

U.S. Chamber of Commerce



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January 28, 2015

The Right Honorable Bamdev Gautam
Deputy Prime Minister and
Minister
Ministry of Home
Singha Durbar
Kathmandu, Nepal

Dear Honorable Minister:

As an organization representing over three million U.S. businesses, including major corporations with business operations in Nepal, the U.S. Chamber of Commerce is heartened by the Honorable Prime Minister Koirala's efforts to grow Nepal's economy and attract foreign investment. We recognize that a strong Nepalese economy will benefit Nepalese citizens and companies first and foremost, but also American companies operating in Nepal.

Respectfully, I want to bring focus to a recent development that is of concern to American companies. As you are aware, on October 30, 2014, the Ministry of Health and Population (MoHP) announced that graphic health warnings (GHWs) on cigarette packs shall be increased from 75 percent to 90 percent, effective May 15, 2015. We are very concerned that the new GHW regulation was issued less than one year after the implementation of the 75 percent GHWs in December 2013.

The Chamber is committed to working in partnership with the Ministry of Health and Population and others in the Nepalese government to achieve our common objectives. And we do so in consideration of the many challenging contexts in which the policies have to be formulated.

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We would strongly encourage the MoHP to reconsider this regulation's implementation taking into account the unusual speed by which it was issued and the likely negative perception this could generate with the international business community. Specifically, we encourage outreach to business and industry in ongoing consultations regarding policies, sound policy implementation, and improved governance. We believe this will increase business and investor confidence in Nepal.

We are not aware of any science-based evidence that larger GHWs will have any discernible impact on reducing or discouraging tobacco use. In the U.S., health authorities have not been able to produce evidence that large GHWs will reduce the prevalence of smoking. According to the OECD, smoking is more prevalent in Canada, where 75 percent GHWs are in place, than in the United States, where they are not. From our perspective, larger GHWs simply have no strong record of accomplishment in advancing public health.

Furthermore, since 90 percent GHWs constitute a practical ban on trademarks, implementing this regulation could send the wrong message to prospective investors about Nepal's adherence to its international trade obligations under the World Trade Organization (WTO) Agreements.

The protection of trademarks is a priority for the U.S. Chamber, as is the protection of other forms of IP. The proposed GHW initiative would significantly undermine the ability of brand owners to use their legally sanctioned trademarks in commerce. This will damage not only the affected companies, but may also affect consumers' ability to identify products of their choice, and may facilitate counterfeit trade.

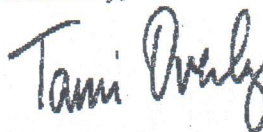
Finally, as a member of the WTO, we urge Nepal to ensure that technical regulations and standards, including packaging, marking and labeling requirements, do not create unnecessary obstacles to international trade. As the experience involving efforts to impose GHWs related to alcoholic beverages demonstrated, such efforts can become the subject of discussion in the WTO's Committee on Technical Barriers to Trade.

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The U.S. Chamber of Commerce is committed to promoting a robust and growing trade and investment relationship with Nepal, and we would hope that decisions made by public policymakers be based on sound science-based evidence and reflect global best practice.

Thank you for your consideration of the Chamber's views on this issue. If you need additional information or background, please do not hesitate to have your staff contact Espie Jelalian, the Chamber's director for South Asia at 202-463-5732 or ejelalian@uschamber.com.

Sincerely,



Tami Overby
Senior Vice President, Asia
International Affairs Division
U.S. Chamber of Commerce

Enclosure

cc: Mr. Rishi Ram Ghimire
Mr. Lekh Nath Gautam

GRAPHIC HEALTH WARNINGS AND POINT-OF-SALE DISPLAY BAN

UNITED STATES VERSUS CANADA

Experience from the United States and Canada demonstrates that massive graphic health warnings coupled with point of sale display bans do not achieve their desired effects.

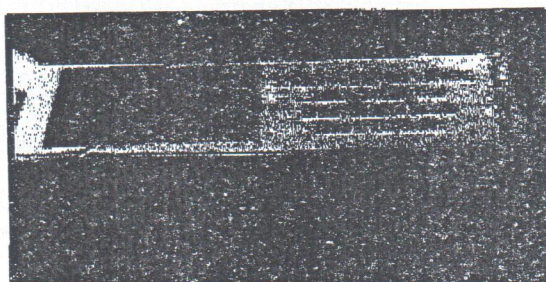
Consider the facts:

- Since 1965, in the United States has required simple textual health warnings on cigarette packs by printing a "conspicuous label" stating: "*Caution: Cigarette Smoking May Be Hazardous To Your Health*". The US law applicable – in large part – has remained the same. The current law requires four rotating textual health warnings on all cigarette packages which cover approximately 10% of the whole pack located on the side panel.

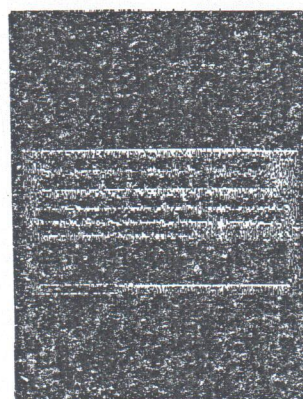
In contrast, Canada has gone down a different path.

- In 1989, regulations required a series of 4 text warnings covering 20% of the front and back panels of the pack. In 1994, regulations were amended to require text warnings in black and white to cover the top 35% of the package (front and back). Notably, Canada became the first country to implement picture-based health warnings on cigarette packages in June 2001. Between 2001-2011, a set of 16 health warnings were rotated on packages covering 50% of the front and 50% of the back panels of the pack. In March 2012, GHWs were further increased to 75% of both front and back panels. Manufacturers were also required to insert information messages inside of the pack containing information to help smokers quit.

Illustration:

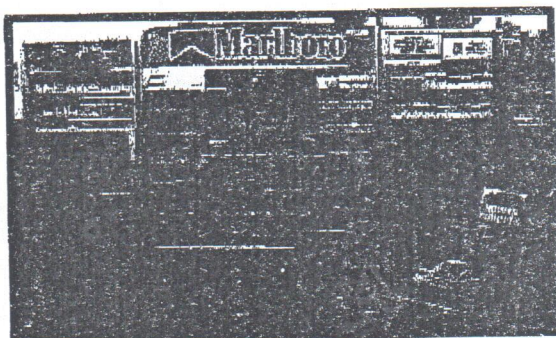


United States

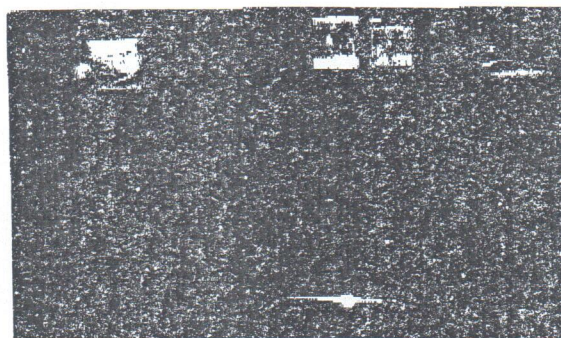


Canada

- On the other hand, **point of sale display** has been allowed and very visible in the United States, including in-display advertising which. In stark contrast, every Canadian province had banned all forms of advertisements at points of sale in 2010.

Illustration:

United States



Canada

- However, despite the marked differences in Canada and US regulations, historical data from OECD from 1965 – 2012 reveal that smoking rates declined in the US at slightly faster rate of 2.3% versus Canada's 2.0%. And significantly, the smoking rate in Canada in 2012 is actually higher at 16.1% compared to that of the U.S. which stands at 14.2% – notwithstanding the overly strict regulations in Canada.

