

Australia - Tobacco Plain Packaging: WTO Dispute Panel Report - Summary and Talking Points

Background

- The panel's report was nearly 900 pages long and was published on June 28, 2018. **The ruling rejected all grounds of complaint.** The complaints took 6 years to resolve by the World Trade Organization (WTO) and an appeal is likely, which could take a further year.
- The complaints were brought in 2012 and 2013 by Honduras, Indonesia, the Dominican Republic and Cuba – countries that have either no, or very minimal, trade in tobacco with Australia. Honduras and Dominican Republic are reported to be receiving legal and financial assistance from BAT and PMI to pursue the WTO complaints.
- The complaining countries argued that Australia's tobacco plain packaging measures breach:
 - the Agreement on Technical Barriers to Trade (TBT) because plain packaging is 'more trade-restrictive than necessary' to fulfil its public health objective;
 - the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) by failing to provide protections to trademarks rights.
- The panel reviewed extensive volumes of evidence submitted by Australia and the complaining countries, and made authoritative rulings about what the evidence demonstrates. These findings should be powerful in persuading governments to move forward with plain packaging and can be used to resist the flawed arguments of the tobacco industry.

Talking Points On The Ruling – The WTO panel found ...

- Plain packaging measures **are not more trade restrictive than necessary** to reduce the use of tobacco and they **do not violate trademark protections** under WTO TRIPS.
- The totality of the evidence demonstrates that plain packaging measures **“are apt to, and do in fact, contribute to Australia's objective of reducing the use of, and exposure to, tobacco products.”**
- **“branded packaging can act as an advertising or promotion tool in relation to tobacco products”** and internal documents show the tobacco companies agree this is the case. The panel also stated that **branded tobacco packaging can have a promotional effect even when it has large 75% graphic health warnings.**
- The importance for tobacco companies **“of attracting new consumers, and therefore making their products appealing to those most likely to initiate tobacco use (i.e. youth), including through branded packaging.”**
- The evidence shows plain packaging measures **“increase the effectiveness of Graphic Health Warnings [making them] easier to see, more noticeable, perceived as being more credible and more serious, attract greater visual attention ... and are read more closely and thought about more”**
- The evidence **does not establish “either through empirical evidence or descriptive argument based on the drivers of illicit trade, that plain packaging measures have given rise to an increase in Australia's illicit tobacco trade.”**
- Contrary to the complainants' arguments that plain packaging would lead to price competition and therefore *a fall* in prices, the evidence shows that plain packaging **“led to an increase in the price of cigarettes”** in Australia.
- The alternative measures put forward by the complaining countries, such as improved marketing campaigns or increased minimum purchase age, were not less trade restrictive and **“would not make a contribution to Australia's objective that is equivalent to the contribution made by tobacco plain packaging”.**