



This document relates to item 6.5 of the provisional agenda.

FCA Policy Briefing:
Smokeless tobacco

FCA recommendations

- In view of the wide variation in smokeless tobacco products around the world, significant differences in market dynamics and large differences in national regulatory experience, COP5 should neither recommend a specific course of action to Parties nor refer the issue of smokeless tobacco to the Article 9/10 working group.
- However, in countries where harm from smokeless products is significant, individual Parties should seriously consider their regulatory options, based on the best policy and scientific evidence available.
- Parties should consider adopting a declaration reiterating that the provisions of the FCTC apply to all tobacco products, including smokeless products, and that Parties should be free to apply tobacco control and consumer protection laws to tobacco products without interference by the tobacco industry.
- Parties should discuss approaches to international co-operation to improve the availability of data on harmful constituents in smokeless products.

Introduction

Cigarettes make up most of the world market for tobacco products, account for most of the disease and death from tobacco products, and not surprisingly are the focus of most global discussions about tobacco control. However, as the Secretariat report points out, so-called smokeless tobacco products (which include oral and nasal dry and moist snuff) are common in some countries, most notably in South Asia, but also in some parts of Africa, Southeast Asia, Central Asia, Northern Europe and the United States.

There are many different varieties of smokeless tobacco, with wide variation in patterns of use, type of manufacture (industrial or artisanal), marketing, composition and toxicity. Circumstances vary widely between Parties and there remain significant gaps in research and in national regulatory experience.

In South Asia, which accounts for most of the world's use of smokeless products, smokeless tobacco is a major cause of cancer, particularly (but not exclusively) oral cancer. In India and several other countries, use of smokeless products by youth is a particular concern: in the case of India, 16.1 percent of people aged 15-24 use smokeless tobacco, and 40.2 percent of all smokeless users started before the age of 17 years.¹

¹ WHO. GATS India Report, 2009-2010.

Advice from the WHO Study Group on Regulation of Tobacco Products (TobReg)

As the Secretariat's report mentions, TobReg (formerly SACTob) has produced a number of reports on tobacco product regulation, of which two deal with smokeless products at some length.²

It is difficult to summarize the nuanced recommendations in these two reports, but we note that the latter one focuses on content regulation (which is the subject of FCTC Article 9). It states:

The content of smokeless tobacco is substantially less complex than the emissions of combusted tobacco products. Smokeless tobacco contains fewer carcinogens, but some formulations have substantial amounts of some carcinogens common to cigarette smoke emissions (3–6). Differences of several orders of magnitude in the concentrations of carcinogens have been found between products with the lowest levels, which are most commonly marketed in the developed world, and those produced in 'cottage' industries in Asia and Africa. The differences among manufactured smokeless tobacco products used in different regions are more modest, but even within the same region there are substantial differences in products (3). Differences in the content and formulation of the smokeless tobacco products used in different geographical areas might reasonably explain the different health outcomes observed with their use. The disease outcomes indicate a public health benefit of regulation. Regulatory lowering of the concentrations of carcinogens in smokeless tobacco products might reduce the numbers of cancers resulting from their use.³

Despite this recommendation, the Secretariat's summary of Party reports does not mention, nor are we aware of, any examples of Parties that have so far imposed limits on carcinogens in smokeless tobacco products. In the absence of Party experience in implementing the type of regulations on contents mentioned in Article 9, it would be virtually impossible for the FCTC working group on Article 9/10 to make global recommendations on best practices.

Regulatory developments since COP4

FCA notes with great interest the recent regulatory initiatives in India with respect to one type of smokeless product, gutka. Gutka consists of sun-dried, or roasted, finely chopped tobacco mixed with areca nut, slaked lime, catechu and flavourings, and is used by 8 percent of adults in India.⁴ The Supreme Court of India classified gutka as a food product in a 2004 decision, and the Food Safety and Standard Authority of India adopted a regulation in 2011 on the prohibition of any food item containing tobacco or nicotine.

Since then, 14 states and 2 union territories in India have decided to go ahead and prohibit the sale of gutka. Predictably enough, the tobacco industry has challenged the bans in court, and the issue has now been referred to the Supreme Court of India.

Parties should consider reiterating their support for the right of Parties to apply the full force of tobacco control legislation and other consumer protection laws to tobacco products, without interference and delaying tactics by the tobacco industry.

² WHO Study Group on Tobacco Product Regulation. Report on the scientific basis of tobacco product regulation: second report of a WHO study group. 2008; and Report on the scientific basis of tobacco product regulation: third report of a WHO study group. 2010.

³ Ibid (third report), pp. 23-24.

⁴ Global Adult Tobacco Survey India Report 2009-2010.

While other Parties may not be able to adopt the specific approach taken by India (i.e. the use of food safety legislation), the Indian experience demonstrates that there is considerable scope for innovative regulatory approaches in this area.

Parties should further consider reiterating that the provisions of the WHO Framework Convention on Tobacco Control (FCTC) apply to *all* tobacco products, not only to cigarettes. The nature of many smokeless products and the current pattern of use poses an extremely serious problem that warrants application of the full force of the FCTC's measures – in particular those that are most likely to affect usage rates amongst youth, such as Article 6 (tax and price measures) and Article 13 (advertising, promotion and sponsorship). It may also be worth considering extending the principle of Article 16.3 (which involves banning sales of cigarettes in small quantities) to smokeless products.

Finally, lack of data about the level of carcinogens and toxicants in smokeless products is a particular concern in developing countries. Parties are invited to discuss how international co-operation can be used to improve data availability.

Conclusion

Parties that are interested in more effective regulation of smokeless products are encouraged to review recent Indian policy experience, as well as the two TobReg reports cited above and other scientific reports listed in the Secretariat's report.

Because of wide variations between types of smokeless products used and national regulatory frameworks, it is improbable that an FCTC working group would be able to formulate meaningful recommendations on global best practice at present. However, continuing information exchange between Parties could be very valuable.

Parties should also consider a declaration expressing support for India, and for other Parties facing litigation by the tobacco industry, as well as emphasizing that the FCTC's provisions apply to smokeless products and should be applied accordingly.

Parties should discuss approaches to international co-operation to improve the availability of data on harmful constituents in smokeless products.