



WORLD HEALTH ORGANIZATION

CONFERENCE OF THE PARTIES TO THE
WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

A/FCTC/COP/1/INF.DOC./3

5 January 2006

First session

Provisional agenda items 5.2 and 5.3

Additional matters identified in the Convention for consideration by the Conference of the Parties

Elaboration of guidelines for implementation of Article 7 and Article 9, and Elaboration of protocols

Note by the Secretariat

INTRODUCTION

1. The WHO Framework Convention on Tobacco Control identifies a number of issues to be considered by the Conference of the Parties without specifying the timeline within which this should be done. These issues appear in the draft provisional agenda as follows:

- Agenda item 5.1: Reporting (Articles 21.2 and 21.3);
- Agenda item 5.2: Elaboration of guidelines on non-price measures to reduce the demand for tobacco (Article 7), and for testing, measuring and regulating the contents and emissions of tobacco products (Article 9); and
- Agenda item 5.3: Elaboration of a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship (Article 13.8).

2. These issues were not addressed by the Intergovernmental Working Group on the WHO Framework Convention on Tobacco Control, as they were not explicitly part of the preparation of the first Conference of the Parties and hence not included in its mandate. The Conference of the Parties may however wish to conduct a preliminary discussion on these items, with the aim of setting out in its programme of work relevant steps to be undertaken. Against this background, the interim secretariat has prepared the present information note as a basis for discussion by the Conference of the Parties at its first session.

3. Agenda item 5.1 (Reporting) is the subject of a separate document prepared by the interim secretariat.¹ This note addresses Agenda items 5.2 (Elaboration of guidelines for implementation of Article 7 and Article 9) and 5.3 (Elaboration of protocols). It briefly discusses the general nature and purpose of guidelines and protocols and sets out possible actions to be considered by the Conference of the Parties.

ELABORATION OF GUIDELINES FOR THE IMPLEMENTATION OF ARTICLES 7 AND 9

4. Articles 7 and 9 request the Conference of the Parties to propose guidelines in specific areas in which the Parties are required to adopt and implement effective legislative, executive and administrative or other measures. Under Article 7, guidelines are to be elaborated for the implementation of non-price measures to reduce the demand for tobacco, including all measures set out in Articles 8 to 13. Article 9 specifically requires the elaboration of guidelines for testing and measuring the contents and emissions of tobacco products, and for the regulation of such contents and emissions.

5. Guidelines constitute a non-binding instrument adopted by an international body to provide assistance to countries in addressing specific issues at the national or international level. This type of instrument is often used in the context of complex technical or legal matters. It is designed to provide a reference frame and detailed guidance to countries in adopting national measures on the issues in question. In the framework of international treaties, guidelines are often developed to assist parties in implementing treaty provisions on complex issues.

6. For example, under Article 9, there currently is no international standard which is acceptable to the public health sector for the testing of the ingredients of tobacco products and the emissions from tobacco smoke. Contracting Parties may need guidance on this issue from the Conference of the Parties in order to have meaningful implementation of Article 9. Some countries are currently using the cigarette smoking machine testing standard set by the International Standardization Organization's Technical Committee on Tobacco and Tobacco Products, a committee that has been noted in tobacco industry documents as having substantial involvement with scientists working either directly or indirectly with tobacco companies. The WHO Study Group on Tobacco Product Regulation pointed out in its report to the Director-General that smoke yields derived from machine testing using the International Standardization Organization protocol are misleading.² As a way of addressing the issue, the WHO Study Group recommended in the same report a set of guiding principles for the development of tobacco product research and testing capacity, and proposed new testing standards for the initiation of tobacco product testing. Such guiding principles may serve as the basis for guidelines coming from the Conference of the Parties for the implementation of Article 9.

7. Furthermore, closely tied to Article 9 is Article 10 which calls for disclosure of results of the testing of contents and emissions. For the disclosed testing results to be meaningful, the Conference of the Parties may wish to issue a guideline for a harmonized reporting format so that trend data can be compared across countries and over time. This value-added ability to gather and analyse such data would then have a direct impact on epidemiological studies conducted to evaluate the contents and

¹ Document A/FCTC/COP/1/INF.DOC./2.

² See document EB115/27.

emissions of tobacco products, and the effect of tobacco-smoke exposure on populations, as well as the effectiveness of specific tobacco control measures, both nationally and globally.

8. Against this background, the Conference of the Parties may wish to consider:

- issues to be addressed in the future guidelines on non-price measures;
- issues to be addressed in the future guidelines on contents and emissions of tobacco products and the harmonized reporting of those contents;
- possible technical input from WHO;
- whether two sets of guidelines should be elaborated under Articles 7 and 9 respectively, or whether one set of guidelines should address all relevant issues;
- the modalities of undertaking the relevant work (e.g. establishment of a subsidiary body or expert group);
- the timing of the relevant work;
- budgetary implications of the relevant work; and
- inclusion of the relevant tasks in the medium-term workplan.

ELABORATION OF PROTOCOLS

9. The concept of a framework convention implies that protocols are elaborated to enlarge on specific issues, while the Convention establishes the fundamental rules and principles. A common reason for choosing to address an issue in a protocol to a convention rather than in the convention itself is the complexity of an issue, which justifies that it be addressed apart from the main text by a negotiating group of specialists on that particular issue. The form of a protocol may also be chosen where an issue is controversial and requires considerably more discussion than the rest of the text.

10. By resolution WHA52.18, the Health Assembly in 1999 established the legal basis for negotiation of a WHO framework convention on tobacco control, as well as “possible related protocols”. Accordingly, the option of elaborating protocols was discussed throughout the negotiation process. For the first pre-negotiation working group, WHO, at the request of Member States, prepared a document that outlined the possible rationale and areas for developing a protocol.¹ This document indicated that protocols could be drafted either concurrently with the framework convention or subsequently, and suggested a range of topics on which protocols might be developed. For the second pre-negotiation working group, again at the request of Member States, WHO prepared a document proposing the technical components of protocols in the areas of advertising, smuggling, and treatment of tobacco dependence. The first session of the Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control subsequently accepted this text, which contained a number of model provisions, as a working document. Following relevant discussions by the second

¹ Possible subjects of initial protocols: Elaboration of technical components of three possible protocols, document A/FCTC/WG2/4, 15 February 2000.

session of the Negotiating Body and the Bureau, the third session of the Negotiating Body devoted one plenary session to the discussion of the issue. Two primary questions emerged from the discussion: (1) whether protocols should act as tools to clarify obligations laid out in the WHO framework convention or as separate, more detailed obligations in themselves; and (2) whether they should be negotiated simultaneously with the convention or subsequent to its finalization. Further, the topics that might be covered by protocols were discussed, with smuggling, advertising, promotion and sponsorship, tobacco product regulation, and elimination of tobacco addiction, mentioned as possible subjects. Following the release of a paper on possible protocols by one Member State during the fourth session of the Negotiating Body, a plenary session was again devoted to the issue during the fifth session. During the fifth and sixth sessions of the Negotiating Body, illicit trade, advertising, promotion and sponsorship, and tobacco product regulation were considered as possible topics for future protocols. However, relevant language was not included in the final version of the Convention, and the Intergovernmental Negotiating Body ultimately decided to postpone the possible elaboration of protocols until after the conclusion of the negotiations of the Framework Convention. Cross-border advertising, promotion and sponsorship is the only issue expressly highlighted in the Convention as a topic possibly to be addressed by a protocol.

11. As a result of the relevant discussions during the negotiations, the WHO Framework Convention on Tobacco Control addresses the adoption of protocols on two levels. Article 33 provides the general legal basis for the adoption of protocols under the Convention and sets out the procedure to be followed. In accordance with this provision, protocols on any topic may be elaborated and adopted, and any Party may propose the elaboration of a protocol. Article 13.8 identifies “appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship” as an issue to be considered by the Parties for inclusion in a protocol. Article 13.8 does not set a time-line for consideration of this matter, nor does it prejudice the outcome of the considerations.

12. Accordingly, the Conference of the Parties should consider a protocol on cross-border advertising in accordance with Article 13.8. In this regard, WHO has commissioned technical work on cross-border advertising that may be of use to the Conference of the Parties in its possible future deliberations of a future protocol in this area of tobacco control.

13. Further, the Conference of the Parties may also consider other issues for inclusion in a protocol. In particular, and following the discussions during the fifth and sixth sessions of the Negotiating Body about a protocol on illicit trade, WHO has commissioned technical work on the background of illicit trade, which again may be of use to the Conference of the Parties in its possible future deliberations of future protocols.

14. Against this background, the Conference of the Parties may wish to discuss:

- the need for a protocol on cross-border advertising, promotion and sponsorship of tobacco products;
- the measures requiring international collaboration that may be set out in a future protocol on cross-border advertising, promotion and sponsorship of tobacco products;
- the desirability of elaborating one or more protocols on other issues;
- possible technical input from WHO;

- the modalities of undertaking the relevant work (e.g. establishment of a subsidiary body or negotiating group);
- the timing of the relevant work;
- budgetary implications of the relevant work; and
- inclusion of the relevant task in the medium-term workplan.

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