

Chapter 6 Tobacco Labeling Toolkit

LEGISLATION



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This chapter is taken from the **Tobacco labelling and packaging toolkit**.

A complete copy of this toolkit and additional resources are available at:
www.tobaccolabels.org , or by contacting the author directly:

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6.0 LEGISLATION

This chapter provides recommendations for drafting labelling regulations, particularly with respect to health warnings. Packaging and labelling legislation should be as specific as possible to minimize the possibility of loopholes. A lack of specificity may be exploited by tobacco companies and thus reduce the intended benefits of the regulations. Note that this section does not cover all aspects of labelling regulations; rather it is only meant to provide guidance on key issues.¹

Source document

The most effective approach for health warnings and messages is to include a “source document” in the legislation. A “source document” is a stand alone document referred to in regulations (or included in the regulations, such as in a Schedule or Annex) that visually depicts in full colour the warning messages (including both text and image components) as they are to appear on packages. Using a source document removes the need to specify details such as the font style, given that they are already incorporated in the messages themselves. A number of jurisdictions, including Canada and the European Community have used this approach—examples of these source documents are available for download at: www.tobaccolabels.org. A source document may be in electronic form, such as on a CD.

Specific considerations

Rotation of messages

The rotation period for “sets” of warnings (e.g. every 24-months) should be clearly specified in national legislation. Legislation should also specify that

¹ Several sections in this chapter have been drawn from a Framework Conventional Alliance briefing paper prepared for the Article 11 Working Group: <http://www.fctc.org/index.php>

each health warning message appear in equal proportion for each stock keeping unit (each format/size of each brand variation). Thus all warnings should appear in equal rotation for Marlboro 100mm 20 pack, for Marlboro 100mm 25 pack, for Marlboro 100mm Menthol 20 pack, etc.

Printing and Quality of Messages

Parties should consider specifying minimum printing requirements. For example in the European Community Directive, picture warnings are to “be printed in four-colour/-CMYK-/ screen 133 lines per inch, as a minimum requirement.” The UK and Belgium, for instance, have implemented this required standard.

Legislation should also indicate that health warnings should be parallel to the top edge of the package surface to prevent manufacturers printing warnings at an angle or upside down.

Different shaped packages & cartons

For soft packs, depending on the design of the package and of the warning, the top edge of the warning should be required to be lowered sufficiently on the package surface so that the warning is not severed when the package is opened in the normal way. When some soft packs are opened, the top of the package is permanently removed, and a small portion of the front and back of the package may be removed as well (although for other soft packs, the foil folds open and shut at the top). If a substantive part of the health warning was removed, this would be of concern. If there was a border surrounding the warning (e.g. 3-4mm black border), and only part of the border was removed, this would be of less concern. Other considerations for package sizes include:

- Cylindrical containers (such as for roll-your-own tobacco): Canada has requirements to ensure that the warning appears twice on cylindrical

containers, effectively on what could be considered the “front” and “back”; Singapore also has specific requirements; Australia and New Zealand have specific requirements for cylindrical and elliptical containers;

- Bundles of cigars with no packaging: Canadian regulations specify that a label is to be placed on the bundle;
- Individually packaged cigars: warnings should be required to be placed horizontally to ensure better visibility;
- Leaf tobacco sold for consumer use (sometimes sold without packaging, and sometimes referred to as a “hand” of tobacco): a warning on a cardboard or other tag of a specified size could be attached with an elastic, string or other device (somewhat akin to a luggage tag affixed to a suitcase, or a price label for a lamp or some other products).
- Cartons: health warnings should also be located on all sides of cartons. Depending on carton format/dimensions, Parties should consider requiring that a picture-based warning be repeated and appear several times, instead of just appearing once.

Obscuring Messages

Parties should prohibit the industry from obscuring a mandatory package message, such as by printing anything or affixing anything (e.g. a sticker) on the package or on the cellophane in a way that blocks a mandatory message.

Exemptions

No exemptions should be allowed to these requirements. For example, there should not be exemptions for small volume companies or brands. Nor should there be exemptions for products sold in duty-free stores.

Tax markings

When determining packaging and labelling requirements under Article 11, Parties should recall obligations related to packaging under Article 15.2 of the FCTC (illicit trade), including:

- that the origin of the product must be indicated on the package and any outside packaging, e.g. "Made in country X" (Article 15.2);
- "that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: "Sales only allowed in (insert name of the country, subnational, regional or federal unit)" or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market" (Article 15.2(a)).

Parties should avoid a situation where tax-related markings/stamps cover or replace the area devoted to warnings or other mandatory labelling information.

Implementation period

When implementing new or modified packaging and labelling requirements, one option is for Parties to ensure that there are two implementation dates: one date for manufacturers/importers, and a later date for wholesalers/retailers. Another option would be to have one implementation date that would apply to all levels, including manufacturers/importers, wholesalers, and retailers. At the manufacturer/importer level, the transition period should not be longer than one year from the date the regulation is finalized, although a shorter transition period, such as six months, is preferable. For manufacturers, there should be a ban on not only manufacturing/packaging products with old packages after the implementation date, but also a ban on distributing as well. This would prevent manufacturers from stockpiling product with old packaging.

If a wholesaler/retailer has non-compliant product past the implementation date, that product should be able to be seized by enforcement officials. It is important to have a final implementation date at the wholesaler/retailer level in addition to the manufacturer/importer level. For example, when Australia and Canada implemented picture-based warnings, there was no implementation date at the retailer level.

Pre-emption

Parties should ensure that packaging and labelling requirements do not relieve tobacco manufacturers and/or others from any obligations to consumers and others, such as to provide further health warnings other than those required by legislation. For example, Parties should avoid including in legislation a pre-emption provision indicating that manufacturers are not liable for an absence of warning messages beyond the messages required by legislation, or that sub-national levels of government may not have additional packaging and labelling requirements.

📌 RESOURCE: Library of existing regulations

Copies of labelling regulations from dozens of countries is available at:

www.tobaccolabels.org