

**Philip Morris International and Philip Morris USA's  
Comments on the World Health Organizations'  
Framework Convention on Tobacco Control**

**March 15, 2001**

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## OVERVIEW

In response to the Department of Health and Human Services' request (Fed. Reg. 7765 (Jan. 25, 2001)), Philip Morris International and Philip Morris USA respectfully submit their joint comments on the "Chair's Text of a Framework Convention on Tobacco Control" (World Health Organization, International Negotiating Body, A/FCTC/TNB/2, 9 January 2001) (the "Chair's Text").

At a global level, we share the World Health Organization's desire to make progress through a Framework Convention on many of the issues addressed in the Chair's Text. At a Member State level, we likewise remain committed to working with governments, civic and international organizations, and the public health community to find sensible and effective regulatory solutions that address complex tobacco issues. Indeed, we are already working with governments around the world on regulatory solutions and continue to implement our own voluntary initiatives to address many of these issues. No matter what happens with the Framework Convention, we intend to continue these initiatives. We have previously made submissions to WHO regarding these matters, and have published a position paper outlining our views, the reasons for them, and the actions we have taken in support of them. All of this material is available on the Internet at [www.pmfctc.com](http://www.pmfctc.com).

The Chair's Text lists as its ultimate objective to "continually and substantially . . . reduce the prevalence of tobacco use" on a worldwide basis. Given WHO's status as a public health organization, this is an appropriate objective for the Framework

Convention, so long as it is pursued through measures that respect and preserve the right of adults, if they wish, to smoke cigarettes that they enjoy.

Our business objective is to responsibly sell quality tobacco products to adult smokers. We believe that tobacco consumption is a legitimate choice adults should be free to make despite the attendant risks. If public health measures to prevent minors from smoking and to provide strong, consistent public health messages about the health effects of smoking lead to a reduction in adult smokers in the future then we say, "so be it". In our view, there is nothing inconsistent between a public health objective of encouraging an overall reduction of tobacco consumption, on the one hand, and our business objective of selling quality tobacco products to those adults who nevertheless choose to use them, on the other.

Strong and effective regulation of tobacco will achieve legitimate and laudable public health goals. It will be a benefit to society and to adult smokers everywhere. We also believe that strong and effective regulation -- including many of the measures proposed in the Chair's text -- will be good for our business. It will provide the stability and predictability inherent in knowing the rules, knowing that the rules are applicable to everyone, and knowing that compliance with the rules will be enforced. It will hold all industry participants to the same standards of appropriate conduct. Moreover, we believe that regulation can provide a framework that will guide the development, evaluation, marketing and sale of reduced risk products that our research and product development efforts and the efforts of others have the potential to offer.

In developing an international treaty on tobacco control, we urge WHO and its Member States to apply the following four fundamental principles: (1) smoking-related

decisions should be made on the basis of a consistent public health message; (2) effective measures should be taken to prevent minors from smoking; (3) the right of adults to choose to smoke should be preserved; and (4) all manufacturers of tobacco products should compete on a level playing field. We encourage Member States to adopt measures that are based on these principles, and we believe that WHO can and should have an active role in the development of tobacco control measures.

In this document, we provide our comments on the Chair's Text. We first address the stated objectives and guiding principles of the Framework Convention. We then discuss individual provisions of the Chair's Text. In doing so, Philip Morris International and Philip Morris USA express our view that Member States should support many of the provisions of the Chair's Text, including proposals to (1) provide for consistent government health warnings and other public health information to adult smokers; (2) mandate responsible marketing practices for tobacco products; (3) impose reasonable restrictions on public smoking; (4) combat the smuggling and counterfeiting of tobacco products; and (5) develop internationally accepted standards for disclosing and regulating tobacco product ingredients and measuring or calculating specific smoke constituents, as well as addressing reduced-risk tobacco products.

We also express our opinion that Member States should request modification of certain provisions in the Chair's Text because they fail to recognize the principle of adult choice. Regulatory frameworks should balance legitimate public health concerns with both the right of adults to engage in legal, but harmful, behaviors, and the potential adverse impact of ill-considered regulations. While it is appropriate for governments and health authorities to identify health risks, and strongly *encourage* people to avoid

behaviors such as tobacco consumption, we do not believe that they should *prohibit* adults from choosing to smoke -- or from having a choice of tobacco products. Simply put, we think that the Framework Convention must recognize, and reflect the reality, that smoking is -- and should remain -- an adult choice

Accordingly, we believe that Member States should oppose provisions that (1) support an agenda leading to a ban of tobacco products; (2) establish bureaucratic rules that would make it impossible, as a practical matter, for manufacturers to provide adult smokers with affordable, high-quality cigarettes that they enjoy; (3) prevent adult smokers from receiving truthful and non-misleading information about different brands of tobacco products; (4) punish, stigmatize or demean smokers for the choices that they have made; or (5) foster continued acrimony rather than solutions that governments and industry members can pursue together.

Philip Morris International and Philip Morris USA welcome this important policy discussion on tobacco control. Some have advocated that tobacco companies and other industry participants should be excluded from discussions relating to the proposed global treaty. But, as stated in the Chair's Text, "[t]he participation of all elements in civil society is essential to achieving the objective of this convention." If this Framework Convention is to lead to meaningful policy, all of the affected stakeholders, including manufacturers, growers, wholesalers, retailers, and other stakeholders, must be brought into the process to allow a full and robust discussion of the issues. As responsible manufacturers of tobacco products, we believe we have much to offer WHO and its Member States as they consider the Framework Convention.

## SPECIFIC POSITIONS AND BACKGROUND ON THE CHAIR'S TEXT

### A. DEFINITIONS – PRODUCTS COVERED

*The comments in this section address §B. of the Chair's Text.*

- **Definitions:** The Chair's Text states that "definitions" will be formulated at a later session of the International Negotiating Body.

**Position:** The Chair's Text does not include a section defining "tobacco products." We believe the Convention should explicitly state that it covers – and national tobacco regulations must extend to – all tobacco products, including cigarettes, roll-your-own tobacco, kreteks, "bidis", and the like.

### B. OBJECTIVES AND GUIDING PRINCIPLES.

*The comments in this section address §§ C. & D. of the Chair's Text.*

- **Reducing Tobacco Use to Advance Individual and Public Health.** Sections C. & D.1. "Reducing the current impact, and halting the growth, of tobacco consumption" is the ultimate objective of the Convention. The Chair's Text states that this objective is "crucial in protecting the health of individuals, as well as national and global public health, and requires comprehensive multisectoral national actions and coordinated international responses."

**Position:** As stated above, we believe that this is an appropriate guiding principle for Member States to retain in the Convention.

**Background:** Seeking to reduce adult tobacco consumption through encouragement of voluntary demand reduction is, of course, a valid public-health objective. However, such a reduction should not be coerced. Instead, this objective should be pursued through means that recognize and respect adults' right to smoke if they wish. Consistent with the principle of adult choice, we believe that it is appropriate for governments to enact reasonable regulations and to fund programs to address public health concerns regarding smoking and tobacco use through public-health efforts focused on education, youth smoking prevention, and cessation. Strong efforts must continue to be made to make sure that minors do not use tobacco.

- **Information about Tobacco Products.** Section D.2. "Every person should be fully informed about the addictive and lethal nature of tobacco consumption . . ."

**Position:** We believe that this is an appropriate guiding principle for Member States to retain in the Convention.

**Background:** We strongly believe there should be a single, consistent public health message on the role played by cigarette smoking in the development of disease in smokers, and on smoking and addiction. We agree with the overwhelming medical and scientific consensus that cigarette smoking causes lung cancer, heart disease, emphysema and other serious diseases in smokers, and is addictive.

- **Adequate Protection from Exposure to Tobacco Smoke.** Section D.2. "Nonsmokers should be adequately protected from exposure to tobacco smoke."

**Position:** We believe that this is an appropriate guiding principle for Member States to retain in the Convention.

**Background:** We support efforts by governments and the private sector to adopt reasonable measures so that nonsmokers -- particularly children -- are not exposed to unwanted secondhand smoke in public places. Further, we believe that mandatory smoking restrictions (and, in some cases, bans) are appropriate in certain contexts.

- **Technical Cooperation.** Section D.3. Recognition of importance of providing technical cooperation in establishing and implementing effective tobacco control programs given limited public health resources.

**Position:** We do not have a position on this proposal. We believe that this issue most appropriately resides with Member States.

- **Financial Assistance for Tobacco Growers and Workers.** Section D.4. Recognizing the importance of providing financial assistance to aid the transition of tobacco growers and workers.

**Position:** We would urge all Member States to ensure that tobacco growers and workers are not unfairly impacted by the adoption of the proposed Framework Convention. We also believe that farmers should be free to make their own decisions regarding the crops they choose to grow.

**Background:** We are concerned about the impact of the proposed Framework Convention on tobacco growers and workers throughout the world. Although it has been suggested that investments made by nations in tobacco production could be readily transferred to crops of equal or greater profitability, the impracticability of substituting other crops for tobacco rests both on tobacco's unique advantages and on the difficulties inherent in producing and marketing the suggested alternatives.



- **Trade Nondiscrimination.** Section D.5. “Tobacco-control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade.”

**Position:** We believe that Member States should retain this proposal in the Convention.

**Background:** Unjustified discriminatory actions, such as higher taxes or more stringent testing and disclosure requirements for imports, are not permissible under World Trade Organization rules. The rules exist to allow governments to take legitimate actions to impose health-related measures that might impact international trade in tobacco products, provided those measures do not arbitrarily or unjustifiably discriminate against foreign products or provide disguised protections to domestic goods.

- **Tobacco Industry Liability.** Section D.6. “The tobacco industry should be held responsible for the harm its products cause to public health and the environment, with each Party determining the scope of such responsibility within its jurisdiction.”

**Position:** We believe that Member States should delete this provision

**Background:** WHO’s proposal to adopt special “liability and compensation” provisions to promote litigation against tobacco companies is unprecedented in both scope and application, unwise public policy, and unfair to the millions of people worldwide who depend on the tobacco industry for their livelihood. Because litigation, by its very nature, is adversarial, it cannot facilitate constructive discussion and resolution of important tobacco regulation issues. Rather, litigation only adds to the conflict and rancor and is a hindrance to the resolution of important public health issues.

- **Participation of All Elements of Civil Society.** Section D.7. “The participation of all elements in civil society is essential in achieving the objective of this convention.”

**Position:** We believe Member States should retain this proposal in the Convention and believe that this is an appropriate guiding principle for WHO and Member States.

**Comments:** Allowing affected stakeholders, including manufacturers, growers, wholesalers, retailers, and the public health community, to attend and participate in future Framework Convention proceedings is essential to ensure that the Convention will be effective. As experts in this field have recognized, attempting to craft an international agreement that regulates an industry without drawing on the expertise and experience of that industry is a shortsighted and flawed approach. Moreover, in recent years, other international bodies have made it their standard practice to allow industry representatives to participate actively in negotiating sessions relating to

agreements aimed at regulating the industries. We are convinced that we can assist WHO with technical issues relating to the Framework Convention, and that, as described in this paper, we support many of the stated objectives in the Chair's Text.

- **Convention as Minimum Standards. Section D.8.** Convention provisions are minimum standards, and Parties are encouraged to implement additional measures.

**Position:** We believe that Member States should retain this proposal in the Convention.

**Background:** We note Member States' strong support for this provision and believe that Member States should retain the ability to adopt national measures that respond to local concerns that may exceed the requirements of the Convention. However, harmonization on some issues such as ingredients disclosure and criteria for reduced risk is important to provide consistent information to adult smokers in all markets and to reduce the burden of differing and potentially inconsistent regulatory requirements on manufacturers.

**C. PROVISIONS REQUIRING NATIONAL TOBACCO REGULATION**

*The comments in this section address Section E 1-2 of the Chair's Text.*

- **National Tobacco Control Measures.** Sections E.1.-2. Requires each Party to develop, implement, and enforce national tobacco control programs, including where appropriate through the harmonization of policies with other parties.

**Position:** As indicated throughout this document and in our previous submissions to WHO, we support a wide range of tobacco regulations in every market where we do business.

**D. PROVISIONS GOVERNING EXPORTS OF TOBACCO PRODUCTS**

*The comments in this section address § E.3 of the Chair's Text.*

- **Exports.** Section E.3. Requires Parties to regulate and prohibit the export of tobacco products that do not conform to the exporting country's domestic standards.

**Position:** We believe that Member States should delete this provision.

**Background:** Any requirement that is applicable to exported products, but not to those products produced domestically, will only serve to provide manufacturers with an incentive to move their manufacturing operations to another location, with resulting dislocation of jobs and other adverse consequences. Worldwide uniformity of standards will not be achieved through such requirements, but rather through the harmonization of meaningful standards for all tobacco products produced worldwide.

## **E. PROVISIONS REGARDING TAXATION AND PRICING**

*The comments in this section address § F of the Chair's Text.*

- **Increase Taxes on Tobacco Products.** Section F.2.(b)-(c). Proposes to impose additional taxes on tobacco products with the goal of a stable and continuous reduction in tobacco consumption.

**Position:** We believe that Member States should delete this provision.

**Background:** Cigarettes are already among the highest-taxed consumer products in the world, with taxes comprising a large percentage – and often the majority – of the retail price in many countries. Burdensome levels of taxation should not be used to attempt to make adults stop smoking, or to fund government expenditures from which everyone benefits.

- **Harmonization of Tobacco Product Prices.** Section F.1. Proposes using taxes to achieve progressive harmonization of tobacco product prices.

**Position:** We believe that Member States should delete this provision.

**Background:** Harmonization of prices at the global level simply is not practical and would not help WHO meet its stated goal of “discouraging illicit traffic in tobacco products.” The harmonization of tobacco taxes globally would not lead to price harmonization, because the costs of production and distribution vary greatly from market to market, variations in exchange rates contribute to price differences, and nations levy taxes in a variety of different ways. Moreover, to the extent that “harmonization” of either prices or taxes will lead to increased prices, such action actually would widen the price gap between legitimate and contraband/ counterfeit cigarettes. Such a widening of the price differential is likely to increase the incentives to manufacture and distribute contraband or counterfeit tobacco products for criminal purposes.

- **Tax Free and Duty Free Sales.** Section F.2.(a). Prohibits tax-free and duty-free sales of tobacco products.

**Position:** We believe that Member States should delete this proposal.

**Background:** We support the World Bank's recommendation that cigarette packs be marked as duty/tax free. A carefully regulated, monitored and enforced duty-free system should effectively prevent the diversion of duty- or tax-free products into free

circulation in domestic commerce. Moreover, we do not believe that abolishing travelers' duty-free allowances would significantly reduce contraband or limit opportunities for criminals. Such abolition would ignore the causes of diversion. It would also ignore alternative and highly lucrative sources of contraband product: low cost tax-paid product and counterfeit product.

We also support recommendations of leaders in the customs enforcement community who have called for the computerization of government systems controlling the movement of duty-suspended goods to help such authorities monitor and track shipments, thus reducing the opportunities, through different types of fraud, for the diversion of duty-suspended product into domestic commerce.

## F. PROVISIONS RESTRICTING PUBLIC SMOKING

*The comments in this section address § G.1(a) of the Chair's Text*

- **Public Smoking Restrictions. Section G.1(a).** Requires each Party, to the extent possible within its means and capabilities, to harmonize measures at the appropriate governmental level that provide for the systematic protection of individuals from ETS with particular attention to special risk groups.

**Position:** We encourage Member States to support this provision, and would look forward to working with them on ways to implement it in a reasonable way to minimize unwanted secondhand smoke in public places.

We also believe that the Convention should recognize that decisions about public smoking are generally best left to individual proprietors, each of whom has an economic incentive to provide a comfortable environment for nonsmokers and smokers alike.

**Background:** Government agencies have concluded that environmental tobacco smoke ("ETS") causes disease -- including lung cancer and heart disease -- in nonsmokers; and many people have health concerns regarding ETS. In addition, we believe that because of concerns relating to conditions such as asthma and respiratory infections, particular care should be exercised where children are concerned; and smokers who have children -- particularly young ones -- should seek to minimize their exposure to ETS.

Because of these health concerns, and also in recognition of common courtesy, we support efforts by governments and the private sector to adopt reasonable measures so that nonsmokers -- particularly children -- are not exposed to unwanted environmental tobacco smoke in public places. Mandatory smoking restrictions (and, in some cases, bans) are appropriate in certain contexts. We also strongly support -- through a variety of actions and programs -- options designed to minimize unwanted ETS, while still providing adults with pleasant and comfortable places to smoke.

**G. PROVISIONS REGULATING THE PRODUCT, INCLUDING INGREDIENTS, CONSTITUENTS, AND REDUCED-RISK**

*The comments in this section address §§ G.1.(b)-(d) and § E.3 of the Chair's Text.*

- **Our General Position:** We believe that Member States should support provisions that call for the reasonable regulation of tobacco products. Further, we hope that public health officials and manufacturers, working together, can make progress in defining the criteria that would identify technologies that have the potential of offering adult smokers reduced risks.

In considering product regulation, however, the principle of adult choice must be recognized. This principle is not limited to the issue of whether or not tobacco products should remain legal for adults. We believe that adult smokers should continue to have a wide variety of brand choices. Regulation should ensure that tobacco products do not *increase* the risks associated with tobacco use, and that adult smokers are provided with truthful and non-misleading information about the available brand choices. Regulation should also be used to assist in the development of reduced risk products. But regulation should not be used as a means to impose requirements that would make tobacco products unpalatable to adult smokers.

- **Regulation of the Contents and Design of Tobacco Products. Section G.1.(b).** Requires Parties to adopt standards for regulating the contents of tobacco products, including the testing, measuring, designing, and manufacturing of such products; and to cooperate in the development and harmonization of standards for these purposes.

**Position:** We believe that Member States should retain this proposal to the extent that it requires them to promulgate standards regarding the testing, measuring, and manufacturing of tobacco products. Appropriate standards could be developed by WHO, working with Member States, the public health community, and other stakeholders, including tobacco product manufacturers. For example, we believe that the treaty could direct a respected, qualified scientific body to develop:

- a standard for detailed cigarette ingredient disclosure (while protecting our proprietary “brand recipes”) that could practically be adopted by all signatory nations;
- global standardized testing methods for evaluating tobacco product ingredients, to determine whether the use of any of them increases the inherent risks of smoking (including by increasing addictiveness); and

- a global standardized test method for measuring or calculating cigarette smoke constituents, and develop recommendations to signatory countries as to how the resulting information should be disclosed to adult smokers.

We believe, however, that Member States should oppose the idea of mandatory “performance standards” because they would unreasonably limit brand choices for adult smokers.

**Background:** There are many ways that an international convention could assist Member States on these subjects. The need for uniform, global standards is evident in many areas.

For example, we support regulations that would enable governments to review and approve the use of ingredients in cigarettes to ensure that the ingredients added to cigarettes do not increase the inherent health risks of smoking, including increasing addiction. However, regulation in this area should not be utilized to prohibit the use of an ingredient simply because it adds to the taste or aroma of the cigarette.

Similarly, we support regulations that would measure or calculate smoke constituents using standardized and commercially feasible test methods and disclose meaningful information about them to the public. But we oppose measures that would impose mandatory changes in the inherent composition of tobacco products that would make products unpalatable to adult smokers.

- **Reduced-Risk Tobacco Products.**

**Position:** We believe that Member States should include a provision in the Convention encouraging Member States to work with WHO to establish standards with respect to the development and responsible marketing of reduced risk tobacco products.

**Background:** There is no safe cigarette. We are committed to developing and responsibly marketing products that may offer smokers reduced health risks as compared to traditional cigarettes. We believe that the best approach is for government regulators to decide what is in fact “reduced risk”, and what communications are appropriate on this subject. Therefore, we believe that Member States should support a treaty provision encouraging Member States to work with WHO to help establish standards for determining if certain tobacco products do in fact present significantly reduced risks, and to help ensure that adult smokers have access to accurate information about such products.

- **Tobacco Product Disclosures. Section G.1.(c).** Requires Parties to require manufacturers to make disclosures to the government, “including all ingredients and



additives, and major constituents of tobacco smoke” and to promote the availability of this information to the public.

**Position:** We believe that Member States should retain this proposal in the Convention.

**Background: Ingredients.** We have provided, and have no objection to providing, detailed information to governments about cigarette ingredients (also referred to as “additives”), so long as that information is afforded the confidential treatment necessary to protect the proprietary information in our “brand recipes” from public disclosure to our competitors.

**Tar and Nicotine Yields.** We believe that adult smokers should be able to choose from a wide range of brands whose yields are measured by a standardized method. At the same time, we recognize government and public health concerns about the way in which this information is presented to adult smokers. We advise visitors to our web sites that the actual intake of these constituents will vary depending on how they hold and smoke their cigarette.

We also support the establishment of a process that will lead to one global standardized test method for determining tar and nicotine yields, as well as regulations designed to describe the limitations of standardized tar and nicotine test methods and to advise adult smokers of these limitations. In addition, we support measures to encourage public health authorities to work with the tobacco industry to determine whether lower yield products in fact reduce exposure and risk to smokers.

**Other Smoke Constituents.** In addition to tar and nicotine yield disclosures, we support legislation that would enable governments to require the disclosure of information about individual smoke constituents in cigarette smoke, as long as the information can be generated according to a standardized and commercially feasible test method or reliably calculated on the basis of the test results. Testing standards must be based on sound scientific principles and should be recognized by international standard setting bodies.

- **Use of Tar Descriptors.** Section G.1.(d)(i). Requires Parties to ban the use on product packages of terms, including “low tar,” “light,” “ultra light,” “mild,” and “similar terms,” which “have the aim or the direct or indirect effect of conveying the impression that a particular tobacco product is less harmful than [another tobacco product].”

**Position:** We believe that Member States should modify this proposal to call for uniform regulation, not prohibition, of the use of descriptors.

**Background:** We believe that adult smokers should be able to choose from a wide range of brands whose tar and nicotine yields are measured by a standardized test method. We also believe that manufacturers should be permitted to use descriptors

such as "full flavor," "light," "ultra light" and "suave" to describe brand styles with differing taste characteristics and reported tar and nicotine yields. At the same time, we recognize government and public health concerns about the way in which this information is presented to adult smokers.

However, consumers should understand the limitations of descriptors and standard tar and nicotine yield measurements to which they relate. For that reason, we support measures that would require manufacturers to apply descriptors in a uniform manner within each market, with a specific descriptor consistently signifying specific ranges of reported tar and nicotine yields. We also support measures to remind consumers that there is no such thing as a safe cigarette, and that a lower reported tar and nicotine yield does not indicate that one brand style is safe, or safer than other brand styles.

## H. PROVISIONS ADDRESSING WARNINGS AND STATEMENTS ON PACKAGES

*The comments in this section address the warning label requirements in § G.1.(d)(iv) and related aspects of §§ G.1.(c) & (d) of the Chair's Text.*

- **Package Warnings.** Section G.1.(d)(iv). Requires each tobacco product package to bear a general health warning, including a picture or pictogram, in accordance with an Annex to the Convention. The warnings must indicate that sales to minors are prohibited; provide clear information about the tar, nicotine, and carbon monoxide yields of the brand; and appear in the principal language or languages of the relevant country.

**Position:** We believe that Member States should support this provision to the extent that it would require cigarette manufacturers to place government-prescribed health warnings on any package in which those tobacco products are available for sale to adult smokers. WHO should work with Member States to recommend the text of the warning messages, and they should periodically revise the required text in light of any changed circumstances. Moreover, we believe Member States should expand this proposal to cover warnings in cigarette advertisements. However, it is our view that Member States should delete the references in the provision to graphic warnings.

**Background:** We support a single, consistent public message on the role played by cigarette smoking in the development of disease in smokers, and on smoking and addiction. Further, we believe that it would be appropriate for WHO to recommend the specific text that signatory nations could adopt for their cigarette health warnings, and to reevaluate periodically those recommendations in light of evolving developments.

We believe that Member States should support requirements that warning statements appear in the official languages of Member States, so long as all of those statements are confined to a reasonable amount of space, as discussed below, and continue to permit manufacturers to use trademarks and other means to communicate differences in brands to adult smokers

We believe that Member States should oppose language in the provision that would require the use of graphic or "shock" images that disparage cigarette adult smokers or make the product's packaging repulsive. We believe that such images are not designed to educate, but rather to repel and humiliate individuals for the choices they have made. Governments have many other avenues of communication available to them to display graphic images as part of their own educational campaigns regarding the health effects of smoking.

- **Amount of Package Space Devoted to Warnings and Other Government-Prescribed Information.** Sections G.1.(c) & (d). The current draft does not specify any formatting requirements for package warnings, arguably leaving those determinations to be made in an Annex to the Framework Convention.

**Position:** We would ask Member States to support the provisions in Sections G.1(c) and (d) to the extent that they require manufacturers to devote a reasonable amount of space on product packages to government-prescribed warnings and other health-related information.

**Background:** Governments should mandate a clear and conspicuous statement of government-prescribed warnings, as well as other health information on or in tobacco product packages and in advertisements. We do not oppose proposals to devote reasonable space to warnings, so long as they continue to permit the communication of commercial trademarks and other information that helps consumers distinguish one brand from another. However, in order to be clear and readable, warnings do not need to dominate cigarette packages. Unreasonably large warning sizes, in our view, would gratuitously infringe upon our trademarks. Further, it is not necessary for the government to seek to dominate tobacco product packages with warnings given the many other avenues available to the government to convey that information to consumers.

## **I. EDUCATION, SMOKING CESSATION, EXCHANGE OF INFORMATION**

*The comments in this section address § G.1(e), H, and K of the Chair's Text.*

- **Education, Training, and Public Awareness.** Section G.1(e). Parties to the Convention should work to facilitate and strengthen education, training, and public awareness campaigns on the health risks of tobacco consumption.
- **Surveillance, Research and Exchange of Information.** Section K. Parties to the Convention should establish national systems for collecting epidemiological health data relating to tobacco consumption; work with WHO to undertake research consistent with the goals of the Framework Convention; and work with WHO to compile and share this information among all parties to the Convention.

**Position:** We believe Member States should retain these provisions.

**Background:** We support WHO's efforts to facilitate and strengthen education and training regarding tobacco consumption and smoking cessation programs. We also believe that Member States should utilize WHO to sponsor and share information about important tobacco issues, including research into cessation techniques, and recommend those found to be effective in assisting smokers who want to quit.

- **Smoking Cessation.** Section H. Parties to the Convention should implement promotional and educational campaigns aimed at encouraging cessation of tobacco use; integrate treatment for tobacco dependence and tobacco cessation advice into all national health programs; and establish as a priority in health centers programs addressing the treatment of tobacco dependence.

**Position:** We believe that Member States should retain this provision.

**Background:** We believe that it would be appropriate for WHO to sponsor and /or facilitate research into various cessation techniques, and recommend those that are found to be effective in assisting smokers who want to quit. As we have stated on our websites, for those smokers who want to quit but are having difficulty, there are many programs and products marketed as being helpful, including group classes, hypnosis, nicotine replacement therapies and smoking deterrents. If smokers want to quit and believe that outside assistance would be helpful, we encourage them to investigate the wide selection of options that are available, and see if there are any that seem right for them.

## J. PROVISIONS THAT ADDRESS MARKETING

*The comments in this section address §§ G.1-3 of the Chair's Text.*

- **Ban Marketing Targeted at Minors.** Section G.2.(a). Prohibits all forms of direct and indirect tobacco advertising, promotion, and sponsorship targeted at persons under the age of 18.

**Position:** We believe that Member States should retain this proposal in the Convention.

**Background:** We believe that tobacco products should be marketed only to adult smokers and that a prohibition against targeting of minors is appropriate. As discussed below, reasonable tobacco product marketing is necessary to allow companies to communicate to adult smokers and to provide them with the opportunity to choose among various brands, including those with substantially different characteristics.

- **Restrictions on Tobacco Marketing to Adults.** Section G.2.(b). Imposes strict restrictions on all forms of direct and indirect tobacco advertising, promotion and sponsorships targeted at persons 18 years and older, including limits on gifts, coupons, rebates, competitions, and frequent purchaser programs.

**Position:** We believe that Member States should permit reasonable and meaningful brand advertising and marketing to be directed towards adult smokers. We also agree that those communications should be limited to further reduce youth exposure to tobacco advertising. For example, as we have said, we would support restrictions around the world that would, among other things:

- prohibit advertising of tobacco products on television and radio
- require that advertising be placed in media and locations that do not have a particular appeal to minors
- prohibit the use of cartoons in cigarette advertising
- prohibit the distribution of cigarettes or premiums, except to adult smokers

We note that, for the most part, these restrictions already exist in the United States.

**Background:** Reasonable and responsible tobacco product marketing should be permitted to enable companies to communicate to adult smokers and to provide them with the opportunity to choose among various brands, including those with substantially different characteristics. Marketing is an important way that tobacco manufacturers compete for a share of adult smokers in a mature market. Our marketing is designed to encourage adult smokers to select our brands. We believe that any marketing restrictions should provide sufficient opportunities to allow manufacturers to communicate to, and compete on a level playing field for a share of, the market of adult smokers.

- **Health Warnings in Advertisements.** The current draft does not provide for health warnings in advertisements.

**Position:** We would encourage Member States to include a provision in the treaty that would, consistent with the health warnings on packages, require manufacturers to include clear and conspicuous health warnings in tobacco advertisements.

- **Disclosure of all Expenditures on Advertising and Promotions. Section G.2(c).** Requires tobacco companies to disclose to the public all expenditures on advertising and promotions.

**Position:** We believe that Member States should delete this proposal.

**Background:** This proposal would require the disclosure of competitively sensitive information to the public. We have already voiced our support of provisions in the Framework Convention that would ask Member States to monitor tobacco product advertising to ensure that all companies are complying with the laws in each Member State.

- **Restrictions on Advertising Content. Section G.2 (d).** Prohibits false and misleading advertising and advertising that is likely to create an erroneous impression about the characteristics, health effects, hazards or emissions of tobacco products.

**Position:** We support provisions designed to ensure that cigarette advertising is not false or misleading. However, these provisions should not be used for the purpose of banning all advertising about cigarettes or the characteristics of particular brand styles or families.

**Background:** We fully support legislation prohibiting false and misleading advertising or marketing. But such legislation should not be used to prohibit

meaningful communications to adult smokers. As noted above, we believe that tobacco manufacturers must be permitted to engage in reasonable and responsible marketing to adult smokers. This is particularly true of new products that may offer the potential of reduced risks to adult smokers. However, just as public health officials would object to claims in these areas that they have not had the opportunity to validate, consumers should view skeptically claims about new technologies that have not been sensibly regulated. Also, we are mindful of the critical need for manufacturers to work with the public health community so that mixed messages are not sent in such advertising. Advertising should be clear that all smoking is risky, and that the best option from a health perspective is to quit or not to start in the first place. We believe that the best approach is to regulate communications about product developments, so that adult smokers can decide whether they should avail themselves of any such products.

- **Phase Out of Cross Border Advertising.** Section G.2.(f). Directs a progressive phasing out of cross-border advertising, promotion and sponsorships including advertising on cable and satellite television, the Internet, newspapers, magazines and other printed media.

**Position:** We oppose this provision to the extent that it would require Member States to prohibit domestic advertising and marketing activities that they would otherwise permit. We agree, however, that tobacco manufacturers should not be able to place advertisements or engage in marketing in media that crosses borders for the purpose of targeting consumers in a country where such advertisement would otherwise be prohibited.



**K. PROVISIONS THAT ADDRESS THE SERIOUS PROBLEM OF YOUTH SMOKING**

*The comments in this section address §§ I.8–14 and G.1(e)(v) of the Chair’s Text.*

- **Anti-Tobacco Education.** Section G.1.(e)(v). Requires the development and implementation of promotion and prevention measures for tobacco control designed for students at various levels.
- **Minimum Age Sales Law.** Section I.8. Prohibits the sale of tobacco to any person under the age of 18.
- **Penalties for Sellers and Distributors of Cigarettes.** Section I.11. Requires the Parties to the Convention to implement appropriate measures to verify compliance with underage limitations and to set penalties against sellers and distributors for violations of the measures.

**Position:** We believe that Member States should retain all of these proposals in the Framework Convention.

**Background:** WHO has identified youth smoking prevention as one of the key objectives of its proposed Framework Convention. We share this objective. Minors should not smoke. Not only do we share a responsibility to help prevent them from doing so, we are fully committed to playing a significant role in this effort by supporting a wide variety of initiatives around the world.

Youth smoking is a complex issue that requires comprehensive efforts by a number of institutions. Local expertise is especially important, which is why many of our own initiatives have been undertaken in collaboration with governments, parents, educators, community-based organizations, other tobacco companies and cigarette retailers. We hope to work with WHO in the same way.

We support provisions of the Framework Convention that establish minimum age laws, as well as efforts to ensure that these laws are effectively enforced. Similarly, we support educational programs designed to keep young people from smoking. We stand ready to work with the WHO and others who are willing to join with us to make progress on this most important issue.

- **Minimum Package Size Requirement.** Section I.10. Prohibits the sale of cigarettes individually or in packages containing fewer than twenty cigarettes.

**Position:** We support minimum pack size requirements.

- **Vending Machine Limitations.** Section I.8.(b). Prohibits the distribution of tobacco products through unsupervised vending machines in locations accessible by any person under the age of 18.

**Position:** We believe Member States should amend this proposal to permit Member States to find ways to prohibit access to vending machines by persons under 18.

- **Proof of Age Requirements.** Section I.8.(a). Requires sellers of tobacco products to require age identification from each buyer of tobacco products.

**Position:** We believe that Member States should retain this proposal in the Convention but amend it to extend only to those persons who reasonably could be mistaken for a minor purchaser.

- **Criminal Penalties for Youth.** Section I.12. No criminal penalties for youth under the age of 18 who purchase tobacco products.
- **Retail Sales License Requirements.** Sections I.13.-14. Requires parties to institute a licensing system for retailers of tobacco products
- **Minimum Age of Sellers.** Section I.9. Prohibits the sale of tobacco products by any person under the age of 18.

**Position:** We do not have a position on whether these issues should be included in the Framework Convention. We strongly believe that a priority for regulation in every country where we do business is to help stop minors from gaining access to tobacco products, and, as expressed throughout this paper, will work with Member States to achieve this goal.

## **L. PROVISIONS ON CONTRABAND AND COUNTERFEITING**

*The comments in this section address §§ I.1.-7. of the Chair's Text.*

- **General Provision Addressing Smuggling and Counterfeit. Section I. 1.** Requires that Member States recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling and counterfeiting, is an essential component of tobacco control.

**Position:** We believe that Member States should support this provision. In particular, we are pleased that the Chair's Text recognizes the importance of the counterfeit issue.

**Background:** We sell our cigarettes in accordance with all applicable fiscal and other laws, and we expect our customers to do the same when reselling the cigarettes they buy from us. This objective is implemented through a series of internal systems and procedures.

As smuggling is typically a transnational problem, it makes sense that any Framework Convention that is adopted includes sensible principles for signatory nations to adhere to. We would encourage Member States to support Convention provisions that require:

- enforcement of the criminal laws against cigarette smuggling and counterfeiting, and the enactment of criminal laws against counterfeiting, where they do not currently exist;
  - the use of appropriate tax stamps or other indicia of tax-paid status (where applicable) as a part of a comprehensive law enforcement program;
  - customs bonds and guarantees for shipments;
  - specific destination and country identifications on packs; and
  - computerized government records of transactions.
- **Government Enforcement Efforts. Section I.5.** Requires each Party to: (i) monitor and collect data on cross-border tobacco product trade, including illicit trade; (ii) enact or strengthen and enforce criminal legislation with appropriate penalties addressing production of or trade in counterfeit or contraband tobacco products; (iii) destroy any confiscated counterfeit or contraband tobacco products. Requires Parties to strengthen their cooperation in investigating and prosecuting the perpetrators of such illicit trade.

**Position:** We believe that Member States should retain these proposals in the Convention. We would recommend, however, that the requirement that contraband and counterfeit cigarettes be destroyed should be extended to the equipment used to produce counterfeits. Removing the means of production from the hands of counterfeiters is critical to resolution of the increasingly chronic problems of cigarette counterfeiting.

**Background:** We support increased law enforcement efforts to combat the problem of contraband cigarettes, many of which are counterfeit, and we agree with the Chair's Text inclusion of counterfeit cigarettes as an issue to be addressed in the Framework Convention.

**M. PROVISIONS TO ENCOURAGE TRIAL LAWYERS TO FILE NOVEL LAWSUITS.**

*The comments in this section address proposed liability provisions at §§ D.6 and J of the Chair's Text.*

- **Liability and Compensation.** Sections D.6 and J. Recommends that the tobacco industry be held "responsible for the harm its products cause to public health." Notes that WHO will convene an expert panel of legal experts to make recommendations on the nature and scope of liability and compensation provisions.

**Position:** We believe that Member States should delete these provisions in their entirety.

**Background:** We are opposed to the inclusion of any provisions in the Framework Convention that seek to encourage litigation against tobacco manufacturers. The liability and compensation provisions currently proposed in the Framework Convention remain largely undefined. The Chair's Text notes that it is "consulting legal experts to make recommendations" as to these provisions. Even without further detail, we can see no conceivable basis for *any* provision relating to this type of proposal. Our previous comments make the following basic points:

First, it would be improper and inconsistent with prior U.N. practice to attempt to create private civil liability under the "polluter pays" or any other theory. We are not aware of any prior U.N. convention that has attempted to impose standards of civil tort liability on local legal systems for activities that do not have a uniquely international character.

Second, an international convention imposing a strict or absolute liability standard on manufacturers regardless of fault would result in a radical change in the law of many countries. Nations should not jettison the established standards and rules of their national tort law in favor of a "one size fits all" liability scheme that ignores those standards.

Third, the treaty should not seek to impose liability retroactively. Most legal systems – including the German, French, English and American ones -- reject retroactive legislation that changes the legal rules that govern private conduct after the conduct has occurred.

Fourth, it would be fundamentally flawed to single out one industry that manufactures a legal product from all other industries to impose special liability rules. Once countries open their doors to U.S.-style mass tort litigation, it is likely to be used against any other industry, whether in the private sector or the public sector, that trial lawyers decide to target.

We strongly request Member States to reject any suggestion that litigation should be used as a means to achieve tobacco regulation. We believe such an approach would hinder the adoption of meaningful regulatory solutions to tobacco issues. Encouraging lawsuits as part of a global treaty, or changing national legal systems to make tobacco companies liable for past sales of a legal product, are ideas that are unprecedented and unwarranted.

Such changes to tort laws around the globe also would have negative ramifications for governments that have owned tobacco monopolies in many countries, for other industries which could be similarly targeted by the new laws, and for national legal systems which would likely experience an explosion of tort litigation like that in the United States.

Regulation, on the other hand, which we endorse and which would not benefit only trial lawyers, is a much more practical and effective means for resolving tobacco issues. We believe that time, effort, and expense are better spent focusing on solutions to tobacco issues for the future, rather than on disputes over past events.

**N. PROTOCOLS TO THE CONVENTION.**

*This section addresses the Letter of Ambassador Amorim, Chair of the INB and §§ G.3 and 4, and I.7 of the Chair's Text.*

- **Adoption of Protocols to the Convention.** The Chair of the International Negotiating Body noted in his January 10, 2001 Letter from Ambassador Celso Amorim: "Framework Convention on Tobacco Control" (A/FCTC/INB2/DIV/1), "I have proposed the option of negotiating protocols either before the adoption of the convention, under the auspices of the Negotiating Body, or after its entry into force, by the Conference of Parties, in the areas of [1] tobacco advertising, promotion and sponsorship; [2] the elimination of illicit trade in tobacco products; and [3] regulation of the contents of tobacco products, tobacco product disclosures, and packaging and labeling of tobacco products."

**Position:** We support regulation in all three of these broad areas, and, as we have stated with respect to the current provisions in the Chair's Text, we believe that these issues are properly part of the Convention. As with the preparation and negotiation of the Convention itself, however, we believe that all interested parties, including industry, should participate in the development of the Protocols. Moreover, the process surrounding the creation of any Protocol to the Convention must be transparent and public comment should be permitted. Protocols should not be used to adopt measures that are not acceptable to Member States in the Convention itself.

## **CONCLUSION**

Philip Morris International and Philip Morris USA thank the U.S. Department of Health and Human Services for soliciting the views of the public on the Framework Convention. Our companies want to fully participate in important public policy discussions on the regulation of tobacco. In that spirit, we are gratified and pleased that the Department of Health and Human Services has provided this opportunity for public comment, and is permitting participation by the diverse range of stakeholders whose voices need to be heard in order for WHO's Member States to develop an effective, practical Convention. WHO itself continues to be reluctant to afford tobacco industry participants the same level of input into the process that it is soliciting from a range of other non-governmental organizations. We urge that the United States delegation take the lead in advocating an open and inclusive process as negotiations proceed in Geneva.

We want to join with the WHO and its Member Countries -- including the United States -- to confront the challenge of addressing the issues surrounding tobacco policy, and to find practical, effective solutions.