



ALLIANCE BULLETIN

Framework Convention on Tobacco Control • Geneva, Switzerland • 26 November 2001 • Issue Sixteen

Today's Weather: Showers
High 9 C Low 1 C

Exchange Rate: 20 Swiss FR =
Armenian Drams 6,769 Paraguay Guaranis 55,985
Vanuata Vatu 1,721 Zimbabwe Dollars 655.76

INB-3 MONDAY

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TODAY'S
DELEGATE BRIEFING

"LIGHT" CIGARETTES

26 November 2001
13:00 - 14:00

Salle 3

**DEATH
CLOCK**

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

8,405,208

people have died from tobacco-related diseases.
(At 9 am 26 November 2001)

Cigarrillos "light", "ligeros" Marketing eficaz, desastre para la salud pública

La venta de cigarrillos con los términos "light", "bajo en alquitrán", "ligeros", "ultraligeros", "suaves" o descriptores similares, engañan al consumidor, inducen a la confusión, y se han vuelto en un método de marketing muy eficaz para las compañías tabacaleras. En varios países, las marcas ligeras representan más del 50% del mercado.

Tales términos y descriptores se utilizan para sugerirle a los consumidores que pueden reducir la exposición a los elementos perjudiciales del tabaquismo si cambian de marca de cigarrillos.

Sin embargo, no hay evidencia convincente que demuestre que cambiar a cigarrillos "ligeros" resulta en una reducción de los riesgos para la salud. Incluso, en algunos casos, la exposición a alquitranes puede aumentar.

Además, las marcas que ostentan los términos "ligeros", "suaves" a menudo reduce la inclinación de dejar de fumar. Por esa razón, algunos países (la Unión Europea, el Brasil y el Canadá) han decidido prohibir el uso de tales descriptores.

En teoría, la versión "ligera" de una marca tiene un nivel de alquitrán menos elevado que la versión regular, pero en

realidad hay una falta total de valor científica en el sistema de nombrar a los cigarrillos.

Por lo general, la composición de cigarrillos ligeros y regulares es casi idéntica. La mayor diferencia suele ser que más una marca es "ligera", más contiene agujeritos de ventilación alrededor del filtro.

En teoría, esos agujeritos de ventilación añaden aire fresco al humo del ta-

baco. Es simplemente una forma de disolución del humo, método que por cierto no hace que el humo sea menos nocivo.

A menudo, el nivel de alquitrán se imprime sobre los paquetes de cigarrillos. Contrariamente a lo que uno podría creer, el nivel de alquitrán, monóxido de carbono y nicotina no se refieren al contenido de los cigarrillos, lo que de todos modos no ten-

dría ningún sentido ya que el tabaco no contiene ni alquitrán ni monóxido de carbono, productos que se crean al fumar.

El nivel impreso sobre los paquetes refleja la cantidad de sustancias nocivas inhaladas por un fumador mecánico. Es decir, una maquina que toma una



(Continuado en p. 2)

FAIT A NOTER:

La Chine représente près du tiers du marché mondial de la cigarette.
(World Tobacco File, 4th Edition)

TODAY'S NOON HOUR DELEGATES BRIEFING

26 November 2001

Lows, Lights and Lies: Debunking myths about "light" cigarettes

Members of the Framework Convention Alliance invite all delegates to a luncheon briefing today, 26 November, on the topic of light cigarettes. The briefing will start at 13.00, or 15 minutes after the Working Group meeting, whichever comes first.

You will hear from an international panel of experts who will discuss and answer your questions.

Moderator: **Francis Thompson**, Non-Smokers' Rights Association (Canada).

Speakers

- **Judith Wilkenfeld, JD**
Campaign for Tobacco-Free Kids, USA
Vice-Chair, WHO Scientific Advisory Committee on Tobacco Product Regulation
- **Martin Jarvis, PhD**
University College London, Imperial Cancer Research Fund Health Behaviour Unit (UK)
- **Fiona Godfrey**
Legal Consultant to the European Respiratory Society, Luxembourg
- **Ms. C. Ferreira Vianna**
Legal Advisor, National Institute for Cancer Prevention, Ministry of Health, Brazil.

The meeting is slated for Salle 3. A light lunch will be provided before the meeting, in the lobby.

calada de un volumen estándar a intervalos estándares.

Desgraciadamente, este método de análisis no tiene ninguna relación con las cantidades de humo inhaladas por un fumador humano. El caso es incluso más agudo con cigarrillos "ligeros".

Al tener una dependencia, el fumador ajusta su modo de fumar para obtener la dosis de nicotina requerida, no importa que marca de cigarrillo sea. La terminología técnica para ese ajuste se llama *compensación*.

Es muy fácil aumentar la cantidad de alquitrán inhalado ya que los cigarrillos "ligeros" han sido concebidos de modo que favorecen la compensación.

Los fumadores de cigarrillos "ligeros" toman una cantidad mayor de humo cuando toman una calada para obtener el mismo nivel de nicotina al cual están acostumbrados.

Además, muchos fumadores bloquean los agujeros de ventilación con los labios o los dedos. Una vez bloqueados, la diferencia entre los cigarrillos "ligeros" y "regulares" desaparece.

El sabor más ligero de los cigarrillos "light" refuerza la creencia que dañan menos para la salud, pero la razón principal por el sabor más ligero es la disolución del humo.

En términos de cantidad total de sustancias nocivas, 800 ml de humo de un cigarrillo "light" equivale a 500 ml de humo proveniente de un cigarrillo regular pero con un gusto más suave.

Para la mayoría de los consumidores, el tabaquismo es una dependencia muy fuerte, de la cual es muy difícil liberarse. Las marcas ligeras han sido lanzadas durante los años 70 con el propósito de calmar las inquietudes de los fumadores.

Eso les permitía creer que hacían algo para la salud mientras seguían fumando. En 1978, un documento de Imperial Tobacco (Canadá) se alegraba del hecho que los fumadores que habían escogido una marca ligera y luego conseguían dejar de fumar fueron casi inexistentes.

Ya que sabemos que alrededor del 50% de los fumadores a largo termino mueren de las secuelas del tabaquismo, una táctica de marketing que convence

fumadores a no dejar de fumar representa una amenaza para la salud pública.

Los descriptores "light", "ligeras", "suaves" y otros términos similares están sobre los paquetes de cigarrillos para manipular a los consumidores al hacerles creer que hay una diferencia para la salud si se fuma un cigarrillo suave. Pero como lo han comprobado grupos de expertos a través del mundo, no hay ninguna diferencia en el ámbito de la salud si se fuma un cigarrillo "light" en lugar de un cigarrillo "regular".

Por esta razón es muy importante que el convenio marco para la lucha antitabáquica adopte medidas apropiadas para asegurar que los fabricantes no utilicen en ningún paquete o envase de productos del tabaco los términos "bajo en alquitrán", "ligeros", "ultraligeros", "suaves" o términos similares; y que en los paquetes y etiquetas del tabaco no se promocióne de otro modo un producto del tabaco mediante indicaciones falsas, que desorienten o sean engañosas, o que puedan inducir a error respecto a sus características, efectos para la salud, riesgos o emisiones.

— Laurent Huber, Action on Smoking and Health (USA)

What's the big deal about "light" and "mild" cigarettes?

There is no reliable evidence of *any* health benefit from switching from "regular" to "light" brands of cigarettes.

Smokers of "light" cigarettes can easily, and often do, inhale just as much harmful tar from a "light" brand as from a regular brand.

Tar numbers printed on the pack provide next to no information on human exposure. They measure what a machine inhales — a machine that takes standard-size puffs of smoke at standard intervals.

But addicted smokers smoke virtually any kind of cigarette in such a way as to get their usual dose of nicotine. "Light" cigarettes have been engineered to make this process as easy as possible.

More news on this topic tomorrow.

Tobacco industry fights EU for right to use misleading terms

In July 2001, the European Union adopted a new tobacco directive, including a ban on use of terms such as 'light' and 'mild' on tobacco products. The directive marked the start of another round in an ongoing battle about the relationship between European trade law and public health rules.

As expected, the industry response was fast and predictable. BAT, Japan Tobacco and the German government have each filed legal challenges in various courts.

Germany, supported by Luxembourg, is challenging only one feature of the directive: its application to cigarettes manufactured in the Community for export to non-EU countries.

What is the EU Tobacco Products Directive?

Directive 37/2001/EC on tobacco product regulation is a recast of three existing Community directives regulating labelling and tar yields, and prohibiting the sale of oral tobacco. Its key points are:

- A reduction in machine-measured tar yields from 12 to 10 mg per cigarette;
- New limit of 1 mg for nicotine;
- New limit of 10 mg for carbon monoxide;
- Provisions on yields to apply to products for export to third countries after 2007;
- New warning labels – up to 50% of pack surface including pictorial warnings;
- Compulsory disclosure to governments of additives used in products and reasons for their use;
- Prohibition of terms such as 'light';
- Continuation of the prohibition of the sale of oral tobacco.

Japan Tobacco, with its flagship brand Mild Seven, is challenging only the prohibition on misleading terms.

British American Tobacco is going much farther, attacking the entire directive on several grounds. BAT claims:

- The directive is illegal in its entirety because it fails to achieve its stated aim of harmonising and liberalising the EU internal market in tobacco products.
- The prohibition of the use of the terms 'light' and 'mild' conflict with the provisions on reduced tar and nicotine yields.
- The labelling provisions are disproportionate and impair manufacturers' ability to inform consumers.
- The export provision does not liberalise the internal market and will cost jobs in the EU.

The legal background

All EU tobacco control directives (with the exception of taxation and agricultural measures) have derived their legal basis from the internal market provision in the treaty (Article 95). Article 95 is designed to achieve the completion of the internal market taking as a base a high level of health protection.

The internal market is characterised by the abolition of all obstacles to trade in goods and services. The EU does have a public health competence in the Treaty but this explicitly prohibits the Community from adopting binding legislation such as directives and regulations.

Reliance on the internal market legal base was not a problem for the first three tobacco directives and the use of Article 95 (or 100a as it was at the time) was not legally challenged.

However, in 1998 when the Community adopted a directive banning most forms of tobacco advertising, Germany, the UK Tobacco Manufacturers Association and several other plaintiffs challenged the measure, arguing that the Community had exceeded its legal powers because the directive restricted rather than liberalised



Canadian government advertisement: "Only the tobacco industry would label a product like this 'light' or 'mild'."

the free circulation of tobacco advertising services and products.

In its ruling in October 2000 the ECJ agreed with Germany and declared the directive illegal. The Court set a new test for the EU legislator to meet: there must exist genuine obstacles to trade and appreciable distortions of competition arising out of national laws on tobacco advertising in the Member States before the Community can take action.

The Court found that such conditions did not exist at present or were unlikely to exist in the future except in the media and sponsorship of international events.

(Continued next page)

The introduction of this test into EU internal market law was inconsistent with previous case law which had emphasised that in the event of conflict, public health protection must take precedence over internal market considerations.

Unfortunately, the supposed failure of the EU to meet this test concerning tobacco products now forms the basis of the legal challenges to the measure. The industry is arguing that no such obstacles existed in the case of yields, labelling or product descriptors and that the Community cannot satisfy the test

laid down by the Court.

Impact of the legal challenges

The industry strategy, supported by Germany, of challenging EU tobacco control legislation has been and continues to be effective. During the passage of the tobacco products directive members of the Parliament's Legal Affairs Committee declared the products proposal illegal following the ECJ ruling on the advertising directive.

Since the annulment of that measure the Commission has proposed a new directive based on the

Court's judgment which will do nothing to restrict tobacco advertising in the Community and may endanger Member State's existing and stronger legislation.

Finally, in September the Commission Legal Services threw out an attempt by the Commission to introduce an EU-wide ban on tobacco promotions, arguing that the measure was incompatible with the ECJ's tobacco advertising ruling.

— Fiona Godfrey,
European Respiratory Society

Ban on Tobacco Advertising and Promotion – How did the tobacco industry react in Hong Kong?

In Hong Kong, tobacco advertisements in electronic media and in cinema were banned in 1994. In June 1997, the law was further amended in Hong Kong to tighten control on tobacco marketing and promotion. This included banning of tobacco advertisements on display outdoors, in printed publications and on the Internet, and forbidding tobacco marketing activities such as free gifts to induce people to buy cigarettes.

All these legislative measures took effect by 1 January 2000. It may be too early to say by how much such measures have effectively reduced smoking prevalence



Japan Tobacco International set up "Salem Open" as a corporate name to get around the Hong Kong advertising ban.

in Hong Kong. It's interesting however to note how the tobacco industry have been using new tactics to circumvent the law and continue promoting their tobacco products.

The Hong Kong SAR Government is proposing new legislative amendments to redress these problems.

Lessons to learn in formulating legislation to prohibit tobacco advertising and promotion:

- Be concise.
- Avoid loopholes.
- Allow no exceptions.

— Marcus Yu, Hong Kong Council on Smoking and Health

	Law	Loophole
(a)	Outdoor display of tobacco advertisements is not allowed (except at small hawker stalls).	Numerous tobacco advertisements appeared in the form of banners, signboards and umbrellas at points of sale.
(b)	Tobacco advertisements in printed matters are prohibited.	Feature articles appeared in newspapers and magazines, appraising the qualities of tobacco products.
(c)	Tobacco advertisements on the Internet are prohibited.	Advertisements found in websites housed outside Hong Kong.
(d)	Free gifts to induce customers to buy tobacco products are not permitted.	A non-tobacco consumer product (e.g. lighter, lady's watch) is bundled with a pack of cigarettes and sold together at a much-discounted price.
(e)	Tobacco sponsorship of sports and cultural events using tobacco brand names is prohibited. However, sponsorship in the name of a	The tobacco company registered the whole sports event bearing the title of a cigarette brand name (e.g. Salem Open) as the name of a sports company and continued to hold the event with the same title.

Controversy is good for our health

It is perhaps no surprise that the more affluent countries – such as the USA, Japan and the EU Member States, in which the multinationals are based – feature amongst those least committed to achieving a meaningful outcome at the FCTC negotiating table.

During the past 48 hours the EU contingent, in particular, has seemed surprisingly sensitive to criticism of their negotiating stance; which, with the best will in the world, can only be seen as a brake on the proceedings.

This approach contrasts strongly with the view of the European Parliament. Less than two weeks ago (13 November), Parliament adopted a Resolution calling on the EU to take a more forceful role in the FCTC process. Parliament demanded a 'high level of public health protection' (actually, a basic requirement of the EU treaties) and then singled out the following issues for particular concern:

- Elimination of tobacco smuggling and counterfeiting;
- Clear and conspicuous health warnings;
- Future development of tobacco products regulation, including measurement standards, under the auspices of WHO;
- Financial support for the implementation of the Convention in developing countries;
- Crop conversion programmes for tobacco farmers.

Furthermore, Parliament urged the Community delegation to go beyond existing EU legislation in the search for innovative and effective measures necessary to substantially reduce tobacco consumption worldwide.

The European Parliament is the Community Institution that is closest to EU citizens: it is directly elected by them. The EU delegation should take note of Parliament's Resolution and show that they respect it by adopting a far more flexible and imaginative negotiating stance. Let the last few hours of INB 3 prove to be the seeds of real progress in tackling the world's tobacco epidemic.

– Andrew Hayes, UICC/ECL Liaison Office, Brussels



EU

The European Parliament... notes that the EC delegation will have a key role to play in the negotiations and believes that, while taking as a basis the Community acquis, the Community must also be open to considering and supporting proposals for tobacco control measures going beyond existing EU legislation.

— Resolution, 13 November 2001

The Federalism Smokescreen

At Saturday's session of Working Group 2, the delegate from the United States said that one of his country's objections to licensing of retailers was the legal doctrine of federalism. He stated that even if his country were to sign a treaty containing such an obligation, a Federal court might strike it down.

In a federal system, governmental rights and powers are loosely divided between the national government and state governments. According to this interpretation, the delegation of powers to each entity is rigid, with many powers given to the states and forbidden to the national government.

In anticipation of concerns from constitutionally based governments that all governmental functions are not administered at the Federal level, the Co-Chair's text has included language that makes reference to "the appropriate governmental level" when referring to the obligation of signatories.

"Wrong on the treaty and wrong on the law," said Judith Wilkenfeld, JD, former assistant director of the US Federal Trade Commission and Special Advisor to the Commissioner of the Food and Drug Administration.

"While the US may oppose licensing as part of a negotiation strategy, to suggest that their opposition is based on Federalism is an inaccurate reading of the US Constitution. Our Constitution does not bar the adoption of a Federal licensing scheme for tobacco retailers.

"Indeed, both the text of the Constitution and the definitive constitutional interpretations by the US Supreme Court provide compelling evidence that the federal government has the power to agree to such measures. The federal commerce power extends to the sale of tobacco products no less than it applies to the sale of alcohol, food and every consumer commodity sold in the US.

"US NGOs, indeed the entire Frame-

work Convention Alliance are disappointed by the effort of the US delegation to disguise their objection to effective tobacco control measures with dubious interpretations of US Constitutional law. They should argue their positions on the substantive merits as have other constitution based governments such as Canada and Brazil.

"The US government had been informed of its misinterpretation of the Constitution by Congressman Henry A Waxman, Congressional Democrat from California in a letter and legal opinion sent to the President prior to the INB. We know of no response to the letter."

The United States' neighbour to the north, Canada, also has a federal system. The Canadian government has nonetheless been able to impose national rules on tobacco retailing. Neither Canada nor Australia – another federated country – has raised any federalism concerns about FCTC.

Recent court decisions make clear Sue the tobacco companies at home, not in the United States

Last week's decision by a Florida state judge rejecting claims brought by Venezuela against the tobacco industry follows a series of U.S. federal court cases rejecting third-party liability claims against the industry.

These cases, brought by U.S. health insurers as well as foreign governments, were based on the reasonable (but wrong) expectation that the precedents developed in the successful litigation by U.S. states against the tobacco companies would be applied in an even-handed way to cases brought by other public and private entities.

Instead, all but a few U.S. courts have built a legal fence around the state cases, treating

them as never-to-be-repeated exceptions to the general rule that third party payers are too remote from the injury to have standing to sue under U.S. law.

Other countries, however, are free to take the state precedents more seriously. Each country is free to adopt procedural rules to facilitate third party reimbursement cases: as the state cases made clear, any resulting judgment against U.S. based companies would be consistent with constitutional due process limitations.

As a public health matter, cases brought in domestic courts have important educational benefits that cannot be achieved by filings made in far-away courts. Local reporters

will likely cover the cases in detail, including the allegations and evidence that the products and behavior of the tobacco industry have caused huge amounts of costs, addiction, disease, and death.

A wide range of cases can be brought, depending on local laws and circumstances. The FCTC will, hopefully, encourage the development of arrangements for sharing technical expertise in tobacco litigation techniques on a worldwide basis.

— Richard Daynard,
Tobacco Products Liability Project,
Boston/USA

US Continues to Oppose Smoking Ban in Private Workplaces

As it did at the previous round of negotiations, the US delegation Thursday continued to oppose a ban on smoking in private workplaces during discussion of the secondhand smoke provisions of the FCTC.

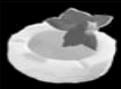
The United States did support prohibiting smoking in "enclosed public places, public transport and indoor premises of government agencies." However, in place of a ban, the US called for "the promotion of systematic protection from exposure to tobacco smoke in restaurants and indoor private workplaces."

This position stood in contrast to the strong support expressed for a total ban on workplace smoking by a large number of countries.

"There is no scientific basis for the US position and that it would establish a two-tiered system of protection from secondhand smoke that would aid efforts by the tobacco industry and its allies to fight enactment of clean indoor air measures across the globe," says Laurent Huber from Action on Smoking and Health in Washington.

While government employees would be protected from the dangers of secondhand smoke, which is a proven cause of cancer and other diseases, most private sector employees would be left to a discretionary standard of "systematic protection."

Orchid Award



Palau, on behalf of the Pacific Islands, for calling for generic packaging for tobacco products (apart from health warnings).

Dirty Ashtray Award

The International Tobacco Growers' Association, for representing big tobacco companies instead of poor tobacco farmers.



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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