



THE PACIFIC CIGAR CO. (AUSTRALIA) PTY LTD.

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Submission No. 49

(Plain Packaging Bill)

A.O.C. Date: 22/07/2011

The Pacific Cigar Company (Aust) Pty Ltd

**SUBMISSION TO THE HOUSE STANDING
COMMITTEE ON HEALTH AND AGEING**

Tobacco Plain Packaging Bill (2011)

**Trade Marks Amendment (Tobacco Plain
Packaging) Bill (2011)**

**Angelo Giannakopoulos
General Manager**

The Pacific Cigar Company (Aust) Pty Ltd



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22 July 2011

Dr Alison Clegg
Committee Secretary
Standing Committee on Health and Ageing
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

Via email: haa.reps@aph.gov.au; Alison.clegg.reps@aph.gov.au;

Dr Clegg,

THE PACIFIC CIGAR COMPANY (AUST) Pty Ltd SUBMISSION TO THE HOUSE STANDING COMMITTEE ON HEALTH AND AGEING

The Pacific Cigar Company (Aust) Pty Ltd tends this document as a formal submission to the House Standing Committee on Health and Ageing in response to the Government's plain packaging Legislation, the Tobacco Plain Packaging Bill (2011) and the Trade Marks Amendment (Tobacco Plain Packaging) Bill (2011).

The Pacific Cigar Company understands that the House Standing Committee for Health and Ageing may be hearing evidence as well as considering written submissions and formally requests an opportunity to appear before the Committee to give evidence.



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The Pacific Cigar Company (Aust) Pty Ltd believes that much of the discussion in relation to the plain packaging measures has centred on the cigarette industry and issues relating to "big tobacco".

As the importer of handmade long filler Cuban cigars to Australia, The Pacific Cigar Company (Aust) Pty Ltd is deeply concerned that the unintended consequences of the Legislation as it now stands will result in handmade long filler Cuban cigars being banned from sale in Australia.

The Government of the Republic of Cuba cannot permit removing, hiding or tampering with its seals and marks of authenticity, all of which are Trademarks of either the Cuban Government owned tobacco company or the only authorised exporter, the Cuban Government enterprise, Habanos SA.

The Pacific Cigar Company (Aust) Pty Ltd is pleased to submit its initial response and concerns with the Tobacco Plain Packaging Bill (2011) and the trade Marks Amendment (Tobacco Plain Packaging) Bill (2011).

The Pacific Cigar Company (Aust) Pty Ltd, as a relevant and very different segment of the tobacco industry, is hopeful that it will also have the opportunity to give evidence and to further explain their concerns with the Legislation to the Committee as it affects handmade long filler Cuban cigars.

Yours sincerely,

Angelo Giannakopoulos
General Manager
The Pacific Cigar Company (Aust) Pty Ltd

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Introduction

The objects of the legislative measures contained in the Tobacco Plain Packaging Bill (2011) and the Trade Marks Amendment (Tobacco Plain Packaging) Bill (2011) introduced into Parliament on 6 July 2011 and presently referred for inquiry to the House of Representatives Standing Committee on Health and Ageing are to deter the uptake of smoking, reduce smoking, particularly among young people, encourage people to give up smoking and not revert back to smoking in the future.

The objects of the Legislation do not include banning the selling or consumption of tobacco products and the Tobacco Plain Packaging Bill (2011) specifically allows the importation of tobacco products.

Thus, a degree of tobacco use by Australians is assumed by the Australian Government. If the rate of smoking cigarettes were to decrease as a result of this Legislation by 10%, an overly optimistic scenario, over 20 billion cigarettes would still be sold in Australia annually.

Although the importation of Cuban handmade long filler cigars is allowed under the Legislation, the inability of the manufacturer and importer, the Government of the Republic of Cuba, and The Pacific Cigar Company (Aust) Pty Ltd, respectively to meet the broad requirements of the Legislation, really designed for the big tobacco industry, means that the Tobacco Plain Packaging Bill (2011) will, in its present form, unintentionally cease the importation of Cuban handmade long filler cigars into Australia.

It is clear that the purpose of the Legislation is not the prohibition of any tobacco product, but more an issue of control over the manner in which such products, particularly cigarettes, are sold.

The measures in the Legislation are directed, in the main, to the two basic forms of cigarette packaging. The packaging of Cuban handmade long filler cigars and cigars in

general are not referred to in detail but rather subsumed in to the general category of all “other tobacco” products.

In this submission The Pacific Cigar Company (Aust) Pty Ltd will explain why a sharp distinction should be drawn between Cuban handmade long filler cigars, cigarettes and machine made cigars.

The Australian Government has itself has already effectively drawn a distinction between handmade long filler Cuban cigars and mass produced cigarettes and machine-made cigar products in the current Australian Customs Tariff Schedule¹.

Cuban handmade long filler cigars are held to be separate and distinct within the cigar retail market, the industry and by consumers. The consumer of handmade long filler Cuban cigars is very different to the cigarette consumer or even the consumer of machine-made cigars in terms of their background, age and gender. This submission will also outline the reasons why consumers purchase Cuban handmade long filler cigars as they differ markedly from the reasons why people purchase cigarettes or other tobacco products.

Cuban long filler cigars are rolled by hand using 100% natural tobacco and traditional methods that have been in practice for nearly two hundred years. The definition of a "handmade" cigar is a cigar made by hand exclusively from 100% natural tobacco leaves and vegetal gum using the following implements only: cutting boards, hand held tobacco knives, hand operated guillotines and bunching devices, length and girth templates, glue pots and size moulds.

Handmade long filler Cuban cigars are internationally recognised as being of the highest quality, not only because they are hand rolled using traditional methods, but also because 100% natural tobacco long leaves are used to make the filler, the binder and the wrapper.

¹ <http://www.customs.gov.au/site/page5663.asp>

These handmade long filler Cuban cigars are separate, distinct and distinguishable from machine-made cigars which some manufactures may describe as being “hand made” but which may in fact have been machine made, using machine chopped tobacco leaf filler and then wrapped by hand using a single long leaf wrapper or even a wrapper made from pulped tobacco.

There are more than 350 different variations of packaging for Cuban handmade long filler cigars. The packaging can be made solely from, or from a combination of, wood, aluminium, plastic, leather, ceramic, porcelain, glass, cardboard and paper. The ribbons which hold the cigars in place, the tissue paper which prevents damage to the cigars from rubbing against the packaging, the sheet of cedar wood which absorbs moisture to ensure the product does not deteriorate, the insert of advice as to the recommended humidity and temperature to store the cigars, seals and marks of authenticity, which are registered as trademarks of either the Cuban Government owned tobacco company or the only authorised exporter, the Cuban Government enterprise, Habanos SA and, other authenticating seals designating the date and the factory where cigars were hand-rolled, packed and exported cannot be removed, as the Legislation requires, without damaging or destroying the product itself.

The goal of the Legislation is a reduction of public health consequences as a result of tobacco consumption. As the Legislation stands, it is the smallest group, the most well informed cohort who make up Cuban handmade long filler cigar consumers; the older male demographic, the least tobacco dependant and addicted consumer, that is targeted by the new measures which impose a level of compliance which cannot be met by the producers or importers of these specific tobacco products.

The Government of the Republic of Cuba and the importer, The Pacific Cigar Company (Aust) Pty Ltd are cognisant that the Australian Government has not intentionally selected their handmade long filler cigars to bear the brunt of their Legislation or Legislative compliance measures but, nevertheless it is their industry which will be most impacted by the new measures.

The Tobacco Plain Packaging Plain Bill (2011) inadvertently or accidentally, should it be passed in its present form, will inevitably mean that Cuban handmade long filler cigars will not be able to be sold in Australia.

The Pacific Cigar Company (Aust) Pty Ltd urges the Government to amend the Legislation so that it is no longer a requirement that their Cuban handmade long filler cigar products be broken into and/or tampered with in order to be compliant for sale in Australia. In agreeing to such amendments the Australian Government's objects under the Tobacco Plain Packaging Bill (2011) in relation to public health outcomes would not be impaired or compromised.

The Pacific Cigar Company (Aust) Pty Ltd is the exclusive distributor to Australia of handmade Cuban Havana (*Habanos*) cigars, such as *Cohiba*, *Trinidad*, *Montecristo*, *Partagas*, *Romeo y Julieta*, *Punch*, *H. Upmann*, *Hoyo de Monterrey*, *La Flor de Cano*, *Quintero*, *San Luis Rey*, *Bolivar*, *Vegas Robaina* and *Vegueros*.

The Explanatory Memorandum to the Australian Government Tobacco Plain Packaging Bill (2011) provides three reasons for introducing the measures covered in the Legislation. These are; deterring the uptake of smoking, particularly among young people, encouraging people to give up smoking and also to not revert back to smoking once one has given up.

These reasons are not equally applicable to all tobacco products and indeed The Pacific Cigar Company (Aust) Pty Ltd believes a sharp distinction should be drawn between Cuban handmade long filler cigars and mass market cigarettes and other tobacco products such as machine-made cigars, in terms of the consumers of these different products, the rates of consumption and the use of these products by consumers.

The Product

As has been described in the introduction to this submission, there is no comparison between Cuban handmade long filler cigars and mass market cigarettes or machine-made cigars. The handmade long filler Cuban cigar is made from 100% natural long leaf tobacco hand crafted as a unique, luxury item for occasional use, or potentially to be stored for a number of years before being consumed as opposed to a mass produced, machine manufactured disposable product for habitual use.

Within the cigar market itself, Cuban handmade long filler cigars are a discrete sub category, given the long established and world renowned reputation of the product.

As noted in the introduction, handmade long filler Cuban cigars fall under a separate classification in the current Australian Customs Tariff schedule². There are particular size and weight characteristics that predominantly distinguish handmade long filler cigars and thus mean that these products attract an excise under tariff code 2401.10.00 for tobacco products which weigh more than 0.8 grams per stick (\$420.43 per kilogram of tobacco content)

² <http://www.customs.gov.au/site/page5663.asp>

Tariff code 2402.10.20 is applied to all tobacco products which weigh less than 0.8 grams per stick. Cigarettes and the vast majority of machine-made cigars fall within this category and attract an excise of \$0.33633 per stick³.

In this submission The Pacific Cigar Company (Aust) Pty Ltd will describe in detail the processes by which Cuban handmade long filler cigars are made, and also the means by which the seals and marks of authenticity placed on these products, which are registered as Trademarks of either the Cuban Government owned tobacco company or the only authorised exporter, the Cuban Government enterprise, Habanos SA, ensure the authenticity and security of these products.

The niche occupied by Cuban handmade long filler cigars within the retail tobacco market is comparable to that of the fine wine market within the broader liquor industry.

In the same way that varieties of French wine are rendered unique by virtue of the *terroir*, so connoisseurs are aware of the characteristics that distinguish varieties of Cuban tobacco leaf and hence cigar flavour due to seed variety, location where the cigar has been made and leaf combinations.

The same care and attention that is paid to the correct labeling and attribution of French wine, or indeed a Penfolds Grange wine in Australia, is paid to the packaging and labeling of Cuban handmade long filler cigars. There are similar expectations on the part of the consumer too. In the same way as a connoisseur of French wine will consider the year, the region and the variety of grape or combination of grapes, so too will an aficionado of handmade long filler Cuban cigars take similar considerations into account – particularly when purchasing to invest.

The effect of the Tobacco Plain Packaging Bill (2011) in its current form being applied to handmade long filler Cuban cigars will be similar to a scenario where, as a result of measures being introduced to tackle alcoholism generic cartons were mandated for such

³ <http://www.customs.gov.au/site/page5663.asp>

premium imports as Chateau Lafite Rothschild and Tattinger Champagne and thus could only be legally sold in Australia if they were decanted after importation into plastic bottles.

Cuban handmade long filler cigars imported into Australia make no claims, have no misleading advertising and indeed are designated only by their name and style of cigar, a practice which predates modern marketing, having begun some 180 years ago. All the other marks or markings on the packaging of these products are registered Trademarks confirming origin and authenticity.

Unlike cigarettes advertising differentiation is not used. Cuban handmade long filler cigars are not 'Deluxe', 'Special', 'Mild' or 'Extra Mild', nor have they ever been designated by such special catch phrases or words such as 'low' or 'excellent'.

Cigarettes may contain a cocktail of 4,000 different chemicals, including 43 cancer causing compounds and 400 other toxins including acetone, methanol, naphthylamine, pyrene, cadmium, vinyl chloride, cyanhydric acid, ammoniac, urethane, toluene, arsenic, dichlorodiphenyltrichloroethane and dibenzacridine.

The handmade long filler cigars imported by The Pacific Cigar Company (Aust) Pty Ltd from Cuba are made from 100% natural long leaf tobacco only. There are no additives and/or chemicals included in the manufacturing of these cigars. Thus, Cuban handmade long filler cigars have no shelf life or expiry date and, if held in the appropriate conditions, do not deteriorate.

Should the Australian Government wish to ensure that tobacco consumers are not misled, it might also wish to consider a comprehensive list on the packages, of the chemicals and compounds included in cigarettes.

The reduction of smoking addiction rates desired by the Australian Government in implementing its new plain packaging measures outlined in the Tobacco Plain Packaging Bill (2011) is not applicable to more than half of the total number of Cuban handmade long filler cigar purchasers in Australia. As The Pacific Cigar Company

(Aust) Pty Ltd will explain in this submission, within the group of consumers of these products there are two sub groups; those who buy them for iconic life celebratory milestones and those who buy cigars for investment purposes.

It should also be noted that it is not only the tobacco product that may be kept as a memento from a purchase of a Cuban handmade long filler cigar. The containers for these products can sometimes be unique, are often handmade artisan works and many are considered collectors items in their own right. The containers can incorporate particular designs and features, particularly in the case of the wooden boxes and can therefore be considered part of the Intellectual Property of a particular type of handmade long filler Cuban cigar.

This characteristic of handmade long filler Cuban cigars is a further illustration of the manner in which these products differ in all respects from mass market cigarettes and machine-made cigars. The packs and cartons cigarettes are sold in, are disposed of as soon as the product has been consumed and are ubiquitous as litter in much of the urban environment.

Vintage/Aged Cuban handmade long filler cigars

The operation of the vintage (also called aged) handmade long filler Cuban cigar market in Australia highlights further the differences between mass market cigarettes, machine-made cigars, other tobacco products and handmade long filler Cuban cigars.

Vintage handmade long filler Cuban cigars may be up to 60 years old, but in Australia are typically 5 to 25 years old – and never under 5 years old. These cigars are identifiable by their dates and box codes.

These vintage handmade long filler Cuban cigars are available from retailers and The Pacific Cigar Company (Aust) Pty Ltd estimates they make up 5% of the retail market in Australia.

The limited edition vintage handmade long filler Cuban cigars which come in humidor cigar containers are locked and then sealed (in the usual way as required by the

Government of the Republic of Cuba). These humidor boxes of cigars are sold as a locked, sealed retail package and may contain between 40 and 100 cigar sticks.

Boxes of vintage handmade long filler Cuban cigars (usually wood) do not look different from the ordinary wooden cigar boxes which contain non vintage Cuban handmade long filler cigars. Many vintage and aged cigar boxes and humidors are kept in specially humidified rooms and are primarily kept as an investment. The act of opening a box significantly impacts on the value and, a single missing cigar stick destroys the value of the investment altogether.

The rarest of the vintage Cuban humidor cigar boxes containing these valuable handmade long filler Cuban cigars are not only sealed and locked but may also be embellished. The Tobacco Plain Packaging Bill (2011) would destroy the wholesale and retail value of these products as well as the secondary market for such products.

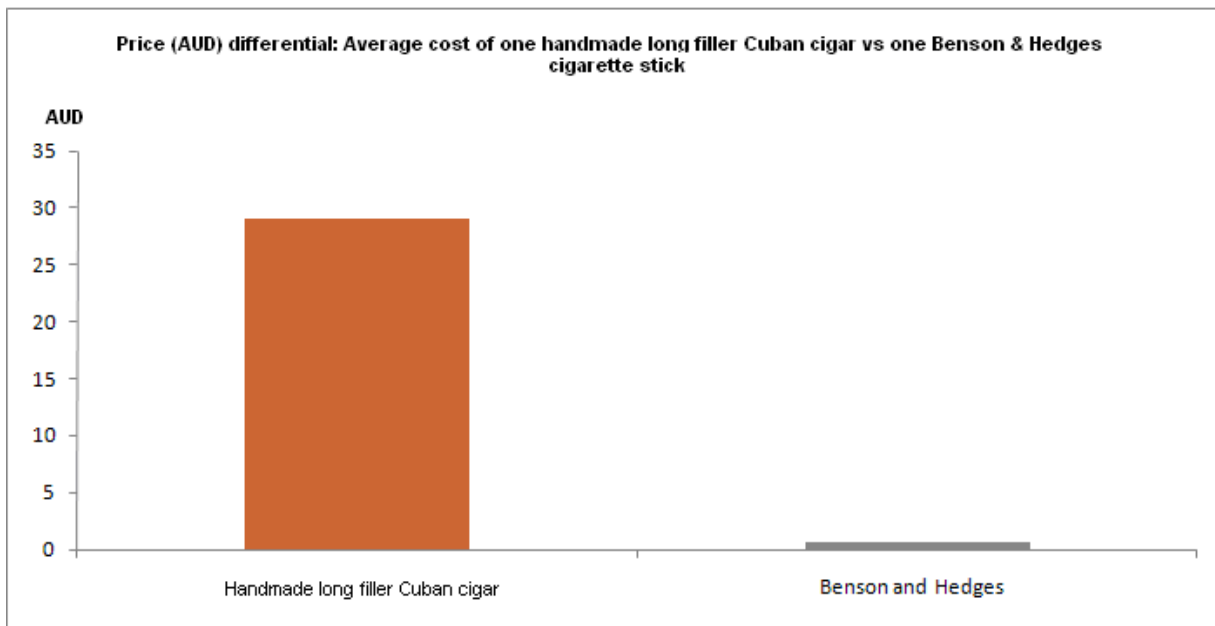
Clearly, these containers and the products therein bear no relationship to cigarettes or cigarette packaging and should not be treated in the same way by the Legislation.

Access

The Cuban handmade long filler cigar market in Australia makes up 0.004% of total tobacco consumption in Australia.

The average cost of a Cuban handmade long filler cigar is AUD\$29 and a single cigar of this type may cost up to AUD\$150 per stick. The price differentiation between a cigarette, AUD\$0.68 (Benson and Hedges), and a Cuban handmade long filler cigar precludes the young as consumers of these particular cigars. If, as research suggests, cost is the biggest deterrent against smoking, Cuban handmade long filler cigars are already prohibitively expensive for the vast majority.

Unlike mass-market cigarettes and machine-made cigars, the Cuban handmade long filler cigars imported by The Pacific Cigar Company (Aust) Pty Ltd are sold predominantly in a limited number of exclusive cigar retail outlets (including a limited number of premium tobacconists and speciality liquor stores).



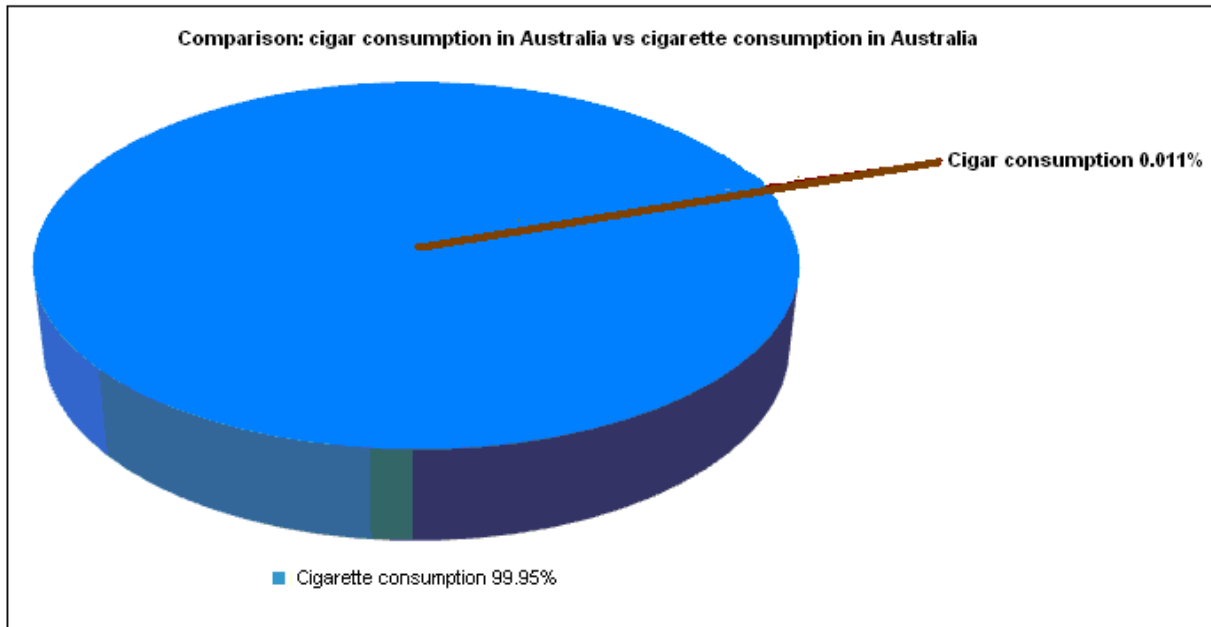
Source: The Pacific Cigar Company, 2011.

These Cuban handmade long filler cigars are not available in supermarkets, milk bars or petrol stations (and/or other venues through dispensing machines) in contrast to mass market cigarettes.

In Australia, The Pacific Cigar Company (Aust) Pty Ltd operates two retail stores (Melbourne and Sydney). In addition, there are 418 other retailers that sell Cuban handmade long filler cigars to the Australian market. These retailers include: airport duty-free shops, cigar shops, tobacconists, bottle shops, bars and clubs, and casinos. Most of these retailers are - by law – already required to have the products ‘blacked out’; that is, these products cannot be visible to consumers and/or potential consumers. A consumer must know where the product is sold and must specifically ask for the product in order to purchase it.

As the Tobacco Plain Packaging Bill (2011) has as one of its objectives discouraging people taking up smoking and/or reducing the number of smokers including those who have given up smoking, access to the products and the ease of purchase of the product is

an element the Legislation should take in consideration. Currently, there is no distinction made in the Bill in relation to this matter.



Source: PriceWaterhouseCoopers 2010

Proportion of the Market

The number of individual handmade long filler Cuban cigars sold in Australia has remained consistent at 1,000,000 per annum over the last 5 years⁴. In contrast, the size of the cigarette market in Australia in 2010 is estimated at 22,000,000,000 sticks a year⁵.

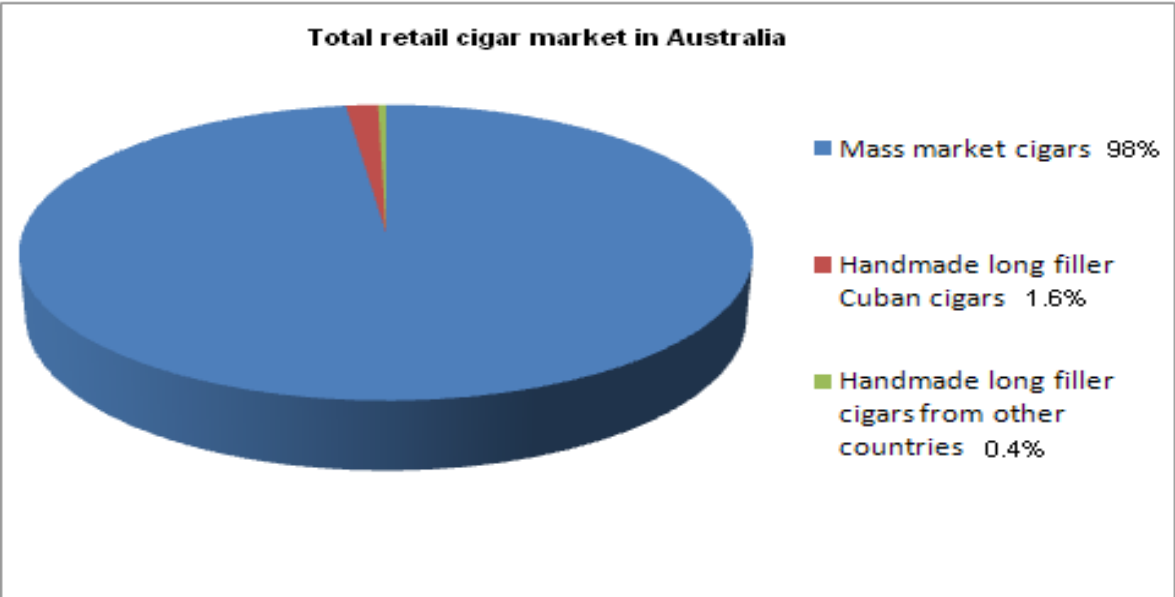
The total consumption of all handmade cigars in Australia represents 2% of all cigars consumed in Australia. The remaining 98% of cigars consumed consist of mass produced, machine-made cigars manufactured overseas and imported into Australia.

⁴ The Pacific Cigar Company (Aust) Pty Ltd

⁵ PriceWaterhouseCoopers 2010; British American Tobacco Australia

Cuban handmade long filler cigars consumed in Australia represent 1.6% of the total number of cigars consumed in Australia (including other hand-made cigars and mass produced, machine made cigars)⁶.

The chart below reflects cigar consumption in Australia and percentage consumed, within that market, of Cuban handmade long filler cigars, together with an even smaller percentage (0.4) of handmade long filler cigars imported from other countries.



Source: PriceWaterhouseCoopers, 2010.

The Consumer

Purchasers of Cuban handmade long filler cigars fall into one or more of three categories; the regular smoker; the special occasion purchaser and the investment purchaser. It is worth noting that consumers who fall into the second and third categories do not necessarily smoke the cigars after purchase.

⁶ PriceWaterhouseCoopers 2010

The regular Cuban handmade long filler cigar smoker in Australia consumes on average 2 cigars per week. They do not necessarily buy by the box but are more likely to buy 2 containers each containing 3 cigars, which would last them three weeks.

The regular Australian handmade long filler Cuban cigar smoker is male, over 45 years of age and earns in excess of \$150,000 per annum. The average regular consumer of these cigars typically lives in metropolitan Sydney, Melbourne, Brisbane and Perth and they tend to live in upper socio-economic post-codes. Typically these consumers are senior professionals; business leaders (CEOs), lawyers, accountants, journalists and doctors⁷.

Based on The Pacific Cigar Company (Aust) Pty Ltd experience, as the exclusive distributor of Cuban handmade long filler cigars in Australia, with direct contact with the 420 retail outlets selling these products we can state that we know of possibly only a handful of customers within the regular consumers of our handmade long filler Cuban cigars who are female. Thus young female smokers of these products are not relevant to any discussion of the purposes or impact of the Legislation but, it should be noted that the Australian Government is concerned by the number of young women who are taking up smoking cigarettes at an alarming rate.

The price differentiation of handmade long filler Cuban cigars and the rest of the tobacco market, predominantly mass market cigarettes is one of the reasons why young Australians do not smoke these cigars. Another is that handmade long filler Cuban cigars are not part of Australia's Youth culture. Cigar smoking is something middle-aged men do. It is not "alternative". It is not counter culture; most often it is seen as a mark of an older establishment type person, not something that young people aspire to be a part of, or identify with.

⁷ Based on data generated by the 420 retail outlets of handmade long filler Cuban cigars in Australia

While The Pacific Cigar Company (Aust) Pty Ltd recognises that smokers of handmade long filler Cuban cigars and of cigarettes are not in every case mutually exclusive, in our experience smokers of both are extremely rare.

Cuban handmade long filler cigar smoke, because it is not inhaled when smoked, nor intended to be inhaled has a strong aroma and taste; very much an acquired taste, usually associated with the completion of a fine dining experience.

The regular smoker of handmade long filler Cuban cigars makes an informed decision on the product they are consuming. They are not dictated to by habit in the way a cigarette smoker, or even a smoker of machine-made cigars is, and which gives rise to the significant health concerns the Australian Government is aiming to control.

The second group of purchasers of handmade long filler Cuban cigars is the very occasional celebratory cigar purchaser; typically male and coming from all walks of life. He may purchase one of these cigars as part of a rite of passage, such as getting married, becoming a grandfather, the marriage of a child, a bar mitzvah, a graduation, a confirmation or the successful conclusion of a very important business negotiation; the very occasions from which the ubiquitous saying, “give the man a cigar” originated. Additionally, “giving the man a cigar” does not necessarily mean ‘the man’ will necessarily smoke it, but may well rather keep it as a treasured keepsake of a momentous occasion.

Women occasionally make a one-off purchase of a handmade long filler Cuban cigar for the same reason, to give as a gift to a partner or close relative, or for a special celebration.

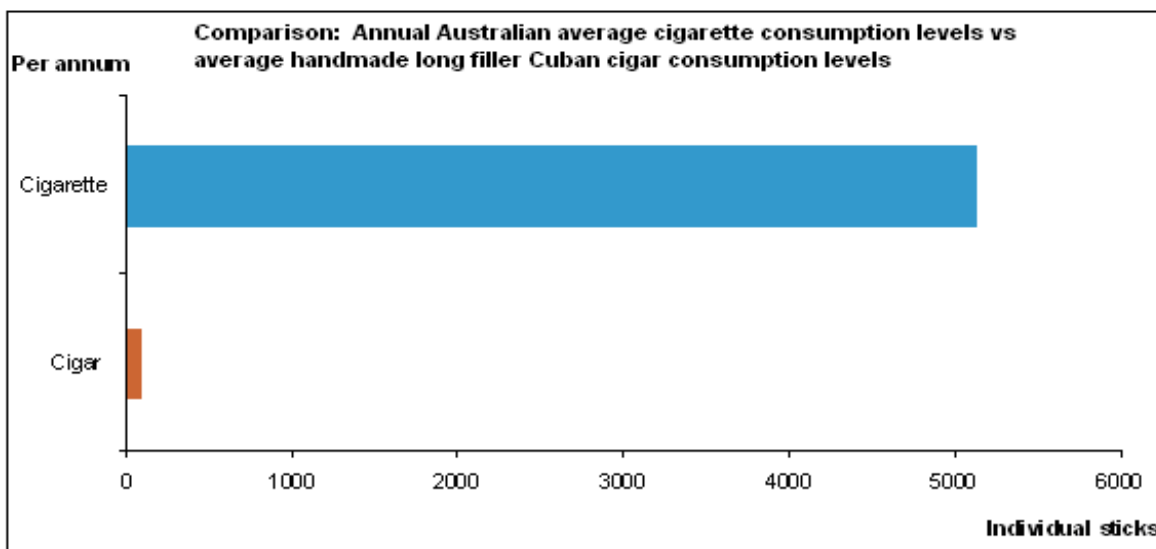
The third group of consumers are those customers interested in purchasing vintage or aged handmade long filler Cuban cigars. For this group, even more than in the case of the occasional or one-off purchaser, the purpose is not to smoke the product. Rather, this consumer is making an investment decision in the same way that they might invest in Fine Art or in particular wine vintage, such as a Penfolds Grange of a specific year.

The consumer of aged or vintage handmade long filler Cuban cigars has disposable income, is cultured about cigars and knowledgeable about investing, and investing in the vintage cigar market in particular and, will be aware of the long time frames required to realise the potential of this type of investment.

Consumption

The Pacific Cigar Company (Aust) Pty Ltd notes that, in Australia, on average, a regular smoker of handmade long filler Cuban cigars smokes 2 cigars a week. Contrast this with the average Australian cigarette consumer, who smokes 14 cigarettes per day⁸. On this basis, total average weekly cigarette consumption in Australia is 98 sticks per week, compared with 2 handmade long filler Cuban cigars.

Projected, on an annual basis, the total average annual cigarette consumption in Australia is 5096 cigarette sticks, compared with 104 handmade long filler Cuban cigars.



Source: *The Pacific Cigar Company*

⁸ Smoking Study, Galaxy Research March 2009

However, extending this consumption to an addiction, by any 'occasional' (2 cigars a week) smoker of Cuban handmade long filler cigars is a long bow, and creates a situation whereby one is able to question whether it is possible to also compare an occasional drinker of a luxury registered and serial-numbered cognac such as *Richard Hennessy* which retails at around AUD\$3,000 per bottle, to that of an alcoholic or a youth consuming cheaply available spirits, such as Alco pops.

Typically the regular handmade long filler Cuban cigar smoker does not lean on cigars as a mood or psychological corrector. It is also very rare to find a handmade long filler Cuban cigar smoker who also smokes cigarettes.

It should also be noted that the majority of Cuban handmade long filler cigars are sold individually and not per box. This is analogous to a vintage wine buyer buying an exclusive wine to enjoy as an occasional treat not as part of a staple diet.

This kind of buyer is making an informed decision on the product they are consuming, rather than a cigarette smoker purchasing a product as part of a sustained habit giving rise to the significant social and health consequences the Commonwealth Government is aiming to curb.

Globally, a handmade long filler Cuban cigar buyer is an educated sporadic buyer who is not engaged or captured by the marketing involved in cigarette sales campaigns.

As has been stated in this submission a proportion of handmade long filler Cuban cigars available on the Australian market are vintage or aged cigars. As has already been stated, these products are not by definition smoked, but similar to the premium wine market are regarded as a high quality investment product perhaps for future use or more likely to be sold when a significant profit can be realised.

Although vintage or aged handmade long filler Cuban cigars are sold by specialist retail stores in Australia, they can also be purchased at auction and privately.

The Pacific Cigar Company (Aust) Pty Ltd is aware of numerous examples of these products being sold at auction. A recent auction in London in July 2011 was of a 10 year

old special edition *Cohiba* cigar humidor containing 150 *Cohiba* cigars with an estimated value of between 150,000 and 200,000 pounds sterling. We estimate that 10 years ago this item would have retailed for the equivalent of between AUD\$80,000 and AUD\$100,000.

The Pacific Cigar Company (Aust) Pty Ltd is also aware of a private sale in Australia, 18 months ago, of a box of 1981 – 1982 Cuban *Dunhill* cigars which sold for AUD\$20,000. We believe this box would have originally been purchased for around AUD\$1000.

At The Pacific Cigar Company (Aust) Pty Ltd Melbourne retail store, the most expensive sale of vintage cigars within the last 5 year was to the value of AUD\$7,800 for a limited edition humidor containing *Cohiba*, *Montecristo*, *Hoyo De Monterrey*, *Partagas* and *Romeo y Julieta* cigars. The original value of this item was AUD\$2,685 and the current estimated value for such an item, based on US prices, is between AUD\$10,000 and AUD\$15,000. These are just three examples of sales of vintage handmade long filler Cuban cigars within the last 5 years, which illustrate the return on investment purchasers of these products can expect.

Critical to maintaining the value of these investment products, aside from the obvious in terms of cigar type; Government of the Republic of Cuba seals; Trademarks and other marks of authenticity, is the correct storage of these products and most importantly in terms of resale value, the requirement that these products remain sealed, intact, unopened and unused.

It is clear therefore that the objects of the Australian Government's plain packaging measures applied to aged or vintage handmade long filler Cuban cigars, which make up 5% of the retail market in Australia, is irrelevant to the purchasers of these products and the Legislation's intended outcomes.

Making and authenticating of handmade long filler Cuban cigars

The Pacific Cigar Company (Aust) Pty Ltd imports cigars from Cuba that have been crafted by hand using high-quality 100% natural tobacco long filler leaves, which typically are the size and length of a cigar. Handmade long filler Cuban cigars are recognised as the highest quality cigar because long leaf tobacco is used throughout the cigar. On average, it takes five types of tobacco leaf to make one of these cigars – and each leaf type is specially grown and prepared for its purpose.

That is:

- a) *The Filler ('tripa')* – three types of tobacco leaf are combined to form the filler;
- b) *The Binder ('capote')* – the tobacco leaf that wraps around the leaves of the filler, defining the shape of the cigar and its quality;
- c) *The Wrapper ('capa')* – a thin and supple tobacco leaf that forms the outer surface of a cigar.

The making of these cigars is labour intensive based on centuries-old methods of cultivating Cuban tobacco that remain virtually unchanged today.

Similar to premium wines from around the world that are defined by their vineyard and vintage, Cuban handmade long filler cigars are associated with and defined by the specific location in Cuba where a particular variety of tobacco is grown.

In Cuba, the locations where cigar tobacco can be grown are strictly limited to defined regions. Tobacco regions are served by Tobacco Research Stations which control the seed and processes that farmers use. Each farmer may be responsible for over half a million plants and each plant must be inspected more than 150 times in the course of the growing season. As noted, the process remains heavily labour intensive; farmers are required to pick tobacco leaves by hand and this can take up to 30 days to complete. Following this arduous process, leaves are aged (depending on the tobacco this process alone can take over two years to complete), next comes the process of fermentation,

followed by sorting and classification, and eventually the crafting and wrapping of individual cigars. On average, Cuban cigar rollers can make between 60 and 150 cigars per day – depending on the type of cigar they are crafting, its size and complexity.

The artisan based cultivation and manufacturing processes that combine to create handmade long filler Cuban cigars share no common elements and have nothing in common with the mass production processes of mass market cigarettes.

Marks of distinction

Relevant to the measures proposed in the Tobacco Plain Packaging Bill (2011) is one of the final stages of production for a handmade long filler Cuban cigar; the application of a band around the cigar.

In the mid-19th Century, Cuba introduced the now iconic labelling for its cigar packaging in an effort to reduce the incidence of counterfeit products and to firmly establish the integrity of the Cuban manufacturing processes and final product. All labels are affixed to individual cigars and also cigar packaging by hand in Cuba (packaging materials include wood, aluminium, plastic, leather, paper, cardboard, ceramic, porcelain and glass).

Before the packaging for a handmade long filler Cuban cigar is closed and secured, there is a final quality examination by authorised Government of the Republic of Cuba inspectors who check colour matching, banding, and the general appearance of each cigar stick. Any cigars that fail to meet Cuban Government regulatory standards are placed upside down and the entire container is returned to the manufacturer for correction.

The Cuban Government long ago implemented intricate and systematic trademarks, seals and other authenticating marks in order to distinguish genuine Cuban product from the counterfeit products sold on the global market under the Cuban brand.



An example of the Seal used by the Government of the Republic of Cuba

Source: The Pacific Cigar Company (Aust) Pty Ltd

The Government of the Republic of Cuba measures include:

The Cuban Government Warranty Seal

This was first introduced in 1889 by Royal Decree of the King of Spain. In 1912, the Government of Cuba passed a law authorising the use of a new design which is similar to the one in use today. In 1999, the Government of the Republic of Cuba introduced the addition of a red serial number that is visible only under ultra-violet light.

The Warranty Seal from the Government of the Republic of Cuba now includes two additional elements. On the right hand side of the Warranty Seal, there is a hologram and, on the left hand side of the Seal, next to the coat of arms, there is a bar code, which identifies each container.

This Warranty Seal must always be located on the left-hand side of the opening side of the container or display, 3-6mm from the edge. It is positioned in such a way that the fold runs through the centre of the coat of arms, whenever possible.

The Warranty Seal is printed on a synthetic paper that is destroyed if removed and features a number of inbuilt security measures including:

- Highly adhesive paper (plastic)
- A scan and photocopy protection system
- A holographic band with two- and three-dimensional bicolour text
- Optically changing elements
- A security dot only visible through a laser-beam scanner

Each Seal features a unique barcode. This barcode information is stored in a database making it possible not only to identify a particular container anywhere in the world, to know to whom it was sold as well as the invoice number, among other details.

The Cuban Government Warranty Seal may not be broken outside Cuba (unless by Customs Officials). A company such as The Pacific Cigar Company (Aust) Pty Ltd is only authorised to break the Seal for the purposes of quality control. It should be noted that where cigar containers are opened by non Cuban Customs officials, these products are frequently unable to be sold as purchasers see the breaking of the Seal as a breach of the assured quality of the handmade long filler Cuban cigars.

Habanos Seal - Denomination of Origin

Since 1994, all packaging for handmade long filler Cuban cigars must carry the Habanos Seal as a mark of the cigars' denomination of origin. No cigar container can be shipped from Cuba without this affixed Seal.

Cigar Container Bottoms

Since 1960, the undersides of handmade long filler Cuban cigar containers have been hot-stamped with the words '*Hecho en Cuba*' ('Made in Cuba'). Since 1994, containers have also been hot-stamped '*Habanos S.A.*' the Cuban Government enterprise that distributes Habanos worldwide.

Factory Code and Container Date

There are two ink-stamps on the underside of Habanos containers. One code denotes the factory in which the cigar was hand-rolled; the other code indicates the month and year the cigars were packaged.

All these measures have been instituted by the Government of the Republic of Cuba to ensure the authenticity and integrity of Cuban cigars is able to be maintained once the product is exported.

The Pacific Cigar Company (Aust) Pty Ltd has received advice from the Government of the Republic of Cuba that these controls cannot be altered during the cigar making process.

Counterfeiting

The seals and marks of authenticity, which are registered as Trademarks of either the Cuban Government owned tobacco company or the only authorised exporter, the Cuban Government enterprise Habanos SA, are part of Cuba's rigorous defence of their handmade long filler cigar products against tampering, fraud and counterfeiting. The threat posed by these activities, which are increasingly connected to international organised crime, is real and is acknowledged not only by the Cuban Government but internationally and indeed by Australia.

Counterfeiting of such luxury products as handmade long filler "Cuban" cigars continues to rise and the impact of counterfeiting for the Republic of Cuba's economy is very serious, given the importance to their economy of cigar products and also because it raises obvious concerns, including health issues, for the consumers of these products.

The 2008 Report from the OECD Project on Counterfeiting and Piracy⁹ notes that in the United States, law enforcement officials uncovered an operation in which legally imported, but unbranded cigars were falsely packaged and resold as premium, branded cigar products. The scale of the operation was significant, as enough genuine cigar bands, boxes, cellophane and other materials were found to have repackaged between 30 and 50 million "Cuban" cigars.

Cuban cigars are an illegal import in the United States, but as the example noted in the OECD Report illustrates, the ease and potential for these products to be counterfeited in Australia increases under the new Legislation, particularly given the potential financial rewards that accrue from such a high value product. Plain packed cigars, compliant with the Tobacco Plain Packaging Bill (2011) and imported into Australia could be repackaged as handmade long filler "Cuban" cigars using also legally imported, or

⁹ OECD The Economic Impact of Counterfeiting and Piracy (2008), Chap 3.4, p80, http://www.oecd.org/document/4/0,3746,en_2649_34173_40876868_1_1_1_1,00.html

supplied here, genuine or facsimile bands, boxes, cellophane and other “authentic” packaging materials to achieve the counterfeit product.

This incident alone underscores the importance of the Government of the Republic of Cuba’s seals and marks of authenticity and is an example of why the Cuban Government will not allow these Trademarks to in any way be compromised.

Also worthy of note, is the “Indonesia: IPR Enforcement Report 2009”¹⁰ from the European Trade Commission which estimates that up to 20% of “premium” cigars sold in Indonesia are counterfeit.

These incidents raise a potential second unintended consequence of the Legislation; latent criminal activity in Australia in the future focusing on counterfeiting “Cuban” cigars in this country.

While it is difficult to quantify the number of counterfeit “Cuban” cigars currently entering Australia, given the hundreds of internet sites purporting to sell Cuban cigars, consumers who purchase handmade long filler Cuban cigars online are especially vulnerable to the risk of purchasing and importing counterfeit products.

The Pacific Cigar Company (Aust) Pty Ltd estimates that the percentage of counterfeit handmade long filler Cuban cigars may be significant given the number of products offered for sale online and the number of web sites. In many cases the purchaser might not even be aware that the product is counterfeit or that the packaging is not genuine.

Cuba’s protection measures enable accurate tracking of their tobacco trade pattern, revealing the precise origin of the product and thereby disrupting counterfeiting activities at the points of greatest risk – the place of manufacture and the point of importation.

Certainly the lack of appropriate seals, barcodes and other authentication marks correctly affixed are a failsafe test for a genuine handmade long filler Cuban cigar.

¹⁰ http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143740.pdf

The Global Perspective

Cuba has been subject to a US economic, financial and trade embargo since 1962 and this is subject of a Resolution each year in the United National General Assembly. In 2009, President Obama announced the easing of remittances that Americans with relatives in Cuba can send back. He also ended a number of restrictions on US citizens visiting Cuba. Regulations around US agricultural exports to Cuba have also been eased. Furthermore, President Obama recently announced that US international airports will be accepting flights from Cuba. These initiatives are the first step towards a possible rapprochement between the US and Cuba.

Since 1996, Australia has voted in favour of Cuba's resolution in the United Nations General Assembly calling for an end to the US embargo. As the Australian Department of Foreign Affairs notes, 'Australia believes that confrontation and isolation are not productive policies in relation to Cuba'¹¹.

The Pacific Cigar Company (Aust) Pty Ltd urges the Australian Government to acknowledge that handmade long filler Cuban cigars are a major export of a small emerging economy¹². Ironically in a country which can ill afford a heavy blow to a primary, labour intensive, artisan industry, handmade cigar making, the hand crafting of many of the containers, packages and exportation of these products will be the most impacted by the Tobacco Plain Packaging Bill (2011), albeit unintentionally as a result of attempting to solve a problem in a single legislative stroke.

The Pacific Cigar Company (Aust) Pty Ltd is aware of a number of Intellectual Property issues and World Trade Organisation initiatives that have arisen as a result of the introduction of the Tobacco Plain Packaging Bill (2011), involving Cuba and other nations.

¹¹ http://www.dfat.gov.au/geo/cuba/cuba_country_brief.html

¹² UNData: 2008 Cuba per Capita GDP US\$5,596, World Bank Cuba 2008 Per Capita GDP US\$5,596

The Government of the Republic of Cuba has also raised in international fora what it sees as inconsistency in the position of the Australian Government on this issue as it relates to addiction. At the June 2011 TBT Committee Meeting¹³ in relation to Thailand's proposal on pictorial health warnings on alcoholic beverages, Australia joined the EU, Mexico, the US, Chile, Argentina, New Zealand and others in raising concerns that Thailand did not have scientific evidence to justify the measures being proposed and also, that Thailand did not appear to consider less trade restrictive, less costly, and less burdensome alternatives. The Pacific Cigar Company (Aust) Pty Ltd believes that the Republic of Cuba has noted its concern to the Australian Government and internationally that in relation to Cuban cigars Australia has not applied the same standards to its own Legislation.

Cuba has also raised (document G/TBT/N/AUS/67) a number of concerns relating to Intellectual Property rights as they impact on Cuban handmade long filler cigars, which may also encompass cigar containers, many of which are also handmade. At the very least the ready availability of direct purchase of these products online, means that the design of any Legislation must be set within a global context.

It is not clear whether the Tobacco Plain Packaging Bill (2011) is contrary to Australia's position of lifting embargos against Cuba and The Pacific Cigar Company (Aust) Pty Ltd believes these international trade issues are best addressed in detail by the Government of the Republic of Cuba.

It is clear however, that while the import of handmade long filler Cuban cigars is a small issue for Australia, for Cuba it would be a huge economic blow to a labour intensive industry and its workforce.

¹³ http://www.wto.org/english/news_e/news11_e/tbt_15jun11_e.htm

Conclusion

The Pacific Cigar Company (Aust) Pty Ltd notes that there is at least one serious unintended consequence resulting from the Tobacco Plain Packaging Bill (2011) which must be addressed by the Australian Government. The Pacific Cigar Company (Aust) Pty Ltd is greatly concerned that the Legislation has the potential to cease the future importation of handmade long filler Cuban cigars to Australia.

The Tobacco Plain Packaging Bill (2011) is strongly skewed towards the mass-cigarette market in Australia and assumes all “other tobacco products” are extensions of the cigarette market, which is not the case for handmade long filler Cuban cigars.

The consumers of handmade long filler Cuban cigars, the products and their usage are not comparable to cigarettes or to other tobacco products.

There is an irony in the fact that the big tobacco industry, through its mass machine production processes, will easily be able to comply with the Tobacco Plain Packaging Bill (2011), their products will still be available in Australia and the Bill’s target audience will still be able to purchase cigarettes, but handmade long filler Cuban cigars will not be legally available for purchase.

The Pacific Cigar Company (Aust) Pty Ltd does not have authorisation from the Government of the Republic of Cuba to indirectly or directly tamper, remove, hide or in any way alter the product so as to meet the requirements with respect to packaging proscribed in the Tobacco Plain Packaging Bill (2011). Moreover, the Government of the Republic of Cuba cannot amend its production processes. There are strong concerns about the potential enormous growth in the counterfeiting of handmade long filler Cuban cigars that may result, as well as trade restrictions impinging on the current regulations, as administered by the WTO, governing trade between the two member countries.

Were the Legislation to pass as is, the Cuban Government would almost certainly cease exporting cigars to Australia due to its inability to change manufacturing processes in

order to comply. Cuba would lose its largest export to Australia and Australian handmade long filler Cuban cigar consumers would be devastated. No doubt, it would not take long, however, for online, overseas duty-free, counterfeit or black market trade to flourish. What is certain is that no fewer people would be smoking these cigars and there would be no attendant health benefit.

In closing, The Pacific Cigar Company (Aust) Pty Ltd urges consideration that the measures outlined in the Tobacco Plain Packaging Bill (2011) for plain packaging for the mass market cigarettes and other tobacco products are not applied or extended to the handmade long filler Cuban cigar market in Australia, which are very much a sui generis product and, as such should be treated accordingly.

The Pacific Cigar Company

The Pacific Cigar Company Limited (PCC) is the exclusive distributor for all the Habanos Cigars Brands for the Asia Pacific region. PCC also imports cigars from the Dominican Republic and Honduras.

In 1992, Habanos Sociedad Anonima (Habanos S.A) granted PCC with exclusive distribution to export Havanas from Cuba.

PCC imports all Havana (Habanos) Cigar Brands to the Asia Pacific Region.

Main brands are Cohiba, Trinidad, Montecristo, Partagas, Romeo y Julieta, Punch, H. Upmann, Hoyo de Monterrey, La Flor de Cano, Quintero, San Luis Rey, Bolivar, Vegas Robaina and Vegueros.

PCC imports Havana cigars to the following countries:

Australia	Bangladesh	Bhutan	Brunei	Cambodia
China (via Infifon HK Ltd)	East Timor	Fiji	French Polynesia	Hong Kong
Indonesia	Japan	Kiribati	Korea	Laos
Macau	Malaysia	Maldives	Mongolia	Myanmar
Nauru	Nepal	New Caledonia	New Zealand	North Korea
Papua New Guinea	Palau & Marsall Island	Philippines	Samoa	Singapore
Solomon Island	Sri Lanka	Taiwan	Thailand	Tonga
Tuvalu	Vietnam	Vanuatu		

In Australia, PCC has been operating since 2001 and has two retail stores in Australia - La Casa del Habano (Melbourne) and Havana Express (Sydney). The company employs thirteen people in Australia.

PCC distributes Cuban cigars to approximately 420 businesses across Australia, ranging from airport duty free shops, cigar shops, tobacconists, bottle shops, bars and clubs, and casinos.

Images of Cuban cigar boxes imported and sold in Australia by the Pacific Cigar Company



For further information in relation to this submission and future consultation processes with the Commonwealth Government and the Department of Health and Ageing, please contact:

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