

**SUBMISSION TO THE SENATE STANDING COMMITTEE
ON SOCIAL AFFAIRS, SCIENCE & TECHNOLOGY
*Bill S-5, An Act to Amend the Tobacco Act***

This submission is provided on behalf of the National Smokeless Tobacco Company (NSTC) regarding Bill S-5, *An Act to Amend the Tobacco Act*. As the largest distributor of smokeless tobacco products in Canada, NSTC has a unique perspective to provide to the Standing Committee on Social Affairs, Science, and Technology (SOCI) on certain provisions of S-5 as they relate to plain packaging for smokeless tobacco products, and the broader policy issue of harm reduction in tobacco product regulation.

NSTC is the Canadian distributor of smokeless tobacco products sold in Canada under the brand names of Copenhagen and Skoal. We do not distribute cigarettes or e-cigarettes in Canada. Our smokeless tobacco products are available at approximately 11,000 retail locations in Canada and sell for almost twice the price of a package of premium cigarettes.¹ Smokeless tobacco sales in Canada accounted for approximately 0.5% of all tobacco sold in Canada in the year 2015 (the last full year data available).²

Tobacco Harm Reduction (Appendix A)

We urge Senators to take into account that not all tobacco products are the same – nor should they be regulated as if they are. There is a consensus in the medical, public health, and scientific communities that the use of smokeless tobacco products is considerably less harmful than cigarette smoking. Any tobacco product regulations implemented by Health Canada should recognize this continuum of risk. **We ask that SOCI recommends in its final report on Bill S-5 that Health Canada develop a comprehensive tobacco harm reduction strategy for Canada as a complement to existing prevention and cessation programs.** The objective of this strategy would be to transition cigarette smokers to less hazardous products, to implement a science-based regulatory regime for tobacco products, and to provide accurate information to cigarette smokers and tobacco consumers on tobacco products that are proven to be lower on the risk continuum of tobacco products.

Plain Packaging for Tobacco Products (Appendix B)

Bill S-5 contains significant new regulatory powers for the government to implement plain packaging for tobacco products. We ask that Senators review what the government is considering with respect to plain packaging for tobacco products. As the Canadian government has acknowledged, effective regulation must be science- and evidence-based. This is also true for tobacco product regulation. For the reasons outlined in Appendix B, we have requested that smokeless tobacco be exempt from any plain packaging requirements for tobacco products. **We ask that SOCI recommends to the Senate and the House of Commons in its final report on Bill S-5 that Health Canada provide an exemption for smokeless tobacco products from any future plain packaging requirements for cigarettes.** There is a paucity of evidence to support the government's objectives with respect to any plain packaging requirement for smokeless tobacco products.

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¹ Based on an average national retail selling price of \$24.00 for a standard 34g can of smokeless tobacco and an estimated national retail selling price of \$12.00 for a standard 25-count package of premium cigarettes. Prices will differ by province based on applicable provincial tobacco taxes and sales taxes.

² Source: Health Canada Wholesale Sales Date, 2015

APPENDIX A

SOCI Background Brief: Tobacco Harm Reduction

A Continuum of Risk for Tobacco Products

Not all tobacco products are the same – nor should they be regulated as if they are. The scientific evidence clearly demonstrates there is a continuum of risk associated with tobacco products. We urge Health Canada to recognize this continuum of risk and to consider a tobacco control approach that complements effective prevention and cessation strategies with a focus on transitioning adult smokers to less hazardous products.³ Any regulatory decisions by Health Canada should be grounded in science and evidence and recognize the differences between categories of tobacco products such as smokeless tobacco and cigarettes.

The Major Hazards of Tobacco Use

The U.S. Surgeon General, Health Canada and other public health authorities have determined that tobacco products are addictive and cause serious diseases. Cigarette smoking is the most hazardous form of tobacco consumption.⁴ The U.S. Surgeon General has described cigarettes smoking as “the single greatest cause of avoidable morbidity and mortality in the United States.”⁵

Discouraging initiation and promoting cessation, particularly among those not legally permitted to buy tobacco products because they are underage, are and should remain core strategies to reduce tobacco-related harm. However, there is growing consensus that public health policies based solely on prevention and cessation are not sufficient in the real world. Millions of adults are likely to continue using tobacco products, notwithstanding efforts by government, public health, and others to encourage them not to use tobacco at all.⁶ Other public health authorities, such as the U.K. Royal College of Physicians (RCP), recognize that “even with full implementation of all recognized effective tobacco control policies it will take many years for a marked reduction in smoking prevalence, and in the morbidity and mortality that smoking causes, to be realized.”⁷ A tobacco harm reduction approach thus is needed to complement proven prevention and cessation strategies.

Harm Reduction

A harm reduction approach can complement smoking prevention and cessation strategies. This approach focuses on reducing tobacco-related morbidity and mortality by making available, and providing accurate information about, consumer-acceptable tobacco products that are proven to be lower on the risk continuum of tobacco products. This continuum can be represented as follows:

³ See ALCS comments on a Regulatory Framework for Harm Reduction, submitted to the U.S. Food and Drug Administration, December 22, 2009, accessible at: <http://www.altria.com/About-Altria/Federal-Regulation-of-Tobacco/Regulatory-Filing/Pages/default.aspx?src=leftnav>; ALCS Comments on Health Canada Consultation Document, “Looking Forward: The Future of Federal Tobacco Control”, submitted to Health Canada, October 11, 2011, accessible at: http://www.nstco.ca/assets/pdf/FTCS%20Letter%20to%20Health%20Canada_10%2011%2011.pdf.

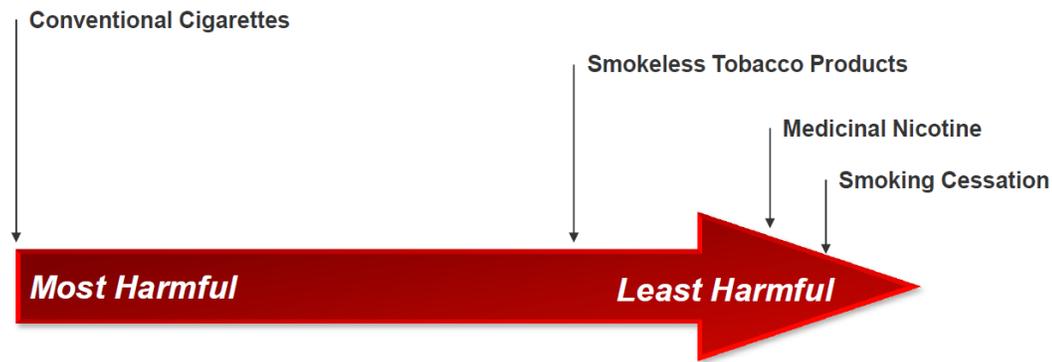
⁴ D.K. Hatsukami et al., Developing the science base for reducing tobacco harm, *Nic. & Tob. Res.*; vol. 9: S537-S553 (2007).

⁵ U.S. Surgeon General, *The Health Consequences of Smoking: A Report of the Surgeon General* (2004), ch. 1, p.3.

⁶ Institute of Medicine, *Committee on Reducing Tobacco Use, Ending the Tobacco Problem: A Blueprint for the Nation* (Washington D.C.: National Academies Press 2007).

⁷ Royal College of Physicians of London, *Tobacco Advisory Group of the Royal College of Harm Reduction in Nicotine Addiction: Helping People Who Can't Quite* (London: RCP 2007), at 219.

Continuum of Risk



Risk continuum of tobacco products
(directional only – not to scale; adapted from Hatsukami *et al.*)

Conventional cigarettes are at one end of the risk continuum, presenting the highest risk due to the combustion and inhalation of tobacco smoke. Smoking cessation is at the opposite end of the continuum.⁸

Smokeless Tobacco as a Means to Reduce Cigarette Smoking Harm

There is an overwhelming scientific, medical, and public health consensus that moist smokeless tobacco products, including those widely available in Canada, the U.S. and Sweden (snuff and snus), are substantially less hazardous than cigarettes. As early as 2001, the Institute of Medicine (IOM) observed that smokeless tobacco products pose a lower overall risk than cigarettes.⁹

In a 2002 report, RCP, the oldest medical organization in the United Kingdom, concluded that “the consumption of non-combustible tobacco is of the order of 10-1,000 times less hazardous than smoking, depending on the product,” and that “[s]ome smokeless tobacco products ... may offer substantial reductions in harm compared to smoking.”¹⁰ The RCP followed up with a second study in 2007, again concluding that the overall health risks of using smokeless tobacco are “considerably” and “substantially” less than those of cigarette smoking.¹¹

The American Council on Science and Health (ACSH), a public health-oriented consumer education consortium with a board of 350 physicians, scientists, and policy advisors, concluded in a 2006 report that, “[o]verall, the use of smokeless tobacco confers only about 2% of the health risks of smoking,” emphasizing that in contrast to cigarette smoking, smokeless tobacco poses no risk of lung cancer or other chronic pulmonary diseases and little risk, if any, of other cancers.¹²

In 2008, an international group of experts that provides scientific and technical advice on tobacco products to the World Health Organization (WHO) – the WHO Study Group on Tobacco Product

⁸ M. Zeller *et al.*, The Strategic Dialogue on Tobacco Harm Reduction: a vision and blueprint for action in the United States, *Tob. Control J.*; vol. 18: 324-332 (2009); D.K. Hatsukami *et al.*, Developing the science base for reducing tobacco harm, *Nic. & Tob. Res.*; vol. 9: S546 (2007).

⁹ Institute of Medicine, Committee to Assess the Science Base for Tobacco Harm Reduction, *Clearing the Smoke: Assessing the Science Base for Tobacco Harm Reduction, Executive Summary* (K. Stratton *et al.*, Washington, D.C.: National Academies Press 2001).

¹⁰ Royal College of Physicians of London, Tobacco Advisory Group of the Royal College of Physicians, *Protecting Smokers, Saving Lives* (London: RCP 2002).

¹¹ Royal College of Physicians of London, Tobacco Advisory Group of the Royal College of Harm Reduction in Nicotine Addiction: *Helping People Who Can't Quit* (London: RCP 2007).

¹² K. Meister, *Helping Smokers Quit: A Role for Smokeless Tobacco?* (American Council on Science and Health 2006).

Regulation (TobReg) concluded, “[u]sers of smokeless tobacco products generally have lower risks for tobacco-related morbidity and mortality than users of combustible tobacco products such as cigarettes.”¹³

The Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) – an advisory body to the European Commission’s Health & Food Safety Directorate-General issued a report in 2008 concluding that the overall health risks of smokeless tobacco products of the types found in Sweden and North America are “clearly” and “substantially” less than the overall health risks of cigarettes.¹⁴ “[I]t is undeniable that for an individual, substitution of tobacco smoking by the use of moist snuff would decrease the incidence of tobacco related disease.”¹⁵

In 2009, the “Strategic Dialogue” (a consensus by twenty-six scientists and researchers, including the current Director of the U.S. Food & Drug Administration’s Center for Tobacco Products, Mitch Zeller) concluded that cigarette smoking is “undoubtedly” more hazardous than smokeless tobacco, and that “[c]igarette smoking is undoubtedly a more hazardous nicotine delivery system than various forms of non-combustible tobacco products for those who continue to use tobacco, which in turn are more hazardous than pharmaceutical nicotine products.”¹⁶

In sum, these and many other scientific reports demonstrate beyond credible dispute that the health risks of moist smokeless tobacco products, including U.S. and Swedish moist smokeless tobacco (snuff and snus), are substantially less hazardous than cigarettes.¹⁷

When considering any regulation of tobacco products, we urge Health Canada to recognize the continuum of risk associated with tobacco products and to implement tailored regulation based on that continuum. Smokeless tobacco products are different other tobacco products, such as cigarettes, and government regulations should take account of those differences.

¹³ WHO Study Group on Tobacco Product Regulation (“TobReg”), *The Scientific Basis of Tobacco Product Regulation*, 951 WHO Technical Report Series (WHO Press: 2008).

¹⁴ European Commission, Health & Consumer Protection Directorate-General, Scientific Committee on Emerging and Newly Identified Health Risks (“SCENIHR”), *Health Effects of Smokeless Tobacco Products* (Feb. 6, 2008).

¹⁵ European Commission, Health & Consumer Protection Directorate-General Scientific Committee on Emerging & Newly Identified Health Risks. *Opinion on: Health Effects of Smokeless Tobacco Products*. European Commission, 2008, p. 14.

¹⁶ M. Zeller et al., *The Strategic Dialogue on Tobacco Harm Reduction: a vision and blueprint for action in the United States*, *Tob. Control J.*; vol. 18: 325 (2009).

¹⁷ L.T. Kozlowski and B.O. Edwards, “Not Safe” is Not Enough: Smokers have a Right to Know More Than There Is No Safe Tobacco Product, *Tob. Control J.*; vol. 14: ii3-ii7, ii5 (Suppl. II 2005).

APPENDIX B

SOCI Background Brief: Plain Packaging for Smokeless Tobacco Products

Summary of NSTC's submission to Health Canada's Proposal for "Plain and Standardized Packaging" for tobacco products" (August 2016)

- ***The Proposal is not appropriate for tobacco products and, in particular, should not apply to smokeless tobacco products***
 - Under existing provincial restrictions, tobacco products are not visible at retail and in-store advertising is banned. Other federal and provincial laws impose significant restrictions on smokeless tobacco products, including restrictions on sampling, price promotion, advertising and strict labeling requirements that already occupy a significant amount of the package with non-promotional messages. Given the current regulatory regime, the Proposal is not necessary and does not represent reasonably tailored regulation of smokeless tobacco products.
- ***The Proposal fails to meet the standards for federal regulatory development***
 - The Cabinet Directive on Regulatory Management of January 2012 (CDRM) provides federal government departments and entities, including Health Canada, with guidance and direction on all stages of the regulatory life cycle, including regulatory development. This Proposal must meet the standards set by the CDRM in order to justify the severe restrictions proposed for tobacco products generally, and smokeless tobacco in particular. Indeed, the Proposal arbitrarily sweeps in smokeless tobacco largely based on cigarette-focused evidence. In fact, the Proposal does not cite any study that specifically assessed the impact of plain packaging on smokeless tobacco products.
- ***Plain packaging has not been shown to reduce any tobacco use, let alone smokeless tobacco use***
 - Health Canada has failed to make the vital link between plain packaging regulations and an actual reduction in tobacco use.
 - Australia's plain packaging regime has not yielded evidence of reductions in tobacco consumption. Moreover, similar models in the United Kingdom, France and Ireland have only recently come into effect. Combined with the lack of Canadian data supporting the Proposal and the significant restrictions that already exist in Canada – including no product visibility at retail – there is a paucity of science and evidence to support the Proposal.
- ***Plain packaging requirement for smokeless is not warranted given low levels of youth usage of smokeless tobacco products***
 - The Canadian Tobacco, Alcohol and Drugs Survey (CTADS)¹⁸ shows a low prevalence of smokeless tobacco use among youth and young adults. Specifically, CTADS reports that in 2015, 1% of Canadian youth (15-19) reported past 30-day use of smokeless tobacco.¹⁹
- ***Current regulations on tobacco products in Canada are significant and already accomplish the goals of plain packaging***
 - The current federal and provincial restrictions on tobacco products in Canada already significantly limit manufacturers' communications to consumers, making the additional measures outlined in the Proposal unnecessary. The Canadian retail environment for tobacco products is already among the most restrictive in the world, such that company packages, brands, brand names, and logos are not visible to the general public.

¹⁸ Formerly known as the *Canadian Tobacco Use Monitoring Survey* (CTUMS).

¹⁹ CTADS 2015 available at <http://healthycanadians.gc.ca/science-research-sciences-recherches/data-donnees/ctads-ectad/summary-sommaire-2015-eng.php>

- ***The Proposal must contemplate Charter implications***
 - The Supreme Court of Canada has held that the guarantee of free expression in section 2(b) of the *Charter* extends to commercial speech such as advertising and product promotion and that prohibitions or strict limitations against engaging in commercial expression, including tobacco packaging requirements, infringe upon the freedom of expression.²⁰ The Court has noted that commercial speech can give consumers useful information about products and provides a basis for consumer purchasing decisions.
 - The Proposal’s prohibition on expression will only be constitutionally acceptable if evidence is provided that: 1) such a measure is necessary in order to achieve a pressing and substantial policy objective; and 2) the measure is proportional to the objective.

- ***The Proposal may contravene international agreements***
 - The Proposal invites uncertainty with respect to Canadian obligations under the WTO or could place Canada in candid contravention of its legally-binding international obligations under WTO law. Similarly, the Proposal may also affect Canada’s obligations under the North American Free Trade Agreement (NAFTA).

- ***Any proposal should reflect the unique manufacturing and packaging requirements for smokeless tobacco***
 - Current smokeless tobacco packaging preserves product attributes, communicates important non-branded information, and assists in product distribution. Any regulation should preserve NSTC’s ability to use packaging for those purposes.

- ***The Proposal should recognize a continuum of risk for tobacco products***
 - Not all tobacco products are the same – nor should they be regulated as if they are. The scientific evidence clearly demonstrates there is a continuum of risk associated with tobacco products. We urge Health Canada to recognize this continuum of risk and to consider a tobacco control approach that complements effective prevention and cessation strategies with a focus on transitioning adult smokers to less hazardous products.²¹ Any regulatory decisions by Health Canada should be grounded in science and evidence and recognize the differences between categories of tobacco products such as smokeless tobacco and cigarettes.

²⁰ See *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712; *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199; and *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30.

²¹ See ALCS comments on a Regulatory Framework for Harm Reduction, submitted to the U.S. Food and Drug Administration, December 22, 2009, accessible at: <http://www.altria.com/About-Altria/Federal-Regulation-of-Tobacco/Regulatory-Filing/Pages/default.aspx?src=leftnav>; ALCS Comments on Health Canada Consultation Document, “Looking Forward: The Future of Federal Tobacco Control”, submitted to Health Canada, October 11, 2011, accessible at: http://www.nstco.ca/assets/pdf/FTCS%20Letter%20to%20Health%20Canada_10%2011%2011.pdf.