

TOBACCO CONTROL: DON'T TRADE AWAY PUBLIC HEALTH

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When I responded to a request from friends in the tobacco control community to attend last week's World Health Organisation (WHO) negotiations for the Framework Convention on Tobacco Control (FCTC), I thought I would be in for an easy – albeit interesting – ride. But I was wrong.

I have been involved in *cutting edge* issues almost all of my life. With Greenpeace, I had worked on many difficult and politically sensitive issues including the testing and proliferation of nuclear weapons. So I thought Tobacco would be easy in comparison. Friends in the environmental and social justice movements wondered what I was doing taking on such a 'soft' issue as smoking, an issue of 'individual choice' which could hardly be considered one of the more pressing issues of the day. But I quickly came to learn that the negotiations around the Tobacco Convention epitomise all of the same dynamics which I'd faced the year before in the run-up to the *World Summit on Sustainable Development*. Developing countries being saddled with rising health costs to feed the profits of Northern multinationals, US double standards designed to serve America first, and the same kind of cynical arm-twisting rich-country politics that I have experienced all too often. In any case, I was interested to see what parallels I could find between environmental and public health campaigning.

As an environmentalist, I have campaigned on many issues involving the *precautionary principle*, such as toxic trade and dumping, genetically modified organisms in food and agriculture, climate change and biodiversity loss. The *precautionary principle* requires preventative action even in the face of scientific uncertainty regarding the extent of environmental damage identified or anticipated. As a general rule, governments and the private sector are reluctant to act upon the *precautionary principle* because conventional economics does not fully account for the true costs -- the *ecological footprint* of any given activity. Conventional economists emphasise *artificial wealth* (money) at the expense of *natural wealth* ("environmental services" from climate and ocean systems, and genetic resources including forest and marine biodiversity). Environmentalists say that part of the problem is that there is a *grey area between science and politics*; that environmental politics are held hostage to *value judgements*.

With tobacco, there is no scientific controversy as to the reality of Tobacco-related diseases.¹ The industry has been and still is involved in a massive campaign to sow doubts about for example the effects of second-hand smoking, the efficacy of measures designed to curb consumption, and the potential health

¹ Physicians have estimated that since the negotiation of the Framework Convention started on 25 October 1999, 13,461,552 people have died from tobacco-related diseases.

benefits of supposed “reduced-risk” products. But, these cynical manoeuvres aside, with its attempt to establish a worldwide convention to control the multinational tobacco industry, the WHO is dealing with scientific certainty, and the *precautionary principle* should not be needed to justify urgent action. Hence my thought that the negotiations to establish a worldwide convention to control the multinational Tobacco industry would be a piece of cake.

Worldwide Tobacco Epidemic

People who are addicted to nicotine probably know that they really ought to quit smoking. Most of them undoubtedly try to convince their kids not to start. As WHO Director General Gro Harlem Brundtland has written, “*Four million unnecessary deaths per year, 11,000 every day – it is rare, if not impossible to find examples in history that match tobacco’s programmed trail of death and destruction*”. The word “*programmed*” was a good choice of words, as this is the most disturbing aspect of tobacco addiction, in comparison with other global public health crises such as Aids or Malaria. As noted in the 2000 WHO internal inquiry on tobacco industry infiltration of WHO’s tobacco programme – “*Tobacco use is unlike other threats to global health. Infectious diseases do not employ multinational public relations firms. There are no front groups to promote the spread of cholera. Mosquitoes have no lobbyists.*”² There are serious-looking guys in expensive suits sitting in Board rooms actually planning campaigns to get us and our children addicted to nicotine - guys who went to exclusive universities and know they are getting away with murder.

According to WHO figures, if current growth rates continue, by 2020, tobacco use will be responsible for about 10% of the global burden of disease.³ Dr. Brundtland rightly points out that today, there are very few of us without a relative or a friend who has died as a result of tobacco addiction. The evidence is overwhelming.

Dirty Business

Like illegal drug dealers, the multinational tobacco corporations have selected as their prime targets young people and – increasingly – those from developing countries. Targeting young people is obvious: get them while they’re young and you can gain a lifelong addicted customer. Why target developing countries? Because these corporations need to compensate for tobacco control measures and increased public health awareness in Europe and North America. As a result, countries with already distressed economies and faced with increasing levels of poverty are now also projected to face the costs of an unprecedented tobacco-related epidemic in the decades to come. The proliferation of tobacco

² <http://www.tobaccofreekids.org/campaign/global/pdf/infiltration.pdf>

³ “*Women and Tobacco Epidemic, Challenges for the 21st Century*”, Foreword by Dr. Gro Harlem Brundtland, WHO, 2001, WHO/NMH/TFI/01.1.

is not only a public health affair: it has become what is known in UN jargon as a *development and a poverty eradication issue*.⁴

Everyone views the executives of tobacco corporations as unscrupulous individuals who put private profit over human lives deliberately. This probably accounts at least in part for the popularity of the Hollywood blockbuster *The Insider*, and the evil nicotine-peddling executive has almost become a cliché. Very few people, however, have any idea that at the beginning of the 21st century there are still governments covering up for them. And, ironically enough, the US Government is taking the lead in trying to torpedo the WHO effort. I say ironically because in the rest of the world, the United States is perceived as being on the forefront of anti-smoking initiatives. Everyone has seen pictures of Wall Street employees forced to get their nicotine fix out on snowy streets, and smoking bars in the US have become the exception rather than the rule. But perhaps it's not ironic after all given the Bush Administration's predisposition to support corporate interests above those of the public. Given that the largest multinational tobacco corporation, *Philip Morris* is from the US, and it needs to sell its products somewhere, US negotiators have stood in the way of all key tobacco control measures proposed for adoption as part of the WHO Framework Convention. It probably doesn't hurt that Philip Morris is also the single largest corporate contributor to the Republican party.

US Arm Twisting

Despite its economic might and usual arm twisting tactics, the US lost in Geneva. The vast majority, led by a group of *like-minded* developing countries from Africa and Asia, fed up with the insanity of Bush's *Health for US Citizens Only* approach, managed to complete the draft convention with several novel provisions, including the explicit recognition that a ban on all tobacco advertising would save lives. The Convention will be forwarded for adoption to the UN *World Health Assembly* scheduled for the end of May.

The negotiation ended at 4:30 am on Saturday morning. The late hour alone reveals the strong resistance exercised by the US and its (very few) allies. Even after the draft convention was adopted, the US expressed reservations to the most meaningful provisions, including: the requirement to include minimum size (30% to 50%) health warning labels on tobacco packaging (curiously denounced as inhibiting freedom of speech); the prohibition of sales to minors (the ultra-liberal US administration does not recognise that the federal government has a constitutional role to protect minors!); a reference to the rights of "indigenous individuals and communities" (an "unrecognised formulation" according to the White House); definitions of the words

⁴ See "*The Economics of Tobacco Use and Tobacco Control in the Developing World*", The World Bank, February 2003, available at: http://europa.eu.int/comm/health/ph/programmes/tobacco/world_bank_en.pdf, and "*Tobacco and Health in the Developing World*", WHO, February 2003, available at: http://europa.eu.int/comm/health/ph/programmes/tobacco/who_en.pdf.

“advertisement” and “sponsorship” that are “unacceptable” (read too effective) to the US; and a *take it or leave it* clause whereby no party to the treaty may file reservations on any provision (the US would prefer an *à la carte* menu).

Foot draggers

To a lesser, but still significant, extent, there were a few other countries dragging their feet. One after the other on Saturday morning they expressed their own reservations and provided some much appreciated breathing space to the US who would otherwise have been totally isolated.

Perhaps most disturbing in this regard was the position of Germany opposing the proposal to give priority to a comprehensive ban on tobacco advertising. Not only is the German position incomprehensible coming from a country with one of the world’s best records in public health and environmental protection; it may also severely affect what is left of European cohesion, on an issue otherwise championed by the EU Commissioner for Public Health David Byrne. On the final day of the negotiation last week, public health Non-Governmental Organisations nicknamed Gerhard Schroeder “*Chancellor Philip Morris*”, a name that is likely to *stick* unless Germany shifts its position before the *World Health Assembly* in eleven weeks.

China, a giant with a state-owned tobacco industry to match (and a looming giant tobacco epidemic as well) was also on record opposing the adoption of additional protocols by voting. China would like protocols (for example on illicit trade, liability, or advertising) to be adopted by consensus (read: they would like to have a veto).

Japan was also outspoken during the meeting, opposing common sense measures such as the banning of the misleading terms “*mild*” and “*light*”. They carefully crafted a statement in the end, giving them the option to object to anything during the *World Health Assembly*. This should come as no surprise, given that two-thirds of *Japan Tobacco International*, the world’s third largest multinational tobacco company, is owned by the Japanese Ministry of Finance, and one of its best exports is branded “*Mild Seven*”.

Finally, the delegation from Cuba, though not opposed to sending the draft to the *World Health Assembly*, expressed its well-known concern that a clause on liability could be used to sue its state-owned tobacco company.

Looming Tobacco Trade War?

Government delegates covering their backs? Governments protecting their corporations (and their tax revenues)? “*What’s new?*” you will ask.

Well, in fact, there is more to this story: at the eleventh hour, negotiators decided not to clarify in the treaty whether trade trumps health. In other words, should a country be able to challenge through the *World Trade Organisation*

(WTO) any tobacco control provision it considers an unfair restriction on trade? We still don't know. Several drafts circulated during the negotiation, some *trade-friendly*, others *health-friendly*, but the negotiators found it simpler not to decide.

"No deal is better than a bad deal", said Ira Shapiro, former General Council to the US Trade Representative under the Clinton administration, who has now joined the public health community in demanding that special trade rules be created for this uniquely lethal but legal product. Shapiro is right, of course, but how much longer can we afford to let the US and others use the WTO as a stick to undermine the political will of the international community to protect human health? Even the casual observer cannot have failed to notice the Bush Administration's near-theological crusade against multilateralism and the UN more generally. We should not allow this government to use the WTO to pursue this agenda.

Since the creation of the WTO in 1994, environmentalists and public health activists have warned of its *chilling effect* on the further development of international and national laws and regulation aimed at the protection of the environment and human health via trade-restricting measures. One particular *chilling factor*, they say, is the legally binding WTO dispute settlement mechanism. Any state that believes a trade-restricting measure adopted by another state is arbitrary and may affect its own commercial interests, may ask for the formation of a WTO dispute settlement panel, whose ruling is binding under the WTO constitution.

In principle there is nothing wrong with such a legally binding mechanism. It could even be a good thing were the judgements unbiased. The problem however lies with the WTO's pro-trade bias. In most cases, it rules in favour of trade at the cost of public health and the environment. This is why, for example, all European taxpayers pay a fine every year for the EU having banned growth hormones in beef, a health measure that the US does not like because it restricts American meat exports to Europe. This is also why, when the US threatened the government of Sri Lanka with WTO retaliation in 2001 for having banned genetically modified organisms in food and agriculture (a measure that Sri Lanka believed would protect its biodiversity as well as its export markets given the increased reluctance of consumers in Europe and Japan to buy genetically modified food), the Sri Lankan parliament was left with little choice but to "suspend" the anti-GMO law.

But here's another great irony. While the Bush Administration campaigns against multilateralism on nearly all fronts, it nevertheless uses the multilateral trading system to pursue its own unilateral agenda. The application and use of *double-standards* by the US is perhaps nowhere as clearly exemplified as in the Bush Administration's opposition to a strong and effective multilateral framework on tobacco control which is – in many respects – consistent with the policies which are applied in the US to protect its own citizens.⁵

⁵ US Public Health activists consider that the US Administration's reluctance to a strong international framework on tobacco control is a good reminder of the fact that restrictions to

Awaiting the Emperor with no Clothes in Cancún

So having ducked the issue of whether tobacco control measures will be subordinate to free-trade regulations, negotiators have – perhaps inadvertently – subjected the newly agreed convention to the politics of upcoming WTO negotiations. Four years after the failed Seattle ministerial WTO conference, and two years after the launch of the so-called *Doha Development Round* of trade liberalisation pursuant to the 4th WTO Ministerial Conference in Qatar, the WTO is holding its next ministerial meeting in Cancún, Mexico in September 2003.

Cancún is likely to take place in a very politically charged environment. Everyone was determined to make Doha *look good* two years ago, because it was seen as the first test of the international community's ability to grapple with the issues arising out of the 11 September attack which had taken place a couple of months previously. The fact that the meeting was held in the Middle East made the gathering all the more challenging. This "test" continued through the Monterrey UN Conference on *Financing for Development* in February 2002, and ultimately to the *World Summit on Sustainable Development* held in Johannesburg in September 2002. With this backdrop, it appears now that compromise-agreements were reached which in retrospect did not reflect a real political will to come to grips with key issues of global governance. But things are different now.

Apart from (and perhaps compounded by) current uncertainties over the impact of the Iraq crisis and related controversies, there is increased irritation with the lack of progress on the so-called *Doha development round*. US *double talk* on export credit and subsidies and – of course – the deadlock in the implementation of the *Doha agreement on access to medicines* to facilitate the fight against Aids and other diseases have created a lot of bad feeling and frustration.

Even the EU Trade Commissioner Pascal Lamy, normally a quite self-contained gentleman, does not hide his irritation with the US. In an unusually strong article published in *The Wall Street Journal* on 3 March, 2003 titled "*Come on, America, Play By the Rules!*", Lamy says: "*Neither the U.S. nor the European Union has a 100% record to brag about when it comes to the implementation of rulings of the World Trade Organization. But the problems, particularly on the U.S. side, are starting to mount up. Meetings of the WTO's dispute settlement body have become a litany of complaints against the U.S. and its failure to implement WTO findings*". Lamy is aware of the fragility of the multilateral trading system, and you can read between the lines that he sees his US partners behaving *like bulls in a china shop*.

tobacco smoking applied in the US, including second-hand smoke, were in fact conquered by grassroots organisations and civil rights lawyers.

It is unclear whether Lamy knew when he wrote that article that the US was overtly threatening to use the WTO to undermine the Draft WHO Tobacco Control Convention. Someone should tell him quickly! In the context of the *Doha Development Round*, Lamy is engaged in negotiating on behalf of the European Union with the other WTO governments an agreement on the relationship between the WTO multilateral trading system and multilateral environment agreements (including the application of the *precautionary principle*). The outcome of this will have important long term consequences for public health. The question is whether trade agreements should supersede health and environment agreements – precisely the issue which was avoided in Geneva. Critics have said that the WTO is not the right place to discuss these issues, but Lamy asked to be given the benefit of doubt and in essence promised that a good solution could be found.

So what can we expect from the US in this context? To start with, the US is and will continue to be a forceful opponent of the *precautionary principle*. Its negotiators claim that they would accept trade-restricting measures for environment and health only when enacted only on the basis of scientific evidence.

This position is at odds with that of the EU, which is constantly threatened by the US of WTO retaliation whether it be for having restricted genetically modified organisms in agriculture, having required computer and electronic companies to be responsible for the elimination of the wastes they generate through the entire life-cycles of their products, or for banning the most toxic plastic additives in toys designed for children of less than three years of age.

So why is this relevant to tobacco control? Because now, in the context of the anti-smoking negotiations, the US government is taking a position which is 180 degrees opposite to its position in its relation to the precautionary principle. The US position has been, in effect: “We don’t support measures to alleviate problems impacting human health and the environment unless these impacts are scientifically proven. But actually, come to think of it, we don’t support them when they are scientifically proven either, at least when it comes to making sure that other countries aren’t deterred from buying our deadly products” At this point, the credibility of the US negotiators falls apart: who will now believe them when they claim they would agree to trade-restricting measures on issues such as GMOs if only there were more solid scientific evidence of the damage to biodiversity or health? Won’t it be hard for US Trade Representative Robert Zoellick in Cancún to tell everyone that GMOs are safe, when his negotiators at the WHO act as if tobacco smoking was safe too? Poor Robert Zoellick is doomed to play the part of the emperor with no clothes in Cancún. Perhaps health activists should bring along spare clothing to Cancún – to donate to Zoellick in sympathy for his nudity.

In all seriousness, perhaps no one is as acutely aware of the boomerang effect that a WTO dispute settlement panel over tobacco control could have on the credibility of his organisation as WTO Director General Dr. Supachai

Panitchpakdi. The concern that *Philip Morris* could convince the Bush administration to fight tobacco control at the WTO is possibly what motivated Dr. Supachai on 3 March to issue an official statement on the FCTC “congratulat[ing] all of those who worked so hard to bring about this important agreement”. He went on to say “When dealing with the pressing problems of our age, whether they relate to improving health standards or eradicating poverty, there can be no doubt that nations of the world must work together. A multilateral approach to problem solving offers all of us the best hope for a better world”.⁶ Dr. Supachai comes from Thailand, a country that was aggressively challenged by the US a few years ago for enacting its own restriction to tobacco advertising...

WHA: Towards a Coalition of the Conscientious

Under US leadership, those who speak for *Philip Morris* and their ilk will try to further weaken the Draft FCTC which in three years of negotiation has in effect already been reduced to little more than a shopping list from which countries may choose between higher and lower standards of tobacco control.⁷

Public health NGOs and physicians organisations from all over the world are rallying to join the *World Health Assembly* in May in Geneva to support the fight of the poorer countries which need the legitimacy and protection of the United Nations to secure maximum protection for their people from the abuse of the tobacco multinationals.⁸

Talks are already underway to use the *World Health Assembly* as an opportunity for those countries to go beyond the lowest common denominator. For example it is possible that some countries could announce collectively or individually that they will implement the strongest tobacco control measures contemplated under the FCTC, particularly a total ban on advertisement; banning the use of the misleading words *mild* and *light*; and compulsory use of 50% size warning labels on tobacco packages.

The world (like the financial markets) places great stock in signals. What better signal could there be to reaffirm the imperative right of States to protect human health than by forming a “*coalition of the Conscientious*” on tobacco control at the *World Health Assembly*? In so doing, governments would highlight the imperative need to prevent the US from *trading away public health*.

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⁶ http://www.wto.org/english/news_e/news03_e/sp_who_tobacco_agr_3march03_e.htm

⁷ The full text sent to WHA for adoption can be found at:
www.ash.org.uk/html/international/html/postINB6text.html

⁸ The WHA will be held 17-28 May, 2003 in Geneva. Website www.who.int