CIGARS

AND THE PLAIN PACKAGING EFFECT

Cigars were an afterthought when the Gillard government introduced tobacco plain packaging. But plain packaged cigars are not an afterthought in the Dominican Republic, finds Chris Berg.
In the 176 page report into smoking produced by the Preventative Health Taskforce—which Labor used as a blueprint for plain packaging—cigars are mentioned just twice. Once, buried in a footnote to a graph showing declining smoking rates across blue and white collar groups; and once in a piece of draft legislation written not for Australia, but for the United Kingdom. The public health activists who wrote that report were interested in people who, they believed, had so little free will that colours and logos were enough to swing their decision of whether to smoke cheap cigarettes.

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Premium cigars—the sort that sell in Australia for upwards of $30-$50 for a single cigar—are a luxury product. The consumers of premium cigars are highly informed about what they are buying. The cigars have to be carefully stored in carefully calibrated humidors that replicate the humid conditions of the countries in which the tobacco is grown—a dried cigar tastes burned and worthless, and bringing a single cigar back to life can take days.

The stereotype of the addicted and helpless consumer that has driven so much anti-smoking policy does not apply to cigar smokers. They are a special consumption good—an indulgence. Cigar manufacturers like to say their products are part of the special moments in the lives of their customers. They’re for celebrations.
or contemplation. Few people do, even could, smoke a cigar daily. When we talk about cigar consumption, we are not talking about a major health crisis for which extraordinary regulatory measures might be justified.

Nevertheless, when the government first moved ahead with plain packaging—described in their 2011 consultation paper to ‘make cigarettes less appealing, particularly to young people’—cigars were included in the definition of tobacco products. Labor’s health minister, Nicola Roxon declared that ‘whether you are talking about cigarettes, cigars or pipe tobacco, all are addictive and all are harmful’. Australia’s few cigar bars had closed thanks to state laws which banned indoor smoking. Now, with plain packaging, Australian cigar retailers are forced to strip the colourful bands of cigars and replace them with the drab olive bands with the name of the cigar printed in a regulated font. On top of that, changes to the Tobacco Advertising Prohibition Act 1992 (implemented less than a year after plain packaging) prevent online retailers from showing almost any information about the cigars they are selling. The only legal information is a cigar’s name, price and country of origin. Online retailers are not allowed to show any details about a cigar’s flavour or characteristics—let alone images of the cigar.

The flipside of being a luxury
good is that branding is all important. Cigar aficionados talk about the aesthetics of the product as much as the flavour. Different regions prefer different aesthetics—European markets tend to prefer lighter coloured cigars, even though there is no discernible difference in taste. Cigar manufacturers tend to be family run down the generations. They are supposed to ‘taste’ of the region they come from, like good wine. The look and branding of the cigar is a big part of its pleasure. That isn’t something to be derided. The American writer Virginia Postel has argued compellingly that the ‘frivolous’ aesthetics of consumer goods are in fact extremely important and valued parts of the human experience. When the Gillard government replaced the highly stylised cigar bands with olive paper, they made it clear that to ‘make smoking history’ (the declared position of the Preventative Health Taskforce) was to deliberately go after a centuries-old human pleasure. While plain packaging of cigars may have been an afterthought, their eventual inclusion goes to the paternalistic heart of the policy itself. Plain packaging is not about helping people make better choices. It is about eliminating those choices.

**PLAIN PACKAGING AND THE DEVELOPING WORLD**

To make smoking history is to make the cultivation and production of tobacco history. Tobacco grows best in tropical locations and the best cigars come from countries that are both hot and humid. While Cuba has the international cultural cache for quality cigars, the real hub of premium cigar manufacturing is in the Dominican Republic. The Spanish speaking Dominican Republic is a case study in institutional stability—sharing half of the island of Hispaniola with the French speaking Haiti, it has relatively stable democratic institutions and an economy which grew at 7 per cent in 2015. Just an hour and a half flight from Miami, the Dominican economy is heavily reliant on the US economy and sustained by its two big export industries—mining, and tobacco, nearly 90 per cent of which is sold in the form of premium cigars.

In other words, the Dominican Republic is a tobacco economy. There are 135,000 Dominicans cultivating, commercialising, processing, manufacturing and supplying tobacco, and the tobacco industry represents 1.3 per cent of the country’s GDP. Cuba has the cultural cache for hard-to-obtain premium cigars, thanks to the American trade embargo, but the Dominican Republic has 44 per cent of the market.

So while it is rare that Australia and the Dominican Republic interact, Australia’s plain packaging legislation has brought the two countries into a fundamental conflict of interests. To eliminate brands from premium cigars is to threaten a substantial part of the Dominican Republic’s economy. Australia is—or was—only a small part of the Dominican tobacco market. But the introduction of this Australian pioneered paternalism in larger economies across the world (the United Kingdom, for example, is set to introduce plain packaging this year) has made the Australian introduction a key policy contest. Market trades are mutually beneficial—beneficial to the consumer of a good, and beneficial to the producer of a good. When governments ban or prevent those trades, both consumers and producers are harmed.

The Dominican Republic is one of four countries arguing in front of a World Trade Organisation dispute resolution panel that Australia has restrained trade by eliminating the ability of cigar manufacturers to differentiate themselves and convey the premium nature of their products. The other countries are Honduras, our close neighbour Indonesia, and Cuba. (It ought to be embarrassing that we are contesting a restraint of trade case against a communist nation). More than forty other nations have joined the dispute as third parties. As

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many Australians would be aware, plain packaging has been upheld in the High Court—in its 2012 ruling, the court did not consider plain packaging to be a taking of intellectual property that would require compensation. In December 2015 the Australian government won a further dispute with Phillip Morris in a Hong Kong court pursuant to a 1993 trade agreement with Hong Kong by contesting that the court had jurisdiction. But the WTO case is the most substantial and long running case. A ruling is expected some time in mid-2016.

WTO cases are rarely unambiguous wins or unambiguous losses for the parties contesting them. However, a loss for Australia would be politically complicated. WTO rulings are not binding, and the instinctive reaction of the
Australian government might be to brush it aside. After all, Australians’ health must come first. But Australia benefits from the WTO framework—as an open, mid-sized economy highly integrated in world markets, we have a clear interest in ensuring other countries are open to trade, and comply with the agreed-to WTO rules. And where the previous two cases pitted Australia against a multinational tobacco firm, the WTO case has Australia against a group of developing nations. Of the four parties, the Dominican Republic is the most prosperous, and even then Australia’s GDP per capita is 11 times that of the small nation.

Australia has argued that plain packaging is not discriminatory against trade—it applies to domestic and foreign tobacco products alike—and that it has been imposed to fulfil (in the words of the WTO’s Agreement on Technical Barriers to Trade) the ‘legitimate objective’ of the ‘protection of human health’. Fundamentally, the question at the WTO is the same question plain packaging faces domestically. Does the elimination of branding advance human health? The developing nations argue it does not. The Australian government argues that it does.

Both parties are working with a highly contested, limited evidence base created in the four years since plain packaging was introduced. Complicating this, the keeper of that underlying data—which is, of course, the Australian government—has an interest in the outcome.

SO HAS PLAIN PACKAGING WORKED?

Whether a public policy has achieved its goal depends on how that goal is initially defined. The Tobacco Plain Packaging Act stated that its intention was to improve public health by discouraging smoking through the reduction of the appeal of tobacco products. Over the last few years, a series of graphs and data points have been released by the government to show that the policy has achieved this goal. Each time they are dutifully praised by public health activists as the definitive evidence of success.

But as the IPA’s Sinclair Davidson writes, ‘unfortunately, and despite assurances from the Australian government and the Australian public health lobby, that evidence is simply non-existent’.

There is a fundamental problem with any claim of the success of the policy—the sharp increases in tobacco excises introduced almost at the same time as the plain packaging legislation. This makes it hard to disentangle the effect of plain packaging from the effect of other anti-smoking measures. And it is fairly well agreed that excise hikes are the most effective—that
is, punitive—way to reduce smoking rates.

The latest effort to demonstrate that plain packaging has been a success was the February 2016 release of the government’s plain packaging Post-Implementation Review. The review featured an econometric regression that purported to show a sharp increase in the decline in smoking after the 2012 plain packaging changes. Smoking rates have been declining for decades.

The policy question is whether any given intervention increases the rate that decline occurs. The underlying data which informs the review’s econometrics is—unsurprisingly—unavailable. But, using tools that can roughly extract the data from a graph, Davidson notes that the decline was steady after plain packaging, and has only increased in response to the huge boost to the excise a year later.

The developing countries’ case against Australia rests on this question. And that means a big part of the economic growth of a Caribbean nation is hostage to how a panel of WTO technocrats assesses a highly contested, highly uncertain, political tarnished and intellectually questionable econometric vignettes. Governments don’t like their legislative interventions to be questioned after the fact. By increasing the excise dramatically after introducing plain packaging, the Gillard government ensured that any answer to the question of whether or not plain packaging works is unlikely to ever meet a consensus.

But however the WTO rules this year, the application of plain packaging to premium cigars is a revealing instance of regulatory overreach and consequences. A questionable health measure applied to a luxury product only enjoyed by informed consumers that threatens the livelihood of thousands of workers in a developing country on the other side of a planet. Paternalism at home can mean job losses abroad.

Chris Berg visited the Dominican Republic as a guest of the Dominican government.