



OKBA
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Senator Kelvin Kenneth Ogilvie
Chair
Standing Senate Committee on Social Affairs, Science and Technology
Senate of Canada
Parliament Hill
Ottawa K1A 0A4

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Subject: OKBA submission on Bill S-5, an act to amend the Tobacco Act and Non-smokers Health Act

On behalf of the 1500 Ontario Korean Businessmen's Association ("OKBA") members across the province of Ontario, I am submitting this submission for the senate's current debate on Bill S-5, *An act to amend the Tobacco Act and Non Smokers Health Act*. As licensed retailers of regulated and legal tobacco products, we have a very clear understanding of tobacco consumer habits and have strong opinions of how the government's proposed plain packaging regulations will impact not only our business but society in general.

The OKBA has been an active trade association for its membership since 1972. At our height, we had more than 2,500 independent family owned businesses located in towns and cities across the province of Ontario. In addition to our membership base in Ontario, there are several hundred more licensed tobacco retailers across Canada of Korean descent whom we collaborate with, mostly in Western Canada. Over the last 10 years we have experienced significant changes in the retail landscape and unfortunately we have seen close to 40% of our members close down and go out of business. Without a doubt the most significant single contributor to the closure of so many stores has been the continued and growing presence of illegal contraband tobacco throughout central Canada. Numerous studies have estimated that in excess of 30% of all tobacco products bought and sold is illegal contraband.

Last summer the OKBA made a submission through the [Ministry of Health's website](#) that solicited public feedback on the government's intention to introduce plain packaging for tobacco products. Below is a summary of concerns we highlighted. We hope that the senate committee members will review these in detail and consider our concerns before approving the bill in front of you currently.

Contraband Tobacco Will Increase Under Plain Packaging

Our concern with Bill S-5 and the proposed implementation of plain packaging is that contraband manufacturers will once again have another advantage over legal products. Given government's reluctance to deal with the illegal manufacturing facilities currently operating in Canada, contraband manufacturers and dealers will have the potential to once again increase their sales via two different ways. First off they may choose to completely ignore any new packaging rules, therefore making their products the strongest and most unique brands available. While some contraband products have been packaged to simulate legal products by including health warnings, others have completely existing regulations and package their products with strong branding. Secondly, illegal contraband manufacturers will undoubtedly find it easy to make counterfeit products if all corporate brands, logos and colours are removed from existing legal products. Knowing that contraband tobacco often sells for more than 80% less than legal tobacco, consumers will increasingly be drawn to black market products. This eventuality will only hurt small business owners like our members and rob government of much needed tax revenue.

Reviewing the Australia Example on Plain Packaging

From what we have learned from our retail counterparts in Australia where plain packaging was mandated in 2012, the environments are very different. While Australia has experienced an increased problem with counterfeit products, they do not have any comparable level of illegal domestic manufacturing as we do in Canada. Canada's contraband problem is not one of products being smuggled into the country like Australia. As you know, our problem to date has been the significant volumes of illegal tobacco being manufactured on First Nations reserves. There have been numerous reports and studies citing the RCMP's suggestion that up to 50+ illegal factories are currently producing illegal cigarettes in Canada today. We understand from Australian studies that the introduction to plain packaging actually resulted in some smokers increasing the amount they consume as they were drawn away from their usual brands and switched to the lowest priced product available. In Canada, the lowest priced cigarettes are those coming from contraband traffickers who sell products that do not include appropriate taxes, are sold without government health warnings, and without age checks. Under this scenario government and small business lose, and contraband manufacturers and traffickers will benefit greatly.

Youth Access to Tobacco Products

Licensed retailers of legal tobacco, including our 1500 members, are well aware of the significant restrictions put into place by governments to prevent access by minors. Local health boards routinely conduct mystery shops in our stores to ensure no licensed retailer is selling tobacco products to anyone under age. We have collaborated with our partners in the Canadian Convenience Store Association to create a thorough training system to ensure that all business owners, and their staff, understand their responsibility of selling restricted products to adults only. Retailers that are found selling to minors face very significant fines, to the point

where two convictions within a five year period results in a store losing its tobacco license. The OKBA regularly translates all the regulatory information around tobacco sales into Korean and makes sure that all our members clearly understand the rules, regulations and responsibilities around tobacco retailing. When it comes to restricting tobacco sales to youth, few stakeholders have as much experience as we do. We take our role as responsible retailers very seriously. For these reasons, we have concerns with what the government is proposing and the unintended consequences that will inevitably result. Contraband tobacco traffickers have shown little or no regard around age restriction and have routinely been found to sell illegal products to minors.

In Store Safety for Retailers

We are very concerned about the safety and security of our stores and employees if plain packaging regulations are implemented as currently being proposed. By mandating that all products be packaged in the same size, colour and style of packaging it will undoubtedly take longer for our store clerks to identify their customer's chosen product. Seeing that tobacco racks are behind the store clerk and they must turn their back to customers, the opportunity for petty crime, including robbery, will likely increase. We also believe that more mistakes will be made as there will be much less opportunity to distinguish one brand to another. This will only further negatively impact retailers like our members and give them one more thing to worry about.

In addition, our members fear what will happen when all tobacco packaging must look the same, leaving little to no ability to tell a legal product from an illegal product. The involvement of organized crime in the illegal contraband tobacco trade is well-documented. We are very concerned that organized crime groups will begin targeting independent retailers and use intimidation tactics and threats to violence to compel store owners to stock counterfeit products.

Therefore, the OKBA strongly recommends that if plain packaging is implemented, regulations allow the inclusion of a small logo or branding on the top corner of the package. The logo/brand could have certain restrictions; however, a recognizable brand graphic, in addition to the product name, would provide the retail clerk a somewhat better chance of quickly differentiating between the variety of brands available for sale. Restricting the brand/logo to the top corner of the package would allow it to be easily seen by the clerk from the store inventory. It would also provide protection against organized crime trying to force its counterfeit products into legal retail channels.

Specifics Around Plain Packaging Guidelines

Licensed retailers like our members are responsible for the installation and maintenance of our tobacco back wall inventory. Currently there are different formats of tobacco packaging being sold in Canada, a "hinged lid" and another package with a "slide & shell". We understand, if implemented, the plain packaging would mandate that all packaging be consistent in addition

to product design. If plain packaging is in fact mandated, we strongly recommend the “hinged lid” is chosen as the standard pack. The reason for this is that currently close to 90% of legal products already come in this type of pack. Based on what we have seen from our customers, the majority of contraband tobacco products that are currently being sold on the black market are being produced in “slide & shell” packs. Ensuring that all legal brands be in a “hinged lid” design would be one way of differentiating between legal and contraband products. However, we are still concerned that mandating a standard, universal package for all products will result in making it easier for contraband manufacturers that will no longer have to worry about different packaging for different products.

Addressing the Contraband Problem Before Implementing More Regulations

We implore governments, both federal and provincial, to do more in the fight against contraband tobacco. As tobacco retailers we have seen firsthand the reduction in smoking amongst the adult population. However, at the same time we have seen reduced sales due to our customers increasingly sourcing illegal products and buying them with impunity – sometimes right in front of our stores. Government legislation continues to focus on legal tobacco, while not enough is being done to counter the growing illegal market of manufacturing and distribution. When tobacco taxes are increased, illegal tobacco sales rise for obvious reasons. While governments implement strict rules on youth access, contraband tobacco finds its ways into high schools and playgrounds in our communities. Without dedicating more resources to crack down on contraband tobacco, illegal manufacturers and the traffickers will capitalize even further on the plain packaging regulations. Brightly coloured branded packages from contraband manufacturers will increasingly look appealing to consumers when high taxed, legal products are restricted to uniform packaging. While we play by the rules, follow all regulations and are government’s partner in selling legal tobacco we are very frustrated that illegal black market products are allowed to proliferate and increasingly impact our businesses.

Concerns over Counterfeit Products

The single biggest concern we have with the governments proposed recommendation is the prospect of more counterfeit products flooding the marketplace. Currently contraband manufacturers market their own brands and in Canada counterfeit products (with perhaps the exception of Chinese products smuggled into BC) has been relatively minor. However if plain packaging includes the removal of all branding and logos from the package AND the cigarette, how will anyone know what product they are smoking? Counterfeiters will have an easy time replicating multiple brands and consumers will believe they are purchasing legal products – even those who are opposed to purchasing and consuming illegal contraband products. Given the government has already made public some of likely formats that will be introduced if the plain packaging regulations are implemented, we worry that illegal manufacturers could already be in a position to counterfeit legal brands.

We understand that some of the proposed plain packaging changes suggested the possible elimination of any branding on actual cigarette sticks. If this is adopted, counterfeiters will have

yet another easy opportunity to flood the market with fake products. Products that consumers will have virtually no way of telling the difference between legal products.

Transition Period for New Product Implementation

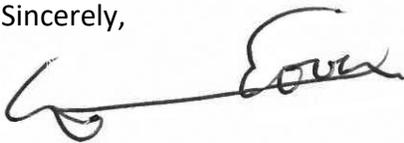
Should the government proceed with plain packaging rules for legal tobacco products, we ask that you strongly consider an acceptable implementation period. Retailers often have significant money tied up in inventory and removing the products overnight will result in challenging cash flow problems. We will also need to train staff to properly identify products that will be difficult to distinguish. Consistent with our fellow convenience store sector retailers, we recommend that a minimum 12 month implementation period be given to fully integrate new products and regulations.

In addition, the government must take measures to protect the safety of our members from the organized crime groups running the contraband tobacco trade. Bill S-5 puts our members and their employees at severe risk of intimidation and violence. That is unacceptable.

We are afraid that further regulation on legal tobacco, while being introduced with good intentions, will only further increase the presence of contraband tobacco, which in turn, will hurt more small independent family owned business owners. As you well know, contraband tobacco manufacturers do not follow government regulations and will only look to take advantage of these additional restrictions on legal product, by promoting their brands even more aggressively than before.

Thank you for your consideration. We welcome the opportunity to meet with you and discuss this further if you are interested.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Cha", written over a horizontal line.

Don Cha
General Manager, OKBA