



**27 September 2010**

**Imperial Tobacco Limited**

**and**

**The European Union**

**and**

**the Participating Member States**

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**MUTUAL CESSATION AGREEMENT**

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**THIS AGREEMENT** is made on 27 September 2010,

**BETWEEN**

Imperial Tobacco Limited (*ITL*) on their own behalf and for and on behalf of any and all companies forming the ITL Group Companies

and

The European Union (the *EU*) represented by the European Commission (the *Commission*)

and

Certain Member States of the European Union participating in this Mutual Cessation Agreement (the *MCA*) (the *Participating Member States*).

**RECITALS**

**WHEREAS**

(A) ITL, the Participating Member States and the EU have entered into a Cooperation Agreement establishing an ongoing relationship of cooperation among the Parties in order to combat the trade in smuggled and/or counterfeit Cigarettes in the EU and specifically to work toward the elimination of ITL Cigarettes from the illegal market; and

(B) the Parties have agreed that it is in their best interests fully and finally to resolve, without any admission of liability, all matters between the Parties that relate to any potential Claims, or the alleged acts (or omissions) forming the basis of said potential Claims, that have been asserted, or which could have been asserted, by any Party.

**THEREFORE**

the Parties have agreed to enter into this MCA in consideration of the mutual covenants and other valuable consideration set out below.

**1. DEFINITIONS AND INTERPRETATION**

1.1 All terms which are defined in the Cooperation Agreement shall have the same meaning in this MCA and, further, the following terms shall have the following meanings:

**Agents** means direct and indirect subsidiaries of ITL Companies along with their direct and indirect subsidiaries, as well as all of their current and former employees, directors, officers, agents acting lawfully and within their authority and servants

insofar as their conduct relates to the manufacture, sale, distribution and/or storage of ITL Cigarettes prior to the Execution Date.

**Assigns** means an individual or business to whom the property or legal rights or interests of ITL Companies have been transferred, including a non-Affiliate of ITL Group Companies engaged in the manufacture under license of products bearing ITL Trademarks, prior to the Execution Date.

**Cooperation Agreement** means the agreement between ITL, the EU and the Participating Member States.

**EU Claims** means any and all civil claims, charges, demands, subpoenas, discovery requests, actions, suits, liabilities, obligations, judgments, orders, debts, liens, covenants, expenses, counterclaims, rights of set-off, claims for indemnity, causes of action, proceedings or rights or interests of any kind or nature whatsoever, including monetary claims which are made within criminal proceedings (in the form of claims for restitution, disgorgement, forfeiture, punitive or other damages or otherwise), as well as claims for interest and costs, for any conduct or acts or omissions prior to the Signature Date, whether known or unknown, suspected or unsuspected, accrued or unaccrued, however and whenever arising or capable of arising and in whatever jurisdiction, whether in a court, tribunal and/or in arbitration, including (but not limited to) any claims for costs, or for damages including punitive damages and penalties or any multiple thereof imposed by civil courts and whether on the basis of contract, equity, tort, restitution or unjust enrichment or otherwise, provided that such civil claim arises out of or relates to, the manufacture, sale, or distribution of Cigarettes. Notwithstanding the above, EU Claims does not include issues unrelated to the subject matter of the Cooperation Agreement such as health-care matters, administrative matters or competition (anti-trust) matters.

**ITL Claims** means any and all civil claims, charges, demands, subpoenas, discovery requests, actions, suits, liabilities, obligations, judgments, orders, debts, liens, covenants, expenses, counterclaims, rights of set-off, claims for indemnity, causes of action, proceedings or rights or interests of any kind or nature whatsoever, as well as claims for interest and costs, for any conduct or acts or omissions prior to the Signature Date, whether known or unknown, suspected or unsuspected, accrued or unaccrued, however and whenever arising or capable of arising and in whatever jurisdiction, whether in a court, tribunal and/or in arbitration, including (but not limited to) any claims for costs, or for damages including punitive damages and penalties or any multiple thereof imposed by civil courts and whether on the basis of contract, equity, tort, fraud, restitution or unjust enrichment or otherwise, provided that such claim arises out of or relates to, or is connected with any matters, or the alleged acts (or omissions) forming the basis of the claims, that have been raised or asserted, or could have been raised or asserted, in relation to any matters related to EU Claims.

**ITL Group Companies** means ITL and all of its Affiliates and subsidiaries existing at the date of this MCA .

**MCA** means this Mutual Cessation Agreement as it may be amended from time to time.

**Party or Parties** means a party or parties to this MCA who is/are listed or referred to at the head of this MCA.

**Signature Date** means, for ITL, the EU and each initial Participating Member State, the Execution Date, and for each subsequent Participating Member State, the date on which that Participating Member State executed a signature page to this Agreement.

1.2 Save where the context requires otherwise:

- (a) references to any clause, sub-clause or annex without further designation shall be construed as a reference to the clause, sub-clause or annex to or of this MCA so numbered;
- (b) clause and annex headings are for convenience only and shall not be taken into account in the interpretation of this MCA;
- (c) reference to any gender shall include all genders and reference to the singular shall include the plural and vice versa.

## **2. CONDITION PRECEDENT RELATING TO THE COOPERATION AGREEMENT**

2.1 No party may become a Party to the Cooperation Agreement, either on the Execution Date or later, unless that Party has previously, or simultaneously, become a Party to this MCA. The Parties agree that, in the event of any conflict between this Clause and any provision in the Cooperation Agreement, this Clause will prevail.

## **3. MUTUAL CESSATION**

3.1 Save in relation to obligations arising under this MCA or the Cooperation Agreement, the EU and the Participating Member States hereby absolutely, unconditionally and irrevocably fully release and discharge ITL Group Companies and their successors, Agents and Assigns from any and all EU Claims and all such claims are hereby waived.

3.2 The release, discharge and waiver provided for in sub-Clause 3.1 shall cover companies acquired by or merged into ITL Group Companies subsequent to the Execution Date, but this release, discharge and waiver shall extend to the acquired company or companies only if the average EU market share of such acquired company or companies has not been more than 2% since 1990.

3.3 In addition, the release, discharge and waiver provided for in sub-Clause 3.1 shall continue to cover any ITL Group Companies and any companies referred to in sub-Clause 3.2 (if applicable) in the event that any of them cease at any time to be an Affiliate or subsidiary of Imperial Tobacco Limited.

3.4 Save in relation to obligations arising under this MCA or the Cooperation Agreement, ITL Group Companies hereby absolutely, unconditionally and

irrevocably fully release and discharge the EU and the Participating Member States, and their public officials, officials, employees, staff and successors, from any and all ITL Claims and all such claims are hereby waived.

3.5 Each of the waivers, releases or discharges of liability pursuant to this Clause is expressly with prejudice to those claims or liabilities. For the avoidance of doubt, the Parties granting waivers, releases or discharges acknowledge that the Parties thereby benefiting do not admit and shall be deemed not to have admitted, liability for any of the matters waived, released or discharged pursuant to this MCA or the truth, or arguability, of any factual allegation made in any of the EU Claims or the ITL Claims directed against such benefited Parties.

3.6 For the avoidance of doubt, and without prejudice to the position of any of the Parties, the EU, the Participating Member States and ITL Group Companies shall each bear all their own costs including, without limitation, those relating to the negotiation of the Cooperation Agreement.

#### **4. FURTHER AND ADMINISTRATIVE MATTERS, NOTICES AND APPOINTED REPRESENTATIVES**

4.1 The following provisions of the Cooperation Agreement shall be incorporated into this MCA (and for this purpose only: (i) any reference in such provisions to "the list attached to this Agreement as Schedule 8" shall be amended to refer to "the list attached to the Cooperation Agreement as Schedule 8; and (ii) any other reference to "Agreement" in such provisions shall be amended to refer to "MCA").

- (a) Article 12.1 (Dispute Resolution);
- (b) Article 12.2 (Arbitration Clause);
- (c) Section 13.1 (Notices);
- (d) Section 13.3; (Expenses);
- (e) Section 13.5 (Successors and Assigns);
- (f) Section 13.6 (Legality and Severability);
- (g) Section 13.8 (Entire Agreement);
- (h) Section 13.11 (Amendments); and
- (i) Section 13.14 (Additional Participating Member States).

## **5. GOVERNING LAW**

5.1 The construction, interpretation, operation and effect of this MCA and any claims, controversies or disputes arising out of or related thereto shall be governed by and construed in accordance with the laws of England and Wales without giving effect to conflicts of law principles.

## **6. EXECUTION AND EFFECT**

6.1 This MCA comes into effect immediately prior to the Cooperation Agreement coming into effect on the Signature Date.

6.2 No provision of this MCA is intended to confer upon any person other than the EU and Participating Member States, and ITL Group Companies (and any companies referred to in sub-Clause 3.2 if applicable), any rights or remedies hereunder.

6.3 All of the obligations of this MCA are subject to the relevant constitutional provisions, statutes, ordinances, rules, regulations or other provisions having the force and effect of the law of the EU and/or the Participating Member States and, without limitation, nothing herein may be construed to limit, in any way, the EU's or Participating Member States' power or discretion to discharge their official duties.

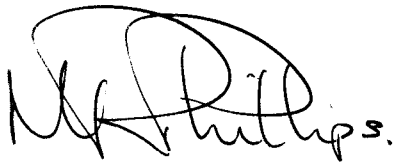
6.4 This MCA may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF this MCA has been executed on behalf of the Parties hereto with effect from the date specified on the first page of this MCA.

**Imperial Tobacco Limited**

Imperial Tobacco Limited hereby executes the Mutual Cessation Agreement between the European Union and the Participating Member States with Imperial Tobacco Limited.

Imperial Tobacco Limited

A handwritten signature in black ink, appearing to read 'M Phillips', with a large, stylized initial 'M' and 'P'.

Matthew Phillips  
General Counsel & Company Secretary

Date: 27 september 2010

## European Union

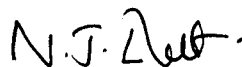
The European Commission hereby executes this Mutual Cessation Agreement on behalf of the European Union and has the full right and authority to do so;

The execution and performance of this Mutual Cessation Agreement by the European Commission is within its powers and has been duly authorised by all necessary action on its part; and

This Mutual Cessation Agreement constitutes a valid and binding agreement of the European Union and is enforceable in accordance with its terms.



Luis Requena Romero  
Director General  
Legal Service  
European Commission



Nicholas Ilett  
Acting Director General  
European Anti-Fraud Office  
European Commission

Date: 27 september 2010