



INB-6 Friday

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# ALLIANCE BULLETIN

Framework Convention on Tobacco Control

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## A proportional response?

Listen carefully in the corridors of the Palais and you can just hear the whispers of the more than 13 million ghosts killed by the tobacco epidemic since the FCTC negotiations began. That figure is now rising at 4.9 million per year – or one every six and a half seconds.

It is an incredible death toll and it could rise to *one billion* in the 21<sup>st</sup> century on current trends. Cigarettes are the original weapons of mass destruction...and they still have no equal.

Over five trillion cigarettes are unleashed on society each year, addicting and killing millions. What other man-made devices have ever killed so many?

What would be a proportional response to such a problem? When a

billion lives are at risk would it really be excessive to ban the advertising and misleading branding that promotes the trade?



Would it be disproportionate to insist on having warnings covering 50% of the packaging of a product that kills one in two of its long-term users?

Is it really too much to suggest that government shouldn't subsidise it, or give it tax-breaks? Would it be too bold to agree that human health should come before the trade

in this product?

After the danger of asbestos was discovered, the asbestos industry was virtually closed down by litigation and regulation.

In response to tobacco we will...ban ads purportedly targeting children? Ask people to blow their smoke away from those who don't wish to be exposed? Suggest that governments possibly perhaps consider a slight tax increase?

The reason that some NGOs see the text as weak or feeble is simple. Whatever the efforts of the negotiator, the text falls far short of a *proportional response* to the global tobacco epidemic when measured against what is necessary and justified.

## A Historical Moment Slipping By?

During the last few months, the INB Chair and WHO officials have worked to make the Chair's text acceptable to a minority of states, which do not want strong provisions. It is time now for them to start listening to the majority of states, which want a strong FCTC.

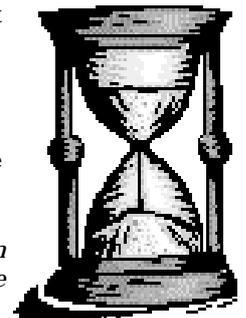
I believe that at the end of next week we will see a text where advertising bans are the norm, and restrictions are saved only for those who value old laws more than new lives.

I believe we will see text where the priority of public health over commercial interests will be seen not only in general obligations, but on every tobacco pack. I believe we will see text

where the rights of non-smokers to clean air will finally take precedence over the "rights" of smokers to pollute the air.

Time is running out. We must act now, and act strongly, to ensure that the FCTC fulfills the role for which it has been designed, rather than simply becoming a text so weak as to be palatable only to those who are the least likely to ratify it.

- Konstantin Krasovsky, Ukraine



## DEATH CLOCK

Since the opening of the first working group for the Framework Convention on Tobacco Control on 25 October 1999,

**13,384,440** people have died from tobacco-related diseases.  
(At 9 am 21 February 2003)

Today's Weather: Scattered Clouds  
High 8 °C Low -2 °C

# International Trade and the FCTC: We Can Do Better Than Silence

One of the biggest challenges facing negotiators is defining the relationship of the FCTC to other treaties, especially WTO and other trade agreements. This is also one of the major areas in which the revised Chair's text rejects the views of a substantial majority.

Over the past few days, SEARO, AFRO and WPRO have presented a united front in renewing demands that concern for public health should take precedence over tobacco trade interests, and that trade agreements should be interpreted in a manner consistent with the FCTC.

This position has gained more strength as China and other nations have added their support. Apparently only a few nations oppose this position.

What "health over trade" advocates are proposing is that the FCTC comes down on the side of protecting health by minimizing the possibility that hard-won tobacco control measures will be subjected to trade challenges by countries where the multinational tobacco companies are headquartered.

Those who support silence on this issue, as the Chair's text does, contend that there probably will not be conflicts between the FCTC and trade agreements. This is plainly wishful thinking.

The tobacco industry has already threatened to use trade laws to challenge measures being considered in the FCTC, includ-

ing bans on misleading descriptors such as "light" and "low tar". Over time, as the FCTC develops protocols, trade-related legal challenges are a virtual certainty.

Those who oppose "health over trade" language say that such language could allow a nation to protect domestic tobacco interests through measures "disguised" as tobacco control laws.

No one in the public health community is proposing that discriminatory measures which do not benefit public health should be protected by this treaty.

All that is being suggested is

health measure (a ban on chrysotile asbestos) has fully survived scrutiny, and that only after years of arbitration and appeal. In practice, most trade panels have resolved uncertainty in favor of international trade interests.

While the careful balancing required by Article XX(b) is appropriate for beneficial products, it is not adequate to address the dangers posed by the world's most addictive and deadly consumer product.

The FCA favors a clear statement reinforcing the right of parties to prioritize public health

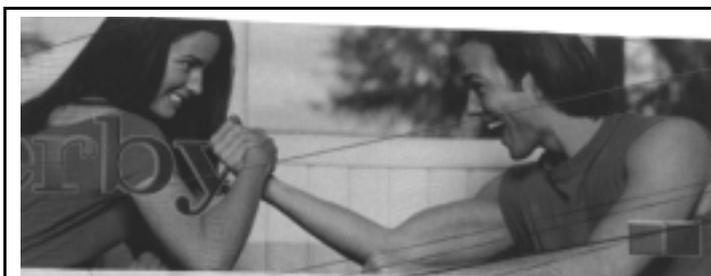
measures and expressing the parties' intent that other agreements be interpreted in a manner consistent with the FCTC.

More than three years hard work has gone into this treaty. The tobacco companies and allied governments have op-

posed strong substantive provisions from start to finish. Once the FCTC is complete, we should not leave the door open to trade challenges to vital health measures.

We are confident that with persistence and creativity, delegates will agree on language that protects legitimate tobacco control measures from tobacco industry legal attacks.

- John Bloom  
and Ira Shapiro



A Costa Rican billboard reminds us of the danger of being strong-armed by the tobacco industry.

that legitimate tobacco control measures—those reasonably expected to save lives—should not be undermined or rejected due to a strict interpretation of existing trade rules.

Opponents of "health over trade" language say that current trade rules offer all the protection needed for tobacco control. But the strongest protection offered for public health in any major trade agreement—Article XX (b) of the General Agreement on Tariffs and Trade—has been construed so that only one

to implement a total ban, and the more countries that do so, the more effective global tobacco control will be. This is based on present evidence about what works in tobacco control."

## More from the DG on Tobacco Advertising

Following our short interview published in yesterday's Bulletin, Dr. Brundtland has confirmed that "the reasons behind choosing a broader basis in the Chair's Text on advertising, were the number of countries raising ob-

jections to a total ban due to constitutional and other issues, and that we need to see what countries will be ready to agree on."

The Director-General believes that "many countries will choose

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## Article 26:

# Development Funding for Tobacco Control

"The global fund" is a defining issue in the negotiations. How can developing countries and economies in transition access development assistance to build the tobacco control capacity necessary to meet the objective of the FCTC?

A "global fund" really consists of two main elements: firstly, development assistance in the form of financial resources, technology, and/or expertise; and secondly, some mechanism for channelling it from the donors to the recipients. A mechanism with no resources is as useless as resources that are squandered through a poor mechanism. We have to get both right.

The European Union has provided some interesting ideas in this area and hosted a high-level round table with the World Bank and WHO to exchange views\*. This approach bears careful consideration:

- It is embedded in a wider development agenda. This emphasises poverty reduction, with sector programmes in health and education and sustainable rural development.
- It is led by demand from partner countries and national ownership of policies. The EU assistance is not determined by the EU, but is based on demand from the partner country expressed through policy dialogue. Though the EU is responsible for over half (55%) of the world's Overseas Development Assistance (ODA) it has not so far received requests for tobacco control assistance – but that would change following signing of the FCTC.
- It is open-ended. The EU's aim is to increase its ODA to 0.39% of gross national income, adding €7,000 million per year to its ODA expenditure.
- It can start now, possibly with support for the work necessary to allow ratification. It is not dependent on entry into force of the FCTC, or decisions of the COP.
- It potentially includes agricultural diversifica-

tion and may therefore be able to assist states particularly dependent on growing tobacco. One of the EU's six development priorities is "*food security and sustainable rural development strategies*".

- It includes looking for opportunities for supporting increased partnerships between European NGOs and their sister organisations in developing countries. This allows for a broader civil society approach as envisaged in Article 4.7 of the Chair's text.

The EU's philosophy is to include tobacco control in its wider development processes using the connections and channels it already has with governments.

The alternative approach could create a new mechanism, but it may be limited in funding and scope, unlikely to include support for agricultural transition, operate outside the established ODA connections...and create a new bureaucracy that will consume some of the available funds (reflecting unhappy experience of the Global Fund for HIV, TB and Malaria).

The main advantage of a new mechanism is that it makes the committed resources more visible, even if they are less and more limited in scope. To address this underlying concern, the EU and other donors need to build the credibility of their approach and confidence that ODA really will flow to tobacco control.

The EU also stresses the importance of trade and development, and of macro-economic development policies, but its credibility with developing countries suffers while it still subsidises EU tobacco growers with almost €1,000 million each year. The EU needs to demonstrate its good faith by reinstating language on subsidies in the FCTC.

- Clive Bates, ASH-UK and

Yussuf Saloojee, NCAS, South Africa

\* see *Tobacco Control in EC Development Policy* (available in the hall)

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## Slovenia: Getting It (Almost) Right

In 1996, Slovenia adopted the Restrictions on the Use of Tobacco Products Act, which includes a ban on tobacco advertising and sponsorship, more visible health warnings on packets, and restrictions on smoking in public places and workplaces.

The Act has been challenged by the tobacco industry at the Constitutional Court, which decided in favour of health protection. Further amendments to the Act were adopted in December 2002, which includes stronger health warnings and a ban on misleading descriptors such as "light", "low tar", and "mild".

The new health warnings consist of a warning on the front side of the packet stating either "Smoking kills" or "Smoking can damage your health and the health of people around you", covering not less than 30% of the surface. Warnings on the back of the pack

must cover not less than 40% of the surface, and use of 14 warnings rotationally. While more and pictorial would be better, the current warnings are an improvement over the previous situation.

Slovenia is one of five countries in Europe in which less than 25% of the population smokes. Smoking prevalence decreased from 34% in 1988 to 24% in 1999. Most of the decline has happened in the last decade, when modern and restrictive legislation was introduced in 1996, a big success due to a joint effort of civil society, public health workers, the Ministry of Health, and several parliamentarians.

It is time for strong laws for tobacco control to become the norm, not the exception.

- Tomaz Caks

# Tobacco Litigation:

*When a Los Angeles (USA) jury recently assessed \$28 billion in punitive damages against Philip Morris, the tobacco control community cheered. The jury calculated that only one in 28,000 Californians who have suffered from tobacco-caused disease ever sues, so to make Philip Morris confront the real cost of its misbehavior, they multiplied a typical \$1 million compensatory damage award (for medical bills, lost wages, and pain and suffering) by 28,000. Bravo! Even though the trial judge subsequently reduced the award to \$28 million, that sum is still enough to encourage thousands more suits to be filed.*

## Achievements so far

What has litigation achieved for tobacco control? The millions of documents obtained in US litigation have revolutionized tobacco control research and advocacy.

The documents reveal an amazing variety of tobacco industry misconduct, including targeting children, deliberately misleading scientists, politicians, and customers about the lethality and addictiveness of their products, and conspiring with smugglers and money launderers around the world.

### Stopping Illegal Ads in Bangladesh

Imperial Tobacco (Bangladesh) Limited recently ran an advertising campaign in which people could join a lottery to win a plane ticket to London. Advertising campaigns using lotteries are illegal in Bangladesh.

In response to a writ petition filed by anti-tobacco groups, the Court issued an order to stay all promotional/advertising campaigns by Imperial Tobacco for months.

In addition to the lottery aspect of the campaign, the main thrust of the argument was that Imperial Tobacco (BD) Ltd. has been conducting promotional activities of its product in violation of fundamental rights, e.g. the right to life, and that no action may be taken detrimental to life.

— Syed Mahbubul Alam

Large verdicts in tobacco cases made possible by the documents have added to the industry's confusion and loss of legitimacy. When juries repeatedly award punitive damages in the millions or billions of dollars, people get the message that this industry is no longer being regarded as a law-abiding member of the community.

The settlements of the US cases have added about \$10 billion/year to the industry's costs, forcing substantial price increases that have contributed to dramatic declines in U.S. smoking rates. Publicity about industry stratagems to recruit teenage smokers has also probably contributed to record declines in smoking among minors who do not appreciate being manipulated.

### A Shock to the Industry in Niger

The tobacco company SITAB, which is part of Imperial Tobacco, recently organized a huge concert with the very popular reggae musician Alpha Blondy.

SITAB launched a huge promotion campaign before the concert, using it as an excuse to promote its brands heavily on radio and television.

The NGO SOS Tabagisme-Niger took SITAB to court—and won. The court demanded an immediate stop to the promotional campaign, which violates Niger law. The tobacco industry, which believed itself nearly invulnerable in Africa, thus faced a stunning defeat.

— Inoussa Saouna

While only a small proportion of the money received from the settlements has been spent as promised on tobacco control programs, that is nonetheless much more than had been spent previously.

“Public interest” litigation brought by NGOs in India and Uganda has produced judicial orders requiring that public places be smoke free, while such litigation in Bangladesh and Mali have resulted in injunctions against illegal tobacco industry marketing practices.

(continued on next page)

### Protecting Non-Smokers in India

On November 2, 2001, the Supreme Court of India issued a landmark judgement banning smoking in key public places throughout the country. The ban, issued in response to a writ petition, includes public places such as auditoriums, hospital buildings, health buildings, educational institutions, libraries, court buildings, public office and public conveyances including railways.

Additionally, the judgement called on the National Government to pursue legislation to this effect, and directed the States to implement it immediately. Kashmir, Andhra Pradesh and Maharashtra are among the States that responded and subsequently banned smoking within their jurisdiction through individual state ordinances and laws.

— Shoba John

# A wealth of benefits

## Future potential

What can be expected from additional litigation?

While a tobacco executive who only has to worry about legislation and regulations can target children, deny smoking causes disease, or pretend that "light" cigarettes are safer than ordinary ones, the possibility of civil remedies makes all these activities problematic. The executive must ask himself how an angry jury five or twenty years hence will regard his conduct.

There are many areas of tobacco company misbehaviour that are only beginning to be explored.

The "light" cigarette scam, smuggling and money laundering, ingredients that increase addictiveness, the companies' ability to make less toxic or incendiary cigarettes that would be acceptable to smokers, are all areas where focused discovery in cases raising these issues might produce detailed information.

Tobacco litigation is still relatively rare out-

side the US. The rest of the world has barely begun to experience the benefits that flow from tobacco litigation

Public discussions about tobacco lawsuits, which educate the public about smoking-caused addiction and disease, happen most intensively when the lawsuit is local. Cigarette price increases to cover litigation and settlement costs, and settlement-based funds for tobacco control, only occur in countries that have been directly affected.

Current precedents applying legal and constitutional provisions to limit tobacco advertising and smoking in public places can be invoked in many more countries, and provisions protecting the rights of children might be used to limit the distribution of cigarettes by and to minors. After all, the movement by NGO's to use public interest litigation to achieve tobacco control goals is just beginning.

- Richard A. Daynard, JD, Ph.D.

## Redefining Promotion of Smoking in Hungary

On February 3, 2003 the Court of the Capital City Budapest (Hungary) ruled that billboards depicting smoking individuals can no longer be considered lawful.

In early 2002, billboards presenting the latest CD of a popular singer and heavy smoker, nicknamed Charlie, were displayed in the capital city. The National Smoke-free Association (NSFA) called for an investigation by the Consumer Protection Agency (CPA), claiming this advertisement is unlawful.

The NSFA stated that the ad infringed both the 1999 law protecting the rights of non-smokers by presenting a well known artist smoking a cigar, and the 2000 law ban-

ning advertising of tobacco. The CPA decided that the ad was legal, since it does not promote a given tobacco product.

The NSFA sued the CPA over its decision, and won. The Court rejected CPA's argument that only advertising of a particular tobacco product is prohibited by the law. The Court ruled that such narrow interpretation of the law is against the will of the law-makers.

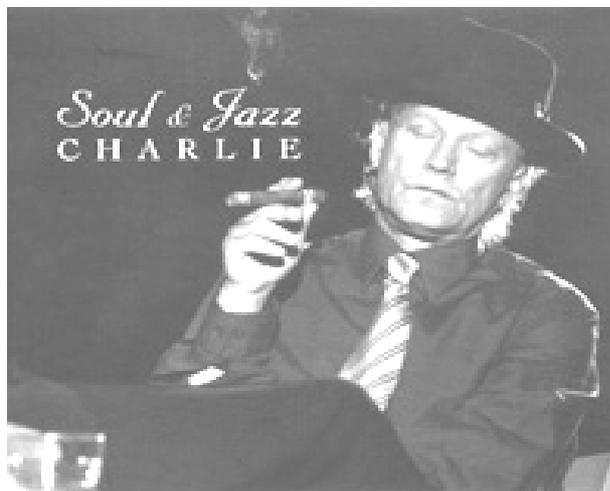
The Court reiterated that the Hungarian Constitution secures the right to health of every individual, and the advertisement in question is able to stimulate the consumption of tobacco products. The Court argued that presenting a smoking artist also negatively influences the physical, psychological and moral development of children, which again, is against the intent and scope of the advertising law.

This decision is important for a couple of reasons. It provides precedent for Court cases on the publication of illegal tobacco advertisements. It is the first Court decision in Hungary which proclaimed illegal the advertisement of a non-tobacco product because it depicted a smoking individual.

Further, it gives an impetus to efforts aimed at making tobacco consumption an unfashionable and unacceptable behaviour and, hence, at decreasing the social acceptance of smoking.

The Hungarian case demonstrates that litigation can become an important tool in the hands of the anti-tobacco community in their attempt to decrease the social acceptance of smoking.

- Tibor Szilágyi, MD





## International Treaties the US Has Not Ratified

EXAMPLE 3:

### The Landmine Ban Treaty

Date Adopted: March 1, 1995

The Landmine Ban Treaty is often lauded as one of the

most successful human rights treaties, due in large part to the negotiating process, in which a core of two dozen small and medium countries drove the process, including Canada, South Africa, New Zealand and Germany.

When the majority of countries are united, opposition from the U.S. can be overcome. Appeasement does not work.

## Pass a Strong FCTC, Save Georgia!

What happens when tobacco control law remains weak? In Georgia, rates of smoking among youth and young women have increased triplefold (300%) since 1985. Data from 2001 show that 51% of men and 20% of women use tobacco. Each year, 11,000 Georgians die from smoking, which includes 3,000 deaths from passive smoking. A further 240,000 people fall ill from smoking. Yet the population of Georgia is only 4.5 million.

Why is tobacco use in Georgia so high? First is the low price of cigarettes: about \$0.50 US per pack. Taxes remain quite low, and cigarettes are commonly smuggled into Georgia through Turkey and Russia. Smuggling in Georgia remains such a huge problem due to corruption in customs and tax bodies, and weakness of the administration.

Meanwhile, warnings cover only 6% of the packs. Attempts by the government to ban all forms of tobacco advertising have to date been foiled by delaying tactics of the industry.

The average Georgian smoker would spend about

US\$160 per year on cigarettes, or about \$272 million for the population as a whole. Based on that figure, the tax revenue should be about \$90 million, but is in fact only \$18 million, with the rest being lost due to smuggling and corruption.

Meanwhile the government spends about \$18 million—or the total figure of tax revenue—treating tobacco-related diseases. This fails to take into account the other costs, economic and social, of illness and loss of life due to tobacco use.

It is clear that the fight against tobacco should be a priority state policy. We are preparing a case against the tobacco industry. We are requesting the government to pass a special tax which will be used for public health. Finally, we are calling on delegates internationally to pass a strong FCTC that will help us in Georgia to win our exceedingly difficult battle against the tobacco industry, in favour of public health.

- Dr George Bakhturidze

Coordinator of Tobacco Control Alliance in Georgia

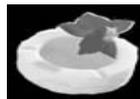
### Clarification: Russia on Health vs. Trade

Professor Rafael Oganov, head of the Russian Delegation, believes that we have completely misunderstood his country's position on "trade vs. health".

He is pleased to confirm that Russia actually supports health over trade, and we are delighted to correct this misunderstanding.

### Orchid Award

**Saudi Arabia**, for ensuring a smoke-free Hajj (pilgrimage to Mecca) for 3 million people.



### Dirty Ashtray Award

**UN & WHO**, for forcing us to breathe smoky air while debating a tobacco control treaty.



## FRAMEWORK CONVENTION ALLIANCE

The Framework Convention Alliance (FCA) is an alliance of NGOs from around the world working to achieve the strongest possible Framework Convention on Tobacco Control. Views expressed in the *Alliance Bulletin* are those of the writers and do not necessarily represent those of the sponsors.

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