Global Tobacco Control. What’s in It for You?

“Think globally, act locally.” It’s a guiding philosophy of the environmental movement, but one that would serve us equally well in tobacco control. That’s why we’ve devoted this issue of the Legal Update to international issues.

The last decade has seen the emergence of an increasingly cohesive global tobacco control community, spurred by the FCTC, the World Health Organization’s Framework Convention on Tobacco Control. For those who have joined this global movement, national frontiers are no longer barriers to collaboration. This morning, my email in-basket has seen: (1) organizations in Argentina, Bangladesh, Syria, Thailand, Togo and Ukraine lend their support to a Scottish petition drive to make the next Commonwealth Games, the international sporting competition, tobacco-free; (2) an appeal from advocates in the former Soviet Republic of Georgia to nearby countries for examples of legislation to use in advocacy; (3) a report on the campaign for plain packaging in the United Kingdom; and (4) support from the World Lung Foundation for smoke-free legislation in Senegal.

And the day’s not half over.

Yet the U.S. tobacco control movement remains oddly disconnected from the international action. Collaboration is the lifeblood of community advocates: every day, across the U.S., we turn to one another to share best practices, lessons learned, cautionary tales, and mutual support. But the collaboration seems to stop at the water’s edge.

Maybe that’s not surprising. For whatever reasons of history, culture, or perceived “American exceptionalism,” the U.S. is often shamefully blind

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Brazil and Chile Pass Historic Laws Prohibiting Flavored Additives in Tobacco Products

Last year Brazil, and this year Chile, made history in adopting laws that prohibit the inclusion of menthol and other flavoring additives in tobacco products. The Brazil measure has been temporarily suspended due to tobacco industry litigation and is pending review in the federal Supreme Court. A ruling is expected later this year. The law provides cigarette manufacturers 18 months to remove menthol cigarettes, and 24 months to remove other flavored tobacco products, from the market.

Chile’s legislation, which took effect March 1, 2013, prohibits the inclusion of additives in tobacco products, making Chile the second country in the world after Brazil to ban menthol cigarettes (in both standard and capsule form). Menthol and other flavor additives are used to mask the harshness of tobacco and attract new generations of underage smokers. By banning menthol flavored tobacco products, Brazil and Chile have taken giant steps in fighting the tobacco epidemic in their countries.

» Read more about tobacco control progress in Latin America.

» Learn more about the robust body of scientific data on menthol, its relationship to smoking initiation and cessation, and a Citizen Petition, submitted by nineteen major U.S. organizations, urging the U.S. Food & Drug Administration to prohibit menthol as a characterizing flavor in cigarettes.

Russia and Ukraine Adopt Strong Tobacco Control Measures

Both Russia and Ukraine recently passed expansive new tobacco control laws to bring their countries into compliance with the Framework Convention on Tobacco Control, which they ratified in 2008 and 2006 respectively. In February 2013, Russian President Vladimir Putin signed into law legislation that prohibits smoking in most public places, workplaces, universities and schools, common areas of residential buildings, and on all local and intercity public transportation. Russia has one of the world’s highest smoking rates: 40 percent of its people smoke regularly and approximately 400,000 die each year from tobacco-related illness, according to the World Bank. Many of the smoke-free measures will take effect in June, while others will go into effect a year later. The law includes restrictions on cigarette sales, advertising and the sponsorship of events by tobacco companies, and sets minimum prices for cigarettes which now cost 50 to 60 rubles (less than $2) per pack.

» Read more about the new Russian tobacco control measures.

» Read Tobacco Control in the Russian Federation — A Policy Analysis.

On December 16, 2012, Ukraine enacted a broad smoke-free law, prohibiting smoking in public places, including cafes, bars, restaurants, nightclubs and government buildings, as well as sports facilities, playgrounds, and hospital and educational institutions. Approximately 11 million Ukrainians (29 percent) smoke — 50 percent of men and 11 percent of women. Almost one-fourth (24 percent) of Ukrainian youth aged 13 to 15 smoke cigarettes.

» Read more about the new Ukraine tobacco control measures.
Global Tobacco Control Challenges

We asked experts from ten countries to describe the greatest challenge to effective tobacco control in their countries. Their answers:

Australia

Jonathan Liberman
Director, McCabe Centre for Law and Cancer, Cancer Council Victoria and Union for International Cancer Control

“Australia’s world-first plain packaging legislation is presently under challenge in two international fora. Since 1 December 2012, the packaging of tobacco products sold in Australia has had to be a standard, drab dark brown color, and the printing of tobacco company logos, brand imagery, colors, or promotional text on that packaging and on individual tobacco products has been prohibited. Tobacco packaging must carry large health warnings composed of graphics, warning statements and explanatory messages, and information messages. The tobacco industry’s constitutional challenge to the legislation was dismissed in August 2012. Ukraine, Honduras and Dominican Republic have requested the establishment of a panel to hear their claims that Australia’s legislation breaches its World Trade Organization obligations. Philip Morris is suing the Australian Government under a bilateral investment treaty between Australia and Hong Kong. The Australian Government is defending the legislation in both fora and may be doing so for some time yet.”

Read more information on Australia’s tobacco control legislation.

Brazil

Clarissa Homsi
Legal Coordinator, Alliance for the Control of Tobacco Use, Brazil

“In March 2013, Brazil became the first country to prohibit menthol and other flavoring additives in tobacco products. See related story on page 2.

“The Brazilian judiciary will play a major role in tobacco control in the next years. Currently all effective public policies are being challenged in court. The judiciary is also the recipient of the tobacco industry’s usual weapons: corporate social responsibility and public relations. Two examples: (1) For years, the tobacco industry has been sponsoring events of judges and legal conferences on topics of its interest; and (2) The tobacco industry has been hiring leading lawyers, large law firms and even former Justices from the superior courts to create legal theses in the industry’s favor, to defend it in court and to lobby in the magistrates’ offices.

For now, the decisions are favorable to the tobacco industry in the area of civil liability. Public policies have been preserved by the judiciary. However, in recent years there have been some decisions suspending resolutions of the Regulatory Agency.

Civil society must strengthen its role in the lawsuits, in monitoring the judiciary, in reporting the tobacco industry’s strategies, in enhancing support from the legal community, in stimulating scientific production for the constitutionality of public policies, and in fighting for judgments in accordance with the guarantee of fundamental rights.”

— CLARISSA HOMSI

Continues
Civil society must strengthen its role in the lawsuits, in monitoring the judiciary, in reporting the tobacco industry’s strategies, in enhancing support from the legal community, in stimulating scientific production for the constitutionality of public policies, and in fighting for judgments in accordance with the guarantee of fundamental rights.”

“Several huge tobacco lawsuits are on the agenda in Canada, posing a significant threat to the tobacco industry. In the province of Quebec, the trial in two class actions seeking C$27 billion in damages from three tobacco manufacturers began in Quebec Superior Court in March 2012, with the trial to continue into 2014.” — ROB CUNNINGHAM

Canada

Rob Cunningham
Senior Policy Analyst, Canadian Cancer Society

What has been touted as the largest class action lawsuit in Canadian history is now underway, involving two groups of individuals representing a total of 1.8 million Quebecers, who allege that they were not sufficiently warned of the health risks associated with smoking, and that the tobacco companies concealed both the health dangers and highly addictive nature of cigarettes.

Indonesia

Patricia R. Waagstein
Legal Advisor, Campaign for Tobacco-Free Kids

“In Indonesia, one of the biggest tobacco-producing countries in the world, industry interference is the most important challenge to tobacco control. The tobacco industry attempts to interfere in the legislative process by hindering or diluting any bill on tobacco control and failing this, tries to thwart or slow its implementation. The industry uses different strategies to achieve this, ranging from influencing the legislative process to litigation.

One of the main methods used by the tobacco industry to influence law-makers is to mobilize front groups such as tobacco farmers and laborers to stage protests and demonstrations. The tobacco industry also seeks to undermine anti-tobacco health campaigns by organizing groups of scientists to develop and promote research challenging the negative effects of tobacco.
use. Furthermore, the tobacco industry is trying to sway political and public opinion by such activities as sponsoring scholarships and media, organizing social activities and funding natural disaster relief efforts, creating interdependencies between itself and the country which make it harder for the politicians and public to act against the industry’s interests.”

» Click here for more information on Indonesia’s tobacco use and links to its tobacco control legislation.

**Kosovo**

Shkumbin Spahija
Executive Director, Kosovo Advocacy & Development Center

“Five years after declaring independence, Kosovo has just recently passed a strong comprehensive tobacco control law that bans all forms of promotion and sponsorship and mandates smoke-free public places and workplaces as an essential step for protecting public health. As the newest country in Europe, Kosovo is struggling with law enforcement in many fields — including tobacco control.

Oppressed for many years, Kosovo society was not really in a position to develop a law-abiding culture. If we add to this the scarce capacities and lack of clear organizational structure of the implementing authorities, it seems almost impossible to think about effective enforcement of the newly adopted tobacco control policies. However, cultural change will happen if we manage to involve a wide range of people in monitoring and enforcement and not leave it entirely in the hands of a limited pool of enforcement officials.

In the next five years, generating public support will be the biggest challenge in ensuring the success of Kosovo’s smoke-free law. This will require a successful mobilization of public opinion and the media, so people become supportive and ready to accept the change. The past has shown that it is not enough for people to know about the harms of smoking, they must also be aware of the dangers of second-hand smoke and the viability of policies to protect people from these dangers. This is a unique chance for the citizens of the newborn country to start developing a law-abiding culture, build a modern country and shift from a smoking society to a non-smoking one.”

» Click here for more information on Kosovo’s tobacco control legislation.

**New Zealand**

Matthew Allen
Director, Allen & Clarke Policy and Regulatory Specialists Ltd.

“The New Zealand legislature is reportedly considering plans to introduce plain packaging for cigarettes, with large graphic health warnings. This would make New Zealand the second country (after Australia) to adopt plain packaging.

“New Zealand has committed to a vision of being a tobacco-free country by 2025. This will not happen, however, unless there are significant changes to our policy, regulatory and program mix — we won’t get there by just incremental changes and ‘more of the same.’ We need to be open to contemplating some potentially radical new policy and regulation in the area of supply control, and potentially considering other means of nicotine delivery. This is an area that internationally over the next five years will get greater attention, particularly as the tobacco industry itself increasingly markets innovative nicotine delivery and ‘reduced harm’ products. These products are coming whether we like them or not and we need to be ready for them. This means having relevant and flexible regulatory frameworks in place around their introduction, marketing, sale and use — and the technical capability and capacity to be able to assess their potential value and harms before they enter the market.”

» Click here for more information on New Zealand’s tobacco control legislation.

Continues
In early 2013, Norway adopted several strong new tobacco control measures, including a licensing system for the sale of tobacco, a ban on packs smaller than 20 cigarettes, expanded smoke-free restrictions, and a legal requirement protecting children’s right to a smoke-free environment.

On April 2, 2013, the Norwegian Parliament finally adopted a Tobacco Control Act which aims at protecting children against tobacco. Most notably, the Act contains a general normative provision to protect children from passive smoking. Going forward, it will be exciting to see whether the normative provision without sanctions will ensure children a smoke-free environment as intended.

Over the next five years, the biggest challenge to tobacco regulation in Norway will be how to close the loopholes in the regulation banning tobacco advertising. Norway has already introduced a ban on display of tobacco products in stores (NB: this law was passed in 2010, legally challenged by Philip Morris Norway in 2010, and upheld by the Oslo District Court in 2012.) Plain packaging is the natural next step considering Norway’s obligations under the Framework Convention on Tobacco Control and its guidelines. It is predictable that the tobacco industry will strongly argue that plain packaging violates human rights and is contrary to the Agreement on the European Economic Area."

» Click here for more information on Norway’s tobacco control legislation.

» Click here for Norwegian tobacco control milestones.

» Read the 2012 Oslo district court’s ruling upholding Norway’s tobacco display ban.

The biggest challenge to effective tobacco control in Pakistan is the tobacco industry’s constant influencing of policy makers and relevant stakeholders in an effort to hamper the government’s overall enforcement efforts. Tobacco control advocates have to be alert all the time as the industry finds new ways to violate tobacco control laws in the country, especially through tobacco advertising, promotion and sponsorship or in the name of corporate social responsibility.

In this regards, litigation proved to be a successful way to counter such violations by the tobacco industry. In 2012, the tobacco industry violated the tobacco control laws by advertising its products in print media. Tobacco control advocates filed a case in High Court Hyderabad, Sindh, where the tobacco industry was found guilty and fined for violating the tobacco control laws. This litigation effort was carried out through the Coalition for Tobacco Control of the Society for Alternative Media & Research, with technical and financial assistance from the International Legal Consortium, Campaign for Tobacco-Free Kids. Currently, the coalition is engaged in litigation efforts for the enforcement of tobacco control laws on Shisha smoking in Punjab province (one of four) in Pakistan and are successful in getting court orders in favor of public health.”

» Click here for more information on Pakistan’s tobacco use and links to its tobacco control legislation.

Continues
Russia
Viktor Zykov
Legal Expert, Russian Anti-Tobacco Coalition

In February 2013, Russian President Vladimir Putin signed a strong smoke-free law prohibiting smoking in most public places, workplaces, universities and schools, common areas of residential buildings, and on local and intercity public transportation. See related story on page 2.

Russia will face a number of challenges in tobacco control policy over the next five years:

• **Tobacco Tax Increases.** The Ministry of Finance (MOF) has authority over all issues of taxation in Russia but current policy does not include significant increases for tobacco. Any domestic tax policy can also be hampered by the potential harmonization of excise taxes on tobacco and alcohol under the Eurasian Customs Union, which includes Russia, Belarus, and Kazakhstan. Harmonized tax policy could allow the tobacco industry to force Russia to keep their excises low, arguing that excessive increases would be prejudicial toward Kazakhstan and Belarus, where the rates are 2-3 times lower than in Russia.

• **Illicit Trade Protocol.** Russia is not likely to adopt measures to combat illicit trade and implement effective tracking and tracing policies until the Illicit Trade Protocol is signed and ratified.

• **Tobacco Industry Interference.** The tobacco industry will continue to seek ways around the new tobacco control law passed this year, including using lawsuits. The law will need to be strengthened to close any gaps and loopholes for the tobacco industry, and to include strong penalties and fines for violations.

• **Customs Union Treaty.** Negotiations on a treaty to regulate packaging and labeling of tobacco products could be delayed until 2017.

Ukraine
Petro Korol
Project Lawyer, NGO Media Law Institute “Smoke Free Kyiv”

Contributions by Taras Shevchenko and Olga Sushko

“In our opinion, the biggest challenge in the sphere of tobacco regulation in Ukraine in the next five years will be the appropriate enforcement of the Law of Ukraine No. 4844, An Amendment of Certain Laws of Ukraine on Improving Certain Provisions on Limiting Places for Smoking, which took effect on December 16, 2012. This law prohibits smoking of tobacco products, as well as electronic cigarettes and hookahs, inside the premises of public dining places. Even though our monitoring initially showed that the law was largely enforced, currently the number of violations of this law has visibly increased.

The tobacco industry has not given up its opposition to law No. 4844, and a new draft law was registered on January 31, 2013 under No. 2153. This proposed law would allow designated smoking rooms inside the premises of public dining places. Therefore, a strong tobacco lobby in the Parliament can be also considered a great challenge.”

» Click here for more information on Ukraine’s tobacco use and links to its tobacco control legislation.

”
to global context. Where else, after all, could universal health care be dismissed by half the population as a fanciful notion, when it has long been reality in every other high-income country? Where else could gun violence be debated in ways that mystify even the staunchest libertarians outside our borders? Who else would steadfastly refuse to ratify even the most universally-accepted treaties, from the Convention on the Rights of the Child, to the Kyoto Protocol, to the Convention on the Rights of Persons with Disabilities? Why should we be surprised, then, that with the FCTC the law of the land in 176 countries representing 90 percent of the human species, the United States stands as the last major holdout nation?

What makes this sad is the cost of isolation. If you’re not thinking globally, here is some of what you’re missing:

**Follow the Leaders.**

Today’s best practices in tobacco control policy are to be found in places like Australia, with its historic plain packaging law; Brazil, with the first ban on menthol; Norway, with its prohibition on product displays; and Uruguay, with its smoke-free casinos. Why wouldn’t you want to learn from the best?

**Learn from Your Adversaries.**

If Chinese military sage Sun Tzu was right when he counseled “Think like your enemy,” then we should also learn from the tobacco industry, and see every local skirmish as part of the larger global struggle, just as our opponents do. That campaign you’re planning next year? The industry tipped its hand in something just like it in India or Chile last year. Why not connect with your international colleagues and get an advance copy of the industry’s playbook?

**Free Trade Isn’t Always Free.**

Multinational tobacco companies are using the arcane and undemocratic procedures of international trade agreements to mount a growing war on the best tobacco control laws. Already, they’ve won a trade dispute claiming the right to sell clove cigarettes here, and
they’ve launched half a dozen legal attacks on cutting-edge policies in other countries. Get ready for a whole new battlefront — offshore.

**Catch Them Red-Handed.**

Years of public debate in the U.S. have taught tobacco executives to be more subtle and covert than they once were. Today, in this country, they take pains to pass themselves off as reasonable-sounding, socially-responsible corporate citizens. In the developing world, not so much. By connecting up with your international colleagues, you will have access to the evidence that reveals the industry’s true nature, like the stories of Chinese companies that buy “naming rights” to “brand” elementary schools with the names of their cigarettes, or the multinationals that, where they think they can get away with it, still deny that cigarettes cause disease!

So, as busy as you are — and with a limited budget for globetrotting — how can you connect to the global community? A great starting point is the website of the Framework Convention Alliance, or FCA, the global confederation of 350 tobacco control organizations in 100 countries. The FCA leads efforts to strengthen the FCTC and make its promise a reality around the world. Here in the U.S., Action on Smoking or Health (ASH) works in partnership with the FCA on global initiatives, but also focuses on the domestic impact of global developments, while the Campaign for Tobacco-Free Kids is home to the largest U.S.-based programs with an international focus.

Find an international issue that connects with your priorities. Reach out to an advocate grappling with your issues in another part of the world. We promise you won’t be disappointed. You’ll find the same instant kinship and rapport you do with your colleagues down the street and across the U.S. You’ll make some amazing new friends. And who knows? You just might learn something valuable in the process.

Doug Blanke
Executive Director, Tobacco Control Legal Consortium
“What event stands out to you as pivotal in international tobacco control?”

From my perspective, the most important development in international tobacco control is the negotiation, adoption and entry into force of the Framework Convention on Tobacco Control (FCTC). It is an outstanding achievement for governments, civil society and the World Health Organization (WHO) alike.

The FCTC is significant because (1) the policies contained in the treaty are based on irrefutable scientific evidence; (2) the content of the treaty was negotiated and agreed by consensus by all the member states of the WHO so it has political legitimacy; and (3) it has the force of international law. Countries that choose to ratify the FCTC are legally bound to implement the policies contained in the treaty.

The world has taken the treaty seriously. Today, just 8 years after it entered in force, 176 countries have agreed to be bound by the treaty. Potentially, this means that approximately 88 percent of the people on earth are protected from the health, sociological and economic effects of tobacco use.

“Why did the world need an international treaty for tobacco control? Many countries had already implemented effective tobacco control measures.”

Tobacco-related disease and death are spurred on the one hand by the addictive nature of the product and on the other by the multinational operations of a highly profitable industry. Add to this the fact that the tobacco industry is heavily targeting low- and middle-income countries as its markets in high-income countries are beginning to shrink and you have an international public health problem that requires an international solution.

“For those who are unfamiliar with the treaty, what is in it?”

The heart of the treaty consists of obligations for governments to put in place legislation to implement certain evidence-based measures to control the demand for tobacco products and to denormalize tobacco-use. These include smoke-free air; effective health warnings and other messages on packages of tobacco products; bans or severe restrictions on advertising, promotion and sponsorship; price and tax measures; communication, public awareness, and cessation. The treaty also covers measures to reduce the supply of tobacco, protect the environment, and hold the
tobacco industry liable for the harms caused by its deadly products.

Q “So how is the treaty doing? Is it proving to be effective?”

Absolutely. There has been remarkable progress in tobacco control around the world since the treaty’s inception: 35 countries have adopted 100 percent smoke-free air laws; more than 68 countries now mandate graphic health warnings covering at least 30 percent of the pack; and 37 countries have banned or severely restricted all tobacco advertising, promotion and sponsorship. This translates into millions of lives saved.

And this is only progress related to legislation. The treaty is also proving its power in litigation when the tobacco industry sues governments to try to stop them from passing or implementing new laws. In more than 20 countries courts have referred positively to the FCTC when they upheld the right of governments to protect the health of their citizens from tobacco-related harm.

Q “How does the treaty work in practice?”

The treaty created a body called the Conference of the Parties, or COP, to manage and develop the original treaty. The COP consists of all those governments that have agreed to be bound by the treaty. It meets biennially to discuss implementation of the treaty provisions, share the most up-to-date scientific evidence and adopt guidelines to elaborate provisions in the treaty. The COP meetings are also motivating for governments in that they provide a platform for the Parties to hold one another accountable.

Q “What are your thoughts about the U.S.’s failure to ratify the treaty?”

I think it’s a great pity. By not ratifying the treaty, the U.S. is isolating itself from the international community unnecessarily. This deprives the international community of learning from U.S. experience and it deprives the U.S. of learning from the rest of the world.

Q “What suggestions do you have for an American tobacco control advocate who is interested in learning more about global tobacco control?”

Get involved with civil society organizations in the U.S. that work on tobacco control. Many of them are members of the Framework Convention Alliance (FCA), a global alliance of over 350 organizations from more than 100 countries that work on the development, ratification and implementation of the FCTC. Their website is http://www.fctc.org. There is also a comprehensive new database on global tobacco control legislation and litigation, which can be found at http://www.tobaccocontrollaws.org.
Laurent Huber: An International Champion in Tobacco Control

Fighting the tobacco epidemic around the world requires leadership, vision, passion and incredible stamina. It also doesn’t hurt if the person in question speaks four languages fluently and is widely acclaimed for his diplomatic and coalition-building skills. Laurent Huber is Director of the Framework Convention Alliance (FCA), an international coalition of over 350 non-governmental organizations from more than 100 countries. Under Laurent’s leadership, the FCA was instrumental in shaping the World Health Organization’s Framework Convention on Tobacco Control (FCTC), the first global public health treaty negotiated under the auspices of the World Health Organization. His work has helped ensure the FCA’s transition from a loose coalition to a powerful well-funded organization with an official relationship with the United Nations and the World Health Organization. Today, the FCA is leading the global tobacco control community to shift its focus toward implementation of the Convention.

Laurent has played an influential role in global tobacco for more than a decade. Since January 2011, he has also served as Executive Director of Action on Smoking and Health (ASH), a U.S.-based nongovernmental organization, founded in 1967, which supports international tobacco control efforts. Prior to this, Laurent served for more than ten years as ASH’s International Director. Before working full-time in tobacco control, Laurent directed a number of nonprofit organizations where he helped develop and implement non-communicable disease prevention programs for at risk and native populations.

Laurent’s tireless work to support international tobacco control results in a hectic schedule with regular presentations at public health and tobacco control policy events for advocates and legislators, at conferences, and at academic institutions around the world. Laurent serves on many panels and advisory boards for academic institutions, corporations and intergovernmental organizations that address health policy matters.

For his efforts in health and international tobacco control, Laurent received the American Lung Association — C. Everett Koop Foundation Award in 2005 and under his leadership, the FCA received the prestigious Luther Terry Award in 2006, the Premio SEDET in 2008, and the WHO World No Tobacco Day Award in 2011. The Tobacco Control Legal Consortium is proud to salute this international tobacco control champion!
Patricia Lambert is a South African human rights lawyer and social justice advocate currently working as the Director of the International Legal Consortium (ILC) at the Campaign for Tobacco-Free Kids in Washington, DC — part of the Bloomberg Initiative to Reduce Tobacco Use. Over the past six years, the ILC has provided legal technical assistance to almost 70 countries.

For ten years, during the Mandela and Mbeki administrations, Patricia worked as a legal adviser to the South African government on a range of human rights, trade, environmental and health issues. While with the Ministry of Justice, she co-drafted South Africa’s National Action Plan for the Promotion and Protection of Human Rights, which was lodged with the UN in December 1998; advised on the post-Apartheid revision of laws pertaining to sexual offenses against women and children; and participated actively in the judicial transformation process.

During her time with the Ministry of Health (1999-2006), Patricia began to work intensively on tobacco control. In addition to implementing South Africa’s comprehensive tobacco control legislation, she was appointed as the Chief Negotiator for the South African government for the Framework Convention on Tobacco Control (FCTC), the world’s first public health treaty. During the negotiations she served as Africa’s representative on the Bureau that managed the treaty-making process and chaired several sessions of the negotiating body. Beyond tobacco control, Patricia advised her government during its historic legal battle with the multinational pharmaceutical industry over the country’s groundbreaking laws aimed at providing affordable medicines, and was appointed as South Africa’s Chief Negotiator for the revision of the WHO International Health Regulations.

Patricia is the current President of the International Network of Women Against Tobacco (INWAT). She also serves on the Boards of Action on Smoking or Health (ASH-US) and the African Tobacco Control Alliance (ATCA).
For years, the tobacco industry has exploited international trade agreements to protect and expand tobacco markets and to challenge and undermine public health measures. The following article, written by Benn McGrady, PhD, Project Director, Initiative on Trade, Investment and Health at Georgetown University’s O’Neill Institute for National and Global Health Law, provides an overview of this dilemma.

Role of International Trade and Investment Agreements in Tobacco Control

In recent history, international trade and investment agreements have played an increasingly important role in discourse concerning the lawfulness and legitimacy of tobacco control measures. This follows a number of challenges to tobacco control laws and regulations under such agreements.

In April 2012, the Appellate Body of the World Trade Organization (WTO) upheld a panel’s finding that the United States’ Family Smoking Prevention and Tobacco Control Act (2009) violated WTO law. In particular, the panel and Appellate Body found that the prohibition of clove- but not menthol-flavored cigarettes had the effect of discriminating against cigarettes of Indonesian origin. The United States is currently considering how it will come into compliance with WTO law.

At present, the Dominican Republic, Honduras and Ukraine are also challenging Australia’s right to require plain packaging of tobacco products. Various claims have been made under WTO law, including that plain packaging unlawfully interferes with trademark rights and is more trade restrictive than necessary to protect human health. These claims bring into question the extent of each WTO Member’s regulatory autonomy and the role of the WHO Framework Convention on Tobacco Control (WHO FCTC) in interpretation of WTO law.

Outside the WTO context, Philip Morris has brought two claims under bilateral investment treaties (BITs) and one claim under a free trade agreement (FTA). Relying on a bilateral investment treaty between Australia and Hong Kong, Philip Morris Asia is bringing its own international challenge to plain packaging. Philip Morris argues that plain packaging indirectly expropriates its property rights, including trademark rights, and that the measure is unfair, inequitable and unreasonable. Making similar arguments, Philip Morris is also challenging Uruguayan tobacco packaging measures under the Switzerland – Uruguay BIT. In that claim, Philip Morris argues that graphic warnings covering 80 percent of the surface of the pack, and a ban on misleading branding that has been interpreted to prevent the company from selling more than one variant of any brand, violate the BIT. In addition, Philip Morris recently lost a challenge to Norwegian bans on the display of tobacco products at the point of sale under the European Economic Area Agreement.

The emerging role of international trade and investment agreements in tobacco control is a natural development in the context of a two-level game played between tobacco companies and proponents of tobacco control. At the domestic level, one game is played out through legislation, regulation and

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Resource Roundup

International Tobacco Control Laws Website
Check out Tobacco Control Laws, a regularly updated website with the most recent information about tobacco control legislation and litigation worldwide. This project of the International Legal Consortium of the Campaign for Tobacco-Free Kids allows users to search and download tobacco control laws from around the world. It also features legislative reviews and policy fact sheets that help users assess how tobacco control measures from a growing list of countries compare to the WHO Framework Convention on Tobacco Control (FCTC) and its associated Guidelines in the areas of:

- Smoke Free Places (FCTC Article 8)
- Tobacco Advertising, Promotion and Sponsorship (FCTC Article 13)
- Tobacco Packaging and Labeling (FCTC Article 11).

» Visit the Tobacco Control Laws website.

Tobacco Labeling Resource Centre
This website, designed to help promote effective, evidence-based labeling policies, was developed with the support of the Framework Convention Alliance and the International Union Against Tuberculosis and Lung Disease. It contains information on plain tobacco product packaging, pack images, research and reports and health images around the world.

» Check out the Tobacco Labeling Resource Centre.

Podcast on Tobacco Control in Europe
As part of a 3-part series focusing on the global tobacco epidemic, the May 4–10, 2013 issue of The Lancet offers a 10-minute podcast discussion with University of Nottingham Professor John Britton, who discusses progress and future priorities for tobacco control in Europe.

» Listen to The Lancet podcast.

Impact of the WHO Framework Convention on Tobacco Control
A recent article in Tobacco Control reports that at least fifty-one (51) jurisdictions have incorporated the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) into legislative objectives, definitions and/or substantive provisions and that courts in at least twenty-seven (27) jurisdictions have referenced the WHO FCTC in litigation. The paper was written by attorneys Monique Muggli, Annie Zheng, Jonathan Liberman, Nicholas Coxon, Liz Candler, Kaitlin Donley, and Patricia Lambert.

» Read the Tobacco Control article.

» Visit the International Legal Consortium website to access the unpublished paper.

Role of International Trade and Investment Agreements in Tobacco Control
Continued from page 14

litigation. At the international level, another game is played out with the public health community seeking stricter tobacco control through the WHO FCTC and the tobacco industry seeking to curb new developments in tobacco control through trade and investment agreements. Recourse to trade and investment agreements should be viewed in this broader context and it should not be assumed that the claims have merit. On the contrary, claims challenging the lawfulness of tobacco control measures per se (as distinct from how those measures are implemented in individual countries) are particularly likely to fail.
Upcoming Events

World No Tobacco Day
May 31, 2013

Every May 31, the World Health Organization and its partners hold World No Tobacco Day to highlight the health risks associated with tobacco use and to advocate for effective tobacco control policies. The theme for World No Tobacco Day 2013 is: Ban tobacco advertising, promotion and sponsorship. Despite the effectiveness of such comprehensive measures, the vast majority of the world’s population remains unprotected from exposure to tobacco industry advertising, promotion and sponsorship tactics.

» Read more about World No Tobacco Day 2013.

International Conference on Public Health Priorities
September 10–12, 2013, New Delhi, India

“The International Conference on Public Health Priorities: The Endgame for Tobacco” is an opportunity for multi-sector stakeholders around the world to collaborate in evaluating global strategies to fight tobacco and next steps. India, which is hosting the conference, has made progress recently in its efforts to end its tobacco epidemic by prohibiting the sale of smokeless tobacco products, including mixed products like gutkha and pure tobacco products like zarda, and by introducing strict tobacco control laws.

» Read more about the International Conference on Public Health Priorities in the 21st Century.

Upcoming Webinar on Global Tobacco Control

Mark your calendar! On September 24, 2013, the Tobacco Control Legal Consortium is presenting a webinar on recent tobacco control achievements around the world and lessons U.S. tobacco control advocates can learn from the international tobacco control community.

More information on this webinar will be available in future Consortium Bulletin and Legal Update newsletters, and on the Public Health Law Center’s website at http://www.publichealthlawcenter.org. Please also check this site for archived recordings of past Consortium webinars.

Disclaimer: While we make every effort to ensure the information in this newsletter is accurate and complete, the Tobacco Control Legal Consortium is unable to guarantee this information. Material is provided for informational purposes and is not intended as legal advice. We encourage readers with questions to consult an attorney familiar with the laws of their jurisdictions.

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