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# ARCHIVED - Report on the Government of Canada Stakeholder Consultations on the Framework Convention on Tobacco Control [Health Canada, 2001]

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October 3 - 4, 2001

Crowne Plaza Hotel

Ottawa, ON

## Background

### The Framework Convention on Tobacco Control (FCTC)

In 1999 the World Health Assembly (WHA), the governing body of the World Health Organization (WHO) unanimously backed a resolution calling for the development of the Framework Convention on Tobacco Control (FCTC). The main objective of the Convention is to reduce the health consequences of tobacco use through collective international action and co-operation on tobacco control. The International Negotiating Body (INB) of the FCTC has

met periodically since October 2000 to negotiate the Convention text. Over 150 WHO member states participate in these meetings. The aim is to complete negotiations and have the FCTC open for signature and ratification by 2003.

The Chair of the FCTC developed a draft text after the first round of negotiations which was used as the basis for negotiations among member states during the second negotiating session. This draft text was also used as the basis of discussion for the consultations held with Canadian stakeholders in Ottawa on October 3 and 4, 2001 (see Appendix D). A written consultation on this same text was held in February 2001 for which Health Canada received comments from 21 groups.

## Participants

The 100 participants at the Ottawa consultations included non-governmental organizations (NGOs) working in the areas of health and tobacco control, Aboriginal organizations, and those representing tobacco product manufacturers, associated labour union organizations, tobacco growers and tobacco product retailers. A number of provincial and territorial government representatives also participated as observers. Representatives from the federal departments of Foreign Affairs and International Trade, Finance, Canadian International Development Agency, Canada Customs and Revenue Agency, Justice, Solicitor General, Agriculture, Industry, Royal Canadian Mounted Police, Indian and Northern Affairs and Health Canada also attended to listen to the discussion and to act as technical advisors. For a full participant list, please see Appendix B. At the end of the consultation session, participants were asked to complete evaluation forms. In the evaluation forms, participants were asked to identify the one most important thing they would like to see happen in the

upcoming negotiations in Geneva. A compendium of the responses to this question can be found in Appendix C.

## Plenary 1 (October 3)

### Speakers

The following is a summary of the remarks from the opening speakers.

Ed Aiston, Health Canada

Ed Aiston, Director General, International Affairs Directorate, Health Policy and Communications Branch, Health Canada and Head of the Canadian Delegation to the FCTC negotiations

Mr. Aiston chaired the opening plenary of the stakeholder consultations on the FCTC. He welcomed the participants and expressed his appreciation for their willingness to participate in the consultations. He indicated that the FCTC represents the first time that over 150 countries have joined together to develop a Convention that is grounded in public health. The consequences of tobacco use are important to both Canadians and citizens in other countries, particularly those in the developing world.

Mr. Aiston outlined the three objectives for the meeting:

- To draw on expertise from the stakeholder community in Canada
- To gather input and comments on the issues covered in the "Chair's Text of a Framework Convention on Tobacco Control"
- To seek views on priorities for future negotiations on the FCTC.

He indicated that there was a broad mix of stakeholders at these consultations, representing many views on tobacco issues; all viewpoints would be taken into consideration. He also indicated that the Canadian Government would continue to welcome comments at any time during the

negotiating process. The consultation process began in 1999 and will continue until the FCTC is open for signature in 2003. The next negotiating meeting will take place in Geneva in November 2001.

Dann Michols, Health Canada

Dann Michols, Assistant Deputy Minister, Healthy Environments and Consumer Safety Branch, Health Canada

Dann Michols welcomed the participants and provided the following background and context for the meeting.

The WHO estimates that tobacco-related illnesses cause over four million deaths per year and that this will grow to about 10 million deaths by 2030. The majority of these deaths will be in developing countries. In Canada tobacco use is the greatest preventable cause of illness, disability and premature death - causing 45,000 deaths per year. As well, links between health problems and exposure to second-hand smoke are well established.

Canada played a leadership role in introducing the idea of an international treaty on tobacco control to the World Health Assembly (WHA). Canada believes a comprehensive, coordinated and multifaceted approach to tobacco control is necessary which includes policy development, legislation and regulation, enforcement, public education and partnerships.

Progress is being made to curb smoking and improve health through domestic policy, but tobacco issues are also global in nature. The FCTC will ensure that domestic initiatives are supported by international efforts, and that trans-boundary issues and international development goals are addressed.

Allyn Taylor, World Health Organization (WHO)

Allyn Taylor, Health Policy Advisor, World Health Organization (WHO)

Allyn Taylor provided insight into how the FCTC negotiations were progressing.

Tobacco cannot be regulated through domestic legislation alone as the tobacco market is affected by a complex mix of factors that transcend national borders, including international trade liberalization. So far global participation has been outstanding, but a number of political splits have arisen, some between developed and developing countries, but others due to cultural and historical differences. Challenges have arisen around financial and technical assistance as well as compensation and liability provisions. Other areas which may be problematic include the harmonization of policies (taxes and prices) at the global level, the role of NGOs in the negotiating process, and the level of detail appropriate for the Convention. All these issues are on the table for negotiation.

The FCTC marks the first time in the history of the WHO that member states have used the organization as a platform to negotiate a legally binding convention.

Ken Kyle, Canadian Cancer Society representing the Framework Convention Alliance

Ken Kyle, Director, Public Issues, Canadian Cancer Society

Ken Kyle made the following comments related to NGO participation.

The Framework Convention Alliance (FCA) is a coalition of 140 international NGOs committed to ensuring a strong and effective FCTC and includes organizations and coalitions working at regional, national and international levels. It was formed to improve communication among groups working on the FCTC and to reach out to groups not yet involved, particularly those in developing countries.

In ensuring a strong FCTC, the FCA has produced position papers on the draft text, daily news bulletins during the negotiating sessions, and advocacy materials. It has also run briefing sessions for delegates.

The FCA believes tobacco policies should be evidence-based and draw upon international best practices. Promotion of public health must be the guiding principle and should override provisions of other international agreements. Some issues of concern to the NGO community include advertising, sponsorship and promotion; smuggling; tax-free and duty-free tobacco sales; and misleading terms such as "light" or "mild" on tobacco products. The FCA advocates for a mechanism to provide financial and other resources to assist countries in their tobacco control efforts and to use tobacco tax policy as a public health tool to achieve continuous decreases in tobacco consumption.

## Questions and Comments

Participants were invited to ask questions or make comments on the speakers' presentations. A summary of the discussion follows.

A tobacco union representative raised the issue of unemployment being a health hazard and noted that 50,000 Canadian workers rely on the industry and their voices must be heard.

An NGO representative stressed the need for a sustainable development model that balances economic development, environmental sustainability, health and well-being. There are concerns around the global trade agenda and the impact of the World Trade Organization (WTO) and regional trade agreements. A question was posed regarding the statement that the Convention may be able to supercede trade agreements, the role of the treaty bodies and how this may be balanced regarding human rights issues.

Allyn Taylor responded that some of the WHO member countries have asked that the Convention supercede international trade agreements. WHO and WTO are discussing the relationship between trade law and tobacco control.

A tobacco union representative expressed his dismay at the small number of references to workers in the Chair's text and pointed out that this was indicative of how the workers' interests have not been taken into consideration throughout the process. As well, the language is unclear between the French and English documents. In the English text the phrase used is "tobacco control" however in the French version this appears as "anti-tabac." This confusion between the two languages makes it impossible to decipher if the approach being taken is one of control or one of banning.

Mr. Aiston responded that all of the UN languages are being used in the negotiations, including both French and English, causing multiple problems around translation. These issues will be raised with the WHO. But the operative word is "control"- there are no expectations around a ban at this point.

An industry representative inquired about the relationship between trade and the FCTC.

Allyn Taylor responded that this was a question that she, as a member of the WHO secretariat could not answer, but that the issue is being discussed in the negotiations, particularly between developing and developed countries. Guiding principle five has a reference to the FCTC and trade law.

The same representative asked whether this guiding principle would affect packaging or labeling issues as the cigar industry is over 90 percent international and thus trade barriers are of particular importance to them.

They embrace the idea of harmonization to even the playing field and to bring many countries up to a certain standard level.

An NGO representative revisited earlier comments concerning the issue of jobs and sustainable livelihoods. She stressed the importance of these issues and indicated work around collaborative research is being carried out to ensure there is a strong evidence base around this treaty. In response a tobacco union representative acknowledged the concern for job replacement, but cautioned against not replacing current jobs with low paying, service industry positions.

A representative from an Aboriginal organization referred to the fact that 72 percent of Aboriginal adults 15 years and older smoke. There is no mention of Aboriginal or indigenous populations in the Chair's text. An open question was posed to the other Aboriginal representatives in the room for discussion over the course of the meeting: Should there be special mention made regarding indigenous peoples in the Convention?

A tobacco representative asked for clarity around how the stakeholders' comments will be incorporated and the proposed timetable. Mr. Aiston clarified that member countries will continue to negotiate the Convention text at the next meeting in Geneva in November. The Canadian delegation will consider comments made at the consultations when forming positions for the negotiations.

An NGO representative raised questions regarding how other United Nations (UN) conventions such as the Convention on the Rights of the Child will link with a convention on tobacco control and how youth will be involved in the process.



Allyn Taylor explained that UNICEF is a participant on the ad hoc interagency task force on tobacco control and has collaborated on a WHO study on the relationship of the Convention on the Rights of the Child and tobacco control.

A tobacco union representative for the tobacco industry asked for clarification around the role and responsibilities of the provinces regarding the ratification of the FCTC. Mr. Aiston indicated that provincial/territorial governments have been consulted on the FCTC and that they have been represented on Canada's delegation to the negotiations.

Provincial/territorial rights and interests will be respected in the ratification process.

A tobacco union representative asked for clarification of the government's objectives regarding banning tobacco (a legal product) and called for a need to be honest with the workers in the industry.

Mr. Aiston responded that there has been no serious discussion during the negotiations around banning tobacco; all discussions have revolved around control and the means of control.

Another tobacco union representative voiced further concerns about job loss due to restrictions which may ensue, and would result in, but not be limited to, factories closing. He further pointed out that if manufacturing jobs are moved to other countries to take advantage of cheap labour, the government will still enjoy its \$5 billion in revenues (12 times what the companies receive in profits) and the companies themselves will still make a profit, but it will be displaced workers who will be affected.

A representative for duty-free retailers pointed out that although the FCTC does not set out to ban tobacco products, it does contain mention of banning duty-free tobacco products. As well, the text addresses issues

around licensing, taxation, trade and commerce. When will representatives for finance, trade, labour, commerce, transport and international trade be brought into the discussions?

Mr. Aiston clarified that all the relevant government departments have been a part of the discussions, including Industry, Foreign Affairs and International Trade and Finance, and that officials from some of these departments will be members of the delegations to FCTC negotiations.

An NGO representative asked about provisions in the Convention which will improve, or have the potential to improve, the conditions for workers, and whether international labour bodies had been involved in the negotiations.

Allyn Taylor responded that there are a number of provisions aimed at workers, including financial measures. As well, the International Labour Organization has attended the INB.

## **Chair's text of a Framework Convention on Tobacco Control: Opening sections**

Ross Snyder from the Department of Foreign Affairs and International Trade is a senior member of the Canadian negotiating team on the FCTC.

Ross Snyder briefly outlined the structure, elements and relationship between the opening and later sections in the Chair's text. The opening sections in the Chair's text include the following: Preamble, Definitions, Objective, Guiding Principles, and General Obligations. After the introduction by Mr. Snyder, participants were invited to comment on the various opening sections in plenary and were also given the opportunity to complete an evaluation form with additional comments (39 completed forms were received). Due to time restraints, participants were asked to vote on which of the eight guiding principles they would be most interested in discussing in plenary. Four guiding principles were chosen: 2, 5, 6 and 7.

Following are summaries of Mr. Snyder's introductions to the opening sections, the comments made in plenary and the response forms submitted by participants at the end of the consultation.

## **Preamble**

This section has not yet been written. Mr. Snyder indicated that it is typical to add this section further into the negotiating process. The Preamble will not in itself carry any obligations, but will be a political statement of purpose.

## **Definitions**

This section had not yet been written. Mr. Snyder explained that definitions are critical to the interpretation of the substantive obligations. They should not be written at the end of the process as the negotiations should not take place based on assumptions regarding the meaning of certain terms. The Chair of the INB and the secretariat have asked the parties to supply lists of terms which need to be defined, as well as suggested definitions.

## **Objective**

The draft text declares that the objective of the Convention and its protocols is to provide a set of tobacco control measures which will be implemented by the Parties with the aim of continually reducing the prevalence of tobacco use in order to protect people from the health, social, environmental and economic results of tobacco use and exposure to tobacco smoke.

The participants were asked: From your perspective, what is positive or negative about the objective statement? Following is a summary of the comments from the plenary session and written submissions.

An NGO representative remarked that the Convention was taking a needed global approach.

Issues were raised by a representative from an Aboriginal association around the terms "prevalence" and "consumption" and the need for clarification regarding their precise definitions. An NGO representative noted the inclusion of the term "prevention" in several areas, but also noted that the term "promotion" (as in "health promotion") is not present and should be. According to at least eight NGOs, the objective should not be to reduce the "prevalence" of tobacco use, but to reduce tobacco use overall or to ultimately eliminate it; one of these NGOs suggested including prevalence, incidence and overall consumption in the objective statement. Three other NGOs concurred that consumption should be mentioned, and one also added that the positive protection aspect should be included as well.

An industry representative questioned the negative phrasing of this section and suggested a more positive approach be taken. Comments were raised by a tobacco representative around the issue of translation. In the French text "la lutte anti-tabac" should be revised to keep in line with the English text "tobacco control". A representative from a health NGO would like mention of "promotion" and "prevention" in the Convention. In the French version of the text, an NGO representative requested the term "sensiblement" be replaced by "substantiellement," that "tabagisme" replace "tabac" (in lutte pour control...) and that the last few words be changed to "a la fumée de tabac environnementale."

An industry representative suggested that although it was clarified earlier in the discussions that the focus of the Convention is on tobacco control and not on banning tobacco, the text in this section (in the French version) suggests the contrary with phrases such as "effets dévastateurs" and

"protéger les générations." Other industry representatives stressed that the objective is based on false and misleading assumptions and that industry was not properly consulted.

A suggestion was put forth to include references to workers and jobs by a tobacco union representative. A duty-free retail representative suggested the Convention would be more relevant if it focused on prevention, specifically aimed at youth. A cigar industry representative asked for a distinction to be made between cigar and cigarette tobacco.

It was also suggested that the objective should state "present and future generations through the means of the framework."

While the inclusion of "health, social, environmental and economic consequences" was applauded by at least one tobacco industry representative as acknowledging the balance which must be part of the Convention, several others felt the issue of employment protection was not adequately stated.

Several NGOs lauded the acknowledgment in this section that tobacco use is a global issue and a standardized approach is needed. One of these organizations also added that the issue of addiction be added to this section and another issued the reminder that tobacco use must be kept in the context of a social problem, not an individual one.

This section is too broad, according to two representatives from the cigar industry, and does not distinguish between the different types of tobacco products. A duty-free representative questioned the authority of the WHO and Canadian Government to dictate to the world and its citizens around tobacco use and stressed the primary focus of the Convention should be on addressing youth smoking.

## **Guiding Principles**

With respect to the Guiding Principle section, Mr. Snyder explained that it is unusual to have guiding principles as a separate part of a convention. In this context it is not clear what the guiding principles will do. This section could change. In the current Chair's text there are eight guiding principles.

Following is a summary of the comments from the plenary session and written submissions on the guiding principles.

#### Guiding principle # 1

Chair's text: "Reducing the current impact, and halting the growth, of tobacco consumption is crucial in protecting the health of individuals, as well as national and global public health, and requires comprehensive multisectoral national actions and coordinated international responses."

Three health organizations noted that reducing impact and halting growth will not achieve the objective, but that reversing growth, or reducing or eliminating use is necessary. One duty-free participant objected to the FCTC superceding other treaty agreements and local customs. Another individual from the same sector stated that the WHO should not venture outside of its mandate by trying to regulate taxation and trade issues.

#### Guiding principle # 2

Chair's text: "Every person should be fully informed about the addictive and lethal nature of tobacco consumption, and non-smokers should be adequately protected from exposure to tobacco smoke."

Both a tobacco industry representative and a duty-free retail representative took exception to the dictatorial tone of the principle, that "every person should be fully informed." The duty-free representative asked that it be replaced with "information be made available to each person." The same duty-free representative addressed the vagueness of the term "adequate." Several NGO representatives also asked that this term be removed or be

replaced by "completely" and one cited that consensus research shows there is no safe level of exposure to second-hand smoke. Another asked for a clear definition of the term "smoke." The term "addictive" is preferable to "dependance" and should be used throughout the text, as it is here, according to an Aboriginal representative.

A tobacco industry official pointed out that the Canadian public already has a high awareness level of the risks involved; an NGO countered that the awareness levels are not high enough.

An NGO representative stressed that tobacco use has to be dealt with in different ways - many approaches are needed, especially at the international level. All available means should be employed to curb the problem.

Two NGO representatives questioned the usefulness of simply informing people (especially in developing countries) about the addictive and lethal nature of tobacco. An Aboriginal representative asked that this idea be expanded to every child (beginning as young as kindergarten) becoming educated about the lethal nature of tobacco.

An NGO representative related that smokers themselves seek protection by requesting non-smoking sections in public places, and therefore requested that "non-smokers" be changed to "people." Two other NGO representatives agreed. Another NGO representative asked that non-smokers not only be protected against exposure to tobacco smoke, but that they also be informed of its negative impacts.

According to several NGO representatives, there are two separate points in this section and they should be treated as such. Informing the public is an issue to be dealt with apart from protecting non-smokers.

The nature of the term "tobacco" was discussed and resulted in a cigar industry representative asking that a distinction be made between cigarette and cigar tobacco. An Aboriginal representative asked that the term be broadened to include snuff tobacco as well.

### Guiding principle # 3

Chair's text: "The importance of technical cooperation in helping to establish and implement effective tobacco-control programmes in Parties in which public health resources are limited should be recognized."

A public health worker emphasized the need for governments to be actively involved in public health initiatives around tobacco issues; the federal governments through policy decisions and provincial governments through program funding.

### Guiding principle # 4

Chair's text: "The importance of financial assistance to aid the economic transition of tobacco growers and workers that may be displaced as a future consequence of successful tobacco-control programmes should be recognized."

A retailer indicated that economic transition should take small business owners and displaced retail/wholesale workers into consideration.

### Guiding principle # 5

Chair's text: "Tobacco-control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade."

A cigar industry representative indicated full agreement with this principle.

An NGO representative pointed out that agreements which liberalize trade restrictions result in making products more available; and if the purpose of the Convention is to decrease consumption, the FCTC should not be subject



to normal trade rules. The present wording of the principle does not support this idea.

Another NGO representative endorsed wording put forward by the European Union at the last round of negotiations: "priority should be given to public health protection when tobacco control measures provided for in this Convention are examined for compatibility with other international agreements."

Several NGO representatives expressed concerns around how the Convention will address justifying trade discrimination and how trade agreements could undermine the Convention. Two NGO representatives also argued that the text should prioritize health over trade and other issues.

According to a duty-free representative, a ban on duty-free sales contravenes many national laws and multi- and bi-lateral trade agreements.

#### Guiding principle # 6

Chair's text: "The tobacco industry should be held responsible for the harm its products cause to public health and the environment, with each Party determining the scope of such responsibility within its jurisdiction. (Chair's note: As announced during the first session of the Intergovernmental Negotiating Body, WHO is convening a panel of legal experts to make recommendations to the Negotiating Body on the nature and scope of potential liability and compensation provisions.)"

A retailer stressed the need for governments to also be held financially responsible through the taxes they receive from tobacco sales and a duty-free representative added individual responsibility should also appear in

this principle. An industry representative pointed out that if the real intention is to force businesses to close through threat of litigation, this is an indirect means of banning tobacco products.

A retail representative asked that guiding principles six and seven be amalgamated due to their interdependence.

An NGO representative asked for more emphasis on "industry conduct" which includes, but is not limited to, its products. A retail representative asked that the term "tobacco industry" be defined to include manufacturers, retailers, growers, etc. Another industry representative added that the government is the largest tobacco stakeholder and should also be held responsible.

A cigar representative found the principle problematic as it does not consider individual rights, type of use or genetics, but is rather just a blanket statement. To illustrate his point, he suggested substituting the words "auto industry" for "tobacco industry." The auto industry is not held responsible for negative spin-off effects from their products, for instance when 16-year-olds drive carelessly or recklessly. Thus cigar smokers, who represent a separate demographic from cigarette smokers (older and smoke very few cigars each year), should be treated separately in the Convention.

An NGO representative pledged support for the inclusion of this principle. Another NGO participant concurred and pointed out that meaningful change will only happen (especially in the developing world) if the industry and its senior officials are held personally responsible. Still another NGO representative drew on examples from British Columbia and Ontario where cost recovery law suits have been initiated.

Several industry representatives remarked on the need for individuals to accept responsibility for their tobacco consumption. A representative from the duty-free sector also noted that tobacco is a legal product and companies are required by law to divulge their recipes to the government. Therefore, they should be held responsible for their products according to compliance with these recipes.

#### Guiding principle # 7

Chair's text: "The participants of all elements of civil society is essential in achieving the objective of this Convention."

A tobacco union representative pointed out that Canadian smokers should be consulted and their rights should be respected. Another tobacco union representative asked that this principle be less prescriptive.

An NGO representative stressed that it is not appropriate for the industry to be present during such public health discussions.

An NGO representative indicated that this principle is not relevant to the discussion.

If, as was suggested, smokers are added to this section, the same must be done for non-smokers according to an NGO representative.

#### Guiding principle # 8

Chair's text: "The provisions of this Convention should be recognized as minimum standards, and Parties are encouraged to implement measures beyond those required by the Convention."

No comments were received regarding this guiding principle.

#### Other comments

An NGO representative noted that two points are missing from the guiding principles which should be included:

1. Access to programs to reduce tobacco use; and
2. Incorporation of best practice research (dealing with programs, policies and other interventions) into program development on an ongoing basis.

## General Obligations

Mr Snyder indicated that general obligations sections are common in treaties, cutting across the various substantive issues.

The Chair's text outlines seven general obligations regarding:

1. Developing national tobacco-control strategies;
2. Financing these strategies, adopting legislation and reducing tobacco consumption and exposure to tobacco smoke in accordance with the Convention;
3. Regulating and prohibiting tobacco product exports which do not comply with the exporting country's domestic standards;
4. Cooperating to formulate agreed measures, procedures and standards ;
5. Cooperating with international bodies;
6. Not affecting additional domestic measures; and
7. Not affecting bilateral or multilateral agreements.

Following is a summary of the comments from the plenary session and written submissions.

A representative from an NGO drew attention to the fact that the link between financial assistance for economic transition is made in the guiding principles, but this theme is not carried through under the general obligations. In countries such as Zimbabwe, much of the available land is used for tobacco crops, including land which historically grew food crops.

As well, money from the tobacco industry is used to build schools. The Convention must go deeper in terms of how the transition from tobacco crops will be made, especially in developing countries.

Clarification around the term "harmonization" is needed according to several NGOs and if this term results in the lowest common denominator being the baseline, then reference to harmonization should be removed. Several participants also asked for clarification regarding financial responsibilities.

An NGO participant asked that the word "reduce" be replaced with "eliminate exposure to tobacco smoke" in 2 (c) which now reads: "reduce tobacco consumption and exposure to tobacco smoke in accordance with the provisions of this Convention and, as relevant, its protocols." Another NGO representative asked that technical assistance be added to 2 (a) which deals with establishing, reinforcing and financing a national coordinating mechanism for tobacco control. This representative also commented that the language is weak in both 2 (a) and 2 (b) which deal with adopting legislation measures and harmonizing policies.

Many industry representatives felt workers were not given fair consideration in this (and other) sections, one also stressed the need for evidence-based decisions.

An NGO representative suggested that integration with sustainable development approaches should be reinforced here, and that employment strategies could also be addressed in this section.

An industry representative suggested that the industry be represented at the negotiations in Geneva.

Mr. Aiston summarized the morning's discussions. Participants then broke into small groups to discuss the remaining sections of the Chair's text not discussed in plenary for the afternoon session. Technical advisors from the federal government were on hand for direction and clarification. Groups were asked to organize their discussions around the following headings: gaps, areas that need more emphasis, areas that need less emphasis, priorities, and other comments.

## Plenary 2 (October 4)

### Results of the small group discussions

The results of the discussions from the small groups were reported back in plenary and participants made further comments or clarifications on the various sections. Following are summaries from each small group discussion. These summaries include information from the presentations made in plenary by the small group facilitators, the detailed notes submitted by the small group rapporteurs, and the comments made by the participants in plenary following each presentation. These discussions have been organized to follow the structure of the Chair's text, and comments do not appear in the order in which they were presented at the meeting.

### **Section F - Price and tax measures to reduce the demand for tobacco**

As in other discussions, NGO participants expressed concern around the term "harmonization" (in reference to harmonization of tobacco product prices) and want assurance this will result in prices going up to meet the highest price, and thus making the product less affordable. This being said, price is only one factor in a multipronged approach including education, prevention, etc. to tobacco reduction. One of the NGOs contended retail price, more than any other factor, impacts consumption and sales rates.

An industry representative voiced concerns around raising taxes for tobacco products, contending that this leads to both an increase in smuggling and a rising probability of foreign product flooding the market. It was suggested that higher taxes also place an unfair burden on the working poor and the unemployed, two of the heaviest tobacco using groups.

There was agreement that consumption rates and purchase rates are separate indicators and must be recognized as such (purchase rates do not take illegal purchases into consideration).

## **Section G Non-price measures to reduce the demand for tobacco**

### **Passive smoking**

NGOs asked that the statement in the draft text dealing with systemic protection from exposure to tobacco smoke in enclosed workplaces, public places and public transit, either become universal or that the special risk groups identified be broadened to include workers, children in the home, etc. As it stands the only special interest groups cited for particular consideration are children and pregnant women. Elimination of tobacco use should be emphasized, not protection from or reduction of tobacco use, and references to second-hand smoke should replace the action of "passive smoking."

Smokers are not accommodated in this statement, according to industry officials. They should have the right to choose a ventilated room or non-smoking section.

NGO representatives urged that honesty and transparency guide all communication regarding environmental tobacco smoke. This can be achieved in part by an elimination of third party communication/disinformation campaigns.

## **Regulation of contents of tobacco products**

With respect to the reference of harmonizing standards, NGO representatives were unanimous in voicing their concerns around the vague nature of this statement. They also stressed that harmonization may not be feasible or desirable if it results in the lowest common standard being used. In particular it was warned that harmonization of international standards should not interfere with a country's ability to act quickly.

Industry and tobacco union representatives called for the development of international testing/reporting standards as well as a framework to facilitate reducing the risk associated with tobacco products. It was agreed that all stakeholders should be involved in developing the standards.

Several NGO representatives asked for the focus of this statement to be broadened beyond the product content itself and include smoke content. These same individuals asked for more emphasis to be placed on emissions, additives and nicotine. They also asked that priority be placed on giving governments the power to change product content and regulate tobacco as a hazardous product. Industry representatives indicated that harmonized standards would be useful so that they would not have to defend Canadian standards in the international arena.

## **Regulation of tobacco-product disclosures**

Discrepancies in the text between the French and English versions were identified.

Industry representatives reported that this statement regarding enforcing disclosures around ingredients, additives and major components of tobacco smoke, is vague. Questions from all participants centred around timing and format of disclosures: who will receive the information (government, regulatory bodies or a broader audience?); and what will be done with the information. While industry participants were particularly



concerned with disclosing confidential commercial information (although willing to disclose all ingredients and major constituents of tobacco smoke for appropriate products), others felt the statement should not allude to proprietary rights.

NGO representatives asked that disclosure also include information regarding point of sale payments, third party funding and research. Industry officials asked that anti-tobacco groups funding sources also be revealed. They also suggested that industry may be able to support developing countries that do not have the technical capacity or funding around disclosure issues.

Industry representatives supported government collaboration around product testing and welcomed further discussion around the issue as it has been acknowledged that current tests are not adequate.

### **Packaging and labelling**

An NGO participant strongly supported the provision which addresses banning terms such as 'light', 'mild' and 'low tar' to convey a product is less harmful, both in Canada and internationally. A cigar industry representative stressed that descriptors for cigars denote taste and not tar levels, and this is another reason why cigar products should be considered separately from cigarettes. A tobacco industry representative argued that terms such as "light" and "mild" are not misleading, while an NGO participant disagreed.

A tobacco industry participant asked for clarification around the terms "false, misleading or deceptive." NGO representatives supported the article which contained these terms and pointed out that this provision is already in effect in the Canadian Tobacco Act.

A cigar industry representative stated that articles pertaining to statements and product information on packaging is of particular importance to the cigar industry due to the international focus of its packaging. A substantial amount of cigar packaging space is already used to meet current requirements.

One NGO representative expressed the futility of an age requirement on packaging as it makes smoking seem more adult, and therefore more attractive to young people.

NGO and cigar industry representatives were clearly divided around the issue of colour pictorial warnings. The cigar industry representative argued that these warnings are not appropriate for their products, and that perhaps an international symbol should be developed. NGO representatives believed photos would address literacy issues and language issues both in Canada (where some communities, including native communities, may not communicate in either official language) and in other countries.

One NGO representative explained that the broad nature of packaging can be used as a cost-effective educational initiative to increase public awareness and reduce smoking. Representatives from both the cigar and the tobacco industries questioned the goal of health warnings on the packaging and stated that some of the information required, such as tar levels in cigars, is impossible to test.

Representatives from health and First Nations NGOs maintained that consumers have a right to know as much information about products as possible.

## **Education, training and public awareness**

It was agreed by all that more emphasis should be placed on targeted education campaigns, although one NGO representative felt public training should be somewhat more generic and the focus be broadened beyond youth. Several NGO representatives stressed the need for target audience involvement in the design and delivery of programs and initiatives.

Aboriginal and other NGO representatives identified advocacy as a gap in this section of the Convention. The deletion of the term "vulnerable" was also called for in the clause relating to ensuring groups ("notably, children, young persons and vulnerable groups") are fully informed about the health risks of tobacco, particularly if it relates to Aboriginals. A suggested replacement was the term "high risk." A note of caution was expressed around lumping different groups with different sensibilities and issues, such as youth and Aboriginals, under one moniker.

NGO representatives believed more emphasis should be placed on sharing best practices which can be adapted for local conditions, cultures and different groups. This will also allow other countries to benefit from Canada's expertise. Education should also be more accessible (and include NGOs and governments) and an Aboriginal representative pointed out it should be culturally relevant and take into consideration traditional and nontraditional tobacco uses.

An NGO representative voiced uncertainty regarding the quality of information reaching the general public, and as a result health organizations should be at the ready to respond to misinformation. It was suggested that one such myth is that bars will close as a result of smoking bans. Information should be positioned around a premise to promote health, not attack individual rights. Further, a goal should be set to encourage a smoke-free norm.

An Aboriginal representative reinforced the need for both youth and the communities themselves to be involved at all stages of the initiatives, including the development stage. Adequate resources are also imperative for First Nations communities to implement effective programs for their youth.

Industry representatives asked for clarification around the term "industry" as referred to in the phrase "facilitate public access to information on the tobacco industry." It was further pointed out that there are many people involved in the industry including growers, vendors, truck drivers etc.

### **Advertising, promotion and sponsorship**

A tobacco union member pledged his support for the statement: "prohibiting all forms of direct and indirect tobacco advertising, promotion and sponsorship targeted at persons under the age of 18." NGOs were unanimous in their support for a total ban on advertising, for all age groups.

Tobacco industry representatives questioned the existence of evidence to support some of the commitments in the Convention. They pointed to the statement regarding imposing strict restrictions on all forms of direct and indirect tobacco advertising, promotion and sponsorship targeted at people over 18. They noted that a ban on advertising has been in place in Canada since 1989 and yet there was an increase in youth smoking in 1991.

An NGO representative suggested that tobacco-industry identification programs could indirectly promote smoking, by raising its profile. Representatives from industry adamantly denied that their program "Operation Identification" in any way promotes tobacco sales to youth. A representative from the retail industry defended the identification program and outlined the compliance rate and the success it has had.

An Aboriginal participant pointed out that one industry-funded pilot project for First Nations youth saw a reduction of tobacco use by 50 percent on the premises of one particular school. Several NGO representatives voiced objections to direct industry funding for youth-related projects.

Adopting national measures and cooperating to phase out cross-border advertising, promotion and sponsorship is a priority according to one NGO representative. The issue of cross-border advertising can only be addressed in an international convention.

## **Section H Demand reduction measures concerning tobacco dependence and cessation**

Industry participants believed the government should be responsible for funding the cessation initiatives outlined in the Convention. Both industry and NGO representatives stressed the importance of adequate funding. One NGO representative added that a sustained funding approach, to address issues beyond cessation, is necessary. As well, funding must be proportional to impact with some groups, such as Aboriginal communities, requiring more funding. General consensus resulted around the need for sustainable, affordable, portable (including internationally), and accessible cessation and treatment resources and programs.

Looking at the issue with an international perspective, cessation initiatives must take into account products besides cigarettes (such as bidis, chewing tobacco, etc.) and also examine the social norms which support these practices, according to an NGO representative.

NGO representatives found several gaps in the section that addresses implementation of promotional and educational campaigns aimed at encouraging cessation of tobacco use. They asked for the inclusion of tobacco control information in standard curricula for all health

professionals. This includes making advocacy information and cessation training available to all - cessation is an overlooked, yet primary issue. According to one NGO representative, coalitions must be built outside the medical model to include a broad range of stakeholders. As well, what is required is treatment, which is long-term, not cessation, which is short-term.

It was agreed that education measures should be targeted in their approach and the intended audiences should be involved in the design and implementation. Audiences that require specific, separate approaches include youth (with sub-sets such as late teens and early 20s), Aboriginals, women, and pregnant women. Promotion and education campaigns should be integrated into school curriculum starting at the elementary levels. Because this is an international treaty, the issue should also be addressed outside of schools.

An Aboriginal participant also stressed the importance of employing culturally relevant and appropriate approaches. Minimal international standards should be established and best practices should be recognized and used.

Regarding language, it was pointed out by one NGO representative that the term "campaign" as referring to "educational campaigns aimed at encouraging cessation ..." sounds temporary. An Aboriginal representative asked that "addiction" replace "dependence," in the statement "integration of treatment of tobacco dependence ..." and in all other references in the Convention.

## **Section I - Measures related to the supply of tobacco**

## **Illicit trade in tobacco products**

The regulation of Internet sales must be addressed in the Convention and more emphasis is needed on the impact of illicit trade on youth according to a duty-free representative who also thought it should be clearly stated that retail duty-free is not the main source of smuggled tobacco.

An industry participant indicated that it was important to recognize that increased taxes may result in increased smuggling - the opposite of the intended effect. As well, smuggling is an international problem which encompasses much more than just tobacco products, therefore the best approach in dealing with the problem should not single out one industry. Another industry representative pointed out that a tobacco marketing board controls the production and sale of tobacco and ensures quality standards are met. Smuggled products will not necessarily meet these standards.

An NGO representative contradicted the comment made by an industry representative that tobacco control will result in a decrease in jobs. There will be a decrease in jobs in that industry, but money will be diverted to other areas of the economy.

Another NGO provided alternate wording for article 3(a) which reads: "carry a statement indicating the name of the manufacturer, the country of origin, and the product batch-number, including the date of production and expiry." The NGO proposed text reads: "carry overt or covert markings that allow enforcement authorities to identify the manufacturing plant, production batch, and at least the first customer to whom the product was sold and all future customers known to the manufacturer at the time of manufacture."

## **Elimination of sales to and by young persons**

A retail representative indicated that the retail industry has asked for government support to train individuals in the retail business around youth and intervention measures. More emphasis is required in this section around youth education, retailer education, and the responsibility of all sectors. Questions arose from industry representatives around article 12 and the lack of repercussions for youth buying or selling tobacco. NGO representatives stressed that resources are not best used to prosecute youth, but would be better spent on educating retailers. A retail representative outlined Operation ID, a program to train retailers in the area of illegal tobacco sales.

## **Licensing**

The differences in licensing measures between developed and developing nations need to be clear and the link between consumption and licensing (of tobacco retailers) must be clearly established according to a duty-free representative.

An NGO representative pledged support for effective licensing with enforcement and substantial penalties. An industry representative drew on the Quebec example, where licensing measures were cancelled, to illustrate their lack of effectiveness.

An industry representative objected to implementing developed country standards on developing countries. The representative indicated that government policy which does not prosecute minors for possessing or smoking tobacco is at the root of the problem for underage consumption.

NGOs were generally supportive of measures to ensure licensing requirements for tobacco retailers.



## **Government support for tobacco manufacturing and agriculture**

An industry representative stressed the need to recognize that government support will be needed if the intent is to eliminate tobacco consumption and production. Both industry and NGO representatives agreed crop replacement is difficult. Several suggestions arose regarding how tobacco tax money and industry profits could be used to benefit the community. This included exploration of alternate crops and jobs, youth programs, and cessation and education programs.

## **Section J Compensation and liability**

There exists no text in the Convention related to this subject. WHO has convened a panel of legal experts to make recommendations to the Negotiating Body on the nature and scope of potential liability and compensation provisions. Participants had suggestions for the development of this section.

NGOs and industry participants identified a clear link between guiding principle six and this section which both address the issue of compensation and liability. Health NGOs suggested the following points be incorporated into this section:

- A financial reward (for compliant governments) and punishment (for errant tobacco companies)
- Minimum marketing standards equivalent to the highest existing standards
- Clarity regarding general versus specific responsibility
- Systems that work internationally as well as individually for each country.

Health NGO representatives identified the need to strengthen liability issues in the treaty and an industry representative voiced concerns around retroactive liability.

## **Section K Research and surveillance**

## **Section L Scientific, technical and legal cooperation**

## **Section M Conference of the Parties**

## **Section Q Financial resources**

One discussion took place around the above sections which deal with financial and technical resource issues.

Participants were split on the usefulness of collecting and trading statistics on tobacco use and consumption. Tobacco industry representatives prefer article K.1 be more specific in the required tobacco indicators to be followed; NGOs want it to remain flexible. This section currently allows for flexibility through the following sentences "To the extent possible, the Parties shall integrate tobacco surveillance programmes into national, regional and global health surveillance programmes. To this end, each Party shall, in accordance with the means at its disposal and its capabilities."

NGO representatives asked for an obligatory payment system similar to that used by the UN, based on the ability to pay. Specific terms should be laid out and all financial issues should be grouped in the General Obligations section. This would allow the "in accordance with the means at its disposal" clause to be removed throughout the document.

Suggestions for other sources of funding included donations from tobacco companies.

## **Section P Reporting and implementation**

Accountability issues were raised by an NGO participant around compliance and monitoring issues. They suggested that a parallel, independent group of experts should be convened as a monitoring and surveillance body, similar to the UN Convention on Human Rights model.

## **Section R Settlement of disputes**

It was suggested by NGO representatives that the proposed independent group of experts (see section P above) could also function as a dispute resolution body. Two NGO representatives also pointed out the need to include a complaints process for individuals/non-members of the Convention and sanctions for non-compliance.

## **Section N Secretariat and Section O - Support by the World Health Organization**

There were no comments on these sections

## **Comments**

Participants were invited to share further comments and report on their priorities for the upcoming negotiations in Geneva.

A tobacco industry representative stressed the need for the issues of jobs and the economy in general to become more of a priority in the FCTC.

Several NGO participants spoke to the issue of job loss in relation to the Convention and other tobacco reduction measures. According to one, the history of tobacco control in Canada shows that we have only stopped consumption rates overall from growing and that job losses in the industry have come about mainly as a result of automation, motivated by a desire on the part of the industry to increase profits. In order to see a decrease in tobacco use world-wide much more needs to be done. Another NGO

participant agreed that tobacco use will not stop overnight regardless of the measures taken, and that consumption rates will decrease gradually as will revenues and the number of jobs.

An NGO representative pointed out that according to statistics quoted at the meeting by an industry representative, there are 50,000 jobs in the Canadian tobacco industry; 45,000 people die each year in Canada due to tobacco use. The representative thought these figures indicated the importance of tobacco control as a health issue.

An NGO representative contended that it is inappropriate for industry to directly provide resources for cessation, education and prevention programs because of possible conflicts of interest. This is particularly important given the international context of the Convention, which includes poor countries who have to deal with a very rich and influential industry.

Several participants expressed interest in the US position on the FCTC and communication between Canada and the US on the Convention. Mr. Aiston indicated that Canada was in regular communication with the US and had also consulted with its British and French counterparts. Canada and the US are not in agreement on all issues within the Convention, but the US has voiced support for its development.

According to an NGO representative, with the context of the events of September 11, which demonstrates how the West is viewed by others in the international community, it is even more relevant how our corporations behave abroad, including their marketing techniques. The Western world has a serious responsibility to restrain our own corporations in order to change how we are viewed internationally.

## **Summary of Recurring Themes and Issues**

## Global approach and resource sharing

Many NGOs applauded the Objective section of the FCTC for reflecting a global approach in addressing the health, social, environmental and economic consequences of tobacco use. However, the fact that the Convention is intended to be international in its approach raised questions and concerns around implementation challenges in developing versus developed countries. It was acknowledged that some countries are in a better position to be able to implement the measures put forward by the Convention. Strategies to overcome some of these limitations included setting realistic goals and expectations, sharing expertise and resources between developing and developed countries, and soliciting support from industry. Although clarification is needed around the particular details of resource aid for some countries, it was suggested that developed countries should lend support in terms of finances, technology and expertise. Industry was also cited as a resource possibility.

## Evidence-based decisions

The importance of making evidence-based decisions in all areas of the Convention was stressed throughout the discussion. Making use of the best existing evidence and research was discussed in areas such as jobs and sustainable livelihoods, advertising, and finances and resources for developing countries.

## International law and existing trade agreements

The role the FCTC will play in the international arena and its relative expected position vis a vis existing trade agreements and conventions raised many comments and questions from all parties. There were polarized views regarding whether this Convention should supercede existing international agreements and questions were raised regarding how it will link with other UN conventions such as the Convention on the Rights of the Child.

## Employment

It was felt that the issue of job protection was not taken into serious consideration in the Convention, both in terms of the impact which will be felt by those employed directly in the industry, but also through filter-down effects to other industries. It was also emphasized that displaced workers must not be expected to accept non-union, low-paying jobs in replacement for those lost in the tobacco industry.

## Employment versus health

There was general agreement between the participants that loss of jobs can have a negative effect on individuals and communities, and that this issue needs to be seriously addressed. NGOs and industry representatives were in agreement that employment has an effect on health. However, NGOs stated emphatically and repeatedly that the main emphasis of the FCTC should centre on public health. Employment concerns and economic fall-out need to be addressed, but in the context of a consequence of tobacco control due to the Convention, not as a separate issue.

## Duty-free retail operators

Representatives from the duty-free sector stated their unique position within the retail industry and within the tax-free community. They drew attention to the division between the duty-free retail business they represent and the export business. Duty-free shop customers must first purchase an international airline ticket before they make a purchase. Their purchases are limited and total less than one percent of tobacco sales world-wide. The average customer crosses the border once per year and buys one carton of cigarettes and their customer base does not include many youth. If arbitrary decisions are made regarding tax-free products, negative impacts will be felt by duty-free operators who are not a factor in

the smuggling equation and should not be linked to this discussion. The result will not be a reduction in tobacco sales, but simply a shift in sales from one type of retail outlet (duty-free) to another.

### The cigar industry

The cigar industry representatives repeatedly indicated a desire for their industry to be considered as separate from the cigarette industry. Reasons cited included the fact that cigars rely on descriptors to describe taste and not tar content; the cigar smoking demographic is very different from that of the cigarette industry, including frequency of use and number of users; and its predominantly international market. There was some opposition to this request from an NGO representative regarding creating special categories for tobacco products - all of which are unsafe.

### The Internet

The sale of tobacco across the borderless venue of the Internet raised concerns with both NGOs and industry officials. It was indicated that this has repercussions on issues surrounding standards and smuggling. It was also felt that price harmonization is a moot point until this issue is addressed at the next round of FCTC negotiations.

### Language

Many issues arose around language, mostly centering in three areas: requests for language changes, differences between French and English text, and the need for definitions and clarification.

Aboriginal groups objected to the term "vulnerable" in referring to certain communities and asked that it be replaced. A request was made to refrain from using the action of "passive smoking" and instead refer to "second-hand smoke." Many NGOs strongly objected to the term "prevalence" in the objective section.

Discrepancies exist in several places between the English and French text and the two versions need to be verified. Specifically, some examples cited were "tobacco control" in the English text versus "anti-tabac" in the French text. Another example is the wording in the section around youth selling and buying tobacco.

Although it was acknowledged that the definitions section of the document has not been developed, participants felt it was necessary to highlight certain terms of importance. For instance, clarification is needed around the terms "tobacco industry", "manufacturers," and "harmonization" as it relates to both pricing and product standards.

Many participants called for a broad definition of responsibility relating to, but not limited to, areas of liability. Over the course of the discussions responsible parties identified include individuals, governments, industry (specifically executives), retailers, and youth.

### Individuals and responsibility

The rights (and conversely, the responsibilities) of the individual were also raised by several industry participants, which includes the rights of smokers. Canada is a free and democratic country and citizens should be able to choose to consume tobacco - a legal product.

## Closing remarks

Ed Aiston, Health Canada, made the closing remarks.

Mr. Aiston indicated that the Chair's text which was used as the basis for the consultation is very much a work in progress and does contain some contradictions. Reflecting on the discussions that took place over the past day and a half, both opposing views and issues of commonality emerged.



Issues where there was general agreement include implementing standards in testing and monitoring, addressing illegal trade, and sales to young people.

Some overarching themes that cut across many of the discussions include issues around employment and the need to give consideration to the impact tobacco control policy can have on working families and the communities in which they live. As well, it was made evident that clear definitions of terms are needed sooner rather than later in the negotiation process. This would allow negotiators to share a common understanding about the substantive issues and obligations they are discussing.

Differences between the French and English versions of the text need to be addressed.

Finances and resources for developing countries were touched upon in many areas as was the need to base decisions on the best available evidence. In recognition of the complexity of this issue in particular and many policy issues in general, many groups cited the need for a multi-pronged approach to tobacco control.

As negotiations are on-going, participants were invited to continue to submit comments in writing regarding the Convention, several of which have already been received and will be considered by the negotiators. These can be forwarded to:

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# Appendix A

## Government of Canada Stakeholder Consultations on the Framework Convention on Tobacco Control

### Program Agenda

**OCTOBER 3, 2001**

8:00-8:45 Registration

Continental breakfast

9:00 Plenary 1: Introduction [Ballroom "A"]

Chair: Ed Aiston, Director General, International Affairs Directorate, Health Canada

Speakers:

- Dann Michols, Assistant Deputy Minister, Healthy Environments and Consumer Safety Branch, Health Canada
  - Allyn Taylor, Health Policy Advisor, World Health Organization
  - Ken Kyle, Framework Convention Alliance
- Comments and questions from the floor

10:30 Refreshment Break

10:45 Plenary 1 continued: Objective, Guiding Principles and Obligations (Chair's Text)

Chair: Ed Aiston, Director General, International Affairs Directorate, Health

## Canada

Technical Advisor: Ross Snyder, Deputy Director, UN Specialized Agencies,  
Department of Foreign Affairs and International Trade

12:30 Lunch

1:30 Discussion Groups, Part I

Discuss assigned issues in Chair's text

3:00 Refreshment Break

3:15-5:00 Discussion Groups, Part II

Complete assigned issues

5:30-6:30 Reception [Panorama Room]

## **OCTOBER 4, 2001**

8:00-8:45 Continental breakfast

9:00 Plenary 2: Reporting Back [Ballroom "A"]

Chair: Gillian Lynch, Director General Tobacco Control, Health Canada

Reports from Discussion Groups

10:30 Refreshment Break

10:45 Plenary 2 continued: Concluding Session

Complete Discussion Group reports

Comments and open discussion

Closing comments: Ed Aiston

# Appendix B

## Participants List

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Stakeholder Consultations on the Framework Convention on Tobacco Control

October 3 - 4, 2001

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## Appendix C

**From your perspective, what is the one most important thing you would like to see happen in the upcoming negotiations?**

### Compendium of participant responses

Participants were asked the following question on the meeting evaluation form: From your perspective, what is the one most important thing you would like to see happen in the upcoming negotiations? Following is a

compendium of their responses to this question.

- Focus on priority #1 - reduction in youth smoking through education (3 tobacco duty-free)
- Focus on what is accomplishable and ensure it doesn't lead to "downward harmonization", i.e., descending to lowest common denominator (2 NGO)
- Not to lose the Canadian perspective as we move forward (1 NGO and 1 Aboriginal organization)
- Tobacco industry workers and responsibility of government relating to loss of employment (3 tobacco union and 1 unidentified organization)
- Negotiate to obtain the best possible result for preventive measures and reduction of use. Continue to push envelope so that result will at least be reasonable (NGO)
- Involvement by industry and labour in negotiations/delegation (3 industry)
- Eliminate funding for tobacco industry for prevention and education programs (NGO)
- Tobacco is a toxic and lethal consumer product that must be controlled through industry that makes production and promotion (NGO)
- Strengthen convention's ability to control movement of tobacco and practices of tobacco industry. Don't allow it to be watered down in deference to financial concerns of companies whose interest is in killing its addicted customers (NGO)
- Agricultural labour ministry to be included (didn't identify organization)
- An understanding and clarity of relative strengths of FCTC into regulatory mechanism (NGO)

# Appendix D

## A Framework Convention on Tobacco Control

### Chair's Text

#### WORLD HEALTH ORGANIZATION

#### INTERGOVERNMENTAL NEGOTIATING BODY ON THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

Second session

9 January 2001

Chair's text of a framework convention on tobacco control

##### A. Preamble

(to be formulated at a later session of the Intergovernmental Negotiating Body)

##### B. Definitions

(to be formulated at a later session of the Intergovernmental Negotiating Body)

##### C. Objective

The ultimate objective of this Convention and of the related protocols is to provide a framework for integrated tobacco-control measures to be implemented through the engagement of the Parties in order continually and substantially to reduce the prevalence of tobacco use and thus protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.

## D. Guiding principles

In their actions to achieve the objective of this Convention and to implement its provisions, the Parties shall be guided inter alia by the principles set out below:

1. Reducing the current impact, and halting the growth, of tobacco consumption is crucial in protecting the health of individuals, as well as national and global public health, and requires comprehensive multisectoral national actions and coordinated international responses.
2. Every person should be fully informed about the addictive and lethal nature of tobacco consumption, and non-smokers should be adequately protected from exposure to tobacco smoke.
3. The importance of technical cooperation in helping to establish and implement effective tobacco-control programmes in Parties in which public health resources are limited should be recognized.
4. The importance of financial assistance to aid the economic transition of tobacco growers and workers that may be displaced as a future consequence of successful tobacco-control programmes should be recognized.
5. Tobacco-control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade.
6. The tobacco industry should be held responsible for the harm its products cause to public health and the environment, with each Party determining the scope of such responsibility within its jurisdiction.
7. The participation of all elements of civil society is essential in achieving the objective of this Convention.
8. The provisions of this Convention should be recognized as minimum standards, and Parties are encouraged to implement measures beyond those required by the Convention.



## E. General obligations

1. Each Party shall develop, implement, periodically update and enforce, where appropriate, comprehensive, multisectoral, national tobacco-control strategies, policies, legislation and other measures, such as standards, in accordance with the provisions of this Convention and, as relevant, its protocols.
2. To this end each Party shall, to the extent possible within the means at its disposal and its capabilities:
  - a. establish or, where it already exists, reinforce, and adequately finance a national coordinating mechanism for tobacco control, with inputs from relevant government and civil society sources;
  - b. adopt legislative, executive and administrative measures and cooperate with other Parties in harmonizing appropriate policies;
  - c. reduce tobacco consumption and exposure to tobacco smoke in accordance with the provisions of this Convention and, as relevant, its protocols.
3. The Parties shall undertake to adopt legislative, executive and administrative measures to regulate and to prohibit the export of tobacco products that do not conform to the exporting country's own domestic standards.
4. The Parties shall cooperate in the formulation of agreed measures, procedures and standards for the implementation of this Convention.
5. The Parties shall cooperate with competent international bodies in order to implement effectively this Convention and the protocols to which they are parties.
6. The provisions of the Convention shall in no way affect the right of Parties to adopt domestic measures in addition to those referred to above, nor shall they affect measures already taken by a Party,

provided that such measures are compatible with its obligations under this Convention and the protocols to which it is a party.

7. The provisions of the Convention shall in no way affect the right of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to this Convention, provided that such agreements are compatible therewith. Copies of such agreements shall be communicated to the secretariat of the Convention by the Parties concerned.

#### **F. Price and tax measures to reduce the demand for tobacco**

1. The Parties recognize that price measures are an effective mechanism to reduce tobacco consumption, and that progressive harmonization of tobacco product prices is an important means of discouraging illicit traffic in tobacco products.
2. Each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt legislative, executive and administrative measures, and cooperate with other Parties in harmonizing appropriate tax policies, in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include the following:
  - a. prohibition of tax-free and duty-free sales of tobacco products;
  - b. imposition of taxes on tobacco products so as to achieve a stable and continuous reduction in tobacco consumption;
  - c. adoption of other price and tax measures that may be recommended by the Conference of the Parties.

#### **G. Non-price measures to reduce the demand for tobacco**

1. Each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt legislative, executive and administrative measures, and cooperate with other Parties in harmonizing

appropriate non-price policies, in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include the following:

(Passive smoking)

- a. implementation of legislation and other effective measures at the appropriate governmental level that provide for systematic protection from exposure to tobacco smoke in indoor workplaces, enclosed public places, and public transport, with particular attention to special risk groups such as children and pregnant women;

(Regulation of contents of tobacco products)

- b. adoption of standards for the regulation of the contents of tobacco products, including standards for testing and measuring, designing, manufacturing and processing such products, and cooperation in the development and harmonization of such standards under the auspices of the World Health Organization;

(Regulation of tobacco-product disclosures)

- c. implementation and taking of necessary steps to enforce measures for tobacco-product disclosures by all manufacturers, including all ingredients and additives, and major constituents of tobacco smoke, and promotion of availability of such information to the public. Each Party shall apply these measures to all tobacco products manufactured or sold under its jurisdiction;

(Packaging and labelling)

- d. adoption of appropriate measures to ensure that:

- i. the terms "low tar", "light", "ultra light", "mild" or any other similar term that has the aim or the direct or indirect effect of conveying the impression that a particular tobacco product is less harmful than others are not used on any unit packet or package of tobacco products;
- ii. tobacco packaging and labelling does not otherwise promote a tobacco product by any means that are false, misleading or deceptive or that are likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;
- iii. each unit packet or package of tobacco products carries the statement and product information specified in Article [Measures Related to the Supply of Tobacco];
- iv. each unit packet or package of tobacco products carries a general health warning, including a picture or pictogram illustrating the harmful consequences of tobacco consumption, in accordance with Annex [INSERT]; these warnings shall:
  1. clearly indicate the prohibition of sales of tobacco products to persons under the age of 18;
  2. provide clear information about the toxic contents of the tobacco product, specifically tar, nicotine and carbon monoxide, including actual measurements of smoke yields;
  3. appear in the principal language or languages of the country in whose territory the product is placed on the market.

(Education, training and public awareness)

- e. facilitation and strengthening of education, training, and public awareness campaigns, including counter-advertising. To this end, each Party shall, as appropriate:
- i. develop and assure universal access to effective and comprehensive educational and public awareness programmes on the health risks of tobacco consumption and exposure to tobacco smoke, that include the use of various print and audiovisual media;
  - ii. ensure that the general public and, notably, children, young persons, and vulnerable groups are fully informed about the health risks of tobacco consumption and exposure to tobacco smoke, and about the benefits of smoking cessation and tobacco-free lifestyles;
  - iii. facilitate public access to information on the tobacco industry;
  - iv. develop and implement effective and appropriate training programmes on tobacco control for health professionals, educators and other concerned persons;
  - v. develop and implement effective and appropriate promotion and prevention measures for tobacco control designed for students at various levels of education;
  - vi. endeavour to promote the participation of public agencies and nongovernmental organizations in the development of strategies for tobacco control.

(Advertising, promotion and sponsorship)

2. In addition to obligations related to other non-price measures specified in Article [INSERT], all Parties shall commit themselves specifically to:

- a. prohibiting all forms of direct and indirect tobacco advertising, promotion and sponsorship targeted at persons under the age of 18;
  - b. imposing strict restrictions on all forms of direct and indirect tobacco advertising, promotion and sponsorship targeted at persons 18 years of age and older, including incentives such as gifts, coupons, rebates, competitions and frequent-purchaser programmes, with the aim of reducing the appeal of tobacco products to all segments of society;
  - c. requiring that tobacco companies disclose all expenditures on advertising and promotion and make those figures available to the public;
  - d. adopting national measures and imposing appropriate regulatory restrictions to ensure that tobacco advertising, promotion and sponsorship does not promote a tobacco product by any means that are false, misleading or deceptive or that are likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;
  - e. adopting measures and imposing appropriate regulatory restrictions in order progressively to phase out tobacco sponsorship of sporting and cultural events;
  - f. adopting national measures and cooperating in order to phase out cross-border advertising, promotion and sponsorship, including, inter alia, tobacco advertising, promotion and sponsorship on cable and satellite television, the Internet, newspapers, magazines and other printed media.
3. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the area of tobacco advertising, promotion and sponsorship.

4. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the areas of regulation of the contents of tobacco products, tobacco-product disclosures, and packaging and labelling of tobacco products.<sup>1</sup>

## **H. Demand reduction measures concerning tobacco dependence and cessation**

1. Each Party shall take all practical and effective measures to treat tobacco dependence and to promote cessation of tobacco use.
2. Taking into account national circumstances and priorities, each Party shall undertake the following measures:
  - a. implementation of promotional and educational campaigns aimed at encouraging cessation of tobacco use;
  - b. integration of treatment of tobacco dependence and routine advice on cessation of tobacco use into all national health programmes, plans and strategies, including primary care programmes, reproductive health programmes such as "safe motherhood", and tuberculosis control programmes. Support for such actions shall be provided by health professionals, including physicians, health practitioners, nurses, pharmacists, community workers and social workers, based on primary care in rural and urban areas;
  - c. establishment, as a priority in health centres, of programmes for diagnosis, medical advice and treatment of tobacco dependence.

## **I. Measures related to the supply of tobacco**

(Illicit trade in tobacco products)

1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling and counterfeiting, is an

essential component of tobacco control.

2. The Parties agree that measures to this end shall be transparent, non-discriminatory and implemented in accordance with their international obligations.
3. Each Party shall adopt appropriate measures to ensure that all unit packets or packages of tobacco products and any outside packaging of tobacco products for retail or wholesale use that are sold or manufactured under its jurisdiction:
  - a. carry a statement indicating the name of the manufacturer, the country of origin, and the product batch-number, including the date of production and expiry;
  - b. carry the statement: "Sales only allowed in [the country where the product is to be placed on the market]."
4. Each Party shall adopt appropriate measures to ensure that the packaging information specified in paragraph 3 above shall appear in the principal language or languages of the country in whose territory the product is placed on the market.
5. Each Party shall undertake the following legislative, executive, and administrative measures in order to prevent and combat illicit trade in tobacco products:
  - a. monitoring and collection of data on cross-border trade in tobacco products, including illicit trade;
  - b. enactment and/or strengthening of criminal legislation, with appropriate penalties, that prohibits the production of, and trade in counterfeit and contraband cigarettes and other such tobacco products, and taking of appropriate steps to enforce such prohibition;
  - c. appropriate steps to ensure that all confiscated counterfeit and contraband cigarettes and other such tobacco products are



destroyed.

6. The Parties shall strengthen cooperation between different national and international agencies in promoting investigations, judicial prosecutions and proceedings relating to illicit trade in tobacco products. The Parties shall further cooperate to promote regular exchange of information to prevent such trade pursuant to Annex [INSERT] to this Convention.
7. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures for the elimination of all forms of illicit trade in tobacco products.

(Elimination of sales to and by young persons)

8. Each Party shall prohibit tobacco sales to persons under the age of 18.  
To this end, each Party shall:
  - a. require that all sellers of tobacco products request that each tobacco purchaser provide appropriate evidence of having reached the age of 18;
  - b. prohibit tobacco vending-machines in locations accessible to any person under the age of 18.
9. Each Party shall take appropriate measures to prohibit the sale of tobacco products by persons under the age of 18.
10. Each Party shall, to the extent possible within the means at its disposal and its capabilities, prohibit the sale of cigarettes individually or in packets of fewer than 20 cigarettes.
11. Each Party shall implement appropriate legal and other measures to verify compliance with paragraphs 8 to 10 above. Such measures shall include appropriate penalties against sellers and distributors for the violation of measures prohibiting sales of tobacco products to persons under the age of 18.

12. Each Party shall take appropriate legal and other measures to ensure that no criminal penalties are imposed against persons under the age of 18 for buying and selling tobacco products.

(Licensing)

13. The Parties recognize that an effective licensing system for retailers of tobacco products is an important mechanism to curb illicit trade in tobacco products and to prevent sales of tobacco products to children and young persons.
14. Each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt legislative, executive and administrative measures to licence all tobacco-product retailers.

(Government support for tobacco manufacturing and agriculture)

15. Each Party shall gradually eliminate subsidies for tobacco growing and manufacturing of tobacco products and, in accordance with the means at its disposal and its capabilities, promote alternative economic activities for tobacco workers and growers.

## **J. Compensation and liability**

[Chair's note: As announced during the first session of the Intergovernmental Negotiating Body, WHO is convening a panel of legal experts to make recommendations to the Negotiating Body on the nature and scope of potential liability and compensation provisions.]

## **K. Surveillance, research and exchange of information**

1. The Parties shall establish joint or complementary programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences of tobacco consumption. To the

extent possible, the Parties shall integrate tobacco surveillance programmes into national, regional and global health surveillance programmes. To this end, each Party shall, in accordance with the means at its disposal and its capabilities:

- a. establish, progressively and as appropriate, a national system for the epidemiological surveillance of tobacco consumption, periodically updating economic and health indicators so as to monitor the evolution of the problem and the impact of tobacco consumption control;
- b. cooperate with international bodies, including the World Health Organization, in regional and global tobacco surveillance and exchange of information on the indicators specified in Annex [INSERT].

2. The Parties undertake to develop, promote and coordinate as far as possible national, regional and global research programmes for the purpose of this convention. To this end, each Party shall, in accordance with the means at its disposal and its capabilities:

- a. initiate and cooperate, directly or through competent international bodies, in the conduct of research and of scientific assessments, as detailed in Annex [INSERT];
- b. promote and encourage research that contributes to reducing tobacco consumption and harm from tobacco use, particularly in developing countries, taking fully into account the recommendations of the Conference of the Parties.

3. The Parties shall facilitate the exchange of information, taking into account the special needs of developing countries. To this end, the Parties, in accordance with their national legislation and without prejudice to their obligations under other applicable international agreements, shall, within the framework of the Conference of the

Parties and bilaterally, promote and cooperate in the full, open and prompt exchange of scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry, relevant to this convention. Each Party shall, in accordance with the means at its disposal and its capabilities:

- a. compile and maintain a database of national and subnational laws and regulations on tobacco control and enforcement, and cooperate in the development of complementary programmes for national, regional and global tobacco control;
- b. compile and maintain a base of data from national surveillance programmes in accordance with Article [INSERT] above.

4. Information to be exchanged pursuant to Article [INSERT] above shall be provided to the Conference of the Parties.

#### **K. Scientific, technical and legal cooperation**

1. Each Party shall cooperate, in accordance with its national laws, regulations, practices and international obligations, and taking particular account of the needs of developing countries, in promoting, directly or through the secretariat of the Convention or other competent international bodies, the following:
  - a. facilitation of the development, transfer and acquisition of technology related to tobacco control by other Parties;
  - b. provision of technical, scientific, legal and other expertise to establish and strengthen national tobacco-control programmes, policies and measures aiming at, inter alia:
    - i. building a strong legislative foundation as well as technical programmes, and assisting in the treatment of tobacco dependence;
    - ii. assisting tobacco workers in the development of alternate livelihoods;

- iii. assisting tobacco growers in shifting agricultural production to alternate crops in an economically viable manner;
  - iv. carrying out other activities to achieve the objective of this convention and its protocols;
  - c. support for the establishment and maintenance of training programmes for appropriate personnel as provided in Article [INSERT];
  - d. supply of necessary equipment for tobacco-control programmes and activities.
2. The Conference of the Parties shall determine how to establish a mechanism to promote and facilitate scientific, technical and legal cooperation.

#### **M. Conference of the Parties**

1. A Conference of the Parties is hereby established. The first session of the Conference shall be convened by the Director-General of the World Health Organization not later than one year after the entry into force of this convention. Thereafter, ordinary sessions of the Conference shall be held every year [and convened in conjunction with the World Health Assembly] unless otherwise decided by the Conference.
2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat of the Convention, it is supported by at least one-third of the Parties.
3. [The rules of procedure of the Conference of the Parties and of any subsidiary body shall be the Rules of Procedure of the World Health Assembly.] The Conference shall agree upon and adopt by [simple majority vote] [two-thirds majority vote] [rules of procedure and] financial rules for itself and for any subsidiary body it may establish.

4. The Conference of the Parties shall keep under regular review the implementation of this convention and its protocols and take the decisions necessary to promote the effective implementation of these instruments [and may adopt protocols, annexes and amendments to the convention, its protocols and annexes in accordance with Article [Development of the convention]]. To this end, it shall:
- a. periodically examine the obligations of the Parties and the institutional arrangements under the convention, in the light of its objective, the experience gained in its implementation, and the evolution of scientific and technological knowledge, as well as prevailing socioeconomic conditions;
  - b. promote and facilitate the exchange of information pursuant to Article [Surveillance, Research and Exchange of Information];
  - c. facilitate, at the request of two or more Parties, the coordination of measures adopted by them relevant to the implementation of this Convention and any applicable protocols;
  - d. promote and guide the development and periodic refinement of comparable methodologies, in addition to those provided for in Article [Surveillance, Research and Exchange of Information] and Annexes [INSERT], relevant to the implementation of the Convention and its protocols;
  - e. promote, in accordance with Articles [INSERT] as appropriate, the harmonization of appropriate strategies, plans, programmes, policies, legislation and other measures;
  - f. promote programmes to assist Parties in implementing their obligations pursuant to Articles [INSERT];
  - g. assess the implementation of the provisions of this Convention and its protocols by the Parties, on the basis of information made

available in accordance with Article [Reporting and Implementation];

- h. consider and adopt regular reports on the implementation of the Convention and its protocols and arrange for their distribution;
- i. make recommendations to the Parties, the World Health Organization, other United Nations bodies and other international organizations and bodies on any matters necessary for the implementation of the Convention and its protocols;
- j. seek to mobilize financial resources to support secretariat services pursuant to Article [Secretariat] and to support the implementation of the Convention and its protocols in accordance with Articles [Financial Resources; Reporting and Implementation];
- k. establish such subsidiary bodies as it deems necessary for the implementation of the Convention, review their reports, and provide guidance to them;]
- l. seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent intergovernmental and nongovernmental organizations and bodies as a means of monitoring activities under the convention and its protocols;
- m. exercise such other functions as are required for achieving the objective of the convention, as well as all other functions assigned to it thereunder.

5. The United Nations, specialized agencies of the United Nations, regional economic integration organizations not parties to the convention, nongovernmental organizations qualified in matters covered by the convention, as well as any State not party to this Convention, may be represented by observers at meetings of the Conference of the Parties, subject to the relevant Rules of Procedure and decisions of the Conference of the Parties.]

## **N. Secretariat**

1. The secretariat of this Convention shall be provided by the World Health Organization.
2. The functions of the secretariat shall be:
  - a. to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;
  - b. to compile and transmit reports submitted to it pursuant to this Convention and any of its protocols;
  - c. to facilitate support to the Parties, particularly developing-country Parties, on request, in the compilation and communication of information required in accordance with the provisions of this Convention;
  - d. to prepare reports on its activities under this Convention and any of its protocols and submit them to the Conference of the Parties;
  - e. to ensure, under the overall guidance of the Conference of the Parties, the necessary coordination with other relevant international bodies;
  - f. to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
  - g. to perform the other secretariat functions specified in this Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.

## **O. Support by the World Health Organization**

1. The Conference of the Parties may call upon the World Health Organization to provide technical cooperation in achieving the objective of this Convention or in connection with questions falling



within its mandate arising out of the application of the Convention and its protocols. The Organization shall accord such support in accordance with its programmes and within the limits of its resources.

2. The World Health Organization may, on its own initiative, make proposals to the Conference of the Parties.

## **P. Reporting and implementation**

1. In accordance with guidelines agreed upon by the Conference of the Parties, each Party shall submit to the Conference the following data:
  - a. information on tobacco control institutions, strategies, plans, programmes, policies, legislation and other measures initiated or implemented in accordance with the provisions of Articles [INSERT], together with information on enforcement, where appropriate;
  - b. information on steps to carry out actions taken in accordance with Article [Financial Resources];
  - c. information on the economic, social and other consequences of various response strategies adopted to implement this convention and its protocols;
  - d. information on measures, in addition to those described above, that the Party has taken to implement the provisions of this convention and their effectiveness in meeting its objective;
  - e. description of measures planned by the Party to implement this convention.
2. Each developed-country Party and each other Party included in Annex [INSERT] shall make its initial report within six months of the entry into force for that Party of this Convention. Each Party not so listed shall make its initial report within two years of the entry into force for that Party of the Convention. The frequency of subsequent communications

by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.

3. To assist the Conference of the Parties in the monitoring, assessment and review of the effective implementation of this Convention, the Conference may establish a subsidiary body which shall report regularly to the Conference. The guidelines for participation in this body, as well as its monitoring functions, will be determined by the Conference.
4. In order to provide timely advice in the implementation of this Convention, the Conference of the Parties may, as it deems necessary, appoint, taking into account the rules and practices of the World Health Organization, ad hoc panels to provide it with information and advice on specific issues regarding the current state of fields of science and technology relevant to the objective of the Convention. The members of these panels shall be appointed by the Conference on the recommendation of the Director-General of the World Health Organization, and shall serve in their personal capacity. The Conference shall decide on the terms of reference and the modalities of work of these panels.
5. Starting at its first session, the Conference of the Parties shall arrange for the provision to developing-country Parties of technical support, on request, in compiling and communicating information under this Article. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.

## **Q. Financial resources**

1. Each Party undertakes to provide financial support and incentives in respect of its national activities intended to achieve the objective of this Convention, in accordance with its national plans, priorities and programmes.

2. A voluntary mechanism for the provision of financial resources on a grant or concessional basis, including the transfer of technology, is hereby established to function under the guidance of, and be accountable to, the Conference of the Parties. Its operation shall be entrusted to the World Health Organization. Pursuant to the objective of this Convention, the Conference shall determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for, access to, and use of, the financial resources, including regular monitoring and evaluation of such use. The Conference shall decide on the arrangements to give effect to this provision after consultation with the World Health Organization.
3. The Parties recognize the important role that bilateral, regional and other channels can play in achieving the objective of this Convention. They shall consider providing, in accordance with their capabilities and national law, voluntary funding through such channels for comprehensive tobacco control programmes in support of this objective, taking into account the needs of developing countries.
4. The Parties recognize that developed-country Parties that export manufactured tobacco products, or have branches of international tobacco companies exporting tobacco products from third countries, have a special responsibility to provide technical support to developing-country Parties to strengthen their national tobacco control programmes.

## **R. Settlement of disputes**

1. If a dispute arises between two or more Parties concerning the interpretation or application of this Convention or any of its protocols, those Parties shall consult among themselves with a view to resolving the dispute by negotiation.

2. If the parties to the dispute cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.
3. Failure to reach agreement by negotiation or mediation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depository that, for a dispute not resolved in accordance with paragraph 1 or 2 above, it accepts, as compulsory, arbitration in accordance with procedures to be adopted by the Conference of the Parties.
4. If all the parties to the dispute have not, in accordance with paragraph 3 above, accepted arbitration, the dispute shall, unless the parties otherwise agree, be submitted to conciliation. A conciliation commission shall be established as set out in paragraph 5 below at the request of one or more parties to the dispute.
5. Unless the parties agree otherwise:
  - a. If the dispute is between two parties, each party shall appoint one member of the commission, and the two members so appointed shall appoint a third, who shall serve as chair.

If within three months of the appointment of the first member the second member has not been appointed, or within three months of the appointment of the second member the third has not been appointed, such appointment shall be made by [INSERT] at the request of either party.

- b. If the dispute is between more than two parties, the parties shall agree on three members of the commission and designate one of these as chair. If within three months of the first request for the

establishment of the commission no such agreement shall have been reached, the members of the commission shall be appointed and the chair designated by [INSERT] at the request of any party.

6. Unless the parties agree otherwise, all matters concerning the conciliation shall be determined by the commission, acting by simple majority. The commission shall render a recommendatory award, which the parties shall consider in good faith.
7. The provisions of this Article shall apply with respect to any protocol, unless otherwise provided therein.

## **S. Development of the Convention**

[To be formulated at a later session of the Intergovernmental Negotiating Body]

## **T. Final Clauses**

[To be formulated at a later session of the Intergovernmental Negotiating Body]

### **Date modified:**

2004-10-01