



**INTA Legislation and Regulation Latin America & Caribbean  
Subcommittee**

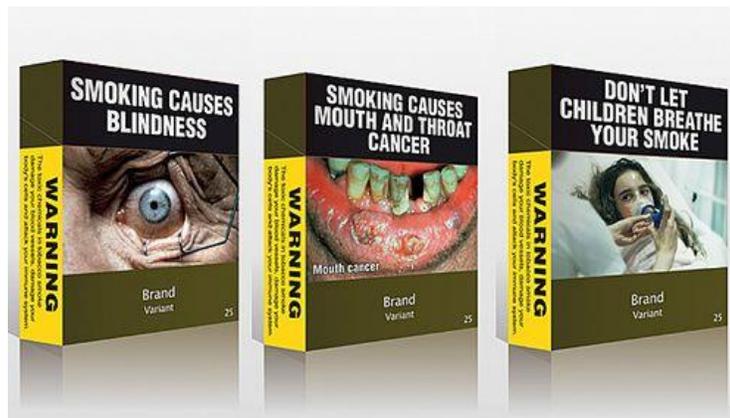
**Report on  
Plain Packaging in Latin America**

**September 2016**

## I. INTRODUCTION

Plain packaging refers to a regulatory measure that requires generic or standardized packaging for a consumer product, whereby all branding (including colors, logos, imagery and trademarks) is removed from the packaging, and manufacturers are permitted to print only the brand name on the pack in a standardized size, font, and color.

Australia was the first country to require plain packaging for any consumer product when it passed the [Tobacco Plain Packaging Act](#) in 2011. Since December 2012, all tobacco products in Australia must be sold in brown-colored packages, with no branding except the name of the brand and variant.



The United Kingdom, Ireland and France have also passed laws requiring plain packaging for tobacco products, and other countries are considering similar proposals. Governments that have enacted plain packaging laws argue that they are justified on public health grounds, because the removal of all branding will reduce consumer deception from misleading packaging, will increase the noticeability of health warnings, and will ultimately lead to less smoking.

To date, the discussion regarding plain packaging has largely been limited to tobacco products, although some in the public health community have called for similar measures for other consumer products, including alcohol, sugary foods and drinks, and pharmaceuticals. In South Africa, logos and imagery have been prohibited on infant formula and similar products on the basis that they could undermine breastfeeding.

The impact of plain packaging on trademark owners and consumers is significant, as manufacturers can no longer use their valuable intellectual property to signify the origin and quality of their products, and consumers are more likely to be confused and unable to distinguish between competing products.

## II. PLAIN PACKAGING LEGISLATION IN LATIN AMERICA

While no country in Latin America has enacted a plain packaging law, several countries in the region are considering proposals for tobacco plain packaging. Those proposals are in various stages of the legislative process, with some more advanced than others. Below is a summary of the current plain packaging proposals in Latin America.



### Argentina

There have been several tobacco plain packaging bills introduced into the Argentinian legislature during the past several years, although none of them has advanced beyond an initial stage of the legislative process. Some of the initial plain packaging proposals lost parliamentary status after being inactive for a significant length of time, although new proposals have since been introduced. Currently, there are three bills pending in the House of Representatives:

- [H.R. Bill 4341-D-2016](#) (introduced July 13, 2016 by Reps. Lagoria, Alonso, and Bermejo)
- [H.R. Bill 3084-D-2016](#) (introduced May 30, 2016 by Rep. Ciciliani)
- [H.R. Bill 4608-D-2015](#) (introduced August 27, 2015 by Rep. Cobos)

All three bills have been assigned to several committees in the House of Representatives, although no further activity has taken place.

## **Brazil**

Similar to the situation in Argentina, in Brazil there have been several plain packaging proposals introduced into the Brazilian legislature, although most have not advanced beyond the initial stage of the legislative process.

Currently, there are five plain packaging bills pending in Brazil, two in the Senate and three in the House of Representatives:

- [Senate Bill 103/14](#) (introduced March 22, 2014 by Sen. Rollemberg)
- [Senate Bill 769/15](#) (introduced December 3, 2015 by Sen. Serra)
- [House Bill 1744/15](#) (introduced May 28, 2015 by Rep. Perondi)
- [House Bill 2360/15](#) (introduced July 14, 2015 by Rep. Cortes)
- [House Bill 5430/16](#) (introduced May 31, 2016 by Rep. Rodrigues)

The three House of Representative bills have been joined together and are expected to pass through the same committees. In the Senate, Bill 769/2015 has been assigned to a special committee in the Brazilian Senate that allows for expedited approval of bills that would assist in urgent economic issues. If the bill were approved by this special committee, it would move immediately to the House of Representatives.

Recent statements from the new Minister of Health in Brazil seem to suggest that plain packaging is not a top priority for the government, although ANVISA, the National Health Surveillance Agency that regulates tobacco, has been very supportive of plain packaging in the past. In addition, the intellectual property association in Brazil (ABPI) has been very active on this issue, including issuing a [strong resolution](#) against plain packaging in 2014.

## **Chile**

A bill of law that would require plain packaging for tobacco products has been pending in Chile since 2013. Senate Bill [8.886-11](#) was introduced by Senator Girardi in April 2013. The original version of the required health warnings to cover 100% of the front and back of all tobacco product packaging. In March 2015, the Health Commission in the Senate approved the bill with certain amendments, including a requirement for standardized packaging (in addition to the 100% health warning requirement). In July 2015, the plenary in the Senate approved the bill, and it moved to the Lower House of the Chilean National Assembly, where it has been assigned to the Health and Agricultural Commissions. Although the bill has been inactive for over a year, the Ministries of Health, Economy and Education all endorsed the bill and there continues to be pressure for the bill to be debated and approved.

## **Ecuador**

In Ecuador, there is one tobacco plain packaging bill pending. Assemblyman Carlos Velasco Enriquez, the author of the current Tobacco Control Law in Ecuador, introduced [Bill 216](#) to the National Assembly on August 3, 2016. The bill was subsequently assigned to the Health Committee.

## **Mexico**

The situation in Mexico is similar to that in Argentina and Brazil, in that several tobacco plain packaging bills have been proposed but none has advanced beyond the initial stages of the legislative process. Currently there are three plain packaging bills pending in Mexico:

- [Ortiz](#) Bill (introduced December 6, 2012 by Sen. Ortiz)
- [Barron](#) Bill (introduced August 20, 2013 by Sen. Barron)
- [Bravo](#) Bill (introduced May 18, 2016 by Sen. Bravo)

In 2014, the Ortiz Bill was modified to remove the provision requiring standardized packaging for all tobacco products and was presented to the plenary for discussion, where no further activity has occurred. The other bills have been assigned to various committees but remain inactive so far. In 2013, the Health Commission in the House of Representatives [rejected](#) a bill that would have required plain packaging for tobacco products. Among the grounds cited for rejecting the bill was that it violated property rights, the topic of plain packaging was already the subject of a dispute resolution in the WTO regarding violations of international treaties, and there was no scientific evidence to show that generic packaging would lead to less smoking.

## **Panama**

In January 2015, [Bill No. 136/2015](#), which would require plain packaging for all tobacco products, was filed in the National Assembly. On April 15, 2015, a sub-committee within the Health Committee presented a report that recommended elimination of the plain packaging provision, making reference to it as a violation of the *TRIPS Agreement*. The Health Committee subsequently approved the subcommittee report. No further action on the Bill has taken place since that time. During the debate in the Health Committee, the Interamerican Association of Intellectual Property (ASIFI) made a written submission raising concerns about the plain packaging measure.

## Uruguay

Currently, there is no active plain packaging proposal pending in Uruguay. However, in July 2016, the Minister of Health in Uruguay [announced](#) that it will move forward with plain packaging. He indicated that the government is currently undertaking studies to decide on the precise details of the plain packaging requirements, and that the objective is to have plain packaging in 2017.

### **III. INTA AND PLAIN PACKAGING**

INTA has been a consistent voice in speaking out against laws and regulations that overly restrict the use of trademarks and other brand imagery, including plain packaging laws. On May 5, 2015, INTA issued a [Board Resolution](#) that sets forth the organization's position on plain packaging:

*1) Plain and highly standardized packaging measures being considered or imposed by governments should be rejected or repealed since they violate various international treaties and national laws on trademark protection including provisions of the Paris Convention (e.g., Articles 6quiquies, 7 and 10bis), the Technical Barriers to Trade Agreement (e.g., Article 2.2), and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) (e.g. Articles 2, 8.1, 15.4, 17, 20 and 26), in particular Article 20 which states that “the use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements such as ... use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings;” and*

*2) Governments should use less drastic alternatives to address health and safety goals, such as public educational campaigns which do not violate international and national law and expropriate valuable trademark rights.*

INTA has also made many submissions to governments around the world regarding proposed plain packaging laws. Those submissions highlight a variety of concerns, including violations of international treaties and national laws, as well as practical implications for consumer rights, competition, and illegal trade in counterfeit and contraband products. In 2015, INTA filed an [amicus brief](#) in the ongoing WTO proceedings between Australia and several countries (including the Dominican Republic, Honduras, Cuba and Indonesia) over Australia's plain packaging law. This was the first time INTA had ever filed an *amicus brief* in a WTO proceeding.

INTA has also advocated against plain packaging and similarly restrictive measures in Latin America. For example, in August 2015, an [INTA delegation](#) presented its concerns to Chilean officials regarding Chile's proposed tobacco plain packaging law and proposed food labelling regulations. In July 2015, INTA made a submission to the Ecuadorian Intellectual Property Office advocating against Presidential Decree 522, which imposes plain packaging requirements on pharmaceutical products once the products' patents have expired.

#### **IV. CONCLUSION**

Plain packaging is an overly restrictive regulatory measure that prevents trademark owners from using their valuable intellectual property and that is likely to have unintended consequences for consumer choice, competition and the illicit trade of consumer products. While to date plain packaging laws have largely been limited to tobacco products, public health advocates are increasingly discussing the possibility of extending similar measures to other consumer products, including food, pharmaceuticals, alcohol and sugary drinks.

INTA closely follows all plain packaging developments around the world, and the Association will continue to speak out against measures that overly restrict a trademark owner's right to use its registered trademarks and brand imagery. We encourage individuals who are facing similar restrictions in their countries to consider requesting INTA submissions when appropriate and in accordance with the Association's policies and procedures on advocacy testimony and submissions.