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BUSINESS COUNCIL

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Ministry of Health
College of Medicine Building
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Singapore 169854
Attn.: Director, Epidemiology and Disease Control Division

EU-Georgia Business Council Position Paper in Response to the Public Consultation on Proposed Tobacco Control Measures

We, EU-Georgia Business Council (EUGBC), refer to the release by the Ministry of Health (MoH) on February 5, 2018 of its "Public Consultation on Standardised Packaging and Enlarged Graphic Health Warnings for Tobacco Products" and to our submission dated 24.03.2016 summarizing our views and concerns on standardised packaging we made to the Singapore Government during its public consultation in early 2016.

We would like to hereunder reiterate our views and concerns over standardised packaging as a formal response to the "Public Consultation on Standardised Packaging and Enlarged Graphic Health Warnings for Tobacco Products" of the Ministry of Health and take this opportunity to again encourage the Singapore Government to take these into account before making any decision on the potential introduction of standardised packaging in Singapore.

Standardised packaging does not work

Standardised packaging is in fact a ban on branding: it removes trademarks, logos, non-prescribed colours and graphics and only permits the use of a brand name in a standard font/size. It deprives legitimate businesses of the value of their brands, impedes investments and creates ample opportunities for criminal activities.

The available evidence, including the studies that were considered by the MoH, clearly demonstrates that standardised packaging does not change smoking behaviour and, accordingly, does not cause a reduction in tobacco consumption.

Why does Singapore aim to pursue this flawed policy knowing the outcome beforehand? Many do not:

- countries such as Indonesia, Dominican Republic, Cuba, Honduras, Malawi, Nicaragua, Zambia, Zimbabwe, Denmark, Switzerland, Germany, Italy, Sweden, Spain, Portugal,

Greece, Bulgaria, Slovakia and Czech Republic[i] are amongst those who opposed to standardised packaging.

- Several countries such as the Netherlands, Taiwan, Brazil and Belgium[ii] are amongst those who had earlier considered standardised packaging, however currently they are still exploring less restrictive regulatory measures before having analysed the full impact of standardised packaging before proceeding.

- Respectable business associations continue to raise concerns over standardised packaging and to oppose the measure. The International Trademark Association (INTA), the International Chamber of Commerce (ICC) and MARQUES[iii] are amongst them.

- Even the French health minister[iv] acknowledges the failure of standardised packaging in changing smoking behaviour.

Australia was unsuccessful with standardised packaging

Whereas the Consultation claims that standardised packaging was a success in Australia, the official data over the last five years tells a different story:

- The results of the Post-Implementation Review[v] that were released by the Australian Government in early 2016 are ambiguous at best. On the one hand, the Government claims that *"tobacco standardised packaging is achieving its aim of improving public health in Australia and is expected to have substantial public health outcomes into the future"*. On the other hand, the government acknowledges that it was impossible to analyse the full effect of standardised packaging, as a number of regulatory measures (e.g. larger health warnings and tax increases) had come into force simultaneously.

- Interestingly, the most recent official data from Australia, which was dismissed by the Singaporean government, reveals that the long-term decline in smoking prevalence has come to a halt after standardised packaging was introduced: *"While smoking rates have been on a long-term downward trend, for the first time in over two decades, the daily smoking rate did not significantly decline over the most recent 3 year period (2013 to 2016)"*.[vi]

Instead, the fundamental flaws of the standardised packaging experiment in Australia are reinforced by the policy's discernible negative impact on competition, market dynamics and illegal trade:

- KPMG's analysis over the recent years, the methodology of which has been acknowledged by Australian public experts as *"probably the most appropriate way of collecting that type of information and tracking it over time"*,[vii] demonstrates that the level of illegal tobacco consumption has grown since standardised packaging was introduced in Australia, reaching 13.9% of total consumption and representing about AUD 1.61 billion excise value loss for the Australian government in 2016.[viii] In addition, the Australian Border Force has seized considerable volume of illegal cigarettes, many of which contain *"metal shavings and even bird droppings"* that may risk creating serious health hazards for consumers of these products.[ix]

- Standardised packaging has largely contributed to the price becoming the most important factor of product selection, depriving premium brand-owners of the value of their brands.

Down-trading has dramatically reduced the margins for all in the supply chain over the last few years.[x]

The impact of standardised packaging is questionable also for the different states that have implemented it

While the Australian experience remains the key indicator of the effects of standardised packaging, the data emerging from the early stages of the standardised packaging implementation in the UK and France is pointing in the same direction:

- Data published by the French public authorities[xi] and quoted by the French health minister[xii] demonstrates that the combination of standardised packaging and the requirements of the revised Tobacco Products Directive 2014/40/EU's (TPD2) has not had any discernible effect on tobacco sales in France.

- The first counterfeit 'standardised' packs have been officially discovered in the UK: *"Following a tip-off, Retail Express was sold a plain pack counterfeit of a premium brand by a London newsagent for £10.50. The retailer took a legitimate pack out of the gantry and swapped it out with a fake pack, while processing the card transaction"*.[xiii]

Standardised packaging would have a serious and widespread negative impact on retailers and on consumers

The experience in Australia shows that standardised packaging creates burdensome conditions for retailers in view of additional costs associated with increased transaction times, customer frustration, inventory management delays and, finally, the increased opportunities for criminal activities.[xiv] These concerns were also echoed by retailers in countries that considered the introduction of the measure.[xv]

Conclusion

In light of the detrimental consequences of standardised packaging highlighted in the foregoing paragraphs, we encourage the Singapore Government - in its capacity as a supporter of free trade and of intellectual property rights - not to implement such a far-reaching and damaging regulation.

We request at a minimum that the Singapore Government delay any consideration of standardised packaging until after the final outcome of the WTO Dispute, inclusive of any appeal to the WTO Appellate Body, and strongly encourage it to carefully review the effectiveness of standardised packaging in France, the United Kingdom and Ireland - as well as assess any further data emanating from Australia - before proceeding further with any plans to implement such a restrictive and detrimental policy in Singapore.

Thank you for your attention to EU-Georgia Business Council's business concerns.

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[i] Indonesia, Dominican Republic, Cuba and Honduras are challenging the Australian legislation at the World Trade Organization (WTO). Malawi, Nicaragua, Zambia and Zimbabwe are amongst the countries that consistently raised concerns on Australia's measure at various meetings of the WTO. See via: www.wto.org. Denmark and Switzerland questioned the