

**UNDERSECRETARY OF FOREIGN TRADE  
GENERAL DIRECTION FOR INTERNATIONAL TRADE RULES**

**Submission No. 58**  
(Plain Packaging Bill)  
A.O.C. | Date: 26/07/2011

SECRETARÍA  
DE ECONOMÍA



**Subject:** Mexican comments to the  
Tobacco Plain Packaging Bill 2011  
July 22<sup>nd</sup>, 2011

**Committee Secretary Standing Committee on Health and Ageing  
House of Representatives Parliament House  
Canberra ACT 2600  
Australia**

### **Mexico's Comments on Australian Tobacco Plain Packaging Bill 2011.**

The Government of Mexico would like to express its concerns and arguments regarding the Tobacco Plain Packaging Bill 2011 in the "exposure draft" on April 7<sup>th</sup>, 2011 and the "Tobacco Plain Packaging Bill 2011, A Bill for an Act to discourage the use of tobacco products, and for related purposes" presented in the Australian Parliament on July 6<sup>th</sup>, 2011.

Through the Bill, the Australian Department of Health and Ageing intends to restrict advertising or promotion on tobacco packaging by: limiting the information that may appear on packaging to only a brand name and variant, along with health warnings and other government-mandated information or markings, in specified locations, without any symbols, logos or design features; specifying the color of packaging, and prescribing how allowed information may appear on packages, including the print color, and font style and size of that information; and prohibiting advertising or promotion inside or attached to the package or on individual tobacco products in Australia.

The Government of Mexico concurs with the interest of the health authorities of Australia to issue all regulations necessary to protect several legitimate objectives, and fundamentally, human health. At the same time, the Government of Mexico believes that each country member of the World Trade Organization (WTO) is responsible of safeguarding its rights and following up the international commitments undertaken through the relevant multilateral agreements.

The Government of Mexico appreciates the opportunity provided by the Australian government to present comments to the Tobacco Plain Packaging Bill.

On that regard, Mexico would like to present its views on the Tobacco Plain Packaging Bill and its possible inconsistencies with the TBT Agreement, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), and the Paris Convention for the Protection of Industrial Property:

#### **1.- Comments related to the TBT Agreement.**

*Article 2.2 from the TBT Agreement establishes that "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create".*

In the same article, the TBT Agreement lists some of the legitimate goals for the preparation of technical regulations, among which it mentions: *"the national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment"*.

The Agreement also details that *"In assessing such risks, relevant elements of consideration are among others: available scientific and technical information related processing technology or intended end-uses of products"*.

In this sense, after analyzing Australian Bill, the Government of Mexico considers that the Australian measure could be unnecessarily restrictive since there are other ways to meet the legitimate objective of protection of health in a less onerous fashion; this is, without the need to restrict advertising or promotion on tobacco packaging.

The Government of Mexico would appreciate if Australia could share the scientific information in which it based its conclusions to elaborate the Bill; and the rationale that helped Australia to determine that such legislation was the less trade restrictive existent policy available.

In Mexico's view to date there is no scientific nor technical evidence that plain packaging influences consumer behavior. Therefore imposing this new technical regulation would restrict trade without doing anything to achieve the legitimate objective pursued by the Australian authorities. Plain packaging would force manufacturers (including exporters serving the Australian market) to comply with new mandatory packaging requirements only for the Australia market, without plain packaging actually being able to prevent youth uptake of smoking or reduce tobacco consumption.

## **2.- Comments related to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), and the Paris Convention for the Protection of Industrial Property.**

Article 8 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) establishes that *"Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement"*.

On the other hand, article 20 of the same Agreement establishes that *"The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking"*.

Even though the TRIPS Agreement allows members to take action to protect human health and nutrition, among other things, these measures must be consistent with the provisions of the agreement.



In these regards, the Mexican Government considers that Australian Tobacco Plain Packaging Bill 2011, might constitute a violation to the TRIPS Agreement, given that, according to that Bill, the trademark must be used without any symbols, logos or design features; additionally, the Bill intends to specify the color of packaging, and to prescribe how allowed information may appear on packages, including the print color, and font style and size of that information.

### 3.- Final Considerations.

Mexico invites the Australian authorities to:

1. Give positive consideration to the comments presented by the Government of Mexico to the Tobacco Plain Packaging Bill and if necessary, discuss them with the Mexican authorities.
2. Provide the scientific information available in which Australia determined that plain packaging influences consumer behavior, which will contribute to reduce smoking rates and explain the justification of the technical regulations in terms of the provisions of paragraphs 2 to 4 of article 2 of the TBT Agreement.
3. Fulfill the provisions established on the TBT Agreement so as to impose a less trade restrictive regulation that allows reducing smoking rates in the country; in other words, promote activities that will result in public awareness of the harmful effects of smoking.
4. Fulfill the provisions established in the TRIPS Agreement, especially through the avoidance of measures that would have the effect of unjustifiably encumbering the use of trademarks.
5. Taking in consideration article 12 of the TBT Agreement, provide special and different treatment to Mexico by considering its special development, financial and trade needs.

With best regards,

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