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# Australia wins landmark WTO tobacco plain packaging case

Updated 26 minutes ago

**Australia's tobacco plain packaging laws are a legitimate public health measure, according to a World Trade Organisation dispute panel ruling reported by Bloomberg.**

It cited two people close to the situation as saying the panel had rejected a case made by Cuba, Honduras, Dominican Republic and Indonesia, which argued the laws constituted illegal barriers to trade.

Such a ruling from the WTO has been widely anticipated as giving a green light for other countries to roll out similar laws, not only on tobacco but also on alcohol and unhealthy foods.

The ruling is not expected to be published until July, but a confidential draft has been circulated to parties in the case, Bloomberg reported.

Spokespeople for the WTO were not immediately available for comment.

Former Australian health minister Nicola Roxon, who introduced plain packaging for cigarettes, said the decision should encourage other countries to follow suit.

"We've already seen a large number of countries introduce or take steps to introduce plain packaging, so it's a really significant international outcome," she said.

A spokeswoman for British American Tobacco declined to comment on the ruling until it was publicly released, but suggested the complainants would keep fighting.

"As there is a high likelihood of an appeal by some or all of the parties, it's important to note that this panel report is not the final word on whether plain packaging is consistent with international law," she said.

A spokeswoman for Japan Tobacco International also declined to comment on the ruling, but the fact that the draft had been leaked was disconcerting and a breach of WTO rules.

"Such breaches completely undermine the integrity of the process, which has not yet run its full course," she said.

Some trade experts said they expected the arguments on trademarks to go Australia's way, but the complainants were battling to discredit the data used to support Australia's case.

Australia had the backing of the World Health Organisation, and many other countries began announcing similar legislation, a sign that they expected the WTO to rule in Australia's favour.

The plodding pace of WTO decision-making prompted Australia to complain that its challengers were deliberately stalling the proceedings, producing a "regulatory chilling" effect on other countries wishing to follow its example.

Britain, France and Hungary went ahead with their own legislation, while Ireland, Canada, and South Africa are considering following suit.

## Reuters

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First posted yesterday at 10:38pm

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PHOTO: Australia's plain packaging legislation has been subject to several court challenges. (News Online Sydney)

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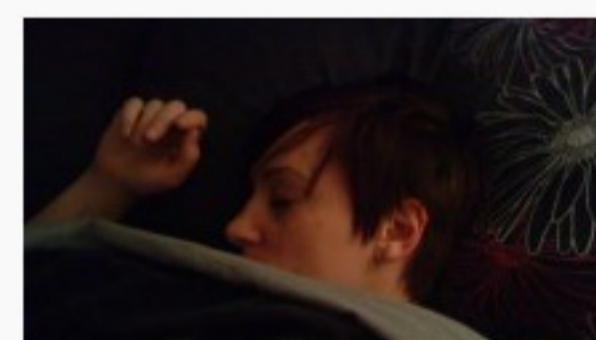
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## DISPUTE SETTLEMENT

## DS467: Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging

This summary has been prepared by the Secretariat under its own responsibility. The summary is for general information only and is not intended to affect the rights and obligations of Members.

## See also:

- [News items about this dispute](#)
- [The basics: how disputes are settled in WTO](#)
- [Computer based training on dispute settlement](#)
- [Text of the Dispute Settlement Understanding](#)

## Current status

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- Panel composed on **5 May 2014**

## Key facts

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Short title:	Australia – Tobacco Plain Packaging (Indonesia)
Complainant:	Indonesia
Respondent:	Australia
Third Parties:	Brazil; Canada; China; Cuba; European Union; Guatemala; Honduras; India; Japan; Korea, Republic of; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Oman; Philippines; Russian Federation; Chinese Taipei; Thailand; Turkey; Ukraine; United States; Uruguay; Zimbabwe; Dominican Republic; Peru; Singapore; Argentina; Chile; Malawi; Nigeria; Ecuador
Agreements cited: (as cited in request for consultations)	Technical Barriers to Trade (TBT): Art. <a href="#">2.1</a> , <a href="#">2.2</a> Intellectual Property (TRIPS): Art. <a href="#">2.1</a> , <a href="#">3.1</a> , <a href="#">15.4</a> , <a href="#">16.1</a> , <a href="#">16.3</a> , <a href="#">20</a> , <a href="#">22.2(b)</a> , <a href="#">24.3</a> GATT 1994: Art. <a href="#">III:4</a>
<a href="#">Request for Consultations</a> received:	20 September 2013

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- [Australia - Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging - Communication from the Chairperson of the Panel \[WT/DS467/21\]\(#\) | 6 December 2016](#)

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## Summary of the dispute to date

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The summary below was up-to-date at 13 February 2017

## Consultations

Complaint by Indonesia. (See also [DS434](#), [DS435](#), [DS441](#) and [DS458](#))

On 20 September 2013, Indonesia requested consultations with Australia concerning certain Australian laws and regulations that impose restrictions on trademarks, geographical indications, and other plain packaging requirements on tobacco products and packaging.

Indonesia challenges the following measures:

- The Tobacco Plain Packaging Act 2011, Act No. 148 of 2011, "An Act to discourage the use of tobacco products, and for related purposes";
- The Tobacco Plain Packaging Regulations 2011 (Select Legislative Instrument 2011, No. 263), as amended by the Tobacco Plain Packaging Amendment Regulation 2012 (No. 1) (Select Legislative Instrument 2012, No. 29);
- The Trade Marks Amendment (Tobacco Plain Packaging) Act 2011, Act No. 149 of 2011, "An Act to amend the Trade Marks Act 1995, and for related purposes"; and
- Any related measures adopted by Australia, including measures that implement, complement or add to these laws and regulations, as well as any measures that amend or replace these laws and regulations.

Indonesia claims that Australia's measures appear to be inconsistent with Australia's obligations under:

- Articles 2.1, 3.1, 15.4, 16.1, 16.3, 20, 22.2(b) and 24.3 of the TRIPS Agreement;
- Articles 2.1 and 2.2 of the TBT Agreement; and
- Article III:4 of the GATT 1994.

On 26 September 2013, Guatemala requested to join the consultations. On 27 September 2013, Nicaragua requested to join the consultations. On 30 September 2013, New Zealand requested to join the consultations. On 1 October 2013, Uruguay requested to join the consultations. On 2 October 2013, Ukraine requested to join the consultations. On 3 October 2013, the European Union and Honduras requested to join the consultations. On 4 October 2013, Brazil, Canada, the Dominican Republic and Norway requested to join the consultations. On 11 October 2013, Cuba requested to join the consultations. Subsequently, Australia informed the DSB that it had accepted the requests of Brazil, Canada, Cuba, the Dominican Republic, the European Union, Guatemala, Honduras, New Zealand, Nicaragua, Norway, Ukraine, and Uruguay to join the consultations.

On 3 March 2014, Indonesia requested the establishment of a panel.

## Panel and Appellate Body proceedings

At its meeting on 26 March 2014, the DSB established a panel. Brazil, Canada, China, Cuba, the European Union, Guatemala, Honduras, India, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Oman, the Philippines, the Russian Federation, Chinese Taipei, Thailand, Turkey, Ukraine, the United States and Uruguay reserved their third party rights. Subsequently, Argentina, Chile, the Dominican Republic, Ecuador, Malawi, Peru, Singapore and Zimbabwe reserved their third party rights.

On 23 April 2014, Australia requested the Director-General to compose the panel. On 5 May 2014, the Director-General composed the panel. On 10 October 2014, the Chair of the panel informed the DSB that the panel expected to issue its final report to the parties not before the first half of 2016, in accordance with the timetable adopted by the panel on 17 June 2014 on the basis of a draft timetable proposed by the parties. On 29 June 2016, the Chair of the panel informed the DSB that due to the complexity of the dispute, the panel expected to issue its final report to the parties not before the end of 2016. On 1 December 2016, the Chair of the panel informed the DSB that in light of the complexity of the legal and factual issues that arise in this dispute, the panel expected to issue its final report to the parties not before May 2017.

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## Tobacco Logo Ban Said to Get WTO Backing in Landmark Case

Photographer: Kiyoshi Ota/Bloomberg

by Bruce Raschuk

7:33 PM GMT+8 Updated on May 4, 2017, 9:35 PM GMT+8

- Decision may spur more countries to adopt plain packaging
- Gauloises maker Imperial Brands leads shares lower, down 2.8%

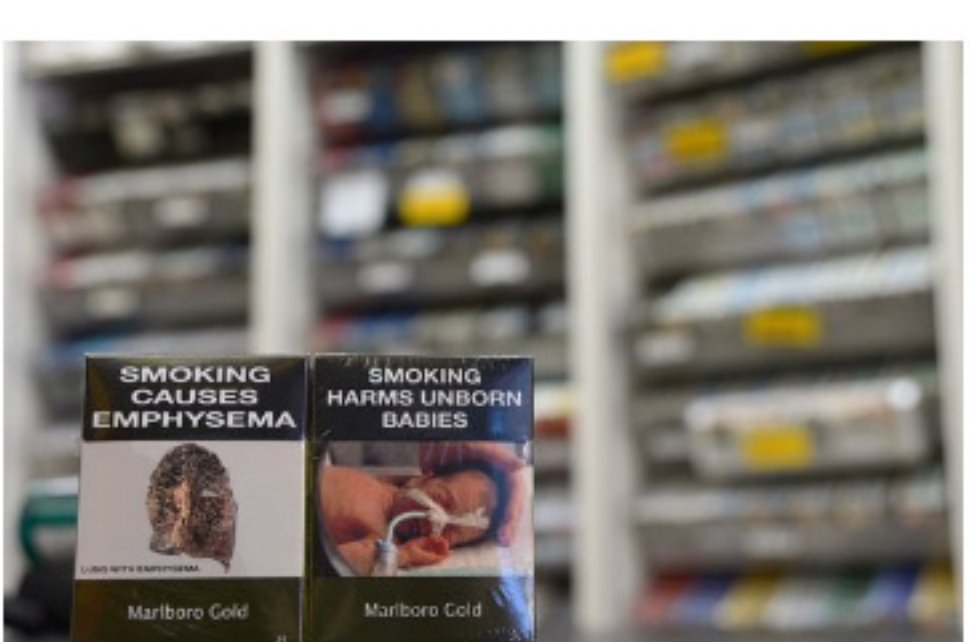
The World Trade Organization upheld Australia's right to impose plain-package label restrictions on the sale of tobacco products, dealing a blow to the cigarette industry, according to two people close to the situation.

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A WTO dispute-settlement panel backed Australia's argument that the rules it set in 2011 don't violate trade law because they qualify as a legitimate public health measure, the people said, asking not to be identified because the decision isn't yet public. The initial notification of the ruling was circulated to the parties of the dispute on May 2, according to a spokesman for the WTO who declined to comment on its content.



Cigarettes in plain packaging in Melbourne. Photographer: Carla Gottgens/Bloomberg

The decision could usher in a new wave of global tobacco restrictions from other countries that have sought to deter smoking among their citizens through the use of plain packaging rules. Australia was the first country to prohibit tobacco logos, and many countries have hesitated to implement such measures after four tobacco-producing countries filed complaints in 2012 and 2013. Philip Morris International Inc. and Japan Tobacco Inc. have argued that such rules could set a precedent for other countries to implement new labeling rules for tobacco, alcohol and junk food.

Imperial Brands Plc, which sells cigarettes under the Kool and Gauloises brands, led declines among tobacco stocks, dropping as much as 2.8 percent. Plain packaging may hurt smaller cigarette makers the most if smokers increasingly adopt the best-known options such as Marlboro or Camel given the absence of marketing. Imperial said Wednesday it's testing caffeine energy products and planning to expand more in e-cigarettes as more countries enact plain packaging rules.

"This is not good news for the cigarettes industry in the long-term," Eamonn Ferry, an analyst at Exane BNP Paribas, said by email. "If plain packaging talks hold in emerging markets, the opportunity to trade-up consumers to higher priced brands may be hindered."

The full WTO ruling will be released in July, the people said. The parties to the ruling -- including Cuba, the Dominican Republic, Honduras and Indonesia -- will then be permitted to appeal the decision, according to WTO rules.

Australian trade officials in Canberra and Geneva did not respond to requests for comment. Philip Morris didn't respond to requests for comment and a spokeswoman for Japan Tobacco Inc. said the company had not seen a copy of the ruling.

The cases were launched in 2012 and 2013. The countries that complained argued that Australia's plain packaging law imposed unfair restrictions on the use of trademarks, geographical indications and other markings in violation of several WTO agreements.

Legislators in France, Hungary, Ireland, New Zealand, Norway, Slovenia and the U.K., have already adopted their own plain packaging rules and similar laws are under consideration in Canada, Turkey, Singapore and South Africa.

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## French, Southern European Stocks Surge as Macron Wins Debate

by Blaise Robinson

May 4, 2017, 7:13 PM GMT+8



Candidates Clash as French Debate Turns Personal

And now, back to the fundamentals.

Investors scooped up French, Italian and Spanish stocks as jitters over the euro area's future diminished further with French presidential candidate Emmanuel Macron emerging as the apparent winner of last night's TV debate over anti-euro Marine Le Pen, and with the focus quickly shifting to the region's brisk economic recovery.

Italy's FTSE MIB Index surged 1.5 percent while Spain's IBEX 35 added 0.9 percent and France's CAC 40 rose 1 percent, extending their sharp rally that started on April 24 after the nation averted what investors had said would be the worst-case scenario for a runoff vote, a contest between two populist candidates.



The latest poll showed Macron is expected to defeat Le Pen on May 7, with 61 percent of voting intentions versus 39 percent for Le Pen. Fund managers and market strategists in recent months had cited the risk of seeing Le Pen winning the election as a reason to hold back on investing in European stocks.

"With just two days of campaigning to go, the polls all put Emmanuel Macron well ahead," Natixis strategists Sylvain Goyon and Thomas Zlowodzki wrote in a note on Thursday. Using data from the French Interior Ministry and detailed polling, the strategists see good chances that Macron's En Marche movement will do well in the June parliamentary elections and could even get an absolute majority, which could lead to swift economic reforms.

"This scenario plays very much in favor of risky assets, particularly European equities," they wrote.

While political risks wane, investors' focus is quickly turning to the euro-area's brisk economic recovery. Data showed earlier on Thursday activity in manufacturing and services accelerated more than initially estimated. The region's composite Purchasing Managers' Index rose to 56.8 in April, while the spread between gauges for the rates of expansion in Germany, France, and Italy hasn't been narrower since data collection started in 1998.

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