



U.S. Chamber of Commerce

Myron A. Brilliant
Senior Vice President
International Division

1615 H Street, NW
Washington, DC 20062-2000
202-463-5489 • 202-822-2470 Fax
www.uschamber.com

September 16, 2013

The Most Honorable Portia Simpson Miller
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 10
Jamaica

Dear Madame Prime Minister:

The U.S. Chamber of Commerce is the world's largest business federation, and represents the interests of more than three million businesses and organizations of every size, sector, and region. The U.S. Chamber's member companies are significantly invested in Jamaica, and we place high priority on our trade and investment relationship with your country.

The U.S. Chamber of Commerce is committed to promoting a robust and growing trade and investment relationship with Jamaica. For this to occur, the decisions made by public policymakers must have a sound basis in science and reflect global best practice.

For that reason, I wanted to bring to your attention a development that concerns us. We understand that the Ministry of Health has enacted a new tobacco regulation on July 15 mandating a dramatic increase in the size of graphic health warnings (GHWs) on cigarette packages to cover 75 percent of the pack. We also understand that this new regulation was passed without proper parliamentary procedure and the ability for public comment. Additionally, we understand that the new regulation of 75 percent pack coverage far exceeds the FTC requirements. While the U.S. Chamber supports legitimate public health regulation of industry, we do not believe this initiative is well founded, and would urge that it be reconsidered, for several reasons.

The Most Honourable Portia Simpson Miller

September 16, 2013

Page 2

1. While we recognize that many countries have GHWs and that the Framework Convention on Tobacco Control (FCTC) encourages warnings, it does not mandate 75 percent warnings. Further, the FCTC text itself requires the treaty be implemented “in accordance with international law” and, as you are likely aware, the proposed measure is currently the subject of numerous disputes under the World Trade Organization (WTO) Trade Related Aspects of Intellectual Property (TRIPS) Agreement.
2. There has been no justification given or necessity stated by the Jamaican government for modifying the text warnings that are currently in place. The Jamaican government did not conduct any impact assessment or any other studies or surveys to justify the measure. Moreover, the Ministry of Health seems to have enacted this regulation without parliamentary debate or public comment. The ability for the public – including the private sector – to comment on pending legislation is critical for ensuring that concerns of unintended consequences are raised and duly considered.
3. The measure is not proven to be appropriate or effective. GHWs are not effective in reducing smoking prevalence. In fact, in the U.S. the Food and Drug Administration (“FDA”) conducted the most comprehensive statistical and behavioral analysis ever done of the impact of GHWs on consumers. The FDA conceded that the effectiveness estimates were “*in general not statistically distinguishable from zero*”¹ and that “[t]he graphic cigarette warning labels did not elicit strong responses in terms of intentions related to cessation or initiation.”² In fact, there is no evidence that larger graphic warnings will have any discernible impact on reducing or discouraging tobacco use. According to the OECD, smoking is more prevalent in Canada, where 75 percent GHWs are in place, than in the United States, where there is only written warning on the side of the packs. Larger GHWs simply have no strong track record in advancing public health.

¹ U.S. Dept. of Health and Human Services, Food and Drug Administration, Required Warnings for Cigarette Packages and Advertisements, Federal Register, Vol. 75, No. 218, Nov. 12, 2010, p. 69546.

² Nonnemaker, J., et al., Experimental Study of Graphic Cigarette Warning Labels: Final Results Report Prepared for Center for Tobacco Products, Food and Drug Administration, Contract No. HHSF-223-2009-10135G.

4. The measure is not proportionate, since the proposed GHW initiative would significantly undermine the ability of brand owners to use their legally sanctioned trademarks in commerce, thus sending a troubling signal that is at odds with a commitment to intellectual property laws. Additionally, the GHWs requirement could potentially create unintended consequences that undermine health objectives, for instance by driving down prices (thus potentially increasing consumption) and increasing illicit trade, since trademarks also protect against counterfeiting as they provide unique identifying characteristics of products.
5. Finally, as a member of the World Trade Organization (WTO), we urge Jamaica to ensure that technical regulations and standards, including packaging, marking and labeling requirements, do not create unnecessary obstacles to international trade and respect the Agreement on Technical Barriers to Trade (TBT). As you are certainly aware, a large number of WTO member countries have expressed concerns about significantly similar proposals involving efforts to impose GHWs related to alcoholic beverages, given the potential violations of WTO rules.

In summary, we respectfully submit that there is no scientific basis to demonstrate that GHWs covering 75 percent of the pack will advance public health objectives. They will, however, erode the IP rights of trademark owners, and create unnecessary obstacles to trade.

Thank you very much for your consideration of the Chamber's views.

Warmest regards,



CC: Dr. The Honourable Peter Phillips, Minister of Finance and Planning

Senator The Honourable A.J. Nicholson, Minister of Foreign Affairs and Foreign Trade

The Most Honourable Portia Simpson Miller
September 16, 2013
Page 4

Honourable Dr. Fenton Ferguson, Minister of Health

Honourable Anthony Hylton, Minister of Industry and Commerce

Honourable Omar Davies, Minister of Transport, Housing and Works

Honourable Mark Golding, Minister of Justice

Honourable Peter Bunting, Minister of National Security

Most Honourable Andrew Holness, Leader of the Opposition

Mr. Audley Shaw, Opposition Spokesperson on Finance