Gentlemen:

Attached please find R.J. Reynolds Tobacco Company's Pre-Hearing Submission. We thank you for the opportunity to submit our comments.

Donald D. Foreman
R. J. Reynolds Tobacco Company Comments

Framework Convention for Tobacco Control

**Background**

R.J. Reynolds Tobacco Company (RJR), the second largest U.S. cigarette manufacturer, is based in Winston-Salem, North Carolina. Due to the recent sale of its international subsidiary to Japan Tobacco, Inc., RJR no longer manufactures, markets, or sells cigarettes outside the United States. However, we continue to have a strong interest in U.S. tobacco trade policy since a substantial portion of RJR’s U.S. factory output is contract manufactured for Japan Tobacco and exported from the U.S. to their operations throughout the world. In addition to the contract manufacture of premium international brands, RJR also exports processed tobacco to Japan Tobacco for use in their overseas manufacturing facilities.

**Importance of Tobacco Exports**

The export of tobacco and tobacco products has been a vital component of U.S. Commerce since the late 1980s. Prior to this time, the export of tobacco, and, to a far greater extent, tobacco products faced substantial trade barriers throughout the world – generally to protect state owned monopolies (which still account for more than 50% of all cigarettes manufactured in the world) as well as entrenched local manufacturers.

In 1999, the U.S. exported $3.88 billion worth of tobacco products, and $1.29 billion of tobacco leaf. Although total tobacco exports have declined somewhat since the mid-1990s, tobacco exports continue to provide a livelihood for hundreds of thousands of persons in the U. S.

**RJR Concerns**

We agree in principle with many of the WHO objectives. For example, we do not want children to smoke and we agree that children everywhere should not have access to tobacco products. Likewise, we share their interests in curtailing international trafficking of contraband tobacco products and have no objection to their plan to insure that a universal awareness of the health risks of smoking continues to exist.

We also have the following concerns:
1. Impact on International Trade

The WHO approach may severely curtail international trade in tobacco. At an early stage in the process, the parties to the framework convention stated as one of their guiding principles: “As a result of the unique nature (addiction, health damage) of tobacco products, normal trade practices are not applicable.” (Framework Convention on Tobacco Control – Report of the WHO Meeting of Public Health Exports, p.32). Although a subsequent document expressed a contrary “guiding principle”, we remain concerned that the Framework Convention on Tobacco Control will continue to be used directly or indirectly to subvert international trade in tobacco products. Comments made by proponents of the FCTC regarding U.S. tobacco exporters further substantiate our concerns in this area.

As one example of how trade may be indirectly subverted, one of the recently released protocols would ban “advertising” of tobacco products as well as product descriptors such as “light”, “mild” or “contains U.S. tobacco leaf.” Although we are not opposed to reasonable restrictions of marketing freedoms, the protocol defines “advertising” as any “direct or indirect” communication “promoting a tobacco product.” Essentially, we would be prohibited from mentioning our brand names in public or distinguishing our export brands from a dominant local brand in any manner.

Since RJR’s export brands are relatively unknown in many export markets, and our market share is small outside the U.S., there is a need to make the consumer aware of the availability of our product and its distinguishing attributes. The broadly worded ban on all “communications” with the consumer will serve to eliminate competition in the market place and maintain current market shares throughout the world.

Competition in the market place would be further inhibited by proposals to require health warning labels on the package that are larger than necessary to appropriately warn the consumer of the health risks associated with tobacco products. Cigarette package trademarks are unique competitive tools that serve to create brand identification and consumer loyalty. They are particularly important for competition in countries with limited marketing freedoms.

Another example, found in the provisional text for the framework convention, is an obligation that nations “ensure that their excise tax is at least two-thirds of the package price of tobacco products”, in order
to “discourage consumption”. Since U.S. manufactured cigarettes have historically been priced in the premium segment (frequently $3 to $4 per pack and higher), they would face an even greater competitive disadvantage than now exists with most local manufactured product. Local value brands, which frequently sell for 50 cents a pack or less, would be minimally affected, and may benefit from the likely reaction of consumers to “trade down” to lower priced brands following a significant price increase in the premium segment. Any tax increase proposal that is considered should be in the form of a “trade neutral” specific (rather than ad valorem) tax that would raise the price of all brands and segments by a similar amount. It is at best questionable whether a tax increase would achieve the results anticipated by proponents.


Many provisions under consideration are either unworkable or politically unfeasible in many nations. There has also been inadequate consideration of the economic costs associated with the proposals.

For example, in order to control contraband, drafters of the framework convention have proposed strict controls on the movement of tobacco products throughout the supply chain. The controls include the placement of a unique serial number on every cigarette package, to be augmented by a “chain of custody” marking for every step in the supply chain. Every manufacturer, distributor, wholesaler, and retailer would be required to maintain records on every cigarette package coming into their possession, as well as records of where it went upon leaving their possession.

Although possibly sound in theory, the drafters fail to recognize that more than five trillion cigarettes move through worldwide commerce each year, with possession changing hands frequently before reaching the consumer. The extensive record keeping imposed on the trade would be cost prohibitive and impossible to accomplish in any event. Prohibitive costs would also be imposed on governments attempting to police the supply chain in multiple jurisdictions.

The World Health Organization also seeks the establishment of independent “national commissions” to oversee development and enforcement of restrictions on tobacco use and the tobacco industry. These groups would be funded by the government, but otherwise beyond their control. Few governments are likely to surrender this portion of their sovereignty to non-governmental entities.

It is equally unlikely that the substantial funding required by the FCTC to assist displaced tobacco farmers worldwide and to police the FCTC
on an international scale will ever materialize. Their assumption that “tobacco exporting countries” will willingly provide the bulk of this funding is at best questionable.

3. Reduced Risk Products

One important subject which participants in the WHO process have not addressed is the issue of reduced risk tobacco products. Even if tobacco product sales are severely restricted (or even banned), and substantial resources are committed to smoking cessation, it is very likely that tens of millions of people around the world will continue to consume tobacco products for decades to come. A position should be adopted that would encourage governments to work with the industry to facilitate the development and design of tobacco products that pose reduced health risks for the consumer.

4. Lack of Industry Involvement

Contrary to the standard practice followed in the development of previous international agreements affecting commerce, the WHO has excluded the entire tobacco industry from participation in the process of developing the Framework Convention on Tobacco Control. Neither the manufacturers of tobacco products nor any association representing tobacco farmers, retailers, importers, advertising agencies, or consumers have had the opportunity to participate in a meaningful way.

As a result of the exclusion, WHO has failed to even consider many legitimate concerns from every sector of the industry. They have also created the Framework Convention and related protocols without the benefit of unique knowledge and experience that could have served to create a more politically feasible and workable approach, particularly in areas where some or all of the industry is in agreement with their general objectives. The likelihood of success in the implementation phase will be reduced as a result.

For these reasons, we encourage you to exercise a great deal of caution during the remainder of the process related to the FCTC. By generally limiting participation in the process to health ministries and the public health community, the WHO has ignored many legitimate concerns that should be addressed, as well as approaches that should at least be considered.