



WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

**Conference of the Parties to the
WHO Framework Convention
on Tobacco Control**

Fourth session
Punta del Este, Uruguay, 15–20 November 2010

19 November 2010

DECISION

FCTC/COP4(5) Punta del Este Declaration on the Implementation of the WHO Framework Convention on Tobacco Control

Recalling the preamble of the Constitution of the World Health Organization, which states that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being;

Recalling the preamble of the WHO Framework Convention on Tobacco Control (WHO FCTC), which states that the Parties to the Convention are determined to give priority to their right to protect public health, due to the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke;

Recognizing that the spread of the tobacco epidemic is a global problem with serious consequences for public health and that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability affecting all segments of the population in every country in the world, particularly the younger population;

Recognizing that measures to protect public health, including measures implementing the WHO FCTC and its guidelines fall within the power of sovereign States to regulate in the public interest, which includes public health;

Taking into account the fact that Article 5.3 of the WHO FCTC states that: “in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”;

Recalling Article XX (b) of The General Agreement on Tariffs and Trade (GATT 1947) which states that nothing in the agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures necessary to protect human health, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade;

Recalling Article 2.2 of the Agreement on Technical Barriers to Trade, which states that Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade and for this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, such as the protection of human health or safety, taking account of the risks non-fulfilment would create;

Recalling Article 7 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which states that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations;

Recalling Article 8 of the TRIPS Agreement, which states that Members may adopt measures necessary to protect public health provided that such measures are consistent with the provisions of the said Agreement;

Recalling paragraph 4 of the Doha Declaration on the TRIPS Agreement and Public Health which states that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, it can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health;

Recalling also that paragraph 5(a) of the said Declaration recognizes in the light of paragraph 4 that while maintaining our commitments in the TRIPS Agreement, we recognize that these flexibilities include, in applying the customary rules of interpretation of public international law, that each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular in its objectives and principles,

The Parties to the WHO Framework Convention on Tobacco Control declare:

1. The firm commitment to prioritize the implementation of health measures designed to control tobacco consumption in their respective jurisdictions.
2. Their concern regarding actions taken by the tobacco industry that seek to subvert and undermine government policies on tobacco control.
3. The need to exchange information on the activities of the tobacco industry, at a national or international level, which interfere with the implementation of public health policies with respect to tobacco control.
4. That in the light of the provisions contained in Articles 7 and 8 of the TRIPS Agreement and in the Doha Declaration, Parties may adopt measures to protect public health, including regulating the exercise of intellectual property rights in accordance with national public health policies, provided that such measures are consistent with the TRIPS Agreement.
5. That Parties have the right to define and implement national public health policies pursuant to compliance with conventions and commitments under WHO, particularly with the WHO FCTC.

6. The need to urge the United Nations Ad Hoc Interagency Task Force on Tobacco Control to support multisectoral and interagency coordination for the strengthening of the implementation of the WHO FCTC within the whole United Nations system.
7. The need to include the topic “challenges to tobacco control” in the agenda of the summit on non-communicable diseases, which will be organized by the United Nations in 2011.
8. The need to urge all countries that have not done so, to ratify the WHO FCTC and implement its provisions and take measures recommended in its guidelines.

(First plenary meeting, 15 November 2010)

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