

# TARGETS FOR TRANSNATIONAL TOBACCO CONTROL

---

## A submission to the World Health Organization

August, 2000

Submitted jointly to the World Health Organization during its review of the proposed Framework Convention on Tobacco Control by: Canadian Cancer Society, the Coalition québécoise pour le contrôle du tabac, Heart and Stroke Foundation of Canada, Non-Smokers' Rights Association, Physicians for a Smoke-Free Canada\*

### INTRODUCTION

The World Health Organization (WHO), the World Bank, the United States Surgeon-General and many governments around the world agree – comprehensive tobacco control programs will reduce tobacco consumption. Through the World Health Organization, member-states have unanimously supported resolutions to reduce tobacco use since 1970. Based on these resolutions, WHO has recommended a ten-point plan for comprehensive tobacco control, including the following measures:

1. Protection for children from becoming addicted to tobacco.
2. Use of fiscal policies to discourage the use of tobacco, such as tobacco taxes that increase faster than the growth in prices and income.
3. Use a portion of the money raised from tobacco taxes to finance other tobacco control and health promotion measures.
4. Health promotion, health education and smoking cessation programmes. Health workers and institutions set an example by being smoke-free.
5. Protection from involuntary exposure to environmental tobacco smoke (ETS).
6. Elimination of socio-economic, behavioural and other incentives which maintain and promote use of tobacco.
7. Elimination of direct and indirect tobacco advertising, promotion and sponsorship.
8. Controls on tobacco products, including prominent health warnings on tobacco products and any remaining advertisements; limits on and mandatory reporting of toxic constituents in tobacco products and tobacco smoke.
9. Promotion of economic alternatives to tobacco growing and manufacturing.
10. Effective management, monitoring and evaluation of tobacco issues.

Nearly all of these measures can and should be implemented by member states. National action undertaken by sovereign nations is the cornerstone of global tobacco control. The FCTC can and should provide strong endorsement and support for comprehensive tobacco control measures that can be implemented at the national level. It should also include complementary measures that will solve problems of tobacco control that cross international borders and can only be solved by countries working together through international law. Indeed, it may be useful to distinguish between transboundary issues that can **only** be dealt with effectively through an international instrument such as the FCTC and more local issues that could be dealt with **either** by national governments alone **or** by international treaty. In the former case, it is essential that *specific* obligations should be included in the Framework Convention and/or its related protocols. In the latter case, involving more local issues, it is important that any specific obligations with respect to minimum tobacco control measures do not become *de facto* maximums for signatory countries. Canadian NGOs would support strong language in the FCTC requiring prominent health warnings, far-reaching restrictions on advertising and promotion and public disclosure of ingredients.

---

\* This is an established coalition of Canadian non-governmental organizations working in the public interest for improved national and international tobacco control. Members of the coalition are funded by membership fees, charitable donations, and, in some cases, by grants and contributions from Canadian federal and provincial governments.

## TARGETING THE SIX 'TERRIBLE T'S' OF TRANSNATIONAL TOBACCO

There are six major targets of tobacco control that transcend national borders. Each target presents problems which are solvable, but whose solution requires changes to international law. The Framework Convention on Tobacco Control (FCTC) and related international legal instruments present opportunities to address these problems and to implement solutions which cannot be provided without international cooperation. The six problems – the Terrible T's – in need of solution are:

Transmission	(Too little) technology transfer
Trade	Trafficking
Transit	Tracking

### TARGET 1:

#### THE TRANSMISSION OF TOBACCO ADVERTISING ACROSS BORDERS

##### **The Transnational Problem**

Tobacco advertising and sponsorship crosses international borders on television, in radio broadcasts, in newspapers and magazines and on the internet.

##### **An FCTC Solution**

Banning tobacco advertising is an important element of comprehensive tobacco control; tobacco advertising that crosses borders is clearly an appropriate matter for international law. Both countries which have been able to implement total bans on tobacco advertising (such as France) and countries where total bans have been found unconstitutional (such as Canada) would benefit from measures which eliminate advertising which crosses borders. Countries should take measures to prevent the export of unwanted tobacco advertising to other countries. Should some countries continue to do so anyway, no country should be obliged to accept tobacco advertising from beyond its borders. Tobacco advertising that crosses borders is an international problem that demands an early international solution.

It is therefore recommended that the FCTC contain an explicit obligation for all signatories to ban imports and exports of all forms of tobacco advertising and promotion.

### TARGET 2:

#### TRADE AGREEMENTS AND TOBACCO USE

##### **The Transnational Problem**

A recent report by World Bank and World Health Organization analysts concludes that "cigarette consumption is rising because of freer trade,"<sup>1</sup>. Currently, there is no explicit exemption for tobacco control measures from international and regional trade agreements. The public health precautionary principle – first, do no harm – should be given primacy over agreements to provide national treatment and market access to transnational tobacco companies. This is not currently the case.

Giving commercial considerations primacy over public health has the effect of a cold shower. Countries who might have otherwise had warming enthusiasm for the FCTC and national tobacco control measures can find their enthusiasm dampened when they discover that their proposed responsible public health initiatives are under threat of challenge as unfair restraints of international trade.

---

<sup>1</sup> Executive Summary of *Tobacco Control in Developing Countries*, edited by Prabhat Jha and Frank Chaloupka. Oxford University Press, 2000.

## **An FCTC Solution**

In a rules-based global economy, we can have rules which protect public health. Member states a long time ago agreed to clearly and unambiguously exclude military equipment from international free trade agreements. They could and should do the same for tobacco.

The strong consensus in the global tobacco control community to protect tobacco control provisions in trade agreements was reflected in the recommendations of the 11th World conference on Tobacco or Health. The first was a resolution in favour of a strong Framework Convention on Tobacco Control, the second supported addressing other international agreements. "Be it resolved," the WCTOH decided "that the international tobacco control community work vigorously to exclude and remove tobacco and tobacco products from bilateral and multilateral trade agreements that would have negative public health consequences." Negotiators for the FCTC have the opportunity to turn this global public health consensus into reality.

It is therefore recommended that, either through changes to existing treaties or inclusion of trade-related provisions in the FCTC, international law reflects that tobacco is a threat to public health that should be excluded from the normal rules of international trade and intellectual property protection. The wording of provisions to protect tobacco control measures should be clear and unambiguous, and should extend to all aspects of international commerce, including trade in services, intellectual property protection, investment protection, etc.

### *TARGET 3:*

#### **TOO LITTLE TECHNOLOGY TRANSFER**

## **The Transnational Problem**

Countries with strong, comprehensive tobacco control programs number no more than twenty. Many others would be willing to improve comprehensive national tobacco control but lack the financial resources and expertise to face down the might of the multinational tobacco companies. Strong, collective international action is needed to help countries that do not yet have the comprehensive national tobacco control measures recommended by WHO to acquire them. Without strong domestic measures in nations of both south and north, international provisions are more difficult to implement.

## **An FCTC Solution**

The FCTC should strongly endorse comprehensive national tobacco control, and provide the means by which tobacco control technology can be transferred from the people and countries that have it to the people and countries that need it. No longer will lack of resources be a reason or even an excuse for failure to implement comprehensive national tobacco control or failure to ratify the FCTC, its protocols and other related international legal instruments. The FCTC should establish an international fund to finance the transfer of tobacco control technology and expertise, and an international register of people with tobacco control experience who are ready and willing to help others work towards stronger tobacco control. Countries in need of assistance to meet their national desires and international obligations for comprehensive tobacco control could draw on these international banks of money and people to effectively strengthen tobacco control as quickly as possible.

To finance tobacco control technology transfer and administration of the FCTC and related protocols, it is recommended that every member state make a supplementary regular budget contribution equal to an agreed-upon percentage of their current regular budget contribution to WHO. Member states are encouraged to finance this contribution by raising taxes on tobacco products or on tobacco companies' profits.

- Every member state should facilitate the participation in international work of its interested citizens who have tobacco control knowledge and experience. These people should be called upon to help transfer tobacco control technology to countries in need of assistance in order to strengthen their national and international tobacco control measures.
- Both of the above recommendations should be translated into obligations that form part of the FCTC.

*TARGET 4:*

**TRAFFICKING – THE ILLEGAL SALE OF CIGARETTES**

**The Transnational Problem**

Estimates are that about one-third of cigarettes in international commerce are smuggled, representing more than 7% of the global cigarette supply. Cigarette smuggling is an affront to the rule of law. It undermines comprehensive public health measures, and deprives governments of tax revenue. Strong international law measures are needed to put a stop – once and for all – to cigarette smuggling. Recent investigations have revealed that transnational tobacco companies are implicated in some global smuggling operations.<sup>1</sup>

**An FCTC Solution**

Tobacco smuggling must be brought under control in order to prevent comprehensive tobacco control from being undermined. A variety of measures are needed to control rampant tobacco smuggling.

It is recommended that the following measures to control smuggling be included in the FCTC:

General obligations

- Heightened collaboration among law enforcement officials to bring tobacco smuggling under control.
- Ready sharing of information among countries of information pertinent to tobacco smuggling control.

Specific obligations

- Mandatory licensing of all tobacco manufacturers and provision to require taxes due on all tobacco products to be paid in full to the country of final destination, before the tobacco products leave the factory in the country of manufacture.
- Obligation that all legal requirements for the labelling of tobacco products in the country of destination be met in the factory in the country of origin, before the tobacco products leave the factory.
- Obligation that all tobacco product packages in international trade bear standardized, coded information (such as tax-paid markings) that will facilitate monitoring, product tracking and global smuggling control. The form and content of the standardized, coded information, will be as determined by the Convention Secretariat. The information requirements may be modified from time to time by the Secretariat.

*TARGET 5:*

**THE TRANSIT OF DUTY-FREE CIGARETTES**

**The Transnational Problem**

---

<sup>1</sup> <http://www.nsra-adnf.ca/english/smuggling.html>

Policies which allow duty-free cigarettes are inherently unhealthy, in that they provide a cheap source of cigarettes, thus leading to increased consumption and tobacco-caused disease. In practice, the duty-free channel is a favourite for tobacco smugglers, and legal duty-free sales have made it more difficult to address illegal sales of contraband cigarettes.

### **The FCTC Solution**

Getting rid of duty-free tobacco would improve public health and help to effectively control smuggling. Duty-free sales of tobacco and tobacco products should be prohibited in all countries. Public health and customs organizations should work together to achieve this through the FCTC, international customs agreements, or both.

*TARGET 6:*

### **TRACKING PROGRESS & TRACKING PROBLEMS**

### **The Transnational Problem**

Monitoring progress in international tobacco control is hampered by incomplete and non-standard reporting of tobacco production, sales, imports, exports and consumption. Greater coordination of standard statistical reporting to the United Nations Statistical Office is needed. Smoking prevalence and other indicators necessary to monitor progress in tobacco control also suffer from incomplete and non-standard reporting. International agreement to develop and implement standardized reporting of indicators of progress in tobacco control will be needed to monitor and help implement all other national and international tobacco control measures.

### **The FCTC Solution**

The FCTC could be the most effective means of attaining a global surveillance standard. Negotiators of the FCTC should work together with tobacco control experts to draw up a list of standard indicators for tobacco control. They should also collaborate with the UN Statistical Office to achieve greater harmony in the reporting of global reporting of tobacco trade and industrial statistics. There should then be an obligation included in the FCTC to report tobacco control statistics to the United Nations Statistical Office and the FCTC Secretariat in the agreed-upon form and manner. The Secretariat should be mandated to issue periodic reports on progress in tobacco control. There should also be provision for the standard list of indicators to be revised appropriately, quickly and efficiently from time to time.

### **CONCLUDING REMARKS**

Canadian non-governmental organizations support a Framework Convention that creates effective and appropriate obligations and mechanisms to address both transboundary and national tobacco control issues. Members of the coalition stand ready to work with negotiators to provide more detailed assistance to help shape the global consensus that will be needed to provide the best possible solutions to the national and international aspects of global tobacco control. Governments and their allies in non-governmental organizations can work together to create the FCTC as an effective tool in the fight to reverse the progress of the global tobacco epidemic.