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Tobacco Products Regulatory Office
Tobacco Control Directorate
Health Canada
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Via email: hc.pregs.sc@canada.ca

Re: Consultation on “Plain and Standardized Packaging” for Tobacco Products

National Smokeless Tobacco Company (NSTC)\(^1\) submits these comments in response to Health Canada’s solicitation for public comment on its Consultation on “Plain and Standardized Packaging” for Tobacco Products released in May, 2016 (“the Proposal”).

The Proposal, if adopted, will dramatically limit tobacco product manufacturers’ ability to communicate about their tobacco products to adult tobacco consumers. The proposed measures would “standardize the colour of all tobacco packages and limit the promotion that appears on them...and, impose limits on how brand names are displayed on tobacco packages.”\(^2\) The stated goals of the Proposal are to “continue to take decisive action to help protect young people and others from inducements to use tobacco products and the consequent dependence on them, and to help users quit.”\(^3\)

While NSTC agrees with the stated goals of preventing youth use and helping users quit, we do not believe this proposal should be adopted. The Proposal is not appropriate for tobacco products and, in particular, should not apply to smokeless tobacco products. Specifically, the Proposal fails to meet the standards for federal regulation development outlined in the Cabinet Directive on Regulatory Management, limits freedom of expression as protected under the Canadian Charter of Rights and Freedoms (the Charter), impairs rights granted to manufacturers under the Trade-marks Act as well as protections for consumers, and may violate international agreements.

As the Canadian government has acknowledged, effective regulation must be science- and evidence-based. This is also true for tobacco product regulation. Plain packaging regulations have not been shown to decrease tobacco use and will significantly constrain legitimate communications to adult tobacco consumers about a legal product. In fact, no study cited in the Proposal specifically assessed the impact of plain packaging on smokeless tobacco products.

\(^{1}\) NSTC is the Canadian distributor of smokeless tobacco products sold in Canada under the brand names of Copenhagen® and Skoal®. “We” is used throughout to refer to NSTC.

\(^{2}\) Proposal at i.

\(^{3}\) Id. at 2.
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.

If, despite the reasons raised in these comments Health Canada moves forward, the Proposal must reflect the unique manufacturing and packaging requirements for smokeless tobacco.

Further, we urge Health Canada 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.4

**About NSTC**

At NSTC we are a leader in responsibly providing smokeless tobacco products to adult tobacco consumers. One of our mission goals is to help reasonable tobacco regulation succeed by supporting the development and implementation of regulations that improve public health and recognize individual adult tobacco consumer preferences.

NSTC markets a total of 17 individual smokeless tobacco products across different sizes (14, 15, 23, and 34 gram cans), forms (long cut, fine cut, and pouches), and tobacco varieties.5 The suggested retail selling price for a standard 34 gram can of NSTC products varies from $19.79 to $29.99, depending on the province, plus applicable sales taxes.6 This high price results from the high federal excise tax burden on smokeless tobacco products. Overall, smokeless products represent a small component of total tobacco sales in Canada. For the year ended December 31, 2014, smokeless tobacco sales accounted for 0.5 percent of all tobacco sold in Canada.7

NSTC’s products are for adults only. Children should not use any tobacco product. We support and participate in programs to help reduce the underage use of tobacco products. For example, we support *We Expect ID*, a program that focuses on keeping tobacco products out of children’s hands by providing retailers a variety of education and training materials to effectively train their employees on the importance of age verification. We also support initiatives and actions by governments to help prevent underage access to tobacco products, including enhanced age verification legislation and penalties for non-compliance.

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5 Not all products are available in all provinces.

6 NSTC Suggested Retail Selling Prices, August 2016.

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.

In developing regulations, Health Canada is responsible for assessing the relevant public policy issues and demonstrating, through the best available evidence and knowledge, that government intervention is needed. This includes explaining the nature of the issue, how its impacts have changed over time, and why government intervention is now needed.

In order to meet the CDRM standard here, Health Canada must put forward sufficient evidence that the government’s intervention in the marketplace through plain packaging requirements will meet its ultimate objective, i.e., changing tobacco consumption behaviour in Canada – and, in particular, consumption by youth of smokeless tobacco. As set forth below, that evidence is lacking.

Beyond that, under the CDRM, Health Canada is also responsible for assessing the effectiveness and appropriateness of regulatory measures in achieving policy objectives. This includes not only demonstrating that the proposed regulatory response is designed to address policy objectives, but also that the response is proportional to the degree and type of risk, and that the least possible cost is imposed on Canadians and businesses in achieving the intended policy objectives. The Proposal’s broad application across all tobacco products does not relieve Health Canada of the burden of assessing the measure and its effectiveness as applied to each tobacco product category, including smokeless tobacco.

Health Canada’s current Proposal makes reference to plain packaging models in jurisdictions where smokeless tobacco products similar to those available in Canada are not even on the market. It should be noted that almost all forms of smokeless tobacco (all chewing tobacco and oral snuff, including varieties currently sold in Canada) have not been sold in Australia since 1991 and are not part of the implementation of plain packaging in that country. Similarly, “tobacco for oral use” (except products intended to be smoked or chewed) has not been sold in the EU since 2001. This raises further questions about the evidentiary basis for requiring plain packaging for smokeless tobacco products.

Additionally, as described below, the Proposal conflicts with well-established Canadian intellectual property law and policy. Health Canada must consult with Industry Canada and the Canadian Intellectual Property Office in order to develop a plain packaging regulation consistent with the CDRM standard.

Finally, under the CDRM, Health Canada is expected to take measures to ensure that proposed regulations are consistent with the Charter as discussed below.

A. 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. The Proposal cites studies that “plain and standardized tobacco packages were

consistently less appealing than branded packages on features such as attractiveness, projected personality attributes (e.g. ‘cool’ and ‘popular’), and even the quality of the smoking experience.”\textsuperscript{10} Health Canada, however, has not shown that reductions of “attractiveness” or “appeal” of plain packaging, have translated into real world reductions in tobacco use. In fact, certain studies cited in the Proposal as including Canadian data indicate that plain packaging can be expected to have a minimal impact in Canada. In \textit{Moodie et. al., Plain tobacco packaging: a systematic review (2012)}\textsuperscript{11}, of the six Canadian studies reviewed only two involved surveys which the authors deemed to have high relevance and even medium quality. Of those two surveys, a clear majority of respondents (71% and 59%) thought that plain packaging would make no difference to tobacco use in Canada; \textit{Hammond, 2014} cites the same studies as \textit{Moodie}.\textsuperscript{12}

The Proposal relies heavily on, and proposes adding to, the plain packaging measures introduced in Australia in 2012.\textsuperscript{13} According to a 2014 Australian National University Study evaluating Australian Bureau of Statistics (“ABS”) data, Australia’s plain packaging regulations have not accelerated declines in tobacco use as measured by tobacco expenditures.\textsuperscript{14} The study concluded “[d]espite our econometric efforts, the data refused to yield any indication this policy has been successful; there is no empirical evidence to support the notion that the plain packaging policy has resulted in lower household expenditure on tobacco than there otherwise would have been.”\textsuperscript{15} More specifically, based on ABS data, in the first year plain packaging regulation was in effect, Australian household tobacco expenditures may have actually increased.\textsuperscript{16}

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.

\textbf{B. A Plain Packaging Requirement is Not Warranted Given Low Levels of Youth Use of Smokeless Tobacco Products}

No children should use tobacco products, including smokeless tobacco. The rate of youth usage of smokeless tobacco products is extremely low and the existing youth use data does not support the Proposal’s call for plain packaging on smokeless tobacco products.

The Proposal states that “the decline in the rate of tobacco use among youth witnessed since 2003 has slowed down. For the period 2003-2010, the rate of past 30-day tobacco use for all tobacco products has dropped from 22% to 16% among 15 to 19 year-olds. However, in the following three-year period, the slope of this decline has mostly plateaued. . .”\textsuperscript{17} Importantly, statistics on tobacco-use patterns for smokeless tobacco products reflect much lower levels of youth incidence.

\textsuperscript{10} Proposal at 5.
\textsuperscript{11} Id. at 5, fn xxiv.
\textsuperscript{12} Id. at 5, fn. xxiv, xxv.
\textsuperscript{13} Id. at 1.
\textsuperscript{15} Id. at 27.
\textsuperscript{16} Id. at 59.
\textsuperscript{17} Proposal at 1.
The Canadian Tobacco, Alcohol and Drugs Survey (CTADS) shows a low prevalence of smokeless tobacco use among youth and young adults. Specifically, CTADS reports that in 2013, 1% of Canadian youth (15-19) reported past 30-day use of smokeless tobacco.

C. 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.

The federal Tobacco Act establishes numerous restrictions on the sale and marketing of tobacco products in Canada. For example, advertising to the general public is prohibited. Advertising is only permitted in direct mail communications to adult tobacco consumers and in places where minors are prohibited by law. Advertising content is limited to defined “brand preference advertising” and “informational advertising.” “Lifestyle advertising” is banned. The Tobacco Act also prohibits sampling of tobacco products, price promotions, brand and corporate sponsorships, and testimonials and endorsements.

In addition to minimum age of purchase requirements, provincial legislation also regulates the visibility of tobacco products to consumers. Although the regulatory language differs among the provinces, the result is that retail visibility of tobacco products is prohibited in stores open to the public in all Canadian provinces and territories, with only limited exceptions for tobacconists. Within a “zero-visibility” retail environment, provinces also prohibit any branded advertising at the point-of-sale, further limiting communications with adult tobacco consumers. Many provinces also prohibit the retail sale of tobacco products in specific locations, such as pharmacies, health care facilities, government buildings and on post-secondary campuses.

A significant portion of each can of smokeless tobacco is already devoted to federally-required information including health warnings and constituent information in French and English, a federal tax stamp, and consumer information mandated by the Consumer Packaging and Labelling Act. As currently configured, this leaves limited space for brand elements, which communicate important information to retailers and consumers about the identity and quality of the product. The Proposal would eliminate these valuable brand elements.

Extensive existing federal and provincial restrictions and requirements on age-restricted products not visible at retail raise serious questions about the policy justification for additional packaging restrictions that would eliminate brand elements and colour from packaging, particularly as the restrictions would apply to smokeless tobacco products.

The Proposal Must Contemplate Charter Implications

Any proposal must take into account the Charter, particularly the impact that a plain packaging measure would have on the right to freedom of expression guaranteed under section 2(b) of the Charter.

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18 Formerly known as the Canadian Tobacco Use Monitoring Survey (CTUMS).
20 These forms of advertising are further limited in the province of Quebec.
21 Tobacco Act Section 22.
22 Tobacco companies must also submit quarterly to Health Canada marketing reports listing the permitted adult advertising conducted, as well as sales reports by product. Tobacco companies must also annually report to Health Canada any consumer research conducted. In terms of manufacturing, the federal government requires reporting of manufacturing processes and ingredients used in the manufacture of a tobacco product sold in Canada. Federal government oversight of tobacco products and tobacco-related business activities is arguably the most significant of any consumer packaged good in the country.
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.\textsuperscript{23} 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.

Health Canada has not met the first test, given the low levels of youth usage for NSTC’s product and the scope of the Proposal. As to the second test of proportionality, the Proposal fails to satisfy three aspects that must be considered. First, the Proposal does not connect the measure to the objective because the evidence does not show that plain packaging will affect tobacco product consumption. Second, rather than impairing expression as little as possible, the Proposal is severe. The government will be dictating almost all the information on the package in an environment where communication is already restricted by federal and provincial law. Third, the deleterious effect of the Proposal, which severely affects manufacturers’ ability to communicate about their legal product to adult consumers, outweighs the speculative results that Health Canada hopes to achieve.

Accordingly, given the severe curtailment of free expression, Health Canada must meet the constitutional standard required, as applied to smokeless tobacco products.

**The Proposal Would Take Away Trade-mark Rights and Diminish the Function of Trademarks**

The Proposal would take away federally-protected trade-mark rights, particularly with respect to stylized word marks, design marks, trade dress and other distinctive marks. It also deprives NSTC of the substantial investment it has made in developing its trade-marks and other proprietary source identifiers (e.g., logos, designs, fonts, and distinctive product packaging), as well as the significant goodwill related to them.

Under the Canadian *Trade-marks Act* (TMA), a trade-mark is defined as “a mark that is used by a person for the purpose of distinguishing or so as to distinguish goods or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased, hired or performed by others.”\textsuperscript{24} This definition is not limited to trade-marks that are comprised of words only, but also includes trade-marks that contain stylized words, designs, trade dress (e.g., the overall appearance of distinctive packaging), and other distinctive marks that help distinguish and differentiate products in the marketplace.

Trade-marks in Canada can be registered or unregistered. Registering a trade-mark under the TMA requires a significant investment of time and money, but in exchange for that investment, the registered owner of a trade-mark receives certain statutory rights. Most importantly, section 19 of the TMA confers on owners of registered trade-marks the right to use their mark(s) on their goods throughout Canada. The Proposal would take away this federally-protected right by eliminating stylized word marks, design marks, trade dress and other distinctive marks on tobacco product packaging, impermissibly turning premium consumer packaged goods essentially into commodities.


Furthermore, the Proposal’s restrictions on the uses of brand names would diminish or extinguish the central function of a trade-mark, which is to distinguish the source of one good from that of another, by making it virtually impossible for NSTC to distinguish its premium smokeless tobacco products sold in the Canadian marketplace under the brand names Copenhagen® and Skoal® from other similar products. Specifically, use of the brand name in a diminutive size and standardized font and font colour would cripple the trade-mark and decrease the value of the goodwill created for the brand by Canadian consumers. Clearly, this would significantly impair NSTC’s reasonable investment-backed expectations in Canada and require a wholesale transformation of NSTC’s business activities in Canada.

In depriving NSTC of the substantial investment it has made in developing its trade-marks, the Proposal has the effect of extinguishing many of the rights NSTC endeavoured to obtain under section 19 of the TMA. This goes beyond destroying NSTC’s trade-mark registrations on smokeless tobacco packaging and would impact trade-marks that fall outside the current Proposal. That is, if NSTC is prohibited from using the marks currently registered in Canada on its smokeless tobacco products, those marks become vulnerable to expungement under section 45 of the TMA as trade-mark rights are derived solely based on their commercial use in Canada. This would also be the case for unregistered trade-marks. As such, the current Proposal would severely and unfairly diminish or destroy NSTC’s valuable intellectual property.

**The Proposal May Contravene Various International Agreements**

A number of international groups including the International Chamber of Commerce, the Emergency Committee for American Trade, and the U.S. Chamber of Commerce, have publicly expressed their opposition to plain packaging, based on their belief that these measures violate international trade agreements. Notably, at least four countries – Cuba, the Dominican Republic, Honduras, and Indonesia – are currently challenging Australia’s plain packaging laws before the World Trade Organization (WTO). 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**

If, despite the reasons shared above, Health Canada moves forward with the Proposal, it should account for the fact that the manufacture and packaging of smokeless tobacco is unique and distinct from that of many other tobacco products.

NSTC’s smokeless tobacco packaging includes a plastic can and a pressed tin lid. The can and the side label material create a seal which are required to protect and preserve the product. Some products feature different paper or poly materials for the side label in order to maintain freshness.

In addition, there is important non-branded information printed on NSTC’s smokeless products, including a numeric freshness date code on the bottom of the can which is critical for inventory management, an alphanumeric manufacturing code for quality control purposes, and, since NSTC product is imported, a requisite U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) code. The TTB code (TP-IL-39) is mandated under U.S. law for a product destined for export outside the United States. Two NSTC products also include printing under the lid of the can with instructions for use. Thus, in addition to consumer product-related information required by the *Consumer Packaging and Labelling Act*, the Proposal should
allow for other information, such as freshness codes, lot numbers, instructions to consumers, and information required by law from other countries.

Certain product packaging information is also necessary for distribution. As cans are wrapped for distribution, individual cans are grouped into five-can rolls. These five-can rolls are wrapped one on top of another and the product-specific brand information needed for distribution may not be readily visible. Product identification on the plastic overwrap is a critical feature of packing and subsequent distribution. Given that NSTC currently has 17 different SKUs for its smokeless tobacco products in different forms and varieties, it is critical to be able to distinguish between otherwise identical five-can rolls by including information on the overwrap.

Once cases of NSTC’s product reach a wholesale distributor, they are broken down into their individual five-can rolls for the purposes of order fulfillment to retail stores. For wholesalers, the issue of product differentiation and the presence of date-coding on each can is a key part of inventory management.

For retailers, this issue of product differentiation is important for maintaining appropriate in-store inventory levels, ensuring product freshness, ensuring accurate distribution of a particular brand to consumers, and allowing for the consumer to efficiently verify their purchase of a requested product.

In summary, 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.25 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.

A. 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.26 The U.S. Surgeon General has described cigarettes smoking as “the single greatest cause of avoidable morbidity and mortality in the United States.”27

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.\textsuperscript{28} 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.”\textsuperscript{29} A tobacco harm reduction approach thus is needed to complement proven prevention and cessation strategies.

B. 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:

\begin{center}
\begin{tikzpicture}
\draw[->,thick,red] (0,0) -- (6,0);
\node at (3,0) {Most Harmful};
\node at (3,1.5) {Conventional Cigarettes};
\node at (1.5,1.5) {Modified Risk Cigarettes};
\node at (0.5,1.5) {Decreasing number of cigarettes/day};
\node at (1.5,0.5) {Smokeless tobacco products};
\node at (2.5,0.5) {Medicinal Nicotine};
\node at (3.5,0.5) {Smoking cessation};
\node at (0.5,-0.5) {Least Harmful};
\end{tikzpicture}
\end{center}

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.\textsuperscript{30}

C. 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.\textsuperscript{31}

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

\textsuperscript{28} Institute of Medicine, Committee on Reducing Tobacco Use, Ending the Tobacco Problem: A Blueprint for the Nation (Washington D.C.: National Academies Press 2007).
reductions in harm compared to smoking." 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.

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.

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 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.”

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. “[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.”

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.”

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.

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.

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Conclusion

Health Canada should not adopt the Proposal. Consistent with the government’s commitment to scientific knowledge informing decision making, effective regulation of tobacco products must be evidence-based. Plain packaging regulations have not been shown to decrease tobacco use and will significantly constrain legitimate communications to adult tobacco consumers about a legal product.

The Proposal fails to meet the standards for regulatory development and could violate the Charter, Canadian trademark law and international trade agreements.

Further, not all tobacco products are the same – nor should they be regulated as if they are. 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.

We appreciate this opportunity to provide our views and look forward to future opportunities to engage in discussions with Health Canada about the Proposal. If you have questions, please feel free to contact me. I can be reached at j.f.turcotte@nstco.ca or 514-697-5577.

Sincerely,

J.F. Turcotte
President
National Smokeless Tobacco Company, Limited