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Congress of the United States
House of Representatives
Washington, DC 20515–0530

HENRY A. WAXMAN
30TH DISTRICT, CALIFORNIA

CHAIRMAN
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

MEMBER
COMMITTEE ON
ENERGY AND COMMERCE

October 3, 2008

The Honorable William E. Kovacic
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chairman Kovacic:

I write to submit the attached comments from the World Health Organization (WHO) on the Commission's Proposal to Rescind Guidance Concerning the Current Cigarette Test Method [Project No. P944509]. The comments were prepared by the Tobacco Free Initiative of the WHO at my request. Because the WHO has substantial expertise in this matter, I urge you to consider these comments in your consideration of final action on this matter.

Thank you for your attention to this important matter.

Sincerely,

HENRY A. WAXMAN
Member of Congress

HAW:pd

World Health Organization

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In reply please refer to: S14-180-1

Your reference:

The Honorable Congressman
Henry A. Waxman
Congress of the United States
House of Representatives
2204 Rayburn House Office Building
Washington, DC 205515-0530
USA

30 September 2008

Dear Congressman Waxman,

Re: WHO Endorsement of FTC Proposal "Cigarette Test Method, [P944509]"

Thank you for your letter, dated 11 September 2008, requesting WHO provide comments on the FTC Proposal "Cigarette Test Method, P944509" (FTC P944509).

The WHO Secretariat welcomes the FTC P944509 and believes the proposal's adoption will improve: accuracy in providing information about the contents and emissions of tobacco products; the alteration of consumers' attitudes with respect to smoking and smoking behaviours; and, ultimately, the reduction of tobacco consumption and use. Most importantly, FTC P944509 promotes WHO's mission of protecting public health, furthers Articles 9 and 10 of the WHO Framework Convention on Tobacco Control (WHO FCTC), and is in line WHO's longstanding global efforts in tobacco control. In response to the specific questions posed by the FTC, WHO provides the following response:

Question 1: Concerning whether the Commission should rescind its guidance that generally permits factual statements about tar and nicotine yields based on the Cambridge Filter Method

We embrace and reiterate the conclusion drawn by the Director-General convened WHO Scientific Advisory Committee on Tobacco Product Regulation (SACTob) (now known as TobReg) that "Tar, nicotine, and CO numerical ratings based upon current ISO/FTC methods and presented on cigarette packages and in advertising as single numerical values are misleading and should not be displayed."[1] Current scientific evidence reveals that the ISO/FTC Test Method is a flawed protocol that purports to measure the amount of tar, nicotine, and carbon monoxide present in cigarette smoke while producing results that gravely underestimate the doses of these toxic compounds received by smokers.[2] Consequently, the ISO/FTC Test Method does not provide cigarette consumers with adequate, nor accurate, information to compare cigarette varieties and brands.

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[1] WHO Scientific Advisory Committee on Tobacco Product Regulation (SACTob) Conclusions on Health Claims Derived from ISO/FTC Method to Measure Cigarette Yield. WHO (2002). SACTob was renamed the WHO Study Group on Tobacco Product Regulation (TobReg) in 2003.

[2] National Cancer Institute. Risks Associated With Smoking Cigarettes With Low Machine Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No.13. Bethesda, U.S. Department of Health and Human Services. NCI, October 2001.

The FTC proposal acknowledges a vast body of current scientific literature which indicates that the ISO/FTC Test Method is not sufficient to measure the biological or epidemiological impact of tobacco products.[3] These studies also posit that the degree of human exposure measured by the current ISO/FTC Test Method underestimates harm in low-yield cigarettes because smokers often compensate by increasing both puff frequency and the volume of smoke inhaled.[4] Because of this practice of smoker compensation, numerical ratings of contents and emissions - based on ISO/FTC methods - which are displayed on tobacco industry promotions and advertisements are inaccurate and deceptive. WHO is in support of the measures of FTC 944509 which collectively prevent the delivery of information to consumers that is not meaningful in the context of public health. These measures aim to prohibit tobacco companies from printing misleading ISO/FTC numerical ratings on cigarette packages and labelling.

WHO additionally supports FTC 944509 because the proposal adheres to WHO's longstanding and well-documented tobacco control efforts which have called for changes in the FTC policies. WHO has demonstrated support for the measures of FTC 944509 in draft guidelines for implementation of Articles 9 and 10 of the WHO FCTC, wherein, WHO acknowledges that the data on cigarette emissions from machine-generated smoke are not intended to be, nor are they, valid measures of human exposure. Though WHO recognizes that methods to test and measure emissions derived from machine smoking of cigarettes aid the characterization of constituents and the monitoring of changes over time, WHO is of the view that all machine-smoking regimens have limitations and none can generally represent human smoking patterns exposure or risk. Thus, it is necessary that FTC prohibit ISO/FTC numerical ratings from being displayed on cigarette packages and labelling.

In recognition of the need to adopt a new cigarette test method that reflects intense use and that, with certain cigarette design features, may yield levels of individual smoke constituents above those that would result when ISO smoking conditions are used, the WHO Tobacco Laboratory Network (TobLabNet) supports the Canadian Intense Method as a more reliable mechanism to assess and compare cigarette emissions. Until this system is operational, WHO welcomes FTC's efforts to enact active measures aimed to ensure that the tobacco industry is prohibited from the continued exploitation of the ISO/FTC Test Method.

Question 2: Concerning any effects the Commission's proposal are likely to have on consumers' purchase of cigarettes and/or smoking behaviour

By rescinding its 40-year guidance that generally permits statements of tar and nicotine yields derived from machine-based testing under the Cambridge Filter Method (ISO/FTC Test Method), FTC P944509 will impair the ability of the tobacco industry to mislead and harm consumers - consumers who rely on FTC's approval of the ISO/FTC Test Method to compare the level of toxins present in various cigarette types and brands. This is particularly pertinent given that the tobacco industry has employed the results of this flawed testing protocol to characterize its brands using a number of misleading descriptors i.e. "low tar", "mild" "light", "ultra-light", etc. Numerous population-based studies have clearly demonstrated the danger in permitting descriptive terms, such as "mild," to remain on tobacco product packaging.[5,6,7] In 2007, the Journal of the New Zealand Medical Association reported that:

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[3] *Ibid.*
[4] *Supra*, at note 1.
[5] Kozlowski LT, White EL, Sweeney CT, Yost BA, Ahern FM, Goldberg ME. Few smokers know their own cigarettes have filter vents. *Am J Public Health.* 1998;88:681–682.
[6] Kozlowski LT, Goldberg ME, Yost BA, White EL, Sweeney CS, Pillitteri JL. Smokers' misperceptions of light and ultra-light cigarettes may keep them smoking. *Am J Prev Med.* 1998;15: 9–16.
[7] Kozlowski LT, Goldberg ME, Sweeney CT, et al. Smoker reactions to a "radio message" that light cigarettes are as dangerous as regular cigarettes. *Nicotine Tob Res.* 1999;1:67–76.

> There is evidence that many smokers are switching to lights/mild on the mistaken assumption of reduced health risks, instead of quitting, and tobacco companies appear to have been deliberately using the descriptors to encourage this behaviour. As a result, light and mild descriptors are helping to maintain the high smoking prevalence and severely undermining efforts to reduce the health effects of tobacco within the New Zealand population.[8]

In addition, a Canadian study reported in the Canadian Journal of Public Health, in 2001, demonstrated that over a quarter of light/mild smokers reported smoking these brands to reduce their risks of smoking, and 40% reported smoking light/mild brands as a step toward quitting. Forty-one percent of this group indicated that they would likely quit if they learned that light and mild cigarettes provided the same amount of tar and nicotine as regular cigarettes. The authors of this study concluded that many of these smokers are being misled by the terms "light" and "mild" cigarettes.[9] Consumers are also being misled by numerical ratings derived from flawed testing method like the Cambridge Filter method. The FTC proposal, which rescinds the guidance, will inevitably lead to improved consumer awareness in relation to the risks of smoking all cigarette varieties. It will also prevent consumers from being misled by deceptive marketing strategies and will assure smokers who choose to switch to, for example, "low-tar" cigarettes as a cessation strategy, that they are indeed not consuming "healthier" or "safer" tobacco product.

For the reasons outlined above, the WHO Secretariat endorses FTC P944509. This proposal will deter the tobacco industry from using the implied endorsement of the FTC to propagate misleading and often incomprehensible scientific data on cigarette packaging and labelling, and will effectively halt the dissemination of FTC approval labels on cigarette packages. Accordingly, if adopted, FTC 944509 will result in better information about the contents and emissions of tobacco products, influence cigarette consumers' attitudes and smoking behaviour, reduce tobacco use and, most importantly, improve public health.

Yours sincerely,

Dr Douglas Bettcher
Director
Tobacco Free Initiative

[8] The prevalence of misleading tobacco descriptors in the New Zealand tobacco market. Journal of the New Zealand Medical Association, 13-April-2007, Vol 120 No 1252

[9] Ashley MJ, Cohen JE, Ferrence RG. 'Light' and 'mild' cigarettes: Who smokes them? Are they being misled? Canadian Journal of Public Health 2001; 92:407-411.