

# WHO Framework Convention on Tobacco Control

Two decades ago, the global tobacco epidemic was threatening to become uncontrollable. Annual tobacco-related mortality and tobacco use were rising rapidly in some countries – particularly among women (1) – while the tobacco industry continued to develop and perfect techniques to increase its customer base and undermine government tobacco control efforts. In the intervening years, predictions that the problem would continue to worsen were unfortunately realized.

Recognizing the critical nature of the crisis, Member States of the World Health Organization (WHO) took concerted action, passing Resolution 49.17 in May 1996, which initiated development of a “framework convention on tobacco control” (2). Applying WHO’s power to conclude treaties for the first time in its history, an intergovernmental negotiating body comprised of all WHO Member States was established in 1999 and the treaty – the WHO Framework Convention on Tobacco Control (WHO FCTC) (3) – was finalized and adopted in 2003.

Tobacco remains a serious threat to global health, killing nearly 6 million people each year and causing hundreds of billions of dollars of economic harm annually in the form of excess health-care costs and lost productivity. However, countries changed the paradigm for combating this epidemic when they adopted the WHO FCTC. One of the most successful treaties in United Nations history, with 176 Parties (as of 15 June 2013), the WHO FCTC is an evidence-based set of legally binding provisions that establish a roadmap for successful global tobacco control.

## Provisions of the WHO Framework Convention

Mindful of the importance of addressing each stage in the production of tobacco, its distribution and consumption, and with awareness of the financial and political power of the tobacco industry, Member States innovatively included substantive provisions focusing on both demand- and supply-side concerns.

### *Demand reduction*

- Article 6. Price and tax measures to reduce the demand for tobacco.
- Article 8. Protection from exposure to tobacco smoke.
- Article 9. Regulation of the contents of tobacco products.
- Article 10. Regulation of tobacco product disclosures.
- Article 11. Packaging and labelling of tobacco products.
- Article 12. Education, communication, training and public awareness.
- Article 13. Tobacco advertising, promotion and sponsorship.
- Article 14. Reduction measures concerning tobacco dependence and cessation.

### *Supply reduction*

- Article 15. Illicit trade in tobacco products.
- Article 16. Sales to and by minors.
- Article 17. Provision of support for economically viable alternative activities.

The WHO FCTC also contains provisions for collaboration between and among Parties, including Article 5 delineating

general obligations and specifying the need to protect public health policies from commercial and other vested interests of the tobacco industry; Article 20 on technical cooperation and communicating information; and Articles 25 and 26 on international information and resource sharing. The WHO FCTC requires each Party to submit to the Conference of the Parties (COP), through the Convention Secretariat, periodic reports on its implementation of the Convention. The objective of reporting is to enable Parties to learn from each others’ experience in implementing the WHO FCTC. In this way, the treaty itself provides support mechanisms that assist Parties to fully implement its provisions, share best practice and present a united, cohesive front against the tobacco industry.

The power of the WHO FCTC lies not in its content alone, but also in the global momentum and solidarity that has developed around the shared goal of reducing the harms caused by tobacco use.

The importance of the Convention was emphasized in the political declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Noncommunicable Diseases in September 2011, in which the assembled countries declared their commitment to “[a]ccelerate implementation of the WHO Framework Convention on Tobacco Control” (4). This shared commitment helps bolster countries in their efforts to prevent tobacco-related illness and death by knowing that they are part of a broad international community, and that their collective work is supported by international law. This is particularly important in light of the increased aggressiveness with which the tobacco industry is selling and promoting its products, and attempting to capture new users.

The Conference of the Parties (COP), an intergovernmental entity comprised of all Parties that serves as the governing body for the WHO FCTC, oversees and guides treaty

implementation and interpretation. The COP meets every two years to discuss progress, examine challenges and opportunities, and follow up ongoing business. The Convention Secretariat supports the Parties and the COP in their respective individual and collective work. Official reports from the WHO FCTC Parties to the COP and accompanying documentation have been used as sources for this report.

In accordance with WHO FCTC Article 7 (Non-price measures to reduce the demand for tobacco), the COP has been mandated with the task of proposing appropriate guidelines for the implementation of the provisions of Articles 8 to 13 (3). Accordingly, the COP has developed and adopted a number of guidelines; most relevant to this Report, in November 2008, the COP unanimously adopted guidelines for Article 13 (Tobacco advertising, promotion and sponsorship), which provide clear purpose, objectives and recommendations for implementing the provisions of Article 13 to their best effect (5).



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## Article 13 – Tobacco advertising, promotion and sponsorship

Advertising, promotion and sponsorship form the front line of the tobacco industry's efforts to maintain and increase its customer base and normalize tobacco use. Against a landscape of robust supporting data and evidence, the WHO FCTC recognizes that meaningful tobacco control must include the elimination of all forms of tobacco advertising, promotion and sponsorship (TAPS). This goal is so critical that Article 13 (Tobacco advertising, promotion and sponsorship) is one of only two provisions in the treaty that includes a mandatory timeframe for implementation. All Parties

must implement a comprehensive TAPS ban (or restrictions in accordance with its constitution if a comprehensive ban would violate its constitutional principles) within five years after the entry into force of the treaty for that Party. The requirement includes domestic TAPS activities, as well as all cross-border TAPS activities that originate within a Party's territory.

Article 1 (Use of terms) of the WHO FCTC provides a very broad definition of TAPS. Tobacco advertising and promotion means "any form of commercial communication,

recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly" (3). Tobacco sponsorship as defined in the Article 13 guidelines means "any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly" (5).

In addition to requiring a ban on TAPS (or restrictions within constitutional mandates), Article 13 further requires that, at a minimum, Parties shall:

- prohibit all TAPS activities that promote a tobacco product by any means that are false, misleading or deceptive (e.g. use of terms such as "light" or "mild");
- require that health or other appropriate warnings accompany all tobacco advertising and, as appropriate, promotion and sponsorship;
- restrict the use of direct or indirect incentives that encourage tobacco product purchases;

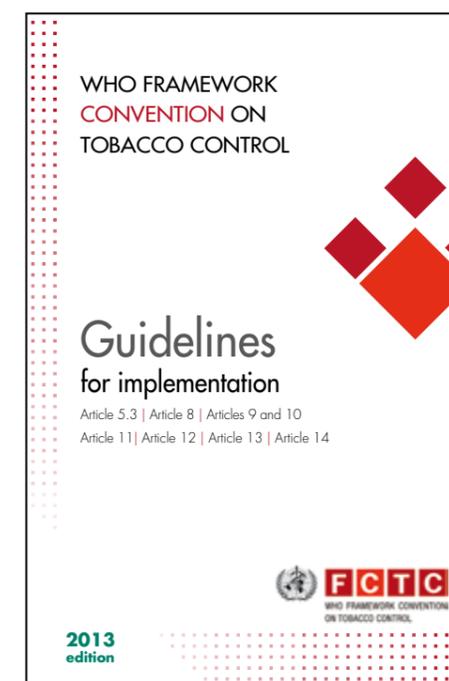
- require, if it does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the tobacco industry on those TAPS activities not yet prohibited;
- prohibit (or restrict as constitutionally appropriate) tobacco sponsorship of international events, activities and/or participants therein.

Parties are encouraged to go beyond these measures as well as to cooperate with each other to facilitate eliminating cross-border TAPS activities. Additionally, Article 13 calls for Parties to consider elaborating

a protocol, or new treaty, to specifically address cross-border TAPS activities. In 2006, the COP convened a working group in this regard, which submitted its report and proposal for consideration in 2007 (6).



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# Guidelines for implementation of Article 13

Guidelines for Article 13 are intended to assist Parties in meeting their WHO FCTC obligations by drawing on the best available evidence as well as Parties' experiences. The guidelines provide clear direction on "the best ways to implement Article 13 of the Convention in order to eliminate tobacco advertising, promotion and sponsorship effectively at both domestic and international levels" (5). The substance of the Article 13 guidelines is separated into seven sections.

## Scope of a comprehensive ban

The guidelines provide recommendations in eight separate areas regarding the scope of a comprehensive TAPS ban.

A comprehensive TAPS ban should cover:

- all advertising and promotion, as well as sponsorship, without exemption;
- direct and indirect advertising, promotion and sponsorship;
- acts that aim at promotion and acts that have or are likely to have a promotional effect;
- promotion of tobacco products and the use of tobacco;
- commercial communications and commercial recommendations and actions;
- contributions of any kind to any event, activity or individual;
- advertising and promotion of tobacco brand names and all corporate promotion;
- traditional media (print, television and radio) and all media platforms, including Internet, mobile telephones and other new technologies, as well as films.

## Retail sale and display

Display and visibility of tobacco products at points of sale constitutes advertising and promotion and should be banned. Vending machines should also be banned because they constitute, by their very presence, a means of advertising and promotion.

## Packaging and product features

Packaging and product design are important elements of advertising and promotion. Parties should consider adopting plain (or generic) packaging requirements to eliminate the advertising and promotional effects of packaging. Product packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products more attractive to consumers.

## Internet sales

Internet sales of tobacco should be banned as they inherently involve tobacco advertising and promotion. Given the often covert

nature of tobacco advertising and promotion on the Internet and the difficulty of identifying and reaching violators, special domestic resources will be needed to make these measures operational.

## Brand stretching and brand sharing

"Brand stretching" occurs when a tobacco brand name, emblem, trademark, logo or trade insignia or any other distinctive feature is connected with a non-tobacco product or service to link the two. "Brand sharing" similarly links non-tobacco products or services with a tobacco product or tobacco company by sharing a brand name, emblem, trademark, logo or trade insignia or any other distinctive feature. Both brand stretching and brand sharing should be regarded as TAPS activities and should be part of a comprehensive TAPS ban.

## Corporate social responsibility

It is increasingly common for tobacco companies to seek to portray themselves as good corporate citizens by making contributions to deserving causes or by otherwise promoting "socially responsible" elements of their business practices. Parties should ban contributions from tobacco companies to any other entity for "socially responsible causes", as this is a form of sponsorship. Publicity given to "socially responsible" business practices of the tobacco industry should also be banned, as it constitutes a form of advertising and promotion.

## Depictions of tobacco in entertainment media

Parties should implement particular measures concerning the depiction of tobacco in entertainment media, including requiring certification that no benefits have been received for any tobacco depictions, prohibiting the use of identifiable tobacco brands or imagery, requiring anti-tobacco advertisements either directly within or immediately adjacent to the entertainment programming, and implementing a ratings or classification system that takes tobacco depictions into account.

## Legitimate expression

Implementation of a comprehensive ban on TAPS activities does not need to interfere with legitimate types of expression, such as journalistic, artistic or academic expression, or legitimate social or political commentary. Parties should, however, take measures to prevent the use of journalistic, artistic or academic expression or social or political commentary for the promotion of tobacco use or tobacco products.

## Communications within the tobacco trade

The objective of banning TAPS can usually be achieved without banning communications within the tobacco trade. Any exception to a comprehensive ban on TAPS activities for the purpose of providing product information to business entities participating in the tobacco trade should be defined and strictly applied.

## Constitutional principles in relation to a comprehensive ban

Insofar as Article 13 provides that countries with constitutional constraints on implementing a comprehensive TAPS ban may instead undertake restrictions to the extent that constitutional principles permit, the guidelines clearly and strongly remind Parties that such restrictions must be as comprehensive as possible within those constraints. This is in light of the treaty's overall objective "to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke" (3).

## Consistency

Domestic bans and their effective enforcement are the cornerstones of any meaningful comprehensive ban on TAPS activities at the global level. Any Party with a comprehensive domestic TAPS ban (or restrictions) should ensure that any cross-border TAPS originating from its territory are banned or restricted in the same manner. Moreover, the ban should also apply to any person or entity that broadcasts or transmits TAPS that could be received in another state. Parties should make use of their sovereign right to take effective actions to limit or prevent any cross-border TAPS entering their territory, whether from Parties that have implemented restrictions or those that have not.

## Responsible entities

The entities responsible for TAPS should be defined widely, and the manner and extent to which they are held responsible for complying with the ban should depend on their role.

- Primary responsibility should lie with the initiator of TAPS activities, usually tobacco manufacturers, wholesale distributors, importers, retailers, and their agents and associations.
- Persons or entities that produce or publish content in any type of media, including print, broadcast and online, should be banned from including TAPS in the content they produce or publish.

- Persons or entities (such as event organizers and celebrities, including athletes, actors and musicians) should be banned from engaging in TAPS activities.
- Particular obligations, for example, to remove content, should be applied to other entities involved in production or distribution of analogue and/or digital media after they have been made aware of the presence of TAPS in their media.

## Domestic enforcement of laws on tobacco advertising, promotion and sponsorship

The guidelines provide recommendations on both appropriate and effective sanctions as well as monitoring, enforcement and access to justice. Specifically, Parties should apply effective, proportionate and dissuasive penalties, and should designate a competent, independent authority with appropriate powers and resources to monitor and enforce laws that ban (or restrict) TAPS activities. Civil society also plays a key role in monitoring and enforcement of these laws.

## Public education and community awareness

The guidelines state clearly that Parties should promote and strengthen, in all sectors of society, public awareness of the need to eliminate TAPS and of existing laws against TAPS activities. Engaging the support of civil society sectors within communities to monitor compliance and report violations of laws against TAPS activities is an essential element of effective enforcement.

## International collaboration

The guidelines note the importance of international collaboration to eliminate cross-border TAPS. Additionally, it is explicitly recognized that Parties benefit from sharing information, experience and expertise with regard to all TAPS activities, in that "[e]ffective international cooperation will be essential to the elimination of both domestic and cross-border" TAPS (5).