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From: Dejong Nathalie [n.dejong@businessseurope.eu]

Sent: Wed 9/25/2013 4:31 PM

To: HARMS Rebecca

Cc:

Subject: BUSINESSEUROPE concerns on impact on intellectual property of review of Tobacco Product Directive (TPD)

Attachments:

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Dear Ms Harms,

On 8 October 2013, the European Parliament will vote on the EU Commission's proposal for a revised Tobacco Products Directive (TPD).

We understand the importance of promoting public policy objectives such as public health. This does not justify, however, extreme and disproportionate measures such as plain packaging, excessively large health warning labels and arbitrary prohibition of trademarks, which impinge upon intellectual property rights.

These risks for intellectual property have been highlighted in the opinion of the Committee on Legal Affairs (JURI) for the ENVI Committee of 25 June 2013, where it is stated that: Intellectual property rights such as trademarks are explicitly covered by the right to property in Article 17 of the EU Charter of Fundamental Rights. The Court of Justice of the European Union (CJEU) held that warnings on the unit packages are admissible *"in a proportion which leaves sufficient space for the manufacturers of those products to be able to affix other material, in particular concerning their trademarks"*. Reducing the space available on the front and back surfaces to less than 25 % would, however, make it difficult to sufficiently distinguish the products of one producer from those of others, thereby depriving the trademarks of one of their main functions. The trade marks could also not properly fulfill their other functions such as its advertising function. This would also not be in accordance with national constitutional law as well as international treaties such as the TRIPS Agreement.

Intellectual property is key for boosting Europe's growth, innovation and job-creation. Restricting IPR owners from making legitimate use of their trademarks, would amount to an indirect IPR expropriation. Europe would also send a wrong signal against its international commitments under the World Trade Organisation's (WTO) Trade Related Aspects of Intellectual Property (TRIPs) Agreement favoring counterfeiters. Additionally, we are concerned about a spill-over effect on other products and industries, especially those which are already subject to specific mandatory constraints such as alcohol, food, medicines, confectionery, beverage, cosmetics and automotives.

We thus fully endorse the opinion of the JURI Committee and the other Opinion Giving Committees which all voted against the amendments introducing plain packaging and excessively large health warning labels placed at the top edge of the packs (by reducing the Commission's proposed size of 75 % of the total packaging to 50 %) and arbitrary prohibition of trademarks and brands as proposed in Article 12 of the revised TPD.

Consequently, we invite the Members of your political group, to vote against the introduction of plain

packaging and extreme measures restricting normal use of trademarks such as 75 % size health warning labels and arbitrary prohibition of trademarks and brands as proposed in the revised TPD.

Yours sincerely,

Jérôme P. Chauvin

Director

Legal Affairs Department

Internal Market Department