



Stopping the Scourge

Tobacco Control Goes Global

Tobacco-related illnesses killed 4 million people worldwide in 1998, a toll that is expected to more than double by 2020, according to the World Health Organization (WHO). Within 25 years, tobacco is expected to exceed infectious disease as the leading cause of morbidity and mortality worldwide, according to a 1 November 1996 *Science* report by Christopher J. L. Murray of Harvard University and Alan D. Lopez of the WHO. The developing world will be the hardest hit by tobacco's onslaught. Although per capita cigarette consumption in developing countries (1,370 in the late 1990s) falls far short of that in the developed world (2,400), the former is climbing while the latter drops, driven

down by health concerns. According to a 2000 report by WHO officials in volume 78, issue 4, of the *Bulletin of the World Health Organization*, at current smoking uptake rates tobacco will kill about 100 million of the 300 million Chinese males now under 29 years of age. Furthermore, says the report, "Penetration of new markets by aggressive multinational companies, facilitated by the liberalization of trade and investment, is one of the factors that have prevented the public health community from effectively implementing tobacco control policies."

But that may be about to change. The WHO is in the midst of developing the Framework Convention on Tobacco Control (FCTC), an international treaty to

constrain the spread of tobacco growth and usage worldwide. One hundred ninety-one member countries are participating in the effort, and 50 of these—including the 5 permanent members of the United Nations Security Council—have pledged financial and political support. Says Gro Harlem Brundtland, director-general of the WHO, "The challenge for us comes in seeking global and national solutions in tandem for a problem that cuts across national boundaries, cultures, societies, and socioeconomic strata."

The first meeting of the Intergovernmental Negotiating Body of the FCTC took place in Geneva, Switzerland, in October 2000. It followed two working group meetings and the 2000 World

Health Assembly—the annual meeting of the governing body of the WHO—where a first version of the convention had been drafted. A second round of negotiations will take place at the end of April 2001. The Chair's Text—the FCTC chairman's summary of the parties' consensus following last October's negotiations—will lead the parties through detailed negotiations at the next meeting of the body.

The Basis for the Framework

The theory guiding the FCTC is that smoking is a public health problem, although about one-third of the members of the Framework Convention Alliance—a lobbying association of more than 100 nongovernmental organizations from roughly 40 countries—are environmental groups motivated by the adverse environmental effects of tobacco farming, says Judith Wilkenfeld, director of the WHO Framework Convention Initiative for the Campaign for Tobacco-Free Kids in Washington, D.C.

Whether a public health or environmental problem, the tobacco industry is viewed as a vector spreading global disease and destruction. As with infectious disease, political boundaries are porous to multinational corporations, and thus an international legal framework is required to combat the epidemic. This may not be as obvious in the United States as it is in the rest of the world, says Francis Thompson, a policy analyst with the Non-Smokers' Rights Association in Canada. Consider the case, he says, of trying to implement cigarette advertising bans. "If you take English-speaking Canadian readers, about half the magazines they read are from the States," he says. "So the Canadian government can ban cigarette advertising, but unless they stop every U.S. magazine at the border, that measure is not effective." Similarly, controlling smuggling of tobacco products is much easier to accomplish with international coordination.

The idea for the FCTC came from a 1992 article (volume 18, issue 4) in the *American Journal of Law and Medicine* in which author Allyn L. Taylor, now of the Johns Hopkins University School of Hygiene and Public Health, pointed out that the WHO had within its constitution a theretofore unused right to develop international treaties. Ruth Roemer of the University of California at Los Angeles School of Public Health read the article and suggested to Taylor that this capability should be applied to controlling the spread of tobacco. That resulted ultimately in their collaboration on *International Strategy for Tobacco Control*, a background document for the 1996 World Health Assembly that presented alternative

strategies for combating tobacco, but that advocated the framework convention mechanism. At that same World Health Assembly, the Canadian government proposed a resolution that work should begin on a convention to address tobacco, says Derek Yach, executive director of noncommunicable diseases and mental health at the WHO. But money and political support were lacking until 1998, Yach continues, when Brundtland became head of the WHO and made tobacco control one of her top priorities. "We went back to the World Health Assembly and received an endorsement for an accelerated track," says Yach, "and we are now on deadline to have the convention adopted by 2003, which is fast for treaties."

All the parties will negotiate a framework convention consisting of broadly defined goals and general obligations. Concurrently, some member states may negotiate protocols that are more technical and more specific, possibly focusing on the more controversial issues involved. Protocols are side agreements that are negotiated and signed separately and that may not be signed by all parties to a treaty. Representatives of signatory countries would agree to the FCTC provisions and seek ratification of the treaty by their governments.

Laying the Groundwork

A series of guiding principles was established to pilot the parties through the negotiations. These include 1) that the effects of tobacco consumption should be reduced and the growth of tobacco consumption be halted, 2) that all people should be informed about tobacco's dangers, 3) that technical cooperation is critical in establishing and managing tobacco control programs in signatory countries with limited public health resources, 4) that financial assistance for tobacco farmers who may be displaced as a future result of tobacco control programs is important, 5) that tobacco control measures should not be used as a means to erect arbitrary trade barriers, 6) that the tobacco industry should be held responsible for the harm caused by its products, 7) that the participation of all members of society is necessary to achieve the goals of the FCTC, and 8) that the provisions of the FCTC should be considered only a springboard for more extensive measures in individual countries.

Nonetheless, in its current form, the FCTC is somewhat nebulous. "It basically sets forth the framework, how the process will proceed, and the type of issues that will be dealt with, but contains very few specific obligations," says Wilkenfeld. "The obligations will be left to later protocols."

Underlying the FCTC is the notion that a global convention should concentrate on those aspects of tobacco control that would be impossible to accomplish or that would be undermined without international cooperation, such as advertising. Action on Smoking and Health (ASH), an antismoking advocacy group in the United Kingdom, recommended in a brief filed in advance of the October 2000 round of negotiations that issues be classified into categories having to do with the degree of international cooperation needed to address them. For example, the group advised, some issues, such as advertising and smuggling, simply cannot be tackled without international cooperation. Others, such as product regulation and disclosure of ingredients, can be addressed more effectively or practically through international cooperation. Still others, such as passive smoking and youth access, have no obvious transboundary dimension.

Framework Focus

Advertising and labeling. Advertising is one of the largest looming issues to be considered by the FCTC because it is a major tool for spreading tobacco use and can easily transcend geographical boundaries. According to an article by Prabhat Jha and Joy de Beyer of the World Bank and Peter S. Heller of the International Monetary Fund in the December 1999 issue of *Finance & Development*, comprehensive bans on advertising and promotion can reduce demand by about 7% in what are referred to as "high-income countries." The Chair's Text calls for prohibitions on targeting children, restrictions on adult advertising (including indirect promotions such as coupons, gifts, and rebates), and an end to sponsorship of sports and cultural events, with specific attention to expunging promotions from television, the Internet, magazines, and other border-jumping media.

The current version of the FCTC pays special attention to measures aimed at protecting children, including advertising restrictions, bans on sales to children, and prohibitions of sales of cigarettes individually or in economy packets of fewer than 20, as well as measures aimed at educating children about smoking hazards. Although it might seem that such provisions would be unilaterally accepted, they have raised some controversy. "Concentrating on 'youth' adds to the definition of smoking as 'adult,' and it is precisely this that appeals to teenagers," warned ASH in its October 2000 brief. "It is no coincidence that youth smoking is just about the only tobacco control policy favored by tobacco companies. It is, in fact, just good marketing." Moreover, Sam Kazman, general counsel for the Competitive Enterprise

Institute, a Washington, D.C.-based non-profit organization dedicated to advancing market solutions to regulatory issues, argues that “advertising restrictions proposed in the name of protecting children would, in fact, seriously weaken free speech rights for all Americans. Our children are far less threatened by Joe Camel than they are by a weakened First Amendment.”

The American Enterprise Institute for Public Policy Research, a Washington, D.C., economic and foreign policy think tank, criticizes the FCTC for inclusion of a blanket restriction on any label claims that would suggest that any particular tobacco product is less harmful than another. The Chair’s Text bars terms such as “low tar” and “light,” which suggest that a product is less harmful. That, the institute implies, would dampen incentives to develop and market safer cigarettes. In comments on the FCTC submitted in March 2000 to the WHO, John E. Chalfee, a resident scholar at the institute, wrote “[A]doption of existing Western cigarettes would provide immediate and substantial health benefits for smokers in much of the underdeveloped world. . . . [I]t is quite likely that cigarettes far safer than anything now available are technologically feasible—if regulatory institutions do not stand in the way.” Furthermore, he wrote, market competition based on safety would only point up the dangers of smoking.

Smuggling. Smuggling is considered by many antismoking advocates to be notoriously difficult to control without international cooperation. For example, several countries, notably Italy, were targeted by smugglers whose suppliers operate openly from Switzerland, says Thompson. That situation is finally beginning to change under pressure from the European Union, but it has persisted for many years despite pressure on Switzerland from neighboring states. Switzerland, Thompson says, viewed the problem as someone else’s as long as the actual crimes were not committed within its borders. Nonetheless, he says, the success of smuggling depends on conditions within the target country. A long-standing tradition of illegal street sales, easy access to the coast, plenty of people needing work, and government corruption has fueled sales of smuggled cigarettes in Italy. On the other hand, Spain, long a target for smugglers, has now managed to mitigate the problem.

One thing that does not cause smuggling, contrary to tobacco company assertions, says Thompson, is price differentials. Spain had persisted as a preferred destination for smuggled cigarettes despite some of the lowest cigarette taxes in Europe. Conversely, France has a high tobacco tax, a

low rate of smuggling, and strong enforcement, Thompson says.

To prevent smuggling, the FCTC calls for all packages of tobacco products for retail or wholesale use to include the manufacturer’s name, product batch number, and date of production, as well as the statement “Sales only allowed in [the country where the product is to be placed on the market].” The FCTC also calls for the prohibition of tax-free and duty-free sales of tobacco products. This is critical to controlling smuggling because the low cost to entrepreneurs of container loads of tax-free cigarettes creates a financial incentive for smuggling, and the tax-free status relieves these middlemen of the need to account for the sales.

R. J. Reynolds Tobacco Company had lambasted as “cost-prohibitive” provisions of the original FCTC on smuggling, notably singling out extensive record keeping on cigarette traffic as infeasible. (The original draft had recommended putting serial numbers on individual cigarettes, a proposal that was left out of the Chair’s Text.) According to R. J. Reynolds, more than 5 trillion cigarettes move through worldwide commerce each year, with possession changing hands frequently before reaching the consumer.

Taxes and trade. Taxes are particularly effective at dampening consumer demand, according to the *Finance & Development* article. “Tax increases that would raise the real price of cigarettes by 10 percent worldwide would cause at least 40 million smokers alive in 1995 to quit, thus preventing a minimum of 10 million tobacco-related deaths,” the article states, continuing, “The modeling assumptions on which this result is based are deliberately conservative.”

A requirement in the proposed draft elements for the FCTC that preceded the first round of negotiations would have pegged taxes at two-thirds the price of a pack, which ASH representatives considered to be politically infeasible given the magnitude of the FCTC’s scale. This requirement has been replaced by a general statement that taxes should be sufficient to “achieve a stable and continuous reduction in tobacco consumption.” The *Finance & Development* article recommends that policy makers look to tax levels adopted in countries where cigarette consumption has actually fallen—levels that range between two-thirds and four-fifths of the retail price of cigarettes.

Both cigarette taxes and government ownership of tobacco companies can give countries a major incentive to keep citizens smoking, according to some observers. A 20 November 1996 *Washington Post* article estimated that tobacco profit and taxes account for approximately one-eighth of the Chinese government’s revenues. And in September

1999, following the announcement that the U.S. Justice Department had filed a multibillion-dollar lawsuit against several major tobacco companies, the Competitive Enterprise Institute issued a press release stating that “tobacco revenues are far more addictive than tobacco itself.”

The issue of trade restrictions, or rather the inability of developing countries to block tobacco exports from developed countries, is a sore point for some antismoking activists. In May 1999 Mary Assunta, a research officer with the Consumers’ Association of Penang in Malaysia, charged that developing countries would be powerless to block the United States from prying open their markets. “Neither unilateral trade actions such as the U.S.’s Super 301 law nor the [World Trade Organization] should be used to push tobacco to developing countries, and the convention should affirm this principal,” she said in a speech at the Nongovernmental Organization Forum on Health that ran concurrently to the 1999 World Health Assembly. Activists claim the convention currently slants toward protecting free trade. ASH recommends that the FCTC should in no way be subordinate to trade agreements.

Parties are also enjoined to license all tobacco product retailers. The combination of criteria necessary for obtaining a license and penalties exacted for violating the terms of a license is intended to help prevent illicit tobacco trade and sales to minors.

Regional Responses

Thompson says there is a feeling among the parties that the negotiations have proceeded more easily than expected. Specifics on compensation and liability that are included among the guiding principles of the FCTC await the convening of a panel of legal experts that will make recommendations to the Intergovernmental Negotiating Body.

A separate panel met in Jordan earlier this year. The discussions there “focused on different approaches to litigation against the [tobacco] industry,” says Yach. In addition, groups of health ministers have been meeting on a regional basis to try to coordinate approaches, Yach says. A meeting took place in Johannesburg, South Africa, in March 2001 to develop an African position, and similar meetings will likely follow in other regions.

But despite the broad support worldwide for the FCTC, support from one country in particular—the United States—could be critical, says Yach. “If the United States doesn’t ratify [the FCTC],” he says, “there is no way we can force the U.S. multinationals to pay compensation [as called for in the Chair’s Text] unless we find some new legal theory.”

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