

Ministerial Submission

10-989
29/04/2010

FOR: MR CREAN (ACTION) MR SMITH (INFO) MR BYRNE (INFO)
From: George Mina, AS SSB, 3156 James Baxter, AS TLB, 2777 Contact: Johanna Taylor, Executive Officer, 1482 Margaret Durnan, Executive Officer, 3698
Subject: TOBACCO PLAIN PACKAGING

Urgency: High

Key Issues:

On 29 April, the Prime Minister, Treasurer and Minister for Health and Ageing announced the introduction of plain packaging of tobacco products in Australia as one of a range of health reforms to address harms from smoking. The measure was first proposed by the National Preventative Health Taskforce and a private member's Bill. Tobacco interests, and the US Chamber of Commerce have opposed the measure on trade law grounds.

Recommendation:

- (a) Note the Government's decision to introduce plain packaging of tobacco products, announced on 29 April
- (b) Note that tobacco companies will continue to oppose the measure on trade law grounds, avoiding dialogue on smoking and health aspects
- (c) Note that, in accordance with your (Mr Crean's) request to Minister Roxon, DFAT advised DoHA on the international trade law implications of the measure (summary attached)
- (d) [Handwritten: 542]
- (e) (Mr Crean) sign the draft letter to Minister Roxon, asking that DFAT continue to be consulted [Handwritten: 542]

Decision:

- Noted ✓
- Noted ✓
- Noted ✓
- Noted ✓

~~Signed/Not Signed~~

Please Discuss

Domestic/Media Considerations: Yes, High media attention.

Action:

Simon Crean
301410

Have we got the supporting evidence that plain packaging reduces the health risk.

Information:

Stephen Smith
//
Anthony Byrne
//

This seems to be the problem. The UK Govt capitulated when they considered the issue & decided against it because the supporting evidence was not strong enough.

Noted

Department of Foreign Affairs & Trade
- DECLASSIFIED -
DATE 1-1 JAN 2011
CASE 110-09
COPY ISSUED UNDER THE FREEDOM OF INFORMATION ACT, 1982

Background:

On 29 April 2010, the Prime Minister, Treasurer and Minister for Health and Ageing announced that the Government will introduce legislation in support of plain packaging of tobacco products (press release at Attachment A). The legislation will restrict or prohibit tobacco industry logos, brand imagery, colours and promotional text other than brand and product names in a standard colour, position, font style and size. The aim is to introduce legislation in 2011 to mandate plain packaging for tobacco products with a gazettal date of 1 January 2012. Packaging will need to comply with the requirements within six months of gazettal, by 1 July 2012.

2. The measure will likely be criticised on trade law grounds as well as on the grounds of Australia's domestic legal obligations. Representations have been made to you (Mr Crean) and DFAT against the 2009 plain packaging Bill introduced by Senator Fielding and the National Preventative Health Taskforce plain packaging recommendation. The representations came from tobacco interests, the US Chamber of Commerce, To date, we have not engaged on the merits or otherwise of the concerns, and the correspondence has been referred to Minister Roxon for reply as a matter of health policy.

3. On 24 December 2009, you (Mr Crean) wrote to Minister Roxon (copy at Attachment B) to ask that her department consult DFAT on the trade consistency of a plain packaging measure. DoHA did so. A summary of that advice is at Attachment C (a full copy of DFAT's advice can be provided to you separately).

4.

5.

Department of Foreign Affairs & Trade
- **DECLASSIFIED** -
CASE DATE
110 - 09 11 JAN 2011
COPY ISSUED UNDER THE FREEDOM
OF INFORMATION ACT, 1982

George Mina
Assistant Secretary
Services and Intellectual Property Branch, SSB

James Baxter
Assistant Secretary
WTO Trade Law Branch, TLB

Consultation: DoHA

File No: 09/14799; 09/15536-

PRIME MINISTER TREASURER MINISTER FOR HEALTH

ANTI-SMOKING ACTION

The Rudd Government today announced a comprehensive package targeting smoking and its harmful effects, including an increase in the tobacco excise of 25 per cent.

This increase in tobacco excise will provide an extra \$5 billion over four years, which along with existing revenues from tobacco, will be directly invested in better health and hospitals through the National Health and Hospitals Network Fund.

The Government's anti-smoking action includes:

- The first increase in tobacco excise (above inflation) in more than a decade, an increase of 25 per cent.
- Cracking down on one of the last frontiers for tobacco advertising - in a world first, cigarettes will have to be sold in plain packaging.
- Restricting Australian internet advertising of tobacco products.
- Injecting an extra \$27.8 million into hard-hitting anti-smoking campaigns.

All four measures deliver on major recommendations of the National Preventative Health Taskforce.

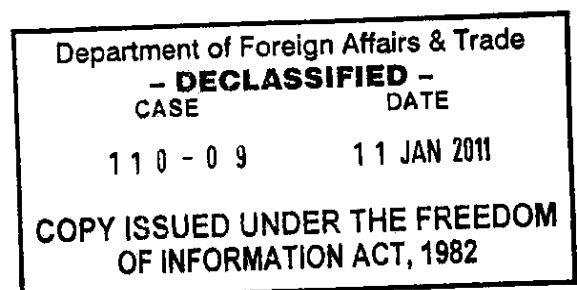
Cutting smoking will save lives, take pressure off our hospitals, and deliver significant economic benefits.

It is one of the best investments in prevention, and keeping people healthy and out of hospital, that we can make.

Smoking kills over 15,000 Australians every year, and is the largest preventable cause of disease and premature death in Australia. The social costs of smoking (including health costs) are estimated at \$31.5 billion each year. Annually, over 750,000 hospital bed days are attributable to tobacco related diseases.

Through tough action over the past two decades, including tax increases and bans on advertising, the number of daily smokers in Australia has been reduced from 30.5 per cent of the population aged 14 and over in 1988 to 16.6 per cent in 2007.

This is important progress, but we can and must do better.



EXCISE INCREASE

The Government will increase the excise and excise-equivalent customs duty rate applying to tobacco products by 25 per cent from midnight tonight. The excise on cigarettes will increase from \$0.2622 to \$0.32775 per stick and loose leaf tobacco from \$327.77 to \$409.71 per kilogram of tobacco.

This will increase the price of a pack of 30 cigarettes by around \$2.16.

This measure alone is expected to cut total tobacco consumption by around six per cent and the number of smokers by two to three per cent - around 87,000 Australians.

This measure will provide an extra \$5 billion over four years that, together with existing revenues collected from tobacco, will be directly invested in better health and hospitals through the National Health and Hospitals Network Fund.

In this way, all customs and excise duty on tobacco will fund a reformed Australian health and hospital system into the future.

Cigarette price increases have been shown to be effective in cutting smoking, especially among young people, who are particularly sensitive to price.

Taxes on tobacco as a percentage of the retail price of tobacco are currently just 62% in Australia, compared to 80% in France and 77.5% in the United Kingdom.

Today's increase will bring Australia's tax treatment of tobacco closer to comparable countries.

CRACKING DOWN ON CIGARETTE ADVERTISING

In a world first, all cigarettes will be sold in plain packaging by 1 July 2012.

This will remove one of the last remaining frontiers for cigarette advertising, and was a key recommendation of the National Preventative Health Taskforce.

The legislation will restrict or prohibit:

- tobacco industry logos
- brand imagery
- colours
- promotional text other than brand and product names in a standard colour, position, font style and size.

The Government will develop and test package design that will make cigarettes less appealing, particularly to young people.

Department of Foreign Affairs & Trade	
- DECLASSIFIED -	
CASE	DATE
110 - 09	11 JAN 2011
COPY ISSUED UNDER THE FREEDOM OF INFORMATION ACT, 1982	

Graphic health warnings will be updated and expanded. Research shows that industry branding and packaging design reduce the effectiveness of graphic health warnings on tobacco products.

The National Preventative Health Taskforce concluded that *"there can be no justification for allowing any form of promotion for this uniquely dangerous and addictive product which it is illegal to sell to children"*, including packaging.

The Government will also legislate to restrict Australian internet advertising of tobacco products, bringing the internet into line with restrictions already in place in other media.

ANTI-SMOKING ADVERTISING

At the same time, the Government will boost investments in hard hitting advertising campaigns by \$27.8 million over four years, to a total of more than \$85 million in the next four years, to encourage even more Australians to quit smoking.

This additional investment will be used for campaigns targeting people in high-need and highly disadvantaged groups such as low socio-economic communities and pregnant women and their partners.

This will extend and broaden the focus of the previous National Youth Tobacco Campaign.

The first elements of the new campaigns will be rolled out by the end of this year.

Through the Australian Taxation Office and Customs and Border Security the Government will continue its successful strong enforcement against the production and importation of illicit tobacco.

This comprehensive anti-smoking package follows this week's landmark COAG agreement delivering fundamental reform to Australia's health and hospital system, and builds upon other actions the Government has taken to improve preventative health:

- A record \$872 million investment in preventative health including programs in schools, workplaces and community settings
- \$103.5 million under the National Binge Drinking Strategy
- The decision to establish the Australian National Preventative Health Agency which is currently being blocked by the Opposition in the Senate.

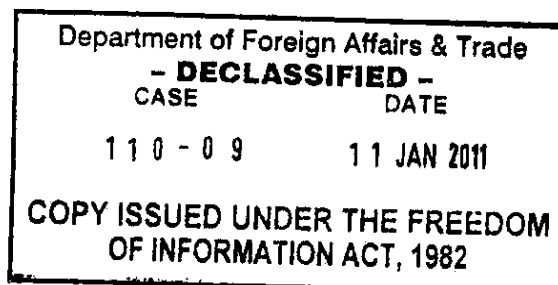
SYDNEY

29 APRIL 2010

PRESS OFFICE (02) 6277 7744

TREASURER'S OFFICE (02) 6277 7340

MINISTER ROXON'S OFFICE (02) 6277 7220



8-16

PLAIN PACKAGING OF TOBACCO PRODUCTS

Department of Foreign Affairs & Trade
- **DECLASSIFIED** -
CASE DATE
110 - 09 11 JAN 2011
COPY ISSUED UNDER THE FREEDOM
OF INFORMATION ACT, 1982

Department of Foreign Affairs & Trade
- **DECLASSIFIED** -
CASE DATE
110 - 09 11 JAN 2011
COPY ISSUED UNDER THE FREEDOM
OF INFORMATION ACT, 1982



8-16

PLAIN PACKAGING OF TOBACCO PRODUCTS

29 April 2010, version 1 CASE 110 - 09 DATE 11 JAN 2011

Department of Foreign Affairs & Trade
- **DECLASSIFIED** -
DATE
COPY ISSUED UNDER THE FREEDOM OF INFORMATION ACT, 1982

Talking Points

- . As a Member of the World Trade Organization (WTO) and as a party to a number of Free Trade Agreements (FTAs), Australia has both rights and obligations
 - Australia does have obligations under those agreements to protect trade marks
 - it also has the right to take measures necessary to protect public health.

- . The Australian Government is pursuing this measure on the basis of public health and considers it is on firm legal and Constitutional ground
 - the measure will be implemented in a way that is fully consistent with Australia's obligations under international trade agreements.

If asked whether the Government will release its legal advice:

- . The Government does not propose to release its legal advice on international trade law obligations.

Background (not for public use)

The Minister for Health and Ageing, Ms Roxon, has announced the Government's intention to implement a plain packaging requirement for tobacco products.

"Plain packaging" of tobacco products would likely involve: restrictions or bans on the use of logos, pictures, brand imagery and specified descriptors, as well as all other embellishing or decorative features such as embossed printing, coloured external wrappers and inserts; and a requirement to use plain matte rigid cardboard packaging in a particular colour, with the brand name, the number of cigarettes in the package and the manufacturer's name and address printed in a specified text, size and location.

DFAT, together with the Attorney-General's Department, has provided legal advice to the Department of Health and Ageing on Australia's relevant international WTO and FTA obligations. Public release of that advice could prejudice Australia's ability to defend itself in any challenge under the WTO or FTA dispute settlement systems.

Media Interest

There has been widespread coverage across all media platforms this morning.

Approval

Author	<i>Margaret Durnan, Executive Officer, WTO Trade Law Branch</i>
Cleared by	<i>James Baxter, AS, WTO Trade Law Branch</i>
Consultation	<i>DOHA, AGD</i>