
Plain packaging of tobacco products

EVIDENCE, DESIGN AND IMPLEMENTATION



World Health
Organization

Plain packaging of tobacco products

EVIDENCE, DESIGN AND IMPLEMENTATION

WHO Library Cataloguing-in-Publication Data

Plain packaging of tobacco products: evidence, design and implementation.

1.Tobacco Products. 2.Product Packing. 3.Tobacco Industry – legislation. 4.Health Policy. 5.Smoking – prevention and control. 6.Tobacco Use – prevention and control. I.World Health Organization.

ISBN 978 92 4 156522 6 (NLM classification: WM 290)

© World Health Organization 2016

All rights reserved. Publications of the World Health Organization are available on the WHO website (<http://www.who.int>) or can be purchased from WHO Press, World Health Organization, 20 Avenue Appia, 1211 Geneva 27, Switzerland (tel.: +41 22 791 3264; fax: +41 22 791 4857; email: bookorders@who.int).

Requests for permission to reproduce or translate WHO publications –whether for sale or for non-commercial distribution– should be addressed to WHO Press through the WHO website (http://www.who.int/about/licensing/copyright_form/index.html).

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the World Health Organization concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. Dotted and dashed lines on maps represent approximate border lines for which there may not yet be full agreement.

The mention of specific companies or of certain manufacturers’ products does not imply that they are endorsed or recommended by the World Health Organization in preference to others of a similar nature that are not mentioned. Errors and omissions excepted, the names of proprietary products are distinguished by initial capital letters.

All reasonable precautions have been taken by the World Health Organization to verify the information contained in this publication. However, the published material is being distributed without warranty of any kind, either expressed or implied. The responsibility for the interpretation and use of the material lies with the reader. In no event shall the World Health Organization be liable for damages arising from its use.

Printed in the Philippines

Contents

Executive summary	vii
Introduction	1
<hr/>	
Part 1. Plain packaging: definition, purposes and evidence	3
1.1 A working definition of plain packaging	4
1.2 Purposes of plain packaging	8
1.3 The evidence base underlying plain packaging	10
1.3.1 The attractiveness of tobacco products and the advertising function of branding	11
1.3.2 Misleading tobacco packaging	12
1.3.3 The effectiveness of health warnings	13
1.3.4 The prevalence of tobacco use	13
1.3.5 Expert reviews of the evidence	15
1.3.6 Conclusions	18
Additional resources	19
<hr/>	
Part 2. Policy design and implementation	21
2.1 The policy design process	22
2.2 Implementation of plain packaging	25
2.3 Compliance and enforcement	32
2.3.1 Delayed compliance and penalties for non-compliance	33
2.3.2 Sleeves, stickers, inserts and other devices	34
2.3.3 Sale in the absence of packaging	35
Additional resources	37
<hr/>	
Part 3. Legal issues	39
3.1 Domestic law	40
3.2 International law	42
3.2.1 World Trade Organization law	43
3.2.2 International investment law	47
3.3 Strengthening governments’ legal positions	49
3.3.1 General	49
3.3.2 The policy process	50
3.3.3 Recommendations on policy design	52
3.4 Conclusion	54
Additional resources	55
<hr/>	
Part 4. Other tobacco industry objections to plain packaging	57
4.1 Plain packaging and illicit trade?	58
4.2 Plain packaging and prices?	59
4.3 Plain packaging and retailers?	60
Additional resources	61
<hr/>	
Endnotes	62

Navigating the document

PART 1 Plain packaging: definition, purposes and evidence

1.1 A working definition of plain packaging

One of the definitions of plain packaging in the WHO Framework Convention is:

“Measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging)”
- Article 11 Guidelines
- Section 1.1, page 4

1.2 Purposes of plain packaging

Plain packaging serves several purposes, including:

-  Reducing the attractiveness of tobacco products
-  Eliminating the effects of tobacco packaging as a form of advertising and promotion
-  Addressing package design techniques that may suggest that some products are less harmful than others
-  Increasing the noticeability and effectiveness of health warnings
- Section 1.2, page 8

1.3 The evidence base underlying plain packaging

A large body of empirical evidence provides strong evidence to justify introduction of plain packaging.

- The attractiveness of tobacco products and the advertising function of branding
- Section 1.3.1, page 11
- Misleading tobacco packaging
- Section 1.3.2, page 12
- The effectiveness of health warnings
- Section 1.3.3, page 13
- The prevalence of tobacco use
- Section 1.3.4, page 13
- Expert reviews of the evidence
- Section 1.3.5, page 15

PART 2 Policy design and implementation

2.1 The policy design process

The policy design process will differ from one jurisdiction to another. In each jurisdiction that has passed plain packaging into law, a careful, detailed and prolonged process of policy design was undertaken.

Several guidelines, recommendations, policy questions and other considerations are outlined.
- Section 2.1, page 22

2.2 Implementation of plain packaging

A number of WHO Member States have implemented plain packaging laws. Australia’s approach is described in this section, and differences are noted from the approaches to be adopted by Member States of the European Union.
- Section 2.2, page 25

2.3 Compliance and enforcement

Compliance and enforcement are important considerations in designing a plain packaging policy. Several issues should be taken into account:

- Delayed compliance and penalties for non-compliance
- Section 2.3.1, page 33
- Sleeves, stickers, inserts and other devices
- Section 2.3.2, page 34
- Sale in the absence of packaging
- Section 2.3.3, page 35

PART 3 Legal issues

3.1 Domestic law

There are limits on the extent to which it is possible to generalize about the legal issues associated with plain packaging in different jurisdictions. Despite these limitations, it is possible to identify broadly the types of domestic legal claims that tobacco companies threaten or bring against plain packaging. Examples of invoked laws include:

- Laws that protect private property rights, including trademarks
- Laws that protect commercial speech and rights to conduct business
- Section 3.1, page 40

3.2 International law

Tobacco companies often rely on arguments about the purported impacts of international trade and investment agreements in attempts to resist domestic regulation. Disputes relating to several treaties are discussed in more detail:

- World Trade Organization law
- Section 3.2.1, page 43
- International investment law
- Section 3.2.2, page 47

3.3 Strengthening governments’ legal positions

Governments can take several steps to strengthen their legal positions. In general, these include:

- Defining the regulatory objectives of plain packaging in a way that is linked to the evidence and to the WHO FCTC.
- Ensuring that plain packaging is implemented as part of a comprehensive set of tobacco control measures.
- Ensuring flexibility in the law to permit amendment if necessary.
- Adopting a whole-of-government approach to policy design, implementation, enforcement and evaluation.
- Section 3.3.1, page 49

Further policy recommendations relating to the policy process and design are made.
- Sections 3.3.2 and 3.3.3, page 50

PART 4 Other tobacco industry objections to plain packaging

4.1 Plain packaging and illicit trade?



There is no rational basis upon which to argue that plain packaging will increase illicit trade.
- Section 4.1, page 58

4.2 Plain packaging and prices?



Governments can address product prices through tax and price measures.
- Section 4.2, page 59

4.3 Plain packaging and retailers?



Retailers can quickly adapt to plain packaging, with product retrieval times returning to normal soon after implementation.

Plain packaging represents an incremental change to be used as part of a comprehensive approach to tobacco control, and not the dramatic policy change suggested by industry. Furthermore, in countries with strong population growth reduced prevalence of tobacco use does not necessarily translate into reduced total sales.
- Section 4.3, page 60

Executive summary

In 2012, Australia became the first WHO Member State to implement laws requiring plain (standardized) packaging of tobacco products. Since then, France, Ireland and the United Kingdom of Great Britain and Northern Ireland (UK) have passed laws to implement plain packaging and several other WHO Member States have initiated legislative processes with the same goal. This legislative activity has generated considerable demand for information from WHO Member States and the public health community more broadly. WHO Member States and civil society groups have published a substantial body of information on implementation of plain packaging at the national level, including with respect to the tobacco industry's objections to the policy. This publication seeks to build upon that important work, to describe developments at the country level and to offer guidance for other WHO Member States that are considering implementing plain packaging.

Plain packaging is distinct from other packaging and labelling measures, such as large graphic health warnings. This publication defines plain packaging in line with guidelines for implementation of Articles 11 and 13 of the WHO Framework Convention on Tobacco Control (WHO FCTC). The Guidelines for Implementation of Article 11 (Packaging and labelling of tobacco products) define plain packaging as “measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging)”. The Guidelines for Implementation of Article 13 (Tobacco advertising, promotion and sponsorship) describe plain packaging in the following terms “black and white or two other contrasting colours, as prescribed by national authorities; nothing other than a brand name, a product name and/or manufacturer’s name, contact details and the quantity of product in the packaging, without any logos or other features apart from health warnings, tax stamps and other government-mandated information or markings; prescribed font style and size; and standardized shape, size and materials. There should be no advertising or promotion inside or attached to the package or on individual cigarettes or other tobacco products.”

When viewed in the context of the WHO FCTC, and particularly Articles 11 and 13, plain packaging serves several purposes, including:

1. reducing the attractiveness of tobacco products;
2. eliminating the effects of tobacco packaging as a form of advertising and promotion;
3. addressing package design techniques that may suggest that some products are less harmful than others; and
4. increasing the noticeability and effectiveness of health warnings.

As the WHO FCTC recognizes, tobacco control relies upon implementation of comprehensive multisectoral measures that work together in a complementary way. In this context, plain packaging, itself a demand-reduction measure, complements or builds upon

other measures designed to reduce demand for tobacco products, such as mandatory health warnings and comprehensive restrictions on tobacco advertising, promotion and sponsorship. Plain packaging is not a panacea for the consequences of tobacco consumption, but provides an incremental step that builds upon other policies.

A large body of empirical evidence in the form of experimental studies, surveys and focus group studies provides strong evidence to justify introduction of plain packaging and to support the conclusion that the policy is apt to achieve the objectives identified. Three recent systematic reviews of the evidence support this conclusion, as does early evidence from Australia, which is consistent with the conclusion that plain packaging is an effective public health intervention.

Although plain packaging has certain core elements, implementation may take slightly different forms in different jurisdictions. This variation may be due to different policy choices in the design of the measures, or differences in the context in which the measures are implemented. Where plain packaging is to be implemented, the WHO FCTC and its guidelines:

- imply that plain packaging should apply to all categories of tobacco products;
- recommend that brand names and product names displayed in a standard colour and font style should be the only form of logo, colour, brand image or promotional information on packaging;
- recommend that design features that make tobacco products more attractive to consumers, such as animal or other figures, “fun” phrases, coloured cigarette papers, attractive smells, novelty or seasonal packs, should be addressed in plain packaging laws;
- recommend that the appearance of tobacco products (as opposed to retail packaging) should be standardized;
- recommend that adhesive labels, stickers, cases, covers, sleeves, wrapping and promotional inserts and onserts do not obscure, obliterate or undermine health warnings and messages (and by implication, do not undermine the objectives of plain packaging); and
- recommend that time allocated for implementation of packaging and labelling measures need only be enough to allow manufacturers and importers to organize the printing of new packages.

Beyond these core elements of plain packaging, additional policy questions may include:

- how other plain or standardized aspects of retail packaging must appear, including colours and finish (gloss or matt);
- the extent to which differences across tobacco product categories should affect application;
- the extent to which, and in what form business or company names may appear on packaging;
- how plain packaging will be enforced, including who will be responsible for enforcement and what penalties will be imposed for non-compliance by different actors in the supply chain, such as importers, manufacturers and retailers; and
- whether repackaging of tobacco products after importation should be permitted as a means of meeting the requirements of a plain packaging law.

The design of a plain packaging measure is also closely related to, and affected by, other packaging and labelling measures. Specific issues for consideration include:

- the size of health warnings;
- where health warnings are located on product packaging, such as the top of packaging;
- how misleading elements of packaging, including descriptors, marks and symbols, are addressed;
- how information on constituents and emissions, including misleading information about tar and nicotine yields, is addressed;
- how information on ignition propensity is addressed;
- what information about smoking cessation, if any, is included on product packaging;
- whether tax stamps or markings for purposes of tracking and tracing tobacco products are used on product packaging, including where and how they are placed;
- how barcodes may appear on packaging; and
- how any other government-mandated information may appear on packaging.

Plain packaging laws in Australia, Ireland and the UK have also been the subject of legal challenges by the tobacco industry. Australia successfully defended a domestic constitutional law claim concerning plain packaging, as well as a claim under a bilateral investment treaty. At the time of writing, Australia is still defending claims under the law of the World Trade Organization (WTO) by Cuba, the Dominican Republic, Honduras and Indonesia. Ireland and the UK are each defending claims before their domestic courts that invoke elements of European Union law.

The tobacco industry’s objections to evidence-based tobacco control measures are not new. For many governments, litigation with respect to tobacco control laws is also not new. Nonetheless, governments designing plain packaging measures should be aware of the existing litigation and be aware that there are several approaches that may strengthen or reinforce their legal positions under both domestic and international laws. These include:

General

1. defining the regulatory objectives of plain packaging in a way that is linked to the evidence and to the WHO FCTC;
2. ensuring that plain packaging is implemented as part of a comprehensive set of tobacco control measures;
3. ensuring flexibility in the law to permit amendment if necessary; and
4. adopting a whole-of-government approach to policy design, implementation, enforcement and evaluation.

The policy process

1. gathering the best available evidence;
2. if possible, testing the efficacy of different approaches to plain packaging;
3. respecting due process rights in the policy development process in accordance with national law and Article 5.3 of the WHO FCTC, including its Guidelines;
4. creating a document development and retention policy in accordance with national law from the outset of the policy development process (in order to address frequent freedom-of-information claims lodged by the tobacco industry);
5. giving producers sufficient time to adapt packaging and sell existing stock; and

-
6. ensuring that commitments are not made to investors in the tobacco sector for purposes of inducing foreign investment.

Policy design

1. applying plain packaging to all categories of retail tobacco packaging and tobacco products;
2. ensuring that brands can be distinguished one from another;
3. permitting registration of trademarks (provided that they are not misleading) and allowing existing trademarks to remain on the register;
4. preventing deregistration of tobacco trademarks on grounds of non-use attributable to plain packaging;
5. permitting the presence of pack features that help to prevent illicit trade, and
6. permitting repackaging of tobacco products at the point of importation.

It is important to stress that the intention is not to suggest that plain packaging measures departing from these recommendations will be inconsistent with domestic or international laws. Moreover, different laws and circumstances in different jurisdictions limit the extent to which it is possible to generalize. Nonetheless, a careful process of policy design, implementation and evaluation can strengthen the measures implemented and the legal positions supporting those measures.

In addition to legal challenges, tobacco companies and their supporters have lobbied against introduction of plain packaging and contested the measure in the political sphere. As far back as 1993 tobacco companies formed what they called a plain packs group to resist development of plain packaging laws. In Australia, the industry's opposition to plain packaging was also far greater than typical industry opposition to introduction of other tobacco control measures. As part of this opposition, tobacco companies and their supporters have made numerous assertions, such as: plain packaging will increase illicit trade in tobacco products, lead to lower prices and have negative effects on retailers. These and other arguments made by tobacco companies align with the industry's self-interest, have not come to fruition in Australia and often lack any rational basis.

Introduction

In December 2012 Australia became the first WHO Member State to implement fully tobacco plain packaging. Since then, interest in plain packaging has grown among WHO Member States so much so that it is now possible to observe a process of policy diffusion or, what some have termed, the globalization of plain packaging. At the time of writing, France, Ireland and the United Kingdom of Great Britain and Northern Ireland (UK) have passed laws that will see implementation of plain packaging in 2016, and Hungary and Norway are in the process of developing laws to implement plain packaging. Singapore is undertaking a public consultation with a view to introducing plain packaging and several other countries, including New Zealand, South Africa and Turkey, have either expressed an intent to implement the measure or are in the policy-development process.

The interest in plain packaging and the tobacco industry's intense opposition to plain packaging have also generated demand for information from WHO Member States. This publication seeks to address that demand by compiling information on plain packaging of relevance to all WHO Member States and by identifying important resources that provide further detail on specific issues relevant to public health. Rather than trying to offer the last word on plain packaging, this publication recognizes that policies on plain packaging are evolving at such a pace that any publication seeking to gather information is quickly out of date. Moreover, some existing resources on plain packaging are updated regularly in ways that a single publication cannot be updated.

Against this backdrop, this publication is divided into four parts. Part 1 first defines the concept of plain packaging and distinguishes it from other packaging and labelling measures. In doing so, it also identifies those provisions of the WHO Framework Convention on Tobacco Control (WHO FCTC) that are of most relevance to plain packaging. Part 1 also sets out the purposes of plain packaging and explains where the policy fits into a comprehensive approach to tobacco control. Finally, it outlines the evidence base supporting plain packaging, which is closely linked to the purposes of, and rationales for, the policy.

Part 2 offers a brief description of the policy design and implementation processes undertaken in Australia, France, Ireland and the UK before identifying policy questions to be considered in designing plain packaging measures. Part 2 makes it clear that plain packaging has several core elements and that much can be learnt and adapted from Australia's

experience of implementing the WHO FCTC guidelines, but that there may be minor variations in implementation in different jurisdictions.

Part 3 briefly describes legal issues surrounding plain packaging under domestic and international law and identifies ways in which governments can reinforce their legal positions. The text is designed to highlight the types of arguments tobacco companies have made in domestic and international claims concerning plain packaging. The purpose is both to provide an update on the status of existing claims and to permit Member States to prepare for the types of legal arguments that can be expected in the tobacco industry's attempts to resist plain packaging. Moreover, Part 3 highlights fundamental contradictions in the tobacco industry's objections to plain packaging. On the one hand, tobacco companies assert that plain packaging will not be effective on grounds that it will not reduce tobacco use, while on the other hand they assert that they are entitled to billions of dollars in compensation for the damage done to their businesses. The inconsistency of these two positions cannot be reconciled.

Finally, Part 4 looks at three other tobacco industry objections with respect to plain packaging. These objections — that plain packaging will increase illicit trade, push prices down and affect retailers — have been made in numerous countries. However, these predictions have not come true in Australia and policies can be developed to address any concerns governments may have in these areas.

This publication is up to date as of 29 February 2016.

PART 1

Plain packaging: definition, purposes and evidence

Tobacco control relies on implementation of comprehensive multisectoral measures that work together in a complementary way. This is recognized in the WHO Framework Convention on Tobacco Control (WHO FCTC), an evidence-based treaty, which with 180 Parties is one of the most rapidly and widely embraced treaties in the United Nations system. Article 4.4 of the WHO FCTC recognizes that “[c]omprehensive multisectoral measures and responses to reduce consumption of all tobacco products at the national, regional and international levels are essential so as to prevent, in accordance with public health principles, the incidence of diseases, premature disability and mortality due to tobacco consumption and exposure to tobacco smoke.”¹

In the context of this comprehensive approach the WHO FCTC obliges Parties to implement various tobacco control measures aimed at reducing demand for tobacco products. Provisions aimed at reducing demand include Article 6 (Price and tax measures to reduce the demand for tobacco), Article 8 (Protection from exposure to tobacco smoke), Article 9 (Regulation of the contents of tobacco products), Article 10 (Regulation of tobacco product disclosures), Article 11 (Packaging and labelling of tobacco products), Article 12 (Education, communication, training and public awareness), Article 13 (Tobacco advertising, promotion and sponsorship) and Article 14 (Demand reduction measures concerning tobacco dependence and cessation). These measures work together by targeting different, or multiple, drivers of tobacco consumption and different population groups.

As the discussion below illustrates, plain packaging (itself a packaging and labelling measure and restriction on tobacco advertising and marketing) complements other demand reduction measures and makes them more effective. Plain packaging is not in itself a panacea for the risks associated with tobacco use, but may be a next step in jurisdictions that are strengthening demand reduction measures or already have strong measures in place. At present, Australia is the only WHO Member State to have taken this next step by implementing plain packaging. France, Ireland and the UK have each passed laws requiring implementation of plain packaging in 2016.

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_26967

