

**Intervention by the Convention Secretariat
WHO Framework Convention on Tobacco Control (FCTC)
in respect of the proposal to
introduce plain packaging of tobacco products in New Zealand**

TRIPS Council

5 March 2013

Thank you, Chair. We are grateful for this opportunity to provide information to the TRIPS Council on the WHO Framework Convention on Tobacco Control, or FCTC.

As we observed at previous meetings of this body, the WHO FCTC was negotiated under the auspices of the WHO in response to the globalization of the tobacco epidemic, and the treaty has been in force since 2005. Like other international legal instruments, States that are party to the FCTC undertake certain obligations pursuant to it. The number of States that are party to the Convention has risen to 176 - in fact, only 14 of the current 159 WTO Members are NOT Party to the FCTC.

New Zealand signed and ratified the WHO FCTC among the first forty States that were required for the entry into force of the Convention.

Relevant WHO FCTC provisions

The WHO FCTC contains a number of provisions that are relevant to the issue of plain packaging of tobacco products.

As noted during previous sessions of the TRIPS Council, the FCTC sets out in Article 5 the general obligations of Parties, including, inter alia, the obligation to "develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with" the FCTC.

The recognition by the States Parties of the effectiveness of comprehensive multisectoral measures in the fight against the global tobacco epidemic is a theme that recurs throughout the Convention and the obligations it contains. It is through the implementation of such a comprehensive multisectoral approach that the tobacco control measures contained in the FCTC are most effective.

Turning to the matter of the plain packaging measures for tobacco currently under discussion, as noted previously in this forum, Article 11 of the Convention requires Parties to adopt and implement effective measures in respect of the packaging and labelling of tobacco products, including health warnings and other appropriate messages.¹

According to the most recent Party reports on implementation, which are required pursuant to Article 21 of the Convention, 93 Parties reported to have banned descriptors on packaging and labeling that were misleading, deceptive or likely to create an erroneous impression of the product, and 104 Parties reported to have adopted policies requiring tobacco product packaging to carry health warnings describing the harmful

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Article 11

Packaging and labelling of tobacco products

1. Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that:

- (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, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as "low tar", "light", "ultra-light", or "mild"; ...

effects of tobacco smoke. In addition, 97 Parties have introduced measures to ensure that health warnings are large, clear, visible and legible.²

Moreover, after seven years of implementation, Article 11 is one of the articles of the Convention attracting the highest implementation rates among Parties.³

Another specific provision of the FCTC that has been previously noted in this Council is Article 13, which requires Parties to undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship.⁴ That comprehensive ban must be read in light of the broad definition of “tobacco advertising and promotion” which, according to Article 1(c) “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.” The Guidelines for the implementation of Article 13 adopted by consensus by the Parties include “packaging and product design features” on the indicative list of forms of advertising, promotion and sponsorship.

Again, the most recent Party reports indicate that 86 Parties have introduced a comprehensive ban on tobacco advertising, promotion and sponsorship.

Finally, the governing body of the Convention, the Conference of the Parties or COP, adopted at its 4th session in November 2010 the *Punta del Este Declaration* (Decision FCTC/COP4(5)) regarding public health policy, international trade and the activities of the tobacco industry. The *Punta del Este Declaration* reiterates the firm commitment of Parties to the WHO FCTC “to prioritize the implementation of health measures designed to control tobacco consumption” and makes specific reference to Articles 7 and 8 of the TRIPs Agreement, as well as to paragraphs 4 and 5(a) of the Doha Declaration on the TRIPs Agreement and Public Health, adopted by the 4th session of the WTO Ministerial Conference in November 2001.

Thank you very much for this opportunity to provide additional information on the WHO FCTC to the TRIPs Council.

² Global progress report on implementation of the WHO Framework Convention on Tobacco Control, 2012, http://www.who.int/fctc/reporting/summary_analysis/en/index.html.

³ Global progress report on implementation of the WHO Framework Convention on Tobacco Control, 2012, http://www.who.int/fctc/reporting/summary_analysis/en/index.html.

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Article 13

Tobacco advertising, promotion and sponsorship

1. Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.
2. Each Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory. In this respect, within the period of five years after entry into force of this Convention for that Party, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21. ...