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EVENTS

WEDNESDAY, 14 NOV. 18:15-19:50 FCA AND ITS MEMBERS WILL LAUNCH A VARIETY OF REPORTS ON TOBACCO CONTROL ISSUES. ROOM TO BE CONFIRMED

DEATH CLOCK

SINCE THE OPENING OF THE FIRST WORKING GROUP FOR THE FRAMEWORK CONVENTION ON TOBACCO CONTROL ON 25 OCTOBER 1999

62,922,259

PEOPLE HAVE DIED FROM TOBACCO-RELATED DISEASES. (AS OF 9AM SEOUL TIME ON 13 NOVEMBER 2012)

THE ROAD TO ARTICLE 6 GUIDELINES

Tobacco taxation is a crucial but often neglected aspect of tobacco control, and COP5 offers a golden opportunity to ensure more Parties use taxation more effectively.

We head into Committee A today with draft Article 6 Guidelines that, while not perfect, can be made ready for adoption by the end of the week. The key ideas are already included in the draft; what is needed now is some simplification and clarification.

A complete set of recommended improvements – including specific text of proposed amendments – is found in the FCA side-by-side document for the Article 6 Guidelines. Some of the recommendations are outlined below.

Simplification of discussion on taxation structures

A core section of the draft Guidelines discusses different tax structures, such as specific taxes (eg US\$1 per pack), ad valorem taxes (a percentage of the price) and mixed systems. In FCA's view, the discussion relies too heavily on the experience of the European Union. FCA recommends that much of the EU-specific paragraphs be deleted as they are not appropriate for global guidelines. The EU has an enviable record on tobacco taxation, but that does not mean that its particular policy approach is appropriate as a global standard.

The WHO recommends that tax structures be kept as simple as possible and that, where possible, uniform specific taxes (same value of tax is applied to all cigarettes) result in the best tobacco control outcomes. This system is easy to administer as tax administrators only need to ascertain the quantity of product and not the value, which can be manipulated.

In FCA's view, the policy advice with respect to tax structures should be shortened and simplified, and should recognize that on balance, specific taxes on cigarettes (and other tobacco products sold by the stick) are to be preferred for

most situations. Parties with exclusively ad valorem systems should consider, as a first step, adding a specific component.

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DG ON TOBACCO INDUSTRY



Photo by Geoff Fong

WHO Director-General Margaret Chan gave a blunt yet inspiring speech at Monday's Opening Ceremony, including this excerpt: "As we know from experience, the tobacco industry will challenge the best science, promote arguments that have nothing to do with the facts, and fund front groups to give these arguments a cloak of legitimacy. This industry will lobby lawmakers, woo the press and, now, fund plaintiffs to challenge legislation. In a recent and most disturbing trend, the showdown between governments, seeking to safeguard the health of their citizens, and industry, seeking to maintain its profits, has moved to the courtroom."

EUROPEAN STUDY SHOWS ILLICIT TRADE NOT DIRECTLY RELATED TO PRICES

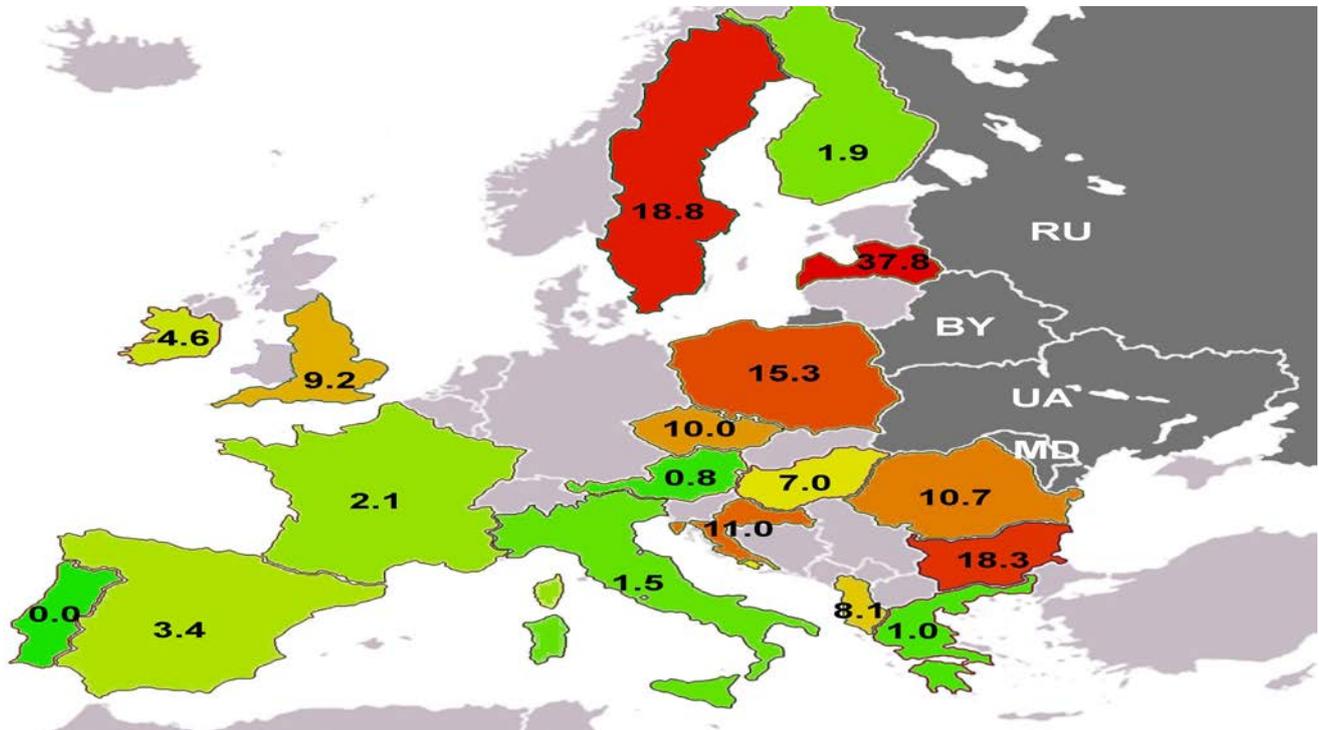


Figure 1: Prevalence (%) of illicit packs for cigarettes and hand-rolled tobacco in 18 European countries. Countries are colored on a continuum according to the relative ranking of illicit tobacco packs (red=highest, yellow=intermediate and green=lowest). PPACTE, 2010. Numbers represent the percent frequency of illicit pack smokers among all smokers in each country, computed weighting each country in proportion to the country specific population aged 15 years or over. BY = Belarus; MD = Moldova; RU = Russia; UA = Ukraine.

Results of the largest independent study yet undertaken of the illicit tobacco trade in Europe reveal that the trade is not directly related to tobacco prices. Specifically, the research found that smokers from countries where a 20-cigarette pack of Marlboro costs less than €3 (\$US4) are more frequently cigarette tax evaders, but multi-level analysis failed to find statistically significant differences. Even once price was adjusted for cigarette affordability, no significant relation was shown with identification of an illicit pack (IIP).

Transparent, public data on illicit tobacco trade is limited and, in many countries, non-existent. The rare available data is often based on information provided by the tobacco industry, which has an incentive to exaggerate the size of smuggling in order to lobby against tobacco tax increases or other tobacco control policies. Within our project, Pricing Policies and Control of Tobacco in Europe (PPACTE), we collected data in 18 European countries in order to estimate the size of the illicit trade in those countries, validating self-reported information on illicit trade with observational pack data*. In so doing, we address an important gap in knowledge.

To our knowledge this is the largest

independent survey on illicit trade undertaken in Europe to date. Data was derived from a face-to-face survey conducted between January and July 2010 in 18 European countries, using standardized methods. For each country, around 1,000 subjects, representative of the population aged 15 and over in terms of age, sex, habitat and socio-economic characteristics, were enrolled. Current cigarette smokers (N= 5114) were asked to show their latest purchased pack of cigarettes or hand-rolled tobacco.

A comprehensive measure called Identification of an Illicit Pack (IIP) was used to study the extent of illicit trade, defining a pack as illicit if it had at least one of the following tax evasion indicators:

- It was purchased from illicit sources, as reported by smokers;
- It had an inappropriate tax stamp;
- It had an inappropriate health warning;
- Its price was substantially below the known price in the smoker's market.

The tobacco industry claims that high cigarette taxes drive smuggling, and has argued to governments, sometimes successfully, that they should not increase tobacco taxes because this will increase illicit trade. Our data show that other

factors are at work. These include the ease and cost of operating in a country, industry participation in illicit trade, how well crime networks are organized, the likelihood of being caught, the punishment if caught, and corruption levels.

Our data also show that illicit trade is more frequent in countries with a land or sea border with Ukraine, Russia, Moldova or Belarus, which are major suppliers of cheap and illicit cigarettes. These findings provide support to the 2011 European Commission action plan to fight smuggling of cigarettes and alcohol along the EU eastern border. This action plan reports that Eastern Partnership countries, in particular Moldova, Ukraine and increasingly Belarus and Russia, are major sources of illicit cigarettes and alcohol in the European Union, and this trend appears to have increased in 2010.

Our findings suggest therefore that the supply of illicit cigarettes is an important contributing factor to tax evasion.

Luk Joossens, Tobacco Control Expert, Belgian Foundation against Cancer, Association of European Cancer Leagues, Brussels, Belgium.

* Joossens L, Lugo A, La Vecchia C, Gilmore A, Clancy L, Gallus S, Illicit cigarettes and hand rolled tobacco in 18 European countries: a cross-sectional survey.

Tobacco Control, 2012, expected online 14 November.

IMPLEMENTING PACKAGING AND LABELING REFORMS

The lunchtime seminar showcasing three success stories in implementing packaging and labelling reforms under the FCTC—Australia, Uruguay, and Mauritius—provided important insights for all Parties, regardless of their stage of implementation of Article 11.

Under Australia's legislation, plain packaging is in fact anything but plain—dramatic pictorial warnings occupy 75% of the front face and 90% of the back of packs, leaving the industry with the ability to print only the brand name in a mandated font on a drab brown background. Of note is the fact that the plain packaging reforms extend to other tobacco products besides cigarettes, including single cigars and loose leaf tobacco. Health Minister Tanya Plibersek emphasized that the strength of opposition from the tobacco industry “confirms that they are very, very worried about losing these mobile billboards.” Her advice to Parties is that with planning, community engagement, and a whole-of-government approach, interference from the tobacco industry can be overcome.

The novel approach undertaken by Uruguay merits consideration. As Health Minister Dr. Jorge Venegas explained, smokers do not identify themselves with the images of those suffering from a tobacco-caused disease. Health warnings need to not only convey a visual impact but also challenge smokers to think of tobacco use itself as a disease, not just a cause of

other diseases.

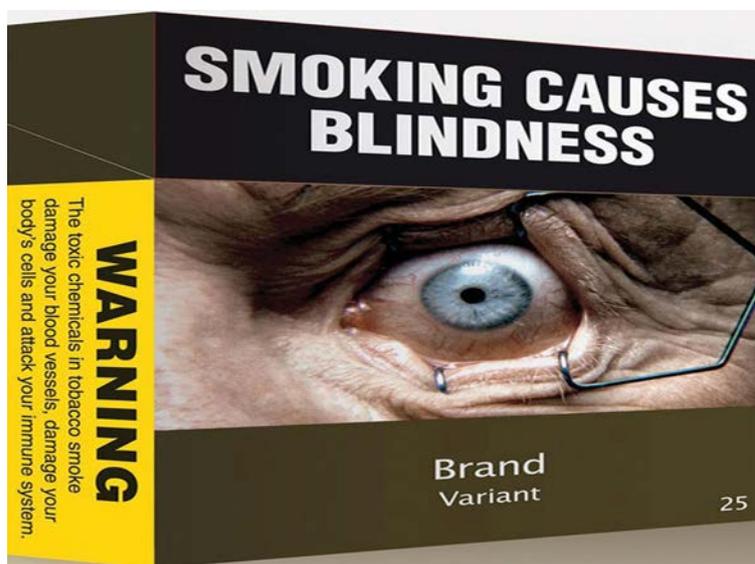
In outlining the challenges experienced by Mauritius in implementing their strong graphic health warnings, the Under-Secretary of Health, stressed the importance of renewing the health warnings every 20-24 months in order to maintain their impact.

Parties that have text only warnings were also advised to consider implementing graphic health warnings at the same time as plain packaging. Research in Australia and Canada shows that health warnings are more effective on plain packs than on

traditional branded ones.

Much of the discussion focussed on the legal challenges launched by the tobacco industry in response to these ground-breaking packaging reforms. Expressing every confidence that Australia's plain packaging would survive the many industry legal attacks, Minister Plibersek summed it up well: “We believe we have the right as a government to legislate to protect the health of our citizens.”

Melodie Tilson, Director of Policy, Non-Smokers' Rights Association, Canada



Continued from page 1

Remove problematic references to illicit trade

The threat of increased illicit trade is frequently used by the tobacco industry as an argument against tobacco tax increases. While illicit trade is indeed a significant issue, COP5 has adopted a Protocol on the issue, which provides a policy recipe for Parties facing such challenges. Keeping tobacco taxes low is not an appropriate response to illicit trade, and it is important that the Guidelines should not inadvertently encourage this type of policy response. Examples of problematic references are found in sections 3.1.4, 3.2 and 3.3, as outlined in the FCA side-by-side.

In FCA's view, it should be possible to agree to a modest recommendation that Parties “should consider” using revenues from tobacco taxation, or a part thereof, to fund FCTC implementation. Considering a policy does not imply deciding to adopt it, but such a recommendation would send a signal that the positive experiences of several Parties, such as Thailand and the Republic of Korea, are worth a serious look.

Other existing guidelines, for Articles 8, 9 and 10, 12 and 14, already identify tobacco taxes as a potential source of financing for tobacco control.

At present, the wording on duty-free in the draft Guidelines is weaker than in the FCTC

itself. This does not make sense. At a minimum, the Guidelines should be adjusted to mirror the FCTC. Additionally, the draft text implies that the only concern with duty-free is the linkage to illicit trade when in fact the concern is also with the sale of cheaper products.

Higher tobacco taxes are an effective way to reduce tobacco consumption, as recognized in Article 6 of the FCTC itself. Guidelines will assist Parties in implementation of tobacco taxation and thus should be as well-drafted and effective as possible.

TOBACCO CONTROL: AN ESSENTIAL COMPONENT OF GLOBAL DEVELOPMENT

Tobacco may well be the greatest threat to public health in the developing world. But it is also a looming economic threat. Tobacco use robs families of their meager resources and diverts money to tobacco multinationals that should be spent on shelter, food and education. Diseases caused by tobacco undermine a country's ability to address other urgent health threats like HIV/AIDS and tuberculosis. It diminishes the effectiveness of existing mutual assistance programmes by increasing absenteeism and killing workers during their most productive years. Tobacco perpetuates the cycle of illness, premature death and poverty.

The WHO FCTC is key, not only to better health, but also to removing a major impediment to economic progress. But as demonstrated by several COP5 reports, many low and middle income countries lack the capacity to fully implement the provisions of the WHO FCTC and to withstand countervailing pressures from the tobacco industry. Per capita spending on tobacco control ranges from US\$1.80 per capita per year in high income countries to \$0.005 in middle income countries to \$0.001 per capita per year in low-income countries. A sustainable campaign to reduce the toll exacted by tobacco deserves a greater allocation of resources. Because increased taxation of tobacco products is a key component of any tobacco control programmes, after an initial boost tobacco control pays for itself.

There are multiple references in the WHO FCTC to the need for mutual cooperation and assistance if the world is to achieve the objective of the Convention, and there have been countless calls at previous meetings of the COP to give meaning to these references. Similarly, the UN High-level Meeting on the Prevention and Control of Non-communicable Diseases called for "the inclusion of non-communicable diseases in development cooperation agendas and initiatives," and recognized tobacco as the only risk factor common to all four of the most prevalent non-communicable diseases.

HIV/AIDS, tuberculosis and malaria have been integrated into the global development agenda for more than a decade. Health development assistance provides for \$782 per death from HIV/AIDS,



\$1,189 per death from malaria and \$1,127 per death from tuberculosis, but only \$35 per death from tobacco-caused diseases. Virtually none of that is targeted specifically to building effective tobacco control programmes. The investment in aid directed to HIV/AIDS, malaria and tuberculosis is paying huge dividends, most notably in the reduced maternal fetal transmission of HIV. Investment in tobacco control would also pay huge dividends in fewer deaths due to cancer, emphysema, heart disease and an ever-growing list of other diseases attributable to the use of tobacco and exposure to tobacco smoke.

At COP5, Parties should take concrete steps and address lack of resources for the FCTC. To make international cooperation and development assistance work, both donor and recipient Parties need to engage in an ongoing dialogue and elaborate solutions. The Framework Convention Alliance has recommended the establishment of a working group on mechanisms of assistance and support for the implementation of the FCTC.

Such a working group would provide a unique opportunity for FCTC Parties to elaborate a long term strategy to unlock resources for tobacco control and strengthen mutual assistance and cooperation to strengthen the FCTC.

Effective mutual assistance for tobacco control might take many forms. As a first step to providing mutual assistance, Parties and signatories to the WHO FCTC could stop protecting the tobacco industry and promoting exports of their deadly product.

Second, because tobacco use undercuts existing mutual assistance programmes, donor countries could incorporate tobacco control in existing bilateral and multilateral assistance programmes, especially those targeted to public health.

Third, because tobacco is unlike any other threat to public health, donor countries could reward innovative tobacco control measures developed at the recipient country level that have measurable stated outcomes. One such approach is the COD Aid concept, developed at the Center for Global Development. The basic COD Aid concept is that a funder and recipient enter into a contract in which the parties agree to a mutually desired outcome and fixed payment for each unit of confirmed progress. These are but a few examples of measures that might be included in recommendations developed by a working group.

Thanks to mutual assistance programmes over the past 50 years, the world has seen an 80 percent drop in extreme poverty, an increase in global literacy by 50 percent and a decline in child mortality by 70 percent. Sadly, tobacco use may undo many of these gains. The establishment of a Working Group on Mechanisms of Assistance and Support is an essential step in ensuring that the promise of the FCTC is brought to fruition, and in eliminating the terrible burden of tobacco use.

Alfred Munzer, MD

POLITIQUES ET PRATIQUES DE LA TAXATION DU TABAC EN AFRIQUE DE L'OUEST

Le tabagisme connaît une croissance exponentielle en Afrique, et notamment en Afrique de l'Ouest. Il affecte les couches les plus vulnérables de la population (les personnes à faibles revenus, les femmes et surtout les jeunes) et tue la moitié de ceux qui en sont victimes. Pour endiguer ce phénomène, l'augmentation significative et continue du prix du tabac est certainement le moyen le plus efficace pour en réduire la consommation. Seule la taxation permet d'obtenir une hausse dissuasive des produits du tabac.

En matière de taxation des produits du tabac, l'Afrique de l'Ouest est caractérisée par une grande diversité de politiques et de pratiques des Etats, même si des efforts importants sont fournis pour une harmonisation de la fiscalité extérieure et intérieure dans le cadre des unions économiques régionales (Union économique et monétaire de l'Afrique de l'Ouest qui regroupe huit pays (UEMOA) et Communauté Economique des Etats de l'Afrique de l'Ouest (CEDEAO)). A cette hétérogénéité des politiques s'ajoute l'absence de bases de données sur les ménages ou les individus permettant d'établir des relations robustes entre la consommation et les prix des produits du tabac dans ces pays.

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UNE GRANDE VARIABILITÉ CARACTÉRISE L'IMPORTANCE RELATIVE DES PRODUITS DU TABAC DANS LES REVENUS PUBLICS, AVEC PAR EXEMPLE UN TAUX ATTEIGNANT 5,1% DU PIB AU NIGERIA MAIS SEULEMENT 0,13% AU CAP-VERT

C'est cet état des lieux sur les politiques et pratiques des Etats ainsi que sur les données disponibles sur le tabac que le Consortium pour la Recherche Economique et Sociale (CRES) a cherché à établir dans la première phase d'un projet de recherche couvrant les 15 pays membres de la CEDEAO. Cette phase étant achevée, le

CRES et tous les partenaires avec lesquels il partage les travaux réalisés vont pour la première fois disposer d'une image globale des politiques, des pratiques et des données. Les résultats confirment bien la diversité des situations nationales. Cette diversité se traduit au niveau de :

- La connaissance du tabagisme, de ses effets ainsi que celle des contextes socioculturels et économiques des fumeurs. De façon générale les études effectuées dans le domaine sont peu nombreuses. On en dénombre dans certains pays comme le Nigeria, la Gambie ou le Sénégal, mais d'autres pays comme le Cap-Vert ou la Guinée Bissau n'en comptent pratiquement pas.
- L'influence de la société civile. Si elle est très active dans certains pays (Burkina Faso, Niger), avec beaucoup d'associations et de réseaux oeuvrant dans la lutte anti tabac, elle est quasi nulle dans d'autres (Liberia, Sierra Leone, etc.).
- La production de produits de tabac manufacturés. Certains pays comme le Sénégal et le Nigeria comptent de grandes manufactures de tabac et bénéficient de ressources provenant de l'exportation de cigarettes. L'influence de l'industrie du tabac y est plus forte.
- Le montant des recettes publiques tirées du tabac. Une grande variabilité caractérise l'importance relative des produits du tabac dans les revenus publics, avec par exemple un taux atteignant 5,1% du PIB au Nigeria mais seulement 0,13% au Cap-Vert.
- Les politiques de taxation du tabac : De façon globale les pays de l'UEMOA pratiquent une politique plus restrictive en matière de taxation, comparativement aux sept autres pays de la CEDEAO.
- La diversité des instruments fiscaux et les taux d'imposition pratiqués. Les huit pays de l'UEMOA recourent à un tarif extérieur commun qui classe le tabac dans la catégorie des produits frappés du droit de douane le plus élevé ; ces pays fixent à 45% le taux plafond des droits d'accise pouvant frapper les produits du tabac. D'autres pays, comme le Nigeria, n'ont pas de droits d'accise frappant

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L'OBJECTIF EST ÉGALEMENT DE PROPOSER DES RECOMMANDATIONS EN MATIÈRE D'HARMONISATION DES LÉGISLATIONS NATIONALE DANS LE DOMAINE DE LA LUTTE ANTI-TABAC ET D'IDENTIFIER LES OBSTACLES À L'APPLICATION DE POLITIQUES EFFICACES CONTRE LE TABAGISME

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spécifiquement les produits du tabac, une TVA de 5% étant appliquée à tous les biens et services.

- La disponibilité des données. Plusieurs types de données essentielles à l'analyse de la taxation et à d'autres investigations sont rarement disponibles dans la plupart de pays. Qu'il s'agisse des enquêtes sur les ménages, des enquêtes démographie et santé (EDS), du GYTS ou de l'enquête EDM de l'UEMOA pour le calcul d'un indice de prix harmonisé, le recensement qui a été opéré montre que les données sur le tabac ne comportent jamais à la fois les quantités consommées, les prix d'achat et les dépenses, ou deux de ces données. Manquent aussi des données fiables sur le commerce illicite du tabac, les coûts sanitaires et économiques du tabagisme, etc.

Un état des lieux sur les politiques et les pratiques ainsi que sur les données en matière de taxation du tabac est une étape importante dans un processus visant à modifier les politiques fiscales d'une quinzaine de pays. Cette étape vient d'être franchie en Afrique de l'Ouest. Les pays membres de la CEDEAO se réuniront à la fin du mois de novembre 2012 afin de tirer des rapports nationaux issus des travaux du projet des enseignements pertinents. L'objectif est également de proposer des recommandations en matière d'harmonisation des législations nationale dans le domaine de la lutte anti-tabac et d'identifier les obstacles à l'application de politiques efficaces contre le tabagisme.

Abdoulaye Diagne, Directeur du Consortium pour la recherche économique et sociale (CRES)

DIRTY ASHTRAY AWARD



To Ukraine and Honduras: FCTC parties that challenged the Australian Government at the WTO for implementing stringent FCTC measures.

ORCHID AWARD



To Australia, Norway and Uruguay for standing against the tobacco industry.



FRAMEWORK CONVENTION
ALLIANCE
BUILDING SUPPORT FOR TOBACCO CONTROL

The Framework Convention Alliance (FCA) is a grouping of global NGOs working to achieve the strongest possible Framework Convention on Tobacco Control (FCTC). Views expressed in signed articles in the Bulletin are those of the writers and do not necessarily represent the views of the FCA. Front-page articles are unsigned as they do represent the consensus of the FCA membership at COP5.

Framework Convention Alliance

Rue Henri-Christiné 5
Case Postale 567
CH-1211
Geneva, Switzerland

Representative Office:
FCA c/o ASH
701 4th Street NW.
Washington, DC 20001
USA

Phone: +1 202 289 7155
Fax: +1 202 289 7166
Email: editor@fctc.org

www.fctc.org

REALITY CZECH IS THE CZECH DECLARATION A RESERVATION?

Upon ratifying the WHO FCTC on 1 June 2012, the Czech Republic made what it described as a "interpretative declaration". Its statement included:

"The Czech Republic also declares that it considers Article 5.3 a provision not affecting the right to non-discriminatory treatment of the tobacco industry by the Parties and thus permitting the necessary extent of cooperation with the tobacco industry as regards tobacco control."

By COP5, other Parties to the FCTC hardly need reminding of the obligations of Article 5.3:

"In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."

Nor of the guidelines on Article 5.3 adopted by consensus at COP3, which:

- Underline that "[t]here is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests"; and
- Recommend, among other things, that Parties:
 - establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur;
 - reject partnerships and non-binding or non-enforceable agreements with the tobacco industry;
 - avoid conflicts of interest for government officials and employees;
 - denormalize and, to the extent possible, regulate activities described as "socially responsible" by the tobacco industry, including but not limited to activities described as "corporate social responsibility"

The very essence of the FCTC, as reflected in its text, its guidelines and other decisions of the COP, is that tobacco products are not like other products, and that the industry that produces and markets them is not like other industries. The product and the industry are to be treated in accordance with the harm they cause – which is different from other products and

industries. This necessarily entails different treatment. It entails "discrimination" in this sense of differentiating or distinguishing.

It is difficult to know exactly what the Czech Republic intends to achieve through its statement. It may wish to clarify the meaning and intent of its statement. The draft *Guidelines constituting the guide to practice on reservations to treaties of the international law commission* can be helpful here.

If the statement "purports to exclude or modify the legal effect of certain provisions of the treaty in their application", it is, in fact, a reservation rather than an interpretative declaration. Reservations are not permitted under the FCTC (Art 30). If it is, in fact, a reservation, the statement is invalid.

If the statement "purports to specify or clarify the meaning or scope of a treaty or certain of its provisions", it may be an interpretative declaration. Interpretative declarations may be taken into account in interpreting treaties – and so may "the approval of, or opposition to, the interpretative declaration, by other contracting States".

On 17 July 2012, Uruguay submitted a communication to the Secretary-General of the United Nations, acknowledging receipt of the Czech Republic's "declaration". Uruguay stated "that such interpretative declaration cannot be deemed to be a reservation, expressly prohibited under article 30 of the FCTC, nor can it be considered to exempt any Party of its obligations under the Convention". Uruguay's communication cited Article 5.3 and reminded Parties of the Article 5.3 Guidelines' recognition of the "fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests".

It is important that other Parties also respond to the Czech Republic's statement. This may take one of two forms:

- treating the statement as a "disguised reservation", recharacterizing it as a reservation, and objecting to it;
- treating it as an interpretative declaration and opposing it.

Jonathan Liberman, Director of The McCabe Centre for Law and Cancer, Australia