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STAKEHOLDER WRITTEN COMMENTS

on the Chair's Text of a

FRAMEWORK CONVENTION ON TOBACCO CONTROL

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Introduction

In May 1999, the Member States of the World Health Assembly (WHA) unanimously supported a resolution calling for the development of the *Framework Convention on Tobacco Control* (FCTC). The Convention, which is expected to be completed in 2003, will be a legally binding international agreement on tobacco-control measures aimed at reducing tobacco use worldwide. Issues that the Convention and its protocols may address include advertising and promotion; smuggling; the prevention, cessation and treatment of tobacco dependence; co-operation in surveillance and research; the taxation of tobacco products; and economic and agricultural diversification.

In October 2000, a Government of Canada delegation participated in the first round of Convention negotiations. After those discussions, the Chair of the FCTC Intergovernmental Negotiating Body drafted a proposed text for the Convention, which formed the basis for a second round of negotiations from April 29 to May 5, 2001. This Chair's Text (WHO document A/FCTC/INB2/2) can be found on the WHO website at http://www.who.int/wha-1998/Tobacco/INB2/PDFinb2/e2inb2.pdf. A third round of negotiations will be held from November 22 to 28, 2001.

Recognizing that many organizations have a potential interest in tobacco-control issues, the Government of Canada invited the submission of views and perspectives on how the FCTC might best advance international co-operation and support countries in developing their national tobacco-control plans. Specifically, organizations were asked to identify the issues which, in their view, would best be addressed through a convention of this nature, and to comment on all aspects of the proposed Chair's negotiating text, but most particularly on the proposed subject areas for obligations (sections E to L).

A total of 21 organizations[1] – mainly health groups – answered the government's call. Those responding included health professional associations; groups working in the areas of health/youth advocacy, public education and research; and organizations representing labour and industry – including

[1]The Arthritis Society; Canadian Cancer Society; Canadian Nurses Association; Canadian Medical Association; European Cigar Manufacturers' Association; Frontier Duty Free Association; Havana House Cigar & Tobacco Merchants Ltd.; Heart and Stroke Foundation of Canada; Imperial Tobacco Canada Limited; JTI-Macdonald Corporation; National Cancer Institute of Canada; Non-Smokers' Rights Association;, Ontario Flue-Cured Tobacco Growers' Marketing Board; Physicians for a Smoke-Free Canada; Prince Eddy of Prince Edward Island; Inc. Sleep/Wake Disorders Canada; Van Nelle Limited; Voices of Youth; Communications, Energy and Paperworkers Union; Research for International Tobacco Control, International Development Research Centre; and Canadian Council for Tobacco Control.

growers, manufacturers, importers/exporters, distributors and retailers (associations as well as individual organizations). Nineteen respondents submitted comments.

This document is a summary of the main points raised in the submissions, which were wide-ranging and, in some cases, very detailed.

The Government of Canada thanks all those who took the time to submit their comments, and looks forward to continued consultations with stakeholders as the process unfolds.

Additional information on tobacco control and on the FCTC can be found on the following web sites:

Health Canada's Tobacco Control Program
http://www.tobacco-control.com
The World Health Organization
http://tobacco.who.int
The World Bank
http://www.worldbank.org
Clearinghouse
http://www.cctc.ca/ncth

Overview

Sectors with a key interest in tobacco control – health, labour, agriculture, manufacturing, import/export, retail, as well as organizations involved in research, education and advocacy – took the opportunity to have their concerns considered in Canada's preparation for the upcoming FCTC negotiations.

In broad terms, health/social sector respondents emphasized the harmful health effects of tobacco, the importance of focusing on health promotion and prevention, and the need for international coordination, stringent regulation and enforcement. Industry respondents raised such issues as international trading arrangements, commercial free speech, competition in the market place, voluntary compliance codes, and consumers' right to choose. There were areas of apparent accord – e.g., on the need for public education, measures to prevent illegal trade, the importance of providing protection from second-hand smoke, and the prevention of cigarette sales to minors – but differences were evident on how to implement these measures.

A common theme in the health-sector submissions was the need for strong, clear, unequivocal language in the framework. Professional associations, NGOs and advocacy groups alike worried that hard-won victories might be watered down, or innovation stifled, because of weak or ambiguous terms (such as "harmonization") throughout the text. They stressed the need to include "minimum standards" provisions, and to work towards outright (rather than partial or limited) bans in such areas as duty-free sales, and cross-border/domestic advertising. At the same time, they conceded that some flexibility is necessary, given the wide variations in the circumstances and priorities of different countries. They urged that health issues should take precedence over trade/economic issues in international agreements, and they warned against allowing the FCTC process to be sidetracked by issues, such as trademark protection or "counterfeit" cigarettes.

The importance of addressing smuggling at every feasible level was emphasized by health-sector respondents, who supported strong taxation/pricing policies and chain-of-custody provisions to make manufacturers liable when their products appear on the black market. Some health-sector respondents also called for a more generous technical assistance regime, and for tighter compliance and accountability provisions.

Research and health groups supported the development and use of a broad set of common indicators, and for social/economic and policy impact studies to aid in determining best practices. However, there was concern that such obligations might prove onerous for some developing countries, and discourage them from supporting the Convention.

To create a stable funding regime for comprehensive tobacco-control strategies (with investments in evidence-based projects and programs), health-sector respondents recommended the use of tobacco tax revenues, including special levies on tobacco products.

Tobacco industry representatives indicated their willingness to adopt reasonable and practical measures, but remained concerned about supranational regulation and of the prospect of a ban on tobacco use in any form through burdensome regulation. They view harmonization as a raising (rather than a lowering) of the bar, and frequently pointed to the impractical and unrealistic nature of certain provisions – e.g., in the areas of packaging and labelling, and advertising, where they felt that developing countries could not be expected to adopt the same measures as Canada has without a very long lead time.

Cigar industry representatives distinguished their products from cigarettes and thereby wanted to have them excluded from some of the FCTC's more onerous provisions – e.g., potentially costly product-testing regimes, warning size requirements, and certain labelling provisions. They argued that cigar smokers make up only a tiny proportion of smokers worldwide, and that many of the problems associated with cigarette smoking do not apply to their products, their industry or their consumer market.

Parallel "special cases" were advanced by two private-sector associations – duty-free operators and tobacco growers. The duty-free group pointed to its long record of good business practice and its contribution to employment, tourism and the economy, warning that a ban on duty-free tobacco sales at borders and airports would imperil these benefits and send consumers to alternate (often unregulated, untaxed) sources of supply. The tobacco growers described themselves as environmentally friendly land stewards who take pride in their crops, farms and communities, and whose industry – despite its substantial economic and social contribution – has faced intrusive (but largely ineffective) public policy measures aimed at discouraging consumption of a legal product. They stressed the need for government assistance, not just in establishing alternate crops but in marketing them.

In general, industry representatives favour responsible, practical measures that are based on common sense. In their view, global regulation is not necessarily beneficial. Issues are often better regulated at national or local levels of government, and harmonization efforts will not work due to fiscal and economic differences between developing and highly industrialized countries. Further, they are concerned that some provisions of the Convention appear to be in conflict with existing international trading and commercial arrangements, as articulated in WTO agreements and other instruments.

Feedback from Interested Organizations: A Review

The reader should be aware that not every section of the draft text attracted comment. Thus, although the responses are addressed in sequence, some FCTC section headings do not appear in the following review. Where a heading is absent, it means that no comments (or only very minor ones) were received on that section.

Section C. Objective

The importance of stating the FCTC's objective was a primary concern for respondents. Two health organizations pointed out that reducing *prevalence* is not the same as reducing *consumption*. Since both are important goals from a health perspective and interests of simplicity, the amended phrase "reduce [...] tobacco use" was suggested.

Looking at the section more broadly, one group felt that statements about reducing the prevalence of tobacco use and undertaking tobacco-control measures merely identify the *means* to an ultimate end. The proper objective for the FCTC, it was suggested, should be to "protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke." The *means* to this end would include, *inter alia*, addressing transboundary issues and national-level control measures.

A cigar industry representative sought to establish whether the ultimate objective might indeed be to put an end to tobacco use in any form. If so, this should be openly confirmed, and the consequences of prohibition openly debated – a ban through burdensome regulation would deny adults the right to make their own lifestyle decisions.

Section D. Guiding Principles

In general, the health respondents who commented supported the inclusion of this section. One organization, while it questioned the legal status and effect of the Guiding Principles, nevertheless joined other groups in seeking improvements to the section. These included a clearer, stronger, more positive statement of principles overall, the extension of specific principles – e.g., the "minimum standards provision" in D.8 should apply not only to the Convention but also to its Protocols[2] – and the addition

[2] The problem of inadvertently omitting reference to protocols occurs elsewhere in the text, e.g., throughout Section E. One suggestion for ensuring that protocols are covered would be to define "Convention" in the definition section such that protocols are included.

of three new principles, one on access to information about smoking cessation, a second embodying the precautionary principle, and a third emphasizing the importance to a national strategy of activities to prevent youth and other high-risk groups from starting to use tobacco.

A health professional association felt that the four goals of any comprehensive national strategy[3] should be spelled out, either as part of D.1 or in a stand-alone principle. Three other challenged the inclusion of the principle concerning financial aid for displaced tobacco growers and workers. In their view, for WHO to tackle a hypothetical problem which lies outside its mandate risks stalling the FCTC process and perpetuating the myth that successful control measures will produce a worldwide fall-off in tobacco sales/consumption (as opposed to a mere flattening out).

The relationship between tobacco control and international trade generated considerable comment. For their part, health organizations tended to view principle D.5 as being weak and unclear, and they worried that domestic tobacco-control measures might be overturned by, for example, NAFTA or WTO trade tribunal rulings. With this in mind, several alternative approaches/wordings were offered to ensure that global public health protection would take precedence over trade agreements.

While health groups argued that tobacco products should not be treated as "normal goods" in international commerce, respondents from the commercial sector saw the incompatibility between certain FCTC provisions and the international trade regime as grounds for contesting these provisions. They noted, *inter alia*, that duty-free sales are recognized in world commerce,[4] and that their elimination would directly contradict recent decisions to establish international trade conventions recognizing or standardizing the rules.

[3] *Prevention* (to help non-smokers stay smoke-free); *protection* (to protect the health and rights of non-smokers); *cessation*: (to encourage and help those who want to quit smoking); *repositioning* of tobacco products and the tobacco industry consistent with the devastating effects of tobacco use on health and society.

[4] Incorporated into trade norms established by the World Customs Organization in the Kyoto Convention.

Industry representatives were also concerned about the potential for discrimination between WTO and non-WTO members,[5] and the impact on market access of measures inconsistent with WTO Agreements.[6]

A cigar importer/distributor regretted that the Chair's text made no distinction between cigars and cigarettes, thereby implying that the two products carry the same health risks and social detriments. According to this respondent, cigars are a "natural" product with no additives or chemicals used in manufacturing, and most cigar-smokers do not inhale, smoke only occasionally (both documented reasons for difference in disease risks),[7] and exhibit different smoking patterns from cigarette smokers (suggesting a difference in the respective addictive properties). This respondent further stated that life insurance companies consider cigar smokers to be a lower risk than cigarette smokers, and that cigar smokers are older and better educated than cigarette smokers. The company also drew attention to the low prevalence of cigar smokers relative to cigarette smokers in Canada,[8] worldwide and in developing countries where it indicated that cigar-smoking is almost nonexistent. In this importer's view, false assumptions about cigars could potentially lead to the imposition of disproportionate and discriminatory measures on the cigar industry. The company suggested that the FCTC should recognize the difference between cigars and cigarettes and apply different rules to these products.

Another group recommended linking principles D.2 and D.6, in effect extending the scope of the tobacco industry's responsibilities to include the provision of full information about its products' harmful characteristics.

Section E. General Obligations

[5] I.e., if farmers were forced to seek state subsidies (prohibited for WTO members under the WTO Agreement on Agriculture).

[6] For example, provisions on tax harmonization might prejudice imported tobacco products, and prohibitions on advertising, marketing, promotion and sponsorship might give established domestic suppliers a competitive advantage over new foreign suppliers (both contrary to GATT Article III).

[7] National Cancer Institute (U.S.).

[8] Less than 1% of Canadians smoke cigars. Approximately 25% smoke cigarettes.

On the basis that both general and specific obligations appear elsewhere in the text, one organization suggested renaming Section E "Basic Obligations" or "Initial Obligations."

A (re)statement of the specific goals of a national strategy to reduce the use of tobacco products – prevention, protection, cessation and denormalization– was recommended by a health professional organization, which also urged that stronger, clearer, less ambiguous language be used throughout this and all subsequent sections. Open to interpretation, in its view, are such expressions as "where appropriate," "within the means at its disposal," "as relevant," "to the extent possible," and "harmonization."

The word "harmonize" drew comment and rewording suggestions from two other sources. A health NGO, in recommending that it be removed from the entire text,[9] submitted two arguments: not only may harmonization discourage innovation, implementation of new measures, and the "leap frog" approach that has characterized the history of tobacco control,[10] but "harmonizing" the laws and policies of two countries could entail *either* improving the less restrictive provision *or* weakening the stronger one. The downward harmonization of a country's tobacco control measures would contradict the Convention's "minimum standards" guiding principle.

A parallel dilemma arises where countries undertake not to export products that do not conform to their own domestic standards.[11] As one health organization asked: If cigarettes were made in Thailand, packaged with Thai health warnings, would the weaker Thai warnings take priority over the stronger Canadian picture-based warnings? To resolve this, rewording was suggested that would require compliance with *both* countries' standards, provided that in the case of conflict the importing country's standards would prevail, and a new provision was proposed, whereby countries would agree not to challenge one another's tobacco-control provisions. Besides the issue of conflicts, a concern raised over paragraph E.3 was that it might make exporting countries reluctant to adopt any products standards at all.

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[9] Including paragraphs F.1, F.2, G.1, G.1(b), M.4(e).

[10] As an example of rewording, paragraph E.2(b) should read "adopt legislative, executive and administrative measures and cooperate with other Parties in enhancing appropriate policies."

[11] As in paragraph E.3 of the Chair's text.

"Specific Obligations"

One NGO suggested that, as an international treaty, the FCTC and its protocols should focus on transboundary tobacco control issues, while also providing strong endorsement and support for national-level control measures. They suggested that Canada should advocate for effective transboundary measures that can be met via "specific obligations" within the Framework Convention and/or its related protocols.

Section F. Price and tax measures to reduce the demand for tobacco

Responses on this issue came from health-sector and industry sources. Health respondents saw the obligations under the section as being weak and in need of strengthening, especially because price/tax strategies are known to reduce youth smoking. In their view, strong, unequivocal obligations are essential to prevent all high-risk groups from starting to use tobacco products. A simple, strong statement was recommended, to the effect that all such products, wherever produced, should be taxed to the point where price is a barrier, especially for youth. The aim of taxation should be to reduce consumption, and countries should not be deterred from imposing large one-time tax increases, which are often more effective than a series of small, easily absorbed and less noticeable increases.

A cigar-manufacturing association outlined the need for different tax/excise treatment for cigars than other tobacco products. It explained that in the European Union, different minimum excise rates are applied, in recognition of the differences between the cigar and the cigarette/hand-rolled tobacco sectors[12] and other relevant factors – e.g., the absence of major internal market problems related to cigars (cross-border shopping, large-scale fraud), the absence of concerns expressed by the relevant trade bodies, and the very small demand/price cross elasticity between cigars and other tobacco products.[13]

In this section, the word "harmonization" was of concern for health organizations, who called for its deletion from the text. According to one, the wording in the first paragraph, F.1, implies that high tax

[12] Small-scale artisanal production, often in rural areas, with low-skill, high-labour content, covers a wide range of products, caters to a variety of tastes and price ranges, but has recorded a significant decline in consumption levels in recent years (although this was admitted to have levelled off).

[13] European Commission 1995 report concerning the excise duties on tobacco products (COM (95) 285 Final).

jurisdictions should reduce their tax rates, or at least not increase them further. The organization also refuted, with examples, the proposition that harmonizing prices necessarily discourages illicit traffic in tobacco products.[14]

A health advocacy organization pointed out that profitability in organized cigarette smuggling does not stem from differences in taxes or retail price levels between neighbouring countries, since virtually all large-scale, organized cigarette smuggling involves *untaxed* merchandise.[15] The cigar industry representatives did not contest the notion that the elimination of price/tax differences would reduce smuggling. The industry indicated their support and cooperation in efforts to prevent smuggling, the idea of harmonizing tax policies as being totally unrealistic, impractical, and unachievable due to wide differences in national circumstances and priorities. Such a measure would merely provide new opportunities for illegal traders and open up access for smokers to unregulated, untaxed products.

A business association advocated for the duty-free sales sector, describing it as a legitimate and well-respected yet highly constrained and regulated source of tobacco in limited quantities that accounts for only a minor portion of worldwide sales. There is little demonstrable evidence, according to this association, that price alone significantly affects final demand – price increases merely drive consumers to seek out other sources of supply such as lower-priced alternative outlets, which in Canada include discounters, First Nations outlets, high-volume retailers, and a myriad of black and grey market sources. For the travelling public, these unregulated alternatives create a temptation to smuggle.

According to this association, duty-free stores should not be singled out for a ban. It maintained that airport outlets are part of the economic bedrock of international airport authorities, financing a large share of the public's facilities, and that the Canadian Land Border Duty Free Program generates jobs, tax and tourism revenues, nearly $62M a year in direct export sales, and the value of goods and services purchased in the community. In this respondent's view, ending duty-free tobacco sales would not curtail smuggling or sales to minors, but it would endanger any economic benefits attributable to

[14] In Europe, smuggling has often been worse in southern Europe, where tobacco tax rates were lower than in northern Europe. In North America, a carton of cigarettes is almost double the price in New York state as compared with Ontario, and yet there is not any material level of smuggling from Ontario to New York.

[15] For example, a significant portion of the cigarettes smuggled into Spain in the 1980s and 1990s came from Belgium, where cigarette taxes/prices are much higher than in Spain (the product was theoretically en route from the United States to North Africa, and therefore untaxed).

cigarettes sales. Further, it would jeopardize significant long-term investments made by store operators in good faith to comply with government objectives and requirements.

Health organizations felt that countries were unlikely to end duty-free sales without a concrete obligation to do so. They called for an outright ban on the tax-free trade in tobacco products – including duty-free sales at borders and airports, and wholesale trade in untaxed cigarettes – as well as a prohibition on mail order/Internet sales, and international delivery/sending of tobacco products (except inside the trade). They also proposed making manufacturing/export taxes on tobacco products collectible in the country of origin, prior to factory departure.

Another group suggested the use of taxation to influence not just consumer demand but also corporate behaviour, and recommended that the title and text of section F be framed broadly enough not to close the door on this possibility.

Section G. Non-price measures to reduce the demand for tobacco

One health NGO felt that the title of this section should be reviewed, since not all its provisions address the issue of reducing demand.

Once again, problems were raised here with respect to "harmonization," and the removal of this word was recommended. It was noted that "harmonizing" its tobacco product regulations with those of other countries would force Canada to throw out most of the *Tobacco Act* and its associated regulations. Experimentation with different approaches should not be discouraged – for example, in the realm of product content regulation, where consensus was lacking on regulatory means and objectives. On the other hand, where there is clear public consensus on the need for maximum protection (e.g., second-hand smoke, advertising), "maximum protection" – not harmonization – should be stated as the objective.

Passive smoking

Health groups generally supported this section, but called for some fine-tuning. According to one group, there is no scientific evidence that pregnant women are more at risk from second-hand smoke than anyone else. Moreover, it is in the home – the most difficult place to regulate – that young children receive the most exposure. Broader wording was suggested.

One (cigar) industry representative commented on this issue, accepting that environmental tobacco smoke can be annoying and irritating to some people in some situations, and supporting a sensible provision for smokers and non-smokers in public places.

Regulation of contents of tobacco products

While health groups agreed that this issue was important in principle, two considered the provisions to be premature. According to one, Canada should not agree to harmonize (potentially downwards) its product standard regulations by deference to a delegated body. Another, noting that worldwide standards on content are unlikely to be developed in the near future, suggested that the objective of this provision should be reformulated. A more realistic aim might be for the WHO to convene an international forum where approaches to setting national standards could be discussed and pertinent information exchanged.

One industry representative – a cigar manufacturer – believed that regulations requiring lower tar-yield ceilings were unjustified, and that substantial testing of other smoke components would produce no benefit. Instead, the effect would be to reduce competition and consumer choice, and to stimulate trade in unregulated products of inferior quality. Some testing regimes would be so extensive and demanding that only about three laboratories worldwide would be capable of undertaking the necessary analysis – and then only at high cost, forcing closure or brand withdrawal upon many smaller companies/minor brands. This respondent felt that sensible regulation, combined with well thought out voluntary agreements would be more practical than supranational regulation. A cigar importer/distributor asserted that unlike cigarettes, cigars come in many different sizes, shapes, densities and porosities, and that there are no scientifically recognized methods for testing cigar emissions.

Regulation of tobacco-product disclosures

The two health organizations who commented on this provision both favoured making it more stringent. A cigar industry respondent indicated that it had cooperated with the United Kingdom Department of Health in developing a voluntary agreement on additives to be used in the manufacture of tobacco products (i.e., to only use additives from a list permitted by the Department of Health and their scientists ... and then only at the approved levels), and said that it publishes information on additives on its web site. This company stated that it would have no difficulty with a policy of disclosing additives to authorities, provided the commercially confidential nature of the information was recognized and protected.

Packaging and labelling

Canada was clearly seen as a pacesetter in this area. However, respondents differed on what this meant for the FCTC text. For example, a cigar importer took the view that developing countries could not realistically be expected to adopt the same measures as Canada without a very long lead time. For example, while strongly supporting a ban on the deceptive use of terms such as "light" and "mild", they pointed to loopholes in the language that might at once open the door to deceptive market segmentation and close it to the possibility of desirable competition. New wording was proposed that would clearly give national authorities the final say on whether particular health claims were justified. Health groups – while favouring the overall direction of the provisions – suggested a number of refinements to the text.

Concerning health messages, the health-sector supported the idea in principle, but felt the provisions could be improved in various – although not always identical – ways. For example, one respondent called for the adoption of strong warnings similar to the graphic pictorial warnings appearing on Canadian cigarette packages, but several others supported a more flexible provision requiring *some* picture-based aspect for *some* warnings (with warnings to occupy at least 50% of exterior package). Another health organization recommended not only that message content be left for countries to determine domestically, but that such content need not be restricted to health matters. It was felt that, in some countries, financial incentives ("Quit smoking, save money"), religious/historical references, or even a description of the provisions of a new law might work more effectively than health warnings, or at least complement them.

A cigar manufacturers' association deemed unworkable any proposals that did not recognize the differences between different tobacco products. According to this group, cigar packaging comes in a broad range of sizes[16] – thus, any requirement expressed in percentage terms could lead to warnings 20 times the size of those on standardized cigarette packs. Further, if stickers were prohibited, both developing and industrialized countries would be seriously set back in their export trade, since internationally standardized packets – in wide use due to variations in cigar types, specifications and methods of packaging, and small production runs – could not possibly accommodate printed health warnings. Accordingly, this group suggested warnings be placed on stickers, and for an absolute

[16] From 150 cm² to over 3,500 cm².

maximum warning size to be expressed in square centimetres.[17] In conclusion, the association questioned the need for warnings to be directed to cigar smokers, whom are mostly males of mature age, with low and mostly occasional consumption, who are fully aware of the risks associated with smoking.

Two of the health-sector respondents did not support the idea of requiring a statement on packages that sales to minors were prohibited. One noted that the space on packaging is already at a premium, and further, that the measure would risk making tobacco products even more attractive to youngsters. Also rejected was the idea of requiring information about toxic contents in products and smoke yields, given that the products themselves contain no tar/carbon monoxide, and machine-measured smoke yields do not give reliable information on the relative harm of different products.

One health group favoured encouraging countries to examine the issue of generic packaging. Their view was that this would draw attention to an important tobacco control measure without necessarily obligating Parties to adopt it.

Education, training and public awareness

There were relatively few comments on this section, with two health organizations providing input. One – a health association – recommended that health promotion programs should start in the earliest primary grades and be continuously available in schools, addressing the reasons why people use tobacco, motivating them to quit, and generally helping to counterbalance tobacco industry marketing. Each country should be encouraged to identify its own high-risk populations (e.g., children and Aboriginal peoples in Canada) and develop programs to address the concerns of these particular groups. Another health NGO suggested the addition of a new provision encouraging Parties to consider recovering the costs of programming from the tobacco industry (an idea further discussed under Section Q, *Financial Resources*).

[17] To support its position, this association notes that on 28 June, 2000, the European Commission presented an amended proposal for a Directive regarding the manufacture, presentation and sale of tobacco products (COM(2000) 428 final), which takes into account the special features of the cigar industry. In the case of tobacco products other than cigarettes, warning texts could be affixed by means of stickers, provided they were not removable. Further, the absolute size of the warnings is maximized for unit packets intended for tobacco products other than cigarettes. (Note: Canada's *Tobacco Act* regulations also make separate arrangements for cigars, which recognize their size, shape, etc.).

Involving young people in the design and delivery of educational materials would help maximize efforts to reach them, according to another organization. This group noted that knowing the risks and hazards of smoking does not always deter young people from engaging in risky behaviour. In its view, educational efforts should be augmented by more direct interventions via youth culture (music, films etc.). In particular, youth require alternative ways of meeting the needs they fill by using tobacco.

One industry representative, a cigar manufacturer/importer, commented on education issues. This organization indicated that it neither encouraged nor wanted children to smoke, nor did it challenge (or intend to challenge in future) the public health message that smoking is a cause of certain diseases. It also affirmed its support for reasonable, practical regulation aimed at a consistent public health message.

Advertising, promotion and sponsorship

This section attracted considerable negative comment from the health sector. One organization characterized it as the weakest part of the FCTC draft text, while another termed it completely inadequate and its provisions unacceptably weak, stating that it failed to reflect the support at First Intergovernmental Negotiating Body Session by numerous countries for a total ban on advertising and promotion.

Health organizations were upset that the FCTC had opted for a "youth first" strategy. An NGO described this approach as naive, philosophically objectionable and practically impossible to implement, and cited a World Bank report to support the view that limited or partial bans on advertising do not work. In the opinion of this NGO and other health- sector respondents, even constitutional obstacles would not justify backing away from a complete ban.

All health organizations who responded called for an outright ban on advertising. To accomplish this, two possible approaches were suggested: either push for a complete advertising ban "to the full extent allowable under each Party's constitution" (although it might be difficult to gain agreement on this), or include a general obligation to ban all forms of direct and indirect advertising which might a) recruit new users of tobacco products, or delay/prevent users from quitting, b) be misleading, or c) be otherwise harmful to public health.

It was strongly felt that Parties should specifically commit themselves to a complete ban on cross-border advertising. To this end, one NGO suggested that the wording of 2(f) could be strengthened (e.g., "adopting national measures *to prohibit the export of advertising and of promotional and sponsorship materials for tobacco products and brands*, and cooperating with other Parties to phase out cross-border advertising…"). A specific ban of this type – over and above the commitment to "phase out" Internet advertising and the like – would help ensure that implementation is not delayed by discussions about reciprocity. Moreover, "cross-border advertising" should be specifically defined elsewhere in the text, otherwise it might be argued that the provision does not cover spillover advertising – e.g., international cigarette brand advertising appearing in United States media that "spills over" into Canada.

Given that an outright ban might take time to implement, health organizations proposed the implementation of the measures in paragraphs 2.(b) to (e) – e.g., public disclosure of industry expenditures on advertising and promotion; prohibitions on false, misleading or deceptive advertising; and the prohibition of free distribution of tobacco products and incentive promotions – on an interim basis. A cigar industry representative felt that Canada's head start in the area of advertising measures would make it difficult for developing countries to catch up quickly, but did not propose measures for any transition period.

With respect to paragraph G.4, a health organization noted that protocols might not be needed if the relevant provisions were included in the Convention. Nevertheless, it was felt that the Convention should contain a general enabling section authorizing the Parties to adopt protocols.

Section H. Demand reduction measures concerning tobacco dependence and cessation

Health professional associations supported the intent of this section. However, one felt that the section contained too much detail, and recommended that it be broadened and subsumed under *General Obligations*. This association, while acknowledging that activities aimed at smoking cessation are an important part of an overall national strategy, emphasized that prevention is still the most important goal. In a similar vein, another group suggested modifying H.1 such that the goal of promoting cessation clearly took precedence over that of treating dependence (a term that one health NGO recommended replacing with "addiction").

The inclusion of a declaration of intent to cooperate internationally on the affordability of pharmaceutical aids was also recommended. This was acknowledged to be a complex issue, which would need to be framed in broad terms – e.g., "The Conference of Parties shall examine mechanisms to promote the affordability and accessibility of dependence treatment in developing countries."

Section I. Measures related to the supply of tobacco

Illicit trade in tobacco products

Health groups were united on the importance of eradicating smuggling. In their view, eliminating the tax/duty-free regime for tobacco products (or, at least, cigarettes) was vital to the control of this problem, given that untaxed cigarettes were the main source of supply for the black market. But simply prohibiting the tax-free *sale* of tobacco products was not enough – unless all tobacco products/cigarettes, regardless of destination, were taxed at the point of manufacture, a manufacturer in a signatory country could export cigarettes to a subsidiary in a non-signatory country tax-free and the products could then resurface on the black market, (whether in the country of origin or another signatory country). Also recommended was a provision calling on Parties to join forces with customs organizations – nationally and internationally – in the fight against illicit trade.

Health-sector respondents viewed the "chain of custody" principle as essential to smuggling control. Cigarette manufacturers (and other distribution links) should be legally responsible for ensuring that their products do not enter illegal channels, and should cease dealings with any party directly or indirectly supplying the black market.[18] The text should clearly prohibit the use of one country by another as a platform for smuggling.

As well, health respondents called for all legal labelling requirements in the country of destination to be met before tobacco products leave the factory, and for all internationally traded tobacco product packages to bear standardized, coded information – e.g., tax-paid markings.

While generally supporting the measures proposed for the elimination of illicit trade in tobacco products, one industry (cigar) representative pointed out that some modifications to the labelling

[18] I.e., along the lines of the Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes.

requirements would be necessary in the case of cigars. For example, cigars often improve with age – making expiry dates not appropriate, and handmade cigars do not have product batch numbers.

An NGO described counterfeiting (brand piracy) as a marginal phenomenon that should not divert attention from the smuggling of genuine product – a major problem. Reflecting the health-sector view that health should be the focus of the FCTC, it asserted that trademark protection issues should be left to other international instruments and negotiations.

Echoing their earlier recommendations that public health should take precedence over trade in international agreements, two health organizations questioned the need to include paragraph I.2.[19]

Elimination of sales to and by young persons

While agreeing that any comprehensive strategy should emphasize prevention of tobacco use by youth and other high-risk populations, health-sector respondents differed on the specific approaches that should be used, given the impracticality of implementation in some countries.

One organization indicated that countries should be required to enact and strictly enforce regulations prohibiting the sale of tobacco to minors, with substantial fines for violators. Another criticized the subsection as a whole (paragraphs 8 to11) as being extremely weak, and as containing nothing but an emphasis on "age 18 " restrictions which do not work. While indicating that activities to prevent youth smoking were the important elements of a comprehensive national strategy, this organization concluded that in an international treaty, it would not be feasible to include anything more than a general obligation on countries to implement youth-directed preventive programs and strategies. Given the diversity of youth culture worldwide, attempting to specify content would be unrealistic and might only feed into misunderstandings about what actually works, especially in countries that lacked comprehensive tobacco-control policies and might be looking for a blueprint.

Another group questioned the value of spending scarce tobacco-control dollars on enforcing a prohibition on sales to minors. Extremely high compliance would be needed to have any impact on youth smoking. Moreover, public attention would be diverted to the actions of individual retailers

[19] Which provides that measures against the illicit trade of tobacco products shall be transparent, non-discriminatory and implemented in accordance with international obligations.

rather than to the overall social environment. Two organizations felt that the requirement to provide proof of age would be impractical in many countries, as would prohibiting the sale of cigarettes by teenagers in countries with large informal sectors. One of them proposed broadening the text to include not just minors, but consumers (particularly in new markets) who lack access to appropriate health information.

One group took a different approach. It felt that since deterrence measures worked most effectively when there was a strong likelihood of being caught, the FCTC should make it clear that enforcement measures would be strong and well resourced. Both retailers and young people needed to hear public, consistently stated messages about prohibition on retail sales to youth, and to know the threat of enforcement was real. This would discourage retailers from selling tobacco to minors, and, by making it harder for young people to obtain tobacco from legitimate retail sources, deter them from using tobacco. This group conceded, however, that strict enforcement could boost illegal trading.

Licensing

Two respondents – both from the health sector – commented on these provisions. While they favoured a licensing system that encompassed all levels of tobacco manufacturing and distribution, one of them acknowledged that this might not prove to be a cost-effective measure at the retail level, and suggested enshrining the principle that "everything not expressly allowed is prohibited."

Government support for tobacco manufacturing and agriculture

Two organizations – representing tobacco industry workers and growers respectively – commented on this provision and both expressed unease. The union acknowledged both the health damages caused by tobacco products and that such products are still legal substances whose commerce is allowed by governments. It called for those same governments to spend tobacco revenues helping industry workers transfer to other full- time, well-paid union jobs. The Union wanted to ensure that the FCTC addressed the welfare of the workers. According to this union, 25,000 workers (in agriculture, manufacturing, printing and transportation) would be affected in Canada.

The tobacco growers' organization indicated that the production of alternative crops was only half of the equation. The real challenge would lie in marketing alternative crops effectively, given that the marketplace for agricultural goods was either flooded or being supplied by lower-cost imported product (see discussion under D. *Guiding Principles*).

Sections J to R

A health organization felt that many of the obligations contained in sections J to R were ambiguously stated, and open to wide interpretation. It was important to clearly identify those obligations which should be specific in an international treaty and to ensure that they were expressed in unequivocal language.

Section J. Compensation and liability

A health group – commented on the issue of compensation and liability.[20] Referring to unethical practices by tobacco manufacturers, such as the denial of the harmful properties of their product and involvement in cross-border smuggling. This group recommended that strong provisions be included to ensure that the industry is held accountable for its actions. Specifically, it called for an investigation into industry practices, and that tobacco manufacturers be made legally accountable for health care costs attributable to use of their product.

Section K. Surveillance, research and exchange of information

A tobacco-control research group supported the inclusion of this section, while also stressing the need for standardized surveillance methods for tobacco consumption and related morbidity/mortality. This was echoed by a call from an NGO for tobacco-control stakeholders to jointly create standard indicators for tobacco control that would encompass global reporting on tobacco trade/industrial statistics.

The compilation of data on both economic impacts and tobacco-control policies was considered desirable, on the grounds that a strong evaluation component could assist in determining best practice. It was felt that surveillance should focus not just on health indicators, but ones that capture the socioeconomic consequences of tobacco and the impact of interventions (e.g., cessation programs, taxation policies). With a common set of outcome-oriented indicators, countries could regularly assess their own progress in implementing the Convention.

Health-sector organizations commenting on Section P: *Reporting and implementation* indicated that obliging Parties to report on the economic, social and other consequences of strategies adopted, and

[20] No text has yet been drafted for this section. A panel of legal experts, convened by the WHO, prepared a report on potential liability and compensation provisions. The report was made available at the second session of the Intergovernmental Negotiating Body.

on the effectiveness of different measures, would be too burdensome for most developing countries and might only divert the FCTC from its focus on health. (See Section P: *Reporting and Implementation*).

One NGO suggested placing the provision on information exchange (K.3) under Section L: *Scientific, technical and legal cooperation*.

Section L. Scientific, technical and legal cooperation

The tobacco-control research group supported the inclusion of this section, but proposed that technical assistance should extend to providing countries with guidance on translating research results into policy recommendations (e.g., preparation of policy briefs, and interacting with non-government organizations and/or advocacy groups).

Section M. Conference of the Parties

The one comment on this section came from a health NGO which suggested that the word "harmonization" in paragraph 4(e) be replaced by the word "adoption." This view was consistent with the stance taken by a number of groups on the use of the word "harmonization" throughout the text, a major concern being that the use of the term may open the door to a watering down of strategies, policies, legislation, etc., and to a loss of innovation.

Section P. Reporting and Implementation

Several health-sector respondents felt this section needed reworking and refinement. Two objected to paragraphs P.1(c) and (d), which require Parties to report on the economic, social and other consequences of strategies adopted to implement the Convention, and on the effectiveness of measures they have adopted. They felt that these requirements would place a burden on the resources of most developing countries. In addition, they might shift attention from health to economic issues, whereas it was essential that the focus of the FCTC should remain on the health effects of tobacco use.

One NGO remarked that the useful data intended to be captured in paragraph 1(e) could be gathered under paragraph 1(a). If the former were left in, it might be interpreted as requiring countries to notify the Conference of Parties *in advance* of proceeding with any tobacco-control measure (including an imminent tax increase). An additional provision was suggested, requiring countries to collect and submit information on trends in tobacco use. These data, it was felt, would be relatively inexpensive to track.

The enforcement provisions were judged inadequate by two health organizations, who recommended that countries should be specifically required to make their reports public. In addition, a designated entity should be mandated to assess Parties' compliance with the Convention and its protocols at least every four years, and to publicly highlight any failure to comply.

The inclusion of a mechanism whereby private parties might file complaints of noncompliance was deemed to be necessary by a health group. This NGO felt that complaints about noncompliance in a country were more likely to be made by non-government agencies than by other countries. (See also Section R: *Settlement of disputes*).

The same NGO expressed surprise that the only specific assistance to be provided to developing countries was technical support in reporting to the Conference of Parties, a task unlikely to be any country's most urgent priority. It recommended deleting the provision in question and making the language on general financial resources and technology transfer more specific. (see Section Q: *Financial resources*).

Section Q. Financial resources

Negotiating an effective funding mechanism should be a high priority for Canada in FCTC discussions, according to one group. This respondent questioned whether countries would want to agree to potentially costly commitments with no more than a promise of money if rich countries decided to donate to the Conference of Parties. Referring to strong, well-funded programs that have been considered successful in reducing smoking rates in California and Florida, a health professional association called for the implementation of similar programs worldwide. In its view, a sustained and substantial resource commitment would be needed, but it would be worthwhile.

Three possible mechanisms were suggested. A health professional association recommended that all governments commit stable funding for comprehensive tobacco-control strategies, using tobacco tax revenues (including special levies on tobacco products) for this purpose. An NGO favoured encouraging countries to recover implementation costs from the industry. Another group leaned toward imposing an obligatory international tax on imports/exports of tobacco products, administered by the Conference of Parties. This would be a strong incentive for countries to ensure the effectiveness of anti-smuggling measures. Alternatively, Parties could contribute through a funding formula based on:

1) GDP per capita; 2) domestic consumption of tobacco products; and 3) exports of tobacco products.

Section R. Settlement of disputes

Repeating its earlier observation that NGOs are more likely than the Parties themselves to note noncompliance, particularly with respect to domestic obligations, one group proposed that provision be made in this section for private parties to lodge complaints.

Annex A: List of Contributors

1. The Arthritis Society
2. Canadian Cancer Society
3. Canadian Nurses Association
4. Canadian Medical Association
5. European Cigar Manufacturer's Association
6. Frontier Duty Free Association
7. Havana House Cigar & Tobacco Merchants Ltd.
8. Heart and Stroke Foundation of Canada
9. Imperial Tobacco Canada Limited
10. JTI-Macdonald Corporation
11. National Cancer Institute of Canada
12. Non-Smokers' Rights Association
13. Ontario Flue Cured Tobacco Marketing Board
14. Physicians for a Smoke-Free Canada
15. Prince Eddy of Prince Edward Island, Inc.
16. Sleep/Wake Disorders Canada
17. Van Nelle Limited
18. Voices of Youth
19. Communications, Energy and Paperworkers Union
20. Research for International Tobacco Control, International Development Research Centre
21. Canadian Council for Tobacco Control