

CAMPAIGN For TOBACCO-FREE Kids

NATIONAL CENTER FOR TOBACCO-FREE KIDS

Comments on the Chair's Text of a Framework Convention on Tobacco Control

(March 2001)

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Comments on the Chair's Text of a Framework Convention on Tobacco Control (March 2001)

The Campaign for Tobacco Free Kids¹ offers the following comments and recommendations on the Chair's text of the FCTC for the consideration of WHO Member States. We begin with some general comments, followed by some recommendations on areas of the text that need clarification and/or improvement, and conclude with specific textual recommendations.

General Comments on the Chair's Text

The Campaign for Tobacco-Free Kids is pleased with the progress made by the negotiating parties in October 2000 at the first session of the Intergovernmental Negotiating Body (INB) and the choice of Ambassador Celso L.N. Amorim as Chair of the INB. He brings years of successful diplomacy and negotiation skills to this task, and he will need to utilize all of his experience and skills to see this process to a successful conclusion. We offer our continued support in this effort.

The Chair's text for a FCTC is an improvement over the previous draft document in terms of brevity and organization. We are pleased to note that the draft recognizes the importance of reducing the prevalence of tobacco use and the protection of present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke. However, the draft currently is set out as a series of guidelines or best practices. Unlike specific requirements for effective tobacco control policies, guidelines are insufficient on their own to tackle adequately the problems of tobacco-related death and disease. It is essential for the Convention to contain stronger language and concrete provisions if the treaty is to achieve its stated goals.

In addition, the Chair proposes negotiating concurrently, or immediately following the framework treaty, protocols in three areas (tobacco advertising, promotion and sponsorship; the elimination of illicit trade in tobacco products (smuggling); and regulation of the contents of tobacco products, tobacco product disclosures, and packaging and labeling of tobacco products). We can not stress strongly enough that the protocols for advertising and smuggling be negotiated simultaneously with the Convention. The discussions at the second working group meeting and at the first Intergovernmental Negotiating Body (INB) illustrated a remarkable degree of support for strong, effective and immediate measures in these areas. We also agree that a protocol addressing the issue of product regulation should be negotiated as soon as possible after negotiations on the FCTC are completed.²

Moreover, while we agree with the Chair that the three areas designated for early protocols are important starting areas, we believe that the Convention itself should also contain other meaningful and substantive obligations. These would be, at a minimum, in the area of advertising, smuggling, product labeling, banning tax-free and duty free sales, banning the use of terms such as "low tar" and "light" that imply reduced risk, etc.

(see Appendix). Our specific recommendations for additions to the text or changes to the text are appended to this comment. We have provided an expanded analysis of three areas: advertising, smuggling and trade, because these represent areas that we believe need the most modifications.

RECOMMENDATIONS

Advertising

Each year, the tobacco industry spends billions of dollars on advertising, marketing and promotion. In the United States alone, where less than 5 percent of the world's smokers live, tobacco companies spent over \$8.2 billion on advertising and promotion in 1999.³ Despite industry denials, many studies show that tobacco advertising and promotion leads to a dramatic increase in consumption. In addition, tobacco advertising has an especially powerful effect on young people. In the United States, 86 percent of teenagers who smoke use the three most heavily advertised cigarette brands.

Bans on tobacco advertising, sponsorship and other promotional activities have proven to be effective in reducing tobacco use and preventing new smokers from starting. Both the World Health Organization and the World Bank⁴ recommend that countries prohibit all forms of tobacco advertisement and promotion. Such bans, if adopted globally, could reduce worldwide demand by approximately 7 percent, preventing over 5 million tobacco-related deaths. More limited or partial bans have little or no effect.⁵ Moreover, country after country expressed support for a total ban on all direct and indirect advertising at the 1st INB.

The preliminary provisions on advertising in the Chair's text do not reflect what the majority of Member States expressed at the first session. The initial proposal is limited to a ban on advertising targeted to persons under 18 and strict restrictions on promotions and sponsorships targeted at older persons. While we understand that a number of countries, including our own, indicated a constitutional or legal impossibility of imposing a complete ban, limiting the restrictions on advertising to only those that target young people creates an artificial distinction between youth-targeted and other advertising. Moreover, it unnecessarily creates burden-of-proof problems, as the industry already claims that they do not target young people.

Consequently, we recommend that the Convention recognize what experience and evidence has established, and delegates prefer, by requiring that each party prohibit all direct and indirect

advertising, sponsorship and promotional activities (that is any use of the brand name—alone or in conjunction with any other word—logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification, identifiable with those used for any brand of tobacco product). Only those countries with constitutional constraints on banning advertising should be permitted to enact the most stringent restrictions that fall short of a ban on all direct and indirect advertising, sponsorship, and promotional activities consistent with their Constitutional requirements. In addition, parties should be encouraged to phase out all cross-border advertising, promotion and sponsorship (e.g. Internet and satellite TV advertising) regardless of their national policies. Finally, there are several provisions in the Chair's text that would be superfluous were all countries to ban advertising immediately. As this will not be the case, these additional requirements are important, e.g., the requirement that companies be required to disclose all advertising expenditures. This information is essential for countries to understand the breath of the problem and to have data to justify more stringent restrictions. We recommend strengthening this provision by requiring that the information be provided on a brand-by-brand basis in a timely fashion.

Smuggling

The scope of the cigarette smuggling problem is enormous: one-third of all global cigarette exports are never accounted for as legal imports. And tobacco smuggling is more than just an economic or law and order issue; it has major public health implications. Smuggling undermines tobacco tax and price policies, which have been proven to be one of the most effective public health policy tools available to reduce smoking, especially among young people. Moreover, the specter of smuggling, exploited by the tobacco industry whenever a tax increase is proposed, often succeeds in convincing lawmakers that tax increases will spark smuggling and lawlessness.⁶ This argument is specious, according to internal company documents, because the tobacco industry itself is a major factor and participant in tobacco smuggling.⁷ Moreover, smuggled cigarettes are sold at a discount to price sensitive smokers who usually are young initiators or price sensitive smokers who might otherwise quit. Finally, the resultant loss of revenue available for tobacco control has been affected either by smuggled products or the forbearance from raising taxes.

The Framework Convention negotiations offer a unique opportunity to take concerted global action on smuggling. It is a strategic global problem that can be addressed by international cooperation. Moreover, while governments may debate some tobacco control measures, most agree on the importance of taking forceful action against smuggling. Existing international measures designed to reduce the illegal trade of pharmaceutical products, alcohol, and firearms provide strong precedents for such an agreement.

In order to adequately control smuggling, two types of provisions are necessary: (1) those imposing obligations on parties to enact domestic law provisions to prevent smuggling (such as counterfeit resistant chain of custody markings on all packages and cartons, place of sale designation on the package, licensing of the entire manufacturing, retailing and exporting network) and

(2) those requiring cooperation between states and with other international organization (information sharing, monitoring and investigating suspected smuggling activities, judicial proceedings, prosecutions and extradition). The Chair's text contains many of the provisions that we believe should be included in a comprehensive package of restrictions to control smuggling.

In addition to those included in the text, we also recommend several additional provisions. Parties to the Convention should permit other parties who are final destination recipients of tobacco products to collect all their national and sub-national tobacco taxes directly from the manufacturers and exporters in the country of origin. If the taxes are paid before the product leaves its country of origin, there is reduced incentive for the companies to divert the shipment. Second, parties should be required to mandate the placement of the importing countries' tax stamp under the cellophane on the package and require that all packages meet the importing country's package requirements. The tax stamp would serve as an additional package marking to indicate the product's intended destination.

Finally, the Convention should require that parties hold the manufacturer or exporter, usually the tobacco company, responsible for ensuring that its product is ultimately sold legally—and be liable for damages if the product ends up on the black market. The original exporting company would pay duty plus fines on any seized contraband. This means they should have to secure the distribution chain and refuse to supply wholesalers or importers that could not guarantee safe onward sale. By passing liability for excise losses up the distribution chain to the initial exporter, a liability regime would effectively pass a duty of care down the distribution chain. This sort of regime is not unprecedented - it forms the basis of the (UNEP) Basel Convention on Transboundary movement of hazardous waste—which has a 'Protocol on Liability and Compensation'. See <http://www.basel.int/pub/Protocol.html>.

Trade

The case for applying special rules to international trade in tobacco products rest on four propositions:

- Tobacco products uniquely harm public health and the global economy;⁸
- Liberalization of trade in tobacco products stimulates tobacco consumption and harms public health;⁹
- Major multilateral trade agreements do not adequately protect tobacco control measures from trade-based challenges;¹⁰ and
- There is ample precedent in many other international agreements for provisions to restrict trade in particularly harmful products such as tobacco, for example, special rules were developed for ozone-depleting chemicals and persistent organic pollutants.

Trade agreements focus on promoting and expanding trade in covered products. While health promotion, environmental protection and other values are reflected in the agreements, the bias in interpretation of the treaties has been and will be in favor of trade promotion. Whether or not expanding commerce and free trade is a public good, tobacco products are different from all other products in commerce. They are unique in that their pro-

motion and expansion to additional markets merely raises that country's death toll and incurs a net economic loss. Therefore tobacco can and should be treated differently in international trade. Existing trade laws should give way to treaty obligations fashioned exclusively for tobacco, an action that is not without precedent. Other harmful products are subject to limitations on unrestrained free trade. In the environmental field alone, there are at least 20 multilateral treaties that contain trade-related provisions.¹¹ Examples of special treatment can be found in the multilateral treaties regarding trade in weapons, the Montreal Protocol on Substances that Deplete the Ozone Layer (1987—phasing out ozone depleting chlorofluorocarbons and restricting trade activities in these chemicals with non-parties), the Persistent Organic Pollutant Convention (agreed to Dec. 2000—phase out of production, limitation on trade with non parties, and contains a precautionary principle); and The Convention in International Trade in Endangered Species of Wild Fauna and Flora (1972—imposing strict controls on trade in threatened species). Each treaty provides for restrictions in trade permitting discrimination against non-parties that do not agree to restrictions. Establishing tobacco as a special class of product deserving or permitting separate treatment is a logical extension of these precedents.

Trade is considered in several provisions in the Chair's text. The primary provision is Guiding Principle 5 (page 1 of the Chair's text), which repeats some of the language currently found in the General Agreement on Tariffs and Trade (GATT). Article XX (particularly XXb) of GATT permits a limited exception to trade liberalization rules in order to protect environmental, public health and other values. However, XXb has been narrowly construed, and ambiguity or uncertainty is generally resolved in favor of free trade. We recommend, therefore, that Guiding Principle 5 be replaced with a clause ensuring that the

Convention and its protocols take precedence over and not be subordinate to other international treaties.¹²

Second, it is important that the Convention and its Protocols not act as a restraint on national tobacco control action. Therefore, the Convention should state that it and subsequent protocols should serve as a minimum standard and not set limits on what restrictions countries can take. This is currently spelled out in guiding principle 8.¹³

Third, a recurring concern in international trade agreements has been the imposition of a difficult standard of proof for exemption on proposals that would burden trade. Restrictions that are based on "incomplete" science are often found to be inappropriate barriers to trade (such as attempts to ban the importation of genetically altered food). Historically, the tobacco industry has challenged the scientific consensus on the harm caused by its product, and it still disputes the harms caused by passive smoke and the effectiveness of tobacco control measures. The industry has demanded scientific certainty and has often prevailed with this argument. This should not be allowed to prevail in the international arena. We therefore propose the inclusion of a precautionary principle, particularly as its relates to the evidentiary basis for remedial measures.¹⁴

Finally, we recommend including a provision that would prevent parties from using trade rules in ways that would conflict with Framework principles and goals, such as the language that is currently applied to the United States via Executive Order of the President, January 18, 2001¹⁵, i.e. "The Parties agree to take all necessary measures to ensure that no person acting on their behalf shall attempt to (a) remove, weaken, undermine, or otherwise interfere with tobacco control measures in force or under consideration in another State or (b) promote tobacco product exports or tobacco use in another State."

Footnotes

- ¹ The Campaign for Tobacco-Free Kids is a nationwide organization with 135 member groups, including many of the United States' major public health organizations and other groups concerned about the health and welfare of our nation's children. The Campaign was created to protect children from tobacco by raising awareness that tobacco use is a pediatric disease, by working to change public policies to limit the marketing and sales of tobacco to children, by altering the environment in which tobacco use and policy decisions are made, and by actively countering the tobacco industry and its special interests.
- ² An early protocol covering the various elements of product regulation is essential. Without proper national regulation of the content of the product, the Convention will ultimately not succeed in reducing the death and disease caused by tobacco products. The industry has a long history of making whatever changes are required to adapt to a new marketing environment. It reacted to the disclosure of the health risks of smoking by aggressively marketing low tar, "less hazardous" products, a change that in all likelihood did more to increase the number of smokers than anything else. It has added ingredients and designed its products to be more addictive, more acceptable to young initiators, and even to mask passive smoke. Effective national product regulation is essential to ensure that the government knows as much about the product as the company and can oversee whatever changes occur.
- ³ See <http://www.ftc.gov/opa/2001/03/cigarette.htm>
- ⁴ World Bank, *Curbing the Epidemic: Governments and the Economics of Tobacco Control* (1999) p. 50.
- ⁵ World Bank, *Curbing the Epidemic: Governments and the Economics of Tobacco Control* (1999).
- ⁶ In response to the imposition of a very high cigarette tax in the early 1990s, Canadian tobacco companies began openly shipping billions of cigarettes to the U.S. each month, where there was no real market for the product. The cigarettes were smuggled back into Canada via Native American reservations and sold at a reduced price in Canada. Neither the U.S. nor Canada was able to stem the smuggling. The industry used the smuggling "problem", which it created, as proof that Canadian taxes were fueling this new lawlessness. The Canadian government eventually capitulated and raised taxes. The industry's complicity is well documented. See, William Marsden, "Major firms deeply involved in cross-border smuggling, former exec says," *Montreal Gazette*, 18 December 1999, <http://www.montrealgazette.com/news/pages/991218/3316186.html>; Dow Jones Newswire, "RJR affiliate to pay \$15 million for acting as smuggling front," 22 December 1998; <http://www.nsr-aadnf.ca/english/smuggling.html>
- ⁷ ASH-UK website: <http://www.ash.org.uk/smuggling/>; C. Buddle, "Tobacco chief guilty in \$33 million bribes case," *South China Morning Post*, 12 June 1998.
- ⁸ By the year 2030, 10 million people will die each year from tobacco use, 70 percent of them in developing nations. Using conservative assumptions and data from the 1990s, a World Bank economist concluded that each 1,000 tons of tobacco smoked produces a net global loss of US \$27 million, and that tobacco produces a total annual net loss to the world economy of about \$200 billion. (H. Barnum "The Economic Burden of Global Trade in Tobacco," *Tobacco Control*, 1994; 3: 358-361).
- ⁹ See A. Taylor, F.J. Chaloupka, E. Guindon & M. Corbett, "The Impact of Trade Liberalization on Tobacco Consumption," in *Tobacco Control in Developing Countries*, Jha and Chaloupka, eds., (Oxford: Oxford University Press, 2000). Chaloupka and Laixuthai constructed a fixed-effect model to measure the relationship between cigarette consumption and a country's openness to cigarette trade, focusing on the four nations forced by U.S. trade action to open their market to US cigarettes (Japan, South Korea, Taiwan and Thailand). The study found an overall increase in cigarette demand of about 10 percent attributable solely to trade liberalization. See F.J. Chaloupka and A. Laixunthai "U.S. Trade Policy and Cigarette Smoking in Asia," National Bureau of Economic Research Working paper No. 5543, 1996.
- ¹⁰ General Agreement on Tariffs and Trade (GATT) Article XX provides that countries may take measures necessary to protect public morals (XX a), human, animal or plant life or health (XX b), relating to conservation of exhaustible natural resources (if domestic restrictions are applied)(XX g) but they must be non-discriminatory, and not a disguised restriction on international trade. These tests have been applied in numerous cases, both under the GATT and the WTO, when "necessity" was raised as a defense or justification by a country whose measure had been challenged. In every case except the recently decided *Asbestos* case, the defense of necessity, (however defined) was rejected.

GATT Cases

- US-Prohibition of Imports of Tuna and Tuna Products From Canada*, adopted 22 February 1982, BISD 29S/91: an import restriction on albacore tuna under the *Fishery Conservation and Management Act* was not justified under GATT XI:2 or XX(g).
- US-Restrictions on Imports of Tuna*, 3 September 1991, BISD 39S/155: Prohibitions on imports from Mexico of tuna harvested with purse-seine nets causing dolphin deaths (primary nation and intermediary nation embargoes) specified in the *Marine Mammals Protection Act* were not justified by GATT XX(b) (d) and (g).
- US Restrictions on Imports of Tuna*, 16 June 1994, DS29/R: The same embargoes against imports from the EEC and the Netherlands were not justified by GATT XX (b) (g) or (d).
- Canada – Measures Affecting Exports of Unprocessed Herring and Salmon*, March 22 1988, BISD 35S/98: Canadian Fisheries Act regulations prohibiting on export of certain unprocessed salmon and herring could not be justified as a conservation tool under GATT XX (g).
- Thailand – Restrictions on Importation of and Internal Taxes on Cigarettes*, 7 November 1990, 7 November 1990, BISD 37S/200: Thai prohibitions on import of cigarettes were found not "necessary" within GATT XX (b) although chemicals and other additives in US cigarettes may have been more harmful than those in Thai cigarettes.
- US-Taxes on Automobiles*, 11 October 1994, DS31/R: Challenged by the EEC, the CAFÉ regulation (Corporate Average Fuel Economy regulation) could not be justified under GATT XX(d).

WTO Cases

- US – Standards for Reformulated and Conventional Gasoline*, 20 May 1996, WT/DS2/9 (Appellate Body and Panel Reports): Regulations under the US Clean Air Act regarding composition of gasoline was found contrary to GATT III by both the Panel and Appellate Body. The Panel found the regulations could not be justified under GATT XX (b), (d) or (g). The Appellate Body held that the regulations fell under XX (g) but did not satisfy the chapeau of the article.
- European Communities-Measures Affecting Meat and Meat Products*; 13 February 1998, WT/DS26/AB/R and ST/DS45/AB/r IAB) and WT/DS26/R/USA and WT/DS48/R/CAN (Panel): This Beef Hormones case was decided under the SPS chapter, and both the Panel and Appellate Body found the EC's ban on certain hormone-treated beef was inconsistent with the EC's obligations under the SPS.
- US-Import Prohibition of Certain Shrimp and Shrimp Products*, 6 November 1998, WT/DS58/AB/R (AB) and WT/DS58/R (Panel): US prohibitions under the Endangered Species Act on shrimp imports caught without turtle excluder devices could not be justified under GATT XX, either because it did not satisfy XX (g) (in the Panel's opinion) or because it did not satisfy the chapeau of GATT XX (the AB's decision).
- Australia – Measures Affecting Importation of Salmon*, 6 November 1998, WT/DS18/AB/R (AB) and WT/DS18/R (Panel) Australia's quarantine restrictions on certain salmon imports were found inconsistent with the SPS on the basis of available scientific evidence.
- EC – Measure Affecting Asbestos and Products Containing Asbestos*: (WT/DS135/R): The panel found that a French directive banning chrysotile asbestos can be justified under GATT XX (b) and the chapeau of the Article. However, the Panel also found that asbestos products are "like" products to those substitutes which are less carcinogenic. The decision has been appealed to the Appellate Body.
- ¹¹ "Trade Measures and Multilateral Environmental Agreements: Resolving Uncertainty and Removing the WTO Chill Factor." World Wildlife Federation, WWF International Discussion Paper, November 1999.
 - ¹² See Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Preamble.
 - ¹³ The words "and protocols" should be added to every mention of the Convention in D8.
 - ¹⁴ E.g., Because it is scientifically certain that tobacco use causes many diseases that result in needless disability and early death, lack of full scientific certainty shall not be used as a reason for postponing measures to control tobacco, or for challenging tobacco control measures taken by other States.
 - ¹⁵ The language is modeled after a provision in US law that has become known as the Doggett Amendment.

Appendix – Specific textual comments

[Provisions from the Chair's texts are in italics]

In addition to the areas dealt with in detail above, we have the following textual recommendations:

One overall comment is important. The text often refers to the need to have compatibility or “harmonization” between country obligations E(2)(b), legislative or administrative measures; E(7) bilateral agreement, F(2), tax policies; G(1) non-price policies; G(1)(b) tobacco product regulation, M(4)(e) strategies and plans. This should be reworded and clarified to indicate that this does not require any state to decrease or reduce its regulations or policies. We suggest “cooperate with other parties to create the strongest possible measures” or similar language.

D. Guiding Principles

4. *The importance of financial assistance to aid the economic transition of tobacco growers and workers that may be displaced as a future consequence of successful tobacco-control programmes should be recognized.*

While the Campaign does not believe that significant economic dislocation will occur in the short term, it recognizes the importance of providing assistance to farmers to reduce or eliminate their dependence on tobacco farming.

6. *The tobacco industry should be held responsible for the harm its products cause to public health and the environment, with each Party determining the scope of such responsibility within its jurisdiction.*

The concept of the polluter pays should be included within the FCTC; however, it needs to be operationalized better. One suggestion is:

The tobacco industry should be held responsible for the harm its products cause to public health and the environment **and for any failure to meet its obligations to provide full information to potential or actual consumers about the addictive and lethal characteristics of its products**, with each Party determining the scope of such responsibility within its jurisdiction.

E. General Obligations

1. *Each Party shall develop, implement, periodically update and enforce, where appropriate, comprehensive, multisectoral, national tobacco-control strategies, policies, legislation and other measures, such as standards, in accordance with the provisions of this Convention and, as relevant, its protocols.*

The FCTC should require all parties to establish and document a comprehensive tobacco control program including local, national and international measures with the aim of reducing tobacco caused death, disease and disability affecting tobacco users and those exposed to second hand smoke. Finally, Member States should not wait for the conclusion of the negotiations to implement these measures, including those called for in World Health Assembly resolutions that have already been unanimously approved.

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

1. *The Parties recognize that price measures are an effective mechanism to reduce tobacco consumption, and that progressive harmonization of tobacco product prices is an important means of discouraging illicit traffic in tobacco products.*

The Campaign believes that there should be specific recognition that price measures are an effective mechanism to reduce tobacco consumption. Included within this should be a requirement that tax policy be used to achieve a continuous reduction in tobacco consumption; a specific, as opposed to a general requirement, that States ban tax free sales and duty free products, which would not only assist in reducing smuggling but would recognize that purchasing incentives are inappropriate for such a deadly product; and a ban on all international mail order or internet sales, which would help prevent the evasion of a country's taxes or health regulations. In the provision cited above, the phrase from “and that progressive....tobacco products” should be deleted. This portion of the provision perpetuates the myth that it is the disparity of taxation rates that causes smuggling, as opposed to criminality and industry complicity. For example, there is a higher incidence of smuggling in southern Europe, where tax rates are low, than in northern Europe, which has high tax rates.

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

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

This provision should not be limited to protecting specific groups. There should be a broad-based requirement that all people be protected from passive smoke, including a restriction on work place smoking.

- 1(d)(I) (i) *the terms “low tar”, “light”, “ultra light”, “mild” or any other similar term that has the aim or*

the direct or indirect effect of conveying the impression that a particular tobacco product is less harmful than others are not used on any unit packet or package of tobacco products;

The Campaign supports a ban on the use on packaging and in advertising of the terms “light,” “low,” “ultra light,” “mild,” or any other similar term that has the aim or direct or indirect effect of conveying the impression that a particular tobacco product is less harmful than others. There is no credible evidence that the introduction and use of lower yield products have had any significant public health benefit. In fact, the aggressive marketing of these products as “safer” has kept many from quitting, who might otherwise have quit, and thus has produced a negative health impact.

(iv) each unit packet or package of tobacco products carries a general health warning, including a picture or pictogram illustrating the harmful consequences of tobacco consumption, in accordance with Annex [INSERT]; these warnings shall:

(1) clearly indicate the prohibition of sales of tobacco products to persons under the age of 18;

(2) provide clear information about the toxic contents of the tobacco product, specifically tar, nicotine and carbon monoxide, including actual measurements of smoke yields;

(3) appear in the principal language or languages of the country in whose territory the product is placed on the market.

The Campaign proposes that the mandated warning message be required to appear in the principal language(s) of the country of sale, that they contain pictures or pictographs, that the warning occupy at least 50% of all principal display panels, and that Parties be required to mandate generic or black and white text only packaging, in order to reduce the appeal that the product imagery has for young people. On the other hand, we would delete (1) the requirement that the package indicate that it is for sale only to those over 18. This would identify it as an adult product and could have the consequence of increasing its appeal. (2) We agree that the package should contain information about the toxic contents of the tobacco product, but disagree that this should include the yields of tar, nicotine, CO as measured by current test methods. The current evidence suggests that this information only aids tobacco company marketing and not the public health. The numbers are inaccurate, irrelevant and not useful. Consumers use numbers and comparisons of numbers to make decisions about the relative safety of a product. In the case of the ISO numbers, this decision making process is flawed. Therefore, we recommend that “specifically tar...to yields” be deleted.

(Education, training and public awareness)

(e) facilitation and strengthening of education, training, and public awareness campaigns, including counter-advertising. To this end, each Party shall, as appropriate:

A provision should be added to require that the cost of government sponsored and regulated education be borne by the tobacco industry and that government mandated educational messages be included in the tobacco package.

H. Demand reduction measures concerning tobacco dependence and cessation

Change the word “dependence” to “addiction” throughout this provision.

I. Measures related to the supply of tobacco

(Elimination of sales to and by young persons)

8. Each Party shall prohibit tobacco sales to persons under the age of 18 or higher. To this end, each Party shall:

(b) prohibit tobacco vending-machines in locations accessible to any person under the age of 18.

The Campaign recognizes the importance of strong provisions to eliminate sales of tobacco products to young people. Section 8(b) should be strengthened to prohibit all vending machine sales regardless of location.

(Licensing)

13. The Parties recognize that an effective licensing system for retailers of tobacco products is an important mechanism to curb illicit trade in tobacco products and to prevent sales of tobacco products to children and young persons.

Add manufacturers, importers and exporters. This will enhance the obligation by putting the burden on the entire chain of responsibility for both underage sales and smuggling.

P. Reporting and implementation

There should be a provision requiring the Secretariat to make reports from the countries public. This would permit NGOs and others to put pressure on non-complying countries as well as provide a resource to measure implementation.

Each Party shall submit to the Conference the following data:

(c) information on the economic, social and other consequences of various response strategies adopted to implement this convention and its protocols;

This might be interpreted to give companies a right to insist that a cost/benefit analysis be required in order to enact legislation. We recommend deleting the requirement that economic data be submitted unless it is clear that a Party does not have an obligation to perform cost/benefits analyses. In addition, there should be language that encourages countries to acquire data from the companies via compulsory process.