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WHO Framework Convention on Tobacco Control
Key issues for the INB-4
A briefing for the Government of Malaysia

Packaging and labelling of tobacco products

Labelling, warnings and descriptors

The markings placed on tobacco product packaging may have many functions – to the tobacco manufacturer this is an important space for branding and reinforcing the identity of the product. It may also be used to communicate claims about the product. For the government authorities, the packaging is an important space for mandatory health warnings, consumer information and anti-smuggling marks. There is an obvious conflict over space on the pack between the authorities and the tobacco companies – the latter wanting the official markings to be small and unobtrusive, with no restrictions on branding. As advertising is steadily banned and restricted around the world, the pack is becoming an important promotional space.

Misleading descriptors and branding – ‘light and low’

Tobacco companies use the pack to make claims about their product. Such claims may be implicit and built into subtle branding including words, graphics, pictures and even just colours. The most obvious example of this is ‘light’ branding of so-called low tar cigarettes. The intention or effect is to convince some smokers that they are using a less dangerous product. In fact, the products only register lower tar when measured on a machine, but not when smoked by a human. Scientists now reject the idea that switching to lower tar has any meaningful health benefits at all. According to the US National Cancer Institute¹.

The absence of any meaningful difference in smoke exposure when different brands of cigarettes are smoked and the resultant absence of meaningful difference in risk make the marketing of these cigarettes as lower-delivery and lower risk products deceptive for the smoker.

Human smokers ‘compensate’ to achieve a desired level of nicotine intake. If the smoke is diluted, then they will take more puffs or deeper puffs to absorb the same nicotine. The effect is similar to the difference between drinking beer and wine – wine appears stronger because the alcohol is less diluted, but it is consumed in lesser quantities). This is a good basis for banning branding ‘light’ and ‘low’ branding as in G1(d)(ii) of the working text – but this should also be a warning to the health authorities not to require misleading machine-measured tar and nicotine yield numbers to be printed on the pack, as proposed in one possible interpretation of 1(d)(v).2.

Misleading claims

It is possible to promote tobacco products using misleading claims and to disguise the hazardousness of the product. The working text proposes a general prohibition on this, though that would leave the burden of proof with the health authorities G1(d)(i). Even claims that are literally true, may be misunderstood by the smoker or may be disproportionate. For example recently launched tobacco products with an unstated and unverified reduction in one carcinogen have claims made like – ‘All of the taste . . . less of the toxins’ or ‘Reduced carcinogens. Premium taste.’²

Banning comparative health claims

There is a stronger approach to this problem, currently included in part in G1(d)(ii) – this could prohibit all comparative health claims made for tobacco products. This is an approach taken in new legislation in the European Union applicable from September 2003³. However, there might be circumstances where health authorities wish to allow a health claim to be made – for example to communicate the difference in hazard between smokeless tobacco and cigarettes, or where meaningful reductions in risk have been verified and properly communicated, so it would be important to give health authorities the option to regulate health claims made for tobacco products.

Warnings and other pack markings

In many jurisdictions a manufacturer is obliged by law to communicate the risks associated with use of their product. For tobacco products, health authorities have assumed that role – and it is therefore important that the warnings are complete and properly convey the risks. This means the warnings must be large (50% is now in use in Canada), bold and contain enough information to convey the range and scale of adverse impacts. This implies a system of rotation so that different health (and other) risks can be communicated.

FCTC approach to labelling

The FCTC working text contains several provisions relating to markings on tobacco products in G.1:

Potential restrictions on tobacco company markings

- Ban on false or deceptive claims – G.1(d)(i).
- Ban on misleading light and mild branding – G1(d)(ii).
- Ban on claims that one product is less dangerous than another - G1(d)(ii).
- A proposal for generic packaging (no tobacco industry markings at all) - G1(d)(i).

Potential mandatory markings required by the parties

- General health warning - G.1(d)(iv)
- Specific rotating health warning (which may be additional to the general warning) - G.1(d)(iv)
- Use of picture warnings – G.1(d)(iv)
- Information on ingredients or emissions – G.1(d)(v).3
- Market destination marking - G.1(d)(iii) and I.3(b)
- Age restriction label - G.1(d)(v).1
- Markings required for tracking and tracing – G.1(d)(iii) and I.3(a)

Specifying restrictions on misleading branding

A key issue in the specifying of restrictions on branding is ‘burden of proof’ – if each claim had to be tested in each party, the bureaucratic burdens would be very high. The strongest approach to this is to accept that ‘light and low’ branding is misleading and to ban it globally in the FCTC. To reverse the burden of proof, any claim could be prohibited unless accepted by the health authorities.

Specifying markings

Despite there being many different markings specified in the working text, only one clause is used to specify their size – and it is not clear which of the markings this refers to. Experience shows that it is important to specify the characteristics of each marking very precisely. Factors to consider in specifying each marking include: size and proportion (which may vary by pack size), border (thickness and whether this is additional to the size), colours, typeface and size, text(s), rotation regime (if more than one text); position on package (which faces and where on the face), visibility (not concealed beneath wrapping), specifications for photographs or images (size, location, colour, content). One way to do this would be to have a technical annex with specifications for each warning, and clarify obligations under the FCTC and specifications under the control of each party.

Negotiating the markings regime

This area of the text remains difficult to follow, with major measures numbered as 5th level sub-clauses and several distinct measures included in the same clause. One option would be to table a ‘non-paper’ to the INB-4 with the various measures above properly separated, so that each could be negotiated in turn and individually specified in a technical annex.

¹ National Cancer Institute. Risks associated with smoking cigarettes with low machine-measured yields of tar and nicotine. Smoking and Tobacco Control Monograph 13. 2001. Washington DC, US Department of Health and Human Services.

² First claim made for *Advance* cigarettes, from Brown & Williamson, the US division of British American Tobacco; 2001. Second claim made for *Omni*, from the Vector Group; 2001

³ European Union Directive 2001/37/EC Article 7: With effect from 30 September 2003, [...] texts, names, trade marks and figurative or other signs suggesting that a particular tobacco product is less harmful than others shall not be used on the packaging of tobacco products.