

WHF Proposed Position on : Framework Convention on Tobacco Control

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The third round of negotiations on the Framework Convention on Tobacco Control (FCTC) will be held this coming Fall in Geneva (November 22-28). The World Heart Federation (WHF) has been active in both the 1st and 2nd rounds of FCTC negotiations (INB1 & 2). The Federation now has the opportunity to take an even stronger leadership role in global tobacco control during the upcoming negotiations. This could be accomplished by setting a high standard in its advocacy of tobacco control measures and by making regular interventions during the working group sessions.

Notable developments during the second round of negotiations included:

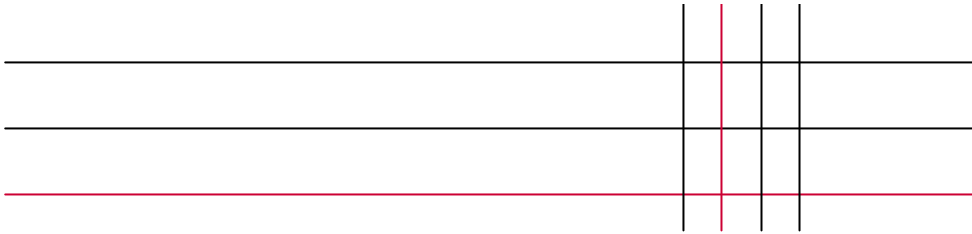
- The African region, which spoke in a unified bloc, was noted for its particularly strong stance in favour of tobacco control measures.
- Other developing countries, such as India, Thailand and Brazil also demonstrated progressive positions.
- Canada, Australia & New Zealand were generally positive in their positioning. It is likely that these countries will strengthen their positions during the upcoming rounds of negotiation.
- Overall, the position of the European Union was weaker than had been expected, although some aspects were positive.
- Japan and the United States were not in favour of a strong FCTC. The US in particular attempted to weaken the treaty by advocating the inclusion of many of the provisions within protocols, rather than within the main body of the treaty.

This paper proposes a series of positions that could be adopted by the World Heart Federation for a number of potential tobacco control measures. Ideally, the WHF position should be framed within the context of cardiovascular disease and should emphasize the role of developing countries.

The measures listed below follow the format of the working group clusters presented during INB1.

Research:

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.



Regulation of tobacco product disclosure:

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. **It is crucial that any regulatory mechanism be product-cycle-based.** Given the exceptionally hazardous nature of tobacco products, it seems clear that the public has the right to make informed decisions, and government's right to regulate in the public interest, should override commercial considerations. In view of the transnational nature of the tobacco industry and its supply chain, this principle should be enshrined in international law via FCTC. Otherwise, manufacturers can be expected to evade reporting requirements by, for example, contesting a country's power to force disclosure of third-party information from a supplier in another country.

Tobacco sales to youth:

Although addressing tobacco sales to youth is hardly a trivial matter, it can best be addressed indirectly through other means. One way in which this could be addressed is by examining how the tobacco industry should be governed. Another important factor is a high price, which is known to have a definite impact upon the ability of youth to purchase and consume tobacco. For this reason a high tobacco taxation policy is imperative (see section on Tobacco Taxes). The elimination of all tobacco advertising is a crucial element for the reduction of youth tobacco consumption, given that youth are particularly vulnerable to advertising (see section on Advertising, Promotion & Sponsorship).

Packaging & labelling:

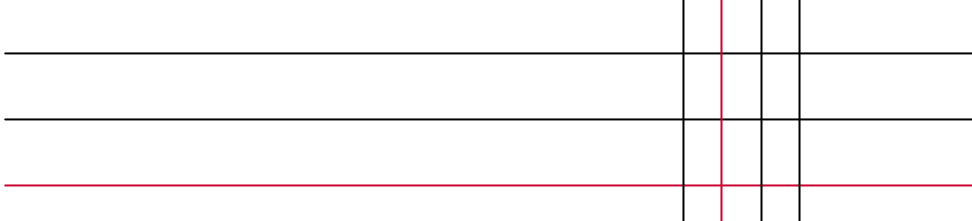

WHF should advocate that **all countries adopt a requirement for package warnings, with minimum standards being set to at least 50% of the exterior package and some picture-based aspect for some of the warnings** (this is useful in countries with low literacy rates). The mechanism for this standard should be implemented in such a way that it is clearly understood to be a minimum standard.

The type of information that could be included within the warnings would be dependant upon the cultural & linguistic context of each country. Within this approach, WHF should also push for an end to the light/mild deception by calling for a prohibition of this concept on all packaging/labelling. See also the section on "Regulation of the contents of tobacco products," below. (Unfortunately, the 2nd round of negotiations saw the US government delegation attempt to weaken provisions proposing a ban on misleading labelling claims such as low-tar, light and mild).

Treatment of tobacco dependence:

It is generally agreed that a truly effective tobacco control strategy must be comprehensive in scope. Smoking cessation is an important component of a comprehensive approach to tobacco





control. The WHF should **strongly encourage initiatives that propose to address the evidence-based treatment of tobacco dependence**. Countries should be strongly encouraged to include treatment programs within their approach to tobacco control.

Media, communications & education:

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. WHF should advocate that countries 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.

Exposure to tobacco smoke:

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 of the convention.

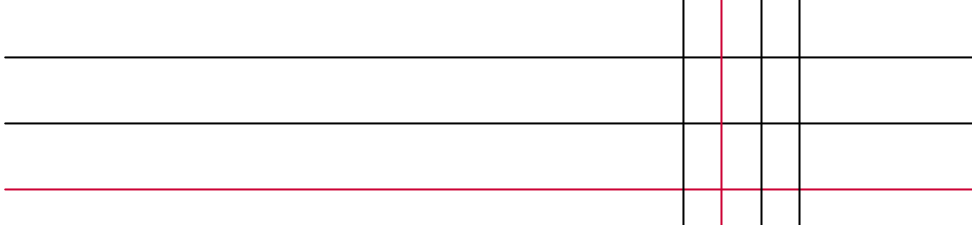

Regulation of the contents of tobacco products:

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 action on this subject by way of a general obligation**.

While product content regulation will likely remain a largely national matter for some time, we suggest the FCTC should include an 'anti-dumping' provision, particularly in view of recent debate in the European Union. The Convention should enshrine the principle that the standards for tobacco products destined for export cannot be lower than the standards for products destined for the domestic market (clearly standards for exported products may, in some circumstances be higher, depending on the rules in effect in the country of import - indeed, given the present debate on standards, it is likely that such a provision would only come into play in cases where the country of import had no product content regulation at all). This prohibition of double standards should apply not only to the content of tobacco products, but also to their design and to rules against misleading labeling.

Moreover, independent countries should explicitly be allowed to adopt their own content regulations in the interests of public health, and such regulations should not be considered grounds for trade sanctions or other commercial measures.

Advertising, promotion and sponsorship:



The overall positioning of many of the developed countries during the 2nd round of FCTC negotiations was quite disappointing with respect to the proposed advertising ban. The United States and Japan were especially notable for their opposition to a ban. The European Union's pro-ban stance was weakened following a court ruling that struck down advertising bans on the grounds that they blocked the free movement of goods and services. This is unfortunate given that an advertising ban has the potential to have a significant and cost-effective impact upon future consumption.

Especially problematic is the youth focus that exists within the advertising section within the draft text of the treaty. It is likely that limiting the focus solely on youth would lead to a misallocation of limited tobacco control resources and render some tobacco control programmes ineffective. This approach has the potential of ignoring the needs of adults.

The WHF should advocate for a total ban on advertising, retail promotion and sponsorship to the extent that is possible within the domestic constitution of respective countries. The **focus should not be restricted solely to youth**. 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 transboundary tobacco advertising is prohibited. No country should be obliged to accept tobacco advertising from beyond its borders. Tobacco advertising that crosses borders is an international problem that demands an early international solution.

Surveillance:

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.

Information Exchange:

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

Tobacco Taxes: tax-free and duty-free sales:

Given that the power of taxation is an essential element of sovereignty, it seems highly unlikely that signatories to the FCTC would accept rigid rules on the appropriate level of tobacco taxes. However, the **FCTC should enshrine the principle that tobacco taxes are an essential element of public health policy and that tobacco taxation should be as high as is reasonably possible - proceeds from taxation should be funnelled back into tobacco control efforts.** The FCTC should also ensure that countries take all reasonable measures to ensure that their national 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).

WHF should call for an **outright ban of tax-free trade in tobacco and tobacco products.** This would involve **banning the retail duty-free sale of cigarettes** (at borders and airports), but more importantly, put an end to the wholesale trade in untaxed cigarettes that is the primary source of contraband. Free-trade zones and bonded warehouses should not be allowed to function as legal suppliers to an illegal and highly damaging black market. Public health and customs organizations should work collaboratively to achieve a complete ban, not only through the FCTC, but also through international customs agreements (a ban on duty free sales was opposed by the United States during the 2nd round of negotiations).

Subsidies:


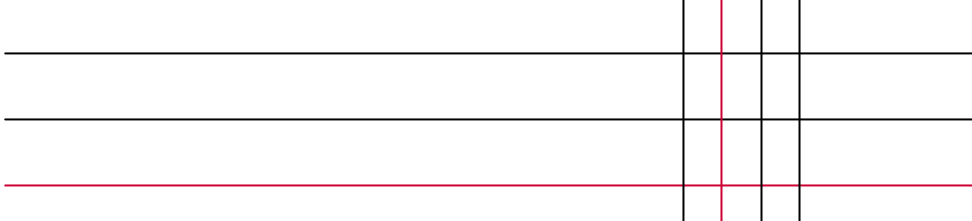
Both **direct and indirect subsidies for the agricultural production of tobacco should be prohibited**, in particular in the case of tobacco destined for export. Subsidies to tobacco farming amount to a "beggar thy neighbour" policy, artificially create a further obstacle to effective tobacco control, 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.

Currently in some countries there is some private industry subsidization of tobacco exports; it is clear that governments should not be involved in this type of activity.

The subsidy issue may be a difficult one for some parties to the FCTC. WHF can play a useful role in negotiations by pointing out that any drop in global tobacco consumption could easily be absorbed by removing incentives for tobacco farming in developed countries.

Measures to eliminate smuggling and other trade-related issues:

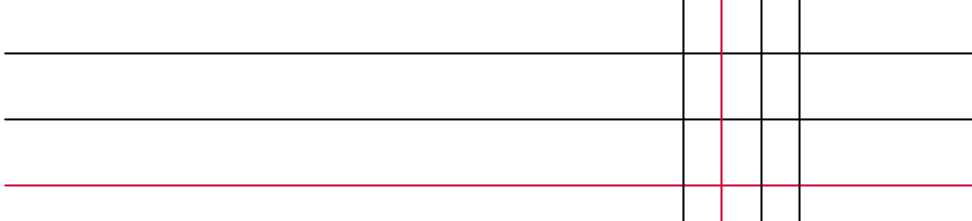

Smuggling can be addressed in a number of ways, including improved collaboration between law enforcement officials across the world and by requiring that tobacco manufacturers undergo mandatory licensing. Some specific counter-smuggling measures that could prove very effective include:

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- The tax-free trade in tobacco products should be eliminated (see above) and signatories should explicitly endorse the principle that any tax harmonization to combat smuggling should be in an upward direction.
 - 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. In the case of merchandise destined for export, this could take the form of a reimbursable export tax, or of bilateral agreements on tax collection between the importing and the exporting country.
 - Until now, manufacturers have generally not been held responsible for what happens to tobacco products once they are sold to a distributor. This has allowed manufacturers to knowingly sell merchandise to distributors who supply the black market. To avoid this problem in the future, signatories to 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 disposal 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. Moreover, national governments retain responsibility for regulating the movement of tobacco products until such products are legally imported and taxed in another country. (This is similar to the language in the Basel protocol on hazardous wastes.)
 - 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.
 - Coordinated aggressive prosecution of cigarette smugglers should take place between countries to crack smuggling rings.

Economic & agricultural transition:

Concerns about economic dislocation in the agricultural sector could emerge as a significant obstacle to an effective FCTC. It is worth noting that these concerns are probably unfounded, at least in the short and medium terms: remarkable progress on halting the spread of the tobacco epidemic would be required to seriously affect global tobacco consumption, given the rapid growth in the world's population. Moreover, eliminating subsidies to First World tobacco cultivation could help absorb any hypothetical glut in global tobacco leaf supply.

The World Bank has expressed scepticism about the usefulness of supply-side measures as a tobacco control strategy, a scepticism we share. However, WHF should not ignore the concerns of tobacco-exporting countries in the Third World. Apart from lobbying on the difficult issue of subsidies, WHF could **propose a fund to assist the transition to alternative crops** — a fund whose creation would be triggered by a precipitous drop in global tobacco consumption



(in absolute terms, not on a per capita basis). Exact criteria would need to be worked out. One could imagine a rule whereby, in the event consumption dropped by more than 5% in a given period, First World countries would be given the choice either of stabilizing the market by eliminating subsidies to their own farmers, or of providing assistance for crop substitution programmes.

Financial mechanism:

There are no more than 20 countries with strong, comprehensive tobacco control programs. Many other countries would be willing to improve comprehensive national tobacco control but lack the necessary expertise, technical knowledge and financial resources. International action is needed to help countries that are without comprehensive national tobacco control measures to acquire them. As such, the FCTC should **establish an international fund to finance the transfer of tobacco control expertise and technology**. Countries in need of assistance to meet their national objectives and international obligations for comprehensive tobacco control could draw on these international banks of money to effectively strengthen tobacco control. Money for such a fund could be offset by tobacco tax revenue collected in countries around the world. From a tactical point of view, the existence of such a mechanism could increase the number of signatories, and thus help deal with other issues (such as smuggling).

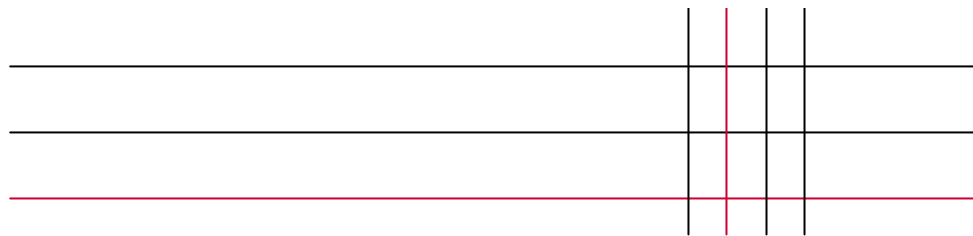
Cooperation in the scientific, technical & legal fields:

The FCTC should **establish an international registry of people with tobacco control experience** who are willing to help others work towards stronger tobacco control. This registry could go a long way towards strengthening comprehensive tobacco control programs in countries without solid tobacco control programs.

Guiding Principles:

One of the most important guiding principles that the FCTC should adopt is the principle that **public health always take primacy over any other objective** (economic or otherwise). The FCTC should aim to protect public health by increasing national sovereignty against the tobacco industry.

Specifically, **public health should be prioritized over trade agreements** that provide national treatment and market access to transnational tobacco companies. In other words, changes must be made to existing treaties, or trade-related provisions should be included in the FCTC, such that international law can acknowledge that tobacco is a threat to public health and that it should thus be excluded from the normal rules of international trade and intellectual property protection. This strategy is in line with existing practices that allow for the development of product-specific trade rules pertaining to harmful or risky products (e.g., weapons, narcotic drugs, psychotropic substances, ozone-depleting chemicals, hazardous waste, genetically modified organisms, persistent organic pollutants, and endangered species).



The above principle was affirmed in a resolution adopted at the recent 11th World conference on Tobacco or Health, where it was resolved that "...the international tobacco control community work vigorously to exclude and remove tobacco and tobacco products from bilateral and multilateral trade agreements that would have negative public health consequences". Language on this issue should be specific enough to ensure the FCTC provides real protection against trade-based challenges to tobacco control measures.

One way to accomplish this is to delete Guiding Principle 5 of the Chair's text; it reads, "Tobacco control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade". Its deletion is crucial, as this principle has the potential to inflict irreconcilable harm upon tobacco control efforts.

To this end, the following intervention, pertaining to the relationship between trade agreements and the FCTC, was made by the International Union Against Cancer and the World Heart Federation during one of INB2 working groups sessions:

"The UICC and the WHF appreciate the opportunity to share our concerns about the need to clarify the relationship between the FCTC and other international agreements. The nations of the world are here to negotiate a framework convention on tobacco because of the unique and lethal nature of this product. This is a product that when used normally, kills one half of its long-term users. Under these circumstances we should recognize that normal trade rules designed to promote expanded trade and its benefit should not apply to this product.

The sovereign rights of governments to protect the public health of their people through strong tobacco control measures should be established beyond doubt. The nations drafting this framework should make it clear in the text that:

- Guiding principle 5 should be replaced with a clause ensuring that the convention takes precedence over other international agreements.
- Signatories to the FCTC must be given the widest possible latitude to design and execute tobacco control measures tailored to the unique social and cultural sensitivities of their populations.
- Nations should agree not to challenge tobacco control measures of other nations nor support the export of tobacco products".

