Finding an effective strategy to implement the WHO FCTC Article 5.3

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1. Rationale

Tobacco use caused 6 million deaths around the world in 2011. The World Health Organization (WHO) recognizes tobacco issues as 'epidemic' due to the continued increase of tobacco users. The WHO warns that, unless urgent action in all countries is taken, this will rise to 8 million deaths annually by 2030. Tobacco use is also a leading cause of preventable illness and is responsible for more than 40,000 deaths annually in South Korea. It is estimated that the economic loss due to tobacco use reaches 5 trillion won.

In order to effectively respond to the tobacco epidemic, the WHO adopted the Framework Convention on Tobacco Control (FCTC) during the World Health Assembly on 21st May 2003. The purpose of the Conference was to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by enacting a set of universal standards stating the dangers of tobacco and limiting its use in all forms worldwide. FCTC entered into force on 27th February 2005 and it has the first global treaty in the field of public health.

The WHO FCTC contains 11 Chapters and 38 Articles. The core contents of the FCTC are demand and supply reduction of tobacco products. In particular, Article 5.3 states that the tobacco industry has operated for years with the express intention of subverting the role of governments and of WHO in implementing public health policies to combat the tobacco epidemic. Thus Article 5.3 requires the need for Parties to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts.

Article 5.3 provides detailed guidelines as follows.

- Parities to the treaty should refuse to:
  - Treat tobacco corporations as "stakeholders" in public health policy;
  - Invest in the tobacco industry;
  - Partner with tobacco corporations to promote public health or other purposes; and
  - Accept the tobacco industry's so-called corporate social responsibility schemes which are really just marketing by another name.

- There are certain activities prohibited.
  - No partnerships, non-binding, or non-enforceable agreements between tobacco industry and governments.

- ☐ No voluntary contributions by tobacco industry to governments.
- ☐ No tobacco industry-drafted legislation or policy, or voluntary codes as substitutes for legally enforceable measures.
- ☐ No investments by governments or public officials in tobacco industry.
- ☐ No tobacco industry representation on government tobacco control bodies or FCTC delegations.

- ■ There are also transparency measures established.
  - ☐ Transparency of government interactions with tobacco industry through public hearings, public notice of interactions, and disclosure of records.
  - ☐ Disclosure of tobacco industry activities, including: production, manufacture, market share, revenues, marketing expenditures, philanthropy – with penalties for providing false or misleading information.
  - ☐ Disclosure or registration of tobacco industry affiliated entities, including lobbyists.
  - ☐ Disclosure of current or previous work with tobacco industry by applicants for government positions related to health policy, and of plans to work for tobacco industry by former public health officials.

The government of South Korea has ratified the FCTC in 2005 and has worked hard to reinforce tobacco control regulations and measures based on the FCTC. Yet, there has been no effort to implement the FCTC Article 5.3 so far, additionally there are no existing regulations related to Article 5.3.

Based on the rationale, first, we studied the tobacco industry activities and tactics. Second, we searched international and national case studies on tobacco industry interference. Third, we learnt how other FCTC Parties have implemented FCTC Article 5.3 in their countries and regions, and as a case study, we analysed Australia's plain packaging on tobacco products to learn lessons on how to overcome tobacco industry interference. Finally, we suggest practical tactics to effectively implement FCTC Article 5.3 in South Korea.

2. Methods

We began with a comprehensive review of existing literature on tobacco industry practices. In addition, we reviewed media reports, official documents, and various reports from international non-government organizations. To obtain highly related literature, we used 'PubMed' and 'Google Scholar" with keyword searching terms, including "tobacco industry activity", "tobacco industry tactics", "FCTC and tobacco industry" and "FCTC 5.3". To triangulate these data, we also searched NAVER and Google. We used standard snowball search methods to identify additional documents and reports until saturation was reached. Through this, we obtained a total of 145 documents and papers. Among them, after excluding unrelated source, we used about 80 documents and papers in order to achieve the research purpose.

We also searched and analysed tobacco industry internal documents available from the Legacy Tobacco Documents Library (LTDL: www.legacy.library.ucsf.edu). Since 1990, more than 80 million pages of internal tobacco industry correspondence and other documents have become available to the public and are housed in the LTDL. To narrow the sample of documents, we used keyword searching terms such as “Framework Convention on Tobacco Control”, “FCTC”, “WHO FCTC”, and “FCTC 5.3”.

Lastly, we were offered various advices from the international tobacco control experts on the implementation of FCTC Article 5.3.

3. Results

(1) Tobacco industry interference

The tobacco industry employs varied strategies to increase their profit and maintain their business around the world. The strategies followed four main themes - economic activity; marketing/promotion; political activity; and deceptive/ manipulative activity. Economic activity, including foreign investment and smuggling, was used to enter new markets. Political activities included lobbying, offering voluntary self-regulatory codes, and mounting corporate social responsibility campaigns. Deceptive activities included manipulation of science and use of third-party allies to oppose smoke-free policies, delay other tobacco-control policies, and maintain sup-port of policymakers and the public for a pro-tobacco industry policy environment. The tobacco industry used tactics for marketing, advertising, and promoting their brands that were tailored to specific market environments. These activities included direct and indirect tactics, targeting particular populations, and introducing new tobacco products designed to limit marketing restrictions and taxes, maintain the social acceptability of tobacco use, and counter tobacco-control efforts.

Among these varied strategies or tactics of the tobacco industry, there are particular tactics, such as: maneuvering to hijack the political and legislative process; exaggerating the economic importance of the industry; manipulating public opinion to gain appearance of respectability; fabricating support through front groups; discrediting proven science; and intimidating governments with litigation or the threat of litigation, to challenge the reinforcement of tobacco control policies.

Parties to FCTC should recognize the influence of tobacco industry tactics on tobacco control policies and measures. By understanding the case of Costa Rica, we learnt that the world’s strongest tobacco control regulations could become weaker due to tobacco industry interference.

The main tactics of the domestic tobacco companies related to FCTC Article 5.3 was corporate social responsibility (CSR) activities. KT&G spent 4262 trillion won from 2004 to 2011 to conduct CSR activities. Philip Morris Korea and British America

Tobacco Korea have also preferred CSR activities rather than marketing and promotion activities due to the existing tobacco control policies in Korea. The WHO FCTC Article 5.3 states that CSR activities conducted by the tobacco industry are to recruit supporters for tobacco businesses and to maintain the tobacco business; therefore the Article requires that Parties denormalize the tobacco industry CSR activities. However, there is no effective regulation to control CSR activities.

(2) Implementation of the WHO FCTC Article 5.3

The WHO FCTC Article 21 requires that Parties should submit regular reports on implementation of their obligations, meaning that their tobacco control activities must be explained and accounted for within the FCTC's framework. These implementation reports are made public, creating an important lever of public accountability for governments' tobacco control activities. According to the reports Parties submitted to the WHO, 52% of the total Parties reported that they have implemented the FCTC Article 5.3 in their countries and regions. However, there are criticisms on the reports, because the WHO asks the Parties about the FCTC Article 5.3 with only a question: "Have you adopted and implemented, where appropriate, legislative, executive, administrative or other measures or have you implemented, where appropriate, programmes protecting public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry?" Thus, the answers from the Parties are not clear and cannot be trusted.

Framework Convention Alliance (FCA), a non-governmental organization which monitors the implementation of the FCTC among the Parties, developed their own questions based on the Guideline of Article 5.3. According to FCA's report, Australia, Hong Kong, the Philippine, Singapore, and European Union show their strong efforts to implement the FCTC Article 5.3. However there are many other Parties that still have no intention of implementing Article 5.3 in their countries.

(3) Australia's Plain Packaging Law and tobacco industry interference

By analyzing Australia's Plain Packaging Law as a case study, we have provided valuable information to the Korean government and tobacco control experts. We have identified how tobacco industry undermine and interfere with Plain Packaging Law in Australia and also how the Australian government and tobacco control experts responded to the industry interference.

The purpose of Plain Packaging Law was to reduce current smokers and to protect potential smokers from tobacco use; in turn to decrease overall smoking prevalence based on the guidelines of WHO FCTC. As a result, Australia is trying to achieve to be the healthiest country in the world by 2020.

The Plain Packaging Law focuses on the tobacco packaging to become less attractive to adolescents and for the warning messages with texts and pictures to become more visible. Plain Packaging Law refers to packaging that requires the removal of all branding, such as colors, imagery, corporate logos and trademarks, permitting tobacco manufactures to print only the brand name in a mandated size. Based on this plan, the Australian government conducted a research and found that the major population of Australians do not like the color dark olive, thus the government decided this to be the packaging color. With plain packaging, tobacco products must display pictorial health warnings on both front and back of packaging with 75% and 90% respectively.

The reasons why Australia could pass the remarkable regulation on global tobacco control are: firstly, the Australian government has kept their tobacco control very strong and comprehensive. Since the ratification of the FCTC, the government has made efforts to implement the guidelines; secondly, not only the Department of Health, other government bodies, including the Department of Finance and Department of Trade are also closely involved in tobacco control policy development; finally, Australia has Nicola Roxon, the former Minister of Health, who has shown an amazing support and leadership for Plain Packaging Law.

The tobacco industry mainly used media campaigns and established a front group, the Alliance of Australian Retailers (AAR), to undermine and interfere with Plain Packaging Law. The basic ideas of the tobacco industry were as follows.

- **Plain packaging just doesn't make sense.**
  The Government has provided no real evidence that plain packaging for cigarettes will work, and now that they are not on display in most states and territories due to tobacco display bans, it just doesn't make sense. If customers cannot see cigarette packets on display anyway what is the point? Small retailers working in local communities talk to hundreds of customers every day. Customers say that plain packaging is a silly idea that won't stop people from smoking. We draw the line at Government proposals which, like the Alcopops tax, won't work and will create negative consequences for small retailers.

- **Plain packaging will create unnecessary confusion for retailers and inconvenience for customers.**
  Imagine a store where every cigarette packet looks the same. Imagine how difficult that would make it for retailers to find the right product for their customers. Plain packaging is just plain confusing and bad for small business. It is going to make it more difficult for staff in small retail stores and slow down service times which will inconvenience customers. It will also make managing stock more difficult and time consuming which is lost time small retailers can-not afford. The big advantage small retailers have over large supermarkets is the convenience they offer. Customers shop there because they are 'convenience stores.' We are concerned that if the Federal

Government takes away small retailers' ability to serve customers quickly then they lose their ad-vantage over large supermarkets – and losing frustrated customers over a policy that won't work is bad for business.

- **Plain packaging will cost small retailers money they can't afford.**
  A recent report by Deloitte on the potential impact on retailers from the introduction of plain packaging shows that plain packaging could cost small retailers up to $34,000 annually in lost time. Direct impacts include increased stock taking times, product selection errors and slower customer service. And that's just lost time. The report also shows that plain packaging will add up to 45 seconds to every cigarette transaction. The big advantage small retailers have over large supermarkets is the convenience they offer. It's tough enough competing with the large supermarkets on price – and if the government takes away their convenience it's going to make business very tough. Losses for small retailers will affect local communities. It has been estimated that around 45 cents in every dollar spent in a locally owned shop stays in the community; on the other hand only about 13 cents of every dollar spent in the big retailers stays in the community.

- **Plain packaging is likely to further increase illicit tobacco trading, increasing the risk of children and teenagers getting hold of cheap, illegal cigarettes.**
  Illicit trading of tobacco is already a serious problem in Australia. In March 2011, the Daily Telegraph reported a Deloitte study which found that 2.7 mil-lion kilograms of illicit tobacco were bought last year, equivalent to 15.9 per cent of the tobacco market. This equates to approximately $1.1 billion in lost taxation revenue annually to the Federal Government that could be used on hospitals, schools and roads. We believe that the Federal Government's plain packaging policy will further increase the trade in illicit tobacco as plain packets will be easier to counterfeit, increasing the risk of children and teen-agers getting hold of cheap, illegal cigarettes. A recent report by the Australian Crime Commission linked organised crime to the growing and importation of illicit tobacco. Anything that might make illegal tobacco more accessible to children and teenagers concerns us as responsible small retailers.

  The tobacco industry also raises Australia's Plain Packaging as an international trade issue. The industry argued that Plain Packaging Law violates intellectual prop-erty. Philip Morris, British America Tobacco, Japan Tobacco, and Imperial Tobacco sued the Australian government to the High Court on Plain Packaging law. However, the Australian government overcame all the interference from the tobacco industry and successfully launched the Tobacco Plain Packaging Act 2011.

4. Conclusions

Based on the findings of the project, the table below can be suggested to the government to effectively implement the WHO FCTC Article 5.3.

1st Step	2nd Step	3rd Step
➢ Raise awareness of tobacco industry interference ➢ Establish a Core group or committee under the government to implement the FCTC Article 5.3	➢ Adopt Code of Conduct to obtain transparency ➢ No incentive or investment for tobacco businesses ➢ Control and regulate tobacco industry CSR activities	➢ Monitor tobacco industry practices and report the progress ➢ Evaluate the implementation of Article 5.3 ➢ Support research on tobacco industry interference

In order to effectively and fully implement the WHO FCTC Article 5.3, one of the most important and urgent steps is to raise awareness of tobacco industry interference on tobacco control policies and measures. Not only the government but also the public should recognize the tobacco industry tactics and practices to undermine tobacco control policies. Most existing tobacco control polices and measures currently focus on smokers and potential smokers, while the tobacco industry as a producer and distributor of the deadly product is freely playing in the market. Given the tobacco industry targets the government bodies and employees to interfere with tobacco control policies and measures, the government should also be aware of tobacco industry interference and make efforts to obtain transparency based on the guidelines of Article 5.3, while working with the tobacco industry. Monitoring the tobacco industry practice is also crucial for an effective implementation of Article 5.3. Once the industry recognizes the existence of industry monitoring body or people, it will not be so easy for them to undermine tobacco control policies.