Public Health and International Trade

Volume II:

Tariffs and Privatization

Campaign for Tobacco-Free Kids

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Campaign for Tobacco-Free Kids
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Table of Contents

Preface iv

I. Introduction and Executive Summary 1

A. Tobacco and International Trade: An Overview 1

B. Tobacco Product Tariffs 3

C. Privatization of State-Owned Tobacco Companies 4

II. Tobacco Tariffs and Public Health 6

A. Background 6

B. Public Health Impact of Tobacco Tariffs 7

C. Rationales for Maintaining or Raising Tobacco Product Tariffs 8

D. Rationales for Reducing or Eliminating Tobacco Product Tariffs 8

III. Public Health and the Privatization of State-Owned Tobacco Companies 14

A. Background: The Global Trend toward Privatization 14

B. Privatization and the Global Tobacco Industry 16

C. Public Health Concerns about Tobacco Industry Privatization 17

D. Rationales for Privatization 19

IV. Conclusions 23

V. Policy Recommendations 25

Appendices

1. Goods and Services Restricted in International Trade 27

2. Assessing the Public Health Impact of Tobacco Tariff and Privatization Actions: Questions and Answers 30

3. World Trade Organization National Tariff Schedules for Cigarettes 35

4. The Thai GATT Decision and U.S. Tobacco Trade Policy 37

Preface

The Campaign for Tobacco-Free Kids commissioned this background report to help public health groups and others understand the policy issues raised by two recurring issues: (1) changes in tobacco product tariff rates and (2) the privatization of state-owned tobacco companies. This report is intended to review and synthesize existing scholarship and to stimulate additional research, discussion and debate over these issues. The report may be of interest to public health groups, trade policy officials, elected officials and multilateral lending agencies such as the International Monetary Fund (IMF), which has promoted privatization of tobacco companies as part of its structural adjustment loan packages.

On the basis of existing evidence, this report finds that in most cases reducing tobacco product tariff rates and privatizing state-owned tobacco companies work just as economic theory would predict to increase competition, reduce prices, stimulate mass marketing and boost overall demand for tobacco products. These outcomes are likely to result in a large and preventable loss of human life over time. For this reason, the report concludes that nations should not be pressured into reducing tobacco product tariffs or privatizing tobacco companies. Exceptions may be appropriate where a careful assessment of the public health impact of a specific measure shows that it poses no significant risk to public health. The burden of proof should be on those who are proponents of stimulating additional trade and competition in tobacco product markets. This is the opposite of current policy and practice.

The report also finds relatively little data or analysis published on these issues. Additional peer-reviewed work in this area is needed.

The Campaign for Tobacco-Free Kids
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I. Introduction and Executive Summary

A. Tobacco and International Trade: An Overview

According to basic economic theory, free trade in a product generally leads to lower prices, greater competition, more vigorous marketing and greater economic efficiency. All of these factors, in turn, lead to increased production and consumption of the product and to greater economic success by those firms with a comparative advantage in the marketplace. Increased availability and consumption of products—"goods" in a literal sense—is a major goal of free trade and provides an important justification for free trade policies.

The problem with tobacco products[1] is that they are not beneficial. Each additional unit of consumption causes additional suffering and death, as well as a net economic loss to the economy of the nation in which it is consumed and to the global economy.[2] This distinction between a beneficial product and a harmful one essentially turns the traditional presumption in favor of free trade on its head with respect to tobacco products. Logically, the presumption should be against actions that stimulate consumption of harmful products.[3]

Studies confirm that tobacco products are no exception to economic principles and that liberalization of trade in tobacco products does, in fact, stimulate higher levels of tobacco use in most nations. Some econometric studies show that liberalization of trade in tobacco products has a significant stimulative effect on tobacco use in low-income nations, a modest effect

[1] For purposes of this report, "tobacco products" refers to manufactured and branded tobacco products, particularly cigarettes.

[2] Barnum H, "The economic burden of the global trade in tobacco," *Tobacco Control* (1994) 3: 358–61.

[3] The practical effect of reversing the presumption in favor of free trade in tobacco products would not be to condone unjustified discrimination in tobacco product trade but to make clear that, with respect to trade in tobacco products, protecting public health is of paramount importance. This is in contrast to the approach taken under Article XX(b) of the General Agreement on Tariffs and Trade (GATT), in which a high level of scrutiny is imposed on measures that could restrict trade in tobacco products. Proponents of such measures must show not only that a trade restriction is "necessary" (i.e., essential) to protect public health but that there are no protectionist motives behind a proposed measure and that no less trade-restrictive alternative policies are available. See Section II(D)(2) for more detailed discussion of this point. This high level of scrutiny ensures that nondiscrimination principles are upheld but allows measures that would promote public health to be rejected due to alleged discriminatory intent by policymakers or other non-health-related concerns. This approach also casts a chill over innovative approaches to tobacco control. If the presumption implicit in Article XX(b) were reversed, nations would remain free to attack discriminatory tobacco trade practices and could succeed provided that they could demonstrate that the relief they seek would not stimulate tobacco consumption.

in middle-income nations, and little or no effect in high-income nations.[4] However, there is evidence that tobacco trade liberalization and privatization stimulate consumption even in high-income nations. One study found that liberalization and privatization of the Japanese tobacco product market slowed the rate of decline in smoking prevalence in many age groups and was associated with an increase in prevalence among young women.[5]

These findings are of grave concern, because the World Health Organization (WHO) and other health authorities have determined that tobacco-related diseases are the single most important cause of preventable death in the world.[6] During this century, tobacco use is expected to claim approximately one billion lives.[7] This epidemic is fueled by significant growth in smoking rates in low- and middle-income nations, precisely where the stimulative effects of trade liberalization in tobacco products are greatest.

While no government wishes to increase tobacco use among its own people, and many governments devote significant resources to reduce tobacco use, they are simultaneously stimulating tobacco consumption in their own nations and the world by agreeing to liberalize trade in tobacco products and by requiring other nations to do so.

As the conflict between the goals of expanding trade in tobacco products and reducing tobacco use has become clear, consensus has grown among public health groups that concern for human life should take precedence over commercial interests in expanding trade in cigarettes. There is also consensus that stronger rules are needed to address the unique problems posed by the growing epidemic of tobacco use.[8] Specifically, health groups have urged that tobacco products be added to the growing list of goods that are subject to product-specific trade rules developed to address specific threats to public health, the environment, national

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[4] *See, e.g.,* Taylor A, Chaloupka FJ, Guindon E, Corbett M, "The impact of trade liberalization on tobacco consumption," chapter 14 in Jha P, Chaloupka FJ, editors, *Tobacco Control in Developing Countries,* Oxford: Oxford University Press, 2000. Chaloupka FJ, Laixuthai A, "U.S. Trade Policy and Cigarette Smoking in Asia," National Bureau of Economic Research Working Paper No. 5543, 1996. Hsieh CR, Hu TW, Lin CFJ, "The demand for cigarettes in Taiwan: domestic versus imported cigarettes," *Contemporary Economic Policy* (1999) 17(2): 223–34. Bettcher DW et al., *Confronting the Tobacco Epidemic in an Era of Trade Liberalization*, World Health Organization 2001, WHO/NMH/TFI/01.4, pp. 48–53. Review. Bettcher DW, Yach D, Guindon E, "Global trade and health: key linkages and future challenges," *Bulletin of the World Health Organization* (2000) 78(4):521–34. Review.

[5] Sato H, Araki S, Yokoyama K, "Influence of monopoly privatization and market liberalization on smoking prevalence in Japan: trends of smoking prevalence in Japan in 1975–1995," *Addiction* (2000) 95(7): 1079–88.

[6] *See, e.g.,* United Nations Ad Hoc Interagency Task Force on Tobacco Control, *Report of the First Session, 29–30 September 1999,* http://tobacco.who.int/en/united-nations/un-report.html.

[7] Peto R, Lopez A, *The Future Worldwide Effects of Current Smoking Patterns,* Imperial Cancer Research Fund, 2000, http://www.ctsu.ox.ac.uk/pressreleases/50thAnniv/article.cfm.

[8] Bloom J, *Public Health, International Trade and the Framework Convention on Tobacco Control,* Campaign for Tobacco-Free Kids, March 2001, http://tobaccofreekids.org/campaign/global/framework/docs/Policy.pdf. Callard C, Collishaw N, Swenarchuk M, *An Introduction to International Trade Agreements and Their Impact on Public Measures to Reduce Tobacco Use,* Physicians for a Smoke-Free Canada, April 2001, http://www.smoke-free.ca/pdf_1/Trade&Tobacco-April%202000.pdf. Framework Convention Alliance, Briefing Papers INB3, "Trade Issues & the FCTC Recommended Text," http://www.fctc.org/INB3brief_trade.pdf. These sources urge that nations be allowed to adopt trade-restrictive rules specific to tobacco products where doing so would be likely to reduce tobacco use and save lives.

security or other important interests. International agreements are already in place to address concerns about small arms, narcotic drugs, ozone-depleting chemicals, hazardous waste, genetically modified organisms, endangered species, persistent organic pollutants and other products. In each of these cases, special rules were developed because the international community determined that existing trade agreements did not adequately address the concerns raised by these products.[9]

To date, tobacco trade policy issues in most nations have been approached primarily, if not exclusively, as commercial and economic matters, with little or no consideration of public health consequences. As a result, most governments and multilateral agencies have made no distinction between tobacco products and other products in tariff and trade policy. The World Bank's 1991 policy on tobacco is an exception. It allows tobacco and tobacco products to be exempted from borrowers' agreements to liberalize trade and reduce tariffs. The policy also prohibits loans that are directly or indirectly tied to tobacco production or manufacturing and sets a number of other important precedents.[10]

[9] *See, e.g.,* Framework Convention Alliance, "Trade Briefing Paper for the Framework Convention on Tobacco Control," http://www.fctc.org/INB3_Briefing_Trade.shtml.

[10] The World Bank, *Curbing the Epidemic: Governments and the Economics of Tobacco Control*, Washington, DC: World Bank, 1999, p. 85. Despite this policy, the World Bank appears to have cooperated with the IMF to pressure numerous nations, including many former Soviet Union states, Turkey, Thailand and South Korea, to privatize state-owned tobacco companies as a condition for structural adjustment loans. There is no indication that the World Bank or IMF assessed the public health impact of these privatizations or addressed public health concerns in any meaningful way before taking action.

Against this backdrop, this report focuses on two specific issues: tobacco product tariffs and the trend toward mandated privatization of state-owned tobacco companies. Both of these issues involve conflict, or the potential for conflict, among multinational tobacco companies, state-owned and other national tobacco companies, and public health.

B. Tobacco Product Tariffs

Over the past 50 years, tariffs on many products, including tobacco, have been reduced substantially in member nations of the World Trade Organization (WTO) through successive rounds of global, regional and bilateral trade negotiations. Lowering tariffs is intended to lower costs, provide greater product and brand availability, and stimulate price and marketing competition. In the case of tobacco, all of these effects are associated with higher smoking rates. This negative public health impact would be greater in some nations than others. It would be especially pronounced in those markets in which imports make up all or most of the market and in nations that traditionally have restricted trade in tobacco products.

Public health groups have urged that nations be allowed wide latitude to set tobacco product tariffs at levels that will help reduce tobacco use, and that countries should not pressure one another to lower tobacco product tariffs. They also have urged that tobacco product tariffs be judged by their public health consequences rather than by the intent of policymakers in approving the tariffs. They have concluded that tobacco tariffs that serve to protect public health

should not be rejected simply because they were passed with protectionist intent.[11]

Rationales offered for lowering tobacco product tariffs range from the tobacco industry's claim that tariffs have no effect on consumption to concerns by some public health advocates that tariffs are not "optimal" tobacco control policies. This report considers these rationales in some detail and concludes that none of them adequately address public health concerns.

C. Privatization of State-Owned Tobacco Companies

The trend toward privatization of state-owned tobacco companies raises complex issues. Although privatization, narrowly defined, affects ownership and does not directly affect trade, it is closely linked with trade liberalization; it is intended to reduce government control over the private sector and to foster a more competitive business environment. Privatization is intended to transform an industry that is responsive to a government's agenda but performs poorly financially into one that focuses solely on maximizing profits. The inefficiency of state-owned tobacco companies, their responsiveness to government control, and the natural tendency of monopolies to reduce output and maximize prices are all positive attributes of a tobacco company from a public health perspective. Moreover, in most cases, privatization involves dismantling a government monopoly by selling the assets to one or more of the major multinational tobacco companies. This raises additional public health concerns, because these companies have an extensive record of opposing public health measures and of marketing to women, children and other traditionally nonsmoking populations.

Rationales for privatizing state-owned tobacco companies include, among others, promoting economic efficiency, improving financial performance and eliminating the potential conflicts of interest and corruption that result from government involvement in the tobacco industry. This report concludes that these rationales are not sufficient to overcome the fundamental concern that privatization is likely to stimulate higher rates of tobacco use by creating a tobacco company that is more efficient and effective at marketing tobacco products and more resistant to government oversight.

In light of these concerns, public health groups have taken the position that no nation or multilateral agency should use its economic or political influence to promote privatization of a state-owned tobacco company. If a nation decides to privatize a tobacco company, health groups believe that appropriate tobacco control policy measures should be implemented

[11] *See, e.g.,* Campaign for Tobacco-Free Kids, *Bush Administration Presses South Korea to Drop Cigarette Tariff, Putting Tobacco Industry's Interests Ahead of Public Health*, June 14, 2001, http://tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=369. The public health perspective on this issue is in contrast to Article XX of GATT and similar provisions of other major trade agreements. The introductory clause, or "chapeau," of Article XX requires that a health measure, even if "necessary" to protect human life, may be rejected if it was passed with an intent to discriminate against imported products. This requires a difficult inquiry into the state of mind of policymakers. Health groups believe that the expected public health consequences of a measure should be the overriding concern of any inquiry regarding tobacco products.

before privatization takes place. This is necessary because major multinational tobacco companies have an extensive record of blocking effective tobacco control measures in the nations in which they operate. Multilateral lending agencies could support this policy by declining to support privatization plans that do not include the implementation of appropriate tobacco control policy measures in advance.

To gain acceptance for these or similar policies, the public health community must become more involved in trade policy matters and develop a greater capacity to advocate for public health principles within the trade policy community.

II. Tobacco Tariffs and Public Health

A. Background

A tariff (sometimes referred to as a duty), is a tax on imported products intended to create a competitive advantage for domestic producers, improve the balance of trade for the nation imposing the tariff and raise revenue. These potential benefits of a tariff often are offset by the fact that other trading nations may respond by imposing tariffs of their own, potentially leading to a cascade of tariff and nontariff trade barriers that stifles international trade and economic growth.

Despite these dangers, and despite the fact that tariffs are often discriminatory and inconsistent with the concept of national treatment, all nations maintain tariffs on various products for economic, political and defense purposes. A major goal of the international trading regime, beginning with adoption of the General Agreement on Tariffs and Trade (GATT) in 1947, is to reduce and ultimately eliminate tariffs.[12] Over several decades, GATT has sponsored successive rounds of global negotiations to substantially reduce tariff rates. Regional and bilateral trade agreements have reduced rates among many nations beyond the rates established by GATT.

In many nations, tariffs on tobacco products are higher than on other products. This is not surprising, as few nations wish to encourage tobacco imports. Tobacco imports threaten domestic tobacco agriculture and manufacturing, and siphon off badly needed hard currency in many nations. Tobacco tariffs also are a traditional and reliable source of revenue in some nations. These economic concerns are heightened in nations that maintain a state-owned tobacco monopoly or near-monopoly. Typically, such monopolies are an important source of government revenue and are especially vulnerable to foreign competition.

In the Uruguay Round of the GATT negotiations, tobacco product tariff rates among developed nations were slashed by more than half, from an average of 22.1 percent to 9.2 percent.[13] In connection with the Uruguay Round, the United States agreed to cut tariffs on most cigarettes by 55 percent, and the European Union (EU) agreed to reduce tariffs

[12] As among different methods of protecting domestic producers, however, tariffs are recognized as preferable from an international trade perspective because they are transparent, quantifiable and therefore amenable to negotiation and reduction through bilateral and multilateral agreements. For this reason, an intermediate goal of GATT and other trade agreements is to require nations to convert subsidies and other less transparent trade barriers into tariffs in a process called "tariffication."

[13] Guha-Khasnobis, Basudeb, "Tariff Escalation—A Tax on Sustainability," CUTS–CITEE, Briefing Paper No. 1, 1998.

on cigarettes and other manufactured tobacco products by 36 percent.[14] Considerable variation remains in tobacco product tariff rates from country to country and from product to product.

B. Public Health Impact of Tobacco Tariffs

If tobacco tariffs do not affect overall tobacco consumption, there is no real public health issue involved and tobacco tariff negotiations should continue to be approached solely as an economic issue. On the other hand, if tariffs are likely to have a meaningful effect on consumption, public health concerns may be of paramount importance and should be carefully considered in any negotiations.

Economic theory suggests that high tobacco tariffs would have different effects in different markets. For example:

- In nations that import all or virtually all tobacco products, the effect of tariffs would be almost identical to that of an across-the-board tobacco tax. Tobacco taxes have been conclusively shown to be one of the most effective tools available to reduce tobacco use.[15] Therefore, public health concern about reducing tobacco tariffs in such markets is justified. Examples of such markets include the Gulf Cooperation Council nations of Kuwait, Saudi Arabia, Bahrain, Qatar, Oman and the United Arab Emirates.

- In nations in which penetration by multinational companies has been restricted through tariffs and non-tariff barriers, liberalization of tobacco markets is associated with a significant jump in overall tobacco consumption.[16] Therefore, in these markets, tobacco tariffs may be an important public health tool, and concern about reducing tariffs is justified. Examples of such markets include those of many low- and middle-income nations, including the People's Republic of China (home to one-third of the world's smokers), Taiwan, Thailand, South Korea and Vietnam.

- In nations in which imported products compete vigorously with domestic brands and command significant market share, the effect of tariff rate changes would not be as great as in the cases cited above because of the availability of competitive domestic brands. Studies of smoking behavior show that many smokers are loyal to specific brands. Therefore, tariff-related price increases on imported brands would stimulate some quitting, even though the majority of smokers of imported brands would pay the higher prices or "trade down" to a domestic brand. Similarly, basic economic theory suggests that price decreases in "fashionable"

[14] Taylor A, Chaloupka FJ, Guindon E, Corbett M, "The impact of trade liberalization on tobacco consumption," chapter 14 in Jha P, Chaloupka FJ, editors, *Tobacco Control in Developing Countries,* Oxford: Oxford University Press, 2000.

[15] Jha P, Chaloupka FJ, editors, *Tobacco Control in Developing Countries,* Oxford: Oxford University Press, 2000.

[16] Taylor A, Chaloupka FJ, Guindon E, Corbett M, "The impact of trade liberalization on tobacco consumption," chapter 14 in Jha P, Chaloupka FJ, editors, *Tobacco Control in Developing Countries,* Oxford: Oxford University Press, 2000. Chaloupka FJ, Laixuthai A, "U.S. Trade Policy and Cigarette Smoking in Asia," National Bureau of Economic Research Working Paper No. 5543, 1996. Bettcher DW, Yach D, Guindon E, "Global trade and health: key linkages and future challenges," *Bulletin of the World Health Organization* (2000) 78(4):521–34. Review.

imported brands would encourage some children and teenagers to begin smoking and would discourage some established smokers from quitting. Markets that fit this description are common among developed nations.

- Tobacco tariffs would have the most limited effect in markets such as the United States, where tariffs already are low and imports account for a tiny fraction of the total market. In such an environment, raising or lowering tariffs would not have a significant effect on overall consumption. However, higher tariffs in such a market might have a dramatic effect in niche markets for imported products such as bidis (tobacco mixed with flavoring such as vanilla, licorice, cinnamon or clove) and kretek (a clove/tobacco blend) cigarettes, which have grown in popularity among American youth.

These examples suggest that the public health impact of raising or lowering tariffs may be highly significant in many, but not all, nations. It is important to note that even in markets such as the United States, tariff increases would be expected to provide a small benefit to public health.

C. Rationales for Maintaining or Raising Tobacco Product Tariffs

The most compelling rationale for maintaining or raising tobacco product tariffs is that, in many nations, doing so is likely to result in lower overall rates of tobacco use, which would provide large long-term public health and economic benefits. In most cases, however, nations that impose high tobacco tariffs appear to be motivated by the short-term economic benefits of reducing tobacco product imports.

In nations in which tobacco products are an important source of government revenue and employment, tariffs protect domestic producers from direct competition with major multinational tobacco companies that have strong comparative advantages in marketing, manufacturing and economies of scale. Tariffs also may be used to encourage foreign direct investment in domestic manufacturing operations. Lowering tariffs in such nations would result in more imported products, lower prices, lower employment and potentially lower government revenue. Imported tobacco products also are likely to harm the balance of trade.

While the short-term economic rationales for high tobacco tariffs are powerful, they can be, and often are, overcome by countervailing economic rationales. International trade is based on a series of economic trade-offs, and it is entirely possible that a nation would choose to open itself fully to trade in tobacco products by lowering tariffs as a means of gaining reciprocal access to other lucrative markets. However, if the health-related long-term benefits are properly considered, the benefits of maintaining high tobacco tariffs would be much more compelling.

D. Rationales for Reducing or Eliminating Tobacco Product Tariffs

In the face of economic theory and data that suggest that tobacco tariffs are a legitimate public health issue in many nations, tobacco companies and others offer several rationales for reducing tobacco tariffs. Each of these is discussed below.

1. "Tariffs do not affect smoking rates. They only influence whether people smoke foreign or domestic brands."

This is the most common argument offered by tobacco companies. As discussed earlier, the best econometric, theoretical and anecdotal evidence suggests that tobacco tariffs have a significant influence on overall consumption in many markets. This is largely because lowering tariffs is intended to make imported brands affordable to a broader segment of the population, thereby triggering greater marketing and price competition between imported and domestic brands. These effects are associated with higher smoking rates, primarily resulting from higher initiation rates among children and young people.[17] Conversely, raising tariff rates would be expected to have the opposite effect, reducing initiation rates and inducing some smokers to quit as prices on their favorite brands increase.

2. "There is no need to resort to discriminatory policies such as tobacco product tariffs. Any nation that wishes to reduce tobacco use may do so using nondiscriminatory policies such as ad bans, excise taxes and smoke-free indoor air policies."

This reasoning is implicit in Article XX(b) of GATT and in comparable provisions of other trade agreements. It holds, in essence, that trade liberalization in tobacco products should move forward unless public health authorities can show that no less trade-restrictive means are available to reduce tobacco use.

This approach has two serious shortcomings:

First, it places the burden on public health authorities to "prove" that tariffs on tobacco products are "necessary" for tobacco control. While this approach may make sense with respect to many beneficial products, it makes no sense for tobacco products. Given the enormity of this public health issue and the strong econometric and theoretical evidence that tariff reductions stimulate tobacco use, the burden should rest with those who favor expanding trade in tobacco products to show that lower tobacco product tariffs will not harm public health.

Second, in analogous cases, trade panels deciding whether alternative measures that impose less of a burden on trade are available to achieve a government's purpose have not adequately considered whether such measures are socially and politically feasible as a practical matter, only whether they are theoretically available.[18] As one

[17] *See, e.g.,* Taylor A, Chaloupka FJ, Guindon E, Corbett M, "The impact of trade liberalization on tobacco consumption," chapter 14 in Jha P, Chaloupka FJ, editors, *Tobacco Control in Developing Countries,* Oxford: Oxford University Press, 2000. Chaloupka FJ, Laixuthai A, "U.S. Trade Policy and Cigarette Smoking in Asia," National Bureau of Economic Research Working Paper No. 5543, 1996. Bettcher DW, Yach D, Guindon E, "Global trade and health: key linkages and future challenges," *Bulletin of the World Health Organization* (2000) 78(4):521–34. Review.

[18] For example, U.S. restrictions on tuna caught using methods associated with a high incidence of dolphin mortality were rejected because a GATT panel ruled that a less trade-restrictive option available to the United States was to work toward international agreement in fishing practices and that the United States had not yet exhausted that approach. The panel did not find that the practical political difficulties and the amount of time required to achieve such an agreement outweighed the fact that it was a less restrictive available approach. "U.S. Restrictions on Imports of Tuna," September 3, 1991, BISD 39S/155.

commentator has noted, this "may set a very high hurdle for public health policies, because measures that intrude less on trade are almost always conceivable and therefore in some sense 'available.'"[19] That observation is particularly true in the case of tobacco. Tobacco companies will always be able to point to alternative measures that a nation theoretically might be able to implement, such as across-the-board tobacco tax increases. However, the reality in many nations is that the political will exists to enact measures such as tariffs that will reduce overall tobacco use without harming domestic tobacco companies, but the same will may not exist to enact other tobacco control policies. In such nations, if tariff measures are blocked by international trade agreements, other tobacco control measures will not be implemented as an alternative, and the result will be higher rates of tobacco use than otherwise would exist.

3. "It is in the economic self-interest of exporting nations to advocate for lower tobacco product tariffs."

In its push for lower tariff rates and other trade-promotion measures, the tobacco industry has produced numerous reports in the United States and other tobacco-exporting nations documenting—and exaggerating—the economic importance of tobacco exports on jobs, balance of trade and related issues.[20] The tobacco industry's point is that it is in the economic interest of tobacco-exporting nations to fight for lower tobacco tariffs and a reduction in other trade barriers. It is true that boosting tobacco exports can be profitable for exporting nations, even though any resulting increase in the prevalence of tobacco use is harmful to the importing nations and to the global economy. For an exporting nation, an important question is whether the potential economic advantages of promoting trade in tobacco products are offset by other policy concerns, including a concern for public health and an interest in being viewed as a responsible member of the international community.

4. "Tobacco tariffs are not optimal tobacco control policies. Countries should focus on raising across-the-board taxes and on other, more effective policies."

In most countries, it is true that greater health gains would be

[19] Correa CM, "Implementing National Public Health Policies in the Framework of WTO Agreements," Draft Working Paper No. 3, April 2000.

[20] Tobacco industry estimates of the economic contributions of tobacco are flawed in many ways. Most notably, tobacco industry reports portray any reduction in tobacco use as if it were a total loss to the economy. This fails to account for the fact that labor, capital and consumer dollars do not disappear as demand for tobacco declines; they are redirected to the next most profitable or attractive alternative use. For an example of such a flawed analysis related to tobacco exports, see "The Status of Cigarette Exports: A USCEA Progress Report," U.S. Cigarette Export Association, 1990. For an analysis of how consumer dollars would be redirected as tobacco use declines, see Warner K, "Employment implications of declining tobacco product sales for the regional economies of the United States," *JAMA* (April 24, 1996) 275(16): 1241–6.

achieved through an across-the-board cigarette tax increase than through a tariff increase of a similar amount. However, it would be a mistake to imagine that policymakers are faced with an "either/or" choice among different tobacco control policy measures. From a public health perspective, the goal should be to harness all appropriate policy tools to reduce tobacco use. That would mean raising tobacco taxes to the extent that it is politically feasible to do so and raising tobacco tariffs as well in nations in which smoking rates appear to be sensitive to tariffs. Raising tariffs also reduces price pressure on domestic tobacco companies, which may make domestic tobacco price increases more likely.

Tariffs may be one of the most powerful and politically viable tobacco control measures available to some nations. For example, as noted earlier, taxes and tariffs are virtually the same thing in nations that import all tobacco products. Similarly, in nations in which multinational tobacco companies are not well established, tariffs may be an effective means to avoid triggering marketing and price wars between domestic and imported brands that would stimulate higher smoking rates. Moreover, in many nations, a tariff increase may be politically feasible while a tax increase is not. In such circumstances, it is difficult to see a rationale for rejecting a tariff increase on the grounds that it is "suboptimal."

5. "Tobacco tariffs are designed to protect domestic tobacco companies, not public health, and therefore are not legitimate public health measures."

The policy response to a tobacco tariff should depend on a solid assessment of the likely public health consequences of the tariff, not on an assessment of motives. It is certainly true in many cases that tobacco tariffs and other trade restrictions are motivated partly or wholly by a desire to shield domestic tobacco producers from direct competition with multinational tobacco companies or to stimulate foreign investment in the domestic tobacco sector. The desire to protect the domestic tobacco industry could be the result of rational economic self-interest. It also could be the result of political concerns or corruption. More than likely, different constituencies within the country have different motives for supporting it. Therefore, in the case of tobacco products, an assessment of motives behind a tariff rate change is difficult, subjective and ultimately far less important than an assessment of public health consequences.

6. "Tobacco products are legal and therefore entitled to the same treatment in international trade as any other product."

This view was frequently expressed by Clayton Yeutter, who served as U.S. trade representative under President Ronald Reagan and as secretary of agriculture under President George Bush, Sr.[21] After an official visit to

[21] Soon after leaving government service, Yeutter joined the board of directors of the British American Tobacco Company (BAT).

Thailand, Yeutter insisted that forcing open foreign tobacco markets had "nothing whatsoever to do with health." Rather, he said, it was necessary to uphold the principle that all products should be treated alike. "It shouldn't make any difference whether it's tobacco…or semiconductors or soybeans," Yeutter said.[22] The argument that tobacco should be treated like all other products also is used by the tobacco industry to resist tobacco taxes, advertising restrictions and any other policy measure that "singles out" tobacco products for special treatment.

In reality, tobacco products are not like any other legal product. They are uniquely addictive and lethal when used as intended, resulting in the death of approximately half of all long-term users.[23] While other risky products are acknowledged to have some beneficial uses, use of tobacco products is universally discouraged by governments and health authorities. Their legal status is also different from that of most consumer products. Like pesticides, explosives, drugs and other dangerous products, their manufacture, sale, use and advertising are subject to special rules; they are legal under some circumstances and illegal under others. Thus, the claim that tobacco products are like other "legal products" is false and misleading, and the suggestion that all "legal products" should be treated the same is absurd. It is appropriate and common under national and international trade law to develop product-specific rules to address public health, environmental, national security and other concerns regarding legal and illegal products.[24]

7. "It's a slippery slope. If we implement special rules for tobacco products, the same rules might end up being applied to other products like alcohol or fatty food."

The "slippery slope" argument says, in effect, that if special rules are developed to deal with tobacco, these same rules will end up being misapplied to other products. Therefore, the argument goes, we should not develop special rules for tobacco. Tobacco companies and their supporters use this argument—like the argument that all "legal products" should be treated the same—to resist tobacco tariffs, taxes and any other policies that "single out" tobacco products for special treatment. Like the "legal product" argument, the "slippery slope" argument fails to acknowledge the fact that tobacco products are uniquely addictive and lethal when used as intended, and that it is therefore appropriate to develop specific rules for tobacco that do not apply to other products. Every risky product must be regulated based on accurate and specific facts about that product. The recognition that tobacco products present unique challenges is the basis for the ongoing negotiations to create a Framework Convention on Tobacco Control, in which 191 nations have been participating for three years.

[22] "The Status of Cigarette Exports: A USCEA Progress Report," U.S. Cigarette Export Association, 1990.

[23] Peto R et al., *Mortality from Smoking in Developed Countries, 1950–2000,* Oxford: Oxford University Press, 1994.

[24] See Appendix 1 for a summary of special trade rules adopted to address concerns regarding other products.

Clearly, there is an international consensus that product-specific rules are needed for tobacco. It is not a legitimate response to say that appropriate tobacco policies should not be implemented out of fear that they might be inappropriately applied to other products. Policymakers regularly make distinctions with respect to products far less deadly and addictive than tobacco, and it is their duty to do so with respect to tobacco products as well.

III. Public Health and the Privatization of State-Owned Tobacco Companies

"Privatization's essential contributions are… to distance the firm from the political process and to inoculate it against the recurrence of the common and deadly ailment of public enterprises: interference by those who have more than profit on their minds."

—John Nellis, manager, Private Sector Development, the World Bank, "Is Privatization Necessary?" Public Policy for the Private Sector, FPD Note No. 7, May 1994, the World Bank.

A. Background: The Global Trend toward Privatization

The past 20 years have seen a global shift toward privatization of state-owned enterprises (SOEs) at all levels of government. One World Bank economist describes the current situation as follows:

> "Privatization appears to have swept the field and won the day. More than 100 countries, on every continent, have privatized some or most of their state-owned companies, in every conceivable sector of infrastructure, manufacturing and services… an estimated 75,000 medium and large-sized firms have been divested around the world, along with hundreds of thousands of small business units."[25]

Economic theory and data show that in many cases of state ownership, the enterprise suffers because government employees are not efficient business operators and are prone to political interference and corruption. The government suffers because it is overextended and less able to focus resources and personnel on core public goods such as a system of justice, education and defense. And the nation's people suffer because they receive suboptimal service from

[25] Nellis J, "Time to Rethink Privatization in Transition Economies?" International Finance Corporation, Discussion Paper Number 38, 1999, p. 1.

government-owned enterprises and from the government itself. There is extensive literature on the economic merits of privatization.[26]

The following are other major factors contributing to the trend toward privatization:

- The disintegration of centrally planned economies of the Soviet Union and Eastern Europe resulted in an enormous wave of privatizations in that region.
- Multinational companies and the governments that support them have pressured nations to privatize SOEs to help secure access to those markets for exports and foreign investment. This pressure has taken the form of lobbying public officials, funding research and advocacy by third-party organizations supporting privatization, and exerting direct trade pressure by governments, especially in connection with negotiations over accession to the World Trade Organization.
- Multilateral agencies, especially the World Bank and the IMF, have pressured economically distressed nations to adopt broad privatization plans as a condition for structural adjustment loans.
- As markets are opened to global competition, economies of scale become paramount in many industries, including the tobacco industry. This leads to consolidation—the acquisition of weak players by stronger ones—among private and state-owned enterprises. SOEs are especially vulnerable to acquisition because they are often not in a strong competitive position relative to multinational companies and because of some of the factors cited above.

The embrace of privatization is by no means absolute. The definition of what constitutes a "public good" that should be delivered by government is hotly debated and raises many serious questions of economics and ideology. Studies are under way on the outcomes of privatization efforts undertaken so far, and it is clear that results often have fallen short of predictions.[27]

Critics raise concerns about the impact of privatization in specific cases on workers, women, the environment, the distribution of wealth and public health.[28] They contend that the costs, unintended consequences or negative externalities of privatization may in some cases outweigh the economic benefits of having a more efficient enterprise. They agree that privatization is appropriate in some cases but worry that privatization proponents are too quick to prescribe it without rigorously weighing the costs and benefits in each case, and without fully considering values and consequences that are sometimes difficult to quantify in economic analyses.

[26] *See, e.g.,* The World Bank, *Bureaucrats in Business: The Economics and Politics of Government Ownership,* New York, Oxford University Press, 1995.

[27] For a discussion by a World Bank economist of the literature critical of privatization efforts, see Nellis, J, "Time to Rethink Privatization in Transition Economies?" International Finance Corporation, Discussion Paper Number 38, 1999.

[28] *See, e.g.,* Stiglitz J, *Globalization and Its Discontents,* New York, NY: W.W. Norton, 2002.

In many cases, critics are not opposed to privatization per se, but to the manner in which it is carried out. They assert that privatization should not take place until an effective regulatory framework is in place to protect the public from potential abuses by the privatized company, along with civil institutions to administer and enforce the regulations. Where appropriate conditions do not already exist, critics suggest that conditions should be attached to the sale of public assets to protect vital interests such as the environment and public health.[29] They point out that the World Bank, IMF and related institutions could encourage or require such conditions as part of their structural adjustment loan agreements.

In many respects, the debate over privatization parallels the larger debate about the benefits of free trade. Proponents of free trade and privatization argue that, as a general rule, free trade and privatization increase economic efficiency and other measures of economic well-being, and that economic well-being in turn is closely tied to improving health status and other less tangible benefits.[30] Critics and skeptics generally do not argue against free trade and privatization in all cases but hold that free trade and privatization strategies should be pursued more carefully on a case-by-case basis.

The parallel between the debates over free trade and privatization is no coincidence. The two issues are closely linked. The economic concern about SOEs is that they tend to be protected from market forces, including international trade and investment. The goal in privatization, as in free trade, is usually to stimulate competition and create a competitive business environment where one did not previously exist.

B. Privatization and the Global Tobacco Industry

The trend toward privatization has had a profound effect on the global tobacco industry. Thirty years ago, state-owned tobacco companies, most of them monopolies, dominated markets throughout Latin America, Asia and Europe. The vast majority of these monopolies have now been privatized or are in the process of privatization, although state-owned tobacco companies still exist in a number of countries, including China, which is home to one-third of the world's smokers. One researcher has identified more than 70 major changes in ownership or joint venture agreements in the global cigarette market between 1991 and 1998, most of them involving state-owned tobacco companies;[31] other research shows 141 mergers and acquisitions by major tobacco multinationals since 1990.[32]

WTO agreements allow state-owned companies, including monopolies,

[29] *See, e.g.,* Sohn J, Hayes S, *Making Privatization Work,* Washington, DC, Friends of the Earth, September 1999.

[30] *See, e.g.,* Feachem R, "Globalization is good for your health, mostly," *BMJ* (2001) 323:504–6, September 1, 2001, http://www.bmj.com/cgi/content/full/323/7311/504.

[31] Chaloupka FJ, Nair R, "International issues in the supply of tobacco: recent changes and implications for alcohol," *Addiction* (2000) 95 (Supplement 4), S477–S489, citing Market Tracking International Ltd. (MTI) (1999) World Tobacco File 1998 (London, MTI Ltd.).

[32] Physicians for a Smoke-Free Canada, *An Introduction to International Trade Agreements and Their Impact on Public Measures to Reduce Tobacco Use*, April 2001, Appendix 2, p. 36, http://www.smoke-free.ca/pdf_1/Trade&Tobacco-April%202000.pdf.

to exist but prohibit any nontariff discrimination by SOEs against imported products. GATT (1994), Article III, requiring that imported and domestic products be treated equally, is particularly important in this respect.

Public health concerns appear to have played little or no role in the push to privatize state-owned tobacco companies. Nowhere in the extensive literature on privatization issues is anything of substance published on the costs and benefits of privatizing state-owned tobacco enterprises or on the public health issues raised. In the absence of significant involvement by the public health community, the trend toward privatization of tobacco companies has been driven by the same forces behind the overall trend toward privatization of other SOEs. The impact on the tobacco industry has been more extensive because SOEs once held a high percentage of the global tobacco market.

C. Public Health Concerns about Tobacco Industry Privatization

Public health concerns about tobacco industry privatization are part of a broader concern about the impact of multinational tobacco companies' entry and expansion in previously restricted tobacco markets in low- and middle-income nations. Whatever the method used to gain access to or dominance in a market, there is growing evidence that multinational marketing practices lead to more marketing (through whatever means are allowed), lower prices, brand proliferation, a greater number of sales outlets, more attractive products, lobbying to neutralize effective tobacco control policies, and higher smoking rates among young people and women.[33] Privatization is the focus of more attention partly because it is the most dramatic method multinational companies use to quickly dominate a nation's tobacco market and partly because privatization of tobacco companies is promoted by the IMF, World Bank and related institutions that should be sensitive to public health concerns.

Public health researchers have questioned the wisdom of privatizing state-owned tobacco companies and urged careful review of any proposed privatization. Specific concerns they have raised include the following:

- If privatization succeeds in producing a more competitive and efficient business, the likely result will be higher smoking rates, more suffering and death, and greater economic damage caused by smoking. This concern is based on economic theory and data showing that trade liberalization (which, like privatization, involves stimulating competition in a previously protected market) does in fact result in a significant increase in smoking rates in low- and middle-income economies.[34]
- The major problems associated with state ownership—poor marketing, unappealing products and high

[33] *See, e.g.,* Chitanondh H, "Ownership of Tobacco Companies and Implications on Health," presented at the WHO International Conference on Global Tobacco Control Law: Towards a WHO Framework Convention on Tobacco Control, New Delhi, India, January 2000.

[34] Taylor A, Chaloupka FJ, Guindon E, Corbett M, "The impact of trade liberalization on tobacco consumption," chapter 14 in Jha P, Chaloupka FJ, editors, *Tobacco Control in Developing Countries,* Oxford: Oxford University Press, 2000.

prices—coincide with major tobacco control policy goals: marketing restraints and price increases.

- State-owned tobacco companies may represent the lesser of two evils. Historically, they have shown little regard for public health and in some cases have resisted strong tobacco control measures from government, just as private companies resist such measures through external pressure. However, as leading proponents of privatization have noted,[35] state-owned companies are less intensely focused on maximizing profits and are more responsive to political forces. This suggests that in a nation that develops the political will at the highest levels to restrain tobacco industry behavior, a tobacco company that is directly owned and controlled by government may be more amenable to reform than a major multinational company. In addition to their more narrow focus on profit maximization, multinational companies are more likely to adopt a global perspective. If they view a proposed tobacco control measure as a precedent that threatens their profitability on a regional or global basis, they are likely to devote resources to defeat the measure that are far in excess of what would be justified on the basis of national interests alone. This phenomenon undermines the ability of nations to implement precedent-setting tobacco control measures.

- The World Bank, IMF and other multilateral lending institutions are in an ideal position to encourage or require client nations to enact appropriate tobacco control policies in advance of any tobacco industry privatization, but they have not done so. Such policies should include a substantial tobacco tax increase, a tobacco advertising ban if possible, a prohibition on smoking in public places and workplaces, and other proven tobacco control measures. It is important that these policies be in place in advance of privatization to reduce the negative effects of privatization. It also may be more difficult to pass such measures after privatization because of the expertise of multinational tobacco companies in defeating effective tobacco control measures.[36]

Health groups believe the responsible approach to tobacco industry privatization in light of these concerns is to assess the costs and benefits of tobacco industry privatization in each case and to proceed only if health concerns are addressed. Nevertheless, multilateral agencies such as the IMF and World Bank have continued to promote privatization of tobacco companies and in many cases have insisted

[35] Nellis J, "Time to Rethink Privatization in Transition Economies?" International Finance Corporation, Discussion Paper Number 38, 1999, p. 1.

[36] In privatization literature, the concern with establishing an effective regulatory environment in advance of privatization is known as a "sequencing issue." Environmental groups have urged that privatization of power plants and other environmentally sensitive assets be postponed until effective pollution control regulations are in place, including measures such as taxes to ensure that the environmental costs of energy production are internalized, and including strong civil society institutions to ensure that environmental laws are actually enforced. These concerns closely parallel concerns by the public health community about tobacco industry privatization. For a discussion of these issues, see Sohn J, Hayes S, *Making Privatization Work,* Washington, DC, Friends of the Earth, September 1999.

upon it as a loan condition. National governments also continue to promote privatization through trade pressure. There is no evidence that any government or multilateral agency has conducted a disciplined review of the public health implications of their actions. When U.S. Members of Congress pressed the IMF for an explanation of its position in 1999, the IMF replied that it deferred to the World Health Organization on the public health aspects of tobacco industry privatization. WHO researchers have repeatedly documented that liberalization of trade in tobacco products stimulates higher levels of tobacco use in low- and middle-income economies, but WHO has not publicly suggested any change in international trade rules regarding tobacco. Similarly, WHO has not publicly suggested any change in the IMF or World Bank approach to tobacco industry privatization. It is not clear whether this is because WHO officials are genuinely supportive of the status quo in these areas or because they believe it would be politically unwise to publicly question policies and practices of powerful United Nations agencies such as the WTO and IMF.

D. Rationales for Privatization

Proponents have offered the following rationales for tobacco industry privatization:

1. "Tobacco industry privatization will deliver the same economic benefits as privatization in other sectors: improved fiscal performance by the government; improved profitability of the tobacco company; reduced corruption and waste; improved product quality; etc."

The only problem with this rationale is that it considers only one side of the equation and does not weigh the potential costs of privatization. If privatization results in even a marginal increase in tobacco use, it appears likely that the economic benefits would be more than offset by higher health care costs and lost worker productivity. If economic value were assigned to human suffering and loss of life, as it should be, the costs would be even higher. These health-related costs are over and above the transition costs as the tobacco industry is privatized and the likelihood that a higher percentage of profits from the tobacco market would be repatriated to other nations after privatization. It is also worth pointing out that the concept of "improved product quality" is complicated in the case of tobacco products. Tobacco products perceived by consumers to be more attractive are, from a public policy standpoint, undesirable because they will lead to higher rates of tobacco use.

2. "State-owned tobacco companies represent a conflict of interest for governments. Privatization frees governments to pursue aggressive tobacco control policies that may offset the stimulative effect of privatization."

One IMF official has cited this rationale in support of IMF's efforts to encourage privatization of state-owned tobacco companies.[37] Proponents of tobacco industry privatization say that Poland is a good example of how privatization can stimulate tobacco control by eliminating a conflict of interest within

[37] Chaloupka FJ, Nair R, "International issues in the supply of tobacco: recent changes and implications for alcohol," *Addiction* (2000) 95 (Supplement 4), S477–S489 at S483, citing personal communications with Peter Heller of the IMF.

government. Shortly after privatizing its tobacco industry, Poland sharply restricted tobacco marketing, enlarged health warning labels and took other significant steps to reduce tobacco use. One leading Polish tobacco control leader believes that privatization allowed advocates to frame tobacco control measures as a matter of protecting public health against foreign tobacco companies and that this was an important element of their successful campaign that would not have been possible had the tobacco industry remained in government hands.[38] However, Poland's success in passing strong legislation after privatization seems to be the exception rather than the rule. Other nations have not reported similar results. Moreover, it is not entirely clear how much, if any, of Poland's progress should be attributed to privatization. There are many other factors at work in Poland, including highly regarded tobacco control leadership.

Tobacco companies reportedly have taken steps to prevent a repeat of their experience in Poland. In some countries, tobacco companies are alleged to have demanded and received significant tax concessions, including assurances from governments that tax increases would be limited after privatization.[39] These are exactly the opposite of the kinds of "conditions of sale" advocated by public health experts. They are made possible by the lack of public health representation in negotiations and the lack of transparency in the privatization process.

Whether or not Poland's successes should be attributed to privatization, the idea that it is a conflict of interest for a government to manage a tobacco company is a powerful one. It appeals to many people as a reflection of the principle that a government should not be involved in raising revenue by selling harmful products to its own people. It also reflects a practical concern that a government-owned tobacco company will have undue influence over health policy and that the government's involvement may provide inappropriate legitimacy to tobacco use.

Opponents of tobacco industry privatization say that the fact that tobacco use is harmful is precisely the reason government *should* strictly control its production and distribution. As discussed earlier, they point out that government ownership may constitute the lesser of two evils. The concern that a state-owned tobacco company would have undue influence within a government is valid but should be weighed against the reality that private tobacco companies also wield enormous political influence wherever they operate. It appears that the degree of influence of the tobacco industry, regardless of ownership structure, depends on many factors and will differ from one nation to another.

A related concern is that a government would be more likely to subsidize a state-owned tobacco company for political reasons (e.g., to curry favor with tobacco growers, tobacco workers and smokers) or to allow it to compete with more efficient firms.

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[38] Witold Zatonski and Scott Thompson, personal communications.

[39] According to sources who have requested confidentiality, tax concessions and other provisions that are counter to sound public health policy are reported to have been provided by the governments of the Kyrgyz Republic, Hungary and Ukraine. Similar provisions are likely to exist in other agreements.

Such a subsidy in most cases would be harmful to public health and to the fiscal health of the nation. While privatization would appear to make direct subsidies less likely, there is extensive evidence from the United States, European Union nations, former Soviet Union nations and elsewhere that private tobacco firms are often successful in lobbying governments for tax, trade and other concessions that have the same effect as a subsidy.

Despite its intuitive appeal, there does not appear to be any rigorous analysis or study to support the view that privatization is necessary or sufficient to reduce conflict of interest over tobacco-related issues within governments. Moreover, there are also intuitively appealing public health rationales for maintaining state control of tobacco production and/or distribution. Therefore, it seems reasonable to conclude that concern about conflict of interest within government is appropriate but that this rationale does not eliminate the need for a careful case-by-case analysis of the likely public health impact of the privatization of a tobacco company. Analysis in advance of action is particularly important in cases such as this one, in which the action contemplated is, for practical purposes, irreversible.

3. "In an era of liberalized trade, state-owned tobacco companies are not viable. There is no real alternative to privatization."

Some economists believe that state-owned tobacco companies simply are not viable in a global economy and that the only real question is not whether to privatize, but when and how. It is certainly true that state-owned enterprises of all descriptions are under pressure from falling tariffs and that globalization of trade in tobacco products has contributed to the decision by many nations to privatize their formerly state-owned tobacco companies. However, it is by no means inevitable that state-owned tobacco companies will be forced out of business.

The outlook for survival of state-owned tobacco companies would be improved if tobacco trade and privatization rules were reformed so that public health concerns were allowed to take precedence over commercial concerns, as public health groups are urging. In that case, nations that decide to maintain a state-owned tobacco company would be able to maintain tariff and nontariff tobacco trade and investment restrictions at a level that ensures the viability of the state-owned tobacco company.

Even in the absence of tobacco trade reform, many state-owned tobacco companies may remain viable. China, which represents more than one-third of the world's tobacco production, has joined the WTO and reduced tobacco tariffs while planning to maintain a state-owned tobacco industry for the indefinite future. Prospects appear good because the Chinese market is still protected by 25 percent tariffs on cigarettes and by restrictions on foreign direct investment in the tobacco sector. Other nations that maintain an adequate tariff rate and restrictions on foreign direct investment in the tobacco sector may be able to follow the Chinese model.

In nations that find they must restructure their tobacco companies to remain viable, a range of options is available short of complete privatization.[40] Nations may wish to retain ownership of one sector (e.g., manufacturing, wholesale or retail) while privatizing another or may wish to engage private firms to manufacture or distribute the products on a contractual basis while maintaining government control of the overall enterprise. It may even be possible for a nation to reform its state-owned tobacco company by reducing waste, corruption and other harmful practices without turning to the private sector at all. For these reasons, it would be a mistake to make sweeping generalizations about the viability of state-owned tobacco firms. What is feasible depends on the specific facts and circumstances of each nation.

[40] Little scholarship or discussion has been devoted to determining what might constitute an "ideal" structure for the tobacco industry from a public health perspective, or what structures might be achievable from a practical and legal standpoint in different nations.

4. "Maintaining a state-owned tobacco company is a suboptimal tobacco control measure that should be rejected in favor of more effective strategies such as taxation and marketing restrictions."

There are two responses to this rationale:

First, maintaining a state-owned tobacco company is not necessarily a suboptimal tobacco control measure. In theory, as discussed in Section III (C), a state-owned tobacco company in a government that prioritizes public health over tobacco sales provides the best possible environment for tobacco control.

Second, it would be a mistake to imagine that policymakers face an "either/or" choice among different tobacco control policy measures, and that maintaining a state-owned tobacco company will somehow prevent other tobacco control measures from being implemented. From a public health perspective, the goal should be to harness all appropriate policy tools to reduce tobacco use. These tools include maintaining a state-owned tobacco company, if doing so is likely to result in lower rates of tobacco use.

IV. Conclusions

The global trends toward reducing tobacco product tariffs and privatizing state-owned tobacco companies are continuing at a rapid pace, even though they raise significant public health concerns that have not been adequately considered or addressed. In many nations, lower tariffs and the privatization of state-owned tobacco companies are expected to stimulate higher levels of tobacco use, causing harm to public health and the global economy. The public health and economic impact of these measures will vary considerably from nation to nation. Therefore, the impact of any proposal to lower tobacco tariffs or privatize a state-owned tobacco company should be assessed on a case-by-case basis and addressed before any action is taken.

The following eight principles should guide public policy regarding tobacco trade generally, and tobacco tariff and privatization issues in particular:

- **A precautionary approach should be adopted.** In light of the magnitude of harm caused by tobacco products, it is appropriate to apply extra care in assessing any measure that may stimulate tobacco use. Scientific uncertainty regarding the likely impact of a trade measure, or regarding the efficacy of a tobacco control measure, should be resolved in favor of taking actions least likely to stimulate tobacco use. Such uncertainty should not be used as a reason for challenging tobacco control measures of another nation.
- **The primacy of public health concerns over interests in expanding trade in tobacco products should be respected.**
- **Tobacco-related trade actions that stimulate tobacco use should be rejected.**
- **To the extent that existing international trade rules do not adequately address public health concerns about trade in tobacco products, appropriate rules should be developed.** This is already done for a wide range of harmful or risky products. There is no reason why it should not also be done for tobacco products.
- **Public health consequences of any tobacco-related trade action should be assessed in advance.** Governments and multilateral agencies should carefully assess the potential public health impact of any tobacco-related trade measure before taking action, even if this requires the action to be postponed. This principle is fundamental to sound policy, particularly if the

action, once taken, is unlikely to be reversed.[41]

- **A transparent and fair decision-making process should be used.** Governments and multilateral entities should have a transparent process in place to ensure that public health concerns are addressed before any tobacco-related trade action is taken. To ensure fairness, the process must include, in advance of a tobacco-related trade decision, public disclosure of the issues under consideration and of the government's assessment of the public health implications of a proposed action. Any decisions or actions taken also should be disclosed immediately. Public health experts must be integrated into the decision-making process from the outset.
- **Only credible information should be relied upon.** Governments and multilateral entities should rely on credible information regarding tobacco trade and public health issues. The tobacco industry has demonstrated that it is not a credible source of information related to health concerns; therefore, governments and multilateral entities should not rely on information provided by the tobacco industry unless it is independently verified.
- **Policy decisions should be based on consequences, not motives.** Governments and multilateral entities should focus on public health outcomes in assessing tobacco-related trade policies. Tobacco trade policies that will have a good public health effect sometimes will be supported by governments with protectionist motives. In such cases, the importance of saving lives by achieving a good public health outcome should take precedence over commercial interests in improving access to a market for tobacco products.

The public health community has had limited success in promoting acceptance of these principles by the international trade policy community. As a result, public health concerns have rarely been considered in tobacco trade matters, including tobacco product tariff and privatization matters.

[41] This principle is the basis for the legal requirement that the environmental impact of building projects in environmentally sensitive areas be assessed before work begins. This same principle should be applied before tobacco industry dynamics are significantly altered through tariff reductions, privatization and other policy measures likely to affect public health.

V. Policy Recommendations

Representatives of government health and trade ministries, multilateral agencies and public health groups should work together to develop a common understanding of appropriate policies to address public health concerns regarding international trade in tobacco products.

With respect to tobacco product tariffs and the privatization of state-owned tobacco companies—two of the most difficult trade-related issues—the following brief policy statements may serve as a useful starting point for discussion:

Tariffs:
(1) Nations should adopt comprehensive policies to reduce tobacco use. Consistent with this approach, nations should adopt tobacco tariff policies most likely to reduce tobacco use based on economic, social and political circumstances. (2) To protect public health, no nation or group of nations should use trade agreements, trade pressure or any other means to limit manufactured tobacco product tariffs in any nation unless qualified public health and economic experts establish with reasonable certainty that the action will not stimulate tobacco use. Existing international agreements should be revised as soon as possible for consistency with this policy.

Privatization:
(1) To protect public health, nations should exercise strict control over tobacco product design, manufacture, marketing and sale. To achieve this goal, each nation should adopt or maintain the most appropriate tobacco industry structure based on economic, social and political circumstances. (2) If a nation determines that it is appropriate to privatize a state-owned tobacco enterprise, the privatization process and any privatization agreements should be transparent. No privatization should proceed until basic tobacco control policy measures are in place, including a prohibition of all forms of tobacco advertising, substantial taxes on tobacco products, prohibition of smoking in enclosed public places and workplaces, and government authority over tobacco product design, manufacture, marketing and sale. (3) To protect public health, no nation or group of nations should use trade agreements, trade pressure or any other means to promote privatization of state-owned tobacco companies in any nation. Existing international agreements should be revised as soon as possible for consistency with this policy.

Multilateral lending agencies:
The IMF, World Bank and related multilateral lending agencies should adopt an operational directive or other binding policy to ensure that their personnel adhere to the policies outlined above.

These policies would allow tobacco product tariff changes and tobacco industry privatizations to continue where they are consistent with public health policy and would remove external pressure for nations to take actions likely to stimulate tobacco use. To gain acceptance for these or similar policies, the public health community will need to develop a greater understanding of trade policy issues and a greater capacity to advocate for public health principles within the trade policy community.

Appendix 1. Goods and Services Restricted in International Trade

Public health groups have proposed that tobacco products should be subject to product-specific rules that would operate as limited exceptions to the generally applicable rules promoting free trade in goods and services. This proposal follows a well-established practice of developing specific international agreements to govern trade practices involving goods that pose unusual risks. Goals of these agreements vary widely and include economic protection, national security, nonproliferation of dangerous technologies, environmental protection, and advancing humanitarian, moral and public health goals.

Specific examples of products subject to special trade rules include the following:

Exclusion lists for "sensitive" or "very sensitive" products. In negotiating trade treaties, nations typically specify classes of goods that they wish to exclude from the agreement or subject to quantitative or other restrictions. Very few nations have listed tobacco products as "sensitive" in this way. For example, of the 10 Asian nations forming the Association of South-East Asian Nations (ASEAN) Free Trade Area (AFTA), only Malaysia excluded tobacco products from its tariff obligations. In contrast, 7 of the 10 nations excluded alcoholic beverages.

Weapons. Weapons have been excluded from the General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) jurisdiction since 1947 in recognition of the national security issues they raise. Various weapons and weapons systems are the subject of dozens of bilateral and multilateral treaties. The following are examples of agreements governing light weapons:

1. **Small arms.** The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (1997) imposes extensive tracking, reporting, information sharing and other obligations on nations involved in the small arms trade.
2. **Antipersonnel landmines.** The Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (1997) (also known as the Landmine Treaty) prohibits parties from using or possessing landmines and also prohibits any trade by members that would assist other nations engaging in prohibited landmine-related activities.

Exclusions for weapons exist in many other agreements. For example, AFTA specifically excludes guns and ammunition from its provisions (Article 9).

Drugs and medical devices. Trade in drugs and medical devices is subject to various restrictions under multilateral and bilateral agreements. In addition, the U.S. Food, Drug and Cosmetic Act, Sections 801-802, 21 U.S.C. Sections 381-382, imposes a number of restrictions on the export of drugs and medical devices not approved for use in the United States. Depending on the details of the proposed export, the exporter may be required to demonstrate that the product is not objected to by the importing nation (Section 801(e)(2)), that the export of a device will not be contrary to public health and safety (Section 801(e)(2)), and that it would not pose an imminent hazard to the receiving country (Section 802(f)). In the case of unapproved devices intended to treat tropical diseases, under Section 802(e)(1), FDA must find that the device does not present an unreasonable risk, that the benefits outweigh the risks, and that the risks of using available alternatives were considered.

Narcotic and psychotropic drugs. Trade in these drugs is subject to strict and elaborate controls under three primary international agreements: the Single Convention on Narcotic Drugs (1961, as amended), the 1971 Convention on Psychotropic Substances and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). Many other multilateral and bilateral agreements also act to limit trade in these drugs to prevent diversion into illegal channels.

Alcohol, tobacco, firearms and ammunition distribution services. These are among the services excluded from coverage by the General Agreement on Trade in Services (GATS) (1994).

Ozone-depleting chemicals. The Montreal Protocol on Substances that Deplete the Ozone Layer (1987) is analogous in some respects to the Landmine Treaty. It establishes a timetable to phase out production and consumption of ozone-depleting substances such as chloroflourocarbons. It also imposes on its 173 members an obligation to restrict their trade activities in ozone-depleting chemicals with nonparties to the Convention.

Persistent organic pollutants (POPs). The Stockholm Convention on Persistent Organic Pollutants (2001) (the POPs Convention) governs the production, use and trade in PCBs, DDT and other pollutants that accumulate in the environment and pose a substantial threat to human, animal and plant life. The Convention divides POPs into several categories, with one category to be phased out of production and use entirely; another category subject to strict production, use and transportation restrictions; and the third category subject to less strict measures. The Convention includes obligations for parties to the Convention not to trade in POPs with nonparties to the Convention.

Hazardous waste. The Basel Convention on Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989) governs production, transportation, storage, management and disposal of hazardous waste. It includes prohibitions on the import or export of hazardous wastes to or from nonparties (Article 4.5) and obligates parties to prohibit export of wastes if the wastes will not be managed "in an environmentally sound manner" (Article 4.8).

Endangered species. The Convention in International Trade in Endangered Species of Wild Fauna and Flora (1972) (CITES) imposes strict controls on trade in covered species, including a complete prohibition on trade in the most threatened species.

Other trade-related provisions of environmental treaties. Researchers have identified more than 20 multilateral treaties in the environmental field that include trade-related provisions.[42]

These examples demonstrate that, contrary to claims by the tobacco industry and its allies, it is relatively common and widely accepted to develop special rules governing trade in uniquely risky or harmful goods and services.

[42] World Wildlife Federation (WWF), "Trade Measures and Multilateral Environmental Agreements: Resolving Uncertainty and Removing the WTO Chill Factor," WWF International Discussion Paper, November 1999.

Appendix 2. Assessing the Public Health Impact of Tobacco Tariff and Privatization Actions: Questions and Answers

Question: *Why should we assess the public health impact of tobacco product tariff reductions and other tobacco-related trade actions?*

Answer: Assessing the likely consequences of any significant policy change is fundamental to sound policymaking and is a core responsibility of government. The importance of assessing outcomes before taking action grows in proportion to the seriousness of the potential consequences. By any measure, stimulating a higher rate of tobacco use in a population is a serious potential consequence of reducing tobacco product tariffs or taking other measures to liberalize trade in tobacco products. That is why the public health impact of such measures should be assessed before any action is taken.

Question: *Does good precedent exist for conducting such assessments?*

Answer: There are many examples of disciplined impact assessments that are required before action can be taken. For example, when the United States proposed reductions in timber tariffs in the late 1990s, the U.S. government sponsored detailed studies of the potential impact of its proposal on global deforestation.[43] It is ironic that no similar assessment has been made in the case of tobacco product tariffs, even though in this case human lives are at stake. U.S. state and federal environmental authorities require an environmental impact statement to be produced in advance of any major development project. Traffic studies also are routinely required before construction projects may begin.

[43] Brooks DJ et al., "Economic and Environmental Effects of Accelerated Tariff Liberalization in the Forest Products Sector," U.S. Department of Agriculture, U.S. Forest Service, Pacific Northwest Research Station, http://www.fs.fed.us/pnw/pubs/gtr517.pdf.

Question: *Why haven't public health impact assessments been conducted in the past?*

Answer: Many possible reasons for this are explored in Sections II(d) and III(D) of this report, ranging from a belief by some that there are no public health consequences to assess to a belief by others that it is not appropriate for public health groups to become involved in international trade policy matters. Some public health officials also may be reluctant to become involved because of lack of familiarity with trade policy, political constraints or uncertainty about how to conduct an assessment of the public health impact of tobacco-related trade policies.

Question: *What should be the key elements of a public health impact assessment?*

Answer: Details of a public health impact assessment would vary greatly depending on the case presented, the nation involved and other factors. Key elements of such a review should include the following:

A health-based standard of review. The standard of review defines the key question that the assessment must answer. For example, the assessment might seek to determine whether a proposed action poses a significant risk to public health.

Burden of proof on proponents of tobacco-related trade action. It should be clear at all times that the burden of proof rests with proponents of actions to liberalize trade in tobacco products.

Appointment of appropriate experts to conduct the assessment. The assessment should be conducted by unbiased experts in the appropriate fields. A team assessing a tobacco tariff action, for example, should include experts in tobacco product marketing, health economics, epidemiology, international trade and international law. The expert reviewers should be insulated from political influence to the extent possible. Those who have worked for or on behalf of tobacco companies should not be eligible to serve. Because the question being addressed is one of public health, primary oversight should be by the ministry or department of health.

Time and resources. The team should develop a research plan based on the facts and data available in a specific case. The team should be provided with the time and resources necessary to carry out the appropriate research strategy. In some cases, the team may be able to reach a conclusion by soliciting public comment and by reviewing publicly available information without conducting new research. However, especially at the outset, it is possible that new research will need to be conducted or commissioned and subjected to an appropriate peer review process.

Transparency. The process and the results must be transparent to the public so that the scientific basis for any decision is subject to appropriate scrutiny.

Question: *What are some examples of specific tobacco tariff and privatization issues in the world today that should be subject to a public health impact assessment?*

Answer: Tariff issues arise whenever nations negotiate bilateral or multilateral tariff treaties that include tobacco products. The question in each case is whether the nations involved will protect public health by excluding tobacco products from the scope of tariff agreements. Privatization issues arise when individual nations or multilateral lending agencies such as the International Monetary Fund use their political and economic leverage to pressure nations to privatize state-owned tobacco monopolies.

The following are examples of current tariff and privatization issues:

Free Trade in the Americas Agreement (FTAA). The FTAA is now being negotiated by the 34 nations of the Americas. The timeline calls for a final agreement by the end of 2004. One general goal of the treaty is to eliminate tariffs on all products among member nations over time. An important policy question is whether the nations involved will identify tobacco products as an appropriate exception to this goal, thereby allowing those nations that wish to maintain tariffs on manufactured tobacco products to continue to do so. Most nations in Central and South America are allowed substantial tobacco tariffs under current WTO rules. Bound tariffs on cigarettes range from 40 percent in Venezuela to 150 percent in Dominica. If these tariffs are eliminated, the FTAA would dramatically alter tobacco markets throughout the region and potentially raise smoking rates beyond levels that otherwise would prevail. Therefore, a careful advance assessment of the impact of eliminating tobacco tariffs throughout the Americas seems appropriate before the United States or any other nation agrees to reduce tobacco product tariffs or asks another nation to do so.

Doha Round of WTO negotiations. Each round of WTO negotiations has resulted in lower tobacco product tariffs globally with no assessment of the public health consequences. The current round, launched in Doha, Qatar, in November 2001, provides an opportunity for nations to recognize that tobacco products raise special public health concerns and should be dealt with separately from other products. Nations that wish to maintain or increase tariffs may wish to assert their right to do so in these negotiations, and exporting nations such as the United States should refrain from pressing for lower tobacco product tariffs except in cases in which a public health impact assessment demonstrates that there is no significant risk to public health.

Framework Convention on Tobacco Control (FCTC). The FCTC will not directly affect tobacco product tariff rates in any nation but may have a profound indirect impact. Nongovernmental organizations support language in the treaty that would obligate parties to prioritize concern for human health over commercial interests in expanding trade in tobacco products. If this principle is accepted as an international norm,

public health concerns regarding tobacco tariffs and other trade-related matters may be more carefully considered in the future.

China. The current status of the market for tobacco products in the People's Republic of China raises tariff and privatization concerns. Through WTO accession negotiations with the United States and other major trading nations, China already has been forced to reduce its tariff on tobacco products from 65 percent to 25 percent and to reduce or eliminate other tobacco-related trade restrictions. This should not have happened without an assessment of the public health consequences. China is home to more than one-third of the world's smokers. About 100 million Chinese males under age 30 are expected to be killed by tobacco use based on current patterns.[44] If tariff reductions cause an increase in smoking rates of only 2 percent among that age group, it would result in approximately two million additional deaths over time and many more deaths among Chinese women and adults over 29. No demands should be placed on China to liberalize its tobacco product market or to privatize its tobacco monopoly until a rigorous public health impact assessment is completed.

Vietnam. Vietnam is one of several nations that do not allow tobacco product imports. As Vietnam seeks entry into the WTO and the ASEAN AFTA, Vietnam will come under increased pressure to open its tobacco market. Vietnam already has agreed to a joint venture with the British American Tobacco Company (BAT) and is expected to allow additional investments in its tobacco industry to boost its competitiveness as it prepares to compete internationally. As with China, the United States and other nations should not pressure Vietnam to open its market or privatize its monopoly unless studies of the Vietnamese market show that doing so would not pose a significant threat to public health.

Question: *Can you give a more specific example of how a health impact assessment might be conducted?*

Answer: Take the case of China and tariffs. There are many ways to assess the likely impact of lower tobacco product tariffs in China. An assessment might include the following:

- Inviting public comment on the issue to build a file of relevant information.
- Studying available data on the effect of past changes in the affordability of imported brands in China to predict likely consumer response to a drop in the price of imported brands.

[44] Shi-ru Niu et al., "Emerging tobacco hazards in China: early mortality results from a prospective study," *BMJ* (1998) 317:1423–4.

- Studying the impact of tobacco product tariff reductions in countries similar to China, taking care to account for differences between countries to the extent possible.
- Studying consumer preferences in China to predict likely consumer response to lower prices for imported tobacco products, with special attention to the youth and female markets, where imported brands appear to have the greatest appeal.
- Studying the likely responses of the Chinese Tobacco Monopoly (CNTC) to more direct competition from foreign brands, and assessing the possibility that lower tariffs would stimulate price and marketing competition that would raise overall smoking rates as well as the possibility that lower tariffs might ultimately lead to the demise of CNTC and the takeover of the Chinese market by multinational tobacco companies.
- Translating the range of potential changes in smoking patterns resulting from tariff reductions into estimated gains or losses in terms of human life and health care costs.

Not all the approaches outlined above will be viable in every case, and none of them allows a high degree of precision in estimating consumer response to lower tobacco product tariffs. Economists, marketing experts, epidemiologists and others may be able to devise better methods. Even in the absence of better methods, however, these approaches should allow a panel of independent experts to reach consensus on the fundamental question: Would lowering tobacco product tariffs in China pose a significant risk to public health? If the answer is “no,” U.S. trade officials could enter into discussions with China about the possibility of lowering tobacco product tariffs.

Appendix 3. World Trade Organization National Tariff Schedules for Cigarettes[45]

The "Base Rate" in the table below refers to the beginning implementation rate as of 1995. The "Bound Rate" is the final tariff rate at the end of the implementation period. The implementation period is not defined but is normally 6 years for developed countries and 10 years for developing countries (end of implementation is 2000 and 2004, respectively). The reductions in tariffs are in equal yearly increments.

	Tariff on Cigarettes		
Nation	**Base Rate of Duty**	**Bound Rate of Duty**	**Implementation Period**
Antigua and Barbuda		100.0%	1995
Australia	AUD 6.83/kg	AUD 2.44/kg	1995–2000
Bahrain		100.0%	1995
Belize		110.0%	1995
Brazil	105.0%	35.0%	1995/2004
Brunei		BND 132.00/kg	1995
Canada	20.0%	12.8%	1995/2000
Sri Lanka	66.0%	50.0%	1995
China, People's Republic of	150.0%	135.0%	1995–2004
Colombia	100.0%	70.0%	na
Dominica		150.0%	1995–2004
Egypt	110.0%	85.0%	na
European Union	90.0%	57.6%	na
Czech Republic	65.0%	55.0%	na
Fiji		FJD 30.00/kg	1995
Guatemala	100.0%	90.0%	1995/2004
Guyana		100.0%	1995/2004
Hungary	90.0%	57.6%	1995–2000
Indonesia	130.0%	40.0%	1995–2004
Israel	150.0%	125.0%	1995–2004
Cote D'Ivoire	75.0%	64.0%	1995/2004

[45] All information in Appendix 3 is drawn from http://www.fas.usda.gov/scriptsw/wtopdf/wtopdf_frm.asp.

Nation	Tariff on Cigarettes Base Rate of Duty	Bound Rate of Duty	Implementation Period
Japan	10.0% + JPY 342.00/1000 pieces	8.5% + JPY 290.7/1000 pieces	na
Jamaica		100%	1995
Korea	100%	65.5%	na
Slovakia	65%	55%	na
Morocco	45%	34%	na
Malta and Gozo	na	MTL 2420 cents/kg	na
Mexico	75%	67.5%	1995/2004
Norway	NOK 17.00	NOK 14.45	na
Nicaragua	85%	75%	2004
New Zealand	24.8%	12.5%	1995
Papua New Guinea		PGK 100.00/kg	1995
Philippines	70%	45%	na
South Africa, Republic of	90%	54%	1995–2000
Singapore	SGD 151.50/kg	SGD 115.50/kg	1995–2004
South America	180%	120%	1995/2004
Thailand	70% + THB 93.3/kg	60% + THB 80.0/kg	1995–2004
Tunisia	34%	25%	1995–2004
Turkey	200%	140.8%	na
United States	5.0% + USD 2.34/kg	2.3% + USD 1.05/kg	1995–2000
St. Vincent and the Grenadine	180	120	1995/2004
Venezuela	50%	40%	1995
Namibia	90%	54%	1995–2004
Swaziland	90%	54%	1995–2000

The national tariff schedules included in this table represent submissions to the WTO at the conclusion of the Uruguay Round of multilateral trade negotiations.

Bound rates are the official rates legally committed to in the WTO. Tariffs cannot be raised above these rates unless a negotiated waiver is arranged. However, tariff rates can be, and often are, lower than bound rates. These lower rates are known as "applied tariff rates" and represent the duty that is actually applied to imported products. Applied rates may change frequently, depending on supply and demand and on the political situation in each nation.

Appendix 4. The Thai GATT Decision and U.S. Tobacco Trade Policy

The public health community has voiced its concerns about the promotion of trade in tobacco products for many years, beginning in earnest during the late 1980s, after the United States began using threats of trade sanctions to force open closed tobacco markets in Japan, South Korea, Taiwan and Thailand. Health groups consistently have urged that governments and multilateral agencies recognize that concern for human life and public health should take precedence over commercial interests in expanding trade in tobacco products and that no nation should be pressured to liberalize trade in tobacco products if doing so would risk stimulating higher rates of tobacco use.

Public health groups have applied this principle to a number of cases over the years, beginning with the Thai General Agreement on Tariffs and Trade (GATT) case in 1990.[46] In that case, the Thai government, with support from health groups, argued before a GATT dispute resolution panel that its closed tobacco market, ad ban and other policies were justified on public health grounds. The panel ruled that traditional public health measures such as tobacco taxes and advertising bans were justified on public health grounds but that Thailand must open its market to foreign cigarettes and treat domestic and foreign brands equally. The panel reasoned that Thailand could achieve its public health goals through less trade-restrictive measures, so that maintaining a closed market was not "necessary" within the meaning of Article XX(b) of the GATT.[47]

Critics of the GATT panel decision have pointed out that maintaining a

[46] Thailand—Restrictions on Importation of and Internal Taxes on Cigarettes, November 7, 1990, BISD 37S/200.

[47] Most WTO agreements, including GATT (Article XX(b)), provide a limited exception to ordinary rules of international trade for measures deemed by WTO dispute resolution panels to be "necessary" to protect human health. However, trade panels have construed the term "necessary" narrowly, applying what amounts to a standard of strict scrutiny (as that term is used in U.S. constitutional jurisprudence) to trade-restrictive health measures. As in the Thai cigarette case, the panels have required that a health measure be the least trade-restrictive measure that is reasonably (or theoretically) available. They have demonstrated through their decisions that they are likely to reject restrictive trade practices that protect public health but that they are also at least partly motivated by a desire to protect domestic producers. This pattern of decisions indicates that current trade rules favor free trade in tobacco products over protecting public health when these two goals are in conflict. For a more detailed discussion of these issues, see Section II (D) (7) above; also see Campaign for Tobacco-Free Kids, *Public Health, International Trade and the Framework Convention on Tobacco Control,* March 2001, http://tobaccofreekids.org/campaign/global/framework/docs/Policy.pdf, and Physicians for a Smoke-Free Canada, *An Introduction to International Trade Agreements and Their Impact on Public Measures to Reduce Tobacco Use,* April 2001, http://www.smoke-free.ca/pdf_1/Trade&Tobacco-April%202000.pdf.

closed tobacco market would have reduced tobacco use in Thailand over and above any reductions resulting from nondiscriminatory tobacco control measures. Econometric data show that smoking rates in the four nations targeted by U.S. trade pressure increased by about 10 percent solely as a result of opening their markets to foreign cigarettes.[48] Supporters of the Thai GATT decision point out that Thailand has successfully implemented nondiscriminatory tobacco control measures and suggest that Thailand's successful tobacco control efforts may have been stimulated by the forced opening of its tobacco market. The degree to which this is true, and the extent to which the Thai experience can be replicated in other nations, is unknown.

Concern over national treatment of tobacco products has essentially governed tobacco trade policy ever since the Thai GATT ruling. For example, when the Clinton Administration announced its "reformed" tobacco trade policy in 1995, after two years of review, the new policy mirrored the 1990 GATT panel ruling. The United States announced that it would continue to attack discriminatory tobacco-related policies in other countries but would support nondiscriminatory tobacco control measures. "Equal access to a declining market" was the phrase used by Administration officials to describe and promote its policy. Of course it was not a new policy for the Administration to fight for access to foreign markets for U.S. tobacco companies. Adopting the vision of a shrinking tobacco market did not change the reality that global tobacco consumption is growing. Fortunately, the Clinton Administration was restrained in practice, although it did take action against tobacco tariffs in China and other nations.

Legislatively, a similar policy is reflected in the Doggett Amendment,[49] which prohibits U.S. taxpayer funds from being used by the Departments of Commerce, State and Justice to promote tobacco overseas. The Amendment explicitly allows the United States to take action against discriminatory[50] tobacco policies in other countries.

The George W. Bush Administration has left no doubt that it, too, will fight for access by U.S. tobacco companies to overseas markets. When South Korea announced plans to impose a 40 percent tariff on imported cigarettes, U.S. trade officials quickly pressured the South Korean government to weaken the measure by phasing it in over four

[48] Chaloupka FJ, Laixuthai A, "U.S. Trade Policy and Cigarette Smoking in Asia," National Bureau of Economic Research Working Paper No. 5543, 1996.

[49] Originally passed as Public Law 105-119, Section 618, in 1997, the Doggett Amendment has been included in all subsequent appropriations acts for the Departments of Commerce, Justice and State.

[50] The term "discrimination" carries such negative connotations that many people assume it refers to indefensible conduct. However, the term refers to any action that favors domestic products over imported ones. All nations engage in extensive "discriminatory" trade behavior through tariffs, subsidies, quotas and other means with respect to products they regard as sensitive for political, economic, military or other reasons. In essence, the public health community is urging that tobacco products be recognized in trade agreements as a sensitive product and that nations be allowed more latitude to restrict trade in tobacco products to protect public health.

years.[51] The Administration took the position that no public health issues were involved because the Korean tariff was discriminatory.[52] The Bush Administration also has spoken out against developing trade rules for tobacco products as part of the Framework Convention on Tobacco Control.

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[51] Campaign for Tobacco-Free Kids, "Bush Administration Presses South Korea to Drop Cigarette Tariff, Putting Tobacco Industry's Interests Ahead of Public Health," June 14, 2001.

[52] Murray B, "Bush Administration Gets South Korea to Limit Cigarette Tariffs," Bloomberg, June 26, 2001. A spokesman for the U.S. trade representative commented in this article that "The Korean government's proposed regulations discriminated against Americans and were aimed at protecting their own industry, not at protecting health and safety, which would have presented a different situation."

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