



This document relates to item 7.4 on the provisional agenda.

Fifth Session of the Conference of the Parties to the  
WHO Framework Convention on Tobacco Control, 12-17 November 2012, Seoul, South Korea

### FCA Policy Briefing

## Cooperation with WTO on trade-related tobacco-control issues

#### Key recommendations:

- The Framework Convention Alliance recommends continued cooperation among the Convention Secretariat, the World Health Organization, the World Trade Organization and other relevant bodies;
- Workshops and training materials on the intersection between tobacco control and trade should be continued and expanded. Uniform whole-of-government approaches to the issue should be encouraged;
- In its ongoing trade-related technical assistance activities, the WHO should document and report on how tobacco industry legal challenges and threats of challenges impede implementation of the FCTC;
- FCA agrees that efforts should be made to help individual governments ensure that tobacco control and FCTC implementation are protected under international trade and investment agreements.

FCA thanks the World Health Organization for the preparation of document FCTC/COP/5/18 titled “Cooperation with the World Trade Organization on trade-related tobacco-control issues”. The intersection of FCTC implementation and trade law was among the most important issues discussed at the Fourth Conference of the Parties in November 2010, and the issue has become more consequential in the ensuing two years. FCA also thanks the WTO Secretariat for its cooperation and public stance that there is no conflict between the FCTC and WTO rules.

FCA is very concerned about the impact of continued litigation and threats of litigation to Parties’ willingness to undertake advanced tobacco control measures, or legal “chill”. This is a particularly cynical form of industry interference and an abuse of a legitimate legal system, which was not envisioned by the framers of the international trade regime. We urge the Convention Secretariat to examine requests for technical assistance in light of the eventual actions of the requesting governments in order to determine the extent to which legal threats dampen Parties’ willingness to proceed with strong tobacco regulation. This information would be important to the Conference of the Parties in determining resource allocation for trade-related activities.

FCA shares the concern over international investment agreements, particularly as many allow direct challenges from the tobacco industry without the intervention of a government sponsor. We agree that efforts should be made to help governments negotiating such agreements to ensure that governments maintain their right to protect public health.

Recalling that the first line of the FCTC declared Parties' determination to give priority to their right to protect public health, the FCA urges WHO and the Secretariat to continue to represent the interests of health over profit. In coordinating with WTO and other entities involved in the international trade legal regime, WHO should focus on ensuring that trade law maintains policy space for strong tobacco control, rather than placing the focus on ensuring that tobacco control measures meet trade standards.

FCA applauds the efforts of the WHO and Convention Secretariats to build the capacity of individual Parties to enhance policy coordination across sectors. We have noted with concern instances in which individual Parties' positions on tobacco control and trade have not been internally homogenous, and urge continued efforts to promote uniformity.

As the level of global understanding of the intersection of tobacco control and trade remains low, even among many governments, FCA congratulates the WHO and Convention Secretariats on their efforts to provide training and materials.

FCA also supports the production of issue-specific fact sheets to guide governments facing threats of legal action by the tobacco industry over planned regulations, and to make such information available on its website. Technical assistance to Parties should also include a referral list for expertise on trade issues available to Parties. This is an efficient method of counteracting tobacco industry tactics to claim that virtually every tobacco regulation violates international trade. Likewise we encourage the continuation of information sharing among Parties facing similar legal challenges.