

ECMA

EUROPEAN CIGAR MANUFACTURERS ASSOCIATION

Committee Secretary
Standing Committee on Health and Ageing
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA
By e-mail: haa.reps@aph.gov.au

Submission No. 55 (Plain Packaging Bill) A.o.C. Date: 26/07/2011

Tilburg, 22 July 2011

Re.: ECMA submission concerning the Tobacco Plain Packaging Bill 2011

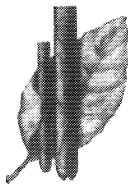
Dear Sir, Madam,

I am writing to you on behalf of the European Cigar Manufacturers Association (ECMA). ECMA is the trade association of cigar manufacturers in the Member States of the European Union. ECMA members together account for over 90% of the cigars produced in and exported from the European Union.

Recently we have been advised about the Standing Committees' inquiry on the Tobacco Plain Packaging Bill 2011. According to the consultation paper that was published on 7 April 2011, the Australian Government has committed to introduce legislation mandating that all tobacco products sold in Australia be sold in plain packaging by 1 July 2012. Alongside the plain packaging measure, the Australian Government announced that it would be moving to update and expand the graphic health warnings on the packaging of tobacco products. The consultation paper set out the proposed design features for cigarettes and for cigarette packaging under the plain packaging regime. Although the proposed design features for the plain packaging of other tobacco products like cigars are still under development, ECMA highly welcomes the opportunity to inform you about its views.

Plain packaging and expanded graphic health warnings

The cigar consumer is typically a male adult of mature age, with mostly an occasional and low consumption. ECMA agrees to the fact that the adult, occasional cigar consumer should be informed about the health risks associated with smoking. However, we are of the opinion that neither plain packaging nor expanded graphic health warnings are necessary to achieve that goal.



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ECMA believes that cigar manufacturers have the right to distinguish and differentiate their products from those of competitors. Packaging guarantees origin, quality and investment. Brands and packaging designs are often protected as registered trademarks. Plain packaging would expropriate or fundamentally restrict the essential function of registered trademarks and the right to distinguish products, contrary to national and international law. The development of brand equity and goodwill is fundamental to a market economy, consumer choice, innovation and product development.

Manufacturers have fundamental rights to communicate with consumers, to the property in their packaging and to conduct their business. Consumers have the right to receive information to facilitate the selection process. Plain packaging would breach these rights. The ability of manufacturers to distinguish their products through packaging provides a key means by which consumers are able to freely exercise their right of product choice. Cigar retailers and consumers use packaging to identify cigar products, easily and without confusion.

ECMA is of the opinion that there is no evidentiary basis to contend that plain packaging or increased health warnings would further improve the achievement of public health objectives. There is no credible scientific and empirical research to demonstrate that plain packaging or larger health warnings would 1) produce a degree of awareness of tobacco related health risks amongst cigar smokers that is higher than currently achieved, 2) reduce cigar smoking initiation, 3) increase cigar smoking cessation or 4) reduce consumption rates in continuing cigar smokers.

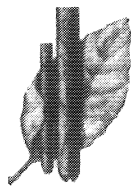
In our view plain packaging is a disproportionate measure, as it would 1) facilitate the trade in counterfeit and contraband tobacco products, 2) result in consumer confusion and 3) negatively impact on the competitive operation of the market.

The further expropriation of the principal display areas of cigar packaging would lead to a series of negative and undesirable consequences, including unjustified limitation on 1) trademarks, goodwill and brand equity, 2) the ability to communicate with consumers and 3) consumers' rights to product choice, fair competition and product information. Increasing the size of cigar health warnings would furthermore lead to the erosion of the brand equity that has been built up and which is currently attributable to brands and to the serious and unnecessary damage to the legal, fair and competitive market economy in tobacco products. Finally an increase in the health warning size would undermine the ability of members of the legal tobacco industry to brand and distinguish its products from those of its competitors.

For all the above reasons ECMA rejects plain packaging and expanded graphic health warnings.

Implementation period

The Australian Government announced that the legislation to implement plain packaging of tobacco products would be in place by 1 January 2012. On 20 May 2012, the offences relating to importing, packaging and manufacturing non-compliant tobacco products, and tobacco



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products in non-compliant packaging will commence, along with investigation and enforcement powers of authorised officers. Finally on 1 July 2012, the offences relating to selling and purchasing non-compliant tobacco products and tobacco products in non-compliant packaging commence.

We would like to note that other territories, like for example the European Union, generally acknowledge that cigars are slow moving products. The EU Directive concerning the manufacture, presentation and sale of tobacco products for example stipulates that “transitional periods should be provided for in order to allow the necessary modifications in production to take place and for the disposal of stocks, particularly for products other than cigarettes”. In the context of this specific Directive, products other than cigarettes that did not comply with the provisions of the Directive could continue to be marketed for two years after the date of entry into force, compared to one year for cigarettes.

Currently the proposed design features for the plain packaging of other tobacco products like cigars are still under development. Consultation will only follow in the second half of 2011. On the basis of this time schedule it is totally impossible for the cigar industry to comply with the new requirements by 20 May 2012 and to achieve full compliance only 6 weeks later, by 1 July 2012.

As was stated before, ECMA rejects the proposal as regards plain packaging and expanded graphic health warnings. Nevertheless we would like to note that for the cigar sector at least 2 years are needed in order to be able to comply with any new requirements.


Overall conclusion

ECMA rejects plain packaging and expanded graphic health warnings for the reasons mentioned above. Furthermore in our view a “one size fits all approach” for all tobacco products would not work, as it would create an unnecessary and disproportionate burden for the cigar sector.

Due to the typical profile of a cigar smoker, the evidence base mentioned in the consultation paper is irrelevant for cigars. Additionally implementation of plain packaging and expanded graphic health warnings for cigars would be much less straightforward than for cigarettes, as cigars are much less standardised due to their enormous variety of models, sizes, and brands.

In addition to the above we would like to note that for the cigar sector at least 2 years are needed in order to be able to comply with any new requirements.

Yours sincerely,


Marcel Grijnen,
Secretary General.