Implementation of Article 5.3 of the WHO FCTC

Report by the Convention Secretariat

INTRODUCTION

1. At its sixth session (Moscow, Russia, 13–18 October 2014), the Conference of the Parties (COP) adopted decision FCTC/COP6(14) entitled “Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry”. The COP urged Parties to strengthen their implementation of Article 5.3, including at international levels, and to raise awareness and adopt measures to implement Article 5.3 and its guidelines throughout government including diplomatic missions. COP also requested the Secretariat to carry out various activities and report on its findings to the seventh session of the COP.

2. This document summarizes the progress made in implementation of Article 5.3 by the Parties, and details the work carried out by the Convention Secretariat, in collaboration with WHO, other partners and international experts. This collaborative work was formalized in two expert meetings (on the sidelines of the 16th World Conference on Tobacco or Health in March 2015 and at an expert consultation co-organized by the Convention Secretariat and the South East Asia Tobacco Control Alliance (SEATCA), an observer to COP, in Bangkok, Thailand, in November 2015). Additionally, the Secretariat commissioned a background paper to summarize the body of evidence and our current understanding on matters addressed in decision FCTC/COP6(14).

3. This report derives from the preparatory work described above and aims to inform discussion of this matter by the COP. It is structured by the items addressed in decision FCTC/COP6(14).

PROGRESS MADE BY THE PARTIES

4. Parties were requested to inform the COP, through the Secretariat, on their implementation work on Article 5.3 as part of their reports submitted in the 2016 reporting cycle. Although the percentage of Parties that reported efforts to implement this Article has not changed (with two thirds of Parties having done some work on the matter), slightly more Parties reported giving the public access to information on tobacco industry activities. Fortunately, the trend of Parties including implementation of Article 5.3 as a part of national legislation (programmatic policy documents, such as strategy and action plans), has continued, with 11 Parties reporting such inclusion. This helps to bring the prevention of tobacco industry interference to the attention of decision-makers and society at large,
and to integrate it into the overall effort on WHO Framework Convention on Tobacco Control (WHO FCTC) implementation. Additionally, an increasing number of Parties reported national workshops or other work to inform government departments on their obligations under Article 5.3 of the Convention. In some cases, national consultations are followed by the elaboration of national guidelines on implementation of Article 5.3. Although progress is visible, most Parties reporting advances in this area did not utilize all the recommendations of the Article 5.3 guidelines adopted by the COP.

5. The work mandated by the COP analysing the impact of the WHO FCTC globally has also touched upon the impact of Article 5.3 implementation. Evidence shows that the Convention has facilitated global mobilization and exchanges among Parties and civil society, and highlighted the means by which the tobacco industry interferes with policy-making processes and how this harms tobacco control. Although the implementation of the Convention has not changed previously documented tactics to oppose tobacco control by the tobacco industry, it has, in fact, resulted in a change in the intensity of their use (for example, legal challenges to delay and weaken tobacco control measures), including additional new alliances and industry front groups to those that already existed.

ADDRESSING MATTERS MANDATED BY COP6

Examine the level of tobacco industry engagement in key international organizations which are in a position to contribute to WHO FCTC implementation

6. As explained in paragraph 2 above, the Convention Secretariat commissioned a report on this matter\(^2\). This addressed tobacco industry engagement with intergovernmental organizations (IGOs) and international nongovernmental organizations (NGOs). Additionally, a joint paper from the Convention Secretariat and WHO on tobacco industry interference\(^3\) which was presented at a meeting of the UN Inter-Agency Task Force on the Prevention and Control of NCDs (UNIATF) in February 2016, also identified examples of tobacco industry activities that were associated with some of the organizations’ work.

7. The report found that the tobacco industry’s engagement with IGOs is well-documented and predated negotiations of the Convention by decades. This includes members of UNIATF (examples include the United Nations Global Compact; United Nations High Commissioner for Refugees; United Nations Office on Drugs and Crime) and also IGOs that are Observers to the COP (examples include the International Labour Organization and World Customs Organization). Tobacco industry engagement results from: 1) Direct representation in, or partnership with IGOs, including participation in their meetings and activities, especially as it relates to illicit trade of tobacco or humanitarian efforts; 2) Sponsorship, whether financial or otherwise, of the activities of IGOs and any promotion of the sponsorship; 3) Enlisting front groups, particularly non-health and business-interest NGOs, to engage IGOs on its behalf.

8. It is also to be noted that the tobacco industry continues to interfere with the COP in a variety of ways. These include: 1) Sending representatives to attend the COP as members of the public to influence Party delegations and gather information; 2) Including representatives of state-owned tobacco corporations or monopolies in Party delegations to the COP; 3) Mobilizing groups furthering the interests of the tobacco industry, such as the International Tax and Investment Center (ITIC), or front groups such as the International Tobacco Growers Association (ITGA), to promote the tobacco industry’s interests at the COP through events and conferences scheduled prior to COP meetings or in the intersessional period.

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\(^2\) http://bit.ly/29UXMvw
\(^3\) http://bit.ly/2a0cbK2
9. The report also found that the tobacco industry engaged international NGOs, including United Way, Red Cross/Red Crescent movement, Caritas and Habitat for Humanity. The tobacco industry is engaged with a number of business-interest NGOs with varying focuses to advance its interests. These include ITGA, the International Hotel & Restaurant Association, US Chamber of Commerce and American Chambers of Commerce, International Chamber of Commerce, ITIC and the International Trademark Association. Engagement between the tobacco industry and these entities take place through the following channels: 1) Partnership with and/or financial contributions to NGOs, such as health, human rights, or environmental organizations; 2) Founding, co-founding, or funding business-interest NGOs, such as trade-associations, giving access to and influence over national governments and IGOs; 3) Direct membership in or partnership with business-interest NGOs to enable access to and influence over national governments and IGOs.

10. The tobacco industry’s engagement with international organizations has enabled it to amplify its message to governments, both directly and through international NGOs. The report highlighted several international NGOs that the tobacco industry has engaged to influence governments and public health policies, including ITGA and the US Chamber of Commerce.

11. The report made a number of recommendations for addressing these activities in the future; the Convention Secretariat has already addressed or is in the process of addressing all of them.

Seeking collaboration with pertinent international organizations, including regional and subregional organizations, to raise awareness of their role in contributing to Parties’ implementation of Article 5.3

12. These efforts are presented in the following paragraphs.

- The Convention Secretariat, in coordination with WHO, included an agenda item on Article 5.3 in the programme of the February 2016 UNIATF meeting to raise awareness of the issue and ask members of the Task Force to act in the spirit of Article 5.3 and the relevant guidelines. Moreover, the Secretariat led the development of a draft “Model policy for agencies of the United Nations system on preventing tobacco industry interference” that was presented to UNIATF members, who were asked to adopt this policy. It is to be noted that policies to prevent tobacco industry interference, or frameworks applicable to the tobacco industry are already in place in a few UN agencies, including the International Atomic Energy Agency (IAEA), WHO, UN Development Programme (UNDP) and the UN Organization for Education Science and Culture (UNESCO), with other entities having taken steps to dissociate themselves from tobacco industry activities, including the World Bank, UNESCO and the UN Environment Programme (UNEP). The agencies were asked to consider adoption of such policies and in the meantime, to make suggestions to improve the proposed draft policy. It is expected that such internal consultations take place before the next meeting of UNIATF in October 2016. The UN Economic and Social Council (ECOSOC) adopted a recommendation to encourage members of UNIATF to adopt this model policy contained in the note by the UN Secretary General to ECOSOC. The Convention Secretariat, in collaboration with WHO, could help agencies in their efforts. For example, discussions have already started with the Office of the United Nations High Commissioner for Human Rights to initiate an amendment to the UN “Guidelines on Cooperation between the United Nations and the Business Sector” and to adopt a model policy in the UN Secretariat.

- The Convention Secretariat developed, in consultation with the Bureau, a series of measures to maximize transparency of Parties’ delegations, IGOs, NGOs and civil society groups.

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during sessions of the COP and meetings of its subsidiary bodies. Furthermore, also in consultation with the Bureau, the Secretariat proposes a mechanism to review IGO observer status for organizations granted such status based on their participation in the WHO FCTC negotiations, and which were never reviewed thereafter. This will help to identify whether or not they have direct or indirect connections with the tobacco industry, with a view to the possible revocation of observer status for those that have such ties. These measures are now submitted to the COP for its consideration. (A procedure for screening prospective new IGO and NGO observers to ensure that the applicants have no direct or indirect connections with the tobacco industry, is already in place.)

13. The Convention Secretariat will continue to promote the principles of Article 5.3 and its guidelines among the IGOs that are observers to the COP and those with which it is engaged in collaborative efforts to assist Parties in Convention implementation.

- The Secretariat, at the request of Parties, has engaged in various efforts to ensure that requirements of Article 5.3 prevail and recommendations of the guidelines are taken into account when developing relevant policies. These included issuance of three notes verbales on matters related to tobacco industry interference (in September 2014, March 2016, April 2016); assistance provided to Parties upon their request (e.g. assisting ASEAN states to prevent participation in an ITIC-organized meeting; assisting Australia with an amicus curiae intervention at the World Trade Organization (WTO); engaging with the European Union on the termination of the Philip Morris/European Commission agreement (in collaboration with relevant partners)); inviting Parties not to send representatives of the state tobacco monopolies in Parties’ delegations to statutory and technical meetings; engaging with members of the European Parliament, including the chair of the parliamentary committee on tobacco industry interference.

**Tools to assist Parties in their implementation of Article 5.3 and mechanisms of international cooperation and information exchange**

14. The report reviewed the existing tools on raising awareness and assisting with implementation of Article 5.3. The investigation found extensive background material for guidance to Parties, including policy toolkits, legislative templates, advocacy materials and more. These can be found in the annex of the said report. Furthermore, a number of organizations offer technical support to Parties for implementation of Article 5.3 using the tools as resources.

15. The tools that exist have been used with success by a number of Parties. Thus, it is likely that a means to support Parties’ implementation of Article 5.3 is their awareness of and access to existing tools, rather than a need for additional tools. This could be addressed in a number of ways.

16. The Convention Secretariat could coordinate the establishment and promotion among the Parties of a user-friendly digital platform that centralizes the tools and resources that exist, thus increasing Parties’ awareness. This may include: 1) A system to organize and summarize the various tools and mechanisms of assistance to guide Parties to the resources that suit their particular needs; 2) A collection of examples of implementation of Article 5.3, including legislative language and modalities of enforcing such policies; 3) A referral mechanism matching Parties’ needs with experts who can provide relevant technical assistance, including tailored training programmes or national

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6 Document FCTC/COP/7/30.
7 CSF/NV/14/25 entitled “Sixth session of the Conference of the Parties to the WHO FCTC: issues related to Article 5.3 and the guidelines for its implementation”; CSF/NV/16/04 entitled “Industry interference in tracking and tracing of tobacco products” and CSF/NV/16/05 entitled “Parties’ nominations of delegates to the Conference of the Parties and its subsidiary bodies”.
8 Several tools are presented in the WHO FCTC Implementation Database: http://bit.ly/2abXTVy
workshops, or other activities to build national capacity on implementation of Article 5.3 and the monitoring of tobacco industry activities.

17. In an effort to strengthen Parties’ monitoring of the activities of the tobacco industry, the Convention Secretariat has established tobacco industry monitoring centres (observatories) in selected academic institutions of the Parties. The first such observatory was established in Brazil (launched in March 2016), with other observatories to follow (in South Africa and in Sri Lanka). The International Union Against Tuberculosis and Lung Disease (the Union), an observer to COP has supported the establishment of such observatories.

18. The role of the observatories is to monitor tobacco industry strategies and tactics in the country in which they are based but also regionally, and to share such information globally. This information can subsequently be used by governments, academia and the civil society for policy-making and advocacy. This information will assist all Parties to the Convention to learn how the tobacco industry interferes with public health policies and how to address such interference. Initial training for representatives of such observatories was held in November 2015.

19. The suggestions presented in paragraph 16 could be coordinated through a knowledge hub, as appropriate. Such a knowledge hub should also provide the necessary support to the operation of the observatories, described in paragraph 17.

20. Technical meetings organized by the Convention Secretariat (including regional workshops on the implementation of the Convention and workshops to promote the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products) feature Article 5.3 and its implementation as one of the key cross-cutting issues of the Convention and of the Protocol, as appropriate. As a related matter, the Convention Secretariat commissioned a paper9 on the tobacco industry and illicit trade in tobacco products, which aims at facilitating discussions related to the ratification and entry into force of the Protocol.

Stimulate reporting by the Parties on Article 5.3 and develop and promote monitoring tools that would encourage voluntary and timely sharing of further information in order to enhance the monitoring of tobacco industry interference, including at the international level

21. The Secretariat has organized the 2016 reporting cycle and reminded Parties about the additional questions (optional module) as a means to provide information on Parties’ utilization of the COP guidelines, including those for Article 5.3. More than 50 Parties provided information on how they addressed implementation of Article 5.3. Such examples are provided in the report on global progress in implementation of the WHO FCTC submitted to COP10.

22. The Secretariat has also established a discussion forum on Article 5.3 on its networking platform, which is currently available to Article 5.3 experts and will soon be extended to all interested Parties. Additionally, the web portals of the knowledge hubs will also feature various discussion forums, as established by their registered users, which could provide platforms for exchanges on tobacco industry interference in the relevant area of the Convention. The observatories referred to in paragraph 17 are designed to disseminate information collected through monitoring the tobacco industry.

23. The report also identified additional measures the Secretariat could take, including: 1) establish a global tobacco industry monitoring listserv (mailing list) that includes the Convention Secretariat, WHO, interested Parties and civil society organizations, to facilitate direct and rapid communication regarding tobacco industry interference; 2) utilize the digital platform described in paragraph 16 to

10 Document FCTC/COP/7/4 and the 2016 global progress report.
enable Parties to share information on tobacco industry interference at the national, regional, or international levels, and solicit expert assistance in countering them.

Continue to develop, and make available on a continuous basis, the technical capacity required to carry out the tasks listed above and provide technical assistance to Parties upon their request, to implement Article 5.3 of the Convention

24. The Convention Secretariat in consultation with its partners developed a draft list of experts that could be mobilized to assist Parties in their implementation of Article 5.3. This list could serve as the basis for the establishment of a panel of experts, as in the case of the Protocol.

25. Experts from this list could be deployed to Parties that have required assistance on any matter, project, legislative or other effort. This support should be given in coordination with the knowledge hub, should that be established. The coordination of the different assistance mechanisms should be led by the Convention Secretariat. Examples of such assistance are available, for example, in relation to post-needs assessment support provided to Parties that have undertaken needs assessments with the assistance from the Convention Secretariat. For example, Jamaica benefited from such expertise during a national workshop aimed at raising awareness on and promoting implementation of Article 5.3.

26. It is important to note that a group of Parties initiated a south-south and triangular cooperation project aimed at reducing tobacco industry interference in health policies. Parties that have indicated a wish to join the project include Brazil, Colombia, Georgia, Guatemala, Jamaica, Panama, Peru, the Philippines and Thailand, with France, the UNDP and the Union indicating they may provide triangular support. This project is a form of international cooperation, with elements focusing on information exchange and capacity building.

CONCLUSIONS

27. The tobacco industry continues to prevent, weaken and delay effective implementation of the Convention and also to engage in and interfere with international organizations. Additional measures are therefore needed, under the guidance of the COP, to counter such efforts.

28. There are sufficient tools and resources for Article 5.3 implementation available to Parties. However, Parties seem to lack awareness of and access to these tools. This could be addressed by promoting these resources through a knowledge hub or additional electronic means of communication.

29. The Convention Secretariat initiated a series of activities to address and prevent tobacco industry interference with international forums. The Secretariat will follow-up and strengthen, as appropriate, its engagement with international partners to fulfil its mandate provided by the relevant COP decisions.

ACTION BY THE CONFERENCE OF THE PARTIES

30. The Conference of the Parties is invited to note this report and provide further guidance.

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