The Evidence is Plain

The ineffectiveness of standardised packaging for public health

A response to the Chantler Review on standardised packaging of tobacco products

10 January 2014

http://www.imperial-tobacco.com
The Evidence is Plain

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1. Introduction - Company background

Imperial Tobacco Group PLC ("ITG") is a FTSE top 25 company, the world's fourth largest international - and second largest European - tobacco company. ITG manufactures and sells a range of cigarettes and other tobacco products. ITG has sales in over 160 countries worldwide and is the world leader in the premium cigar, fine-cut (roll-your-own) tobacco and rolling papers sectors.

Imperial Tobacco UK ("ITUK", and, together with ITG, "Imperial Tobacco") is the Bristol-based trading operation of ITG which distributes Imperial Tobacco’s products to the UK market. ITUK is market leader, holding approximately 45 per cent market share. ITUK’s leading UK cigarette brands include Lambert & Butler, JPS, Richmond, Embassy and Regal. ITUK also distributes tobacco products on behalf of Philip Morris Ltd.

Imperial Tobacco has its headquarters in Bristol with manufacturing and distribution facilities in Nottingham. Imperial Tobacco directly employs over 1,600 people in the UK and last year collected around £5.8 billion for the Exchequer in duties and other taxes. Imperial Tobacco has around 26,000 shareholders with 53 per cent of issued shares held in the UK. Over 34,000 individuals are members of the company pension fund, and it is estimated that the tobacco industry indirectly supports the livelihoods of over 66,000 people elsewhere in the economy via the supply chain, production and packaging, retailers within the UK.

Tobacco is a legal product, enjoyed by around 10 million adults in the UK. This equates to around 20 per cent of the adult population and is not an insignificant minority. These adults make an informed choice to smoke; they smoke for many and varied reasons and despite the continual stream of unreasonable and disproportionate tobacco control regulations imposed upon them and propaganda to the contrary many do not wish to give up.

Our commercial focus is solely on gaining the custom of the 55% of adult smokers – over 5 million adults - who currently do not choose our products. We do not market our products to anyone under the age of 18 or to non-smokers. We adhere to all legislation, and where none exists, our International Marketing Standards which are published at: http://www.imperial-tobacco.com/files/environment/marketing_standard_2009.pdf. We support retailer programmes designed to discourage tobacco sales to children such as our support for the ‘No ID, No Sale’ retailer awareness campaign and the CitizenCard proof-of-age scheme.

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1 Cogent factsheet, published Q2 2012
2. Executive summary

Imperial Tobacco welcomes the opportunity to respond to the *Chantler Review on standardised packaging of tobacco products* (the "Review").

Imperial Tobacco supports sound, evidence-based, reasonable and practicable regulation of tobacco products.

We have noted carefully the closely defined remit for this review, and have tailored our response accordingly. However, we are concerned that such a narrow consideration of the available evidence of a very complex issue will disregard crucial elements of the evidence base that should be considered as a whole when reaching any conclusions.

Sir Cyril’s Method Statement states:

“I am concerned with evidence directed to the specific question of whether the introduction of standardized packaging is likely to lead to a decrease in the consumption of tobacco, including in particular a decrease in the risk of children becoming addicted. I start from the uncontroversial premise that any such decrease will have a positive effect on public health."

Following the Department of Health’s Consultation on Standardised Packaging2 ("DH" and “Consultation”), the closure of which led to a rigorous and comprehensive assessment of all submissions, the Government chose not to proceed with the proposed policy due to a lack of solid, credible evidence that standardised packaging would work. The various studies produced by the tobacco control community since then have not changed that situation; standardised packaging will not achieve the Government's stated objectives and will very likely lead to serious unintended consequences to the detriment of public health.

For any review to be credible, methodologies and conflicts of interests of existing standardised packaging studies should be scrutinised very carefully, especially those around perceptions of packaging. Most of the existing ‘evidence’ is by no means independent research, but instead appears to have been manufactured with a specific result in mind, i.e. to produce material that would support the introduction of standardised packaging. It should also be noted, that a lot of the material has been ‘peer reviewed’ by like-minded individuals from within the public health

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2 Department of Health consultation on standardised packaging of tobacco products, 16 April 2012
community who share a common public health goal. This further undermines the transparency and credibility of these studies.

The very narrow focus of the Review is surprising and unhelpful. Sir Cyril’s Method Statement makes it plain that: “I am concerned only with any public health benefits of introducing standardised packaging…”. It is unclear why the Government has adopted this approach in light of the fact that standardised packaging is, from any perspective, a complex and significant issue with important repercussions for society as a whole. As a consequence, and as we explain below, the impact of standardised packaging cannot properly or adequately be considered from such a narrow standpoint.

2.1 No contribution to improving public health

There is no credible evidence whatsoever that standardised packaging will contribute to improving public health or will affect smoking behaviour at all. By depressing prices and effectively promoting the non-UK duty-paid tobacco trade (“illicit”) (with tobacco prices being lower in many other countries and illicit tobacco sold at lower prices than UK duty-paid products), there is a real risk of consumption increasing. The consultation ignored the established research as to the reasons why people smoke and continue smoking, specifically those under 18, which do not include packaging and branding.

There is no evidence that demonstrates that standardised packaging would achieve any or all of the Government’s stated policy objectives). The DH Systematic Review3 (“Systematic Review”) and Impact Assessment (“IA”) have not shown that smoking behaviour and consumption would change as a result of the introduction of standardised packaging; still less do they provide a sufficient evidence base to justify such a draconian policy. Crucially for the terms of reference for this Review, no new robust evidence has been provided to date. The Systematic Review update4 (17 studies) produced in September 2013 contained the same flaws as the previous Review e.g. self-reported intent versus real world impact and the statement that they do not show standardised packaging to be an effective intervention. We note from Sir Cyril’s Method Statement that he envisages: “…commissioning further expert evidence to assist in the qualitative analysis of what I consider to be key evidence”. We respectfully request that all interested parties to this Review are afforded an opportunity to

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3 Department for Health Systematic Review April 2012 Plain tobacco packaging : A systematic review
4 http://www.stir.ac.uk/media/schools/management/documents/Plain%20Packaging%20Studies%20Update.pdf
review and comment upon any ‘new’ evidence that may be submitted – either in support of or against standardised packaging – or any expert advice obtained by Sir Cyril before his final report is published. This would be consistent with the principles of a fair and open consultation process.

Following the introduction of standardised packaging in Australia, smoking prevalence has not been affected. The latest national statistics from Australia covering smoking prevalence only cover the period up to the end of 2012 and there has been no data or anecdotal evidence on youth smoking rates in Australia after 2011. We are not aware of any national statistics from Australia that are due to be published in the next few months, which Sir Cyril could review, covering the period since standardised packaging was mandated. We consider this to be an essential requirement for a proper assessment of the policy’s impact.

We believe any introduction of standardised packaging would be ineffective for public health for the reasons set out in detail below.

3. The existing regulatory context and the impact on public health

The proposal to introduce standardised packaging makes no sense in the existing regulatory context. The Government has introduced a number of far reaching tobacco control measures, the last of which - the display of tobacco products in retail outlets - will not fully come into force until 2015. The common denominator in all of these regulatory measures is that they do not address the reasons why people start or continue to smoke. The consultation and IA were no different and ignored all of the well-established research on the main reasons for smoking initiation by young people and the factors that influence quitters, and completely failed to provide any analysis of how standardised packaging would address those reasons.

The Government must acknowledge and take into account developments in other jurisdictions that are important and relevant to UK policy and this must be considered as part of the Review.

3.1 The European context

At the end of a long and robust deliberation process, the institutions of the European Union have come to the conclusion in the revised Tobacco Product Directive ("EUTPD") of 16 December 2013, that graphic health warnings covering 65% of the front and back of pack surface are appropriate to introduce in the 28 Member States. The UK and Ireland are currently alone among the EU Member States in consulting on standardised packaging. Would it not be
appropriate for the UK Government and the Review process to await evidence regarding the effectiveness of this measure before considering the introduction of standardised packaging? It is therefore, important that the review not only considers if standardised packaging is likely to lead to a decrease in the consumption, but also if it would have the effect of achieving any decrease beyond what the EUTPD may achieve when it comes into effect.

3.2 Assess current legislation before proposing additional legislation

The Government stated in the Impact Assessment accompanying the consultation that standardised packaging must be based on benefits "over and above existing tobacco control measures".

It is incumbent on the Government to undertake a comprehensive and considered analysis of the effect of the existing regulatory framework, including a rigorous assessment of the impact of "the existing tobacco control measures" and their effect before it considers standardised packaging. However, the existing tobacco control measures have not been properly evaluated - either during the consultation and IA, or since - for their effectiveness or for delivering the outcomes or benefits that were originally expected or promised. In the UK, we are only half way through the implementation of a ban on the display of tobacco products. We believe the impact of this measure should be properly evaluated and assessed before considering the next regulatory measure.

It is therefore impossible for the Government to assess whether any further tobacco control measure would have an appreciable effect on improving public health over and above existing measures.

It is our strongly held view that the Government needs to develop a rational and appropriate framework within which legitimate consumer demand for tobacco and nicotine products is met and real public health goals achieved, rather than continuing to pursue an irrational approach that appeases a small minority of vested interests but achieves no public health benefit.

3.3 Inappropriate Regulation

Over the last decade, a range of tobacco control measures have been implemented with the stated objective of reducing youth smoking uptake. The measures rarely stand up to scrutiny and are not evidence based. This irrational approach to regulation has led to many unintended consequences, including a rise in the number of underage and adult smokers being exposed to
illicit products. In many ways, it is a sad irony that overregulation has led to an increasingly unregulated market through increases in illicit tobacco sales.

In markets where bans on smoking in public places ("SiPPs") have been implemented, while we have generally seen an initial dip in duty paid volumes, overall volume trends have not been affected as adult smokers adapt to the new social environment. Whilst this has had little impact on prevalence, it has had a profound impact on local economic and social trends as consumers stay at home and pub closures have been accelerated.

In the context of setting out its Tobacco Control Plan for England, the DH published a report by Professor Linda Bauld, whom it commissioned to provide an academic review of the ‘smokefree’ (smoking ban) legislation that was implemented in England in 2007. As highlighted by Imperial Tobacco in June 20115 the review conducted by Linda Bauld - who had a clear conflict of interest - is not methodologically sound and is deliberately selective, and is easily refuted using freely available information. It fell well short of the Regulatory Policy Committee’s principles by which the robustness and quality of the analysis and evidence used to inform policy decisions must be judged. We suggested at the time that the Government should find an appropriate and recognised third-party to objectively analyse and review the impact of the 2007 smoking ban, devoid of the conflicts of interest that are all too apparent in the review paper. At the very least, the Government should have conducted an objective evaluation of Linda Bauld’s review.

The disproportionate and ill-considered blanket implementation of the SiPPs ban was further highlighted in December 2013 through the media coverage discrediting the links between Environmental Tobacco Smoke ("ETS") and lung cancer. As reported in the Journal of the National Cancer Institute on 6 December 20136:

“The large prospective cohort study of more than 76,000 women…found no link between [lung cancer] and secondhand smoke.”

The study was presented by Ange Wang, a Stanford University medical student, at the June 2013 meeting of the American Society of Clinical Oncology in Chicago. It was also reported in many UK national mainstream media outlets including the Telegraph, The Mail and The

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6 Journal of National Cancer Institute, 6th September 2013
Independent. The articles generated a considerable number of readers’ comments – largely in favour of relaxing the smoking restrictions in bars and restaurants or generally against Government interference. The experience of SiPPs, where inadequate evidence has been shown to have led to policy intervention which in turn has led to unnecessary damaging effects on legitimate businesses, demonstrates the need for clear and compelling evidence of the efficacy of standardised packaging before considering its introduction.

3.4 Government’s role in public health

In January 2014, Ipsos MORI, the Social Research Institute, released the latest edition of its Understanding Society report. In this issue, they look at the way Britons live now and how attitudes, values and behaviours compare with those in other countries. Interestingly, a poll of 19 major countries (including the UK) found that the majority of the population everywhere (with the exception of Russia) think Governments at best have a limited role in trying to “encourage healthy lifestyles”. Only 30% of Britons thought it was the responsibility of Government to influence people’s behaviour to encourage healthy lifestyles. The researchers also noted:

“Whether or not we support government involvement, we clearly believe responsibility for maintaining a healthy lifestyle remains in the hands of individuals, at least to a large extent. Only five per cent of the British public strongly believe it is the job of the NHS to keep people healthy – this compares to a far greater proportion (39%) who strongly believe it is the individual’s responsibility to keep themselves healthy.”

Unintended consequences are not exclusive to the tobacco category. Changes in regulation meant that food producers were forced into rapid changes in the ingredients of the foods that they produce. The change meant that “desinewed meat” (“DSM”), a fine mince rubbed under pressure from carcasses, could no longer be called meat on packaging. DSM produced in the UK was the main ingredient in most value-range burgers, sausages, pies and kebabs and the change meant that thousands of tonnes of meat had to be sourced from elsewhere and at low cost. There have been claims from some quarters that poor, rushed implementation meant producers switched to horsemeat as one of the few readily available alternatives.

It is therefore essential to consider the unintended consequences of irrational and disproportionate regulation; and in doing so, avoid effectively coercing members of society into purchasing from illicit, and unregulated, channels.

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Ipsos MORI: Understanding Society - Great Britain: The way we live now, January 2014
4. No credible evidence or research

4.1 Imperial Tobacco does not believe there is any credible or reliable evidence that standardised tobacco packaging will achieve the Government's stated objectives of reducing smoking prevalence among young people or assisting smokers who have, or are trying to, quit.

The research which is relied upon is speculative and inconclusive and fails to provide the "robust and compelling case" that is required by the Government's Better Regulation Agenda.8

Instead the consultation and IA relied upon "subjective judgments" from anonymous "experts" about their views on the likely impact of standardised packaging. These judgements were not made available as part of the consultation and cannot form the basis for an evidential justification of standardised packaging. It is valid to question the independent nature and objectivity of such research and its methodology and underlying raw data. Proponents of standardised packaging ignore the substantial body of research which runs contrary to their pre-determined objectives.

The consultation failed to provide any explanation of how standardised packaging would address the real issues behind smoking initiation and activity by young people and attempted quitters.

4.2 Standardised Packaging of tobacco – A Systematic Review

The authors of the Systematic Review - despite being well-known tobacco control advocates and in many cases reviewing their own work - do not show that standardised packaging would meet the Government's stated objectives. The Systematic Review provided no evidential basis for standardised packaging.

The Review Report relied on by Government is the product of selective and questionable research methods and does not present the clear and compelling evidence base that would be required to justify the introduction of standardised packaging. In summary, the Systematic Review:

- is not independent. Its authors have well-established links with, and receive funding from, organisations that actively pursue a tobacco control agenda and/or have been

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8 BIS general principles of better regulation
well known advocates of standardised packaging for many years. Indeed, 20 of the 37 studies included in the Systematic Review include work by the authors (and their colleagues);

- failed to demonstrate a causal link between tobacco packaging and smoking behaviour (including initiation, prevalence and consumption);
- does not demonstrate, therefore, that standardised packaging is necessary to achieve the Government's public health objectives by affecting smoking behaviour; and,
- does not comply with the Government's own guidelines and standards. The conclusion reached stated only "there was consistency in study findings regarding the potential impacts of plain packaging. That, manifestly, does not provide the standard of "robust and compelling" evidence that standardised packaging will have any impact on smoking behaviour that is required by the Government's Better Regulation Agenda.

Contrary to how it has been presented, the UK Public Health Research Consortium ("PHRC") 'systematic review' commissioned by the DH does not provide supporting evidence that standardised packaging would be an effective intervention. It concluded:

"….caution is required in interpreting these findings, as expressed smoking-related intentions are not always predictive of future smoking behaviour and perceptions of the impact of a future policy measure on the behaviour of others are of course subjective. However, there is some evidence from the studies in this review that standardised packaging may affect smoking-related attitudes and beliefs, and smoking behaviour, particularly for young people and/or non-smokers and lighter smokers." [our emphasis]

Attempts to present the PHRC review as evidence supporting standardised packaging would be unjustifiable. The same would be true of the subsequent subjective views solicited by the DH from an unknown group of selected academics, which itself concluded that “there remains considerable uncertainty about the likely impact of plain packaging of tobacco products.”

More recent reports by advocates of standardised packaging suffer from the same limitations.

Many of them seek to show that survey participants (including children) prefer branded packs to non-branded packs. That is not in itself surprising, but it does not show that non-branded packs would lead to actual changes in behaviour when people are deciding whether or not to

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9 Ajzen & Madden 1986, Sheeran 2002
11 http://www.biomedcentral.com/1471-2458/13/18
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smoke, particularly in a mandated standardised packaging environment where such comparisons – at least between legal products – could not occur.

In Imperial Tobacco's view, in addition to not being evidence-based it is difficult to envisage how the introduction of such a draconian measure could be:

- reasonable, having regard to a full consideration of the costs of standardised packaging, including its effects on illicit trade;
- proportionate, having regard to whether there are less costly ways of realising the identified policy objectives. The Government does not address this issue at all, and has historically ignored alternative ways of limiting the access of young smokers to tobacco (see Alternative Solutions); and,
- effective, in terms of achieving the stated objectives of reducing tobacco consumption, particularly by the young and poor socio-economic groups. It is quite clear that the evidence for any public health benefits can at best be described as very limited, with there being no consideration of whether these benefits will be appreciable in the context of all the other anti-tobacco measures which have recently been introduced (see Appendix A - Current tobacco control measures).

4.3 Is packaging a reason why people start smoking?
All the evidence suggests not. Only 1% of UK smokers cite packaging as one of the various factors in their decision to start smoking.\textsuperscript{12} Research regularly shows the most important factors involved in smoking initiation include:

- rebelliousness;
- risk taking;
- family structure, parental example;
- relationships, peer pressure;
- socioeconomic status;
- school connection; and,
- educational success.

\textsuperscript{12} http://ec.europa.eu/health/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf
4.4 Why do people smoke?
The many different benefits of smoking, including habitual behaviour, all contribute to why an individual chooses to smoke. The reasons for smoking may differ between smokers, and a smoker may smoke for different reasons throughout the day.

The benefits that smokers report include: aid to socialising, pleasure, sensory stimulation, mood regulation, and cognitive enhancement. The strong habitual behaviour aspect of smoking is supported by scientific evidence and it develops as a consequence of the benefits of smoking. While such behaviour becomes repetitive, and to a degree automatic, it is still controllable. These observations are supported by scientific studies. An expert health panel report to Health Canada concluded:

- young people do not decide to smoke on the basis of tobacco packages;
- packages do not lead to smoking; and,
- changing the package will not “have any major effect on the decision(s) to smoke or not to smoke”.  

The evidence and research suggest the introduction of standardised packaging would not have a material impact on addressing smoking, particularly underage smoking, therefore providing no discernible health benefit.

4.5 Why young people smoke [please refer to Section 3.3 of our Consultation response – Appendix C]

4.6 The impact of ‘Denormalisation’ policies on smoking rates
The smoking rate (also referred to as ‘prevalence’ or ‘incidence’) is a measure of the percentage of smokers in the population. This metric is derived from population surveys in which a sample of people are asked different questions about their lifestyle. Data is normally available for regular (daily) and occasional smokers. Data is usually segmented by age, gender and socio-economic status.

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The primary stated goal of most tobacco control policies is to reduce smoking prevalence. For example, the Australian Federal Authority has set a performance benchmark to reduce smoking rates to 10% by 2018 in their tobacco control strategy for 2012 to 2018\textsuperscript{14}. Reducing the smoking rate by an average of 2% across Europe was also set as the benchmark for the review of the EUTPD. Globally, there were rapid declines in smoking rates in the 70s and 80s which probably reflected the growing awareness and acceptance of government health messages on smoking. However smoking rates have been levelling off in most jurisdictions since about 2000 and especially since 2005 when the World Health Organisation's Framework Convention on Tobacco Control ("FCTC") was ratified. However, against this global trend there are exceptions. For example smoking rates in Turkey have remained largely unchanged over the last 20 years. And despite falls in the 1990s, smoking rates in France and Ireland have risen slightly in recent years.

Since the ratification of the FCTC in 2005 there has been a shift in regulatory policy towards co-ordinated global population level interventions designed to change attitudes to tobacco use and to alter its social context. This social engineering approach to tobacco control is referred to as ‘denormalisation’.

Denormalisation aims to work on both supply of and demand for tobacco products – seeking to reduce the production and availability of tobacco products, curtailing opportunities to smoke at work and the home, and attacking brand value and attractiveness through product standardisation. The denormalisation objective is for those who don’t smoke to become less tolerant of those who do, and even those who continue to choose to smoke to become more receptive to regulation. Tobacco manufacturers are treated with suspicion and are excluded from discussion, even where their expertise could inform regulation. A 2012 review claimed that:

“The majority of studies suggest that tobacco industry denormalisation is effective in reducing smoking prevalence and initiation and increasing intentions to quit.”\textsuperscript{15}

This claim is refuted by the evidence. For example, the Organisation for Economic Co-operation and Development ("OECD") published a Factbook on Economic, Environmental and Social Statistics in early 2013. They compared the change in smoking rates in a number of


\textsuperscript{15} Tobacco industry denormalisation as a tobacco control intervention: a review; Ruth E Malone, Quinn Grundy and Lisa A Bero, Tob Control 2012 21: 162-170
countries between 1990 and 2010. Their analysis shows that in the EU, Scandinavian countries including Denmark, Sweden and Norway saw the largest fall in smoking rates over the period. In contrast, Great Britain was just behind the OECD average and Ireland had one of the poorest records of all, a decline of just 3% over 20 years.

To evaluate the impact of denormalisation on smoking rates, it is most relevant to focus on the changes which have occurred since FCTC ratification in 2005. Although rates of decline have slowed in many countries since about 2000, the Scandinavian countries continued to see continuing falls in smoking rates over the same period. However for many other developed countries, FCTC ratification appears to have had little or no impact on smoking rates. When compared to the period from 1990-2010, whilst Canada appears to have maintained some momentum, Australia has seen little change in its smoking prevalence since 2005. Smoking rates in France and Turkey have actually increased since 2005, despite both countries embracing policies of tobacco denormalisation. Most significantly of all, Ireland has also seen a rise in smoking rates since 2005 despite being the first country in Europe to introduce a comprehensive smoking ban in 2004, a display ban in 2009 and having amongst the most expensive cigarettes in Europe.

In England and Wales, smoking was banned in all indoor public places from July 2007. In 2010 the UK Government published a ten year tobacco control plan entitled ‘A SmokeFree Future’. The data presented in this plan suggests that rather than having no impact on smoking rates; the smoking ban may in fact have had the opposite effect. It indicates that for 2008, the year after the smoking ban was first introduced, smoking rates rose both for manual workers and in the general population. This completely contradicts the analysis made in DH’s official report of the smoking ban impact in March 2011:

“…this type of legislation has the potential to change social norms around smoking and results in changes in smoking behaviour…” [evidenced by] “…a general pattern of reduced tobacco consumption…”.

Further evidence of the lack of any correlation between denormalisation, tobacco control initiatives and smoking rates is presented in our review ‘Denormalisation, smoking rates and the way ahead for tobacco product regulation’ in Appendix E. Overall, there is no evidence that smoking rates have been greatly impacted by tobacco regulation nor the policy of

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16 ‘A Smokefree Future’ UK Department of Health, February 2010
denormalisation pursued after ratification of the FCTC in 2005. In these terms, denormalisation is not working as an effective tobacco control policy.

Smoking rates are still falling consistently in markets where a viable choice/alternative to smoking is presented to consumers. Furthermore, we suggest that the Norwegian experience with smokeless tobacco could be a predictor of what the impact of e-cigarettes on smoking rates could be in the US and Western Europe in 10 to 15 years’ time, provided that the growth of this sector is not impeded by poorly conceived regulation.

5. Australian experience has proven that standardised packaging has had no effect

The Government in Australia introduced standardised packaging and the laws came into effect on 1 October 2012 for cigarettes and 1 December 2012 for other tobacco products.

5.1 What does the evidence from Australia show so far?

The facts from Australia, the only country to have introduced standardised packaging, so far show the following effects.

5.2 Smoking prevalence has not been affected

The KPMG report 1H2012 found that overall consumption has remained stable. The latest national statistics from Australia covering smoking prevalence are only as recent as up to the end of 2012 and there has been no data or anecdotal evidence on youth smoking rates in Australia after 2011. We are not aware of any national statistics from Australia that are due to be published in the next few months, which Sir Cyril could review, covering the period since standardised packaging was mandated. We consider this to be an essential requirement for a proper assessment of the policy's impact.

5.3 Increase in the illegal market

The illegal market has increased significantly from 11.8% to 13.3% (a 13% increase) in the twelve months prior to June 2013. The images illustrate the first examples of an illicit standardised pack sold in Australia. The brand Spoonbill is not officially registered anywhere in the world. Intelligence suggests that it was manufactured in Asia and smuggled
into Australia. It demonstrates that with standardised packaging regulations in force, it is not even necessary for counterfeiters to use an existing brand. Criminals can simply use a fictitious name, comply with packaging regulations to avoid obvious detection and sell cheaply. It would be impossible for a consumer to tell whether this is a genuine product or not. The images below illustrate ‘Spoonbill’ again, and ‘Thunder Bay’, the first examples of an illicit standardised pack sold in Australia; plus ‘Jun Long’ which is the first example of a counterfeit version of a brand ‘Jin Ling’ which is in itself an “illicit white” (Low cost cigarettes legally produced by small independent tobacco companies but sold illegally outside their intended market(s)).

5.4 The increase in the illicit trade has been detailed in the KPMG Report

At the end of October 2013, KPMG released a report [see Appendix D] which aimed to estimate the size of the illicit tobacco market in Australia in the first six months since the introduction of standardised packaging in December 2012. The report was by KPMG on behalf of PMI, BAT Australia and Imperial Tobacco Australia and is based on an empty pack survey, web-based consumer interviews to gauge the prevalence of loose tobacco and rolling paper data.

The report finds that illicit tobacco in Australia as a proportion of total consumption has increased from 11.8% in 2012 to 13.3% in 1H2013. It also indicates a structural shift away from unbranded tobacco (chop chop) towards manufactured cigarettes. Illicit whites have emerged
as a major form of illicit trade. Manchester is currently the largest illicit whites brand in Australia; if it were sold legally in the country it would have a 1.3% market share. If all of this illegal tobacco had been consumed in the legitimate market, it would have represented an excise amount of approximately AUD1.0bn at current excise rates.

While the legal tobacco market has contracted slightly, overall consumption remained stable at 17.4%. Figures provided since the implementation of standardised packaging have shown a reduction in legal consumption, however, overall consumption has remained stable, demonstrating that the illicit trade has grown considerably and will grow even further after the 12.5% tax increase in December 2013. Early indications from the 3Q2013 illicit trade report suggest that illicit sales rose further to 15.5% (from 13.3%).

5.5 Lack of robust evidence that standardised packaging has worked

Contrary to what tobacco control lobbyists have been saying and how some media outlets have portrayed it, a study by the Centre for Behavioural Research in Cancer in Australia (funded by the anti-tobacco lobbying organisation Quit Victoria) does not support a case for standardised packaging. In fact an analysis of the study on the UK NHS Choices\textsuperscript{18} website concludes that:

\begin{quote}
\textit{“…the study could not assess whether a change in packaging achieves the desired outcomes – of an increase in quit rates…While people smoking the plain pack cigarettes were significantly more likely to have thought about quitting and place higher priority on quitting, their intention to quit smoking remained unchanged.”} [our emphasis]
\end{quote}

The effectiveness of the policy in Australia can only be properly judged on actual changes in consumption by both adults and under-age smokers, after factoring out other possible significant influences on consumption like tax increases and the reduction in travel allowances.

5.6 Australian Government to review standardised packaging

The Australian Government is planning to conduct a review on the standardised packaging implementation in December 2014 and we would expect other Governments to wait until this review has been conducted before making any decisions. The Australian review would present a more appropriate time for a comprehensive review to be conducted in the UK. Indeed, this

\textsuperscript{18} http://www.nhs.uk/news/2013/07July/Pages/Does-plain-packaging-help-smokers-quit.aspx
appeared to be accepted by the Government when it announced, following the extensive consultation that concluded in August 2012, that it would wait until the impact of standardised packaging in Australia could be properly analysed before making a policy decision. It is wholly unclear why the Government has departed from its previous stated position.

As a result of its policy on the standardised packaging of tobacco products, legal actions have been brought against Australia before the World Trade Organisation (“WTO”) Dispute Settlement Body by Ukraine, Honduras, Cuba, the Dominican Republic and Indonesia. A major tobacco company has also separately brought international arbitration proceedings against the Australian Government claiming billions in damages.

The numbers support our previously expressed concerns that standardised packaging is a gift to organised crime, whereas there are still no facts to show it is an effective intervention to reduce smoking prevalence amongst young people or adults. The jury is still out in Australia.

6. Standardised packaging will increase the trade in illicit tobacco

Standardised packaging would increase the supply of, or demand for, illicit tobacco or non-duty-paid tobacco in the United Kingdom. The increase in illicit trade would have a direct influence on public health for the following reasons:

6.1 Product Differentiation - Standardised packaging would, by its very nature, reduce the differentiation between brands and packs. The commoditisation of any category leads to an increased focus on price. The cheapest available price will be found in the illicit market.

6.2 Easier to counterfeit - Standardised packaging would provide a stimulus for the illicit trade of tobacco products - which already costs the Exchequer billions of pounds each year - by creating a “Counterfeiters’ Charter”, aiding and accelerating the spread of counterfeit tobacco products and the trade in illicit tobacco by making it simpler to copy legitimate packaging and also by creating an unfulfilled supply vacuum for branded products. Furthermore, the criminals have no qualms about selling their products to children; a clear public health issue.

6.3 Increased access for children - The illicit tobacco market undermines Government and industry efforts by making it easier for children and adults to access illegal tobacco products. Peddlers of illicit product, unlike the vast majority of UK tobacco retailers, do not care or
question how old a buyer is; they are happy to sell packs and even single cigarettes to minors.\textsuperscript{19}

The opportunity that standardised packaging would bring to criminals would increase the availability of illicit products, which in turn would expose tobacco to more children under the age of 18 who cannot legally purchase the product. This may be a gateway to further criminal activity, including drugs, and have the effect of increasing smoking prevalence of youth smoking and not reducing it. In this regard, it should be noted that there is clear survey evidence\textsuperscript{20} that:

- 50\% of the tobacco bought by 14 to 15 year olds is illegal;
- 1 in 4 young smokers are regularly offered illegal tobacco, which is far more often than adults\textsuperscript{21};
- 1 in 7 young smokers have gone to a private address (or a "fag house"\textsuperscript{22}) to buy illegal cigarettes;
- Buyers of cheap illicit smoke more, and admit it keeps them smoking\textsuperscript{23}; and,
- A third of all smokers aged 14 - 17 buy illicit and on average accounts for almost half of total consumption\textsuperscript{24}.

If the Government wants to protect children from tobacco, as we do, it should not drive them into the arms of criminals who have no qualms about who they sell to.

6.4 Unregulated product is dangerous - Illicit and counterfeit products usually undermine and circumvent legislation on ingredients, smoke emissions and reduced fire risk cigarettes and may not carry mandated English language health warnings.

7. International legal implications

Standardised packaging is in breach of UK and EU law and is being challenged with a view to infringing on the obligations undergone by the Member States of the World Trade Organization. The Australian Plain Packaging Act is subject to an ongoing dispute in the WTO on grounds of

\textsuperscript{19} http://www.bbc.co.uk/news/uk-england-devon-25671824
\textsuperscript{20} HMRC Measuring Tax Gaps 2011
\textsuperscript{22} NEMS 2011, ibid
\textsuperscript{23} http://ash.org.uk/localtoolkit/docs/cfr-briefings/illicit.pdf
\textsuperscript{24} http://www.ashscotland.org.uk/media/3480/Andrea%20Crossfield%20ITS%20Sept%202010.pdf
eroding the protection of intellectual property rights, imposing severe restrictions on the use of validly registered trademarks, and erecting an unnecessary obstacle to trade.

8. Alternative solutions

We may wish that as part of the Review process the possibility of alternatives to standardised packaging are considered. It is incumbent on the Government to assess the best and least restrictive way of achieving its policy objectives and any assessment of standardised packaging must be made in that context. **We would propose the following alternative approaches:**

8.1 Enforcing existing legislation and providing additional resources

We do not want children to smoke and we support effective measures to ensure tobacco products do not get into the hands of children. Existing legislation should be supported with greater enforcement of current laws via the relevant enforcement agencies. The Government should provide additional resources to support enforcement agencies and retailers in their efforts to tackle under-age smoking. Imperial Tobacco supports appropriate penalties for retailers who knowingly break the law by selling tobacco to children or illicit tobacco. In addition, we would like to ensure increased enforcement, in the form of penalties and prosecutions, to tackle the illicit trade.

8.2 Strengthening current legislation

We do not market our products to anyone under the age of 18 or to non-smokers. We adhere to all legislation, and where none exists, our International Marketing Standards.\(^\text{25}\) We support retailer programmes designed to discourage tobacco sales to children such as our support for the ‘No ID, No Sale’ retailer awareness campaign (http://www.noidnosale.com/) and the CitizenCard proof-of-age scheme (http://www.citizencard.com/) which has helped prevent under-age sales. The government should give greater support to proof-of-age schemes, which have contributed to a decrease in youth smoking prevalence (11-15 year-old regular smokers in England) from 13% in 1996 to the **lowest ever figure of 4\(^\text{26}\)** in 2011, and to 3% (average 13 years old – lowest figure since 1982) in Scotland.\(^\text{27}\)

8.3 Proxy purchasing


\(^{27}\) http://www.drugmisuse.isdscotland.org/publications/local/SALSUS_2010.pdf
We would support reasonable action to combat proxy purchasing e.g. adults who purchase tobacco on behalf of children, as implemented in Scotland in April 2011. We therefore support the recent Opposition proposal for legislation which makes proxy purchasing an offence across the UK, following Scotland’s lead, which would also bring tobacco in line with alcohol.

**8.4 Education programmes – German model**

Germany, which permits the advertising and display of tobacco products and has no plans for standardised packaging, has significantly fewer young people taking up smoking than in the UK, which has some of the most draconian anti-smoking laws in the world. Germany has a tobacco control strategy with education embedded at its core, and it delivers proven results.

As part of the Review process, the DH should engage with their German counterparts - who have a significantly lower youth smoking rate than the UK - to explore how they have successfully reduced youth smoking rates, and consider how such proven measures could be implemented successfully in the UK.

**9. Conclusion**

Imperial Tobacco believes that public policy interventions in the tobacco sector should be both designed and shown to address the well-established reasons why people smoke.

In summary, increasing education and retailer programmes to prevent children being able to purchase tobacco products, together with preventing access via the illicit trade and strengthened enforcement against both retailers and those attempting to purchase tobacco for others, are the most effective methods of preventing children purchasing or accessing tobacco and therefore achieving the public health objectives.

Imperial Tobacco also believes that an evidence led policy requires the UK Government not to consider the introduction of standardised packaging until its effects in Australia have been properly studied. Those studies need to be based on population wide, independent, robust national statistics and the Australian Government has committed to such a review in December 2014.

We do not believe that legislation should be pursued until what is a highly controversial policy - with potentially very significant unintended consequences - actually in and of itself is proven to reduce consumption amongst under-age smokers.
Appendix A - Current tobacco control measures

The existing UK regulatory context includes:

- the ban on advertising (2002);
- one of the most punitive tobacco tax regimes in the world;
- the ban on smoking in public places (2006 - Scotland, 2007 - England, Wales and Northern Ireland);
- the use of pictorial health warnings (2007);
- Age of Sale of Tobacco Products increased from 16 – 18 years (2007 - UK)
- the ban on tobacco vending machines (2011 - UK, 2013 - Scotland);
- Tobacco Retailers’ Register implemented and a ban on proxy purchasing (Scotland - 2011) and, most recently,
- the ban on the display of tobacco at the point of sale - despite the Coalition parties having opposed it in Opposition on the grounds of a lack of evidence, which hasn’t changed (2012 - smaller shops, and 2015 - larger premises in England and Wales, 2013 - smaller shops, and 2015 - larger premises in Scotland).28

Appendix B - Education on tobacco in Germany

According to Eurobarometer 2012, 28% of UK smokers have started under the age of 15 compared to an EU average of 17%. The German rate is also 17%. In Germany smoking among under aged people between the age of 12 and 17 has seen a significant decline from 27.5 % in 2001 to 11.7 % in 2012.29 Even among elder people smoking is in decline.

Germany permits advertising and display of tobacco products and has fewer young people taking up smoking than Ireland which has some of the most draconian anti-smoking laws in the world. Germany has a tobacco control strategy with education embedded at its core and it seems to be working. The German tobacco control approach identifies three different target groups:

- Education for the entire population
- Education for valuable groups, for example children or pregnant women
- Education and support for current consumers

28 http://www.telegraph.co.uk/news/politics/3463980/Tories-to-oppose-tobacco-restrictions.html;
29 Bundeszentrale für gesundheitliche Aufklärung, 2012
The Evidence is Plain
The ineffectiveness of standardised packaging on public health

Every measure has to take into consideration:
- possible reasons for up taking
- familial environment
- gender related specifics
- age related specifics

Examples of measures that are in place in relation to tobacco

1. "Class2000" - Strong and healthy in elementary school": "Class2000" is the largest national education program to promote health, addiction and violence prevention in elementary school. Since 1991, it has already reached more than 930,000 children. The educational program is financed by donations in the form of sponsorships for individual classes (200 euros per class and school year). The most important partners are the Lions Clubs in Germany. (www.klasse2000.de)

2. “ClearSight”- Join-In Circuit on tobacco and alcohol: Education on risks associated with smoking, focused on school aged children from 12 to18. In 2012, 52 events were held. 16,089 people attended: 13,826 students and, among others, 822 educational escorts and teachers and 165 media representatives. The project is hosted by the Federal Centre for Health Education (BZgA). (www.klarsicht.bzga.de)

3. “Be Smart – Don’t Start”: Non-smoking competition for school classes to motivate young people to remain smoke-free. Classes of students at the age between 12 and 15 agree in the competition that they´ll be smoke-free for the contest period of half a year. Since its start in the school year 1997/98 130,000 school classes with more than three million students have participated in the competition. It is hosted, among others, by the Federal Centre for Health Education (BZgA), the German Cancer Aid and the German Heart Foundation. (www.besmart.info)

4. "Smoke-Free" campaigns of the Federal Centre for Health Education (BZgA)
   - The youth campaign's goal is to continuously increase the number of non-smokers. In addition, young people shall be encouraged to stop smoking. Central Element of the campaign is the Internet platform www.rauch-frei.info. It offers access to information material, interactive elements as online-trainings and is a free source for media that can be used by teachers in schools. The website recorded more than 62,000 Visits in 2012.
   - The adult campaign aims to promote non-smoking in the adult population. This provides information about the health risks of smoking. To promote quitting the campaign also offers various free media, including the booklet "Yes, I'll be smoke free". The "smoke-free starter pack" contains this brochure, a "calendar for the first 100 days after quitting"
and a "Relax Ball". In addition to print media, the Internet platform www.rauchfrei-info.de is a central element of the adult campaign. The Internet platform was accessed about 270,000 times in 2012 by a total of about 175,000 visitors.

5. Youth Movie Days "Nicotine and Alcohol - everyday life drugs in focus": 16 Events every year in various Cinemas across Germany. In 2012 Youth Movie Days reached more than 140,000 participants, of which approximately 9,000 were teachers. The Movie Days are hosted by the Federal Centre for Health Education (BZgA) in cooperation with the Association of Private Health Insurances.

6. Internet based education for specific risks during pregnancy: Education and support platform "IRIS" (www.iris-plattform.de). Participants are supported on the platform for twelve weeks, the treatment is anonymous. In addition, it provides weekly e-mail contact with a so-called e-coach. The platform is hosted by the University of Tübingen and receives financial support from the Ministry for Health.

7. Round table "Youth Protection - Improving law enforcement": The Website www.jugendschutzaktiv.de additionally provides videos, flyers etc. for various groups, for example parents, teachers and retailer. The project is hosted by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth in cooperation with the associations of retail, restaurant and gas station industry.

8. "Smoke free PLUS" - health centers for counseling and smoking cessation: The German network Smoke-Free Hospitals & Health facilities (DNRfK) continues the pilot project funded from Ministry of Health and develops it further. This is supported by many different opportunities to non-smoking and smoking cessation. (www.rauchfrei-plus.de)

The “Report on Drug use and addiction 2013” published by the German Ministry for Health contains more than 100 best practice examples regarding education on tobacco and other substances. Those measures are offered by national authorities as well as non-governmental organizations.

Please see additional documents supplied:

Appendix C - Imperial submission to DH standardised packaging consultation - August 2012

Appendix D - Australian Study on Illicit Trade (KPMG) - October 2013

Appendix E - 'The impact of 'Denormalisation' policies on Smoking Rates' - September 2013