



**IMPERIAL TOBACCO
CANADA**

**Submissions on the *Proposed order to amend the schedule
to the Tobacco Act
(menthol)***

January 18, 2017

Executive Summary

Imperial Tobacco Canada Limited (ITCAN) recognizes the health risks associated with smoking, and that is why we support reasonable, fact-based regulation, especially when it comes to protecting young people. However, we will continue to oppose excessive regulation that will not achieve any of the Government's stated objectives and that could actually prove counter-productive.

To that end, a ban on menthol cigarettes will not address youth access to tobacco products, which should be the Federal Government's priority. Indeed, youth should not be accessing any tobacco products, flavoured or not.

The proposed menthol ban is also the complete opposite of the Federal Government's position on other related matters. For example, menthol cigarettes would be banned in order to reduce youth access, yet marijuana is due to become legal in order to reduce youth access. A menthol ban would also aggravate Canada's already severe illegal tobacco problem, as the illegal operators, who already sell many brands of menthol cigarettes, would in effect gain a complete monopoly over this market segment.

Also, there is no scientific evidence to support a ban on menthol cigarettes. Data on youth smoking rates used to justify a ban is misinterpreted and does not demonstrate that menthol is the cause of youth smoking initiation or prevalence. In addition, Health Canada has offered no new data to justify a menthol ban since the last consultation on flavoured tobacco products, pursuant to which it maintained the menthol exemption.

While ITCAN supports bans on candy and confectionary flavoured cigarettes, we believe that traditional products favoured by adult consumers, like menthol cigarettes, should continue to be authorized as they are a completely different product category and they do not drive youth initiation, which is a position Health Canada itself used to hold.

Finally, if Health Canada chooses to proceed with banning menthol cigarettes despite the flaws in the evidence used and the aggravated contraband risks, it is critical that the market be given proper time to adjust. For that purpose, in addition to the 180 day period proposed following publication of final regulations in *Canada Gazette*, Part 2, to end production of menthol cigarettes, a further minimum of an additional three months should be provided to retailers to liquidate their inventory. However, before implementing such a ban, the authorities must take concrete actions to address the existing illegal manufacture and sale of menthol cigarettes in Canada, as the availability of such products defeats the claimed purpose of such a ban entirely.

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Introduction

On behalf of Imperial Tobacco Canada Ltd. (“ITCAN”), we welcome the opportunity to provide representations on the Notice regarding the proposed *Order Amending the Schedule to the Tobacco Act (Menthol)*, and its accompanying Regulatory Impact Analysis Statement (“RIAS”), published in the *Canada Gazette*, Part 1, Vol. 150, No. 45 dated November 5, 2016. We previously provided submissions on the government’s proposal to ban certain menthol products on May 26, 2016.

We oppose the proposed measure for four main reasons. First, the “evidence” presented by Health Canada to justify this ban is deeply flawed. Second, the proposed ban stands in direct opposition to the Government’s own position that prohibition of a product does not address youth use of a product, as evidenced by its plans to legalize marijuana. Third, a ban on menthol cigarettes will be ineffective in a market already so permeated by illegal tobacco products. Fourth, Health Canada continues to do nothing on the more important issue of youth access.

Building on that final point, the proposed menthol ban fails to address that youth should have access to no tobacco products, whether menthol or otherwise. Health Canada needs to address the problem of youth accessing tobacco products from social sources. The problem of youth smoking also needs to be viewed against other youth health risks such as ease of youth access to marijuana and cocaine.

About Imperial Tobacco Canada Limited (ITCAN)

Established in 1908, ITCAN is Canada’s leading tobacco company, offering brands like du MAURIER, Player’s and Pall Mall to over five million adult Canadians who choose to smoke. ITCAN is headquartered in Montreal and employs approximately 400 people across Canada.

ITCAN is dedicated to conducting its business responsibly, in a manner that meets society’s expectations of a 21st century tobacco company. ITCAN recognizes the health risks associated with tobacco consumption and believes underage people must not consume tobacco products. We support reasonable and evidence-based regulation especially when aimed at keeping tobacco products out of the hands of youth.

Need for evidence-based regulation

Our comments in this section echo those made in response to the original consultation on this subject. As Health Canada has still provided no evidence to support its position, we must again outline the problems with its policy approach.

1. Background Regarding Flavoured Cigarette Regulation:

ITCAN has supported past efforts to ban candy and confectionary flavoured cigarettes, both federally and at the provincial level. Given our belief that young people should not smoke, we do not manufacture products with candy or confectionary flavouring and this has been true long

before Governments started to regulate in this area.

Therefore, to be clear, we support a ban on candy and confectionary cigarettes. However, we do not support a ban on traditional products like menthol cigarettes, which is, until recently, in accordance with the long-standing position of Health Canada and the Federal Government.

There is a clear difference between such products and traditional products catering to an adult demographic, like menthol cigarettes, which have been sold in Canada for over 80 years.

2. Proposed Ban on Menthol Cigarettes:

The original *Notice to interested parties – Proposed order to amend the schedule to the Tobacco Act (menthol)* (the “Notice”), published on April 30, 2016, indicates that “due to the prevalence of menthol cigarette smoking among Canadian youth and the popularity of menthol in cigars, measures are being proposed to restrict the use of menthol in specific tobacco products to reduce their appeal among youth.”

There is, however, a lack of scientific evidence to support a prohibition policy that will affect adults using menthol cigarettes or to demonstrate that a menthol ban will have an impact on youth smoking rates. Indeed, scientific studies have yet to conclude that such cigarettes lead to stronger addiction than their non-flavoured counterparts or represent a significant factor in introducing smoking to young Canadians, or that a ban on these types of cigarettes could impact youth smoking.

Health Canada and tobacco control lobbyists originally used prevalence data from the 2012/2013 Youth Smoking Survey (YSS) to claim that menthol introduces teenagers to smoking or has an impact on the youth smoking rate. For example, a study using the YSS data was published by Azagba et al. (2014) in *Cancer Causes Control*.¹ Because 32% of teenage smokers from grades 9 to 12 said they had smoked at least one menthol cigarette in the last 30 days, its authors conclude that there is a genuine need to ban menthol products in Canada.

However, this type of study and the YSS reporting prevalence data are not designed to demonstrate a causal relationship between consuming menthol cigarettes and youth smoker behaviour or smoking initiation. Interestingly, the authors themselves admit this, despite their own conclusions.

Moreover, the editor of *Cancer Causes Control* subsequently published an article by public policy expert Jeff Stier which sharply criticized the Azagba et al. study and mentions that its observations say nothing on how restrictive regulations on menthol products would impact youth smoking rates or reduce the risks associated with tobacco use among the general public.²

¹ Azagba S, Minaker LM, Sharaf MF, Hammon D, Manske S. Smoking intensity and intent to continue smoking among menthol and non-menthol adolescent smokers in Canada. *Cancer Causes Control* 2014, DOI 10.1007/s10552-014-0410-6. Published online on June 10, 2014

² Stier, J. Even anti-tobacco studies must be held to basic scientific standards. A response to: Smoking intensity and intent to continue smoking among menthol and non-menthol adolescent smokers in Canada. *Cancer Causes Control* 2015, DOI 10.1007/s10552-015-0581-9. Published online on April 20, 2015.

Stier accurately foresaw the outcome of this misconstrued data, stating:

“In my view, the findings of the study are scientifically flawed and run the risk of misleading regulators looking at means to reduce smoking prevalence, especially among youth.”³

Stier adds that the authors of the study acknowledge that “association” does not equal “effect” or “cause,” yet these facts are completely ignored by those that use this data to lobby for a menthol ban.⁴ Stier goes on to further critique the methodology of menthol ban proponents:

“This limitation is compounded by the authors’ classification of what constitutes being a menthol cigarette user. In their analysis, they count any youth who smoked even just one menthol cigarette in the last 30 days, as a menthol smoker. This classification ignores the reality that youth smokers who get their cigarettes mainly from social sources (Youth Smoking Survey, 2013) are willing to smoke whatever they can get their hands on, mentholated or not. If a non-menthol smoker can occasionally get his or her hands on a mentholated cigarette, they will take it. This applies especially to those who are most addicted to nicotine, the known addictive component in cigarettes. It is unreasonable and unscientific to suggest that it is the menthol in the cigarettes that causes youth to smoke, even if they only smoke one mentholated cigarette a month.”⁵

Stier concludes by stating:

“[T]he findings of this study tell us nothing about whether prohibitive regulation of any mentholated or flavored tobacco product would alter youth smoking rates and reduce the population-level risk of smoking.”⁶

While it is a fact that teenagers smoke and some of them state that they smoke menthol cigarettes, the only data available comes from the YSS (and its successor, the Canadian Student Tobacco, Alcohol and Drug Survey, or CSTADS) and it does not prove that menthol flavouring drives youth initiation.

Even the U.S. Food and Drug Administration’s preliminary scientific evaluation of the possible public health effects of menthol cigarettes compared to their non-menthol counterparts acknowledges that menthol’s possible impact on the introduction to and progression toward regular smoking are limited and that no large-scale case studies specifically developed to clearly map out the path to initiation have been conducted.⁷

Also, the American Council on Science and Health concluded that available scientific evidence does not suggest that menthol cigarettes are linked to an independent decrease of the age when smoking is introduced, a smoking rate increase or addiction.⁸ It further bears mentioning that

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ U.S. Food and Drug Administration, Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes, page 90, July 2013. Available at <http://www.fda.gov/downloads/UCM361598.pdf>

⁸ The Mentholation of Cigarettes: A Position Statement of The American Council on Science and Health (2010) (available at http://www.acsh.org/wp-content/uploads/2012/04/20100421_Menthol_Statement_ACSH_2010.pdf). See also: [The Mentholation of Cigarettes: An Update for 2013](http://www.acsh.org/2013/03/the-mentholation-of-cigarettes-an-update-for-2013/) (available at <http://www.acsh.org/2013/03/the-mentholation-of-cigarettes-an-update-for-2013/>)

there is no statistical link between menthol cigarette market shares and youth smoking rates in over 50 countries,⁹ which further fails to support the theory that menthol cigarettes have a significant or different impact on youth smoking.

To sum up, the weight of scientific evidence does not support the conclusion that menthol cigarettes are more addictive than non-menthol, that menthol draws youth to smoking, or that a menthol ban would have an impact on youth smoking rates. No cause-and-effect relationship has been established in these regards and to suggest otherwise is misleading.

What is particularly interesting is that Health Canada rightly recognized that no evidence was available to support a menthol ban in past legislative and regulatory efforts to restrict flavoured tobacco products. When legislation was first passed in this area in 2009, menthol was exempt. During the hearings on that legislation, Health Canada officials were asked about menthol and their position back in 2009 could not have been more clear:

"It is not something [menthol] that youth view as attractive. When presented with it, they actually refuse it and prefer something else. We do not feel that it is a product that needs to be acted upon, and therefore we are not proposing action. In fact, it [a menthol ban] goes counter to some of the evidence we have."¹⁰

After its review of the evidence in 2009, the Government concluded that, while flavours such as fruit and confectionery should be banned as potentially attractive to youth, the evidence pointed in a different direction entirely with regard to menthol cigarettes. Again, according to Health Canada, the legislation was properly focusing "on the new and emerging fruit and candy flavours" rather than menthol products, which "have been on the market for a long time."¹¹

Indeed, sales of menthol cigarettes had been declining in Canada for some time by this stage. While menthol has been in the marketplace since the 1930s, Health Canada acknowledged in 2009 that retail sales of menthol products in Canada had fallen in the intervening years. Between 2001 and 2007, for example, unit sales of menthol declined by 26%¹² whereas sales of other flavoured products increased eightfold during the same period.

For these reasons, the Canadian federal government deliberately exempted menthol cigarettes from its comprehensive additives ban following an analysis of the demographics of cigarette use and the intrinsic properties of menthol cigarettes, concluding specifically that menthol cigarettes were neither popular nor attractive to youth, constituted only a small percentage of the cigarette market and were declining in popularity among smokers overall.

⁹ Oxford Economics, The influence of the availability of menthol cigarettes on youth smoking prevalence, page 5, December 2012. <http://www.oxfordeconomics.com/my-oxford/projects/246456>

¹⁰ Testimony to the House of Commons Health Committee, June 16, 2009, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3999057&Language=E&Mode=1>.

¹¹ Testimony to the House of Commons Health Committee, June 16, 2009, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3999057&Language=E&Mode=1>.

¹² Testimony to the House of Commons Health Committee, June 16, 2009, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3999057&Language=E&Mode=1>.

Health Canada has not presented any data to demonstrate a change in the market since 2009, other than the flawed interpretation of the YSS data, which we have already addressed earlier in this submission.

Then in the fall of 2014, when additional restrictions were proposed, the menthol exemption was maintained. The regulatory consultation at the time stated “[R]egardless of the type of cigar, menthol would remain exempt from the prohibition on flavouring additives, as is currently the case.” In describing the proposed changes, the consultation stated that “exceptions would be made to limit the impact on the choices of adults.”¹³ The regulations stemming from that consultation were posted for comment in March 2015 and menthol was exempt, as it was when final regulations were posted in June 2015.

This timeline is important since the data used to justify a ban on menthol in the original April 2016 Notice cited the data from the 2012-13 YSS, which was released in June 2014.¹⁴ Since then, the results of the 2014-2015 CTSATDS¹⁵ have been released (as now referenced in the November, 2016 RIAS) and these actually show a further decline in youth consumption of menthol cigarettes. In other words, throughout the previous consultation on flavoured tobacco products, Health Canada had the same data on menthol use that it invoked in early 2016 to impose a menthol ban, and now the Government continues to propose a menthol ban notwithstanding that more recent evidence in truth shows a continuing decline in youth menthol consumption.

All this information was presented in our response to the April 2016 Notice. Health Canada’s RIAS offer a brief, one paragraph response that does not address any of the specifics outlined above, stating only “the available research suggests that removing menthol would reduce youth inducements to tobacco use that would result in a decrease in the number of youth experimenting with mentholated tobacco products,” while as usual providing no evidence to support that statement.

Finally, it is important to note that youth smoking rates in Canada are at an all-time low, according to the 2014-15 CSTADS.¹⁶ It is hard to match this reality with the Government’s claim that menthol cigarettes are leading youth to smoke. Youth smoking rates are clearly declining, as they have been for years, with menthol in the market.

Using the exact same data set, Health Canada managed to first support a menthol exemption for tobacco products and now to support a menthol ban. This is a logical inconsistency.

¹³ See <http://www.hc-sc.gc.ca/hc-ps/consult/2014/tobacco-act-loi-tabac/index-eng.php>

¹⁴ Health Canada’s website suggests that data was posted on June 3, 2014. See <http://healthycanadians.gc.ca/publications/healthy-living-vie-saine/youth-smoking-survey-2013-enquete-jeunes-tabagisme/index-eng.php>

¹⁵ See <http://healthycanadians.gc.ca/science-research-sciences-recherches/data-donnees/cstads-ectade/summary-sommaire-2014-15-eng.php>

¹⁶ See <http://healthycanadians.gc.ca/science-research-sciences-recherches/data-donnees/cstads-ectade/summary-sommaire-2014-15-eng.php>

Proposed ban on menthol: Inconsistent with Government's views on prohibition

The inconsistencies with Health Canada's policy making become more evident when looking at its approach to other products. For example, ITCAN is perplexed about the projected policy intent for banning menthol, which is allegedly to reduce youth smoking rates, particularly given the Prime Minister's views on prohibition. In speaking about marijuana legalization in February 2015, Prime Minister Trudeau stated that "[O]ur current approach [prohibition] isn't protecting our kids, we need to protect the vulnerable, while respecting people's freedoms."¹⁷ The decision to proceed with marijuana legalization appears to have been made despite the Health Minister's publically stated concerns about the health risks posed to youth by consumption of marijuana.¹⁸

How then do two completely opposite policy approaches reach the same goal? On the one hand, the Government claims banning menthol cigarettes, which are widely available already on the illegal market, will lead to less youth access. On the other hand, the Government suggests legalizing an illegal product – marijuana – will also lead to less youth access. This is simply a logical inconsistency.

The evidence suggests that marijuana is in fact the more disturbing health concern for young people in terms of usage. Health Canada's 2014-15 Canadian Student Tobacco, Alcohol and Drugs Survey, released in September 2016, found that, amongst students in grades 6-12, a record low percentage (3%) were daily or occasional smokers. Conversely, 17% of students in grades 7-12 reported using cannabis during the preceding year.¹⁹

A ban on menthol would significantly aggravate the issue of the illegal tobacco trade

The Government's contradictory logic with regard to menthol cigarettes and marijuana could also have important repercussions on the already flourishing illegal tobacco trade. Indeed, on one hand, the Government suggests marijuana needs to be legalized to prevent illegal sales driven by organized crime groups. However, on the other hand, when it comes to menthol cigarettes, the Government is prepared to hand over the entire market to the illegal operators.

Banning menthol is likely to be seen as a "growth opportunity" by the organized crime groups that control the illegal tobacco trade, as seen with other tobacco product bans. For example, within weeks of the original ban on flavoured little cigars and cigarillos at the federal level in 2009, such products were widely available in First Nations smoke shacks.²⁰ Worse still, it was quickly revealed that smoke shacks were selling those products to youth.²¹ And this practice

¹⁷ See <http://www.metronews.ca/views/opinion/2015/10/26/how-and-when-trudeau-will-legalize-weed-we-dont-know.html>

¹⁸ See CBC news report June 30, 2016, <http://www.cbc.ca/news/politics/liberals-marijuana-task-force-1.3659509>.

¹⁹ See <http://healthycanadians.gc.ca/science-research-sciences-recherches/data-donnees/cstads-ectade/summary-sommaire-2014-15-eng.php>

²⁰ Ottawa's fruit flavored tobacco bomb, National Post", November 17, 2009

²¹ See Le Journal de Montreal, September 22, 2009

continues to this date without any intervention by Health Canada or the Government.²²

Proposed tobacco control policies, or changes to them, must take into account the illegal tobacco trade. Since 2006, illegal tobacco has made up between 16.5% and 32.7% of Canadian tobacco sales depending on the year.²³ The RCMP reports there are 50 illegal cigarette factories and some 300 smoke shacks located on First Nations territories selling tobacco outside existing legal, regulatory and tax frameworks, and which is connected with more than 175 groups tied to organized crime that are profiting handsomely from illegal tobacco.²⁴ Federal and Provincial Governments lose upwards of \$2 billion in tax revenue annually to the illegal trade.²⁵

Recent evidence from Quebec also indicates that youth access to tobacco products – including menthol products - through First Nation retail outlets continues to be a huge problem, notwithstanding the introduction of new tobacco control legislation in that province (including a menthol ban effective in August, 2016).²⁶

Three recent developments have driven home the stark realities of Canada's illegal tobacco trade. First, the Ontario Convenience Stores Association (OCSA) released data in November 2016 that measured that Province's illegal tobacco rate at 32.8%. This is up from around 24% in 2015.²⁷ As Canada's largest market, the trends with illegal tobacco in Ontario significantly influence the national contraband landscape.

Second, on March 30, 2016, over 700 police officers in Ontario and Quebec conducted 70 raids on a massive illegal tobacco smuggling network, the largest such police operation of its kind in Canadian history. Police forces in South America and Europe were also involved, showing the transnational nature of this criminal endeavour. The details of this one operation are stark:²⁸

- 2,081 tons of raw leaf tobacco was smuggled onto the Kahnawake and Six Nations reserves to supply illegal cigarette manufacturing facilities operating there. That is enough raw leaf to manufacture upwards of 2.34 billion cigarettes.
- According to police, the raw leaf tobacco seized in this one operation represents \$530 million in lost tax revenue.
- The media reports state that those involved in this illegal tobacco activity had links to biker gangs and other organized crime groups, showing once again that illegal tobacco is not a First Nations issue, but rather an organized crime issue.
- Along with tobacco, Canadian authorities seized large quantities of cocaine, methamphetamine, marijuana and Fentanyl.
- Millions in cash related to illicit transactions and international money laundering was also seized.

²² <http://www.journaldemontreal.com/2016/09/28/les-cabanes-a-tabac-vendent-aux-mineurs>

²³ Illicit usage of cigarettes – national study for the CTMC, GFK Research Dynamics, 2007, 2008, 2010

²⁴ RCMP testimony to the House of Commons Public Safety and National Security Committee, April 27, 2010

²⁵ Estimate based on the level of illicit trade in 2010 from GFK Research and PTT Revenue is sourced from the Government budget documents (government Year-end March 31st, 2010).

²⁶ See Le Journal de Montreal, September 29, 2016

²⁷ See <http://ontariocstores.ca/contraband-tobacco-usage-rises-even-higher-in-2016/>

²⁸ See <http://www.cbc.ca/news/canada/montreal/quebec-raids-contraband-tobacco-operation-international-1.3511876>

A recent statement from the RCMP further highlights the ties between illegal tobacco and other criminal activity.

*“Although the effects of contraband tobacco activities are not obvious, all Canadians, in one way or another, feel the repercussions of these activities in the form of: The loss of millions in federal and provincial government revenues. **Undermining of public health efforts to decrease tobacco use.** Prevent legitimate business from carrying out their activities in a climate of fair competition. Funding for organized crime groups.”²⁹*

Finally, the Macdonald Laurier Institute released a study³⁰ in March 2016 that suggests this is only the tip of the iceberg, and that globally the illegal tobacco trade is linked to the financing of terrorist groups like ISIS. The report does not mince words:

*“Contraband has a more pervasive impact on the public safety of Canada, Canadians, and Canadian interests than terrorism has ever had. If Canadians only knew, they would demand that government act accordingly. Now they do. It is time to act to ensure the benefits of taxation accrue to all citizens instead of organized criminals and terrorists”.*³¹

This reality poses a severe challenge to tobacco control, including any proposed product bans. For example, the OSCA found that more than 43% of menthol smokers in Ontario would find another way to purchase menthol cigarettes if banned.³²

Therefore, given these contraband realities, the Government’s proposed actions on menthol will be counterproductive. Banning menthol in cigarettes when contraband is so rampant simply hands a monopoly to the illegal operators and crime groups. In effect, sales risk shifting from a legal, taxed and regulated market to one that is illegal, unregulated and untaxed and that is also far more accessible to youth.

Perhaps in anticipation of this, there has been a marked increase in the number of illegal menthol brands available. **We are now aware of at least 35 contraband menthol cigarette brands in Canada, which is approximately double the number of legal ones** (see photos in the appendix for examples). Most of these are produced on First Nations reserves in Ontario and Quebec. These menthol products retail for as little as \$3 per pack, versus upwards of \$14-15 for a pack on which all taxes have been paid.

Once again, all these concerns were raised in ITCAN’s response to the April 2016 Notice. Here again, however, Health Canada offered a glib, one paragraph response that downplays the threat of illegal tobacco, stating “the Government of Canada has a number of measures to combat the illicit trade in tobacco.” Clearly those measures are not working and it is time for the Department to look at the reality and address Canada’s illegal tobacco problem.

²⁹ <http://www.rcmp-grc.gc.ca/on/news-nouvelles/2016/16-12-15-thunder-bay-eng.htm>

³⁰ <http://www.macdonaldlaurier.ca/files/pdf/MLILEuprechtContrabandPaper-03-16-WebReady.pdf>

³¹ Ibid.

³² See Ontario Convenience Stores Association, Stop the Menthol Ban in Ontario, 18 February 2015, available at <http://ontariocstores.ca/stop-menthol-ban-ontario/>

Youth Access

The proposed menthol flavour ban fails to address the real issue, which is that young people should not have access to any tobacco products, whether flavoured or not.

Data from the 2014-15 CSTADS shows that upwards of 77% of youth from grades 6-12 get tobacco products from social sources, meaning family and friends.³³ If the goal is truly to eradicate youth smoking, it is respectfully submitted that this is where the focus should lie. Retailers are already prohibited from selling tobacco products to those under the legal age and adults should be reminded of the importance of not supplying them to those below legal age, perhaps with harsher penalties.

This concern was also raised in response to the April 2016 Notice and, once again, Health Canada offered a brief one paragraph response stating “the Government of Canada already has a number of restrictions in place” to deal with youth access to tobacco, and that the Tobacco Act “prohibits the furnishing of tobacco products to youth under the age of 18.” When the Department’s own data shows 77% of youth get tobacco products from social sources, clearly there is a problem that needs to be addressed.

Furthermore, the question of youth access to tobacco products needs to be viewed in proper proportion to other youth health risks. For example, a recent news report showed the shocking ease of youth access to marijuana and cocaine in suburban Montreal. The accompanying undercover video shot in connection with this report ironically concludes with a segment comparing widespread youth drug access with the robust barriers to youth tobacco access already in place for tobacco products.³⁴

Ultimately, we believe that education and targeted measures focused on at-risk populations are the best means to address youth smoking, in addition to decisive action to address the contraband tobacco problem.

Implementation

If, as previously, Health Canada chooses to ignore all the evidence and proceeds with a ban on menthol, it is critical that the market be given time to adjust. The 180 days following publication of the proposed Order is insufficient to allow retailers to clear inventory. A minimum of an additional three months should be provided to retailers to liquidate their inventory. This is consistent with the time frame required by the Quebec government following their ban of menthol products in 2016.³⁵

In addition, Health Canada and the Federal Government must first provide the legal tobacco industry with guarantees that it is taking actions to address the illegal manufacture and sale of

³³ See <http://healthycanadians.gc.ca/science-research-sciences-recherches/data-donnees/cstads-ectade/summary-sommaire-2014-15-eng.php>

³⁴ See <http://www.grenier.qc.ca/nouvelles/12044/la-fondation-jean-lapointe-leve-le-voile-sur-laccessibilite-aux-drogues>

³⁵ See *An Act to bolster tobacco control*, S.Q. 2015, c. 28, s. 75.

menthol (and all other) tobacco products on First Nations' territories. Health Canada must provide the legal tobacco industry with a plan detailing how it intends to enforce the law to ensure the proposed menthol ban will be respected.

Only once the above is in place should any timeline for implementation of a menthol ban begin. Failing that, the exercise can only be moot as menthol cigarettes will still be widely available on the illegal market.

Conclusion

Youth should not be smoking, period. However, banning menthol in cigarettes will not do anything to address youth smoking. In addition, there is no consistency in the Government's approach. To deal with youth access to marijuana, the Government is proposing legalization. On the other hand, to address alleged youth access to menthol cigarettes, the Government proposes prohibition.

Prohibition is not the solution, which the current Federal Government led by Prime Minister Trudeau seemingly recognizes with its intent to legalize marijuana.

In addition, the contraband realities cannot be ignored. With illegal tobacco products already representing as much as 20% of the Canadian market – and over 50% in some regions of Ontario, the focus should be on eradicating the illicit operators, not handing them a new monopoly on traditional tobacco products such as menthol.

ITCAN supports evidence-based policies to prevent youth from smoking. That is the reason we have supported past efforts to ban candy and confectionary cigarettes. However, we cannot support regulation that is based on misinterpretation of the available evidence. The data that tobacco control lobbyists and now Health Canada are relying on to support a ban on menthol cigarettes is being misrepresented and should not be the basis for regulation. It does not show that menthol cigarettes are a significant cause of youth smoking initiation or that banning menthol can reasonably be expected to change youth smoking prevalence. That was the original conclusion of Health Canada – before it decided to use the same data to reach a different conclusion.

For all these reasons, ITCAN cannot support the proposed ban on menthol cigarettes. Should such a ban occur notwithstanding all the foregoing, a proper transition plan which considers the realities of contraband tobacco must be established.

APPENDIX: EXAMPLES OF ILLEGAL MENTHOL CIGARETTE BRANDS CURRENTLY AVAILABLE IN CANADA

