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**From:** Withheld under section 9(2)(a)  
**Sent:** Tuesday, 21 February 2012 3:00 p.m.  
**To:** Withheld under section 9(2)(a)  
**Subject:** RE: Plain Packaging and the TTMRA

Hi Withheld under section 9(2)(a)

Looking below I think the best way to respond would be along the following lines:

Processes and obligations re packaging of tobacco products

Current situation: Australia proposes to put in place its plain packaging initiative under a specific Act – which has been drafted to automatically invoke up a temporary exemption under the TTMRA.

Comment: NZ does not have to do anything in this situation.

- The Australian instrument removes the defence under the TTMRA that otherwise would allow NZ labelling/packaging to be accepted. So no NZ packaging could be sold in Australia.
- The defence still operates in NZ so Australian plain packaging would continue to be able to be sold in NZ.

The temporary measure lasts for 12 months – i.e. if the Act takes effect in Dec 2012 then the TE lasts until Dec. 2013. It is then possible to continue the temporary measure for a further 12 months ( i.e. to Dec 2014) as long as 2/3rds of the participants agree to this. And further temporary exemptions could also be available. Australia would need to initiate any extensions to the temporary exemption which would be put in place in Australia by way of Order in Council - NZ (if required to do so to meet the 2/3 threshold - would signal its agreement to the extension by way of Gazette Notice).

Looking forward:

NZ continues to consider whether or not it will introduce plain packaging. There is actually no time limit as long as the temporary exemptions are operational –i.e. in place and extended as appropriate.

Depending on the decision made there are two scenarios:

- If deciding against proceeding with plain packaging, New Zealand would need to advise Australia of this outcome. Australia would then need to assess whether or not it wanted to seek a permanent exemption. This would require agreement from all participants. Again the action would be with Australia – they would put in place regulations by way of Order in Council and NZ would signal its agreement through gazetting the Australian Order. NZ could elect to put in place its own permanent exemption if it didn't want Australian plain packaging to be sold in NZ (would need to regulate) or it could allow the exemption to operate for Australia only. It would be expected that PMs would exchange letters signalling agreement to this approach.

- If deciding to proceed with plain packaging the temporary exemption, or extension thereof, could simply be allowed to lapse or be repealed at the time the NZ legislation came into force. Again this action would be up to Australia to initiate. (Note: this approach presumes that there will be sufficient similarity between the Australian and NZ regimes to allow for mutual recognition.)