
First Report of Committee A

(Draft)

Committee A recommends to the Conference of the Parties the adoption of the attached decisions as follows:

- 4.3 Elaboration of guidelines for implementation of Articles 9 and 10 of the WHO Framework Convention on Tobacco Control;
- 4.5 Elaboration of guidelines for implementation of Article 12 of the WHO Framework Convention on Tobacco Control;
- 4.6 Recommendations on possible key elements of a protocol on cross-border advertising, promotion and sponsorship;
- 4.7 Elaboration of guidelines for implementation of Article 14 of the WHO Framework Convention on Tobacco Control;
- 4.6 Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control;
- 4.1 Elaboration of a protocol on illicit trade in tobacco products;
- 4.4 Elaboration of guidelines for implementation of Article 11 of the WHO Framework Convention on Tobacco Control;
- 4.8 Study group on economically sustainable alternatives to tobacco growing (in relation to Articles 17 and 18 of the WHO Framework Convention on Tobacco Control);
- 4.6 Measures that would contribute to the elimination of cross-border advertising, promotion and sponsorship.

The Committee agreed not to take action on the draft decision contained in document FCTC/COP/3/A/Conf.Paper No.4, entitled “Rule 28.1 of the Rules of Procedure of the Conference of

the Parties”. However, in view of the ambiguity arising from the interpretation of the word “term” in Rule 28.1, the Committee recommends that the Conference of the Parties, when establishing future subsidiary bodies under Rule 25 of its Rules of Procedure, consider defining the duration of the term of office of the officers of those bodies.

Agenda item 4.3

Elaboration of guidelines for implementation of Articles 9 and 10 of the WHO Framework Convention on Tobacco Control

The Conference of the Parties,

Recalling its decisions FCTC/COP1(15) and FCTC/COP2(14) on the elaboration of guidelines for implementation of Articles 9 (Regulation of the contents of tobacco products) and 10 (Regulation of tobacco product disclosures) of the WHO Framework Convention on Tobacco Control; and

Noting the information contained in the report of the working group to the third session of the Conference of the Parties on the progress of its work (document FCTC/COP/3/6),

1. DECIDES to mandate the working group to:
 - (1) continue its work, elaborating guidelines in a step-by-step process, and to submit a first set of draft guidelines to the Conference of the Parties for consideration at its fourth session;
 - (2) continue to monitor the areas set out in its previous progress report (A/FCTC/COP/2/8), which include dependence liability and toxicology;
 - (3) continue to examine the challenges and potential approaches to setting up a global data repository;
2. REQUESTS the Convention Secretariat to invite WHO's Tobacco Free Initiative to undertake the following work:
 - (1) submit a report for consideration by the Conference of the Parties at its fourth session which:
 - (a) identifies best practices in reporting to regulators as regards contents, emissions and product characteristics, including electronic systems;
 - (b) identifies best practices in informing the public;
 - (c) collects information on legal cases and analyses the legal issues related to tobacco product disclosures;
 - (2) validate, within five years, the analytical chemical methods for testing and measuring the cigarette contents and emissions identified as priorities in the progress report of the working group (FCTC/COP/3/6), using the two smoking regimens set out in paragraph 18 of that report, and to inform the Conference of the Parties through the Convention Secretariat on a regular basis of the progress made;

(3) monitor scientific progress; when appropriate, design and validate methods for testing and measuring the product characteristics identified in paragraph 33 of the progress report of the working group; and inform the Conference of the Parties, through the Convention Secretariat, on a regular basis of the progress made;

3. ALSO DECIDES, in accordance with decision FCTC/COP2(14):

(1) to request the Convention Secretariat to provide assistance and to make the necessary arrangements, including budgetary arrangements, for the working group to complete its work and to ensure, in consultation with the Bureau, that Parties have access to the draft text, for example, via a protected web site, and can provide comments before the circulation of the draft guidelines to the Conference of the Parties;

(2) to adopt the timeline set out below:

To make the draft guidelines, as requested, accessible by the Parties for their comments	At least six months before the fourth session of the Conference of the Parties
For submission to the Convention Secretariat for editing and translation	At least three months before the fourth session of the Conference of the Parties
For circulation to the Conference of the Parties	At least 60 days before the fourth session of the Conference of the Parties (Rule 8, Rules of Procedure of the Conference of the Parties)

Agenda item 4.5

Elaboration of guidelines for implementation of Article 12 of the WHO Framework Convention on Tobacco Control

The Conference of the Parties,

Recalling its decision FCTC/COP2(14) establishing a working group to elaborate guidelines for implementation of Article 12 (Education, communication, training and public awareness) of the WHO Framework Convention on Tobacco Control;

Noting the report of the working group to the third session of the Conference of the Parties on the progress of its work (document FCTC/COP/3/8);

Mindful of the discussions on the report during the third session of the Conference of the Parties,

4. DECIDES to request the working group established by decision FCTC/COP/2(14) to continue its work and to submit draft guidelines to the Conference of the Parties for consideration at its fourth session;

5. ALSO DECIDES, in accordance with decision FCTC/COP2(14):

(1) to request the Convention Secretariat to provide assistance and to make the necessary arrangements, including budgetary arrangements, for the working group to complete its work and to ensure, in consultation with the Bureau, that Parties have access to the draft text, for example, via a protected web site, and can provide comments before the circulation of the draft guidelines to the Conference of the Parties;

(2) to adopt the timeline set out below:

To make the draft guidelines, as requested, accessible by the Parties for their comments	At least six months before the fourth session of the Conference of the Parties
For submission to the Convention Secretariat for editing and translation	At least three months before the fourth session of the Conference of the Parties
For circulation to the Conference of the Parties	At least 60 days before the fourth session of the Conference of the Parties (Rule 8, Rules of Procedure of the Conference of the Parties)

Agenda item 4.6

Recommendations on possible key elements of a protocol on cross-border advertising, promotion and sponsorship

The Conference of the Parties,

Taking into account Article 13.8 of the WHO Framework Convention on Tobacco Control;

Recalling its decisions FCTC/COP1(16) and FCTC/COP2(8);

Recognizing the work undertaken by the expert group on cross-border advertising, promotion and sponsorship established pursuant to decision FCTC/COP1(16);

Recognizing the work undertaken by the working group on Article 13 (Tobacco advertising, promotion and sponsorship) of the Convention established by decision FCTC/COP2(8),

DECIDES to take note of the recommendations of the working group on possible key elements of a protocol on cross-border advertising, promotion and sponsorship of tobacco products as annexed to this decision, which would be complementary to the guidelines for implementation of Article 13 of the Convention¹.

¹ Decision FCTC/COP3(XX).

ANNEX

Recommendations on key elements of a possible protocol on cross-border advertising, promotion and sponsorship

1. Having taken into account, as requested by the Conference of the Parties, the report of the expert group on cross-border advertising, promotion and sponsorship presented to the Conference of the Parties at its second session, the working group recommends:

2. If the Conference of the Parties decides, either now or at some time in the future, to commence negotiation of a protocol on cross-border advertising, promotion and sponsorship, without prejudice to the right of the Conference of the Parties to decide the scope of those negotiations, that consideration be given to the following areas for possible inclusion in such a protocol:

- notification and response procedures in relation to cross-border tobacco advertising, promotion and sponsorship, including obligations to acknowledge receipt of notification, take measures to investigate and respond to the notifying party;¹
- cooperation between relevant enforcement agencies in relation to the investigation of possible breaches of the law and the bringing of enforcement proceedings, including with respect to the exchange of information, searches of premises or records and the obtaining of evidence (production of documents and the interviewing of witnesses);²
- exercise of jurisdiction over cross-border tobacco advertising, promotion or sponsorship, in order to address the possibility that agencies in multiple Parties bring enforcement proceedings against the same entity with regard to the same conduct or, alternatively, that no agency brings enforcement proceedings in the expectation that an agency in another Party or Parties will do so;³
- recognition and enforcement of foreign judgments, acknowledging that a Party may obtain a judgement against a body that is not located in its territory and has no assets in its territory.⁴

¹ See document A/FCTC/COP/2/10, paragraph 21.

² See document A/FCTC/COP/2/10, paragraphs 17–21.

³ See document A/FCTC/COP/2/10, paragraphs 22–26.

⁴ See document A/FCTC/COP/2/10, paragraphs 27–28.

Agenda item 4.7

Elaboration of guidelines for implementation of Article 14 of the WHO Framework Convention on Tobacco Control

The Conference of the Parties,

Recalling its decision FCTC/COP2(14) which requests the Convention Secretariat to elaborate, in consultation with Parties particularly interested in the issue, a first report on tobacco dependence and cessation in relation to Article 14 (Demand reduction measures concerning tobacco dependence and cessation) of the WHO Framework Convention on Tobacco Control; and

Noting the report on tobacco dependence and cessation presented by the Convention Secretariat for consideration by the Conference of the Parties at its third session (document FCTC/COP/3/10),

1. DECIDES:

(1) to establish a working group for the elaboration of guidelines for implementation of Article 14 of the Convention. The working group shall present a progress report or, if possible draft guidelines, for consideration by the Conference of the Parties at its fourth session;

(2) to request the working group to take into account the report presented by the Convention Secretariat for consideration by the Conference of the Parties at its third session (document FCTC/COP/3/10);

(3) to request the Convention Secretariat to invite relevant intergovernmental and nongovernmental organizations with specific expertise in this area to actively participate and contribute to the work of the working group;

(4) to establish initial membership of the working group as follows:

Key Facilitators: Iran (Islamic Republic of), Uruguay;

Partners: Botswana, Brazil, Burkina Faso, Burundi, France, Germany, Ghana, India, Mali, Mexico, Namibia, New Zealand, Nigeria, Republic of Korea, Russian Federation, Solomon Islands, South Africa, Syrian Arab Republic, Thailand, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Zambia;

(5) to set 31 January 2009 as the deadline for other Parties to announce to the Convention Secretariat their participation as a Partner in the working group;

2. ALSO DECIDES, in accordance with decision FCTC/COP2(14):

(1) to request the Convention Secretariat to provide assistance and to make the necessary arrangements, including budgetary arrangements, for the working group to complete its work and to ensure, in consultation with the Bureau, that Parties have access to the draft text, for

example, via a protected web site, and can provide comments before the circulation of the draft guidelines to the Conference of the Parties;

(2) to adopt the timeline set out below:

To make the progress report or, if possible draft guidelines, as requested, accessible by the Parties for their comments	At least six months before the fourth session of the Conference of the Parties
For submission to the Convention Secretariat for editing and translation	At least three months before the fourth session of the Conference of the Parties
For circulation to the Conference of the Parties	At least 60 days before the fourth session of the Conference of the Parties (Rule 8, Rules of Procedure of the Conference of the Parties)

Agenda item 4.6

**Guidelines for implementation of Article 13 of the
WHO Framework Convention on Tobacco Control**

The Conference of the Parties,

Taking into account Articles 7 and 13 of the WHO Framework Convention on Tobacco Control;

Reaffirming the eleventh preambular paragraph of the WHO Framework Convention on Tobacco Control, which emphasizes the serious concerns about the impact of all forms of advertising, promotion and sponsorship aimed at encouraging the use of tobacco products;

Emphasizing that these guidelines are to assist Parties in meeting their obligations under Article 13 (Tobacco advertising, promotion and sponsorship) of the Convention and to provide guidance for the implementation of this Article,

ADOPTS the guidelines for implementation of Article 13 of the Convention contained in the Annex to this decision.

ANNEX

Guidelines for implementation of Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO Framework Convention on Tobacco Control

PURPOSE AND OBJECTIVES

1. The purpose of these guidelines is to assist Parties in meeting their obligations under Article 13 of the WHO Framework Convention on Tobacco Control. They draw on the best available evidence and the experience of Parties that have successfully implemented effective measures against tobacco advertising, promotion and sponsorship. They give Parties guidance for introducing and enforcing a comprehensive ban on tobacco advertising, promotion and sponsorship, or, for those Parties that are not in a position to undertake a comprehensive ban owing to their constitutions or constitutional principles, for applying restrictions on tobacco advertising, promotion and sponsorship that are as comprehensive as possible.

2. These guidelines provide guidance 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.

Underlying principles

3. The following principles apply:

(1) It is well documented that tobacco advertising, promotion and sponsorship increase tobacco use and that comprehensive bans on tobacco advertising, promotion and sponsorship decrease tobacco use.

(2) An effective ban on tobacco advertising, promotion and sponsorship should, as recognized by Parties to the Convention in Articles 13.1 and 13.2, be *comprehensive* and applicable to *all* tobacco advertising, promotion and sponsorship.

(3) According to the definitions in Article 1 of the Convention, a comprehensive ban on all tobacco advertising, promotion and sponsorship applies to *all* forms of *commercial communication, recommendation or action* and all forms 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*.

(4) A comprehensive ban on tobacco advertising, promotion and sponsorship should include *cross-border advertising, promotion and sponsorship*. This includes both out-flowing advertising, promotion and sponsorship (originating from a Party's territory) and in-flowing advertising, promotion and sponsorship (entering a Party's territory).

(5) To be effective, a comprehensive ban should address *all persons or entities* involved in the production, placement and/or dissemination of tobacco advertising, promotion and sponsorship.

(6) Effective *monitoring, enforcement and sanctions* supported and facilitated by strong *public education and community awareness programmes* are essential for implementation of a comprehensive ban on tobacco advertising, promotion and sponsorship.

(7) *Civil society* has a central role in building support for, developing and ensuring compliance with laws addressing tobacco advertising, promotion and sponsorship, and it should be included as an active partner in this process.

(8) Effective *international cooperation* is fundamental to the elimination of both domestic and cross-border tobacco advertising, promotion and sponsorship.

Scope of a comprehensive ban

4. The scope of a comprehensive ban on tobacco advertising, promotion and sponsorship is outlined in general terms in subsection “Overview” (paragraphs 5–11) below, while the following subsections (paragraphs 12–34) address aspects that could pose special challenges for regulators in introducing a comprehensive ban.

Overview

5. A ban on tobacco advertising, promotion and sponsorship is effective only if it has a broad scope. Contemporary marketing communication involves an integrated approach to advertising and promoting the purchase and sale of goods, including direct marketing, public relations, sales promotion, personal selling and online interactive marketing methods. If only certain forms of direct tobacco advertising are prohibited, the tobacco industry inevitably shifts its expenditure to other advertising, promotion and sponsorship strategies, using creative, indirect ways to promote tobacco products and tobacco use, especially among young people.

6. Therefore, the effect of a partial advertising ban on tobacco consumption is limited. This is recognized in Article 13 of the Convention, which lays down the basic obligation to ban tobacco advertising, promotion and sponsorship. According to Article 13.1 of the Convention, “Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.”

7. To implement the comprehensive ban laid down in Articles 13.1 and 13.2 of the Convention, Parties should ban advertising, promotion and sponsorship as defined in Article 1(c) and (g) of the Convention. Article 1(c) defines “tobacco advertising and promotion” as “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”. Article 1(g) defines “tobacco sponsorship” as “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”.

8. It is important to note that both “tobacco advertising and promotion” and “tobacco sponsorship” cover promotion not only of particular tobacco products but also of tobacco use generally; not only acts with a promotional aim but also acts that have a promotional effect or are likely to have a promotional effect; and not only direct promotion but also indirect promotion. “Tobacco advertising and promotion” is not restricted to “communications”, but also includes “recommendations” and “actions”, which should cover at least the following categories: (a) various sales and/or distribution

arrangements¹ (b) hidden forms of advertising or promotion, such as insertion of tobacco products or tobacco use in various media contents; (c) association of tobacco products with events or with other products in various ways; (d) promotional packaging and product design features; and (e) production and distribution of items such as sweets and toys or other products that resemble cigarettes or other tobacco products.² It is also important to note that the definition of “tobacco sponsorship” covers “any form of contribution”, financial or otherwise, regardless of how or whether that contribution is acknowledged or publicized.

9. Promotional effects, both direct and indirect, may be brought about by the use of words, designs, images, sounds and colours, including brand names, trademarks, logos, names of tobacco manufacturers or importers, and colours or schemes of colours associated with tobacco products, manufacturers or importers, or by the use of a part or parts of words, designs, images and colours. Promotion of tobacco companies themselves (sometimes referred to as corporate promotion) is a form of promotion of tobacco products or tobacco use, even without the presentation of brand names or trademarks. Advertising, including display, and sponsorship of smoking accessories, such as cigarette papers, filters and equipment for rolling cigarettes, and imitations of tobacco products, may also have the effect of promoting tobacco products or tobacco use.

10. Legislation should avoid providing lists of prohibited activities that are, or could be understood to be, exhaustive. While it is often useful to provide examples of prohibited activities, when legislation does so, it should make clear that they are only examples and do not cover the full range of prohibited activities. This can be made clear by using terms like “including but not limited to” or catch-all phrases such as “or any other form of tobacco advertising, promotion or sponsorship”.

11. An indicative (non-exhaustive) list of forms of advertising, promotion and sponsorship that fall under the ban in Article 13 of the Convention is attached in the Appendix to this Annex.

Recommendation

A comprehensive ban on tobacco advertising, promotion and sponsorship, 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;*

¹ For instance, incentive schemes for retailers, display at points of sale, lotteries, free gifts, free samples, discounts, competitions (whether the purchase of tobacco products is required or not) and incentive promotions or loyalty schemes, e.g. redeemable coupons provided with purchase of tobacco products.

² This text reflects the spirit of Article 16.1 of the Convention, which obliges Parties to “adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit sales of tobacco products to persons under the age set by domestic law, national law or eighteen. Article 16.1 specifies that these measures may include ... (c) prohibiting the manufacture and sale of sweets, snacks, toys or any other object in the form of tobacco products which appeal to minors.”

- *contribution of any kind to any event, activity or individual;*
- *advertising and promotion of tobacco brand names and all corporate promotion; and*
- *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

12. Display of tobacco products at points of sale in itself constitutes advertising and promotion. Display of products is a key means of promoting tobacco products and tobacco use, including by stimulating impulse purchases of tobacco products, giving the impression that tobacco use is socially acceptable, and making it harder for tobacco users to quit. Young people are particularly vulnerable to the promotional effects of product display.

13. To ensure that points of sale of tobacco products do not have any promotional elements, Parties should introduce a total ban on any display and on the visibility of tobacco products at points of sale, including fixed retail outlets and street vendors. Only the textual listing of products and their prices, without any promotional elements, would be allowed. As for all aspects of Article 13 of the Convention, the ban should also apply in ferries, airplanes, ports and airports.

14. Vending machines should be banned, because they constitute by their very presence a means of advertising or promotion under the terms of the Convention.¹

Recommendation

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

Packaging and product features²

15. Packaging is an important element of advertising and promotion. Tobacco pack or product features are used in various ways to attract consumers, promote products, and cultivate and promote brand identity, for example by using logos, colours, fonts, pictures, shapes and materials on or in packs or on individual cigarettes or other tobacco products.

16. The effect of advertising or promotion on packaging can be eliminated by requiring plain packaging: black and white, or two other contrasting colours, as prescribed by national authorities; nothing other than a brand name, a product name and/or manufacturer's name, contact details and the

¹ Banning vending machines because they amount to advertising or promotion complements the provisions of Article 16 of the Convention on protecting minors. The measures described in Article 16.1 may include: "ensuring that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote sale of tobacco products to minors", and Article 16.5 stipulates that "a Party may, by means of a binding written declaration, indicate its commitment to prohibit the introduction of tobacco vending machines within its jurisdiction or, as appropriate, to a total ban on tobacco vending machines."

² See also the guidelines for implementation of Article 11 of the Convention, which address plain packaging with regard to health warnings and misleading information.

quantity of product in the packaging, without any logos or other features apart from health warnings, tax marks and other government-mandated information or markings; prescribed font style and size; and standardized shape, size and materials. There should be no advertising or promotion inside or attached to the package or on individual cigarettes or other tobacco products.

17. If plain packaging is not yet mandated, the restriction should cover as many as possible of the design features that make tobacco products more attractive to consumers, such as animal or other figures, “fun” phrases, coloured cigarette papers, attractive smells, novelty or seasonal packs.

Recommendation

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

Internet sales

18. Internet sales of tobacco inherently involve advertising and promotion as defined in the Convention. The problem is not only limited to advertising and promotion but also includes sales to minors, tax evasion and illicit trade.

19. The most direct way of avoiding tobacco advertising or promotion on the Internet is to ban tobacco sales on the Internet.¹ The ban should apply not only to entities that sell the products but also to others, including credit card companies, that facilitate payment and postal or delivery services for the products.

20. To the extent that Internet sales are not yet banned, restrictions should be imposed, allowing only textual listing of products with prices, with no pictures or promotion features (e.g. any references to low prices).

21. Given the covert nature of tobacco advertising and promotion in the Internet and the difficulty of identifying and reaching wrongdoers, special domestic resources are needed to make these measures operational. Measures recommended in Annex 3 to eliminate cross-border tobacco advertising, promotion and sponsorship, in particular identifying contact points and dealing with notifications from other Parties, would help to ensure that domestic enforcement efforts are not undermined.

Recommendation

Internet sales of tobacco should be banned as they inherently involve tobacco advertising and promotion.

¹ Options for regulating Internet sales are being discussed by the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products.

Brand stretching and brand sharing

22. “Brand stretching” occurs when a tobacco brand name, emblem, trademark, logo or trade insignia or any other distinctive feature (including distinctive colour combinations) is connected with a non-tobacco product or service in such a way that the tobacco product and the non-tobacco product or service are likely to be associated.

23. “Brand sharing” occurs when a brand name, emblem, trademark, logo or trade insignia or any other distinctive feature (including distinctive colour combinations) on a non-tobacco product or service is connected with a tobacco product or tobacco company, in such a way that the tobacco product or company and the non-tobacco product or service are likely to be associated.

24. “Brand stretching” and “brand sharing” should be regarded as tobacco advertising and promotion in so far as they have the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.

Recommendation

Parties should ban “brand stretching” and “brand sharing”, as they are means of tobacco advertising and promotion.

Corporate social responsibility¹

25. It is increasingly common for tobacco companies to seek to portray themselves as good corporate citizens by making contributions to deserving causes or otherwise promoting “socially responsible” elements of their business practices.

26. Some tobacco companies make financial or in-kind contributions to organizations, such as community, health, welfare or environmental organizations, either directly or through other entities. Such contributions fall within the definition of tobacco sponsorship in Article 1(g) of the Convention and should be prohibited as part of a comprehensive ban, because the aim, effect or likely effect of such a contribution is to promote a tobacco product or tobacco use either directly or indirectly.

27. Tobacco companies may also seek to engage in “socially responsible” business practices (such as good employee-employer relations or environmental stewardship), which do not involve contributions to other parties. Promotion to the public of such otherwise commendable activities should be prohibited, as their aim, effect or likely effect is to promote a tobacco product or tobacco use either directly or indirectly. Public dissemination of such information should be prohibited, except for purposes of required corporate reporting (such as annual reports) or necessary business administration (e.g. for recruitment purposes and communications with suppliers).

28. Tobacco industry public education campaigns, such as “youth smoking prevention campaigns”, should be prohibited on the basis that they involve “contributions” when implemented by other parties or represent corporate promotion if conducted by the industry itself.

¹ The guidelines on Article 5.3 of the Convention, elaborated by a working group established by the Conference of the Parties, address this subject from the perspective of protecting public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry.

Recommendation

The 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 be banned, as it constitutes advertising and promotion.

Legitimate expression

29. Implementation of a comprehensive ban on tobacco advertising, promotion and sponsorship should not prevent legitimate journalistic, artistic or academic expression or legitimate social or political commentary. Examples include news images with coincidental tobacco-related content in the background, the depiction of historical personalities or presentation of views on regulation or policy. Nevertheless, appropriate warnings or disclaimers may be required.

30. In some cases, journalistic, artistic or academic expression or social or political commentary may contain elements that are not justified for editorial, artistic, academic, social or political reasons and must be regarded as advertising, promotion or sponsorship rather than genuine editorial, artistic or academic content or genuine social or political commentary. This is obviously the case if an insertion is made for commercial, tobacco-related reasons, for example, paid placement of tobacco products or images in the media.

Recommendation

Implementation of a comprehensive ban on tobacco advertising, promotion and sponsorship need not 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 promotion of tobacco use or tobacco products.

Depictions of tobacco in entertainment media

31. The depiction of tobacco in entertainment media products, such as films, theatre and games, can strongly influence tobacco use, particularly among young people. Therefore, Parties should take the following measures:

- Implement a mechanism requiring that when an entertainment media product depicts tobacco products, use or imagery of any type, the responsible executives at each company involved in the production, distribution or presentation of that entertainment media product certify that no money, gifts, free publicity, interest-free loans, tobacco products, public relations assistance or anything else of any value has been given in exchange for the depiction.
- Prohibit the depiction of identifiable tobacco brands or tobacco brand images in association with, or as part of the content of, any entertainment media product.
- Require the display of prescribed anti-tobacco advertisements at the beginning of any entertainment media product that depicts tobacco products, use or images.
- Implement a ratings or classification system that takes into account the depiction of tobacco products, use or images in rating or classifying entertainment media products (for example,

requiring adult ratings which restrict access of minors) and that ensures that entertainment media aimed at children (including cartoons) does not depict tobacco products, use or imagery.

Recommendation

Parties should take particular measures concerning the depiction of tobacco in entertainment media products, 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 and implementing a ratings or classification system that takes tobacco depictions into account.

Communication within the tobacco trade

32. The objective of banning tobacco advertising, promotion and sponsorship can usually be achieved without banning communications within the tobacco trade.

33. Any exception to a comprehensive ban on tobacco advertising, promotion and sponsorship for the purpose of providing product information to actors within the tobacco trade should be defined and applied strictly. Access to such information should be restricted to those persons who make trading decisions and who consequently need the information.

34. Tobacco manufacturers' newsletters can be exempted from the comprehensive ban on tobacco advertising, promotion and sponsorship, but only if they are destined exclusively for the manufacturer's employees, contractors, suppliers and other business partners and only to the extent that their distribution is limited to those persons or entities.

Recommendation

Any exception to a comprehensive ban on tobacco advertising, promotion and sponsorship to allow communication within the tobacco trade should be defined and applied strictly.

Constitutional principles in relation to a comprehensive ban

35. Any Party whose constitution or constitutional principles impose constraints on undertaking a comprehensive ban should, under Article 13 of the Convention, apply restrictions that are as comprehensive as possible in the light of those constraints. All Parties are obliged to undertake a comprehensive ban unless they are "not in a position" to do so "*due to* [their] constitution or constitutional principles". This obligation is to be interpreted in the context of the "recogni[tion] that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products", and in the light of the Convention'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" (Article 3 of the Convention).

36. It is acknowledged that the question of how constitutional principles are to be accommodated is to be determined by each Party's constitutional system.

Obligations related to Article 13.4 of the Convention

37. Under Articles 13.2 and 13.3 of the Convention, Parties are obliged to undertake a comprehensive ban on tobacco advertising, promotion and sponsorship (or apply restrictions that are as comprehensive as possible in light of their constitution or constitutional principles). Some forms of tobacco advertising, promotion and sponsorship can be expected to persist in Parties that have not yet met their obligations under Articles 13.2 and 13.3 of the Convention. In addition, some very limited forms of relevant commercial communication, recommendation or action might continue to exist after a comprehensive ban has been implemented, and some forms of tobacco advertising, promotion and sponsorship may continue in Parties whose constitutions or constitutional principles prevent a comprehensive ban.

38. Any form of tobacco advertising, promotion or sponsorship that is not prohibited is obliged to meet the requirements of Article 13.4 of the Convention. Notably, these requirements include: to “prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions” (13.4(a)); to “require that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship” (13.4(b)); and to “require, if it does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited” (13.4(d)).

39. Parties should prohibit the use of any term, descriptor, trademark, emblem, marketing image, logo, colour and figurative or any other sign¹ that promotes a tobacco product or tobacco use, whether directly or indirectly, by any means that are false, misleading or deceptive or likely to create an erroneous impression about the characteristics, health effects, hazards or emissions of any tobacco product or tobacco products, or about the health effects or hazards of tobacco use. Such a prohibition should cover, inter alia, use of the terms “low tar”, “light”, “ultra-light”, “mild”, “extra”, “ultra” and other terms in any language that may be misleading or create an erroneous impression.²

40. Parties should consider giving health or other warnings and messages accompanying any tobacco advertising, promotion and sponsorship at least equal prominence as the advertising, promotion or sponsorship. The content of the required warnings and messages should be prescribed by the relevant authorities and should effectively communicate the health risks and addictiveness of tobacco use, discourage the use of tobacco products and increase motivation to quit tobacco use. In order to maximize their effectiveness, the warnings or other messages required by Parties under Article 13.4(b) of the Convention should be consistent with the warnings or other messages on packaging that Parties require under Article 11 of the Convention.

¹ These phrases are taken from Article 11.1(a) of the Convention, with the addition of the word “colour”, which the working group recognizes can be used to convey a misleading impression about the characteristics, health effects or hazards of tobacco products.

² See Article 11.1(a) and the guidelines on Article 11 of the Convention.

41. Parties should require disclosure by the tobacco industry to relevant governmental authorities of any advertising, promotion and sponsorship in which it engages. The disclosures should be made at regular intervals prescribed by law and in response to specific requests. They should include, both in total and by brand, information about:

- the kind of advertising, promotion or sponsorship, including its content, form and type of media;
- the placement and extent or frequency of the advertising, promotion or sponsorship;
- the identity of all entities involved in the advertising, promotion and sponsorship, including advertising and production companies;
- in the case of cross-border advertising, promotion or sponsorship originating from a Party's territory, the territory or territories in which it is intended to be, or may be, received; and
- the amount of financial or other resources used for the advertising, promotion or sponsorship.

42. Parties should make the information readily available to the public (e.g. via the Internet)¹ while ensuring the protection of trade secrets.

43. While the obligations stated in Article 13.4(d) of the Convention regarding disclosure of expenditures by the tobacco industry on advertising, promotion and sponsorship that is not yet prohibited apply only to Parties that do not have a comprehensive ban, all Parties should implement the recommended measures, in line with Article 13.5, which encourages Parties to implement measures beyond their obligations under Article 13.4. Requiring disclosure by the tobacco industry of expenditures on all advertising, promotion and sponsorship in which it engages may help Parties that consider that they have a comprehensive ban to identify any advertising, promotion or sponsorship not covered by the ban or engaged in by the tobacco industry in contravention of the ban. Disclosure requirements may have the added benefit of discouraging the tobacco industry from engaging in tobacco advertising, promotion or sponsorship in which it might otherwise engage.

Recommendation

Parties should meet the requirements of Article 13.4 of the Convention regarding any form of tobacco advertising, promotion or sponsorship that is not prohibited. Parties should prohibit all promotion of a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression; mandate health or other appropriate warnings or messages; and require regular disclosure by the tobacco industry to authorities of any advertising, promotion and sponsorship in which it engages. Parties should make the disclosed information readily available to the public.

¹ This provision supports the obligation under Article 12(c) to promote public access to a wide range of information on the tobacco industry as relevant to the objective of the Convention.

Consistency

44. Domestic bans and their effective enforcement are the cornerstones of any meaningful comprehensive ban on tobacco advertising, promotion and sponsorship at the global level. Contemporary media platforms such as the Internet, films and direct broadcast satellites easily cross borders, and many forms of advertising, promotion and sponsorship regulated by domestic rules, such as event sponsorship, are broadcast and disseminated widely to other States. Moreover, advertising and promotion are often linked to products such as items of clothing and technological devices or appear in publications, and thus move from one State to another when these items move.

45. It is obvious that the effectiveness of domestic bans can be undermined unless there is international cooperation.

Cross-border advertising, promotion and sponsorship originating from a Party's territory (out-flowing material)

46. Article 13.2 of the Convention states that “a comprehensive ban shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship *originating from its territory.*”

47. Implementation of the ban should cover, for example, all publications and products printed or produced within the territory of a Party, whether they are targeted to persons within the Party's territory or to persons in the territories of other States. It is often difficult to differentiate between publications or products targeted to or actually used in the originating State and those targeted at and used in other States.

48. The ban should also apply to placing tobacco advertising, promotion and sponsorship on the Internet or another cross-border communications technology by any person or entity within the territory of a Party whether the material is targeted to persons outside or inside that Party's territory.

49. Moreover, the ban should also apply to any person or entity who broadcasts tobacco advertising, promotion and sponsorship that could be received in another State.

50. A comprehensive ban on advertising, promotion and sponsorship originating from a Party's territory should also ensure that a Party's nationals – natural persons or legal persons – do not engage in advertising, promotion or sponsorship in the territory of another State irrespective of whether it is imported back to their State of origin.

Cross-border advertising, promotion and sponsorship entering a Party's territory

51. Article 13.7 of the Convention states that “Parties which have a ban on certain forms of tobacco advertising, promotion and sponsorship have the sovereign right to ban those forms of cross-border tobacco advertising, promotion and sponsorship *entering their territory* and to impose equal penalties as those applicable to advertising, promotion and sponsorship originating from their territory in accordance with their national law.”

52. Implementation of the ban should cover, for example, publications and products printed or produced in other States entering the territory of a Party or targeted to persons in that territory. Parties should consider carrying out sampling checks for imported consignments of printed publications. If such publications are printed, published or distributed by nationals of a Party or entities established in

a Party's territory, they should be held liable and the ban enforced to the fullest extent possible.¹ The ban should also apply to all Internet content that is accessible within a Party's territory, and to any other audio, visual or audiovisual material broadcast into or otherwise received in a Party's territory, whether or not it is targeted to persons in the territory of that Party.

Recommendation

Parties with a comprehensive ban or restrictions on tobacco advertising, promotion and sponsorship should ensure that any cross-border tobacco advertising, promotion and sponsorship originating from their territory is banned or restricted in the same manner as domestic tobacco advertising, promotion and sponsorship. Parties should make use of their sovereign right to take effective actions to limit or prevent any cross-border tobacco advertising, promotion and sponsorship entering their territory, whether from Parties that have restrictions or from non-Parties, recognizing that in some cases effective actions might have to be addressed in a Protocol.

Responsible entities

53. The responsible entities should be defined widely, covering the entire marketing chain. Primary responsibility should lie with the initiator of advertising, promotion or sponsorship, usually tobacco manufacturers, wholesale distributors, importers, retailers and their agents and associations.

54. Moreover, many other entities are involved in tobacco advertising, promotion and sponsorship and should also be held responsible.

55. Responsibility cannot be attributed in the same manner to all entities, as their involvement in the production, placement and dissemination of tobacco advertising, promotion and sponsorship varies. In the case of tobacco sponsorship, the responsible entities are those that make any relevant form of contribution, those that receive any relevant form of contribution and any intermediaries that facilitate the making or receiving of a relevant form of contribution. When tobacco advertising and promotion involve communication, the way in which entities should be held responsible depends on their role in the production and dissemination of the content of the communication and the possibilities they have to control it. The disseminator should be made responsible in so far as it is aware of, or was in the position to become aware of, the content of the advertising and promotion. This is true whatever media or communications technology is involved, but it applies especially to controlling content on the Internet and direct broadcast satellite.

56. In relation to all forms of media and communications:

- Persons or entities that produce or publish content (e.g. advertising agencies, designers, publishers of newspapers and other printed materials, broadcasters and producers of films, television and radio programmes, games and live performances, and Internet, mobile phone, satellite and game content producers) should be banned from including tobacco advertising, promotion and sponsorship.

¹ A Party may also enforce its ban against non-national in some circumstances. How to address nationals of other Parties may be the subject of provisions of a possible protocol on cross-border advertising, promotion and sponsorship.

- Persons or entities, for example media and event organizers, sportspeople, celebrities, film stars and other artists, should be banned from engaging in tobacco advertising, promotion and sponsorship.
- Particular obligations (such as that to remove or disable access to content) should be applied to other entities involved in analogue or digital media and communication (such as social networking sites, Internet service providers and telecommunication companies), once they have notice of tobacco advertising, promotion and sponsorship.

In the case of legal entities, the responsibility should normally lie on the company, not an individual employee.

57. A contract, agreement or arrangement concerning tobacco advertising, promotion or sponsorship should be held invalid if it is agreed in violation of a comprehensive ban.

58. In relation to the Internet, for example, there are five principal categories of responsible entity upon which bans or particular obligations should be imposed.

- *Content producers* create the content or cause it to be created. These include tobacco companies, advertising agencies, and producers of television programmes, films and games that are distributed online. Content producers should be *banned* from including tobacco advertising, promotion or sponsorship in the content they produce.
- *Content publishers* include publishers and entities that select content before it is made available to Internet users (e.g. Internet sites of newspapers or broadcasters). Content publishers should be *banned* from including tobacco advertising, promotion or sponsorship in the content they make available.
- *Content hosts* are entities that control Internet-connected computer servers on which content is stored, including entities that aggregate content produced by others without selecting the content before they make it available to Internet users (such as social networking Internet sites). Content hosts should have an *obligation to remove or disable access to* tobacco advertising, promotion and sponsorship *once they have received notice of the content*.
- *Content navigators* are entities that facilitate the location of content by users of communications services, such as Internet search engines. Content navigators should have an *obligation to disable access to* tobacco advertising, promotion and sponsorship *once they have received notice of the content*.
- *Access providers* are entities that provide end-user access to communications services, such as Internet service providers and mobile telephone companies. Access providers should have an *obligation to disable access to* tobacco advertising, promotion and sponsorship *once they have received notice of the content*.

59. Unlike the obligations on content producers, content publishers and content hosts, Parties could limit the obligations on content navigators and access providers to using reasonable efforts to disable access in light of what is technically possible.

Recommendation

The entities responsible for tobacco advertising, promotion and sponsorship should be defined widely, and the way in which they are held responsible should depend on their role.

- Primary responsibility should lie with the initiator of advertising, promotion or sponsorship, usually tobacco manufacturers, wholesale distributors, importers, retailers and their agents and associations.*
- Persons or entities that produce or publish media content should be banned from including tobacco advertising, promotion and sponsorship in the content they produce or publish.*
- Persons or entities (such as event organizers, sports people and celebrities) should be banned from engaging in tobacco advertising, promotion and sponsorship.*
- Particular obligations (such as that to remove content) should be applied to other entities, involved in analogue or digital media after they have received notice of the tobacco advertising, promotion and sponsorship.*

Domestic enforcement of laws on tobacco advertising, promotion and sponsorship

Sanctions

60. Parties should introduce and apply effective, proportionate and dissuasive penalties (including fines, corrective advertising remedies and license suspension or cancellation). In order that the penalties imposed be effective deterrents, they should be graded and should be commensurate with the nature and seriousness of the offence(s), including a first offence, and should outweigh the potential economic benefits to be derived from the advertising, promotion or sponsorship.

61. Repeat infringements should incur a highly significant penalty for a manufacturer or responsible entity. In the case of frequent or flagrant infringements, more stringent sanctions should be imposed, including possible imprisonment. Sanctions should also include the obligation to remedy the infringement, for example by:

- removal of the advertising, promotion or sponsorship;
- the publication of the court decision in a manner to be determined by the court and at the expense of the party or parties designated by the court; and
- funding of corrective or counter-advertising.

62. Sanctions should be applied to the conduct of entities and not only to individuals (including corporate entities that can be held responsible for the conduct of related corporate entities outside the territory but with an effect within the territory). Sanctions should also be applied to the conduct of managers, directors, officers and/or legal representatives of corporate entities when those individuals bear responsibility for the corporate entity's conduct.

63. Licensing of tobacco manufacturers, wholesale distributors, importers and retailers can be an effective method for controlling advertising, promotion and sponsorship. A licence would be granted

or renewed only if the applicant could ensure compliance with the legal requirements. In cases of non-compliance, the license could be withdrawn for a certain time or cancelled. For responsible entities not directly involved in producing or selling tobacco, e.g. broadcasters, when such entities are required to be licensed, compliance with the provisions on tobacco advertising, promotion and sponsorship should be included in the criteria for granting, renewing, suspending or revoking a license.

64. If deterrent sanctions are in place, enforcement authorities might be successful in putting an end to illegal practices without court proceedings (e.g. by contacts, meetings, warnings, administrative decisions and periodic penalty payments).

Monitoring, enforcement and access to justice

65. Parties should designate a competent, independent authority to monitor and enforce the laws and entrust it with the necessary powers and resources. This agency should have the power to investigate complaints, seize unlawful advertising or promotion and pronounce on complaints and/or initiate appropriate legal proceedings.

66. Civil society and citizens should be involved in monitoring and effective enforcement of the ban. Civil society, notably entities such as public health, health care, prevention, youth protection or consumer organizations, can be expected to undertake rigorous monitoring, and legislation should specify that members of the public may initiate complaints.

67. In addition, civil law options should be made available to oppose tobacco advertising, promotion and sponsorship. National law should enable any interested person or nongovernmental organization to initiate legal action against illegal tobacco advertising, promotion and sponsorship.

68. The enforcement programme may include a toll-free telephone complaint hotline, an Internet web site or a similar system to encourage the public to report violations.

Recommendation

Parties should introduce and apply effective, proportionate and dissuasive penalties. Parties should designate a competent, independent authority to monitor and enforce the law and entrust it with the necessary powers and resources. Civil society should be involved in monitoring and enforcement of the law and have access to justice

Public education and community awareness

69. In the spirit of Article 12 of the Convention,¹ Parties should promote and strengthen public awareness of tobacco advertising, promotion and sponsorship in all sectors of society, using all available communication tools. Parties should, inter alia, adopt appropriate measures to promote broad access to effective, comprehensive educational and public awareness programmes that underline the importance of a comprehensive ban, educate the public concerning its necessity, and explain why advertising, promotion and sponsorship by the tobacco industry is unacceptable.

¹ "Education, communication, training and public awareness".

70. Engaging the support of the community to monitor compliance and report violations of laws against tobacco advertising, promotion and sponsorship is an essential element of enforcement. In order for members of the community to perform this role, they must be made aware of the problem and understand the law and the ways in which they can act on breaches.

71. Parties should implement public education and awareness programmes, inform members of the community about existing laws on tobacco advertising, promotion and sponsorship, the steps that can be taken to inform the relevant government agency of any advertising, promotion or sponsorship, and the steps that can be taken against a person who has engaged in tobacco advertising, promotion or sponsorship in breach of the law.

Recommendation

Parties should promote and strengthen, in all sectors of society, public awareness of the need to eliminate tobacco advertising, promotion and sponsorship, the laws against it, and the ways in which members of the public can act on breaches of these laws.

International collaboration

72. The effectiveness of efforts to eliminate tobacco advertising, promotion and sponsorship depends not only on the initiatives undertaken by individual Parties but also on the extent to which Parties cooperate in addressing tobacco advertising, promotion and sponsorship. Effective international cooperation will be essential to the elimination of both domestic and cross-border tobacco advertising, promotion and sponsorship.

73. Parties to the Convention already have undertaken commitments with respect to international cooperation, including under Article 13.6 (Cooperation in the development of technologies and other means necessary to facilitate the elimination of cross-border advertising), Article 19 (Liability); Article 20 (Research, surveillance and exchange of information), particularly Article 20.4 (Exchange of publicly available, scientific, technical, socioeconomic, commercial and legal information, as well as information regarding the practices of the tobacco industry); Article 21 (Reporting and exchange of information), Article 22 (Cooperation in the scientific, technical, and legal fields and provision of related expertise) and Article 26 (Financial resources).

74. In addition to the recommendations in these guidelines, the Conference of the Parties also recommends other measures that would contribute to the elimination of cross-border advertising, promotion and sponsorship with respect to facilitation of the exchange of information and other cooperation between Parties. Such measures to domestic tobacco advertising, promotion or sponsorship are also beneficial, recognizing that Parties would benefit from sharing information, experience and expertise in respect of all tobacco advertising, promotion and sponsorship, not only cross-border tobacco advertising, promotion and sponsorship.

APPENDIX

Indicative (non-exhaustive) list of forms of tobacco advertising, promotion and sponsorship within the terms of the Convention

- communication through audio, visual or audiovisual means: print (including newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs), television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (computer games, video games or online games), and other digital communication platforms (including the Internet and mobile phones), theatre or other live performance;
- brand-marking, including in entertainment venues and retail outlets, and on vehicles and equipment (e.g. by use of brand colours or schemes of colours, logos or trademarks);
- display of tobacco products at points of sale;
- tobacco product vending machines;
- Internet sales of tobacco products;
- brand stretching and brand sharing (product diversification);
- product placement (i.e. the inclusion of or reference to a tobacco product, service or trademark in the context of communication (see above), in return for payment or other consideration);
- provision of gifts or discounted products with the purchase of tobacco products (e.g. key rings, T-shirts, baseball hats, cigarette lighters);
- supply of free samples of tobacco products, including in conjunction with marketing surveys and taste-testing;
- incentive promotions or loyalty schemes, e.g. redeemable coupons provided with purchase of tobacco products;
- competitions, associated with tobacco products or brand names, whether requiring the purchase of a tobacco product or not;
- direct targeting of individuals with promotional (including informational) material, such as direct mail, telemarketing, “consumer surveys” or “research”;
- promotion of discounted products;
- sale or supply of toys or sweets that resemble tobacco products;
- payments or other contributions to retailers to encourage or induce them to sell products, including retailer incentive programmes (e.g. rewards to retailers for achieving certain sales volumes);
- packaging and product design features;

- payment or other consideration in exchange for the exclusive sale of a particular product or particular manufacturer's product in a retail outlet, at a venue or at an event, or prominent display of a product;
- sale, supply, placement and display of products at educational establishments, hospitality, sporting, entertainment, music, dance and social venues or events;
- provision of financial or other support to events, activities, individuals or groups (such as sporting or arts events, individual sports people or teams, individual artists or artistic groups, welfare organizations, politicians, political candidates or political parties), whether or not in exchange for publicity, including corporate social responsibility activities; and
- provision of financial or other support by the tobacco industry to venue operators, such as pubs, clubs or other recreational venues, in exchange for building or renovating premises to promote tobacco products or use or provision of awnings and sunshades.

Agenda item 4.1

Elaboration of a protocol on illicit trade in tobacco products

The Conference of the Parties,

Recalling its decision FCTC/COP2(12);

Taking note of the report of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products contained in document FCTC/COP/3/4;

Acknowledging in particular the requests made by the Intergovernmental Negotiating Body concerning the continuation of its work including intersessional activities,

DECIDES:

- (1) that the third session of the Intergovernmental Negotiating Body shall be held from 28 June to 5 July 2009 in Geneva;
- (2) that the Intergovernmental Negotiating Body may decide to hold a fourth session in 2010, if necessary, for the purpose of submitting the text of a draft protocol on Illicit Trade in Tobacco Products to the fourth session of the Conference of the Parties, with the date and venue to be decided by the Bureau of the Conference of the Parties;
- (3) that the second term of the officers of the Intergovernmental Negotiating Body, in accordance with Rule 28.1 of the Rules of Procedure of the Conference of the Parties, shall include the sessions of the Intergovernmental Negotiating Body to be held between the third and fourth session of the Conference of the Parties;
- (4) to agree with the proposal of the Intergovernmental Negotiating Body that regional consultation meetings be held before the third session;
- (5) to encourage Parties to provide extrabudgetary contributions to enable the Convention Secretariat to organize expert reviews, regional consultation meetings and to extend the third session from six, as currently budgeted, to eight working days;
- (6) to request the Convention Secretariat:
 - (a) to make the necessary arrangements, including budgetary arrangements, for the performance of the work of the Intergovernmental Negotiating Body, noting also that the activities referred to in paragraph 1.4 would be delivered subject to the priorities established by the Conference of the Parties;
 - (b) to facilitate the participation of low-income and lower-middle income Parties in the Intergovernmental Negotiating Body.

Agenda item 4.4

Elaboration of guidelines for the implementation of Article 11 of the WHO Framework Convention on Tobacco Control

The Conference of the Parties,

Recalling Article 7 of the WHO Framework Convention on Tobacco Control, which states that the Conference of the Parties shall propose appropriate guidelines for the implementation of Articles 8 to 13 of the Convention; and

Recalling its decision to establish a working group to elaborate guidelines on the implementation of Article 11 (Packaging and labelling of tobacco products) of the Convention, and to present draft guidelines to the Conference of the Parties at its third session (FCTC/COP2(14));

Emphasizing that the aim of these guidelines is to assist Parties to meet their obligations under Article 11 of the Convention and that these are not intended to increase Parties' obligations under this Article,

DECIDES:

- (1) to adopt the guidelines for the implementation of Article 11 of the Convention contained in the Annex to this decision;
- (2) to request the Convention Secretariat to make accessible, via a website, studies, research and other reference material used in the development of the guidelines for implementation of Article 11 of the Convention;
- (3) to request the Convention Secretariat to take into consideration the guidelines for the implementation of Article 11 of the Convention when elaborating a draft of the Group 3 questions of the reporting instrument used by Parties to fulfill their reporting obligations under Article 21 of the Convention;

- (4) to request the Convention Secretariat to invite WHO's Tobacco Free Initiative to establish and maintain, in consultation with those Parties who wish to provide pictorial health warnings and messages, a central, international database of such warnings and messages, which may be either copyright-free or require a license, including those that are granted free of charge;
- (5) to request the Convention Secretariat to encourage the use of the central, international database of pictorial health warnings and messages;
- (6) to request the Convention Secretariat to facilitate, upon request, the granting of licenses between Parties where a license is required for the use of pictorial health warnings and messages;
- (7) to encourage each Party, taking into account its obligations under Article 22 of the Convention, and noting Article 26.5(a) of the Convention, to include in its periodic reports on its implementation of the Convention any action it has taken under paragraphs (4) and (6) of this decision;
- (8) to consider at its fifth session whether to initiate a review of these guidelines.

ANNEX

Guidelines for implementation of Article 11 (Packaging and labelling of tobacco products) of the WHO Framework Convention on Tobacco Control

PURPOSE, PRINCIPLES AND USE OF TERMS

Purpose

1. Consistent with other provisions of the WHO Framework Convention on Tobacco Control and the intentions of the Conference of the Parties to the Convention, these guidelines are intended to assist Parties in meeting their obligations under Article 11 of the Convention, and to propose measures that Parties can use to increase the effectiveness of their packaging and labelling measures. Article 11 stipulates that each Party shall adopt and implement effective packaging and labelling measures within a period of three years after entry into force of the Convention for that Party.

Principles

2. In order to achieve the objectives of the Convention and its protocols and to ensure successful implementation of its provisions, Article 4 of the Convention states that Parties shall be guided, *inter alia*, by the principle that every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke.

3. Globally, many people are not fully aware of, misunderstand or underestimate the risks for morbidity and premature mortality due to tobacco use and exposure to tobacco smoke. Well-designed health warnings and messages on tobacco product packages have been shown to be a cost-effective means to increase public awareness of the health effects of tobacco use and to be effective in reducing tobacco consumption. Effective health warnings and messages and other tobacco product packaging and labelling measures are key components of a comprehensive, integrated approach to tobacco control.

4. Parties should consider the evidence and the experience of others when determining new packaging and labelling measures and aim to implement the most effective measures they can achieve.

5. As provided for in Articles 20 and 22 of the Convention, international collaboration and mutual support are fundamental principles for strengthening the capacity of Parties to implement fully and improve the effectiveness of Article 11 of the Convention.

Use of terms

6. For the purposes of these guidelines:

“legal measures” means any legal instrument that contains or establishes obligations, requirements or prohibitions, according to the law of the relevant jurisdiction. Examples of such instruments include, but are not limited to acts, laws, regulations and administrative or executive orders;

“insert” means any communication inside an individual package and/or carton purchased at retail by consumers, such as a miniature leaflet or brochure.

“onsert” means any communication affixed to the outside of an individual package and/or carton purchased at retail by consumers, such as a miniature brochure beneath the outer cellophane wrapping or glued to the outside of the cigarette package.

DEVELOPING EFFECTIVE PACKAGING AND LABELLING REQUIREMENTS

7. Well-designed health warnings and messages are part of a range of effective measures to communicate health risks and to reduce tobacco use. Evidence demonstrates that the effectiveness of health warnings and messages increases with their prominence. In comparison with small, text-only health warnings, larger warnings with pictures are more likely to be noticed, better communicate health risks, provoke a greater emotional response and increase the motivation of tobacco users to quit and to decrease their tobacco consumption. Larger picture warnings are also more likely to retain their effectiveness over time and are particularly effective in communicating health effects to low-literacy populations, children and young people. Other elements that enhance effectiveness include locating health warnings and messages on principal display areas, and at the top of these principal display areas; the use of colour rather than just black and white; requiring that multiple health warnings and messages appear concurrently; and periodic revision of health warnings and messages.

Design elements

Location

8. Article 11.1(b)(iii) of the Convention specifies that each Party shall adopt and implement effective measures to ensure that health warnings and messages are large, clear, visible and legible. The location and layout of health warnings and messages on a package should ensure maximum visibility. Research indicates that health warnings and messages are more visible at the top rather than the bottom of the front and back of packages. Parties should require that health warnings and messages be positioned:

on both the front and back (or on all main faces if there are more than two) of each unit packet and package, rather than just one side, to ensure that health warnings and messages are highly visible, recognizing that the frontal display area is the one most visible to the user for most package types;

on principal display areas and, in particular, at the top of the principal display areas rather than at the bottom to increase visibility; and

in such a way that normal opening of the package does not permanently damage or conceal the text or image of the health warning.

9. Parties should consider requiring, in addition to the health warnings and messages referred to in paragraph 8, further health warnings and messages on all sides of a package, as well as on package inserts and onserts.

10. Parties should ensure that health warnings and messages are not obstructed by other required packaging and labelling markings or by commercial onserts and inserts. Parties should also ensure,

when establishing the size and position of other markings, such as tax stamps, and markings as per the requirements of Article 15 of the Convention, that such markings do not obstruct any part of the health warnings and messages.

11. Parties should consider introducing other innovative measures regarding location, including, but not limited to, requiring health warnings and messages to be printed on the filter overwrap portion of cigarettes and/or on other related materials, such as packages of cigarette tubes, filters and papers as well as other instruments, such as those used for water pipe smoking.

Size

12. Article 11.1(b)(iv) of the Convention specifies that health warnings and messages on tobacco product packaging and labelling should be 50% or more, but shall be no less than 30%, of the principal display areas. Given the evidence that the effectiveness of health warnings and messages increases with their size, Parties should consider using health warnings and messages that cover more than 50% of the principal display areas and aim to cover as much of the principal display areas as possible. The text of health warnings and messages should be in bold print in an easily legible font size and in a specified style and colour(s) that enhance overall visibility and legibility.

13. If a border is required, Parties should consider excluding the space dedicated to framing health warnings and messages from the size of the health warning or message itself when calculating the percentage of display area occupied by them; that is, the space dedicated to the frame should be added to the total percentage of space occupied by the health warnings and messages, and not included within it.

Use of pictorials

14. Article 11.1(b)(v) of the Convention specifies that health warnings and messages on tobacco product packaging and labelling may be in the form of or include pictures or pictograms. Evidence shows that health warnings and messages that contain both pictures and text are far more effective than those that are text-only. They also have the added benefit of potentially reaching people with low levels of literacy and those who cannot read the language(s) in which the text of the health warning or message is written. Parties should mandate culturally appropriate pictures or pictograms, in full colour, in their packaging and labelling requirements. Parties should consider the use of pictorial health warnings on both principal display areas (or on all main faces if there are more than two) of the tobacco products packaging.

15. Evidence shows that, when compared with text-only health warnings and messages, those with pictures:

are more likely to be noticed;

are rated more effective by tobacco users;

are more likely to remain salient over time;

better communicate the health risks of tobacco use;

provoke more thought about the health risks of tobacco use and about cessation;

increase motivation and intention to quit; and

are associated with more attempts to quit.

16. Pictorial health warnings and messages may also disrupt the impact of brand imagery on packaging and decrease the overall attractiveness of the package.

17. When creating pictures for use on tobacco product packaging, Parties should obtain, where possible, ownership or full copyright of images, instead of allowing graphic designers or other sources to retain copyright. This provides maximum flexibility to use the images for other tobacco control interventions, including mass media campaigns and on the internet. It may also enable Parties to grant licences to other jurisdictions to use the images.

Colour

18. The use of colour, as opposed to black and white, affects the overall noticeability of pictorial elements of health warnings and messages. Therefore, Parties should require full colour (four-colour printing), rather than black and white, for pictorial elements of health warnings and messages. Parties should select contrasting colours for the background of the text in order to enhance noticeability and maximize the legibility of text-based elements of health warnings and messages.

Rotation

19. Article 11.1(b)(ii) of the Convention specifies that health warnings and messages shall be rotating. Rotation can be implemented by having multiple health warnings and messages appearing concurrently or by setting a date after which the health warning and message content will change. Parties should consider using both types of rotation.

20. The novelty effect of new health warnings and messages is important, as evidence suggests that the impact of health warnings and messages that are repeated tends to decrease over time, whereas changes in health warnings and messages are associated with increased effectiveness. Rotation of health warnings and messages and changes in their layout and design are important to maintain saliency and enhance impact.

21. Parties should specify the number of health warnings and messages that are to appear concurrently. Parties should also require that health warnings and messages in a specified series be printed so that each appears on an equal number of retail packages, not just for each brand family but also for each brand within the brand family for each package size and type.

22. Parties should consider establishing two or more sets of health warnings and messages, specified from the outset, to alternate after a specified period, such as every 12–36 months. During transition periods, when an old set of health warnings and messages is being replaced by a new set, Parties should provide for a phase-in period for rotation between sets of health warnings and messages, during which time both sets may be used concurrently.

Message content

23. Using a range of health warnings and messages increases the likelihood of impact, as different health warnings and messages resonate with different people. Health warnings and messages should

address different issues related to tobacco use, in addition to harmful health effects and the impact of exposure to tobacco smoke, such as:

advice on cessation;

the addictive nature of tobacco;

adverse economic and social outcomes (for example, annual cost of purchasing tobacco products); and

the impact of tobacco use on significant others (for example, premature illness of one's father due to smoking and death of a loved one due to exposure to tobacco smoke).

24. Parties should also consider innovative content for other messages, such as adverse environmental outcomes and tobacco industry practices.

25. It is important to convey health warnings and messages in an effective manner; the tone should be authoritative and informative but non-judgemental. Health warnings and messages should also be presented in simple, clear, concise language that is culturally appropriate. Health warnings and messages can be presented in various formats, such as testimonials and positive and supportive information.

26. Evidence suggests that health warnings and messages are likely to be more effective if they elicit unfavourable emotional associations with tobacco use and when the information is personalized to make the health warnings and messages more believable and personally relevant. Health warnings and messages that generate negative emotions, such as fear, can be effective, particularly when combined with information designed to increase motivation and confidence in tobacco users in their ability to quit.

27. The provision of advice on cessation and specific sources for cessation help on tobacco packaging, such as a web site address or a toll-free telephone "quit-line" number, can be important in helping tobacco users to change their behaviour. Parties should be aware that an increased demand for cessation-related services might require additional resources.

Language

28. Article 11.3 of the Convention specifies that each Party shall require that the warnings and other textual information specified in Article 11.1(b) and Article 11.2 appear on each unit packet and package of tobacco products, as well as any outside packaging and labelling of such products, in the Party's principal language or languages.

29. In jurisdictions where there is more than one principal language, health warnings and messages can be displayed on each principal display area in more than one language, or, alternatively, a different language can be used for different principal display areas. Where appropriate, different languages or language combinations could also be used in different regions of a jurisdiction.

Source attribution

30. An attribution statement gives an identified source for the health warnings and messages on tobacco product packaging. There are, however, mixed views about whether they should form part of

health warnings and messages. Some jurisdictions have provided a source attribution statement in order to increase the credibility of the health warnings and messages, while others have decided not to include a source attribution out of concern that it might detract from the impact of the warning. Where a source attribution statement is required, it is often located at the end of the health warning, in a smaller font size than the rest of the warning. Ultimately, Party-specific circumstances, such as beliefs and attitudes among target population subgroups, will determine whether the use of source attribution is likely to increase credibility or reduce impact.

31. If required, a source attribution statement should specify a credible, expert source, such as the national health authority. The statement should be small enough so as not to detract from the overall noticeability and impact of the message, while being large enough to be legible.

Information on constituents and emissions

32. Article 11.2 of the Convention specifies that each unit packet and package of tobacco products and any outside packaging and labelling of such products shall, in addition to the warnings specified in Article 11.1(b), contain information on relevant constituents and emissions of tobacco products as defined by national authorities.

33. In implementing this obligation, Parties should require that relevant qualitative statements be displayed on each unit packet or package about the emissions of the tobacco product. Examples of such statements include “Smoke from these cigarettes contains benzene, a known cancer-causing substance.” and “Smoking exposes you to more than 60 cancer-causing chemicals.” Parties should also require that this information be shown on parts of the principal display areas or on an alternative display area (such as the side of packaging) not occupied by health warnings and messages.

34. Parties should not require quantitative or qualitative statements on tobacco product packaging and labelling about tobacco constituents and emissions that might imply that one brand is less harmful than another, such as the tar, nicotine and carbon monoxide figures, or statements such as “These cigarettes contain reduced levels of nitrosamines.”

35. The above three paragraphs should be read in conjunction with paragraphs 43–45.

PROCESS FOR DEVELOPING EFFECTIVE PACKAGING AND LABELLING REQUIREMENTS

Product category considerations

36. Article 11.1(b) of the Convention requires each Party to adopt and implement effective measures to ensure that each unit packet or package of tobacco products and any outside packaging and labelling of such products carry health warnings and messages. There should be no exemptions for small-volume companies or brands or for different types of tobacco products. Parties should consider requiring different health warnings and messages for different tobacco products, such as cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis and water pipe tobacco, to better focus on the specific health effects related to each product.

Different types of packaging

37. Parties should have a comprehensive understanding of the many different types of tobacco product packaging found within their jurisdiction and should indicate how the proposed health warnings and messages will apply to each type and shape of packaging, such as tins, boxes, pouches, flip-tops, slide and shell packages, cartons, transparent wrappers, clear packaging or packages containing one product unit.

Targeting population subgroups

38. Parties should consider designing warnings targeted at subgroups, such as youth, and adapting the number of health warnings and their rotation accordingly.

Pre-marketing testing

39. Depending on the available resources and time, Parties should consider pre-marketing testing to assess the effectiveness of the health warnings and messages on the intended target population. Pre-marketing testing can permit identification of unintended effects, such as inadvertently increasing the craving to smoke, and assessment of their cultural appropriateness. Consideration should be given to inviting civil society not affiliated with the tobacco industry to contribute to this process. Ultimately, pre-marketing testing can be less costly than changes to legal measures at a later stage.

40. Parties should note that pre-marketing testing need not be long, complex or expensive. Valuable information can be obtained from simple focus groups of the target population, or internet-based consultation is a quick and inexpensive alternative. Pre-marketing testing can be undertaken in parallel with the drafting of legal measures, to avoid undue delay in implementation.

Public information and involvement

41. Parties should inform the public of the proposal to introduce new health warnings and messages. Public support will assist Parties in introducing the new health warnings and messages. Parties should ensure, however, that public information and involvement do not unduly delay implementation of the Convention.

Supporting communication activity

42. The introduction of new health warnings and messages is more effective when it is coordinated with a broader, sustained public information and education campaign. Timely information should be provided to the media, as media coverage can increase the educational impact of new health warnings and messages.

DEVELOPING EFFECTIVE PACKAGING AND LABELLING RESTRICTIONS

Preventing packaging and labelling that is misleading or deceptive

43. Article 11.1(a) of the Convention specifies that Parties shall adopt and implement, in accordance with their national law, effective measures to ensure that tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely

to create an erroneous impression about the product's characteristics, health effects, hazards or emissions, including any term, descriptor, trademark or figurative or other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than others. These may include terms such as "low tar", "light", "ultra-light" or "mild", this list being indicative but not exhaustive. In implementing the obligations pursuant to Article 11.1(a), Parties are not limited to prohibiting the terms specified, but should also prohibit terms such as "extra", "ultra" and similar terms in any language that might mislead consumers.

44. Parties should prohibit the display of figures for emission yields, such as tar, nicotine and carbon monoxide, on packaging and labelling, including when used as part of a brand name or trademark. Tar, nicotine and other smoke emission yields derived from smoking-machine testing do not provide valid estimates of human exposure. In addition, there is no conclusive epidemiological or scientific evidence that cigarettes with lower machine-generated smoke yields are less harmful than cigarettes with higher smoke emission yields. The marketing of cigarettes with stated tar and nicotine yields has resulted in the mistaken belief that these cigarettes are less harmful.

45. Parties should prevent the display of expiry dates on tobacco packaging and labelling, where this misleads or deceives consumers into concluding that tobacco products are safe to be consumed at any time.

Plain packaging

46. Parties should consider adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). This may increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from these and address industry package design techniques that may suggest that some products are less harmful than others.

LEGAL MEASURES

Drafting

47. In drafting legal measures with respect to tobacco product packaging and labelling, Parties should consider issues such as who will be responsible for their administration, the available approaches to ensuring compliance and enforcement and the level or levels of government involved.

Administration

48. Parties should identify the authority or authorities responsible for overseeing implementation of tobacco product packaging and labelling measures. Parties should consider ensuring that the relevant authority responsible for tobacco control matters is the same as that which administers the legal measures. In the event that the administration is made the responsibility of another area of government, the relevant health authority should provide input into label specifications.

Scope

49. Parties should ensure that the packaging and labelling provisions related to Article 11 of the Convention apply equally to all tobacco products sold within the jurisdiction, and that no distinction is made between products that are manufactured domestically, imported or intended for duty-free sale within a Party's jurisdiction. Parties should consider circumstances in which measures would apply to exported products.

Costs

50. Parties should ensure that the cost of placing health warnings and messages, as well as information on constituents and emissions, on tobacco product packaging is borne by the tobacco industry.

Liability

51. Consistent with Article 19 of the Convention, Parties should consider including provisions to make it clear that the requirement to carry health warnings and messages or to convey any other information about a tobacco product does not remove or diminish any obligation of the tobacco industry, including, but not limited to, obligations to warn consumers about the health hazards arising from tobacco use and exposure to tobacco smoke.

Specific provisions

52. Parties should ensure that clear, detailed specifications are provided for in their legal measures in order to limit the opportunity for tobacco manufacturers and importers to deviate in the implementation of health warnings and messages, as well as to prevent inconsistencies among tobacco products. In drafting such measures, Parties should review, inter alia, the following list:

packaging and products (please refer to paragraph 37);

language(s) to be used in mandated text of health warnings and messages and in information on constituents and emissions on packaging, including how languages should appear if there is more than one language;

rotation practice and time frames, including the number of health warnings and messages to appear concurrently as well as specifications of transition periods and deadlines within which the new health warnings and messages must appear;

distribution practices, in order to obtain equal display of health warnings and messages on retail packages, not just for each brand family but also for each brand within the brand family for each package size and type;

how text, pictures and pictograms of health warnings and messages should actually appear on packaging (including specification of location, wording, size, colour, font, layout, print quality), including package inserts, onsets and interior messages;

different health warnings and messages for different types of tobacco product, where appropriate;

source attribution, if appropriate, including placement, text and font (similar detailed specifications as for the health warnings and messages themselves); and

prohibition of promotion by means that are false, misleading, deceptive or likely to create an erroneous impression, in accordance with Article 11.1(a) of the Convention.

Source document

53. Parties should consider providing a “source document”, which contains high-quality visual samples of how all health warnings and messages and other information are to appear on packaging. A source document is particularly useful in the event that the language used in the legal measures is not sufficiently clear.

Adhesive labels and covers

54. Parties should ensure that adhesive labels, stickers, cases, covers, sleeves, wrapping and tobacco manufacturers’ promotional inserts and onserts do not obscure, obliterate or undermine health warnings and messages. For example, adhesive labels might be allowed only if they cannot be removed and are used only on metal or wood containers that hold products other than cigarettes.

Legal responsibility for compliance

55. Parties should specify that tobacco product manufacturers, importers, wholesalers and retail establishments that sell tobacco products bear legal responsibility for compliance with packaging and labelling measures.

Penalties

56. In order to deter noncompliance with the law, Parties should specify a range of fines or other penalties commensurate with the severity of the violation and whether it is a repeat violation.

57. Parties should consider introducing any other penalty consistent with a Party’s legal system and culture that may include the creation and enforcement of offences and the suspension, limitation or cancellation of business and import licences.

Enforcement powers

58. Parties should consider granting enforcement authorities the power to order violators to recall non-compliant tobacco products, and to recover all expenses stemming from the recall, as well as the power to impose whatever sanctions are deemed appropriate, including seizure and destruction of non-compliant products. Further, Parties should consider making public the names of violators and the nature of their offence.

Supply deadline

59. In order to ensure the timely introduction of health warnings and messages, legal measures should specify a single deadline by which manufacturers, importers, wholesalers and retailers must only supply tobacco products that comply with the new requirements. The time allocated need only be enough to allow manufacturers and importers to organize the printing of new packages. It has been considered that a period of up to 12 months from the enactment of the legal measures should suffice in most circumstances.

Review

60. Parties should recognize that the drafting of legal measures for packaging and labelling of tobacco products is not a one-time exercise. Legal measures should be reviewed periodically and updated as new evidence emerges and as specific health warnings and messages wear out. When undertaking periodic reviews or updates, Parties should take into account their experience in using their packaging and labelling measures, the experiences of other jurisdictions, as well as industry practices in this area. Such reviews or updates can help identify weaknesses and loopholes and highlight areas in which the language used in the measures should be clarified.

ENFORCEMENT

Infrastructure and budget

61. Parties should consider ensuring that the infrastructure necessary for compliance and enforcement activities exists. Parties should also consider providing a budget for such activities.

Strategies

62. To enhance compliance, Parties should inform stakeholders of the requirements of the law before it comes into force. Different strategies might be required for different stakeholders, such as tobacco manufacturers, importers and retailers.

63. Parties should consider using inspectors or enforcement agents to conduct regular spot checks of tobacco products at manufacturing and importing facilities, as well as at point of sale, to ensure that packaging and labelling comply with the law. It may not be necessary to create a new inspection system if mechanisms are already in place that could be extended to inspect business premises as required. Where applicable, stakeholders should be informed that tobacco products will undergo regular spot checks at points of sale.

Response to noncompliance

64. Parties should ensure that their enforcement authorities are prepared to respond quickly and decisively to instances of noncompliance. Strong, timely responses to early cases will make it clear that compliance is expected and will facilitate future enforcement. Parties should consider making the results of enforcement action public in order to send a strong message that noncompliance will be investigated and action will be taken.

Complaints

65. Parties should consider encouraging the public to report violations in order to further promote compliance with the law. It might be helpful to establish an enforcement contact point for reporting alleged cases of noncompliance. Parties should ensure that complaints are investigated and dealt with in a timely and thorough manner.

MONITORING AND EVALUATING PACKAGING AND LABELLING MEASURES

66. Parties should consider monitoring and evaluating their packaging and labelling measures to assess their impact as well as identify where improvements are needed. Monitoring and evaluation also contribute to the body of evidence that can assist the efforts of other Parties in implementing their packaging and labelling measures.

67. Monitoring of the tobacco industry's compliance should be initiated immediately after legal measures have come into force and should be conducted continuously thereafter.

Impact on populations

68. It is important to assess the impact of package and labelling measures on the target populations. Parties should consider measuring aspects such as: noticeability, comprehension, credibility, informativeness, recall and personal relevance of health warnings and messages, health knowledge and perceptions of risks, intentions to change behaviour and actual behavioural changes.

Baseline and follow-up

69. Parties should consider adopting strategies to evaluate the impact of packaging and labelling measures both before and at regular intervals after they are implemented.

Resources

70. The extent and complexity of actions to evaluate the impact of tobacco product packaging and labelling measures will vary among Parties, depending on the objectives and the availability of resources and expertise.

Dissemination

71. Parties should consider publishing, or making available to other Parties and to the public, the results gathered from monitoring of compliance and evaluating impact.

INTERNATIONAL COOPERATION

72. International cooperation is essential for progress in such an important, constantly changing area as tobacco control. Several articles of the Convention provide for the exchange of knowledge and experiences to promote progress in implementation, with particular focus on the needs of developing country Parties and Parties with economies in transition. Cooperation among Parties to promote the transfer of technical, scientific and legal expertise and technology, as required by Article 22, would

strengthen the implementation of Article 11 of the Convention globally. One example of such cooperation would be the provision of licences quickly, easily and without cost from Parties to other jurisdictions seeking to use their pictorial health warnings. International cooperation would also help to ensure that consistent and accurate information relating to tobacco products is provided globally.

73. Parties should endeavour to share legal and other expertise in countering tobacco industry arguments against packaging and labelling measures.

74. Parties should consider reviewing the reports of other Parties, pursuant to Article 21 of the Convention, to enhance their knowledge of international experience with respect to packaging and labelling.

Agenda item 4.8

Study group on economically sustainable alternatives to tobacco growing (in relation to Articles 17 and 18 of the WHO Framework Convention on Tobacco Control)

The Conference of the Parties,

Taking into account Articles 17, 18, 20.1(a), 22.1(b) and 26.3 of the WHO Framework Convention on Tobacco Control;

Recalling its decision FCTC/COP/1(17) on the establishment of a study group on alternative crops and its decision FCTC/COP/2(13) on the continuation of this work by the study group on economically sustainable alternatives to tobacco growing;

Noting the report of the study group on economically sustainable alternatives to tobacco growing (document FCTC/COP/3/11);

Considering that the pursuit of alternative livelihoods to tobacco growing should be addressed with a long term sustainable approach and from a development perspective, as it involves health, social, environmental and economic aspects beyond substitution of one economic activity for another;

Reaffirming the commitment of Parties to Article 5.3 of the Convention;

Mindful of the important work being undertaken under the umbrella of the United Nations Ad Hoc Interagency Task Force on Tobacco Control, and especially the broad range of agencies that have recognized expertise in this area, including the United Nations Food and Agriculture Office, the United Nations Development Programme, the United Nations Environment Programme and the World Bank, among others,

DECIDES:

(1) to establish a working group on economically sustainable alternatives to tobacco growing that replaces the study group established by the Conference of the Parties in its decisions FCTC/COP/1(17) and FCTC/COP/2(13). The working group shall be mandated to:

- (a) develop a standardized methodological framework for comprehensive assessment of the viability and sustainability of tobacco growing and alternative livelihoods, including but not limited to alternative cropping systems, taking into account health, social, environmental and economic factors;
- (b) standardize terminology, instruments and variables utilized in this topic for the purpose of the Convention in line with international standards and practices;
- (c) promote the development of studies on the effects of tobacco growing on health, the environment and the social structure in developing country Parties and Parties with economies in transition;

- (d) identify and actively promote the exchange of information and experiences between countries undertaking initiatives to assist farmers in migrating to alternative livelihoods to tobacco growing;
 - (e) assess existing sources of information, research, experiences, best practices and regulations, covering the status of tobacco growing, employment and the role of the tobacco industry, and collect and share those as appropriate;
 - (f) promote synergies and avoid duplication of efforts by identifying and developing mechanisms and areas of cooperation with relevant intergovernmental organizations such as the United Nations Ad Hoc Interagency Task Force on Tobacco Control – especially the International Labour Organization, the United Nations Development Programme, the United Nations Environment Programme, the United Nations Food and Agricultural Organization, the United Nations Industrial Development Organization, the United Nations Office on Drugs and Crime, and the World Bank - and with nongovernmental organizations having relevant expertise in the promotion of sustainable alternative livelihoods to tobacco growing, e.g. alternative cropping systems, etc.;
 - (g) elaborate, based on the above, as deemed appropriate by the working group, policy options and recommendations for implementation of Articles 17 and 18 of the Convention for consideration by the Conference of the Parties;
- (2) to request the working group to present a progress report to the Conference of the Parties at its fourth session, which will include, if possible, a first set of policy options and recommendations for implementation of Articles 17 and 18 of the Convention;
 - (3) to establish initial membership of the working group as follows:
 - Key Facilitators: Brazil, India, Mexico.
 - Partners: Bangladesh, Iran (Islamic Republic of), Lao People's Democratic Republic, Mali, Philippines, Syrian Arab Republic, Thailand, Turkey, United Republic of Tanzania.
 - (4) to set 31 January 2009 as the deadline for Parties to announce to the Convention Secretariat their participation as a Partner in the working group;
 - (5) to invite the relevant intergovernmental and nongovernmental organizations with specific expertise on the matter to participate in the working group, as per request by the Convention Secretariat;
 - (6) to request the Convention Secretariat to make the necessary arrangements, including budgetary arrangements, for the working group to undertake its work and to ensure, in consultation with the Bureau, that Parties have access to the draft text, for example, via a protected web site, and can provide comments before the circulation of the progress report to the Conference of the Parties;

(7) to adopt the timeline set out below:

To make the progress report, as requested, accessible by the Parties for their comments	At least six months before the fourth session of the Conference of the Parties
For submission to the Convention Secretariat for editing and translation	At least three months before the fourth session of the Conference of the Parties
For circulation to the Conference of the Parties	At least 60 days before the fourth session of the Conference of the Parties (Rule 8, Rules of Procedure of the Conference of the Parties)

Agenda item 4.6

Measures that would contribute to the elimination of cross-border advertising, promotion and sponsorship

The Conference of the Parties,

Recalling its decision FCTC/COP2(8) establishing a working group to elaborate guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control and to present recommendations on key elements of a protocol on cross-border advertising, promotion and sponsorship, which would be complementary to these guidelines, and on any other measures that would contribute to the elimination of cross-border advertising, promotion and sponsorship;

Taking into account its decisions FCTC/COP3(XX) and FCTC/COP3(XX);

1. DECIDES:

(a) to take note of the recommendations of the working group on measures that would contribute to the elimination of cross-border advertising, promotion and sponsorship as contained in the Annex to this decision;

(b) to further consider the recommendations at its fourth session;

2. REQUESTS the Convention Secretariat to assess the implications of the recommendations and propose options for further work, and to report to the fourth session of the Conference of the Parties.

ANNEX

Recommendations on measures that would contribute to the elimination of cross-border advertising, promotion and sponsorship

1. In its deliberations, the working group noted that international cooperation is essential to the elimination of both domestic and cross-border tobacco advertising, promotion and sponsorship. The working group was mandated by the Conference of the Parties to provide recommendations on other measures that would contribute to the elimination of cross-border advertising, promotion and sponsorship. These recommendations are provided below.

Recommendations

2. The working group, having taken into account that the effectiveness of efforts to eliminate cross-border tobacco advertising, promotion and sponsorship depends not only on initiatives undertaken by individual Parties but also on the extent to which Parties cooperate in addressing cross-border tobacco advertising, promotion and sponsorship; and that Parties to the Convention have already undertaken commitments with respect to international cooperation, including under Article 13.6 (Cooperation in the development of technologies and other means necessary to facilitate the elimination of cross-border advertising); Article 19 (Liability), Article 20 (Research, surveillance and exchange of information), particularly Article 20.4 (Exchange of publicly available, scientific, technical, socioeconomic, commercial and legal information, as well as information regarding the practices of the tobacco industry); Article 21 (Reporting and exchange of information); Article 22 (Cooperation in the scientific, technical, and legal fields and provision of related expertise); and Article 26 (Financial resources) recommends:

(1) that the questions on Article 13 of the Convention in the reporting instrument adopted by the Conference of the Parties:¹

- be revised to reflect the principal provisions of the guidelines on Article 13 to be adopted by the Conference of the Parties at its third session;
- be revised to include the following question: “Are you precluded by your constitution or constitutional principles from undertaking a comprehensive ban on all tobacco advertising, promotion and sponsorship? If yes, please give details”; and
- be moved from the section “Optional questions” to the section “Core questions”;

¹ Decision FCTC/COP1(14), contained in document A/FCTC/COP/1/DIV/8.

(2) that a web site be set up and facilitated which could be used as a knowledge hub on matters of cross-border advertising, promotion and sponsorship and as a means for notifying instances of cross-border advertising, promotion and sponsorship; relevant material should be regularly uploaded onto the web site. The web site should have, while ensuring the protection of personal data and trade secrets:

- (i) a section accessible only by Parties including:
 - (a) an up-to-date list of Parties' contact points;
 - (b) a register of experts who can provide technical assistance and training on relevant matters; and
 - (c) other information provided by Parties or the Convention Secretariat that is to be shared only with Parties;
- (ii) a section accessible by Parties and observers that includes:
 - (a) a facility for reporting instances of cross-border advertising, promotion and sponsorship; and
 - (b) information provided by Parties or the Convention Secretariat that is to be shared only with Parties and observers but not with the public;
- (iii) a section accessible by the public including:
 - (a) information provided by Parties or the Secretariat that may be shared with the public;
 - (b) evidence of the impact of cross-border tobacco advertising, promotion and sponsorship and the effectiveness of bans on tobacco advertising, promotion and sponsorship; and
 - (c) links to the web sites of other relevant bodies;

(3) that Parties, while ensuring the protection of personal data and trade secrets:

- identify a contact point on matters of tobacco advertising, promotion and sponsorship to the Convention Secretariat and notify the Convention Secretariat of any changes in details;
- when notified by another Party of cross-border tobacco advertising, promotion and sponsorship that appears to originate, or have originated, from its territory, acknowledge the notification and inform the notifying party within a reasonable time of any investigation or other action taken in response to the notification;
- use the web site to share relevant information with other Parties and, as appropriate, observers and the public, particularly in relation to:

- persons or entities responsible for the production, placement and/or dissemination of cross-border tobacco advertising, promotion and sponsorship;
 - new and emerging methods and forms of cross-border tobacco advertising promotion and sponsorship;
 - developments in technology;
 - lessons learnt in dealing with cross-border tobacco advertising promotion and sponsorship;
 - research needs and opportunities;
 - legislation or regulations, including links to such legislation or regulations;
 - breaches, or suspected breaches, of legislation or regulations and the origin of notifications or complaints made;
 - where appropriate, pending investigations or enforcement action;
 - where appropriate, the outcomes of any relevant investigations or enforcement action;
 - jurisprudence, including links to such jurisprudence;
 - education, training or public awareness programmes planned or implemented;
- notify the Convention Secretariat about experts, whether governmental or nongovernmental, who can provide technical assistance and training to Parties on relevant matters;
- (4) that the following tasks be carried out at the international level in a manner to be decided by the Conference of the Parties:
- transmission of a notification, from a Party or observers, of an instance of cross-border tobacco advertising, promotion or sponsorship to the relevant contact point in the Party on whose territory the cross-border tobacco advertising, promotion or sponsorship appears to be originating or to have originated;
 - identification of experts, whether governmental or nongovernmental, who can provide technical assistance and training to Parties on relevant matters;
 - updating Parties on relevant developments, including new and emerging methods and forms of cross-border advertising, promotion and sponsorship and relevant developments in technology, and communicating such developments to Parties and, as appropriate, observers and the public;
 - facilitation of the provision of technical assistance to Parties in respect of cross-border tobacco advertising, promotion and sponsorship;

- assessment of research needs in relation to cross-border tobacco advertising, promotion and sponsorship, and communication of these needs to Parties, research funding bodies and interested researchers;
 - liaison with pertinent bodies, including relevant international and regional intergovernmental organizations and relevant nongovernmental organizations, in respect of implementation of Article 13 of the Convention;
 - coordination of efforts by Parties to find new technologies to assist in eliminating cross-border tobacco advertising, promotion and sponsorship;
 - promotion of public awareness on matters relating to cross-border tobacco advertising, promotion and sponsorship;
 - provision of regular reports on the progress of Parties in implementing Article 13 of the Convention, which may include recommendations for review or amendment of the guidelines on Article 13; and
 - provision of regular reports on the effectiveness of the arrangements established to facilitate international cooperation with respect to cross-border tobacco advertising promotion and sponsorship and on ways in which the effectiveness of these arrangements might be enhanced;
- (5) that observers to the Conference of the Parties be invited to provide relevant information to the Convention Secretariat with respect to cross-border tobacco advertising, promotion and sponsorship, including:
- persons or entities responsible for the production, placement and/or dissemination of cross-border tobacco advertising, promotion and sponsorship;
 - new and emerging methods and forms of cross-border tobacco advertising, promotion and sponsorship;
 - developments in technology;
 - research needs and opportunities; and
 - education, training or public awareness programmes, planned or implemented;
- (6) that the Convention Secretariat examine mechanisms for providing any assistance to give Parties effective access to the arrangements of the kind referred to in subparagraphs (2), (3) and (4), taking into account the particular needs of developing countries and countries with economies in transition, and communicate relevant information to the Parties;
- (7) that an expert group on cross-border tobacco advertising, promotion and sponsorship be established and mandated with the following functions:
- keeping the Conference of the Parties up-to-date on relevant developments in technology, in cross-border tobacco advertising, promotion and sponsorship and in best practices in responding to cross-border tobacco advertising, promotion and sponsorship;

- monitoring and reviewing the guidelines on implementation of Article 13 of the Convention and the arrangements established to facilitate international cooperation between Parties with respect to cross-border tobacco advertising, promotion and sponsorship; and
- reporting to the Conference of the Parties, through the Secretariat, on the performance of its functions.

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