IMPERIAL TOBACCO NEW ZEALAND LIMITED

Submission to the Māori Affairs Select Committee inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori

January 2010
To the Māori Affairs Select Committee:

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January 2010
1.0 EXECUTIVE SUMMARY

Imperial Tobacco supports sound, reasonable and proportionate regulation of tobacco products.

It is the business of Imperial Tobacco to manufacture and sell tobacco, which remains legal in New Zealand. We do not undertake any forms of marketing or advertising or other forms of promotion which are prohibited by the Smokefree Environments Act. Our business is demand driven.

Imperial Tobacco believes that no cigarette is safe, and operates its business on the basis that smoking may cause human disease. The risks associated with smoking are universally known, and we believe that smoking is, and should continue to be a matter of informed adult choice. The qualification here is that choice should be an adult choice.

The disproportionate uptake of smoking by Māori youth will no doubt be of concern to the Committee and it is a concern that we share.

1Underpinning the Select Committee Enquiry is the Ministry of Health's Report on Māori Smoking which has explicitly assessed the nature of smoking influences on Māori youth and their primary sources of tobacco. It repeats earlier conclusions that parental and family behaviour is a key determinant of smoking uptake, particularly among the young, and notes that it is a significant factor in the disproportionate level of smoking among Māori relative to the rest of the population and will no doubt be of concern to the Committee. It is a concern that we share. We do not want youth to smoke and we do not undertake any practices whatsoever intended, directly or indirectly to encourage uptake.

The Ministry's conclusions firmly underscore the limitations of pursuing further regulatory options when it is clear that from the evidence that wider societal, behavioural and attitudinal issues are at stake.

1 Ministry of Health Report on Māori Smoking for the Māori Affairs Select Committee: 12 June 2009

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Accordingly, we consider that the focus of Government's interventions should be upon greater education and we note the apparent decline in smoking rates among Māori in response to recent targeted education campaigns.

We do not suggest that the industry is absolved from playing its part. We have an ongoing role in supporting the enforcement of laws and regulations to prevent those under the age of 18 from accessing tobacco products and by supporting penalties for retailers who sell tobacco products to youth. We accept and endorse this.

We are aware that the Committee will hear from those who advocate an outright ban on tobacco or the imposition of yet more regulation and economic sanctions. These are, of course, matters for the Government. However, regulating for a result does not necessarily make it so, and good regulatory practice must have regard to the efficacy of proposed regulation, at the same time as taking proper cognisance of freedom of choice.

We consider that successive Governments have established a regulatory regime that more than adequately reflects the public interest in health promotion. Given the marginal efficacy or unintended consequences of further regulatory interventions, we conclude that the focus should be on increased compliance with the existing regime, improved public education for retailers to increase compliance and greater targeted education for specific groups.
2.0 INTRODUCTION

Imperial Tobacco has provided this submission for the information and assistance of the Māori Affairs Select Committee. Imperial Tobacco supports sound, reasonable and proportionate regulation of tobacco products. We continue to participate in constructive and effective dialogue with Parliament, Government and regulatory authorities to develop practical and evidence-based regulations.

Imperial Tobacco entered the New Zealand market in 1999 as a result of the New Zealand Commerce Commission's (NZCC) wish to maintain competition.

At the time of our entry into the market here, the Smoke-free Environments Act 1990 and its various regulations had been in place for almost a decade. This Act prohibited the advertising and marketing of tobacco products to New Zealand consumers, among other things, including the use of then textual-based warnings, limitations on how tobacco can be sold and other regulations.

Since Imperial Tobacco became established in New Zealand the following regulations have been instituted by the Government:

- Buildings and grounds of schools and early childhood centres became smoke-free from 1 January 2004;
- Licensed premises (bars, restaurants, cafes, sports clubs, casinos) became smoke-free indoors from 10 December 2004;
- Other workplaces became smoke-free indoors from 10 December 2004 – including offices, factories, warehouses, work canteens and 'smoko' rooms;
- The display of tobacco products in retail outlets was restricted, and a 'smoking kills' sign erected near the display from 10 December 2004;
- Herbal smoking products were included in smoking bans;
- The access of those under 18 years of age to smoking products was further restricted; and
- The regulations around graphic pictorial health warnings (GHW's) appearing on all tobacco packages sold in New Zealand came into force on 28 February
2008, seeing 30% of the front and 90% of the back of cigarette packets covered by graphic health warnings.

The resulting regulatory framework is among the most comprehensive and rigorous in the world.

Last year, a long-running public debate was initiated by the Labour Government over the right of retailers to display the products of tobacco they sell in their shops. This debate was finished by the National Government in March last year.

Which brings us to the current inquiry by the Māori Affairs Select Committee: Imperial Tobacco is unsure what can be gained from the inquiry given the robust efforts by the New Zealand Government over the last decade to increase and renew awareness among the public of the risks associated with tobacco consumption. Imperial Tobacco has worked, where possible, with governments to develop proportionate and workable regulations to advise consumers of the risks associated with smoking and we will continue to do so. Whilst against the introduction of GHV’s, we offered our assistance to the Ministry of Health (MOH) to ensure that they were implemented correctly. Imperial Tobacco took the lead in developing the MOH-supplied artwork to an industry-prepared standard and worked closely with the MOH to explain the complexities associated with implementing GHV’s in a Fast Moving Consumer Goods (FMCG) market.

Imperial Tobacco is committed to good governance and responsible corporate behaviour. Our approach therefore has been one of corporate responsibility that meets our obligations within the legislative and regulatory framework. It is the business of Imperial Tobacco to manufacture and sell tobacco, which remains legal in New Zealand and is consumed by 23% of the adult population. Imperial Tobacco does not undertake any forms of marketing or advertising or other forms of promotion to increase the uptake of smoking and we reject emphatically any claims to the contrary.

The principle of ‘corporate responsibility’ is especially important to us. As a global manufacturer of tobacco products, Imperial Tobacco recognises the importance of manufacturing and selling our products responsibly. We recognise that operating in the tobacco business attracts particular scrutiny with regard to our corporate behaviour and we believe that our responsible approach to the manufacture and sale of our products
is fundamental to long-term business success. At Imperial Tobacco, we are proud of our reputation in how we conduct our business and will continue to work to protect it.

In common with other significant international companies, Imperial Tobacco Group PLC (ITG) is committed to its responsibilities as a manufacturer of consumer goods and a good corporate citizen, as well as to making a positive contribution to the community in which it operates. Each year ITG publishes a Corporate Responsibility Review, which contains information on the Group’s achievements and performance, together with our commitments for the future. It is available at www.imperial-tobacco.com.

Another element of our responsible business practices is our approach to the prevention of youth smoking. We believe that tobacco products are for adults. We share the Committee’s concerns relating to the high rate of Māori youth smoking and believe the best approach to this is through education. We support the enforcement of legal minimum age restrictions by the appropriate authorities for the purchase of tobacco products and are committed to selling our products responsibly, within the laws and voluntary agreements of the countries in which we operate. Because the prevention of youth smoking is such a significant issue for the industry, we are developing an ‘Under 18 Kit’ to help with the education of retailers on the importance of this issue.

Our International Standard for the Marketing of Tobacco Products reinforces this commitment. The Standard sets out clear rules and principles to ensure that our activities are directed only to adult smokers everywhere in the world we operate. We adhere to these stringent standards at all times: all ITG employees and agencies directly employed by an ITG company must observe and enforce the Standard, both in letter and in spirit. The Standard is attached as an Appendix to this submission.
3.0 THE HISTORY OF IMPERIAL TOBACCO IN NEW ZEALAND

Imperial Tobacco was invited into New Zealand in 1999 because the New Zealand Commerce Commission (NZCC) wished to maintain competition in the tobacco industry. The NZCC was concerned that a BAT monopoly in the New Zealand market resulting from BAT’s global merger with Rothmans would substantially lessen competition.

As a result, Imperial Tobacco bought a portfolio of tobacco trademarks and a manufacturing plant at Petone from BAT. Imperial Tobacco New Zealand is this country’s last locally-producing tobacco manufacturer. Since our inception in 1999, we have developed into a truly Kiwi company, employing from the local community, trading with local businesses and, at every opportunity, sourcing from local suppliers. We are a truly multicultural organisation, employing around 150 people throughout New Zealand from many different nationalities and ethnic cultures.

While Imperial Tobacco’s time at the factory has been short, as caretakers of the plant, Imperial Tobacco is committed to ensure its survival and continue the proud tradition of Petone tobacco production. Our commitment to New Zealand is epitomised in the fact that we are now the last tobacco company manufacturing locally, while other, larger, tobacco organisations have migrated their production plants abroad.

We currently command a 19% share of the New Zealand tobacco market, making us a minority player in a market dominated by British American Tobacco New Zealand.

We manufacture for the New Zealand and Australian markets. Australia is our biggest market (we produce around 23% of their tobacco requirements for Imperial Tobacco Australia, which equates to 68% of our output).
4.0 THE HISTORICAL ACTIONS OF THE TOBACCO INDUSTRY TO PROMOTE TOBACCO USE AMONGST MĀORI

Imperial Tobacco has been operating in New Zealand since 1999.

Throughout the ten years that Imperial Tobacco has operated in New Zealand, smoke-free regulations have prohibited the promotion of the tobacco products that we manufacture, distribute and sell. Imperial Tobacco is committed to selling products responsibly, within the regulatory environment of the countries in which we operate.

We recognise that it is the role of governments to provide the general public with clear and consistent messages about the health risks to smokers that are associated with their smoking. We do not challenge those messages.

Throughout the Imperial Tobacco organisation worldwide it is our policy that a clearly visible health warning, whether or not required by legislation, will appear on tobacco products manufactured and/or marketed by Imperial Tobacco, including on any outer packaging intended to be presented to the consumer.

Our tobacco products are distributed according to customer demand. They are not, and have never been, targeted at any specific ethnic group.
5.0 THE IMPACT OF TOBACCO USE ON HEALTH

Imperial Tobacco believes that no cigarette is safe, and operates its business on the basis that smoking may cause human disease. The risks associated with smoking are universally known, and we believe that adults should be allowed to choose whether or not to smoke.

In New Zealand, our tobacco products are distributed according to customer demand. They are not, and have never been, targeted at any specific ethnic group.

There have been more than fifty years of intensive medical and scientific research into tobacco smoking and health. Statistics show that smokers are more likely than non-smokers to develop lung cancer and certain other diseases. This conclusion is derived from epidemiological studies, which are questionnaire-based observations of populations or groups of people. These studies have shown that smoking is associated with several diseases and have led public health authorities to conclude that smoking is a cause of lung cancer and other diseases in smokers.

The component or combination of components as found in cigarette smoke and which may cause human disease remain unidentified despite decades of laboratory research, including research undertaken by or on behalf of Imperial Tobacco. Upon request we are happy to arrange for detailed explanations and analyses of our views on the breadth, depth and complexity of the medical and scientific research into tobacco smoking and health to be presented by our scientific experts.
6.0 POLICY AND LEGISLATIVE MEASURES NECESSARY TO ADDRESS THE FINDINGS OF THE INQUIRY

It is difficult for us to comment on policy and legislative measures in the absence of the Committee's final assessment. Accordingly, we have offered some general comments below on what we believe to be the optimal policy approach along with our views on several of the most common regulatory options proposed by anti-smoking lobbyists.

Since Imperial Tobacco entered the New Zealand market in 1999, tobacco products have had numerous restrictions imposed on how they are manufactured, marketed and sold. No other legal product has been subjected to such severe measures.

We believe that many of the regulations being proposed by anti-smoking lobbyists are disproportionate. Display bans, a total ban on sales of tobacco products, retailer licensing and excise increases will not be effective in reducing smoking prevalence in New Zealand, making them an unnecessary restriction on a legitimate business which manufactures a legal product. Sound, reasonable and evidence-based regulation combined with well-thought-out voluntary agreements is the most effective way to regulate tobacco. Similarly, we support initiatives that deliver strong and consistent public health messages on the risks associated with smoking.

We maintain that the decision to enjoy tobacco products is a choice for adults. We do not want youth to smoke or use tobacco products. In the absence of stricter legal or voluntary market restrictions, ITG's International Standard for the Marketing of Tobacco Products sets out clear rules and principles to ensure that our activities are directed only to adult consumers of tobacco products in all circumstances.

We endeavour to ensure that all national laws, codes of practice and voluntary agreements relating to tobacco products to which ITG companies are signatories are adhered to. Where such requirements are less stringent than our Marketing Standard, the Standard should take precedence unless otherwise required by law. The adoption or absence of a national code does not in any way relieve our obligation to comply with the Standard.

Preventing youth from using tobacco products is an issue for society as a whole to resolve, and we take our responsibilities regarding this issue very seriously. We believe the way to reduce the high numbers of Māori youth smoking is through
education. We play our part by supporting the enforcement of laws and regulations to prevent those under the age of 18 from accessing tobacco products and by supporting penalties for retailers who sell tobacco products to youth. An example of this is our 'Under 18 Kit' which we are currently developing. Our Trade Marketing Representatives (TMR's) will use the kit to educate retailers on the importance of youth smoking prevention. The kit contains key information on retailers' legal obligations, the importance of compliance with the law, an incident log book, staff training guidelines, a quiz to test knowledge of the main points, stickers and posters to communicate that tobacco cannot be sold to under 18's.

We are prepared to work with the relevant authorities on any issue that affects our industry. The tobacco industry has specialist commercial and technical knowledge about its products and about international trade. Although regulators may wish to draw on the research and expertise of their own scientific experts, the knowledge of the tobacco industry is invaluable in supporting the development and implementation of practical, workable solutions.

6.1 Maintaining the principles and obligations of good regulation

We recognise that it is the role of government to provide the general public with clear and consistent messages about the health risks that are associated with smoking. We do not challenge these messages. We also believe that a proper and legitimate function of government is to safeguard the autonomy of the individual and his or her ability to be self-determining. Key to this is the ability to make informed decisions, whether or not those are "popular" with others, with an awareness of the individual's responsibility as a member of a greater society. In our view individuals are the best judges of their own interests. It is the role of government to protect such freedoms, not to remove them or to make such decisions on an individual's behalf. Such freedoms should be protected by government and should, in particular, be protected from simple majority rule.

We believe that, while complex, justification for any restrictions on personal authority, on the basis that the restriction is to prevent harm to others, must be based on solid, factual evidence, rather than emotive speculation. It should be treated consistently with other potential risks which are either accepted or legislated against by the law maker.

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When removing any such freedom, a burden of the highest order must be placed on
the regulator to examine such risks from a factual point of view and to be satisfied that
the risk is real, is of a quality which has led to similar restrictions for other risks and is
incapable of being managed in another way which does not restrict personal authority.

Convenience or ease of application or enforcement is not enough to justify any
restriction where other options are possible. This must be a minimum expectation for
any country which attaches value to the freedom of the individual.

There is an increasing view by some that on too many occasions the worldwide
tobacco control movement has now become one about political correctness rather than
about protecting the public’s health\. In Australia a survey commissioned by the
Cancer Institute found that NSW smokers felt the government agenda on tobacco
issues was potentially influenced by a range of other political factors\. These concerns
even led Jeff Stier, an associate director of the American Council on Science and
Health (ASCH.org), to state on smoking "Overstating the case may help the advocates
win this political battle but at significant cost to the overall public health war".\(^4\)

It is vital that the principles of good regulation are upheld throughout the inquiry
process currently being undertaken here in New Zealand, as well as in any future
decisions taken by government on tobacco issues, regardless of any individual
personal view or personal agenda in relation to tobacco.

**Individual Responsibility**

It is Imperial Tobacco’s view that the decision to use tobacco products is a matter of
informed adult choice. Our view is echoed in the 2004 Wanless Report in the UK
"Securing Good Health for the Whole Population", which asserted:

"Individuals are, and must remain, primarily responsible for decisions about their and
their youth's personal health and lifestyle. Individuals must be free to make their own
choices about their own lifestyles. They are generally the best judges of their own
health and happiness; people differ significantly in their preferences and their situations
in life. But this does not remove the duties on government and many organisations in

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\(^2\) Siegel, Prof. M (Boston University School of Public Health) http://tobaccoanalysis.blogspot.com
\(^3\) "NSW Smokers’ Attitudes and Beliefs change over three years", Cancer Institute NSW
Monograph (February 2008)
society, including businesses, to help individuals make better decisions about their health and welfare. Significant failures in how decisions are made can lead to individuals inadvertently making choices that are bad both for themselves and society. Therefore, to promote improved health outcomes and to reduce health inequalities, the government and other bodies need to act to reduce these failures and assist individuals to make better decisions.\(^5\)

"...for good decisions to be made both for the individual and society as a whole, it is important that:

- The individual is fully informed about all possible options, and their consequences;
- The individual is forced to take all the consequences of a decision (including those that affect others) into account;
- The social context within which individuals make decisions is conducive to making good choices; and
- Opportunities exist for individuals to engage fully in the management of their health and general welfare; regardless of their background and circumstances.\(^6\)

We agree that in general matters of public health, some individuals may require support in their decision making, but this should be achieved in ways which are educative and enabling, rather than disproportionate, coercive or discriminatory. We believe that the health risks associated with smoking are already well known, and have been for decades.

**Understanding the Concept of Risk**

One main barrier to be overcome is the general poor understanding in society of the concept of risk. This opens the way for sensationalism or coercive publicity and journalism and leads to disproportionate public policy responses. For example, the media may report a doubling of risk as a shocking story when the risks involved may be mathematically minute (even when doubled) and unlikely to affect an individual reader.

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The UK House of Lords' Select Committee on Economic Affairs' report “Government Policy on the Management of Risk” pointed out:

“Most of the things we do have uncertain outcomes and risk is necessarily an inherent feature of life … Perceptions of risk by the public clearly have a potentially important impact in a policy environment that rightly aims to be responsive to public concerns over safety … In this context, it is worth noting that excessive risk aversion in the formulation of policy, which, if it exists, has been attributed to the pressure arising from public perceptions or the media, may also stem from single interest lobbying groups or indeed from government itself …”

Sir Kenneth Calman, a former UK Chief Medical Officer, has commented: “In understanding issues surrounding risk assessment, perception is a key aspect of understanding patient and public choice …”

"This leads to one of the major issues facing those who make decisions about public health: the relation between the science base, the knowledge available, the evidence accumulated, and the public policy which derives from them. This can be extraordinarily difficult, and the costs of taking action based on minimal evidence or simply on the basis of a proposed hypothesis can be very considerable indeed …”

“The public should have a right to as much information as is available, but people also have to recognise that this information may not be complete and that it may not be possible to provide further information on a particular issue without more work, resources and, in particular, time. Nevertheless, individuals need to make choices, and the individual perception of risk is important.”

Where an evaluation of risk is replaced by emotionally-driven dread, real but distorted perceptions result. Such considerations lead to politicised or overcautious judgements and to measures beyond the proportionate response warranted by the data. This has led some to suggest that the willingness of influential anti-tobacco activists, including academics, to hurt legitimate scientists and turn epidemiology into junk science in order

7 Calman, K C (1996), British Medical Journal 313, pp 99-802
to further their own agendas does not bode well for the field of epidemiologic science and reputation\(^8\).

**The Precautionary Principle\(^9\)**

There are occasions when little is known about the possible effects on human health of a material and some prudence is called for before such information is available. These considerations gave rise to the "precautionary principle\(^{10}\). This is not a legal principle. It is a principle applied increasingly widely by public health bodies and regulators, including the European Commission. Put simply, the principle (as it has come to be understood) suggests that where there is doubt about the safety of a product or an ingredient or component foodstuff, consumer product, environmental emission, etc., then it should not be used or should be removed. It is an approach to avoid public health risks by erring on the side of caution.

However, the European Commission states that measures based on the precautionary principle should be:

(i) proportionate to the chosen level of protection;

(ii) non-discriminatory in their application;

(iii) consistent with similar measures already taken;

(iv) based on an examination of the potential benefits and costs of action or lack of action;

(v) subject to review, in the light of new scientific data; and

(vi) capable of assigning responsibility for producing the scientific evidence necessary for a more comprehensive risk assessment.\(^{11}\)

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\(^{8}\) Philips, C V, "Warning: Anti-tobacco activism may be hazardous to epidemiologic science, Epidemiologic Perspectives & Innovations", BioMed Central (2007)


\(^{10}\) Morris, J (2000), "Rethinking Risk and the Precautionary Principle", Butterworth-Heinemann, Oxford

The precautionary principle appears, however, to be being used with alarming regularity by the tobacco control movement to bolster general risk-aversion.

"The precautionary principle undermines legal certainty by providing bureaucrats with an excuse to change the rules of the game in an essentially arbitrary manner ... Attempts to redefine the precautionary principle have done little more than restate the views of interest groups and regulators whose antipathy towards the development of new technologies was already well known."^{12}

6.2 Comment on regulatory options proposed by anti-smoking lobbyists

We set out below our views on several of the most common regulatory options proposed by anti-smoking lobbyists.

Display Ban

We encourage governments to respect the principles of adult choice and freedom of competition when regulating tobacco products. We are opposed to regulation that restricts or prohibits retailers from displaying tobacco products at the point of sale. The display of tobacco products is an important aspect of the consumer purchasing process. It provides consumers with the information they need to make a genuine selection from the wide range of tobacco products, brands and prices that are available in retail outlets, whilst contributing to fair and undistorted competition between tobacco manufacturers and retailers. We believe that banning retail displays, in any form, is unnecessary and ineffective.

The negative impact of display bans on fundamental rights and economic interests of various stakeholders is disproportionate, when compared to the unproven, yet claimed benefit, of reducing smoking rates, particularly when considering that consumption and the prevalence of smoking in New Zealand is declining, and continues to experience long-term decline.

Retail display of tobacco is important for consumers because it gives adults the opportunity of choice. Tobacco displays are about informing consumers what brands are available for purchase, what new products are in market and how much they cost.

We are not promoting smoking, or persuading people to smoke. We are informing those adults who want to smoke about the options available to them.

Moreover, none of the evidence from the tobacco market, the econometric literature or display exposure and recall studies suggests a causal connection between tobacco displays and consumption, between tobacco displays and smoking initiation or between restricting tobacco displays and changes in consumption or initiation.

Simply banning retail displays does not address the complex issue of youth smoking. There is currently no reliable evidence showing a link between product displays and youth smoking.

The main reasons young people start to smoke have long been identified and are clearly documented\textsuperscript{13} as largely socio-economic and educational. They are primarily: rebelliousness; peer group pressure; parental and older sibling example; self image, including low self-esteem and low coping skills; and poor educational performance.

Parental behaviour has been found to be a key determinant in smoking among New Zealand youth.\textsuperscript{14} As outlined in the Ministry of Health’s statistics, 50.5\% of Māori youth reported obtaining tobacco from family members, and 37.8\% reported getting tobacco from friends. In relation to young Māori smokers, a 2008 study found that they were more likely to report that other family members were smokers. 93\% of Māori smokers aged 15–19 years reported at least one of their family members smoked, compared to 75\% of non- Māori smokers of the same age\textsuperscript{15}.

The Eureka Strategic Research paper, Youth Tobacco Prevention Research Project which was commissioned by the Australian Government Department of Health and Ageing found that interventions such as school education, social marketing and parental support techniques were particularly effective. Given the higher percentage of Māori youth obtaining their tobacco from family and friends we believe these approaches will be more effective and are likely to have a far greater impact on youth smoking uptake and access than product display bans.


\textsuperscript{14} Scrugg, R et al (2007), "Influence of smoking by family and best friend on adolescent tobacco smoking: results from the 2002 New Zealand national survey of Year 10 students, ANZ J Publ Health 31, pp 217-23

\textsuperscript{15} "Tobacco Trends 2008: A brief update of Tobacco use in New Zealand" Wellington: Ministry of Health (June 2009)
These sentiments are reaffirmed in numerous national and international studies and research. In Iceland, there was little or no impact on the smoking prevalence of 15-19 year olds after a ban on tobacco displays was introduced. During 2001, when the ban was introduced, smoking prevalence among this age group rose by 3.1% from 14.4% to 17.5%. During 2002, the first full year after the ban was introduced, smoking prevalence among this age group was the highest it had been for 5 years at 17%.\textsuperscript{16}

The results from historical Canadian data\textsuperscript{17} suggest that there were no statistically significant differences between those provinces or territories with display bans and those without them in terms of youth prevalence and total prevalence. The highest prevalence was found in Saskatchewan (24%) which was the first province to institute a display ban, while the largest province, Ontario, which had no display ban at the time, reported a total prevalence of just 17%.

Strict enforcement of minimum legal age laws, youth access prevention programmes and retailer education are more effective at achieving a reduction in youth smoking.

With the fact that such bans are unlikely to reduce tobacco consumption, it is conceivable that the Ministry of Health’s objectives to reduce smoking incidence and prevent youth smoking are unlikely to be met. We believe that this measure would therefore be disproportionate to the cost of compliance.

There are many causal links between the banning of tobacco displays and a growth in the illicit trade market.

Display bans undermine the belief that tobacco is a legal, regulated product and that selling and buying counterfeit and smuggled tobacco products is a crime. Of those surveyed in Canada on this issue, it was found that the majority of respondents did not believe they were committing a crime when buying illegal product.

Hiding products from view also makes it more difficult for the customer to distinguish between legal and illegal products, while at the same time removing the ability for Industry Trade Marketing Representatives (TMRs) and health agencies to ensure compliance among retailers. Imperial Tobacco’s TMRs are trained on the display

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\textsuperscript{17} Health Canada Tobacco Control Programme Canadian Tobacco Use Monitoring Survey (CTUMS) Smoking Prevalence 1999 – 2007 November 7, 2007

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regulations so that they can advise a retailer of their legal obligations where necessary. Compliance is not currently a problem – the Ministry of Health’s own research shows that the majority of retail outlets visited regularly by TMRs comply with display regulations.\textsuperscript{16}

It is difficult to measure illicit trade in relation to one single regulatory measure; however data coming through from Ireland indicates a substantial increase post the display ban in that country. In Ireland, initial figures indicate a month-on-month rise of approximately 12% in non-Irish duty paid cigarettes post display ban implementation, with over half of all August seizures being counterfeit products.\textsuperscript{19} In Canada an accelerated growth in illicit trade was reported in 2008 when display bans were first introduced in Ontario (up to 48.6 from 31.6 percent in 2007) and Quebec (up to 40.1 from 30.5 per cent in 2007).\textsuperscript{20} Measures which have the effect of increasing the black market in tobacco also undermine efforts in reducing the smoking rate through price increases, as more tobacco becomes available at a cheaper price, making it easier for smokers to afford cigarettes. An increase in illicit trade would have a hugely detrimental impact on youth smoking prevention efforts by giving youth easier access to tobacco at prices they can afford. It would also increase their exposure to gangs and criminals and, as a consequence, to other illicit substances sold by these people.

The above discussion demonstrates that a change in relation to the display of tobacco products would be ineffective and disproportionate, especially in the absence of reliable scientific research demonstrating a link between displays, youth smoking, or incidences of smoking. For further information on Imperial Tobacco’s views relating to the display ban issue, please refer to our submission on the Review of Tobacco Displays in New Zealand (February 2008) and our submission on the UK Future Tobacco Control submission (December 2009).

\textit{Ban on Tobacco Sales / Controlled Supply}

Anti-smoking lobbyists are calling for a smokefree New Zealand by 2020. Such a measure would destroy Imperial Tobacco’s fundamental right to trade as a legal entity in New Zealand. It would also lead to an increase in illicit trade (along with all the

\textsuperscript{16} "Further follow-up on tobacco display" health report, Ministry of Health (17 August 2007)
\textsuperscript{19} Internal figures
\textsuperscript{20} "Illegal Tobacco Sales: A Crisis for Canadians", Canadian Tobacco Manufacturers’ Council (2008)
problems associated with this channel) and it would significantly harm retailers, particularly the smaller ones where cigarette sales make up a sizeable portion of their revenue. As with a display ban, some dairy owners would be forced out of business due to a loss in revenue from tobacco sales.

The only country to have implemented such a measure, Bhutan in 2004, demonstrated that banning tobacco does not work. The ban was such a disaster in Bhutan that it was lifted by the National Council in June last year. The Council saw no reason to maintain the ban when it had been proven to be ineffective. According to Council members, the ban did not decrease the number of smokers in Bhutan. Tobacco was still easily available and people continued to smoke in public places\(^{21}\). The ban also had the effect of opening the flood gates to a prosperous black market. From 2005 to 2006 customs officials seized .13 million Ngultrums worth of smuggled tobacco products. This rose to .62 million Ngultrums in 2007 and 1.4 million Ngultrums in 2008\(^{22}\). The increase in illicit trade also led to a requirement for enhanced detection of smuggled tobacco products, enhanced intelligence of tobacco smuggling and black marketing, and internal check points for contraband tobacco smuggling\(^{23}\).

A total ban on tobacco sales in New Zealand would be a heavy-handed restriction on the smoking population's personal freedom of choice, particularly in light of the evidence from Bhutan which shows the ineffectiveness and problems created by such a measure. As Bhutan’s National Council member Pema Lhamo stated during the country's debate on banning tobacco: "Creating awareness and educating people would be far more effective than imposing a ban."\(^{24}\)

**Retailer Licensing**

We support penalties for retailers who sell tobacco products to youth and for criminals who trade in smuggled or counterfeit products. However, we do not believe that the introduction of retailer licensing will prevent youth smoking or illegal sales.

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\(^{22}\) Stakeholders on Tobacco Control, Stakeholders Meeting on Tobacco Control, 10-11 April 2009, Phuentsholing (Thimphu, Bhutan: 2009); U. Norbu, Implementation Status (Simtokha, Thimphu, Bhutan: Information and Communication Bureau, Department of Public Health, Ministry of Health, 2009)

\(^{23}\) Givel, M, "Tobacco use policymaking and administration in Bhutan" (November 2009)

\(^{24}\) Pelvar, S, "Booting Out the Ban," Bhutan Times, 12 July, 2009
Retailer licensing does little to reduce these problems. In New Zealand 15-17 year olds are much more likely than 18-19 year olds to obtain their cigarettes from friends or family, rather than buying them. Among Māori youth, a recent study found that 51% obtained their tobacco from family members.

Counterfeit and smuggled products are currently rarely sold through the legitimate distribution chain. Illicit trade is already being combated through the co-operation of the tobacco industry and national authorities, without unnecessarily bureaucratic and costly retailer licensing.

Excessive license fees would be unaffordable and unattractive for small businesses, or even for medium and large businesses, where tobacco products are sold in small quantities. License fees should not be used by Government as simple revenue raising opportunity or an indirect attempt to reduce the number of tobacco outlets. if this was to occur, there could be a potential significant reduction in the number of legitimate outlets, leading instead to business opportunities for illicit trade and organised crime gangs.

**Excise Increase**

The figure below showing the Ministry of Health’s estimate of smoking prevalence in New Zealand demonstrates clearly that previous significant excise increases above the Consumer Price Index in 1995, 1998 and 2000 did not result in any significant decrease in smoking prevalence.

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26 "Tobacco Trends 2008: A brief update of Tobacco use in New Zealand" Wellington: Ministry of Health (June 2009)
26 "Ibid"
27 "Tobacco Trends 2008: A brief update of Tobacco use in New Zealand" Wellington: Ministry of Health (June 2009)
Figure 1  Current smoking among those aged 15 years and over, 1983–2008 (unadjusted prevalence)


An increase in excise would result in an increase in illicit trade, which would consequently give youth easier access to tobacco at prices they can afford.

Price does not have a significant effect on underage smokers, many of whom obtain their cigarettes from friends or family rather than purchasing them. As mentioned previously, a recent study found that amongst Māori youth, 51% obtained their tobacco from family members.

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28 "Tobacco Trends 2008: A brief update of Tobacco use in New Zealand" Wellington: Ministry of Health (June 2009)
29 Ibid

IMPERIAL TOBACCO NEW ZEALAND LIMITED
Submission on the Māori Affairs Select Committee inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori
January 2010
There is also equity concerns related to a significant tobacco excise increase. Many New Zealanders of modest means pay as much or more indirect tax via alcohol and tobacco excise as they pay in GST levied on all of their spending.\textsuperscript{30}

Last year Imperial Tobacco contributed over $190 million in excise to the New Zealand economy, around $6 million in corporate tax, and roughly $3 million as PAYE. As an industry, our combined excise contribution to Government revenue last year was in excess of $1 billion.

\textit{Education}

The main reason for smoking prevalence decline appears to be through education. The potential risks associated with smoking are now common knowledge.

The latest efforts at educating young people on the dangers of smoking have been successful: in the latest Ministry of Health Tobacco Use Survey less young people were seen to be experimenting with smoking - half of youth aged 15 to 19 years had never tried smoking, compared with 39% in 2006\textsuperscript{31}.

We recommend that the Government undertakes its statutory duty to ensure compliance under the current regulations and that it undertakes an educational programme for retailers to increase compliance. We will continue to support to these efforts through our TMRs’ interaction with retailers, along with initiatives such as our Under 18 Kit for Retailers, as detailed above.

We look forward to the opportunity to present our case to the Māori Affairs Select Committee during its inquiry into the tobacco industry in New Zealand and the consequences of tobacco use for Māori.

\textsuperscript{30} McLeod, R, Tax Review 2001
\textsuperscript{31} "Tobacco Trends 2008: A brief update of Tobacco use in New Zealand" Wellington: Ministry of Health (June 2009)
APPENDIX 1 (attached) - Imperial Tobacco Group International Marketing Standard for the Marketing of Tobacco Products
Imperial Tobacco Group
International Standard for the Marketing of Tobacco Products

STATEMENT OF PURPOSE

Imperial Tobacco Group PLC (the "Group") believes that tobacco products are for adults. The Group is committed to promoting and selling its products responsibly, within the laws and voluntary agreements of those countries in which it operates.

This International Standard for the Marketing of Tobacco Products (this "Standard") reinforces this commitment and sets out clear rules and principles to ensure that Group companies advertising and promotional activities are directed only to adult consumers of tobacco products in all circumstances.

For the purpose of this Standard, Tobacco Products are defined as manufactured cigarettes, fine cut tobacco, cigars, cigarillos, pipe tobacco, pre-formed tobacco rolls, chewing tobacco, oral and nasal snuff, as well as snus.

Wherever and whenever dialogue is possible, Group companies will seek to encourage governments and other relevant authorities in the markets in which they operate to incorporate the practices laid out in this Standard into national laws and agreements, respecting the principles of informed adult choice and commercial communication.

The Group supports the enforcement of legal minimum age restrictions by the appropriate authorities for the purchase of Tobacco Products.

SCOPE

All Group companies and employees worldwide shall observe and enforce this Standard, both in letter and in spirit. Where the Group does not have a controlling interest, it will nonetheless endeavour to implement this Standard.

This Standard will apply also to all advertising, promotion and research agencies employed directly by Group companies, as well as any third parties engaged in the marketing, sale and distribution of Tobacco Products.

All national laws, codes of practice and voluntary agreements relating to Tobacco Products to which Group companies are signatories will continue to be observed where they apply. However, where such requirements are less stringent than this Standard, then this Standard will take precedence, unless otherwise required by law. The adoption or absence of a national code shall not in any way relieve the obligation to comply with this Standard.

This Standard does not prohibit the Group from displaying images of its products, brands, packaging or advertising in corporate communications such as Annual Reports and Accounts where such communications are not designed for marketing purposes of Tobacco Products.

This Standard does not prohibit the Group from displaying images of its products, brands, packaging or advertising for purposes of historical interest, including displays of historical material or the inclusion of tobacco memorabilia in publications or exhibitions by third parties where such communications and displays are not designed for marketing purposes of Tobacco Products.

This Standard does not apply to communications between Group companies and the tobacco trade.

For the purpose of this Standard, an adult is defined as someone who is aged 18 years or over, unless a higher minimum age is specified by local law or voluntary agreement.
THE STANDARD

Style and Content of Tobacco Product Brand Advertising

1. Tobacco Product brand advertising will not:
   - be aimed at or particularly appeal to those under 18 years of age (or higher minimum age where specified locally);
   - encourage anyone to become a consumer of Tobacco Products; or
   - discourage consumers of Tobacco Products from giving up.

2. The content of Tobacco Product brand advertising will not:
   - be aimed at or particularly appeal to those under 18 years of age (or higher minimum age where specified locally);
   - feature a celebrity or contain a celebrity endorsement where that celebrity is believed to appeal more to young people under 18 years of age than to the population as a whole;
   - suggest that the consumption of Tobacco Products enhances popularity, sporting, professional or sexual success;
   - suggest that most people consume Tobacco Products;
   - suggest that the consumption of Tobacco Products is a healthy activity.

3. Any person appearing in Tobacco Product brand advertising shall be - and shall appear to be - aged 25 years or over.

Health Warnings

4. Where Tobacco Product brand advertising is permitted, each advertisement will contain an appropriate health warning as specified by local law or voluntary agreement. Where not specified, all new advertising will carry a current and commonly used health warning for the tobacco product category of the market or duty free area in which the advertising will appear. The use of such warnings shall not cause a misleading impression as to the origin of the advertised Tobacco Product.
   Such health warnings shall:
   - appear in the most appropriate local language;
   - be clearly visible or audible; and
   - include an attribution to the legal source of the health warning, if applicable and legally permissible.

5. On all packs of Tobacco Products manufactured and/or marketed by Group companies as well as on any outer packaging intended to be presented to the consumer, an appropriate health warning will appear. This warning will conform to the relevant law or voluntary agreement of the country or market for which the product has been manufactured, including duty free areas. Where no local law or voluntary agreement exists, a current and commonly used health warning for the product category of the market or duty free area in which the tobacco product is
intended to be marketed shall be used. The use of such health warnings shall not cause a misleading impression as to the origin of the Tobacco Product.

Such health warnings shall

- appear in the most appropriate local language;
- be clearly visible; and
- include an attribution to the legal source of the health warning, if applicable and legally permissible.

**Printed Media**

6. No Tobacco Product brand advertising will be placed in printed media unless satisfactory evidence has been provided that at least 75% of the readers are adults.

7. Where Tobacco Product brand advertising is permitted in printed media, each advertisement will contain an appropriate health warning in accordance with paragraph 4.

**Outdoor Advertising**

8. No Tobacco Product brand advertising will be placed on outdoor signs or billboards which are closer than 100 meters to the main entrance of schools used predominantly by those under 18 years of age (or higher minimum age where specified locally). This does not include outdoor signs at the point of sale.

9. Where Tobacco Product brand advertising is permitted on outdoor signs and billboards, each advertisement will contain an appropriate health warning in accordance with paragraph 4.

**Point of Sale Material**

10. Unless specified differently by local law or voluntary agreement, all new point of sale material, the advertising display area of which exceeds 250 square centimeters, will carry an appropriate health warning in accordance with paragraph 4. Branded items that are given to consumers are excepted from this rule.

**Radio, Television and Cinema Advertising**

11. Where tobacco brand advertising is permitted on radio or television, it will be broadcast only during those hours and when the programming is directed primarily at those aged 18 or over (or higher minimum age where specified locally).

12. Where Tobacco Product brand advertising is permitted in cinemas, it will not be shown when the audience is likely to comprise mainly young people under the age of 18 (or higher minimum age where specified locally).

13. Where Tobacco Product brand advertising is permitted on radio, on television or in cinemas, each advertisement will contain an appropriate health warning in accordance with paragraph 4.

**Product Placement**

14. No payment shall be made for the placement of the Group's Tobacco Products, brands or advertisements in any film, television programme or any other public performance or entertainment medium for viewing by the general public.
Internet Advertising

15. There will be no Tobacco Product brand advertising on the internet unless pre-site access adult verification methods are in place and the content or services of the internet site are directed at those countries where such advertisements are not prohibited by law. In the case of internet ad banners on online media, it is sufficient that satisfactory evidence has been provided that at least 75% of the users are adults.

16. Where adult verification has been obtained, all Tobacco Product brand advertisements must contain a health warning appropriate to the country of destination of the internet site in accordance with paragraph 4.

Video Tapes, Audio Tapes, CDs, DVDs and Computer Games

17. No Tobacco Product brand advertising will be included in material published on video tapes, audio tapes, CDs, DVDs, computer games or any other similar medium unless satisfactory measures are in place to ensure that the item is intended only to be provided to adults.

18. Where Tobacco Product brand advertising is permitted in material published on video tapes, audio tapes, CDs, DVDs, computer games or any other similar medium, each advertisement will contain an appropriate health warning in accordance with paragraph 4.

Promotional Events and Activities

Group companies undertake a range of events and activities which are created specifically to raise awareness of a particular brand or brands of Tobacco Products amongst adult consumers, and which would not take place without the support of Group companies. These do not include pre-arranged events for which the organisers subsequently sought Group companies’ support and whose continued success does not depend solely on Group companies as long as no Tobacco Product brand promotion takes place, nor do they include corporate events and activities where no tobacco brand promotion is intended.

19. Where Tobacco Product brand promotional events and activities are permitted, they will be conducted so as to comply with this Standard.

20. Sampling of Tobacco Products will be restricted to existing consumers aged 18 years or over (or higher minimum age where specified locally).

21. Access to Tobacco Product promotional events will be restricted to adults.

22. No Tobacco Product promotional activity or event will be aimed at or particularly appeal to anyone under 18 years of age (or higher minimum age where specified locally).

23. Tobacco Product brand promotional activities will be directed only to those verified to be aged 18 years or over (or higher minimum age where specified locally).

24. All personnel employed directly or indirectly in Tobacco Product brand promotional events and activities, including sampling, shall be and appear to be aged 21 years or over.

25. Tobacco Product brand promotional items bearing tobacco brand names or logos shall not be sold or given away to those under 18 years of age (or higher minimum age where specified locally).
26. Tobacco Product brand promotional clothing will only be made available in adult sizes.

27. All Tobacco Product brand promotional offers shall be directed only to adult consumers. Where such an offer permits an adult consumer to be accompanied by other persons at an event or activity, those accompanying the adult consumer must themselves be adults.

Sponsorship

Group companies provide sponsorship support for a range of sporting and cultural events, activities and teams in order to raise awareness of a particular tobacco brand or brands amongst adult consumers, but without which support the event, activity or team would still exist or take place.

28. Where Tobacco Product brand sponsorship is permitted, all advertising and promotional activities related to the sponsorship will be conducted so as to comply with this Standard.

29. No new sponsorships will be entered into for any event, activity, team or individual unless satisfactory evidence has been provided that all competitors, team members and active participants are adults.

30. Tobacco Product brand sponsorship, clothing and materials will not be provided for any event, activity, team or individual which has greater appeal to young people than to adults.

Direct Mail

31. The marketing of Tobacco Products by direct mail will be directed only to verified adult consumers. All reasonable measures will be taken to ensure that those under 18 years of age (or higher minimum age where specified locally) are excluded from all direct mailing lists.

32. Where Tobacco Product brand advertising is permitted by direct mail each advertisement will contain an appropriate health warning in accordance with paragraph 4.

Use of Brand Names and Logos by Third Parties

33. Wherever possible, measures will be taken to prevent third parties from using the Group's tobacco trademarks and registered designs without authorisation, or in a manner which undermines the principles of this Standard.

Product Market Research

34. Tobacco product concept, advertising and promotion research will only be commissioned amongst adult consumers.

Implementation and Compliance

35. It is the responsibility of all Group companies and Business Units to establish effective mechanisms to ensure that employees and agencies and other relevant third parties understand, implement and comply with the Standard. Group companies and Business Units are expected to begin applying this updated Standard on 31st October 2009 and to confirm full adherence no later than 31st October 2010, insofar as the application of this Standard is not in breach of any local relevant laws.
36. Where the Group acquires the controlling interest of a company after 31st October 2009, the Group’s Sales & Marketing Director will issue the Standard to that company which is then expected to confirm full adherence no later than 12 months after issuance of the Standard, insofar as it is not in breach of any local relevant laws.

37. Employees will be made aware of their obligations to this Standard through its publication on the Group’s Intranet, through the distribution of copies of this Standard through relevant channels and through reference to the Standard in training and development programmes.

38. All advertising, promotion, sampling and research agencies employed directly by Group companies shall be provided with copies of this Standard. Each agency shall be advised that its appointment and representation on behalf of Group companies shall be contingent upon compliance by each such agency (including its employees) with the Standard. Reference to the Standard should be included in all contracts and agreements with such agencies as well as any third parties engaged in the marketing, sale and distribution of the Group’s Tobacco Products.

39. A copy of this Standard will be provided to all relevant external local law firms and all Tobacco Product brand advertising material signed off by them must conform to this Standard.

40. The Group will take appropriate action against any employee who knowingly or negligently violates this Standard.

41. Any significant questions of interpretation that cannot be resolved locally should be addressed to the Group Legal Department for clarification. Group Legal will have ultimate responsibility for matters of interpretation of this Standard.

42. Any significant breach of this Standard, whether accidental or otherwise, shall be reported to Group Legal, as soon as reasonably practical.

43. A regular Company-wide review will be undertaken to ensure consistency of implementation and interpretation of this Standard.