



# Spotlight on the Framework Convention on Tobacco Control (FCTC)

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## Article 5.3 Tobacco Industry Interference



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# Article 5.3: Tobacco Industry Interference

## CURRENT STATUS OF THE ARTICLE 5.3 GUIDELINES

**July 2007:** the second Conference of the Parties (COP2) decides to set up a Working Group to develop guidelines for implementing Article 5.3.

**Key facilitators:** Brazil, Ecuador, Palau, Thailand, the Netherlands

**Lead facilitator:** Netherlands Partners: Benin, Djibouti, France, Iran, Jamaica, Kenya, Malaysia, Namibia, Nigeria, Philippines, Turkey, Uruguay, Viet Nam.

**May 2008:** Draft guidelines circulated to Parties for comment.

**November 2008:** Guidelines expected to be adopted at COP3.

The FCTC is the world's first international public health treaty. It sets out legally binding objectives and principles that countries or organisations such as the European Community (known as

Parties) who ratified and thus agreed to implement the Treaty must follow. It aims to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke through evidence-based policies.

The aim of Article 5.3 of the FCTC is to ensure that policies can be put into practice without interference from an industry whose primary goal is to keep people smoking, in order to generate profits.

There is solid and overwhelming evidence that the tobacco industry has actively and systematically sought to hinder, delay, obstruct and prevent the adoption of effective tobacco control policies. This activity is not confined to just one tobacco company or taken place in a limited number of countries. Internal tobacco industry documents prove that the tobacco industry has attempted to obstruct tobacco control policies around the world by various means such as the creation of front groups, directly attacking the WHO and dissemination of biased scientific studies<sup>1,2</sup>.

Article 5.3 states that when Parties are setting and implementing public health policies related to tobacco control, they shall *'act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.'*

### Why is Article 5.3 important?

The tobacco industry's business interests directly conflict with the goals of public health. Explicit measures preventing tobacco industry interference will strengthen all the guidelines and protocols developed under the Treaty. Successful implementation of Article 5.3 is crucial for success of the FCTC as a whole as Article 5.3 cuts

*"Tobacco is a communicated disease – communicated through marketing."*

**Dr Gro Brundtland, Former director General WHO.  
Sanam Luang, Bangkok May 2000**

across the FCTC and will have a major impact on the effectiveness of all the guidelines, which are currently being developed.

The tobacco industry is a global industry. It is increasingly looking for new markets in areas of the world where there are weaker controls to replace smokers who have either quit or died<sup>3</sup>. Implementation of the guidelines developed under Article 5.3 will help ensure that Parties to the FCTC share the same understanding of tobacco industry strategies and protect their public health policies from tobacco industry interference.

### Who should the guidelines apply to?

All the Parties to the FCTC including government branches (executive, legislative and judiciary) and Regional Economic Organisations. Any body, entity or government department contributing or potentially contributing to public health policies and involved in implementing the FCTC.

### What is meant by the Tobacco Industry?

The FCTC defines the tobacco industry as tobacco manufacturers, wholesale distributors and importers of tobacco products. Article 5.3 should all include other entities and personnel who work for, or on behalf of, the tobacco industry such as wholesale distributors, front groups, tobacco retailers, tobacco trade unions and individuals such as employees, lawyers, scientists, lobbyists and journalists.

*"Infectious diseases do not employ multinational public relations firms. There are no front groups to promote the spread of cholera. Mosquitoes have no lobbyists. The evidence presented here suggests that tobacco is a case unto itself, and that reversing its burden on global health will be not only about understanding addiction and curing disease, but, just as importantly, about overcoming a determined and powerful industry."*

**Committee of Experts on Tobacco Industry Documents, Tobacco Company Strategies to Undermine Tobacco Control Activities at the WHO**

<sup>1</sup> Ong EK, Glantz SA (2000).The Lancet 355 (9211): 1253-1259

<sup>2</sup> Hong, M. K., Bero, L. (2002) How the tobacco industry responded to an influential study of the health effects of second hand smoke. BMJ. 325: 1413-1416

<sup>3</sup> Nakkash R, Lee K, (2006) News analysis: Lebanon: Business as usual for the tobacco industry?. Tobacco Control; 15(3): 147.

## Tobacco: Not just another industry

Its products may be legally available **but**:

- 1. Its products kill.** Tobacco is the only consumer product that kills one half of its regular users when used as recommended by the manufacturers. More people die from tobacco related conditions per year than tuberculosis, hepatitis and HIV<sup>4</sup> combined.
- 2. If tobacco products were developed today they would not be allowed on the market.** The tobacco industry developed at a time when there was little understanding of the detrimental health effects from smoking so that until the 1960s, it had little oversight from regulators.
- 3. The industry cannot be relied upon to regulate itself.** As early as the 1960s tobacco industry sponsored research showed that nicotine was addictive. This information was never willingly disclosed by the industry. The tobacco industry also uses tactics in the developing world that are outlawed in other areas<sup>5</sup> such as promotions to children<sup>6</sup> and young people smoking, advertising that glamorises smoking. The tobacco industry also exploits farmers to such an extent that they struggle to break-even<sup>7</sup>.
- 4. The industry has actively fought against regulation.** The tobacco industry tried to block the development of the FCTC and weaken its content and has attempted to discredit the WHO. An independent enquiry into the tobacco industry's attempts to undermine the WHO concluded that *"the attempted subversion has been elaborate, well financed, sophisticated, and usually invisible"*<sup>8</sup>.
- 5. The tobacco industry has either suppressed research or aimed to create 'controversy' around the harmful effects of smoking.** Despite strong scientific evidence demonstrating

the negative health effects from smoking tobacco, the tobacco industry has

consistently sought to discredit it and funded confounding studies. This was especially the case of second hand smoking. Gilmore and McKee<sup>9</sup> show how the industry systematically tried to undermine a crucial Environmental Tobacco Smoke study conducted by International Agency for Research on Cancer.

- 6. The interests of the tobacco industry, selling more tobacco, are in direct conflict with the goals of public health.** In order to continue generating high profits the tobacco industry needs to replace the smokers who have either died or quit. The industry argues that it does not directly target its advertising at young people. However a major study found 'a positive, consistent and specific relationship' between exposure to tobacco advertising and later take-up of smoking among teenagers<sup>10</sup>.
- 7. Corporate irresponsibility:** WHO has stated that corporate social responsibility and tobacco companies are an "inherent contradiction". The tobacco industry's own documents show that most of its youth smoking prevention campaigns are designed to promote the industry's political and marketing aims rather than to reduce smoking. Their campaigns mostly focus on underage smoking, stressing that smoking is an adult activity rather than an unhealthy one.
- 8. Negative to society:** The World Bank argues that, on economic grounds alone, tobacco should be controlled, and estimates that when all costs of tobacco around the world are subtracted from all the benefits, the net result is a global economic loss of US \$200 billion each year.

### Will Article 5.3 have an impact on the EU and its institutions?

Yes, Article 5.3 and the related future guidelines must be reflected in how the EU institutions and Member States, party to the FCTC, engage with the tobacco industry. For instance under current rules governing impact assessments the Commission must consult with potentially affected stakeholders including the tobacco industry.

*"The tobacco epidemic is a menace which is deliberate, calculating and deeply cynical about the value of human life. A menace which, as we have seen in last year's exposure of 'big tobacco' activities, even dares to advise governments to discount human suffering against the long-term budgetary benefits of premature death."*

David Byrne, Ministerial Conference for a Tobacco-free Europe 2004



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<sup>4</sup> WHO report on the global tobacco epidemic, 2008. The MPOWER package.

<sup>5</sup> Davies, P.(2003), Malawi: addicted to the leaf. Tobacco Control. 12; 91-93

<sup>6</sup> Hammond, R., Rowell, A. (2001) Trust us we're the tobacco industry. Campaign for Tobacco-Free Kids & Action on Smoking and Health. Washington DC and London.

<sup>7</sup> Framework Convention Alliance. The Tobacco Trap: The hidden cost of doing business with the tobacco industry. Producer: P. Stein. (2006).

<sup>8</sup> World Health Organisation, Committee of Experts on Tobacco Industry Documents.(2001) Tobacco Company Strategies to Undermine Tobacco Control Activities at the World health Organisation.

<sup>9</sup> Gilmore A, McKee M. (2004) Tobacco-control policy in the European Union. In: *Unfiltered: Conflicts over tobacco policy and public health*. Feldman E, Bayer R (eds). Cambridge, Massachusetts: Harvard University Press.

<sup>10</sup> Lovato C. et al. (2004). *Cochrane Review: Impact of tobacco advertising and promotion on increasing adolescent smoking behaviours*. The Cochrane Library, Issue 2



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Any engagement with the tobacco industry is fraught with dangers due to the way in which the industry misuses such engagement for broader gain. For example, the industry will use its involvement with the EU institutions and Member States as a way of legitimising its role in public health policy making in areas of the world with weaker regulations and less scrutiny.

### Turning over a new leaf?

In a landmark case in 2006, U.S. District Judge Gladys Kessler ruled that major tobacco companies had violated civil racketeering laws and defrauded the American people by lying for decades about the health risks of smoking and their marketing to children. She also found that the tobacco companies' wrongdoing continues today: "*The evidence in this case clearly establishes that Defendants have not ceased engaging in unlawful activity*". Judge Kessler (pages 1604-1605 of the opinion). 2006<sup>11</sup>.

When asked by the tobacco company to allow them to continue using deceptive terms like "light" and "low-tar" outside of the US, the ruling forbade their use in the US, she answered that "*to rule otherwise.. would also allow the Defendants to spread fraudulent and misleading health messages and descriptors about their products throughout the world, even though they are prohibited from doing so in the United States. The Court sees no justification, either legal or ethical, for concluding that Congress intended to allow Defendants to continue to tell the rest of the world that "low tar/light" cigarettes are less harmful to health when they are prohibited from making such fraudulent misrepresentation to the American public*".<sup>12</sup>

<sup>11</sup> [www.tobaccofreekids.org/reports/doj/FinalOpinion.pdf](http://www.tobaccofreekids.org/reports/doj/FinalOpinion.pdf)

<sup>12</sup> [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?1999cv2496-5800](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?1999cv2496-5800)

## GUIDELINES FOR IMPLEMENTING ARTICLE 5.3 SHOULD STRESS THAT:

- Government action to protect tobacco control policies from commercial and other vested interests of the tobacco industry is both a *legal obligation and essential* for achieving the FCTC's objectives.
- Effective protection against tobacco industry interference requires *insulating tobacco control policy* development and implementation from the tobacco industry to the greatest extent possible. This may involve legal measures by individual Parties.
- *Engagement with the tobacco industry should be limited* to only where it is strictly necessary i.e. in order to effectively regulate tobacco products and the tobacco industry itself. This engagement must be transparent; for instance written records, accessible to the public, should be kept of any meetings.
- Parties should make it *illegal for tobacco companies to make financial contributions* to any public official, candidate for public office or political party. If this is not possible due to constitutional restrictions, then donors and recipients should be obliged to make public all contributions made and received.
- Parties should put in place legal or policy measures *preventing potential conflicts of interest* arising from governments' tobacco business holdings or from officials' previous, current or future involvement with any private tobacco business.
- All tobacco companies must be required to act in a *transparent manner*. For instance publishing information on any scientific or economic research they have commissioned or supported.
- All Parties enact and enforce strong *civil and criminal penalties* for non-compliance with laws aimed at implementing Article 5.3.
- Parties involve *civil society* organisations not affiliated with the tobacco industry as full partners in the development, implementation and monitoring of measures arising from implementing Article 5.3.

### FOR THE FULL TEXT OF THE FCTC SEE:

- [http://www.who.int/tobacco/framework/WHO\\_FCTC\\_english.pdf](http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf)
- WHO: <http://www.who.int/tobacco/framework/en/>
- The Framework Convention Alliance for Tobacco Control (FCA): <http://www.fctc.org/>



The **Smoke Free Partnership (SFP)** is a strategic, independent and flexible partnership between the European Respiratory Society, Cancer Research UK, the Institut National du Cancer and the European Heart Network. It aims to promote tobacco control advocacy and policy research at EU and national levels in collaboration with other EU health organisations and EU tobacco control networks.

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