



**BRITISH AMERICAN  
TOBACCO**

**STANDARDISED TOBACCO PRODUCTS AND PACKAGING  
DRAFT REGULATIONS CONSULTATION**

**SUBMISSION BY  
BRITISH AMERICAN TOBACCO (NEW ZEALAND) LIMITED  
ON BEHALF OF THE BAT GROUP**

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## PRELIMINARY MATTERS

### SUBMITTER DETAILS

This submission was completed by: British American Tobacco (New Zealand) Limited on behalf of the BAT Group

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Date: 29 July 2016

British American Tobacco (New Zealand) Limited is the distributor for the BAT Group's tobacco products in New Zealand. This submission is made by British American Tobacco (New Zealand) Limited on behalf of the BAT Group.

The BAT Group has a market share of approximately 69.1% of the New Zealand market in cigarettes, comprising the BENSON & HEDGES, DUNHILL, ROTHMANS, LUCKY STRIKE, WINFIELD, HOLIDAY, PALL MALL, CLUB and FREEDOM brands. It also has a share of approximately 69.8% of the New Zealand market in loose tobacco through its PARK DRIVE, PORT ROYAL, HOLIDAY, CAPSTAN, ROTHMANS, WINFIELD and CLUB brands.

British American Tobacco (New Zealand) Limited, on behalf of the BAT Group, consents to the release of the non-confidential version of this submission under the Official Information Act 1982 and also reserves the right to release it to the public itself.<sup>1</sup>

<sup>1</sup> Some parts of this submission are confidential and commercially sensitive to the BAT Group and consent is therefore not granted to their release.

## ABBREVIATIONS

**Australian Act** – Tobacco Plain Packaging Act 2011 (Cth)

**Australian Regulations** – Tobacco Plain Packaging Regulations 2011 (Cth)

**BAT Group** – British American Tobacco p.l.c. and its subsidiaries (including B.A.T (U.K. and Export) Limited) together with its or their ultimate holding company (if any) and any such ultimate holding company's subsidiaries

**BAT, British American Tobacco or we** – British American Tobacco (New Zealand) Limited on behalf of the BAT Group or, where the context requires, the BAT Group

**Bill** – Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill

**Consultation Document** – Standardised Tobacco Products and Packaging Draft Regulations Consultation document, Ministry of Health, May 2016

**GHW** – graphic health warnings

**Regulations** – Smoke-free (Standardisation of Tobacco Packaging and Tobacco Products) Regulations (draft)

**SFEA** – Smoke-free Environments Act 1990

**SFER** – Smoke-free Environments Regulations 2007



## 1 EXECUTIVE SUMMARY

- 1.1 BAT welcomes this opportunity to engage with the Ministry of Health in relation to the Consultation Document and the draft Regulations. BAT appreciates the New Zealand Government's strong commitment to fair public debate in relation to significant regulatory initiatives such as this.
- 1.2 BAT does not support the new regime set out in the draft Regulations. Standardised tobacco products and packaging are ineffective, disproportionate, and likely to have serious unintended consequences – including fostering an increase in black market trade in tobacco. If the Government nevertheless decides to push ahead with standardised products and packaging, it will need to be extremely careful to ensure that the new rules do not unduly negatively impact consumers, infringe rights, or otherwise fail to live up to New Zealand's high regulatory standards.
- 1.3 Notwithstanding BAT's continuing view that New Zealand should not introduce standardised products and packaging, we have elected to engage constructively with this consultation process.
- 1.4 If the Regulations listed below are passed without BAT's requested minor amendments which:
- (a) would not in any way impair the health related policy objectives of standardised products and packaging; and
  - (b) relate to features which do not even arguably increase the appeal of smoking or tobacco,
- then compliance:
- (c) **Confidential:**<sup>2</sup>
  - (d) with reg 25(a) and (b) will not be possible with respect to cigarette pack linings being made only of foil (rather than foil with the addition of another material as necessary to hold the foil together) and being fully coloured in Pantone 448C, in light of the circumstances set out in paragraphs 5.44 to 5.49;

<sup>2</sup> This paragraph 1.4(c) of this submission is confidential and commercially sensitive to the BAT Group and consent is therefore not granted to the release of paragraph 1.4(c) under the Official Information Act 1982.

- (e) with reg 19 will not be possible with respect to tobacco package track and trace codes being printed in Pantone Cool Gray 2C and in Lucida Sans font, in light of the circumstances set out in paragraphs 5.2 to 5.8;
  - (f) with reg 4(1)(a) and reg 11 (amongst others) will not be possible with respect to wholesale containers (including shippers) being printed in full compliance with the Regulations, in light of the circumstances set out in paragraphs 5.16 to 5.20;
  - (g) with reg 3 and reg 12 will not be possible with respect to a restriction on inserts having the effect of prohibiting the supply of cigarette packs with inner frames, in light of the circumstances set out in paragraphs 5.40 to 5.43; and
  - (h) with reg 21(2)(c) will not be possible with respect to the requirement that cigarette track and trace codes be printed in Pantone 448C, in light of the circumstances set out in paragraphs 6.9 to 6.14.
- 1.5 BAT asks that the Ministry and its responsible Ministers make the necessary amendments requested to the Regulations and confirm a commencement date for manufacturers that is **(Confidential:<sup>3</sup> provided that 2.11 reg 23 containing data in relation to** ) 12 months (at an absolute minimum) after the Regulations are passed. BAT also asks that the transitional period for compliance be simplified, such that all distributors and retailers be required to comply 12 weeks after that commencement date, as set out in paragraph 4.12.
- 1.6 BAT has sought to outline those and other key issues in this submission. If the Ministry requires additional explanation or evidence in relation to any of the issues, BAT can provide further detail.

## 2 STANDARDISED PRODUCTS AND PACKAGING

- 2.1 BAT remains strongly opposed to standardised products and packaging. As BAT explained in its submission to the Health Committee of the House of Representatives in relation to the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill dated 28 March 2014, standardised packaging:
- (a) is disproportionate;
  - (b) will not reduce smoking;
  - (c) will increase black market trade; and
  - (d) will harm New Zealand's exports and reputation as a trading nation.

<sup>3</sup> These words of paragraph 1.5 of this submission are confidential and commercially sensitive to the BAT Group and consent is therefore not granted to the release of these words under the Official Information Act 1982.



- 2.2 Since BAT made that submission to the Health Committee, there have been a number of important evidential developments in relation to standardised packaging.<sup>4</sup> Crucially, there is now considerable real world data concerning the impact of standardised packaging on smoking behaviour in the one country which has implemented standardised packaging – Australia. Given that Australia remains the only country in the world to have actually implemented standardised packaging, this data of the actual effect of standardised packaging on behaviour is critical to assessing efficacy of standardised packaging. Among other things, it shows that since standardised packaging was introduced in Australia in 2012:
- (a) there has been no acceleration in the long-term smoking rate decline;<sup>5</sup>
  - (b) youth smoking rates did not reduce between 2010 and 2013;<sup>6</sup>
  - (c) the effectiveness of health warnings has not increased;<sup>7</sup> and
  - (d) there has been a 20% increase in the illicit market.<sup>8</sup>
- 2.3 For the reasons above, BAT remains of the view that New Zealand should not introduce standardised products and packaging, and that Parliament should not enact the Bill. Nevertheless, BAT has elected to engage constructively with this consultation process in order to ensure that the Regulations are drafted in terms which reflect New Zealand's high standards of regulatory stewardship.
- 2.4 Given the extraordinarily far-reaching nature of the Regulations and the relatively weak evidential foundation supporting their introduction, BAT also recommends that explicit provision be made for the regime to be reviewed in full two years after implementation and that continuation of the Regulations be subject to a positive decision based on the outcome of the review. Such post-implementation reviews of new regulatory regimes are now commonplace in Australia. Reviews have also been statutorily mandated in other regulatory regimes in New Zealand (including the Commerce Act 1986 and Telecommunications Act 2001). Carrying out such a review

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<sup>4</sup> Further detail of those developments is set out in our paper entitled "Evidential Developments in Relation to Standardised Packaging – the Australian Experience", July 2016, provided at the same time as this submission.

<sup>5</sup> Neil Dryden, "The impact of tobacco plain packaging in Australia: an update report for the Post-Implementation Review", 2015, at 3.

<sup>6</sup> Australian Federal Government National Drug Strategy Household Survey, available at <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/>. Data for the period 2013 to 2016 is not yet available.

<sup>7</sup> W. Kip Viscusi, Analysis of CITTS data and NTPPTS data – a report for the post-implementation review: 3 November 2015; and Davidson, S. & de Silva, A. (2016). Stubbing Out the Evidence of Tobacco Plain Packaging Efficacy: An Analysis of the Australian National Tobacco Plain Packaging Survey.

<sup>8</sup> KPMG Illicit Trade in Australia 2015 Full Year Report, 15 April 2016.

in this context will allow all parties to verify that the regime is working as intended, and is having the desired effects on public health objectives.

### 3 BEST PRACTICE REGULATION

#### PRINCIPLES OF BEST PRACTICE REGULATION

- 3.1 New Zealand has long had a strong commitment to ensuring that its regulatory systems are of the highest quality (dating back to the Code of Good Regulatory Practice endorsed by Cabinet in 1997 and even earlier).
- 3.2 That commitment has been demonstrated through the development of the 'Best Practice Regulation Model', which was approved by Ministers in 2012.<sup>9</sup> In February 2015, that Model was encapsulated in an important report by Treasury.<sup>10</sup> Annex A to that report sets out the "Principles of Best Practice Regulation". Those Principles were said to have been cross-checked against OECD, APEC, World Bank, UK, Australian and US principles.
- 3.3 The Principles most relevant in this context are set out below.

#### GROWTH COMPATIBILITY

- 3.4 This Principle focuses on ensuring that economic objectives are given an appropriate weighting relative to other objectives. It specifically acknowledges the importance of:
  - (a) "open and competitive domestic and international markets including minimising barriers to, and maximising net benefit from, cross-border flows"; and
  - (b) "the need for firms to make long-term investment decisions".

#### PROPORTIONALITY

- 3.5 This Principle requires the burden of rules and their enforcement to be proportional to expected benefits. It involves applying a "risk-based, cost-benefit framework".
- 3.6 It implies that a rule should go no further than is absolutely necessary to achieve a particular objective (e.g. implementing an international obligation). It also requires even-handedness – no rule should have a disproportionate impact on one party compared with others.

<sup>9</sup> Bill English and John Banks, "[Better economic performance through better regulation](#)" (press release, 1 August 2012).

<sup>10</sup> The New Zealand Treasury, "[The Best Practice Regulation Model: Principles and Assessments](#)" (February 2015).



## PREDICTABILITY

- 3.7 This Principle requires that a regulatory regime provide predictability over time, and offer regulated entities certainty as to their obligations. Such a regime would exhibit as much clarity and consistency as possible.

## DURABILITY

- 3.8 This Principle contemplates:
- (a) regulated entities having latitude to adopt “least cost and innovative” approaches to meeting their legal obligations; and
  - (b) a regime which has the “capacity to evolve in response to changing circumstances”.

## OTHER CONSIDERATIONS

- 3.9 As well as complying with the Principles of Best Practice Regulation, the Regulations must of course be compatible with the remainder of New Zealand’s legal system. In particular, they should be compatible with the New Zealand Bill of Rights Act 1990.
- 3.10 The New Zealand and Australian Governments have also recognised the importance of harmonising regulatory regimes in the interests of developing a cohesive trans-Tasman community.<sup>11</sup> The Ministry indicated support for alignment with Australia in its Consultation Document and relies heavily on research based on the Australian experience to explain the standardisation measures.<sup>12</sup> Although the New Zealand Government must always retain a degree of discretion to accommodate the unique circumstances of life in New Zealand, there is a strong argument in favour of ensuring that regulatory regimes align with equivalent regimes in Australia. The Regulations, as currently drafted, go further than the Australian Regulations.
- 3.11 Furthermore, the Government has previously indicated that it would not pass legislation to introduce standardised products and packaging into law until the results of legal challenges to equivalent Australian measures were known.<sup>13</sup> In light of the fact that World Trade Organisation (WTO) disputes involving Australia remain on foot, the appropriate approach would be to delay the passing of the Bill and Regulations until the final outcomes of those disputes are available and have been properly

<sup>11</sup> For instance, the [Joint Statement of Intent](#) published by the Prime Ministers of New Zealand and Australia on 20 August 2009 indicated that “measures should deliver substantively the same regulatory outcomes in both countries in the most efficient manner”.

<sup>12</sup> Consultation Document, at 3.

<sup>13</sup> See <http://www.newshub.co.nz/politics/key-nz-will-stick-to-wto-ruling-on-plain-packaging-2013022008#axzz4FfHRTWVe>

assessed by the Government. It is likely that the outcome of the WTO disputes will be known around the end of 2016.

## 4 GENERAL ISSUES

### IMPLEMENTATION TIMEFRAME AND ACHIEVABILITY

#### CERTAINTY

- 4.1 There is still considerable uncertainty as to the exact date by which the industry will need to comply with the new requirements. Clause 2 of the Bill indicates only that it may come into force on any date up to 18 months after the Bill is enacted.
- 4.2 As explained in this submission, BAT and the rest of the industry will need to make vast and time-consuming changes to existing business processes in order to comply with the Regulations. Without clarity as to the commencement date, there is a real risk that timely compliance will not be achieved. We trust that, if a decision is made to proceed with standardised products and packaging, the Ministry and its responsible Ministers will confirm a reasonable commencement date as soon as possible.

#### IMPLEMENTATION LEAD-TIME: SUMMARY OF ISSUES

- 4.3 The Regulations propose significant and complex changes to our business. As a result, once the Regulations are passed, we will require an extended period to make the necessary changes to our business processes, both offshore and in New Zealand, in order to comply with the detail of those Regulations.
- 4.4 **Minimum 12 months** - BAT's best estimate in this regard is that, (**Confidential**:<sup>14</sup> ), BAT as a manufacturer would require a minimum of 12 months to conduct this transition and comply with the Regulations. Substantiation as to this is set out in the timeline and summarised breakdown of the activities identified in the timeline in paragraph 4.7.
- 4.5 **Confidential**:<sup>15</sup>

<sup>14</sup> These words of paragraph 4.4 of this submission are confidential and commercially sensitive to the BAT Group and consent is therefore not granted to the release of these words under the Official Information Act 1982.

<sup>15</sup> This paragraph 4.5 of this submission is confidential and commercially sensitive to the BAT Group and consent is therefore not granted to the release of paragraph 4.5 under the Official Information Act 1982.



- 4.6 **Not possible to comply** – Notwithstanding our statement in paragraph 4.4, in light of the circumstances set out in the relevant paragraphs below, there are some aspects of the draft Regulations with which it will not be possible for BAT to comply. This means that, in respect of these issues, BAT would not be able to comply with the Regulations regardless of the implementation lead-time provided (whether 12 months or greater).

**IMPLEMENTATION LEAD-TIME: GENERAL – 12 MONTHS**

- 4.7 BAT sources tobacco products from multiple factories around the world for the New Zealand market. Those factories in turn source raw material from multiple vendors internationally. Each source factory and underlying vendor have their own involved and intricate processes. They also utilise machinery that is not solely dedicated to supply for the New Zealand market. Therefore, even minor changes (let alone the major changes contemplated by the Regulations) to the products in the supply chain in which they are involved necessitates that a series of detailed steps be completed. As already mentioned above, the steps necessary for compliance with the Regulations in general, for BAT as a manufacturer, would take a minimum of 12 months to complete. A summary of these steps is as follows:

Activity	1	2	3	4	5	6	7	8	9	10	11	12
Development of Statutory Warning Template												
Development of Pack Design												
Development of Print Cylinders												
Printing of Materials												
Freight of Materials												
Manufacture of Compliant Product												
Shipment to New Zealand												

- 1. Development of statutory warning templates for each different pack size and packaging format: 2 months**
  - (a) Scale and position statutory warning templates according to regulatory requirements
  - (b) Compliance review of resulting packaging designs
- 2. Development of packaging designs: 2 months**
  - (a) Position all other elements including barcode, brand and variant name
  - (b) Compliance review of up to c.188 designs, resulting in completely separate packaging designs (up to two per SKU – one for the statutory Warning Set A cigarette pack/loose tobacco pack, and the other for statutory Warning Set B).
- 3. Development of print cylinders: 2 months**
  - (a) Procurement of physical cylinders from external suppliers
  - (b) Engraving of cylinders with the complete packaging design. This results in hundreds of individually engraved cylinders given each cylinder is dedicated to one colour. This is known as the “rotogravure” printing process
  - (c) Finished cylinders are then sent to the third party printers for printing
- 4. Printing of materials: 2 months**

Printers schedule and undertake printing of all materials. This particular task is involved and time consuming. The printer is not solely dedicated to New Zealand products and also serves other customers within and outside of the BAT Group.
- 5. Freight of materials: 2 months**

Printers send the printed materials to BAT source factories
- 6. Manufacture of tobacco products: 2 months**

Scheduling and manufacturing of compliant tobacco products for 94 SKUs. The product is then packed into printed materials. Again, this task is involved and time consuming as the source factory machinery is not solely dedicated to the manufacture of New Zealand product.
- 7. Shipment to New Zealand from BAT source factories: 2- 3 months**



Sea freight of finished goods to New Zealand. BAT source factories are all located outside of New Zealand and shipment to New Zealand takes a significant period of time.

**CONFIDENTIAL:**<sup>17</sup>

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<sup>17</sup> This section, consisting of paragraphs 4.8 to 4.9 of this submission, is confidential and commercially sensitive to the BAT Group and consent is therefore not granted to the release of this section under the Official Information Act 1982.



#### IMPLEMENTATION LEAD-TIME: CONCLUSIONS

- 4.10 The Australian Regulations were released in final form on 12 December 2011 but the standardised products and packaging requirements did not come fully into effect until 1 December 2012. The Regulations, as currently drafted, go further than the Australian Regulations. A 12 month transition period applies to the upcoming introduction of standardised packaging in the UK and was also permitted when graphic health warnings were introduced in New Zealand. Those graphic health warning changes, while onerous, were far less significant than the full scale standardisation of all products and packaging that is now contemplated.
- 4.11 To avoid instituting an unachievable timeframe, and imposing a disproportionate burden on manufacturers with plant located outside New Zealand, BAT therefore asks that the Ministry and its responsible Ministers make the necessary amendments requested to the Regulations and confirm a commencement date for manufacturers that is **(Confidential):**<sup>18</sup> 12 months (at an absolute minimum) after the Regulations are passed.
- 4.12 There is a further issue which arises from the transitional provisions set out in the Schedule to the Bill. Currently, there are different dates for manufacturers, distributors and retailers. Under the current draft Schedule, distributors are given a transitional period of only 6 weeks (cl 3). This short period is unduly burdensome on

<sup>18</sup> These words of paragraph 4.11 of this submission are confidential and commercially sensitive to the BAT Group and consent is therefore not granted to the release of these words under the Official Information Act 1982.

distributors and would result in significant unwarranted disruption. For example, there would be increased risk of products being overstocked at the retailer level, retailers and distributors incurring fines, or unused products becoming unsalable. The clearer and more effective approach would be to remove the more limited transitional period for distributors, and instead oblige all distributors and retailers to transition by the same date (being 12 weeks after all manufacturers), which would be consistent with the approach that was taken in Australia.

#### ACHIEVABILITY

- 4.13 There are a handful of other draft Regulations with which BAT will not be able to comply in light of the circumstances set out below. BAT therefore requests that some minor changes be made. These would not in any way impair the health related policy objectives of standardised products and packaging, and relate to features which do not even arguably increase the appeal of smoking or tobacco. The requested changes relate to the following draft regulations:
- (a) The reg 25(a) and (b) requirements that cigarette pack linings be made only of foil, and be fully coloured in Pantone 448C. This is unable to be complied with in light of the circumstances set out in paragraphs 5.44 to 5.49.
  - (b) The reg 19 requirements that tobacco package track and trace codes be printed in Pantone Cool Gray 2C and in Lucida Sans font. This is unable to be complied with in light of the circumstances set out in paragraphs 5.2 to 5.8.
  - (c) The reg 4(1)(a) requirement that wholesale containers (including shippers) be printed in full compliance with the Regulations (e.g. reg 11). This is unable to be complied with in light of the circumstances set out in paragraphs 5.16 to 5.20.
  - (d) The reg 3 and reg 12 restriction on inserts, which will have the effect of prohibiting supply of cigarette packs with inner frames. This is unable to be complied with in light of the circumstances set out in paragraphs 5.40 to 5.43.
  - (e) The reg 21(2)(c) requirement that cigarette track and trace codes be printed in Pantone 448C. This is unable to be complied with in light of the circumstances set out in paragraphs 6.9 to 6.14.

#### FURTHER DETAILS

- 4.14 BAT would welcome the opportunity to discuss in more detail its implementation lead time and the processes involved and the compliance issues discussed above in paragraphs 4.3 to 4.13. During the consultation process in Australia, the Australian Government met with representatives of the tobacco industry to discuss the implications and practical impact of the proposed regulations on manufacturers. That engagement was useful to both sides. As part of this, the Australian Government also received a detailed tour of a BAT factory to aid full understanding of the manufacturing



processes and practical considerations and limitations involved. BAT would be willing to engage with the Ministry similarly, should it wish to do so. We note for completeness that manufacturers do not have identical machinery or processes so there are likely to be differences between the issues and timing challenges faced by BAT and those faced by other manufacturers.

## OTHER ISSUES

- 4.15 BAT's views on the detail of the Regulations are set out in the submissions below. If the Ministry considers that it would be helpful, BAT could also provide further information on the following issues (and any others as would assist):
- (a) Reg 7 provides that tobacco must be the natural colour of dried tobacco. The Ministry should be aware that there is no one natural colour of dried tobacco and that colours can vary significantly according to differences in tobacco varieties, and in drying methods.
  - (b) Reg 8 provides that tobacco must smell only of manufactured tobacco. Again, the Ministry should be aware that smells can vary significantly according to differences in tobacco varieties and drying or curing methods.

## 5 CIGARETTE PACKS

### TEXT AND MARKINGS

- 5.1 BAT does not support the restrictions on the appearance of brand and variant names that would be imposed by regulations 27, 33 and 38. In particular, we oppose those requirements that go further than the Australian Regulations (such as the requirement that brand and variant names be less than 35 mm in length). However, BAT has elected to focus in this submission on those changes which need to be made to the Regulations in order to ensure that they are drafted in terms which reflect New Zealand's high standards of regulatory stewardship.

### TRACK AND TRACE

- 5.2 The current draft of reg 19(2)(a) requires printed track and trace codes on tobacco packages to be printed in Pantone Cool Gray 2C, and displayed in 8 point Lucida Sans typeface without the use of upper-case letters.
- 5.3 BAT requests that the following changes be made to this regulation:

**19 ~~Printed code~~ Code for tracking and tracing tobacco products**

- (1) A tobacco package may have a ~~printed~~ code for the purposes of tracking and tracing tobacco products.
- (2) The ~~printed~~ code -
  - (a) ~~must conform to the requirements of regulation 9 except that it~~ must be no larger than 8 point font size: and

(b) may be a barcode, alphanumeric code, or any such code as is reasonably required to enable efficient tracking and tracing; and  
(c) must not convey any other information to the consumer.

- 5.4 If reg 19 is not amended in line with paragraph 5.3 above, given the technology currently available to BAT, which reflects the market standard on track and trace codes on tobacco packaging, it will not be possible for BAT to comply with the regulation. BAT would be forced to consider removing these track and trace codes which would severely compromise the ability to confidently discharge the obligation to react to consumer complaints, or undertake any necessary market recalls.
- 5.5 To explain further, BAT currently uses a range of packing machinery which utilises laser coding or embossing techniques (high speed machines) or inkjet printing techniques (low speed machines) which presents the following issues under reg 19:
- (a) Pantone Cool Gray 2C for track and trace codes cannot be delivered using this technology. It is impossible for laser coding to deliver that colour given that form of coding does not involve the use of inks. Rather, the process it employs produces a code that is the natural colour of the board in use. Embossing produces a code that is the natural colour of the cigarette pack (e.g. Matt Pantone 448C). Inkjet printing typically produces a black or white code, as ink suppliers do not currently supply a Pantone 448C colour for inkjet printers.
  - (b) It is impossible to ensure that Lucida Sans is accurately delivered, given variations in the speed of the machining process.
  - (c) The small font size would make lower-case letters difficult to read.
- 5.6 If it was required to comply with the strict requirements of reg 19 as currently drafted, BAT would need to change its entire process for inscribing track and trace codes, and even then, given this raises the prospect of utilising technology which is not currently deployed, we cannot be confident that it would be possible to fully comply. This would impose significant, unjustifiable burdens on manufacturers for no discernible benefit. These requirements do appear disproportionate, and unnecessary in order to achieve the standardisation objective. Track and trace codes are already subtle in appearance and entirely practical in nature. Even in their present form, track and trace codes could not conceivably constitute a form of advertising of tobacco products.
- 5.7 In addition, the currently proposed requirement that track and trace codes be alphanumeric only will also pose significant problems for law enforcement authorities. This is because an alphanumeric code is far more difficult to scan. For example, the similarities between some characters, such as O, o and the number zero, l and 1, etc, mean that the codes are likely to require manual inputting. The Ministry asserts that



*“Global efforts to distinguish legitimate, tax-paid tobacco products from illicit tobacco trade depend on the ability to effectively track and trace tobacco products through the supply chain.”<sup>19</sup>* If reg 19 permitted other forms of coding (such as dot matrix coding), enforcement authorities would be able to use scanners at the point of seizure to much more accurately and efficiently identify illegitimate product.

- 5.8 BAT also notes that the Government is in the process of considering the Protocol to Eliminate Illicit Trade in Tobacco Products, negotiated under the WHO FCTC, to assess whether New Zealand should become a party to it. If New Zealand does become a party, the changes necessary to bring track and trace systems in line with the Protocol will be substantial. As noted above, compliance with draft reg 19 in the use of track and trace codes on packaging would necessitate a complete redevelopment of BAT’s track and trace process. Requiring it to do so in the knowledge that any new track and trace requirements may be completely reconfigured within just a few years (if the Protocol is implemented) creates a disproportionate burden that is entirely inconsistent with the principles of best practice regulation. This is a further reason not to impose heavily prescriptive regulations relating to track and trace until the position regarding the Protocol has been confirmed.

#### OUTER SURFACES

- 5.9 The draft of reg 15 currently requires only that outer surfaces of a tobacco package, excluding the wrapper, use Matt Pantone 448C as the background colour.

- 5.10 BAT requests that the following changes be made to this regulation:

**15 Outer surfaces of tobacco package**

(1) The outer surfaces of a tobacco package (other than the wrapper) must have only Matt Pantone 448C as a background colour.

(2) A tobacco package may not bear or display any logos, images or devices other than in accordance with these Regulations.

(3) A tobacco package may bear or display such minor markings as are required for calibration and printing purposes.

- 5.11 The insertion of reg 15(2) would address an apparent loophole in the current drafting of the Regulations. Reg 9 restricts the way in which text or alphanumeric marking may be displayed on a tobacco package. Regs 27 and 33 further restrict the way in which brand names and variant names may be displayed. However, there is no explicit prohibition on the display of visual features which do not incorporate textual elements e.g. crests. The only restriction is in reg 15 which requires Matt Pantone 448C as a “background” colour, which would not clearly restrict the use of such visual features on top of that background. BAT understands that the intention behind the Regulations is to standardise the external appearance of tobacco packages, without

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<sup>19</sup> Consultation Document, at 11.

leaving scope for the continued use of non-textual imagery. BAT therefore considers that reg 15(2) should be inserted to clarify that no such non-textual visual features may be used.

- 5.12 The insertion of reg 15(3) would ensure that minor, practical markings are not inadvertently excluded. Examples of these markings are provided below. They include:
- (a) Printer markings that are necessary for printing machinery to run automatically (and which are entirely covered when the pack is formed due to being positioned on a flap that is glued beneath another surface):



- (b) A coloured dot spectrum that ensures a high quality of print (particularly important with regard to the required health warning messages). As with the above, these are entirely covered when the pack is formed due to being positioned on a flap that is glued beneath another surface:



- (c) Inconspicuous registration marks that are used for wrappers holding multiple cigarette packs. The barcodes for the individual packs need to be concealed, with a single barcode for the wrapped pack positioned for scanning. This marking ensures the rectangle and barcode on the wrapper is automatically positioned correctly. In addition to this, BAT also requires an inconspicuous alphanumeric code on the wrapper for the purposes of wrapping material identification on the production floor:





## OTHER EXTERIOR ISSUES

### QUANTITIES

5.13 The current draft of reg 22(1) provides that a “cigarette pack must contain only 20 or 25 cigarettes”. We understand that this is not intended to apply to cartons.

5.14 BAT requests that the following subclause be inserted into this regulation:

#### **22 Number of cigarettes in cigarette pack**

- (1) A cigarette pack must contain only 20 or 25 cigarettes.
- (2) A statement of the number of cigarettes in a cigarette pack—
  - (a) may appear on any surface of the pack on which there is a brand name or variant name; and
  - (b) must appear in the same orientation as any required warning or other text on that surface; and
  - (c) must be no larger than 10 point font size.
- (3) A retail package may not contain more than one cigarette pack.

5.15 Without that addition, BAT’s understanding is that manufacturers would still be able to wrap several cigarette packs together into a retail multi-pack. That would counteract the intention of reg 22(1) by permitting the sale of a retail package containing more than 25 cigarettes. It may also lead to discounting behaviour, with consumers paying, or believing they are paying, a lower effective price for the same quantity. BAT considers that the addition of reg 22(3) above would provide greater clarity around this issue.

### WHOLESALE CONTAINERS

5.16 There exists some confusion as to which items are captured by the Regulations. That confusion arises from some definitional complexity in the SFEA, the SFER, and the Regulations.

5.17 BAT asks that reg 4 be amended to exclude wholesale containers which have no exposure to consumers, as follows:

#### **4 Meaning of tobacco package**

- (1) In these regulations, unless the context otherwise requires, **tobacco package** —
    - (a) means a retail package containing 1 or more tobacco products; and
    - (b) includes a carton; and
    - (c) does not include a large wholesale container used for transporting tobacco packages in bulk;
- and

- (d) does not include a wrapper or container containing a single cigar.
- (2) A non-removable adhesive label or sticker securely attached to a tobacco package is part of the tobacco package.
- (3) A wrapper that contains a single tobacco package and is normally removed from the package when the package is opened is not part of the tobacco package.

- 5.18 This amendment would ensure that the Regulations do not capture the large cardboard containers used to transport products from source factories to warehouses and distributors. BAT calls those items “shippers”. An example is shown below:



- 5.19 It is clear that the intention is that any item which contains tobacco products and is sold to consumers should be captured by the Regulations. In other words, in the event that the submission in the previous subsection is not accepted, the Regulations should apply to:
- (a) cigarette packs;
  - (b) twin-packs or multi-packs of cigarettes;
  - (c) cartons of cigarettes; and
  - (d) loose tobacco packs.
- 5.20 It is not at all clear that items which contain tobacco products and are not sold to consumers (such as shippers) should be captured by the Regulations. Shippers could arguably be captured by reg 4(1) as currently drafted (because they are packages which contain tobacco products). However:
- (a) Shippers perform a purely logistical function. They are wholesale transport containers which have no exposure to consumers at all.



- (b) The Australian Regulations only apply to “retail” packaging, so do not capture shippers.
- (c) Shippers which would be fully compliant with the Regulations cannot be delivered through BAT’s current processes. The reasons for this include that the current cardboard material used for shippers is not able to be printed in the high definition required for the relevant statutory warnings. The ink would smudge and result in noncompliant printing. A material of the type used for fully printed cartons would be required to be used. Furthermore, the automatic packing machines deployed in the factories which pack cartons or wrapped bundles of product into the current cardboard shippers would need to be redesigned in order to handle the necessary packing of the newly compliant shippers. In the worst case, where it eventuated that fully compliant shippers could not from a technical manufacturing perspective be produced, it would then not be possible to move product from factory to warehouse to container and through to its final destination in shippers in a compliant fashion.
- (d) Deploying shippers which are printed in full compliance with the Regulations also presents a new security issue. This is because tobacco products are highly valuable and when transporting them in fully printed shippers, the contents (including the particular SKUs) would be immediately visible from a distance and serve as an early alert to would-be thieves. This presents heightened security and safety risks to all persons involved in the end to end logistics and warehousing supply chain whereas current shippers display a discrete black and white label identifying at close range viewing the contents within.
- (e) Requiring shippers to comply with the Regulations would place a significant and entirely unjustifiable burden on manufacturers and raise security risks as referenced above for no discernible benefit. Amending reg 4 to ensure shippers are not captured by these requirements as we request in paragraph 5.17 would also not in any way impair the health related policy objectives of standardised products and packaging.

#### CARTONS AND WRAPPED PACKS

- 5.21 The current draft of reg 13(4) provides that a wrapper which covers more than one individually wrapped item may have a barcode, or be marked with rectangles to conceal the barcodes of the individually wrapped items.
- 5.22 BAT requests that the following changes be made to this regulation (in line with the position in Australia, where the regulations permit the application of a barcode via an adhesive label (reg 2.3.5(3)):

##### **13 Tobacco package wrappers**

- (1) A tobacco package may have a wrapper.
- (2) The wrapper must be transparent and must not be coloured, marked, textured, or embellished in any way.



- (3) To avoid doubt, subclause (2) does not apply to any tearstrip permitted by regulation 14.
- (4) If the wrapper covers more than one individually wrapped item,—
- (a) it may have a rectangular barcode that is coloured Pantone 448C on a Pantone Cool Gray 2C background, or black barcode on white background (and which may be applied by means of a non-removable adhesive label or sticker); and
- (b) it may be marked with a Pantone 448C rectangle to conceal the barcode of each individually wrapped item (which may be applied by means of a non-removable adhesive label or sticker) but the size of the rectangle must be no larger than is necessary to conceal the barcode of each individually wrapped item.

- 5.23 BAT supplies all of its loose tobacco packs and most of its cigarette packs in transparent plastic wrappers containing up to 10 individual packs for transportation by the distributor to retailers across New Zealand.

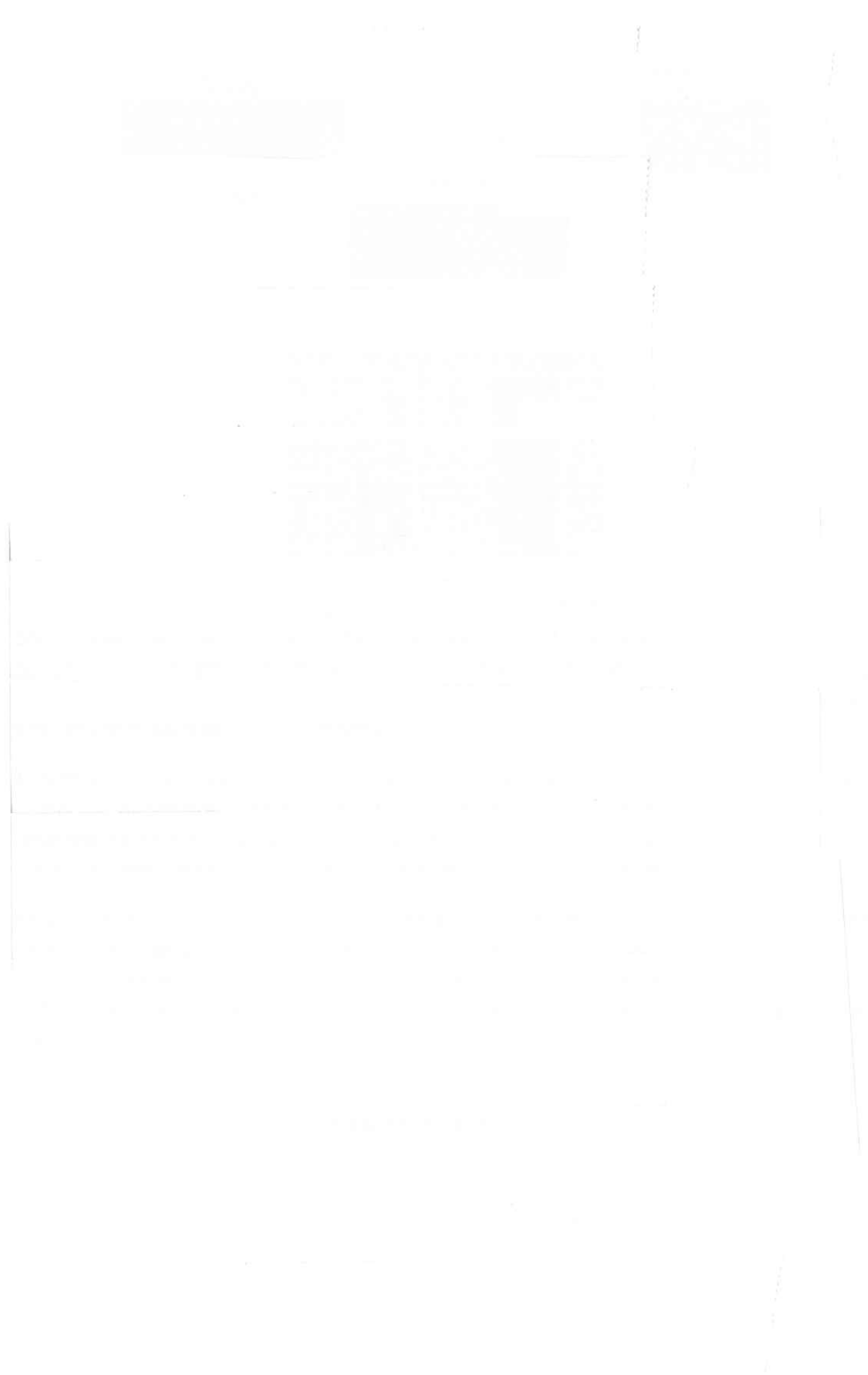


- 5.24 Retailers then break those plastic wrapped units down, and sell the individual loose tobacco packs or cigarette packs to consumers. Consumers do not see these plastic wrapped units distributed to retailers, so they are not “retail” tobacco packages in any real sense.
- 5.25 BAT currently uses a single barcode printed on a non-removable adhesive sticker for the sale to retailers of the plastic wrapped units containing loose tobacco packs. In the near future, BAT intends to adopt the same approach in respect of the sale to retailers of plastic wrapped units containing cigarette packs.
- 5.26 BAT also notes that the requirement for barcodes to appear in Pantone 448C on a Pantone Cool Gray 2C background will create practical difficulties for BAT’s factory which manufactures loose tobacco. This factory currently does not have the capability to print a barcode in these colours. It also goes further than the Australian requirements. This requirement appears disproportionate and unnecessary in order to achieve the standardisation objective. Barcodes are entirely practical in nature. Even in their present form, they could not conceivably constitute a form of advertising of tobacco products. BAT therefore requests that the regulations be amended to permit barcodes to appear in black and white.

**CONFIDENTIAL:**<sup>20</sup>

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<sup>20</sup> This section, consisting of paragraphs 5.27 to 5.37 of this submission, is confidential and commercially sensitive to the BAT Group and consent is therefore not granted to the release of this section under the Official Information Act 1982.





#### IRREGULARITIES

- 5.38 The current draft of reg 23(2)(b) also requires that each surface of a cigarette pack be “flat with no irregularities”. On a strict reading, this could prohibit the use of embossed track and trace codes. As indicated above, BAT regularly utilises embossing for its coding. This is standard market practice and, should reg 19 be clarified in order to allow such techniques, a minor modification to reg 23 would confirm its permissibility.



Embossed Code

- 5.39 BAT therefore requests that the following minor change also be made to this regulation:

**23 Dimensions and features of cigarette packs**

...

(2) The construction of a cigarette pack must conform to the following requirements:

- (a) it must be made of rigid cardboard;
- (b) each surface must be flat with no irregularities, other than those necessary for manufacturing or tracking and tracing purposes; ...

**LINING AND INSERTS**

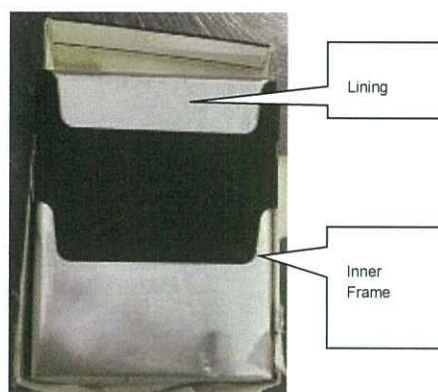
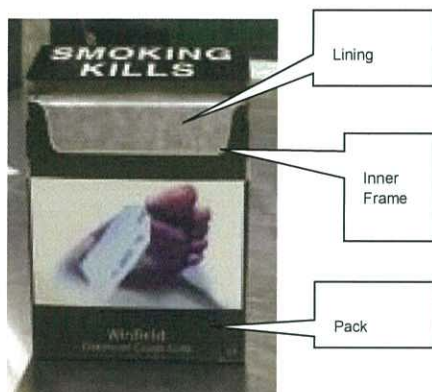
**INNER FRAMES**

- 5.40 BAT requests that the following additional change be made to reg 3:

**insert** means any thing that is placed inside the packaging of a tobacco product, other than—

- (a) the tobacco product; or
- (b) the lining of a cigarette pack that complies with regulation 25; or
- (c) an inner frame made of rigid cardboard that is fully coloured in Pantone 448C.

- 5.41 Absent that change, the current draft definition of “insert” and reg 12 could prohibit the use of inner frames inside cigarette packs. It would not be possible to comply with this restriction given the current industry standard on manufacture of cigarette packs which BAT adopts.
- 5.42 An inner frame is a U-shaped piece of cardboard placed inside a cigarette pack, usually inside the lining, as shown in the images below. It has two purely practical functions:
- (a) To ensure that the pack maintains its necessary shape and rigidity from the time the pack is formed to the time the consumer ultimately disposes of it. Without the inner frame, there is a high chance that the cigarette pack would lose its shape or be damaged whilst being packed with cigarettes in the factory, during transit or while it is being stored/handled (and with a misshapen pack leading to other possible compliance issues under reg 23(2)(b) and (c)); and
  - (b) To ensure that the compliant straight edged flip-top lid can be properly closed. Without a properly closing lid, which relies on the inner frame being present, the manufacturing process would be severely hampered due to frequent machinery stoppages.



- 5.43 The inner frame of a cigarette pack is a standard and essential part of current cigarette packs and is present in all cigarette packs currently sold in New Zealand. Even in their present form, they could not conceivably constitute a form of advertising of tobacco products and there seems to be no good policy basis for prohibiting such purely functional items. BAT therefore requests that reg 3 be amended to ensure the permissibility of the use of inner frames inside cigarette packs.

#### FOIL

- 5.44 The current draft of reg 25 requires cigarette pack lining to be made of foil that is no more than 0.5mm thick, is fully coloured in Pantone 448C, is not textured and is fixed to the inside of the pack, and not easily detachable.
- 5.45 BAT requests the following changes be made to this regulation:

##### 25 Lining on cigarette packs

- (1) A cigarette pack may be lined but only if the lining is—
- (a) ~~made of foil that is~~ no more than 0.5 mm thick; and
  - (b) fully coloured in either silver or Pantone 448C; and
  - (c) not textured, with the exception of small dots or squares embossed into the lining for the purpose of the automated manufacture of cigarette packs, or the packing of cigarettes into cigarette packs, and which must be:
    - (i) equidistant from each other; and
    - (ii) closely spaced; and
    - (iii) of uniform size; and
  - (d) ~~fixed to the inside of the pack and not easily detachable.~~
- (2) However, the embossing of the lining must not:
- (a) except as permitted by subregulation (1)(d)), form a pattern; or
  - (b) form an image or other symbol; or
  - (c) constitute tobacco advertising.

- 5.46 Compliance of BAT's cigarette pack linings with the current draft reg 25(a) and (b) will not be possible as follows, hence the requested amendments in paragraph 5.45:
- (a) It is not at all obvious why the lining must be entirely of foil. For example, the Australian Regulations contemplate linings being made of "foil backed with paper" (s 18(3)(d), reg 2.2.1(4)). In practice, the addition of another material is required to hold the foil together and this is the market standard for cigarette



pack foil linings. Without the addition of another material holding the foil together, the foil would quickly break apart in the manufacturing process given it is run through high speed machines during production.

- (b) Printing foil in Pantone 448C would not be straightforward. This particular colour has an especially high pigment content and, based on BAT's investigations to date, there is a high likelihood that the colour would come off the foil and smudge during the manufacturing process, revealing the silver foil base material below which would then be non-compliant with the mandated colour requirement. It is highly likely to also transfer onto other materials (including pack and inner frame) of the product, thereby causing a number of quality control issues. The foil lining also comes into direct contact with the product itself and thereby risks the 448C pigment leeching onto the product, rendering it unsaleable. This further adds to the complexity of having this uniquely-coloured Pantone 448C foil. There is no such colour requirement in Australia, where silver foil is permitted.

5.47 BAT would be happy to provide further information if that would assist the consideration of this important issue by the Ministry.

5.48 The following requirements under reg 25 present practical problems, hence the additional requested amendments in paragraph 5.45:

- (a) Part of BAT's manufacturing process for foil results in "pin embossing", consisting of a pattern of small dots. This is a purely practical requirement that allows the machinery to run smoothly. While manufacturing foil without embossing is not strictly impossible, it would necessitate entirely new parts to be obtained and assembled into the machine. It is standard market practice to have some form of embossing. The Australian Regulations acknowledge the purely practical role of some forms of texture on foil linings, providing that lining may be textured for the purpose of its automated manufacture (reg 2.1.3). The Ministry itself has acknowledged in its Consultation Document that some additional marks and features may be needed to assist with manufacturing and packaging processes. The unnecessary requirement that the foil not be textured would prohibit an important practical feature. An example of pin embossing is shown below:



- (b) Fixing lining to the cardboard of a cigarette pack so that it is “not easily detachable” is also problematic. Neither foil that is less than 0.5 mm thick, nor cardboard of the thickness used in cigarette packs, are robust materials. Regardless of the process used, it will always be possible to detach the lining if force is applied. Whether or not it is “easily” detachable is subjective, making certainty of compliance very difficult. Further, the lining on virtually all cigarette packs, regardless of manufacturer, will contain a detachable front panel with perforated edges that is designed to be completely removed and discarded the first time the product is accessed (see also paragraph 5.50). The pictures below indicate the practicality of having a detachable front panel, without which the consumer will not be able to reasonably access the product:



- (c) This is a purely practical feature to ensure that the correct moisture level in the product is maintained while the product is transported and stored and so it is then received by the consumer in the expected condition. Under the current drafting of reg 25(d), even this feature may be non-compliant, creating issues for manufacturers and consumers alike.

5.49 Those requirements do seem to go much further than is necessary to achieve the standardisation objective (and further than the Australian Regulations). Linings



necessarily sit on the inside of cigarette packs. They are not usually visible to consumers, and have no marketing potential.

#### REMOVEABLE LINING SECTION

- 5.50 As indicated above, the lining on virtually all cigarette packs contains a detachable section with perforated edges that is designed to be completely removed and discarded the first time the product is accessed. Regulation 17(2)(e), as currently drafted, could have the effect of inadvertently prohibiting these legitimate features which are common to most cigarette packs on the market.
- 5.51 BAT requests the following minor change be made to this regulation to clarify that the features are not captured:

**17 No feature in tobacco package that changes appearance after sale**

- (1) A tobacco package must not have any feature that is designed to alter the package after sale.  
(2) A feature described in subclause (1) includes, without limitation, any of the following:  
(a) heat activated inks;  
(b) inks or embellishments designed to appear gradually over time;  
(c) inks that appear fluorescent in certain light;  
(d) panels designed to be scratched or rubbed to reveal an image or text;  
(e) removable tabs (excluding sections of lining designed to be removed and discarded the first time the tobacco product is accessed);  
(f) fold-out panels.

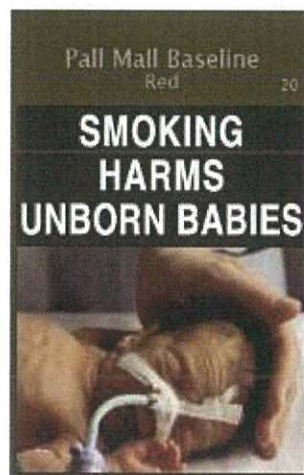
#### HEALTH WARNINGS

##### PLACEMENT OF HEALTH WARNINGS

- 5.52 While supportive of health warnings in principle, BAT is opposed to regulations 11, 24 and 39, which will result in significant and disproportionate increases in the size of GHWs on tobacco packages. BAT has, however, chosen to focus in this submission on constructive engagement with the Ministry on practical matters relating to the draft Regulations.
- 5.53 The current draft Regulations prescribe that “required warnings” cover at least 75% of the front of a cigarette pack (reg 24(a)) or a loose tobacco pack (reg 11(a)). Currently, the SFER suggest that such warnings should occupy the top part of the front of the pack (see front layout 1 in Part 1 of Schedule 3). That suggests that the top 75% of the front of packs would be occupied by warnings, with the brand and variant being placed in the lower 25%.
- 5.54 BAT requests that, when the Regulations are integrated with the SFER, care is taken to amend the Schedules to the SFER such that the brand and variant may feature on the flip-top lid of the pack and the top 25% of the front of the pack with the 75% warning appearing below. BAT notes that GHWs are permitted to be positioned at the bottom of cigarette packs in a number of other countries, including Switzerland, United Arab Emirates, Kuwait, Jordan, the Philippines, Turkey, Chile, Panama, Mauritius, Costa Rica, Uruguay, and Russia.



- 5.55 This is important because the brand and variant being placed in the lower 25% of the pack would present real practical difficulties for retailers. Many products are stored in push fed storage units located behind the retail display screens. The top 25% of the pack (i.e. the flip-top lid) is the only clearly visible part of the pack.



- 5.56 If the required warnings occupy the top 75% of the pack, a retailer who is asked for a particular brand or variant would not be easily able to locate the product within the storage unit (especially given the small, standardised nature of the brand and variant name). That would have significant implications in terms of efficiency of service, and in terms of in-store security – many retailers are small stores with minimal staff levels,

so it would be easy for criminals to distract staff for extended periods of time. BAT notes that the Australian approach does not suit New Zealand in this regard, as the latter has a higher number of small-scale independent retailers that stock tobacco products. In addition, Australia has legislation in place limiting the size of a tobacco unit to one square meter, and with only one point of sale per store. This mitigates the difficulties faced by retailers in locating the product which, in turn, minimises the time the store-keeper's attention is diverted away from the store.

#### ROTATION OF HEALTH WARNINGS

- 5.57 The current draft Regulations do not propose to make any changes to reg 11 of the SFER, which provides for annual rotation of health warnings. The Ministry has explained that it favours standardisation in order to avoid imagery detracting from the impact of health warnings. Following standardisation, there will be no such alleged distraction. Further, under the current draft Regulations health warnings will increase to cover at least 75% of the principal surfaces of tobacco packages.
- 5.58 BAT requests that, when the Regulations are integrated with the SFER, reg 11 of the SFER is redrafted to remove the requirement for annual rotation of health warnings. This would mean that, instead of requiring that seven images be used in a calendar year, followed by a new seven the following year, all fourteen images would be used in each calendar year. The burden should fall on manufacturers alone to ensure even printing of all warnings each calendar year, freeing up both retailer and Customs resources. This would bring the requirements in line with those of a number of other countries, including Singapore, Denmark, Spain, Malaysia, Fiji, Indonesia, Turkey, Russia and the Ukraine, all of which utilise fourteen warnings without rotation.
- 5.59 Removing the need to take packages with previous GHWs off the market and to simply allow these to be 'sold through' would have no deleterious impact on health policy objectives but would reduce the burden on small retailers and distributors to remove products from market and to re-export such product claiming drawback of duty from Customs.
- 5.60 Standardisation as contemplated by the Regulations removes the justification for annual rotation of health warnings. Continuing to insist on annual rotation simply increases the unnecessary complexity of compliance for no policy benefit. The complexity of such compliance impacts not only the manufacturer and distributor but also the retailer and indeed adds to Customs' costs due to an increased burden on resources in processing drawback claims.

## 6 CIGARETTES

### PHYSICAL REQUIREMENTS

**CONFIDENTIAL:**<sup>24</sup>

<sup>24</sup> This section, consisting of paragraphs 6.1 to 6.5 of this submission, is confidential and commercially sensitive to the BAT Group and consent is therefore not granted to the release of this section under the Official Information Act 1982.



## LENGTH

- 6.6 The current draft of reg 20(c) requires that a cigarette be no longer than 95 mm.
- 6.7 BAT requests the following additional changes be made to this regulation:

### **20 Dimensions and features of cigarettes**

A cigarette must conform to the following requirements:

- (a) it must be cylindrical ~~with flat ends~~;
  - (b) it must be no less than 7 mm and no more than 9 mm in diameter;
  - (c) it must be no ~~shorter than 70 mm and no~~ longer than 95 mm;
  - (d) its enclosing paper must be coloured plain white;
  - (e) its filter tip, if any, must be coloured plain white or imitation cork.
- 6.8 A minimum length for cigarettes is consistent with the stated policy objective of standardising dimensions to prevent the sale of different cigarette sizes in an attempt to appeal to particular market segments. A lower length limit of 70mm would not prohibit any existing products in the market in New Zealand but would provide certainty for both manufacturers and the Government in relation to the intended approach to standardise the length of cigarettes.

## CIGARETTE TRACK AND TRACE CODES

- 6.9 The current draft of reg 21(2)(c) requires that the printed track and trace code be coloured Pantone 448C, and conform to the requirements currently proposed under reg 19.
- 6.10 BAT requests the following changes be made to this regulation:
- ### **21 Printed codes on cigarettes**
- (1) A cigarette may have a printed code for the purposes of tracking and tracing tobacco products.
  - (2) The printed code must—
    - (a) appear horizontally across the cigarette on one line; and
    - (b) be within 10 mm of the cigarette's filter, or one end of the cigarette, if no filter; and
    - (c) be coloured Pantone 448C or black; and
    - (d) be in Lucida Sans typeface no larger than 8 point font size; and
    - (e) may be a barcode, alphanumeric code, or any such code as is reasonably required to enable efficient tracking and tracing; conform to the requirements of regulation 9(e); and
    - (f) convey no other information to the consumer.
- 6.11 If reg 21 is not amended in line with paragraph 6.10 above, it will not be possible for BAT to comply with the regulation using existing processes in light of the fact that our suppliers do not currently offer Pantone 448C cigarette dye ink.

<sup>26</sup> See "Evidential Developments in relation to Standardised Packaging – The Australian Experience", July 2016.

- 6.12 As discussed at 5.6 above, track and trace codes are already subtle in appearance and entirely practical in nature. There is no obvious reason why the code must be printed in Pantone 448C rather than black. Requiring cigarette track and trace codes to comply with this would place a significant and entirely unjustifiable burden on manufacturers for no discernible benefit. Australia does not impose such an unnecessary requirement (where reg 3.1.2(2)(b)(5) requires that codes are printed in black).
- 6.13 BAT also repeats the submissions made above at paragraph 5.7 regarding the inefficiency of permitting only alphanumeric coding. It therefore requests that the regulation be amended to reflect reg 19 (as modified above).



- 6.14 As indicated above at paragraph 5.8, BAT is also aware that, should the Government choose to implement the Protocol to Eliminate Illicit Trade in Tobacco Products, substantial changes to track and trace processes would be required. While the Protocol appears to be primarily aimed at tobacco packaging, BAT is concerned that there may also be modifications to track and trace requirements for individual products. Requiring it to incur difficulties in complying with reg 21(2)(c) in the knowledge that any new track and trace requirements may be completely reconfigured within just a few years (if the Protocol is implemented) creates a disproportionate burden that is entirely inconsistent with the principles of best practice regulation. This is a further reason not to impose heavily prescriptive regulations relating to track and trace until the position regarding the Protocol has been confirmed.

## 7 LOOSE TOBACCO PACKS

### POUCHES

#### DIMENSIONS

- 7.1 The current draft of reg 30(1) provides that a loose tobacco pack must be a “rectangular pouch”, but does not prescribe specific dimensions.
- 7.2 BAT requests that the following changes be made to this regulation:

##### **30 Dimensions and features of loose tobacco packs**

(1) A loose tobacco pack must conform to the following requirements:

(d) measured as a closed pack, prior to retail sale, it must be:

- (i) no less than 112 mm and no more than 193 mm on the longer edge of the pack; and
- (ii) no less than 57 mm and no more than 83 mm on the shorter edge of the pack; and
- (iii) no more than 28 mm deep.

- 7.3 Without such specific dimensions in place, manufacturers would be permitted to use packs in varying sizes, thereby defeating the standardisation purpose and potentially allowing some products to be more prominent than others.

#### MATERIALS

- 7.4 The current draft of reg 30(1)(a) requires that a tobacco pack be made from “soft plastic”.

- 7.5 BAT requests the following changes be made to this regulation:

**30 Dimensions and features of loose tobacco packs**

(1) A loose tobacco pack must conform to the following requirements:

(a) it must be a rectangular pouch made from ~~soft plastic~~ flexible material:

- 7.6 The wording of the current draft reg 30(1)(a) suggests that the use of any material other than “soft plastic” in the tobacco pack is prohibited. This may have the effect of banning all but one of BAT’s current tobacco packs, along with a significant proportion (if not all) of the tobacco packs produced by other manufacturers. That creates an unnecessarily wide prohibition.
- 7.7 A vast proportion of loose tobacco packs currently sold in New Zealand (by both BAT and other manufacturers) are constructed from a combination of plastic and paper elements. “Pluvius 1” pouches (the supplier name for this packaging format) are comprised of a printed paper inner which is heat-sealed between a layer of transparent Cast Poly Propylene film (thermoplastic polymer) and Polyethylene film. In this packaging format, the paper inner is required to provide structural integrity to the pouch (equivalent to an inner-frame in a cigarette pack) to enable the pouch to be formed in the manufacturing process and provide protection to the product. The current branded and health warning elements are printed directly onto the paper insert that is visible through the transparent Cast Poly Propylene film.





- 7.8 The Australian Regulations explicitly provide an exception to the general prohibition on “inserts” to allow those inserts that are “used to avoid damage to the tobacco product during transportation or storage” (reg 2.6.2(1)). The draft Regulations provide no such exception. A slight adjustment to the wording of reg 30(1)(a) as set out above would make it clear that loose tobacco packs constructed in this way are permissible and does not detract in any way from health policy objectives.

## SURFACES

- 7.9 The current draft of reg 30(1)(b) requires that each surface of the tobacco pack be flat with no irregularities.
- 7.10 BAT requests the following changes be made to this regulation:
- 30 Dimensions and features of loose tobacco packs**  
(1) A loose tobacco pack must conform to the following requirements:  
(a) it must be a rectangular pouch made from soft plastic-flexible material;  
(b) each surface must be flat with no irregularities, with the exception of the functional closing mechanism: ...
- 7.11 “Surface” is not defined in the Regulations, the Bill, the SFEA or the SFER. Reg 30(2) also provides that the opening flap of a tobacco pack may be sealed by a re-sealable transparent tab. The current drafting of reg 30(1)(b) means that BAT is unsure whether the method by which its loose tobacco packs currently seal, using a feature known as Ziploc, would comply.
- 7.12 Ziploc allows consumers to reseal the pack after accessing the product, ensuring that it remains fresh and secure. While the resealing function itself is wholly concealed within the pack, it does create a slightly raised ridge along one of the exterior surfaces. Ziploc is not a marketing feature designed to grow demand for tobacco. It was developed for a purely practical purpose. It provides a practical function and a means by which to discourage BAT’s customers from switching to alternative products including black market products. The standardised packaging requirements should not prevent legitimate competition on such practical matters.



## LINING

7.13 Reg 30(1)(c) provides that the lining (if any) must be transparent and not coloured.

7.14 BAT requests the following changes be made to this regulation:

### **30 Dimensions and features of loose tobacco packs**

(1) A loose tobacco pack must conform to the following requirements:

...

(c) its lining (if any) must—

(i) be transparent or coloured plain white ~~and not coloured~~; and

(ii) be made from flexible material of plastic.

7.15 Reg 30(1)(c) as currently drafted presents difficulties for BAT and other manufacturers given that, as discussed above, the vast proportion of loose tobacco packs currently sold in New Zealand are constructed from plastic and paper elements (see further paragraph 7.7 for a description of these “Pluvius 1” pouches). The underside of the opening flap of these loose tobacco packs displaying the paper inner which provides structural integrity to the pack is arguably a “lining” for the purposes of reg 30(1)(c). Because it is paper, this lining cannot be transparent as required. It can, however be coloured plain white.

7.16 Furthermore, these Pluvius 1 pouches’ lining are not made simply of “plastic” as required by the reg 30(1)(c). They are made of a printed paper inner which is heat-sealed between a layer of transparent Cast Poly Propylene film (thermoplastic polymer) and Polyethylene film. A slight adjustment to the wording of reg 30(1)(c) as set out above would make it clear that loose tobacco packs constructed in this way are permissible.



## STICKERS

7.17 The current draft of reg 32 provides that a loose tobacco pack may display any required warning by way of a non-removable adhesive label.



- 7.18 BAT requests the following changes be made to this regulation:

**32 Non-removeable adhesive labels**

~~(1) A loose tobacco pack may have one or more non-removeable adhesive labels affixed to it in order to display any required warning.~~

~~(2) In subclause (1), an adhesive label is non-removeable if it is fastened firmly to the tobacco pack so as not to be easily removable without significant destruction of the pack.~~  
A loose tobacco pack may not employ adhesive labels in order to display required warnings.

- 7.19 BAT considers that manufacturers should be required to comply with all provisions of the SFEA, the SFER, and the Regulations. This means compelling manufacturers to print fully compliant warnings on their packaging. If this change is not made to reg 32, there would be an unnecessary inconsistency between the rules for cigarette packs and loose tobacco packs, and an undermining of the Government's standardisation objectives. This change would also have the benefit of increasing cost and complexity for suppliers of black market products.

## 8 CIGARS

### CIGAR LABELS

- 8.1 The current draft of reg 40 provides that non-compliant markings on cigar packs and cigar tubes must be concealed by a firmly fixed adhesive covering.

- 8.2 BAT requests the following changes be made to this regulation:

**40 Coverings on cigar packs or tubes**

~~(1) If a marking on a cigar pack or cigar tube does not comply with the Act or the regulations, the marking must, to the extent it does not comply, be concealed by a firmly fixed adhesive covering.~~

~~(2) The covering described in subclause (1) must not convey any information to the consumer other than a printed code for the purposes of tracking and tracing tobacco products.~~

Markings on cigar packs or cigar tubes that do not comply with the Act or the regulations may not be concealed with an adhesive covering.

- 8.3 BAT considers that manufacturers should be required to comply with all provisions of the SFEA and the Regulations. This means expecting manufacturers to print fully compliant warnings on their packaging, and not permitting the use of adhesive coverings to disguise non-compliant markings.
- 8.4 To compel full compliance in some areas of tobacco packaging but permit non-compliance in others creates inconsistencies within the requirements and undermines the Government's standardisation objectives. It would also unfairly prejudice those manufacturers who have already expended considerable money ensuring packaging fully conforms to the requirements.



## SCHEDULE

The following table cross-references the questions in the Consultation Document to sections of this Response.

Question	Response
1. Do you agree with the proposals to limit the number of cigarettes in a pack to either 20 or 25, and the amount of loose tobacco to 30 grams or 50 grams?	No objection to these proposals.
2. Do you agree with the proposals to restrict the dimensions of cigarette sticks by setting minimum and maximum length and diameter?	See paragraphs 6.6 to 6.8.
3. Do you agree with the proposals setting minimum and maximum height, width and depth of cigarette packs, consistent with the limits on the number and size of the cigarette sticks they contain?	See paragraphs 5.27 to 5.37.
4. Do you agree with the proposal that loose tobacco should be sold only in rectangular pouches made of soft-plastic?	See paragraphs 7.1 to 7.8.
5. Do you agree with the proposals to standardise cigar packaging, including the proposal to limit the number of cigars that may be sold in a pack?	See paragraphs 8.1 to 8.4.
6. Should the regulations include a general provision to set a minimum size for all tobacco packages, including cigar packages?	See paragraphs 5.27 to 5.37 and 7.1 to 7.3.
7. Do you have any other suggestions for regulatory requirements to standardise the shape and size of tobacco products and tobacco product packages?	See paragraphs 5.27 to 5.37 and 7.1 to 7.3.
8. Do the regulations need to allow for any other anti-counterfeiting marks?	No objection to other anti-counterfeiting marks being allowed for in the Regulations.

Question	Response
9. If additional anti-counterfeiting marks are to be allowed, how could these be regulated to ensure they do not communicate to consumers or have any effect that might undermine the intention of standardised packaging?	No comment.
10. Do the regulations need to permit any other marks or features on tobacco product packages to allow for automated manufacturing and packaging processes?	See paragraphs 5.2 to 5.8, 5.38 to 5.49 and 6.9 to 6.13.
11. Should the regulations allow for the country of manufacture to be printed on tobacco products or packages?	No objection to the Regulations providing for country of manufacture to be printed on tobacco products or packages.
12. Are there any additional features within the scope of the regulation-making powers in the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill that might increase the effectiveness of standardising tobacco products and packaging? If so, what is the rationale and can you provide supporting evidence?	See submissions above.