AWMA

AMERICAN WHOLESALE MARKETERS ASSOCIATION

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Center for Tobacco Products
U.S. Food & Drug Administration
Document Control Center
9200 Corporate Boulevard
Rockville, MD 20850

"FDA 05-2010 Menthol Request"

To Whom it May Concern,

Thank you for providing the opportunity to submit these written comments to become a part of the record. The American Wholesale Marketers Association (AWMA) is submitting this statement to express our serious concern that a ban on menthol cigarettes would be ineffective and create an outsized contraband market.

AWMA is the only international trade organization working on behalf of convenience distributors in the United States. Our distributor members represent more than $85 billion in U.S. convenience sales. Associate members include manufacturers, brokers, retailers and others allied to the convenience store industry.

The typical products purchased and sold by convenience distributors include candy, tobacco, snacks, beverages, health and beauty care items, general merchandise, foodservice and groceries. In addition to convenience stores, their largest customer segment, convenience distributors also service grocery stores, drug stores, tobacco shops, mass merchants, newsstands, concession stands, gift shops, fundraising groups, restaurants, institutions and much more.

AWMA is committed to continuing to promote distributors' interests as the FDA works to implement its new authority over tobacco manufacturing, sales and distribution. Our association has been following this implementation process very closely, taking every opportunity to express our concerns and report to our members any new developments.

We understand that TPSAC is considering whether or not to recommend banning menthol cigarettes and, as an organization that has a front-row seat with respect to the ramifications of such action, we wanted to make clear our views on this important issue.

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We are deeply concerned about the very real possibility that banning menthol will only create a large contraband market.

AWMA's members are often affected by science-based policy decisions by government regulatory bodies. AWMA has grave concerns whenever government agencies justify a regulatory action based upon tenuous links or preconceived notions involving a product and a purported effect. We do not believe, with respect to menthol, that the data support the government reaching into the personal choices of individuals to ban menthol in cigarettes. To our analysis, the compendium of science demonstrates that menthol cigarettes have the same health effects as non-menthol cigarettes.

We believe it is right for TPSAC to look to *proven science* (studies conducted by and published by renowned individuals and institutions that can be replicated) with solid data. Our members believe that the most sound and most comprehensive science should be an integral part of the public policy debate impacting our industry. More important, to have credibility with the public, government policies should always be based upon the strongest science.

Common sense tells us that banning menthol will create a large and significant contraband market. Menthol cigarettes today constitute about one-third of all cigarette sales. If menthol were banned, the sales of a currently legal product would be replaced by a contraband market. It is likely that this contraband market – because illicit trafficking of tobacco already exists through an established underground economy – will be sophisticated, large and widespread.

This black market will not only reduce the government's revenue, but will also open the door for easy and unmonitored accessibility by youth. Organized criminal groups will be in the driver's seat, and black marketers will pocket billions of dollars in profit. And, if contraband cigarettes are sold at lower prices – a distinct possibility given historical examples – it is likely that banning menthol will do little to diminish smoking. It is even possible to imagine a scenario where cheaper cigarettes could increase tobacco use, especially among youth.

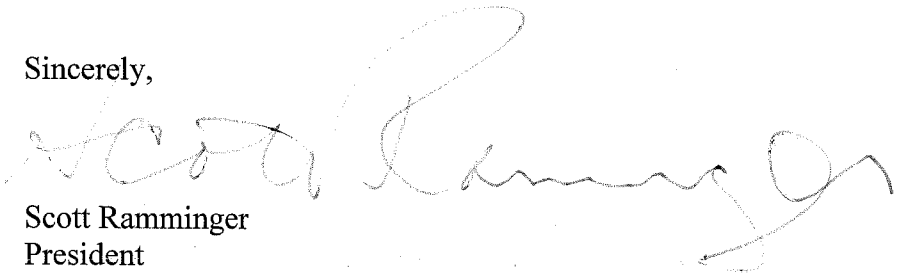
The contraband market is complex and constantly evolving. Illegal trafficking of tobacco takes many forms, including casual bootlegging, organized international smuggling, illicit manufacturing, tax-avoidance from duty-free sources, and counterfeit cigarettes. While contraband sources often emerge domestically, given the ease of transport and manufacture, sources can be easily displaced to overseas or neighboring jurisdictions. Tobacco smuggling, in fact, has become a problem of international scope. That is one reason why the effectiveness of anti-contraband policy measures have sometimes been called into question in federal reports and studies.

Thus, what is to be gained if a decision regarding menthol is not based on sound science and ignores practical realities? Banning menthol will be good for illegal businesses and not much more. In addition, it stands a good chance of undermining stated government health objectives.

For this reason, AWMA believes strongly that it would be a mistake to deliberately create a contraband market in the face of solid scientific studies showing that menthol cigarettes have no different health effects than non-menthol cigarettes.

Thank you for considering these concerns as part of your study. We look forward to hearing from you.

Sincerely,



Scott Ramminger
President
American Wholesale Marketers Association