



Published in final edited form as:

*N Z Med J.* ; 131(1473): 25–41.

## Regulatory chills: tobacco industry legal threats and the politics of tobacco standardised packaging in New Zealand

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### Abstract

**AIMS:** To describe the process of enacting tobacco standardised packaging (SP) amidst tobacco industry legal threats in New Zealand.

**METHODS:** Relevant government and NGO documents, and media items were reviewed. Policymakers and health advocates in New Zealand were interviewed. The data were triangulated and thematically analysed.

**RESULTS:** In 2011, the New Zealand Government announced the goal of becoming a smokefree country (reducing smoking prevalence to 5%) by the year 2025, and considered adopting SP. In April 2012, the Government announced it would introduce SP, but tobacco companies threatened the Government with litigation in international courts for violating investment and intellectual property rights. In response, the Government adopted a ‘wait and see’ approach, waiting until two legal challenges against Australia’s SP law were resolved before it enacted its legislation in September 2016. Health advocates, limited due to funding constraints, attempted to alter the Government’s approach to the legal threats without success. Interviews with policymakers and health advocates confirmed these threats helped produce a regulatory chill, delaying the policymaking process by three years.

**CONCLUSION:** The New Zealand case illustrates how the threat of a potential international lawsuit can create a chilling effect by helping delay the implementation of public health policies.

The constantly evolving nature of trade governance in the 21<sup>st</sup> century is increasingly having a profound impact on public health and the development of public health policies globally.<sup>1</sup> New rules governing international trade are increasingly affecting access to medicines,<sup>2</sup> alcohol control<sup>3</sup> and nutrition regulations.<sup>4</sup> In particular, these issues are highly contentious in trade and tobacco control.<sup>5</sup>

While much of the focus of the trade and tobacco control literature has concentrated on commercial aspects of trade liberalisation on tobacco consumption<sup>6</sup> and legal implications of trade agreements on public health,<sup>7</sup> recent studies have examined the political implications of trade agreements on tobacco control policies.<sup>8</sup> This emerging literature

highlights how tobacco companies have used trade agreements to try and block innovative public health proposals,<sup>9,10</sup> and how the *threat* of legal action can help dissuade governments from implementing progressive policies.<sup>11,12</sup>

The ‘regulatory chill’ hypothesis suggests that governments may weaken or withdraw public policies due to concerns over capital flight or potentially costly trade and investment lawsuits.<sup>13</sup> Some critics of this hypothesis argue policymakers are unaware of trade and investment law, and consequently do not take these laws into consideration when making legislative and regulatory decisions.<sup>14</sup> Other critics argue it is difficult to prove that legal threats alter the regulatory process and produce a chilling effect.<sup>15</sup> However, recent studies illustrate policymakers are increasingly aware of trade and investment law and incorporate these understandings into the policymaking process.<sup>16</sup>

This article examines the politics of regulatory chill and the reactions of a nation-state to industry legal threats, by analysing the policy process for tobacco standardised packaging (SP) in New Zealand (2010–16). Instead of testing the regulatory chill hypothesis (whether a policy is enacted or weakened), this paper investigates the extent to which industry legal threats significantly contributed to political delays that have a profound impact on public health.

In September 2009, the Māori Affairs Select Committee of the New Zealand parliament started an inquiry into the tobacco industry and the disproportionate harm of tobacco use to the Māori population. In November 2010, the committee recommended New Zealand become ‘smokefree’ (interpreted as reducing smoking prevalence to 5%) by 2025.<sup>17</sup> The committee recommended several policies to enable this goal, including SP. Over the next six years, tobacco companies pressured the New Zealand Government with legal threats to the SP proposal. We examine the effects of this pressure.

## Methods

We reviewed New Zealand Government and health group documents, and New Zealand media items from official and media websites using standard snowball searches,<sup>18</sup> beginning with search terms ‘plain packaging’, ‘standardised packaging’, ‘international trade’, ‘intellectual property’, ‘tobacco companies’, ‘threats’, as well as using key dates and specific actors. Between January and June 2015, we attempted to recruit via email and telephone 38 New Zealand interviewees closely involved in the SP process. Twenty-three agreed to be interviewed, 10 declined, and five never responded to multiple requests. Of the 23 interviewees, six were tobacco control advocates, four were academics, 11 were members of parliament (MPs) and one was a Health Ministry official. The interviewees agreed to waive their anonymity in accordance with a protocol approved by the University of California, Santa Cruz Committee on Human Research. We also interviewed one official from the Ministry of Foreign Affairs and Trade who requested anonymity. In the Results below, interviewees are cited by initials, with a key to the initials given in the online supplementary material (Supplementary Table 1). Results from these sources were triangulated and thematically analysed through standard process tracing frameworks.<sup>19</sup>

## Results

A series of delays to SP occurred from November 2010 to September 2016. All 23 interviewees (policymakers and advocates) confirmed that industry legal threats were either the most significant or a primary reason for delays (Supplementary Table 1). AI, BS, DS, LW, MF, FT, ILG, JS, KW, SS, SO, TUF, CB, EC, GL, JK, LR, PS, RB, SB, SE, ME, LD.

### Introduction of standardised packaging (SP)

From November 2010, the Cabinet considered the SP recommendation and in April 2012 agreed in principle to introduce SP<sup>20</sup> (Figure 1). However, the New Zealand Government was divided on the issue of introducing SP. Associate Health Minister and M ori Party (an indigenous rights party within government) Member of Parliament (MP), Tariana Turia, was highly supportive of introducing SP, stating it was “a powerful tool” to reduce the appeal of tobacco products and smoking in general. Turia also stated SP would fulfill New Zealand’s commitment to the World Health Organization’s Framework Convention on Tobacco Control treaty (FCTC).<sup>20</sup> The National Party-led coalition Government had delegated responsibility for tobacco control to Turia, who was a Minister outside Cabinet. In New Zealand, an Associate Minister’s delegated authority is constrained, as policy decisions are controlled by the Health Minister and Cabinet.

Meanwhile some members of Cabinet were less optimistic and more cautious about SP, including Health Minister Tony Ryall, who lacked a demonstrated commitment to the Smokefree 2025 goal.<sup>21</sup> Prime Minister Key told reporters that Government was “likely” able to introduce SP legally, but that it was “not absolutely clear cut” and no “slam dunk”<sup>22</sup> (Supplementary Table 2). National Party Trade Minister Tim Groser also said there were “some complexities” concerning the proposal’s legality needing to be addressed.<sup>23</sup>

The Health Ministry, which is responsible for drafting and implementing the SP legislation, held a 60-day public consultation period on the draft (the interim version is called a ‘Bill’) between August and October 2012.

**Tobacco industry initial opposition**—British American Tobacco (BAT) (68.3% market share in New Zealand), Imperial Tobacco (20.0%) and Philip Morris International (PMI) (7.1%) opposed SP. As with the opposition against SP in other countries, including Australia, Ireland, France and the UK,<sup>24</sup> their comments centred around arguments that SP: 1) would not work, 2) would increase illicit tobacco trade, 3) would create unnecessary problems for retailers and 4) would violate domestic laws and international treaties governing intellectual property and investment.<sup>25–27</sup>

The industry claimed the proposal would: a) deprive them of intellectual property rights by degrading the value of their trademarks and expropriate their investments, b) constitute an unnecessary barrier to trade and c) did not accord them fair and equitable treatment.<sup>25–27</sup> In particular, they argued the proposal violated New Zealand’s Bill of Rights and its obligations under various trade and investment agreements, including the Paris Convention for the Protection of Industrial Property, and the World Trade Organization (WTO) Agreements on Trade-Related Aspects of the Intellectual Property Rights (TRIPS) and Technical Barriers to

Trade (TBT). If SP was enacted, tobacco companies threatened to sue the Government for compensation, which they claimed would amount to billions of dollars.

**BAT media campaign**—In August 2012, BAT ran a multi-media campaign titled “Agree Disagree” opposing the SP Bill with the slogan “We agree that tobacco is harmful. We disagree that plain packaging will work.” The campaign ran media advertising on television, radio and print and had its own website ([www.agreedisagreedisagree.co.nz](http://www.agreedisagreedisagree.co.nz)), which reiterated industry arguments submitted during the consultation period. Their television advertising achieved very high reach and frequency of exposure, and presented arguments that were either unsound or demonstrated fallacies.<sup>28</sup>

**Health group support**—The main public health groups in New Zealand, and international health groups, lawyers, activists and academic scholars submitted comments supporting the Bill.<sup>29</sup> They argued SP reduced the appeal of tobacco products by removing the glamorisation and contributed to the de-normalisation of tobacco, especially for youth and vulnerable populations. Health groups also identified there may be domestic and international legal implications associated with SP, but did not see these as a reason not to proceed. Instead, they argued SP was a justified public health action and met the Government’s commitments to the FCTC.

### Ministry of Health regulatory impact statement and reports to Cabinet

In November 2012, the Health Ministry presented their report on the submissions,<sup>29</sup> mentioning that several submitters argued SP violated several treaties. After consulting with other ministries, the Health Ministry also issued a regulatory impact statement (RIS) addressing potential impacts and risks of SP.<sup>30</sup> The RIS stated that the Ministry of Foreign Affairs and Trade (MFAT) warned there was “a reasonably high risk of trade litigation,”<sup>30</sup> (Supplementary Table 2). MFAT also noted that Australia, the first country to introduce SP, was facing two international legal challenges (one through WTO). MFAT estimated a 1.5–2 million NZD cost to defend a WTO case and potentially substantially more to defend an investment arbitration lawsuit.<sup>30</sup>

As part of the executive policy process, Associate Health Minister Turia sent a report on SP on November 27, 2012 to the Cabinet Social Policy Committee. It expressed concerns over a potential legal challenge as a significant risk that “would require significant investment of resources”,<sup>31</sup> estimating \$3–\$6 million for investment arbitration. The report acknowledged that risks would be significantly mitigated upon conclusion of the Australian legal disputes. It therefore proposed developing “policy details to enable legislation to be considered for introduction by August/September 2013.”<sup>31</sup> Consequently, the Government developed a ‘wait and see’ approach reliant upon the two Australian legal challenges for “greater legal certainty” before proceeding with SP in New Zealand.<sup>32</sup>

### Resuming the process of SP legislation

On 21 August 2013, Minister Turia issued another report proposing the Bill be introduced in parliament and sent to the Health Select Committee. In proposing SP, the report again took a

cautious approach, stating the Bill “could be delayed if necessary”, reiterating the “uncertainty” of the timetable for the Australian legal challenges.<sup>33</sup>

Although the Cabinet continued to consider legal challenges as a “high risk”, the August 2013 report addressed for the first time the issue of intellectual property rights. It acknowledged that the right to “register” trademarks did not grant tobacco companies the right to “use” the trademarks,<sup>33</sup> as acknowledged by domestic rulings outside New Zealand,<sup>34</sup> international rulings<sup>8</sup> and the tobacco industry’s internal legal counsel.<sup>12</sup> Following the August 2013 report, Minister Turia introduced the SP Bill to parliament in December 2013.

**SP first reading**—On 11 February 2014, the parliament had their first reading of the SP Bill.<sup>35</sup> MPs in opposition to the Bill (from the small New Zealand First and ACT parties) reiterated the industry’s arguments by discussing the potential risk and cost to tax payers associated with a legal challenge. MPs in support of the Bill (from the Labour and Green parties) condemned these industry intimidation tactics and emphasised the importance of public health. The Bill was sent to the House Health Select Committee following a 142–1 vote.

Following the first reading, Associate Health Minister Turia and the National Party Cabinet disagreed on how the Bill should proceed. Turia congratulated the MPs for moving the Bill forward, and said that the Government should not be intimidated by tobacco companies or delay the legislation.<sup>36</sup> Prime Minister Key, however, stated the Government would continue waiting for the Australian legal challenges before enacting legislation<sup>36</sup> (Supplementary Table 2). Despite the Government’s cautious approach, the Bill was allowed to proceed to the House Health Select Committee.

**Health House Select Committee 2014**—In February and March 2014, the Health Select Committee received 191 substantive submissions on the Bill. These included some from international legal experts who argued that the SP proposal was consistent with international law, including WTO obligations. Both tobacco companies<sup>25–27</sup> and health groups<sup>37</sup> reiterated their positions on the Bill. In particular, health groups urged the Government to pass the Bill immediately without further delays.

**Health Ministry response to Health Committee**—On 18 June 2014, the Health Ministry gave their submission to the Health Select Committee in consultation with other ministries, especially MFAT.<sup>38</sup> The Health Ministry accepted the international legal advice on the Bill’s legal standing, stating it was consistent with New Zealand’s WTO obligations concerning intellectual property rights and was non-discriminatory under trade and investment agreements (Supplementary Table 2). The submission stated the legal analysis provided by opponents of the Bill was “incomplete”, “selective” and did not “provide credible evidence to support their claims”<sup>38</sup> (Supplementary Table 2).

**Health Select Committee report**—On 5 August 2014, the Health Select Committee submitted its report, which rejected the industry’s trademarks argument but did not address other legal issues pertaining to the Bill. The Health Select Committee also did not address

whether the Bill should be delayed and instead recommended the Bill to the House for a second reading.<sup>39</sup>

### Two more years of cautious delay

On 20 September 2014, following the recommendation for a second reading, New Zealand held a general election. The National Party remained in government, however, Turia retired and the position of Associate Health Minister 'responsible' for tobacco control was filled by new Cabinet Minister Peseta Sam Lotu-liga, from the National Party. The Māori Party lost two seats in parliament and became less influential as a support party for the National Party.

Health advocates interviewed for this study felt this change represented a drastic shift in leadership (Supplementary Table 1). CB, EC, GL, JK, LR, PS, RB, SB, SE Along with several MPs also interviewed for this study (Supplementary Table 1), DS, LW, MF, FT, ILG, KH, SS, SO, TUF they commented that former Minister Turia was a "bold" and "courageous" leader who had dedicated her political career to advancing Māori rights. While Lotu-liga did need agreement from senior ministers to prioritise the Bill, as did his predecessor, health advocates stated that, unlike Turia, he followed the caution of the National Party instead of challenging this approach.

In 2014, two former tobacco industry lobbyists, Christopher Bishop (Corporate Affairs Manager PMI, 2011–2013) and Todd Barclay (Corporate Affairs Manager PMI, 2013–2014) became National Party MPs in the new parliament. In 2012, Bishop was PMI's lead New Zealand spokesperson, appearing on television programmes to oppose the SP proposal.<sup>40</sup> Health advocates noted a conflict of interest between their previous jobs and their duties as MPs, and worried they were contributing to delaying the Bill. Although there is no evidence to suggest these new MPs helped delay the process, their presence in government reflected long-term alliances between the National Party and the industry,<sup>41,42</sup> and other strong contemporary links.<sup>43</sup>

In February 2015, the UK and Ireland passed legislation requiring SP by May 2016.<sup>44</sup> In response, health advocates and MPs began calling on the New Zealand Government to call the Bill for its second reading and not continue waiting on the Australian legal disputes.<sup>44,45</sup> In March 2015, Associate Health Minister Peseta Sam Lotu-liga replied to the demands, echoing the Government's cautious 'wait and see' approach by stating it was "prudent to await the World Trade Organization decision"<sup>46</sup> on Australian SP.

In September 2015, the text of the Trans-Pacific Partnership Agreement (TPP), a regional trade agreement between New Zealand and 11 countries in the Asia-Pacific region, was finalised. It included a semi-carve out for tobacco, meaning that governments would have the opportunity to prevent tobacco companies from using the investor-state dispute settlement (ISDS) mechanism to directly challenge public health policies under the TPP in future disputes. This prompted Labour Party MP Annette King to ask Lotu-liga when the Bill would be brought up for a second reading.<sup>47</sup> Minister Lotu-liga responded, stating the Government had a busy legislative programme for 2015.<sup>48</sup> Some health advocates felt this was a poor excuse, since the National Party was in its third term of government and its

legislative agenda was the least busy it had been in 30 years (Supplementary Table 1). PS,RB,SE

On 18 December 2015, the international tribunal examining the Australia-PMI legal dispute dismissed PMI's challenge, ruling that it did not have jurisdiction to hear PMI's claim.<sup>49</sup> This tribunal ruled that initiation of the arbitration constituted an "abuse of right" because Philip Morris Asia did not have any relevant investment in Australia when the SP Bill was announced in April 2010, because PMI moved ownership of its Australian operations from Switzerland to Hong Kong in February 2011, 10 months after the Australian Government's SP announcement. Since one of the two Australian trade law disputes had been settled and the Australian High Court had ruled SP did not constitute acquiring the property (trademark), but was merely restricting the use of the trademark on the *packaging and presentation* of tobacco products,<sup>50</sup> Prime Minister Key was questioned about the progress of SP. On 15 February 2016, he stated that the Government was "feeling a lot more confident."<sup>51</sup>

Although Prime Minister Key did not identify a date for the Bill's second reading in parliament, he stated he expected it to become law by the end of the year.<sup>51</sup> On 19 February 2016, MP Annette King again asked Minister Lotu-liga to explain the Bill's delay in the House. Minister Lotu-liga responded that the bill would progress as priorities permitted.<sup>52</sup>

Three of the four MPs from the National Party and NZ First Party interviewed for this study felt it prudent and pragmatic to await the result of the Australian legal challenges before enacting SP (Supplementary Table 1). SS,SO,BS They felt New Zealand, especially as a small nation, could learn from those cases and adopt the necessary adjustments to avoid any unnecessary and protracted legal battles. These MPs were concerned about the legal costs associated with trade disputes, which they argued required spending taxpayers' dollars (Supplementary Table 1).SS

On the other hand, MPs from the Labour Party, Green Party and M ori Party argued this 'wait and see' approach ignored health priorities and undermined New Zealand's sovereignty (Supplementary Table 1).DS,LW,MF,ILG,KH,TUF These MPs emphasised New Zealand's sovereign right to implement public health measures and said that it was alarming that a corporation could directly sue a government over attempts to advance public health. However, some MPs opposing the 'wait and see' approach empathised with the Government's desire to avoid risk, considering the legal uncertainty (Supplementary Table 1).LW,ILG

**Constrained health groups (Health Ministry realignment)**—Throughout 2015 and 2016, health advocacy groups urged the Government to move forward with the second reading, but were reluctant to pressure the Health Ministry from whom they received the majority of their funding (Supplementary Table 1).PS,EC,LR,SE In 2014, the Ministry of Health announced they would 'realign' their tobacco control services and priorities between April 2015 and June 2016 with more focus on tobacco use cessation rather than prevention.  
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More importantly, by June 2016, the government had cut funding for national tobacco control advocacy by 79% (from \$1.7 million to \$450,000) closing or largely curtailing the operations of several health groups.<sup>54</sup> These included the two most active and experienced advocacy groups, the Smokefree Coalition and ASH New Zealand. Advocates interviewed for this study in June 2015 were concerned the Health Ministry's realignment would affect their funding to perform adequate advocacy operations (Supplementary Table 1).PS,EC,LR,SE Some interviewees argued this realignment prevented and in some sense 'silenced' the public health voices pressuring the Government to adopt a Bill that had high public approval and strong supporting evidence (Supplementary Table 1).PS,EC,LR,SE

**SP second reading**—On 31 May 2016 (World No Tobacco Day), Associate Health Minister Lotu-liga announced the SP Bill would finally have its second reading in parliament in June 2016. Prime Minister Key also confirmed that tobacco industry legal threats were the primary reason for delaying the Bill, stating it had been prudent to wait. He said, however, that his officials were now advising him that it was safer to proceed (Supplementary Table 2).

On 23 August 2016, parliament held its second reading of the SP Bill, followed by a discussion in the committee of the whole House. A few MPs addressed the tobacco industry's legal threats and accused the Government of unnecessarily delaying the process of SP.<sup>55</sup> MPs then voted on the Bill, which passed 108–13. The Bill had its third reading on 8 September 2016 and was given royal assent on 14 September 2016.

## Discussion

The case of SP in New Zealand illustrates how an industry can use trade and investment agreements to delay the policy-making process for public health measures. Other possible contributing factors for political delays include the closeness of the Government to the tobacco industry, and the Government's reluctance to be seen regulating industry and acting against foreign investors.<sup>41</sup> The government could also have been using the legal threats as an excuse not to pass SP for other reasons. While these factors may have contributed to the delay, litigation threats were prominent in government explanations for the delays of SP, indicating the integral role played by concerns over legal risks.

The six-year period for this legislation compares with less than one year for the law banning tobacco advertising in New Zealand (1990) and less than three years (2001–2003) for the next major tobacco legislation.

While the trade and health literature has primarily focused on the *direct* effects of trade agreements on public health policies,<sup>7</sup> this paper demonstrates that trade agreements can also have *indirect* effects by disrupting the policymaking process. The ability of transnational corporations to use the mere threat of challenging a public health proposal in international court forces governments at a minimum to consider trade and investment law into the decision-making process.<sup>11</sup> This can create legal risk and uncertainty for governments.



This paper broadens the regulatory chill literature by examining the chilling effect in terms of delay (time elapsed between introducing and enacting legislation) and its impact on public health. In comparison to the timeframes of other early adopters of SP—Australia (18 months), Ireland (22 months), the UK (35 months) and France (20 months)—New Zealand was by far the slowest (53 months). These political delays have substantial public health effects, including slowing the diffusion of best practices and delaying the effect of SP on smoking cessation and initiation. They also delay the reduction of government health expenditures and tobacco industry sales.

In February 2016, the Australian Department of Health released its Post-Implementation Review of SP, reporting significant health gains after two years of implementation, including delaying youth smoking initiation from 15.4 years to 15.9 years. Within the reduction of smoking prevalence over the two years from 19.4% to 17.2%, 0.55 of the drop was attributed to SP.<sup>56</sup> The Department of Health estimated SP would generate health costs savings of \$273 million over 10 years.<sup>56</sup>

The New Zealand case also provides insight into how various political parties may react to industry legal threats and be more susceptible to regulatory chill. As in Australia,<sup>57</sup> tobacco regulations may share bi-partisan support, but the intersections of trade and health, and trade and tobacco can be a dividing issue along party lines. Some MPs within centre-right and right parties evoked industry legal concerns tied to SP, and those in centre-left and left parties rejected these arguments. The case of New Zealand was similar to the UK,<sup>58</sup> where the centre-right party leadership was cautious, and delayed enacting SP. In contrast, the centre-left and left leadership in Australia and Uruguay respectively was bold in rejecting the industry legal threats from the outset, and emphasised the public health importance of SP. This boldness can be attributed to strong leadership in these two countries, but research in both cases indicates that there were significant differences across party lines.<sup>8,57</sup>

### Policy implications

The tobacco companies' threats to New Zealand highlight the industry's longstanding fear of New Zealand's tendency to adopt policies similar to Australia's,<sup>12</sup> and its fear of diffusion of best practices globally.<sup>59</sup> Internationally, such threats help explain the slow diffusion of pictorial health warnings exceeding 50% of the package, and of SP.

As of April 2018, other countries, including Georgia, Hungary, Norway, Romania, Slovenia and Thailand have enacted SP, and Canada, South Africa, Malaysia, Turkey, India, Panama, Brazil and Chile have announced plans to introduce SP.<sup>60,61</sup> Health advocates and lawyers should inform governments, especially those that may have similar legal concerns, about the growing legal certainty of implementing these policies to avoid unnecessary delays in the regulatory process. Advocates can highlight the Australian,<sup>62</sup> UK,<sup>63</sup> French<sup>64</sup> and Indian<sup>65</sup> High Court decisions to uphold strong packaging and labeling policies. Advocates can also highlight an international trade tribunal ruling in favor of Uruguay's strong tobacco packaging and labeling laws, also based on similar intellectual property, expropriation of trademark property and trade law, which can be applicable to SP and to wider public health policies.<sup>8</sup> On 5 May 2017, news sources reported that the WTO dispute panel's interim report upheld the Australian SP laws.<sup>66</sup> Although the final ruling is expected in 2017, as of

April 2018, it has not been made public. Given these favorable legal rulings governments should ignore any ‘wait and see’ arguments by the industry and their allies.

The New Zealand case also points to the importance of non-government funding resources in supporting tobacco control advocacy efforts,<sup>67–69</sup> including legal expertise and support to help shape the Government’s reaction and response to the industry legal threats. Due to their reliance on government funding, primarily from the Health Ministry, some New Zealand health advocacy groups may have been constrained in challenging the Government’s decision to delay SP. Although New Zealand has a well-established tobacco control network, it lacked the extent of domestic legal expertise or international legal support found in other contexts to counter the industry’s pressure.<sup>8,57</sup> Sustainable funding for independent advocacy and legal assistance can possibly help minimise legal fears and limit the effects of regulatory chill.

Although New Zealand has finally enacted SP, health advocates should expect continued industry interference during the implementation phase.<sup>70,71</sup> Delays to progress in Georgia are reported to be due to industry interference,<sup>72</sup> and in Thailand the Ministry of Commerce has raised trade concerns and it appears the Government is waiting until the results of the WTO dispute with Australia before moving forward.<sup>73</sup> In Uruguay<sup>8</sup> and Australia,<sup>57</sup> following the enactment of strong packaging and labeling regulations, tobacco companies sued in international courts, almost forcing the Uruguay Government to weaken its regulations. Unless the New Zealand Government issues the necessary regulations without undue delays, the Government runs the risk of not fulfilling its commitment to becoming smokefree by 2025. As of April 2017, it appears that the requirement for SP will not be implemented until June 2018.<sup>74</sup>

## Limitations

Cabinet politicians and some officials from MFAT declined requests to be interviewed for this study. Also, some information was withheld under Official Information Act provisions in the Regulatory Impact Statement and the reports to Cabinet, limiting a complete understanding of how the Key administration responded to the tobacco industry legal threats.

## Conclusions

The New Zealand case illustrates how the threat of a potential international lawsuit can create a chilling effect by delaying public health policies. Other countries introducing or implementing similar policies should learn from these experiences and take steps to proactively avoid unnecessary political delays that have a profound impact on public health.

## Supplementary Material

Refer to Web version on PubMed Central for supplementary material.

## Acknowledgments

Competing interests:

Eric Crosbie reports grants from National Cancer Institute Training Grant 2T32 CA113710-11 and Tobacco-Related Disease Research Program Dissertation Research Award 24DT-0003 during the conduct of the study.

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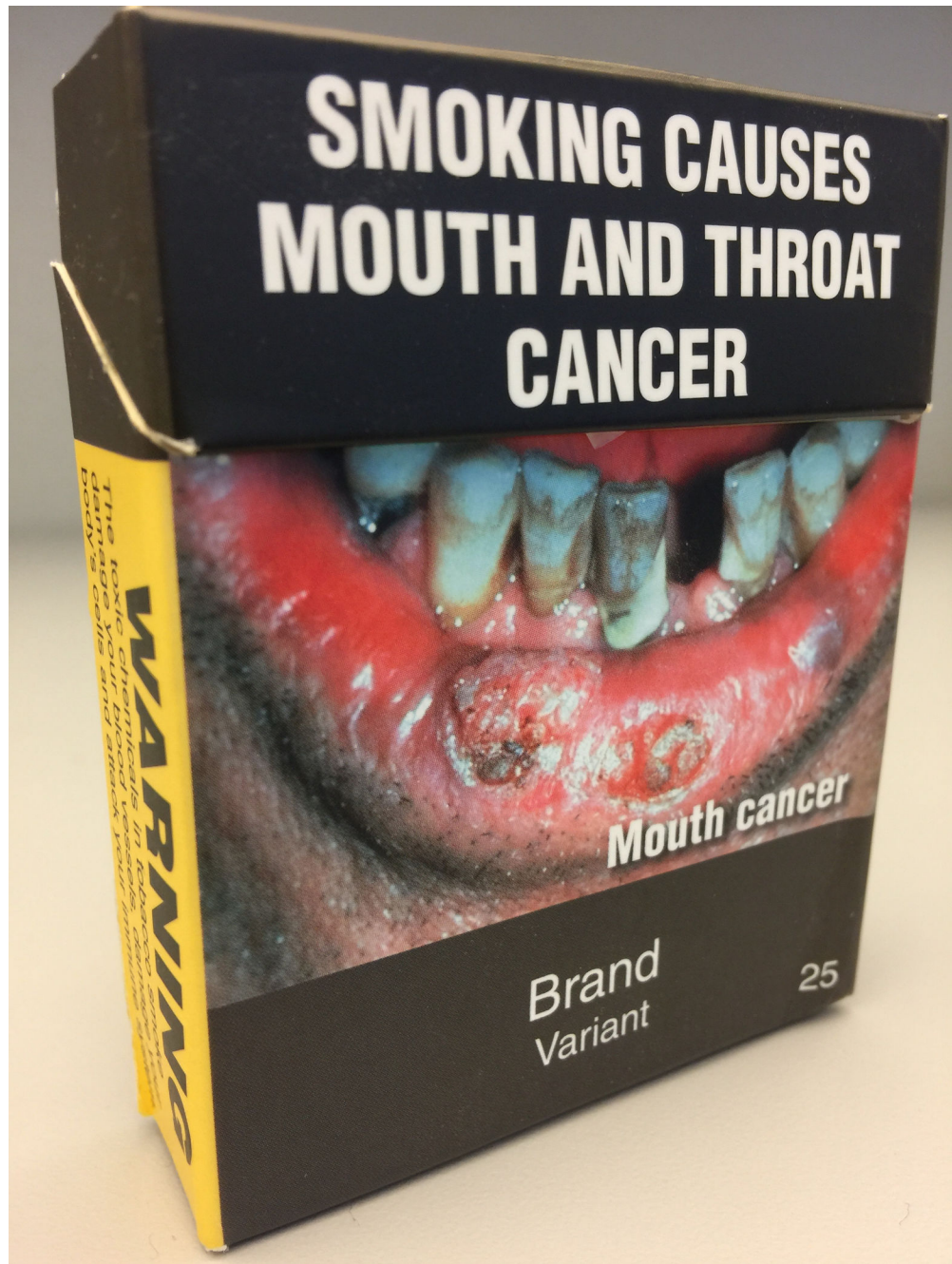
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