



INB-5 Wednesday

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TODAY'S DELEGATE BRIEFING

The Scientific Advisory Committee on Tobacco Product Regulation (SACTob)

presents

Recommendations on health claims derived from ISO/FTC numbers

Room to be announced 13:00-14:00

DEATH CLOCK

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

11,974,392

people have died from tobacco-related diseases.

(At 9 am 16 October 2002)

ALLIANCE BULLETIN

Framework Convention on Tobacco Control

Geneva, Switzerland

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Advertising – the language that must be stopped

Whatever else happens to the provisions on advertising, Article 13e of the Chair's draft should never become treaty text. This would violate the "Do No Harm" principle, as this most definitely would do harm if agreed and given the authority of WHO and the parties to the FCTC.

Article 13e reads: "impose strict restrictions on all forms of tobacco advertising, promotion and sponsorship targeted at vulnerable groups".

The best evidence on this* argues that "...comprehensive advertising bans can reduce tobacco consumption, but a limited set of advertising bans will have little or no effect. A limited set of advertising bans will not reduce the total level of advertising expenditure but will simply result in substitution to the remaining non-banned media."

In addition, using the term 'targeted' means governments have to prove the intent to address promotion at a specific group, which is almost impossible. Furthermore, advertising which appears notionally targeted

at 18-24 year olds may be very effective with younger teenagers. How does a court decide which group is targeted by any particular advertisement? We know that advertising that looks like it is aimed at adults has great appeal to kids – precisely because they aspire to become adults.

And why specify 'vulnerable groups'? Everyone that smokes or encounters tobacco advertising is vulnerable. Tobacco is an addictive and harmful drug without parallel, killing one in two of its long-term users.

The only credible policy with a secure evidence base is a complete and comprehensive ban on all direct and indirect tobacco advertising, sponsorship and promotion. Where there are constitutional constraints, we believe negotiators have the ingenuity to find a solution that leaves the overall purpose intact.

* H. Saffer, Chaloupka F, *The effect of tobacco advertising bans on tobacco consumption*. Journal of Health Economics Vol. 19 (2000) 6:1117-1137.

Roses for the Victims: Tobacco Death Clock Unveiled

In a moving ceremony conducted in several languages, a "clock" measuring the worldwide deaths from tobacco since negotiations of the FCTC began was unveiled yesterday in the lobby of the CICC.



In her remarks, Dr. Gro Harlem Brundtland, Director-General of the WHO, pointed out that the annual death toll from tobacco has increased dramatically since the beginning of discussions of the FCTC.

(continued p.6)

Today's Weather: Light rain early, then remaining cloudy with showers in the afternoon
High 16 °C Low 10 °C

Experience Shows Necessity of a Total Advertising Ban

A key issue in FCTC negotiations is the extent to which tobacco advertising is to be controlled. Although there has been widespread and repeated support among many delegations for a total ban on tobacco advertising, this is not reflected in the current Chair's Text.

Experience in country after country shows that unless there is a total ban, the tobacco industry will aggressively exploit remaining marketing avenues. This is illustrated by the Canadian experience.

In Canada, when direct tobacco advertising was banned on television and radio in 1972, advertising increased in other media. A provision in the tobacco industry's voluntary code requiring that advertising only target adults proved a total failure, with internal company

documents now available indicating that the industry targeted children as young as 12-17.

In 1989, the Canadian *Tobacco Products Control Act* came into force and implemented a phased-in ban on direct tobacco advertising. In response, the tobacco industry shifted marketing expenditures to sponsorships in order to continue widespread lifestyle advertising of cigarettes. Sponsorships became a pretext to promote cigarettes, with many times more spent on promoting various events than on the events themselves.

Although Canadian legislation has contained controls on brand-stretching — the use of tobacco logos in association with non-tobacco goods and services — the industry has ac-

tively sought to invalidate such provisions. The industry knows that if it were able to engage in brand-stretching, it would have access to a massive loophole allowing promotion of the same lifestyle images previously used in direct advertising. This is what has occurred at various times in countries such as Belgium, Norway, France and Malaysia.

A total ban on advertising would ensure that there are no loopholes, and that there is maximum public health protection for everyone vulnerable to the industry's ads — that is to say, everyone who can see or hear.

— Rob Cunningham,
Canadian Cancer Society

Health Claims for Tobacco Products? An Oxymoronic Concept

The WHO Scientific Advisory Committee on Tobacco Product Regulation (SACTob) has added its authoritative voice to those calling for an end to deceptive labelling of tobacco products.

At a luncheon briefing today, SACTob representatives will be discussing the committee's first set of recommendations, *On Health Claims Derived from ISO/FTC Method to Measure Cigarette Yield and On Nicotine and the Regulation in Tobacco and Non-Tobacco Products*.

The Committee's findings are based upon an exhaustive review of the science and the most recent evidence and provide countries with recommendations for regulatory "best practice" options.

The SACTob concludes that tar, nicotine and carbon monoxide ratings based upon current machine technology and presented as a single numerical val-

ues are misleading and should not be displayed. Machine measurements of these substances have been found to have little or no relationship to what a consumer inhales or to the amount of disease caused by the product.

Consequently, the Committee also concludes that all misleading health and exposure claims should be banned. These claims in the past have been based upon machine measured tar and nicotine levels and as noted have been found to be false.

The Committee believes that the ban should apply to all packaging, brand names, advertising and promotional activities. Finally, banned terms should include "light," "ultra-light," "mild," and "low tar." The ban should cover these terms and any name, trademark, imagery or other use of terms or claims that give the impression that the product provides a health benefit.

Speak Up!

During this morning's plenary session on tobacco advertising (Article 13) the European Community is expected to relinquish its common position on the tobacco advertising issue and allow Member States to speak freely.

In previous negotiations, both Germany's blocking of a complete advertising ban and the European Community's policy of representing the 'lowest common denominator' has meant that the majority of European countries who have implemented or will soon implement a complete tobacco advertising ban did not feel that their true position was properly reflected.

We therefore urge EU Member States and EU accession countries to exercise their right to speak out in favour of a complete advertising ban, in particular: Belgium, the United Kingdom, France, Italy, Portugal, Norway, Ireland, Finland, Sweden, Poland, Hungary and Slovakia.

This is a unique opportunity during the treaty negotiations for you to vocalise your country's achievements in supporting public health through a complete tobacco advertising ban. Speak Up!

— Sophie Kazan, European Network for Smoking Prevention (ENSP)

Regulating Deceptive Descriptors

Acting on evidence proving that there are no health benefits from smoking so-called “light” cigarettes, and that such deceptive descriptors mislead the smoker and the public into a false sense of safety, Brazil recently banned the use of terms such as “mild”, “lights”, “suave”, and “ultra-lights” on cigarette packs.

Other pack changes included a warning that there are no safe levels for the consumption of tar, nicotine and carbon monoxide.

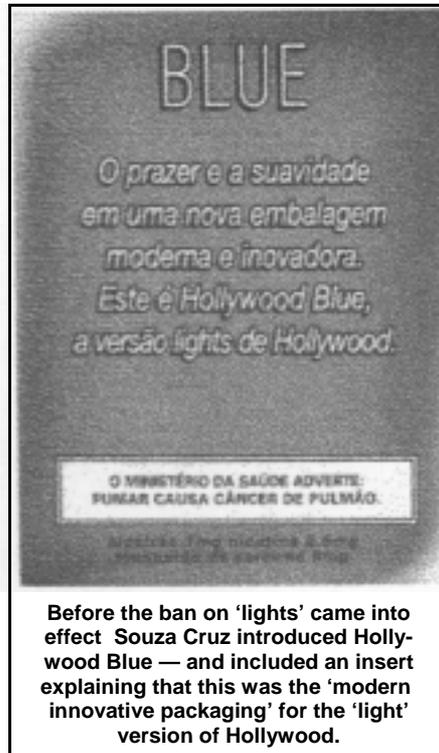
The legislation was approved in late March 2001, and went into effect on February 1st, 2002. Between its approval and its enactment, the tobacco industry has been searching for loopholes in order to circumvent the restrictions.

One of the industry’s strategies was to create different colours on their packs to differentiate full flavour, light, and ultra light cigarettes. When the law went into effect, there was no need to continue to use verbal descriptors. These new special packs were introduced into the market shortly after passage of the law, with colour branding replacing the banned words.

In case smokers hadn’t picked up on the colour branding, companies placed a card or pamphlet inside the new packs explaining to the consumer that the colours were in fact the new descriptors, blue being light and silver, ultra lights. The information card also explained that this was the same product, just in different “clothes”.

In 2001, Souza Cruz, like many other BAT companies, issued its social responsibility report. The section on Information to Consumers opens with

the following sentence: “Supplying consumers with data on cigarettes is essential for them to exercise their freedom of choice.” The words make clear that continuing to deceive consumers about light cigarettes is what Souza Cruz considers information.



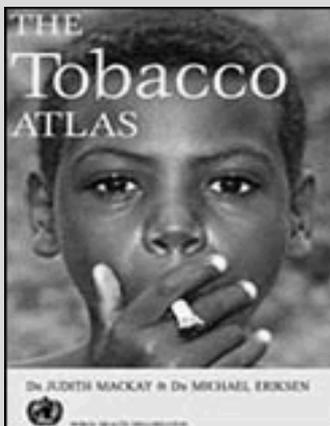
Before the ban on ‘lights’ came into effect Souza Cruz introduced Hollywood Blue — and included an insert explaining that this was the ‘modern innovative packaging’ for the ‘light’ version of Hollywood.

This case illustrates how the industry takes advantage of oversights in legislative and regulatory language. The regulations ban the use of verbal descriptors, both on packs and in advertisement and promotional material, so the industry simply resorted to a colour code that perpetuates the misperceptions of “light” cigarettes as safer and healthier.

The lag time between passage and implementation, and the provision for currently circulating packs to continue in the market until their expiration, meant that the tobacco industry had more than one year to “educate” its current and prospective consumers about the changes. The language was not inclusive enough to ban *all* types of descriptor, visual or verbal, that imply a different health risk from full flavour to lights.

Countries that are considering similar legislative or regulatory action should be prepared to ensure that their legislative language bans *all* such coding of packs, and thus that consumers are protected from this form of fraud perpetuated by the tobacco industry.

— Stella Aguinaga Bialous,
Public Health Consultant



Tobacco Atlas Released

At a press conference held yesterday, WHO released a new Tobacco Atlas that provides visuals of the worldwide tobacco epidemic. The Atlas provides detailed data from countries on the differences and similarities of the global tobacco control struggle, through visuals such as maps and graphics.

The Atlas also shows similarities and differences between countries, the conduct of the tobacco compa-

nies, gender differences between countries’ investments in the tobacco industry and the costs of tobacco use and illicit trade and litigation. Several of the Tobacco Atlas visuals can be found on the WHO website at www.who.int.

Dr Judith Mackay, Senior Policy Advisor to the Tobacco Free Initiative of the World Health Organization and long-time tobacco control advocate in Hong Kong, co-authored the new Atlas with Dr Michael Eriksen, of the Centers for Disease Control and Prevention.

Tobacco Litigation Recognized as Public Health Strategy: 28 Billion Arguments for the Industry to Improve its Behaviour

The tobacco industry hates the notion that it should be held responsible for the harm it does. And so, no doubt, it must be alarmed at the provisions in the new Chair's Text on tobacco liability — particularly in light of last month's stunning decision by a California jury to award US \$28 billion in punitive damages against Philip Morris.

The effect of the Chair's Text wouldn't be — and shouldn't be — to change the legal systems of signatory countries to make such massive damage awards possible everywhere. In fact, the Text respects the existing structure of the law in each country, noting that "Each Party should determine the scope of such responsibility within its jurisdiction."

However, the Chair's Text does confirm the usefulness of tobacco litigation as a public health strategy.

One of its Guiding Principles is: "The tobacco industry is responsible for the harm its products cause to public health and the environment. Each Party should determine the scope of such responsibility within its jurisdiction." (Article 4.6)

Part VI of the Text, which is devoted entirely to liability and compensation, declares that "The Parties shall take legislative action or promote their existing laws to deal with liability and compensation for the purpose of tobacco control", and continues by providing for the sharing of legal and health information and mutual assistance in facilitating legal proceedings (Article 19). Articles 20.3 and 22.1 also provide for information sharing and technical assistance on legal matters.

Tobacco litigation looks at the conduct of a tobacco company after it has occurred, and asks questions about it like: Did the company mislead its customers? Did it make the least toxic product possible? Did it give warnings that were likely to be understood and acted upon by its consumers? Did it facilitate the smug-

gling of its products? Did it cause massive harm?

If the answer to questions like this is "yes", the company may be liable to those who are harmed, regardless of whether there are specific laws prohibiting the conduct in question.

By contrast, even the ideal regulatory system cannot anticipate all of the possible misdeeds of the tobacco industry. And we already know that the regulatory system in most countries will fall far short of the ideal.



Betty Bullock shown here with a grandchild sued Philip Morris after developing lung cancer — leading to a multi-billion dollar damage award.

The industry is hard at work lobbying against effective provisions in the FCTC, such as clear and meaningful warnings, bans on misleading descriptions (e.g. light and mild), and efficacious measures against smuggling. As we know from past experience, the industry will lobby vigorously against national laws that would fully implement the provisions of the FCTC.

To the extent it fails at both these levels, the industry will do what it can to subvert the enforcement of whatever laws are adopted.

But in any country in which tobacco litigation is a real possibility, the industry may be forced to voluntarily "clean up its act" or face damage awards far in excess of the fines typically attached to regulatory legislation.

The law in every country provides some type of legal remedy for individuals who have been harmed by negligent, reckless, or fraudulent conduct. Since more than 4 million people die each year worldwide from tobacco-caused diseases, and since the industry's misconduct knows no national boundaries, massively harming people everywhere, the amount of damages possible in each country is potentially sufficient to deter industry misconduct.

The public health benefits of tobacco litigation extend beyond industry deterrence. Tobacco litigation exposes industry misbehaviour not only to the tribunal but to the press as well, and through them to the general public. This reduces the industry's political clout, and helps immunize the population against the industry's manipulative marketing techniques.

Litigation also "puts a face" on tobacco victims, communicating to current and potential smokers that "real people" get sick and die from smoking.

Paying substantial damage judgments or settlements force tobacco companies to raise prices, thereby discouraging consumption.

And some types of lawsuits, such as the successful suits brought by American state attorneys general to recover from tobacco companies the cost of caring for residents suffering from tobacco-caused diseases, have the potential to generate revenue that can be applied to tobacco control and other public health purposes.

— *Richard A. Daynard, Chairman, Tobacco Products Liability Project, Northeastern University School of Law (USA)*

La prohibición de la publicidad dirigida a grupos vulnerables, una proposición dañina para la salud pública

El texto sobre la publicidad de productos de tabaco propuesto por el Presidente dañaría a la salud pública si se acepta tal cual. El texto propone la imposición de "restricciones estrictas" a las formas de publicidad "dirigidas a grupos vulnerables" (Artículo 13.e).

La especificación en el Artículo 13.e "dirigida a grupos vulnerables" es imposible de demostrar. Varios países ya han intentado prevenir la publicidad "dirigida" a las poblaciones específicas, y han encontrado esta tarea imposible. El vaquero Marlboro ha sido uno de las campañas de publicidad más efectiva para las compañías tabacaleras. Los vaqueros son un símbolo que atrae a todos los jóvenes, sin embargo sería muy difícil demostrar que este tipo de publicidad está dirigida a un grupo vulnerable.

No se puede diferenciar entre una publicidad dirigida a un consumidor de 23 años y una publicidad dirigida a un consumidor de 16 años. Visto que la mayoría de los jóvenes fuman para demostrar que son adultos, incluso si la publicidad del tabaco estuviera dirigida a los adultos aun atraería a los jóvenes.

Además, es importante recordar que no existe un grupo invulnerable a la publicidad del tabaco y a los efectos nefastos del consumo de tabaco.

Si se bloquean algunas formas de publicidad, las compañías tabacaleras aumentarán otras formas de publicidad. Si se prohíbe la publicidad en algunos medios de comunicación, se aumenta la publicidad a través de otros medios.

Si se prohíbe la publicidad directa, las tabacaleras aumentarán las formas de publicidad indirecta. Por ejemplo, cuando se eliminó la publicidad directa de cigarrillos en Malasia, aparecieron un gran número de productos y publicidades con el nombre de marcas de cigarrillos pero sin mencionar los cigarrillos.

Existe una multitud de ejemplos que demuestran que las compañías tabacaleras aprovechan cualquier debilidad en las leyes para seguir inundando nuestros países con mensajes que incitan la población a fumar.

Por esas razones, el texto del Convenio Marco debería endosar la única medida eficaz relacionada a la publicidad del tabaco para la cual hay una base de evidencia: una prohibición completa de todas formas de publicidad del tabaco.

— Lorenzo Huber, ASH EE.UU.

Can Hungary sustain its achievements in tobacco control?

Hungarian tobacco control advocates achieved a glorious victory over Big Tobacco in December 2000, when the Parliament voted for an amendment of the very liberal 1997 Act on Advertising, which only forbade tobacco advertising targeted at children and youth.

The amendment causes a total ban on direct and indirect advertising for tobacco products to take effect by July 1, 2001 for print media and by January 1, 2002 for outdoor posters and billboards.

A different law bans sponsorship of sports, with only one exception: the Hungarian Formula 1 race, claimed to be an important source of income for the country.

The new advertising law, along with regular tax increases to keep tobacco prices rising more than inflation, and the law protecting the rights of non-smokers in force since November 1999, gives Hungary an advanced regulatory framework in the fight against the tobacco epidemic.

The country clearly needs to implement without delay all measures found effective on the international arena, since its citizens are still among the top smokers in the world, with Hungary ranking 6th (an improvement over its past ranking



Indirect advertising Hungarian style.

of 3rd).

Hungary is one of the most developed countries of the central and eastern European region, and expects to join the European Union (EU) in 2004. As part of the legal harmonisation process to be performed prior to accession, Hungary has to adopt the EU directives on various issues, including tobacco control.

The European Union position on the Framework Convention on Tobacco Control (FCTC) is thus especially important for Hungary which, along with some other "accession

countries" of the region, fully supports EU positions.

The weak provisions of the Chair's text on tobacco advertising and the present EU position in this regard, along with the continuous struggle of the European Commission to have a new tobacco advertising directive adopted to replace that annulled by the European Court in October 2000, may leave our countries without support for maintaining their strict advertising rules.

If provisions of the FCTC on advertising remain weak, the tobacco industry would have another trump card in lobbying to erode stricter local regulations, even if a particular country decides not to adopt the Convention or any potential protocol on advertising.

It is very important for accession countries to stand vigorously for safeguarding their stricter, more effective rules on various aspects of tobacco control, even against the official position of the EU. Country delegations should protect the achievements of their people, especially when their citizens' health and well-being are at stake.

—Dr. Tibor Szilagyi
Health 21 Hungarian Foundation

The Era of Costly Lies

As the fifth round of talks amongst governments on a treaty to control tobacco consumption around the world gets into gear, BAT in Uganda continues to use the same old lines (and some new ones) to try to fool Ugandans.

The Company's recently released *Report to Society 2002* was yet another costly exercise of concealing the truth at the expense of Ugandans.

Leafing through the colourful pages of the report, there is no sign that the authors are aware that the land planted with tobacco is the same land that will hold the victims of tobacco products. In the talk of reporting standards of ethics in social accountability, there was no mention of the addiction to tobacco that holds millions hostage, putting them on a path to an early grave.

One wonders what is ethical about this pretence at telling the truth, when BAT's product continues to make Ugandans sick. BAT says that the company's position is that the choices made by individuals represent an *informed* choice. However, the report to society said that the company would "consult with the Ministry of Health and the National Bureau of Standards with the aim of intro-

ducing a new health warning".

This is the same ministry to which the company had written in 1988 saying they did not know of any link between smoking and disease. Where is the information on which to make an informed choice?

I wondered too why if there was such a concern with ethics the company was willing to "admit" to its shareholders that smoking comes with "serious risks" and could cause cancer...yet denies the same information to its customers.

This is the era of telling costly lies. The cost we are talking about is not the cost of human lives but the costs of production and delivery of products for profits. Ethics are no more than the printed words and colour on a report.

The sum of the BAT corporate responsibility report to society can be seen in the truth they did not tell. The ignorance they feign at the morbidity and mortality caused by their product. Their actions make clear that only regulation by law can cause needed change in this country.

— *Izama Angelo, Journalist*

Rumours of War

US Health and Human Services Secretary Tommy Thompson announced yesterday that in accordance with new national policy, the United States would be invading countries that manufacture products of mass destruction for export.

At the top of the U.S. list of rogue cigarette states are notorious exporters Japan, Germany and the United Kingdom.

State Department spokeshingies refused to comment on reports the United States was

Roses for the Victims (*cont. from p. 1*)

Tobacco has claimed almost 12 million lives since the negotiations began. How many more of our loved ones must die before strong action is taken to reduce this unnecessary death toll? Shoba John from India and Veronique Le Clézio of Mauritius, speaking on behalf of the Framework Convention Alliance, urged delegates to take serious actions to curb the death toll. A large wreath commemorating the dead was placed on the clock, then representatives from each region of the world placed a symbolic rose on the wreath and commemorated those killed by tobacco.

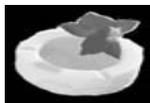
As the speakers pointed out, the point is not merely to mourn the dead, but to give their deaths meaning, by using the tragic losses caused by tobacco to strengthen our resolve to draft a strong, meaningful treaty that puts human life and health above the interests of business and trade.

Dirty Ashtray Award

Singapore, for the hypocrisy of having a domestic advertising ban, while blocking an ad ban within the FCTC, presumably because it is a major centre for the cigarette trade.



Orchid Award



Dr. Brundtland, for her prominent leadership and her call on governments to reject co-operation with the tobacco industry's so-called youth smoking prevention programmes.

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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