



# JT's response to the public consultation on the draft Decree to amend the Tobacco and Related Products Decree in the Netherlands

*24 May 2019*

Japan Tobacco Inc. is a leading international tobacco company with operations in more than 130 countries. With over 63,000 employees, it manufactures and sells some of the world's best-known brands including Winston, Camel, MEVIUS and LD. The JT Group is committed to investing in Reduced-Risk Products (RRP) and currently markets its tobacco vapor products under the Ploom brand and various e-cigarette products under the Logic brand. The Group is also present in the pharmaceutical and processed food businesses. For more information, visit <https://www.jt.com/>.

## 1. EXECUTIVE SUMMARY AND INTRODUCTION

1.1 Japan Tobacco Inc. (*JT*) sets out its response to the Public Consultation on the Draft Decree to amend the Tobacco and Related Products Decree, complemented by an Explanatory Note (*the Consultation*) and more specifically on the proposal to introduce plain packaging for cigarettes and roll your own tobacco products.

1.2 JT makes this response in addition to the detailed submission to the Consultation by its subsidiary, Japan Tobacco International (*JTI*). JT does not repeat here but agrees with all statements made in JTI's submission to the Consultation.

1.3 JT welcomes and fully supports the Dutch Government's efforts to fight youth smoking. It is only right to create a regulatory framework that can successfully tackle youth smoking.

1.4 In line with the Better Regulation Principles of the Organization for Economic Co-operation and Development that we support, regulation should be proportionate, evidence-based, competitively neutral and targeted at cases where action is needed.

1.5 However, plain packaging of tobacco products does not meet any of these criteria as it has failed to improve public health (including youth smoking prevention) where it was implemented and only generated serious unintended consequences.

1.6 From the specific perspective of an overseas legitimate shareholder that has invested significantly in the Dutch economy, JT wishes to stress that plain packaging seriously risks:

- depriving JT Group of its most valuable assets – its brands and trademarks;
- making the Netherlands a less attractive place for foreign investments and undermining investor certainty; and
- having serious unintended consequences, including increased opportunities for illegal trade in tobacco, negative effects on legitimate competition and the broader Dutch economy.

1.7 Despite being ignored in the Consultation, evidence from a number of countries that have the measure in place shows that plain packaging did nothing to decrease smoking initiation or to increase quitting.

1.8 Even the French Health Minister has admitted publicly that plain packaging “*doesn't lead smokers to stop smoking*” in quoting official data on cigarette sales in France, which did not reduce after the introduction of plain packaging.

1.9 Conversely, plain packaging generated serious negative consequences, including increased illegal trade in tobacco and criminality.

1.10 JT is disappointed that the Consultation fully ignores these and other serious negative consequences that the measure risks having, if implemented in the Netherlands.

1.11 JT is convinced that there are better and proven alternatives to fight youth smoking and achieve other health benefits in the Netherlands.

## 2. WE STAY AGAINST THE INTRODUCTION OF PLAIN PACKAGING

### JT as an investor in the Netherlands

2.1 JT is the world's third largest global tobacco manufacturer.<sup>1</sup>

2.2 JT has invested heavily in expanding its international business outside Japan in markets like the Netherlands, with the international tobacco business serving as the profit growth engine of the JT Group. Through its subsidiary in the Netherlands, the JT Group continues to grow within the Dutch market, particularly since it converted to a Direct Selling Operations model in 2009. Between 2009 and 2015, the JT Group has continually stepped up its investments in the Netherlands.

- The JTI Company Netherlands B.V. is part of the JTI Benelux organization, including Belgium, the Netherlands and Luxembourg. The headquarters of the JTI Benelux organization is located in Amstelveen, the Netherlands, where about 120 persons are employed. The Sales & Marketing departments are separated for the Netherlands and Belgium/Luxembourg. The Belgium department is located in Strombeek-Bever (Brussels) and employs approximately 80 people.
- JTI contributes to the Dutch State Budget around EUR 441 million in taxes per year. This consists of around EUR 350 million in excise tax, and around EUR 91 million in VAT.

2.3 Plain packaging is of grave concern to JT as to the ultimate parent company of the JT Group. Any adoption of plain packaging will seriously undermine JT Group's contribution to the Dutch economy and could put any future investment by JT in the Netherlands in jeopardy.

### **Plain packaging deprives legitimate manufacturers from their key assets / damages brand equity**

2.4 **Plain packaging is a ban on branding**, as it eradicates branding and erodes brand equity.

2.5 The JT Group has invested very substantially in its brands, which are worth billions of EUR. We continuously make efforts to enhance our brand equity because central to JT's business are its brands, including the JT Group's world-renowned brands in the Netherlands, such as Camel, Winston, and Benson & Hedges.

2.6 JT is seriously concerned that this measure would infringe fundamental principles of intellectual property by depriving JT and other legitimate manufacturers of their rights to communicate their trademarks. A regulation of this kind would not only remove the possibilities to communicate about products' quality and authenticity to existing adult smokers but could also result in deprivation of the manufacturer's property.

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<sup>1</sup> For more information, please visit <https://www.jt.com/>.

## **Plain packaging risks having potential legal implications and creating investment uncertainty**

2.7 Intellectual property stands high on the agenda of the Dutch Government as a key growth and economic driver. However, plain packaging will disprove this claim as it demonstrates a fundamental disregard for the protection of intellectual property rights as provided by national and international law, and the investments that JT and others have made to establish and develop that property.

2.8 Despite the statement in the Consultation that there is no intention to introduce plain packaging for other consumer goods, the introduction of this measure for tobacco products will damage the reputation and the credibility of the Netherlands as a place to do business. If a regulation is introduced, which is disproportionate, ineffective in meeting its objectives and lacks the necessary evidence to justify it, the extent of regulatory burdens for the tobacco sector (as well as other industries) will increase, whereas investors' confidence in the Netherlands will decrease.

## **Plain packaging will have other unintended consequences**

2.9 JT strongly believes that if plain packaging is introduced in the Netherlands, it will not achieve actual public health benefits, just as it has failed to achieve in Australia, the first country that experimented with plain packaging in 2012. Even data that were released by the Australian Government five years after the introduction of plain packaging, reveal that it was a wrong policy to pursue, as the historical decline in smoking rates even stopped not long after the implementation of the measure: “...while smoking rates have been on a long-term downward trend, for the first time in over two decades, the daily smoking rate did not significantly decline over the most recent 3 year period (2013 to 2016)”.<sup>2</sup>

2.10 Moreover, the official data emerging from France, which have been equally ignored in the Consultation, point into the same direction: plain packaging did not have any discernible effect on tobacco sales in France.<sup>3</sup> These data were earlier quoted by the French Minister in the context of her statement that plain packaging “does not lead smokers to stop smoking”.<sup>4</sup>

2.11 This is in line with the expert analysis of smoking prevalence in France and the UK, which demonstrates that the introduction of plain packaging did not impact tobacco consumption in both countries and has even led to some increases in the consumption in the UK.<sup>5</sup>

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<sup>2</sup> See the latest National Drug Strategy Household Survey (*NDSHS*) released in May 2017, which does not show statistically significant decline in the overall daily smoking rate between 2013 (12.8%) and 2016 (12.2%). Available at: <https://www.aihw.gov.au/reports/illicit-use-of-drugs/ndshs-2016-key-findings/contents/highlights-from-the-2016-survey>.

<sup>3</sup> See data by the OFDT (Observatoire français des drogues et des toxicomanies) on the volumes of tobacco products distributed to retailers in France. It indicate that the number of cigarettes shipped to retailers remained largely unchanged (-0.7%) in 2017, while the amount of other tobacco products decreased by 5.1%, following excise tax increases in February and November 2017. Available at: <https://www.ofdt.fr/statistiques-et-infographie/tableau-de-bord-tabac/>.

<sup>4</sup> See the French Health Minister's statement during a parliamentary debate on the Social Security Finance Bill in November 2017. Available at: <http://www.assemblee-nationale.fr/15/cr/2017-2018/20180075.asp>.

<sup>5</sup> See Europe Economics “*TPD2 and standardised tobacco packaging – What impacts have they had so far?*”, December 2018, available at: <https://www.jti.com/about-us/our-business/key-regulatory-submissions> and [http://www.europe-economics.com/publications/tpd2\\_and\\_standardised\\_tobacco\\_packaging\\_dec\\_2018\\_1.pdf](http://www.europe-economics.com/publications/tpd2_and_standardised_tobacco_packaging_dec_2018_1.pdf).

2.12 Plain packaging will not be an effective means to changing smoking behavior in the Netherlands in terms of smoking (including youth smoking) initiation and quitting. It has not generated such effects in Australia and so far has not had any health benefits in the UK and France.

2.13 What will most probably happen, if the measure is introduced in the Netherlands, is that illegal tobacco trade and criminality will flourish (as plain packs are cheaper and easier to replicate than branded packs), amongst other unintended consequences.

2.14 As evidence shows, in a plain packaging environment, where the price becomes the main purchasing criteria, smokers will look for cheaper alternatives, including illegal products.

- In Australia, the premium brand owners lost the value of their key assets through down trading and the price-led competition<sup>6</sup> to the benefit of criminals.<sup>7</sup>
- In Australia, the level of illegal tobacco consumption has grown significantly since plain packaging was introduced. In 2017, it reached 15% of total consumption, up from 11.5% in 2012.<sup>8</sup> If it had been sold legally, the illegal tobacco consumed in Australia in 2017 would have represented an estimated excise value of AUD 1.91 billion<sup>9</sup>.
- In France, the volume of counterfeited products tripled in 2018, compared to 2017 data, based on Empty Pack Surveys.<sup>10</sup>
- In the UK, the situation with an increasing number of counterfeited products appears to be similar.<sup>11</sup> It is not surprising that UK authorities discovered counterfeit “plain” packs as early as one month after plain packs appeared on retailers’ shelves.<sup>12</sup>

**2.15 Any increase in illegal trade will cause significant losses to the Dutch Government, legitimate businesses, and further undermine our brand equity, as an important investor in the country.**

### **3. THERE IS A RIGHT WAY FORWARD**

3.1 It is necessary and right to create a regulatory framework for tobacco control, which can tackle youth smoking and remind the population of the health risks of smoking. However, **the introduction of a measure that only adds another ineffective layer of regulation without any**

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<sup>6</sup> See, for example, the KPMG 2017 Full Year Report “*Illicit Tobacco in Australia*”, April 2018, page 11, at: [https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2018/05/australia\\_illicit\\_tobacco\\_report\\_2017.pdf](https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2018/05/australia_illicit_tobacco_report_2017.pdf).

<sup>7</sup> The Australian Border Force seized considerable volume of illegal cigarettes following the introduction of plain packaging, many of which contain “*metal shavings and even bird droppings*” that may risk creating serious health hazards for consumers of these products. See more at: <http://www.abc.net.au/news/2017-02-20/illegal-tobacco-cigarettes-smuggled-into-australia-fluffy-toys/8285470>.

<sup>8</sup> See KPMG’s 2017 Full-Year Report “*Illicit Tobacco in Australia*”, page 6.

<sup>9</sup> *Idem*

<sup>10</sup> Empty pack survey is a statistically representative method of illicit trade research. Surveys are conducted twice a year in the UK and France and the size of the collected packs sample exceeds 10,000. The findings of the surveys are extrapolated on the basis of cigarette market size.

<sup>11</sup> *Idem*

<sup>12</sup> See at: <https://www.betterretailing.com/first-fake-plain-packs-discovered>.

**health benefits, creates incentives for illegal trade and unjustifiably attacks the key assets of legitimate businesses, is not a right policy to pursue.**

3.2 JT wishes to express its concerns that there has been no consideration of potential negative effects of the proposed plain packaging, as well as the real effects of recent regulatory interventions (including the additional packaging requirements that were enforced in July 2018 to restrict “*glitter and glamour*” elements on tobacco packaging), which intend to contribute to similar objectives that the proposed measure aims to achieve.

3.3 JT therefore urges the Dutch Government to conduct a proper impact assessment to address these shortfalls before making any decision to regulate further.

3.4 In addition to this and the need for better enforcement of current legislation (including on the minimum legal age for accessing tobacco products), JT encourages the Dutch Government to reflect on better alternatives that could help achieve public health objectives, including the common objective of youth smoking prevention, without negative consequences for legitimate businesses, policy makers and society.

3.5 A number of countries, including Germany<sup>13</sup> and the USA<sup>14</sup> **that do not have plain packaging in place**, put an emphasis on public information campaigns and tailored education initiatives, which help reduce smoking prevalence amongst minors.

3.6 **The focus of the Dutch Government should be on targeted government-led public information and education campaigns and not on a flawed policy.**

**JT**  
**24 May 2019**

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<sup>13</sup> For example, in her 2015 “*Drug and Addiction report*”, the Federal Drug Commissioner stated: “... it is worth the effort to develop prevention program aimed at specific groups and implement them over the longer term”. “There are probably very few prevention projects that have been running for as long as the competition for smoke-free school classes “*Be Smart – Don’t Start*”. Since the 1997/98 school year, it has been motivating young people throughout Germany to lead lives that are smoke-free. In the current school year a total of 7,560 school classes with approximately 200,000 pupils are registered “*Be Smart – Don’t Start*” has contributed to the fact that today significantly fewer adolescents smoke than ten years ago.” See “*Drogen- und Suchtbericht der Bundesregierung 2015*”, available (in German) at: <https://www.bundesregierung.de/Content/Infomaterial/BMG/2827.html>.

<sup>14</sup> Already in the first 2 years since its launch, the US Food and Drug Administration’s “*Real Cost*” campaign prevented nearly 350,000 teenagers from starting to smoke cigarettes. See more via: <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm617131.htm>.