

**PUBLIC HEARINGS**

**TOBACCO PRODUCTS CONTROL AMENDMENT BILL (SECTION 76)**

**6 MAY 2008**

**STEEN HJORTHOLM, ULREICH TROMP, NEETESH RAMJEE**



**PHILIP MORRIS**  
**SOUTH AFRICA (Pty) Ltd**

# SUMMARY



- PMSA supports the Bill
- Definitions of “Advertisement” and “Promotion” - Section 1
  - Should expressly exclude communication with the trade (wholesalers and retailers)
  - Should expressly exclude trade programmes compliant with Competition Act and not aimed at consumers
- Notices at point of sale - Sections 3(10)(b) and 7(b)
  - 1 sign for all tobacco products will not allow fair competition
  - Prescribe maximum size and number of signs per point of sale
  - Prescribe maximum 1 sign per tobacco company
  - As is the case today i) signs to only indicate price and availability ii) signs to have health warning and minimum age warnings

- Recent entrant after we stopped selling our products in the 1980s in support of anti-apartheid measures
- PMSA is an affiliate of Philip Morris International - PMI is the leading international tobacco company
- Constructive dialogue and consultation with Department of Health
- PMSA supports Government's decision to supplement current legislation through s76 Bill
- Not a member of the Tobacco Institute of South Africa (TISA)

## ▪ Section 1(a) and (d)

- Definition of “advertisement” includes all “...*commercial communication or action brought to the notice of any member of the public...*”
- Definition of “promotion” includes “...*the practice of fostering awareness of and positive attitudes towards a tobacco product...or manufacturer...for the purposes of selling the tobacco product...*” and through “...*incentives...*”
- If no exclusion for trade (wholesalers and retailers) or corporate communication then:
  - ***a business card, a phone call, a price list, a letter, a job advertisement, a store visit by a sales rep etc. would constitute an advertisement or promotion***
- Trade programmes providing incentives to wholesalers and retailers help ensure that as a recent entrant PMSA products will be able to compete fairly versus competitor products
- **Recommendation:** i) include definition for “tobacco trade” and exclude this group from definitions of “advertisement” and “promotion”, ii) allow trade programmes that do not infringe the Competition Act

## ▪ Sections 3(10)(a) and 7(b)

- Current Regulation allows signs (that have prescribed health warning and minimum age warnings) that are no larger than 1m<sup>2</sup> and placed no further than 1m from point of sale to show price and availability only
- A single notice for all tobacco products would severely reduce the ability of new or recent entrants to the SA market to compete
- A single notice would be confusing as there are over 250 tobacco brand variants available in the SA market
- Recommendation:
  - prescribe a maximum number of signs per point of sale + maximum of 1 sign per tobacco company; or
  - reduce current maximum size + allow a greater prescribed maximum number of signs per point of sale + maximum of 1 sign per tobacco company

# 1 SIGN PER COMPANY

Health warning +

Minimum age  
warning +

Maximum size +

1 per tobacco  
company +

Only show price  
and availability +

1m from point of  
sale =

*Serves to inform  
adult smokers at  
the counter of price  
and availability of  
products at the  
point of sale*



CONFUSING



WE CANNOT, BY LAW, SELL  
TOBACCO PRODUCTS TO ANYONE UNDER  
THE AGE OF 18 YEARS



DANGER: TOBACCO IS ADDICTIVE

CLEAR



# PICTORIAL HEALTH WARNINGS

- **Section 7(bA)**

- PMSA will not oppose introduction of pictorial health warnings
- PMI has complied in a number of countries where it is required by law

- **Recommendation:** allow reasonable phase-in period to sell out existing stock (e.g. minimum 12-18 months) and reasonable space to display trademarks



THAILAND



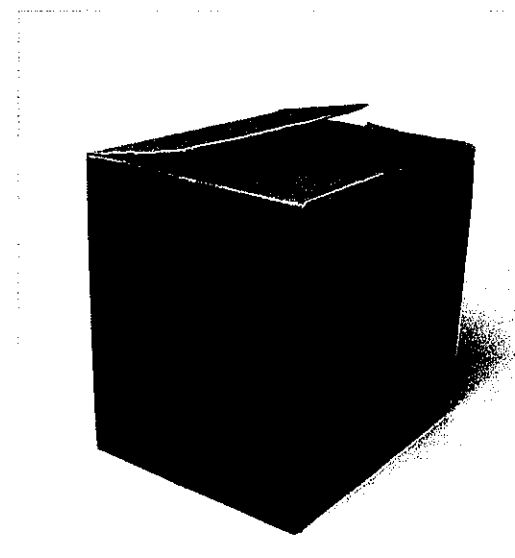
SINGAPORE



VENEZUELA

## ▪ Section 1(e)

- Definition of “package” includes all packaging in which tobacco products are sold at “...*wholesale or at retail.*”
- Shipping cases (50 x cartons) sold at wholesale not seen by general public / consumers
- Not required in any other country where pictorial health warnings implemented
- If a clear wrapper is used instead of a cardboard carton to package 10 x packs then clear wrapper should not have to have health warning as individual pack health warnings will be clearly visible through clear wrapper



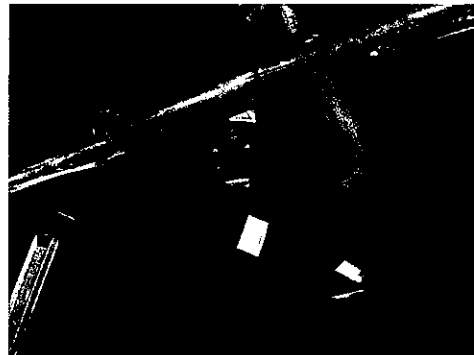
**Recommendation:** exclude shipping cases and clear wrappers expressly from health warning requirements by requiring warnings on packs and cartons only



# CHARITABLE CONTRIBUTIONS

## ▪ Section 3(3)

- All charitable contributions to be anonymous
- PMSA contributes financially and also builds NGO capacity through our unique approach and the time and hands-on involvement of staff members in projects
- Anonymous contributions may present issues with respect to the CSI element of the BEE scorecard
- **Recommendation:** prohibit tobacco companies from proactively seeking publicity for their charitable contributions but continue to allow them to make a difference by getting staff involved in charitable activities



- **Section 7(bA)(iii)(bb)**

- Section empowers Minister to make Regulations regarding fiscal markings to be placed on packs
- **Recommendation:** Consult head of SARS Working Group on Tobacco on progress made to date - Industry has been working together with SARS for last 18 months to formulate measures to combat illicit trade including fiscal marking, tracking and tracing systems and licensing of the supply chain

## ▪ Section 4(5)

- Bans sales via the postal service, the internet or any other electronic media
- Legitimate sales to wholesalers conducted through email or fax correspondence – modern way of doing business
- Internet sales not prominent in SA therefore should be permitted provided proper age verification and tax checks have been complied with
- **Recommendation:** Amend clause to permit sales where proper age verifications and tax checks have been conducted

# MISLEADING DESCRIPTORS

## ▪ Section 3(6)

- Prevents the use of descriptors such as “lights” and “mild”
- PMSA has already voluntarily removed such descriptors from all of its products available in SA since early 2007



**OLD**



**NEW**

**(Since Q1 2007)**

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