

# THE FCTC ANNOTATED TEXT



## KEY TO TREATY PROVISIONS

TOPIC	CLAUSE
<i>Advertising restrictions</i>	G-2—G-4
<i>Bad Methodologies</i>	G(1)(b), G2
<i>Content regulations</i>	G-1(b)
<i>Cooperation</i>	L
<i>Disclosure</i>	G-1(e)
<i>Financial mechanisms and resources</i>	Q
<i>Health Before Trade</i>	D-5
<i>Implementation—disputes</i>	R
<i>Implementation—reporting</i>	P
<i>Information Exchange</i>	K-3
<i>Institutions</i>	M,N,O,P
<i>Liability</i>	J
<i>Licensing</i>	I-13-14
<i>Misleading Claims</i>	G1(d)(ii)
<i>Packaging and labelling</i>	G-1(d)
<i>Public Education Campaigns</i>	G-1(e)
<i>Research</i>	K-2
<i>Sales to Youth</i>	I-8-12
<i>Second hand smoke</i>	G-1(a)
<i>Smuggling</i>	I-1-7
<i>Subsidies</i>	I-15
<i>Surveillance</i>	K-1
<i>Tax-free &amp; Duty Free Sales</i>	F2(b)
<i>Tobacco Taxes</i>	F-1 and F-2
<i>Treatment</i>	H-1-2

## WHAT MAKES A STRONG AND EFFECTIVE GLOBAL TOBACCO TREATY?

That question has been at the heart of the global reflection that governments and citizen's groups have participated in through INB sessions.

Tobacco use is a complex health, social, economic, political and justice issue. There is no single “magic bullet” that will quickly reduce tobacco use to, or will save the millions of tobacco users whose early death we can safely (and sadly) predict. The mixture of strategies and measures known to be effective includes many elements which will work best in different variations to suit local circumstances.

While the blend of measures needed may vary from country to country, there is an unambiguous need for **specific measures** to address the international dimensions of the tobacco business that drives the smoking epidemic. These include:

- Coordinated global action to control smuggling
- Agreement to end tobacco advertising, especially that which cannot be controlled through domestic law (such as cross-border advertising)
- Protection for health measures from unfair trade challenges
- Technical and financial support from those who are able to lend it to those who are in need.

A treaty which includes specific undertakings on these transboundary issues will accomplish much — but even more will be achieved if countries agree to improve their domestic policies and programs.

This pamphlet is intended to assist discussions between delegates during INB4.

*The comments and textual suggestions are drawn from submissions and comments by governmental and non-governmental members of the Inter-governmental Negotiating Body. To facilitate consideration of each suggestion, authorship is not attributed.*



# 10 KEY ISSUES FOR GLOBAL TOBACCO CONTROL AND THE FCTC

The Framework Convention Alliance (FCA) is an alliance of 160 non-governmental organisations from around the world that are working to support the development of a strong Framework Convention on Tobacco Control, and related protocols.

These are the issues we believe demand the most urgent attention of delegates are as follow:.

## 1. **ADVERTISING.**

The FCTC should ban all forms of direct and indirect tobacco advertising, promotion, and sponsorship – but with accommodation for those parties where existing, genuine constitutional barriers prevent a complete ban. Each party would prohibit all forms of advertising unless it faced constitutional constraints, in which case it would restrict advertising as far as possible within the tested limits of its constitution.

## 2. **SMUGGLING.**

One in three internationally traded cigarettes enters the black market, and it is now essential to secure the distribution system to stop this. Customs authorities must be able to *trace* the movement of tobacco products retrospectively to identify where diversion to the black market occurred. There are about 10,000 wholesale traders in the world, and these could be built into a licensed system in which they would record movements of tobacco products by scanning pack markings. Technology is available to do this at less than US\$0.02 per pack.

## 3. **PACK MARKINGS.**

Produce a clear pack-marking regime – the language is currently

confusing. There are up to seven markings requirements to be specified in G1.

- Rotated health warnings (not merely a bland general warning) - these must cover at least 50% of the pack in line with world best practice
- Use of pictures for at least some warnings to provide powerful visual communication of risk.
- Information on ingredients and/or smoke emissions, but only if these provide useful information about the product to consumers – there should be no requirement for listing of tar, nicotine etc. yields on packages (see 6).
- “For sale only in [market]” marking, this shortens the distribution chain and will help to tackle diversion to the black market.
- “Not for sale to under-18s” label. The FCA opposes this because it makes tobacco seem more adult – and hence *more* attractive to kids.
- Security markings required for tracing – essential for a meaningful counter-smuggling strategy

- Plain packaging required for parts of package other than where mandatory messages appear.

For all markings, the FCTC should establish a framework of *minimum* standards for size, positioning, and, as appropriate, the use of pictures and rotation. National authorities should specify culturally relevant messages and content for warnings and consumer information, in local languages.

4. **HEALTH BEFORE TRADE.**

Change the guiding principles to give higher priority to human life than to commercial interests. The FCTC should be the prime treaty on tobacco and not be subject to challenge under the WTO agreements – the guiding principles must be changed to reflect FCTC supremacy in treaty conflicts relating to tobacco and to take a precautionary approach to evaluating measures intended to protect life. Nothing in the FCTC should prevent parties from going further.

5. **PROHIBIT MISLEADING CLAIMS AND DESCRIPTORS.**

Ban clearly misleading brand names using words like ‘light’, ‘mild’, and ‘ultra low’ or similar misleading expressions or symbols. These implied health claims have no scientific basis, and mislead consumers and confuse regulators. The FCTC should also ban *any* health claim on tobacco products unless approved by the authorities in the country where it is placed on the market.

6. **ABANDON THE ISO METHODOLOGY.**

The system of measuring tar and nicotine ‘yields’ with a smoking machine does not give useful information about the impact of smoking on health – it is not, therefore, a useful basis for regulation or comparison of products. The ISO is domi-

nated by the tobacco industry, and should have no more than a strictly subordinate role to the WHO, which must lead in the definition of standards for public health.

7. **INCREASE TAXES.**

Tobacco taxes are effective in reducing demand and raising revenue. It will be impossible and undesirable to develop a common tax regime in the FCTC, but each party should commit to raise its tobacco taxes so that tobacco does not become more affordable. This means increasing tobacco taxes at least at the rate of growth of incomes – considerably ahead of inflation. Some fraction of tobacco tax revenue should be dedicated to funding tobacco control and cessation programmes

8. **CLOSE DOWN DUTY FREE.**

Duty-free opens a back door route to the black market by allowing retail access to tobacco products on which the full duties have not been paid.

9. **THE RIGHT TO SMOKE-FREE LIFE.**

The FCTC should recognise the right not to breathe second-hand smoke – a toxic and carcinogenic pollutant. The aim of the FCTC must be to eliminate involuntary exposure to tobacco smoke. There is no need to specify vulnerable groups in the text: everyone deserves protection.

10. **END SUBSIDIES.**

There is no justification for subsidising any part of the production of tobacco. If there are social needs for subsidising communities based on tobacco farming, any support should be for diversification, infrastructure development or activities that produce public goods..

# FCA MEMBERS

AFRICA · ·AFRICAN CENTRE FOR EMPOWERMENT AND GENDER ADVOCACY (KENYA)  
 ·ASSOCIATION POUR LA DEFENCE DES DROITS DES CONSOMMATEURS (CHAD)  
 ·ASSOCIATION TOGOLAISE POUR LA DEFENSE DU CONSOMMATEUR / TOGOLAISE CON-  
 SUMERS ASSOCIATION (ASTODEC) (TOGO) ·ASSOCIATION VISA - VLE SANTE (LIFE-  
 HEALTH) ·BONS TEMPLIERS CONGOLAIS ·CENTRE FOR TOBACCO EDUCATION AND DEVELOPMENT (CTFED) (KENYA) ·CONSUMERS ASSOCIATION OF  
 MALAWI ·CONSUMER WATCH (KENYA) ·CROIX BLEUE DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO ·ENVIRONMENTAL RIGHTS ACTION (NIGERIA)  
 ·ENVIRONMENTAL ACTION NETWORK (UGANDA) ·NATIONAL COUNCIL AGAINST SMOKING (SOUTH AFRICA) ·MOUVEMENT NATIONAL DES CONSOMMA-  
 TEURS (MNC) ·MOZAMBICAN PUBLIC HEALTH ASSOCIATION / ASSOCIAÇÃO MOÇAMBICANA DE SAÚDE PÚBLICA (AMOSAPU) ·MUTUELLE SOCIALE DE  
 SANTE (MSS) (CAMEROON) ·SENEGAL ANTI-TOBACCO MOVEMENT ·SOCIAL NEEDS NETWORK (KENYA) ·SOS TABAGISME (MALI) ·SOUL CITY (SOUTH  
 AFRICA) ·SUDAN COMMITTEE FOR THE CONTROL OF TOBACCO CONSUMPTION ·TANZANIA PUBLIC HEALTH ASSOCIATION ·TOOMBAK AND SMOKING  
 RESEARCH CENTRE (SUDAN) ·TOGOLESE ASSOCIATION OF CAMPAIGN AGAINST ALCOHOLISM AND OTHER DRUGS / ASSOCIATION TOGOLAISE DE LUTTE  
 CONTRE L'ALCOOLISME ET LES AUTRES TOXICOMANIES (ATLAT) ·UGANDA CONSUMERS PROTECTION ASSOCIATION ·ZUNA WOMEN'S OPERATION  
 GREEN (ZIMBABWE) ·AMERICAS ·NORTH AMERICA · ·ACTION ON SMOKING AND HEALTH (USA) ·ADVOCACY INSTITUTE (USA) ·AMERICAN CANCER  
 SOCIETY ·AMERICAN HEART ASSOCIATION ·AMERICAN LUNG ASSOCIATION ·AMERICAN PUBLIC HEALTH ASSOCIATION ·CAMPAIGN FOR TOBACCO  
 FREE KIDS (USA) ·CANADIAN CANCER SOCIETY ·CHINESE PROGRESSIVE ASSOCIATION (USA) ·ESSENTIAL ACTION (USA) ·HEART AND STROKE FOUN-  
 DATION (CANADA) ·INFAC (USA) ·INTERFAITH CENTER ON CORPORATE RESPONSIBILITY ·NON-SMOKERS' RIGHTS ASSOCIATION (CANADA)  
 ·PHYSICIANS FOR A SMOKE FREE CANADA ·ROBERT WOOD JOHNSON FOUNDATION (USA) ·SAN FRANCISCO TOBACCO FREE COALITION (USA)  
 ·SOCIETY FOR RESEARCH ON NICOTINE AND TOBACCO (USA) ·TOBACCO FREE COALITION (USA) ·TOBACCO LAW PROJECT (USA) ·TOBACCO-FREE  
 LAS CRUCES COALITION (USA) ·TRANSNATIONAL RESOURCES AND ACTION CENTRE (USA) ·WOMEN'S ENVIRONMENT AND DEVELOPMENT ORGANISA-  
 TION ·SOUTH AMERICA · ·ARGENTINE UNION AGAINST TOBACCO ·CENTRE OF INFORMATION AND EDUCATION FOR DRUG ABUSE PREVENTION (PERU)  
 ·COALITION FOR TOBACCO-FREE TRINIDAD AND TOBAGO ·GRUPO UNIVERSITARIO ANTI-TOBAQUICO (URUGUAY) ·HEART FOUNDATION OF BARBADOS  
 ·INTERAMERICAN HEART FOUNDATION ·REDEH-CEMINA - THE NETWORK IN DEFENSE OF HUMANKIND (BRAZIL) ·ST. LUCIA CANCER SOCIETY  
 ·URUGUAY ANTITOBACCO COMISSION ·ASIA ·EAST ASIA · ·HONG KONG COUNCIL ON SMOKING AND HEALTH ·JAPAN ASSOCIATION AGAINST TO-  
 BACCO ·JAPAN COALITION ON A SMOKEFREE ENVIRONMENT ·JAPAN MEDICAL-DENTAL ASSOCIATION ON TOBACCO CONTROL ·KOREAN ASSOCIATION  
 ON SMOKING AND HEALTH (KASH) ·OCEANIA · ·ACTION ON SMOKING AND HEALTH (AUSTRALIA) ·ACTION ON SMOKING AND HEALTH (NEW ZEA-  
 LAND) ·ACTION ON SMOKING AND HEALTH (PAPUA NEW GUINEA) ·APĀRANGI TAUTOKO AUAAHI KORE (MAORI SMOKEFREE COALITION) ·CAMPAIGN  
 AGAINST FOREIGN CONTROL OF AOTEAROA (NZ) ·CANCER FOUNDATION OF WESTERN AUSTRALIA ·COALITION FOR A TOBACCO FREE PALAU  
 ·NATIONAL HEART FOUNDATION (AUSTRALIA) ·NEW SOUTH WALES CANCER COUNCIL (AUSTRALIA) ·SMOKEFREE COALITION (NEW ZEALAND)  
 ·SMOKE FREE PACIFIC ACTION NETWORK - S.P.A.N ·SOUTH ASIA · ·ACTION COUNCIL AGAINST TOBACCO (INDIA) ·ALCOHOL AND DRUG INFORMATION  
 CENTRE (SRI LANKA) ·ASSOCIATION FOR CONSUMERS ACTION ON SAFETY AND HEALTH (ACASH) (INDIA) ·BANGADESH ANTI-TOBACCO ALLIANCE  
 ·CANCER INSTITUTE (INDIA) ·COMMUNITY HEALTH CELL (INDIA) ·CONSUMER EDUCATION AND RESEARCH CENTRE (INDIA) ·HEALTH RELATED INFOR-  
 MATION DISSEMINATION AMONGST YOUTH (HRIDAY) (INDIA) ·JANAK MEMORIAL SERVICES CENTRE (NEPAL) ·NETWORK FOR CONSUMER PROTECTION  
 (PAKISTAN) ·PAKISTAN SOCIETY FOR CANCER PREVENTION ·SCHOOL OF PREVENTATIVE ONCOLOGY, PATNA (INDIA) ·WORK FOR A BETTER BANGLA-  
 DESH ·SOUTH EAST ASIA · ·ACTION ON SMOKING AND HEALTH FOUNDATION (THAILAND) ·ADVENTIST DEVELOPMENT AND RELIEF AGENCY  
 (CAMBODIA) ·CONSUMERS ASSOCIATION OF PENANG (MALAYSIA) ·FRAMEWORK CONVENTION ALLIANCE PHILIPPINES ·INDONESIAN ASSOCIATION OF  
 PULMONOLOGIST ·INDONESIAN SMOKING CONTROL FOUNDATION (LM 3) ·PHILIPPINE CANCER SOCIETY ·PUBLIC HEALTH INITIATIVE (PHILIPPINES)  
 ·SOUTHEAST ASIAN TOBACCO CONTROL ALLIANCE ·VIETNAM STANDARD AND CONSUMER ASSOCIATION ·CENTRAL ASIA · ·ADVENTIST DEVELOPMENT  
 & RELIEF AGENCY (ADRA) MONGOLIA ·EUROPE ·EASTERN EUROPE · ·AER PUR ROMANIA ·ALCOHOL AND DRUG INFORMATION CENTRE (UKRAINE)  
 ·CZECH COMMITTEE OF EUROPEAN MEDICAL ASSOCIATION SMOKING OR HEALTH ·CZECH COALITION AGAINST TOBACCO ·ASSOCIATION WOMEN  
 AGAINST TOBACCO (BULGARIA) ·GEORGIAN MEDICAL ASSOCIATION ·GEORGIAN NATIONAL COUNTER TOBACCO CENTER ·HEALTH 21 HUNGARIAN  
 FOUNDATION ·HUNGARIAN NATIONAL TOBACCO CONTROL FORUM ·KAUNAS ABUSE HELP CENTRE FOR YOUTH - "SOCIUS SANSUS" (LITHUANIA)  
 ·LITHUANIAN ASSOCIATION OF NON-SMOKERS ·RUSSIAN PUBLIC HEALTH ASSOCIATION ·WORKING GROUP OR PREVENTION AND TREATMENT OF TO-  
 BACCO DEPENDENCE, CZECH MEDICAL ASSOCIATION ·WOMEN AGAINST TOBACCO ASSOCIATION (BULGARIA) ·WESTERN EUROPE · ·ACTION ON SMOK-  
 ING AND HEALTH (FINLAND) ·ACTION ON SMOKING AND HEALTH (IRELAND) ·ACTION ON SMOKING AND HEALTH (LONDON) ·ACTION ON SMOKING  
 AND HEALTH (SCOTLAND) ·ASOCIACION ESPANOLA CONTRA EL CANCER ·ASSOCIATION OF THE EUROPEAN CANCER LEAGUES ·BRITISH MEDICAL ASSO-  
 CIATION ·BRITISH MEDICAL ASSOCIATION - TOBACCO CONTROL PROJECT ·CANCER SOCIETY OF FINLAND ·CNCT (FRENCH COMMITTEE FOR SMOKING  
 PREVENTION) ·CONSELHO DE PREVENCAO DO TABAGISME (PORTUGAL) ·EUROPEAN HEART NETWORK ·EUROPEAN MEDICAL ASSOCIATION ON SMOK-  
 ING AND HEALTH ·EUROPEAN NETWORK FOR SMOKING PREVENTION ·EUROPEAN RESPIRATORY SOCIETY ·EUROPEAN UNION OF NON-SMOKERS  
 ·GERMAN CANCER RESEARCH CENTRE ·GERMAN COALITION AGAINST SMOKING ·GERMAN COALITION AGAINST SMOKING ·GERMAN MEDICAL ACTION  
 GROUP SMOKING AND HEALTH ·GERMAN MEDICAL ASSOCIATION ·HELLENIC CANCER SOCIETY ·LONDON SCHOOL OF HYGIENE AND TROPICAL MEDI-  
 CINE ·OXYGENÈVE ·SPANISH ASSOCIATION AGAINST CANCER ·SWISS ASSOCIATION FOR SMOKING PREVENTION ·SWEDISH DENTISTRY AGAINST TO-  
 BACCO ·UNITAT DE TABAQUISME COORPORACIO SANITARIA CLINIC (SPAIN) ·EASTERN MEDITERANEAN · ·ISFAHAN CARDIOVASCULAR RESEARCH CEN-  
 TRE (IRAN) ·IRANIAN HEART FOUNDATION ·ISRAEL CANCER ASSOCIATION ·SAUDI CHARITABLE ANTI-SMOKING SOCIETY ·TURKISH COMMITTEE ON  
 TOBACCO OR HEALTH ·INTERNATIONAL · ·CONSUMERS INTERNATIONAL REGIONAL OFFICE FOR ASIA AND THE PACIFIC (CI-ROAP) ·FDI WORLD  
 DENTAL FEDERATION ·INGCAT ·INTERNATIONAL COUNCIL OF WOMEN ·INTERNATIONAL AGENCY ON TOBACCO OR HEALTH ·INTERNATIONAL FED-  
 ERATION OF MEDICAL STUDENTS ASSOCIATION ·INTERNATIONAL NETWORK OF WOMEN AGAINST TOBACCO ·IOGT REGIONAL COUNCIL FOR SOUTH  
 AND SOUTH EAST ASIA ·INTERNATIONAL UNION AGAINST TUBERCULOSIS AND LUNG DISEASE ·MEDICAL WOMEN'S INTERNATIONAL ASSOCIATION  
 ·PATH (CANADA) ·PUBLIC SERVICES INTERNATIONAL ·UICC GLOBALINK ·UICC INTERNATIONAL UNION AGAINST CANCER ·WORLD ASSEMBLY OF  
 YOUTH ·WORLD FEDERATION OF PUBLIC HEALTH ASSOCIATIONS ·WORLD HEART FEDERATION ·WORLD VISION INTERNATIONAL · · · ·

## A. PREAMBLE

### *A. Preamble*

*(to be formulated at a later session of the Intergovernmental Negotiating Body)*

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#### **POINTS TO CONSIDER:**

Much of the text in the current “Guiding Principles section could and should be moved to the Preamble.

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## B. DEFINITIONS

*(to be formulated at a later session of the Intergovernmental Negotiating Body)*

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#### **POINTS TO CONSIDER:**

In proposing definitions, the following should be considered:

**Less is better.** In legal drafting, particularly definitions, clear, concise statements are best. Unnecessary statements should be excluded.

When the ordinary standard dictionary definition applies to a word, no special legal definition is needed; definition for such a word best not be included.

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## C. OBJECTIVE

*The ultimate objective of this Convention and of the related protocols is to provide a framework for integrated tobacco-control measures to be implemented through the engagement of the Parties in order continually and substantially to reduce the prevalence of tobacco use and thus protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.*

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#### **POINTS TO CONSIDER:**

We need an objective that is more ringing, more eloquent — and more memorable!

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# D. GUIDING PRINCIPLES



IT IS NOT CLEAR WHETHER THE 'GUIDING PRINCIPLES' ARE INTENDED TO BE IMPLEMENTED, OR ARE A SUPPLEMENTAL 'PREAMBLE.'

MUCH OF THIS TEXT SHOULD BE RE-WRITTEN AS PART OF THE PREAMBLE.

SECTIONS WHICH ARE INTENDED TO IMPOSE OBLIGATIONS SHOULD BE MOVED TO THE OBLIGATION SECTION.

## D. Guiding principles

*To achieve the objective of this Convention and to implement its provisions, the Parties shall be guided, inter alia, by the principles set out below:*

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### POINTS TO CONSIDER:

Under the current structure, these guiding principles are a "fish with feathers" : it's not clear whether they are, like a preamble, without force or effect, or whether they are intended to be implemented in a monitorable way.

The "Guiding Principles" section should be restructured — with some sections being moved to the preamble, and others moved under "obligations."

[1. *It should be a public health imperative to prevent and halt the growth of tobacco consumption and to reduce its current impact, in order to protect and promote the health of all individuals and to reduce tobacco-related morbidity and mortality at national and global levels.*]



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### POINTS TO CONSIDER:

The 'statement of purpose' of the treaty will likely be frequently cited — that's why it's important that it is written in a clear and compelling way.

*Possible amendment:*  
"It **IS** a public health imperative...."

This sentence is quite unreadable. It should be more elegantly drafted.

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[2. Full information should be provided to the general public about the addictive and lethal nature of tobacco consumption, and everyone should be [adequately] protected from exposure to tobacco smoke [, and from tobacco dependence and nicotine addiction] and its health [and environmental] consequences, also recognizing the importance of efforts and various measures to control tobacco smoking of young persons [and of health promotion for the development of healthy lifestyles and tobacco free environments].]

**WG1**

[2.bis Strong political commitment is needed to develop and support comprehensive multisectoral measures and coordinated responses at both national and international levels.]

[2.ter The importance of international cooperation, particularly transfer of technology and financial assistance between Parties, to establish and implement effective tobacco-control programmes, taking into consideration local culture, social, economic, political and legal factors, should be recognized.]

**POINTS TO CONSIDER:**

<p>"Adequately protected" from exposure to tobacco smoke is a dangerous qualification -- how do we decide on an 'adequate' reduction of risk when the only</p>	<p>safe level of exposure is non at all?</p>
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4. The importance of technical and financial assistance[, including the creation of a global funding mechanism,] [to aid the economic transition of]/[to] tobacco growers, workers and individual sellers who may be displaced as a future consequence of successful tobacco control programmes, should be recognized [[and addressed], particularly in developing countries

**WG 2**

**POINTS TO CONSIDER:**

This clause is disingenuously vague. By signing a treaty which includes this principle, it is not clear whether governments are obliging themselves to make payments to farmers (either their own or those of other nations).

Any payments for transition to other crops should be triggered only by a significant drop in global tobacco consumption (in absolute terms, not on a per capita basis).

With growing populations, even the most optimistic forecasts of smoking will result in INCREASED amounts of tobacco smoked for many years.



THE TREATY DEFINITIONS FOR 'TOBACCO DEPENDENCE' AND 'NICOTINE ADDICTION' SHOULD CLARIFY THAT BOTH TOBACCO AND NICOTINE ARE ADDICTIVE.



THIS SECTION SHOULD BE REWRITTEN TO RECOGNIZE THE NEED FOR FINANCIAL SUPPORT TO POORER NATIONS TO MEET THEIR FCTC OBLIGATIONS

IF SUCH AN AMENDMENT IS NOT AGREED TO, THE CLAUSE SHOULD BE DELETED.

D. GUIDING PRINCIPLES (CONTINUED)

TRADE AGREEMENTS, LIABILITY, AND OTHER

OKAY =>

5. [Priority should be given to measures taken to protect public health when tobacco control measures contained in this Convention and its protocols are examined for compatibility with other international agreements.]



or

VERY HARMFUL =>

[The Parties agree that tobacco control measures shall be transparent, non-discriminatory and implemented in accordance with their existing international obligations.]

or

VERY HARMFUL =>

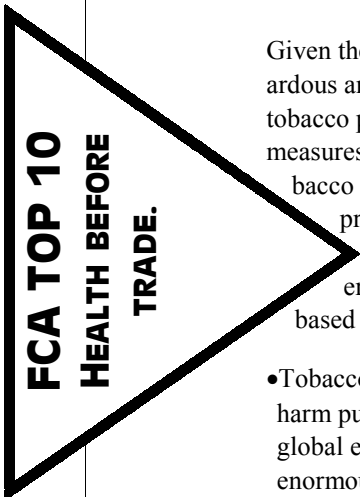
[Tobacco control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade.]

or

HARMFUL =>

[Tobacco control measures taken to protect human health should not be deemed as constituting a means of arbitrary or unjustifiable discrimination in international trade.]

POINTS TO CONSIDER:



Given the exceptionally hazardous and addictive nature of tobacco products, public health measures to deal with the tobacco epidemic should take precedence over any commercial considerations. This view is based on three premises:

•Tobacco products uniquely harm public health and the global economy, imposing enormous economic costs on governments, consumers and private employers.

•Liberalization of trade in tobacco products stimulates tobacco consumption and harms public health;

•There is ample precedent in many other international agreements for provisions to restrict trade in particularly harmful products. Special rules, for example, have been developed for ozone-depleting chemicals and persistent organic pollutants.

BETTER TEXT



5. The Parties agree to take all necessary measures to ensure that no person acting on their behalf shall attempt to (a) remove, weaken, undermine or otherwise interfere with tobacco control measures in force or under consideration in another State or (b) promote tobacco exports or tobacco use in another State.

In the event of a conflict between this Convention or any of its Protocols and any other international agreement, this Convention and its Protocols shall prevail.

It is scientifically certain that tobacco causes many diseases that result in needless disability and early death. Lack of full scientific certainty regarding the efficacy of specific tobacco control measures shall not be used as a reason for postponing measures to control tobacco or for challenging such measures taken by other States.

6. *The tobacco industry should be held responsible for the harm its products cause to public health and the environment, with each Party determining the scope of such responsibility within its jurisdiction.*

**WG 3**



THIS CLAUSE DOES NOT APPEAR IN THE FINAL REVISIONS TO THE CO-CHAIRS WORKING PAPERS

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**POINTS TO CONSIDER:**

Holding tobacco companies responsible for their actions is a necessary condition for effective tobacco control.

This provision should be maintained, either in the preamble, or as an obligation.

7. *The appropriate participation of all elements of civil society is essential in achieving the objective of this Convention.*

**WG 2**



THIS CLAUSE DOES NOT APPEAR IN THE FINAL REVISIONS TO THE CO-CHAIRS WORKING PAPERS

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**POINTS TO CONSIDER:**

Advances against tobacco use have been made with the partnership of health and civil society organizations.

Care should be taken to ensure that this does not provide an entitlement for tobacco company engagement in public health measures.

This provision should be maintained, possibly in the preamble.

**Civil Society ≠ Big Tobacco**

8. *The provisions of this Convention should be recognized as minimum standards, and Parties are encouraged to implement measures beyond those required by the Convention.*

**WG 3**



BECAUSE WTO AGREEMENTS PLACE BURDENS ON COUNTRIES WHO WISH TO ADOPT STANDARDS STRICTER THAN ONES WHICH ARE INTERNATIONALLY-AGREED UPON (THINK OF BEEF HORMONES!), THIS SECTION MAY NOT HAVE THE INTENDED EFFECT UNLESS IT IS MADE CLEAR IN OTHER PARTS OF THE TREATY THAT THE FCTC IS NOT SUBORDINATE TO WTO AGREEMENTS.

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**POINTS TO CONSIDER:**

This section may not be as forceful as it appears, as agreements under WTO (such as the Agreement on Technical Barriers to Trade) may have their own interpretation of what evidence is required for a country to make its standards beyond

those set by international organizations, such as WHO or the FCTC..

This section should be given a higher standing than 'guiding principles' and should be part of the general obligations.

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D. GUIDING PRINCIPLES (CONTINUED)

# TRANSITION PAYMENTS, POLITICAL WILL & SECOND HAND SMOKE

*[9. Developed country Parties [and the tobacco industry] [shall] undertake to [compensate the losses to] [aid the economic transition of] economies that depend on tobacco [to other economically viable alternatives] through the provision of adequate financial and technical assistance as well as access to markets and appropriate technology.*



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**POINTS TO CONSIDER:**

This clause is a clearer version of Guiding Principles 4 — but no more acceptable.

Requiring transfers of resources and expertise is a reasonable request for signatories to this convention. This broad obligation for payments to replace economic dependence is unrealistic and an invitation to mischief.

Negotiators should keep in mind that, with growing popu-

lations, even the most optimistic forecasts of smoking will result in INCREASED amounts of tobacco smoked for many years.

Any payments for transition to other crops should be triggered only by a significant drop in global tobacco consumption (in absolute terms, not on a per capita basis).

*10. The provision of political will and commitment by State Parties in their highest possible offices is of utmost importance in ensuring the success of the objectives of this Convention and mortality at national and global levels.*



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**POINTS TO CONSIDER:**

This statement has been referred for discussion under the preamble — which is where this type of sentiment is best expressed.

*11. The parties rescognize that exposure to second hand smoke represents a serious and preventable health risk to nonsmokers, especially in enclosed workplaces, and recognize that this hazard can be controlled most effectcively by prohibiting smoking in places of employment and public gathering.*



THIS CURRENT "GUIDING PRINCIPLES" DO NOT CONTAIN STRONG LANGUAGE ON SECOND-HAND SMOKE.

**NEW-TEXT**



## E. GENERAL OBLIGATIONS

1. *Each Party shall [, taking into account its specific circumstances,] develop, implement, and update, as appropriate, comprehensive and multisectoral tobacco control strategies, policies and legislation and other measures, [such as standards,] in furtherance of the objective and purpose of this Convention [and, as relevant, its protocols].*

**WG 1**



WEASEL-WORD TEXT LIKE "TAKING INTO ACCOUNT ITS SPECIFIC CIRCUMSTANCES" WEAKEN THE TEXT.

THESE AND OTHER WEASEL-WORDS SHOULD BE DELETED.

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**POINTS TO CONSIDER:**

Qualifications such as "taking into account its specific circumstances" can only lead to weakening of the treaty.

to ensure these cannot be used to stop countries from going further.

It is very important that they be deleted.

Some standards (like the current ISO methods for testing tar levels) are quite harmful. These can be used in WTO disputes against countries who wish to adopt higher protection levels.

Caution should be used in adopting language which requires adhering to "standards"

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2. *To this end, each Party shall [, within the means at its disposal and its capabilities]:*

**WG 1**



"WITHIN THE MEANS AT ITS DISPOSAL AND ITS CAPABILITIES" IS AN EXCUSE FOR NON ACTION.

(a) *establish or, where it already exists, reinforce [and adequately finance] a national coordination [mechanism] / [arrangement] for tobacco control [, preferably coordinated by the minister of health], with inputs from relevant government and civil society sources;*

(b) *adopt legislative, executive, administrative and other appropriate measures and cooperate with other Parties in [developing] [and] [harmonizing] appropriate policies, with a view to reducing nicotine addiction, tobacco consumption and exposure to tobacco smoke.*

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**POINTS TO CONSIDER:**

Qualifications such as "within the means at its disposal and its capabilities" can only lead to weakening the treaty.

Obligations to "harmonize" may work against progress, as they can be interpreted by tobacco companies and courts as a reason for resisting innovation (such as Canada's new health warnings)

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It is very important that they be deleted.

E. GENERAL OBLIGATIONS (CONTINUED)



THIS TRANSBOUNDARY OBLIGATION IS A CORE ISSUE FOR THE TREATY.

[3. The Parties shall undertake to adopt legislative, executive and administrative measures to regulate and to ensure that export of tobacco products and associated packaging conform [either to the exporting country's own domestic standards or the importing country's domestic standards or the standards laid down in accordance with this Convention, whichever ensures] / [the highest level of public health protection. Transitional periods, to allow for specific manufacturing situations, may be envisaged.]

**WG 2**

[3.bis The Parties shall adopt and ensure satisfactory implementation of means to protect public health policy from undue interference by tobacco companies, their subsidiaries, affiliated parties and other entities.]

**POINTS TO CONSIDER:**

This is written as a specific obligation for transboundary obligations.

porting countries from adopting any standards in order that they can continue to export.

Banning exports of tobacco products that do not meet the exporting countries' standards may discourage 'dumping' of sub-standard tobacco products, but may also discourage ex-

It is important to stop countries from exporting tobacco which does not conform to the importing countries' standards.



THESE PROVISIONS MORE PROPERLY BELONG IN THE PREAMBLE AND/OR IN THE CLOSING TEXT.

4. The Parties shall cooperate in the formulation of agreed measures, procedures and standards for the implementation of this Convention.

**WG3**

5. The Parties shall cooperate with competent international bodies in order to implement effectively this Convention and the protocols to which they are parties.

6. The provisions of the Convention shall in no way affect the right of Parties to adopt domestic measures in addition to those referred to above, nor shall they affect measures already taken by a Party, provided that such measures are compatible with its obligations under this Convention and the protocols to which it is a party.

7. The provisions of the Convention shall in no way affect the right of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to this Convention, provided that such agreements are compatible therewith. Copies of such agreements shall be communicated to the secretariat of the Convention by the Parties concerned.

# F. PRICE AND TAX MEASURES TO REDUCE THE DEMAND FOR TOBACCO

1. *The Parties recognize that [progressive]/[coordinated] price and tax [measures]/[increases] [are]/[can be] effective and important means of reducing tobacco consumption for various sections of the population, in particular young persons. [The Parties agree that appropriate coordination and cooperation on price and tax measures, in accordance with national policies, between countries and at the international, regional and subregional levels, may be an important means of eliminating illicit traffic in tobacco products.]*

**WG2**

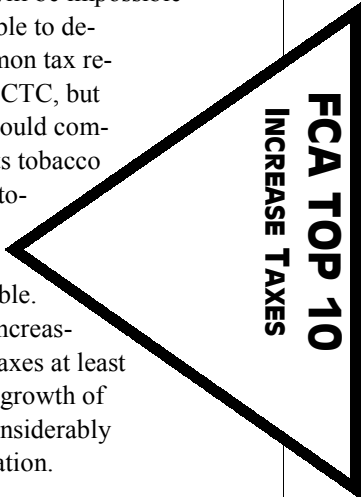


COOPERATION ON TAX AND SMUGGLING IS A CORE ISSUE FOR THIS TREATY.

**POINTS TO CONSIDER:**

The FCTC should enshrine the principle that tobacco taxes are an essential element of public health policy; it should include an undertaking that countries will take all reasonable measures to ensure that their countries' policies do not undermine the tobacco tax policies of other (particularly neighbouring) countries, and that their countries are not used as bases of operation for attacks on other countries' tobacco tax policies (e.g., through smuggling.)

Tobacco taxes are effective in reducing demand and raising revenue. It will be impossible and undesirable to develop a common tax regime in the FCTC, but each party should commit to raise its tobacco taxes so that tobacco does not become more affordable. This means increasing tobacco taxes at least at the rate of growth of incomes – considerably ahead of inflation.



**F. PRICE AND TAX MEASURES TO REDUCE THE DEMAND FOR TOBACCO (CONTINUED)**  
**SMUGGLING**

**WG2**



**THE TREATY SHOULD REQUIRE OBLIGATORY (NOT OPTIONAL) REQUIREMENTS TO:**

**(A) BAN DUTY-FREE SALES**

**(B) KEEP PRICES HIGH THROUGH TAXES**

**(C) COOPERATE INTERNATIONALLY**

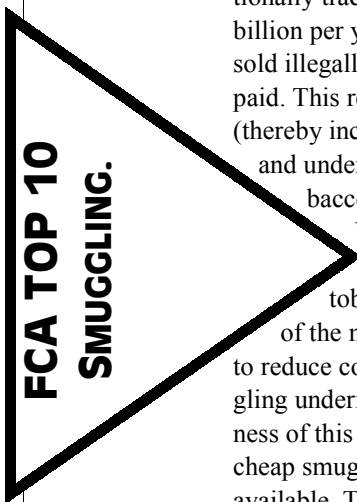
**(D) FUND HEALTH THROUGH TOBACCO TAXES**

**(E & F) WORK TOGETHER TO REDUCE SMUGGLING**

2. *[[While] recognizing the sovereign right of States to determine their taxation policy,] each Party shall endeavour to take into account health policy objectives relating to tobacco control, and the reduction of tobacco consumption [and exposure to tobacco smoke] when establishing [national] tax policies. [Related measures [may]/[shall] include:*

- [(a) prohibition of tax-free and duty-free sales of tobacco products, within an agreed timeframe and without exception;]*
- [(b) imposition of taxes on tobacco products so as to achieve a progressive reduction in tobacco consumption;]*
- [(c) adoption of other price and tax measures that may be recommended by the Conference of the Parties;]*
- [(d) allocation of a part of the revenues from tobacco taxes to tobacco control programmes;]*
- [(e) provision of available information on the rates of taxation for tobacco products, their method of calculation, and their impact on consumption;]*
- [(f) provision of available information on the impact of tax-free and duty-free sales including links between such sales, transit and illicit traffic.]*

**POINTS TO CONSIDER:**



Roughly one third of internationally traded cigarettes (350 billion per year) are eventually sold illegally, with no duty paid. This reduces the price (thereby increasing demand) and undermines national tobacco tax policies. The World Bank has identified high tobacco prices as one of the most effective ways to reduce consumption. Smuggling undermines the effectiveness of this policy by making cheap smuggled cigarettes available. This keeps people smoking who might otherwise quit and entices young people to start. As a result, public health is harmed.

The difference in duty levels between neighbouring states is only a MINOR driver of smug-

gling. The economic driver of most smuggling is the difference between the duty paid and duty not paid price rather than the difference between duty paid price in different countries. Most smuggled cigarettes have never had duty paid in any country and are smuggled by diversion from the transit trade.

Smuggling is based on tax avoidance, but it is driven by commercial activities of tobacco companies and organised crime and the extent to which law enforcement creates costs and risks as a disincentive to smuggling. The success of the FCTC will depend on how it improves law enforcement and how it changes the business practices of tobacco companies.

# G. NON-PRICE MEASURES TO REDUCE THE DEMAND FOR TOBACCO

1. Each Party shall adopt [effective] legal, administrative or other measures [and policies], [according to its capabilities,] and [cooperate with other Parties] in [[adhering to international standards set by the World Health Organization and in] / [adopting the international standards set by the Conference of the Parties and in]] developing non-price policies [including measures to combat illicit traffic], in order to reduce [the prevalence of] tobacco consumption and [to fully protect nonsmokers from] exposure to tobacco smoke. Such measures and policies shall include the following:



**PUBLIC HEALTH MEASURES TO REDUCE TOBACCO ADDICTION.**

---

**POINTS TO CONSIDER:**

This section would be stronger if it were simpler.

prove not to be the ideal role for WHO).

- Qualifiers like “according to its capabilities” and similar qualifies should be deleted.
- References to WHO standard-setting (this may

The title is cumbersome and hard to understand.



**BETTER TITLE**

**PUBLIC HEALTH MEASURES TO REDUCE TOBACCO ADDICTION**

1. Each party shall adopt legislative, executive and administrative measures and cooperate with other parties in strengthening and implementing the strongest possible measures to reduce tobacco addiction and eliminate exposure to tobacco smoke. Each party shall report on its activities under this article within one year of entry into force of this convention using an agreed upon format. Such measures and policies shall include the following.



**BETTER TEXT**

### G. NON-PRICE MEASURES TO REDUCE THE DEMAND FOR TOBACCO (CONTINUED) SECOND-HAND SMOKE, REGULATION OF CONTENTS, DISCLOSURE



THE ONLY WAY TO ADEQUATELY PROTECT WORKERS AND THE PUBLIC FROM SECOND HAND SMOKE IS TO ELIMINATE EXPOSURE.

THE TEXT SHOULD CLEARLY STATE THE **ELIMINATION** OF EXPOSURE IS THE GOAL.

*[(Passive smoking)] / [(Protection for nonsmokers [from the hazards of passive smoking])] / [(Protection of the public from passive smoking)]*



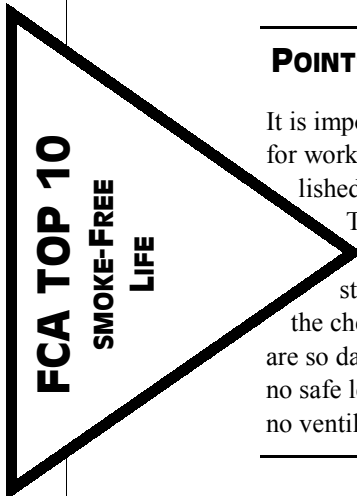
*(a) [[implementation and enforcement of legislation and other effective] measures that provide for [appropriate] / [systematic] protection from exposure to tobacco smoke in [enclosed] public places, [indoor] workplaces, public transport[, and in particular in health care facilities and places providing services to children.] [and in the family]; special attention shall be given to the protection of vulnerable groups such as pregnant women, children, infants, the elderly and persons with chronic conditions and severe illnesses, especially respiratory infections;]*

*or*

*[implementation of legislation and other effective measures at the appropriate governmental level that prohibit smoking in places providing services to children and in enclosed public places, public transport, and in the indoor premises of government agencies and authorities and comparable bodies intended for the public; promote systematic protection from exposure to tobacco smoke in indoor private workplaces and restaurants, with particular attention to special risk groups such as children and pregnant women, persons with chronic lung disease and heart disease;]*

*or*

*[implementation of legislation and other effective measures at the appropriate level, that provide for systematic protection from exposure to tobacco smoke in enclosed places, workplaces, and public places and on public transport;]*



#### POINTS TO CONSIDER:

It is important that a standard for work place safety is established across the world.

This standard should reflect the understanding that many of the chemicals within tobacco are so dangerous that there is no safe level of exposure and no ventilation system capable

of eliminating the health risks - and that consequently, no worker should be exposed to these harmful chemicals as a condition of employment.

This understanding should be articulated within the guiding principles and the obligations of the convention.

**BETTER TEXT**



*(a) implementation and enforcement of legislation and other effective measures directed at eliminating exposure to tobacco smoke in indoor workplaces, public places, and public transport in order to reduce the risk of tobacco-related illnesses and premature death;*

**G.1(b) (Regulations of contents of tobacco products)**

(b) adoption and implementation of [national] [minimum] standards[, as recommended by the [World Health Organization] / [Conference of the Parties].] for the regulation of the content of tobacco products, including standards [and best practices] for testing and measuring the content and [emission] of such products;

[(b bis) cooperation, on the basis of public health criteria [and under the auspices of the World Health Organization], in the development [and harmonization] of [model international] standards for the regulation of the content of tobacco products, in consultation with competent international bodies[, such as] [the International Standards Organization.] [the World Health Organization and the Codex Alimentarius Commission.] [and in the establishment of science- and health-based regulatory agencies with enforcement authority];]



**POINTS TO CONSIDER:**

More specific work is needed before international standards can be proposed. At this time, the very important work of tobacco product regulation is best done at the national level. The framework convention should encourage national ac-

tion on this subject by way of a general obligation.

The WHO and other health agencies should not be put in the position of giving a “seal of approval” to tobacco standards.

**G.1(c) (Regulation of [tobacco product disclosures]) / [(Regulation of disclosures in labelling tobacco products)]**

(c) adoption and implementation of [appropriate] measures for tobacco-product disclosures[, consistent with each Party’s domestic laws.] [to appropriate government authorities] by [all] manufacturers, by brand, including [toxic] / [all] ingredients, [emissions.] additives and [major] constituents of tobacco smoke[, and the promotion of the [availability] of [such] [clear and meaningful] information [about the toxic constituents of tobacco products and the smoke they produce] to the public]. [Each Party shall], to the extent possible and within the means at its disposal,] apply these measures to all tobacco products manufactured, packaged, sold or imported for sale within its jurisdiction[. The Conference of the Parties or a subsidiary body mandated by the Conference shall specify the ingredients and constituents of tobacco smoke which shall be subject to disclosure];]



**POINTS TO CONSIDER:**

At present, the tobacco industry attempts to have it both ways with respect to information about the ingredients and engineering of tobacco products: it claims this information is proprietary (for commercial

reasons), yet in most countries submits to little, if any, regulation as to what substances can legally be added to tobacco products and how tobacco products are engineered.



**THE FCTC SHOULD TERMINATE THE ISO METHODOLOGY.**

THE SYSTEM OF MEASURING TAR AND NICOTINE ‘YIELDS’ WITH A SMOKING MACHINE DOES NOT GIVE USEFUL INFORMATION ABOUT THE IMPACT OF SMOKING ON HEALTH – IT IS NOT, THEREFORE, A USEFUL BASIS FOR REGULATION OR COMPARISON OF PRODUCTS.



THE FCTC SHOULD REQUIRE INFORMATION ON INGREDIENTS AND/OR SMOKE EMISSIONS, BUT ONLY IF THESE PROVIDE USEFUL INFORMATION ABOUT THE PRODUCT TO CONSUMERS.

# G. NON-PRICE MEASURES TO REDUCE THE DEMAND FOR TOBACCO (CONTINUED) PACKAGING & LABELLING



GOVERNMENTS SHOULD HAVE CONTROL OVER ANY TYPE OF HEALTH INFORMATION, EXPLICIT OR IMPLIED (EVEN COLOURS!) THAT IS PRINTED ON TOBACCO PRODUCT PACKAGING.

THE FCTC SHOULD ALSO BAN ANY HEALTH CLAIM ON TOBACCO PRODUCTS UNLESS APPROVED BY THE AUTHORITIES IN THE COUNTRY WHERE IT IS PLACED ON THE MARKET.

## G.1(d) Packaging and labelling

(d) adoption and implementation of [appropriate] measures to ensure that:

(i) tobacco packaging and labelling does not promote a tobacco product by any means that are false, misleading[, unsubstantiated] or [otherwise] deceptive or that are likely to create an erroneous impression about its characteristics, [or to minimize its] health effects, hazards or emissions[, or that encourage consumption];



### POINTS TO CONSIDER:

The ban on ‘misleading’ packaging and labelling is an important statement. If properly implemented, it will result in reductions of imagery and colour in cigarette packages,

which have been shown to influence how smokers and non-smokers perceive cigarettes.

(ii) the terms [“low tar”,] “light”, “ultra light”, “mild”, any similar terms, or any expression [,] / [or] text [, trademark, figurative sign or other picture or pictogram] are not used on any package in any manner that [may] [directly or indirectly] convey the impression that a tobacco product is less harmful [to health] than others;



### POINTS TO CONSIDER:

The terms "light", "low tar" and "mild" mislead smokers into thinking that they will benefit if they switch to so-called lower-delivery brands.

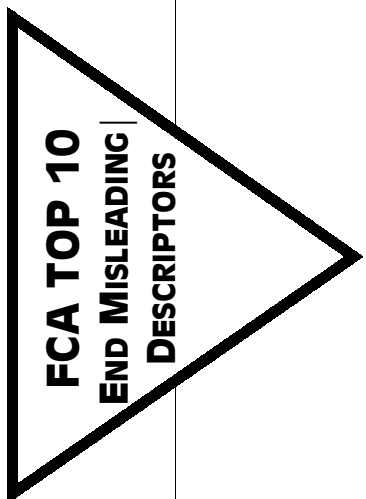
Recent evidence shows that switching to "lights" does not reduce disease risk, and the marketing of these products and terms likely reduces the number of people who would quit.

Brazil, the European Union and Canada have taken steps to ban the use of terms like ‘light’.

Given the increasingly international nature of cigarette branding, it is important that this protection from misleading descriptors be made an international standard.

Tobacco companies are replacing these terms with colours (red for regular, blue for light, silver for ultra-light).

It is important to establish government control over any type of health information, explicit or implied, that is printed on tobacco product packaging.



(iii) each unit packet or package of tobacco products carries the statement and product information [specified [in Article [INSERT]]] [[prominently on the panel or box, occupying no less than 25% of the larger space], [in the principal language or languages of the country in whose territory the product is placed on the market] / [or data approved in another form]] [and is enclosed in a tamper-proof form of packaging];



TO COMMAND ATTENTION, WARNING LABELS SHOULD OCCUPY A MINIMUM OF 50% OF THE TOP OF THE FRONT AND BACK OF THE PACKAGE.

**POINTS TO CONSIDER:**

Health warning labels, both on cigarette packages and on all marketing materials, are an inexpensive and important step in a national health education program. Research shows:

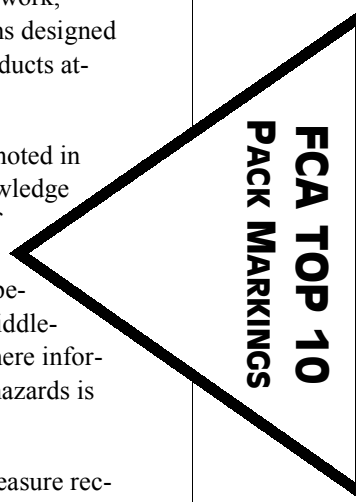
- They should be in black and white or other sharply contrasting colors.
- Type style and size also must be specified to avoid industry efforts to undermine the impact of the warning.
- Warning labels should be applied to all tobacco products, not just cigarettes.
- Tobacco product packaging is the ideal tool for communicating with smokers, who are typically exposed to images printed on packs at least 20 times per day.

Consumers have a right to better information about the risks inherent in tobacco products, easily the most deadly consumer products in regular use.

Given tobacco's exceptionally hazardous nature and tobacco companies' failure to adequately disclose risks, warnings should occupy at least as much area on tobacco product packaging as any artwork, trademarks or slogans designed to make tobacco products attractive.

As the World Bank noted in 1999, "People's knowledge of the health risks of smoking appears to be partial at best, especially in low- and middle-income countries where information about these hazards is limited."

Warning labels, a measure recommended by the World Bank, provide a way of communicating with smokers that is virtually free to governments.



## G. NON-PRICE MEASURES TO REDUCE THE DEMAND FOR TOBACCO (CONTINUED) PACKAGING & LABELLING

(iv) *each unit packet or package of tobacco products carries a clear, visible, and legible [general] [rotating] [health] warning [including a picture or pictogram], [as prescribed] / [which shall be approved] by the national [health] authorities [and in keeping with World Health Organization specifications], illustrating the harmful consequences of tobacco consumption [for health] [and that generic packaging is used for the parts of the package other than where mandatory messages are required], in accordance with Annex [INSERT]; these warnings shall:*

**WG1**

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### POINTS TO CONSIDER:

Package health messages should be unequivocal, simple, and stark.

They should convey both the nature and magnitude of the risks, since studies show smokers underestimate most risks associated with tobacco use.

The type of information may vary from country to country: in some cultures, it may be important to remind people of religious strictures against smoking, in others the amount of money they could save by overcoming their addiction.

This information should be conveyed in the main language or languages of the country in which the tobacco product is to be sold.

Prominent, picture-based warnings are also necessary, particularly in countries with low literacy rates or where research shows that smokers are ignoring standard warning labels.

Such warnings are extremely cost-effective for governments: they cost the authorities next to nothing and reach virtually all consumers.

*[(1) clearly indicate the prohibition of sales of tobacco products to [persons under the age of 18] / [minors as determined by domestic law];]*

**WG1**

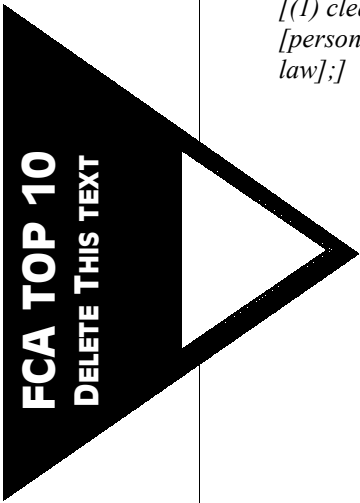
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### POINTS TO CONSIDER:

**This is an extremely bad idea.**

It reinforces tobacco industry efforts to market cigarettes to children as an “adult” product,

and smoking as something that “adults” do.



(2) provide clear [and meaningful] information [and, where appropriate, relevant and quantitative data] on the toxic constituents of the tobacco product[s and the smoke [emissions] they may produce], [specifically with regard to tar, nicotine and carbon monoxide] [, and also];

[(3) carry the statement and product information specified in Article G.1(c);]

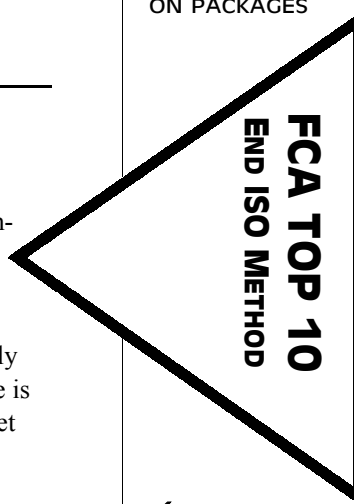
**WG1**

**POINTS TO CONSIDER:**

Requirements to put quantitative data on products or emissions should be deleted because:

- machine measurements of smoke yields under ISO/FTC methods have been thoroughly discredited as measures of real human exposure or predictors of disease;
- appropriate means to communicate health information will likely vary from country to country.

- Publishing numerical yields obtained from improved test methods may or may not be an appropriate way to improve health, particularly in countries where there is not yet a separate market for “light” cigarettes.



THERE SHOULD BE NO REQUIREMENT FOR LISTING OF TAR, NICOTINE ETC. YIELDS ON PACKAGES



THE FCTC SHOULD REQUIRE PACK LABELS WHICH INCLUDE A “FOR SALE ONLY IN [MARKET]” MARKING.

THIS SHORTENS THE DISTRIBUTION CHAIN AND WILL HELP TO

[(4) appear prominently on the upper portion of the front panel of the tobacco-package (or carton) and occupy not less than [twenty-five per cent (25%)] / [fifty per cent (50%)] of such front [and rear] panel[s];]

[(5) appear in the principal language or languages of the country in whose territory the product is placed on the market;]

**WG1**

**POINTS TO CONSIDER:**

The minimum standard for package warning should be 50% of the exterior package.

The mechanism for this standard should be implemented in such a way that it is clearly understood to be a minimum standard.



THE FCTC SHOULD REQUIRE PLAIN PACKAGING FOR PARTS OF PACKAGE OTHER THAN WHERE MANDATORY MESSAGES APPEAR.

## G. NON-PRICE MEASURES TO REDUCE THE DEMAND FOR TOBACCO (CONTINUED)

## EDUCATION, TRAINING &amp; PUBLIC AWARENESS, ADVERTISING

**G.1(e) (Education, training and public awareness)****WG1**

(e) [promotion and strengthening of education, training and public awareness campaigns, including communication on tobacco-related health risks] / [facilitation and strengthening of health promotion and preventive campaigns, comprising education, training and communication activities, including counter-advertising and mechanisms for assessing the impact of such activities]. To this end, each Party shall, as appropriate:

(i) promote[, implement] [and evaluate the impact of] [universal access to [scientifically based.] effective and comprehensive] educational and public awareness programmes[, including counter-advertising,] on the health [and environmental] risks of tobacco consumption, tobacco dependence, nicotine addiction and exposure to tobacco smoke, as well as on the benefits of smoking cessation [and tobacco-free lifestyles], using all available communication media and technologies [and incorporation of the contents of such [cross-cutting] programmes in school curricula];

(ii) [promote] / [ensure] broad access to these programmes for the general public and notably vulnerable groups[, including [children,] [youth,] [pregnant women,] [and persons with chronic lung and heart diseases]];

(iii) develop and implement appropriate training programmes on tobacco control for [decision-makers,] [administrators, politicians,] [civil servants,] health professionals, educators and other concerned persons [and professionals];

(iv) promote the participation of public agencies, nongovernmental organizations and other private entities, in the development of strategies for tobacco control [while [ensuring that the tobacco industry is not involved in any of these activities] / [preventing the participation of tobacco growers and manufacturers]];

**POINTS TO CONSIDER:**

In order to be truly effective, media/communications campaigns aimed at educating the public require substantial funding. These campaigns are by nature cost-intensive exercises. As a result, what we could realistically call for is a reporting requirement among countries regarding the progress they have made in this area.

For this reason, qualifying the obligation with “as appropriate” is, well, appropriate.

Countries should commit to some type of resource pooling, whereby best practices could be communicated via a clearinghouse-type service. This could entail the sharing of expertise.

*[(v) facilitate [public access to information] / [the provision of information to the general public] [on the tobacco industry] [and] [the hazards of tobacco consumption], as relevant to [the objective of the Convention] / [promoting tobacco prevention and control programmes]].*

The logo consists of the letters "WG1" in a white, bold, sans-serif font, centered within a solid black oval.

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**POINTS TO CONSIDER:**

Exposing the role of tobacco manufacturers in the global tobacco epidemic is an important and effective way of creating public support and enthusiasm for public measures to reduce smoking.

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# G. NON-PRICE MEASURES TO REDUCE THE DEMAND FOR TOBACCO (CONTINUED) ADVERTISING, PROMOTION AND SPONSORSHIP

TOBACCO ADVERTISING  
LEADS TO INCREASED  
SMOKING.

BANNING ALL FORMS OF  
TOBACCO ADVERTISING IS  
A PUBLIC HEALTH  
STRATEGY THAT WORKS.

THE FCTC SHOULD RE-  
QUIRE A TOTAL BAN ON  
ADVERTISING

### *(Advertising, promotion and sponsorship)*

[2. In addition to the measures specified in Article [INSERT] [and as long as advertising is permitted] / [and before achieving a total prohibition on advertising], each Party shall commit itself to:

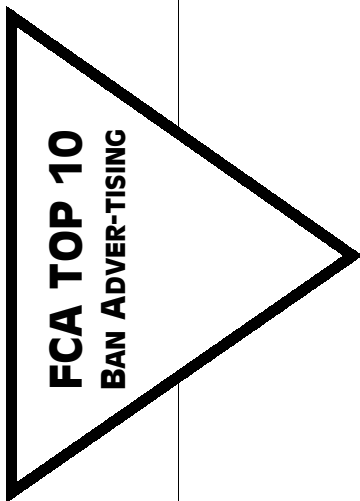


*((a) [[adopting] [and gradually implementing]] / [imposing] measures [in conformity with its national constitution [and domestic law]], to [prohibit] / [[strictly] / [appropriately] restrict] / [impose appropriate restrictions on] all forms of [direct and indirect] tobacco advertising, [marketing,] promotion and sponsorship [, including incentives [such as gifts, coupons, rebates, competitions and purchaser programmes] / [of any kind]], with the aim of reducing the appeal of tobacco products to all segments of society[, without prejudice to stricter national rules];*

*[(b) [requiring] / [adopting measures to require] that tobacco companies disclose [to the competent bodies] aggregate expenditures on sales, advertising, promotion and sponsorship[, and make those figures available to the public[, providing they do not constitute corporate or trade secrets, as provided for by national legislation] ];]*

*[(c) adopting measures and imposing appropriate regulatory restrictions to ensure [that each advertisement carries a clear and conspicuous health warning, and] that tobacco advertising, promotion and sponsorship do not promote a tobacco product by any [means] / [messages] that are false, misleading or deceptive or that are likely to create an erroneous impression about its characteristics, health [and environmental] effects, hazards or emissions;]*

*[(d) adopting measures and imposing appropriate regulatory restrictions in order to [progressively] [phase out] / [eliminate] tobacco promotion and sponsorship [of sporting and cultural events] / [of any type of event][, within (...) years after the entry into force of the Convention];]*



### **POINTS TO CONSIDER:**

Banning tobacco advertising -- a public health strategy that works.

A study published by the World Bank examined data from 102 countries and found that per-capita cigarette consumption in countries with comprehensive bans declined by about 8 percent, while consumption rates in countries without such bans declined by only about 1 percent.

Furthermore, the rate of decline in smoking was much steeper in those countries with relatively comprehensive bans.

Based on the strength of current studies, the World Bank recently concluded that "bans on advertising and promotion prove effective, but only if they are comprehensive, covering all media and all uses of brand names and logos."

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**POINTS TO CONSIDER: (CONT'D)**

However if governments only ban tobacco advertising in one or two media, the industry will simply shift its advertising expenditures, with no effect on overall consumption.

Bans on tobacco advertising and promotion should cover both direct and indirect advertising and include all types of media. The industry has been adept at finding creative new ways to publicize their brands, especially with young people.

Given the proven ability of the tobacco industry to find loopholes in complex legislation, such regulations should be kept simple. It should not try to specify all of the types of advertising that are pro-

hibited because the industry will simply come up with new categories.

Voluntary industry codes of conduct are ineffective. In order to undercut political support for strong marketing restrictions, tobacco companies will often offer to adopt voluntary codes of conduct, which appear to offer significant concessions. These proposals are usually designed for public relations purposes, with sufficient loopholes to leave plenty of options available for aggressive marketing and are rarely followed in spirit or letter. The major tobacco multinationals have made such an offer in September 2001, hoping to emasculate the FCTC.

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***G. Non-price measures to reduce the demand for tobacco (Advertising, promotion and sponsorship)***

*2. In addition to obligations related to other non-price measures specified in Article [INSERT], all Parties shall commit themselves specifically to:*

- a) prohibiting all forms of direct and indirect tobacco advertising, including promotion and sponsorship;*
- b) within two years of the entry into force of this convention, each party acting individually and in co-operation with other parties, implementing the provisions of paragraph 2(a). Parties may specify such exemptions to para 2 (a) as are strictly necessary to comply with existing constitutional constraints that have been interpreted by the appropriate court as inhibiting a complete implementation of para 2a;*
- c) requiring that tobacco companies disclose all expenditures on advertising, sponsorship and promotion by brand according to rules determined by the Conference of the Parties, and making these figures available to the public; and*
- d) adopting national measures and cooperating in order to phase out cross-border advertising, promotion and sponsorship, including inter alia, tobacco advertising, promotion and sponsorship on cable and satellite television, the Internet, newspapers, magazines and other printed media.*



**BETTER  
TEXT**

## G. NON-PRICE MEASURES TO REDUCE THE DEMAND FOR TOBACCO (CONTINUED)

### ADVERTISING, PROMOTION AND SPONSORSHIP

VERY IMPORTANT TO  
HAVE A SPECIFIC OBLIGA-  
TION TO BAN EXPORTS  
AND IMPORTS OF TO-  
BACCO ADVERTISING



**WG1**

*[(e) adopting [national] [legislative and regulatory] measures [and cooperating] in order to [make it possible to require that the tobacco industry] [phase out] / [eliminate] / [ban] / [restrict] cross-border advertising, promotion and sponsorship[, by whatever means or medium of communication, as well as any form of sponsorship by the tobacco industry within (...) years after the entry into force of the Convention] [, including, inter alia, tobacco advertising, promotion and sponsorship on cable and satellite television, radio, the Internet, newspapers, magazines and other printed media].]*

or

*[In addition to the measures specified in Article [INSERT], each Party shall commit itself to adopting measures to [ban] / [phase out] all forms of [direct and indirect] advertising, including cross-border advertising by whatever means or medium of communication, marketing, promotion and sponsorship of sporting, cultural and other similar events, including incentives such as gifts, coupons, rebates, discounts, competitions and frequent purchaser programmes [within two years] after the entry into force of the Convention, and enabling governmental and nongovernmental organizations specialized in tobacco control to provide the public with counter-advertising if advertising has not been completely eliminated.]*

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#### POINTS TO CONSIDER:

Countries should take measures to prevent the import and export of tobacco advertising.

At a minimum, the FCTC should include a specific obligation to ensure that trans-boundary tobacco advertising is prohibited. No country should be obliged to accept tobacco advertising from be-

yond its borders. Tobacco advertising that crosses borders is an international problem that demands an early international solution.

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*[3. The Conference of the Parties shall initiate the preparation of a protocol [or protocols, as they may deem necessary.] setting out appropriate rules and procedures [in the area of] / [during the phase-out period for] tobacco advertising, promotion and sponsorship.]*

*[4. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the areas of regulation of the content of tobacco products, tobacco-product disclosures, as well as packaging and labelling of tobacco products.]*

## H. [DEMAND REDUCTION MEASURES CONCERNING TOBACCO [DEPENDENCE] / [ADDICTION] AND CESSATION] / [[FIGHTING] / [REDUCING] TOBACCO [DEPENDENCE] / [ADDICTION]]

1. *Each Party shall take all practical, effective [and culturally] relevant measures[, based on scientific evidence and best practices] / [, supported by scientific evidence and in accordance with its economic, social and cultural characteristics, to secure a better cost-benefit relation], to treat tobacco dependence and to promote cessation of tobacco use.*

2. *Each Party shall undertake the following measures [taking into account national circumstances and priorities, and with special attention to the needs of vulnerable groups]:*

(a) *[design,] implementation [and evaluation] of [health] promotion and educational programmes [and interventions [, including smoke-free environment programmes in educational institutions, health care facilities, workplaces and sporting environments,]] aimed at encouraging cessation of tobacco use;*

(b) *integration of treatment of tobacco dependence, routine advice, and counselling services on cessation of tobacco use, into national health, education and development programmes, plans and strategies. Support for such actions shall be provided by trained health workers[, including physicians, nurses and pharmacists], as well as by teachers and community and social workers;*

(c) *establishment in health care facilities and other rehabilitation centres of programmes for diagnosis, counselling, prevention and treatment of tobacco dependence, with priority emphasis on primary health care services.]*

[2.bis *The Conference of the Parties shall begin preparing a protocol to establish an appropriate procedure in respect of cessation of tobacco use.]*

**WG1**

**MEASURES TO  
HELP SMOKERS  
QUIT**



**BETTER  
TITLE**

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### **POINTS TO CONSIDER:**

Cessation is important, but a protocol is not needed.

An international agreement would add little to what countries can do on their own to promote quitting.

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# I. MEASURES RELATED TO THE SUPPLY OF TOBACCO (SMUGGLING)

**WG2**

*(Illicit trade in tobacco products)*

1. *The Parties recognize that the elimination of all forms of illicit trade in tobacco products and raw tobacco materials and additives, including smuggling, illicit manufacturing and counterfeiting, and the development of related legislation, as well as subregional, regional and international agreements, are essential components of tobacco control.*

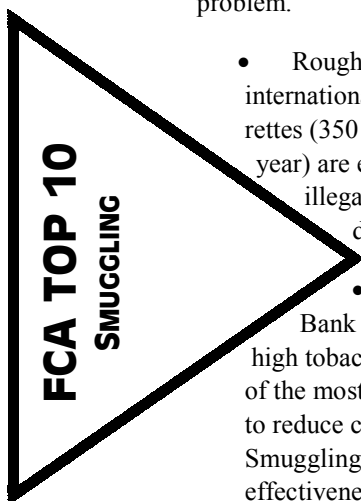
**POINTS TO CONSIDER:**

Tobacco smuggling is a **health** problem.

- Roughly one third of internationally traded cigarettes (350 billion per year) are eventually sold illegally, with no duty paid.
- The World Bank has identified high tobacco prices as one of the most effective ways to reduce consumption. Smuggling undermines the effectiveness of this policy by making cheap smuggled cigarettes available.

Tobacco companies benefit from smuggling.

- Smuggling reduces average prices, and thus increases demand.
- It has been documented that tobacco companies have used smuggling as a distribution channel to launch new brands, to enter new markets and fight price wars with their competitors.



⇒  
**THIS DANGEROUS  
 CLAUSE SHOULD BE  
 REWORDED.**

**BETTER  
 TEXT**

2. *The Parties agree that measures to this end shall be transparent, well-defined, non-discriminatory and implemented in accordance with their [national and] international obligations [as well as standards established by regional. economic integration organizations, where applicable].*

2. *The Parties agree that measures taken to eliminate tobacco smuggling and organized crime take priority over commercial liberalization when being examined for compatibility with other international agreements.*

3. Each Party shall adopt appropriate measures to ensure that all unit packets and packages of tobacco products and raw tobacco materials and any outside packaging of such products and materials for retail or wholesale use that are sold and/or manufactured under its jurisdiction [carry a marking in any appropriate manner in order to enable the origin of the product to be identified [, to ensure the identity and tracking of the product and to enable the place and time of manufacture to be determined such as through the use of approved [batch] numbering or equivalent.]] [ :

(a) carry a statement indicating, inter alia, the name of the manufacturer, the country of origin, the importer in the country of import, and the product [batch-] number [, including the date of production and expiry];

[(b) carry the statement: "Sales only allowed in (insert name of the country, subnational, regional or federal unit where the product is to be placed on the market)."] ].

(NOTE: to be cross-referenced against G.( 1 )(d))

[3c or 4]. Each Party shall adopt appropriate measures to ensure that the packaging information [specified in paragraph 3 above shall appear in the principal language(s) of the country in whose territory the product is placed on the market or data approved in another form] [will follow the requirements of the importing country].

WG2

FCA TOP 10  
SECURITY  
MARKINGS

#### POINTS TO CONSIDER:

The basic approach must be to ensure:

- That movements of tax-free tobacco products are minimised – this is aided by identifying the destination market at the time of manufacture or first export.
- That the supply chain is secured to prevent diversion – by knowing the final destination and all traders in between .
- That cigarette trade can be tracked and contraband can be traced – a markings regime is necessary to facilitate this, but its exact design cannot be specified in isolation of the system to be used for tracking and tracing.
- That manufacturers should be responsible for selling to legitimate traders and that those traders sell legally – thus creating a ‘duty of care’ in distribution of tobacco products.

# I. MEASURES RELATED TO THE SUPPLY OF TOBACCO (CONTINUED) SMUGGLING



STRONG MEASURES TO CONTROL INTERNATIONAL SMUGGLING ARE A CORE REASON TO VALUE THIS TREATY.

THE FCTC SHOULD INCLUDE A BAN ON DUTY FREE SALES.

5. Each Party shall undertake the following legislative, executive, administrative [or] [and] other appropriate measures in order to eliminate illicit trade in tobacco products and raw tobacco materials:

(a) to monitor and collect data on cross-border trade in tobacco products and raw tobacco materials, including illicit trade, and exchange information among customs, tax and other appropriate authorities;

(b) to enact legislation [, with appropriate penalties and remedies.] that prohibits production of, and trade in [counterfeit and contraband cigarettes and other such tobacco products] [illicit products];

(c) to take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are [either] destroyed, using environmentally-friendly methods [except for those contraband cigarettes and other tobacco products which are contraband only because national or subnational taxes have not been paid on those cigarettes or products] [, or placed on the market according to national [legislation] [legislative practices and measures]];

[(d) to adopt measures to monitor, document and control the distribution and movement of duty-free and tax-free tobacco products, including raw leaf tobacco;]

[(e) to adopt measures to enable the confiscation of proceeds derived from the commission of criminal offences related to the illicit tobacco trade.]

### POINTS TO CONSIDER:

Taxes due on tobacco products (e.g., in countries of destination) should be collected at the point and time of manufacture, whatever the stated destination of the merchandise. This could be done through either:

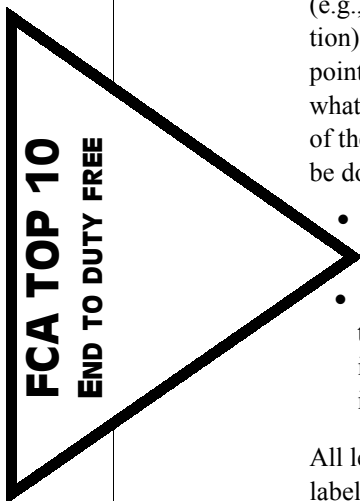
- a reimbursable export tax,
- bilateral agreements on tax collection between the importing and the exporting country.

All legal requirements for the labelling of tobacco products in the country of destination should be met in the factory in the country of origin, before the tobacco products leave the factory.

All tobacco products packages in international trade should bear standardized, coded information (e.g., tax-paid markings) that will facilitate monitoring, product tracking and global smuggling control.

National governments should retain responsibility for regulating the movement of tobacco products until such products are legally imported and taxed in another country

Duty free is opens a back door route to the black market by allowing retail access to tobacco products on which the full duties have not been paid.



6. *[In accordance with their national legislation and their obligations under international [law]/[treaties],] the Parties shall promote cooperation between national, regional and international agencies [involved, in promoting investigations, prosecutions and proceedings] to eliminate illicit trade, in particular smuggling, in tobacco, tobacco products, raw tobacco materials and additives[,and]. The Parties shall further cooperate to promote regular exchanges of information to prevent such trade [pursuant to Annex [INSERT] to this Convention]. Special emphasis shall be placed on cooperation at regional and subregional levels as the most effective prerequisite for combating smuggling and illicit trade of tobacco products.*

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### POINTS TO CONSIDER:

The FCTC should apply the principle of chain of custody to tobacco products. That is, manufacturers should be obliged to exercise due diligence in their choice of distributors, who must keep their suppliers informed of their dis-

posal of merchandise (and so on down the supply chain); manufacturers should be legally obliged to immediately halt supply to distributors when product turns up on the black market.

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*1.5 Each Party shall undertake the following legislative, executive, and administrative measures in order to prevent and combat illicit trade in tobacco products and raw leaf tobacco:*

*(a) by establishing data collection mechanisms to ensure that information on the production and subsequent distribution of all tobacco products and raw leaf tobacco, including imports and exports, is collected and analysed;*

*(b) by enacting legislation and regulatory measures, with appropriate penalties and civil remedies so that smuggling is no longer profitable, to prohibit the illicit tobacco trade, including illicit manufacturing, smuggling, counterfeiting and contraband;*

*(c) Appropriate steps to ensure that all confiscated counterfeit cigarettes and other tobacco products are destroyed, and that contraband tobacco products are either destroyed, placed on the market, [repurchased by the manufacturer, or otherwise handled in a manner that does not create incentives for tobacco manufacturers to facilitate smuggling or generate additional income for any tobacco manufacturer];*

*(d) By adopting measures to monitor, document, and control the distribution and movement of duty-free and tax-free tobacco products, including raw leaf tobacco;*

*(e) By adopting measures to enable the confiscation of proceeds derived from the commission of criminal offences related to the illicit tobacco trade.*

*1.6. The Parties shall strengthen cooperation between different national and international agencies in promoting investigations, judicial prosecutions and proceedings relating to illicit trade in tobacco products. The Parties shall further cooperate to promote regular exchange of information to prevent such trade pursuant to Annex [INSERT] to this Convention.*



**BETTER  
TEXT**

## I. MEASURES RELATED TO THE SUPPLY OF TOBACCO (CONTINUED)

## SMUGGLING

[7. *The Conference of the Parties shall initiate [or take forward] the preparation of a protocol setting out appropriate rules and procedures for the elimination of all forms of illicit trade, in particular smuggling, in tobacco, tobacco products and raw tobacco materials.*]

**POINTS TO CONSIDER:**

One in three internationally traded cigarettes enters the black market, and it is now essential to secure the distribution system to stop this. Customs authorities must be able to *trace* the movement of tobacco products retrospectively to identify where diversion to the black market occurred.

There are about 10,000 wholesale traders in the world, and these could be built into a licensed system in which they would record movements of tobacco products by scanning pack markings. Technology is available to do this at less than US\$0.02 per pack.

**NEW  
TEXT  
SMUGGLING  
PROTOCOL**



*I.7bis*

*i. The Parties shall sign at the earliest opportunity a protocol setting out appropriate rules and procedures for the elimination of all forms of illicit trade in tobacco products.*

*ii. The protocol shall include, but not be limited to, the following aims and approaches:*

- a) Securing the distribution system for tobacco products by developing a chain of custody.*
- b) The introduction of a system of tracking in which the final market is known at the point of manufacture and each intermediary may be identified.*
- c) Creating a duty of care on all participants in the distribution chain to ensure that the product is ultimately sold legally.*
- d) A system of to allow tracing of tobacco products that have been seized as contraband.*
- e) A system of liability and compensation to recover lost excise duties from manufacturers and wholesalers*
- f) A licensing system for manufacturers, wholesalers, import-export traders and warehousing operations.*
- g) Controls on the trade in second hand cigarette manufacturing machinery with a view to reducing counterfeit production.*

*Internet and mail-order*

*I.7 bis. Each Party shall prohibit international delivery or sending of tobacco products, and mail order sales and internet sales, unless the delivery or sending is within the tobacco trade.*

**NEW  
TEXT  
INTERNET**



## I. [MEASURES RELATED TO] / [CONTROLLING] THE SUPPLY OF TOBACCO SALES TO YOUNG PERSONS)

8. Each Party shall [take appropriate measures to] prohibit tobacco sales [and supply] to [persons under the age of 18] / [minors as determined by domestic law]. To this end, each Party shall [, to the extent possible within the means at its disposal and its capabilities]:

(a) require [, within the means at its disposal,] that [all] / [the] [suppliers] / [sellers] of tobacco products post signs at the point of sale which carry a health warning [and indicate] / [indicating] that the sale of tobacco products to persons under age is prohibited;

(b) require [, within the means at its disposal,] that [all] / [the] [suppliers] / [sellers] of tobacco products [request that each tobacco purchaser provide appropriate evidence of having] / [take all reasonable steps to ensure that buyers have] reached the age of [18] / [majority as determined by domestic law];

(c) [strictly restrict access to] / [take appropriate measures to restrict persons under the age of 18 to access] / [prohibit] tobacco vending machines [and other similar apparatus], and prohibit tobacco sales via the Internet [to persons under 18] / [minors as determined by domestic law] [and ban the selling of tobacco products from shelves or supermarkets, convenience shops and similar establishments where customers can freely pick up the goods, and by street vendors and pavement stalls, within a period of no more than [...] years];

[(d) prohibit the manufacture and sale of sweets and toys in the form of tobacco products.]

[9. Each Party shall take appropriate measures to prohibit the sale [and the free distribution] of tobacco products by [persons under the age of 18] / [minors as determined by domestic law] [should this be necessary to prevent the sale of tobacco products to minors].]

[10. Each Party shall [, according to its capabilities,] prohibit the sale [and the free distribution] of cigarettes individually or in packets of fewer than [20] cigarettes [should this be necessary to prevent the sale of tobacco products to minors].]

[11. Each Party shall [, according to its capabilities,] ensure compliance with paragraphs 8 to 10 above and implement appropriate penalties against sellers and distributors for the violation of measures prohibiting sales of tobacco products to [and by] [persons under the age of 18] / [minors as determined by domestic law].]

[12. Each Party shall take [appropriate legal and other] measures to ensure that no criminal penalties are imposed against [persons under the age of 18] / [minors as determined by domestic law] for [selling or] buying tobacco products for personal use.]

or

[Each Party shall implement appropriate legal and other measures to verify compliance with paragraph 8 above, taking into account the provisions applicable according to national law in case of breaches of law by under-age purchasers and sellers of tobacco products.]



**THIS SECTION IS WELL-INTENTIONED, BUT POORLY REFLECTS THE DIFFERING REALITIES OF PROTECTING YOUTH FROM SMOKING.**

**BETTER TEXT**



8. Each Party shall, to the extent possible within the means at its disposal and its capabilities prevent the sale of tobacco products to underage persons.  
[Delete 9-12]

# I. [MEASURES RELATED TO] / [CONTROLLING] THE SUPPLY OF TOBACCO LICENSING & SUBSIDIES

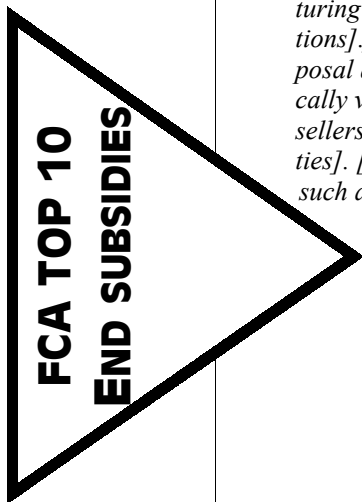


IT IS VERY IMPORTANT THAT LICENSING SYSTEMS APPLY TO ALL POINTS OF THE SUPPLY CHAIN OF TOBACCO — I.E. MANUFACTURERS, IMPORTERS, EXPORTERS, DISTRIBUTORS, WHOLESALERS AND RETAILERS.

[13. The Parties recognize that an effective licensing or registration system for [growers, retailers, manufacturers, importers, exporters, distributors and wholesalers] [the distribution] of tobacco products [is an] [can be one] important mechanism to eliminate illicit trade in tobacco products and to prevent sales of tobacco products to [legal minors]/[persons under the age required in national law]/ [persons under the age of 18].]

[14. Each Party shall [, to the extent possible within the means at its disposal and its capabilities,] adopt legislative, executive and administrative measures to [license all. tobacco-product retailers, manufacturers, importers, exporters, distributors and wholesalers] [exercise efficient control over all tobacco retailers such as by means of a licensing or tax registration system or provide other means to identify and regulate the retail trade in these products].]

[15. [Each Party shall gradually eliminate subsidies, including tax exemptions, loans and rebates, for tobacco growing and manufacturing of tobacco products [, consistent with its international obligations].] Each Party shall [, in accordance with the means at its disposal and its capabilities,] promote, as appropriate, other economically viable alternatives for tobacco workers, growers and individual sellers [, and provide technical and financial support for such activities]. [[International] financial and technical support is required for such a purpose.]]



### POINTS TO CONSIDER:

Both direct and indirect subsidies for the agricultural production of tobacco should be prohibited, in particular in the case of tobacco destined for export.

Subsidies to tobacco farming amount to a “beggar thy neighbour” policy, artificially create a further obstacle to effective tobacco control, and inflate the adjustment costs that will be incurred when global

tobacco consumption begins to decline. Governments cannot, in good faith, aim to eliminate the health consequences of tobacco use throughout the world while simultaneously promoting the cultivation of tobacco.

Any support provided to promote viable alternatives should be directed to alternatives that are feasible, and economically and socially useful.

## J. COMPENSATION AND LIABILITY

*General*

1. Each state party, in coordination with other parties, shall adopt all necessary measures including legislations in order to devise compensation and liability mechanism within its jurisdiction based on the principles set out by this convention. These legislations will define the details of liability and compensation in line with the following principles:

*Liability and compensation for smuggling*

2. (a) Any person who supports, finances or by any other means facilitates the illicit trade in tobacco products shall be subject to criminal punishment including deprivation of liberty and or confiscation of proceeds of crime within the jurisdiction of states parties.

(b) Without prejudice to sub-paragraph (a) legal persons including producers, importers and exporters are subject to civil liability for the harms caused by them as a result of illicit trade in tobacco products on the interest of the states or other companies dealing with lawful trade in such products in the same market.

(c) Parties undertake to hold tobacco product manufacturers responsible for proper and legal final sale of tobacco products they have manufactured and liable for lost excise duties arising from tobacco smuggling or other illegal activities.

(d) The parties shall define appropriate rules and procedures in the field of liability and compensation related to the recovery of lost excise duties arising through tobacco smuggling and other illegal activities.

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**POINTS TO CONSIDER:**

Compensation and civil liability are two important elements of industry accountability. National action in this area is urgently needed.

Criminal investigations, especially at the level of each member state, should be vigorously pursued. At the current time, international instruments for seeking justice through civil action (compensation and liability) and criminal charges are not well-developed.

Strengthening of instruments to

seek international justice is to be encouraged and when such instruments are developed, then international civil actions and international criminal charges should be launched against the tobacco industry. In the meantime, such actions should be vigorously pursued through national justice systems.

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## K. [SURVEILLANCE] / [MONITORING], RESEARCH AND EXCHANGE OF INFORMATION

1. *[The Parties shall establish joint or complementary programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences of [active and passive] tobacco consumption. [To the extent possible,] the Parties shall integrate tobacco surveillance programmes into national, regional and global health surveillance programmes so that data are comparable and can be analysed at the regional and global levels, as appropriate. To this end, each Party, noting the importance of financial and technical assistance from international organizations, shall [in accordance with the means at its disposal and its capabilities]:]*

(a) *establish progressively a national system for the epidemiological surveillance of [active and passive] tobacco consumption and related social, economic and health indicators to be specified in Annex [INSERT];*

(b) *cooperate with the World Health Organization and other relevant organizations, including government and nongovernment agencies in regional and global tobacco surveillance and exchange of information on the indicators specified in Annex [INSERT];*

(c) *cooperate under the auspices of the World Health Organization in the development of general model standards or procedures defining the collection, analysis and dissemination of major surveillance data as specified in the Annex [INSERT].*




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### POINTS TO CONSIDER:

FCTC negotiators, tobacco control experts and the UN Statistical Office should work together to create a list of standard indicators for tobacco control, including the global reporting of tobacco trade and industrial statistics.

Surveillance should not only focus on health indicators but should include a common set of indicators that are more outcome-oriented. In other words, they should encompass indicators that capture the socio-economic consequences of tobacco upon society, and should also provide meaningful information about the economics of the tobacco business and, more

generally, about corporate behaviour. Indicators should also periodically assess (every 4 years) how countries have fared with respect to the implementation of obligations specified within the convention and its associated protocols.

It is imperative that information exchange between countries be facilitated to the utmost possible. This could also be accomplished via a clearing-house type service. Adequate and thorough access to information between governments is crucial towards the control of tobacco smuggling.

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2. The Parties undertake [*according to their capabilities,*] to develop, promote and coordinate [*as far as possible,*] national, regional and global research programmes for the purpose of this Convention. To this end, each Party shall [*take appropriate measures [in accordance with the means at its disposal and its capabilities] [and] [with the cooperation and support of international bodies] to*]:

(a) [*establish an appropriate national system of epidemiological surveillance of tobacco use [build indicators for the surveillance system] and initiate and cooperate, directly or through competent international bodies, in the conduct of research and scientific assessments, as detailed in Annex [INSERT];*]

(b) [*promote and encourage research [to develop surveillance indicators and contribute] / [that contributes] to reducing tobacco consumption and [harm from] / [the harmful effects of] tobacco use [including exposure to [second-hand] smoke.] [particularly in developing countries [and countries with transitional economies]], [taking fully into account the recommendations of the Conference of the Parties [and the evaluation of the impact of programmes designed for the control and prevention of tobacco addiction, and the economic and social impact associated with tobacco consumption, particularly in developing countries], and countries with transitional economies]]] [in cooperation with the World Health Organization and other international agencies];*

(c) [*promote and strengthen [with the support of competent international organizations,] [training and support for all those engaged in tobacco control activities, including research, implementation and evaluation]] / [the training and preparation of multidisciplinary teams to gradually develop surveillance systems, research and programmes of intervention for tobacco control;]*

(d) [*promote and encourage research activities designed to accelerate diversification of alternative crops, especially in developing countries;*]

(e) [*promote research activities on behaviour and attitudes.*]

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**POINTS TO CONSIDER:**

Any international mechanism that supports/facilitates tobacco control research world-wide should be encouraged. It is true that such a mechanism could not function without appropriate funding. However,

the determination of what national funding priorities ought to be should be left up to individual countries.

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## K. [SURVEILLANCE] / [MONITORING], RESEARCH AND EXCHANGE OF INFORMATION (CONTINUED)

THE PROVISIONS OF SECTIONS K, L AND P ARE ALL CLOSELY RELATED—AND ACTUALLY DUPLICATE ONE ANOTHER.

OVERLAP IS PARTICULARLY EVIDENT BETWEEN SECTIONS K AND P. THE SUBJECTS COVERED BY SECTIONS K, L AND P ARE QUITE IMPORTANT. HOWEVER, THE EFFECT OF SPREADING THEM ACROSS THREE SECTIONS WITH CONFUSING, DUPLICATIVE LANGUAGE IS TO GENERALLY WEAKEN THESE IMPORTANT PROVISIONS.

**SECTIONS K AND L SHOULD BE INTEGRATED INTO SECTION P, RENAMED “COOPERATION, INFORMATION EXCHANGE AND IMPLEMENTATION.” THE TEXT SHOULD BE SUBSTANTIALLY REVISED. THE REVISED TEXT SHOULD BE STRONG, CONCISE AND CLEAR.**

3. *The Parties shall promote and facilitate the exchange of [publicly available] scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco, relevant to this Convention. Each Party shall, in accordance with their national legislation, and taking into account and addressing the special needs of developing countries:*

(a) *establish and maintain an updated database of [national and subnational] laws and regulations on tobacco control and enforcement, and cooperate in the development of complementary programmes for national, regional and global tobacco control;*

(b) *establish and maintain updated data from national surveillance programmes [in accordance with Article [INSERT] above];*

(c) *cooperate with international bodies including the World Health Organization to establish and maintain a global monitoring system to regularly collect and disseminate information on tobacco production, manufacture (including additives) and the activities of tobacco corporations which have an impact on the Convention, its protocols or national tobacco control activities.*

**WG2**

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### POINTS TO CONSIDER:

The agreement to cooperate and exchange information (particularly on the activities of the tobacco industry) is an important element of the treaty.

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4. *[Regional and international health organizations should provide technical and financial resources to the secretariat of this Convention to assist developing countries to fulfil their commitments on surveillance research and information exchange. Information to be exchanged pursuant to Article [INSERT] above shall be determined by and provided to the Conference of the Parties.]*

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### POINTS TO CONSIDER:

This specific obligation for WHO and its regional offices could be rolled into another section of the treaty dealing with the relationship between the FCTC and WHO.

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# L. SCIENTIFIC, TECHNICAL AND LEGAL COOPERATION



1. Each Party shall [be encouraged to] cooperate in accordance with its domestic legislation [and international obligations] [and its means], taking into account the needs of developing countries and countries with transitional economies, in promoting, directly or through the secretariat of the Convention or other competent international bodies, the following:

(a) [facilitation of the development, transfer and acquisition of] technology, knowledge, skills and capacity related to tobacco control by other Parties

(b) [provision of] technical, scientific[,legal] and other expertise to establish and strengthen national tobacco control programmes, policies and measures aiming at, inter alia:

(i) assisting in the development of [a strong legislative foundation as well as] technical programmes, including programmes for the prevention of tobacco uptake and for the promotion of tobacco cessation;

(ii) assisting tobacco workers[, particularly in developing countries] [and countries with transitional economies.] who are affected by the implementation of the Convention [,to develop [viable] alternative livelihoods/crops;]

[(iii) assisting tobacco growers [, particularly in developing countries] [and countries with transitional economies.] [who are affected by the implementation of the Convention,] in shifting agricultural production to alternative crops in an economically viable manner;]

(iv) carrying out other activities to achieve the [objective]/[aim/goal] of the Convention and its protocols

[(c) support for the establishment and maintenance of training and educational programmes for appropriate personnel as provided in Article [INSERT] in order to implement the provisions of the Convention in an effective manner;]

[(d) the supply of [necessary] material, equipment and pharmaceutical supplies, as well as logistical support, for tobacco control programmes and activities;]

[(e) the establishment of technical and financial cooperation and of mechanisms to study cost-effective methods for treating nicotine addiction.]

2. The Conference of the Parties shall establish and review a mechanism to promote and facilitate scientific and technical [, and legal] cooperation [with the required financial support].



RE: L1(B):

THE FCTC SHOULD ESTABLISH AN INTERNATIONAL REGISTRY OF PEOPLE WITH TOBACCO CONTROL EXPERIENCE WHO ARE WILLING TO HELP OTHERS WORK TOWARDS STRONGER TOBACCO CONTROL.



RE: L1(B)(II) AND (III)

THE FCTC SHOULD FOCUS ON HEALTH OUTCOMES, NOT TRANSITIONAL PAYMENTS FOR FARMERS AND TOBACCO WORKERS.



RE: L(2)

THE FINANCING MECHANISM IS AN IMPORTANT AND ESSENTIAL PART OF THE TREATY MACHINERY. IT SHOULD BE THOUGHTFULLY AND EFFECTIVELY ESTABLISHED

## M. CONFERENCE OF THE PARTIES

THE FINANCING PROVISIONS ARE VAGUE AND VOLUNTARY (WITH THE EXCEPTION OF M3).

UNDER THESE CIRCUMSTANCES, IT MAY BE THAT ONLY THE CONFERENCE OF THE PARTIES WILL GET FINANCED, AND NOT MUCH ELSE.

1. *A Conference of the Parties is hereby established. The first session of the Conference shall be convened [by the Director-General of the World Health Organization] not later than one year after the entry into force of this Convention. The Conference will determine the venue and timing of subsequent regular sessions [at its first session].*

2. *Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat of the Convention, it is supported by at least one-third of the Parties.*

3. *[Unless it otherwise decides, the rules of procedure of the Conference of the Parties and of any subsidiary body shall be the Rules of Procedure of the World Health Assembly.] [However,] The Conference of the Parties may[, at its first session,] agree upon and adopt by [two-thirds majority vote]/[consensus] rules of procedure and financial rules for itself and for any of its subsidiary bodies.*

4. *The Conference of the Parties shall keep under regular review the implementation of this Convention [and its protocols] and take the decisions necessary to promote the effective implementation of [this instrument]/[these instruments] [and may adopt protocols, annexes and amendments to the Convention, its protocols and annexes in accordance with Article [Development of the Convention]] [and on the basis of scientific evidence]. To this end, it shall:*

(a) *periodically examine the obligations of the Parties[, the operation of the financial mechanism] and the institutional arrangements under the Convention, in the light of its [principles and objective]/ [aim or goals], the experience gained in its implementation, and the evolution of scientific and technological knowledge, as well as [prevailing] socioeconomic conditions[, particularly in developing country Parties];*

(b) *promote and facilitate the exchange of information[, by the most cost- effective and appropriate means,] pursuant to Article [Surveillance, Research and Exchange of Information];*

(c) *facilitate, at the request of two or more Parties, the coordination of measures adopted by them relevant to the implementation of the Convention [and any applicable protocols];]*

(d) *promote and guide the development and periodic refinement of [comparable methodologies], in addition to those provided for in Article [Surveillance, Research and Exchange of Information] and Annexes [INSERT], relevant to the implementation of the Convention [and its protocols];]*

(e) *promote, in accordance with Articles [INSERT] as appropriate, the [harmonization]/ [development and evaluation] of appropriate strategies, plans, programmes, policies, legislation and other measures;]*

WG3

(f) *promote programmes to assist Parties in implementing their obligations pursuant to Articles [INSERT];*

(g) *assess the implementation of the provisions of the Convention [and its protocols] by the Parties, on the basis of information made available in accordance with Article [Reporting and Implementation]*

(h) *consider and adopt regular reports on the implementation of the Convention [and its protocols] and [arrange for their distribution];*

(i) *make recommendations to the Parties, the World Health Organization, other United Nations bodies and other international organizations and bodies[, including international financial and development institutions] on any matters necessary for the implementation of the Convention [and its protocols];*

(j) *seek to mobilize financial resources to support secretariat services pursuant to Article [Secretariat] and to support the implementation of the Convention [and its protocols] in accordance with Articles [Financial Resources; Reporting and Implementation];*

*[(k) [establish such subsidiary bodies as it deems necessary for]/[arrange for the assistance of the WHO secretariat in connection with] the implementation of the Convention and its protocols, review their reports, and provide guidance to them;]*

*[(l) seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent intergovernmental and nongovernmental organizations and bodies as a means of [monitoring activities under]/[strengthening the implementation of] the Convention [and its protocols], verifying the transparency, the reliability and the accuracy of the information;]*

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**POINTS TO CONSIDER:**

The financing provisions of the current draft FCTC are vague and voluntary (with the exception of M3).

With this drafting, it could be that only the Conference of the Parties will get financed, and not much else.

Many of the proposed measures of the FCTC can only be implemented if properly financed, yet the current text is too frequently silent on these activities are to be financed.

Section L contains key provisions for technical cooperation, but no indication of how such cooperation is to be financed.

The global tobacco industry has revenues greater than those of most countries; its products kill 10,000 people per day. This money can be accessed through taxation to fund the FCTC.

See Section “Q” for specific suggestions

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## M. CONFERENCE OF THE PARTIES (CONTINUED)

(m) *exercise such other functions as are required for achieving the objective of the Convention [and its protocols], as well as all other functions assigned to it thereunder.*

(a) *periodically examine the obligations of the Parties[, the operation of the financial mechanism] and the institutional arrangements under the Convention, in the light of its [principles and objective]/ [aim or goals], the experience gained in its implementation, and the evolution of scientific and technological knowledge, as well as [prevailing] socioeconomic conditions[, particularly in developing country Parties];*

(b) *promote and facilitate the exchange of information[, by the most cost- effective and appropriate means.] pursuant to Article [Surveillance, Research and Exchange of Information];*

[(c) *facilitate, at the request of two or more Parties, the coordination of measures adopted by them relevant to the implementation of the Convention [and any applicable protocols];]*

[(d) *promote and guide the development and periodic refinement of [comparable methodologies], in addition to those provided for in Article [Surveillance, Research and Exchange of Information] and Annexes [INSERT], relevant to the implementation of the Convention [and its protocols];]*

[(e) *promote, in accordance with Articles [INSERT] as appropriate, the [harmonization]/ [development and evaluation] of appropriate strategies, plans, programmes, policies, legislation and other measures;]*

(f) *promote programmes to assist Parties in implementing their obligations pursuant to Articles [INSERT];*

(g) *assess the implementation of the provisions of the Convention [and its protocols] by the Parties, on the basis of information made available in accordance with Article [Reporting and Implementation]*

(h) *consider and adopt regular reports on the implementation of the Convention [and its protocols] and [arrange for their distribution];*

(i) *make recommendations to the Parties, the World Health Organization, other United Nations bodies and other international organizations and bodies[, including international financial and development institutions] on any matters necessary for the implementation of the Convention [and its protocols];*

(j) *seek to mobilize financial resources to support secretariat services pursuant to Article [Secretariat] and to support the implementation of the Convention [and its protocols] in accordance with Articles [Financial Resources; Reporting and Implementation];*

[(k) *[establish such subsidiary bodies as it deems necessary for]/ [arrange for the assistance of the WHO secretariat in connection*

*with] the implementation of the Convention and its protocols, review their reports, and provide guidance to them;]*

*[(l) seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent intergovernmental and nongovernmental organizations and bodies as a means of [monitoring activities under]/[strengthening the implementation of] the Convention [and its protocols], verifying the transparency, the reliability and the accuracy of the information;]*

*(m) exercise such other functions as are required for achieving the objective of the Convention [and its protocols], as well as all other functions assigned to it thereunder.*

*[5. The United Nations, specialized agencies of the United Nations [, regional economic integration organizations not parties to the Convention,] nongovernmental organizations qualified in matters covered by the Convention, as well as any State not party to this Convention, may be represented by observers at meetings of the Conference of the Parties, subject to the relevant Rules of Procedure and decisions of the Conference.]*

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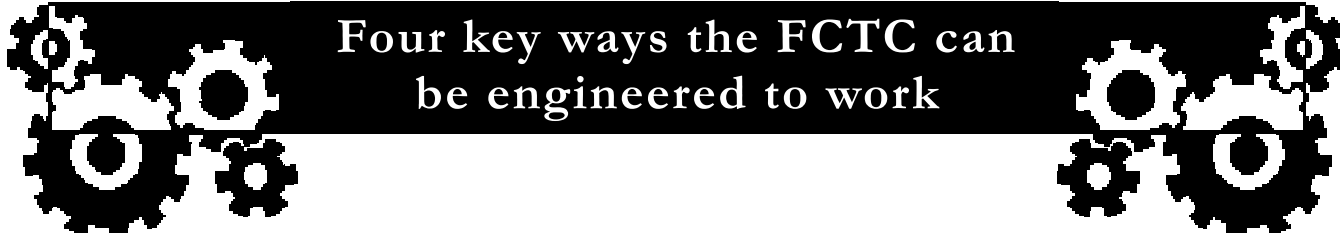
**POINTS TO CONSIDER:**

The institutions that will administer the convention include the Conference of the Parties, WHO and a Secretariat to the Convention, with the Secretariat being provided by WHO. All of these institutions are entirely dependent on member states. As a result, there is no body that is independent of member states, able to undertake demonstrably independent monitoring of functioning of the convention.

Some monitoring functions should be removed from the Conference of the Parties and the Secretariat. A whole new

institution to undertake independent monitoring and dispute settlement should be established to:

- Monitor functions currently assigned to the Conference of the Parties and described in Sections M.4 (g), (h), (i).
  - Oversee reporting currently described in Sections P.1, P.2 and P.3. Reports described in these sections should be sent to both the Global Tobacco Control Committee and the Conference of the Parties.
-



Four key ways the FCTC can  
be engineered to work

# The Treaty Machinery

The FCTC can only improve global health if there is the commitment, the power — and the money — to do the job.

## **F**unding

*The right kind of funding, the right amount — and from the right place*

### ●Obligatory contributions

Funding of the FCTC is too important to be left to the uncertainties of voluntary contributions. All signatories should be expected to contribute, according to their ability to pay. 100% of all budgets should be financed through such obligatory contributions.

### ●Real accountability

The secretariat and all other institutions created by the convention

should be accountable to the Conference of the Parties and to Member States for the responsible and effective disbursement of funds according to planned budgets.

### ●Comprehensive funding

All aspects of the making the FCTC work are equally important. If any one part is under-financed, the whole will cease to function properly. Accordingly, all parts of treaty functioning (from technical and financial assistance to developing countries to treaty administration to monitoring and dispute settlement) should be funded on the same basis, by the same obligatory contributions by all member states.

### ●Make the “polluter pay”

Treaty funding can flow from tobacco industry revenues, through two sources:

- A fraction of revenues from tobacco growing, manufacturing, wholesaling, importing and exporting.
- Setting minimum contributions from each party (proportional to contributions to WHO regular budgets) to safeguard against industry “sheltering” its revenue activities in non-party states.

*Each party should finance its obligatory contributions to the FCTC by offsetting taxes on tobacco industry revenues.*

# Cooperation and Information Exchange

## ●Ensure and facilitate global cooperation.

The FCTC should strongly endorse comprehensive national tobacco control and provide the means to transfer tobacco control technology from those that have it to those that need it.

Lack of resources should be neither reason nor 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 two ways to support the transfer of tobacco control technology and expertise:

- **an international fund**, administered by the convention secretariat
- **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.

## ●Engage and draw on civil society expertise.

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.

# I ndependence

*of monitoring and dispute settlement*

## ●Create an independent body to “mind the minders.”

The Conference of the Parties, the Convention Secretariat and the WHO Secretariat all have legitimate, important roles to play in ensuring the smooth functioning of the FCTC. However, all of these bodies are beholden to Member States. Another independent body is needed to “mind the minders.”

The FCTC can adopt the oversight provisions of the Covenant on Human and Political Rights to protect the FCTC from interference and neglect. This would involve setting up a global tobacco control committee, akin to the Human Rights Committee, to oversee implementation of the FCTC.

If modelled on the human rights treaty, membership on this Global Tobacco Control Committee could include:

- 18-24 members with equal representation from each WHO region;
- Members elected by a vote of member states. Elected members would be drawn from a slate of six names nominated by each WHO regional committee;
- Members elected for a term of four years.

The Committee would:

- arbitrate in the resolution of disputes, and, if necessary to create Dispute Resolution Commissions to resolve disputes that cannot be resolved through arbitration;
- submit reports to the Conference of the Parties, the Director-General of WHO and the Secretary-General of the United Nations.

Members of the Global Tobacco Control Committee will be expected to be knowledgeable, independent, impartial and conscientious.

# C onditions

*to bring the treaty into force*

## ●Start as soon as possible.

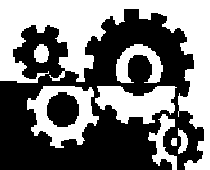
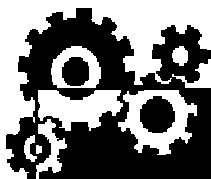
The FCTC should begin to function as soon as ratified by a “small critical mass” of countries.

The size of this “small critical mass” will be a matter of debate and decision among member states, but a threshold of ten or twenty countries could be enough to make it work.

## ● Protect treaty supporters from treaty opponents.

Countries which ratify the FCTC should be allowed to reject tobacco products from countries which refuse to sign on.

Notwithstanding other international treaty obligations, no Party to this convention should be obliged to buy tobacco or tobacco products from non-parties, or to sell them tobacco or tobacco products. This is more than an incentive to ratify the treaty—it’s a way to protect health from products, companies and countries which do not respect international rules.



## N. SECRETARIAT

1. *[The secretariat of the Convention shall be provided by the World Health Organization[, which should make the necessary funds available]]/[The secretariat of the Convention is hereby established. The Conference of the Parties shall at its first session determine permanent arrangements concerning the establishment and operations of the secretariat].*

*[2. The functions of the secretariat shall be:*

*(a) to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;*

*(b) to compile and transmit reports submitted to it pursuant to this Convention [and any of its protocols];*

*(c) to facilitate support to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;*

*(d) to prepare reports on its activities under the Convention [and any of its protocols] and submit them to the Conference of the Parties;*

*(e) to ensure, under the overall guidance of the Conference of the Parties, the necessary coordination with other relevant international bodies;*

*(f) to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;*

*(g) to perform the other secretariat functions specified in the Convention [and in any of its protocols] and such other functions as may be determined by the Conference of the Parties.]*



## O. [RELATIONS BETWEEN THE CONFERENCE OF THE PARTIES, THE WORLD HEALTH ORGANIZATION AND OTHER RELEVANT INTERNATIONAL ORGANIZATIONS [AND INTERNATIONAL FINANCIAL AND DEVELOPMENT INSTITUTIONS]]

1. *The Conference of the Parties may call upon the World Health Organization and other intergovernmental organizations, including the international financial and development institutions, to provide technical and financial cooperation in achieving the objective of this Convention or in connection with questions falling within their mandates arising out of the application of the Convention [and its protocols]. [The Organization shall accord such support in accordance with its programmes and within the limits of its resources], and also help to find extrabudgetary resources for countries that require them].*

*[2. The World Health Organization may, on its own initiative and within its authority, make proposals to the Conference of the Parties.]*

## P. REPORTING AND IMPLEMENTATION

1. *[In accordance with guidelines agreed by the Conference of the Parties and the relevant provisions of this Convention, each Party shall submit to the Conference through the secretariat of the Convention reports [on its implementation of the national programme of tobacco control], [including the following data]/[that might include]:*

(a) *information on measures taken to implement provisions of the Convention [on tobacco control institutions, strategies,] [plans, programmes,] policies, and on legislative and administrative [as well as any additional] measures planned or implemented in accordance with the provisions of Articles [INSERT][, together with information on enforcement, where appropriate];*

OR

(a) *[information on procedures and strategies initiated by each Party and implementing the Convention and its protocols, and on any problems encountered];*

(b) *information on steps taken to carry out actions in accordance with Article [Financial Resources];*

(c) *information available on the [economic, social [and other]] consequences of the various measures adopted to implement the Convention [and its protocols];*

*[(d) information on measures, in addition to those described above, that the Party has taken to implement the provisions of the Convention, on any constraints or barriers encountered in such implementation, and on the measures taken to overcome these and on the effectiveness of such measures;]*

*[(e) description of measures planned by the Party to implement the Convention, including national tobacco control targets;]*

*[(f) [data]/[information] on [tobacco growing] and imported, exported and nationally manufactured tobacco products, and on consumption and smoking rates;]*

*[(g) information available on the health impact of tobacco consumption.]]*

OR

1. *[Each Party shall submit to the Conference, a comprehensive report on national experiences and measures taken in implementation of the Convention. The reporting guidelines shall be established by the Conference of Parties at its first session.]*

2. *[Each developed country Party [and each other Party [already having an established]/[with the intention to establish a] surveillance mechanism [in place]] shall make its initial report within [six months]/[one year]/[eighteen months]/[two years] of the entry into force of this Convention for that Party. Each other Party shall make its initial report within [two]/[four] years of the entry into force of the Convention for that Party.] The frequency of subsequent reports by all Parties shall be determined by the Conference of the Parties[, taking into account the differentiated timetable set by this paragraph.]*

**WG3**

THE PROVISIONS OF SECTIONS K, L AND P ARE ALL CLOSELY RELATED—AND ACTUALLY DUPLICATE ONE ANOTHER.

OVERLAP IS PARTICULARLY EVIDENT BETWEEN SECTIONS K AND P. THE SUBJECTS COVERED BY SECTIONS K, L AND P ARE QUITE IMPORTANT. HOWEVER, THE EFFECT OF SPREADING THEM ACROSS THREE SECTIONS WITH CONFUSING, DUPLICATIVE LANGUAGE IS TO GENERALLY WEAKEN THESE IMPORTANT PROVISIONS.

**IT IS RECOMMENDED THAT SECTIONS K AND L BE INTEGRATED INTO SECTION P, RENAMED “COOPERATION, INFORMATION EXCHANGE AND IMPLEMENTATION.” THE TEXT SHOULD BE SUBSTANTIALLY REVISED. THE REVISED TEXT SHOULD BE STRONG, CONCISE AND CLEAR.**

## P. REPORTING AND IMPLEMENTATION (CONTINUED)

[3. To assist the Conference of the Parties in the [monitoring,] assessment and review of the implementation of this Convention, the Conference may establish a subsidiary body should this become necessary [or may request the World Health Organization to render such assistance], arranging to receive regular reports from such body or the Organization. Guidelines for participation in such a body, as well as its functions, will be determined by the Conference. Persons affiliated with tobacco corporations [or tobacco growing and manufacturing companies], their subsidiaries or agents may not participate in such monitoring body and must disclose their affiliation when appearing before

such body.] The [World Health Organization, in consultation with the] Conference of the Parties shall:

- (a) develop a mechanism for [monitoring]/[assessment] and reviewing the implementation of the Convention and its protocols;
- (b) develop indicators for [monitoring] the progress of such implementations;
- (c) provide information to interested Parties on the progress of implementation by and make recommendations to the Parties based on the best practices applied by other Parties;
- (d) assist the Conference of the Parties in establishing a management information system to be utilized in the monitoring of such implementation.]

[4. In order to provide timely advice in the implementation of this Convention, the Conference of the Parties may, as it deems necessary, appoint [, taking into account the rules and practices of the World Health Organization,] ad hoc panels to provide it with information [and advice] on specific issues regarding the current state of fields of science and technology relevant to the objective[s] of the Convention. The members of these panels shall be appointed by the Conference [on the recommendation of the Director-General of the World Health Organization,] and shall serve in their personal capacity. The Conference shall decide on the terms of reference and the modalities of work of these panels.]

5. Starting at its first session, the Conference of the Parties shall arrange for the provision to developing country Parties [and Parties with transitional economies], at their request, of technical [and financial] support in compiling and communicating information under this Article. Such support [may be provided by other Parties]/ [shall be provided by the financial mechanisms under this Convention] by competent international organizations and by the secretariat of the Convention within its existing resources, as appropriate.

[6. Each Party shall establish or designate one or several agencies to be responsible for gathering and communicating information on surveillance, on research and monitoring and on the technical socioeconomic, commercial and legal aspects of tobacco production and control programmes, and on the progress achieved in implementing all the provisions of this Convention.]

# Q. FINANCIAL RESOURCES

[1. Each Party undertakes to provide financial support and incentives to the developing countries [and countries with transitional economies,] to facilitate their national activities to achieve the [objective]/[aim or goals] of this Convention.]

OR

[1. Each Party which is a developed country and produces and exports tobacco undertakes to provide financial support and financial incentives to developing countries in order to facilitate the implementation of their national activities to achieve the objective of this Convention.]

OR

[1. Each Party undertakes to provide financial support in respect of its national activities intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.]



EACH OF THE FOLLOWING MERIT ASSURED FUNDING THROUGH OBLIGATORY CONTRIBUTIONS:

- STRENGTHENED NATIONAL PROGRAMS
- SCIENTIFIC, TECHNICAL AND LEGAL COOPERATION
- ADMINISTRATION OF THE FCTC
- MONITORING AND SURVEILLANCE OF THE FCTC.

## POINTS TO CONSIDER:

Section Q, the financing section, needs to be strengthened to ensure that funding addresses all forms of convention measures.

Here are the proposed principles for financing:

### OBLIGATORY CONTRIBUTIONS

Funding of the FCTC is too important to be left to the uncertainties of voluntary contributions. All signatories should be expected to contribute, according to their ability to pay. 100% of all budgets should be financed through such obligatory contributions.

### COMPREHENSIVE FUNDING

All aspects of the making the FCTC work are equally important. If any one part is under-financed, the whole will cease to function properly. Accordingly, all parts of treaty functioning (from technical and

financial assistance to developing countries to treaty administration to monitoring and dispute settlement) should be funded on the same basis, by the same obligatory contributions by all member states. Assessments based on ability of each member state to pay

### MAKE THE "POLLUTER PAY"

Treaty funding can flow from tobacco industry revenues, through two sources:

- A fraction of revenues from tobacco growing, manufacturing, wholesaling, importing and exporting.
- Setting minimum contributions from each party (proportional to contributions to WHO regular budgets) to safeguard against industry "sheltering" its revenue activities in non-party states.

## Q. FINANCIAL RESOURCES (CONTINUED)

FINANCING FOR THE  
FCTC SHOULD COME  
FROM **OBLIGATORY**  
CONTRIBUTIONS.

EACH PARTY SHOULD  
FINANCE ITS OBLIGATORY  
CONTRIBUTIONS TO THE  
FCTC BY OFFSETTING  
TAXES ON TOBACCO  
INDUSTRY REVENUES.

THIS IS EASIER TO  
ACHIEVE THAN ONE  
MIGHT THINK:

THERE IS A GROWING  
INTERNATIONAL  
CONSENSUS IN FAVOUR  
OF INCREASING TOBACCO  
TAXES TO DISCOURAGE  
TOBACCO CONSUMPTION.  
THE COST OF FINANCING  
THE MAJOR ELEMENTS OF  
THIS TREATY CAN BE  
OFFSET BY REVENUES  
RAISED THROUGH NEW  
TOBACCO TAXES.

[2. A [voluntary] mechanism, in the form of a multilateral Global Fund, is hereby established, for the provision of financial resources and the transfer and development of sustainable technology on a grant or concessional basis [and without any conditions attached] to developing countries especially for the least developed ones[, as well as to countries with transitional economies]. The Fund shall function under the guidance and supervision of the Conference of the Parties. Pursuant to the objective of this Convention, the Conference shall determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for, access to, and use of, the financial resources, including regular monitoring and evaluation of such use. The Conference shall decide on the arrangements to give effect to this provision after consultation with the World Health Organization, to which the operation of the Fund shall be entrusted. In particular:

**WG3**

[(a) The Fund shall be financed, inter alia, by an export tax on manufactured tobacco products. It shall also be voluntarily financed by Parties and, in particular cases, when so decided by the Conference of Parties, by non-governmental sources.]

[(b) The Fund shall be used to support, inter alia, technology transfer for tobacco cessation programmes, the creation of testing facilities required under the Convention [, and the economic transition of tobacco growers and workers; in particular the Fund shall assist:]

[(i) tobacco workers in the development of viable alternative livelihoods;]

[(ii) tobacco growers in shifting to alternative agricultural crops in an economically and environmentally friendly manner;]

[(iii) victims of tobacco and of tobacco products;

[(iv) any other activity to meet the objectives of the Convention.]]]

OR

[2. The Parties recognize the important role that bilateral, regional and other channels can play in achieving the objective of this Convention, They shall consider providing, in accordance with their capabilities and national law, voluntary funding through such channels for comprehensive tobacco control programmes in support of this objective, taking into account the needs of developing countries.]

3. The Parties recognize the important role that bilateral, regional and other channels can play in achieving the objective of this Convention. They shall consider providing, in accordance with their capabilities and national law, [unconditional] [voluntary] funding through such channels for comprehensive tobacco control programmes [[including actions to develop alternative crops in support of this objective], taking into account the needs of developing country Parties [, as well as of Parties with transitional economies]].

[3bis Regional and international health organizations shall provide technical and financial assistance to developing countries to meet their commitments in respect of exchange of information, surveillance and research as set out in this Convention.]

[4. The Parties recognize that the developed country Parties that export manufactured tobacco products or raw tobacco, or have branches of international tobacco companies exporting or selling tobacco products in third countries, [have a special responsibility to] provide technical and financial support to developing country Parties, as well as to Parties with transitional economies, to strengthen their national tobacco control programmes as well as to diversify to other economically viable options.]/[Countries exporting tobacco undertake to provide financial assistance to developing countries.]

OR

[4. Each Party which is a developed country and exports manufactured tobacco products and raw tobacco, or on the territory of which branches of international tobacco companies are operative, undertakes to provide financial support and financial incentives to developing countries to facilitate the implementation of their national programmes to achieve the objective of this Convention.]

**POINTS TO CONSIDER:**

The FCTC should strongly endorse comprehensive national tobacco control and provide the means to transfer tobacco control technology from those that have it to those that need it.

The FCTC should establish two ways to support the transfer of tobacco control technology and expertise:

- **an international fund**, administered by the convention secretariat
- **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.

**ENGAGE AND DRAW ON CIVIL SOCIETY EXPERTISE.**

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.

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.

## R. SETTLEMENT OF DISPUTES

WG3

1. *If a dispute arises between two or more Parties concerning the interpretation or application of this Convention, those Parties should, unless another mechanism has been established between them, consult among themselves with a view to resolving the dispute by negotiation.*

2. *If the parties to the dispute cannot reach agreement by negotiation within [three]/[six] months, they may jointly seek the good offices of, or request mediation by, a third party.*

3. *Failure to reach agreement by negotiation, good offices or mediation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 or 2 above, it accepts, as compulsory, arbitration in accordance with procedures to be adopted by the Conference of the Parties.*

[4. *If all the parties to the dispute have not, in accordance with paragraph 3 above, accepted arbitration, the dispute shall, unless the parties otherwise agree, be submitted to conciliation. A conciliation commission shall be established as set out in paragraph 5 below at the request of one or more parties to the dispute.*

[5. *Unless the parties otherwise agree:*

(a) *If the dispute is between two parties, each party shall appoint one member of the commission, and the two members so appointed shall [appoint]/[nominate] a third, who [is not a national of either party and] shall serve as chair. If within three months of the appointment of the first member the second member has not been appointed, or within three months of the appointment of the second member the third has not been appointed, such appointment shall be made by [INSERT] at the request of either party;*

(b) *If the dispute is between more than two parties, the parties shall agree on three members of the commission and designate one of these as chair [who shall not be a national of any party to the dispute]. If within three months of the first request for the establishment of the commission no such agreement shall have been reached, the members of the commission shall be appointed and their chair designated by [INSERT] at the request of any party.]*

[6. *Unless the parties agree otherwise, all matters concerning the conciliation shall be determined by the commission, acting by simple majority. The commission shall, within twelve months, render a written proposal for the resolution of the dispute, which the Parties shall consider in good faith.]*

7. *This Article does not preclude the application of the dispute settlement provisions of any other treaty in force between two or more of the Parties in relation to disputes covered by those provisions.*

[8. *In the [case]/[event] of conflict between [this]/[the] Convention [or any of its protocols] and [the application of another] [other] international agreement[s] [to] [concerning] tobacco [such as trade agreements], [the]/[this] Convention shall take [priority]/[precedence] as it aims to protect the health of the people.]*

[9. *The provisions of this Article shall apply with respect to any protocol, unless otherwise provided therein.]*

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**POINTS TO CONSIDER:**

There is no independent monitoring of the implementation of the convention, nor any satisfactory way of resolving disputes. Section R simply calls on member states to resolve disputes between themselves. If they cannot do so third party mediation is recommended. But the member states still have to agree on which third party will be named as a mediator.

Long and good international experience exists with both independent treaty monitoring and institutional means for dispute settlement. Part IV of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1966, entered into force in 1976, creates a Human Rights Committee to carry out both these functions. A key feature of the Human Rights Committee is its independence. The members are to be “persons of high moral character and recognized competence in the field of human rights.”

In addition, “the members of the Committee shall be elected and shall serve in their personal capacity.” Article 38 of the Covenant specifies:

*“Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.”*

A new section of the FCTC should be created that will create a global tobacco control committee. It will incorporate the functions described in Sections M.4(g-i) and P.1-3 in the current draft and the mechanisms and functions described in Part IV of the International Covenant on Civil and Political Rights (See next page 1). As these functions incorporate a superior mechanism for dispute settlement, the new provisions will entirely replace Section R of the Chair’s text.

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## R. SETTLEMENT OF DISPUTES (CONTINUED)

⇒  
**TEXT TO ESTABLISH  
 AN INDEPENDENT  
 GLOBAL TOBACCO  
 CONTROL  
 COMMITTEE CAN BE  
 MODELED ON THE  
 HUMAN RIGHTS  
 COMMITTEE.**

PART IV OF  
 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS  
 ADOPTED AND OPENED FOR SIGNATURE, RATIFICATION AND ACCESSION BY  
 GENERAL ASSEMBLY RESOLUTION 2200A (XXI) OF 16 DECEMBER 1966  
 ENTRY INTO FORCE 23 MARCH 1976, IN ACCORDANCE WITH ARTICLE 49

### *PART IV*

#### *Article 28*

1. *There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.*
2. *The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.*
3. *The members of the Committee shall be elected and shall serve in their personal capacity.*

#### *Article 29*

1. *The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.*
2. *Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.*
3. *A person shall be eligible for renomination.*

#### *Article 30*

1. *The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.*
2. *At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.*
3. *The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.*
4. *Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.*

#### *Article 31*

1. *The Committee may not include more than one national of the same State.*
2. *In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different*

forms of civilization and of the principal legal systems.

*Article 32*

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

*Article 33*

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

*Article 34*

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

*Article 35*

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

*Article 36*

The Secretary-General of the United Nations shall pro-

vide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

*Article 37*

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

*Article 38*

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

*Article 39*

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
  - (a) Twelve members shall constitute a quorum;
  - (b) Decisions of the Committee shall be made by a majority vote of the members present.

*Article 40*

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
  - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
  - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may

be made in accordance with paragraph 4 of this article.

*Article 41 General comment on its implementation*

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a

report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

*Article 42*

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at

*such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.*

*5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.*

*6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information. 7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:*

*(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;*

*(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;*

*(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;*

*(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.*

*8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.*

*9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.*

*10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.*

#### *Article 43*

*The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.*

#### *Article 44*

*The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.*

#### *Article 45*

*The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.*



## *Why should you support global controls on big tobacco?*

Canada was one of the first countries to pass strong laws to control tobacco companies and their products. Now it's time to do something to protect the children of the world from becoming addicted to tobacco.

As the demand for cigarettes is falling in the developed world, multinational cigarette companies are benefiting from globalization to aggressively target developing countries. The result? Every day, 100,000 children start smoking.

Governments and citizens are working together to stop this. Through the World Health Organization, a treaty is now being negotiated to control global tobacco. It's called the Framework Convention on Tobacco Control (or FCTC).

### ***A tobacco treaty is needed. The FCTC can:***

- Protect kids by ending tobacco advertising
- Help developing countries build effective programs and policies
- Save health policies from unfair trade challenges
- Control tobacco smuggling
- Curb tobacco industry marketing practices

We need your support to make sure our government pushes for a strong and effective tobacco treaty. Find out more about how you can help by contacting Physicians for a Smoke-Free Canada.

**Call 1-800-540-5418 or  
visit [www.smoke-free.ca](http://www.smoke-free.ca)**

