

**FCTC**WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL**Conference of the Parties to the
WHO Framework Convention
on Tobacco Control**Sixth session
Moscow, Russian Federation, 13–18 October 2014
Provisional agenda item 4.8**FCTC/COP/6/16
14 July 2014**

**Implementation of Article 5.3 of the WHO FCTC:
evolving issues related to interference by the
tobacco industry****Report of the Convention Secretariat****INTRODUCTION**

1. A Party to the WHO Framework Convention on Tobacco Control (WHO FCTC) proposed, in accordance with Rule 7 of the Rules of Procedure of the Conference of the Parties (COP), inclusion of an item on the provisional agenda of the sixth session of the COP in relation to Article 5.3 of the Convention. The aim was to address evolving issues regarding tobacco industry interference nationally and internationally.

2. This report was prepared by the Convention Secretariat to support consideration of the proposed agenda item by the COP. It provides a snapshot of the progress made in implementation of Article 5.3 of the Convention as per the Parties' implementation reports, examples of perceived tobacco industry interference at international level, and a review of recent work by the Secretariat and its partners to assist Parties in implementation of this article. It also identifies potential areas in which implementation of measures under Article 5.3 of the Convention could be strengthened.

BACKGROUND

3. Article 5.3 stipulates that, while setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law. To assist Parties in meeting their legal obligations under this article, at its third session in 2008 the COP adopted guidelines for implementation of Article 5.3. At subsequent COP sessions, Parties reiterated their commitment in this

regard.¹ The implementation guidelines are applicable to government officials, representatives and employees of any national, state, provincial, municipal, local or other public or semi/quasi-public institution or body within the jurisdiction of a Party and to any person acting on their behalf. They are based on four guiding principles and contain eight key recommendations.²

4. The guidelines recommend proper enforcement and monitoring of Parties' efforts in this area, and recognize the importance of international cooperation, not least through enhanced collection and dissemination of national and international experiences which may, in turn, strengthen implementation. Furthermore, the guidelines recognize that "*as the strategies and tactics used by the tobacco industry evolve constantly, these guidelines should be reviewed and revised periodically to ensure that they continue to provide effective guidance to Parties...*"

PROGRESS AND CHALLENGES IN IMPLEMENTATION OF ARTICLE 5.3 BY THE PARTIES³

5. **Monitoring** of implementation of Article 5.3 has been integrated into the reporting system of the WHO FCTC, in accordance with the recommendations contained in the implementation guidelines. In the core questionnaire, which is mandatory for all Parties, there are two indicators relevant to Article 5.3,⁴ while open-ended questions provide more opportunities for Parties to report on progress in this area. In addition, beginning with the 2014 reporting cycle, Parties also have the opportunity to submit information voluntarily on their use of the guidelines adopted by the COP through 43 additional questions included in the Internet-based questionnaire.

6. **Implementation status, progress and trends.** Of the 130 Parties that submitted a report in the 2014 reporting period, over two thirds (89) reported, by responding to the respective close-ended (yes/no) question, that they have taken steps to prevent the tobacco industry from interfering with their tobacco-control policies, an increase of 13 percentage points over the 2012 reporting period, and of 20 percentage points in comparison with 2010.

7. However, only around a quarter (37) of the Parties reported that they have taken measures to make information on the activities of the tobacco industry available to the public, as referred to in Article 12(c) of the Convention, and there has been no change in the rate of implementation of this measure since 2012. With respect to exchanges of information on the practices of the tobacco industry, there is also a need for further efforts to be made, with less than half of the Parties reporting that they engage in such exercises at regional and global levels.

8. Several Parties (including Australia, Brazil, Canada, Gabon, Panama, Philippines, Thailand and Togo) reported that they have followed several of the recommendations contained in the guidelines when taking measures to implement Article 5.3. Some new developments and novel approaches have also been observed in implementation of Article 5.3. One of the major advances has been the

¹ See decisions FCTC/COP4(5), *Punta del Este Declaration on the implementation of the WHO Framework Convention on Tobacco Control* (http://apps.who.int/gb/fctc/PDF/cop4/FCTC_COP4_DIV6-en.pdf), and FCTC/COP5(5), *Seoul Declaration* (http://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5_DIV5-en.pdf).

² The guidelines are available at http://www.who.int/fctc/guidelines/adopted/article_5_3/

³ More details concerning implementation of Article 5.3, based on the reports of the Parties submitted in successive reporting periods, can be found in the global progress reports on implementation of the WHO FCTC. The reports are available at http://www.who.int/fctc/reporting/summary_analysis.

⁴ The relevant indicators concern whether, in general, Parties protect their public health policies from the commercial and other vested interests of the tobacco industry, and whether they ensure that the public has access to a wide range of information on tobacco industry activities relevant to the objectives of the Convention, such as in a public repository.

inclusion, in national laws, of specific requirements that are in line with Article 5.3 and the guidelines for its implementation. This has mostly been reported by Parties in Africa, with several countries (Burkina Faso, Djibouti, Gabon, Namibia and Togo) already having done so, and other Parties following suit. Some Parties reported that they have developed or are in the process of developing national guidelines, policies or regulations based on Article 5.3 (such as Jordan, Ghana, Micronesia (Federated States of), Myanmar, Nepal, Solomon Islands, Thailand and Turkey). Other advanced policies include divesting government-managed funds of tobacco industry investments (most recently Australia and Norway) and adoption of codes of conduct/guidelines for government employees applicable to interactions with the tobacco industry (Parties doing so include Australia, Iran (Islamic Republic of), Republic of Korea, Panama, Singapore and Thailand). One innovative approach was the adoption by the Government of the United Kingdom of Great Britain and Northern Ireland, in 2014, of revised guidance for the country's overseas posts (such as embassies) on interactions with the tobacco industry in line with Article 5.3.

9. Based on a non-representative sample of 18 Parties that responded to the optional, additional questions, there are only four indicators that attracted positive responses from more than half of the Parties, namely: preventing the nomination of any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to the COP, meetings of subsidiary bodies of the COP, or meetings of any other bodies established pursuant to decisions of the COP, and requiring that the tobacco industry periodically submit information on tobacco production and manufacture. Several other measures have been implemented by around one third of the Parties that reported, such as requiring periodic submission of information by tobacco companies on their revenues and prohibiting contributions by the tobacco industry to political parties, candidates or campaigns.

Challenges and constraints. In spite of the progress made in implementation of Article 5.3, Parties have reported that they still consider tobacco industry interference with public policies on tobacco control to be the most important barrier they face to treaty implementation. Weak legislation or loopholes in existing legislation allow for blatant examples of interference, such as voluntary agreements with the tobacco industry on advertising restrictions; acceptance of tobacco industry-sponsored youth-smoking prevention programmes; activities of the industry that are described as “socially responsible”; and conclusion of memoranda of understanding and other forms of partnerships between the tobacco industry and relevant government agencies in relation to the fight against illicit trade in tobacco products¹ (which might be one of the factors preventing early ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products by the Parties).

10. The tobacco industry has also used the threat of legal challenges to legislation and regulations to prevent, delay or weaken implementation of tobacco-control measures, especially in countries that plan to implement strong or innovative measures (in the areas of packaging and labelling, promotion of tobacco products, regulation of flavours and additives in tobacco products, etc.). Assistance to Parties in assessing and countering threats and legal challenges is being strengthened through information sharing as well as through provision of support in obtaining technical and legal advice, as, for example, in the ongoing cases against Australia and Uruguay.²

¹ As revealed during several needs assessment missions jointly conducted by requesting governments and the Convention Secretariat.

² At the time of preparation of this report in July 2014.

INTERNATIONAL ASPECTS OF TOBACCO INDUSTRY INTERFERENCE AND ACTION TAKEN INTERNATIONALLY

11. Recent experiences also highlight tobacco industry strategies and tactics that go beyond national borders. Examples include: entering into partnerships with international organizations in relation to efforts to combat illicit trade in tobacco products;¹ providing funding to international organizations, and their affiliates, that work on matters related to tobacco control; involvement with regional economic blocs; lobbying through embassies and regional business organizations to promote provisions in free-trade and investment agreements that favour tobacco industry interests; supporting governments in challenging, in international forums, WHO FCTC implementation by other Parties; compromising tobacco-control governance mechanisms; and attendance by representatives of tobacco companies at sessions of the COP accompanied by engagement with delegates.

12. The fundamental conflict of interest between the tobacco industry and public health has been recognized in various forums, including in the resolution of the United Nations Economic and Social Council (ECOSOC) on “United Nations system-wide coherence on tobacco control”² and the “Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases”.³ The 2013 report of the United Nations Secretary-General to ECOSOC on the work of the Ad Hoc Interagency Task Force on Tobacco Control⁴ described examples of interference by the tobacco industry in the work of the United Nations system. The document highlights the fact that the International Atomic Energy Agency and the United Nations Development Programme developed internal policies to ensure that tobacco-affiliated groups are not considered when establishing agreements with new partners and donors, and that these examples could be used as models for agencies that do not have such clearly defined policies. The report also recommended to ECOSOC that the United Nations should adopt guidelines “to ensure independence and objectivity in its work”, in line with the principles of Article 5.3 of the Convention and the guidelines for its implementation.

13. Such aspects have also been recognized by the COP following the 2008 adoption of the guidelines for implementation of Article 5.3, with references included in the Punta del Este and Seoul Declarations, as noted above.

RECENT WORK BY THE SECRETARIAT AND ITS PARTNERS TO ASSIST IMPLEMENTATION OF ARTICLE 5.3

14. Recent intercountry workshops on implementation of the WHO FCTC organized by the Convention Secretariat in collaboration with the respective WHO regional and country offices in several WHO regions⁵ included discussions on tobacco industry interference, which were also integrated into the outcome documents of the meetings.⁶ The Secretariat also promotes implementation of Article 5.3 during needs assessments, which are carried out jointly with the authorities of the countries concerned.⁷

¹ In addition to engaging in similar partnerships at the national level.

² E/2012/L.18 (20 July 2013).

³ A/66/L.1 (16 September 2013).

⁴ E/2013/61 (6 May 2013).

⁵ African Region – October 2012; South-East Asia Region – July 2013; Region of the Americas – September 2013; European Region – March 2014; Western Pacific Region – April 2014.

⁶ See <http://www.who.int/fctc/implementation/workshops/>

⁷ See <http://www.who.int/fctc/implementation/needs/>

15. The WHO Department for Prevention of Noncommunicable Diseases and regional offices have also recently undertaken several activities to promote implementation of Article 5.3 in the regions. Upon request from Member States, WHO has supported due diligence processes to ensure a firewall between the tobacco industry's interests and public policy, provided technical assistance on countering industry interference and industry arguments, provided advisory statements and briefs in legal cases brought by the tobacco industry against Member States, and built technical capacity at country level. Specific activities are presented in the table below.

WHO Headquarters or region	Activity
Headquarters	<p>World No Tobacco Day 2012 materials.</p> <p>Technical resources.</p> <p>Publications on monitoring the activities of the tobacco industry and the Tobacco Industry Monitoring Database.</p> <p>Organization of high-level meetings, sessions and plenaries at international events promoting the need to scale up work on countering tobacco industry interference, e.g. 15th World Conference on Tobacco or Health (2012), United Nations High-level Meeting on Non-communicable Diseases (2011), World Health Assembly (2012).</p> <p>Assisting regions and Member States.</p>
African Region	<p>One regional workshop on implementation of Article 5.3 (Benin)</p> <p>Country-level sensitization training provided by regional and country offices in 12 countries.</p> <p>A code of conduct being developed in Uganda as a test case to be suggested for other countries.</p>
Region of the Americas	<p>Subregional South American workshop on tobacco and trade, covering Article 5.3 (Plurinational State of Bolivia).</p> <p>Three national workshops on tobacco and trade, also covering Article 5.3 (Chile, Jamaica, Peru).</p>
Eastern Mediterranean Region	<p>One regional training session on tobacco and trade, also covering Article 5.3 (Egypt), with a regional training-of-trainers workshop planned.</p> <p>Two national workshops on Article 5.3 (Jordan, Lebanon) and another national meeting (Jordan) to develop national guidelines on Article 5.3.</p> <p>Country factsheets on implementation of Article 5.3 being developed.</p>
European Region	<p>Two national workshops on Article 5.3 (Turkey, United Kingdom), with similar meetings planned in other countries.</p> <p>Publication of a document on tobacco industry interference in the Region, and another to be published in September 2014.</p>
South-East Asia Region	<p>Regional meeting on Article 5.3 (India).</p> <p>Five national workshops (Bangladesh, Indonesia, Myanmar, Nepal, Sri Lanka).</p>

	Provision of technical support and coordination with WHO Headquarters and country offices concerning the court cases in Nepal, Sri Lanka and Thailand.
Western Pacific Region	<p>Three national workshops (Cambodia, Solomon Islands, Vanuatu)</p> <p>Assistance provided to two countries to respond to attacks from the tobacco industry, and to prepare for a court case in a third country.</p> <p>Collaboration on relevant training programmes with the McCabe Centre for Law and Cancer and the Southeast Asia Tobacco Control Alliance.</p>

16. Several nongovernmental organizations that are observers to the COP (Corporate Accountability International, European Network for Smoking and Tobacco Prevention, Framework Convention Alliance for Tobacco Control, International Network of Women Against Tobacco, International Union Against Tuberculosis and Lung Disease, World Federation of Public Health Associations, and World Heart Foundation) also reported on their work (or that of their member organizations) in assisting Parties to meet their obligations under Article 5.3 of the Convention, as part of their reports submitted to the COP during the review of their accreditation as observers in 2014. Such work includes several publications and supporting documents.

POTENTIAL AREAS FOR FURTHER STRENGTHENING IMPLEMENTATION OF ARTICLE 5.3

17. As indicated in Parties' most recent implementation reports, as well as in other sources of information, around two thirds of reporting Parties have implemented provisions of Article 5.3; most of those Parties have only applied one or a few of the recommendations of the implementation guidelines. In addition, only half of the Parties that reported any activity in relation to Article 5.3 have made efforts to systematically collect and make information on the tobacco industry available to the public. Concerted efforts will be needed to ensure strengthening of implementation of this article, which may involve, among other things, provision of further assistance to Parties in this area, facilitation of exchanges of best practices (through establishment of a virtual community on the new WHO FCTC Information Platform for example), strengthening of systems for monitoring the tobacco industry and/or further awareness-raising at national and regional levels. The encouraging development of a growing number of Parties integrating measures to prevent tobacco industry interference into their national tobacco-control laws or other programmatic documents (such as national action plans or policies) should be built upon, through cataloguing and disseminating best practices.

18. Exchanges of information can be enhanced by several means, including through the creation of a virtual community of practice on the new web-based WHO FCTC Information Platform and publication of an updated resource list on the WHO FCTC website (including links to relevant websites); using social media, where appropriate, and in line with the relevant policy developed and applied by the Secretariat; reactivating and regularly updating the WHO Tobacco Industry Monitoring Database; using the knowledge hubs that are currently being established in relation to the Secretariat's new Information Platform; and through the WHO collaborating centres, in particular those that are active in tobacco control.

19. Monitoring of Parties' implementation of Article 5.3 can be strengthened by encouraging Parties to complete the additional questions on the use of implementation guidelines adopted by the COP, a new tool aimed at assisting the Parties to voluntarily submit information on their use of guidelines. The Convention Secretariat is available to provide additional support to Parties that wish to do so. Utilization of the full set of recommendations contained in the guidelines should be promoted, by documenting good practices and providing targeted advice to Parties upon their request.

20. At the same time, Parties face further challenges in the form of new methods of tobacco industry interference to which Parties are exposed through, for example, legal challenges initiated within countries and in international forums that slow policy-making and implementation of the treaty. Strengthening assistance to Parties, particularly at subregional and country level, in the form of knowledge, expertise and resources, where appropriate, is necessary to safeguard their tobacco-control policies and ensure timely and effective enforcement.

21. To ensure protection from tobacco industry interference at meetings of the governing bodies of the WHO FCTC, the Secretariat is submitting proposals to the COP at its sixth session on how to regulate attendance by the public at meetings of the COP and its subsidiary bodies, based on concerns raised by Parties over the large numbers of tobacco industry representatives among public attendees.¹

ACTION BY THE CONFERENCE OF THE PARTIES

22. The COP is invited to note this report and provide further guidance.

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¹ See document FCTC/COP/6/27.