

The World Trade Organization and Tobacco Plain Packaging: Is Packaging Advertising and Does It Influence Consumption?

On June 29, 2020, a dispute settlement panel convened by the World Trade Organization (WTO) rejected the appeal regarding its findings in the report “Australia – Certain Measures Concerning Trademarks, Geographical Indications and other Plain Packaging Requirements Applicable to Tobacco Products and Packaging”.¹ The dispute was initiated by Honduras in 2012 and later joined by the Dominican Republic, Cuba, Indonesia and the Ukraine (who withdrew). A large number of other countries participated in the proceedings as third parties, with 24 submitting formal arguments. The dispute concerned Australia’s right to regulate the advertising and promotion of tobacco products vis-a-vis certain WTO obligations and potential trade-distorting effects. The case was closely followed as several other countries had passed tobacco plain packaging (TPP) legislation, and because of the potential implications for alcoholic and high-sugar products of concern to public health.

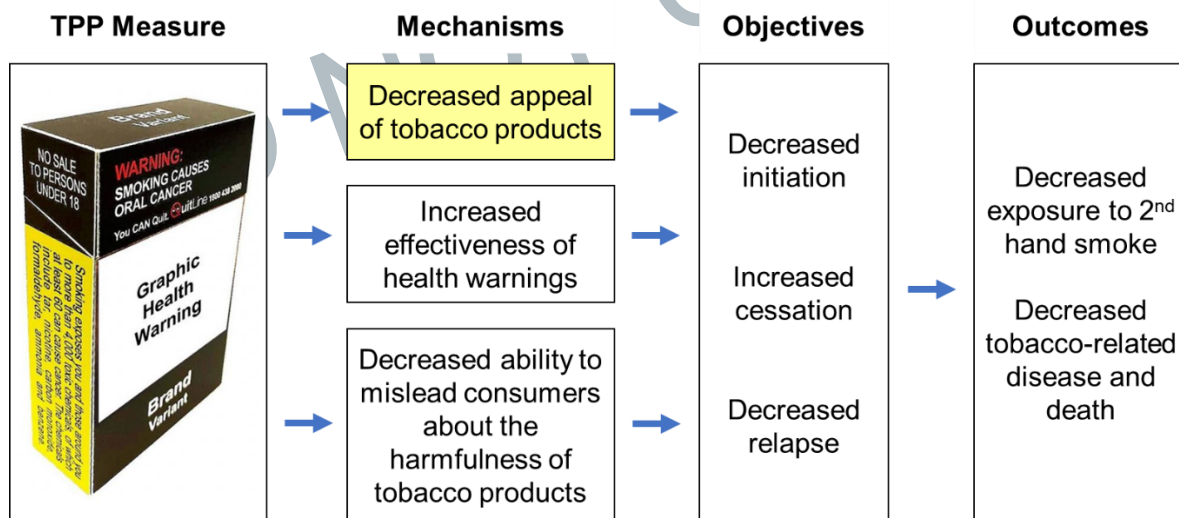


Figure 1. Adapted from Australia’s depiction of the operation of the TPP measure²

Australia’s TPP Measures and Their Public Health Objectives

On December 1, 2012, Australia was the first country to introduce TPP. The measure required that all tobacco packaging be made of card board with flip-top openings, in drab olive with a matte finish, and no other design features including colours, logos or brand features (i.e., trademarks) visible, other than the brand, business or company name and variant in standardised form and font. The measure further included graphic health warnings (GHWs) to cover 75% of the front of packs, enlarged from 30% previously. There were further restrictions on the pack’s lining and the appearance of tobacco products themselves.

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