

# FCTC-related interventions at the World Trade Organization 2005-2012

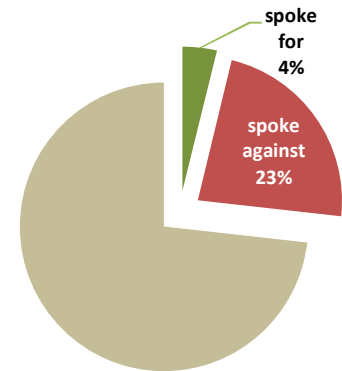
There are 141 countries which are both members of the WTO and also Parties to the FCTC, 12 and therefore bound to both sets of commitments.

Since the FCTC came into force (2005), 7 tobacco control policies adopted by FCTC Parties have been the subject of discussions at WTO. These are:

- 2008 **Thailand's** custom and tax evaluation system
  - Request for dispute panel by Philippines (DS371)
  - The panel decision against Thailand was upheld by Appellate Body and the measure was rectified.
- 2009 **Canada's** ban on certain additives to tobacco products (C-32)
  - Discussed in TBT Committee on 5 occasions. Measure maintained.
- 2010 **Armenia's** law "On Presumptive Tax for Tobacco Products"
  - Request for a dispute panel by Ukraine (DS411)
  - Panel never established.
- 2011 **Brazil's** ban on certain additives to tobacco products
  - Discussed in TBT Committee on 5 occasions. Measure maintained.
- 2011 **Australia's** plain packaging of cigarettes
  - Discussed in TBT Committee on 4 occasions
  - Discussed at TRIPS Council on 3 occasions
  - Separate requests for dispute panels by Honduras (DS435), Ukraine (DS434), Dominican Republic (DS441).
  - One panel has been established (DS434), but measure is in force.
- 2012 **New Zealand's** proposal for plain packaging
  - Discussed in TBT Committee on 1 occasion. Measure not yet in force.

In addition, 1 FCTC-consistent tobacco control policy adopted by a non-Party was the subject of discussions at WTO.

- 2010, the **United States** ban on additives (including cloves)
  - Disputed by Indonesia, which requested a panel in September 2011.
  - The Appellate Body upheld the panel's finding against the U.S. measure. USA says it will implement DSB recommendations by July 2013.



## More than 1 in 5 WTO Members expressed concerns about TC measures at WTO

36 countries spoke against TC measures in WTO committees.

6 FCTC Parties defended TC measures in WTO committees.

## 26 FCTC Parties agreed to guidelines at COP, but raised concerns on implementation at WTO

Burundi, Chile, Colombia, Croatia, Ecuador, Egypt, El Salvador, European Union, Guatemala, Honduras, India, Japan, Jordan, Kenya, Macedonia, Mexico, Nicaragua, Nigeria, Philippines, Russian Federation, South Africa, Tanzania, Turkey, Uganda, Ukraine, Zambia

1 The 35 countries which are FCTC Parties, but not members of WTO are: Afghanistan, Algeria, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Comoros, Cook Islands, Equatorial Guinea, Iran, Iraq, Kazakhstan, Kiribiti, Korea (North), Lao Republic, Lebanon, Liberia, Libya, Marshall Islands, Micronesia, Nauru, Nieu, Palau, San Marino, Sao Tome and Principe, Serbia, Seychelles, Sudan, Syrian Arab Republic, Timor Leste, Turkmenistan, Tuvalu, and Uzbekistan.

2 The 17 countries which are WTO members, but not Parties to the FCTC are: Argentina, Cuba, Dominican Republic, El Salvador, Ethiopia, Haiti, Hong Kong, Indonesia, Liechtenstein, Macau, Malawi, Morocco, Mozambique, Switzerland, Taipei, United States, Zimbabwe.

Physicians for a Smoke-Free Canada  
February 2013

## WTO concerns about tobacco issues are predominantly coming from developing countries (and tobacco issues dominate their concerns).

Concerns about tobacco policy becoming a technical barrier to trade are more likely to be raised by developing countries, and the poorest nations that are members of the WTO are more likely to raise tobacco concerns than any other issue.<sup>3</sup>

- Of the 14 times that any low income country raised “specific trade concerns” at the TBT committee, only one (By Zimbabwe) did not concern tobacco.
- High income countries are more likely to raise trade concerns (583 country-interventions), but much less likely to raise concerns about tobacco, and almost equally likely to speak in favour of a tobacco control measure as against it.
- 14 countries have made tobacco control the subject of their only interventions (ever) at TBT Committee. These countries are: Burundi, Croatia, Guatemala, Honduras, Kenya, Nicaragua, Nigeria, Malawi, Macedonia, Mozambique, Tanzania, Uganda, Ukraine and Zambia.
- The United States and Japan have kept a lower profile, intervening on only a few occasions.

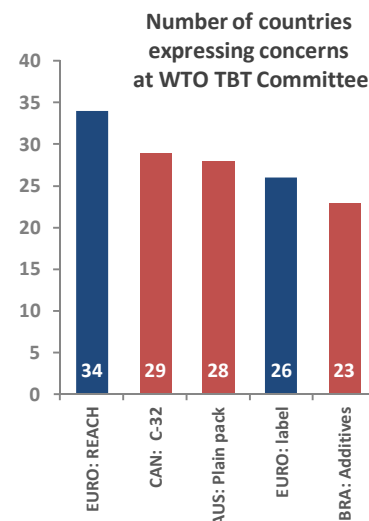
### Interventions at TBT Committee – Tobacco Control (TC) Issues

Number of countries with concerns and number of concerns raised

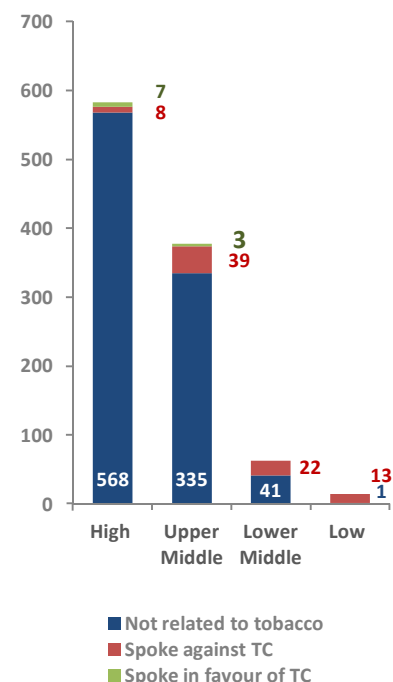
Income	Number of WTO Members	Number of countries raising concerns (AGAINST TC)	Number of countries raising concerns (FOR TC)	Number of times trade concerns raised (All issues)	Number of times TC concerns raised (AGAINST)	Number of times TC concerns raised (FOR)
High	49	6	4	583	8 (1%)	7 (1%)
Upper Middle	40	13	2	377	39 (10%)	3 (1%)
Lower Middle	39	10		63	22 (35%)	
Lower	28	7		14	13 (93%)	

### Ranked by number of countries raising concerns, 3 of the top 5 issues ever raised in TBT committee concern tobacco

(Unofficial statistics based on tbtims.wto.org)



### 93% of interventions ever raised in TBT committee by low-income countries are related to tobacco regulation.



<sup>3</sup> The number of times a country raises “specific trade concerns” at the TBT Committee is tracked and made available on a public database. (tbtims.wto.org).

## Post-FCTC Interventions at the WTO on tobacco-related policy issues

FCTC Party	CONCERNS RAISED IN COMMITTEES OF THE WORLD TRADE ORGANIZATION (WTO)																			FORMAL WTO DISPUTES							
	TBT History			Canada C-32 (Additive ban)					Brazil Additive ban +					Australia Plain Packaging				New Zealand	Thailand	USA	Armenia	Australia					
	# Concerns raised at TBT	Tobacco concerns raised	Tobacco as % of concerns raised	TBT Nov 2009	TBT Mar 2010	TBT Jun 2010	TBT Nov 2010	TBT Mar 2011	TBT Mar 2011	TBT Jun 2011	TBT Nov 2011	TBT Mar 2012	TBT June 2012	TBT Jun 2011	TBT Nov 2011	TBT Mar 2012	TBT June 2012	TRIPS Jun 2011	TRIPS Oct 2011	TRIPS Feb 2012	TBT Nov 2012	DS371 2010	DS406 2011	DS411 2010	DS435 2012	DS434 2012	DS441 2012
<b>High Income</b>																											
Australia	Yes	37	2	5%																							
Canada	Yes	54	2	4%																							
Croatia	Yes	1	1	100%																							
European Union	Yes	175	3	2%	○	○	○	○	○				○	○	○			○				○	○	○	○	○	○
Hong Kong	n/a	4	1	25%																							
Japan	Yes	54	2	4%																							
Korea	Yes	39	-	-																							
New Zealand	Yes	23	1	4%																							
Norway	Yes	11	2	20%																							
Oman	Yes	-	-	-																							
Singapore	Yes	2	-	-																							
Switzerland	No	22	2	9%	○	○																					
United States	No	149	2	1%	○	○																					
<b>Upper Middle Income</b>																											
Argentina	No	26	1	4%	■	■																					
Brazil	Yes	26	2	4%		○	■																				
Chile	Yes	21	3	14%			■																				
China	Yes	49	1	2%																							
Colombia	Yes	11	3	27%	■	■																					
Cuba	No	11	4	36%				○	■																		
Dominican Republic	No	8	4	50%			■	■	■	■																	
Ecuador	Yes	10	2	20%			■	■	■	■																	
Jordan	Yes	6	2	33%			■	■	■	■																	
Macedonia	Yes	2	2	100%	■	■	■	■	■																		
Malaysia	Yes	11	-	-																							
Mexico	Yes	49	4	8%	■	■	■	■	■	■																	
Peru	Yes	5	-	-																							
Russian Federation	Yes	5	2	40%																							
South Africa	Yes	9	-	-																							
Thailand	Yes	10	-	-																							
Turkey	Yes	5	3	60%	○	■	■	■	■	■																	
Uruguay	Yes	5	1	20%																							
<b>Lower Middle Income</b>																											
Armenia	Yes	-	-	-																							
Egypt	Yes	12	1	8%			■																				
El Salvador	Yes	3	1	33%																							
Guatemala	Yes	3	3	100%			■																				
Honduras	Yes	4	4	100%			■		■																		
India	Yes	10	-	-																							
Indonesia	No	10	3	30%				○																			
Moldova	Yes	-	-	-																							
Nicaragua	Yes	3	3	100%																							
Nigeria	Yes	3	3	100%																							
Philippines	Yes	7	3	43%			■	■	■	■																	
Ukraine	Yes	1	1	100%																							
Zambia	Yes	4	4	100%			■	■	■	■																	
<b>Low Income</b>																											
Burundi	Yes	1	1	100%																							
Kenya	Yes	2	2	100%																							
Malawi	No	2	2	100%			■																				
Mozambique	No	2	2	100%																							
Tanzania	Yes	2	2	100%																							
Uganda	Yes	1	1	100%																							
Zimbabwe	No	5	4	80%			■	■	■	■																	
<b>Not classified</b>																											
Chinese Taipei	n/a	4	-	-																							

Positions are interpreted from minutes of TBT Committee and TRIPS Council Meetings. Legend: ■ = opposition; ● = support; ○ = neutral, indeterminate, question or maintaining Third Party Interests.

Source for number of concerns raised at TBT Committee is TBT Information Management System. (tbtims.wto.org); Also "Specific Trade Concerns Raised in the TBT Committee, Note by the Secretariat. G/TBT/GEN/74/Rev.9