

ASEAN inter-sessional meeting 4-7 March 2002
WHO Framework Convention on Tobacco Control
Key issues for the INB-4
A briefing for the Government of Malaysia

Advertising, promotion and sponsorship

Section G2 of the working texts deals with tobacco advertising – it is one of the central components of tobacco policy. It does not require significant government expenditure, but can deliver substantial health benefits.

Role of tobacco advertising

The US Surgeon General¹ identified seven ways in which tobacco advertising and promotion can increase consumption:

1. By encouraging children or young adults to experiment with tobacco and thereby slip into regular use
2. By encouraging smokers to increase consumption
3. By reducing smokers' motivation to quit
4. By encouraging former smokers to resume
5. By discouraging full and open discussion of the hazards of smoking as a result of media dependence on advertising revenues
6. By muting opposition to controls on tobacco as a result of the dependence of organisations receiving sponsorship from tobacco companies
7. By creating through the ubiquity of advertising, sponsorship, etc. an environment in which tobacco use is seen as familiar and acceptable and the warnings about its health are undermined.

Impact of advertising bans

The World Bank report, *Curbing the Epidemic*² confirms that bans on tobacco advertising do reduce consumption of tobacco. The authors give estimates of 6-7%, based on studies and modelling of advertising bans in developed countries. Given that up to one billion may die from tobacco-related disease on current trends in the 21st Century, tens of millions of lives may depend on securing an advertising ban in the FCTC. It is sometime argued that tobacco advertising simply promotes switching between brands – while this undoubtedly true it is not the *only* effect of advertising.

Advertising bans must be comprehensive

However, the evidence shows that this only applies when the ban is comprehensive³. Partial bans have tended to be ineffective, and it is easy to see why: when only some types of advertising are banned, the marketing budgets simply flow to some other type of promotion. When cigarette advertising on television was banned, promotional budgets switched to sponsoring televised sport. When advertising of tobacco products was banned in some countries, tobacco companies resorted to 'brand-stretching' to enable so-called indirect advertising – the advertising of a tobacco brand using a non-tobacco product like clothing, holidays or accessories. It follows from this that *all* forms of tobacco advertising, promotion and sponsorship should be banned if the full health value is to be achieved.

Indirect advertising

Indirect advertising is a deliberate strategy used by tobacco companies to circumvent bans on tobacco advertising and must be addressed if the FCTC is to be effective. Indirect advertising has grown rapidly in Malaysia since a ban on tobacco advertising. The objective of tobacco brand-stretching and indirect advertising was made clear in a 1979 document from BAT⁴:

Opportunities should be explored by all companies [ie in the BAT group] to find non-tobacco products and other services which can be used to communicate the brand or house name, together with their essential visual identifiers.... The principle is to ensure that tobacco lines can be effectively publicised when all direct lines of communication are denied.

There is little point in banning advertising that only relates to a tobacco product – the modern market now revolves around *brands*.

Cross-border advertising

One argument used in the negotiations is that an international treaty should only regulate relations between states – and therefore only cross-border advertising should be included in the treaty. Cross border advertising at present accounts for a small share of the total advertising – mostly through sponsorship of televised international events like Formula One motor racing. However, this overlooks the important purpose of establishing a global norm and international accountability for the tobacco companies.

'Permissive' regulation

Advertising bans should generally not try to specify what type of advertising is banned. Instead the approach should be to ban all forms of advertising and specify only what is exempt (for example advertising in tobacco trade journals, pricing information at the point of sale etc.). This is known as 'permissive regulation'. It means that FCTC texts should be simple and based on definitions of advertising that are broad and comprehensive.

Advertising protocol

Some parties have suggested using a protocol to elaborate a full ban on tobacco advertising. In practice this is unlikely to be necessary as an advertising ban can and should be expressed quite simply – the only role for a protocol would be to contain any implementation detail that could not be included in the Convention itself. For some, the protocol would be effectively an opt-out – they could sign the Convention and gain the political credit for that, but ignore or delay the protocol.

Constitutional barriers

Some states have apparently insurmountable barriers to banning tobacco advertising arising from constitutional constraints – related to protection of so-called commercial free speech. In some cases these are hypothetical, in others, they have been tested in constitutional courts and have been validated. The US, Canada, Germany and Brazil, among others, cite constitutional barriers to a complete tobacco advertising ban. One approach to this would be to allow exemptions for constitutional constraints, but require each party to do as much as possible to tobacco advertising within the limits imposed by the constitution.

Disclosure of advertising spend

At first sight the requirement to disclose advertising spend appears pointless if the intention is to ban all forms of tobacco advertising. However, there are reasons to do this:

- Some parties may not be able to have a complete ban for constitutional reasons
- There may be transitional periods in phasing out advertising
- Some very limited forms of advertising may be permitted (with the trade etc) and disclosure enables vigilance over potential circumventing strategies
- It would be useful to see zero or near zero returns as confirmation of effectiveness

Definitions

"Tobacco advertising" means any commercial communication whose main, secondary or incidental aim or effect is to promote a tobacco brand or to promote tobacco use.

"Indirect-advertising" includes the association of a tobacco product brand element with a non-tobacco product good or service, and the advertising or marketing of such good or service.

¹ The Surgeon General's 1989 Report on Reducing the Health Consequences of Smoking: 25 Years of Progress. *MMWR Morb.Mortal.Wkly.Rep.* 1989;**38 Suppl 2**:1-32.

² Jha P, Chaloupka FJ. Curbing the epidemic: governments and the economics of tobacco control. Washington, DC. The World Bank, 1999.

³ Saffer H., Chaloupka F. The effect of tobacco advertising bans on tobacco consumption. *J Health Econ.* 2000;**19**:1117-37.

⁴ "Future communication restrictions in advertising" British American Tobacco, 1979.