BRITISH AMERICAN
TOBACCO
SALES & MARKETING

16th March 2018

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Ministry of Health
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Attention: Director, Epidemiology and Disease Control Division

Dear Sir/Madam,

Public Consultation on Standardised Packaging and Enlarged Graphic Health Warnings for Tobacco Products (5th February 2018 to 16th March 2018)

On 4th February 2018, the Ministry of Health announced a Public Consultation on Standardised Packaging and Enlarged Graphic Health Warnings (**"Standardised Packaging Proposal"** or **"SP Proposal"**). British American Tobacco Sales & Marketing (**"BATSM"**) Singapore is strongly opposed to the SP Proposal on the grounds set out in our response dated 29 March 2016 to the Government's first *Public Consultation on Potential Tobacco Control Policies* (**"First Consultation"**) and as further explained in the attached Response, including:

- **Standardised Packaging does not work.** Standardised packaging and enlarged GHWs have now been in place in Australia for more than 5 years. The objective post-implementation data from Australia demonstrates that the measures have had no impact on the rate of decline of smoking or the number of daily smokers since their implementation. The Singapore Government cannot rely on survey data from Australia that seeks to measure the impact of standardised packaging on "intermediate outcomes", where four years of real-world data is available from Australia to assess the actual impact of the measures on behaviours. The enclosed expert reports on this data reveal that the measure does not work.
- **The SP Proposal would have a detrimental impact on Singapore's reputation as an international trading centre**. The Singapore Government clearly recognises the importance of intellectual property, including trademarks, which is reflected in its strong reputation for protecting intellectual property. The SP Proposal would represent a fundamental shift in Singapore's attitude towards intellectual property rights and the protection of fair competition. The latter is unfortunately already being eroded by the implementation of a retail display ban on tobacco products.
- **The SP Proposal would also potentially violate Singapore's international obligations under international law.** This includes the World Trade Organization's (**"WTO"**) Agreement on Trade-Related Aspects of Intellectual Property Rights, the Agreement on Technical Barriers to Trade, and the General Agreement on Tariffs and Trade 1994, as well as investment protection under bilateral investment treaties. Australia's measures are currently under review in WTO dispute settlement.

Additionally, the SP proposal would have a number of unintended consequences, including:

- **Stimulating price competition leading to downtrading to cheaper products, which may in turn lead to an increase in consumption:** Standardised packaging prevents manufacturers from differentiating their products since all packages look the same. Without the ability to use trademarks

and brands to differentiate on quality and value attributes, tobacco products would become commodified and manufacturers would only be able to compete on price. The impact of reduced prices from price competition is likely to lead to an increase in consumption, especially among price-sensitive consumers, as tobacco products become more affordable. This would undermine the very basis of the SP Proposal of reducing smoking prevalence.

- **Exacerbating the illicit trade problem in Singapore:** Illicit trade is a problem in Singapore. The Empty Pack Survey of the Tobacco Association of Singapore estimates the illicit share of the market to be about 12-15% over the period of 2014-17. The SP Proposal would drive prices down across all market segments, conferring a competitive advantage to those able to supply product at the lowest cost. Thus, the SP proposal would likely strengthen the market in all illicit products, including contraband. A potential consequence of increased illicit trade is to heighten national security risks since smuggling activities may be sources of illicit activities for financing terrorism.

In light of the evidence from Australia mentioned above, BATSM Singapore proposes that the Government undertake its own analysis of standardised packaging in Australia based on the datasets underlying our expert reports. In our 2016 Response to the First Consultation, we presented expert analyses of the Australian experience, and in the current 2018 Consultation, these experts provide updated reports based on the most recent data. As discussed in our Response, the Government has relied on a report by Professors Chia and Miller, which only briefly critiques these expert reports but does not provide any analysis of the data itself. However, the data analysed by our experts comprise the most comprehensive, up-to-date datasets available from Australia. We are willing to provide this data to the Government for analysis by an independent third-party expert it appoints. Before implementing an SP Proposal that may well be counterproductive to the goal of promoting public health by reducing smoking prevalence, the Government may find it informative to commission such a review of the Australian data on the effectiveness of a similar standardised packaging law.

As mentioned, the WTO dispute settlement proceedings against Australia's standardised packaging measures are still ongoing. The claims include, among others, that Australia's standardised packaging law violates the TRIPS and TBT Agreements. Given the likelihood of a decision on the legality under international law of standardised packaging in the near future, we would strongly urge the Government to await the outcome of these proceedings before moving forward with its SP Proposal.

Aside from reviewing the Australian data and awaiting the WTO dispute outcome, we request the Government to consider the following measures to reduce smoking prevalence instead of the SP Proposal:

- **Adopt a longer-term approach to tobacco taxation**: Such an approach will provide stability to excise revenues and help the Government to achieve its health goals. Regular planned and affordable increases (linked to such factors as real income growth) as part of a long-term plan would help to reduce affordability and consumption whilst minimizing any unintended consequences such as higher illicit trade. Experience with planned approaches to tobacco taxation in countries such as Germany and New Zealand shows revenues can rise while consumption falls.
- **Review the current ban on "imitation tobacco products" including electronic nicotine delivery systems ("ENDS") (e.g. e-cigarettes) and tobacco heating products (THPs)**: Tobacco harm reduction is a critical component of the WHO FCTC, to which Singapore is a party and upon which the Government relies to support its SP Proposal. Singapore should follow suit of the increasing number of governments and other public health bodies, which have recognised the potential of ENDS to contribute to public health strategies and now actively support ENDS as part

of their harm reduction activities. For example, the United Kingdom ("**UK**") has encouraged smokers to transition to ENDS as part of its tobacco harm reduction strategy. Most recently, the UK sponsored an October 2017 'Stoptober' campaign to encourage smokers to use e-cigarettes to assist in quitting smoking. Furthermore, initial data from the UK indicates a correlation between a faster decline in the adult smoking rate and ENDS becoming more mainstream since 2012. While the correlation may be caused by other factors, these initial data underscore the potential contribution ENDS can play in a tobacco harm reduction strategy. Reasonable regulation of ENDS, as practiced by scores of jurisdictions around the world stands as a less restrictive, more beneficial public policy as compared to an outright ban. We thus propose that the Government undertake a regulatory impact assessment to determine how to incorporate ENDS into a tobacco harm reduction strategy.

We sincerely hope that our submission helps to inform the future direction of Singapore's tobacco control programme. We further urge the Government to consider our proposed measures above which we believe are a more effective and proportionate alternative to promote public health instead of standardised packaging which has clearly not worked in Australia and risks a number of unintended consequences. We welcome the opportunity to share any additional information that is required.

Thank you for your kind attention.

S J Heng (Ms)
General Manager

cc:

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