

An introduction to  
**International Trade Agreements**  
and their impact on  
**Public Measures to Reduce Tobacco Use**

**Cynthia Callard, Neil Collishaw and Michelle Swenarchuk**

## **Authors' Note**

This report was prepared by Cynthia Callard, Neil Collishaw and Michelle Swenarchuk in collaboration with the Western Pacific Regional Office of the World Health Organization and the Commonwealth Medical Association. Authors can be contacted at the following address:

**Cynthia Callard, Neil Collishaw and Michelle Swenarchuk**  
**Physicians for a Smoke-Free Canada**

1226A Wellington Street

Ottawa, Ontario

CANADA K1Y 3A1

Telephone: 1 613 233 4878

Fax: 1 613 233 7797

Email: [ccallard@smoke-free.ca](mailto:ccallard@smoke-free.ca)

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The views expressed in this document are solely the responsibility of the authors. They do not engage the responsibility of any of the project's supporting and collaborating organizations. This report is presented in the interest of fostering broad discussion on tobacco policy and public health.

Cynthia Callard | Neil Collishaw | Michelle Swenarchuk

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## Executive summary

As smoking rates decline in wealthy nations, the tobacco pandemic has moved to the developing world. Current projections of increased smoking point to a four-fold increase in tobacco-caused deaths in the developing world between 1990 and 2020.

Tobacco use is not only a global problem; it is a problem of globalization. Much of the increased spread of tobacco use can be traced to the vectors of liberalized trade, more active multinational corporations and increased westernization.

There is a structural conflict between trade liberalization and public health. The benefits of liberalized trade (increased access to improved and cheaper consumer products) apply in reverse to cigarettes. Public health is harmed when cigarettes are made more efficiently and inexpensively, are more attractive and more available. Resolving the conflict between trade liberalization and public health may be made more difficult in light of the powerful new World Trade Organization agreements through which global commercial activity – including the commerce in cigarettes – is governed.

The members of WTO must agree to abide by the rules of general agreements regulating goods (General Agreement on Tariffs and Trade – GATT 1994 – and twelve additional agreements, including those on agriculture, textiles and clothing, domestic standards, food and plant safety), services (the General Agreement on Trade in Services, GATS) and intellectual property (the Agreement on Trade-Related Aspects of Intellectual Property Rights, TRIPS). WTO rules are accompanied by an effective enforcement mechanism, the dispute settlement process.

Common themes in these agreements:

### National treatment (NT)

This principle requires that governments give to trading partners treatment equal to that given to domestic producers. National treatment may require measures for imported products that are more favourable than those governing domestic products if necessary to provide "effective equality of opportunities for imported products."

### Most-favoured nation (MFN)

This requirement ensures that any trade advantage (such as tariff reductions) that is provided to one trading partner must be provided to all trading partners.

### Prohibition on quotas

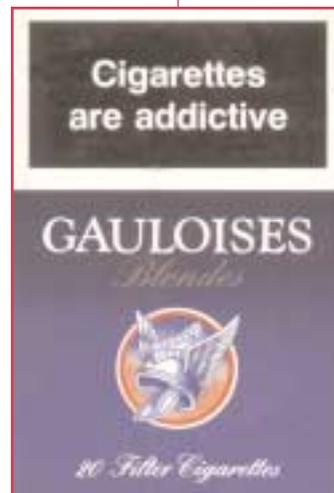
The prohibition on "quantitative restrictions" in GATT Article XI means that countries cannot use quotas to restrict imports or exports of products, such as might be useful to restrict foreign-made tobacco to a limited share of a market.

### "Like products"

WTO panels have consistently applied these principles, requiring that products that are used in similar ways must be treated equally as "like" products. This has removed the ability of governments to make distinctions between goods on the environmental or social consequences of their manufacture and marketing. WTO panels have determined that U.S.-style cigarettes are "like" domestic cigarettes (GATT 1990), and that beer in environmentally friendly bottles is "like" beer in energy-consuming aluminium cans (Grieshaber-Otto et al. 2000). The "like-product" requirements forced Thailand to remove a ban on imported cigarettes and required Japan and other countries to abandon high-tax policies designed to discourage consumption of whisky and other imported alcohols.

### Least trade-restrictive

A second general application of the principles of national treatment and most favoured nation is the requirement that countries use the least trade-restrictive means of achieving their policy goals. Alternatives which are least harmful to international commerce can be required if they are feasible (even if they are more difficult to achieve or maintain). A United States ban on tuna caught with nets harmful to dolphins, for example, was struck down as GATT ruled that a less trade-restrictive option available to the U. S. was working towards international cooperation in fishing practices (WTO 1999).



## IMPLICATIONS FOR KEY TOBACCO CONTROL POLICIES

WHO recommends comprehensive tobacco control programmes. Yet the WTO agreements make it possible for the measures endorsed through one international agency (WHO), to be undermined by those of another (WTO). Such measures can be undone through official WTO rulings. They can also be blocked when governments are dissuaded or discouraged by threats of trade action.

### Ending tobacco advertisement and marketing

Governments that try to ban or restrict cigarette advertising may find that they run against WTO agreements on services, technical barriers to trade, and intellectual property.

### Health warnings and packaging requirements

Intellectual property and investment agreements can provide limits to intended governmental controls on tobacco packaging, as Canada learned when the federal government considered requiring plain (generic) packaging of cigarettes. In the face of a contrary legal opinion from a former U.S. Trade Representative, Canada dropped its generic tobacco packaging initiative.

### Other measures

Other sound public health measures that could potentially be challenged under one or more international trade agreements include:

- Regulating tobacco product manufacturing;
- Controls on smoking in public places and workplaces;
- Differential tobacco taxation;
- Bans on tobacco imports;
- Supporting state monopolies for tobacco manufacturing; and
- Creating economic alternatives to tobacco growing and manufacturing.

## CONCLUSION

Given the broad reach of the trade agreements, and the variety of potential barriers they pose to tobacco control policies, it is essential that those charged with negotiating international agreements resolve the current conflict between tobacco control and trade liberalization by ensuring that national and international measures to curb tobacco are not undermined by obligations under commercial trade agreements. Treaty and trade negotiators should safeguard the ability to implement public health measures under all international obligations. Current negotiations for a new WTO services agreement and a WHO Framework Convention on Tobacco provide these powerful negotiators with opportunities and responsibilities to ensure that this is done.



## SECTION 1:

# The globalized problem of tobacco

## THE TOBACCO PANDEMIC MOVES SOUTH

In wealthy nations, smoking rates are steadily, if slowly, declining and public health benefits are beginning to be felt as lung cancer rates begin to fall. But the tobacco pandemic has not been slowed; it has been transmitted to more vulnerable places.

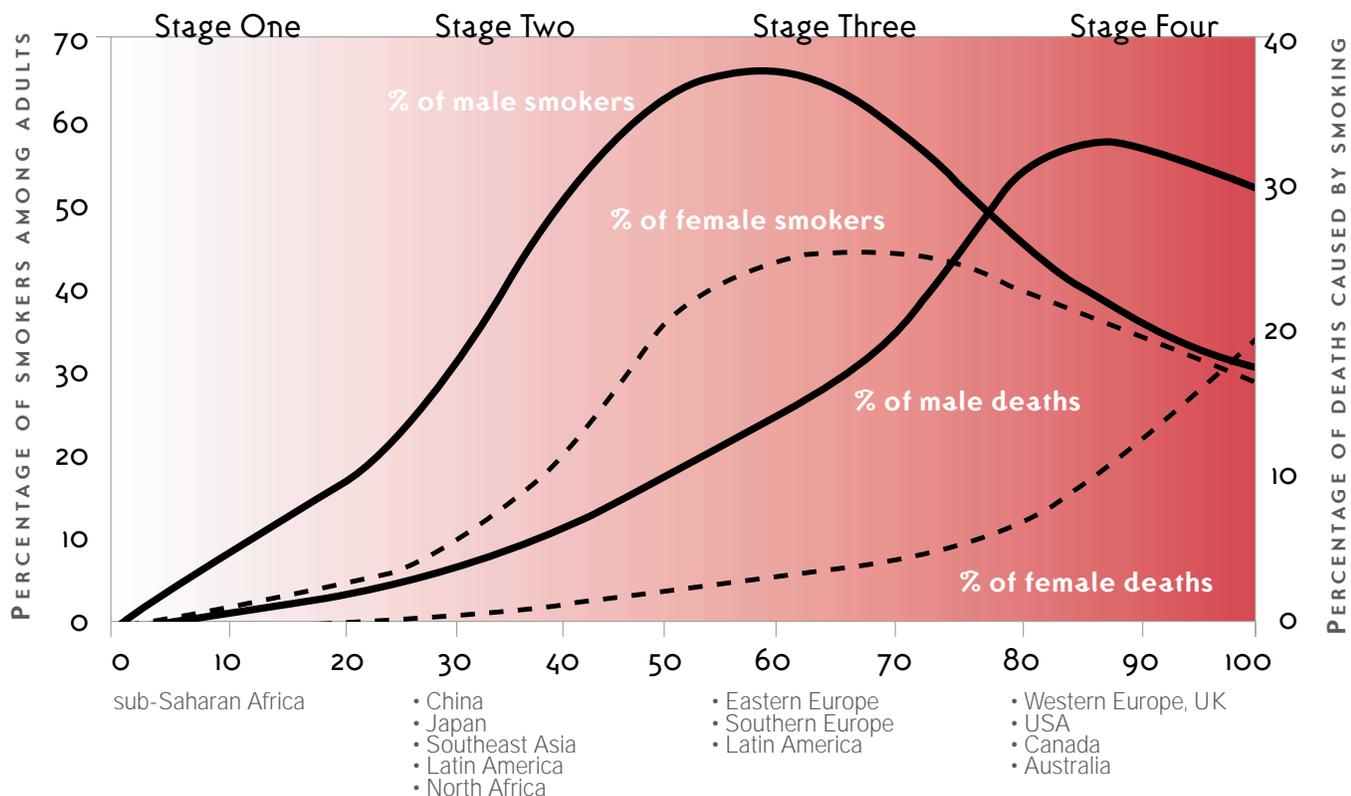
Although the rich northern countries are in 'recovery' from tobacco addiction, the more populous southern countries are in the 'infectious' and 'full-blown' stages of this pandemic, according to WHO's paradigm.

Already, 30% of the world's adults smoke. Increased population, together with increased smoking rates are expected to push that figure from 1.1 billion to 1.6 billion within 25 years. At the current rate, tobacco-caused deaths will increase from 100 million in the 20th century to 1 billion in the 21st.<sup>1</sup>

Smoking is not a lifestyle choice freely made by consenting adults. In both rich and poor nations, smoking is a paediatric disease, as addiction to tobacco usually begins in childhood.

- The vast majority of smokers begin smoking while they are teenagers. Every day an estimated 100,000 children around the world become regular smokers.<sup>2</sup>
- A recent survey coordinated by the World Health Organization (WHO) found 1 in 10 children aged 13-15 living in a developing or transitional country was already a regular smoker.<sup>3</sup>

## Stages of the Tobacco Epidemic



Source: Alan D. Lopez, Neil E. Collishaw, and Tapani Pihla, "A Descriptive Model of the Cigarette Epidemic in Developed Countries," *Tobacco Control* 3 (1994): 242-247.

- Unless dramatic action is taken to change the patterns of smoking, 250 million children alive today will die from smoking.<sup>4</sup>

As the disease burden of tobacco use shifts from the developed to the developing world, so does its accompanying economic burden. Poorer nations – like poorer individuals – are poorly equipped to deal with either the health effects or economic consequences of smoking.

- In many parts of the world, the health consequences of smoking are poorly understood (70% of Chinese smokers recently reported that they thought smoking caused "little or no harm.")<sup>5</sup>
- In wealthy nations, approximately 1% of the GDP is currently spent on treating the diseases caused by smoking, and available information indicates that the proportion may be equally high in low-income countries.<sup>6</sup>
- A World Bank study concluded that each 1,000 tonnes of tobacco smoked produces a net global loss of US \$27,000,000 – the current economic drain totals about \$200 billion on the world's economy.<sup>7</sup>
- Smoking is not only increasing in poorer nations, it is also increasingly concentrated among the poorer citizens in all countries.<sup>8</sup> Once a 'habit' of the wealthy, smoking is becoming an addiction suffered by the world's most disadvantaged.

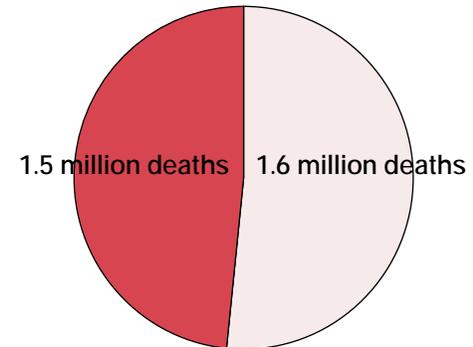
## GLOBALIZATION AND TOBACCO USE

The global problem of tobacco is increasingly recognized as a problem of globalization. Much of the increased spread of tobacco use can be attributed to the vectors of globalization – liberalized trade, economic integration, market domination of multinational corporations, new technologies, increased western-style marketing and increased foreign direct investment.<sup>9</sup> Cigarettes are shown in movies and advertisements as part of a western lifestyle, a powerful allure for many in Asia and Africa.

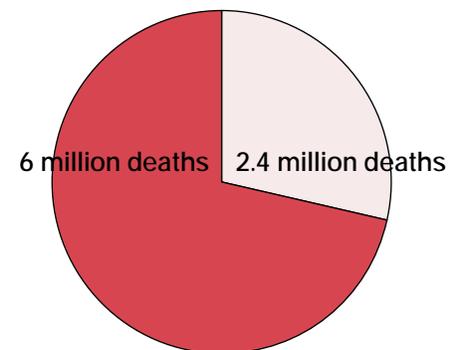
With the falling demand for cigarettes in the developed world, and an increasing demand in the developing world, cigarette companies

## Predicted Tobacco Deaths in Developed and Developing Countries

Tobacco-caused deaths in 1990 = 3 million people



Tobacco-caused deaths in 2020 = 8 million people



- Developed Countries
- Developing Countries

Source: Ad Hoc Committee on Health Research Relating to Future Intervention Options. *Investing in Health Research and Development*, Document TDR/Gen/96.1, (Geneva: World Health Organization, 1996), pp. 187-194.

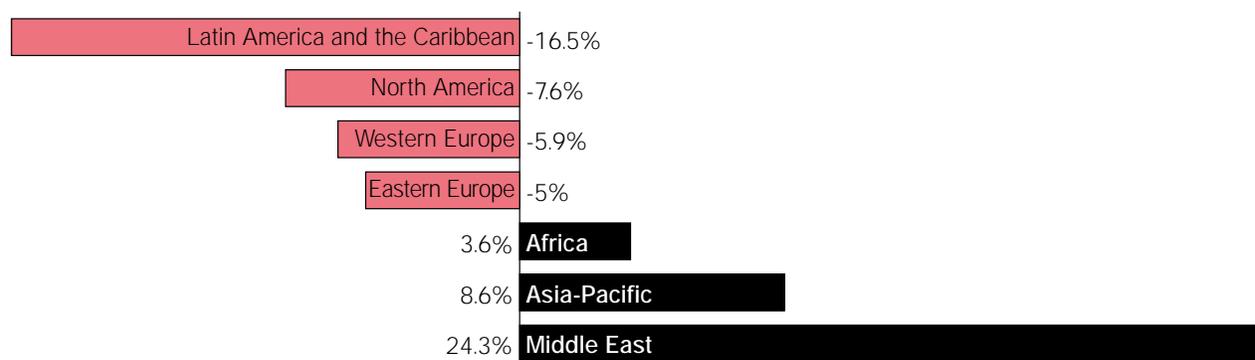
have moved aggressively to establish markets in the new economies.<sup>10</sup> A decade ago, only 50% of the world's market was available to international companies – today they have access to almost the whole world. The entry of multinational tobacco companies into these new markets has transformed the global tobacco market increasingly towards U. S.-blend cigarettes. Consumption of the

traditional cigarette of many developing countries (with Turkish, oriental, or dark tobaccos) fell by 66% in only eight years.

The entry of the multinational tobacco companies into the developing world was assisted by:

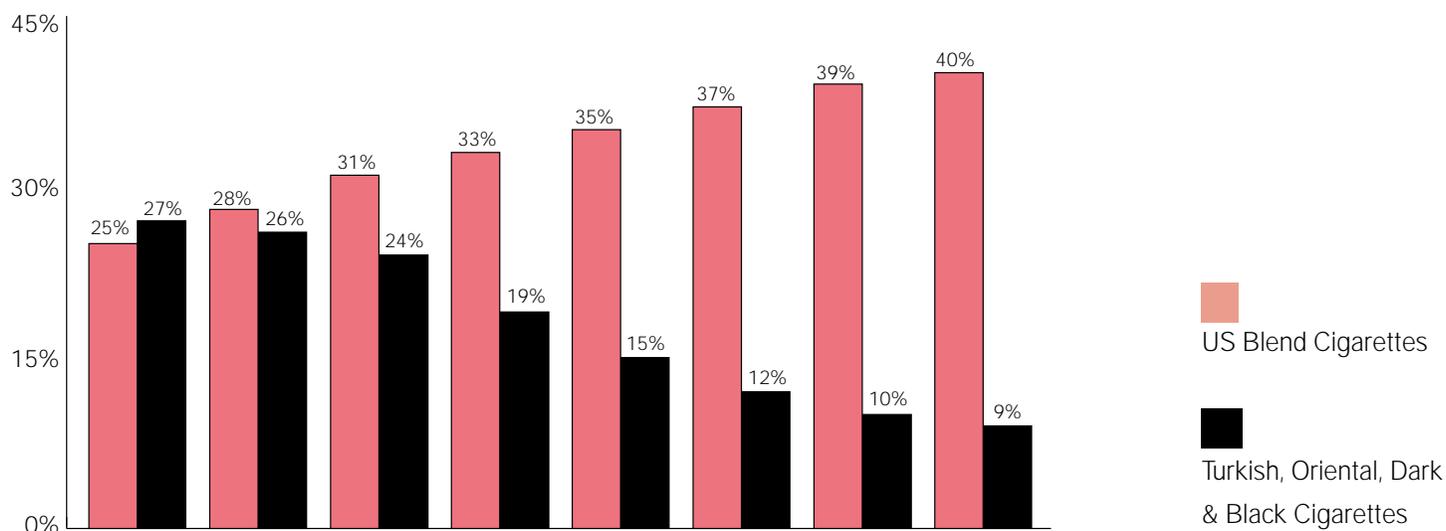
- Dismantling of state monopolies (often at the suggestion of international financial institutions like the World Bank);

## Trends in Regional Cigarette Consumption 1990 - 1997: Percentage Change by Volume



Source: *World Tobacco File*, 1998 (United Kingdom: International Trade Publications, 1998), p. 3.

## Global Cigarette Market by Cigarette Blend Type, 1990-1997



Source: *World Tobacco File*, 1998 (United Kingdom: International Trade Publications, 1998), p.998.

- Acquisitions and joint ventures between multinational and domestic companies (the multinational tobacco companies often purchased state monopolies);
- Introduction of free-market economies with fewer restrictions on business operations;
- Gradual removal of trade barriers (symbolized by the 1990 GATT ruling that Thailand could not deny access to U.S. tobacco companies).

LEADING CIGARETTE COMPANIES	BILLIONS OF CIGARETTES SOLD (1997)
1. China National Tobacco Corporation (China)	1,700
2. Philip Morris (USA)	947
3. BAT/Rothmans (UK)	899
4. Japan Tobacco (including RJR International) (Japan)	487
5. RJR (USA)	136
6. Reemstma (Germany)	119
7. Altadis (Seita + Tabacelera) (Spain and France)	99
8. Korean Tobacco & Ginseng (Korea)	94
9. Tekel (Turkey)	74
Other	1,045
<b>Total sales worldwide</b>	<b>5,600</b>

Source: *World Tobacco File, 1998*

Recent mergers and acquisitions have reduced the number of multinational tobacco companies, and today more than two-thirds of the world's cigarette market is controlled by only four companies.<sup>11</sup> The leading tobacco companies are:

1. The **China National Tobacco Corporation (CNTC)** is the state-owned Chinese monopoly. It produces 30% of the world's cigarettes – but operates only in mainland China.

## Footnotes

- <sup>1</sup> G.K. Gajalakshmi, Prabhat Jha, Kent Ranson and Son Nguyen. "Global Patterns of Smoking and Smoking-attributable Mortality," in *Tobacco Control in Developing Countries*, eds. Prabhat Jha and Frank Chaloupka, (Oxford: Oxford University Press, 2000), 12-39.
- <sup>2</sup> Ibid.
- <sup>3</sup> Charles W. Warren, Leanne Riley, Samira Asma, Michael P. Eriksen, Lawrence Green, Curtis Blanton, Cliff Loo, Scott Batchelor, and Derek Yach, "Tobacco Use by Youth: a Surveillance Report from the Global Youth Tobacco Survey Project," *World Health Organization Bulletin* 78 (2000): 868-876.
- <sup>4</sup> Christopher J. L. Murray and Alan D. Lopez, eds., *The Global Burden of Disease: A Comprehensive Assessment of Mortality and Disability from Disease, Injuries and Risk Factors in 1990 and Projected to 2020*. (Harvard School of Public Health: Harvard University Press, 1996).
- <sup>5</sup> Donald Kenkel and Likwang Chen, "Consumer Information and Tobacco Use," in *Tobacco Control in Developing Countries*, eds. Prabhat Jha and Frank Chaloupka, (Oxford: Oxford University Press, 2000), pp. 177-214, p. 182
- <sup>6</sup> James Lightwood, David Collins, Helen Lapsley, and Thomas E. Novotny, "Estimating the Costs of Tobacco Use," in *Tobacco Control in Developing Countries*, eds. Prabhat Jha and Frank Chaloupka, (Oxford: Oxford University Press, 2000), pp. 64-103, p. 64.
- <sup>7</sup> Howard Barnum "The Economic Burden of the Global Trade in Tobacco", *Tobacco Control* 3 (1994): 358-361.
- <sup>8</sup> Martin Bobak, Prabhat Jha, Son Nguyen, and Martin Jarvis, "Poverty and Smoking," in *Tobacco Control in Developing Countries*, eds. Prabhat Jha and Frank Chaloupka, (Oxford: Oxford University Press, 2000), pp. 42-61, p. 42.
- <sup>9</sup> Allyn Taylor, Frank Chaloupka, Emmanuel Guindon, and Michaelyn Corbett. "The Impact of Trade Liberalization on Tobacco Consumption," in *Tobacco Control in Developing Countries*, eds. Prabhat Jha and Frank Chaloupka, (Oxford: Oxford University Press, 2000), pp. 343-364.
- <sup>10</sup> The leading tobacco market analysts reported that "the emerging economies of Eastern Europe and Asia-Pacific and to a lesser extent markets in Latin America and the Caribbean, the Middle East and Africa have been the tobacco industry's salvation from litigation and falling consumption during the 1990s." Source: *World Tobacco File, 1998*, (United Kingdom: International Trade Publications, 1998), p. 21.

2. **Philip Morris** manufactures the world's most widely smoked brand – Marlboro. Philip Morris manufactures one in six cigarettes sold around the world. International sales have helped make Philip Morris the most profitable tobacco company, with earnings of \$4.9 billion from international tobacco sales in 1999.<sup>12</sup>

Philip Morris dominates the U.S. market, and is a market leader in Western Europe. Between 1994 and 1997, Philip Morris increased its cigarette sales by over one-third, with three-quarters of its sales now outside the United States.<sup>13</sup>

#### PHILIP MORRIS INTERNATIONAL INC. MARKET SHARE SELECTED FOREIGN MARKETS (1999)

Market	Share	Market	Share
Argentina	63.8%	Mexico	54.3%
Australia	39.0%	Netherlands	38.8%
Belgium	43.8%	Philippines	26.2%
Czech Republic	81.4%	Poland	31.9%
Egypt	14.4%	Portugal	89.1%
Finland	76.1%	Saudi Arabia	63.6%
France	35.9%	Singapore	49.3%
Germany	40.4%	Slovak Republic	55.4%
Hong Kong	61.2%	Spain	29.7%
Hungary	32/3%	Switzerland	47.1%
Italy	59.9%	Turkey	22.7%
Japan	20.3%	U.A.E.	42.6%

Source: *Philip Morris Companies Inc. 2000 Fact Book, p. 7*

3. **British American Tobacco (BAT)**, the second-largest private tobacco company, grew significantly through merging with Rothmans International in 1999. BAT's leading brands are Lucky Strike, 555, Derby, and Benson & Hedges. (BAT owns more than 250 brands world-wide.)

BAT was one of the first multinational companies to move into emerging markets in Asia, Africa and Latin America, and is the market leader in more than 50 countries. Although headquartered

in the United Kingdom, BAT sells few cigarettes in that country. Most of its business is in less developed countries.

BAT manages itself in six regions, with a global market share of 13.71%.

#### BAT REGIONS AND MARKET SHARE (1999)

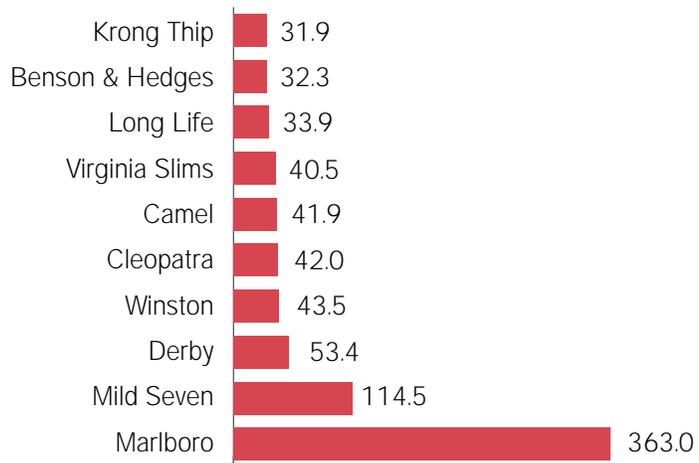
Region	Share
Europe	13.9%
America-Pacific (U.S., Japan, Korea)	9.8%
Latin America and the Caribbean	50.1%
Canada	70.4%
Amesca (Africa, Middle East, Southern and Central Asia, including the Indian sub-continent).	31.2%
Asia-Pacific	3.9%

Source: *BAT Director's Report*,  
[http://www.bat.com/annualreport/ops\\_i.htm](http://www.bat.com/annualreport/ops_i.htm)

4. **Japan Tobacco (JTI)** was a state monopoly until 1985, and the Japanese government remains the largest shareholder of the world's third-largest private cigarette company. In 1999, JTI purchased RJR's international market. Its international brands include Camel (sold by RJR in the United States) and Mild Seven, which is so popular in the Asian markets that it is the world's second-best-selling brand.<sup>14</sup>
5. **RJ Reynolds** sold its international operations to Japan Tobacco in 1999, but remains one of the world's leading companies based on its U.S. sales. Its best selling brands are Camel, Winston and Salem.
6. **Reemstma** is the second-largest cigarette company in Germany. Since 1990, the company has expanded into Eastern Europe. In the mid-1990s it was the fastest growing cigarette company, with sales increasing by more than 56% between 1995 and 1997. Reemstma's major brands are West, R1 and Davidoff (primarily a duty-free brand).

7. **Altadis** was formed by the 1999 merger of the former French state monopoly, Seita, with the former Spanish state-monopoly, Tabacalera. Seita was privatized in 1995, and Tabacalera fully privatized in 1998. Altadis is the third-largest manufacturer of cigarettes in Western Europe (after Philip Morris and BAT). Its primary cigarette brands are Gauloises, Gitanes and Fortuna, although it is also a major manufacturer of cigars. About 12% of its cigarette sales are outside Europe (primarily Asia, Africa and America), and it has operational sites in 35 countries.
8. **Korea Tobacco and Ginseng** operated as a state monopoly in South Korea from 1915 to 1997. It holds its place among the top 10 tobacco companies chiefly as a result of its 95% market share in South Korea.

#### LEADING CIGARETTE BRANDS BILLIONS OF CIGARETTES SOLD IN 1996



Source: *World Tobacco File 1998*.  
(United Kingdom : International Trade Publications, 1998)

In 1997, the combined operating profits of Philip Morris, BAT, RJ Reynolds, Japan Tobacco and Rothmans International were US\$ 13,849 million.<sup>15</sup>

<sup>11</sup> *World Tobacco File 1998* (United Kingdom: International Trade Publications, 1998), p. 1063.

<sup>12</sup> *Philip Morris Annual Report, 1999*.

<sup>13</sup> *World Tobacco File 1998*, (United Kingdom: International Trade Publications, 1998), p. 1065.

<sup>14</sup> *World Tobacco File 1998* (United Kingdom: International Trade Publications, 1998), p. 1161

<sup>15</sup> *World Tobacco File 1998*, (United Kingdom: International Trade Publications, 1998), p. 1061.

## SECTION 2:

# Tobacco, liberalized trade and multinational economic management

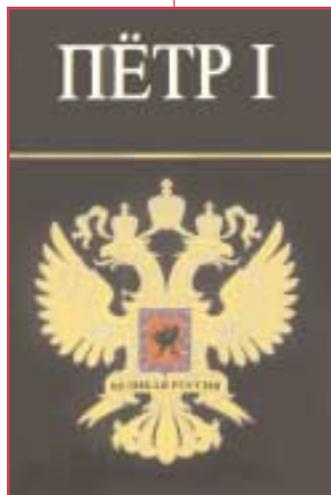
There is an inherent conflict between the goals of trade liberalization and those of tobacco control. Trade liberalizers seek to increase availability and use of products and services; while public health authorities struggle to decrease availability and use of tobacco. With liberalized trade, nations' economies and the welfare of their citizens are thought to benefit from improved, more accessible and cheaper consumer products. Yet with respect to tobacco, a nation's economy and the welfare of its citizens benefit when cigarettes are more expensive, less attractive and less used.

In this context, it is important for public health authorities to take note of obligations and undertakings made in the interests of trade liberalization, as these have the potential to increase smoking rates. Similarly, it is important for trade officials to take note of the consequences of liberalized trade on tobacco use and public health.

Resolving the conflict between trade liberalization and public health may be made more difficult in light of the new trade regimes governed by the World Trade Organization, and regional agreements like the North American Free Trade Agreement (NAFTA). These agreements are powerful mechanisms through which commercial activity – including the commerce of cigarettes – is governed.

## THE WORLD TRADE ORGANIZATION (WTO) AND ITS AGREEMENTS

Global trade is centred in the World Trade Organization (WTO), headquartered in Geneva. The WTO was founded in 1994 and now has over 140 member countries.<sup>16</sup> It replaced the General Agreement on Tariffs and Trade (GATT 1947), in operation from 1947 to 1994.



The mandate and powers of the WTO are much larger than those of the original GATT. Unlike its predecessor, the WTO regime contains disciplines on governmental measures that include not only tariffs and trade in goods but also non-tariff matters including standard-setting for public protection, intellectual property laws, corporate investment rights, and trade in services. Its rules are accompanied by an effective enforcement mechanism, the dispute settlement process.

The WTO is governed by a Ministerial Conference of its members, which must meet every two years.

Although the launch of a comprehensive round of expanded negotiations of the WTO, planned for Seattle in December, 1999, did not occur, the "built-in" agenda of the WTO mandated ongoing negotiations regarding agriculture and trade in services, and these are now in preparation.

Investment protections are also included in regional agreements like NAFTA and Association of South East Asian Nations (ASEAN), and were discussed at the Organisation for Economic Co-operation and Development.

## THE WTO AGREEMENTS

Under GATT, members could pick and choose which agreements or sub-agreements they wished to accept. Under the WTO, membership requires adherence to three major agreements:

- **Multilateral Agreements on Trade in Goods** (which include GATT 1994, 7 interpretive understandings, and 12 specific agreements, including those on Agriculture, Sanitary and Phytosanitary Measures, Textiles and Clothing, Technical Barriers to Trade, Trade-Related Investment Measures, etc.)
- **General Agreement on Trade in Services** (GATS),
- **Agreement on Trade-Related Aspects of Intellectual Property Rights** (TRIPS),

The agreements require that all levels of governments within a country (national, provincial, state, and local) be bound by their provisions. Very few products or substances are untouched by WTO agreements (armaments are a notable exception).

## Agreements on Goods

Several WTO agreements on trade in goods are relevant to health.

### The Agreement on Technical Barriers to Trade (TBT)

This sub-agreement to GATT seeks to ensure that technical standards, including testing methods, product labelling, packaging and certification procedures do not unnecessarily create restraints on trade. The agreement recognizes the rights of governments to take measures to protect human, animal or plant life, health or the environment. However, a country may be challenged to prove both that its measures are "necessary" to protect life, health or the environment *and* that there is no less trade-restrictive option).

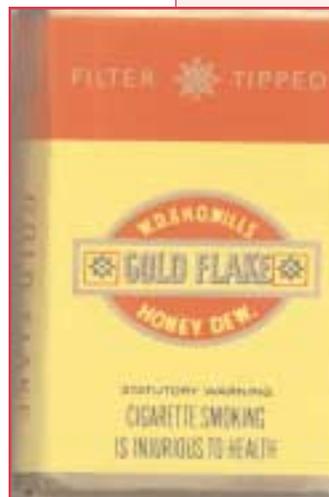
The TBT agreement has been cited during:

- Canada's appeal in autumn 2000 of the WTO ruling upholding France's ban on asbestos.<sup>20</sup>
- The U.S. objections to European Commission proposals to block entry of genetically modified organisms.<sup>21</sup>
- Objections to Dutch proposals to label imported timber that came from sustainably managed forests.<sup>22</sup>

### The Agreement on Sanitary and Phytosanitary Measures (SPS)

This WTO Agreement governs the use of regulations concerning food safety and animal and plant health. It requires that such measures be:

- necessary for health protection;
- science-based;
- transparent; and
- not disguised restrictions on trade.



## Footnotes

- <sup>16</sup> As of November 30, 2000 there were 140 members and 32 observer nations. When obtaining observer status, nations agree to begin negotiations to join WTO within five years.
- <sup>17</sup> The OECD discussions on a Multilateral Agreement on Investment (MAI) terminated in 1998, when France unexpectedly withdrew.
- <sup>18</sup> Under the North American Free Trade Agreement, in addition to state-to-state dispute processes, investors (corporations) may sue states directly for alleged interference with investment rights.
- <sup>19</sup> WTO dispute panels have the option to consider submissions or "amicus briefs" from NGOs or other interested parties but the practice is controversial and is not accepted by all WTO member states.
- <sup>20</sup> The decision of a WTO panel in favour of France's ban on asbestos on health grounds was the first example of a positive application of GATT Article XX. Canada lost its appeal to the WTO Appellate Body, which ruled that the ban on asbestos could be upheld. Although it agreed with Canada's claim that the TBT agreement should have applied, it decided it did not have an adequate basis to decide how applying the TBT agreement would have affected the decision.
- <sup>21</sup> "Report on WTO Technical Barrier to Trade meeting," *Bridges Weekly Trade News Digest 2*, Number 36 (September 21, 1998).
- <sup>22</sup> Committee on Technical Barriers to Trade - Minutes of the Meeting Held on 15 September 1998.
- <sup>23</sup> European Communities-Measures Affecting Meat and Meat Products; 13 February 1998, WT/DS26/AB/R and ST/DS45/AB/r IAB) and WT/DS26/R/USA and WT/DS48/R/CAN (Panel): This beef hormones case was decided under the SPS chapter, and both the Panel and Appellate Body found the EC's ban on certain hormone-treated beef was inconsistent with the EC's obligations under the SPS.
- <sup>24</sup> Australia – Measures Affecting Importation of Salmon, 6 November 1998, WT/DS18/AB/R (AB) and WT/DS18/R (Panel) Australia's quarantine restrictions on certain salmon imports were found inconsistent with the SPS on the basis of available scientific evidence.
- <sup>25</sup> Japan – Measures Affecting Agriculture Products. AB-1998-8WT/DS76/AB/R, 22 February 1999.

The SPS includes requirements for risk assessment methodology, and encourages harmonization with international standards. Governments must give notice of any measures that differ from international standards. Many have expressed concerns that the effect of this stated preference for international standards is that standards which were established as minimal measures, or "floors", or as mere recommendations, become de facto ceilings, to be applied in all countries without appropriate consideration of local conditions.

In the WTO's first five years, the WTO dispute panels have reported on three challenges under the SPS. Each time the Panel ruled against the health measure:

- The European Union ban on hormone-fed beef was successfully challenged by the United States and Canada on the basis that the scientific justification was not adequately founded. The European Union decided to accept retaliatory trade penalties rather than rescind the ban.<sup>23</sup>
- Australia was required to rescind a 24-year ban on fresh salmon, after Canada challenged that there were other less trade-restrictive ways of protecting Australia's salmon from threat of introduced disease.<sup>24</sup>
- Japan's testing requirements for imported fruits and vegetables were successfully challenged by the United States when the WTO

## **DISPUTE SETTLEMENT AT THE WTO**

*The WTO's dispute settlement process is much more stringent than that of the GATT. The process is governed by the Dispute Settlement Understanding (DSU), to which all members are bound. Only member countries can bring a dispute to the WTO. The process uses the following steps:*

### **Consultation**

*A country which feels another has broken the agreement may ask for a consultation. If there is no response within 10 days, or no consultation within 30, a Panel may be established.*

### **Panels**

*Disputes are first heard by Panels composed of three or five panelists from countries not party to the dispute. Only countries that are party to the dispute have formal standing in this process. The Panel process is time-tabled at several steps.*

### **Appellate Body (AB) Review**

*Appeals of Panel decisions are heard by an Appellate Body, composed of seven individuals who are recognized authorities in law and international trade. There is no mechanism to invite expertise from other sectors, such as health. The proceedings are confidential.*

### **Dispute Settlement Body (DSB)**

*The DSB is composed of all member states. It adopts Appellate Body reports unless there is a consensus among all members not to do so.*

## **Remedies**

*A graduated process is used to enforce WTO panel decisions:*

- *The dispute panel makes recommendations of how the nation should come into compliance with the agreements.*
- *If the member fails to do so within a "reasonable period of time," the complaining country may ask for negotiations for compensation.*
- *Twenty days later, if compensation is not agreed, the complaining country may ask for permission to use trade retaliation. The DSB is expected to grant authorization within 30 days.*
- *Retaliation must be limited to the same sectors, although permission may be sought to retaliate across sectors. The defending country may ask for arbitration on the level or type of retaliation.*

*WTO disputes can also be addressed through conciliation, mediation and arbitration.*

*The goal of the WTO dispute process is to interpret and enforce the agreements. The proceedings are held in camera, and third-party interventions are not permitted.*

*There is nothing in WTO agreements to accord equality to other international agreements, including those in the areas of health, social development, environmental protection or labour practices. The panels are expected to enforce trade law, even at the expense of other international agreements, national or international laws.*

found no scientific basis for such measures to protect domestic orchards from introduced pests.<sup>25</sup>

### General Exception (Article XX)

Article XX of GATT provides a General Exception to the provisions of the WTO trade in goods agreements. Exceptions for health or environmental reasons are found in GATT Article XX(b), which allows exceptions for measures "necessary to protect human, animal or plant life or health."

This exemption is not as broad as it may at first appear. Several GATT and WTO dispute panels have ruled on measures where a defence was mounted on the basis of this section and, with one exception,<sup>26</sup> have rejected each one.<sup>27</sup>

To receive an Article XX(b) exception, countries must meet a two-tiered test. They must first show that the health or environmental measure is justified. They must also show that of all the measures available, the one chosen has the smallest impact on trade.

These two requirements can make traditional public health regulation more difficult, as there are often alternatives which intrude less on trade, even if they are not preferred from a public health protection standpoint. Consumer health warnings, for example, might be considered less trade-restrictive than bans on potentially hazardous products.

The TBT and SPS agreements allow countries to challenge the scientific or risk-assessment basis for protective measures. They promote reliance on international standards.

There are some products and substances that receive a blanket exemption from WTO agreements. For example, firearms are carved out of these agreements.

<sup>26</sup> The single occasion in which GATT or WTO has allowed the language of Article XX(b) to protect a health measure against a trade challenge happened in 200 when a WTO panel upheld France's ban on the importation of asbestos against a challenge from Canada. Canada lost its appeal to the WTO's Appellate Body.

<sup>27</sup> Eleven GATT/WTO rulings have applied the "necessity" test to the use of Article XX exceptions. On only one occasion was justification found. Five of those cases have ruled on the use of Article XX (b):

#### GATT:

1991. US – Restrictions on Imports of Tuna, 3 September 1991, BISD 39S/155: Prohibitions on imports from Mexico of tuna harvested with purse-seine nets causing dolphin deaths (primary nation and intermediary nation embargoes) specified in the Marine Mammals Protection Act were not justified by GATT XX (b) (d) and (g).

1994. US – Restrictions on Imports of Tuna, 16 June 1994, DS29/R: The same embargoes against imports from the EEC and the Netherlands were not justified by GATT XX (b) (g) or (d).

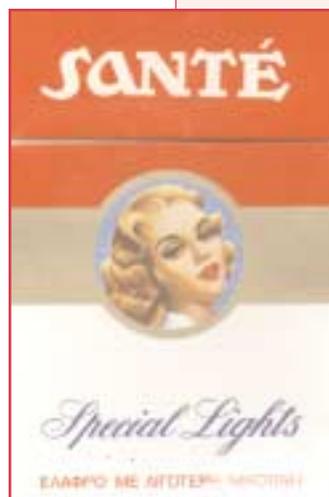
1990. Thailand – Restrictions on Importation of and Internal Taxes on Cigarettes, 7 November 1990, BISD 37S/200: Thai prohibitions on import of cigarettes were found not "necessary" within GATT XX (b) although chemicals and other additives in US cigarettes may have been more harmful than those in Thai cigarettes.

#### WTO:

1996. US – Standards for Reformulated and Conventional Gasoline, 20 May 1996, WT/DS2/9 (Appellate Body and Panel Reports): Regulations under the US Clean Air Act regarding composition of gasoline was found contrary to GATT III by both the Panel and Appellate Body. The Panel found the regulations could not be justified under GATT XX (b), (d) or (g). The Appellate Body held that the regulations fell under XX (g) but did not satisfy the chapeau of the article.

2000. EC-Measure Affecting Asbestos and Products Containing Asbestos : (WT/DS/135R): The panel found that a French directive banning chrysotile asbestos could be justified under GATT XX(b) and the chapeau of the article. The Appellate body upheld the decision.

<sup>28</sup> WTO General Agreement on Trade in Services (GATS), Article 1.



## The General Agreement on Trade in Services (GATS)

In 1994, WTO nations agreed to a GATS framework agreement. The GATS covers all government measures "affecting trade in services"<sup>28</sup> and all of the four "modes of supply." These are:

- Cross border supply (such as provision of advertising copy electronically from one country to another);
- Consumption abroad (e.g. tourism);
- Commercial presence (foreign investment); and
- Presence of natural persons (service through presence of foreign staff).

Service providers are considered to be "like" and entitled to equal treatment, however they provide the service. The architecture of the 1994 WTO agreements established:

- General rules which apply to all services (such as most-favoured nation);
- Specific commitments to market access and national treatment for services listed by countries in schedules;
- Sectoral annexes establishing rules in specific sectors (notably telecommunications and financial services); and
- A commitment to "progressive liberalization" through successive rounds of negotiation.

Governments are currently engaged in the next round of negotiations on GATS (GATS 2000).

Discussion about the potential impact of the GATS agreement on health often focuses on the effect on health care systems. There are other services, however, such as advertising, packaging or retailing, that governments may wish to regulate in order to protect or improve public health. The GATS prohibits governments from placing "limitations on the number of service suppliers"<sup>29</sup> or "limitations on the total number of service

operations,"<sup>30</sup> that could interfere with proposals to limit the number of tobacco retail outlets.

## The Trade-Related Aspects of Intellectual Property Rights (TRIPS)

TRIPS took effect in January 1995, promoting a controversial and mandatory intellectual property regime, enforceable through the WTO dispute settlement process.

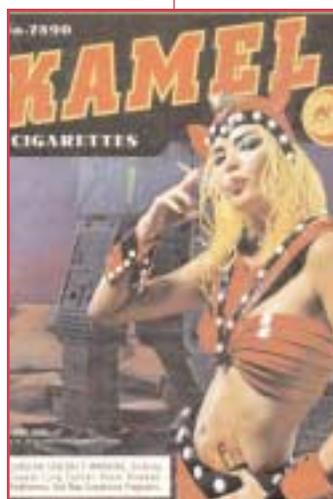
The Paris Convention for the Protection of Industrial Property, administratively supported through the World Intellectual Property Organization (WIPO), continues in force concurrent with TRIPS.

TRIPS incorporates The Paris Convention provisions and increases protection for many forms of intellectual property, including: trademarks; patents; geographic names and copyrights; among others. The TRIPS agreement establishes core intellectual property rights such as a minimum patent protection period, and trademark entitlements.

As with other WTO agreements, TRIPS specifies the ways in which governments may protect public health. (They may "adopt measures necessary to protect public health and nutrition... provided that such measures are consistent with the provisions of this Agreement." – Article 8.2). Like other WTO agreements, any such action may be challenged and will be assessed on whether it is necessary and least trade-restrictive. In the case of TRIPS, such measures must also be compatible with the overall agreement, which is an additional burden for governments to demonstrate.

Article 20 of TRIPS may have special significance for tobacco control, as it may affect how governments may limit trademarks through advertising restrictions or bans. Article 20 states that:

*"The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings."*



The potential impact of TRIPS is often thought of in terms of the availability of patent medications and patenting of plants and animals, but the protection it offers to trademark holders (such as tobacco brand names) also has far-reaching public health implications.<sup>31</sup>

## Membership in the WTO

There are many countries anxious to become members of the WTO and willing to bring their domestic policies into line with WTO principles to advance their candidacy for admission. Gaining admission can require countries to adopt measures that increase smoking, such as allowing importation of western cigarettes or abandoning controls on the supply of cigarettes.

Two recent examples include:

- China's commitment to relax controls on imported cigarettes (and alcohol)<sup>32</sup> as part of its undertakings to join the WTO.
- Taiwan, China's commitment to change the tax structure on tobacco, to privatize its tobacco and wine monopoly, and to allow foreign companies to import, produce and sell tobacco in Taiwan, China<sup>33</sup> in preparation for WTO membership.

## THE WORLD BANK

The World Bank was established after the Second World War as part of the Bretton Woods agreements. It includes five related institutions, including the International Bank for Reconstruction and Development. The World Bank provides around \$16 billion in loans each year to client countries. It is governed by its 180 member countries.

In 1991, the World Bank adopted policies to reduce tobacco use, recognizing its harmful effects on health. The World Bank policy is to:<sup>34</sup>

- Use its lending and policy activities in the health sector to discourage the use of tobacco products;
- Not lend directly for, invest in, or guarantee

<sup>29</sup> GATS Article XVI

<sup>30</sup> GATS Article XVI:2(c).

<sup>31</sup> The U.S. Advocacy Group, Public Citizen recounts the story of TRIPS being used to pressure Guatemala to exempt Gerber from its infant formula rules:

"For four years between 1990 and 1995, U.S. based Gerber Products Company launched a campaign to force Guatemala to eliminate an infant health law that banned the use of baby pictures on labels for baby food for children under two years of age. The Guatemalan law implemented the WHO-UNICEF Infant Formula Marketing Code, which was developed to help protect the lives of infants by promoting breast feeding over artificial breast milk substitutes, including through elimination of packaging that would induce illiterate parents to associate formula with healthy, fat babies.

All of Guatemala's domestic and foreign suppliers of infant formula and other breast milk substitutes made the necessary changes to their packaging to comply with the Guatemalan law, except Gerber. Guatemalan infant mortality rates dropped significantly after the law passed, with UNICEF holding up Guatemala as a model of the Code's success in its literature.

Upon passing the law, the Guatemala Ministry of Health negotiated with Gerber to seek compliance. After several years of watching Gerber refuse to abide by its regulations, the government of Guatemala considered a ban on the company's products altogether. It was at this point that Gerber threatened the Guatemalan government with a challenge under the GATT/WTO. Although Gerber cannot personally launch a GATT challenge to the Guatemalan law, it was able to get the U.S. State Department to repeat its WTO threat in a face-to-face meeting with Guatemalan officials. The tactics intimidated the Guatemalan government eager to avoid the expense of defending a GATT challenge.

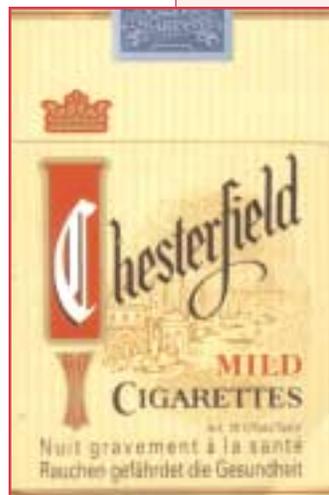
According to Gerber's letter to the President of Guatemala, the TRIPS rules forbid enforcement of a conflicting domestic health law that limits use of a trademark protected under TRIPS. By 1995, Gerber's threats of trade sanctions succeeded. The Guatemalan Supreme Court ruled that imported baby food products could be exempted from Guatemala's stringent infant health laws."

– Comments of Public Citizen, Inc. regarding U.S. preparations for WTO Ministerial Meeting Fourth Quarter 1999, October 22, 1998.

<sup>32</sup> European Trade Commissioner Pascal Lamy's Declaration on China's WTO accession, Beijing, 19 May 2000.

<sup>33</sup> *The Taiwan Economic News*, September 11, 2000.

<sup>34</sup> Prabhat Jha and Frank Chaloupka, eds.,



## KEY PROVISIONS OF WTO AGREEMENTS

The WTO agreements build upon two key principles of trade liberalization, **national treatment** and **most favoured nation**. Over the years, these principles have been interpreted to impose very specific obligations on countries.

### National Treatment

National Treatment is the obligation of countries to treat imported foreign goods equally to those produced domestically, and to treat foreign trading partners equally to domestic producers.

Sometimes formally equal treatment might not be enough for products to achieve real equality. GATT has ruled that in such cases foreign products may have to be given preferable treatment to ensure effective equality of opportunities for imported products.<sup>35</sup> National treatment also applies to trade in services under the WTO General Agreement on Trade in Services and to goods, services and investments under NAFTA.

### Most-favoured Nation

Most favoured-nation treatment requires that any trade advantage (such as tariff reductions) that is provided to one trading partner must be provided to all trading partners. This principle is found in the first article of the GATT. It is also a priority in the GATS and in the TRIPS.

### Prohibitions on Quotas

The prohibition on "quantitative restrictions" in GATT Article XI means that countries cannot use quotas to restrict imports or exports of products, such as might be useful to restrict foreign-made tobacco to a limited share of a market.

### "Like" Products

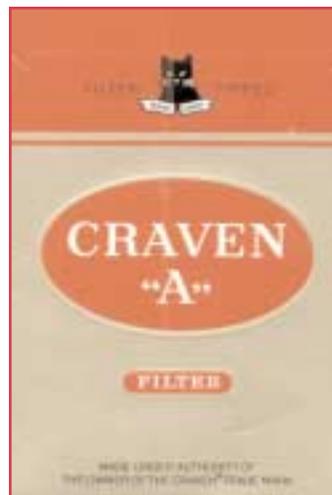
Through WTO agreements, countries commit to giving equal treatment to domestic goods and "like products" from other countries. Therefore, deciding whether an imported good is "like" a domestic good is a key factor in deciding whether regulations, tariffs and other measures must be identical.

The general approach of WTO is to rule that products which are used in similar ways are "like" one another. They do not make distinctions on the basis of how a product is made, the environmental consequences of its manufacture, or the way it is marketed.

WTO panels have ruled that U.S.-style cigarettes may not be banned as they are "like" domestic cigarettes.<sup>36</sup> They have disallowed environmental regulations that placed a penalty on beer in energy-consuming aluminium cans instead of beer sold in reusable containers.<sup>37</sup> They have required Japan and other countries to abandon high-tax policies designed to discourage consumption of whisky and other imported alcohol.<sup>38</sup> They have ruled that similar-use products cannot be distinguished on the basis of toxicity.<sup>39</sup>

### "Least trade-restrictive" Measures

The WTO requires countries to use the least trade-restrictive means of achieving their policy goals. The alternatives that are least harmful to international commerce are preferred, and can be required if they are feasible (even if more difficult to achieve or maintain). A U.S. ban on tuna caught with nets harmful to dolphins, for example, was struck down as GATT ruled that a less trade-restrictive option available to the United States was to work towards international cooperation in fishing practices.<sup>40</sup>



investment or loans for tobacco production, processing or marketing. (For countries highly dependent on tobacco growing, the banks aims to help the countries diversify away from tobacco.);

- Not lend indirectly to tobacco production activities;
- Not allow tobacco and its related processing and equipment to be included among imports financed under World Bank loans; and
- Allow tobacco and tobacco-related imports to be exempt from borrowers agreements with the Bank to liberalize trade and reduce tariffs.

These World Bank policies have been much applauded for their leadership in establishing different norms for tobacco enterprises than for other commercial activities.

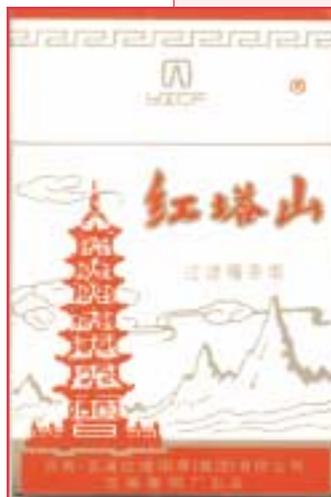
Some World Bank policies may remain in conflict with public health objectives, such as the Bank support of privatization of state tobacco monopolies.<sup>41</sup>

## THE INTERNATIONAL MONETARY FUND

The International Monetary Fund (IMF) was created as a UN specialized agency after the Second World War as part of the Bretton Woods Agreements. The IMF's primary goal is monitoring the monetary and exchange rate policies of member countries as part of ensuring a stable world monetary and trading system. The IMF is ruled by a board of governors with one representative from each of its 183 member countries.

The IMF conducts surveillance of exchange rate policies, and provides financial and technical assistance to member countries. The agreements reached between the IMF and lending countries often include commitments to privatize state industries (including tobacco companies) and to reduce tariffs (including tobacco tariffs).

Developing countries can be placed under significant pressure to privatize their state-owned enterprises, irrespective of whether maintaining public



*Curbing the Epidemic: Governments and the Economics of Tobacco Control* (Washington: World Bank, 1999), p 85.

<sup>35</sup> GATT (1989) United States – Section 337 of the Tariff Act of 1930, GATT Doc. L/6439, 36 B.I.S.D.

<sup>36</sup> "Thailand – Restrictions on Importation of and Internal Taxes on Cigarettes," BISD 37S/200. (7 November 1990).

<sup>37</sup> Jim Grieshaber-Otto, Scott Sinclair, and Noel Schacter, "Impacts of international trade, services, and investment treaties on alcohol regulation," *Addiction* (December 2000): 491-504

<sup>38</sup> A WTO panel, for example, ruled against Japan's decision to tax whisky and cognac at a higher level than domestic liquor, sochu, and rejected Japan's arguments that these products were not "like".

<sup>39</sup> Kevin Gray, "Asbestos Ruling Raising More Questions than Answers" *Bridges Weekly Trade News Digest* 4, Number 7 (September 2000).

<sup>40</sup> "US Restrictions on Imports of Tuna," BISD 39S/155. (3 September 1991)

<sup>41</sup> "World Bank IMF Agenda," *Newsletter of the World Bank* (April 2000).

<sup>42</sup> Letter from to Chol-Hwan Chon, Governor Bank of Korea and Hun-Jai Lee, Minister of Finance and Economy to Mr. Horst Köhler, IMF (July 12, 2000). [www.imf.org/external/NP/LOI/2000/kor/01/INDEX.HTM](http://www.imf.org/external/NP/LOI/2000/kor/01/INDEX.HTM).

<sup>43</sup> Letter from Mr. Recep Önal, Minister of State for Economic Affairs and Mr. Gazi Erçel Governor of the Central Bank to Mr. Horst Köhler (June 20, 2000). [www.imf.org/external/NP/LOI/2000/tur/02/INDEX.HTM](http://www.imf.org/external/NP/LOI/2000/tur/02/INDEX.HTM)

<sup>44</sup> Tobacco or Health in Turkey: Report of a WHO Mission to Ankara (10-14 November 1997).

<sup>45</sup> Suein Hwang and Michael Phillips, "IMF's Asian Bailout Could Open Markets for the Tobacco Giants," *Wall Street Journal* (December 16, 1998).

<sup>46</sup> Letter of Intent to the IMF, signed by Malawi's Minister of Finance (December 8, 2000), and Letter of Intent to the IMF, signed by Uganda's Minister of Finance (November 19, 1999).

<sup>47</sup> Chapter 7 of NAFTA is parallel to the Sanitary and Phytosanitary Agreement of WTO.

<sup>48</sup> Chapter 17 of NAFTA is parallel to the TRIPS agreement of WTO.

<sup>49</sup> NAFTA's investment provisions were essen-

ownership is in the public health interest. Already most of the Eastern European nations have privatized their tobacco factories in compliance with IMF requests. Current letters of intent solicited from developing countries with state-owned tobacco enterprises indicate that the IMF continues to advance the view that privatizing tobacco companies is a progressive measure.

The Korean Letter of Intent<sup>42</sup> commits the government to proceed to privatize state-owned enterprises in 2000, including reducing its shares in the Korea Tobacco and Ginseng Corporation. In its letter of intent<sup>43</sup> the Turkish government promises to enact legislation to reform TEKEL, including allowing private sector alcohol sales and privatizing its production facilities. The letter states: "the divestiture of TEKEL's commercial assets will start in 2001 and will be completed by end 2002." Philip Morris is speculated to be the purchaser. In 1997, a WHO mission to Turkey<sup>44</sup> found that:

*"There is a sharp contrast in the behaviour and the role of the domestic and multinational tobacco industry in Turkey. While the multinationals are openly breaking the new law [banning advertising], no one reported any infractions on the part of TEKEL or its distributors... The multinational companies are strongly resisting tax increases, have avoided tax policies aimed at funding health care and are aggressively lobbying parliamentarians."*

When the IMF was criticized during its response to the 1997 Asian financial crisis for requesting further privatization of state tobacco monopolies (especially those in Korea and Thailand), its spokesperson replied that the IMF had no policy on tobacco, but found such privatization "wholly consistent" with its policies.<sup>45</sup>

The IMF also encourages reducing tariffs on tobacco, irrespective of the health consequences. Uganda and Malawi have recently filed letters of intent with the IMF promising to reduce tobacco tariffs.

Ample evidence exists that privatizing tobacco monopolies can lead to increases in tobacco consumption, thereby harming public health. Yet the IMF has made no adjustment to its general policy in favour of privatization in relation to the tobacco industry."



## REGIONAL TRADE AGREEMENTS

In addition to the multilateral agreements governed through the WTO, there are a number of regional associations and agreements that might influence governments in establishing tobacco control measures. These foster economic cooperation, economic integration and trade liberalization. They include:

### Africa

- Common Market of East and Southern Africa (COMESA)
- Economic Community of Western African States (ECOWAS)
- South African Development Community (SADC)

### America

- Organization of American States (OAS) (and the Free Trade Area of the Americas (FTAA))
- The North American Free Trade Agreement (NAFTA)
- The Andean Community
- Mercosur

### Asia

- The Association of South East Asian Nations (ASEAN)
- Asia-Pacific Economic Cooperation (APEC)

### Caribbean

- The Association of Caribbean States (ACS)
- The Caribbean Community (CARICOM)

### Europe

- The European Union (EU)
- The European Free Trade Association (EFTA)

tially copied in the Multilateral Agreement on Investment, which was discussed at the OECD from 1995 until it was withdrawn after France's unexpected retreat in November 1998.

<sup>50</sup> Of the eleven investor-state dispute challenges launched between 1993 and 2000, two involved health-related matters:

US-based **Metalclad** demanded compensation from the Mexican government after a local government had refused to issue a license for a hazardous waste landfill. In August 2000, the NAFTA arbitral tribunal awarded Metalclad \$16.7 million in compensation for expropriation. The tribunal ruled that the process the municipality used to deny the permit had been unfair, and that this was tantamount to expropriation.

**Ethyl Corporation**, a US-based company manufacturer of gasoline additive MMT, challenged Canada's proposed ban on MMT. Some (but not all) scientists believe MMT has neurotoxic effects on humans, and it is not used in U.S. gasoline. Ethyl claimed compensation for measures tantamount to expropriation; the case was settled before a NAFTA tribunal ruled, and the Canadian government paid US \$ 13 million to compensate Ethyl for lost profits.

<sup>51</sup> See Prabhat Jha and Frank Chaloupka, eds. *Tobacco Control in Developing Countries*, (Oxford: Oxford University Press, 2000), p. 354.

<sup>52</sup> Luc Joossens and Martin Raw, "Are Tobacco Subsidies a Misuse of Public Funds?" *British Medical Journal* 312 (1996): 832-835.

Subsidizing tobacco growing is understood to be a practice that runs counter to central tenets of both good trade practice and good public health protection practice. In 1994, the European Court of Auditors remarked, "Subsidies are paid for producing tobacco which has practically no market in the Community. Almost all of the tobacco is exported to Central and Eastern Europe and North Africa, where there are insufficient controls of tar content and where countries can hardly afford to cope with the additional bought-in mortality and high health care costs."

<sup>53</sup> Existing EU directive (90/239/EEC) requires cigarette health warnings to cover a minimum of 4% of the pack, although Member States have the option to go further.

On December 12, 2000, the European Parliament voted to support cigarette controls including:

- **requirement for health warnings** that cover at least 30% of the front of each pack and 40% of the back.
- **permission for national governments** to order the inclusion of shocking colour photographs showing the possible consequences of smoking, like rotting teeth and diseased lungs.

- **bans on the use of terms like mild, light and low-tar** to describe cigarettes, since they may give a false impression of the dangers of smoking.
- **upper limits on toxic emissions** from cigarettes – maximum levels of 10 mg for tar, 1 mg for nicotine and 10 mg for carbon monoxide.

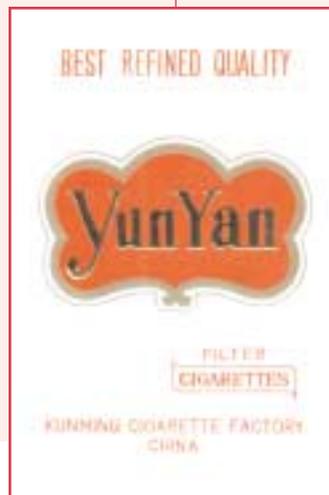
This EU Tobacco Directive has to be approved by the governments of EU Member States before coming into force, but the European Parliament has full co-legislative powers in drafting and approving this legislation; ultimately it can block or reject the new law if it is not satisfied with the content of the final text.

<sup>54</sup> *The General Agreement on Tariffs and Trade*, Part III, Article XXIV, Geneva, World Trade Organization (July, 1986), [http://www.wto.org/english/docs\\_e/legal\\_e/gatt47.wpf](http://www.wto.org/english/docs_e/legal_e/gatt47.wpf)

<sup>55</sup> World Trade Organization. *Bilateral, Regional, Plurilateral and Multilateral Agreements*. Note by the Secretariat. Document No. WT/WGT1/W/22 (98-0269), (Geneva: World Trade Organization 26 January 1998).

<sup>56</sup> Association of South East Asian Nations. *Framework Agreement on the ASEAN Investment Area* (7 October 1998). [http://www.asean.or.id/economic/fwagr\\_aia.htm](http://www.asean.or.id/economic/fwagr_aia.htm)

<sup>57</sup> D.G. Diongson, "Philip Morris to Invest \$300 Mln in Philippine Cigarette Plant," *Bloomberg News* (May 24, 2000), <http://lists.essential.org/pipermail/intl-tobacco/2000q2/000146.html>.



## SELECTED REGIONAL TRADE AGREEMENTS

### *The North American Free Trade Agreement*

*NAFTA is an economic agreement among three nations: Canada, Mexico and the United States.*

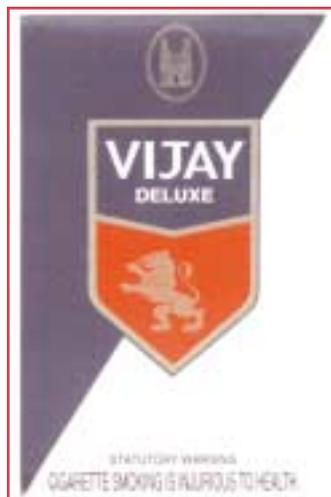
*NAFTA is much more than a free-trade area. Membership includes obligations to facilitate the cross-border movement of goods and services and to provide adequate and effective protection and enforcement of intellectual property rights. Like WTO agreements, NAFTA includes comprehensive rules regarding the setting of domestic standards.<sup>47</sup> Like WTO agreements, it extends intellectual property rights.<sup>48</sup> NAFTA, however, goes much further in providing rights for foreign investors.*

*The investment chapter of NAFTA (Chapter 11) is the most expansive set of rights for foreign investors of any commercial agreement to date. NAFTA's definition of investment is quite broad (it includes business licences and trademarks), and it allows investors to directly sue host countries for actions alleged to constitute "expropriation." Unlike WTO disputes, companies do not need the support of their own governments to challenge government measures under NAFTA. They can ask for compensation for both direct and indirect expropriation and a regulation that affects their profits can be ruled to be an indirect expropriation.*

*The NAFTA investment chapter does not distinguish between commercial and non-profit entities, nor between beneficial and harmful foreign investment, such as in tobacco. All foreign investors are entitled to equal protection. (The WTO services agreement also contains elements of investment protection.)*

*The potential impact of NAFTA on tobacco control measures is illustrated by:*

- *Mexico's agreement to significantly reduce tariff barriers on imported tobacco, and its elimination of an import licensing system for tobacco.<sup>51</sup>*
- *Philip Morris' threat in 1994 to launch an investor-state dispute against Canada, demanding "millions" in compensation, if Canada proceeded with plans for plain packaging.*



### *The European Union*

*The European Union includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.*

*Under agreements reached through the EU, European countries agree to co-manage much of their trading, agriculture and public regulation.*

*The Common Agricultural Policy of the European Union results in a daily subsidy to tobacco-growing at a rate of US\$ 3 million per day. This is by far the largest subsidy payment to agriculture, and is provided at every stage of tobacco production, from growing to storage to disposal. Since European tobacco farmers grow more than they can sell, much ends up being disposed of at dumping prices in Eastern Europe and Africa, thus exporting the tobacco epidemic to these countries.<sup>52</sup>*

*Health regulations on tobacco products are also established through the EU, which has recently advanced EU proposals to ban tobacco advertising by 2006 and to require tobacco-product labelling that bans the use on packages of "light and mild." EU proposed directives would also regulate the manufacturing standards of cigarettes.<sup>53</sup>*

### *Association of South East Asian Nations Trade and Investment Agreements*

*ASEAN is an association of ten Asian nations (Brunei Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, the Philippines,*

*Singapore, Thailand and Viet Nam), with a combined population of over 527 million. ASEAN was formed with broad goals of promoting Asian regional cooperation in the interests of fostering regional peace, stability and social and economic development. Since its formation in 1967, ASEAN members have entered into several regional trade and investment agreements. These agreements, and the economic frameworks in which they operate create four key implications for tobacco control in the region.*

- **The agreements liberalize trade more than the WTO agreements.**

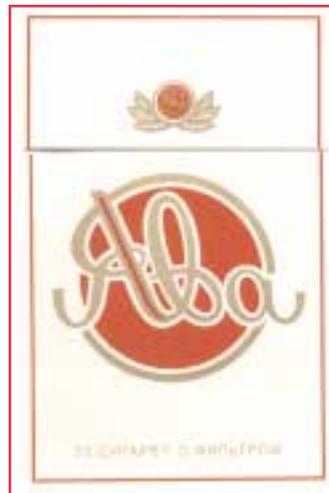
A key feature of all regional trade agreements (EU, NAFTA, ASEAN and all others) is that, according to provisions of the WTO agreements, regional agreements must complement WTO agreements and provide even more liberalization of trade than the global agreements. The ASEAN agreements meet this criterion.<sup>54</sup>

- **Six of the ten ASEAN members have signed agreements that promote and protect investments.** The six are Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand. Like NAFTA, this agreement provides that compensation be obligatorily paid to investors for "expropriation, nationalization or any measure equivalent thereto." The definition of investment is broad; it includes intellectual property, and unlike NAFTA, intellectual property expropriation is not excluded from the mandatory compensation provision.<sup>55</sup> A more recent 1998 agreement seeks to further encourage investment throughout the region "through a more liberal and transparent investment environment by 1st January 2010."<sup>56</sup> If a tobacco company with offices or factories in one of the six countries party to these agreement, say, Singapore, had approval to sell its Singapore-made cigarettes in another country, Malaysia for example, and were to subsequently find its sales of cigarettes rapidly declining in Malaysia because Malaysia had implemented tough new tobacco-control measures, it is conceivable that the tobacco company could demand and receive compensation for loss of business from the Malaysian government.

- **The Common Effective Preferential Tariff Scheme, implemented in 1992, is the main vehicle for phasing out tariffs that ASEAN members have been charging to each other.** Tariff reduction is a long process in ASEAN. It is not scheduled to be fully completed until 2017. However, only Laos and Malaysia have chosen to protect their tobacco growing and manufacturing industries from tariff reduction until later stages of the tariff phase-out scheme. With these exceptions, internal tariffs on tobacco within ASEAN will be among the earliest to be phased out. This will have the effect of making

tobacco and tobacco products cheaper and more easily available throughout the region.

- **Tobacco industry expansion in Asia.** Major multinational tobacco companies are expanding their manufacturing operations in ASEAN countries (see Appendix 2). With strong operational bases throughout the region, in Singapore, Indonesia, Malaysia, and most recently, in the Philippines,<sup>57</sup> the multinationals will be able to take advantage of not only global trade agreements but also ASEAN trade and investment agreements to sell more cigarettes more cheaply throughout the region. They may also be able to use regional trade and investment agreements to their advantage to limit the effectiveness of comprehensive tobacco control measures.



## SECTION 3

# Solutions that work – globally and locally

The World Health Organization, the World Bank, the United States Surgeon-General and many governments around the world agree that policies to reduce smoking will only work if they are comprehensive and sustained.

## THE WORLD HEALTH ORGANIZATION'S ANTI-TOBACCO POLICIES

Through the World Health Assembly (WHA), WHO member states have unanimously supported 18 resolutions to reduce tobacco use since 1970.<sup>58</sup>

Through these resolutions, the WHA has repeatedly called for comprehensive tobacco control programmes to be implemented at national and international levels. Several of the resolutions have specified exactly what the elements of a comprehensive tobacco control programme are.

In 2000, both the World Health Assembly (WHA)<sup>59</sup> and the Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control (INB)<sup>60</sup> approved draft elements for a WHO Framework Convention on Tobacco Control. It remains to be determined exactly which of these elements will be retained in an approved and ratified convention, and which will be deemed to be more appropriately carried out exclusively at the national level. Negotiations are expected to last until 2003.

Whether elements are national or international, the draft elements add up to a comprehensive tobacco control programme. In effect, in endorsing the draft elements, WHA and the INB have endorsed the need for comprehensive tobacco control programs, and spelt out quite specifically what is in such programmes. These elements of a framework convention for tobacco control have been preserved in the "Chair's text of a framework convention on tobacco

control."<sup>61</sup> While specific provisions of each element remain to be negotiated, they have been arranged in the following categories in the Chair's text:

### Price and tax measures to reduce the demand for tobacco

- Increasing tobacco taxes.
- Financing tobacco control by spending that is offset by revenues from a portion of taxes on tobacco products.
- Prohibiting tax-free and duty-free sales of tobacco products.

### Non-price measures to reduce the demand for tobacco, including tobacco-use cessation measures

- Eliminating exposure to second-hand tobacco smoke in public places and workplaces, including bars and restaurants.
- Adopting standards for the regulation of the content of tobacco products.
- Regulating tobacco product disclosures.
- Regulating tobacco packaging and labelling in order to effectively discourage tobacco consumption.<sup>62</sup>
- Undertaking effective communication campaigns to inform both smokers and non-smokers of the health risks of tobacco use and the nature of the tobacco industry.
- Prohibiting tobacco advertising, promotion and sponsorship.

- Establishing programs favouring the cessation of tobacco use.

### Measures related to the supply of tobacco

- Eliminating tobacco smuggling.
- Prohibiting sales to youth.
- Licensing tobacco manufacturers, distributors, importers, exporters and retailers.



- Eliminating tobacco subsidies and providing viable economic alternatives to tobacco growing and production.

### Compensation and liability

- Undertaking appropriate measures to ensure that liability and compensation are correctly assigned for the damages that tobacco causes.

### Surveillance, research, exchange of information and scientific, technical and legal cooperation

- Undertaking scientific, technical and legal cooperation to ensure the transfer of tobacco control techniques and resources to countries that need help in strengthening their tobacco control programmes.
- Undertaking information exchange on tobacco control issues with other countries.
- Establishment of a national coordinating authority for tobacco control.
- Ensuring adequate financing for comprehensive tobacco control.
- Undertaking regular surveillance of progress in controlling the tobacco epidemic.
- Undertaking research on ways of reducing tobacco consumption.

These are the key elements of a comprehensive tobacco control programme. Their implementation will touch on many areas of public life and international affairs, not just the health sector. The tobacco industry, other businesses, taxation and trade are among the many areas that will be affected by comprehensive tobacco control. How is the right balance to be achieved? The Director-General of WHO leaves no doubt as to her opinion on this matter:

*"Public health gains for current and future generations should be the compass to guide our decision-making."*<sup>63</sup>

## Footnotes

<sup>58</sup> The first fourteen of these resolutions are reproduced in Annex 1 of the following publication:

*Guidelines for Controlling and Monitoring the Tobacco Epidemic*, (Geneva: World Health Organization, 1998).

The four most recently adopted resolutions on tobacco are:

World Health Assembly Resolution WHA49.16, *Tobacco-or-health programme*, (Geneva: World Health Organization, May, 1996).

World Health Assembly Resolution WHA49.17, *An international framework convention for tobacco control*, (Geneva: World Health Organization, May, 1996).

World Health Assembly Resolution WHA52.18, *Towards a WHO framework convention on tobacco control*, (Geneva: World Health Organization, May, 1999).

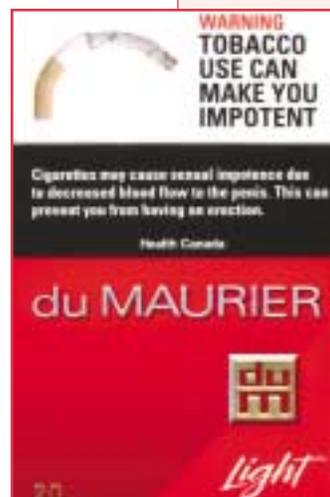
World Health Assembly Resolution WHA53.16, *Framework convention on tobacco control*, (Geneva: World Health Organization, May, 2000).

<sup>59</sup> World Health Assembly Resolution WHA53.16, *Framework convention on tobacco control*, (Geneva: World Health Organization, May, 2000).

<sup>60</sup> International Negotiating Body on the WHO Framework Convention on Tobacco Control. *Proposed draft elements for a WHO framework convention on tobacco control: provisional texts with comments from the working group, A/FCTC/INB/2*, (Geneva: World Health Organization, July 26 2000).

<sup>61</sup> Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control, Second Session. *Chair's text of a framework convention on tobacco control*. Document Number A/FCTC/INB2/2, (Geneva: World Health Organization, January 9, 2001). <http://www.who.int/wha-1998/Tobacco/INB2/anglaisINB2.htm>.

<sup>62</sup> Elimination of the terms "light", "mild" and other similar designations is favoured by many public health organizations and has recently been put forward as part of draft directive on cigarette labelling in the European Union. Already, however, Japanese producers are considering launching a complaint about this measure under international trade agreements, as indicated in this extract from a recent news story.



Many of the very same elements in a comprehensive tobacco control are contained in recommendations contained in a recent World Bank publication.<sup>64</sup> The same ideas are also repeated in a report of the United States Surgeon-General issued in the year 2000.<sup>65</sup> Around the world, public health authorities agree that comprehensive tobacco control programmes, containing most or all of the elements identified and endorsed by the World Health Assembly offer the best hope for sustained tobacco use reduction.

## EXPERIENCE IN EFFECTIVE TOBACCO CONTROL MEASURES

Do comprehensive tobacco control programmes, once implemented, actually work? The answer is a resounding yes. Several lines of evidence converge, leading to this conclusion.

### Experience in Countries That Have Had Comprehensive Programmes for Several Years

There are only a couple of dozen countries that have comprehensive tobacco control programmes embracing most or all of the measures recommended by the World Health Organization. Of these, only a few have had programs in place long enough to accumulate data that permit evaluation of their effectiveness. Data in this regard have been published for four countries, all of which have included a ban on tobacco advertising as part of their comprehensive programme. In these countries, other complementary measures were introduced at the same time as the ban on advertising as well as before and since the ban. Per capita tobacco consumption fell markedly in all four countries since the bans on tobacco advertising, as the following results indicate.

### Econometric Analyses of the Effect of Advertising Bans

Two international econometric studies of the effect of tobacco advertising bans have been reported by the World Bank.<sup>67</sup>

COUNTRY	DATE OF AD BAN	DECLINE IN PER CAPITA CIGARETTE CONSUMPTION
		BY 1996
Norway	1 July 1975	- 26%
Finland	1 March 1978	- 37%
New Zealand	17 December 1990	- 21%
France	1 January 1993	- 14%

Source: Luk Joosens, Improving public health through an International Framework Convention on Tobacco Control, Technical Briefing Series, Paper 2, Catalogue No. WHO/NCD/TFI/99.7 (Geneva: World Health Organization, 1999)

*"A recent study of 22 high-income countries based on data from 1970 to 1992 concluded that comprehensive bans on cigarette advertising and promotion can reduce smoking, but more limited partial bans have little or no effect. If the most comprehensive restriction were in place, the study concluded, tobacco consumption would fall by more than six per cent in high-income countries.*

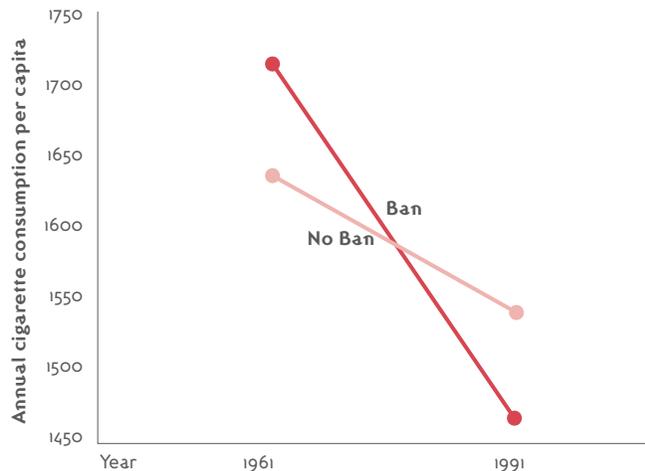
*Another study of 100 countries compared consumption trends over time in those with relatively complete bans on advertising and promotion and those with no such bans. In the countries with nearly complete bans, the downward trend in consumption was much steeper (see figure). It is important to note that, in this study, other factors may have also contributed to the decline in consumption in some countries."*

### Detailed Evaluations of State-Wide Comprehensive Tobacco Control Programmes in Several States of the United States of America

In recent years, comprehensive tobacco control programmes have been mounted in several states of the United States. Programmes running in Minnesota, California, Massachusetts, Arizona, Oregon, Maine, Mississippi, Florida and Texas have been evaluated by the United States Surgeon-General.<sup>69</sup> The following conclusions were reached regarding these programs:

## Comprehensive Advertising Bans Reduce Cigarette Consumption<sup>68</sup>

Trends in weighted cigarette consumption per capita in countries with a comprehensive ban compared with countries with no ban.

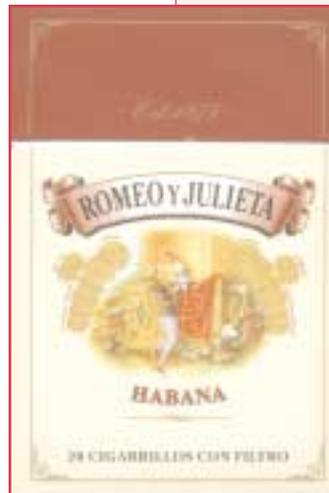


Source: Prabhat Jha and Frank Chaloupka, eds., *Curbing the Epidemic: Governments and the Economics of Tobacco Control*. (Washington: World Bank, 1999).

*"Initial results from the state-wide tobacco control programmes are favorable, especially regarding declines in per capita consumption of tobacco products.*

*Results of state-wide tobacco control programmes suggest that youth behaviours regarding tobacco use are more difficult to change than adult ones, but initial results of these programmes are generally favorable."*

California has had the longest experience with state-wide programmes and an evaluation of the programme was recently published.<sup>70</sup> It has been concluded that the programme was associated with 33,000 fewer heart-disease deaths in California between 1989 and 1997. Budgets were reduced and the effectiveness of the program diminished after 1992. This diminished effectiveness was associated with 8,300 more deaths than would have been expected had the programme been maintained.



"Proposed EU rules against the use of words such as "mild" and "light" on tobacco packaging would exclude two of JT's most popular brands, Mild Seven and Mild Seven Lights, from the 15-nation EU market. "The rules would violate WTO rules, so if they are enacted, we should take the case to the WTO," a senior Japanese Foreign Ministry official said. "EU rules may shut JT cigarette brands out," Japan Times (Sunday, September 3, 2000)

<sup>63</sup> Gro Harlem Brundtland, *Remarks by the WHO Director-General to a WHO International Conference on Tobacco and Health*. Kobe, Japan, 15 November 1999. (Geneva: World Health Organization, 1999). [http://www.who.int/director-general/speeches/1999/english/19991115\\_kobe.html](http://www.who.int/director-general/speeches/1999/english/19991115_kobe.html)

<sup>64</sup> Prabhat Jha and Frank Chaloupka, eds., *Curbing the Epidemic: Governments and the Economics of Tobacco Control* (Washington: World Bank, 1999).

This review concludes with recommendations that governments adopt a multi-pronged strategy, aimed at deterring children from smoking, protecting non-smokers, and providing all smokers with information about the health effects of tobacco.

Elements of the strategy recommended for national governments are:

- Raising taxes, using as a yardstick the rates adopted by countries with comprehensive tobacco control policies where consumption has fallen. In these countries, tax accounts for two-thirds to four-fifths of the retail price of cigarettes.
- Publishing and disseminating research results on the health effects of tobacco, adding prominent warning labels to cigarettes, adopting comprehensive bans on advertising and promotion, and restricting smoking in workplaces and public places.
- Widening access to nicotine replacement and other cessation therapies.

The World Bank recommended that United Nations agencies should:

- Review their existing programs and policies and give tobacco control due prominence
- Sponsor research into the causes, consequences, and costs of smoking, and the cost-effectiveness of interventions at the local level.
  - Address tobacco control issues that cross borders, including working with the WHO's proposed Framework Convention for Tobacco Control to:
    - facilitate international agreements on smuggling control;
    - advance tax harmonization to reduce smuggling;
    - ban advertising and promotion in the global media.

## The Importance of Innovation

Several tobacco control initiatives were pioneered in jurisdictions that opted to 'try something new' in the public campaign against smoking. Their experiences provided evidence that such measures worked, and provided the evidentiary basis for other countries to follow suit. Examples of such leadership can be found in:

### Norway's 1975 ban on tobacco advertising

Norway was one of the first countries to effectively ban tobacco advertising.<sup>71</sup> Without the Norwegian example, implementation of this sound public health measure could have been delayed even longer in other countries.

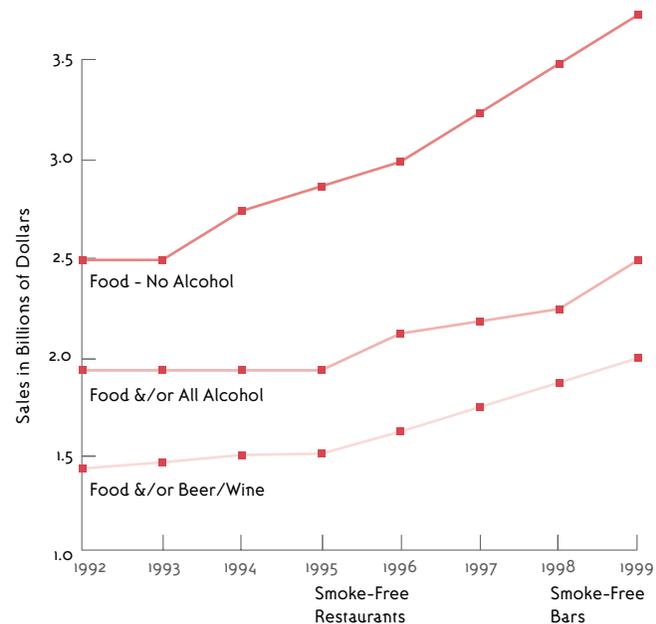
### Smoke-free flying

Air Canada introduced trial smoke-free short-haul domestic flights in the mid-1980s. Smoke-free flights were extended to all domestic flights soon thereafter. However, Canada recognized that domestic bans on smoking on board aircraft would not survive unless smoke-free flights became the international norm. Canada became a strong advocate of smoke-free international flight. In 1992 the International Civil Aviation Organization adopted a resolution calling for smoke-free international flight within five years.<sup>72</sup> Now, nearly all flights in the world are smoke-free. It would not have happened as soon as it did, and perhaps not at all, without regulatory innovation by Canada at the national and international levels.

### Government litigation against tobacco companies

In the mid-1990s, a handful of states in the USA, led by Mississippi, filed suits against the tobacco industry claiming compensation for extra health care costs due to tobacco use.<sup>73</sup> Many public health benefits resulted, and many more jurisdictions around the world are now claiming compensation from the tobacco industry as a result of innovation in tobacco litigation in the United States.

## Sales Revenues in California Bars and Restaurants



Source: First quarter taxable sales figures for restaurants and bars, State of California 1992 to 1999 California Department of Health; California Board of Equalization.

### California's ban on smoking in all workplaces, including bars and restaurants

California was one of the first jurisdictions to ban smoking in all workplaces, including bars and restaurants. Banning smoking in bars and restaurants proved to be especially contentious. Clear evidence from California shows that bar and restaurant revenues from sales of both food and alcohol increased after smoking was banned in restaurants in 1995 and increased again in 1998 after the ban on smoking was extended to bars.

### British Columbia's 1998 required disclosure of all tobacco ingredients and constituents of tobacco smoke

British Columbia, Canada's westernmost province, now requires tobacco companies to report amounts of 44 toxic chemicals in mainstream and sidestream smoke.<sup>74</sup> BC's innovation is encouraging other jurisdictions to consider similar regulatory requirements.

## Canada's health warnings that include photographs and occupy 50% of the front and back of the package

Canada has recently broken new ground with warnings on cigarette packages that occupy 50% of both the front and back of cigarette packages and include photographs or other graphic images. Information on smoking cessation is included inside the package.<sup>75</sup>

## Poland's innovative health warnings

Poland was the first country in Central Europe to implement prominent health warnings on packages. They did so in the mid-1990s.<sup>76</sup> Poland's initiative may have provided some motivation for neighbouring countries in Western Europe. Following Poland's initiative, the European Union is now considering revisions to its laws to make warnings more prominent in all 15 European Union countries.

## Singaporean innovation in tobacco control

Singapore has a long history of innovation in tobacco control, beginning with a partial ban on tobacco advertising in 1971. Other elements of a comprehensive tobacco control programme have been gradually added over three decades. Now, Singapore has one of the most comprehensive tobacco control programs in the world, and very low smoking rates – 27% among men and 3% among women.<sup>77</sup>

## Thailand's Tobacco Products Control Act and ingredient disclosure regulations

Thailand was one of the first countries in the world to create legislative authority to regulate the composition of tobacco products for public health purposes. It did so in its 1992 Tobacco Products Control Act. Attempts to adopt ingredient disclosure regulations under the law, however, met with stiff opposition from the tobacco industry, Japan, the United States, and the European Union.<sup>78</sup> Thailand withstood the challenges from abroad, but it was six long years before regulations were adopted. Innovation in tobacco control is a laudable activity to improve public health. Though public health authorities may praise innovation in tobacco control, it is subject to challenge and criticism under international trade regimes, as Thailand has learned.

<sup>65</sup> U.S. Department of Health and Human Services. *Reducing Tobacco Use: A Report of the Surgeon-General* (Atlanta, Georgia: U.S. Department of Health and Human Services, Centres for Disease Control and Prevention, National Centre for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2000).

The report identifies the following as key elements of an effective tobacco control strategy.

- Educational strategies.
- Pharmacological treatment of nicotine addiction, combined with behavioural support.
- Regulation of advertising and promotion.
- Clean air regulation and restriction of minors' access to tobacco products.
- An optimal level of excise taxation on tobacco products that will reduce the prevalence of smoking and the consumption of tobacco.

<sup>66</sup> Luk Joossens, *Improving public health through an International Framework Convention on Tobacco Control*, Technical Briefings Series, Paper 2, Catalogue No. WHO/NCD/TFI/99.7 (Geneva: World Health Organization, 1999).

<sup>67</sup> Prabhat Jha and Frank Chaloupka, eds., *Curbing the Epidemic: Governments and the Economics of Tobacco Control*. (Washington: World Bank, 1999): p.50.

<sup>68</sup> The analysis covers 102 countries, with or without a comprehensive ban on tobacco advertising, in relation to changes in cigarette consumption data per adult aged 15 to 64, weighted by population, between 1980-82 and 1990-92. Countries with comprehensive bans start at a higher consumption level than the non-ban group, but end the period with a lower consumption rate. The change is due to a faster decrease in consumption for the ban group than the non-ban group.

<sup>69</sup> U.S. Department of Health and Human Services, *Reducing tobacco use: a Report of the Surgeon-General* (Atlanta, Georgia: U.S. Department of Health and Human Services, Centres for Disease Control and Prevention, National Centre for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2000).

<sup>70</sup> C.M. Fitchenberg and S.A. Glantz, "Association of the California Tobacco Control Program with declines in cigarette consumption and mortality from heart disease," *New England Journal of Medicine* 343 (2000): 1772-1777.

<sup>71</sup> Kjell Bjartveit, "Fifteen Years of Comprehensive Legislation: Results and Conclusions," in *Tobacco and Health 1990 – The Global War: Proceedings of the Seventh World Conference on Tobacco and Health*, 1<sup>st</sup>-5<sup>th</sup> April 1990, eds. Betty Durston and Konrad Jamrozik (Perth, Australia: Health Department of Western Australia, 1990).

<sup>72</sup> "Smoking Restrictions on International Passenger Flights," Resolution A29-15, 29<sup>th</sup> Assembly of the International Civil Aviation Organization

## SECTION 4:

# How international trade agreements can affect key tobacco control policies

The national and international measures endorsed by the World Health Organization and the Intergovernmental Negotiating Body on the Framework Convention on Tobacco Control (FCTC) set a comprehensive agenda for action to reduce smoking, but a country trying to implement these measures may find itself forced to defend them before a trade tribunal.

The existence of a broad consensus on the harm attributable to tobacco amongst important international organizations including the WHO and the World Bank may assist in any future dispute settlement processes.<sup>79</sup> Nonetheless, the essential components of effective tobacco programmes may provide the basis for trade-based challenges or may be made more difficult by international economic policies. Such measures can be undone through official WTO rulings. They can also be blocked by governments being dissuaded or discouraged by threats of trade action.

## PRICE AND TAX MEASURES TO REDUCE THE DEMAND FOR TOBACCO

### Raising Prices Through Taxation of Tobacco Products

The Thai cigarette case upheld the right of countries to impose taxes on tobacco products, but did not allow different types of cigarettes to be taxed differently.

In some countries, taxes are currently applied differently to different tobacco products for historical and political reasons (Indian bidis, for example, are not taxed by the national government, while manufactured cigarettes are). If challenged, India

could be forced to harmonize taxes between bidis and western cigarettes – even though the political and economic realities would result in cheaper cigarettes, not more expensive bidis.

There are other reasons that public health authorities might want to implement differential tax rates on different types of tobacco products. Lower taxes on types of tobacco thought to be less harmful (as some believe nitrosamine-free tobacco or nicotine-free cigarettes might be)<sup>81</sup> could be part of a strategy to reduce the harm caused by smoking.

In numerous WTO cases involving alcohol products, similar tax differentials have been consistently struck down and quite different types of alcohol have been found to be “like” products for trade purposes.<sup>82</sup> Strategies for alcohol control such as minimum price requirements, price mark-ups, and an environmental tax on aluminium beer cans have been successfully challenged. Trade tribunal decisions that all alcohol products are “like” each other have also prevented differential regulations regarding domestic and foreign types of alcohol products, and have resulted in countries being required to open their markets to the foreign products. For example, vodka was deemed “like” the traditional Japanese liquor shochu, and Japan was further required to open its market to gin, rum, brandy, whisky and other imported spirits.<sup>83</sup>

### Banning Imports of Foreign Tobacco Products

Health authorities may correctly identify that foreign brands pose a different level of public health risk than less attractive domestic brands. They may even have some evidence that local cigarettes are less likely to be smoked, are less addictive or otherwise less harmful. Banning the import of foreign cigarettes could be a reasonable health measure in such circumstances. The decision on the Thai cigarette case (see across) demonstrates that this option is not available under the WTO regime.



## THAILAND, TOBACCO AND GATT

*In the late 1980s, the U.S. government began to pressure Japan, South Korea, Taiwan and Thailand to reduce barriers to importing cigarettes, threatening trade sanctions under U.S. law. Japan, South Korea and Taiwan, China bowed to U.S. demands, but Thailand held firm. The U.S. challenged both Thailand's refusal to allow cigarette imports and its ban on cigarette advertising at GATT. Thailand defended its ban by appealing to the GATT exception for measures that are necessary to protect human health (Article XX(b)). The panel rejected Thailand's argument and ruled that imports of U.S. cigarettes should be allowed. The panel did uphold Thailand's right to ban advertising, and impose taxes, price restrictions, and labelling requirements (GATT 1990). Following the GATT decision, Thailand allowed the importation of U.S. cigarettes; a U.S. study conducted afterwards found that this resulted in a 10% higher smoking rate.<sup>80</sup> The panel decision makes it clear that, under current international trading rules, tobacco control policies must apply equally to foreign and domestic tobacco products, and that foreign and domestic cigarettes must be treated as "like" products.*

## State Monopolies

The GATT requires that monopolies and state enterprises conduct purchases and sales without discriminating against private sector importers and exporters (GATT XVII) and that they buy and sell on a commercial basis (GATT XVII (1b)). It also restricts use of "mark-ups" on imported products to protect domestic producers (GATT II (4)). NAFTA prohibits discrimination between foreign and domestic investors in purchase and sale of the monopoly good (NAFTA 1502 (3c)) and "anticompetitive practices" that adversely affect a foreign investor (NAFTA 1502(3d)). These restrictions limit the options for countries that may wish to use state monopolies to restrict market penetration by the large tobacco companies, with their accompanying advertising and price-lowering advantages.<sup>84</sup>



(Montreal: International Civil Aviation Organization, 1992).

<sup>73</sup> Graham Kelder and Patricia Davidson, "The Multistate Master Settlement Agreement and the Future of State and Local Tobacco Control: An Analysis of Selected Topics and Provisions of the Multistate Master Settlement Agreement of November 23, 1998" (Boston: Northeastern University School of Law, The Tobacco Control Resource Centre, March 24, 1999), [http://www.tobacco.neu.edu/msa/msa\\_analysis.pdf](http://www.tobacco.neu.edu/msa/msa_analysis.pdf)

<sup>74</sup> Lists of toxic substances by brand of cigarette are posted on the British Columbia Department of Health website. <http://www.hlth.gov.bc.ca/ttdr/pdf/sc.html>

<sup>75</sup> All sixteen exterior warnings and all interior messages in use can be viewed at the website <http://www.infotobacco.com>. Regulations require that this website address be included as part of every interior package message.

<sup>76</sup> Mary Ann Corrao, G. Emmanuel Guindon, Namita Sharma, Dorna Fakhrabadi Shokoohi, eds. *Tobacco Control Country Profiles*, (Atlanta, Georgia: American Cancer Society, 2000), p. 488.

<sup>77</sup> See: Alan D. Lopez, Neil E. Collishaw, and Tapani Piha, "A Descriptive Model of the Cigarette Epidemic in Developed Countries," *Tobacco Control* 3 (1994): 242-247, and Mary Ann Corrao, G. Emmanuel Guindon, Namita Sharma, Dorna Fakhrabadi Shokoohi, eds. *Tobacco Control Country Profiles*, (Atlanta, Georgia: American Cancer Society, 2000), pp. 424-5.

<sup>78</sup> Hatai Chitanondh, "Tobacco Industry Response to Ingredient Disclosure Law," (Paper presented at WHO Meeting *Advancing Knowledge on Regulating Tobacco Products*, Oslo, 2000).

<sup>79</sup> The international consensus may provide support for measures for which the defence of "necessity" for the protection of human health is invoked. The defence of such measures as "necessary" to protect health may depend on the basis of the challenge, and may not be available in all cases.

<sup>80</sup> Frank Chaloupka and Aditi Laixuthai, "U.S. Trade Policy and Cigarette Smoking in Asia," Working Paper 5543, (Cambridge, Massachusetts: National Bureau of Economic Research, 1996).

## Maintaining Tobacco Tariffs

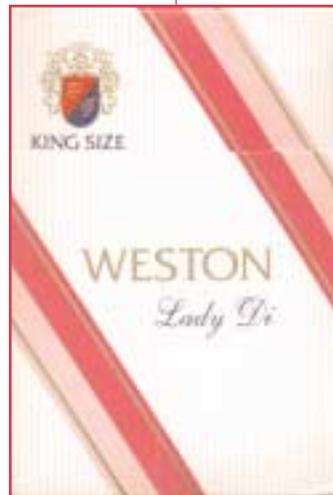
Since the General Agreement on Tariffs and Trade was first adopted in 1947, a major goal of trade liberalization had been to reduce and eventually eliminate all tariffs. Tariffs have long been recognized as a source of economic inefficiency, leading to high prices and shortages of supply. Removing tariffs leads to a more plentiful supply of goods at lower prices. This general economic observation applies equally well to tobacco.<sup>85</sup>

However, countries with existing tariffs on imported tobacco products may well wish to maintain such tariffs as a public health strategy, because shortages of supply, fewer brand choices and higher cigarette prices all serve to dampen cigarette consumption.

All over the world, however, cigarette tariffs are rapidly disappearing as countries rush to embrace free trade in tobacco products, even at the expense of public health. The World Trade Agreements set forth specific programmes of tariff reduction, including tobacco tariff reduction. Some regional trade agreements, like those of ASEAN nations, require accelerated tariff reduction.<sup>86</sup>

## Economic Alternatives

Governments may wish to implement measures to encourage tobacco farmers to move to other economic activities. If these measures give preference to domestic enterprises over foreign enterprises, they could be subject to a trade challenge. For example, Canada provided subsidies to tobacco farmers to engage in alternative economic enterprises in the late 1980s. Other payments were made to encourage some tobacco farmers to leave the tobacco growing business.<sup>87</sup> In the 1980s, neither of these measures was challenged as being contrary to international trade agreements. Were similar measures to be implemented today, they could well be subject to challenges under regional and global trade agreements.



## Voluntary Codes and Other Administrative Arrangements

Many Ministers of Health have reached agreements with tobacco companies that cigarette marketing and sales will be governed by a “voluntary agreement.” A more recent development in such arrangements can be seen in the “master settlement” reached between the attorneys general of U.S. states and tobacco companies operating in the United States in 1999. In return for the state governments’ dropping their lawsuits against the companies, the companies agreed to make financial payments, to disband some of their lobbying efforts, and to curtail their advertising. There are no tobacco billboards in the entire United States – despite the absence of any law banning them.

Such administrative arrangements offer great potential to governments, but their ability to withstand challenge has not been tested. Companies that are not party to a legal settlement (as Reemstma is not party to the U.S. Master Settlement), or companies that are not members of trade associations are not bound by these agreements. Should Reemstma decide to promote WEST cigarettes in the United States, attempts to prevent it from doing so could be held to be a barrier to trade.

## NON-PRICE MEASURES TO REDUCE THE DEMAND FOR TOBACCO, INCLUDING TOBACCO USE CESSATION MEASURES

### Competition in the Non-Profit Sector

GATS provides no preferential treatment for voluntary agencies over commercial service providers. Each is entitled to equal treatment so that commercial interests might challenge and demand any preferences – including subsidies – made available to the non-profit sector for health promotion, education or smoking cessation programs.

Thus, a national lung association might find itself replaced as provider of nationwide smoking cessation services by a foreign commercial enterprise. Governments may find it increasingly difficult to favour domestic non-governmental organizations over foreign commercial enterprises for delivering health promotion and smoking cessation services.

## "Standards" for Tobacco Products and Exposure

Many proposals have recently been made on ways to reduce the harmful effects of cigarettes by setting maximum levels of tar<sup>88</sup>, nitrosamines<sup>89</sup> or nicotine<sup>90</sup> or by requiring that cigarettes be self-extinguishing and thus "fire-safe."<sup>91</sup> Laws and regulations to enact tobacco control are technical standards within the WTO and NAFTA chapters on Technical Barriers to Trade, and will be challengeable under the TBT and other WTO provisions. Fire-safe cigarettes and regular cigarettes, for example, would likely be viewed as "like" products by WTO panels, which could then insist on the least-trade restrictive measure of reducing cigarette harm. Consumer warnings might be required as a substitute for product regulation as they are less trade-restrictive.

Similarly, banning smoking in public places like restaurants or buses affects services under the jurisdiction of the GATS. These public health protection measures can be challenged as "non-tariff barriers to trade."

## Controls on Tobacco Products: Health Warnings and Packaging

Intellectual property and investment agreements can provide limits to intended governmental controls on tobacco packaging as Canada learned when the federal government considered requiring plain (generic) packaging of cigarettes.



<sup>81</sup> Several proposals for making cigarettes "less harmful" have been suggested. These include: reducing selected chemicals in the smoke (like nitrosamines or benzo-a-pyrene), reducing nicotine in the smoke, making the cigarettes harsher and thus harder for children to smoke. There is as yet no scientific consensus.

<sup>82</sup> Jim Grieshaber-Otto, Scott Sinclair, and Noel Schacter, "Impacts of international trade, services, and investment treaties on alcohol regulation," *Addiction* (December 2000): 491-504

<sup>83</sup> "Japan – Taxes on Alcoholic Beverages," WT/DS 10/R; WT/DS11/R; WT/DS8/R. (Geneva: World Trade Organization, 1996).

<sup>84</sup> Jim Grieshaber-Otto, Scott Sinclair, and Noel Schacter, "Impacts of international trade, services, and investment treaties on alcohol regulation," *Addiction* (December 2000): 491-504

<sup>85</sup> Allyn Taylor, Frank Chaloupka, Emmanuel Guindon, and Michaelyn Corbett. "The Impact of Trade Liberalization on Tobacco Consumption," in *Tobacco Control in Developing Countries*, eds. Prabhat Jha and Frank Chaloupka, (Oxford: Oxford University Press, 2000), pp. 343-364.

<sup>86</sup> Association of South East Asian Nations. *Framework Agreement on the ASEAN Investment Area* (7 October 1998). [http://www.asean.or.id/economic/fwagr\\_aia.htm](http://www.asean.or.id/economic/fwagr_aia.htm).

<sup>87</sup> Agriculture Canada, "Evaluation of the Tobacco Diversification Plan (Tobacco Transition Adjustment Initiative and Alternative Enterprise Initiative) Executive Report," (Ottawa: Agriculture Canada, Audit and Evaluation Branch, Program Evaluation Division, 1990).

<sup>88</sup> Such as current recommendations of the European Parliament for maximum tar levels of 12mg.

<sup>89</sup> John Slade quoted in "Tobacco Capital Cannot Even Innovate," *New Scientist*, (March 6, 2000).

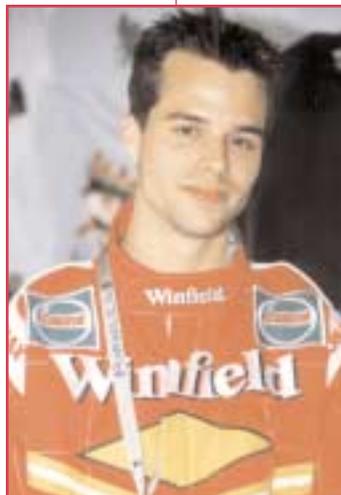
<sup>90</sup> Jack Henningfield et al., "Reducing the Addictiveness of Cigarettes," *Tobacco Control* 7 (1998): 282-293.

<sup>91</sup> New York Governor Pataki signed into law legislation making New York the first State to require all cigarettes to be "fire safe." "Governor Pataki Signs Historic Fire Safe Cigarette Bill Into Law," Press Release. (August 17, 2000).

<sup>92</sup> Carla Hills, "Legal Opinion with Regard to Plain Packaging of Tobacco Products Requirement Under International Agreements," prepared for R.J. Reynolds Tobacco Company and Philip Morris International Inc. (May 3, 1994).

The tobacco industry commissioned and delivered in Ottawa a legal opinion by Carla Hills, former U.S. Trade Representative,<sup>92</sup> that requiring generic packaging would deprive the owners of their entitlements under NAFTA and WTO. Trademarks would be "encumbered" by "special requirements" on their use. She argued that plain packaging would thus entitle the cigarette company to pursue sanctions through a WTO trade panel at the behest of its government, the United States. She also warned that the tobacco companies could launch an independent challenge under NAFTA, which provides for direct lawsuits by investors against governments in a number of circumstances. It is unclear what effect Carla Hill's opinion had on tobacco policy formulation in Canada. Nevertheless, shortly after her opinion was presented, the Canadian government quietly dropped its plain-packaging initiative.

Regulations requiring health warnings and other smoking-deterrent messages such as graphic images on tobacco packaging are technical regulations and standards within the Agreement on Technical Barriers to Trade of both NAFTA (Chapter 9) and the WTO Agreements (TBT). Both agreements seek to further the harmonization of standards in all countries and to discourage domestic standards, which affect trade in products differently in various markets. Although they are subject to the "General Exception" which permits regulations for protection of human health, the weakness of the exception was evident in the Thai cigarette case. The possibility exists that if such regulations were challenged by the government of a foreign tobacco producer, trade panellists could substitute their opinion for that of domestic legislators on whether such packaging requirements "have the effect of creating unnecessary obstacles to international trade," (TBT Article 2.2) and whether, if they were found to do so, they could be defended as necessary for the protection of human health.



## Elimination of Direct and Indirect Tobacco Advertising, Promotion and Sponsorship

Advertising bans or other restrictions on advertising services and/or the use of tobacco trademarks could run up against several trade provisions, including multilateral agreements on services, and regional agreements on intellectual property and investment.

### Tobacco advertising is a "service" governed under GATS

Some elements of the GATS bind all WTO members and all service sectors (most favoured nation) while others (national treatment, market access) only apply to those sectors listed by each individual country in a schedule to the agreement. For example, a country that agrees to open its borders to advertising would be required to treat foreign advertising agencies providing tobacco advertisements over the Internet with rights equal to domestic advertisers although the foreign ones cannot be effectively regulated under the recipient country's laws regarding the content of their advertisements.

Various measures that could be used to control tobacco marketing, such as wholesale and retail licensing, controls on vending machines, restrictions on sales to children, and prohibitions against "kiddie packs", are all examples of provisions that could potentially be subject to challenge under one or more provisions of GATS.

Under GATS, countries retain the maximum authority to regulate those sectors in which they have listed no commitments.

Significant difficulties and uncertainty exist regarding service classifications, which form the basis of administration of the GATS, and countries may find that service sectors that they had intended to protect from progressive liberalization may be affected by the unforeseen breadth of a specified classification, or overlapping ones.

## Benson & Hedges Coffee Houses – a food service or an advertising service?

The advertisement and establishment of 'Benson and Hedges' Coffee Houses and Salem Cool Planet record stores (that currently exist in Malaysia) might fit within classifications of advertising services, food services or tobacco promotion. Tobacco-branded services, such as coffee houses, record stores and travel agencies, are an emerging form of brand-stretching, and are used in Eastern Europe and Asia to escape advertising restrictions on direct promotion of cigarettes.<sup>93</sup>

Such GATS obligations can be used to override protections that governments thought they had negotiated, as actually happened in the Canadian magazines case.<sup>94</sup>

Under GATS, countries must ensure that their domestic regulations (including those to control tobacco) are "not more burdensome than necessary to ensure the quality of the service."<sup>95</sup> This standard invites WTO trade panellists to review, from a strictly commercial perspective, domestic regulations that affect services. They may then substitute their judgement for that of advocates and legislators regarding whether regulations that are otherwise consistent with the trade agreements nevertheless are more "burdensome" to industry than other approaches (or no regulation) that the industry might prefer.

TRIPs may be used to challenge restraints on marketing as unjustified restrictions on the use of trademarks. The 1990 GATT decision upholding Thailand's ban on cigarette advertising gave comfort to some that future WTO panels would support bans on cigarette advertising.<sup>96</sup> This GATT ruling, however, predated the GATS and did not address the newer TBT requirements to harmonize with international standards. The overlapping authorities of GATS and GATT may result in unexpected vulnerabilities to trade challenge, and it is not clear whether Thailand's ban on advertising would survive a renewed challenge under GATT or GATS.

<sup>93</sup> The tobacco trade report, *World Tobacco File*, cites the Benson and Hedges coffee brand as a "possible strategy to circumvent advertising bans elsewhere." *World Tobacco File* 1998. (United Kingdom: International Trade Publications, 1998), p. 1255.

<sup>94</sup> "Canada – Certain Measures Concerning Periodicals, Report of the Appellate Body, 30.06.97," WT/DS31/AB/R, " (Geneva: World Trade Organization, 1997).

In response to Time Warner's electronic transmission of Sports Illustrated into Canada, designed to evade Canadian regulations on split-run magazines, Canada instituted an 80 % excise tax on advertising in the split runs, and provided lower postal rates and subsidies to Canadian magazines. These measures were designed by trade officials to be consistent with the WTO rules.

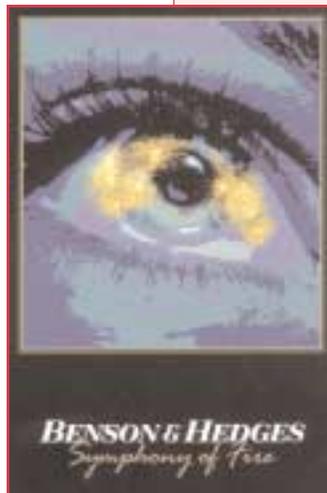
Canada had made no commitment to liberalize advertising services and, when challenged at the WTO, argued that the excise tax related to the service of advertising and could be maintained. However, the panel found that the rules on trade in services and trade in goods are "overlapping" and being inconsistent with the rules on goods, the excise tax was not permissible. Nor were the postal subsidies. In response to US pressures, Canada opened the market to split-run magazines and reduced limits on foreign ownership in Canadian publishing. The case illustrates the complexity and comprehensiveness of the WTO agreements, and the care that governments must exercise to protect their jurisdiction to regulate for public health goals.

See: Scott Sinclair, "GATS: How the World Trade Organization's New 'Services' Negotiations Threaten Democracy, (Ottawa: Canadian Centre for Policy Alternatives, 2000).

<sup>95</sup> GATS Article VI.

<sup>96</sup> Allyn Taylor, Frank Chaloupka, Emmanuel Guindon, and Michaelyn Corbett. "The Impact of Trade Liberalization on Tobacco Consumption," in *Tobacco Control in Developing Countries*, eds. Prabhat Jha and Frank Chaloupka, (Oxford: Oxford University Press, 2000), pp. 343-364.

<sup>97</sup> Hatai Chitanondh., "Tobacco Industry Response to Ingredient Disclosure Law," (Paper presented at WHO Meeting *Advancing Knowledge on Regulating Tobacco Products*, Oslo, 2000).



## Innovation in Tobacco Control

As noted, progress can be made in tobacco control through innovative action at the national level. But implementing innovative national policies can be extraordinarily difficult at the national level, as Thailand found when it tried to require disclosure of cigarette ingredients.

Thailand's Tobacco Product Control Act, adopted in 1992, created regulatory authority to control tobacco product composition and require ingredient disclosure. Tobacco industry lobbying, both directly and through Japanese, European and American governments, delayed implementation of the regulation until 1998. During that period, there were twenty-two instances of lobbying by tobacco industry or government representatives to seek to have the regulation quashed.<sup>97</sup> Reasons cited included possible violations of TBT and TRIPS agreements. In the end, however, the regulation was adopted and tobacco companies have complied with it. To date, no formal trade challenge to the regulation has been launched.

One wonders how many other countries can maintain their innovative public health measures in the face of multiple and repeated threats of trade challenges, when such threats come from powerful sources like multinational tobacco companies, Japan, the United States and the European Union.

Thailand was threatened with trade challenges under TRIPS and TBT for undertaking an effective, innovative tobacco control measure. It is a risk that other countries may also face when they seek to innovate in tobacco control. But failure to innovate carries risks too – risks to public health. Innovation in tobacco control programs and regulation is a key source of improved tobacco control and greater public health protection. The chilling effect of industry lobbying and potential trade actions may be most strongly felt when new and innovative approaches to tobacco control are proposed.



## Summary, conclusions and action points

### SUMMARY AND CONCLUSIONS

Although the launch of a comprehensive round of expanded negotiations of the WTO, planned for Seattle in December 1999, did not occur, the “built-in” agenda of the WTO mandated on-going negotiations of agriculture and services trade, and these are now in preparation. Concurrent negotiations for increased trade liberalization through regional agreements (such as the proposed Free Trade Area of the Americas and recent trade liberalization agreements in ASEAN countries) suggest that trade agreements will play an increasingly important role in the setting of public policy.

Given the broad reach of the trade agreements, and the variety of potential barriers they pose to tobacco control policies, it is essential that those charged with negotiating international instruments resolve the current conflict between tobacco control and trade liberalization by ensuring that national and international measures to curb tobacco are not undermined by obligations under commercial trade agreements.

Negotiations currently underway through the WHO towards a Framework Convention on Tobacco Control and through the WTO for a new services agreement provide an opportunity to balance and enrich global rule-making. New rules can be created in a thoughtful and coordinated way to promote coordinated, balanced improvements in both global public health and the global economy

No longer do global trade and global public health rules need to be negotiated in isolation from each other, nor do we need to face the spectre of public health rules being undermined by international trade regimes.

Global tobacco control can be achieved while preserving and

enhancing harmony between global public health and the global economy. But it can happen only if everyone contributes to the effort. Member states, Ministers of Trade and Health, and other participants at the Intergovernmental Negotiating Body for the FCTC all have to play their part.

Clearly, trade issues that impact on tobacco control need to be addressed. How countries will approach these issues will be determined by their particular circumstance vis-à-vis tobacco agriculture, manufacture and trade, and membership in subregional, regional and global trade agreements. As negotiations for the FCTC proceed, sensitive issues will be highlighted, providing a venue for creative discourse. While it may be premature to propose specific recommendations to resolve the conflict between trade liberalization and tobacco control, Member States would benefit by assessing their current situation in relation to tobacco trade. Several trade agreements have clauses that refer to products posing a risk to human health. Member States could begin by examining their existing trade agreements for these provisions, and considering how these provisions could apply to tobacco and tobacco products. Subregional or regional meetings could be organized around this topic to allow countries to fully explore and develop the various options available to them.

In the meantime, efforts to establish the strongest possible Framework Convention on Tobacco Control need to continue. Support from Member states is crucial to ensure that the FCTC is presented to and adopted by the World Health Assembly as soon as possible. At the same time, member states need to develop and implement comprehensive domestic tobacco control measures.

## Action Points for Member States

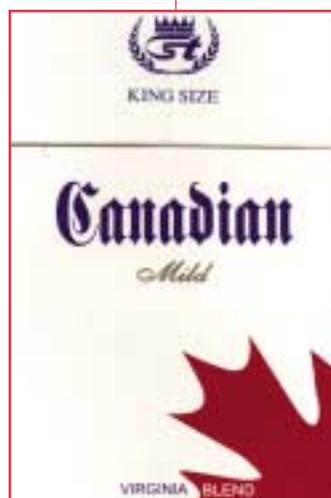
Member states should adopt comprehensive national tobacco control measures as recommended by the World Health Organization. Establishment of a national authority to coordinate tobacco control efforts is critical to assure the success of these measures. Such measures, currently being discussed by the Intergovernmental Negotiating Body, would include:

### Price and tax measures to reduce the demand for tobacco

- Increasing tobacco taxes and financing tobacco control by spending that is offset by revenues from a portion of taxes on tobacco products.
- Prohibiting tax-free and duty-free sales of tobacco products.

### Non-price measures to reduce the demand for tobacco, including tobacco-use cessation measures

- Eliminating exposure to second-hand tobacco smoke in public places and workplaces, including bars and restaurants.
- Adopting standards for the regulation of the content of tobacco products and regulating tobacco product disclosures.
- Regulating tobacco packaging and labelling in order to effectively discourage tobacco consumption.
- Undertaking effective communication campaigns to inform both smokers and non-smokers of the health risks of tobacco use and the nature of the tobacco industry.
- Prohibiting tobacco advertising, promotion and sponsorship.
- Establishing programmes favouring the cessation of tobacco use.



## Measures related to the supply of tobacco

- Eliminating tobacco smuggling.
- Prohibiting sales and marketing to youth.
- Licensing tobacco manufacturers, distributors, importers, exporters and retailers.
- Eliminating tobacco subsidies and providing viable economic alternatives to tobacco growing and production.

## Compensation and liability

- Undertaking appropriate measures to ensure that liability and compensation are correctly assigned for the damages that tobacco causes.

## Research and surveillance

- Undertaking research on tobacco control and regular surveillance of progress in controlling the tobacco epidemic.
- Undertaking scientific, technical and legal cooperation with other countries on tobacco control issues.
- Ensuring adequate financing for comprehensive tobacco control.

## ACTION POINTS FOR MINISTERS OF TRADE, HEALTH AND OTHER MINISTERS

Ministers of Trade and Health and other ministers should enthusiastically work together with their colleagues to ensure that tobacco is effectively controlled, both nationally and internationally, and that trade liberalization measures are never allowed to be impediments to comprehensive, effective national and international tobacco control.



## ACTION POINTS FOR PARTICIPANTS AT THE INTERGOVERNMENTAL NEGOTIATING BODY MEETINGS

Participants at the Intergovernmental Negotiating Body need to ensure a strong Framework Convention on Tobacco Control that emphasizes that public health protection from tobacco is more important than trade in tobacco products. Specifically the Framework Convention needs to do the following:

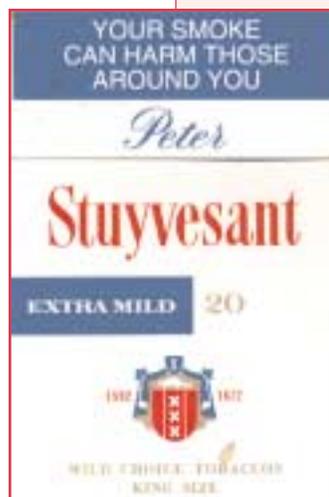
- Assert the importance of good health, and the importance of comprehensive tobacco control as an integral part of health protection, nationally and internationally;
- Assert the importance of the precautionary principle in the application of national and international tobacco control measures;
- Provide strong protection for national comprehensive tobacco control regimes from being weakened by application of international trade law;
- Assert that this convention should not be subordinate to any other international agreement, including trade agreements.

There are many text formulations that could make it possible to achieve these goals. Some that could be included in a "General Provisions" section of the FCTC are:

- Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition. As it is an inherent threat to health, tobacco must be controlled through comprehensive measures the national and international levels.
- It is scientifically certain that tobacco causes many diseases that result in needless disability and

early death. In order to control tobacco, the precautionary principle shall be widely applied by States in their comprehensive tobacco control measures. Lack of full scientific certainty about these measures shall not be cause for postponing effective measures to control tobacco.

- The Parties agree to take all necessary measures to ensure that no person acting on their behalf shall attempt to (a) remove, weaken, undermine or otherwise interfere with tobacco control measures in force or under consideration in another State or (b) promote tobacco product exports or tobacco use in another State.
- In the event of a conflict between this Convention or any of its Protocols and any other international agreement, this Convention and its Protocols shall prevail.



## APPENDIX I

## Smoking in Commonwealth Countries

	% among Men	% among Women	% Survey Year		% among Men	% among Women	% Survey Year
Antigua & Barbuda	*	*		Samoa	58	24	1995
Australia	27.1	23.2	1995	Seychelles	37	6.9	1994
The Bahamas	19	4	1989	Sierra Leone **	18.5		1998
Bangladesh	40	10	1998	Singapore	26.9	3.1	1998
Barbados **	9		1993	Solomon Islands	*	33	1989
Belize §**	31	*	1997	South Africa	42	11	1998
Botswana**	21		1998	Sri Lanka	41	*	1998
Brunei Darussalam	40	14	1979	St Kitts & Nevis	*	*	
Cameroon **	35.7		1994	St Lucia	*		
Canada	27	23	1999	St Vincent & The Grenadines	26.4	3.5	1991
Cyprus	38.5	7.6	1997	Swaziland	24.7	2.1	1994
Dominica	*	*		United Republic of Tanzania	49.5	12.4	1993
Fiji Islands	24	17	1997	Tonga	62.4	14.2	1991
The Gambia	*	*		Trinidad & Tobago §	40	8	1997
Ghana	28.4	3.5	1980	Tuvalu	51	31	1975/81
Grenada	*	*		Uganda	52	17	1995
Guyana §	26	9	1997	United Kingdom	29	28	1996
India ***	45	7	1985/6	Vanuatu	50	10	1990
Jamaica **	14.6		1994	Zambia	35	10	1996
Kenya	66.8	31.9	1995	Zimbabwe	34.4	1.2	1993
Kiribati	82	65	1978/87				
Lesotho	38.5	1	1992				
Malawi	20	9	1996				
Malaysia	49.2	3.5	1996				
Maldives	*	*					
Malta	33.1	14.6	1995				
Mauritius	42	3.3	1998				
Mozambique	*	*					
Namibia	65	35	1994				
Nauru	61	47	1978/87				
New Zealand	26	24	1998				
Nigeria	15.4	1.7	1998				
Papua New Guinea	46	28	1990				

\* Data not available.

\*\* Both sexes.

\*\*\* Smokeless tobacco is widely used in India. In some regions two-thirds of men and half of women use paan and other forms of smokeless tobacco. Smoking prevalence estimates understate total tobacco use in India by a large margin.

Sources:

§ *World Tobacco File* 1998, (United Kingdom: International Trade Publications, 1998). Unless otherwise indicated data are taken from Mary Ann Corrao, G. Emmanuel Guindon, Namita Sharma, Dorna Fakhrabadi Shokoohi, eds., *Tobacco Control Country Profiles*, (Atlanta, Georgia: American Cancer Society, 2000).

**APPENDIX 2****Mergers and acquisitions by major tobacco transnationals since 1990.****Altadis (formerly Seita and Tabacalera)**

Country	Year	Business Venture/Acquisitions	Source
France	1995	Privatized.	1
Poland	1994	Tabacalera enters into trading agreement with Zaklady Przemyslu Tytoniowego in Radom, Poland to manufacture Tabacalera brands under license.	1
Poland	1996	Seita acquires controlling interest in ZPT Radom, Poland's largest cigarette manufacturer.	1
Poland	1997	Seita increases ownership of Polish company ZAPT Radom to 75.5%.	1
Spain, France	1997	Seita and Tabacalera announce joint venture, "Global Tobacco."	1
Global	1998	Altadis acquires Consolidated Cigar, becoming world leader in cigar manufacturing.	12
Finland	1998	Seita founds Seita Tupakka.	12
France	1999	Seita agrees to market Philip Morris and Japan Tobacco brands in France.	12
China	1999	Seita creates 50/50 joint venture with Nanyang Brothers aimed at developing sales in Hong Kong and China.	12
Global	1999	Seita and Tabacalera merge under the name Altadis (thus becoming the 5th largest tobacco group).	2

**Austria Tabak**

Country	Year	Business Venture/Acquisitions	Source
Austria	1997	Privatized.	1
Global	1999	Acquires Swedish Match's cigarette division.	13

**BAT (British American Tobacco)**

Country	Year	Business Venture/Acquisitions	Source
Hungary	1991	Acquires factory at Pecs in Hungary along with major brand Sopiana.	1
Spain	1991	Acquires minority interest in state-company, Tabacalera.	1
Spain	1991	Acquires minority interest in Spanish State company, Tabacalera with Rothmans, Philip Morris and RJ Reynolds.	1
Ukraine	1992	Purchases the Priluki factory.	1
Russia	1994	Acquires 75% stake in the Saratov factory on the Volga River.	2
Russia	1994	Establishes Yava operations in Russia, the largest manufacturer of filtered cigarettes.	1
U.S.	1994	Acquires American Tobacco and its brands Pall Mall, Carlton and Lucky Strike.	2

## BAT (British American Tobacco)

Country	Year	Business Venture/Acquisitions	Source
Uzbekistan	1994	Creates UzBAT.	1
Cambodia	1995	Acquires majority shareholding in joint venture with Cambodian Tobacco Company.	2
Czech	1995	Begins to produce cigarettes in Czech Republic.	1
India	1995	Subsidiary Indian Tobacco Company (ITC) sets up a new plant near Bangalore.	2
Pakistan	1995	Pakistan Tobacco Company (PTC), a subsidiary of BAT diversified into edible oils.	2
Poland	1995	Acquires 33% share of Augustow tobacco factory (majority control obtained later).	1
Romania	1995	Cigarette factory built in Romania.	1
Vietnam	1995	Singapore subsidiary takes license to produce cigarettes in cooperation with a Vinataba's factory.	2
Poland	1996	Acquires 65% of state-owned PWT Augustow Tobacco plant.	2
Romania	1996	Establishes factory in Ploiesti.	2
Russia	1996	Modernizes a tobacco plant in Saratov.	2
Uzbekistan	1996	Constructs a factory in Samarkand and increases its share in the joint venture with UzBAT.	2
Mexico	1997	Acquires Cigarrera La Moderna, Mexico largest cigarette manufacturer for US \$1.7 billion.	1
United Kingdom	1997	De-merges from its financial services division of BAT Industries.	1
Pakistan	1998	Invests more in PTC.	2
Turkey	1998	Announces joint venture with Tekel.	1
Croatia	1999	Acquires a controlling interest, initially owning 80.5%, in Tvornica Duhana Zadar (TDZ).	2

## Gallaher

Country	Year	Business Venture/Acquisitions	Source
Kazakhstan	1997	Built cigarette factory in co-venture with Reemstma.	2
United Kingdom	1997	Is spun off from parent company American Brands, becoming the U.K.'s largest cigarette manufacturer.	1
Germany	1999	Enters into agreement with Reemtsma to sell Benson & Hedges cigarette in Germany.	4
United Kingdom	1999	Purchases business of RJ Reynolds in the United Kingdom.	4
United Kingdom	1999	Enters into agreement with Reemtsma to launch West cigarettes in the United Kingdom.	4
Russia	2000	Acquires Liggett-Ducat Ltd (Russia's largest cigarette manufacturer and distributor) from Vector Group.	4

## Imperial Tobacco

Country	Year	Business Venture/Acquisitions	Source
U.K., Holland?	1998	Acquires Douwe Egberts van Nelle, world's largest producer of RYO tobacco.	1
Australia & New Zealand	1999	Purchases portfolio of cigarette, tobacco and paper brands in Australia and New Zealand (equal to 17% of market share).	6
Spain	1999	Sets up company in Spain as part of strategy of "growth through international expansion."	6
Global	2000	Announces proposed acquisition of German paper & tube company, EFKA group.	6
Global	2000	Acquires Belgium roll your own manufacturers, the 'Baelen Group.'	6

## Japan Tobacco

Country	Year	Business Venture/Acquisitions	Source
United Kingdom	1992	Purchases small U.K. firm, Manchester Tobacco.	2
Japan	1993	Sets up joint venture with French Seita to manufacture Gitanes Blondes cigarettes in Japan.	2
Malaysia	1993	Gives production and marketing right to RJR subsidiary Malaysian Tobacco Company.	2
Global	1999	Purchases RJR Nabisco Holdings international tobacco business for US \$8 billion. With this purchase, JTI obtained 22 RJR International factories operating in 18 countries.	5
Korea	2000	Announces agreement with Korea Tobacco & Ginseng to cooperate on developing and marketing "new product".	5

## Korea Tobacco and Ginseng Corporation

Country	Year	Business Venture/Acquisitions	Source
Korea	1997	Government-owned Korea Tobacco and Ginseng Corp. (KT&G) begins selling shares to the public.	7
Korea	1999	Philip Morris and BAT call for an open bid during proposed privatization of Korea Tobacco & Ginseng. The government states it does not want foreign firms to hold managerial rights.	2
Korea	1999	Stock in KT&G is floated on Korean Stock exchange in October 1999. Domestic and foreign buyers are eligible to buy stocks up to 7% of shares.	7
Korea	2000	Government sells an additional 10% share of KT&G.	8
Korea	2001	Korean government announces that it will sell 20% of its 53% share of KT&G by April 2001, and will continue to hold 3% to 15%.	9

## Liggett

Country	Year	Business Venture/Acquisitions	Source
Russia	1991	Co-venture established, Liggett-Ducat.	1
Russia	1999	Liggett-Ducat cigarette plant opens in Moscow.	2
Russia	2000	Gallaher acquires Liggett-Ducat cigarette plant.	4

## Philip Morris

Country	Year	Business Venture/Acquisitions	Source
Hungary	1991	Acquires controlling interest in Eger plant.	3
Czech Republic	1992	Acquires 30% of Tabak Kutna Hora. (Took full control in 1993).	2
Russia	1992	Establishes office in Moscow to handle growing business in Russia. Agreement announced for construction of a factory in Leningrad in early 1993.	2, 3
China	1993	Cooperation agreement is signed with the China National Tobacco Corporation for the manufacture and sale of certain brands in China.	3
Kazakhstan	1993	Acquires 49% of Kazakhstan's only cigarette producer Almaty Tobacco Kombinat. This was increased to 97% in 1994.	2
Lithuania	1993	Wins tender to buy control of Klaipeda state tobacco company.	2
Russia	1993	Acquires controlling interest in Krasnodar Tobacco Factory.	3
Turkey	1993	New cigarette manufacturing facility commences operations in Torbali, Turkey.	3
Croatia	1994	Croatia's second largest Rovinj Tobacco factory licensed to make Marlboro cigarettes.	2
Ukraine	1994	Purchases a 51% stake in the Kharkov Tobacco Factory.	2
China	1995	Joint venture with Ningbo cigarette factory, China.	1
Malaysia	1995	Constructs its first tobacco processing plant in Asia.	2
Viet Nam	1995	Produces cigarettes in cooperation with a state-owned Viet Nam National Tobacco Corporation (Vinataba) factory in Ho Chi Min City.	2
Indonesia	1996	Acquires 36% stake in Godfrey Philips India Ltd.	2
Kazakhstan	1996	Establishes new factory in Kazakhstan.	2
Poland	1996	Acquires 33% of ZPT Krakow in Poland (now majority).	1
Poland	1996	Purchases Poland's largest factory Zaklady Przemyslu Tytoniowego (ZPT) Krakow.	1
Portugal	1996	Philip Morris acquires majority share in Tabaqueira, Portugal's former state monopoly.	2
Lithuania	1997	Production begins at new cigarette manufacturing facility in Klaipeda (Lithuania).	3
Portugal	1997	Acquires majority control of Portugal's state tobacco monopoly, Tabaquerira.	1
Croatia	1998	Acquires majority of stock and control of the Zagreb Tobacco.	2
Indonesia	1998	Through PT Philip Morris Indonesia acquires cigarette manufacturing facility from PT Prusahaan Dagang dan Industri Tresno (Indonesia).	3
Kazakhstan	1998	Construction of new cigarette manufacturing plant begins in Almaty.	3
Romania	1998	Production begins at new manufacturing facility in Romania.	3
Russia	1998	New factory in St Petersburg is built.	2

Global	1999	Acquires L&M, Lark and Chesterfield from Liggett Group.	2
Russia	2000	Inaugurates Izhora facility (large enough to supply 10% of annual consumption in Russia. Completed reconstruction of Krasnodartabak-prom.	10

## RJ Reynolds

Country	Year	Business Venture/Acquisitions	Source
Hungary	1992	Buys Satoraljaújhely factory.	1
Russia	1992	Enters into partnership agreement with AS Petro to form RJR Petro.	2
Turkey	1992	Establishes factory in Turkey.	1
Ukraine	1992	Government announced a joint venture with government-owned factories in Lviv and Kremenchug.	2
India	1993	Sets up a 50-50 joint venture with Modipon Fibers. Co. to form Modi RJR.	2
Iran	1993	The Iranian Tobacco Organization, in agreement with RJR, is licensed to sell Winston cigarette.	2
Romania	1993	Establishment of RJ Reynolds Tobacco (Romania).	1
Russia	1993	RJR Poland begins production in its plant in Piaseczno, Russia.	1
Poland	1994	Opens a cigarette manufacturing factory.	2
Russia	1994	Purchases a controlling interest in Yelets. Experimental Tobacco factory, a tobacco processing plant, to serve as a central tobacco processing facility for RJR's cigarette manufacturing in Central and Eastern Europe.	2
Russia	1994	Acquires controlling stake in Armavirtabak, a cigarette manufacturer in Krasnodar region, and renamed RJR-Armavirtabak.	2
Czech	1995	Cigarette production in Czech Republic.	1
Finland	1995	Acquires Oy P.C. Rettig, Finland.	1
Romania	1995	Establishes cigarette manufacturing plant, Romania.	2
Russia	1995	Controlling interest in RJR-Armavirtabak, Russia.	1
Vietnam	1995	Signs a joint venture agreement with state-owned Da Nang Cigarette Factory.	2
Azerbaijan	1996	Acquires controlling interest in Azerbaijan Tobacco Company.	2
Belarus	1996	Establishes 50-50 joint venture of domestic manufacturer Kosmos.	2
India	1996	Establishes joint venture in India.	1
Malaysia	1996	Expands plant in Shah Alam.	2
Tanzania	1996	Acquires controlling interest in Tanzanian Cigarette Company with Reemtsma.	2
Azerbaijan	1997	Establishes RJR Tobako Baku (50-50 co-venture of country's only cigarette maker).	2
Serbia	1997	Serbia's Duvanska Industrija Vranje (DIV) resumes production cigarette brands under licence from RJR after ceasing production for RJR in May 1992.	2
Russia	1998	Opens a new factory, Petro 2, in St Petersburg.	2
Global	1999	JTI purchases RJR Nabisco Holdings international tobacco business for US \$8 billion. With this purchase, JTI obtained 22 RJR International factories operating in 18 countries.	5

## Reemstma

Country	Year	Business Venture/Acquisitions	Source
Slovenia	1991	Invests in Tabacna Ljubljana, Slovenia.	1
Hungary	1992	Acquires 22% share of Debrecen, Hungary.	1
Slovakia	1992	Acquires 100% shareholding of Slovak International Tabak.	1
Ukraine	1993	Acquires Cherkassy factory, Ukraine.	1
Ukraine	1994	Acquires 65% share in the second largest cigarette plant Cherkassy.	2
Ukraine	1995	Builds cigarette factory built in Kiev, Ukraine.	1
Moldova	1996	Wins tender to privatize state cigarette factory. It was reported in 1997 that the tender results were withdrawn to allow BAT a new chance to win the deal.	2
Poland	1996	Acquires state-owned Wytwomia Wyrobow Tytoniowych (WWT) SA in Poznan.	2
Tanzania	1996	Acquires controlling interest in Tanzanian Cigarette Company with RJ Reynolds.	2
Poland	1997	Purchases Polish cigarette producer WWT Poznan.	1
Kazakhstan	1998	Announces 33% participation in new cigarette factory in Kazakhstan.	2
Kyrgyzstan	1998	Establishes joint Venture with Kyrgyz government.	1
Russia	1998	Purchases majority stake in Reemtsma-Volga.	10
Poland	1999	Opens its second factory in Jankowice.	2
Macedonia	1999	Slovenian subsidiary (Tobacna Ljubljana) purchases majority holding in Tutunski Kombinat Skopje.	11
Cambodia	1999	Acquires majority holding in Paradise Tobacco Company.	11
Japan	1999	Enters into agreement with Japan Tobacco to market Davidoff brands.	11
Kazakhstan	1999	Joint venture with Gallaher to start up production facilities.	11

## Rothmans

Country	Year	Business Venture/Acquisitions	Source
China	1991	Establishes joint venture with Shandong Provincial, China.	1
Russia	1992	Enters into Russia through Klara Tsetkin (Petro).	1
Bulgaria	1994	Purchases shares in BT-Sofia.	2
Myanmar	1994	Enters into a 60% joint venture with the Union of Myanmar Economic Holdings.	2
India	1995	Establishes Rothmans GTC India Ltd.	2
Jordan	1995	Signs licensing agreement with The Jordanian International Tobacco Co. to produce Rothman and other brands.	2
South Africa	1996	Merger of Rothmans international and Remgro, South Africa's largest tobacco group.	1
Switzerland	1996	Purchases Burrus Group.	2
Russia	1997	Opens a new plant in St Petersburg.	2
Malaysia	1998	Expands its production.	2
Global	1999	Merger with BAT (becoming the 3rd largest tobacco group).	2

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