



How Trade-Restrictive Is Standardized Packaging? Economic and Legal Implications of the WTO Panel Reports in *Australia–Tobacco Plain Packaging*

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Abstract

The lengthy and long-awaited WTO Panel Reports in *Australia–Tobacco Plain Packaging* contain a host of material for reflection, particularly in relation to the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Trade-Related Aspects of Intellectual Property Rights. While two of the Panel Reports proceed to appeal, we consider with respect to the two adopted Panel Reports the Panel's reasoning in relation to Article 2.2 of the TBT, focusing on the meaning of trade-restrictiveness. This concept central to WTO law has been under-examined to date, and these Panel Reports demonstrate some of the complexities in identifying trade-restrictive measures, particularly where they are non-discriminatory. The Panel found that Australia's measures restrict trade because they contribute to their objective of reducing tobacco consumption. Therefore, any equally effective alternative will similarly restrict trade. This curious result under TBT Article 2.2 may be particular to non-discriminatory measures that target 'socially bad' products such as tobacco.

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