IMPERIAL TOBACCO LIMITED

Submission on the Framework Convention on Tobacco Control

Summary

Imperial Tobacco Limited ("ITL") is a responsible manufacturer of tobacco products which aims to meet the demands of adults who choose to smoke with knowledge of the risks associated with smoking. It is willing to participate in a constructive and effective dialogue with regulators about smoking and health and other tobacco issues and to work with them to develop practical regulations.

ITL has historically co-operated with successive UK Governments and would support practical regulations to ensure among other things a consistent public health message, prevent smoking by children, eliminate smuggling and control marketing and advertising. However, it believes there is no justification for regulations requiring further reductions of tar yield ceilings, and that a proposal for substantial testing of other smoke components will produce no benefit but will result in a reduction in competition and in consumer choice and a likely increase in the trade in inferior quality and unregulated products. ITL also believes that proposals to harmonise tobacco taxes worldwide and to introduce supra-national regulation of tobacco are impractical and unnecessary.

Introduction

ITL appreciates the opportunity to submit these written comments on the proposed Framework Convention on Tobacco Control (FCTC).

ITL is a UK based company that manufactures and distributes most types of tobacco products. Its production facilities are situated mainly in the UK, Ireland and the Netherlands, with additional factories in, Belgium, France and New Zealand. Its products are exported to many markets worldwide.

ITL has a long and well documented history of co-operation with governments in the UK. As the company grows, it wishes to continue this approach by working constructively with governments and other regulatory bodies.

Areas of agreement

ITL's objectives in many key areas of regulatory interest are, we believe, shared by most governments and regulatory bodies. These objectives have underscored ITL's constructive relationship with successive UK governments, and have contributed to the following governmental achievements:

- a unique regulatory system for the control of the sale of tobacco products
- unchallenged public health messages
- a major reduction in total cigarette consumption in the UK

ITL would support reasonable and practical regulation which had the following objectives:

1. A consistent public health message – ITL agrees that smoking may be a cause of some diseases. We recognise that public health authorities have formed the judgement that smoking is a cause of certain diseases. This has been the consistent public health
message for decades. We agree that there should be one consistent public health message. That is why, whatever our views on these complex issues, ITL does not challenge the public health message. It has not done so for almost forty years and intends, in the future, to continue its policy of not challenging the public health message that smoking causes these diseases.

2. **The prevention of smoking by children** – ITL does not encourage or want children to smoke. In the UK, together with the other tobacco companies ITL has voluntarily agreed measures with successive governments to prevent under-age smoking. ITL does not direct any of its marketing and promotional activities to those under 18 years old, or any higher legal minimum where such regulation exists. We have participated in and helped fund major initiatives in the UK aimed at preventing children from smoking, and we actively support retailer programmes to prevent sales to the under-age. We cannot compel retailers to observe the law. But what we can do and have done is to engage in initiatives, supported by government, to increase awareness of and encourage compliance with the law. We will continue with these policies in the future.

3. **The disclosure of additives used in tobacco products** – In the UK, ITL and other companies co-operated with the Department of Health in developing and following a voluntary agreement on additives. This ensured that only additives on a list permitted by the Department of Health and their scientists were used in the manufacture of tobacco products, and then only at the approved levels. More recently, public health and regulatory bodies expressed an interest in the identity of the additives used in ITL’s cigarette brands. In order to assist them, ITL provided additional information, and recently started to publish additive information on its company website. As a matter of policy, ITL is willing to disclose to appropriate authorities the additives it uses, provided the commercially confidential nature of such information is recognised and protected. We believe this can be achieved satisfactorily.

4. **Public smoking** – ITL accepts that environmental tobacco smoke can be irritating and annoying to some people in some situations, and encourages sensible provision for both smokers and non-smokers in public places. In the UK, ITL has actively supported campaigns to encourage reasonable working and leisure conditions for everyone.

5. **Measures to eliminate smuggling** - ITL is committed to doing all it can to prevent tobacco smuggling and the consequent black market. We have co-operated for many years with UK governments in efforts to prevent illegal trade. Smuggling has traditionally arisen from significant price differentials, usually from differences in duty. Governments understandably retain the right to tax tobacco in line with local circumstances and priorities, but should recognise the likely implications on cross-border trading when their taxes differ markedly from their neighbours. However, ITL believes that the proposed burden of excessive regulation would provide further encouragement and opportunity to the illegal trader, who ignores regulations and legitimate distribution channels to supply the black market. Smokers would then have access to products that not only evaded local duty, but also did not comply with retail or product controls.

6. **Marketing and advertising** - ITL is committed to a responsible approach to advertising, and believes that tobacco advertising should only be directed to existing adult smokers. As such, ITL does not and will not use advertising to persuade non-smokers to start smoking or to encourage smokers to smoke more. ITL does not direct any of its products or its marketing and promotional activities to those under 18 years old (or any
ITL's Concerns

1. **Excessive regulation** - ITL has a general concern that many proposed regulations are based on invalid assumptions, will give rise to disproportionate effects, and potentially cause significant and undesirable distortions of trade. We believe that sensible regulation, combined with well thought out voluntary agreements, is a much more effective approach to achieving mutual goals. Two particular areas of concern relate to demands on product design and testing:-

(a) **Lower tar yield cigarettes** - there has always been a debate among scientists as to whether or not low tar yield cigarettes carry any health benefits. Nevertheless, for almost three decades, UK government policy has been to encourage smokers, who do not stop smoking, to smoke lower tar yield cigarettes. Initially, by means of voluntary agreements between the UK tobacco companies and the government, and subsequently pursuant to legislation, tar yield ceilings in the UK have been progressively reduced to the current level of 12mg. Given the continuing scientific debate about tar, ITL does not believe that regulations requiring further reductions to this tar yield ceiling or depriving smokers of knowledge about tar yields – for example by a ban on descriptors or on yield declarations – are justified. UK smokers have available to them cigarettes with tar yields ranging from 1mg to the maximum of 12mg and we believe that they should be allowed the freedom to choose from this range the cigarettes that they want to smoke.

(b) **Other smoke components** - proposals have been advanced in some jurisdictions, and by the FCTC, to demand substantial testing of other smoke components. We believe that such testing will not deliver any benefit. Cigarette smoke is a highly complex mixture that has been the subject of intense scientific scrutiny for almost 50 years. Although scientists during this period of time have identified thousands of individual components, they have not been able to identify anything in smoke which explains the incidence of lung cancer and other diseases in smokers. For example, in 1985 Sir Richard Doll and Sir Richard Peto stated that “30 years of laboratory research has yet to identify reliably the important carcinogenic factors in cigarette smoke,” and nothing has occurred in the last 15 years to alter this conclusion. Scientists have been able to show, however, that most smoke components are reduced in line with reductions of either the total particulate phase of the smoke (tar) or the vapour phase of smoke. Thus, the information which would result from full analysis would therefore be of little value. On the other hand, some of the testing regimes proposed would be so extensive and demanding that very few, perhaps only three, laboratories worldwide would be able to carry out the analysis and then only at a very substantial cost. That cost will not be justified for many smaller companies and minor brands and will result in closures or brand withdrawals. This, in turn, will reduce competition and consumer choice. Those who will benefit will be the producers of brands large enough to justify the cost of testing, or irresponsible producers willing to supply products without meeting legal requirements. The trade in unauthorised copy products is regrettably already well established. The proposed testing regimes could give illegal
producers greatly increased opportunities to supply inferior quality and unregulated products to the black market.

2. **Tobacco taxation** - the FCTC expresses a wish to harmonise tobacco taxes worldwide, at two thirds of retail prices. While recognising that such a measure would dramatically reduce or eliminate smuggling of tobacco goods, ITL believes this to be a totally unrealistic proposal. Even the relatively coherent group of Member States of the EU have failed to make any progress at all on this measure. We believe world-wide harmonisation is unachievable, when national circumstances and priorities are so different.

3. **Impact on smaller manufacturers** - ITL is particularly concerned about the potential disproportionate and discriminatory effects of the proposed FCTC on smaller producers. While the FCTC proponents claim to target international brands, some of the measures proposed would have a perverse and contrary effect, disadvantaging smaller producers. This is best exemplified by the suggestions on excessive product testing regimes.

4. **Overall objective of the FCTC** - Early reports of the FCTC Working Group indicated that the ultimate objective of the FCTC is “to engage in integrated tobacco control efforts so as to put an end to tobacco use in any form”. We accept that reasonable regulation of tobacco is a subject for valid discussion. However, if prohibition is the ultimate goal this should be openly confirmed, and the consequences of prohibition, including revenue, should be openly debated. A ban by stealth through burdensome regulation is not appropriate, and is a denial of the adult individual's fundamental right to make his own lifestyle decisions and choices.

5. **Global regulation is not necessarily good regulation** - The FCTC proposes a layer of supranational regulation, without justifying the need for this approach. Drafts of the FCTC make global proposals to issues that are better regulated at national or local levels of government. This is for instance particularly relevant to the area of excise duties on tobacco products. ITL believes that tobacco taxes should be set by autonomous governments after consideration of regional and national circumstances and priorities. Efforts to harmonise taxes internationally are unachievable. The economic and fiscal differences between developing countries and highly industrialised ones are so great that governments should determine the tax level and structure for tobacco products to suit the particular circumstances and priorities of that country and that region. Similarly, local responsibility for marketing issues is necessary because of important concerns such as the principles of commercial free speech, which are embodied in national laws, as well as the Convention of Human Rights. A system of voluntary agreements has operated effectively in the UK for many years, and has been accompanied by a greater reduction in smoking than has been observed in any other country. The same system also saw a drop in average tar yields in the UK market much greater than any other.

6. **International trade rules** – Trade in goods and services is already governed by well-established international trade rules, largely under the auspices of the World Trade Organisation (WTO). We do not understand the logic or the necessity of adding a further layer of regulation through the FCTC. Proposals relating to tobacco taxes, the regulation of the contents of tobacco products, disclosures, packaging and labelling, the prohibition of duty-free sales, the elimination of government support to tobacco growers and the
prohibition on tobacco advertising, marketing, promotion and sponsorship are already covered by existing rules. We are concerned that the FCTC:

- will conflict with the international trade regime of the WTO

- will ostensibly involve a policy that will force tobacco farmers to seek state subsidies which are generally prohibited for WTO Members committed since 1995 by the WTO Agreement on Agriculture to capping and reducing the level of trade-distorting support with the aim of gradually eliminating them. Not only would the FCTC proposal discriminate between WTO and non-WTO Members, but the elimination of tobacco related assistance will result in farmers justifiably requiring state subsidy which will jeopardise the wider reform of agricultural policy within the context of the WTO and the new round of negotiations regarding the Agriculture Agreement, due to begin this year.

- will encourage measures inconsistent with WTO Agreements causing or making difficult market access, in particular:
  
  - The implementation of the proposed harmonisation of tobacco taxes could prejudice imported tobacco products in a manner inconsistent with GATT Article III:2;
  
  - The proposed prohibition on tobacco advertising, marketing, promotion and sponsorship could run the risk of creating unequal competitive opportunities between established domestic suppliers and new, foreign suppliers, contrary to GATT Article III:4;
  
  - The proposed regulation of the contents of tobacco products, disclosures, packaging and labelling could run the risk of creating technical barriers to trade inconsistent with the WTO TBT Agreement;
  
  - In addition, even if the proposed FCTC provisions are formally applied both to domestic and to foreign service providers, they could run the risk of infringing Article XVII of the General Agreement on Trade in Services (GATS) if their effect is to modify the conditions of competition in favour of domestic service providers.

7. **Involvement of the tobacco industry in the FCTC process** – Earlier discussions of the FCTC excluded members of the tobacco industry, whether growers, suppliers, manufacturers, distributors or retailers. We are pleased that we have now been involved in the FCTC process. The industry is already highly regulated in most markets around the world. This requires constant dialogue, co-operation and collaboration between industry, government and other interested parties. Industry involvement on key issues, such as tackling youth smoking and preventing smuggling, assist governments in developing practical and enforceable solutions to these problems. The industry has unique commercial and technical knowledge about tobacco products and the international tobacco business. Regulators may wish to use the research and expertise of their own scientific experts, but the knowledge of the tobacco companies will be invaluable and indispensable in formulating practical regulations for the future.

**IMPERIAL TOBACCO LIMITED ● 25th August 2000**