

Standardised packaging of tobacco products

Consultation response from the Scottish Grocers' Federation

CONTACT

David Martin (Public Affairs Adviser)
Scottish Grocers' Federation
Federation House
222/224 Queensferry Road
Edinburgh, EH4 2BN
d.martin@scotgrocersfed.co.uk
0131 343 3300

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Summary

- There are a number of serious and valid concerns about the introduction of standardised packaging which cumulatively amount to a significant administrative and financial burden on business. The evidence base supporting change is neither robust nor unequivocal. It is for these reasons that SGF does not support the standardised packaging of tobacco products.
- There has also been a significant amount of legislative and price-based change introduced in order to control tobacco consumption and not enough time has been given to allow some of these measures to bed down. There are now 28 separate pieces of legislation which deal with the sale, distribution and manufacture of tobacco products.
- Plain packaging, by definition, will mean fewer distinguishing features through which to quickly make product selections. Given the high frequency of turnover in tobacco products this will negatively impact upon transaction times and make the tasks of cleaning, replenishing and stocktaking more arduous. Additional resources from retailers will be required in order to compensate.
- Standardised packaging would exacerbate current trends in down trading whereby for every year there is a 1 per cent shift from premium to economy brands there will be a loss in profit to the retail sector of around £1.7m. At a 10 per cent shift the loss rises to £16.7m per year and a 50 per cent shift would mean a loss of £83.5m per year to the retail sector.
- Standardised packaging could make it easier and cheaper to counterfeit tobacco products which are more prevalent in lower income, price sensitive and disadvantaged areas where smokers will be driven out of legal and responsible premises selling regulated products to an illegal, irresponsible and unregulated market.
- Given the brand loyalty of smokers, standardised packaging may see a proliferation in the number of individuals who choose to import, either personally or through friends or family, 'their' cigarettes replete with branded packaging from other markets. Price differentials between EU countries already make this an attractive proposition.
- The legality of standardised packaging from the perspective of intellectual property rights remains unclear. Pursuing a policy of such legal uncertainty would be detrimental to the retail sector given the difficult economic climate and the substantial regulatory burden and cost involved with the policy.
- There are significant methodological problems with the evidence base used to support standardised packaging. Indeed, the strongest predictors of youth smoking are not linked to exposure to cigarette advertising, let alone its packaging, but are more deep rooted and more intractable: family background and socio-economic situations are far more significant than brand awareness.

Introduction

1. The Scottish Grocers' Federation (SGF) is the authoritative voice of the Scottish convenience retail trade with nearly 2,000 stores in membership. Our members play an important role in the economy employing around 32,000 people across Scotland, with annual sales in excess of £3.2bn. Tobacco constitutes an important part of this economic output accounting for approximately 21 per cent of turnover for the average convenience store with profits ranging from 5 per cent (economy brands) to 8 per cent (premium brands). Due to the high sales contribution of tobacco the cash profit derived can be significantly higher than other product groups. Tobacco also has an important cash flow benefit due to the high frequency at which the products are replenished. The benefit of having more cash in hand at more regular intervals should not be understated especially given the current economic climate and financial pressure of rising overheads.
2. SGF believes that individuals are best placed to decide the *legal* products they wish to consume. However, we recognise the detrimental health impact that tobacco products can have which is why our members take a responsible approach to retailing them. We were, for example, instrumental in amending the Tobacco and Primary Medical Services (Scotland) Bill 2010 to ensure that the proxy purchasing of tobacco for those under-18 years is now illegal in Scotland. We also worked closely with the Scottish Government on the creation of a Scottish tobacco retailer's register¹ to help trading standards clamp down on rogue and illegal traders of tobacco and have been an active and committed member of the Scottish Ministerial Working Group on Age Restricted Products.
3. Whilst our members take a responsible approach to the sale of all their products, not just tobacco, we are also cognisant of the significant and costly amount of regulation that falls on small retailers. The regulatory burden is wide-ranging and sometimes disproportionate. That is why we supported HM Government in its observation that *"over the years, regulations – and inspection and bureaucracy that go with them – have piled up and up. This has hurt business, doing real damage to our economy."*² We believe that retailers are all too often viewed as the delivery agents of government policy: policy which is often about policing the behaviour of law-abiding and rational adults. This approach is not only detrimental to our relationship with local communities and the growth of private business but can often be ineffective in achieving the stated policy aims.
4. We believe that any policy intervention should have sufficient benefits to outweigh the associated costs and that the benefits should be underpinned by a robust and unequivocal evidence base. There should also be an additional burden on government to prove that legislation is required when the intervention is as onerous as standardised packaging. It is our view, and evidenced in this submission, that the proposal for standardised packaging falls short on both of these counts. Accordingly, SGF does not support the standardised packaging of tobacco products.

¹ <http://www.tobaccoregisterscotland.org/>

² <http://www.redtapechallenge.cabinetoffice.gov.uk/about/>

5. In setting out our objections to the policy we would like to declare our involvement with tobacco manufacturers. The Scottish Grocers' Federation is funded by the membership contributions of retailers and suppliers. Of the 37 suppliers which financially support SGF three are tobacco manufacturers; namely, Imperial Tobacco, British American Tobacco and Philip Morris International. Combined, their total contribution accounts for only 9.7 per cent of the total income we derive from supplier memberships. Furthermore, all SGF policy decisions are decided by our National Executive Board which is made up entirely of retail members with no suppliers represented.
6. The remainder of this submission will be in three parts with our observations on:
 - i. The business impact of the proposed policy (the costs).
 - ii. The evidence base supporting the policy (the benefits).
 - iii. Concluding remarks.

Business Impact

Existing regulation

7. SGF recognises the harm that tobacco can cause which is why our members retail tobacco products in a responsible manner and operate stringent age verification policies. It is also why we have supported legislative changes like the introduction of a Scottish tobacco retailer's register and the criminalisation of the proxy purchasing of tobacco for under-18s. However we also note that there has been a significant amount of change introduced, both legislative and price-based, in order to control the consumption of tobacco. There are, for instance, 28 separate pieces of legislation to date which deal with the sale, distribution and manufacture of tobacco products.
8. In the last two years both the Scottish and Westminster Governments have passed legislation which bans the display of tobacco products in retail premises. Although the ban is still under legal challenge in Scotland, the cost implications and regulatory burden of this measure will be significant. Unlike the situation in England, Wales and Northern Ireland where the permitted display during a transaction is 1.5 sq m the restriction in Scotland is far more onerous with a permitted display during a transaction of only 1000 sq cm. This is a significant difference and affects not only the time taken for transaction and stocktaking but also means that the costs of complying with this legislation are greater in Scotland than it is in the rest of the UK. In Scotland, for example, the cost of altering a tobacco gantry has been estimated to be £6000 for a medium-sized convenience store.³ This compares to £1000 in England.⁴
9. The Act⁵ which brought in the display ban also contained other measures including a ban on the sale of tobacco from vending machines, the introduction of a tobacco sales registration scheme, it made it an offence for under 18s to purchase tobacco, made it an offence for adults to proxy purchase tobacco for under 18s, gave trading standards officers powers to issue fixed penalty notices, and gave courts the power to ban retailers from selling tobacco where they have continually broken the law.
10. In April this year, following HM Government's budget, the average price of a packet of cigarettes increased by 37 pence, an increase of 1.5 per cent above inflation. This continues a sustained pattern of using price increases to control tobacco use.
11. Despite all of this HM Government is now consulting on yet another tobacco control measure without allowing an appropriate amount of time to lapse before reviewing the effectiveness of actions taken thus far. It is our view that the hallmark of good governance is not only implementing policies with a robust and unequivocal evidence

³ Scottish Government's Regulatory Impact Assessment

⁴ Department of Health Impact Assessment,

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_100257

⁵ Tobacco and Primary Medical Services (Scotland) Act 2010

base but also objectively reviewing the effectiveness of policies implemented and assessing any unintended consequences.

12. For instance, in accepting the ambivalence of the evidence base supporting minimum unit pricing of alcohol the Scottish Government has allowed a 5 years sunset clause and provisions for a comprehensive evaluation to be included in the Alcohol (Minimum Pricing) Scotland Act 2012. We would respectively suggest that a similar amount of time should be given to evaluating the effectiveness of recently implemented tobacco control measures before reaching for the statute book to impose even more regulation.
13. Indeed it is a fine statement of intent to assert as HM Government did in the Coalition Agreement that it would *“cut red tape by introducing a ‘one-in, one-out’ rule whereby no new regulation is brought in without other regulation being cut by a greater amount”*⁶, but such commitments are meaningless without properly evaluating the effectiveness of existing regulation. In the case of tobacco regulation this is incredibly important given the detrimental and lasting impact it can have on business and given how important the private sector, and SMEs in particular, will be to the UK’s economic recovery.⁷
14. It should also be noted that SGF has concerns about the implications of the “one-in, one-out” rule for Scotland if standardised packaging is implemented. Devolution means that the scope for removing regulation in Scotland as a quid pro quo for standardised packaging is greatly reduced given that the Scottish Government does not subscribe to the “one-in, one-out” rule. If the UK Government is to pursue a policy of standardised packaging then consideration will have to be given to a UK-wide approach to removing a greater amount of regulation.

Transaction and stocktaking

15. Convenience retailing, as the name would suggest, is about selling the products consumers want efficiently. With well over 1000 customers passing through the doors of a typical convenience store each day the importance of being able to quickly allocate, select and serve any product cannot be overstated. Speed of transaction impacts upon queuing time. This affects customer satisfaction which in turn will influence the amount a customer will spend during any one visit or whether they choose to use that convenience store again.
16. Generic packaging, by definition, will mean fewer distinguishing features through which to quickly make product selections. Indeed, a lack of easy recognition is one of the features of this policy that proponents champion. This can make product selection more difficult and time consuming. It also means, given the high frequency of turnover in tobacco products, that the tasks of cleaning, replenishing and stocktaking could become more arduous. This is particularly true for smaller independent retailers without

⁶ The Coalition: our programme for government, Pg. 9

⁷ At the start of 2011 there were around 4.5 million SMEs forming 99.9 per cent of all businesses by number, accounting for over half of private sector employment and nearly half of all private sector turnover - BIS (2011) “Business Population Estimates for the UK and Regions”

electronic stock management systems thus making the policy more regressive and onerous for smaller businesses.

17. It also means that more pressure will be felt by conscientious staff trying to serve, often time conscious, customers as quickly as possible. This can result in mistakes and even longer transaction times. In the worst situations it can end with customers becoming agitated and hostile.
18. As an illustration of the problems retailers face in this context SGF recently lobbied the Scottish Government along with a number of Consulates to extend the list of permitted proof of age documents used for purchasing age restricted products including tobacco and alcohol. This issue was raised because an increasing number of EU nationals were frustrated because their national ID cards were not being accepted as permitted forms of proof of age. Given that their IDs are not recognised under the Licensing (Scotland) Act 2005 it was right for retailers to refuse them. However, the frustration of not receiving the expected service led some, in the worst cases, to turn to violence and anti-social behaviour. The Scottish Government has recognised this situation and after wider consultation has indicated that it will amend the law.
19. This is just one example, albeit at the fringes of customer reaction, which highlights the difficulties that retailers and their staff face on a daily basis when governance doesn't account for the realities and practicalities faced by those running a business and providing a public service.
20. Of course, retailers will always attempt to adapt to new legislation in order to maintain existing levels of service and efficiency where they can. However, this takes resources – over and above possible lost sales - including additional staff training and extra staff time to compensate for a slow-down in the overall process of stocktaking, cleaning, replenishment and transaction. Given the economic climate, low consumer confidence, rising overheads and other costly regulations – such as the tobacco display ban – these are resources which few smaller businesses can afford.
21. Whilst the Impact Assessment (IA) stated that *“there is little direct evidence on the serving time required for a standardised pack as opposed to a conventional branded pack”*⁸, it can be argued that retailers through extensive experience know best about how additional regulation and changes to their business will impact upon operations. Without comparative evidence, it is not plausible to assess the long-term effects of standardised packaging. Contrived replications which may bear little resemblance to the real-time workings of a retail store will not suffice.
22. Unfortunately proponents of standardised packaging have relied on such simulations including an Australian study⁹ as evidence that generic packaging will not have a negative impact on transaction times. The study, which regrettably attacks retailers and small business as being a mouthpiece for Tobacco manufacturers, asserts that “plain

⁸ Department of Health, Standardised packaging for tobacco products, Impact Assessment, IA No. 3080, Pg. 14

⁹ Carter, O.B.J., et al., (2011), ‘Measuring the effect of cigarette plain packaging on transaction times and selection errors in a simulation experiment’, *Tobacco Control*, 2011-050087

packaging” modestly decreased transaction times and selection errors when compared to “coloured packaging”. SGF notes that the IA references this study and cautions against “*applying its findings to the real-world environment of the tobacco retailer.*”¹⁰ However, we would also like to add our own observations of the study and why we believe that it does not provide a robust evidence base upon which to make the proposition that standardised packaging would, in fact, speed up transaction times.

23. Firstly, and perhaps most importantly, this study was not conducted in a real retail environment but on a table within a controlled space. As such, there were no other distractions which would be typical for a convenience retail environment including customers queuing - perhaps becoming impatient at their wait – no requirement to deal with transactions of multiple-items, no safety or security concerns and no actual cash transactions. Indeed, despite this study taking place in a market which has a tobacco display ban this additional variable was omitted from the study. Furthermore, a sample size of 55 participants is too small to make whole population generalisations, particularly when one considers that this accounts for less than 5 per cent¹¹ of customers over a period of one day for the average convenience store.
24. Relative ease and speed at selecting product is fundamental to the efficiency of transactions in a convenience store so it is problematic that the study excluded participants who were not fluent in English given that these will be the staff members who will most rely on package branding for selecting products at speed. It also excluded those who have experience of working in a retail environment selling tobacco products and thus failing to properly reflect the reality of a convenience store. The study acknowledges that “*it is likely that our participants were quicker at locating plain packs than coloured packs because of their general unfamiliarity with cigarette brands, and it remains possible that if the experiment was repeated with experienced tobacco retailers, any advantage conferred by plain packaging would be lost.*”¹²
25. Finally, the study did not include cigarette packets with health warnings despite the fact that in Australia health warnings “*occupy 30% of the front of the pack and contain large colour images and text*”¹³, whilst the study also used a larger font than has been stipulated in Australia meaning that “*both the plain and coloured packs in [the] study are likely to have been easier to read than their real life counterparts.*”¹⁴

Down trading

26. The IA cites research which shows that there has been a pattern of down trading over the last decade with a growth in market share for economy and low-priced cigarettes at the cost of premium and mid-priced tobacco. Given the relative price elasticity and the

¹⁰ Department of Health, *Standardised packaging for tobacco products*, Impact Assessment, IA No. 3080, Pg. 14

¹¹ Based on 1,200 customers per day

¹² Carter, O.B.J., et al., (2011), ‘Measuring the effect of cigarette plain packaging on transaction times and selection errors in a simulation experiment’, *Tobacco Control*, 2011-050087, Pg. 5

¹³ Ibid

¹⁴ Ibid

availability of substitutes within the cigarette market – including hand rolling tobacco - it would be fair to argue that much of this change has been driven by significant price increases. However, this dynamic could change considerably if standardised packaging is introduced.

27. Despite the lack of work HM Government has carried out to model the impact which standardised packaging will have on down trading it is our view that the likely outcome will be a further erosion of the premium market and a consequent growth in economy and low-priced cigarettes. In other words, standardised packaging would exacerbate current trends in down trading.
28. We believe that this is a plausible outcome because there is a plethora of evidence that demonstrates packaging works to attract customers from rival firms rather than drive initiation or increase the overall size of the market.¹⁵ Remove this variable from the existing supply and demand model and the impact of price becomes even more important.
29. This is clearly undesirable from a retail, tax and public policy position. From the retail perspective, convenience stores make a smaller margin on economy brands (around 5 per cent) than from premium brands (around 8 per cent). Based on an approximate calculation where the margin for premium brand tobacco is £0.56¹⁶ and the margin for economy cigarettes is £0.26¹⁷, and where there were 556m premium packs sold in 2010 out of a total of 2262m packs¹⁸, we can posit that for each year there is a 1 per cent shift from premium to economy brands there will be a loss in profit to the retail sector of around £1.7m¹⁹. At a 10 per cent shift the loss rises to £16.7m per year and a 50 per cent shift would mean a loss of £83.5m per year to the retail sector. The loss to the public purse is clear.
30. From a public policy perspective standardised packaging will have brought about a wholly undesirable situation whereby retailers lose out on profit – with wider economic ramifications - the public purse will be deprived of additional revenue and smoking prevalence will remain unchanged. Indeed, we could go further and argue that given this deflationary pressure on the price of cigarettes the policy may have the opposite intended effect and make tobacco more affordable, especially to younger smokers.

¹⁵ cf. Schmalensee, R.L., (1972), *On the Economics of Advertising*, North Holland, Amsterdam; Hamilton, J.L., (1972), *Advertising, the health scare, and the cigarette advertising ban*, Review of Economics and Statistics 54, 401–411; Fujii, E.T., (1980), *The Demand for Cigarettes: further empirical evidence and its implications for public policy*, Applied Economics, 12, 479-489; Seldon, B.J., Doroodian, K., (1989), *A Simultaneous model of cigarette advertising: effects on demand and industry response to public policy*, Review of Economics and Statistics, 71, 673-677; Baltagi, B.H., Levin, D., (1986), *Estimating the dynamic demand for cigarettes using panel data, the effects of bootlegging, taxation and advertising reconsidered*, Review of Economics and Statistics, 68, 148-155

¹⁶ Based on a premium packet of cigarettes costing £7 as stated on page 16 of the Impact Assessment

¹⁷ Based on an economy packet of cigarettes costing £5.25 as stated on page 16 of the Impact Assessment

¹⁸ Department of Health, Standardised packaging for tobacco products, Impact Assessment, IA No. 3080, Pg. 17

¹⁹ This figure has been rounded up from £1.67m

31. Government would then be in the bizarre position of using additional policy levers to rectify the negative externalities of a policy which was intended to stop youth initiation and reduce the prevalence of smoking. One solution would be as ASH Scotland has argued: *“tobacco duties can be adjusted to compensate for any falls in manufacturer’s price, leaving the end price unchanged (with the additional effect of reducing profits for tobacco manufacturers, while increasing taxation duty received.”*²⁰
32. However this solution – much like the original policy – is not free from causing other undesirable consequences. The UK has the second highest tobacco excise rate in the EU behind the Republic of Ireland with tax accounting for as much as 88 percent of the retail price of UK cigarette brands.²¹ At the beginning of 2012, for example, the average price for a premium packet of 20 cigarettes was £7.09 whereas it was only £4.47 in Germany, £3.47 in Spain, and £2.40 in Hungary.²² Tax increases used to offset the effects of down trading could further increase the tax arbitrage available to counterfeiters or sellers of illicit white products which in turn will impact on levels of illicit tobacco with all of the ramifications therein.

Illicit and cross border trade

33. World-wide there has been a continual growth in the illicit trade of tobacco. In 1993 it accounted for 6 per cent of total consumption which grew to 8.5 per cent in 1995, 10.7 per cent in 2006 and 11.7 per cent in 2007.²³ Amongst European Union countries a similar trend has also been witnessed with illicit tobacco accounting for approximately 8.5 per cent of total consumption in 2007 and 9.9 per cent in 2010.²⁴
34. Against this backdrop the market share of illicit tobacco in the UK remains above the EU average²⁵ with around 1 in 6 (16%) cigarettes consumed in the UK sold illegally²⁶, equating to £2.2bn in lost revenue for HM Treasury.²⁷
35. Illicit tobacco is sold at prices which undermine UK price mechanisms to reduce consumption and therefore makes tobacco more affordable, especially to those on low incomes and adolescents. As HMRC argued in 2011: *“Approximately one fifth of the UK’s smoking population admit to purchasing illicit tobacco. Around two-thirds of illicit tobacco buyers claim that cheaper illicit tobacco makes it possible for them to smoke when they otherwise could not afford to.”*²⁸

²⁰ ASH Scotland briefing on the plain packaging of tobacco products, February 2012, accessed at Pgs. 7-8

²¹ Savona, E., Calderoni, F., (2012), *Plain Packaging and Illicit Trade in the UK*, Transcrime – Joint Research Centre on Transnational Crime

²² Tobacco Manufacturers’ Association, *Tobacco Smuggling: The UK Challenge*

²³ Savona, E., Calderoni, F., (2012), *Plain Packaging and Illicit Trade in the UK*, Transcrime – Joint Research Centre on Transnational Crime

²⁴ Ibid

²⁵ KPMG, (2011), *Project Star 2010 Results*, accessed at

http://www.pmi.com/eng/tobacco_regulation/illicit_trade/documents/Project_Star_2010_Results.pdf

²⁶ HMRC, (2011), *Measuring Tax Gaps*, <http://www.hmrc.gov.uk/stats/measuring-tax-gaps.htm>

²⁷ Ibid

²⁸ HMRC, (2011), *Tackling Tobacco Smuggling – building on our success*, A renewed strategy for HM Revenue & Customs and the UK Border Agency, <http://www.hmrc.gov.uk/news/tackling-tobacco.htm>

36. A growth in illicit trade – which is more prevalent in lower income, price sensitive and disadvantaged areas – will drive smokers out of legal and responsible premises selling regulated products to an illegal, irresponsible and unregulated market. HMRC (2011) argue that: *“Unregulated distribution networks associated with smuggling make tobacco more accessible to children and young people and perpetuate health inequalities across socio-economic groups.”*²⁹
37. Furthermore, illicit tobacco will also have lower quality standards than legal/regulated products which can cause even more harm than ordinary tobacco products.
38. This is a worrying starting place for any policy which could make it easier and cheaper to counterfeit tobacco products.³⁰ That is why it is especially concerning that neither the consultation nor the supporting documents³¹ have considered or modelled the impact of standardised packaging on the illicit trade.
39. Drawing on the academic work on heuristics³² in everyday decision making we can also posit that for staff under pressure (for many of the reasons identified above on transaction times) or for inexperienced staff, standardised packaging will make it more difficult to recognise counterfeit packets of cigarettes. It also means that unscrupulous retailers could find it easier to sell on counterfeit packets to lay members of the public for whom a counterfeit packet will be more difficult to recognise.
40. Finally, given how brand loyal smokers are, standardised packaging may see a proliferation in the number of individuals who choose to import, either personally or through friends or family, ‘their’ cigarettes replete with branded packaging from other markets. Considering the price differentials between EU countries alone, this could become an even more appealing proposition and will ultimately further undermine tobacco sales for indigenous retailers. This is particularly concerning given that tobacco is a footfall driver so a loss in tobacco sales would also impact upon associated impulse purchases.

Legality of standardised packaging

41. Regulatory measures like standardised packaging which seek to severely limit a manufacturer’s trademark rights can be considered an unlawful expropriation of

²⁹ Ibid

³⁰ Savona, E., Calderoni, F., (2012), Plain Packaging and Illicit Trade in the UK, Transcrime – Joint Research Centre on Transnational Crime

³¹ Moodie, C., et al., (2012), *Plain Tobacco Packaging: A Systematic Review*, Public Health Research Consortium, http://phrc.lshtm.ac.uk/papers/PHRC_006_Final_Report.pdf

³² Heuristics, associated with the 1974 work of Daniel Kahneman and Amos Tversky, are solution methods guided by common sense, intuition, and/or ‘quick-and-dirty’ reasoning, that is likely to achieve a good enough solution (a rule-of-thumb) to best aide quick decision making where the loss in decision quality is usually outweighed by the time saved.

intellectual property unless a robust evidenced-based public health benefit can be found to justify the measure.

42. In the Australian case, Philip Morris, Imperial Tobacco Australia, Japan Tobacco International and British American Tobacco have challenged the constitutionality of standardised packaging claiming that the legislation allows the Australian Government to illegally expropriate their intellectual property.
43. Research by Basham and Luik³³ supports the claim that there is insufficiently strong evidence to justify this sort of violation of intellectual property rights. They argue:

“We have found that neither the nature of the product argument nor the right of use argument offered a compelling reason for the abrogation of tobacco trademark rights. Most crucially, we have found, after examining all of the empirical evidence on plain packaging supporting the public health argument that none of this evidence comes close to demonstrating that plain packaging is “necessary”, as required by TRIPS³⁴, to protect public health.”³⁵
44. Furthermore, Honduras and the Ukraine have also officially requested the Australian law be reviewed at the World Trade Organisation.
45. This presents an unclear and unstable situation for the implementation of standardised packaging and we would respectfully suggest that such uncertainty would be detrimental to the retail sector given the uncertain economic climate and the substantial regulatory burden and cost involved with the policy.

³³ Basham, P., Luik, J.C., (2011), *Erasing Intellectual Property: “Plain Packaging” for consumer products and the implications for trademark rights*, Washington Legal Foundation, Washington D.C., <http://www.wlf.org/Upload/legalstudies/monograph/LuikBashamMonographFnl.pdf>,

³⁴ Trade-related aspects of intellectual property rights

³⁵ Ibid, Pgs. 117-118

Evidence Base

“One of the great mistakes is to judge policies and programs by their intentions rather than their results.” (Milton Friedman, 1975)

46. As we have made clear throughout this submission, good governance and effective policy making demands that before undertaking radical interventions in the market like standardised packaging we: a) are as certain as we possibly can be about any unintended consequences and negative externalities which may arise from the policy, and; b) are convinced about the effectiveness of the policy including a robust and unequivocal evidence base which supports change and establishes benefits which outweigh expected costs.
47. It is our view that not only are there a number of serious and valid concerns about the introduction of standardised packaging which cumulatively amount to a significant administrative and financial burden on small and medium size businesses but that the evidence base supporting change is neither robust nor unequivocal. Indeed, many of the fallacies which have arisen from the evidence put forward by proponents of standardised packaging are the same fallacies which remained unanswered when both the UK and Scottish Governments moved to introduce a ban on tobacco displays in retail premises. Perhaps two of the worst in this respect are what we refer to as the correlation as causation fallacy and the apples and oranges fallacy.

Correlation as causation

48. Common to the arguments used to justify a tobacco display ban and now being used to justify standardised packaging is a view that conflates the recognition or recall of packaging with a desire to start smoking. This is an argument most often utilised to explain youth uptake and in the most tentative of cases will argue that the mere exposure of youths to cigarette packaging induces or perpetuates a desire to smoke. In other words, it assumes that a correlation infers a direct causal relationship between an individual who smokes (or does not smoke) and their ability to recall or prefer (or not recall/prefer) a type of package with no regard for other intervening variables or the direction of that relationship.
49. As a way of illustration, the Scottish Schools Adolescent Lifestyle and Substance Use Survey 2010 (SALSUS report) which reports on smoking, drinking and drug use among 13 and 15 year olds in Scotland found that pupils who smoke were able to name a greater number of genuine cigarette brands than those who did not smoke. Whilst 70 per cent of all 15 year olds who regularly smoke could identify 4 cigarette brands, the proportion of pupils who have never smoked was considerably lower at 10 per cent.³⁶

³⁶ SALSUS National Report, (2010), Table 2.12, Pg. 51

Amongst 13 year olds a similar pattern emerges. Of those 13 year olds that smoke regularly 51 per cent could identify 4 brands whilst only 6 per cent of those who have never smoked could do the same.³⁷

50. Whilst it is encouraging that so few 13 and 15 year olds can identify with cigarette brands (despite the lack of display ban or standardised packaging) what do these figures say about correlation and causation? Are there more 13 and 15 year olds smoking because they can recall a greater number of cigarette brands? Or do more 13 and 15 year olds easily recognise cigarette brands because they have already taken the decision to smoke?
51. If it was brand awareness that drove smoking initiation amongst Scottish 13 and 15 year olds then this suggests a level of naivety about the dangers of smoking, or at least a degree of indifference. However, the SALSUS report states that youth smokers, even as young as 13 years old, are fully aware of the dangers of smoking. Furthermore, this level of awareness is similar for both those who smoke and those who don't. Over 80 per cent of pupils of any age, gender or smoking status agreed that smoking can harm an unborn baby, that smoking can cause lung cancer and that second-hand smoke can harm the health of non-smokers. 96 per cent of regular smokers aged 15 years know that smoking can cause lung cancer and 90 per cent are aware that second-hand smoke can harm the health of others.
52. It is only when we start to consider other intervening variables, such as the impact of family and friends, do we better understand the influences acting upon these young smokers and why they choose to smoke. Around 78 per cent of 13 year olds who smoke regularly have at least one parent who smokes³⁸ and 52 per cent have at least one sibling who smokes³⁹. For non-smokers this compares to only 35 per cent⁴⁰ and 12 per cent⁴¹ respectively. Of 15 year olds, 70 per cent have at least one parent who smokes⁴² and 48 per cent who have a sibling who smokes⁴³. This compares to 34 per cent⁴⁴ and 14 per cent respectively for those who do not smoke⁴⁵.
53. The SALSUS report also finds that peer pressure has a major impact. Regular smokers were more likely to have friends who smoked. Among both 13 and 15 year old regular smokers, 40 per cent reported that "all or almost all" of their friends smoked. This compares with only 1 per cent of 13 year old non-smokers and 2 per cent of 15 year old non-smokers. The majority of non-smokers reported that none or almost none of their friends smoked.⁴⁶

³⁷ Ibid

³⁸ SALSUS National Report, (2010), Table 2.27, Pg.58

³⁹ SALSUS National Report, (2010), Table 2.28, Pg. 59

⁴⁰ SALSUS National Report, (2010), Table 2.27, Pg.58

⁴¹ SALSUS National Report, (2010), Table 2.28, Pg. 59

⁴² SALSUS National Report, (2010), Table 2.27, Pg.58

⁴³ SALSUS National Report, (2010), Table 2.28, Pg. 59

⁴⁴ SALSUS National Report, (2010), Table 2.27, Pg.58

⁴⁵ SALSUS National Report, (2010), Table 2.28, Pg. 59

⁴⁶ SALSUS National Report, (2010), Table 2.29, Pg. 60

54. The SALSUS findings highlight the danger of generalising about cause and effect relationships when all that may exist is a simple correlation between two variables. As a wealth of seminal research has shown there are a number of intervening variables which are more likely to shape the relationship young smokers will have with tobacco. Quite simply, the evidence shows that the strongest predictors of youth smoking are not linked to exposure to cigarette advertising, let alone its packaging, but are more deep-rooted and more intractable: family background and socio-economic situations are far more significant than brand awareness.
55. This has been evidenced by a wealth of research including studies commissioned by the Department of Health (DoH). Eileen Goddard's seminal longitudinal study⁴⁷ in 1990 assessed children at three points during adolescence in order to determine why they started smoking. Goddard found that the statistically significant predictors of adolescent smoking were broadly socio-economic. In other words, family background and education.
56. A second DoH study from the 1990s, Clive Smee's *Effect of tobacco advertising on tobacco consumption*⁴⁸ argued that - at a time when advertising was subject to very little restriction in the UK - such advertising did not lead to adolescent smoking initiation. Smee states that "[a]wareness of advertising is at most a necessary condition for coming under its influence. It is not reliable evidence that advertising increases consumption."⁴⁹ He continues, "advertising does not have a statistically significant effect in any form".⁵⁰
57. Smee's findings have been supported by a wealth of other studies. Lloyd and Lucas⁵¹ undertook a study, part funded by the DoH, which interviewed adolescents in London and Sussex over a ten year period. The key findings of their work was that it is the family, school environment including peer influences, a desire to offset stress and the utility derived from smoking which predicts smoking initiation. Neither advertising nor packaging was identified by the subjects as a reason for smoking.
58. In 1994 Martyn Duffy argued that there was no robust evidence supporting the view that aggregate cigarette advertising works to grow total market demand for cigarettes. Indeed, Duffy continues, "On the contrary, the results presented here suggest that the general effect, if one exists, of brand advertisements which carry prominent health warnings may have been to restrain aggregate demand for cigarettes. In other words, cigarette advertisements may paradoxically reinforce and disseminate the health education message through their warnings content."⁵²

⁴⁷ Goddard, E. (1990) *Why Children Start Smoking*, Office of Population Censuses and Surveys, HMSO, London

⁴⁸ Smee, C., (1992), *Effect of Tobacco Advertising on Tobacco Consumption (The Smee Report)*, Department of Health, <http://legacy.library.ucsf.edu/documentStore/l/m/m/lmm93a99/SImm93a99.pdf>

⁴⁹ Smee, C., (1992), *Effect of Tobacco Advertising on Tobacco Consumption (The Smee Report)*, Department of Health, <http://legacy.library.ucsf.edu/documentStore/l/m/m/lmm93a99/SImm93a99.pdf>, Pg. 61

⁵⁰ Ibid

⁵¹ Lloyd, B. and Lucas, K. (1998), *Smoking in Adolescence: Images and Identities*, London, Routledge

⁵² Duffy, M., (1994), *Advertising and Cigarette Demand in the UK*, UMIST School of Management, Manchester

59. Finally, a DoH 2008 consultation on tobacco control determined four predictors of regular smoking – age and sex, the home environment, drug and alcohol use, and truancy and exclusion from school. Branded packaging was omitted.

Apples and oranges

60. A second problem some of the evidence runs into is when it attempts to demonstrate that either a) branded packaging is more aesthetically appealing than standardised packaging thus having a bigger impact on consumption and; b) standardised packaging will have a negligible, or beneficial, impact on transactions times as in the case with the Australian study⁵³ identified earlier.

61. In both of these cases it is clear that some of the standardised packaging studies fail to compare like-for-like and thus commit what we refer to as the apples and oranges fallacy. That is to say, they assess an individual's reaction to a generic pack whilst comparing it with a branded pack when in reality all packets under a policy of standardised packaging, by definition, would be generic. Therefore, whilst an individual may – and it is subjective – prefer a branded packet to a plain packet this preference is rendered irrelevant when standardised packaging is introduced. Furthermore, and as discussed above, simply preferring the aesthetics of a packet tells us little about an individual's propensity to consume tobacco.

⁵³ Carter, O.B.J., et al., (2011), 'Measuring the effect of cigarette plain packaging on transaction times and selection errors in a simulation experiment', Tobacco Control, 2011-050087