

Make key policy decisions

Plain Packaging of Tobacco Products involves many different elements and as with all tobacco control policies, the tobacco industry will look for loop holes or ways to get around or undermine the policy. It is important to get the detail right to ensure the policy is robust and ‘future proofed’.

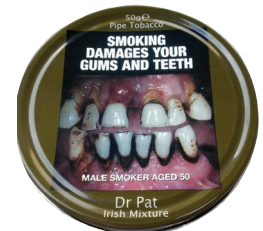
This means the legislation will likely be quite detailed – aiming for simplicity risks the tobacco industry developing novel ways to differentiate their products which don’t currently exist on the market (see **GUIDE 3.2: DRAFTING THE LAW**).

The key initial policy development decisions are listed below.

1. Apply plain packaging to all tobacco product categories

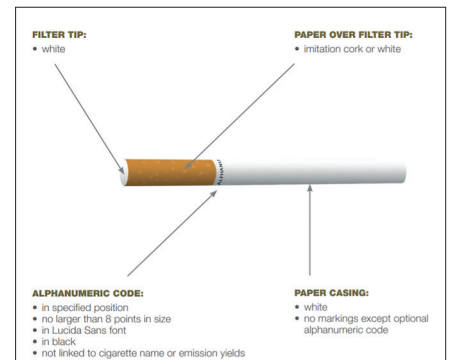
The WHO FCTC guidelines to Article 13 imply that plain packaging should be applied to all tobacco products. Failure to include all tobacco products, could result in those products not subject to the requirements gaining market share (in Canada, for instance, flavoured cigarillos became popular after flavoured cigarettes were banned).

There must be good policy reasons for any decision to apply the policy to only some products because otherwise there is a risk that a claim would be made that the policy is discriminatory and in violation of World Trade Organization (WTO) rules (see **GUIDE 4.3 WTO NOTIFICATIONS**). Australia and Ireland’s legislation applies to all tobacco products. However, UK, Norway, France and Hungary apply the legislation to just cigarettes and hand rolled tobacco. Decisions in those countries were made because of the limited prevalence of less common tobacco products such as cigars or pipe tobacco, especially among younger people.



2. Regulate individual sticks

All existing plain packaging legislation apply plain cigarette stick requirements. White sticks with a white tip or imitation cork tip. In Australia an alpha numeric code is permitted that cannot amount to branding. Australia also stipulates the size and shape of the sticks because ‘slim sticks’ can create the impression that they are less harmful. In UK and Ireland, the brand name and variant is permitted in a specified typeface and location on the stick. It is recommended that sticks be regulated because failure to do so could lead to more branding and the use of attractive colours on the cigarette sticks themselves. If sticks are being regulated, then consideration should be given whether to allow the brand name on them or not.



3. Minimum quantity per pack

Most countries are adopting 20 cigarettes as the minimum individual pack size as part of their plain packaging requirement. Australia and the EU also put minimum quantities on hand rolled (or roll your own) tobacco per pack (30g). The legislation should also prohibit the sale of tobacco in the absence of packaging as this prevents the sale of individual cigarettes or bidi's, a common practice in some countries.

The principle reason for prohibiting smaller packs and individual sticks is that these are cheaper and therefore more accessible to young people and children, and thereby encourage smoking initiation and addiction. This element of the measures is in accordance with WHO FCTC article 16.4

4. Information permitted on the pack

Other than the brand and variant name, and the mandatory prescribed health warnings, there is information that a government may want to allow or require on tobacco packs. These other pieces of information (sometimes given as symbols) may already appear on packs. Depending on how the legislation is drafted, it may need to specifically provide for or allow any additional information that is required by other laws (ie consumer protection) or is otherwise desirable. Examples could include:

- bar codes
- age of sale
- place of origin
- duty tax paid stamps or stickers
- manufacturer's name and address for consumer protection
- amount of product per pack
- Tar, Nicotine and CO₂ (TNC) emissions*
- information about assistance with quitting
- track and trace code or other fraud prevention markings
- recycling symbol*
- no littering symbol*

** Symbols for recycling and no littering are not permitted in Australian, Irish or UK legislation because they imply a positive social connection for the tobacco industry. WHO FCTC Article 11 implementation guidelines (paragraph 44) recommends that TNC emissions information should not be permitted on packs because emission yields are misleading to consumers.)*

A review of existing requirements and legislation (including general consumer laws that apply to all product packaging) is recommended to identify which information should continue, which should be not be allowed, and whether there is legislation that already permits or requires any information on tobacco packaging. This will inform the how the law is drafted.

5. Apply only to retail packaging

In order to ensure that the policy is least restrictive, it needs to be aimed at consumers and no wider. Therefore it should be applied to 'retail packaging' or only packaging that will or could be seen by consumers; rather than 'in trade' packaging that is only used in warehouses or wholesalers.

There are good legal reasons for this limitation. Plain packaging is a measure designed to merely control the use of tobacco trademarks rather than to completely prohibit the trademarks in all circumstances. Applying the measure only to packing that consumers may see will assist in defending some of the legal claims the tobacco industry may make against the policy.

In some countries small shop keepers use the large boxes that are normally only used in warehouses and which may not fall within a definition of ‘retail packaging’. In such situations, where consumers may be exposed to branding on what is normally ‘trade packaging’, a government may consider extending the application of the law and if so, different ways of drafting the legislation can be developed and CTFK can assist or advice on possible options.

6. Transition arrangements and sell through periods

Manufacturers and retailers will have existing stock that does not comply with new packaging laws. Sufficient notice of when the law will come into force ensures that producers and retailers have sufficient time to sell existing stock before changing packaging to comply with the new law. This weakens any industry argument that it has suffered loss as a consequence of holding unsold stock. Australia allowed a 3 month sell through period for plain packaging, after which old packs could no longer be sold; the UK allowed a full year.

The question of what is a sufficient period of time may differ from country to country. Officials should consider what periods have been allowed for previous packaging requirements, such as changes to health warnings.

7. Technical details in parliamentary act or subsequent regulations

It is recommended that new and specific legal authority is obtained from the legislature or parliament to implement the policy, rather than relying on existing Ministerial or executive powers.

A parliamentary Act could provide simple powers so that the Minister of Health can later adopt regulations or a decree that set out the detailed requirement; or the Act could set out most of the detailed requirements. This will depend on the style of legislative drafting and law-making practices for each country as well as the political situation. A shorter Act, or a short provision that is part of a wider tobacco control Act, which just provides simple powers may be easier to get through parliament and less subject to political interference. On the other hand, if there is doubt as to whether the Minister will move quickly to bring in regulations, technical orders or decrees, then it may be better to include the detail in the Act and set a legislative timetable for implementation.

If simple powers are taken it is important they are drafted so as to give authority to regulate all aspects of the packaging *as well as* the appearance of individual tobacco products such as cigarette sticks.