



## **The WHO Framework Convention on Tobacco Control: Preventing Interference by the Tobacco Industry**

This fact sheet summarises what over 180 countries, Parties to the WHO Framework Convention on Tobacco Control (FCTC),<sup>i</sup> have agreed to do in response to tobacco industry efforts to undermine tobacco control internationally – and in countries throughout every region of the world.

### **A global treaty for a global problem**

The tobacco industry is a global entity. It is made up of large trans-national companies, state-owned entities and domestic growers, manufacturers, importers, wholesalers and retailers of tobacco. It also includes a wide range of supporting consultancies specialising in such areas as marketing, legal services and lobbying.

Tobacco products available today are highly engineered during the production process. They are often made up of tobaccos sourced from several countries and may include a wide range of additives including sweeteners and flavourings. Tobacco products and tobacco smoke may contain over 7,000 chemicals: hundreds of these chemicals are hazardous, and at least 69 are known to cause cancer.<sup>ii</sup>

Despite the clear harms caused by their products, decades of evidence show that the tobacco industry actively and consistently acts to delay, dilute and defeat domestic tobacco control measures.

Individual countries find it difficult to know how to respond to an industry that sells a product that is highly addictive and hazardous to health. They may also find it hard to deal with an industry that may or may not have a significant presence within their borders but whose reach, in terms of lobbying power and influence, can be extensive and in many cases, unchallenged. Cross-border trade, including illicit trade in tobacco and extensive tobacco advertising, promotion and sponsorship all contribute to making tobacco use – and the tobacco industry itself – a huge global challenge.

The global response to this global problem has been the WHO FCTC, which had 181 Parties as of 4 March 2015.

### **The FCTC: confronting the industry**

A strong feature of the FCTC is that it not only obligates Parties to take effective steps to reduce tobacco use in their countries and to collaborate internationally, but it also openly confronts the tobacco industry. Article 5.3 of the FCTC requires all Parties, when setting and implementing their public health policies with respect to tobacco control, to “...act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.

In 2008, Parties to the FCTC collectively agreed to guidelines describing their obligations in support of Article 5.3 implementation.<sup>iii</sup>

It is important to note that the Article 5.3 guidelines:

- were established to assist Parties in meeting their legal obligations under Article 5.3;
- were adopted by consensus by the Conference of Party; and therefore
- represent measures that the Parties agreed will help protect public health policies relating to tobacco control from tobacco industry interference.

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In accordance with Article 31 of the Vienna Convention on the Law of Treaties 1969,<sup>iv</sup> the Article 5.3 guidelines should be taken into account when interpreting the scope and content of Parties' treaty obligations in relation to Article 5.3 of the FCTC.

It should also be noted that Article 2.1 of the FCTC encourages Parties to implement measures beyond those required by the FCTC. The Article 5.3 guidelines also explicitly encourage Parties to implement measures beyond those set out in guidelines.

The key features of Article 5.3 Guidelines are presented below.

#### **Who implements the guidelines?**

The guidelines emphasise that Parties should implement measures to prevent tobacco industry interference in all branches of government that may have an interest in, or the capacity to affect, public health policies with respect to tobacco control.

#### **To whom do the guidelines apply?**

The guidelines are applicable to all officials, representatives and employees at all levels of government and to public or semi-/quasi-public institutions or bodies within the jurisdiction of a Party to the FCTC. All those working on public health policies related to tobacco control should be subject to the guidelines. These include individuals working for the government on the broad range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke. This includes those working in areas such as the setting of taxation, price and illicit-trade-related policies and programmes.

#### **What are the key principles underpinning the guidelines?**

The guidelines present a set of four key guiding principles:

- Principle 1: There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.
- Principle 2: Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.
- Principle 3: Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.
- Principle 4: Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses.

#### **What did Parties agree should be implemented under the guidelines?**

The Article 5.3 guidelines present a series of eight recommendations. These are broad ranging, but the key steps Parties are encouraged to take include:

- Raise awareness about tobacco industry interference among all those working within all branches of government and among the public.
- Avoid any interaction with the tobacco industry except where necessary to enable them to effectively regulate tobacco products and the tobacco industry. Where interactions do take place, they must be conducted transparently.
- Reject partnerships, non-binding or non-enforceable agreements with the industry, including voluntary codes of conduct, industry-sponsored tobacco control initiatives or industry offers to assist with the development of tobacco control legislation or policy.

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- Develop clear policies on avoidance of conflicts of interest for government officials, employees, consultants and contractors. A wide range of specific steps are recommended within the guidelines.
- Require disclosure of information by the tobacco industry to promote transparency. This must include tobacco production, manufacture, sales and content, as well as industry lobbying, philanthropy, political donations, etc.
- Denormalise and regulate activities described by the industry as “socially responsible” and expose the real intent – such as making the industry seem benevolent towards the population – behind these activities.
- Do not give any benefits, tax exemptions or other incentives to the tobacco industry.
- Treat any state-owned tobacco industry no differently from privately-owned tobacco companies.

### What should countries do next?

There are some simple steps that governments and NGOs can take, whether their country is a Party to the FCTC or not, to protect public health and the setting of tobacco control policy from the influence of the tobacco industry, using the guidelines for implementation of Article 5.3 of the FCTC.

Research industry interference and implement strategies to prevent interference by the industry. Fact Sheet 1 in this series *‘How do I take steps to prevent interference by the tobacco industry in my country?’* Highlights a number of resources that can assist in this regard.

Also, see Fact Sheet 3 in this series: *Why do we treat the tobacco industry differently from other industries?* This provides the rationale as to why the international community has agreed to active steps that need to be taken to prevent interference by the tobacco industry, given the industry’s past conduct, as well as more recent tactics.

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<sup>i</sup> World Health Organization. 2003. *WHO Framework Convention on Tobacco Control*. Geneva: World Health Organization. Available at: <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>, accessed 16 February 2012.

<sup>ii</sup> See: Rabinoff M, et al. Pharmacological and chemical effects of cigarette additives. *American Journal of Public Health* 2007;97(11):1981-91; U.S. Department of Health and Human Services; *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*. 2010. Atlanta, GA: U.S. Department of Health and Human Services.

<sup>iii</sup> FCTC Conference of the Parties. 2008. *Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry*. Geneva: World Health Organization. Available at: [http://www.who.int/fctc/protocol/guidelines/adopted/article\\_5\\_3/en/index.html](http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html), Accessed 16 February 2012

<sup>iv</sup> Vienna Convention on the Law of Treaties, 1969. [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

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