

# FRAMEWORK CONVENTION ON TOBACCO CONTROL

# Guidelines for Guidelines

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## 3 tests of strength for Article 13

(Tobacco Advertising, promotion and sponsorship)

### 1 Protection from the abuse of “Constitutional Principles”

The FCTC recognizes that countries have different constitutions and that these differences can affect a party’s ability to silence the commercial speech of tobacco companies. Countries whose constitutions don’t allow comprehensive bans on commercial speech are given a special exemption in the treaty from the general requirement that a comprehensive ban be put in place within 5 years.<sup>1</sup>

#### **The guidelines must prevent parties from faking a constitutional impediment.**

Parties must not be allowed to claim they have a constitutional impediment without proving that this is in fact the case. They must not be able to disguise their unwillingness to put a comprehensive ban in place or to go as far as their constitution would allow.

Parties which claim to be “not in a position to undertake a comprehensive ban due to its constitution or constitutional principles” should be required to:

- file with the Conference of Parties proof that they have clearly established through the highest appropriate constitutional authority in their jurisdiction the exact limitations on their ability to implement a comprehensive ban required by their constitution or constitutional principles.
- file with the Conference of Parties a list of the measures that they are unable to take because of their constitution or constitutional principles, as well as a list of the measures they have taken.
- Collect detailed information on any tobacco promotions, and make this information available to the public and the Conference of Parties on an annual basis.

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<sup>1</sup> For Canada, this would require a comprehensive ban on tobacco promotions by February 2010.

## 2 Strong protection from imported and cross-border promotions.

Parties have no less a responsibility to protect their citizens from international advertising than from domestic advertising. Just as nations ensure that imported food, medicines and consumer goods meet domestic health and safety requirements, they must also ensure that imported magazines, broadcasts and other cultural products meet the same national standards that protect people from tobacco advertising.

### **The guidelines must clarify government responsibility to ban imported promotion.**

Countries must be empowered with authority and the means to prevent the import of magazines, movies, television and internet products that promote smoking. If a country is unable to ban these cultural products, then they should be required to use the extent of their administrative and regulatory powers to put measures in place which will minimize the impact of these promotions.

Granting imported cultural products an exemption from the law is an invitation for abuse, and an abdication of responsibility to protect populations from marketing. Should such measure prove ineffective at banning tobacco promotions from entering their jurisdictions, they could consider other measures to neutralize this marketing, such as banning the sale of any brand for which promotions are illegally imported.

The COP should consider implementing standardized surveillance of cross-border advertising and develop accepted methodologies for doing so. This will allow parties to monitor compliance with bans on exported advertising, and will provide measures to assess progress against cross border advertising, whether originating from parties or non-parties.

## 3 Truly comprehensive measures

Tobacco companies adapt their marketing to changing conditions, and governments will need to adapt their laws to changing tobacco industry practices. The list of actions that governments will need to take will change over time.

### **The guidelines must direct governments to implement truly comprehensive measures, and to keep there measures up to date as industry activities change.**

At this time, a comprehensive ban on advertising should include the following:

- A ban on exports of tobacco advertising, promotion and sponsorship.

- A ban on imports of tobacco advertising, promotion and sponsorship (to provide protection from tobacco promotions originating in countries which are not party to the convention)
- A ban on the appearance of tobacco brand names and brand elements in all media.
- A ban on the appearance on tobacco brand names and brand elements on all goods and services.
- A ban on any type of payment for the purpose of promoting a tobacco product. For example, no payments would be allowed to retailers or bar managers to promote tobacco products, either verbally or with advertisements.
- A ban on tobacco promotions in the form of contests, discounts, or free samples.
- A ban on display of tobacco products at points of sale.
- A ban on packaging and labelling that is promotional, false, misleading, deceptive or likely to create an erroneous impression about tobacco. This would require plain packaging, and an end to 'line extensions' (that is, more than one type of cigarette sold under a brand name).
- Ensuring that any form of permitted advertising is limited to:
  - communication among the tobacco trade , such as information shared among tobacco growers, importers, manufacturers, wholesalers and retailers);
  - minimal information on the plain packages of tobacco products (whether verbal or non-verbal), such as the number of cigarettes in a package.
  - educational, historically accurate or incidental depictions of tobacco products in the media, cinema or theatre, such as the depiction of Winston Churchill smoking a cigar.
  - free expression of political or social views about tobacco that are genuinely independent of tobacco company interference, such as a newspaper editorials.

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