

Action on Smoking and Health (London)
Commentary on INB-4 Working Group texts
WHO Framework Convention on Tobacco Control
18th - 23rd March 2002 Geneva

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This document includes the Working Group texts completed at INB-3, which are the opening position for negotiations at INB-4. These texts in original form may be found at the [FCTC documentation centre](#). For each paragraph in the texts, ASH has suggested which bracketed text should be deleted or included to give the best possible convention from the proposed texts. Where we believe none of the text is satisfactory or there is a significantly better option we have made a proposal. For each text recommendation we have provided a short rationale. In this document, the convention used is:

- Proposed deletions are marked with ~~strikethrough~~
- Proposed inclusions are marked with underline
- Proposed ASH additions to the text not included in the working group papers are shown in *italics*
- ASH commentary and rationale is shown in **bold text**

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Section number	Working group texts recommended additions and deletions	Rationale
A. Preamble		
B. Definitions		
C. Objective	<p>The ultimate objective of this Convention and of the related protocols is to provide a framework for integrated tobacco control measures to be implemented through the engagement of the Parties in order continually and substantially to reduce the prevalence of tobacco use and thus protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.</p>	<p>The language can be simplified simply to stress the desired outcome without describing the means.</p> <p>The objective was not debated at INB-3 so the suggested changes are NGO proposals.</p> <p>A stronger 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>
D. Guiding principles	<p><u>Overview</u> The most controversial aspect of the proposed guiding principles is about whether trade treaties or this public health treaty should take precedence in the regulation of tobacco. We argue that as a treaty specific to tobacco, and one concerned with human life rather than commerce, this treaty should take precedence, and that in the absence of certainty measures should be taken on a precautionary basis.</p>	
	<p>To achieve the objective of this Convention and to implement its provisions, the Parties shall be guided, <i>inter alia</i>, by the principles set out below:</p>	
D1.	<p>[1. It should be a public health imperative to prevent and halt the growth of tobacco consumption and to reduce its current impact, in order to protect and promote the health of all individuals and to reduce tobacco-related morbidity and mortality at national and global levels.]</p>	<p>No comment</p>
D2.	<p>[2. Full information should be provided to the general public about the addictive and lethal nature of tobacco consumption, and everyone should be [adequately] protected from exposure to tobacco smoke[, and from tobacco dependence and nicotine addiction] and its health [and environmental] consequences, also recognizing the importance of efforts and various measures to control tobacco smoking of young persons [and of health promotion for the development of healthy lifestyles and tobacco free environments].]</p>	<p>There is no difference between 'protection' and 'adequate protection' if the protection really is adequate.</p> <p>The added [] section rounds out proper objectives for the treaty</p>
D2 bis	<p><u>Strong political commitment is needed to develop and support comprehensive multisectoral measures and coordinated responses at both national and international levels.</u></p>	<p>This reflects the nature of this problem – ie. the tobacco industry is a disease 'vector' with lobbyists, PR people, lawyers etc.</p>
D3.	<p>[3. The importance of international cooperation, particularly transfer of technology and financial assistance between Parties, to establish and implement effective tobacco-control programmes, taking into consideration local culture, social, economic, political and legal factors, should be recognized.]</p>	<p>No comment</p>

D4.	<p>4. The importance of technical and financial assistance [, including the creation of a global funding mechanism] [to aid the economic transition of]/[to] tobacco growers, and workers and individual sellers who may be displaced as a future consequence of successful tobacco control programmes should be recognized [[and addressed], particularly in developing countries] (Reference to the work of Working Group 3).</p> <p>Or replace with...</p> <p><i>4. The importance of financial assistance to assist Parties with low per capita income meet their obligations under this convention and its protocols should be recognised.</i></p>	<p>There should be no in-principle agreement to compensate growers or the tobacco industry for the impact of a public health treaty – certainly not through a mechanism within the treaty. The trend in tobacco consumption is up, with 500 million new users expected by 2020 – it is highly unlikely that total demand will fall for some time.</p> <p>Support for economic transition must come from outside the FCTC, via the normal development channels, such as the World Bank – and should be at the level of sector adjustment, rather assistance to the individual farmer.</p> <p>This should be replaced with a provision related to financial support for implementing the provisions of the treaty – the more appropriate [and politically feasible] use of public funds.</p>
D5.	<p>5 . <u>[Priority should be given to measures taken to protect public health when tobacco control measures contained in this Convention and its protocols are examined for compatibility with other international agreements.]</u></p> <p>OR</p> <p>5 . [The Parties agree that tobacco control measures shall be transparent, non-discriminatory and implemented in accordance with their existing international obligations.]</p> <p>(and delete any other variations on the idea that public health should be subordinated to trade interests)</p>	<p>The alternative language proposed by Thailand and others recognises the sovereign right to address the unique consequences of tobacco commerce.</p> <p>The second paragraph further recognises that this specialised treaty on tobacco should take precedence over general principles from other treaties that might applied to the specific case of tobacco – eg. WTO agreements.</p> <p>A detailed briefing on the relationship between trade and health has been prepared by the Framework Convention Alliance of NGOs –see internet brief</p>
D6.	<p>6. The tobacco industry should be held responsible for the harm its products cause to public health and the environment <u>caused or exacerbated by its conduct</u>, with each Party determining the scope of such responsibility within its jurisdiction.</p>	<p>Emphasis should be <u>conduct</u> rather than the product – the companies can only be held responsible for what they have done, not the product itself – this is an ASH proposal.</p>
D7.	<p>7. The appropriate participation of all elements of civil society is essential in achieving the objective of this Convention.</p>	<p>The use of ‘appropriate’ is unnecessary. Inappropriate participation will not achieve the objective.</p>
D8.	<p>8. The provisions of this Convention should be recognized as minimum standards, and Parties are encouraged to implement measures beyond those required by the Convention.</p>	<p>Chair’s text</p>
D9 & 10 New para bis	<p>[D.9 Developed country Parties [and the tobacco industry] shall undertake to [compensate the losses to] [aid the economic transition of] economies that depend on tobacco [to other economically viable alternatives] through the provision of adequate financial and technical assistance as well as access to markets and appropriate technology.] (NOTE: potential link with paragraph D.4).</p>	<p>Does not add to D4.</p>

	10. The provision of political will and commitment by State Parties in their highest possible offices is of utmost importance in ensuring the success of the objectives of this Convention (NOTE: referred for discussion under the preamble).	Agree – it is important that this is not seen as an administrative matter
D9 Ter	<i>It is scientifically certain that tobacco causes many diseases that result in needless disability and early death. 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.</i>	This language was proposed by Thailand but has been omitted in the WG papers produced so far. This has wide NGO support. The principle deals with a vital concept in regulation –the Precautionary Principle – 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]
E. General obligations	Overview This section requires parties to take on tobacco as an important public health issue.	
E1.	1. Each Party shall [, taking into account its specific circumstances,] develop, implement, and update, as appropriate, comprehensive and multisectoral tobacco control strategies, policies and legislation and other measures, [such as standards,] in furtherance of the objective and purpose of this Convention and, as relevant, its protocols .	The ‘taking into account’ language is superfluous Each party should produce a plan that is appropriate to its circumstances.
E2.	2. To this end, each Party shall [within the means at its disposal and its capabilities]:	Create a firm obligation – it is already the case that countries cannot act beyond the means at their disposal.
E2(a).	(a) establish or, where it already exists, reinforce, and adequately finance a national coordinating mechanism for tobacco control, with inputs from relevant government and civil society sources;	There is no point in setting up a program with ‘inadequate’ financing It is important not to be too prescriptive about such mechanisms – but specifying the level of political responsibility is useful.
E2(b)	b) adopt legislative, executive, administrative and other appropriate measures and cooperate with other Parties in [developing and] [harmonizing] [and extending] appropriate policies, with a view to reducing nicotine addiction, [and] tobacco consumption and [elimination of] exposure to tobacco smoke.	Harmonizing may exert a downward pressure on standards and constrain pursuit of best practice. By establishing harmonised ‘norms’ such an approach may open leaders in tobacco control to challenges under the WTO treaty governing technical barriers to trade (TBT). It is much better to have a general commitment to develop and extend existing policies.
E2l.	l reduce tobacco consumption, and exposure to tobacco smoke, tobacco dependence and nicotine addiction in accordance with the provisions of this Convention and, as relevant, its protocols.	Add reference to dependence

E3.	<p>{3. The Parties shall undertake to adopt legislative, executive and administrative measures to regulate and to ensure that export of tobacco products and associated packaging conform [either to the exporting country's own domestic standards, the importing country's domestic standards or the standards laid down in accordance with this Convention whichever ensures]/[to the international standards set by the Conference of the Parties to ensure] the highest level of public health protection. Transitional periods, to allow for specific manufacturing situations may be envisaged.]</p> <p>Alternative text proposed by Oman and Thailand at INB-2, but excluded in current drafts <i>3.i The Parties agree to take all necessary measures to ensure that no person acting on their behalf shall attempt to</i></p> <p><i>a. remove, weaken, undermine or otherwise interfere with tobacco control measures in force or under consideration in another State or</i></p> <p><i>b. promote tobacco product exports or tobacco use in another State.</i></p>	<p>It will be difficult to require standards to match those in the exporter's country because importing and exporting countries may choose to have <u>different and incompatible domestic standards</u> – and the standards in the importing country matter more. For example, this would prevent exports from Canada to the EU, given the different warning regimes.</p> <p>The clause can only deal with situations where the importer is a non-party or is in non-compliance with the FCTC. In this case, the norms established in the FCTC would become the responsibility of exporters.</p> <p>There is no point in saying what is 'envisaged' – it either is included or not.</p> <p>It would be better at this point to stress Parties role in obstructing global tobacco control in other countries – and language to this effect was proposed at INB-2.</p>
E3 bis. Alternative text	<p>[3.bis: The Parties shall adopt and ensure satisfactory <u>implementation of means to protect public health policy from undue interference by tobacco companies, their subsidiaries, affiliated parties and other related entities.</u>]</p>	<p>This recognises the role the tobacco companies can play in undermining the FCTC at local level.</p>
E4.	<p>4. The Parties shall cooperate in the formulation of agreed measures, procedures and standards for the implementation of this Convention.</p>	<p>Chair's text (this was not included in the working group papers)</p>
E5.	<p>5. The Parties shall cooperate with competent international bodies in order to implement effectively this Convention and the protocols to which they are parties.</p>	<p>Chair's text (this was not included in the working group papers)</p>
E6.	<p>6. The provisions of the Convention shall in no way affect the right of Parties to adopt <u>more stringent</u> domestic measures in addition to those referred to above, nor shall they affect measures already taken by a Party, provided that such measures are compatible with its obligations under this Convention and the protocols to which it is a party.</p>	<p>Chair's text with minor clarification (this was not included in the working group papers)</p>
E7.	<p>7. The provisions of the Convention shall in no way affect the right of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to this Convention, provided that such agreements <u>aim to achieve a higher level of health protection and</u> are compatible therewith. Copies of such agreements shall be communicated to the secretariat of the Convention by the Parties concerned.</p>	<p>Chair's text with minor clarification (this was not included in the working group papers but was tabled at earlier INBs)</p>

<p>F. Price and tax measures to reduce the demand for tobacco</p>	<p><u>Overview</u> Taxes vary widely across the world and most countries guard their tax policy jealously – for these reasons it is practically and politically impractical at present to bring them under a common fixed regime. However the FCTC can establish agreed directions and principles in the use of tobacco taxation for public health objectives.</p> <ul style="list-style-type: none"> We argue for a commitment to raising taxes at least at the rate of growth in incomes – so that tobacco products do not become more affordable over time. Harmonising or lowering taxes will <u>not</u> be effective in controlling smuggling – the idea is based on a misconception of how smuggling works. 	
<p>F1.</p>	<p>1. The Parties recognize that [progressive]/coordinated] price and tax [measures]/increases] [are]/can be] effective and important means of reducing tobacco consumption for various sections of the population, in particular young persons – [The Parties agree that appropriate coordination and cooperation on price and tax measures, in accordance with national policies, between countries and at the international, regional and subregional levels, may be an important means of eliminating illicit traffic in tobacco products.] <u>and that they must be combined with effective measures to combat illicit traffic</u></p>	<p>The word ‘progressive’ has a particular technical meaning in taxation policy – ie the burden should fall disproportionately on the wealthy and this is an unnecessary constraint for the FCTC.</p> <p>It is quite wrong to shape tax policy to tackle smuggling. While upward harmonisation may be advantageous, there is always going to be pressure for downward harmonisation on those parties with higher taxes</p> <p>Smuggling should be dealt with as a law and order issue, and not shape tax policy. The root cause of smuggling is the business practices of tobacco manufacturers and wholesalers and it is best dealt with through duty paid stamps; tracking and tracing technology; liability and compensation; and transparency in the distribution chain.</p>
<p>F2.</p>	<p>[[While] recognizing the sovereign right of States to determine their taxation policy,] each Party shall endeavor to take into account health policy objectives relating to tobacco control, and the reduction of tobacco consumption [and exposure to tobacco smoke] when establishing [national] tax policies. [Related measures [may] [shall] include:</p>	<p>The reference to right of States to determine tax policy is unnecessary – and may cause problems where there is regional co-ordination of tax poly (eg. EU)</p>
<p>F2(a).</p>	<p>[(a) prohibition of tax-free and duty-free sales of tobacco products, within an agreed timeframe and without exception:]</p> <p>NGO proposed modification <u>[(a) prohibition of tax-free and duty-free sales of tobacco products, [within 2 years] and without exception, including for military, diplomatic or other government personnel]</u></p>	<p>Many parties offered text supporting a ban on duty free. Duty free is a source of smuggled tobacco in many countries and it has no economic rationale. Banning duty free sales does not contradict the amended Kyoto Convention on duty free– and has already been achieved within the European Union. It should be clear that exemptions refer to military personnel, diplomats, etc.</p> <p>The time-table should be specified if it is not to come into force at the same time as the FCTC itself.</p>

F2(b).	(b) imposition of taxes on tobacco products so as to achieve <i>contribute to</i> a stable and continuous reduction in tobacco consumption <i>by ensuring that tobacco products do not become more affordable over the long term</i>	<p>Given the number of factors influencing demand, this formulation may not be helpful. How can the link between tax rate and consumption be established? What would constitute a sufficient reduction in consumption?</p> <p>This ASH additional text suggestion 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. more than the rate of inflation.</p>
F2(c).	(c) adoption of other price and tax measures that may be recommended by the Conference of the Parties.	Delete - superfluous. Parties agree to adopt amendments to the convention and protocols they sign and ratify.
F2(d) New para bis	[(d) allocation of a part <i>[not less than [ten] per cent]</i> of the revenues from tobacco taxes to tobacco control programmes;]	This is meaningless unless some level is set. Some Parties will be able to argue that whatever they happen to spend has been allocated from tobacco taxation.
F2(e) New para bis	<p>(e) provision of available information on the rates of taxation for tobacco products, their method of calculation, and their impact on consumption;</p> <p><i>(e) Publication of information in a format specified by the Conference of the Parties describing the application of the tax regime and its impacts on demand and on the structure of the market for tobacco products.</i></p>	<p>This needs to be clear about who is providing what data to which body and for what purpose.</p> <p>Proposed ASH text is designed to provide information that will inform development of the tax policy. By having the data specified by the COP international comparisons can be drawn.</p>
F2(f) New para bis	<p>(f) provision of available information on the impact of tax-free and duty-free sales including links between such sales, transit and illicit traffic.]</p> <p><i>(f) Publication of information in a format specified by the Conference of the Parties describing the illicit market for tobacco products, sources of contraband, including data on Customs seizures by brand.</i></p>	<p>The working group paper proposes what is more of a research question. The aim should be to specify reporting on the illicit market.</p> <p>The proposed ASH language clarifies the nature of the information required.</p>
G. Non-price measures to reduce the demand for tobacco	<p><u>Overview</u> This is a substantial part of the FCTC – in overview.</p> <ul style="list-style-type: none"> • Passive smoking – the language should include the intention to eliminate involuntary exposure to tobacco smoke. • Regulation – the intention to regulate should be established, but detail left for a protocol • Disclosures – disclosures should be relevant to public health and the information manageable • Packaging and labelling should deal with misleading claims and branding (such as ‘lights’) • The warnings and labelling text should specify precisely each space on the pack given over to warnings and other communications • Education and awareness – this should stress the importance of using mass media communication and advertising techniques to motivate changes in behaviour and quitting 	

<p>G1.</p> <p>Passive smoking</p> <p>G1(a).</p>	<p>1. Each Party shall adopt [effective] legal, administrative or other measures [and policies], [according to its capabilities,] and [cooperate with other Parties] in [[adhering to international standards set by the World Health Organization and in]/ [adopting the international standards set by the Conference of the Parties and in]] developing non-price policies [including measures to combat illicit traffic], in order to reduce [the prevalence of] tobacco consumption and [to fully protect nonsmokers from] [eliminate non-smokers] exposure to tobacco smoke. Such measures and policies shall include the following:</p> <p>[(Passive smoking)]/ [(Protection for nonsmokers from the hazards of passive smoking)]/ [(Protection of the public from passive smoking)]</p> <p>Best option of the working group text</p> <p>(a) [implementation and enforcement of legislation and other effective] measures that provide for [appropriate] / [systematic] protection from exposure to tobacco smoke in [enclosed] public places, [indoor] workplaces, public transport [, and in particular in health care facilities and places providing services to children,] [and raise awareness in the family]; special attention shall be given to the protection of vulnerable groups such as pregnant women, children, infants, the elderly and persons with chronic conditions and severe illnesses, especially respiratory infections;]</p>	<p>The reference to WHO or international agreements is unnecessary as the FCTC is the agreement in question and its requirements are set out in the following sections.</p> <p>The emphasis on illicit trade may be an arbitrary focus on one aspect of tobacco policy – why not ‘including measures to ban tobacco advertising.</p> <p>The language sets an objective eliminating exposure to tobacco smoke, though remains subject to means and capabilities. This is to signal the importance given to the rights of non-smokers who are harmed by the actions of others.</p> <p>Generally, protection from passive smoking should be offered to everyone and there is a case for excluding the list of vulnerable groups or particular settings because it implies less concern about the substantially larger group that is not considered vulnerable.</p> <p>The reference to family is potentially problematic (not because exposure in the home is not a problem, it is) but that such language would be used to attack the FCTC as overly intrusive in personal liberty. Though there is some argument that exposing children at home is a form of physical abuse that should be addressed in law, this is not widely accepted. For this reason, we stress raising awareness about the effects of passive smoking at home.</p> <p>The specification of particular sensitive groups is unnecessary and may detract from attention to groups outside those listed.</p>
<p>G1(a) - alternative</p>	<p>OR</p> <p>[implementation of legislation and other effective measures at the appropriate governmental level that prohibit smoking in places providing services to children and in enclosed public places, public transport, and in the indoor premises of government agencies and authorities and comparable bodies intended for the public; promote systematic protection from exposure to tobacco smoke in indoor private workplaces and restaurants, with particular attention to special risk groups such as children and pregnant women, persons with chronic lung disease and heart disease;]</p>	<p>This language also makes the mistake of selecting who is eligible for protection from second-hand smoke. There is a two-tier concept built into this – in some places there is a prohibition of smoking; in others ‘systematic protection’ from exposure. This would potentially weaken protections in many countries.</p>
<p>G1(a) - alternative</p>	<p>OR</p> <p>[implementation of legislation and other effective measures at the appropriate level, that provide for systematic protection from exposure to tobacco smoke in enclosed places, workplaces, and public places and on public transport;]</p>	<p>The meaning of ‘systematic protection’ is unclear – the aim must be to develop smoke-free places by prohibiting smoking.</p>

<p>G1(a) - alternative</p>	<p>NGO text on passive smoking <i>(a)(i) implementation of legislation and other effective measures at the appropriate governmental level sufficient to eliminate smoking in indoor workplaces, public places and public transport in order reduce the risk to nonsmokers of tobacco-related illness and premature death;</i></p> <p><i>(ii) in carrying out this obligation to protect non smokers, undertake expedited actions to protect children and pregnant women from exposure to secondhand smoke; and</i></p> <p><i>(iii) to report on activities under this article within two years of the entry into force of this convention using an agreed format.</i></p>	<p>This NGO language – supported by American Lung Association, American Heart Association, Campaign for Tobacco Free Kids, American Cancer Society and others - places the rights of non-smokers on an appropriate footing in comparison with smokers using the same space. Increased immediacy is suggested for places used by children and pregnant women, but the aim is to provide protection from all</p>
<p>Regulation of contents of tobacco products G1(b).</p>	<p>(Regulation of tobacco products) G1(b) adoption and implementation of [national] [minimum] standards[, as recommended [by the World Health Organization].] <i>and adopted by the [Conference of the Parties]</i> for the regulation of the content of tobacco products, including standards [and best practices] for testing and measuring the content and [emission] of such products;</p> <p>[(b bis) cooperation, on the basis of public health criteria [and under the auspices of the World Health Organization], in the development [and harmonization] of [model international] standards for the regulation of the content of tobacco products, in consultation with competent international bodies [such as the International Standards Organization][, the World Health Organization and Codex Alimentarius] [and in the establishment of science- and health-based regulatory agencies with enforcement authority].]</p>	<p>The suggested text implies a choice between WHO and COP. In practice, a standard introduced under the FCTC should be agreed by the COP at WHO's recommendation – or rules governing WHO's powers to set standards under the FCTC should be defined by the COP or in the FCTC.</p> <p>It is really important to focus on emissions (smoke) not just contents. It is the smoke that does the final damage.</p> <p>The use of ISO standards has not so far served public health well and involvement of the tobacco-industry dominated ISO, which has no public health mandate, should be subordinate to the WHO – the WHO should be the final judge of the needs of public health.</p> <p>Further information on the internet: What goes in, what comes out of cigarettes (ASH briefing)</p>
<p>G1(b). Alternative text</p>	<p>ASH proposed text <i>b)(i). measures to reduce the harm associated with tobacco use by adoption of standards for the regulation of tobacco products, including standards for testing and measuring, designing, manufacturing, marketing and processing such products, and cooperate in the development of such standards under the auspices of the World Health Organization;</i></p> <p><i>(ii). prepare a protocol on tobacco product regulation to define and implement best practices in the setting of such standards;</i></p> <p><i>(iii) ensure that the costs of implementing such measures are fully covered by the tobacco manufacturers;</i></p>	<p>The proposed ASH text starts with specifying the objective of such regulation – to reduce harm to the smoker.</p> <p>There is no reason to restrict regulation to 'contents' – regulation might relate to design, burning characteristics, sidestream smoke etc.</p> <p><u>Harmonisation</u> is not appropriate in this area as it would tend to constrain best practice</p> <p>There are two regulatory challenges - the product standards applied to require reduced risk, and the <u>communication of risk</u> to the consumer. This is why 'marketing' is added to the list here so that marketing claims can be subject to regulatory approval or prohibition.</p> <p>Tobacco companies should pay for the regulation of their product.</p>

<p>Regulation of tobacco-product disclosures G1(c).</p>	<p>(Regulation of tobacco-product disclosures)</p> <p>(c) adoption and implementation of [appropriate] measures for tobacco-product disclosures, consistent with each Party's domestic laws, [to appropriate government authorities] by [all] manufacturers and importers, by brand, including [toxic] / [all] ingredients, [emissions,] additives and [major] constituents of tobacco smoke, and the promotion of the [availability] of [such] [clear and meaningful] information [about the toxic constituents of tobacco products and the smoke they produce] to the public].</p> <p>[Each Party shall, to the extent possible and within the means at its disposal,] apply these measures to all tobacco products manufactured, packaged, sold or imported for sale within its jurisdiction. The Conference of the Parties or a subsidiary body mandated by the Conference shall specify the <u>ingredients and constituents of tobacco smoke which shall be subject to disclosure</u>];</p>	<p>Where the manufacturer has no presence, the importer should assume the responsibility for disclosure. ('importer' was not included in any of the Co-Chair's text).</p> <p>It is important to establish guidance on which disclosures are required – and this should be a responsibility of the COP.</p> <p>The references to 'toxic' are too limiting – many of the ingredients are not in themselves toxic, but may be important in changing the characteristics of the product.</p> <p>The regulatory burden would be reduced and value of disclosures increased if the disclosures are made to agreed standards laid down by the parties. This could be done by the Conference of the Parties, a subsidiary body or through a protocol and this might change over time – the choice is not made here.</p>
	<p>NGO text proposal on costs <i>(Parties shall co-operate to share disclosure information and reduce administrative and regulatory costs. Costs arising in creating and disseminating disclosures shall be borne by the tobacco product manufacturer.</i></p>	<p>This recognises that the burden of collecting data and presenting it in meaningful form etc may be too great for some parties – so a regional or multilateral approach may be most efficient. The tobacco companies should bear any costs – just as pharmaceutical companies bear their costs in seeking regulatory approval.</p>
<p>Packaging and labelling</p>	<p>Overview <i>This text covers two main subjects – descriptors and the claims made on packaging by tobacco companies, and warnings or other markings imposed by the authorities</i></p> <p>Descriptors and claims The FCTC should prohibit all implicit claims for tobacco products that are false or misleading or liable to be misunderstood. This includes misleading branding like 'lights' (which are no less harmful than conventional full-flavour cigarettes)</p> <p>Further information on the internet: Health Canada – ministerial advisory council on misleading cigarette descriptors</p> <p>Markings The following sections deal with pack markings. There is possible confusion in the drafting – there are four different types of pack information under discussion:</p> <ol style="list-style-type: none"> I) Markings that are for anti-smuggling purposes G1(d)(iii) II) warnings about the consequences of tobacco use – there may be two of these for each pack III) description of age restriction (which ASH opposes) IV) information about product ingredients and smoke constituents <p>These are quite different and space for <u>each</u> should be found on the pack and specified independently.</p> <p>Further information on the internet: Evidence on effectiveness of health warnings (Aug 2000)</p>	

G1(d)	<p>(Packaging and labelling)</p> <p>(d) adoption and implementation of [appropriate] measures to ensure that:</p>	<p>A detailed briefing on the text for packaging and labelling has been prepared by the Framework Convention Alliance of NGOs – see internet brief</p>
G1(d)(i).	<p>(i) tobacco packaging and labelling does not promote a tobacco product by any means that are false, misleading [, <u>unsubstantiated</u>] or otherwise deceptive or that are likely to create an erroneous impression about its characteristics[, or to minimize its health effects, hazards or emissions [, <u>or that encourage consumption</u>];</p>	<p>This is good wording. The word 'minimise' is an unduly restrictive qualifier. What if the health effects were 'trivialised' rather than minimised? We advise leaving this out.</p>
G1(d)(ii).	<p>(ii) the terms [<u>"low tar"</u>], "light", "ultra light", "mild", any similar terms, or any expression, text, [<u>trademark, figurative sign or other picture or pictogram</u>] [are not used on any package in any manner that [may] [directly or indirectly] convey the impression that a tobacco product is less harmful [to health]] than others;</p> <p>ASH proposed text</p> <p><i>(a) the terms "low tar", "light", "ultra light", "mild" or similar terms are not used on any unit packet or package of tobacco products;</i></p> <p><i>(b) any terms expression, text, trademark, figurative sign or other picture or pictogram that may convey the impression that a tobacco product is less harmful than others are not used on any tobacco product packaging except where public health authorities choose to explicitly authorize their use after evaluating both their truthfulness and their public health impact;</i></p>	<p>Many smokers believe, wrongly, that these terms suggest a lower health risk. Internal documents show that tobacco companies have deliberately built up these brands to provide false reassurances. 'Light' cigarettes are no less risky – they are simply smoked differently, in much the same way that beer and wine are drunk differently (though they may be equally intoxicating).</p> <p>The problem with the text as it stands is that it may be used to suggest that a test is needed in <u>every</u> party on the impact of <u>each</u> expression. Thus the measure could be defeated by an excessive onerous burden of proof.</p> <p>To solve this problem, the clause is split into two in the proposed ASH language – the first part (a) creates an unconditional ban on light and mild branding.</p> <p>The second part (b) deals with other explicit or implicit health claims – it bans comparative claims unless these have been approved by a regulatory authority.</p> <p>ASH suggested addition to this allows for the situation where the regulator may want to sanction health information.</p>
G1(d)(iii).	<p>(iii) each unit packet or package of tobacco products carries the statement and product information [<u>specified [in Article [INSERT]]] [<u>[prominently on the panel or box, occupying no less than 25% of the larger space], [in the principal language or languages of the country in whose territory the product is placed on the market] / [or data approved in another form]</u>] [<u>and is enclosed in a tamper-proof form of packaging</u>];</u></p>	<p>This deals with anti-smuggling markings and destination labelling. Emphasis on the permanence and security aspects of such markings is important</p>

G1(d)(iv).	(iv) each unit packet or package of tobacco products carries [one of a series of] clear, visible, and legible [generic] [rotating] [health] warnings [including a picture or pictogram for at least some messages] , [as prescribed] / [which shall be approved] by the national [health] authorities [and in keeping with World Health Organization specifications] , illustrating the harmful consequences of tobacco consumption [for health] [and that generic packaging is used for the parts of the package other than where mandatory messages are required] , in accordance with Annex [INSERT]; these warnings shall:	<p>This formulation aims to require rotating warnings that are specified locally. Some of the warnings, but not necessarily all should include pictures – these have proved effective in Canada (see Canadian evaluation summary).</p> <p>There are harmful consequences other than for health – for example money.</p> <p>The move to generic packaging would remove an additional space for brand promotion and is consistent with the widely accepted aim of banning tobacco advertising and promotion.</p>
G1(d)(v):(1)	[(1) clearly indicate the prohibition of sales of tobacco products to [persons under the age of 18] / [minors as determined by domestic law];]	Delete this completely - it is a tobacco industry position aimed at increasing the 'adult' appeal of the product. Its impact would be negative.
G1(d)(v):(2)	(2) provide clear [and meaningful] information [and, where appropriate, relevant and quantitative data] on the toxic constituents of the tobacco product[s] and the smoke [emissions] they may produce, [specifically with regard to tar, nicotine and carbon monoxide] [and also];	<p>Replace the reference to tar yields or 'toxic content' with the more general language of risk communication. The existing system of using 'yields' to communicate risk or consumer information is highly misleading as they do not account for realistic smoking behaviour, which instinctively modifies to control exposure to nicotine. Tar and CO are not part of the 'contents' but products of combustion. It would be wrong to codify this highly flawed system into the FCTC.</p> <p>The reference to quantitative data is also removed because there is no satisfactory means of quantifying the harm done to an individual through use of different tobacco products – and it is important not to persist with the delusion that there is.</p>
G1(d)(v):(3)	[(3) carry the statement and product information specified in Article G.1(c);]	Section "G.1(c)" describes disclosure of ingredients. It may not be appropriate to place <u>all</u> the information about ingredients on a pack – and maybe confusing. It is important to separate the information disclosed to the authorities or to the public through say a web site – and the risk communication for public consumption placed on the pack.
New sub-para	[(4) appear prominently on the upper portion of the front panel of the tobacco package (or carton) and occupy not less than [twenty-five per cent (25%)] / <u>[fifty percent (50%)]</u> of such front [and rear] panel[s];]	It vital to secure a minimum fraction of the packaging with specified prominence and size to be given over to warnings. This should be 50% of the pack in line with current best practice.

New sub-para	<u>[(5) appear in the principal language or languages of the country in whose territory the product is placed on the market;]</u>	In earlier texts, this section was used to specify a requirement that the warnings should be in the national language. This is essential and should be reinstated here or included as an extra clause.
Education, training and public awareness G1(e)	(Education, training and public awareness)¹ G.1(e) <u>[promotion and strengthening of education, training and public awareness campaigns, including communication on tobacco-related health risks.] / [facilitation and strengthening of health promotion and preventive campaigns, comprising education, training and communication activities, including counter-advertising and mechanisms for assessing the impact of such activities].</u> To this end, each Party shall, as appropriate:	The second option is stronger and adopts the modern evidence-based practice of seeing 'counter-advertising' rather than simply education as the way to change behaviour.
G1(e)(i)	(i) <u>promote[, implement] [and evaluate the impact of.] [universal access to [scientifically based.] effective and comprehensive] educational and public awareness programmes[, including counter-advertising,] on the health [and environmental] risks of tobacco consumption, tobacco dependence, nicotine addiction and exposure to tobacco smoke, as well as on the benefits of smoking cessation [and tobacco-free lifestyles], using all available communication media and technologies [and incorporation of the contents of such [cross-cutting] programmes in school curricula];</u>	The aim here is to support and encourage a rigorous approach to education which uses the techniques of advertising to support behavioural change.
G1(e)(ii)	(ii) <u>[promote] / [ensure] broad access to these programmes for the general public and notably vulnerable groups[, including] [children,] [youth,] [pregnant women,] [and persons with chronic lung and heart diseases];</u>	Unnecessary and inappropriate focus. The aim should be to provide universal access aimed at the public as a whole. Too much specialisation into specific groups risks dissipating the available funds and reducing the overall impact.
G1(e)(iii).	(iii) <u>develop and implement appropriate training programmes on tobacco control for [decision-makers.] [administrators, politicians,] [civil servants], health professionals, educators and other concerned persons [and professionals];</u>	
G1(e)(iv).	(iv) <u>promote the participation of public agencies, nongovernmental organizations and other private entities, in the development of strategies for tobacco control [while [ensuring that the tobacco industry is not involved in any of these activities] / [preventing the participation of tobacco growers and manufacturers];</u>	Parties should bar the tobacco companies from involvement in all anti-tobacco activities. These have always been designed to fail, and aim to buy respectability, while preventing meaningful action. Public health is a government responsibility and should not be left to makers of the world's most deadly product. There are circumstances where growers are certainly part of the solution and legitimate stakeholders.
G1(e)(v).	<u>[(v) facilitate [public access to information] / [the provision of information to the general public] [on the tobacco industry] [and] [the hazards of tobacco consumption], as relevant to [the objective of the Convention] / [promoting tobacco prevention and control programmes]].</u>	This aims to give a broad commitment to information disclosure relevant to any aspect of tobacco policy

¹ New Zealand and Canada will be working together to develop language to address the needs of indigenous peoples via the Convention.

G1(e)(vi).	<p>NGO suggested text <i>(vi) recoup the costs for education, training programmes and public awareness campaigns from earmarked tobacco taxes.</i></p>	<p>This shows that tobacco policy can be self-funding and given that large amounts of tax revenue can be raised in this way, it should overcome the objection that tobacco control is too expensive. If governments do raise tax on this product, then they have a moral obligation to provide education about the product and assist with quitting.</p>
<p>Advertising, promotion and sponsorship G2.</p>	<p>Overview Advertising drives consumption and thus contributes to tobacco-related disease and death. The only effective approach is a complete ban on all forms of advertising, promotion and sponsorship where that is possible.</p> <p>However, some countries have a constitutional barrier to a complete ban on tobacco advertising, properly tested in the constitutional court. In this case, we propose text that would require those without constitutional constraints to ban tobacco advertising, and where there are constraints, to go as far as the constitution allows.</p> <p>Further information on the internet: Tobacco advertising: why it should be banned (ASH briefing and evidence summary)</p>	
	<p>([Prohibiting] advertising, promotion and sponsorship)</p> <p>[2. In addition to the measures specified in Article [INSERT] [and as long as advertising is permitted] / [and before achieving a total prohibition on advertising], each Party shall commit itself to:</p>	<p>A detailed briefing on the text for tobacco advertising has been prepared by the Framework Convention Alliance of NGOs – see internet brief</p>
G.2(a)	<p>(a) [[adopting] [and gradually implementing]] / [imposing] measures [in conformity with its national constitution [and domestic law]], to [prohibit] / [[strictly] / [appropriately] restrict] / [impose appropriate restrictions on] all forms of [direct and indirect] tobacco advertising, [marketing,] promotion and sponsorship [including incentives [such as gifts, coupons, rebates, competitions and purchaser programmes] / [of any kind]], with the aim of reducing the appeal of tobacco products to all segments of society, <u>without prejudice to stricter national rules</u>];</p> <p>This reads: Implementing measures in conformity with its constitution to prohibit all forms of tobacco advertising, promotion and sponsorship.</p> <p>NGO proposed text: A i.) prohibiting all forms of direct and indirect tobacco advertising, including promotion and sponsorship;</p> <p>ii.) within two years of the entry into force of this convention, each party acting individually and in co-operation with other parties, implementing the provisions of paragraph (2a). Parties may specify such exemptions to para (2a) as are strictly necessary to comply with existing constitutional constraints that have been interpreted by the appropriate court as inhibiting a complete implementation of para (2a);</p>	<p>The aim should be to require a ban on tobacco advertising (etc) that goes to the limits imposed by a constitution. Such a constitution may be national or include the EU treaties.</p> <p>It is essential that the prohibition includes 'indirect' and 'direct' advertising – but it could be better not to differentiate between them here – but to form a definition of advertising that properly covers direct and indirect.</p> <p>The distinction between direct and indirect advertising is semantic – both are effective means of promoting tobacco products and should be considered within any definition of tobacco advertising.</p> <p>The list of promotions is unnecessary as the definition of promotion should include these.</p> <p>The 'without prejudice' clause is necessary only if the ban falls short of complete prohibition.</p> <p>The NGO proposed texts makes the purpose and scope of the constitutional exemption clear and properly drafted.</p> <p>An implementation timetable is also specified.</p>

<p>G.2(b)</p>	<p>[(b) [requiring] / [adopting measures to require] that tobacco companies disclose [to the competent bodies] aggregate expenditures on sales, advertising, promotion and sponsorship [, and make those figures available to the public [, providing they do not constitute corporate or trade secrets, as provided for by national legislation]];]</p> <p>NGO proposed text <i>requiring that tobacco companies disclose all expenditures on advertising, sponsorship and promotion by brand according to rules determined by the Conference of the Parties, and making these figures available to the public</i></p>	<p>The aim should be to require full disclosure to the authorities, which should verify the information then make it available to the public.</p> <p>The NGO text requires disclosures to be made by brand and aims to impose standardisation on the reporting.</p>
<p>G.2(c)</p>	<p>[(c) adopting measures and imposing appropriate regulatory restrictions to ensure [that each advertisement carries a clear and conspicuous health warning, and] that tobacco advertising, promotion and sponsorship do not promote a tobacco product by any [means] / [messages] that are false, misleading or deceptive or that are likely to create an erroneous impression about its characteristics, health [and environmental] effects, hazards or emissions;]</p>	<p>Though the intention is to ban tobacco advertising completely, this term is retained to cover any exemptions, interim periods or parties where constitutional constraints do not allow a complete ban.</p> <p>Ideally the text here should specify the size, lettering and messages of the warning to avoid ambiguity in terms like 'conspicuous' or 'clear'.</p>
<p>G.2(d)</p>	<p>[(d) adopting measures and imposing appropriate regulatory restrictions in order to [progressively] [phase out] / [eliminate] tobacco promotion and sponsorship [of sporting and cultural events] / [of any type of event][, within (...) years after the entry into force of the Convention];]</p>	<p>This should be addressed in the overall ban on tobacco advertising and sponsorship – the only need for a separate clause would be to allow for a different phase-out date – and there is no justification for favouring one form of advertising over another</p>
<p>G.2(e)</p>	<p>[(e) adopting [national] [legislative and regulatory] measures [and cooperating] in order to [make it possible to require that the tobacco industry] [phase out] / [eliminate] / [ban] / [restrict] cross-border advertising, promotion and sponsorship[, by whatever means or medium of communication, as well as any form of sponsorship by the tobacco industry within (...) years after the entry into force of the Convention] [, including, <i>inter alia</i>, tobacco advertising, promotion and sponsorship on cable and satellite television, radio, the internet, newspapers, magazines and other printed media].]</p> <p>OR</p> <p>[In addition to the measures specified in Article [INSERT], each Party shall commit itself to adopting measures to [ban] / [phase out] all forms of [direct and indirect] advertising, including cross-border advertising by whatever means or medium of communication, marketing, promotion and sponsorship of sporting, cultural and other similar events, including incentives such as gifts, coupons, rebates, discounts, competitions and frequent purchaser programmes [within two years] after the entry into force of the Convention, and enabling governmental and nongovernmental organizations specialized in tobacco control to provide the public with counter-advertising if advertising has not been completely eliminated.]</p>	<p>This deals with cross border advertising – it is needed so that parties still have an obligation to prohibit tobacco advertising originating in one jurisdiction but affecting the public in another.</p> <p>The second formulation – shown deleted - repeats early clauses (G2a)</p>

G.3	[3. The Conference of the Parties shall initiate the preparation of a protocol or protocols, as they may deem necessary, setting out appropriate rules and procedures in the area of / <u>during the phase out period</u> for tobacco advertising, promotion and sponsorship.]	<p>The protocol should be seen primarily as a means of filling in the d</p> <p>The Protocol MUST be negotiated in parallel. Waiting for the COP (ie. until <u>after it enters</u> into force) could possibly mean that the protocol would be delayed for many years. Yet it would be useful as a driver of national legislation if it existed - even if it were not in force or widely ratified. In the formulation above, the protocol is integral to then Convention [as it specifies where exemptions for practicality and proportionality are permitted].</p>
G.4	[4. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the areas of regulation of the content of tobacco products, tobacco-product disclosures, as well as packaging and labelling of tobacco products.]	<p>Depending on what the Parties include in the body of the Convention, this will be needed to elaborate detailed rules on, for example, warning and labelling specifications. This again suggests that the Protocol should not be initiated by the Conference of the Parties – in some important respects this protocol might be needed at the time of entry into force (and therefore <u>starting</u> at the first COP – ie. after entry into force will be too late.</p> <p>Such a protocol could also take in product standards that will take longer to develop.</p>
H. Demand reduction measures concerning tobacco dependence and cessation	<p><u>Overview</u> The aim here is to incorporate treatment for tobacco dependence into the health care system. The commitments are necessarily general, given the considerable variation in local circumstances. A definition of ‘treatment’, may be helpful...</p> <p>‘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.</p> <p>Further information on the internet: Treating Tobacco Use and Dependence (summary) – US Surgeon General WHO-Europe – evidence based recommendations on treatment of tobacco dependence</p>	
H1.	<p>H. [Demand reduction measures concerning tobacco [dependence] / [addiction] and cessation] / <u>[[Fighting] / [Reducing] tobacco [dependence] / [addiction]]</u>²</p> <p>1. Each Party shall take all practical, effective and culturally] relevant measures[, based on scientific evidence and best practices] / [, supported by scientific evidence and in accordance with its economic, social and cultural characteristics, to secure a better cost-benefit relation], to treat tobacco dependence and to promote cessation of tobacco use.</p>	<p>Addiction and dependence may be used interchangeably.</p> <p>A simple formulation is preferred here. ‘Practical and effective’ captures the other qualifications used.</p>
H2.	<p>2. Each Party shall undertake the following measures [taking into account national circumstances and priorities, and with special attention to the needs of vulnerable groups]:</p>	<p>The qualification ‘taking into account...’ is deleted as it does not help to specify clear obligations.</p>

² New Zealand and Canada will be working together to develop language to address the needs of indigenous peoples via the Convention.

H2(a).	(a) [design,]implementation [and evaluation] of [health] promotion and educational programmes [and interventions [, including smoke-free environment programmes in educational institutions, health care facilities, workplaces and sporting environments,]] aimed at encouraging cessation of tobacco use;	The aim here is for simplicity. There is no need to specify a particular kind of campaign over and above others. Parties should identify their own priorities.
H2(b).	(b) integration of treatment of tobacco dependence, routine advice, and counselling services on cessation of tobacco use, into national health, education and development programmes, plans and strategies. Support for such actions shall be provided by trained health workers [, including physicians, nurses and pharmacists], as well as by teachers and community and social workers;	It is especially important to engage the medical profession.
H2(c).	[(c) establishment in health care facilities and other rehabilitation centres of programmes for diagnosis, counselling, prevention and treatment of tobacco dependence, with priority emphasis on primary health care services.]	The aim is to promote ‘mainstreaming’ of smoking cessation in the health care system as part of a wider response.
H2 Bis	[2. bis The Conference of the Parties shall begin preparing a protocol to establish an appropriate procedure in respect of cessation of tobacco use.]	A protocol on treatment is probably unnecessary. The general commitments of the Convention main body should suffice. Extra technical information, best practice, exchange of expertise, capacity building etc should be facilitated through the subsidiary bodies or other institutions of the FCTC.
I. Measures related to the supply of tobacco	<i>I. Measures related to] / [Controlling] the supply of tobacco</i>	
<i>Illicit trade in tobacco products</i>	<p><u>Overview</u> A detailed briefing on the text for illicit trade has been prepared by the Framework Convention Alliance of NGOs – see internet brief</p> <p>The main aim of an anti-smuggling strategy should be:</p> <ol style="list-style-type: none"> 1) Securing the distribution system for tobacco products by developing a chain of custody. 2) The introduction of a system of tracking in which the final market is known at the point of manufacture and each intermediary may be identified. 3) Creating a duty of care on all participants in the distribution chain to ensure that the product is ultimately sold legally. 4) A system of to allow tracing of tobacco products that have been seized as contraband. 5) A system of liability and compensation to recover lost excise duties from manufacturers and wholesalers 6) A licensing system for manufacturers, wholesalers, import-export traders and warehousing operations. 7) Controls on the trade in second hand cigarette manufacturing machinery with a view to reducing counterfeit production. 8) Promoting co-operation at all levels <p>Further information on the internet: Smuggling - what the FCTC could do (Oct 2001) Summary and analysis of smuggling protocol proposals tabled at INB-3 (Nov 2001)</p>	

I.1.	<p>(Illicit trade in tobacco products)</p> <p>1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products and raw tobacco materials and additives, including smuggling, illicit manufacturing and counterfeiting, and the development of related legislation, as well as subregional, regional and international agreements, are essential components of tobacco control.</p>	<p>This gives a good definition of the scope of illicit trade – smuggling, counterfeit and illicit manufacturing in legitimate factories.</p>
I.2.	<p>2. The Parties agree that measures to this end shall be transparent, well-defined, non-discriminatory and implemented in accordance with their [national and] international obligations [as well as standards established by regional economic integration organizations, where applicable].</p> <p>Replace with ASH proposed text: <i>“Parties agree that measures taken to tackle tobacco smuggling and organised crime take priority over commercial liberalisation when being examined for compatibility with international trade agreements.</i></p> <p>A recital may be used to emphasise this point <i>Concerned that over one-third of internationally-traded tobacco products are ultimately sold illegally, that the system of international trade in tobacco products is unacceptably linked to organised crime and that normal trading freedoms have been abused.</i></p>	<p>Delete and/or replace with alternative text</p> <p>The prevention of international crime and protection of health justifies constraints on free trade and this should be the focus of any general principle – not a cautionary note about trade compatibility. The annual global cost of smuggling to the parties runs to tens of billions of dollars – that must surely justify some constraints on trade promotion.</p>
I.3.	<p>3. Each Party shall adopt appropriate measures to ensure that all unit packets and packages of tobacco products and raw tobacco materials and any outside packaging of such products and materials for retail or wholesale use that are sold and/or manufactured under its jurisdiction [carry a marking in any appropriate manner in order to enable the origin of the product to be identified [, <u>to ensure the identity and tracking [and tracability] of the product and to enable the place and time of manufacture to be determined such as through the use of approved [batch] numbering or equivalent.</u>]]</p>	<p>This is an extremely important clause, as it deals with a marking that will allow tracking and tracing of product – a key measure in the fight against illicit trade.</p> <p>For clarity, the clauses dealing with security markings should be separated from the chapeau and included in sub-para (a). If this para is retained the key word is <u>tracking</u>. NGOs would propose adding ‘tracability’ to this so that product that it is possible to identify where seized contraband has entered the black market.</p>
I.3 – relevant definition (ASH proposal)	<p>A definition of tracking could be as follows: <i>“Tracking” shall mean the systematic monitoring of the movement of tobacco products from manufacture to point where all relevant duties and taxes have been paid for the purpose of assisting the competent authorities of parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking.</i></p> <p>A definition of tracing could be as follows: <i>“Tracing” shall refer to the ability of competent authorities to recreate the route taken by a tobacco product through the from manufacturing through the distribution chain to the point where all relevant duties and taxes have been paid using markings carried on the packaging and records of product movements accessible to the authorities for the purpose of investigating illicit trade in tobacco products.</i></p>	<p>Definitions of tracking and tracing are suggested so as to clarify these concepts.</p> <p>It is important that delegates specify markings that will be of greatest value to Customs authorities. For example:</p> <ul style="list-style-type: none"> • ‘Batch’ is not a useful concept as it may refer to very large production runs that are sent to dozens of customers. • The details of manufacturing do little to help identify where the product went from legitimate distribution to the black market.

I 3(a).	<p>(a) carry a statement indicating, inter alia, the name of the manufacturer, the country of origin, the importer in the country of import, and the product [batch] number [including the date of production and expiry];</p> <p>[(a.) carry overt or covert markings that allow enforcement authorities to uniquely identify each packet so that its identity, origin and passage through legitimate manufacturers, warehouses, wholesalers, importers, exporters may be tracked and retrospectively traced.]</p>	<p>The suggested wording would create marking regime that would identify each product uniquely. Each carton, master case and pallet could carry a marking that related to the serial numbers of the products inside. Thus scanning a master case of 10,000 cigarettes will be equivalent to scanning all 500 packs and 25 cartons inside.</p> <p>The markings should be covert to assist identify of counterfeit.</p> <p>If the product is scanned on arrival and departure from each large scale warehouse (not retailer), then it would allow a Customs officer examining seized illicit tobacco to identify the last place at which the product was held legally.</p> <p>Technology to form this system could be exchanged under the technology transfer provisions of the FCTC.</p> <p>For more information on this concept – see the Project Hawkeye paper presented at INB-3. The system has been estimated to cost less than two US cents per pack – so could easily be financed globally by a small levy on tobacco prices.</p>
I 3(b)	<p>End destination marking</p> <p>[(b) carry the statement: “Sales only allowed in (insert name of the country, subnational, regional or federal unit where the product is to be placed on the market).”].</p> <p>(NOTE: to be cross-referenced against G.(1)(d))</p>	<p>This is a vital measure: a first step to ensure that tobacco products arrive legally at their end-market destination is the obligation for tobacco manufacturers to specify on the label of tobacco products their final destination.</p> <p>The main change needed to the Chair’s text is to recognise that some countries may have several tax jurisdictions within them (eg. States) and this uses language proposed by Brazil.</p>
I.3(c) bis New para	<p>[3c or 4]. Each Party shall adopt appropriate measures to ensure that the packaging information [specified in paragraph 3 above shall appear in the principa1 language(s) of the country in whose territory the product is placed on the market or data approved in another form] will follow the requirements of the importing country.</p>	<p>Information on packs should be in the language that people in the final consumer market can understand.</p>
I 4.		<p>This has now become I.3(c)</p>
I 5.	<p>5. Each Party shall undertake the following legislative, executive, administrative [or] [and] other appropriate measures in order to eliminate illicit trade in tobacco products and raw tobacco materials:</p>	
I 5(a).	<p>Collecting market data</p> <p>a) to monitor and collect data on cross-border trade in tobacco products and raw tobacco materials, including illicit trade, and exchange information among customs, tax and other appropriate authorities;</p>	<p>Improve the understanding of the enforcement authorities of the movements in the tobacco trade.</p>

I 5(b)	<p>legislation (b) to enact legislation [with appropriate penalties and remedies.] that prohibits production of, and trade in [counterfeit and contraband cigarettes and other such tobacco products.] [<u>illicit products</u>];</p>	<p>The specification of appropriate penalties is superfluous. Illicit products as defined captures a variety of illegal activities.</p>
I 5(c)	<p>Disposal of confiscated illicit product (c) to take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are [either] destroyed, using environmentally-friendly methods [except for those contraband cigarettes and other tobacco products which are contraband only because national or subnational taxes have not been paid on those cigarettes or products] [or placed on the market according to national [legislation].] [legislative practices and measures.]</p> <p>Suggested NGO wording (c) appropriate steps to ensure that all confiscated counterfeit tobacco products are destroyed and that contraband tobacco products are either destroyed, placed on the market, repurchased by the manufacturer, or otherwise handled in a manner that does not create perverse economic incentives that may encourage smuggling.</p>	<p>The danger of simply destroying all confiscated cigarettes is that it effectively increases the total volume sold – and therefore may create incentives to smuggle more.</p> <p>Destruction of confiscated <u>counterfeit tobacco products</u> is essential, but for <u>contraband products</u>, it may create perverse incentives for manufacturers to facilitate smuggling. It means that the confiscated cigarettes are effectively sold twice in the wholesale part of the distribution chain – once to the smuggler from who they were seized and a second time to meet the same demand that the original smuggler would have supplied. Making manufacturers repurchase contraband, possibly at a premium or the tax paid price, could be a first step in creating a liability/compensation regime.</p>
I 5 (d) new para	<p>Monitoring trade [(d) to adopt measures to monitor, document and control the distribution and movement of duty-free and tax-free tobacco products, including raw leaf tobacco;]</p>	<p>This is an important measure – and should be applied to all untaxed ‘duty-not-paid’ tobacco moving in transit, not just that destined for eventual duty-free sales. The value of tobacco in transit is very high – one container may be worth as much as \$3m at retail prices, US\$1.7 million at black market prices of which US\$1.4 million could be profit to the various smugglers and criminals involved. This high value justifies close monitoring of all large-scale consignments.</p>
I 5 (e) new para	<p>Seizing smugglers’ assets [(e) to adopt measures to enable the confiscation of proceeds derived from the commission of criminal offences related to the illicit tobacco trade.]</p>	<p>This may be standard practice in many countries, but this wording may eventually be developed into a liability regime applicable to the tobacco companies.</p>

16.	<p>Co-operation</p> <p>[In accordance with their national legislation and their obligations under international [law]/[treaties],] the Parties shall promote cooperation between national, regional and international agencies [involved, in promoting investigations, prosecutions and proceedings] to eliminate illicit trade, in particular smuggling, in tobacco, tobacco products, raw tobacco materials and additives [,and]. The Parties shall further cooperate to promote regular exchanges of information to prevent such trade [pursuant to Annex [INSERT] to this Convention]. Special emphasis shall be placed on cooperation at regional and sub-regional levels as the most effective prerequisite for combating smuggling and illicit trade of tobacco products.</p>	No specific comments
17	<p>Protocol</p> <p>The Conference of the Parties shall initiate <u>for take forward</u> the preparation of a protocol setting out appropriate rules and procedures for the elimination of all forms of illicit trade, in particular smuggling, in tobacco, tobacco products and raw tobacco materials.³</p>	<p>The INB should prepare a protocol to be adopted either simultaneously or as soon as possible after the Convention. The EU proposed language suggested here makes it explicit that the preparation of the protocol need not <u>begin</u> with the Conference of the Parties. Any language suggesting that the Protocol begins with the COP builds in a long delay in formulating this most important instrument and it is essential to avoid this.</p>
17 bis. <i>New para</i>	<p>7 bis. Each Party shall prohibit international delivery or sending of tobacco products and mail order sales and <u>internet sales, unless the delivery or sending is within the tobacco trade.</u></p>	<p>This deals with a very important actual and potential source of fraud – internet and cross-border mail order, and as a result should be included.</p>
Elimination of sales to and by young persons	<p>Overview</p> <p>Delegates should be very sceptical about undue focus on ‘youth prevention’ measures. While everyone wants to see youth smoking reduced, it may be that some of the measures have a <u>counterproductive</u> effect by making smoking seem more adult – and hence more appealing to teenagers. Such measures are increasingly advocated by the tobacco industry, and that should always be a cause for concern.</p> <p>If there is a concern about smoking among teenagers, the most important measures will be those that ‘de-normalise’ smoking in the adult world which teenagers are growing up into.</p> <p>Further information on the internet: Why we should tackle adult smoking first (David Hill in BMJ) Danger! PR in the playground – analysis of tobacco industry youth anti-smoking initiatives</p>	
	<p><i>(Elimination of [supply] / [sales] / [supply and sales] to and by young persons)</i></p> <p>8. Each Party shall [take appropriate measures to] prohibit tobacco sales [and supply] to persons under the age of 18 <u>to minors as determined by domestic law</u>. To this end, each Party shall, to the extent possible within the means at its disposal and its capabilities,</p>	<p>We do not think it appropriate to specify an age here. Age of majority is culturally sensitive, changing an age limit can have unintended consequences, and there may be places where the age restrictions are set at ages greater than 18.</p>

³ This provision would be omitted if the Intergovernmental Negotiating Body prepares a protocol on this subject to be adopted simultaneously with the Convention.

I 8(a).	(a) require [within the means at its disposal,] that [all] / [the] [suppliers] / [sellers] of tobacco products post signs at the point of sale which carry a health warning [and indicate] / [indicating] that the sale of tobacco products to persons under age is prohibited;	This is simple consumer information and information about cigarette purchasing.
I 8(b).	(b) require [within the means at its disposal,] that [all] / [the] [suppliers] / [sellers] / [suppliers] of tobacco products [request that each tobacco purchaser provide appropriate evidence of having] / [take all reasonable steps to ensure that buyers have] reached the age of [18] / [majority as determined by domestic law];	This should create a general obligation only – but there is some doubt whether ID cards are useful. They are easy to forge and may even be a way of protecting retailers rather than teenagers.
I 8(c).	{c. strictly restrict access to} / {take appropriate measures to restrict persons under the age of 18 to access} / {prohibit} tobacco vending machines {and other similar apparatus}, and prohibit tobacco sales via the Internet {to persons under 18} / {minors as determined by domestic law} [and ban the selling of tobacco products from shelves or supermarkets, convenience shops and similar establishments where customer can freely pick up the goods, and by street vendors and pavement stalls, within a period of no more than [...] years];	This should tackle the most uncontrolled outlets for tobacco sales. It may be acceptable to allow vending machines to be used in licensed premises or under supervision.
I 8(d).	[(d) prohibit <i>discourage</i> the manufacture and sale of sweets and toys in the form of tobacco products.]	This is a difficult area to intervene in and probably too difficult to legislate against.
I 9.	[9. Each Party shall take appropriate measures to prohibit the sale [and the free distribution] of tobacco products by [persons under the age of 18] / [minors as determined by domestic law] [should this be necessary to prevent the sale of tobacco products to minors].]	Delete – impractical and not known to be an effective tobacco control policy. Free distribution should be dealt with under advertising, promotion and sponsorship.
I 10.	[10. Each Party shall [according to its capabilities,] prohibit the sale [and the free distribution] of cigarettes individually or in packets of fewer than [20] cigarettes [should this be necessary to prevent the sale of tobacco products to minors].]	This should be limited only to those countries where it is practical – it may be impractical when applied to many developing countries where cigarettes may be sold individually. This may have some benefits as young people are sensitive not just to price per cigarette, but are influenced more by total outlay per purchase. The qualifications about sales to minors are unnecessary. Free distribution should be banned under the provisions related to advertising, promotion and sponsorship.

I 11.	[11. Each Party shall [according to its capabilities,] ensure compliance with paragraphs 8 to 10 above and implement appropriate penalties against sellers and distributors for the violation of measures prohibiting sales of tobacco products to [and by] [persons under the age of 18] / [minors as determined by domestic law]. ⁴]	Delete – unnecessary.
I 12.	[12. Each Party shall take [appropriate legal and other] measures to ensure that no criminal penalties are imposed against [persons under the age of 18] / [minors as determined by domestic law] [for selling] or buying tobacco products for personal use. ⁴] OR [Each Party shall implement appropriate legal and other measures to verify compliance with paragraph 8 above, taking into account the provisions applicable according to national law in case of breaches of law by under-age purchasers and sellers of tobacco products.]	Delete – while it may be a dubious practice to take action against young people, it is unnecessary and inappropriate to specify this in a treaty and may be complicated by the authority of sub-national legislatures.
Licensing	<p><u>Overview</u> A licensing regime should be seen primarily as a means of tackling illicit trade. We favour restricting licensing to manufacturers, wholesalers, warehousing operators, duty free outlets and others handling product on which the full duty has not been paid – <u>not</u> to ordinary retailers.</p> <p>Licensing retailers may be impractical in many countries where cigarettes are sold by many thousand street traders and enforcement of age-related sales restrictions should not necessitate a licensing regime. It may be possible to construct a ‘negative licensing’ system for retailers in which they would be banned from selling tobacco products if found to be breaking the relating to illicit or under-age sales.</p>	
I.13.	<p>Licensing</p> <p>[13. The Parties recognize that an effective licensing or registration system for [growers, retailers, manufacturers, importers, exporters, distributors and wholesalers and warehousing] [the distribution] of tobacco products [is an] [can be one] important mechanism to eliminate illicit trade in tobacco products and to prevent sales of tobacco products to [legal minors]/[persons under the age required in national law]/[persons under the age of 18].]</p>	<p>We do not support licensing for retailers as this will be impractical in many countries. The priority should be licensing of the largest scale participants in the tobacco trade: manufacturers, wholesalers and import-export businesses, as these are where the most effective interventions against large-scale smuggling can be made. We suggest the addition of ‘warehouses’. The aim should be to license every entity that trades tobacco products with duty suspended. This is primarily an anti-smuggling measure.</p>
I 14.	[14. Each Party shall [to the extent possible within the means at its disposal and its capabilities.] adopt legislative, executive and administrative measures to [license all tobacco-product retailers , manufacturers, <u>warehouses</u> , importers, exporters, distributors and wholesalers] <i>and</i> [exercise efficient control over all tobacco retailers such as by means of a licensing or tax registration system or provide other means to identify and regulate the retail trade in these products].]	This language is designed to <u>require</u> licensing of larger scale enterprises and <u>encourage</u> licensing of retailers where practical. In the event that it is impossible to gain agreement for licensing <u>retailers</u>, large-scale traders should be licensed.

⁴ There has been a suggestion that sections I.11-12 be merged with section J on compensation and liability.

<p>Government support for tobacco manufacturing and agriculture I 15.</p>	<p>(Government support for tobacco manufacturing and agriculture) [15. [Each Party shall gradually eliminate subsidies, including tax exemptions, loans and rebates, for tobacco growing and manufacturing of tobacco products [, consistent with its international obligations.] Each Party shall [, <u>in accordance with the means at its disposal and its capabilities,</u>] promote, as appropriate, other economically viable alternatives for tobacco workers, growers and individual sellers [, and provide technical and financial support for such activities.] [[International] financial and technical support is required for such a purpose.]]</p>	<p>The FCTC should commit parties to eliminating subsidies to tobacco. There are no 'public goods' that justify this. If needed for social reasons then the subsidy should be for economic development and transition, not agricultural production. The FCTC should not create obligations to pay tobacco farmers or any other part of the tobacco industry.</p>
<p>J. Compensation and liability</p>	<p>Overview The INB and working groups have yet to consider text on liability and compensation. However this has been the subject of inter-sessional work, notably at a meeting in September 2001 in Iran. These comments relate to the proposals emerging from that meeting. There are two main purposes for a liability regime in the FCTC.</p> <ol style="list-style-type: none"> 1. For liability for <u>health injuries</u> there are formidable barriers to developing a strict payment regime – this would be far more complex than simply raising tobacco taxes, which has roughly the same effect. 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. 2. There is scope for a liability regime to be developed as part of the approach to tackling tobacco <u>smuggling</u>. This would cover deal with liability for lost tax revenues. An anti-smuggling liability regime could be modelled on the Basel Convention on the trade in hazardous waste 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. <p>Further information on the internet: Viability of liability – discussion document by ASH (April 2001)</p>	
<p>General</p>	<p>General</p> <ol style="list-style-type: none"> 1. Each state party, in coordination with other parties, shall adopt all necessary measures including legislations in order to devise compensation and liability mechanism within its jurisdiction based on the principles set out by this convention. These legislations will define the details of liability and compensation in line with the following principles: 	<p>From text defined at the September 2001 meeting in Iran. This text is unmarked where unchanged.</p>
<p>Liability and compensation for smuggling</p>	<p>Liability and compensation for smuggling</p> <ol style="list-style-type: none"> 2. (a) Any person who supports, finances or by any other means facilitates the illicit trade in tobacco products shall be subject to criminal punishment including deprivation of liberty and or confiscation of proceeds of crime within the jurisdiction of states parties. 	<p>Paragraph 2a and 2b establish criminal and civil liability respectively (these texts are from the September 2001 meeting in Iran).</p>
	<p>(b) Without prejudice to sub-paragraph (a) legal persons including producers, importers and exporters are subject to civil liability for the harms caused by them as a result of illicit trade in tobacco products on the interest of the states or other companies dealing with lawful trade in such products in the same market.</p>	

	<i>(c) Parties undertake to hold tobacco product manufacturers responsible for proper and legal final sale of tobacco products they have manufactured and liable for lost excise duties arising from tobacco smuggling or other illegal activities.</i>	2c applies liability strictly to the original manufacturer (NGO text). The objective of this text is to establish a regime in which manufacturers and exporters are held responsible and liable for legal sale of the product further down the distribution chain – thus creating ‘top-down’ pressure to establish a secure distribution chain and duty of care.
Liability and compensation for health injuries	(d) The parties shall define appropriate rules and procedures in the field of liability and compensation related to the recovery of lost excise duties arising through tobacco smuggling and other illegal activities. Liability and compensation for health injuries 3.(a) The tobacco industry, in principle , shall be liable for health injuries inflicted on public health arising out of <i>its misconduct</i> , the breach of provisions of this convention and its protocol as well as the health regulations adopted by relevant states parties on the basis of these instruments. (to be completed)	2d. reflects a recognition that establishing a liability regime would be a complex matter and should be included in a protocol. (NGO text) The addition of ‘misconduct’ reflects the liability for more general tort than simply breaking the provisions of the FCTC or national legislation.
Institutional support for liability and compensation	(to be completed)	From the Iran Intergovernmental meeting September 2001
K. Surveillance, research and exchange of information	This section is short on specifics. It would be better to create a single commitment to co-operate and co-ordinate in this area and then allocate the task to a subsidiary body or technical advisory group of the FCTC, or to the WHO.	
	K. [Surveillance]/ [Monitoring], research and exchange of information	
K1.	[The Parties shall establish joint or complementary programmes for national, regional and global surveillance ⁵ of the magnitude, patterns, determinants and consequences of [active and passive] tobacco consumption <i>and exposure to tobacco smoke</i> [To the extent possible,] the Parties shall 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 global levels, as appropriate. To this end, each Party, noting the importance of financial and technical assistance from international organizations, shall [in accordance with the means at its disposal and its capabilities:];	NGO suggested drafting improvement
K1(a).	(a) establish progressively a national system for the epidemiological surveillance of [active and passive] tobacco consumption <i>and exposure to tobacco smoke</i> and related social, economic and health indicators to be specified in Annex [INSERT];	NGO suggested drafting improvement

⁵ Definition requested.

K1(b).	(b) cooperate with the World Health Organization and other relevant organizations, including government and non-government agencies in regional and global tobacco surveillance and exchange of information on the indicators specified in Annex [INSERT];	No comments
	(c) cooperate under the auspices of the World Health Organization in the development of general model standards or procedures defining the collection, analysis and dissemination of major surveillance data as specified in the Annex [INSERT].	No comments
K2.	2. The Parties undertake[, according to their capabilities,] to develop, promote and coordinate [,-as far as possible,] national, regional and global research programmes for the purpose of this Convention. To this end, each Party shall [take appropriate measures in accordance with the means at its disposal and its capabilities] [and] [with the cooperation and support of international bodies] to:	The text should create clear obligations.
K2(a).	(a) [establish an appropriate national system of epidemiological surveillance of tobacco use, build indicators for the surveillance system] and initiate and cooperate, directly or through competent international bodies, in the conduct of research and scientific assessments, as detailed in Annex [INSERT];	This requires party to make some assessment of the tobacco epidemic as it affects them
K2(b).	(b) promote and encourage research [to develop surveillance indicators and contribute] / [that contributes] to reducing tobacco consumption and [harm from] / [the harmful effects of] tobacco use[], including exposure to [second-hand] smoke,] [particularly in developing countries [and countries with transitional economies]], [taking fully into account the recommendations of the Conference of the Parties [and the evaluation of the impact of programmes designed for the control and prevention of tobacco addiction, and the economic and social impact associated with tobacco consumption, particularly in developing countries[, and countries with transitional economies]]] [in cooperation with the World Health Organization and other international agencies];	No comments
K2(c).	[(c) promote and strengthen[, with the support of competent international organizations,] [training and support for all those engaged in tobacco control activities, including research, implementation and evaluation]] / [the training and preparation of multidisciplinary teams to gradually develop surveillance systems, research and programmes of intervention for tobacco control;]	No comments
K2(d).	[(d) promote and encourage research activities designed to accelerate diversification of alternative crops, especially in developing countries;]	This is acceptable as a general commitment, but no funding should be offered for this.
K2(e).	[(e) promote research activities on behavior and attitudes.]	Even if there is agreement that there should be research on behaviour and attitudes, there is no reason to specify one part of research agenda and not others.

K3.	3. The Parties shall promote and facilitate the exchange of [publicly available] scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco, relevant to this Convention. Each Party shall, in accordance with their national legislation, and taking into account and addressing the special needs of developing countries:	
K3(a).	(a) establish and maintain an updated database of [national and sub-national] laws and regulations on tobacco control and enforcement, and cooperate in the development of complementary programmes for national, regional and global tobacco control;	Any database should include all applicable legislation.
K3(b).	(b) establish and maintain updated data from national surveillance programmes [in accordance with Article [INSERT] above];	No comment
	(c) cooperate with international bodies including the World Health Organization to establish and maintain a global monitoring system to regularly collect and disseminate information on tobacco production, manufacture (including additives) and the activities of tobacco corporations which have an impact on the Convention, its protocols or national tobacco control activities.	No comment
K4.	4. [Regional and international health organizations should provide technical and financial resources to the secretariat of this Convention to assist developing countries to fulfil their commitments on surveillance research and information exchange. Information to be exchanged pursuant to Article [INSERT] above shall be determined by and provided to the Conference of the Parties.]	There is a danger of placing obligations on WHO and its regional offices without the funding to allow them to undertake the work.
L. Scientific, technical and legal cooperation	These provisions will drive the 'globalisation' of tobacco control policies and health. It is important that the FCTC acts as machinery for exchange of best practice and high quality authoritative evidence-based advice.	
L1.	1. Each Party shall [be encouraged to] cooperate in accordance with its domestic legislation [and international obligations] [and its means], taking into account the needs of developing countries and countries with transitional economies, in promoting, directly or through the secretariat of the Convention or other competent international bodies, the following:	Suggested simplification
L1(a).	(a) [facilitation of the development, transfer and acquisition of] technology, knowledge, skills and capacity related to tobacco control by other Parties;	No comment
L1(b).	(b) [provision of] technical, scientific, [legal] and other expertise to establish and strengthen national tobacco control programmes, policies and measures aiming at, <i>inter alia</i> :	No comment
L1(b)(i).	(i) assisting in the development of [a strong legislative foundation as well as] technical programmes, including programmes for the prevention of tobacco uptake and for the promotion of tobacco cessation;	Support for development of legislation is important and should be included.

L1(b)(ii).	[(ii) assisting tobacco workers, particularly in developing countries] [and countries with transitional economies,] who are affected by the implementation of the Convention [to develop [viable] alternative livelihoods/crops];	There is no reason to assist tobacco workers more than any other sector – coal, steel, airlines, etc. The FCTC should focus on strictly on achieving public health outcomes.
L1(b)(iii).	[(iii) assisting tobacco growers [particularly in developing countries] [and countries with transitional economies,] [who are affected by the implementation of the Convention,] in shifting agricultural production to alternative crops in an economically viable manner;]	There is no reason to assist tobacco growers through this convention – which is there to promote health by reducing tobacco consumption. The main support for sectoral adjustment should be from development banks and agencies, which have the requisite finance and expertise.
L1(b)(iv).	(iv) carrying out other activities to achieve the <u>[objective]/[aim/goal]</u> ⁶ of the Convention and its protocols.	The objective is clearly specified. The aim/goal is not.
L1(c).	[(c) support for the establishment and maintenance of training and educational programmes for appropriate personnel as provided in Article [INSERT] in order to implement the provisions of the Convention in an effective manner;]	Agree
L1(d).	[(d) the supply of [necessary] material, equipment and pharmaceutical supplies, as well as logistical support, for tobacco control programmes and activities;]	Agree – though such commitments should not be open-ended and be operated through a funding mechanism
	[(e) the establishment of technical and financial cooperation and of mechanisms to study cost-effective methods for treating nicotine addiction.]	Agree
L2.	2. The Conference of the Parties shall establish and review a mechanism to promote and facilitate scientific and technical [, and legal] cooperation <u>[with the required financial support]</u> . ⁷	This is an important institutional aspect of the FCTC and one of the reasons for having a treaty – to promote co-operation.
M. Conference of the Parties	<i>M. Conference of the [States]⁸ Parties</i>	
M1.	1. A Conference of the Parties is hereby established. The first session of the Conference shall be convened [by the Director-General of 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].	The commitment and authority of the DG is important in maintaining the impetus of the FCTC

⁶ There was a proposal to replace the word “objective” (the title of Article C of the Chair’s text) by “aims or goals”. If this is decided, the change should be made throughout.

⁷ It was suggested that this would be more appropriately addressed in Article Q (Financial Resources).

⁸ It was proposed that the word “States” should always precede the word “Parties”, if this is agreed to, then the text will have to be changed accordingly throughout.

M2.	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.	No comment
M3.	3. <u>[Unless it otherwise decides, the rules of procedure of the Conference of the Parties and of any subsidiary body shall be the Rules of Procedure of the World Health Assembly.]</u> [However,] The Conference of the Parties may <u>[at its first session]</u> agree upon and adopt by [two-thirds majority vote] <u>[consensus]</u> rules of procedure and financial rules for itself and for any of its subsidiary bodies.	The WHA rules guarantee a minimum level of transparency – variations from that should not be done over the objections of a minority of parties.
M4.	4. The Conference of the Parties shall keep under regular review the implementation of this Convention <u>[and its protocols]</u> ⁹ and take the decisions necessary to promote the effective implementation of [this instrument]/[these instruments] [and may adopt protocols, annexes and amendments to the Convention, its protocols and annexes in accordance with Article [Development of the Convention]] [and on the basis of scientific evidence]. To this end, it shall:	The COP should consider protocols within its meetings
M4(a).	(a) periodically examine the obligations of the Parties], the operation of the financial mechanism] and the institutional arrangements under the Convention, in the light of its <u>[principles and objective]</u> ¹⁰ [aim or goals], the experience gained in its implementation, and the evolution of scientific and technological knowledge, as well as [prevailing] socioeconomic conditions], particularly in developing country Parties]; <u>and propose modifications as necessary</u>	The COP should also take the initiative of updating the FCTC in the light of its
M4(b).	(b) promote and facilitate the exchange of information[, <u>by the most cost-effective and appropriate means,</u>] pursuant to Article [Surveillance, Research and Exchange of Information];	One of the great benefits of the FCTC should be cost-effectiveness in exchange of information
M4(c).	[(c) facilitate, at the request of two or more Parties, the coordination of measures adopted by them relevant to the implementation of the Convention [and any applicable protocols];]	This is an important function of the treaty – to create a forum in which parties can standardise their approach if they choose to or need to.
M4(d).	[(d) promote and guide the development and periodic refinement of <u>[comparable methodologies]</u> , in addition to those provided for in Article [Surveillance, Research and Exchange of Information] and Annexes [INSERT], relevant to the implementation of the Convention [and its protocols];]	This reflects the benefits of the FCTC in providing a basis for standardisation so that data is comparable
M4(e).	[(e) promote, in accordance with Articles [INSERT] as appropriate, the harmonization] <u>[development and evaluation]</u> of appropriate strategies, plans, programmes, policies, legislation and other measures;]	Inappropriate reference to harmonization, which may hold some parties back

⁹ The question was raised whether the Conference of the Parties should also consider the implementation of protocols. If it is decided that it should not, there should be corresponding deletions throughout this paragraph.

¹⁰ There was a proposal to replace the word “objective” (the title of Article C of the Chair’s text) by “aim or goals”. If this is decided, the change should be made throughout.

M4(f).	(f) promote programmes to assist Parties in implementing their obligations pursuant to Articles [INSERT];	No comment
M4(g).	(g) assess the implementation of the provisions of the Convention [and its protocols] by the Parties, on the basis of information made available in accordance with Article [Reporting and Implementation]	No comment
M4(h).	(h) consider and adopt regular reports on the implementation of the Convention [and its protocols] and [arrange for their distribution];	No comment
M4(i).	(i) make recommendations to the Parties, the World Health Organization, other United Nations bodies and other international organizations and bodies[, <u>including international financial and development institutions</u>] on any matters necessary for the implementation of the Convention [and its protocols];	It is important that the FCTC reaches out beyond its parties –for example the World Bank, WTO, FAO may roles to play in assisting the parties in meeting their obligations.
M4(j).	(j) seek to mobilize financial resources to support secretariat services pursuant to Article [Secretariat] and to support the implementation of the Convention [and its protocols] in accordance with Articles [Financial Resources; Reporting and Implementation];	No comment
M4(k).	[(k) [establish such subsidiary bodies as it deems necessary for]/[arrange for the assistance of the WHO secretariat in connection with] the implementation of the Convention and its protocols, review their reports, and provide guidance to them;]	It is important to have a technical arbitrator in the FCTC to give advice on particular implementation issues. Subsidiary mechanisms are important and should be probably be established in the Convention itself –as specified in the early working group documents – rather than left to the COP. The subsidiary bodies of the UN Climate convention are established in the treaty itself.
M4(l).	[(l) seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent intergovernmental and nongovernmental organizations and bodies as a means of [<u>monitoring activities under</u>]/ [strengthening the implementation of] the Convention [and its protocols], verifying the <u>transparency, the reliability and the accuracy of the information</u> .;]	The more constructive language is preferred.
M4(m).	(m) exercise such other functions as are required for achieving the objective of the Convention [<u>and its protocols</u>], as well as all other functions assigned to it thereunder.	
M5.	[5. The United Nations, specialized agencies of the United Nations [<u>regional economic integration organizations not parties to the Convention</u>] nongovernmental organizations <u>qualified in matters covered by the Convention</u> [<i>in official relations with WHO</i>], as well as any State not party to this Convention, may be represented by observers at meetings of the Conference of the Parties, subject to the relevant Rules of Procedure and decisions of the Conference.]	We suggest the existing rules relating to the participation of NGOs are retained. Not least because the exclude the tobacco industry. Also the question who is 'qualified in matters covered by the convention' may become a way of making the COP 'invitation-only' for NGOs
N. Secretariat		

N1.	1. [The secretariat of the Convention shall be provided by the World Health Organization, which should make the necessary funds available)]/[The secretariat of the Convention is hereby established. The Conference of the Parties shall at its first session determine permanent arrangements concerning the establishment and operations of the secretariat].	The question of the funding of the Secretariat is left unclear in this language. WHO cannot be expected to fund it from within existing resources, which are already stretched.
N2.	[2. The functions of the secretariat shall be:	
N2(a).	(a) to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;	No comment
N2(b).	(b) to compile and transmit reports submitted to it pursuant to this Convention [and any of its protocols];	No comment
N2(c).	(c) to facilitate support to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;	No comment
N2(d).	(d) to prepare reports on its activities under the Convention [and any of its protocols] and submit them to the Conference of the Parties;	There should be just one secretariat for all the FCTC and its protocols
N2(e).	(e) to ensure, under the overall guidance of the Conference of the Parties, the necessary coordination with other relevant international bodies;	No comment
N2(f).	(f) to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;	No comment
N2(g).	(g) to perform the other secretariat functions specified in the Convention [and in any of its protocols] and such other functions as may be determined by the Conference of the Parties.]	No comment
O. Support by the World Health Organization	<u>O. [Relations between the Conference of the Parties, the World Health Organization and other relevant international organizations [and international financial and development institutions]]</u>	
O1.	1. The Conference of the Parties may call upon the World Health Organization and other intergovernmental organizations, including the international financial and development institutions, to provide technical and financial cooperation in achieving the objective of this Convention or in connection with questions falling within their mandates arising out of the application of the Convention [and its protocols]. [The Organization shall accord such support in accordance with its programmes and within the limits of its resources.] , and also help to find extrabudgetary resources for countries that require them].]	This is important – especially in looking at agricultural sector reform, health sector development, removal of subsidies, and co-ordination. If substantial new obligations are undertaken by the WHO or other IGO, then the COP should be prepared to vote the necessary funds though parties' participation in WHA or in the governing bodies of, for example, the World Bank.
O2.	[2. The World Health Organization may, on its own initiative and within its authority, make proposals to the Conference of the Parties.]	Agree – it is important that WHO, with its global overview and technical knowledge, can table well formulated proposals for the Parties to consider.

<p>P. Reporting and implementation</p>	<p>The aim of reporting should be to record the measures taken under the treaty to encourage and ensure compliance. The must be a 'proportional' approach so that the reports are useful, delivered to a compatible format and</p> <p>Two alternative texts are proposed for this section. Both are workable and commented on here – on balance we prefer the second text as this is more precise and coherent.</p>	
<p>P1.</p>	<p>[In accordance with guidelines agreed by the Conference of the Parties and the relevant provisions of this Convention, each Party shall submit to the Conference through the secretariat of the Convention reports [on its implementation of the national programme of tobacco control], [including the following data][that might include]:</p>	<p>It is important that the COP agrees guidelines for reporting in order to achieve standardisation and comparability</p>
<p>P1(a).</p>	<p>(a) information on measures taken to implement provisions of the Convention [on tobacco control institutions, strategies,] [plans, programmes,] policies, and on legislative and administrative [as well as any additional] measures planned or implemented in accordance with the provisions of Articles [INSERT]], together with information on enforcement, where appropriate;</p> <p>OR</p> <p>(a) [information on procedures and strategies initiated by each Party and implementing the Convention and its protocols, and on any problems encountered];</p>	<p>Keep it simple – the parties are reporting on their obligations under the FCTC.</p>
<p>P1(b).</p>	<p>(b) information on steps taken to carry out actions in accordance with Article [Financial Resources];</p>	<p>It is important to report on what parties are doing to assist others.</p>
<p>P1(c).</p>	<p>(c) information available on the [economic, social [and other]] consequences of the various measures adopted to implement the Convention [and its protocols];</p>	<p>Delete – creates a potentially burdensome cost-benefit analysis requirement for the measures to be introduced under the FCTC. The evidence base for most FCTC measures is clear (or they should not be included)</p>
<p>P1(d).</p>	<p>[(d) information on measures, in addition to those described above, that the Party has taken to implement the provisions of the Convention, on any constraints or barriers encountered in such implementation, and on the measures taken to overcome these and on the effectiveness of such measures;]</p>	<p>This type of information should be defined in guidelines developed by the COP.</p>
<p>P1(e).</p>	<p>[(e) description of measures planned by the Party to implement the Convention, including national tobacco control targets;]</p>	<p>Unnecessary</p>
	<p>[(f) [data]/[information] on [tobacco growing] and imported, exported and nationally manufactured tobacco products, and on consumption and smoking rates;]</p>	<p>This data is important and additional to reporting of measures taken under the FCTC. This includes data collected under the surveillance section of the FCTC, but it is appropriate to report such data under the reporting provisions of the FCTC.</p>
	<p>[(g) information available on the health impact of tobacco consumption.]]</p>	<p>See previous comment.</p>

P1. New alternative text	<p>OR (Alternative text)</p> <p>1. [Each Party shall submit to the Conference, a comprehensive report on national experiences and measures taken in implementation of the Convention. The reporting guidelines shall be established by the Conference of Parties at its first session.]</p>	Agree
P2.	<p>2. [Each developed country Party [and each other Party already having an established]/[with the intention to establish a] surveillance mechanism [in place] shall make its initial report within [six months]/[one year]/[eighteen months]/[two years] of the entry into force of this Convention for that Party. Each other Party shall make its initial report within [two]/[four] years of the entry into force of the Convention for that Party.]¹¹ The frequency of subsequent reports by all Parties shall be determined by the Conference of the Parties [, taking into account the differentiated timetable set by this paragraph.]¹²</p>	<p>All the parties should make some sort of report after two years – even if it is to say that little has been achieved! There should be no incentive to delay implementation – eg. by allowing later reporting for parties that have not implemented a surveillance mechanism.</p> <p>Time should be allowed for implementation to let the measures take effect.</p>
P3.	<p>[3. To assist the Conference of the Parties in the [monitoring,] assessment and review of the implementation of this Convention, the Conference may establish a subsidiary body should this become necessary [or may request the World Health Organization to render such assistance], arranging to receive regular reports from such body or the Organization. Guidelines for participation in such a body, as well as its functions, will be determined by the Conference. Persons affiliated with tobacco corporations [or tobacco growing and manufacturing companies], their subsidiaries or agents may not participate in such monitoring body and must disclose their affiliation when appearing before such body.] The [World Health Organization, in consultation with the] Conference of the Parties shall:</p> <p>(a) develop a mechanism for [monitoring]/[assessment] and reviewing the implementation of the Convention and its protocols;</p> <p>(b) develop indicators for [monitoring] the progress of such implementations;</p> <p>(c) provide information to interested Parties on the progress of implementation by and make recommendations to the Parties based on the best practices applied by other Parties;</p> <p>(d) assist the Conference of the Parties in establishing a management information system to be utilized in the monitoring of such implementation.]</p>	<p>It is difficult to see how the COP can perform a monitoring role. There should be an assessment of reports and response to complaints, rather than proactive monitoring.</p> <p>Paras a-d give a useful framework for reporting.</p>

¹² It was proposed that there be no differentiation as to the timing of the initial report.

P4.	[4. In order to provide timely advice in the implementation of this Convention, the Conference of the Parties may, as it deems necessary, appoint [, taking into account the rules and practices of the World Health Organization,] <i>ad hoc</i> panels to provide it with information [and advice] on specific issues regarding the current state of fields of science and technology relevant to the objective[s] of the Convention, The members of these panels shall be appointed by the Conference [on the recommendation of the Director-General of the World Health Organization,] and shall serve in their personal capacity. The Conference shall decide on the terms of reference and the modalities of work of these panels.]	It is important that COP reserves the right to appoint advisors – even if it never actually uses this clause.
P5.	5. Starting at its first session, the Conference of the Parties shall arrange for the provision to developing country Parties [and Parties with transitional economies], at their request, of technical [and financial] support in compiling and communicating information under this Article. Such support [may be provided by other Parties]/[shall be provided by the financial mechanisms under this Convention] by competent international organizations and by the secretariat of the Convention within its existing resources, as appropriate.	
P6 New para bis	[6. Each Party shall establish or designate one or several agencies to be responsible for gathering and communicating information on surveillance, on research and monitoring and on the technical socioeconomic, commercial and legal aspects of tobacco production and control programmes, and on the progress achieved in implementing all the provisions of this Convention.] ¹³	
Q. Financial resources		
Support for tobacco control Q1.	<p>[1. Each Party undertakes to provide financial support and incentives to the developing countries [and countries with transitional economies,] to facilitate their national activities to achieve the [objective]/[aim or goals]¹⁴ of this Convention.]</p> <p>[1. Each Party which is a developed country and produces and exports tobacco undertakes to provide financial support and financial incentives to developing countries in order to facilitate the implementation of their national activities to achieve the objective of this Convention.]</p> <p>[I. Each Party undertakes to provide financial support in respect of its national activities intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.]</p>	<p>The FCTC should not be constructed around the expectation of large transfers from developed to developing countries.</p> <p>To be sustainable, tobacco control should be as far as possible self-financing through tobacco taxation – and reduced tobacco related impacts on the economy. The FCTC should not be phrased in such a way that it suggest tobacco control is <u>burden</u>.</p> <p>There are funding requirements – but these should be facilitating implementation, transfer of skills, capacity building etc rather than paying for large-scale programme expenditures.</p> <p>The important commitment at this stage is to ensure that national programmes are adequately supported.</p>

¹³ It may be preferable to include this paragraph in Article K (“Surveillance, Research and Exchange of Information”

¹⁴ There was a proposal to replace the word “objective” (the title of Article C of the Chair’s text) by “aims or goals”. If this is decided, the change should be made throughout.

Q2.	<p>[2. A voluntary mechanism, in the form of a multilateral Global Fund, is hereby established, for the provision of financial resources and the transfer and development of sustainable technology on a grant or concessional basis [and without any conditions attached] to developing countries especially for the least developed ones <u>[as well as to countries with transitional economies]</u>. The Fund shall function under the guidance and supervision of the Conference of the Parties. Pursuant to the objective¹⁵ of this Convention, the Conference shall determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for, access to, and use of, the financial resources, including regular monitoring and evaluation of such use. The Conference shall decide on the arrangements to give effect to this provision after consultation with the World Health Organization, to which the operation of the Fund shall be entrusted. In particular:</p>	<p>A fund is essential to the Convention, but its remit must be clear and limited – and focussed on public health outcomes.</p> <p>If the fund is limited in size and scope it is reasonable to expect firm commitments from developed countries.</p>
Q2a. – alternative text	<p>[(a) The Fund shall be financed, <i>inter alia</i>, by an export tax on manufactured tobacco products. It shall also be voluntarily financed by Parties and, in particular cases, when so decided by the Conference of Parties, by nongovernmental sources.]</p>	<p>it should be up to the contributing parties to decide how to fund it. An export tax may be a useful device, but it should be justified on its own merits and may have perverse consequences.</p>
Q2b. – alternative text	<p>[(b) The Fund shall be used to support, <i>inter alia</i>, technology transfer for tobacco cessation programmes, the creation of testing facilities required under the Convention [, and the economic transition of tobacco growers and workers; in particular the Fund shall assist:]</p> <p>[(i) tobacco workers in the development of viable alternative livelihoods;]</p> <p>[(ii) tobacco growers in shifting to alternative agricultural crops in an economically and environmentally friendly manner;]</p> <p>[(iii) victims of tobacco and of tobacco products;</p> <p>[(iv) any other activity to meet the objectives of the Convention.]]]</p>	<p>It would be preferable for the scope of the fund to be defined at the same time the financial commitments are made – ie. by the COP.</p> <p>The fund should be used exclusively for promoting the public health measures and objectives of the FCTC – not for agricultural reform.</p> <p>There should be no funding for agricultural reform through the FCTC because:</p> <ol style="list-style-type: none"> 1. There is unlikely to be a sharp drop in global demand. The trend in tobacco use is upwards and it will be a considerable success of the FCTC merely to hold consumption at current levels. 2. The available funds will inevitably be scarce and should be spent on public health. 3. The treaty should help to reduce subsidies in the US and EU and therefore provide indirect support to developing country growers 4. Agriculture sectoral reform is best handled in the normal course of business by development banks and other multilateral organisations, which have the resources and expertise.

¹⁵There was a proposal to replace the word “objective” (the title of Article C of the Chair’s text) by “aims or goals”. If this is decided, the change should be made throughout.

Q2. – alternative text	[2. The Parties recognize the important role that bilateral, regional and other channels can play in achieving the objective of this Convention. They shall consider providing, in accordance with their capabilities and national law, voluntary funding through such channels for comprehensive tobacco control programmes in support of this objective, taking into account the needs of developing countries.]	This is too weak as an alternative to (2) establishing a proper funding mechanism – it however be included as <u>additional</u> reflecting that parties may also provide support through other channels.
Q3.	3. The Parties recognize the important role that bilateral, regional and other channels can play in achieving the objective ¹⁶ of this Convention. They shall consider providing, in accordance with their capabilities and national law, [unconditional] [voluntary] funding through such channels for comprehensive tobacco control programmes [[including actions to develop alternative crops in support of this objective], taking into account the needs of developing country Parties [, <u>as well as of</u> Parties with transitional economies]].	
Q3 New alternative text	3. Regional and international health organizations shall provide technical and financial assistance to developing countries to meet their commitments in respect of exchange of information, surveillance and research as set out in this Convention.	See above
Q4.	[4. The Parties recognize that the developed country Parties that export manufactured tobacco products or raw tobacco, or have branches of international tobacco companies exporting or selling tobacco products in third countries, [have a special responsibility to] provide technical and financial support to developing country Parties, as well as to Parties with transitional economies, to strengthen their national tobacco control programmes as well as to diversify to other economically viable options.][Countries exporting tobacco undertake to provide financial assistance to developing countries.] OR [4. Each Party which is a developed country and exports manufactured tobacco products and raw tobacco, or on the territory of which branches of international tobacco companies are operative, undertakes to provide financial support and financial incentives to developing countries to facilitate the implementation of their national programmes to achieve the objective of this Convention.]	Delete or move to preamble – unnecessarily contentious for no obvious return.

¹⁶There was a proposal to replace the word “objective” (the title of Article C of the Chair’s text) by “aims or goals”. If this is decided, the change should be made throughout.

<p>Economic and agricultural transition Q.5 (bis) new subs-section</p>	<p>5.a. <i>At the direction of the Conference of the Parties, the Secretariat shall from time to time prepare a report on world tobacco demand and tobacco production by region.</i></p> <p>b. <i>Where the economy of a party is especially dependent on tobacco growing, the party shall undertake diversification with the aim of reducing such dependence.</i></p> <p>c. <i>In meeting obligations relating to the removal of subsidies [section I] each Party shall take account of the need for economic and agricultural transition in parties with a high dependence on tobacco growing.</i></p> <p>d. <i>In meeting its obligation under paragraph (b) above, parties with high dependence on tobacco growing may avail themselves of support from international and regional multi-lateral development banks and institutions, and bi-lateral assistance from other parties to this convention.</i></p> <p>e. <i>Acting within their respective capabilities and powers, Parties shall ensure as far as possible that the country assistance programs of the World Bank and programmes of other multi-lateral institutions shall take into account the need for economic and agricultural transition in countries with high economic dependence on tobacco growing.</i></p> <p>f. <i>Funds made available within the Financial Mechanism of this Convention and its Protocols are available to meet the objectives of the Convention and assist developing country parties in meeting their obligations under the Convention.</i></p> <p>g. <i>The parties cannot accept liability for economic or other impacts arising from reductions in tobacco demand that result from tobacco control policies introduced under this convention or otherwise.</i></p>	<p>This is new text proposed by ASH – not in the Working Group texts – aimed at addressing the concerns of tobacco growing states.</p> <p>The aim here is to show that economic and agricultural transition should be facilitated within the normal processes of development, taking advantage of the sectoral programmes of the multi-lateral development banks, such as the World Bank. These institutions have the necessary capital and expertise to facilitate diversification, whereas the FCTC is unlikely to have such resources.</p> <p>Funds in the FCTC should be strictly used for implementing health measures.</p> <p>The removal of subsidies in Europe and US will assist unsubsidised growers in developing countries such as Zimbabwe and Malawi and the need for diversification should be seen in the context of an adjustment in the world market.</p> <p>The FCTC multi-lateral fund should not be used for agricultural diversification – the fund is likely to be limited in size and it must be used to meet public health objectives.</p> <p>It is likely that effect of the FCTC will be that tobacco demand will continue to grow at a reduced level, rather than fall. Should the total demand actually fall then the Parties should be clear that they accept no liability for reduced demand. This sends a reinforcing signal about diversification.</p>
<p>R. Settlement of disputes</p>		
<p>R1.</p>	<p>1. If a dispute¹⁷ arises between two or more Parties concerning the interpretation or application of this Convention, those Parties should, unless another mechanism has been established between them, consult among themselves with a view to resolving the dispute by negotiation.</p>	<p>No comments at this stage</p>
<p>R2.</p>	<p>2. If the parties to the dispute cannot reach agreement by negotiation within [three]/[six] months, they may jointly seek the good offices of, or request mediation by, a third party.</p>	<p>No comments at this stage</p>

¹⁷ It was suggested that the term “dispute” should be defined in Article B (“Definitions”).

R3.	3. Failure to reach agreement by negotiation, good offices or mediation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it. When ratifying, accepting, approving or acceding to this 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 or 2 above, it accepts, as compulsory, arbitration in accordance with procedures to be adopted by the Conference of the Parties.	No comments at this stage
R4.	[4. If all the parties to the dispute have not, in accordance with paragraph 3 above, accepted arbitration, the dispute shall, unless the parties otherwise agree, be submitted to conciliation. A conciliation commission shall be established as set out in paragraph 5 below at the request of one or more parties to the dispute.	No comments at this stage
R5.	[5. Unless the parties otherwise agree:	
R5(a).	(a) If the dispute is between two parties, each party shall appoint one member of the commission, and the two members so appointed shall [appoint]/[nominate] a third, who [is not a national of either party and] shall serve as chair. If within three months of the appointment of the first member the second member has not been appointed, or within three months of the appointment of the second member the third has not been appointed, such appointment shall be made by [INSERT] at the request of either party;	No comments at this stage
R5(b).	(b) If the dispute is between more than two parties, the parties shall agree on three members of the commission and designate one of these as chair [who shall not be a national of any party to the dispute]. If within three months of the first request for the establishment of the commission no such agreement shall have been reached, the members of the commission shall be appointed and their chair designated by [INSERT] at the request of any party.]	No comments at this stage
R6.	[6. Unless the parties agree otherwise, all matters concerning the conciliation shall be determined by the commission, acting by simple majority. The commission shall, within twelve months, render a written proposal for the resolution of the dispute, which the Parties shall consider in good faith.]	No comments at this stage
R7.	7. This Article does not preclude the application of the dispute settlement provisions of any other treaty in force between two or more of the Parties in relation to disputes covered by those provisions.	No comments at this stage

	[8. In the case /[event] of conflict between [this]/[the] Convention [or any of its protocols] and [the application of another] other international agreement[s] [to] concerning tobacco such as trade agreements , [the]/[this] Convention shall take [priority]/[precedence] as it aims to protect the health of the people. ¹⁸]	This should be included in general principles
	9. The provisions of this Article shall apply with respect to any protocol, unless otherwise provided therein.]	
S. Development of the Convention	To be formulated at a later session of the Intergovernmental Negotiating Body	
T. Final Clauses	To be formulated at a later session of the Intergovernmental Negotiating Body	

¹⁸ It was suggested that this provision might be better accommodated in Article E (“General Obligations”).