



**FCTC**

WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL

# WHO Framework Convention on Tobacco Control

Trade issues in the context of the  
WHO FCTC and its guidelines



# Outline

- **WHO Framework Convention on Tobacco Control**
- **The Importance of the WHO FCTC as a binding international treaty**
- **Obligations and guidelines in trade and investment spotlight**



# WHO FCTC

- Developed in response to the globalization of the **tobacco epidemic**
- First international treaty negotiated under the auspices of WHO (Article 19 WHO Constitution)
- Adopted by the World Health Assembly on 21 May 2003
- Entered into force on 27 February 2005



# **WHO Framework Convention on Tobacco Control**

## **Principal Obligations**



# The Convention: principal obligations

- Measures to reduce the **demand** for tobacco products (Part III; Arts 6 - 14)
  - **Price** and **tax** measures
  - Protection from **exposure to tobacco smoke**
  - Regulation of the **contents** of tobacco products and of **disclosures** of tobacco products
  - **Packaging and labeling**
  - Education, communication, training and public awareness
  - Advertising, promotion and sponsorship
  - Tobacco **dependence** and **cessation**.



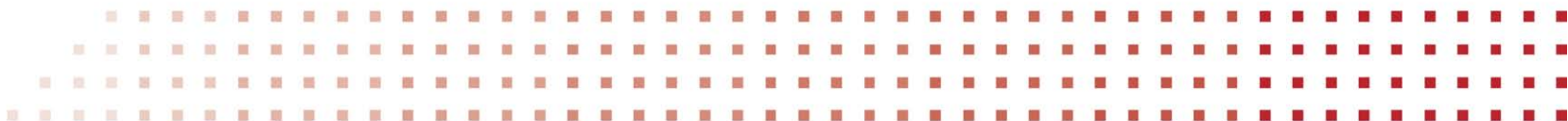
# The Convention: principal obligations (cont.)

- **Measures to reduce the supply of tobacco products** (Part IV; Arts 15 - 17)
  - Measures against **illicit trade** in tobacco products;
  - Measures against sales to and by **minors**;
  - Support for **economically viable alternative** activities.



# The Convention: other key obligations

- General obligations, including the protection of public health policies with respect to tobacco control from the interests of the tobacco industry;
- Establish national coordinating mechanisms;
- Protection of the environment;
- Establish liability;
- International cooperation;
- Reporting and exchange of information



# Current Status of the WHO FCTC

- **March 2013:**

**176 Parties**

= 175 States and the European Union are legally bound by the provisions of the WHO FCTC

= 90% of the world's population





# **Importance of the WHO FCTC as a binding international treaty**



# Importance of the WHO FCTC as a binding international treaty

- Binding international instruments are subject to the law of treaties (Vienna Convention on the Law of Treaties)
  - Presumption against a conflict between two conventions
  - Specific legal rules that assist in the event that the provisions of two different treaties cannot be reconciled
- WHO FCTC and its tobacco control measures are on equal footing with other binding international instruments when questions of conflicts and interpretation arise



# Importance of the WHO FCTC as a binding international treaty

- Recent win in Norwegian case
- Oslo District Court Decision – 14 September 2012 – Point of Sale Advertising Ban
- Basis of case: European Economic Agreement with European Free Trade Association States – Article 11: free movement of goods
- Reference to both **WHO FCTC and Guidelines**



# Importance of the WHO FCTC as a binding international treaty

- Also has influence in respect of non-Parties
  - WTO Panel Report and Appellate Body Report on Clove Cigarettes referred to WHO FCTC
    - Para 235 AB Report: "we recognize the importance of Members' efforts in the World Health Organization on tobacco control"
  - Reinforces the importance of the WHO FCTC regime in trade disputes on tobacco control measures



# WHO FCTC Parties

- **176** WHO FCTC Parties
- **159** WTO Members, only **14** are not WHO FCTC Parties



# **WHO Framework Convention on Tobacco Control**

## Guidelines for Implementation



# WHO FCTC Article 7 – Non-price measures to reduce the demand for tobacco

- Parties are required – through the Conference of the Parties – to propose appropriate **guidelines** for the implementation of the provisions of Articles 8 to 13



# The Nature of WHO FCTC Guidelines

- The result of **intergovernmental** negotiation
- Several rounds of drafting and comments by Parties
- All have been adopted by **consensus** decision of the COP
- **Studies, research and reference material** used by Parties in the development of the guidelines is on the WHO FCTC website





# The Nature of WHO FCTC Guidelines

- Sept 2012 decision in Germany:
  - Tobacco product regulation: Flavoring capsules in cigarette filters banned in Germany referring to guidelines for Articles 9 and 10
  - Court agreed to the decision of the regulatory authority to ban the flavoring capsules based on Article 9 & 10 guidelines
- one of the judges said that even if these guidelines are not legally binding, they represent **a broad scientific consensus internationally and accepted by the Parties**



# WHO Framework Convention on Tobacco Control

Obligations of particular relevance:

- **Article 9** *Regulation of the contents of tobacco products*
- **Article 10** *Regulation of tobacco product disclosures*
- **Article 11** *Packaging and Labelling*
- **Article 13** *Tobacco advertising, promotion and sponsorship*



# WHO FCTC Article 9: *Regulation of the contents of tobacco products*

- “The Conference of the Parties shall propose guidelines for”:
  - “**testing and measuring the contents and emissions** of tobacco products”
  - “**regulation of these contents and emissions**”
- “Each Party shall, where approved by competent national authorities, **adopt and implement** effective legislative, executive and administrative or other **measures** for such **testing and measuring**, and for such **regulation.**”



# WHO FCTC Article 10: *Regulation of tobacco product disclosures*

- “Each Party shall, in accordance with its national law, **adopt** and **implement** effective legislative, executive, administrative or other **measures**”:
  - “requiring manufacturers and importers of tobacco products to **disclose to governmental authorities** information about the **contents** and **emissions** of tobacco products.”
  - “for **public disclosure** of information about the **toxic constituents** of the tobacco products and the **emissions** that they may produce.”



# Partial guidelines for implementation of Articles 9 & 10 WHO FCTC

- Guidelines for Arts 9 & 10 are being developed in a **step-by-step process** as new country experience , and scientific medical and other evidence, becomes available
- Some sections will be addressed later, and in these sections, the language **“This section has been left blank intentionally to indicate that guidance will be proposed at a later stage.”** has been inserted.



# Partial GL for Arts. 9 & 10: objectives

- To support Parties in developing effective regulation of contents and emissions of tobacco products to reduce:
  - Attractiveness
  - *Addictiveness (dependence liability)*
  - *Toxicity*
- Disclosure to governmental authorities
- Disclosure to public
- Use of terms: definitions, including for attractiveness and contents,



# Partial GL for Arts. 9 & 10: recommended measures

Recommendations regarding *contents*:

## ■ Ingredients (disclosure)

- Require manufacturers and importers to disclose to gov't authorities info on ingredients in manufacture at specified intervals and brandy-by-brand and on standardised basis
- Ensure disclosure of ingredients used in manufacture and quantities per unit, including components for each brand (e.g. Filter, paper, glue)
- Require disclosure of info on tobacco leaves used (list of e.g.: type, %, etc)

## ■ Ingredients (regulation)

- Prohibit or restrict ingredients that:
  - Increase palatability (sweeteners, spices, flavours, etc)
  - Have colouring properties
- Prohibit ingredients that:
  - Create impression of health benefits (vitamin C, fruit, veg, omega 3 fatty acids, etc)
  - Are associated with energy or vitality (caffeine, guarana, taurine, etc)

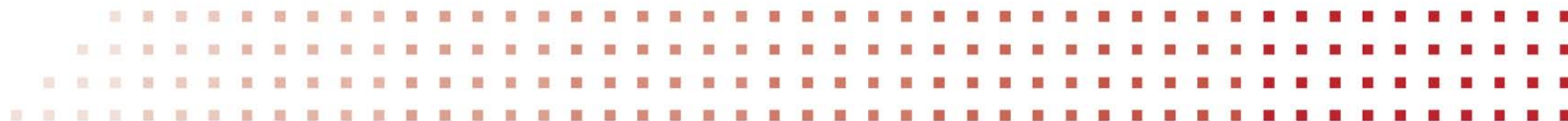
## ■ *Constituents (Disclosure and Regulation)*



# Partial GL for Arts. 9 & 10: recommended measures

Recommendations regarding *emissions*:

- Disclosure - Parties should:
  - Require manufacturers and importers to disclose info on design features to gov't authorities, including results of tests by the industry
  - Specify recommended methods for reporting design features in Appendix 2
  - Ensure every manufacturer and importer provides to gov't authority copy of lab report for design feature and proof of lab accreditation
  - Require notification of any change in design features and updated info
- *Regulation*





# Partial GL for Arts. 9 & 10: recommended measures

Recommendations regarding *disclosure of other information*:

- to governmental authorities:
  - Require disclosure of general company info, including name, street address and contact info of principal place of business and each manufacturing and importing facility
  - Consider requiring disclosure of sales volume info in units for each brand in a brand family
- to the public:
  - Consider making information about toxic constituents and emissions and other info disclosed to gov't authorities publicly accessible



# WHO FCTC Article 11 – Packaging and labelling of tobacco products

- Each Party is required to **implement effective measures** to ensure that:
  - 11.1(a): “tobacco product packaging and labelling **do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression** about its characteristics, health effects, hazards or emissions...”
  - 11.1(b): health warnings



# WHO FCTC guidelines – Article 11 (Packaging and Labelling)

- **“Plain packaging.** Parties should consider adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). ...



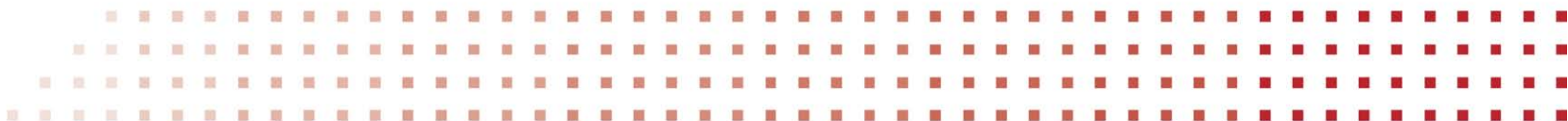
# WHO FCTC guidelines – Article 11 (Packaging and Labelling)

- ...This may increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from them, and address industry package design techniques that may suggest that some products are less harmful than others.”



# WHO FCTC Article 13 – Tobacco advertising, promotion and sponsorship

- Each Party is required to “undertake a **comprehensive ban of all tobacco advertising, promotion and sponsorship. ...**”
- Article 1(c): “‘tobacco advertising and promotion’ means **any form of commercial communication**, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;...”



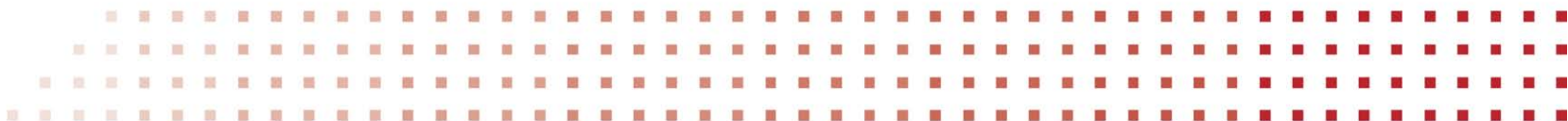
# WHO FCTC guidelines – Art. 13 (Advertising, promotion and sponsorship)

- Packaging and product features
  - “The effect of advertising or promotion on packaging can be eliminated by requiring **plain packaging**: black and white or two other contrasting colours, as prescribed by national authorities; nothing other than a brand name, a product name and/or manufacturer’s name, contact details and the quantity of product in the packaging, without any logos or other features apart from health warnings, tax stamps and other government-mandated information or markings; ...



# WHO FCTC guidelines – Art. 13 (Advertising, promotion and sponsorship)

- Packaging and product features
  - “...prescribed font style and size; and standardized shape, size and materials. There should be no advertising or promotion inside or attached to the package or on individual cigarettes or other tobacco products. ...”



# WHO FCTC guidelines – Art. 13 (Advertising, promotion and sponsorship)

## ■ Recommendation

- “Packaging and product design are important elements of advertising and promotion. Parties should consider adopting **plain packaging requirements** to eliminate the effects of advertising or promotion on packaging. Packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products attractive.”





# The WHO FCTC Guidelines

- In conclusion, the guidelines provide additional grounds for arguing why a government has taken a particular tobacco control measure
- As a result of **intergovernmental** negotiation and adopted by a **consensus** decision of the COP, they are a strong tool to defend, when necessary, tobacco control measures





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**Thank you for your  
attention**

**More information:**

**[www.who.int/fctc](http://www.who.int/fctc)**

