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Committee on Technical Barriers to Trade

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**PROPOSAL TO INTRODUCE PLAIN PACKAGING OF TOBACCO PRODUCTS  
IN NEW ZEALAND: CONSULTATION DOCUMENT  
(G/TBT/N/NZL/62)**

**STATEMENT BY THE DOMINICAN REPUBLIC TO THE COMMITTEE  
ON TECHNICAL BARRIERS TO TRADE 6-7 MARCH 2013**

The following communication, dated 11 March 2013 is being circulated at the request of the delegation of the Dominican Republic.

## 1 INTRODUCTION

1.1. On 24 July 2012, New Zealand notified its "Proposal to introduce plain packaging of tobacco products in New Zealand: Consultation Document" to the Committee on Technical Barriers to Trade.<sup>1</sup> While the Dominican Republic shares New Zealand's interest for protecting human health, as demonstrated by our application of high import charges on such products and of restrictions on the public areas in which they can be used, we are deeply concerned by the proposed measure on plain packaging. The Dominican Republic believes that the measure under discussion will not produce the desired result and that it is contrary to New Zealand's obligations under the TBT Agreement and the TRIPS Agreement. We also believe that the legitimate objectives that it pursues can be achieved by adopting measures that impose fewer restrictions on international trade.

1.2. The Dominican Republic expressed its concern over the measure proposed by New Zealand during the TBT Committee meeting held on 27-28 November 2012.<sup>2</sup> WTO Members also expressed their concern over the measure.<sup>3</sup> Moreover, the Dominican Republic detailed its concerns in previous meetings of the TBT Committee, regarding similar measures notified and implemented by the Australian Government.<sup>4</sup> The Dispute Settlement Body is currently examining Australia's measures on plain packaging.<sup>5</sup>

1.3. Regrettably, New Zealand has not only failed to take any steps towards addressing the concerns expressed by WTO Members, but it seems that its Government intends to introduce the proposed plain packaging regime.<sup>6</sup> While we find this decision regrettable, we welcome New Zealand's apparent intention to delay introducing this legislation until the WTO Dispute Settlement Body has ruled on the plain packaging measures implemented by Australia.<sup>7</sup>

<sup>1</sup> G/TBT/N/NZL/62.

<sup>2</sup> G/TBT/W/355.

<sup>3</sup> Questions put to New Zealand by the Republic of Cuba during the meeting of the Committee on Technical Barriers to Trade on 27 and 28 November 2012 (G/TBT/W/356).

<sup>4</sup> G/TBT/W/339; G/TBT/W/346.

<sup>5</sup> WT/DS434; WT/DS/435; WT/DS441.

<sup>6</sup> "Government moves forward with plain packaging of tobacco products", 19 February 2013, <http://www.beehive.govt.nz/release/government-moves-forward-plain-packaging-tobacco-products>.

<sup>7</sup> "Government moves forward with plain packaging of tobacco products", 19 February 2013, <http://www.beehive.govt.nz/release/government-moves-forward-plain-packaging-tobacco-products>.

1.4. As it presently stands, New Zealand's draft measure has serious consequences, as it will prejudice the competitive opportunities of imported tobacco products and will have wide-ranging and damaging effects on international trade. Moreover, it will not achieve its public health objectives. In order to avoid taking up too much time, we will not repeat the issues that have already been raised, but will instead try to summarize the Dominican Republic's main concerns regarding this measure.

## 2 DESCRIPTION OF THE IMPACT OF THE PROPOSED MEASURE ON PLAIN PACKAGING

2.1. While New Zealand is still to provide the full details of the proposed measure, we understand that it intends to restrict the use of registered trademarks, logos and other distinguishing features on tobacco packaging apart from the brand name, which would have to satisfy specific requirements regarding its lettering and placement.<sup>8</sup> The proposed measure would also require producers and importers of tobacco products to adopt packaging that is highly standardized, including in terms of size and formatting. In addition, it intends to ban any information from appearing on the product.<sup>9</sup> The proposed measure on plain packaging will, as a result, eliminate many characteristics that help to differentiate between competing tobacco products.

2.2. The Dominican Republic is unclear as to how the proposed measure will help to legitimize the health objectives pursued by New Zealand. In particular, we question the quality and reliability of the evidentiary basis that the country is using to support its proposal.

2.3. The Dominican Republic is also concerned that plain packaging might have unwanted effects that undermine the proposed health objectives. For example, tobacco products sold in standardized packaging will make product differentiation difficult, which will in turn intensify price competition and cause prices to fall. The drop in prices could actually *increase* the demand and consumption of tobacco products. The plain packaging requirement could also stimulate the production and sale of fake and counterfeit tobacco products. An increase in sales and consumption of legal and illegal tobacco products would represent a serious threat to public health.

2.4. We wish to emphasize once again our particular concern over the effect that the proposed measure could have on small and vulnerable economies that have invested in the production and export of tobacco and high-quality tobacco products. In the Dominican Republic, 55,000 people are employed directly in tobacco production and another 63,000 work in the tobacco industry, which means a total of 118,000 direct jobs and more than 500,000 indirect jobs across the country. In 2012, tobacco exports amounted to US\$520 million and currently represent nearly 10% of total exports from the Dominican Republic. Moreover, according to TradeMap (UNCTAD-WTO) data the Dominican Republic was the largest exporter of cigars (in terms of volume) in 2011, accounting for 49% of the global total. Cumulative investment in this area totals US\$2.8 billion, and has been used to develop an export-oriented industry based on high-quality products.

2.5. These figures give an idea of the terrible social consequences that this trade-restrictive measure might have for poor countries such as the Dominican Republic. It bears repeating that the Dominican Republic supports tobacco control initiatives; however, it is opposed to speculative measures, devoid of any credible and reliable evidentiary basis, that will ruin the competitive opportunities of high-quality products and that could be substituted for less restrictive alternative measures.

## 3 INCONSISTENCY WITH ARTICLE 2.2 OF THE TBT AGREEMENT

3.1. The Dominican Republic considers that New Zealand's proposed measure on plain packaging fails to comply with Article 2.2 of the TBT Agreement, which stipulates that "technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create".

3.2. As intended, the proposed measure will have a disproportionate effect on trademark tobacco products and will impose significant restrictions on trade in such products. It will cause a drop in the price and market share of imported tobacco products, particularly of those which are

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<sup>8</sup> G/TBT/N/NZL/62 and notified document mentioned therein.

<sup>9</sup> G/TBT/N/NZL/62 and notified document mentioned therein.

high quality, and of the tobacco used in the aforementioned trademark products. As a result, the value of these imports will fall. The proposed measure will reduce the competitive opportunities of the trademark products that are currently on the New Zealand market and will increase barriers to market entry for branded products.

3.3. As it has previously indicated, the Dominican Republic has serious doubts over whether such restrictions are warranted. According to the evidence available to the Dominican Republic, the proposed measure will not only fail to achieve its objective of reducing tobacco consumption, but it runs counter to these objectives and will increase the consumption of both legal and illegal products. On the other hand, New Zealand's goals could be achieved through the adoption of measures that have already proved effective in promoting public health objectives and are less restrictive to international trade.

3.4. We urge New Zealand to take into account these concerns and to ensure that it meets its obligations under the WTO Agreement.

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