Attendance of members of the public in meetings of the Conference of the Parties to the WHO FCTC and its subsidiary bodies

Background

1. At previous sessions of the Conference of the Parties (COP) and the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products (INB), a significant number of Parties have raised concerns over the large numbers of tobacco industry representatives among public attendees. In this context, and pursuant to Rules 27.2 and 32 of the Rules of Procedure of the COP, a decision was made to exclude members of the public at three sessions of the INB as well as in connection with technical or sensitive matters under discussion in meetings of Committees A and B and the final plenary meeting of the fifth session of the COP.

2. The above decisions to exclude the members of the public were taken by consensus. However, several Parties also noted, bearing in mind the general principle of transparency of decision-making, that by excluding all members of the public, the participation of non-accredited members of civil society, academics and students would be prevented, and that the COP should consider establishing procedures to facilitate future decision-making on this question.

3. Following the formal request made by one Party to include an agenda item on this matter, in accordance with Rule 7 of the Rules of Procedure of the COP, and in consultation with the Bureau of the COP, this paper reviews relevant international practice, the Rules of Procedure of the COP, and the Secretariat’s current practice for admitting members of the public to COP sessions and meetings of subsidiary bodies, and suggests measures to facilitate decision-making by the COP on this matter.

International practice

4. The most widespread practice among international organizations and treaties is to make meetings open to public attendance with the option that the governing body concerned can decide otherwise, although generally speaking their rules do not provide specific criteria for closing meetings to the public.
5. Under international law there is no general requirement to make meetings open and governing bodies of multilateral agreements have the discretion to determine what practices to follow in this regard. Despite this fact, most treaties and multilateral organizations maintain open meeting policies with respect to plenary sessions at least. Limits are recognized for subsidiary organs and for meetings concerning sensitive matters, which the parties may wish to keep confidential.

6. With respect to the COP, in contrast to its rules concerning observer status, the terms under which members of the public may attend plenary meetings or meetings of subsidiary bodies, as may be the case, are generally unspecified. The physical limitations of meeting facilities require that the number of public attendees be limited, but aside from Article 5.3 of the Convention, the current Rules of Procedure generally do not provide substantive grounds on which to include or exclude different groups.

**Rules of Procedure of the COP**

7. Rules 2.10 and 2.11 of the Rules of Procedure of the COP define the categories of participants and the types of meetings in which those participants may or may not participate.

- “public” sessions or meetings means sessions or meetings that are open to attendance by Parties, States and regional economic integration organizations that are not Parties, the Secretariat, intergovernmental and nongovernmental organizations accredited by the Conference of the Parties pursuant to Rule 31 and members of the public.”

- “restricted” sessions or meetings means sessions or meetings held for a specific purpose and under exceptional circumstances that are open to attendance by Parties and essential Secretariat staff.”

8. In accordance with Rules 27.2 and 32 of the Rules of Procedures of the COP, sessions of the COP or sessions or meetings of subsidiary bodies shall be held in public unless the COP or the relevant subsidiary body decides that they shall be restricted. Furthermore, both rules stipulate that they shall be implemented in conformity with Article 5.3 of the WHO FCTC, namely 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.”

9. The Rules of Procedure of the COP are also consistent with the earlier resolution of the World Health Assembly which, inter alia, “urges WHO and Member States to be alert to any efforts by the tobacco industry to continue its subversive practice and to assure the integrity of health policy development in any WHO meeting and in national governments”.

10. Rules 27.2 and 32 therefore provide the option for Parties to decide to hold “restricted” sessions or meetings as opposed to “public” meetings. However, given the definition of “restricted” in the Rules of Procedure of the COP, a restricted meeting would exclude not only the public but also accredited observers. This result does not appear to represent the wishes of the Parties in every case and the current rules do not provide for an alternative basis for restricting attendance.

11. The above rules have applied mutatis mutandis to subsidiary bodies of the COP (e.g. the INB, and Committees A and B that are traditionally convened during a COP session); however, they have not applied to intersessional intergovernmental working groups or expert groups (whose membership is determined through a COP decision) or to working groups established during a COP session on a specific agenda item of the COP (which are open to members of the group and accredited observers). Members of the public have therefore not been authorized to attend the meetings of those bodies.

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1 Available at http://www.int/fctc/cop
2 Resolution WHA54.18, available at http://www.who.int/gb
Once the Protocol to Eliminate Illicit Trade in Tobacco Products enters into force, the Rules of Procedure of the COP will also apply mutatis mutandis to the Meeting of the Parties to the Protocol (MOP) pursuant to Article 33.4 of the Protocol, meaning that sessions of the MOP would be held in public (as defined in Rule 2.10 of the Rules of Procedure of the COP) unless the MOP decides otherwise.

Secretariat’s current practice for admitting members of the public and the media

12. Based on the information available to the Secretariat, members of the public attending sessions of the COP or meetings of its subsidiary bodies typically include persons affiliated with business and industry, nongovernmental organizations that do not have the status of observers to the COP, academics and students.

13. In the absence of specific provisions in the Rules of Procedure or measures established by the COP, the Secretariat has so far applied the procedures described below to the admittance of members of the public and the media, which are based on similar practices applied to meetings of WHO governing bodies.

14. Members of the public must register during sessions of the COP and subsidiary bodies; they do not have the opportunity to register beforehand. At the registration desk, they are requested to complete a standard registration form for members of the public and present a document that proves their identity, before receiving a badge. Owing to time constraints and the absence of agreed screening procedures, it is not possible for the Secretariat to verify whether the information provided in the registration form, in particular with regard to institutional affiliation, is accurate.

15. Members of the public are issued a specific badge bearing the word “public” and a number assigned by the Secretariat. The badge is valid for one day only; therefore, members of the public are requested to register on each day they wish to attend.

16. Members of the public are seated in a designated area of the conference room. Seating capacity and arrangements vary depending on the physical capacity and layout of the room and on the level of attendance of Parties and observers accredited to the COP. For these reasons, it is usually necessary to limit the number of seats available to members of the public. However, issuance of “public” badges is on a first-come first-served basis, and experience has shown that they are largely taken by representatives or affiliates of the tobacco industry, who arrive earliest at the registration desk.

17. Special accreditation procedures exist for members of the media. For meetings held in Geneva, members of the media are accredited by the Secretariat in accordance with the practice and procedures established by WHO and the United Nations Office in Geneva, upon submission of an accreditation letter from their editor-in-chief indicating the reason for accreditation and the date for which accreditation is required, and presentation of a press identification card and national passport. When a meeting is held outside Geneva, the local media are accredited by the relevant authorities of the host country and the list is provided to the Secretariat.

18. Members of the media who have been accredited by the Secretariat or the host country are issued a specific badge by the Secretariat bearing the word “media” and are seated in designated areas of meeting rooms, when their access is authorized. Instructions are issued by the Secretariat for the members of the media who have been accredited on such matters as media briefings, access to meeting rooms, filming and taking photographs.

Possible measures to facilitate decision-making of the COP and its subsidiary bodies

19. In order to reduce the time devoted to taking ad hoc decisions on whether or not members of the public should be admitted to sessions of the COP or meetings of its subsidiary bodies, while both
upholding Article 5.3 of the Convention and ensuring transparency, the following measures are proposed for consideration by the COP:

(a) to establish procedures for the screening function of the Secretariat;

(b) to propose an amendment to the Rules of Procedure of the COP in order to provide more flexibility to the COP in deciding the extent to which attendance at a session of the COP or subsidiary body shall be restricted, depending on circumstances and the issues being discussed.

20. The COP may wish to consider adopting either one or both measures as described below.

**Screening function of the Secretariat**

21. The screening function of the Secretariat and relevant procedures would be established through a COP decision on admission and issuance of badges for members of the public at sessions of the COP and subsidiary bodies.

22. In this case, the Secretariat could request all persons wishing to attend a session of the COP or a meeting of a subsidiary body to apply in advance. A standard application form for the public would be developed by the Secretariat, in consultation with the Bureau, which would include questions on contact details and affiliation as well as declarations, similar to those already used by WHO and the Secretariat in other contexts, that the applicants would be requested to make to the effect that they have no direct or indirect involvement with the tobacco industry or activities related thereto (see proposed procedures in the Annex).

23. Following the screening of applications by the Secretariat, in accordance with Article 5.3 of the Convention, persons associated directly or indirectly with the tobacco industry would not be allowed to attend the session or meeting in question. Upon arrival at the session or meeting, registered persons who had not been excluded in accordance with Article 5.3 would be required to present identification; their registration would entitle them to attend during subsequent days upon presentation of proper identification.

24. An additional possibility within this measure would be to make public the names of all persons registered with the Secretariat as members of the public along with their affiliations.

25. Members of the public would not (as per current practice) be able to register on site on the day of the meeting.

**Amendment to the Rules of Procedure of the COP**

26. Should the COP consider that a decision as described in paragraphs 21–25 above does not sufficiently address the issues raised, a more far-reaching option would be to amend the Rules of Procedure to provide additional measures that could be used when deciding on attendance of COP sessions or meetings of its subsidiary bodies, depending on the circumstances and the issues being discussed at a specific session or meeting.

27. As described in paragraph 7 above, the current Rules of Procedure provide for the possibility of holding either sessions or meetings that are open to all participants, including members of the public (Rule 2.10), or sessions or meetings that are restricted to attendance by the Parties and essential Secretariat staff only (Rule 2.11), thus excluding States and regional economic integration organizations that are not Parties, accredited observers and members of the public.
28. To provide more flexibility, a new Rule could be added as follows:

““open” sessions or meetings means sessions or meetings that are open to attendance by Parties, States and regional economic integration organizations that are not Parties, the Secretariat, and intergovernmental and nongovernmental organizations accredited by the Conference of the Parties pursuant to Rules 30 and 31, respectively.”

29. Under this definition, attendance of the public would not be permitted in an “open” session or meeting. This new definition would also reflect the practice applied to subsidiary bodies of the COP typically established as “working groups” whereby members of the public are not invited to attend. Transparency of proceedings could be upheld through reporting of the outcomes of the session or meeting.

30. The following amendments would also be required to Rules 27.2 and 32 of the Rules of Procedure of the COP to ensure consistency with regard to the proposed additional definition of “open”:

Amendment to Rule 27.2:

“Sessions or meetings of subsidiary bodies shall be held in public, unless the Conference of the Parties or the subsidiary body concerned decides that they shall be open or restricted. This rule shall be implemented in conformity with Article 5.3 of the Convention.”

Amendment to Rule 32:

“Sessions of the Conference of the Parties shall be held in public, unless the Conference of the Parties decides that they shall be open or restricted. This rule shall be implemented in conformity with Article 5.3 of the Convention.”

31. In addition, should the proposed new definition of “open” be adopted by the COP, a few minor amendments would be required to ensure the consistency and appropriate application of Rules 29, 30 and 31 related to observers, to Rules 63 and 64 related to the official records of the COP, and to Rule 65 related to the issuance of the daily Journal of the session of the COP.

32. In accordance with Rule 66, amendments to the Rules of Procedure of the COP may be made by consensus. It may also be worth noting that the Rules of Procedure of the COP will apply mutatis mutandis to the Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products as stipulated in Article 33 of the Protocol.

33. The COP’s attention is drawn to agenda item 6.8 on possible amendments to the Rules of Procedure of the COP. The COP may, therefore, wish, to consider, if appropriate, the proposed amendment to the Rules of Procedures described in paragraphs 26–32 in conjunction with consideration of agenda item 6.8.

**Action by the Conference of the Parties**

34. The Conference of the Parties is invited to consider the proposed measures outlined in paragraphs 21–33 above and the proposed procedures for the Secretariat’s screening function outlined in the Annex.
ANNEX

PROPOSED PROCEDURES FOR SCREENING AND ISSUANCE OF BADGES TO MEMBERS OF THE PUBLIC INCLUDING MEMBERS OF THE MEDIA

1. The proposed screening procedures described below would change the current process for the issuance of public badges described in paragraphs 12–18 above, in order to manage the space limitations of meeting facilities, allow for greater scrutiny of applicants for public attendance, and ensure that the process complies with the requirements of Article 5.3 of the Convention. Badges would be issued to members of the public by the Secretariat in accordance with the following principles:

Screening policy and issuance of badges for members of the public

2. Each member of the public would be requested to complete and submit an application form in advance of the session of the COP or the meeting of a subsidiary body and within a deadline established and communicated in advance (e.g. at the latest two months before the opening of the session or meeting).

3. Only applicants who complete the application form in full would be considered for issuance of a public badge.

4. The application form would require applicants to declare whether they are directly or indirectly affiliated with or have ever received funds from the tobacco industry or entities working to further its interests, in addition to providing their affiliation and contact details. The wording of the declarations listed in the application form for nongovernmental organizations (NGOs) adopted by the COP would be reproduced in the application form for the public.1

5. The Secretariat would screen the applications received by the deadline, taking into account the 17th and 18th preambular paragraphs of the Convention, as well as Article 5.3 of the Convention and the guidelines for its implementation, and assess whether the applicant may be authorized to attend a public meeting. If necessary, additional information may be requested by the Secretariat from the applicant.

6. Persons affiliated or having any relations with the tobacco industry or entities working to further its interests would not be permitted to attend any session or meeting of the COP and its subsidiary bodies.

7. Applicants who will be permitted to attend a session or meeting of the COP and its subsidiary bodies would be issued a public badge for the duration of a session or subsidiary body; the badge would include the name and status/affiliation of the bearer, i.e. “student”, “academic”, “NGO”, etc.

8. The applicant would be required to show a valid form of identification before collecting his/her badge.

9. The number of badges that would be issued for a session or a meeting of a subsidiary body would depend on the physical capacity of the facility. Therefore, badges would be issued, based on the outcome of the Secretariat’s screening of applications, on a first-come first-served basis.

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1 See decision FCTC/COP5(22) and document FCTC/COP/5/26 Annex 2, available at http://www.who.int/fctc/publications
10. Considering the resources and time required for screening, applications would have to be submitted by the deadline established before the opening of a session or meeting, and therefore it would not be possible for members of the public to register on site.

**Accreditation and issuance of badges for members of the media**

11. Currently, accredited members of the media are granted entry into COP sessions and meetings of subsidiary bodies with specific badges. Issuing separate credentials for the media is common practice throughout the United Nations system. The Secretariat recommends that credentials for media representatives who wish to attend COP sessions or meetings of subsidiary bodies continue to be issued in line with current United Nations policies and WHO policies for media accreditation to the World Health Assembly (see paragraphs 17–18 above).

**Distribution of the list of members of public and of the media**

12. The list of names and status/affiliations of members of the public and of the media would be communicated to the Bureau before the opening of a COP session and would be made available to the Parties and accredited observers upon request.