



Ms. Monica Mæland
Minister of Trade and Industry
P.O. Box 8090
Norway

Lisbon, 12th May 2015

Dear Minister,

In the context of the ongoing consultation on a proposal to introduce standardized packaging for tobacco products, I take the freedom to convey to you some key concerns that the eventual adoption of this measure raises to the Portuguese Government.

While sharing the public health objectives pursued, we believe that such a policy option is disproportionate and undermines basic principles of the Agreement on the European Economic Area (EEA) and of international law, since it is extremely restrictive of international trade.

As a matter of fact, we consider that the measure clearly violates Article 11 of the EEA Agreement since it will prohibit the importation of tobacco products lawfully manufactured in other EEA countries with a great impact on the economies of countries that export tobacco products to Norway, as is the case of Portugal. Also, Article 2.2 of the WTO Agreement on Technical Barriers to Trade which states that "Members shall ensure that technical regulations (...) to or with the effect of creating unnecessary obstacles to international trade (...)" fails to be respected by the introduction of plain packaging.

It will also lead to the prohibition of use of tobacco products manufacturers' brand equity, which together with the already existing point of sale display ban, will not allow adult consumers to take informed decisions regarding the various tobacco products available for sale, opting therefore most probably for those already long established for in the Norwegian market. The adoption of such measure will therefore create a competitive disadvantage between foreign and national brands,



also hindering the entrance on new players in the market, having consequently a market foreclosure impact and obstructing fair competition.

In this context also the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is clearly violated by the introduction of plain packaging since under Article 20 “the use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.(...)”.

We recall that currently five WTO members are challenging the Australian plain packaging legislation before the WTO based on the violation of both TBT and TRIPS agreements. Therefore we believe that no further actions should be taken in the direction of implementing plain packaging before the outcome of such challenge.

We consider that less stringent measures not negatively impacting the free movement of goods within the EEA should be considered, such as those foreseen under the recently adopted EU Tobacco Products Directive. Furthermore, we are not aware of any unequivocal evidence that plain packing contributes to improved health, which should be the ultimate objective of all tobacco commerce restrictions.

I would like to thank you in advance for taking the above into consideration and remain at your disposal should you wish to discuss it any further.

Yours sincerely, *and at your disposal*

António Pires de Lima

Minister of Economy of Portugal