that puts the amount of food lost or wasted each year as roughly one third of that produced, approximately 1.3 billion tonnes.⁴ In industrialised countries more than 40% of losses happen at the retail or consumer level. A large contributor to this waste is consumer behaviour, with food thrown away when 'best-before' dates expire. Using packaging to extend the 'best-before' date of products can reduce waste by keeping products fresh for longer and therefore more likely to be consumed prior to expiration.

⁴ Jenny Gustavsson, Christel Cederberg, Ulf Sonesson, Robert van Otterdijk, Alexandre Meybeck, '*Global Food Losses and Food Waste*', published in 2011 by Food and Agriculture Organization of the United Nations

3 Counterfeiting

This section highlights the drivers for counterfeiting and its impact on the market.

3.1 Counterfeiting of goods

The counterfeiting of consumer products is a major issue across numerous consumer products and most countries. In our experience, counterfeit products are also a strategic issue for most of our customers.

Given the widespread nature of counterfeit products, anti-counterfeiting is a major component of managing brand integrity, to both safeguard the value of brands and to protect and maintain consumer safety.

As noted in a recent report released by the Institute of Public Affairs, counterfeit and pirated goods into Australia range from food products, to pharmaceuticals, pesticides, electrical components, tobacco and even household cleaning products, with an increase in counterfeited goods which are dangerous to health and safety.⁵

The economic drivers for counterfeiting are strong and it is becoming an increasingly important strategic issue internationally. The International Tax and Investment Center outlines that the two key drivers for illicit trade simply put, are consumers trying to save money and criminals trying to make money.⁶

As outlined in Box 1 below, in its 2007 report *'The Economic Impact of Counterfeiting and Piracy'*, the Organisation of Economic Cooperation and Development (OECD) provides an overview of the economic drivers and impacts of counterfeiting and piracy. This report also raises as a major concern, evidence linking counterfeiting and piracy to organised crime.⁷

Box 1: Economic drivers and impacts of counterfeiting

Economic drivers - Counterfeiters and pirates target the supply of products where profit margins are high, taking into account the risks of detection, the potential penalties, the size of the markets that could be exploited and the technological and logistical challenges in producing and distributing products. On the demand side, consumers either:

- (i) Unwittingly buy counterfeit or pirated products thinking they have purchased genuine items.
- (ii) Knowingly buy lower-priced counterfeit or pirated products. The degree to which consumers knowingly buy counterfeit or pirated products depends on the characteristics of the products concerned. For example, consumers who would knowingly purchase counterfeit garments without any hesitation may have no interest in purchasing counterfeit pharmaceutical products.

Economic impacts - Counterfeiting and piracy are longstanding problems which are growing in scope and magnitude. They are of concern to governments because of (i) the negative impact that they can have on innovation, (ii) the threat they pose to the welfare of consumers and (iii) the substantial resources that they channel to criminal networks, organised crime and other groups that disrupt and corrupt society. They are of concern to business because of the impact that they have on (i) sales and licensing, (ii) brand value and reputation, and (iii) the ability of firms to benefit from the breakthroughs they make in developing new products. They are of concern to consumers because of the significant health and safety risks that substandard counterfeit and pirated products could pose to those who consume them.

⁵ Institute of Public Affairs, *'Counterfeit Conclusions: Why Australia should adopt the Anti-Counterfeiting Trade Agreement'*, IPA, May 2011.

⁶ International Tax and Investment Center, *'The Illicit Trade in Tobacco Products and How to Tackle It'*, page 4, 5 May 2011

⁷ OECD (2007) *'The Economic Impact of Counterfeiting and Piracy'*, page 15

In our operational experience, product manufacturers' anti-counterfeiting strategies are primarily based on the following two elements:

- Packaging design – shape, artwork and manufacturing difficulty.
- Constant change and SKU (stock-keeping unit) proliferation – items are under constant evolution and there can be up to several items per brand family.

Both of these elements addressed simultaneously – packaging design along with constant changes and updates – provide multiple hurdles for counterfeiters, making it more challenging for them to follow the market and replicate products.

In our experience, it is only by this constant evolution of the package that product manufacturers are able to increase the reproduction complexity or provide any type of defence to counterfeiting. If either of these two elements become static, a product becomes easier for counterfeiters to duplicate.

4 Impacts of the *Tobacco Plain Packaging Bill 2011*

This section outlines Amcor's view of the likely impacts of the legislation based on our practical understanding of international consumer packaging markets.

4.1 Our understanding of the purpose of the Bill

We understand that the overall objective of the Bill is to prevent tobacco advertising and/or promotion of tobacco products via their packaging. As outlined in the Government's discussion paper on the exposure draft of the Bill, the purpose of the Bill is to achieve the following:

- Reduce the attractiveness and appeal of tobacco products to consumers, particularly young people.
- Increase the noticeability and effectiveness of mandated health warnings.
- Reduce the ability of tobacco product packaging to mislead consumers about the harms of smoking.
- Through the achievement of these aims in the long term, as part of a comprehensive suite of tobacco control measures, contribute to efforts to reduce smoking rates.

4.2 How the Bill is intended to achieve this purpose

We understand that the Bill aims to achieve its purpose by removing tobacco industry logos, brands, colours and promotional text appearing on cigarette packets.

The specific plain packaging requirements with respect to cigarette package design as outlined in the Bill will encompass the following:

- *Uniform colour of packaging* – a particular shade of dark olive brown (drab green) in matt finish.
- *Uniform font used on packaging* – 'Lucinda sans' 14 font or similar.
- *Uniform box design* – packs will be required to be a standard rectangular shape with a flip-top opening.
- *Package features* – specific features such as packaging material, decorative inks, ridging or embossing will be either banned or restricted. The exact specifications for all design features will be mandated in regulations.
- *Position of brand names* – regulations will mandate the position of the brand name and any variant.
- *Side panels* – manufacturer's details including the font size, style and exact positioning will be mandated.
- *Other symbols and logos* – no other symbols or logos, apart from those required by other regulations will be allowed to appear on tobacco packaging.

4.3 Amcor's view on the implications of the Plain Packaging Bill

Based on the Bill's requirements, we understand that the outcome will be for all tobacco products to be of the same appearance. As such, consumers will be unable to perceive any significant visible difference between tobacco brands and products.

The practical effect of the Bill will be the creation of a generic approach to tobacco packaging. Our view is that the implications of a generic approach will include:

- Lower barriers to entry to the counterfeit tobacco market.
- Creation of scale in the counterfeit market.
- Limited capacity to authenticate and differentiate between products.
- Greater health risk to consumers.
- Lost excise revenues.

Each of these potential implications is discussed below.

4.4 Lower barriers of entry to the counterfeit tobacco market

Tobacco packaging makes use of various requirements and specifications, which not only distinguish products but also minimise the potential for counterfeiting. These include:

- Different pack shapes and sizes.
- Different colours, shades of colours, types of varnishes and number of colours on a pack.
- Different types of packaging material (ie. types of substrate).
- Other features such as embossing, debossing, hot foil stamping, etc.
- Serial coding.

However, under a generic packaging approach there will be:

- One pack size.
- Same standard artwork.
- Static design features.
- Limited number of standard colours and varnishes.

Depending on the product packaging specification, the production process can involve several steps or stages.

An overview of the steps taken to convert processed cartonboard into tobacco packaging is set out in Figure 3.

Figure 3: The tobacco packaging conversion process



Tobacco packaging consists of boxes made from cartonboard or corrugated micro flute board called 'substrate', which is usually multi-layered, and which are then printed and/or coated, and cut into carton 'blanks' (flat non-assembled cartons) as part of an overall process known as 'conversion'. These blanks are then shipped in flat form to the converter's (Amcors) customers. The carton blanks incorporate creases, which enable the carton to be assembled or formed at the customer's site, at the same time as the customer's product is packed into the cartons.

Printing can then be undertaken by way of two different technologies:

- *Gravure*: a laterally reversed image is etched or engraved into the surface of a copper printing cylinder in cellular cavities. The printing cylinder rotates in a bath of ink and a flexible blade removes excess ink, leaving the surface clean, with ink only in the depressions. The cartonboard passes between the inked printing cylinder and a rubber/polymer coated 'impression cylinder'. The etched areas then release the ink to print on to the packaging material.
- *Offset Lithography*: the printing image is carried on a plate. The surface of the plate has areas which attract moisture and repel ink, as well as other (image) areas which attract ink (oil-based) and repel water. The plates are each attached to a cylinder and kept moist so that ink only adheres to the designated image areas. As printing progresses, the ink is transferred to a rubber/polymer 'offset' blanket, which is affixed to a second cylinder, and the ink is transferred in turn to print on to the packaging material.

The printed cartonboard can then be subject to a range of other processes including:

Embossing – this is an optional process, depending on customer requirements. A 'male' embossing plate, with a positive design attached (commonly a crest or a logo) is pressed down on to the substrate, while at the same time a 'female' counter plate is fixed underneath the substrate. The substrate is squeezed hard between the plates and is then permanently shaped in the image of the plates. The majority of folding carton converters (like Amcor) own embossing machines, which are a low-value commodity technology.

Foil stamping – under this process, certain metallic materials (commonly aluminium, for example) are lifted off a roll and applied to the cartonboard substrate in the required design. This can be used to apply a 'prestige' look to premium products, or even be used to coat entire folding carton blanks in certain circumstances. This can be undertaken at the same time as embossing, on the same machine, if required.

Cutting and creasing – this is undertaken via a single, standardised process. A die is created which has both cutting blades (that slice through the cartonboard) together with creasing blades (with blunted ends), which are used to create flat 'carton blanks' ie. non-assembled cartons.

Shipping to customer – carton blanks are stacked on pallets, wrapped and then shipped to a customer's plant. The customer folds the carton blanks to create the finished folding carton box and packs their own finished product.

Most tobacco packaging products today are produced with Gravure technology. One of the main reasons for this is that consistently higher quality results can be achieved compared to Offset printing. In addition, some specific finishes cannot be achieved by the use of Offset

technology (for example metallic inks and certain structural varnishes). The use of Gravure technology also requires a high level of printing expertise and know-how. One of the distinct advantages of using Gravure technology is that technical experts can easily recognise the printing process in which the pack was produced. The combination of these features is also utilised by law enforcement agencies. These agencies join with legitimate industry participants to capitalise on the intelligence offered by this technology to verify product authenticity, and identify and seize counterfeiting facilities in Europe.

A generic approach to tobacco packaging will significantly lower the barriers to entry for counterfeiters because:

- a) *The level of technical difficulty to print generic tobacco packaging will be substantially lower than it is for current branded packs* – the printing requirements are simplified from the multiple (and more technically complex) features to a simple, generic pack.

In other words, by reducing the complexity or number of elements or features on a pack the production or conversion process will be simplified from several process steps to one step only (depending on the number of colours or applications required for the design). In addition, due to the simplified pack and lack of specialised process that will be required for production, a counterfeiter could easily source the printing of the tobacco pack from any number of offset printers already in the market.

- b) *Lower investment required for printing equipment and assets* – the upfront investment required will be significantly less compared to that required for current packaging.

For instance, a brand new inline Gravure machine costs around A\$9-11 million. A converting machine plus infrastructure costs around A\$13 million, and a converting machine, plus infrastructure plus a new building to house these machines could cost approximately A\$25 million. Reduced technical requirements will mean that market entry becomes even more attractive, less specialised and less secure, especially if second-hand equipment is purchased, and where the requirements for installation space are much smaller. For instance, a second-hand offset machine would typically cost around A\$65,000 – A\$135,000 and could easily be installed in a domestic setting e.g. a garage.

In addition, converting equipment is readily available and the lead times for acquisition are relatively short - around nine months on average.

The Bill will enable counterfeiters to enter a less complex marketplace at a lower investment cost and/or access a wider pool of established printers who could fulfil the standardised and simple print requirements.

It is not clear whether future counterfeit operators would be located domestically in Australia, or source product from overseas. However, it is clear that the scope of printers and professional printing equipment available to produce alternative packaging will substantially increase, making it easier for counterfeiters to reproduce the generic design.

We understand that the specific details of the design features are under development and consultation will occur regarding these details in the second half of 2011. It is important to note that it will be extremely difficult to regulate designs that aim to address counterfeiting. This is particularly due to the fact, as noted in Chapter 3, that anti-counterfeiting measures need to involve design features, constant change and SKU proliferation.

4.5 Creation of scale in the counterfeit market

4.5.1 Drivers for scale

The uniform requirement for tobacco packaging will provide the opportunity and incentives for the creation of scale in the counterfeit tobacco market in Australia.

The Australian tobacco market will effectively transition from a market with a large number of brands and distinct product differentiation to a single generic pack for all brands. For example, in Australia, there are currently 306 active tobacco product SKUs with seven different pack sizes.⁸ Format and design of tobacco packaging varies and is also regularly updated. The designs are deliberately complex in order to mitigate against replication.

As the look and feel of tobacco packaging will be uniform under the Bill, and the only distinguishing features of the pack will be the brand and product name, this will create a single, generic tobacco brand in the Australian market. As a result, the counterfeit tobacco market will increase substantially in Australia. The parameters for participation in the market will be reduced from the need to recreate multiple pack designs and formats, to only having to recreate one uniform pack design and format.

Based on our international experience, assisting clients in mitigating against counterfeit product, our view is that the move to a generic approach to tobacco packaging will provide an increased opportunity to create scale in the counterfeit market for tobacco products in Australia as it transitions from multiple SKUs to one generic brand.

Counterfeit tobacco is an extremely lucrative market given the high rates of taxation applied to tobacco products. Therefore any initiative that creates scale in the current market must be carefully considered.

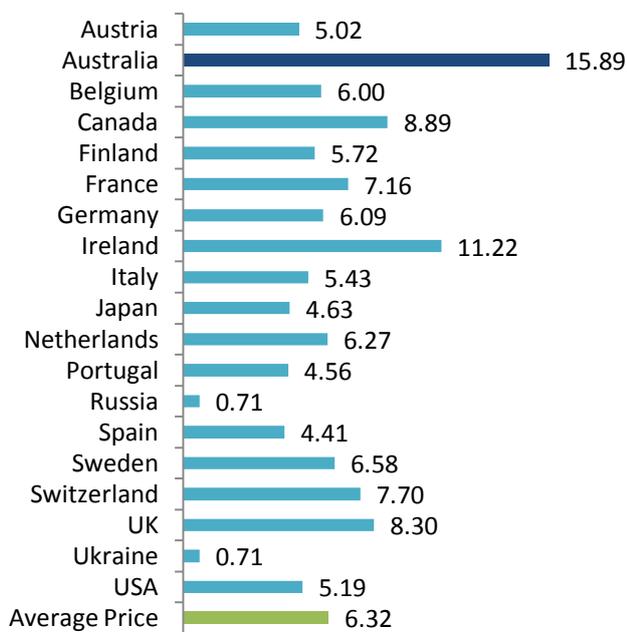
4.5.2 Implication of scale – level of organisation in counterfeit market likely to grow

The combined potential impact of reduced barriers of entry to the counterfeit tobacco market (outlined in section 4.4) and the creation of scale (discussed above), implies that the level of activities in the counterfeit market will also increase. There is evidence internationally of the involvement of organised crime in the illicit and counterfeit tobacco market. Given the relatively high rates of taxation applied to tobacco products, counterfeit tobacco is an extremely lucrative market, in which significant profits can be made.

Partnered with the potential creation of scale, is the relative appeal generated by the high price of cigarettes sold in the retail market. A benchmark of tobacco prices per pack across different countries shows that Australia is by far one of the highest-priced markets in the world. As illustrated in Figure 4, based on the weighted average price per pack, Australia's average retail price reaches A\$15.89 per cigarette pack, followed by Ireland at A\$11.22 per cigarette pack and Canada at A\$8.89 per cigarette pack.

⁸ The Australian Retail Tobacconist Annual Vol 78, August 2010, no5

Figure 4: Average retail price per cigarette pack per country in AUD⁹



There is strong evidence of major involvement of organised crime in the illicit tobacco market internationally. The issue of cigarette smuggling was recently identified by Europol (the European Law Enforcement Agency) in its public information paper *EU 'Organised Crime Threat Assessment (OCTA)'*.¹⁰

*Organised crime groups based in the EU are increasingly active in cigarette smuggling, seen as an attractive alternative to drug trafficking because of its **lower penalties and large profits**.*

Member States witness both large and small scale cigarette smuggling...The size of individual consignments varies according to the means of transportation, from small amounts carried by passengers on buses, trains or ferries, to 40 ft. containers each capable of holding 10 million cigarettes.

*In order to conceal consignments and their origin, organised crime groups make use of transshipment points before entry to the EU. Criminals attempt to move goods through the **free trade zones of Dubai and Jebel Ali (UAE) and Port Said (Egypt)**, or through regions in which the EU law enforcement community has weaker cooperation arrangements, including Indonesia, the Northern Philippines and areas of the Republic of Cyprus in which the Government of Cyprus does not exercise effective control.*

⁹ Sources: for Australia: 'The Australian Retail Tobacconist Annual', Vol 78, August 2010, no5
for European countries: Tobacco Manufacturers' Association, EU- EU Commission/TDC
for USA: <http://www.tobaccofreekids.org/research/factsheets/pdf>.
for Canada: Smoking and Health Action Foundation, Ottawa,(613) 230-4211, www.nsra-adnf.ca
for Japan: Bloomberg, September 2010

¹⁰ Europol, EU 'Organised Crime Threat Assessment', 2011 available at <http://www.europol.europa.eu/>

Of particular relevance to the Australian context, Europol also highlights that the target markets for smuggled cigarettes are countries with comparatively high taxes on tobacco, and that the EU and trafficking of counterfeits originate mainly from China.

The geography of these markets is spreading. For example, the recent International Tax and Investment Center report highlighted that many illicit factories had been detected within the EU undermining “past beliefs that only lower income, corrupt countries with weak legal structures are the source of illicit manufacturing”¹¹.

The same report also highlighted that “developments in recent years show that organized crime will supply any country in the world as long as there is a demand for illicit product and the potential for profit exists”¹².

In the Australian context, a recently released Australian Crime Commission report ‘*Organised Crime in Australia 2011*’, also cited the links between illegal tobacco and organised crime in Australia¹³:

Organised crime networks have been linked to the importation of counterfeit cigarettes and loose tobacco.

Significant government revenue is avoided through the activities of groups involved in illicit tobacco importation and illicit growing, curing, manufacture and sale of tobacco products.

The successful interdiction of illicit tobacco products at the border, the high illicit profits and increases in the excise duty on tobacco products are likely to increasingly attract organised crime groups to the illicit tobacco market.

4.6 Limited capacity to authenticate and differentiate between products

As packaging experts, we are acutely aware that one of the key roles of packaging is to ensure consumers and others can recognise the authenticity of a product. Moving to generic packaging will significantly reduce the role of packaging to communicate product authenticity.

It will also fundamentally change the role that packaging plays in enabling consumers to authenticate and differentiate between tobacco products/brands. Whilst we recognise that this is a stated aim of the Bill, as we have previously outlined in Chapter 2, packaging plays an important role in communicating visual cues and detailed information to consumers about the products they purchase.

Therefore, a further implication of the generic approach to tobacco packaging will be to further reduce the capacity of:

- Consumers; to verify the authenticity of a product they are purchasing,
- Manufacturers; to include anti-counterfeiting cues, eg. specific packaging designs, and
- Enforcement authorities; to recognise counterfeit tobacco products.

It is also important to consider that a move to generic tobacco packaging is intended to eradicate the perception of value that consumers place on different brands and types of products. An implication of this loss of value perception is that consumers will increasingly view tobacco products as a commodity, where the only key point of differentiation is price.

¹¹ International Tax and Investment Center, ‘*The Illicit Trade in Tobacco Products and How to Tackle It*’, page 10

¹² Ibid, page 11

¹³ Australian Crime Commission, *Organised Crime in Australia*, 2011

This will increase the incentive for and the participation (intentional and unintentional) in the illicit tobacco market by tobacco consumers in Australia.

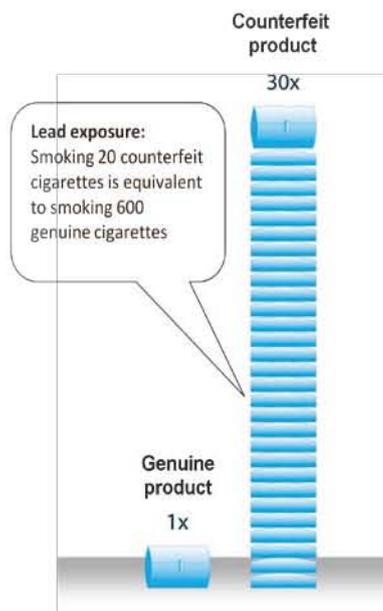
In our experience, and based on standard economic theory, the introduction of plain packaging will have several market effects:

- Product differentiation within the market will reduce.
- In the absence of product differentiation, consumers will be more willing to switch products, leading to higher price competition and lower prices.
- Market entry of non-branded cigarettes will become easier.
- Illicit trade in cigarettes will then increase because:
 - Contraband cigarettes will be perceived as more attractive to some consumers.
 - Simpler packaging requirements will result in counterfeit cigarettes being easier and cheaper to produce – leading to an increase in supply.

4.7 Greater health risk to consumers

Counterfeit cigarettes are not produced under regulated conditions and as such there are no government imposed controls over hygiene, ingredient composition or the level of toxic materials. An increase in the availability of counterfeit tobacco products in Australia will be likely to increase health risks to consumers arising from unregulated products.

Figure 5: Lead exposure



There is evidence from the United Kingdom with respect to the ingredient composition and level of toxins in counterfeit cigarettes. Producers of the 2010 BBC documentary, *Smoking and Bandits*¹⁴ bought counterfeit tobacco in Glasgow, Scotland and had the contents forensically analysed with the following results:

- The lead content in counterfeit rolling tobacco was 30 times higher than in the genuine products (as Figure 5 demonstrates).

¹⁴ BBC Documentary, *Smoking and the Bandits*, January 2011 – see <http://news.stv.tv/scotland/west-central/221538-investigation-reveals-true-dangers-of-counterfeit-tobacco/>

- Counterfeit branded cigarettes contained 17 times the amount of lead when compared to the genuine products.
- Levels of poisons were in some cases six times higher than found in the genuine products.

In early 2010, the Chief Trading Standards Officer for the Lancashire County Council in the United Kingdom warned of the possibility of counterfeit cigarettes containing sawdust, rat droppings or other foreign substances.¹⁵

The issue of increased health risks associated with consuming illicit tobacco was also highlighted in a study commissioned by the Australian Commonwealth Department of Health and Ageing in 2004. The study *'The Medical Consequences of Smoking "Chop Chop" Tobacco'*¹⁶, suggested that smoking illicit tobacco had the potential to induce illnesses as a result of a number of contaminants contained in illicit tobacco.

A recently published report from the International Tax and Investment Centre, *'The Illicit Trade in Tobacco Products and How to Tackle It'*, highlights the public health issues associated with the illicit trade in tobacco, which are outlined in Box 2.

Box 2: Public health issues associated with illicit tobacco

The illegal trade in tobacco undermines public health initiatives to curb tobacco consumption by making cheaper cigarettes available in an unregulated environment where they may be sold to vulnerable groups such as minors. Unlike legal tobacco products, which are manufactured and sold in compliance with strict regulatory requirements such as health warnings and maximum tar and nicotine levels, illicitly traded products, especially counterfeit, are partly or fully outside of this regulatory framework. Research conducted by the Dutch National Institute for Public Health and the Environment (RIVM) demonstrates that counterfeit cigarettes contain cadmium levels that are five times higher and lead levels that are six times higher than in genuine cigarettes. The Centre for Public Integrity's investigation *Tobacco Underground* says: "many of the smokes are made from the lowest quality tobacco, full of stem and sawdust, and spiked with unusually high levels of nicotine. Tests reveal that counterfeit cigarettes carry a bevy of products that could further shorten even a heavy smoker's life: metals such as cadmium, pesticides, arsenic, rat poison and human faeces."

The WCO has reported seizures of counterfeit cigarettes containing mites and identified unprecedented methods of concealment (eg. in barrels of titanium sponge containing toxic chlorine gas) which posed serious health risks for the law enforcement officers charged with inspecting and seizing the illicit cigarettes from inside these containers, and which therefore could have been extremely hazardous if smoked by a consumer.

Source: International Tax and Investment Center (2011) *'The Illicit Trade in Tobacco Products and How to Tackle It'*

¹⁵ BBC News, Alert on 'rat dropping' tobacco, 17 Jan 2010

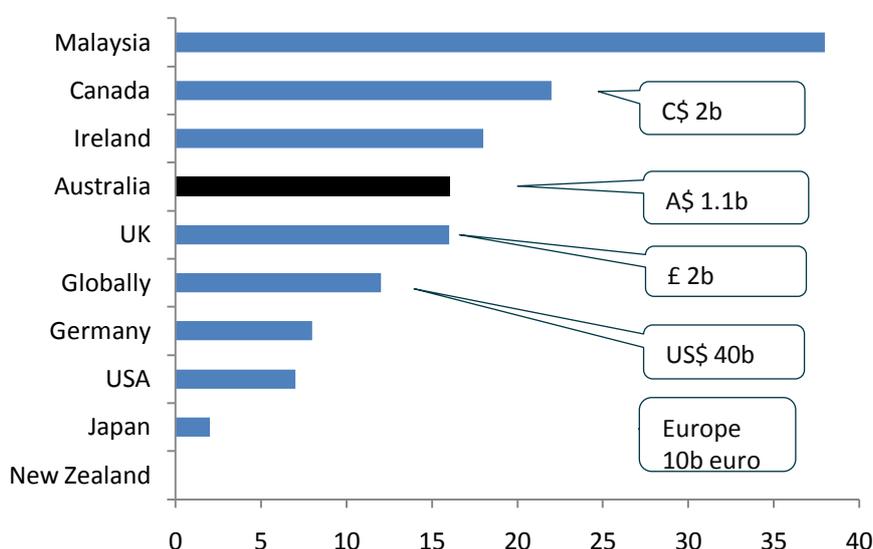
¹⁶ Bittoun, *The Medical Consequences of Smoking "Chop-Chop" Tobacco*, Sydney, December 2004

4.8 Lost excise revenue

Illicit trade of tobacco products is a major issue internationally and cigarettes are considered by the World Health Organisation to be the most widely smuggled legal consumer product globally.¹⁷ With respect to counterfeit cigarettes, the Tobacco Industry Forum convened by the Australian Tax Office estimates that 40% of illicit cigarette imports into Australia during the 12 months to February 2010 were counterfeits of major known brands.¹⁸

The International Tax and Investment Centre indicate that the total loss of revenue globally is estimated to be US\$40 billion.¹⁹ Europol estimates it is around €10 billion in Europe.²⁰ Figure 6 shows the estimated loss of taxation revenue in selected countries.

Figure 6: Illicit (illegal) tobacco trade as a % of total market and lost taxes as a result – 2010



Source: Deloitte, International Tax and Investment Centre, BBC, Euromonitor International for 2010, Europol

In Australia, every cigarette pack sold as a counterfeit pack rather than a genuine pack deprives the Commonwealth Government of more than A\$9 in excise and GST.²¹ A recently published report by Deloitte estimated that the size of the illicit tobacco market in Australia was equivalent to 15.9% of the legal tobacco market²² and that this was equivalent to foregone excise revenue of A\$1.1 billion per annum.

As we have outlined, we strongly believe that the move to a generic approach to tobacco packaging will result in an increase in the level of counterfeit tobacco products available on the Australian market. Moving to a generic approach to tobacco packaging will significantly alter the underlying market structure and incentives for participation in the counterfeit tobacco market. This is likely to lead to an increase in the level of activity the counterfeit market.

As such, there is a significant risk that the predicted increased level of illicit trade will further increase the tax losses suffered by the Government.

¹⁷ World Health Organisation 2009b, Report on the global tobacco epidemic, Chapter 16, Geneva

¹⁸ Australian Tax Office 2010b, TIF minute, February 2010 available at www.ato.gov.au

¹⁹ International Tax and Investment Center, 'The Illicit Trade in Tobacco Products and How to Tackle It', page 3

²⁰ Europol 'EU Organized Crime Threat Assessment Report', page 25

²¹ Calculated on a pack of 25 cigarettes, and 'Tobacco in Australia: Facts and Issues 2008', Scollo and Winstanley. GST is calculated as 1/11th of the pre-GST price.

²² Deloitte, Illicit Trade of Tobacco in Australia, Melbourne, February 2011

5 Conclusion

Our experience in operating in the global consumer packaging industry provides us with a unique insight into how packaging works and how it can help to ensure the integrity and authenticity of products, including tobacco products.

Whilst we acknowledge and support the health-related outcomes underlying the Bill, we are strongly of the view that it will have significant unwanted and negative implications. Most importantly, we believe that the potential impacts will be counterproductive to the key objective of the Bill: to improve public health by reducing smoking and its harmful effects.

The effect of the Bill will be to create a generic approach to the packaging of cigarettes in Australia. In creating a generic pack, consumers will lose the ability to recognise the authenticity of products and to perceive value.

The practical implications of Bill is a significant increase in the level of counterfeit tobacco and growth in the level of illicit trade in tobacco products in Australia. This will occur due to:

- *Lower barriers of entry to the counterfeit tobacco market*

Moving to a generic approach to packaging will lower the barriers of entry for counterfeiters, as there will only be one design to replicate.

- *Creation of scale in the counterfeit market*

A generic approach to packaging will provide an increased opportunity for achieving economies of scale in the counterfeit market. This, coupled with the appeal and possibility of high margins that can be earned from highly-taxed tobacco products, could increase the level of organised crime in the illicit tobacco market in Australia.

- *Limited capacity to authenticate and differentiate between products*

As packaging experts, we are acutely aware that one of the key roles of packaging is to ensure that consumers and others can recognise the authenticity of a product. Moving to generic tobacco packaging will affect a consumer's capacity to verify the product they are purchasing, a manufacturer's ability to include anti-counterfeiting cues and enforcement authorities' ability to recognise counterfeit products. Furthermore, it will drive consumers to see tobacco as a commodity with the only point of difference will be price, resulting in a price driven market.

The possible impacts that could result from the legislation outlined in this submission include:

- *Greater personal risk to consumers*

An increase in the availability of counterfeit tobacco products in Australia will lead to greater personal health risks to consumers as counterfeit products are unregulated and there is no control over hygiene, ingredient composition and level of toxic materials.

- *Lost excise revenue*

Increased counterfeiting will result in a further loss of taxes, effectively shifting legal tax dollars to counterfeiters.

We do not consider the measures currently in place for limiting counterfeit packaging in Australia to be adequate in order to manage or discourage the level of counterfeit tobacco trade.

The adoption of a generic approach to tobacco packaging (with the intended aim being that consumers' will not perceive any difference between tobacco products or brands) will inevitably change the underlying economic structure of Australia's counterfeit tobacco market.

As outlined in this submission, if passed, the Bill is likely to result in a substantial escalation in the level of counterfeit tobacco products in Australia, with the associated adverse impacts on consumers, the wider community and Government revenues.

As such, we submit that the *Tobacco Plain Packaging Bill 2011* should not be adopted.

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