

Framework Convention on Tobacco Control

Sixth Meeting of the International Negotiating Body

17 – 28 February 2003

Revised Chair's text of a framework convention on tobacco control A detailed commentary

**Action on Smoking and Health (ASH), London
Campaign for Tobacco Free Kids, Washington DC**

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This document is a commentary on the new Chair's text of the FCTC ([A/FCTC/INB6/2](#)) released on 15 January 2003. Our aim is to assist government delegates and non-governmental observers in preparation for INB-6 on 17-28 February, 2003 in Geneva and any inter-sessional meetings in WHO regions that take place before.

The format used is 'side-by-side' in which we lay out the Chair's text in the left hand column and make comments and suggestions in the right hand column. This document with internet links to supporting material is available on the international tobacco control section of the ASH web site at www.ash.org.uk/?international

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Table of contents

RECURRING ISSUES IN THE TEXT

RECITALS

I. INTRODUCTION

1. Use of terms
2. Relationship between this Convention and other agreements and legal instruments

II. OBJECTIVE, GUIDING PRINCIPLES AND GENERAL OBLIGATIONS

3. Objective
4. Guiding principles
5. General obligations

III. MEASURES RELATING TO THE REDUCTION OF DEMAND FOR TOBACCO

6. Price and tax measures to reduce the demand for tobacco
7. Non-price measures to reduce the demand for tobacco
8. Protection from exposure to tobacco smoke
9. Regulation of the contents of tobacco products
10. Regulation of tobacco product disclosures
11. Packaging and labelling of tobacco products
12. Education, communication, training and public awareness
13. Tobacco advertising, promotion and sponsorship
14. Demand reduction measures concerning tobacco dependence and cessation

IV. MEASURES RELATING TO THE REDUCTION OF THE SUPPLY OF TOBACCO

15. Illicit trade in tobacco products

- 16. Sales to and by minors
- 17. Provision of government support for economically viable alternative activities

V. PROTECTION OF THE ENVIRONMENT

- 18. Protection of the environment

VI. QUESTIONS RELATED TO LIABILITY

- 19. Questions related to liability

VII. SCIENTIFIC AND TECHNICAL COOPERATION AND COMMUNICATION OF INFORMATION

- 20. Research, surveillance, monitoring, and exchange of information
- 21. Reporting and exchange of information
- 22. Cooperation in the scientific, technical, and legal fields and provision of related expertise

VIII. INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES

- 23. Conference of the Parties
- 24. Secretariat
- 25. Relations between the Conference of the Parties and intergovernmental organizations
- 26. Financial resources

IX. SETTLEMENT OF DISPUTES

- 27. Settlement of disputes

X. DEVELOPMENT OF THE CONVENTION

- 28. Amendments to this Convention
- 29. Adoption and amendment of annexes to this Convention

XI. FINAL PROVISIONS

- 30. Reservations
- 31. Withdrawal
- 32. Right to vote
- 33. Protocols
- 34. Signature
- 35. Ratification, acceptance, approval, formal confirmation or accession
- 36. Entry into force
- 37. Depositary
- 38. Authentic texts

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	RECURRING ISSUES IN THE TEXT	
<i>4.1, 5.2b, 6.2, 7, 8, 9, 10, 12, 13, 15.2, 16.1, 16.7, 16.8, 21.1a.</i>	... legislative, executive, administrative or other measures...	<u>Amend.</u> This formulation is used at 14 places in the text. It has the effect of rendering the language virtually meaningless, as 'other measures' can be anything and the phrase can refer <i>only</i> to these. Proposed recurring amendment: ... legislative, executive <u>or</u> administrative measures, <u>and</u> or other appropriate complementary measures
<i>11.1, 12.c, 13.1c, 13.3, 15.2, 15.4a, 15.4c, 15.6</i>	...in accordance with national law or ...subject to national law	<u>Delete.</u> This formulation is used at eight places in the text. But this overlooks the fundamental idea of a treaty – which is to change national law, where there is a shared commitment to tackle and international problem.

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	RECITALS	
<i>P1</i>	<i>Recognizing</i> that the spread of the tobacco epidemic is a global problem that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and coordinated international response,	No comments
<i>P2</i>	<i>Reflecting</i> the concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke,	No comments
<i>P3</i>	<i>Seriously concerned</i> about the increase in the worldwide consumption and production of cigarettes and other tobacco products, particularly in developing countries, as well as about the burden this places on national health systems,	No comments
<i>P4</i>	<i>Recognizing</i> that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, and that there is a time lag between the exposure to smoking and the other uses of tobacco products and the onset of tobacco-related diseases,	No comments
<i>P5</i>	<i>Recognizing also</i> that cigarettes and some other products containing tobacco are highly engineered so as to create and maintain dependence, and that many of the compounds they contain and the smoke they produce are pharmacologically active,	No comments

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	toxic, mutagenic and carcinogenic, and that tobacco dependence is separately classified as a disorder in major international classifications of diseases,	
<i>P6</i>	<i>Acknowledging</i> that there is clear scientific evidence that prenatal exposure to tobacco smoke causes adverse health and developmental conditions,	No comments
<i>P7</i>	<i>Deeply concerned</i> about the escalation in smoking and other forms of tobacco consumption by children and adolescents worldwide,	No comments
<i>P8</i>	<i>Alarmed</i> by the increase in smoking and other forms of tobacco consumption by women and young girls worldwide and keeping in mind the need for full participation of women at all levels of policy-making and implementation and the need for gender-specific tobacco control strategies,	No comments
<i>P9</i>	<i>Deeply concerned</i> about the escalation in smoking and other forms of tobacco consumption by indigenous peoples,	No comments
<i>P10</i>	<i>Seriously concerned</i> about all forms of advertising, promotion and sponsorship aimed at encouraging the use of tobacco,	Amend: this should say why there is concern and not only express concern about advertising 'aimed at' increasing consumption. Whatever its aim, the <u>effect</u> is to increase consumption Suggested amendment. <u>Seriously concerned that all forms of advertising, promotion and sponsorship have the effect of encouraging the use of tobacco, increasing consumption and play a significant role in people's decision to use and continue to use tobacco</u>
<i>P11</i>	<i>Recognizing</i> that coordinated action is necessary to eradicate all forms of illicit trade of cigarettes and other tobacco products, including smuggling, illicit manufacturing and counterfeiting,	No comments
<i>P12</i>	<i>Acknowledging</i> that tobacco control at all levels is seriously underfunded in relation to the current and projected burden of disease caused by tobacco, and that new and additional financial and technical resources would make a substantial difference in the world's capacity to address the tobacco epidemic,	No comments
<i>P13</i>	<i>Recognizing</i> the need to develop appropriate mechanisms to address the long-term social and economic implications of successful tobacco demand reduction strategies,	No comments
<i>P14</i>	<i>Mindful</i> of the social and economic difficulties that tobacco control measures may engender in the medium- and long-term, particularly in some developing countries whose economies are dependent on tobacco growing and on	No comments

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	<p>manufacturing of tobacco products, and recognizing their need for access to the financial, economic and technological resources required to achieve sustainable development and to decrease their medium- and long-term economic dependence upon tobacco,</p>	
P15	<p><i>Conscious</i> of the valuable work being conducted by many States on tobacco control and commending the leadership of the World Health Organization as well as the efforts of other organizations and bodies of the United Nations system and other international and regional intergovernmental organizations in developing measures on tobacco control,</p>	No comments
P16	<p><i>Emphasizing</i> the special contribution of nongovernmental organizations and other members of civil society, including health professional bodies, women's, youth, environmental and consumer groups, and academic and health care institutions, to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts,</p>	No comments
P17	<p><i>Recalling</i> Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, which affirms the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,</p>	No comments
P18	<p><i>Recalling also</i> the preamble to the Constitution of the World Health Organization, which states that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition, and taking into account all pertinent resolutions of the World Health Assembly,</p>	No comments
P19	<p><i>Determined</i> to promote measures of tobacco control based on scientific, technical and relevant economic considerations, to be continuously re-evaluated in the light of new findings in these areas,</p>	No comments
Suggested additional recital	<p><i>Have agreed</i> as follows:</p>	<p>Add language on subsidies <u>Recognising that subsidies to tobacco growing represent a misuse of financial resources and unfairly penalise farmers in countries that do not or cannot provide agricultural subsidies.</u></p>

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<i>PART I:</i>	I. INTRODUCTION	
<i>Article 1</i>	1. Use of terms For the purposes of this Convention:	
<i>I.a</i>	a) "Illicit trade in tobacco" means any practice not authorized by law, relating to the production, holding, handling, movement, or sale of tobacco products.	<u>Rephrase.</u> The law does not <i>authorise</i> practices, but prohibits them. This definition applies to sales to minors, pollution from factories, speeding offences for delivery vans etc. <u>a) "Illicit trade in tobacco" means any practice not authorized by law, in relation to the production, holding, handling, movement, or sale of tobacco products <u>that causes or contributes to evasion of applicable taxes or sale of counterfeit or contraband tobacco products.</u></u>
<i>I.b</i>	b) "Minors" means human beings below the age of eighteen years unless under the national law applicable to the child, majority is attained earlier.	Amend to respect the position of jurisdictions where the age of majority is older than 18. <u>b) "Minors" means human beings below the age of eighteen years unless otherwise defined under the national law applicable to the child majority is attained earlier.</u>
<i>I.c</i>	c) "Pharmaceutical products for diagnosing and treating tobacco dependence" mean any medicines, active substances used in the production of medicines, diagnostic products or products used to administer medicines that are used for the treatment of dependence on tobacco products.	Agree
<i>I.d</i>	d) "Public place" means any enclosed location to which the general public is admitted, whether accessible freely, by invitation or against payment.	Agree
<i>I.e</i>	e) "Technical cooperation" means the provision among Parties to the Convention of any kind of assistance in the technical area.	
<i>I.f</i>	f) "Tobacco advertising" means any form of communication, recommendation or action that promotes a tobacco product.	This should be limited to 'commercial communication' as it would otherwise appear as a restriction on individual speech. The definition should take in all forms of tobacco advertising, including that designed to promote a tobacco brand without necessarily advertising a specific tobacco product. It should not be a defence that the purpose of the advertising was to advertise something other than tobacco (eg. clothing etc). We suggest the following definition: <u>"Tobacco advertising" means any form of commercial communication, recommendation or action whose main or secondary aim or effect is to</u>

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<i>Suggested addition</i>		<p><u><i>promote a tobacco product, a tobacco brand, or tobacco use.</i></u></p> <p>The emphasis on advertising tobacco <u>products</u> is out of line with modern marketing practice, in which companies advertise brands and may use non-tobacco products to develop the brand equity of a tobacco brand.</p> <p><u><i>“Tobacco branding” means any wording, names, trademarks, images or other signs, figurative or otherwise that constitute all or part of the recognisable identity of a tobacco product or group of tobacco products.</i></u></p>
1.g	g) “Tobacco control” means a range of supply, demand and harm reduction strategies, as well as standard-setting, that aim to improve the health of a population by eliminating or reducing their consumption of and exposure to tobacco in all its forms.	<p>-</p> <p>This should also recognise the scope for reducing harm by regulating for less hazardous forms of tobacco use as an additional plank of a tobacco control strategy. Suggest final clause reads:</p> <p><u><i>“... that aim to improve the health of a population by eliminating or reducing their consumption of tobacco and their exposure to tobacco in all its forms harmful chemicals in tobacco products or tobacco smoke.”</i></u></p>
1.h	h) “Tobacco industry” means tobacco processors, manufacturers and distributors of tobacco products.	Agree
1.i	i) “Tobacco products” mean products entirely or partly made of the leaf tobacco as raw materials which are manufactured to be used for smoking, sucking, chewing and snuffing.	Agree
1.j	j) “Tobacco promotion” means stimulating the demand for tobacco products by publicity and advertising, as well as by special events to draw the attention and interest of consumers.	<p>This is a strange definition because Article 13 refers to “the advertising, promotion and sponsorship of tobacco products” suggesting that promotion is different to advertising and sponsorship, whereas the definition suggests it is a generic term that includes advertising and sponsorship.</p> <p>Suggested clarification: <u><i>“Tobacco promotion” means any commercial marketing technique other than advertising or sponsorship, including inter alia, a discount, a free gift, a premium or an opportunity to participate in a promotional contest or game whose main or secondary aim or effect is to promote a tobacco product, a tobacco brand, or tobacco use.</i></u></p> <p>The examples given of promotions are drawn from a definition in a draft EU regulation on sales promotion - <u>COM 546 2001 final</u> – though it should be understood that the definition suggested here includes but is not limited to these forms of promotion.</p>
1.k	k) “Tobacco sponsorship” means any form of	We suggest the following definition... (see “tobacco

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	contribution to any event, activity or individual that promotes a tobacco product.	advertising" above).
1.1	l) "Regional economic integration organization" means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters.	<p><i>"Tobacco sponsorship" means any form of commercial contribution to any event, activity or individual whose main or secondary aim or effect is to promote a tobacco product, a tobacco brand, tobacco use or companies in the tobacco industry.</i></p> <p>No comment</p>
<i>Suggested addition</i>		<p>Suggested addition: this term is used in Article 15 and is interpreted differently by different parties.</p> <p><u><i>"Tracking" is the systematic monitoring of the movement of tobacco products from the place of manufacture to the place where all relevant duties and taxes have been paid.</i></u></p>
<i>Suggested addition</i>		<p>Suggested addition: this term is used in Article 15 and is interpreted differently by different parties.</p> <p><u><i>"Tracing" refers to the ability of competent authorities retrospectively to recreate the route taken by a tobacco product from the manufacturing plant through the distribution chain to the point where a product was diverted into the black market.</i></u></p>
<i>Suggested addition</i>		<p>Suggested addition:</p> <p><u><i>"Treatment of tobacco dependence" refers to a range of techniques including motivation, advice and guidance, counselling, telephone and internet support, and appropriate pharmaceutical aids which have the aim of helping tobacco users to stop using tobacco and avoid subsequent relapse if successful.</i></u></p>
<i>Article 2</i>	2. Relationship between this Convention and other agreements and legal instruments	
2.1	1. Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions, and are in accordance with international law, in order to better protect human health.	<p>Amend. The phrase "in accordance with international law" may continue to imply that this health treaty is subordinate to other international treaties, including trade treaties. Everything in the convention is a health measure, so the final clause is also unnecessary.</p> <p><i>...imposing stricter requirements that are consistent with their provisions and are in accordance with international law, in order to better protect human health.</i></p>
2.2	2. The provisions of the Convention and its protocols shall in no way affect the right of	Agree

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	<p>Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to the Convention and its protocols, provided that such agreements are compatible with their obligations under these instruments. The Parties concerned shall communicate such agreements to the Conference of the Parties through the Secretariat.</p>	
<p><i>2.3 from previous Chair's text is deleted</i></p>	<p>3. Nothing in this Convention and its related protocols shall be interpreted as implying in any way a change in the rights and obligations of a Party under any existing international treaty.</p>	<p>We <u>warmly</u> welcome the deletion of 2.3 by the Chair. It is essential this remains out of the final text.</p> <p>The Vienna Convention on the Law of Treaties defines the established rules in this area and there is no need to restate them and no case to alter them for the FCTC.</p>
<p>PART II</p>	<p>II. OBJECTIVE, GUIDING PRINCIPLES AND GENERAL OBLIGATIONS</p>	
<p><i>Article 3</i></p>	<p>3. Objective</p>	
<p>3.</p>	<p>The objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.</p>	<p><u>Amend.</u> This objective will only reduce total tobacco-related disease if the substantial and sustained reduction in prevalence is greater than the growth in population expected over the next few decades. Even achieving this objective may therefore mean an annual tobacco-related death toll of the order of 10 million deaths per year.</p> <p>A more ambitious objective would aim to reduce (or stop growth) in total tobacco consumption – implying a reduction in prevalence at least as great as the expected growth in population.</p> <p>Those parties that have a high dependence on tobacco growing should recognize that the FCTC is likely to <i>reduce growth in demand</i> rather than cause a dramatic decline in tobacco use – at least in the medium term.</p>
<p><i>Article 4</i></p>	<p>4. Guiding principles</p>	
<p>4.</p>	<p>To achieve the objective of this Convention and its protocols and to implement its provisions, the Parties shall be guided, <i>inter alia</i>, by the principles set out below:</p>	<p>Agree</p>
<p>4.1</p>	<p>1. Every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke, and necessary legislative, executive, administrative or other measures should be enacted and implemented at the appropriate governmental level to protect all persons from exposure to tobacco smoke.</p>	<p>Agree</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
4.2	2. Strong commitment is necessary to develop and support, at the national, regional and international levels, multisectoral measures and coordinated responses, taking into consideration:	<p>Reinstate. 'Political' should not have been deleted from the earlier text. In addition, restore the reference to 'legitimate expectation' in the previous text...</p> <p>Amendment "<i>Strong <u>political</u> commitment is necessary...</i>"</p> <p><i>....taking into consideration <u>the legitimate expectation of the whole population that parties should meet:</u></i></p>
4.2.a	2(a) the need to take measures to protect all persons from exposure to tobacco smoke;	Agree
4.2.b	2(b) the need to take measures to protect all persons from the initiation, maintenance or increase of tobacco consumption in any form;	Agree
4.2.c	2(c) the need to take measures to protect all persons from the harmful effects derived from the process of production and manufacture of tobacco products;	Agree
4.2.d	2(d) the need to take measures to promote the participation of indigenous peoples in the development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to their needs and perspectives; and	Agree
4.2.e	2(e) the need to take all possible measures to address gender-specific risks when developing tobacco control strategies.	Agree
4.3	3. The importance of international cooperation, particularly transfer of technology, knowledge and financial assistance, and provision of related expertise, to establish and implement effective tobacco control programmes, taking into consideration local culture, as well as social, economic, political and legal factors, should be recognized.	Agree
4.4	4. Comprehensive multisectoral measures and coordinated responses to reduce consumption of all tobacco products, including through agreed norms on advertising, promotion and sponsorship of such products, should be adopted at the national, regional and international levels so as to prevent, in accordance with public health principles, the incidence of diseases, premature disability and mortality due to tobacco consumption and exposure to tobacco smoke.	Agree – the addition of exposure to tobacco smoke is welcome
4.5 from previous Chair's text is deleted	[The Parties agree that] in implementing this Convention in a way compatible with international law, nothing [should] / [shall] prevent the Parties from taking measures in order to give high priority to the protection of human health, subject to the requirement that any such measures are not applied in a manner that would constitute a means of	Add new text. We warmly welcome the Chair's deletion of the previous 4.5 – which was unnecessary and needlessly contentious. However, we do not believe that this goes far enough in giving priority to health in the world order. It is still important to recognise that where the rights granted under trade agreements conflict with public health policies in

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	arbitrary or unjustifiable discrimination or a disguised restriction on international trade.	relation to tobacco, priority should be given to health.
		Suggested wording: <u>5. While recognizing that tobacco control and trade measures can be implemented in a mutually supportive manner, Parties agree that in the event of a conflict between this Convention or any of its Protocols and any other international agreement, this Convention and its Protocols shall prevail.</u>
4.5	5. The tobacco industry should be held responsible for the harm to health caused by tobacco products that is attributable to it as determined by each Party within its jurisdiction.	Amend to link Article 19 on liability <u>5. The tobacco industry should be held responsible and liable for the harm to health...</u>
4.6	6. The importance of identifying appropriate modalities to aid the economic transition of tobacco growers, workers and individual sellers who may be displaced as a future consequence of successful tobacco control programmes, particularly in developing country Parties, as well as Parties with transitional economies, should be recognized and addressed.	Agree. The principle expresses recognition of the problems faced by tobacco growers, but it is important that this does not create an obligation to spend funds through the FCTC on economic transition.
4.7	7. The participation of civil society is essential in achieving the objective of the Convention and its protocols.	Agree
<i>Suggested addition</i>		Non-interference. The addition of a 'non-interference' clause in the Guiding Principles would provide countries with some necessary protection from efforts to undermine their obligations in the FCTC. The text below is an additional principle that has been put forward by a number of Member States. Proposed addition: <u>4.8. The Parties agree to take all necessary measures to ensure that no person acting on their behalf shall attempt to:</u> a) <u>remove, weaken, undermine or otherwise interfere with tobacco control measures in force or under consideration in another State</u> <u>or</u> b) <u>promote tobacco exports or tobacco use in another State.</u>
<i>Suggested addition</i>		Add principle governing evidence and the burden of proof. This principle builds on the 4 th recital, which it cites in the opening sub-clause. This principle is to be applied where unjustifiable or impossible evidential hurdles may be used to obstruct tobacco control measures. For example a requirement to demonstrate beyond reasonable doubt that banning the tobacco sponsorship of motor racing will reduce teenage smoking is impossible to meet for methodological reasons – given lives are at stake, the burden should be on those claiming it will make no difference. The text below is a suggested additional principle.

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
		<p><u>4.9 Scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability. Lack of full scientific certainty regarding the efficacy of specific tobacco control measures shall not be used as a reason for postponing measures to control tobacco or for challenging such measures taken by other States.</u></p>
<i>Article 5</i>	5. General obligations	
5.1	1. Each Party shall develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this Convention and the protocols to which it is a Party.	Agree – though the FCTC process will need to devise recommendations, good practice and practical guidance in order to make this very general obligation meaningful.
5.2	2. Towards this end, each Party shall, in accordance with its capabilities:	<p>This has replaced ‘to the extent possible’, with ‘in accordance with its capabilities’, which should be deleted. Parties should only agree commitments that are within their capabilities that should be addressed in the negotiations not in implementation.</p> <p><i>2. Towards this end, each Party shall, in accordance with its capabilities:</i></p>
5.2.a	(a) establish or reinforce and adequately finance a national coordinating mechanism for tobacco control, with inputs from relevant government and civil society sources; and	Agree
5.2.b	(b) adopt and implement effective legislative, executive, administrative or other measures and cooperate with other Parties in developing appropriate policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.	Agree
5.3	3. In setting and implementing their public health policies with respect to tobacco control, Parties should act in such a way as to protect these policies from commercial and other vested interests of the tobacco industry.	<p>Amend to improve poor drafting</p> <p><i>3. In setting and implementing their public health policies with respect to tobacco control, Parties should act in such a way as to ensure that protect these policies from commercial and other vested interests of the tobacco industry do not distort the unconditional priority given to human health and tackling illicit trade.</i></p>
5.4	4. The Parties shall cooperate in the formulation of agreed measures, procedures and guidelines for the implementation of the Convention and the protocols to which they are Parties.	Agree
5.5	5. The Parties shall cooperate as appropriate with competent international and regional intergovernmental organizations and other bodies to achieve the objectives of the Convention and the protocols to which they	Agree

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	are Parties.	
PART III:	III. MEASURES RELATING TO THE REDUCTION OF DEMAND FOR TOBACCO	
Article 6	6. Price and tax measures to reduce the demand for tobacco	
6.1**	1. The Parties recognize that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.	Agree – the new text removes language suggesting that only co-ordinated price measures would be valuable.
6.2	2. When exercising its sovereign right to establish its taxation policies, each Party shall take account of its national public health objectives concerning tobacco control in determining its policies through adopting and implementing legislative, executive, administrative or other measures . Such measures should include:	No comment
6.2.a	(a) implementing tax policies and, where applicable, price policies, on tobacco products so as to achieve a progressive reduction in tobacco consumption;	<p>This language does not create a verifiable obligation or reflect a sensible real-world objective. The aim should be to specify a measurable objective that will contribute as much as tax policy can to the reduction in tobacco consumption. It is also important to leave the way open for using taxation to support harm-reduction or health promotion strategies.</p> <p>Suggested alternative text:</p> <p><i>2(a) implementing tax policies and, where applicable, price policies, on tobacco products so as to achieve a progressive reduction in tobacco consumption and ensure that tobacco products do not become more affordable over time</i></p> <p>This alternative text proposed stresses 'affordability' (the ratio of average incomes to tobacco prices or number of minutes of work at average pay required to purchase a 20 cigarettes). This language sets the objective of raising prices ahead of growth in <u>incomes</u> – ie. usually more than the rate of inflation.</p>
6.2.b	(b) providing to the Conference of the Parties, in accordance with national capabilities, and pursuant to Article 21, details of rates of taxation for tobacco products and their impact on tobacco consumption for consideration by the Conference of the Parties; and	<p>Restore deleted language. An important purpose of reporting should be to inform the development of the FCTC.</p> <p><i>2(b) providing to the Conference of the Parties, in accordance with national capabilities, and pursuant to Article 21, details of rates of taxation for tobacco products and their impact on tobacco consumption for review by the Conference of the Parties, <u>in order that it may consider the development of further recommendations;</u> and</i></p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
<p>6.2.c</p> <p><i>Suggested addition</i></p>	<p>(c) progressively restricting, with a view to prohibiting, duty-free sales of tobacco products.</p>	<p><u>Replace</u> – there is no credible argument in favour of retaining duty free.</p> <p>There is no clarity about what a ‘restriction’ of duty-free sales would actually mean. Goods are either sold duty-free or not. This should not be agreed until there is clarity about the restrictions the drafters have in mind – Should <i>some</i> duty be paid? Should there be fewer outlets? Should allowances be reduced? As a minimum, a definition needs to clarify ‘restrictions’.</p> <p>“<i>With a view to prohibiting</i>” has no meaning in the text as it simply specifies an idea at the back of the mind of the person designing restrictions. One of the options developed by the facilitators at INB-5 was:</p> <p><u><i>Prohibit [within (x) years] tax- free and duty- free sales of tobacco products.</i></u></p> <p>This has been ignored by the Chair and should be reintroduced. - no party or even lobby group has mounted a credible defence of duty-free – an unjustifiable tax break to travellers and transportation infrastructure with no positive consequences.</p> <p>Earlier texts contained a clause directing a small fraction of tax revenue to fund tobacco control measures. For reasons of fairness in taxation, it is important that tobacco users facing high tobacco taxes receive as much help and encouragement to quit. The following text should be included and negotiations made over the percentage specified.</p> <p><u><i>(d) allocation of not less than [five] per cent of the revenues from tobacco taxes to tobacco control programmes;</i></u></p>
<p>Article 7</p> <p>7</p>	<p>7. Non-price measures to reduce the demand for tobacco</p> <p>The Parties recognize that coordinated non-price measures are an effective and important means of reducing tobacco consumption. Each Party shall adopt and implement effective legislative, executive, administrative or other measures necessary to implement its obligations pursuant to Articles 8 to 13 and shall cooperate, as appropriate, with each other directly or through competent international bodies with a view to their implementation.</p>	<p>It is not clear what this article is for. The new wording diminishes the role of COP to producing ‘guidelines’ for Articles 8-13. In the previous text a more substantial role was envisaged and should be restored. The text proposal below is an amendment of the previous Chair’s text</p> <p><i>The Conference of the Parties and national authorities shall endeavour to develop standards on non-price policies designed to reduce tobacco consumption and to enhance non-smokers’ protection from exposure to the harmful effects of tobacco smoke</i></p>
<p>Article 8</p>	<p>8. Protection from exposure to tobacco smoke</p>	<p>The language on second-hand smoke is becoming weaker with each new text – the latest being less useful than previous WHA resolutions for example</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
<p><i>Suggested addition 8 (bis)</i></p> <p>8</p>	<p>Each Party shall promote the adoption and implementation of effective legislative, executive, administrative or other measures at the appropriate governmental levels, providing for protection from exposure to tobacco smoke in public places, public transport and indoor workplaces.</p>	<p>WHA43.16 Tobacco or health. There may be a case for reintroducing language that creates specific commitments in particular categories of public places. In addition a 'finding' would be useful in challenging the misinformation of the tobacco industry and legitimising measures</p> <p>Add a finding: <i>The Parties recognise that there is overwhelming evidence that exposure to environmental tobacco smoke is a cause of serious disease in non-smokers, including cancer, cardiovascular disease and respiratory illnesses and that action to eliminate this serious environmental hazard is justified on health, welfare and civil liberties grounds.</i></p> <p>Amend. The phrase 'promote the adoption' renders the commitment meaningless. It is probably to try to accommodate 'local' decision-making but such a formulation is not appropriate in the FCTC. Such matters relevant to federal states should be addressed in the process of ratification and through consultation during negotiation – not addressed by weakening the treaty.</p> <p>It is also unclear in this context what 'protection from exposure' actually means in practice. As a minimum, this should be the subject of a <u>definition</u>. In fact, the only evidence-based approach is an elimination of tobacco smoke exposure.</p> <p>Suggested evidence-based wording:</p> <p><i><u>The Conference of the Parties and national authorities</u> Each Party shall promote the adoption and implementation of effective legislative, executive, and administrative or other measures at the appropriate governmental levels, prohibiting tobacco smoke in public places, public transport and indoor workplaces.</i></p>
<p><i>Article 9</i></p> <p>9</p>	<p>9. Regulation of the contents of tobacco products</p> <p>The Conference of the Parties, in consultation with competent international bodies, shall elaborate guidelines for testing and measuring the contents and emissions of tobacco products, and for the regulation of these contents and emissions. Each Party shall</p>	<p>Amend title The regulation might apply to production techniques, processes, acidity, burning propensity, etc.</p> <p><i>9. Regulation of the contents of tobacco products</i></p> <p>Amend to replace 'guidelines' with 'standards'. Such standards should be specified sufficiently precisely that they can be incorporated into legislation, and guidelines will not do that.</p> <p><i>, ...shall elaborate guidelines <u>standards</u></i></p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
<p><i>Suggested addition (9.2)</i></p>	<p>adopt and implement effective legislative, executive and administrative or other measures for such testing and measuring, and for such regulation, where approved by competent national authorities.</p>	<p><i>for testing and measuring...</i></p> <p>Article 9 must be understood as establishing a work programme that will lead to more concrete guidance from the COP.</p> <p>As well as signalling a new regulatory approach in the paragraph above, it will be important to have an explicit rejection of the use of ISO methodology as a means of characterising risk. This also underpins and strengthens Article 11.1.a (restrictions on light branding) – as many the misleading claims are based on this methodology.</p> <p><u><i>The Parties recognise that: the ISO machine-measured tar and nicotine yield measurements do not meaningfully reflect the exposure experienced by smokers; that such measurements may provide false reassurance; and that these measurements should not be used to regulate risk or to communicate risk to consumers.</i></u></p>
<p><i>Article 10</i></p> <p>10. Regulation of tobacco product disclosures</p> <p>10</p>	<p>Each Party shall 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. Each Party shall further adopt and implement effective measures for public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce.</p>	<p>Agree – though technical guidance should be produced to inform such a disclosure regime. The disclosed data should be on a brand-by-brand basis and made publicly available. We welcome the Chair's addition of language requiring public disclosure.</p> <p>To avoid the regulatory burden on small parties and excessive duplication, the text should start:</p> <p><u><i>The parties acting individually or jointly, shall adopt...</i></u></p>
<p><i>Article 11</i></p> <p>11. Packaging and labelling of tobacco products</p> <p>11.1</p>	<p>1. Each Party shall adopt and implement, in accordance with its national law, effective measures to ensure that:</p>	<p>The revised Chair's text has considerably improved and simplified the earlier texts which were confused.</p> <p>A full briefing on packaging and labelling issues is available from the Framework Convention Alliance.</p> <p>Amend. The clause related to <i>national law</i> is unnecessary and obstructive in any treaty – the purpose of which may be to change national law to meet internationally agreed obligations.</p> <p>Labelling and packaging is important and is an issue that has trade, and therefore transboundary, implications. This language should be rephrased to create a clear obligation - the qualification is unnecessary. The purpose of the FCTC is to advance public health, which will in many cases require a revision of existing laws.</p> <p><i>1. Each Party shall adopt and implement, in</i></p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
		<p>accordance with its national law, effective measures to ensure that:</p> <p><u>Amendment –option one: ‘simple’</u>. The problem with this as expressed is that it would require each party to establish that terms like ‘light’ are creating a false impression – and that would create an intolerable regulatory burden on many parties, especially developing countries.</p> <p>Simple amendment... <i>...a particular tobacco product is less harmful than other tobacco products: These may include “low tar,” “light,” “ultra-light,” or “mild” and similar terms</i></p> <p><u>Amendment – option two ‘full’</u>. This would give a best practice approach to this issue. There is no longer any scientific basis for claims that terms such as low tar or mild are in any way less harmful.</p> <p>To reflect this, we suggest the following ideal text...</p> <p><u>(i) the terms “low tar”, “light”, “ultra light”, “mild” and similar terms [detailed in Annex X] are not used on any unit packet or package of tobacco products;</u></p> <p><u>(ii) texts, names, trade marks and figurative or other signs suggesting that a particular tobacco product is less harmful than others shall not be used on the packaging of tobacco products.</u> [nb. This taken directly is from EU directive 2001/37/EC]</p> <p><u>(iii) An exception to part ii would only apply where governmental agencies with full regulatory authority explicitly authorize their use.</u></p>
11.1.a	(a) tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading or deceptive or that are 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 “low tar,” “light,” “ultra-light,” or “mild”;	
11.1.b	(b) each unit packet or package of tobacco products and any outside packaging and labelling of such products carries the product information specified in Article 15 ; and	<p><u>Agree</u>. The marking size and location should be specified (if not a covert marking). The weakness in this proposal arises in Article 15 – the purpose and function of the marking and what sort of tracking regime is envisaged.</p>
11.1.c	(c) each unit packet or package of tobacco products and any outside packaging and labelling of such products also carry health warnings, as approved by the competent national authorities, describing the harmful effects of tobacco use. Health warnings will be a rotating series of large, clear, visible, and legible messages covering ideally 50% or more, but in any case no less than 30%, of the principal display area of each unit packet or package. Health warnings may be in the form of, or include, pictures or pictograms.	<p><u>Amend</u>. The argument against having 50% as a minimum, if more than 50% is ‘ideal’ is unclear. In addition, the text rightly uses health warnings in the plural, but refers to ‘principal display area’ in the singular. It should be clear that whatever size is specified refers to <u>both</u> the main surfaces, front and back, not just one. The commitment to a given size may be clarified to include a border if parties choose to specify a border.</p> <p>The FCTC should not be prescriptive in insisting on <u>health</u> warnings. Other non -health messages might also be effective – for example in relation to financial, new laws about smoking restrictions or the tobacco</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
		<p>industry. In addition, picture warnings should be the norm rather than an option.</p> <p>Proposed clarifying and strengthening amendment: <i>(c) each unit packet or package of tobacco products and any outside packaging and labelling of such products also carry health warnings and/or other messages, as approved by the competent national authorities, describing the harmful effects of tobacco use. Health warnings or other messages will be a rotating series of large, clear, visible, and legible messages covering ideally 50% or more, but in any case no less than 30% 50%, and ideally more, of the principal display area surfaces of each unit packet or package, which may include a border. At least some of the messages</i> Health warnings may shall be in the form of, or include, pictures or pictograms</p>
<p><i>11.1.d</i> Deleted</p>		<p><u>Agree</u> with deletion from the earlier Chair's text. The removal of a 'sales to minors' warning is welcome.</p>
<p><i>11.2</i></p>	<p>2. Each unit packet or package of tobacco products and any outside packaging and labelling of such products shall, in addition to the health warning specified in paragraph 1(c) of this Article, contain information on relevant constituents of tobacco products and their emissions, as defined by competent national authorities.</p>	<p><u>Amend.</u> We do not believe that appropriate numerical metrics are available to convey meaningful information to consumers. In particular, we strongly discourage use of ISO 'yields' which are highly misleading. Messages to consumers should, at least in the foreseeable future, be <i>qualitative</i>.</p> <p><i>...contain information meaningful risk communication on relevant constituents of...</i></p> <p><u>Examples below:</u></p> <div data-bbox="878 1444 1373 1566" style="border: 1px solid black; padding: 5px;"> <p>Warning: this product will expose you and people near you to about 4,000 chemicals, many of which are toxic, cause cancer and may kill you. This product also contains nicotine, which is powerfully addictive and may prevent you giving up smoking when you choose to.</p> </div> <div data-bbox="878 1591 1373 1692" style="border: 1px solid black; padding: 5px;"> <p>Warning: this product expose you to formaldehyde, toluene arsenic, benzene, acrolyn, benz-a-pyrene, and about 4,000 other chemicals of which are toxic, cause cancer and may kill you. This product also contains nicotine, which is powerfully addictive</p> </div>
<p><i>11.3</i></p>	<p>3. The health warnings and other information specified in paragraphs 1(b) and (c) and paragraph 2 of this Article will appear on each unit packet or package of tobacco products and any outside packaging and labelling of such products in the principal language or languages of the country in</p>	<p><u>Agree.</u> It is essential that the public can understand the warnings and therefore they must be expressed in the local language. In some cases, printing of warnings in English has added to the 'imported' luxury status of the brands.</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	whose territory the product is placed on the market.	
11.4	4. The term "outside packaging and labelling" in relation to tobacco products applies to any packaging and labelling used for marketing those products.	Agree
Article 12	12. Education, communication, training and public awareness	Our main concern with this is that a greater role could be given to joint efforts and multilateral efforts by the parties and WHO. The purpose would be to avoid wasteful duplication and to ensure that information and evidence – for example on WHO's web site was available to everyone in all UN languages, up to date and of the highest quality.
12	Each Party shall promote and strengthen public awareness of tobacco control issues, using all available communication tools, as appropriate. Towards this end, each Party shall adopt and implement effective legislative, executive, administrative or other measures to promote:	<u>Amend.</u> The word 'promote' added to the end of the chapeau has dramatically weakened the commitments in the earlier language. Suggested amendment. <i><u>The parties acting individually or jointly, or through multilateral agencies such as the WHO or World Bank shall...</u></i>
12.a	(a) broad access to effective and comprehensive educational and public awareness programmes on the health risks of tobacco consumption and exposure to tobacco smoke;	Restore earlier text (as accepted at INB-5) Previously ' <i><u>develop and assure public access</u></i> ' – now ' promote broad access'.
12.b	(b) public awareness about the health risks of tobacco consumption and exposure to tobacco smoke, and about the benefits of the cessation of tobacco use and tobacco-free lifestyles as specified in Article 14.2 ;	Restore earlier text (as accepted at INB-5) Previously ' <i><u>ensure that the general public [...] are fully informed...</u></i> ' – now ' promote public awareness '.
12.c	(c) public access, in accordance with national law, to a wide range of information on the tobacco industry as relevant to the objective of this Convention;	Agree
12.d	(d) effective and appropriate training programmes on tobacco control addressed to concerned persons such as health workers, community workers, social workers, educators, political leaders, administrators and other concerned persons;	Restore earlier text (as accepted at INB-5) Previously ' <i><u>develop and implement effective and appropriate training...</u></i>
12.e	(e) awareness and participation of public and private agencies and nongovernmental organizations not affiliated with the tobacco industry in developing and implementing intersectoral programmes and strategies for tobacco control; and	Agree
12.f	(f) public awareness of information regarding the economic, health and environmental consequences of tobacco production.	Agree

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
<i>Article 13</i>	13. Tobacco advertising, promotion and sponsorship	<p>Overall comment – extremely disappointing and ignores majority view from INB-5 The new text is extremely disappointing and does not reflect the widely and emphatically expressed view of the majority of delegates in favour of a complete ban on tobacco advertising. We do not understand or accept the reasons for this. We believe the diplomatic challenge is to reflect the will of majority, and to deal with the concerns of the laggard minority, if (and only if) possible.</p> <p>We urge the many delegations that have pressed for a complete ban in earlier INBs to restore this at INB-6 this as a central component of the FCTC.</p>
<i>Footnote 1</i>	<p>There has been considerable discussion throughout the pre-negotiation and negotiation FCTC process concerning the adoption of an early protocol on advertising, promotion and sponsorship. The negotiation of such a protocol could be initiated by the INB before the FCTC is adopted, by the INB following the adoption of the FCTC, or at a later stage by the Conference of Parties.</p>	<p>If the wording of the Chair's text survives even approximately intact, an early protocol specifying a best-practice practical advertising ban is <u>essential</u>.</p> <p>The most effective and evidence-based public health measure for tobacco advertising, promotion and sponsorship is a complete ban. Partial bans or 'restrictions' allow marketing budgets to be spent on the form not banned or restricted.</p> <p>If this is not delivered in the FCTC –which it should be – then it must be formulated in a protocol. The process of negotiating a protocol could be launched by resolution of the World Health Assembly in May 2003, like resolution 53.16 (that expedited the negotiation of the FCTC through the INB) it could ask the INB to continue with its work and develop an advertising protocol.</p>
<i>Proposed addition</i>		<p><u>Addition:</u> this section should be introduced by a declaration on the effectiveness of banning tobacco advertising, which asserts the legitimacy of this approach as a health measure – this is important when assessing such measures for compatibility with other conventions. A similar approach has been used at Art 6.1 and Art 15.1.</p> <p><u>(13.1 bis) The Parties recognise that comprehensive bans on tobacco advertising, promotion and sponsorship are an effective and important means of reducing tobacco consumption</u></p> <p>This text complements the proposed recital (see P9 above) on reasons for concern about tobacco advertising.</p>
<i>13.1</i>	<p>1. Each Party shall take effective legislative, executive, administrative or other measures to restrict tobacco advertising, promotion and sponsorship in accordance with its national constitution. Such measures may include a comprehensive ban on all tobacco advertising,</p>	<p>Amend - this is very weak text that will do harm as it establishes very poor practice as a norm.</p> <p>The chapeau contains no real commitments and 13a-c add very little to that – a very limited</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	<p>promotion and sponsorship. Towards this end, each Party, in accordance with its capabilities and, where relevant, in cooperation with other Parties, shall:</p>	<p>concept of an advertising ban (a), warnings (b), and a disclosure regime (c). These will have minimal public health impact.</p> <p>Essential amendment to restore value to this article.... <i>.... to prohibit or in accordance with its national constitution restrict as far as possible, all tobacco advertising, promotion and sponsorship in accordance with its national constitution. Such measures may include a comprehensive ban on all tobacco advertising, promotion and sponsorship.</i></p> <p>The reference to constitution is welcome, because this holds the key to responding to objections from those states that have real or perceived protection for commercial speech.</p>
<p>13.1a</p>	<p>(a) prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or otherwise deceptive or that are likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;</p>	<p><u>Amend.</u> This language should merely be a safeguard in a wider control regime on advertising and, in any case, should be part of business as usual (few countries allow overtly false advertising). But in this text, it has become the main commitment to restrict tobacco advertising and that is completely inadequate.</p> <p>Most tobacco is not advertised with explicit lies, but subtle branding and image building. At the same time all advertising is to some extent misleading – it depends on definitions. In practice, very little tobacco advertising would be covered by this ‘restriction’ and it is dangerous to suggest that this is the ‘restriction’ that the FCTC intends. It is important therefore to emphasise that this clause is not the only form of restriction envisaged...</p> <p><i>(a) as one component in a policy to control the marketing of tobacco products, prohibit all forms of...</i></p>
<p>13.1b</p>	<p>(b) require that a health warning accompany all tobacco advertising; and</p>	<p>Amend to add size – though this is simply damage limitation and makes little difference to the impact of tobacco advertising. For this to be meaningful a size should be specified – as with Article 11. In addition, the messages need not be purely about health – it could be about cost of smoking for example.</p> <p>Amendment <i>(b) require that a health warning message accompany all tobacco advertising; and</i></p> <p>Addition derived from Article 11. <i>Such warnings will be a rotating series of large, clear, visible, and legible messages covering no less than 30% of the advertising space</i></p>
<p>13.1c</p>	<p>(c) require the disclosure to appropriate governmental authorities of expenditures by</p>	<p><u>Amend.</u> It is important that the expenditure is broken</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	<p>the tobacco industry on advertising, promotion and sponsorship not yet prohibited. Those authorities may decide to make those figures available, subject to national law, to the public and to the Conference of the Parties, pursuant to Article 21.</p>	<p>down by brand. This would provide authorities much more useful information in determining the relationship between advertising and consumption. This will be a useful measure of the success or the failure of the FCTC in tackling tobacco advertising and provide important data for improving the convention and its protocols at a later date.</p> <p>Amendment: <i>...of expenditures by the tobacco industry on a brand-by-brand basis on advertising,...</i></p>
<p>13.2</p>	<p>2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may, by means of a binding written declaration, indicate that it is committed to a total ban on advertising, promotion and sponsorship of tobacco products. Any declaration made pursuant to this Article shall be circulated by the Depositary to all Parties to the Convention.</p>	<p>The most credible reason for a declaration like this would be if some other part of the FCTC referred to it and created further obligations for the parties – this is possible, for example, in the case of cross-border advertising. There could be a commitment of <u>all</u> parties to the FCTC to prohibit advertising that reached those parties that had registered under 13.2. At present no other use is made of 13.2 – and it merely duplicates reporting of policies and legislation required in Article 21.1.a.</p> <p>A protocol to the FCTC would be a better way of parties acting collectively to ban tobacco advertising, but that is not mutually exclusive with the declaration in 13.2 and both could be used. The binding written declaration has the merit of being effective without waiting for the entry into force of a protocol, to which it can also add momentum.</p>
<p>13.3</p>	<p>3. Parties which have imposed a complete ban on certain forms of tobacco advertising are fully empowered to ban such cross-border advertising of tobacco products, in accordance with their national law.</p>	<p>Amend/replace... to ensure that any obligation falls on the party in which cross border advertising originates.</p> <p>This language misunderstands cross-border advertising. In effect this text allows a party to ban 'outgoing' advertising (exported advertising). However, no party needs permission from a treaty to do that. The main problem that parties face is 'incoming' cross border advertising – ie. from other countries that have not banned tobacco advertising. This is why they need co-operation and why they need a meaningful treaty.</p> <p>Restore 13c from the previous Chair's text... and amend as shows. <i>Parties shall require the phasing out of cross-border tobacco advertising, promotion and sponsorship, including, inter alia, on cable and satellite television, radio, the Internet, newspapers, magazines and other printed media within two years of entry into force of this convention;</i></p>
<p><i>Clarifying alternative to 13.3</i></p>		<p><u>Replace.</u> There is a danger that the obligation to tackle cross border advertising falls only on the party receiving it. However, the FCTC should</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
		<p>require co-operation of all parties to prevent cross-border advertising reaching any other party – for example by preventing broadcasts, direct mail or other adverts that originate in one party but may be received in another. The text proposal gives some suggestions to require joint action in tackling cross-border tobacco advertising</p> <p><u><i>3. Each party shall co-operate in the prohibition of tobacco advertising, promotion and sponsorship [which can be received in] [partially or completely targetted at] any other Party that has imposed a ban on tobacco advertising, [as notified through depositing a binding declaration under Article 13.2] [following a request from that party]</i></u></p>
13.4	4. Parties shall consider the elaboration of a protocol setting out appropriate measures for the elimination of cross-border advertising, promotion and sponsorship that require international collaboration.	<p><u>Delete.</u> The commitment to eliminate cross-border advertising should be included in the FCTC, not deferred to a protocol. All measures to control cross border advertising require international co-operation. Even if there is to be a protocol, its elaboration should be launched by the WHA in 2003 in order to expedite its development – this paragraph is therefore superfluous.</p> <p>Any protocol should address cross-border advertising as part of a comprehensive approach to banning tobacco advertising if this is not included in the FCTC. An INB could be given the task of developing a protocol <u>immediately</u> following the 2003 World Health Assembly – and this should be given impetus through a resolution at the WHA, similar to 53.16 that launched the INB itself. If the protocol is signalled in the FCTC, the danger is that work on preparing it may not begin until the FCTC enters into force.</p>
Article 14	14. Demand reduction measures concerning tobacco dependence and cessation	
14.1	1. Each Party shall develop and disseminate appropriate, comprehensive and integrated guidelines based on scientific evidence and best practices, taking into account national circumstances and priorities, and shall take effective measures to secure adequate treatment for tobacco dependence and to promote cessation of tobacco use.	<p>The reference to national priorities removes any commitment - this simply asserts business as usual.</p> <p>The WHO should produce evidence-based guidelines for adaptation by the parties with recognition of the different resources and capabilities. There is no point in each party starting from scratch. Further information on the internet:</p> <ul style="list-style-type: none"> • Treating Tobacco Use and Dependence (summary) – US Surgeon General • WHO-Europe – evidence based recommendations on treatment of tobacco dependence
14.2	2. Towards this end, each Party shall endeavour to:	Delete 'endeavour to' – it renders the text meaningless. The FCTC should define obligations, not require an unspecified level of effort.

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
14.2.a	(a) design and implement effective programmes aimed at promoting the cessation of tobacco use, including in educational institutions, health care facilities, workplaces and sporting environments;	Agree
14.2.b	(b) include diagnosis and treatment of tobacco dependence and counselling services on cessation of tobacco use in national health and education programmes, plans and strategies, with the participation of health workers, community workers and social workers;	Agree
14.2.c	(c) establish in health care facilities and rehabilitation centres programmes for diagnosing, counselling, preventing and treating tobacco dependence; and	Agree
14.2.d	(d) collaborate with other Parties to facilitate access to affordable pharmaceutical products for diagnosing and treating tobacco dependence pursuant to Article 22.	<p>Amend – there is no reason to stress one particular aspect of treatment of tobacco dependence. It is important that pharmaceutical treatments for tobacco dependence are made available at affordable prices in developing countries.</p> <p>Suggested amendment: <u>2(d) collaborate with other Parties to facilitate access to affordable treatment of tobacco dependence pursuant to Article 22.</u></p>
PART IV:	IV. MEASURES RELATING TO THE REDUCTION OF THE SUPPLY OF TOBACCO	
Article 15	15. Illicit trade in tobacco products	<p>Overall comment. The text in Article 15 appears to be close to completion – though some minor revisions would clarify and strengthen the text.</p> <p>There are some good aspects of the revised Chair's text, <i>but expressed in very general terms</i>. The important goal should be to bring clarity to the general obligations. The means to do this would be a <u>protocol</u>.</p> <p>The Framework Convention Alliance (FCA) has set out an appropriate package of measures in a paper <i>The FCTC and tobacco smuggling</i>. The full costs of such a system are a small fraction of the value of the trade and the tax losses involved and should be carried in their entirety by the tobacco companies.</p>
Footnote 1	There has been considerable discussion throughout the pre-negotiation and negotiation FCTC process concerning the adoption of an early protocol on illicit trade. The negotiation of such a protocol could be initiated by the INB before the FCTC is adopted, by the INB following the adoption of the FCTC, or at a later stage by the Conference of Parties.	It is essential that a protocol be negotiated with some urgency. The obligations of Article 15 conform to the concept of a Framework Convention – they make substantial commitments, but mostly of a highly general nature. There is a strong case for articulating these and giving specific detail in a protocol to the FCTC.

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
		<p>A number of issues are raised in the text and were discussed at the ICITT (see the Summary of the ICITT) and these could form the basis of a protocol setting out appropriate rules and procedures in the field of illicit trade including but not limited to:</p> <ol style="list-style-type: none"> 1. Licensing and record keeping 2. Labelling 3. Tracking and tracing 4. Border controls 5. Counterfeit and contraband 6. Information sharing 7. Mutual assistance 8. International co-operation <p>Political momentum for a protocol to be negotiated by the INB, could be developed through a resolution of the May 2003 World Health Assembly.</p>
15.1	1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control.	Agree.
15.2	2. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status. In addition, each Party shall:	Agree However, in a system of widely traded goods it makes sense to have some degree of standardisation of how this is achieved. This could happen through a protocol.
15.2.a	(a) require that packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: " <i>Sales only allowed in (insert name of the country, subnational, regional or federal unit)</i> " or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market; and	Amend for clarity... ...it is important that the wording is understood to refer to the 'domestic market' in which the tobacco products are to be <u>placed on the market</u> , and not the domestic market where they are manufactured and exported from. <i>...or which would assist authorities in determining whether the product is legally for sale on the domestic market in which the tobacco products are intended for legal sale; and</i>
15.2.b	(b) consider, as appropriate, developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.	Amend – to make a general obligation to increase control of the distribution system. <i>(b) consider, as appropriate, developing</i>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
		<p><i>a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.</i></p> <p>Even if the text continues to require only 'consideration' of this measure it would still be improved by definitions of tracking and tracing. At present, there is no clarity among delegates about the meaning of such terms. See tracking definition and tracing definition above.</p>
15.3	3. Each Party shall require that the packaging information or marking specified in paragraph 2 of this Article shall be presented in legible form and/or appear in its principal language or languages.	<p>Amend. This would allow the label to be in any language, as long as the warning was legible! It is also unclear which party is responsible – the exporting or importing party.</p>
		<p>Amend for clarity</p> <p><i>3. Each Party shall require that the packaging information or marking specified in paragraph 2 of this Article shall be presented in legible form and to appear in its <u>the principal language or languages of the country, subnational, regional or federal unit in which the products is to be placed on the market.</u></i></p>
15.4	4. With a view to eliminating illicit trade in tobacco products, each Party shall:	Agree
15.4.a	(a) monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among customs, tax and other authorities, as appropriate, and in accordance with national law and relevant applicable bilateral or multilateral agreements;	<p>Agree - however, for this to work in practice more clarity is needed to specify:</p> <ul style="list-style-type: none"> • which data should be collected; • which data should be exchanged and how; • common formats to facilitate exchange and comparison; <p>This should be specified in a protocol – or in the absence of a protocol, a declaration, or standards established by the COP.</p>
15.4.b	(b) enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes;	<p>Amend to add clarity – though the text could be improved by adding a rationale and specific areas for developing legislation:</p>
		<p><i>... including counterfeit and contraband cigarettes, with the aim of deterring all participants in the illicit trade in tobacco products by creating legal offences or obligations regarding:</i></p> <ol style="list-style-type: none"> i. <u><i>Orchestration or facilitation of illicit trade or racketeering;</i></u> ii. <u><i>Duty of care – a requirement to take all reasonable steps to ensure that products are not sold on to criminal undertakings;</i></u> iii. <u><i>Liability – place liability on manufacturers to give them an incentive to the black market</i></u>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
15.4.c	(c) take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or disposed of in accordance with national law;	<p>iv. <u>Tampering with markings;</u> v. <u>Duty on manufacturers and wholesalers to provide authorities with data on trades and wholesalers;</u></p> <p><u>Amend</u> – it makes sense to destroy any counterfeit tobacco or seized machinery (the trade in used machinery drives the counterfeit tobacco trade. However, it is not always right to destroy contraband that is not counterfeit. For example, the authorities may decide to require tobacco companies to buy it back in order to give them incentives to prevent its diversion in the first place. The FCTC should not close off potential creative approaches to tackling illicit trade. In fact, the destruction of seized contraband, actually increases profits for the tobacco companies, as the seized goods would be replaced with new production.</p> <p><i>(c) take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or and that contraband tobacco products are disposed of or otherwise handled in a manner that does not create perverse economic incentives that may encourage illicit trade. in accordance with national law;</i></p>
15.4.d	(d) adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction; and	<p>Agree – this is potentially very strong. However, it is in the generalised format that suits the Framework Convention and protocol model.</p> <p>A protocol should specify:</p> <ul style="list-style-type: none"> • Common documentation formats • Procedures for monitoring storage and distribution • Controls and authority • Procedures for exchange with other parties when products are exported or imported, or pass through in transit. <p>Such measures are already in place in several countries and existing practice could form a good model for developing an international regime through a 'chapter' of a protocol on illicit trade.</p>
15.4.e	(e) adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.	Agree
15.5	5. Information collected pursuant to subparagraphs 4(a) and 4(d) of this Article shall, as appropriate, be provided in aggregate form by the Parties in their periodic reports to the Conference of the Parties, in accordance with Article 21 .	Agree
15.6	6. The Parties shall, as appropriate and in accordance with national law, promote cooperation between national agencies, as well as relevant	<p>Agree</p> <p>However, this is too vague to suffice in itself – a more</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	<p>regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and subregional levels to combat illicit trade of tobacco products.</p>	<p>precise text is needed in a protocol. At INB-3, the World Customs Organisation produced a draft protocol on mutual administrative assistance with appropriately specific language. The main elements include:</p> <ul style="list-style-type: none"> ● Definitions ● Scope of information exchange ● Surveillance of suspect movements ● Controlled delivery (sting operations) ● Arrangements for assistance ● Hot pursuit ● Joint operations ● Information exchange ● Recovery of Customs claims <ul style="list-style-type: none"> ● Exchange of expert witnesses ● Procedures for making requests of other parties ● Arrangements for visiting officials ● Confidentiality <ul style="list-style-type: none"> ● Exemptions ● Cost sharing regime ● Reservations and final clauses <p>This could form one 'chapter' in a protocol on illicit trade.</p>
<p>15.7</p>	<p>7. Each Party shall endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.</p>	<p>Words like 'endeavour to' denude the text of meaning – changing the obligation from actually doing something, to making an effort that may or may not be successful. There should be a mandatory licensing system for wholesalers trading in large consignments of duty-not-paid tobacco products. The licensing system should be common to all parties and integrated globally.</p> <p>A mandatory licensing system for <u>retailers</u> is <i>not appropriate for the FCTC</i> as many countries would find this excessively expensive and burdensome for little return.</p>
<p>Article 16</p>	<p>16. Sales to and by minors</p>	<p>Overall comment. It is vital to avoid excessive focus on sales to minors in the FCTC as a whole. While no-one disputes the need to reduce teen smoking, the focus of tobacco control measures directly on young people is likely to make tobacco use seem more 'adult' and therefore more appealing to young people. This paradox has been exploited by tobacco companies, which stress youth smoking prevention measures. See ASH page on youth smoking (www.ash.org.uk/?youth)</p> <p>The best way to tackle youth smoking is to marginalize smoking in <i>adult</i> society. See suggested amendment at 16.4 below.</p>
<p>16.1</p>	<p>1. Each Party shall adopt and implement effective legislative, executive, administrative</p>	<p><u>Amend.</u> This chapeau renders the whole article voluntary and eliminates any commitments.</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	<p>or other measures to prohibit the sales of tobacco products to minors. These measures may include, as appropriate:</p>	<p><i>These measures may shall include, as appropriate:</i></p>
<p>16.1.a</p>	<p>(a) requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age.</p>	<p>Amend – the article should not specify a particular regime but stress the need for age verification. Signs may have the effect of ‘advertising’ the adult status of tobacco and therefore making it more attractive.</p> <p>Amendment <i>(a) requiring all sellers of tobacco products not to sell to minors and to take all reasonable steps to verify the age of a buyer prior to purchase including checking appropriate evidence of having reached full legal age</i></p>
<p>16.1.b</p>	<p>(b) banning the sale of tobacco products in any manner in which the customer can directly access such products, such as store shelves; and</p>	<p>Agreed</p>
<p>16.1.c</p>	<p>(c) prohibiting the manufacture and sale of sweets, snacks, toys or any other objects appealing to minors in the form of tobacco products.</p>	<p>No comment</p>
<p>16.2</p>	<p>2. Each Party shall prohibit the distribution of free tobacco products to the public.</p>	<p>Amend - to include “<i>or below cost</i>” as it may be possible to make the distribution almost free and to remove “to the public”. That limitation (which was not in the INB5 draft) would allow distribution of product through the mail, at “private” parties at bars etc.</p> <p><i>2. Each Party shall prohibit the distribution of free <u>or below-cost</u> tobacco products to the public.</i></p>
<p>16.3</p>	<p>3. Each Party shall endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.</p>	<p>The phrase ‘endeavour to’ is unnecessary and weakens the text. The definition of ‘small’ is left open, so there is already flexibility.</p>
<p>16.4</p>	<p>4. The Parties recognize that in order to increase their effectiveness, measures to prevent tobacco product sales to minors should, where appropriate, be implemented in conjunction with other provisions contained in this Convention.</p>	<p>Replace to give greater clarity and direction. The best way to tackle youth smoking is to marginalize smoking in <i>adult</i> society.</p> <p>Suggested additional text: <i><u>16 The parties recognise that measures aimed at reducing smoking in adult society are an essential means of making tobacco less attractive to young people and that measures to control supply to minors will be ineffective unless backed by measures that reduce the demand and pressure on young people to use tobacco.</u></i></p>
<p>16.5</p>	<p>5. Each Party shall take appropriate measures to ensure that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products.</p>	<p><u>Amend</u> to generalise the rationale behind banning vending machines – the impossibility of verifying age of the purchaser and therefore complying with 16.1a.</p> <p><i><u>Each party shall take appropriate measures to ensure that tobacco products are not sold or furnished through an automated vending machine or other self-service means nor through the mail or Internet, or through any means by which the age of the purchaser</u></i></p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
16.6	6. When signing, ratifying, accepting, approving or acceding to the Convention or at any time thereafter, a Party may, by means of a binding written declaration, indicate its commitment to prohibit the introduction of tobacco vending machines within its jurisdiction or, as appropriate, to a total ban on tobacco vending machines. The declaration made pursuant to this Article shall be circulated by the Depositary to all Parties to the Convention.	<u>can not be verified.</u> Delete and replace with a proper commitment at 16.5. Such a declaration is justified if some other part of the FCTC refers to those parties that have made a declaration, and creates other obligations as a result but no other reference is made to
16.7	7. Each Party shall adopt and implement effective legislative, executive, administrative or other measures , including penalties against sellers and distributors, in order to ensure compliance with the obligations contained in paragraphs 1-6 of this Article.	Agree
16.8	8. Each Party shall, as appropriate, adopt and implement effective legislative, executive, administrative or other measures to curb the sales of tobacco products by minors.	Agree
Article 17	17. Provision of government support for economically viable alternative activities	Overall comment. Removal of subsidies is crucially important in securing participation in the FCTC that a reference to tobacco subsidies is retained. There are plenty of other areas where the FCTC makes only lose commitments and uses qualifying language, so why not on the question of subsidies? Suggested new title <i>17. Provision of government support for <u>tobacco growing and for economically viable alternative activities</u></i>
17	Each Party shall, in cooperation with other Parties and with competent international and regional intergovernmental organizations, promote, as appropriate, economically viable alternatives for tobacco workers, growers and individual sellers.	Agree However, it is important that such funds that are made available for implementing the FCTC, are directed only to meeting the objective of the convention – which is purely public health. This article should express support for agricultural diversification and encourage the development that follows this direction.
<i>Suggested addition</i>		<u>Addition – restore the commitment to phase out subsidies</u> Reference to subsidies is <i>essential</i> in meeting some of the concerns of developing countries that grow tobacco and sell into a distorted and unfair market. The danger is that removing this completely has the appearance of caring more for the concerns of developed countries that subsidise tobacco growing. Suggested addition based on the previous Chair's text, with slight amendment <i>Each Party undertakes to phase out, with the view to eliminating subsidies, including tax exemptions, <u>public sector</u></i>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
<p><i>PART V:</i></p> <p><i>Article 18</i></p> <p><i>18</i></p> <p><i>Suggested addition</i></p>	<p>V. PROTECTION OF THE ENVIRONMENT</p> <p>18. Protection of the environment</p> <p>In carrying out their obligations under this Convention, in respect of cultivating tobacco and manufacturing tobacco products within their territories, the Parties agree to have due regard to the protection of the environment.</p>	<p><i>loans and rebates, for tobacco growing and manufacturing of tobacco products.</i></p> <p>It is important to ensure that environmental costs associated with tobacco production are carried entirely by producers – including the cost of regulation.</p> <p>This article is so weak it is almost superfluous. However, as part of a Framework Convention, it could be developed into further guidance and other standards.</p> <p>Additions:</p> <p>Polluter pays principle It is important that the economic burden of environmental protection falls fully on the tobacco industry. Suggested additional text:</p> <p><i>...and ensure the costs of environmental protection and restoration and worker protection are entirely carried by the tobacco industry.</i></p> <p>From a sustainable development point of view it is important that alternatives to tobacco growing are also considered for environmental impact: <i>...cultivating tobacco and manufacturing tobacco within their territories, <u>and the promotion of alternatives...</u></i></p>
<p><i>PART VI:</i></p>	<p>VI. QUESTIONS RELATED TO LIABILITY</p>	<p><u>Overall comment:</u> For liability for health injuries the aim of the convention should be to facilitate litigation and access to justice by removing procedural obstacle and making it easier for those injured to bring their cases.</p> <p>There is scope for a liability regime to be developed as part of the approach to tackling tobacco illicit trade. This would impose strict liability on tobacco manufacturers and exporters for lost tax revenues. An anti-smuggling liability regime could be modelled on the Basel Convention on the transboundary movements of hazardous wastes and its liability and compensation protocol. There are many parallels between the provisions of the Basel Convention, and its Liability and Compensation Protocol and what would be needed to tackle tobacco smuggling. For further information on the internet: Viability of liability – discussion document by ASH (April 2001)</p> <p>The negotiation of a full set of measures on liability and compensation are too difficult to negotiate at this stage (especially as the issue has had little consideration at the INBs). The text therefore should leave options open for further development.</p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
<i>Article 19</i>	19. Questions related to liability	
<i>19.1</i>	1. The Parties shall consider taking legislative action and making use of or promoting their existing laws to deal with liability and compensation for the purpose of tobacco control.	Though the sentence has little concrete effect, it is an important recognition of the role played by litigation in tobacco control – both in forcing truth from tobacco companies and in holding them accountable for their conduct.
<i>19.2</i>	2. Parties shall cooperate with each other in exchanging information through the Conference of the Parties in accordance with Article 21 including:	Agree
<i>19.2.a</i>	(a) information on the health effects of the consumption of tobacco products in accordance with Article 20.2(a) ; and	Agree – though it is really a repetition of article 20
<i>19.2.b</i>	(b) information on legislation and regulations in force as well as pertinent jurisprudence.	Agree
<i>19.3</i>	3. The Parties shall, as appropriate and mutually agreed, within the limits of national legislation, policies, legal practices and applicable existing treaty arrangements, afford one another assistance in legal proceedings relating to civil and criminal liability, consistent with this Convention.	<p><u>Amend.</u> There is little point in defining ‘mutual agreement’ as a precondition for an obligation. The qualification: ‘within the limits of national legislation, policies, legal practices and applicable existing treaty arrangements’ should be more than adequate. The only constraint here should be existing treaty arrangement that regulate assistance in legal proceedings.</p> <p>Suggested amendment: <i>The Parties shall, as appropriate and mutually agreed, within the limits of national legislation, policies, legal practices and applicable existing treaty arrangements</i></p> <p>This is a useful provision and could be further elaborated using principles articulated in proposed developments of the Hague Conventions on Private International law.</p>
<i>19.4</i>	4. With regard to the health injuries arising from tobacco consumption and exposure to tobacco smoke, the Conference of the Parties shall consider appropriate means to support the Parties in their legislative and judicial activities.	<p><u>Expand.</u> The FCTC should also keep open the option to address liability issues arising from illicit trade.</p> <p>Suggested amendment <i>4. With regard to the health injuries arising from tobacco consumption and exposure to tobacco smoke, and economic damage arising from illicit trade in tobacco products the Conference of the Parties shall consider appropriate means to support the Parties in their legislative and judicial activities.</i></p> <p>This creates some means by which to take these ideas forward.</p>
<i>Suggested addition</i>		<p>Protocol Suggested text signalling the intention to elaborate a protocol on liability at some point in the future. <i>19.5 The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of</i></p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
<p><i>Suggested addition</i></p>	<p>PART VII: VII. SCIENTIFIC AND TECHNICAL COOPERATION AND COMMUNICATION OF INFORMATION</p>	<p><u><i>liability and compensation for damage to human health and for economic losses due to illicit tobacco trade.</i></u></p> <p>Overall comment. One of the important things any convention can do is improve the information, analysis and expertise available to its parties. This creates great savings and efficiencies in the development of tobacco control.</p> <p>The main missing element in Part VII (article 20-22) is a formal mechanism within the treaty to facilitate the aims set out. This is a common feature of other treaties. For example:</p> <ul style="list-style-type: none"> • Framework Convention on Climate Change (Art 9) defines a Subsidiary Body for Scientific and Technical Advice • Montreal Protocol on protection of the ozone layer (Art 6) establishes expert panels for Assessment and Review of Control Measures <p>Subsidiary body</p> <p>There is a good case to establish a subsidiary body for scientific and technical advice from the outset – and specify this in the Convention (as was done in the Framework Convention on Climate Change Art 9, the Convention on Biological Diversity Art 25 and other instruments. Suggested additional text (based on UN FCCC):</p> <p><i>Article 20. (bis). A subsidiary body for scientific and technical advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific, legal and technological matters relating to the Convention. This body shall be open to participation by all Parties, public interest NGOs and shall be multidisciplinary. It shall comprise government-appointed representatives and invited NGO participants competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.</i></p> <p><i>2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:</i></p> <p><i>(a) Provide assessments of the state of scientific, technical and legal knowledge relating to tobacco control and the effects of tobacco use;</i></p> <p><i>(b) Prepare assessments on the effects of measures taken in the implementation of the Convention;</i></p> <p><i>(c) Identify innovative, efficient and state-of-the-art techniques and know-how and advise on the ways and means of promoting development and/or transferring such</i></p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
		<p><i>technologies and techniques;</i></p> <p><i>(d) Provide advice on scientific programmes, international cooperation in research and development related to tobacco control, as well as on ways and means of supporting endogenous capacity-building in developing countries; and</i></p> <p><i>(e) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.</i></p> <p><i>3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.</i></p>
<i>Article 20</i>	20. Research, surveillance, monitoring, and exchange of information	
<i>20.1</i>	1. The Parties undertake to develop and promote national research and to coordinate research programmes at the regional and international levels in the field of tobacco control. Towards this end, each Party shall:	Agree
<i>20.1.a</i>	(a) initiate and cooperate in, directly or through competent international and regional intergovernmental organizations and other bodies, the conduct of research and scientific assessments, and in so doing promote and encourage research that addresses the determinants and consequences of tobacco consumption and exposure to tobacco smoke as well as research that addresses the cultivation of tobacco and alternative crops; and	<p><u>Amend</u> to clarify – the addition of a commitment to co-operate in research relevant to growers is useful and welcome, however it should only relate to <u>alternative</u> crops or economic activities as it is only diversification that is relevant to the FCTC.</p> <p>Suggested amendment drawing on language in Article 17.</p> <p><i>...as well as research that addresses <u>viable alternatives to the cultivation of tobacco and alternative crops</u>; and</i></p> <p>It is important that competent organisations involved must be properly funded if they are to take on additional obligations.</p>
<i>20.1.b</i>	(b) promote and strengthen, with the support of competent international and regional intergovernmental organizations and other bodies, training and support for all those engaged in tobacco control activities, including research, implementation and evaluation.	<u>Agree</u> – though the competent organisations involved must be properly funded if they are to take on additional obligations
<i>20.2</i>	2. The Parties shall establish joint or complementary programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences of tobacco consumption and exposure to tobacco smoke. Towards this end, the Parties should integrate tobacco surveillance programmes into national, regional and global health surveillance programmes so that data are comparable and can be analysed at the regional and international levels, as appropriate. Recognizing the importance of financial and technical assistance from	<u>Agree</u>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	international and regional intergovernmental organizations and other bodies, each Party shall:	
20.2.a	(a) establish progressively a national system for the epidemiological surveillance of tobacco consumption and related social, economic and health indicators;	<u>Amend.</u> The parties should establish a national system. What takes place 'progressively' is the implementation. Proposed amendment: <i>(a) establish progressively a national system..</i>
20.2.b	(b) cooperate with competent international and regional intergovernmental organizations and other bodies, including governmental and nongovernmental agencies, in regional and global tobacco surveillance and exchange of information on the indicators specified in paragraph 2(a) of this Article; and	Agree
20.2.c	(c) cooperate under the auspices of the World Health Organization in the development of general guidelines or procedures for defining the collection, analysis and dissemination of major surveillance data.	<u>Agree</u> – a move towards standardisation and best practice should be encouraged in order to facilitate comparison and aggregation of data.
20.3	3. The Parties shall promote and facilitate the transfer of scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco, which is relevant to this Convention and in so doing shall take into account and address the special needs of developing country Parties and Parties with transitional economies. Each Party shall:	Agree
20.3.a	(a) establish and maintain an updated database of laws and regulations on tobacco control and information about their enforcement, as well as pertinent jurisprudence, and cooperate in the development of complementary programmes for national, regional and global tobacco control;	<u>Agree.</u> This will be very helpful in promoting best practice and reducing the time and scope for error in developing tobacco legislation.
20.3.b	(b) establish and maintain updated data from national surveillance programmes in accordance with paragraph 2(a) of this Article; and	Agree
20.3.c	(c) cooperate with competent international organizations to establish and maintain a global monitoring system to regularly collect and disseminate information on tobacco production, manufacture and the activities of the tobacco industry which have an impact on this Convention or national tobacco control activities.	<u>Agree</u> – but if they take on extra commitments the parties should provide extra resources.
20.4	Regional and international intergovernmental organizations should be encouraged to provide technical and financial resources to	Agree

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	<p>the Secretariat of this Convention to assist developing country Parties and Parties with transitional economies to meet their commitments on surveillance, research and information exchange.</p>	
<i>Article 21</i>	21. Reporting and exchange of information	
<i>21.1</i>	<p>1. In accordance with guidelines adopted by the Conference of the Parties and the relevant provisions of this Convention, each Party shall submit to the Conference, through the Secretariat, periodic reports on its implementation of the Convention, including the following:</p>	<p><u>Amend</u> to establish a timetable and promote action by making consideration of reports the first major task of the COP. The formulation below is derived from UN FCCC (Art 12 and Art 4.2.b) which required initial reports to be submitted for consideration at the first COP.</p> <p><i>1. In accordance with guidelines adopted by the Conference of the Parties and the relevant provisions of this Convention, Within six months of entry into force of this Convention, each Party shall submit to the Conference of the Parties, through the Secretariat, and periodically thereafter as determined by the Conference of the Parties, reports on its implementation of the Convention. This information will be reviewed by the Conference of the Parties, at its first session and every periodically thereafter in accordance with guidelines adopted by the Conference of the Parties. The reports shall include the following:</i></p>
<i>21.1.a</i>	(a) information on legislative, executive, administrative or other measures taken to implement the Convention;	<p><u>Amend</u> – parties should report on all the measures taken.</p> <p><i>(a) information on legislative, executive, administrative or and other measures taken to implement the Convention;</i></p>
<i>21.1.b</i>	(b) information on any constraints or barriers encountered in its implementation of the Convention, and on the measures taken to overcome these barriers;	Agree
<i>21.1.c</i>	(c) information on surveillance and research as specified in Article 20 ; and	Agree
<i>21.1.d</i>	(d) information specified in Articles 6.2(b) , 13.1(c) , 15.5 and 19.2 .	Agree
<i>21.1.e</i>		<p><u>Reinstate.</u> The Conference of the Parties should be able to develop the treaty in response to changed circumstance, emerging problems or opportunities, an practicalities; The following facilitator's text was agreed at INB-5. <i>(e) information on other measures as determined by the Conference of the Parties.</i></p>

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
21.2	2. The frequency of reports by all Parties shall be determined by the Conference of the Parties.	Agree
21.3	3. The Conference of the Parties, pursuant to Article 26 , shall consider administrative or financial arrangements in order to assist developing country Parties and Parties with transitional economies, at their request, in meeting their obligations under this Article.	Agree
<i>Article 22</i>	22. Cooperation in the scientific, technical, and legal fields and provision of related expertise	
22.1	1. The Parties shall cooperate directly or through competent international bodies to strengthen their capacity to fulfil the obligations arising from this Convention, taking into account the needs of developing country Parties and Parties with transitional economies. Such cooperation shall promote the transfer of technical, scientific and legal expertise and technology, as mutually agreed, to establish and strengthen national tobacco control strategies, plans and programmes aiming at, <i>inter alia</i> :	Agree
22.1.a	(a) facilitation of the development, transfer and acquisition of technology, knowledge, skills, capacity and expertise related to tobacco control;	Agree
22.1.b	(b) provision of technical, scientific, legal and other expertise to establish and strengthen national tobacco control strategies, plans and programmes, aiming at, <i>inter alia</i> :	Agree
22.1.b.i	(i) assisting in the development of a strong legislative foundation as well as technical programmes, including those on prevention of initiation, promotion of cessation and protection from exposure to tobacco smoke;	Agree
22.1.b.ii	(ii) assisting tobacco workers who are affected by the implementation of the Convention in the development of appropriate alternative livelihoods in an economically viable manner, consistent with the international obligations of the Parties; and	<u>Delete.</u> This is very problematic language as it sets the false expectation that the parties will compensate private sector interests for adjustments in the tobacco market. It will, in any case, be impossible to separate the small, future impacts on farmers due to the FCTC and the much larger impacts arising from other factors – notably mechanisation, relocation and rationalisation of production by the tobacco industry, removal of subsidies for WTO rules and decisions, mergers and acquisitions, etc. The danger is that any adjustments in tobacco-related employment will become a concern of this treaty. The FCTC should concentrate its efforts on public health and allow the private sector to respond to the changes caused by the treaty or the parties to take actions as they see fit, but outside the FCTC.
22.1.b.iii	(iii) assisting tobacco growers who are	<u>Replace</u> (see 22.1.b.ii. above) or replace with language

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	<p>affected by the implementation of the Convention in shifting agricultural production to alternative crops in an economically viable manner, consistent with the international obligations of the Parties;</p>	<p>that emphasises the importance of reducing economic dependence on tobacco growing and invokes the role of established development assistance (eg. World Bank) in assisting in diversification. This language reinforces the misconception that it is the implementation of tobacco control measures, which are responsible for the increasingly desperate plight of tobacco growers, rather than the actions of the manufacturers themselves. ASH proposed language for agricultural transition in text its commentary for INB-4.</p> <p>Suggested alternative <i><u>(iii) promoting sustainable alternatives to tobacco cultivation.</u></i></p>
22.1.c	(c) support for training and educational programmes for appropriate personnel in accordance with Article 12 ;	Agree
22.1.d	(d) provision of the necessary material, equipment and supplies, as well as logistical support, for tobacco control strategies, plans and programmes;	Agree
22.1.e	(e) identification of methods for tobacco control, including treatment of nicotine addiction; and	<p><u>Amend.</u> It is not clear why 'treatment of nicotine addiction' is singled out. Tobacco control broadly consists of:</p> <ul style="list-style-type: none"> • Control of marketing and banning of advertising • Tax policy and control of smuggling • Mass-media communication and counter-advertising • Treatment of tobacco dependence • Provision of smoke-free environments • Regulation of products and packaging • Disclosures and transparency • Community based programmes • Harm reduction <p>These could be incorporated into a <u>definition</u> of tobacco control, and the specific mention of one aspect deleted.</p> <p>Suggested amendment <i><u>(e) identification of methods for best practice in tobacco control, including treatment of nicotine addiction, and</u></i></p>
22.1.f	(f) promotion of research to increase the affordability of treatment of nicotine addiction.	<p><u>Amend.</u> This is too specific in highlighting the affordability of a single measure. Though fine in principle, it sounds naïve about market realities.</p> <p>Suggested amendment <i><u>(f) promotion of research in the economics and commercial aspects of tobacco control, including options to increase the affordability of treatment of nicotine addiction.</u></i></p>
22.2	2. The Conference of the Parties shall promote and facilitate transfer of technical, scientific and legal expertise and technology with the financial support	This needs to be strengthened by reverting to the proposals in earlier working group texts of establishing a subsidiary body – see discussion of

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	secured in accordance with Article 26 .	subsidiary body above.
PART VIII:	VIII. INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES	
Article 23	23. Conference of the Parties	
23.1	1. A Conference of the Parties is hereby established. The first session of the Conference shall be convened by the World Health Organization not later than one year after the entry into force of this Convention. The Conference will determine the venue and timing of subsequent regular sessions at its first session.	Amend to establish an annual meeting as the default. This is the formulation used in the UN Framework Convention on Climate change (art 7.4). <i>1. The first session of the Conference of the Parties shall be convened by not later than one year after the date of entry into force of the Convention. The Conference will determine the venue and timing of subsequent regular sessions at its first session. Thereafter, ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.</i>
23.2	2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat of the Convention, it is supported by at least one-third of the Parties.	Agree
23.3	3. The Conference of the Parties shall adopt by consensus its Rules of Procedure. Until such time as the Rules of Procedure have been adopted, the Conference of the Parties shall, on an interim basis, use the Rules of Procedure of the World Health Assembly.	<u>Amend</u> – the COP's rules of procedure should be adopted by the rules of the WHA rather than 'consensus' – which is not required by WHA procedure. Proposed amendment: <i>3. The Conference of the Parties shall adopt by consensus its Rules of Procedure using the Rules of Procedure of the World Health Assembly. Until such time as the Rules of Procedure have been adopted, the Conference of the Parties shall, on an interim basis, use the Rules of Procedure of the World Health Assembly.</i>
23.4	4. The Conference of the Parties shall by consensus adopt financial rules for itself as well as governing the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.	Amend – see 23.3 above. Proposed amendment: <i>... shall adopt by consensus its Rules of Procedure using the Rules of Procedure of the World Health Assembly. ...</i>
23.5	5. The Conference of the Parties shall keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation and may adopt protocols, annexes and amendments to the Convention, in accordance with Articles 28, 29 and 33 . Towards this end, it shall:	Agree
23.5.a	(a) promote and facilitate the exchange of information pursuant to Articles 20 and 21 ;	Agree
23.5.b	(b) promote and guide the development and periodic refinement of comparable	<u>Agree</u> – though this should be done through a subsidiary mechanism or advisory group established

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	methodologies for research and the collection of data, in addition to those provided for in Article 20 , relevant to the implementation of the Convention;	in the FCTC but accountable to the COP. See language at Article 20(bis) above
23.5.c	(c) promote, as appropriate, the development, implementation and evaluation of strategies, plans, and programmes, as well as policies, legislation and other measures;	<u>Agree</u> – though this should be done through a subsidiary mechanism or advisory group established in the FCTC but accountable to the COP. It is good to remove the word 'harmonisation' as this may cause a lowering of standards rather than promote best-practice.
23.5.d	(d) examine reports submitted by the Parties in accordance with Article 21 and adopt regular reports on the implementation of the Convention;	<u>Agree</u>
23.5.e	(e) seek to mobilize financial resources for the implementation of the Convention in accordance with Article 26 ;	Agree
23.5.f	(f) establish such subsidiary bodies as are necessary to achieve the objective of the Convention;	<u>Replace</u> There is a good case to establish a subsidiary body for scientific and technical advice from the outset – and specify this in the Convention (as was done in the Framework Convention on Climate Change Art 9 , the Convention on Biological Diversity Art 25 and other instruments). See discussion of subsidiary body above
23.5.g	(g) seek, where appropriate, the services and cooperation of, and information provided by, competent organizations and bodies of the United Nations system and other international and regional intergovernmental organizations and nongovernmental organizations and bodies as a means of strengthening the implementation of the Convention; and	Agree
23.5.h	(h) consider and undertake any additional action that may be required for the achievement of the objective of the Convention in the light of experience gained in its implementation.	<u>Amend</u> to reflect responsiveness to developments in scientific, technical, legal other knowledge: Amendment: <i>...gained in its implementation, <u>the evolution of scientific, technical and legal knowledge and developments in or understand of the business practices of tobacco industry;</u></i>
23.6	6. The Conference of the Parties shall establish the criteria for the participation of observers at its proceedings.	<u>Amend</u> to establish WHO practice as the norm. <i>The Conference of the Parties shall establish apply the same criteria as the World Health Assembly for participation of observers at its proceedings</i>
Article 24	24. Secretariat	
24.1	1. Interim secretariat functions under this Convention shall be provided by the World Health Organization until such time that the Conference of the Parties determines permanent arrangements.	Agree. However, the parties and COP must be prepared to fund secretariat functions.
24.2	2. The functions of the Secretariat shall be:	Agree

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
24.2.a	(a) to make arrangements for sessions of the Conference of the Parties and any subsidiary bodies and to provide them with services as required;	Agree
24.2.b	(b) to prepare and transmit reports submitted to it pursuant to the Convention;	Agree
24.2.c	(c) to provide support to the Parties, particularly developing country Parties and Parties with transitional economies, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;	Agree
24.2.d	(d) to prepare reports on its activities under the Convention and submit them to the Conference of the Parties;	Agree
24.2.e	(e) to ensure, under the guidance of the Conference of the Parties, the necessary coordination with other competent international and regional intergovernmental organizations and other bodies;	Agree
24.2.f	(f) to enter, under the guidance of the Conference of the Parties, into such administrative or contractual arrangements as may be required for the effective discharge of its functions; and	Agree
24.2.g	(g) to perform other secretariat functions specified by the Convention and by any of its protocols and such other functions as may be determined by the Conference of the Parties.	Agree
<i>Article 25</i>	25. Relations between the Conference of the Parties and intergovernmental organizations	
25	In order to provide technical and financial cooperation for achieving the objective of this Convention, the Conference of the Parties may request the cooperation of competent international and regional intergovernmental organizations including financial and development institutions.	Agree – though requests for additional work should be matched with additional resources.
<i>Article 26</i>	26. Financial resources	This section needs to be separated into component parts as it covers three substantially different issues. 1. Funding of national commitments 2. Funding for developing and transitional countries 3. Funding of multilateral agencies
26.1	1. Each Party shall provide financial support in respect of its national activities intended to achieve the objective of this Convention, in accordance	Agree

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	with its national plans, priorities and programmes.	
26.2	2. The Parties recognize the important role that financial resources through bilateral, regional, subregional and other multilateral channels play in achieving the objective of the Convention. In this regard, Parties shall promote the utilization of such channels to provide funding for the development and strengthening of comprehensive tobacco control programmes, including viable diversification activities, of developing country Parties and Parties with transitional economies.	Agree
26.3	3. The Conference of the Parties shall seek technical and financial assistance to achieve the objective of the Convention from regional and international intergovernmental organizations and financial and development institutions for developing country Parties and for Parties with transitional economies. Parties shall cooperate with these regional and international organizations in order to achieve the objective of the Convention.	Agree
26.4	4. The Parties agree that:	Agree – the Chair has used a variation on the first option of three proposed at INB-5. This defers the question of mechanisms for financial resources until the COP. The key here is to give confidence that if existing channels are to be used, adequate new resources will be made available through them.
26.4.a	(a) All potential resources, financial, technical, or otherwise, should be mobilized for the benefit of the developing country Parties and Parties with transitional economies for them to meet their obligations and achieve the objective of the Convention. Existing sources of assistance, including those described in the preceding paragraphs of this Article, should be fully utilized.	Agree
26.4.b	(b) Appropriate financial resources to assist developing country Parties and Parties with economies in transition in achieving the objective of the Convention should be made available, and all potential resources, both public and private, should be mobilized towards this end. The first Conference of the Parties shall review existing sources of assistance, including those described in Articles 26.1, 26.2 and 26.3, and consider their adequacy in this regard. The results of this review shall be taken into account in addressing the need for the provision of necessary financial, technical and other assistance as appropriate, including the possibility of establishing a multilateral global fund, for developing country Parties and Parties with transitional economies, to assist them in achieving the objective of the Convention.	<p><u>Amend.</u> It is important that the commitment to fund does not simply involve diverting funds from other budgets. 'Appropriate' is meaningless, and should be replaced by 'sufficient'.</p> <p><i>(b) Sufficient new and additional financial resources to assist developing country Parties...</i></p> <p>The review should have greater force and formality, including verifying that funding is 'new and additional':</p> <p><i>The first Conference of the Parties shall review audit existing sources of assistance...</i></p> <p>The strategy of testing existing mechanisms before establishing a fund is a good one, but a credible assessment and new and additional resources offered in good faith are essential to make this work.</p>
PART IX:	IX. SETTLEMENT OF DISPUTES	

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
<i>Article 27</i>	27. Settlement of disputes	
27.1	1. In the event of a dispute between two or more Parties concerning the interpretation or application of this Convention, the Parties concerned shall seek through diplomatic channels a settlement of the dispute through negotiation or any other peaceful means of their own choice, including good offices, mediation, or conciliation. Failure to reach agreement by good offices, mediation or conciliation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it.	Agree
27.2	2. When ratifying, accepting, approving, formally confirming or acceding to the Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this Article, it accepts, as compulsory, ad hoc arbitration in accordance with procedures to be adopted by consensus by the Conference of the Parties.	No comment
27.3	3. The provisions of this Article shall apply with respect to any protocol, unless otherwise provided therein.	Agree
<i>PART X:</i>	X. DEVELOPMENT OF THE CONVENTION	
<i>Article 28</i>	28. Amendments to this Convention	
28.1	1. Any Party may propose amendments to this Convention. Such amendments will be considered by the Conference of the Parties.	Agree
28.2	2. Amendments to the Convention shall be adopted at any regular session of the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories of the Convention and, for information, to the Depositary.	Agree
28.3	3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to the Convention. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. The adopted amendment shall be communicated by the Secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.	<p><u>Restore</u> This has been changed to three-quarters since INB-5 for no good reason. The lower threshold helps to build dynamism into the process. The entry-into-force provision at 28.4 would not change.</p> <p>Return to previous Chair's text. ...the amendment shall as a last resort be adopted by a three-quarters <u>two-thirds</u> majority vote of the Parties present and voting at the session.</p>
28.4	4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary.	Agree

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	<p>An amendment adopted in accordance with paragraph 3 of this Article shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least two-thirds of the Parties to the Convention.</p>	
28.5	<p>5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.</p>	Agree
<i>Article 29</i>	<p>29. Adoption and amendment of annexes to this Convention</p>	
29.1	<p>1. Annexes to this Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto.</p>	Agree
29.2	<p>2. Annexes to the Convention and amendments thereto shall be proposed, adopted and shall enter into force in accordance with the procedure set forth in Article 28.</p>	<p><u>Restore.</u> This has been replaced since INB-5 with text that makes changes to annexes (though there are none at present) 'opt-in', whereas the earlier version makes them 'opt-out'. It is important the FCTC is a flexible instrument not held back a small number of parties with reservations.</p> <p>Suggested text from previous Chair's text <i>An annex that has been adopted in accordance with paragraph 2 of this Article shall enter into force for all Parties to this Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex. The annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.</i></p>
29.3	<p>3. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.</p>	Agree
<i>PART XI:</i>	<p>XI. FINAL PROVISIONS</p>	
<i>Article 30</i>	<p>30. Reservations</p>	
30	<p>No reservations may be made to this Convention.</p>	Agree
<i>Article 31</i>	<p>31. Withdrawal</p>	
31.1	<p>1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the</p>	No comment

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	Depositary.	
31.2	2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.	No comment
31.3	3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.	This is inconsistent with Article 33.1, which envisages the possibility of being a party to a protocol but not to the convention – if that option is provided for in the protocol concerned.
<i>Article 32</i>	32. Right to vote	
32.1	1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2 of this Article.	Agree
32.2	2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their Member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice versa.	Agree
<i>Article 33</i>	33. Protocols	
33.1	1. Only Parties to this Convention may be parties to a protocol, unless otherwise provided in the protocol concerned.	Agree – this may help in the case of a protocol that is self-contained. For example a protocol on illicit trade might be a case.
33.2	2. Any protocol to the Convention shall be binding only on the parties to the protocol in question.	Agree
33.3	3. The requirements for entry into force of any protocol shall be established by that instrument.	Agree
<i>Reinstate</i>		<u>Restore</u> language for 3.3 agreed at INB-5 that affirms that protocols shall be developed by parties to the protocol. <i>3.3. Decisions concerning any protocol shall be taken only by the parties to the protocol concerned.</i>
<i>Article 34</i>	34. Signature	
34	This Convention shall be open for signature by all members of the World Health Organization and by any States that are not members of the World Health Organization but are members of the United Nations and by regional economic integration organizations at the World Health Organization headquarters in Geneva from (day, month, year) to (day, month, year), and thereafter at United Nations Headquarters in New York, from (day, month, year) to (day, month, year).	Agree

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
<i>Article 35</i>	35. Ratification, acceptance, approval, formal confirmation or accession	
35.1	1. This Convention shall be subject to ratification, acceptance, approval or accession by States and to acts of formal confirmation or accession by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval, formal confirmation or accession shall be deposited with the Depositary.	No comment
35.2	2. Any regional economic integration organization which becomes a Party to the Convention without any of its Member States being a Party shall be bound by all the obligations under the Convention. In the case of those organizations, one or more of whose Member States is a Party to the Convention, the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the Member States shall not be entitled to exercise rights under the Convention concurrently.	No comment
35.3	3. Regional economic integration organizations shall, in their instruments relating to acts of formal confirmation or in their instruments of accession, declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.	Agree – Within the European Union it is important to have a clear articulation of which institution is competent.
<i>Article 36</i>	36. Entry into force	
36.1	1. This Convention shall enter into force on the ninetieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.	Agree
36.2	2. For each State that ratifies, accepts or approves the Convention or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, the Convention shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.	No comment
36.3	3. For each regional economic integration organization depositing an instrument relating to an act of formal confirmation or an instrument of accession, the Convention shall enter into force on the ninetieth day following the date of its depositing of the instrument of formal confirmation or of accession.	No comment
36.4	4. For the purposes of this Article, any instrument	No comment

Section	Revised Chair's text - A/FCTC/INB6/2	Comments and alternatives
	<p>deposited by a regional economic integration organization shall not be counted as additional to those deposited by States Members of the organization.</p>	
<i>Article 37</i>	37. Depository	
37	<p>The Secretary-General of the United Nations shall be the Depository of this Convention and amendments thereto and of protocols and annexes adopted in accordance with Articles 28, 29 and 33.</p>	Agree
<i>Article 38</i>	38. Authentic texts	
38	<p>The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.</p>	Agree
	<p>IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.</p>	
	<p>DONE at GENEVA this [date of month] two thousand and three.</p>	