

Submission to the Senate Committee on Social Affairs

Bill S-5: *An Act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other Acts*

COMMENTS SUBMITTED BY: The National Convenience Stores Distribution Association (NACDA)

April 6, 2017

EXECUTIVE SUMMARY

On behalf of our membership, the National Convenience Stores Distributors Association (NACDA) appreciates the opportunity to table this submission to inform this committee's study on S-5: *An Act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other Acts*.

This public policy decision will have significant impacts on our membership and the business community across this country, without achieving the intended public policy goal to reduce smoking.

NACDA represents the interests of independent and corporate distributor-wholesalers in Canada who serve the convenience store market. Our distributors and the stores we support provide essential products in urban, rural and remote areas with over 27,000 retail locations across Canada that serve 10 million people a day.

As distributors who service the convenience store industry, we are acutely aware of the concerns our customers (retailers) have over plain packaging. As distributors of legal tobacco products, we have our own unique concerns. The operational challenge of filling and delivering orders of products with no differentiation cannot be underestimated.

As you may be aware, Canada has a thriving illicit tobacco problem and we feel this will be worse if plain packaging is implemented. It is critical to understand just how easy the government will be making it for counterfeiters to produce illegal packages. Just as the Bank of Canada ensures that bank notes, such as a \$20 bill have distinguishing characteristics, colours and graphics that make it virtually impossible to replicate, the same objectives should apply to legal tobacco.

Without any type of external differentiation between packages, illegal tobacco traffickers or unscrupulous retailers could sell products to unsuspecting consumers.

In addition, we have learned that illegal tobacco facilities are now manufacturing fake tax stamps, designed to make their products look legitimate to the untrained eye. This is alarming both for government, law enforcement, consumers and our retail customers, who will find it increasingly difficult to discern legal, taxed product from those on the black market.

Plain packaging would only make the manufacturing of counterfeit products easier and cheaper, as they are effectively provided with a blueprint of how to make a standardized pack. It would also be more difficult to differentiate between real and fake tobacco packs.

It is with both operational challenges and the impact of counterfeit and contraband tobacco on our distributors in mind that we strongly recommend against the adoption of plain packaging in Canada. The government's objective to reduce smoking, particularly amongst youth, is laudible. However, we believe plain packaging will not achieve this objective. It is important to note that the introduction of plain packaging in Australia was coupled with the introduction of graphic health warnings. It is therefore virtually impossible to look at the impact of plain packaging in isolation, as Canada already has graphic health warnings on packages.

Should this policy be adopted, our distributors have two core recommendations for the Government of Canada:

- Ensure that the exterior overwrap found on cartons and packages has an identifiable marker that would allow distributors to distinguish between legal and illegal products prior to their distribution, and;
- Allow for a reasonable implementation time for distributors and our retail customers of no less than 18 months following the registration of regulations to ensure compliance and minimal interruption in the small business retail sector.

Distributors are proud to be part of a robust and thriving convenience store industry in Canada. We are partners with government in the collection of taxes and also in economic growth. We welcome any tobacco cessation efforts made by this government so long as they are driven by evidence based data. Sound public policy should always be based on facts, and the facts don't support this fundamental change and will increase rather than decrease youth access to tobacco.

With respect to the inclusion of e-cigarettes in this legislation, NACDA is supportive of the government's move to regulate and provide a framework for sales across Canada. We want to ensure however that both vape shops and convenience stores have access to the same products under the same set of rules. Our members have abided by Health Canada rules and have not distributed e-cigarettes containing nicotine. It would be very unfortunate to punish our sector, that has followed the rules, while allowing a competitive advantage to vape shops who have flaunted the law.

We hope that this committee takes the opportunity to listen to the retail and distribution community and consider the amendments recommended by our membership.

Background: Our Industry

On behalf of our membership, the National Convenience Stores Distributors Association (NACDA) appreciates the opportunity to take part in the consultation around the recommendation to move forward with the plain packaging of tobacco products in Canada. This public policy decision will have significant impacts on our membership and our business community across this country.

Small businesses are the backbone of Canada's economy, spurring economic growth in communities in every region. What this committee may not appreciate is that the convenience store industry is at the forefront of that, employing over 230,000 hardworking people across the country.

The convenience store industry includes distributors at the top of the supply chain all the way down to retailers in thousands of stores from coast to coast. It contributes more than \$51 billion annually to the Canadian economy. Our industry also collects over \$18 billion in taxes on behalf of provincial and federal government with over \$7 billion remaining within federal coffers to fund national investments and programs.

NACDA represents the interests of independent and corporate distributor-wholesalers in Canada who serve the convenience store market. Our distributors and the stores we support provide essential products in urban, rural and remote areas with over 27,000 retail locations across Canada that serve 10 million people a day.

Like most businesses, our distributors are more competitive when they can achieve economies of scale. If a truck is loaded with fewer products, including legal tobacco, it may need to make fewer trips, particularly to remote communities. Alternatively, the fewer products on the truck, the greater impact on the final price, thereby placing an unnecessary burden on Canadians living in more rural areas where their local corner store is often their only option to purchase basic necessities.

As distributors who service the convenience store industry, we are acutely aware of the concerns our customers (retailers) have over plain packaging.

As distributors of legal tobacco products, we have our own unique concerns. It is important for this committee and the Senate of Canada to understand that history has demonstrated policy changes directed at the legal tobacco market end up serving only one purpose: growth in the illegal market.

Illicit and Counterfeit Tobacco

Distributors play a critical role in ensuring convenience stores receive legal, regulated products. The move to plain packaging will increase the availability of illegal tobacco products in the marketplace, diminishing our role in providing a legitimate distribution channel.

It is already an issue our distributors face for other products sold in convenience stores. For example, the availability of grey market confectionary products (candy bars, sodas etc. that are not properly labelled to Canadian standards and may have improper allergy alerts) are on the rise in Canada. In this case, our distributor members look for brand identifiers before agreeing to purchase product, which in turn reduces the likelihood that these items end up in convenience stores.

Canada has a thriving illicit tobacco problem and we feel this will be worse if plain packaging is implemented. It is critical to understand just how easy the government will be making it for counterfeiters to produce illegal packages. Just as the Bank of Canada ensures that bank notes, such as a \$20 bill have distinguishing characteristics, colours and graphics that make it virtually impossible to replicate, the same objectives should apply to legal tobacco. Why would government want to provide criminals with a simple blueprint for producing counterfeit product?

The Importance of Package Differentiation

Plain packaging would make it more difficult for consumers, retailers and enforcement agencies to differentiate between real and fake tobacco packages and cartons.

There are over 50 identified contraband tobacco manufacturing facilities operating in Canada. Plain packaging – and corresponding counterfeit tax stamps – could be easily created and dispersed from these black market manufacturers.

Without any type of external differentiation between packages, illegal tobacco traffickers or unscrupulous retailers could sell products to unsuspecting consumers.

Another significant impact is the operational challenge for distributors without packaging differentiation. If you visit a distributors warehouse, stocked with thousands of consumer products, it is clear that in order to fill orders quickly and efficiently, products need to be easily identifiable. The extra time and increased likelihood of human error will negatively impact hard working businesses while allowing the illegal market to flourish.

Plain packaging poses a threat to the communities we serve by aiding the illegal tobacco industry. In Australia, law enforcement officials believe that nearly \$45 million in federal taxes were lost due to the illegal trade.

Criminal organizations which produce contraband and counterfeit tobacco are highly sophisticated operations within the multitude of manufacturing facilities currently operating in Canada.

In addition to manufacturing tobacco products that look very similar to those sold by legal retailers, we have learned that some of these facilities are now manufacturing fake tax stamps, designed to make their products look legitimate to the untrained eye. This is alarming both for government, law enforcement, consumers and for our retailers, who will find it increasingly difficult to discern legal, taxed product from those on the black market.

Plain packaging would only make the manufacturing of counterfeit products easier and cheaper, as they are effectively provided with a blueprint of how to make a standardized pack. It would also be more difficult for consumers, retailers and enforcement agencies to differentiate between real and fake tobacco packs.

RECOMMENDATION TO ADDRESS ILLICIT / COUNTERFEIT TOBACCO:

- NACDA recommends that Health Canada allow for a differentiating element on cartons and/or the exterior overwrap that would allow distributors to distinguish between legal and illegal products prior to their distribution. Since very few consumers purchase a full carton, the end consumer would not see this packaging, yet it would address a major operational issue for distributors.
- Additionally, we would recommend that the overwrap on individual packages also have a differentiating element. It is important to understand that our smaller retail customers often buy different cigarette brands in quantities less than a carton. Therefore, when orders are being filled and delivered, it will be very difficult to ensure that the right products are being dropped off if they all look the same. The overwrap is immediately removed by the consumer so the concerns around branded packaging would still be addressed.

Timelines and Implementation

Should the government proceed on implementing plain package requirements for tobacco products, our membership would like to see realistic and appropriate transition times to ensure our customers (retailers) are able to implement and abide by these new control measures.

Additionally, it will give our members appropriate time to plan for a change in product requirements when coordinating new shipments to our customers.

We believe that product changes from the manufacturing side will take place extremely close to the deadline. By having the same implementation for the manufacturers, distributors and retailers, it eliminates the opportunity for thousands of employees to transition to new products in a way that does not harm small business.

The process of collecting old stock and replacing with the new, modified tobacco products occurs with each manufacturer separately, and has to happen with our distributors.

A longer implementation period (and one that is separate for manufacturers and distributors) would provide our members with an opportunity to sell through old inventory and transition to new products with ease and minimal interruption to our retail customers.

RECOMMENDATION TO ADDRESS OPERATIONAL HURDLES:

- NACDA recommends an implementation time for distributors and our retail customers of no less than 18 months following the registration of regulations to ensure compliance and minimal interruption in the small business retail sector.

E-Cigarettes

With respect to the inclusion of e-cigarettes in this legislation, NACDA is supportive of the government's move to regulate and provide a framework for sales across Canada. We do want to be sure however that both vape shops and convenience stores have access to the same products under the same set of rules.

Our sector should be rewarded rather than penalized for abiding by Health Canada's regulations that made the sale of e-cigarettes with nicotine illegal. If vape shops are given a competitive advantage, our distributors won't be able to distribute a legal product to our convenience retail customers.

RECOMMENDATION ON E-CIGARETTES

- NACDA recommends a consistent set of rules for both vape shops and convenience stores to ensure a level playing field in the retail space that allows all businesses to compete.

Conclusion

Distributors are proud to be part of a robust and thriving convenience store industry in Canada. We are partners with government in the collection of taxes and also in economic growth. We welcome any tobacco cessation efforts made by government so long as they are driven by evidence based data. Sound public policy should always be based on facts, and the facts don't support this fundamental change and will increase rather than decrease youth access to tobacco.

While plain packaging may sound effective in theory, we are concerned that in practice the unintended consequences will outweigh this initiative, all the while having a negative effect on our industry.

Should this legislation proceed, we hope that you will heed the legitimate concerns from the distributor industry in Canada and how this will affect the convenience store supply chain across this country, and, most importantly, Canadians living in remote communities that we proudly serve.

Sincerely,

Anne Kothawala

President

National Convenience Store Distributors Association (NACDA)