

AUSTRALIA — TOBACCO PLAIN PACKAGING

BRIEFING AND ADVOCACY POINTS



On June 28, 2018, the World Trade Organization (WTO) panel rejected all grounds of complaint against Australia's plain packaging laws, in a 900 page ruling.¹

The panel's authoritative ruling should be powerful in persuading governments to move forward with tobacco plain packaging and can be used to resist many of the flawed arguments that the tobacco industry puts forward to oppose the policy.

THE PANEL'S MAIN FINDINGS

Tobacco plain packaging:

- Is "apt to, and does in fact, contribute to Australia's objective of reducing the use of, and exposure to, tobacco products." [para. 7.1025]
- Is not more trade restrictive than necessary to fulfil Australia's legitimate public health objective. [para. 7.1732]
- Is a justified encumbrance on the use of trademarks and does not violate trademark protections. [para. 7.2593]

KEY MESSAGES

- The WTO panel considered extensive evidence, from Australia and the complaining countries, and found **the evidence demonstrates tobacco plain packaging works to reduce tobacco use** (see next page).
- The panel re-affirmed that states have a **right to regulate** for public health under WTO law.
- Plain packaging **does not interfere** with international trademark rights.
- States should now move forward to adopt laws and implement tobacco plain packaging, and can ignore the tobacco industry's flawed opposition.

THE APPEAL

On July 20, Honduras filed a notice of appeal to the panel's ruling. The Appellate Body is likely to take 6 – 18 months to report but the panel's strong findings of fact make it unlikely any appeal will succeed.

BACKGROUND

The WTO complaints against Australia were brought in 2012 and 2013 by **Honduras, Indonesia, the Dominican Republic and Cuba** — these countries have either no trade or very minimal trade in tobacco with Australia.²

Honduras and the Dominican Republic are reported to be receiving legal and financial assistance from BAT and PMI to pursue the WTO complaints.³

Ukraine also brought a complaint but suspended it in May 2015, with the Trade Minister saying that "*economic logic is absent in this dispute.*"⁴

INTERNATIONAL PROGRESS ON PLAIN PACKAGING

Laws adopted and implemented:
Australia, France, Ireland, Hungary, New Zealand, Norway and United Kingdom

Adopted laws awaiting implementation:
Burkina Faso, Canada, Georgia, Romania, Slovenia and Thailand

Laws before parliament:
Brazil, Chile, Ecuador, Panama, Uruguay and South Africa

Formal government consideration:
Mauritius, Guernsey and Jersey, Singapore and Sri Lanka

BRIEFING AND ADVOCACY POINTS

USING THE RULING TO RESIST TOBACCO INDUSTRY OPPOSITION

For decades the big tobacco companies have tried to prevent or delay countries adopting tobacco plain packaging by asserting that this public health policy would breach international trade rules and trademark protections. The WTO panel's decision finally puts these arguments to rest. The panel also analysed extensive volumes of evidence related to all aspects of plain packaging. In its ruling the panel made strong findings about what that evidence demonstrates. These **FINDINGS OF FACT** undermine many of the other arguments the tobacco industry tries to use to oppose plain packaging laws around the world.

TOBACCO INDUSTRY ARGUMENT	THE FACTS ACCORDING TO THE WTO
There is no evidence that plain packaging works to reduce smoking rates.	The evidence shows reductions in smoking rates and overall tobacco sales accelerated in Australia after plain packaging was implemented. [para 7.896] Plain packaging had a statistically significant impact on lower smoking prevalence and cigarette sales. [para 7.896]
Plain packaging will increase illicit trade in tobacco.	The evidence does not show plain packaging led to any increase in illicit tobacco trade in Australia [para 7.1023] The WTO panel did not agree illicit trade in Australia is at the level estimated by the tobacco industry funded report from KPMG. [para 7.1013]
Plain packaging will lead to lower tobacco prices which will increase smoking rates.	The price of cigarettes increased in Australia after plain packaging was introduced. [para 7.1218]
Branded packaging only influences smoker's choice of brand, not smoking initiation.	It is important for the tobacco industry to attract new young consumers and the industry makes their product appealing to youth through branded packaging. [para 7.1032]
Branding on packaging is not advertising — it is needed to allow smokers to distinguish between brands.	Branded packaging acts as advertising and promotion on tobacco products. [para 7.659] Internal industry documents demonstrate the tobacco companies think this as well. Branded packages have a promotional effect even when they have large 75% graphic health warnings on them. [para 7.7128]

1. DS435, DS441, DS458, DS467 Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging. Report: https://www.wto.org/english/news_e/news18_e/435_441_458_467r_e.htm
2. Data from United Nations COMTRADE database. In 2012 there was no reported trade in tobacco (HS24) between Australia and Cuba or Honduras. Trade between Australia and Dominican Republic was \$102,000, and between Australia and Indonesia was \$1.7mil.
3. Reuters, Australia says big tobacco aiding WTO challengers, May 22, 2012.
4. Interfax Ukraine news agency, Ukraine ends dispute with Australia over Cigarettes, May 6, 2018