

Tobacco plain packaging: too hot for regulatory chill

We commend the courage of Ireland and the UK for joining Australia in the adoption of plain packaging legislation. 4 years have passed since Australia took the monumental step to require tobacco products to be sold in standard or plain packages,¹ facing down the so-called regulatory chill (a potential North America Free Trade Agreement [NAFTA] investor-state challenge) that had prevented Canada's effort to do the same a decade earlier. Comprehensive advertising bans in countries such as Australia left the cigarette package as one of the remaining vehicles of product promotion. The Australian resolution to go forward with plain packaging was the next logical step to reducing tobacco promotion while increasing consumer understanding of tobacco's harmful effects. Resistance from the tobacco industry followed the Australian decision, including a domestic court challenge that failed when the High Court of Australia in 2012 upheld the legislation.² The legislation is also being disputed under a bilateral investment agreement between Hong Kong and Australia (Philip Morris Asia) and by five countries within the World Trade Organization (WTO).³

The legal challenges to the legislation are intended to dissuade other countries from following Australia's lead, despite the legal strength of the measure.³ In an April, 2014 submission to the WTO Technical Barriers to Trade Committee opposing Ireland's proposal, the Government of Malawi noted that "Malawi fails to understand why Ireland would proceed with the type of measure that will soon be likely ruled to be WTO-inconsistent".⁴ Representatives of countries opposing regulation have repeatedly made similar statements. It is precisely these attempts to create regulatory chill that

makes the legislation in Ireland and the UK so powerful. These two countries have demonstrated their confidence in the soundness and necessity of plain packaging and have sent a signal to other governments that it is safe to follow suit. WHO Director General, Margaret Chan, made this same point at the World Conference on Tobacco or Health in Abu Dhabi, United Arab Emirates (March 17–19, 2015). "What industry is aiming for is a domino effect, where countries fall in their resolve, one after another, under the threat of legal action".⁵ She celebrated the fact that the dominos are falling in the other direction and that, "more than ten countries are considering plain packaging". The South African Health Minister was quick to comment that his country would soon be added to this list.

With the support of the global tobacco control community, we could see the emergence of a massive policy cascade as countries around the world join in plain packaging legislation. Such an effect would greatly hinder tobacco industry efforts to slow the momentum of the fight against tobacco.

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- 1 Freeman B, Chapman S, Rimmer M. The case for the plain packaging of tobacco products. *Addiction* 2008; **103**: 580–90.
- 2 Liberman J. Plainly constitutional: the upholding of plain tobacco packaging by the High Court of Australia. *Am J Law Med* 2013; **39**: 361–81.
- 3 Mitchell AD. Plain packaging of tobacco products in Australia: a novel regulation faces legal challenge. *JAMA* 2012; **307**: 261–62.
- 4 Proposal to Introduce standardised/plain packaging of tobacco products in Ireland: Statement by Malawi to the Committee on Technical Barriers to Trade. G/TBT/W/387. World Trade Organization, 2014.
- 5 Dr Margaret Chan's Remarks at the World Conference on Tobacco or Health. Bloomberg Philanthropies March 18, 2015. <http://www.bloomberg.org/blog/dr-margaret-chans-remarks-world-conference-tobacco-health/> (accessed March 19, 2015).

Risk factors for and origins of COPD

Dirkje Postma and colleagues (March 7, p 899)¹ provide a very informative overview of the origins of chronic obstructive pulmonary disease (COPD), emphasising the importance of early life respiratory insults and repetitive exposures, such as tobacco smoking and air pollution, later in life. However they do not mention the contribution of pulmonary tuberculosis, which last year alone newly affected nine million people, most of whom were adolescents and young adults.²

The association between tuberculosis and COPD is underappreciated, although a recent systematic review³ showed a three-times increased risk for both COPD and bronchiectasis in patients with a history of tuberculosis, even after adjustment for known risk factors such as age and tobacco smoking. The association between history of tuberculosis and the presence of COPD was strongest in people younger than 40 years and patients who never smoked cigarettes. These findings are important because up to 60% of patients with COPD in low-income and middle-income countries have never smoked.⁴ Assuming that this association is causal, the population attributable risk of pulmonary tuberculosis for the development of COPD is likely to be highest in countries with a high burden of tuberculosis, by contrast with low tuberculosis-burden settings such as the UK and Europe, in which smoking and occupational exposures are the predominant risk factors.

Since tobacco smoking increases both risk of tuberculosis and risk of COPD, the rising prevalence of tobacco smoking in countries with a high burden of tuberculosis is concerning. These cumulative pulmonary insults are likely to increase rates of COPD in tuberculosis-endemic areas.⁵ In view of the global burden of lung



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For more on *plain packaging in Australia* see <https://www.cancerciv.org.au/plainfacts/>

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