28 June 2018, Geneva - A World Trade Organization (WTO) Panel has ruled against complaints brought by several countries concerning Australia's tobacco packaging law, which implements the WHO Framework Convention on Tobacco Control and its Guidelines.

The panel decided that Australia's policy on plain packaging is consistent with WTO law. The ruling clears another legal hurdle thrown up in the tobacco industry's efforts to block tobacco control and is likely to accelerate implementation of plain packaging around the globe.

In December 2012, Australia was the first country to fully implement tobacco plain packaging (also known as "standardized packaging") Plain packaging prohibits the use of logos, colours, brand images and promotional information on tobacco products and packaging, other than brand and product names in a standardized colour and font.

Today, six other countries have implemented plain packaging laws (Hungary, Ireland, France, New Zealand, Norway and the United Kingdom), another six have passed laws yet to be implemented (Burkina Faso, Canada, Georgia, Romania, Slovenia and Thailand) and a number of other countries are examining the policy.

The World Health Organization (WHO) and the WHO Framework Convention on Tobacco Control (WHO FCTC) Secretariat provided the WTO Panel with a joint submission or amicus brief.

This brief provided an overview of global tobacco control, summarized the public health evidence underlying tobacco plain packaging and the relevant provisions of the WHO FCTC and its Guidelines.

In this respect, the 181 Parties to the WHO FCTC have agreed, through Article 11 of the Convention, to implement effective packaging and labelling measures and, through Article 13, to undertake a comprehensive ban (or restrictions) on tobacco advertising, promotion and sponsorship.

The Guidelines for the implementation of these Articles assist Parties in meeting their obligations under the WHO FCTC by proposing measures Parties can use to increase the effectiveness of their policies. These Guidelines recommend that Parties consider implementing tobacco plain packaging.

Under WTO Dispute Settlement procedures, Parties to the WTO dispute may appeal the Panel Report within 60 days.(1) Appeals are limited to issues of law and legal interpretations developed by the Panel.(2)

The WTO complaints brought by four countries were not the only legal challenge brought against Australia's tobacco plain packaging law. A domestic Constitutional challenge to the

legislation was dismissed in August 2012(3) , and in December 2015 an international Tribunal hearing a claim brought by Philip Morris Asia under a bilateral investment treaty between Australia and China (Hong Kong Special Administrative Region) on tobacco plain packaging held that it did not have jurisdiction to hear the claim (4). Legal claims challenging plain packaging laws in other countries, including France (5), Norway (6) and the United Kingdom of Great Britain and Northern Ireland (7) have also been dismissed.

Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XVI.4.
Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XVII.6.
Japan Tobacco International SA v Commonwealth of Australia [2012] HCA 43 (5 October 2012).
Philip Morris Asia Limited v. The Commonwealth of Australia, UNCITRAL, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility (17 December 2015).
Décision n° 2015-727 DC du 21 janvier 2016 (Conseil Constitutionnel); CE, 23 décembre 2016 , société JT International.
Available at https://www.domstol.no/globalassets/upload/obyf/internett/aktuelt/kjennelser/17-110415tvi_swedish-match-ab.pdf.
R (British American Tobacco & Ors) v. Secretary of State for Health [2016] EWHC 1169 (Admin); [2016] EWCA Civ 1182 (Appeal).