

CONTROL MEASURES IN SOUTH AFRICA SURROUNDING THE TOBACCO AND ALCOHOLIC BEVERAGE INDUSTRY

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DECLARATION

I, the undersigned, hereby declare that the work contained in this assignment my own original work and that I have not been previously in its entirety or in part been submitted at any university for a degree.

Signature: _____

Date: 26-01-2008

ABSTRACT

The tobacco industry of South Africa has fallen under strict legislation and control measures from the South African government since the passing of the initial Tobacco Products Control Act, 1993. Further amendments have been made to the initial act, namely Tobacco Products Control Amendment Act, 1999 and the proposed Tobacco Products Control Amendment Bill, 2004.

This assignment emerges against the backdrop of the alcoholic beverage industry coming under similar scrutiny to that of the tobacco industry from government legislation and control measures

The main objective of this assignment was to discover the similarities, if any, between the tobacco industry and the alcoholic beverage industry of South Africa, specifically with regard to their advertising practices before legislation. The purpose of this assignment is to discover whether or not the alcoholic beverage industry can learn from the example of the tobacco industry in order to maintain its self-regulation, rather than to fall under the control of State regulation and legislation.

The literature and empirical study sought to achieve the following four objectives:

- 1.) To gain a thorough understanding of the tobacco legislation on a global scale;
- 2.) To analyse the control measures and legislation of tobacco in a South African context;
- 3.) To identify any similarities between the tobacco industry and alcoholic beverage industry of South Africa and
- 4.) To identify means in which the alcoholic beverage industry can work with the State in order to maintain the self-regulation of its industry.

Findings indicate that similarities arise when comparing tobacco and alcohol, as both of them have addictive qualities, are often used from a very young age and both have laws prohibiting sale to minors. The success gained in South Africa with regard to anti-tobacco initiatives and government legislation since the introduction of the first Tobacco Act in 1993, has led to certain members of society feeling that similar, if not the same, strict strategies and / or legislative measures should be used to address the public health problems relating to alcohol.

OPSOMMING

Die Suid-Afrikaanse tabaknywerheid val onder streng wetgewing en beheermaatreëls deur die Suid-Afrikaanse regering sedert die aanvanklike Wet op die Beheer van Tabakprodukte, 1993 aanvaar is. Verdere wysigings op die aanvanklike wet is aanvaar, naamlik die Wysigingswet op die Beheer van Tabakprodukte, 1999 en die voorgestelde Wysigingswetsontwerp op die Beheer van Tabakprodukte, 2004.

Hierdie werk spruit voort teen die agtergrond van die alkoholdranknywerheid wat onder 'n soortgelyke soeklig geplaas is as die tabaknywerheid by wyse van regeringswetgewing en beheermaatreëls.

Die hoofmerk van hierdie werk was om die ooreenkomste, indien enige, vas te stel tussen die tabaknywerheid en die alkoholdranknywerheid van Suid-Afrika, spesifiek met betrekking tot hul adverteringspraktyke vóór wetgewing. Die doel van hierdie werk was om vas te stel of die alkoholdranknywerheid uit die voorbeeld van die tabaknywerheid kan leer aldan nie, met die oog op die voortsetting van sy selfbeheer, eerder as om onder die beheer van Staatsregulering en wetgewing te val.

Die bronmateriaal en empiriese studie was daarop toegespits om die volgende vier doelwitte te bereik:

- 1.) Om 'n behoorlike begrip te verkry van tabakwetgewing op 'n globale skaal;
- 2.) Om die beheermaatreëls en wetgewing oor tabak in 'n Suid-Afrikaanse konteks te analiseer;
- 3.) Om enige ooreenkomste tussen die tabak- en die alkoholdranknywerheid in Suid-Afrika te identifiseer en
- 4.) Om wyses te identifiseer waardeur die alkoholdranknywerheid met die Staat kan saamwerk om die selfbeheer van die nywerheid te behou.

Bevindinge dui aan dat ooreenkomste wel ontstaan wanneer tabak en alkohol met mekaar vergelyk word, veral omdat albei verslawende eienskappe bevat, dikwels deur persone vanaf 'n baie jong ouderdom gebruik word en dat wetgewing albei verbied om aan minderjariges verkoop te word. Die sukses wat in Suid-Afrika

rakende anti-tabakinisiatiewe en wetgewing behaal is sedert die inwerkingstelling van die eerste Wet op die Beheer van Tabak in 1993 het daartoe gelei dat sekere lede van die gemeenskap van mening is dat soortgelyke, indien nie dieselfde nie, streng strategieë en/of wetgewende maatreëls aangewend behoort te word om die openbare gesondheidsprobleme rakende alkohol aan te spreek.

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CONTROL MEASURES IN SOUTH AFRICA SURROUNDING THE TOBACCO AND ALCOHOLIC BEVERAGE INDUSTRY

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND OF THE ASSIGNMENT

The tobacco industry of South Africa has been subject to strict legislation and control measures from the South African government since the passing of the initial Tobacco Products Control Act, 1993. Further amendments have been made to the initial act, namely the Tobacco Products Control Amendment Act, 1999 and the proposed Tobacco Products Control Amendment Bill, 2004. These acts are discussed in detail in this assignment.

This assignment emerges against the background of the alcoholic beverage industry coming under similar scrutiny vis a vis the tobacco industry by means of government legislation and control measures. At present the alcoholic beverage industry is controlled by self-regulation. According to Finance24 (2007), the South African health department has published regulations requiring that container labels for alcoholic beverages and the need for them to carry labels should highlight the negative effects of alcohol consumption. The regulations which have been published under the Foodstuffs, Cosmetics and Disinfectant Act are the outcome of lengthy consultations with the parties concerned to address the challenge of alcohol abuse. The regulations would come into effect within the next 18 months and is part of the South African health department's ongoing campaign to promote healthy lifestyles in South Africa.

It is necessary to dispose of a thorough understanding of all of the legislation that have been put into place with regard to the tobacco industry globally and locally in order to identify any similarities between the tobacco industries mentioned and other industries. A thorough analysis is to be undertaken of the tobacco industry on a global scale and in a South African context.

To assist in discovering any similarities between these two industries an analysis of a major tobacco firm, namely British American Tobacco South Africa (BATSA), and a major alcoholic beverage firm, namely South African Breweries (SAB), was undertaken. Discovering similarities between these two industries will enable the alcoholic beverage industry of South Africa to learn from any past mistakes or successful actions of the tobacco industry in order for them to maintain as much self regulation of their advertising practices as possible and thus not to fall under complete government regulation.

1.2 OBJECTIVES AND PURPOSE OF THE ASSIGNMENT

The main objective of this assignment was to discover the similarities, if any, between the tobacco industry and the alcoholic beverage industry of South Africa, specifically with regard to their advertising practices before legislation. The purpose of this assignment is to discover whether or not the alcoholic beverage industry could learn from the example of the tobacco industry in order to maintain its self-regulation, rather than to fall under the control of government regulation and legislation.

The literature and empirical study seeks to achieve the following four objectives:

- 1.) To gain a thorough understanding of the tobacco legislation on a global scale;
- 2.) To analyse the control measures and legislation of tobacco in a South African context;
- 3.) To identify any similarities between the tobacco industry and alcoholic beverage industry of South Africa; and
- 4.) To identify the means in which the alcoholic beverage industry can work with government in order to maintain the self-regulation of the industry.

Some recommendations will be made to the alcoholic beverage industry, based on the lessons learnt from the tobacco industry example.

1.3 METHOD OF INVESTIGATION

The method of investigation followed in this assignment could be divided into two main sections, namely a literature review and an empirical study. The latter study gathered data by means of questionnaires.

1.3.1 The Literature Study

A comprehensive literature review was undertaken on various aspects of the tobacco Industry, specifically with regard to existing research compiled by the World Health Organization (WHO) focusing on the use and distribution of tobacco worldwide and the laws and regulations which should be in place in this regard. Using this existing information four countries were studied with specific relevance to the South African scenario whereby the aims and achievements, policies and legislation formats of these four countries were all analysed. A detailed study was conducted in order to obtain a better understanding of the dynamics of the South African tobacco industry, including an examination of the industry, and also the regulatory and legislative reforms that have impacted and transformed the South African tobacco industry.

Furthermore, a detailed examination was done on both the tobacco industry and alcoholic beverage industry of South Africa with specific reference to two of the major organisations in both this regard, namely BATSA and SAB. Sources of literature included books, journal articles, research papers, pieces of legislation, websites of industry associations and other relevant documents.

1.3.2 The Empirical Study

The empirical study of this assignment consisted of personal interviews with representatives from both British American Tobacco and South African Breweries. These interviews produced useful information which was current and relevant to their specific industries.

The interviews contributed to a better grasp of the literature study by adding a current market view on each of the industries reviewed in this assignment.

1.4 THE STRUCTURE OF THE ASSIGNMENT

Chapter one provides an introduction to the study, detailing the background to the research, the objectives and purpose of the study as well as the methods of investigation used. Chapter two presents an analysis of the tobacco industry on a global scale focusing on four major tobacco legislation enforcing countries, as well as an academic study on tobacco legislation. This is followed by an analysis of the South Africa tobacco environment in chapter three, and also the legislation which were passed to enforce the tobacco control measures in place in South Africa at present. In chapter four the tobacco industry of South Africa is analysed with the main focus on one of the major tobacco companies in South Africa, namely British American Tobacco (BAT). Chapter five of this assignment covers the guidelines set out for alcoholic beverage advertising in South Africa. This assignment concludes in chapter six with a comparative analysis of the tobacco industry and alcoholic beverage industry showing that the two industries are similar and the lessons which may be taken by the alcoholic beverage industry from the tobacco industry over the years in order to maintain its self-regulation versus that of government control measures.

CHAPTER 2: CONTROL OF TOBACCO PRODUCTS IN SELECTED COUNTRIES

2.1 OVERVIEW ON WORLD HEALTH ORGANISATION INITIATIVE ON TOBACCO CONTROL

There has been a major focus shift with more and more attention being placed on smoking and tobacco related issues worldwide and the World Health Organisation (WHO) hopes to do away with the social and health related risks by the reduction of tobacco smoking globally through the Framework Convention of Tobacco Control (FCTC) and combined help of all nations (Moerman and Van Der Laan, 2005).

According to the WHO, global cooperation is crucial to the success of efforts to prevent ill health caused by smoking, over the past 20 years there has been a shift in the consumption patterns of tobacco, namely from developed countries to that of developing countries. More specifically according to the WHO there has been a decrease in the consumption of tobacco by well educated western males and an increase in the tobacco consumption by western females and males from developing countries. This phenomena of tobacco consumption decrease in developed countries and increase in developing countries was also stated by Hoek and Sparks (2000) who found a relationship between the increase of consumption of tobacco products in developing countries had a link to the movement of advertising spends of major organizations from developed countries where the tobacco laws and legislation prohibited their advertising to those developing countries where there were no bans in place due to their lack of knowledge.

As an international, multilateral organisation the World Health Organisation (WHO) stated that they believe in bring together both the technical and public health expertise which they possess in order to reduce the global spread of tobacco and tobacco products (Moerman and Van Der Laan, 2005). Through the formulation of the Framework Convention of Tobacco Control (FCTC) the WHO has set about certain objectives which they intend to achieve. These objectives include protecting children, adolescents and vulnerable communities from tobacco through exposure to

smoking and marketing, addressing the prevention and treatment of tobacco dependence, and promoting a smoke free environment and tobacco free economies. Through these objectives the WHO hoped that they would be able to address more specific topics which would help in the reduction of tobacco use, such as advertising, package design and labelling, environmental tobacco smoke and agricultural diversification and smuggling.

A major area of speculation is that of national restrictions and global restrictions as when taking both into consideration certain loop hole emerge, this is why the WHO have gone about formulating and drafting the FCTC, even though this document will never have an legal status if it is signed and accepted by all nations it will have the power to exert strong economic pressure on tobacco companies according to Hoek and Sparks (2000).

The FCTC, Appendix 1, focuses on five main areas, namely:

1. International rules for cross bordering issues
2. Tobacco – a global public health problem
3. Contents of the Framework:
 - a. Advertising, marketing and sponsorship,
 - b. Smoke free environments,
 - c. Warning texts, declarations of contents and maximum levels,
 - d. Taxation and pricing,
 - e. Young people and tobacco.
4. Framework convention important to sustainable development
5. Implementation of the Convention

Tobacco control measures have become a world wide phenomenon over the past few years with 121 countries having signed up to the WHO's FCTC initiative and there are still another 73 countries who are eligible to become active parties. Particulars pertaining to these figures are set out in Appendix 2 the WHO framework convention on Tobacco Control.

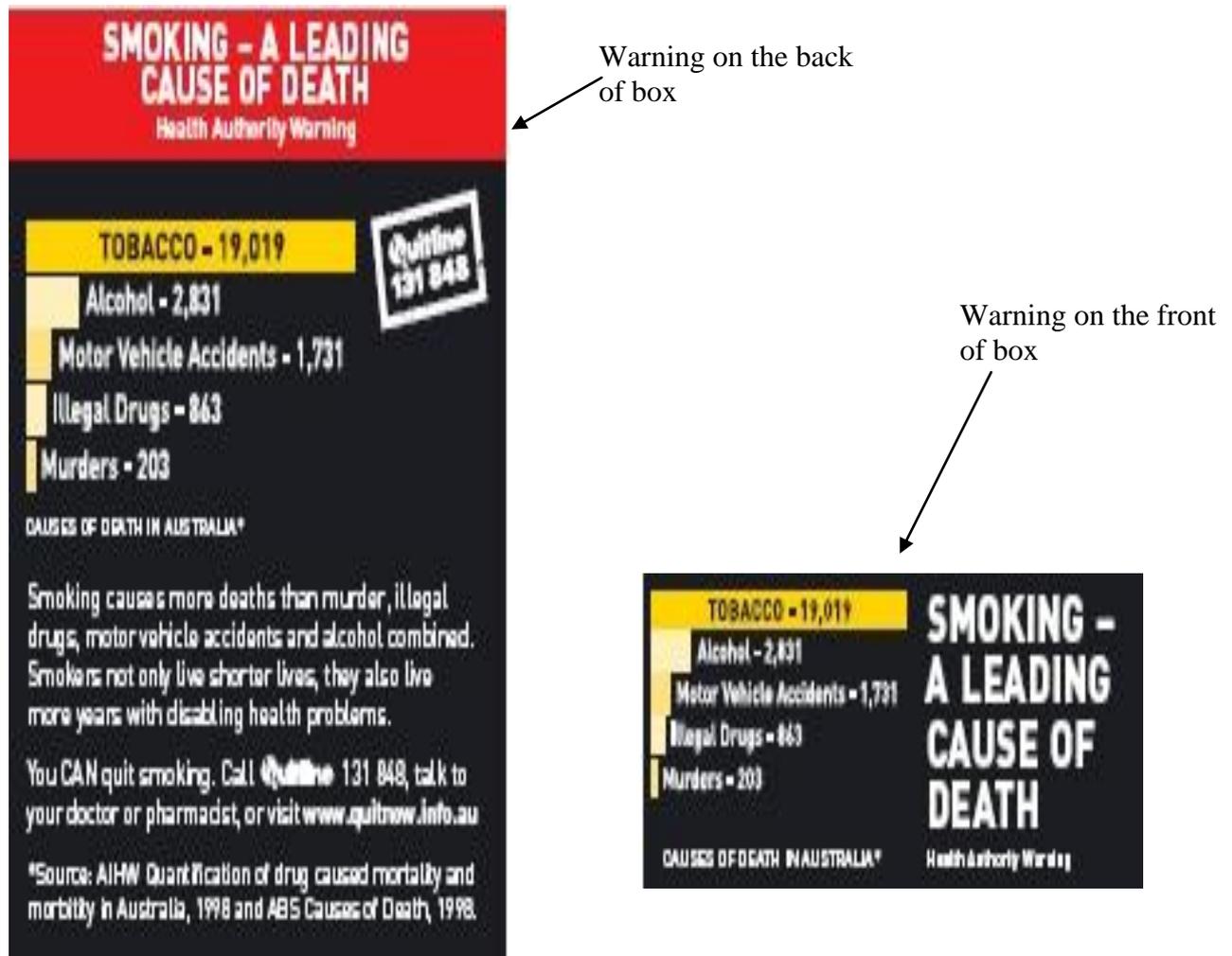
2.2 TOBACCO LEGISLATION IN OTHER COUNTRIES

Over the years governments have tried to curb smoking habits of people by displaying different messages. However, over the years their messages on the disadvantages of smoking as a lifestyle choice have been getting more and more intense, with the focus shifting from the financial issues of the 1960's to the issue of one's health, the main focus on the damage caused by smoking which includes cancer, coronary heart disease, stroke, bronchitis, emphysema, ulcers and pregnancy complications, due to the constant rises on the tax levied on cigarettes, which has increased the price of cigarettes considerably, had not achieved enough in deterring smokers (Wall, 2005). The governments advertising campaigns have become harsher over the years focusing on the effect that smoking has on your bodies' organs and the bad health of young smokers.

Governments also tried another approach to discourage smoking as they steadily went about eliminating smoking in public places, such as cinema's, restaurants, shopping malls and the workplace, which now either don't allow smoking at all or have specific demarked areas for smokers. Another means which Government has enforced to try and deter people from smoking are the more hard hitting messages placed on the actual packaging, from the earlier non-committal messages of "cigarettes can damage your health" to the more hard hitting messages of "SMOKING KILLS" (Wall, 2005).

The warnings placed on cigarette boxes differ from country to country, i.e. in Australia as of the 1st of March 2006 the warning labels cover 30% of the front and 90% of the back of each package. The back of the package will have to provide expanded information on the warning, as well as information on the Australian Quit line, which is an initiative the Australian Government have implemented in order to help people stop smoking. The Australian government has developed fourteen warnings whereby they are going to implement seven in the first year and the other seven in the following year, an example of the front and back warning which has been implemented can be seen below in Figure 2.1.

FIGURE 2.1: AUSTRALIAN CIGARETTE WARNINGS



Source: <http://www.smoke-free.ca/warnings/Australia-warnings.htm> (20th July 2006)

In Canada the health warnings are a little different due to the fact that the government has to take into account both of their official languages, namely English and French, warnings must therefore cover 50% of each of the front and back of the package (Cunningham, 2004). One side is in English and one side is in French. Each package also has to include an insert (a flyer or printed on the inside of the package) which provides information on quitting. There are 16 health warning messages which must appear in equal numbers in each brand. Health Canada is now developing a new set of warning messages. See Figure 2.2 for examples of health warnings used in Canada.

FIGURE 2.2: CANADIAN CIGARETTE WARNINGS



Source: <http://www.smoke-free.ca/warnings/Canada-warnings.htm> (20th July 2006)

The United Kingdom have implemented health warnings which have to cover at least 30 percent of the front face and at least 40 percent of the back face of cigarette packs. The colour and font of these warnings are part of the UK's regulations were they are carefully defined (Department of Health, 2006). These bigger health warnings were brought in following evidence from Australia that they could increase smokers' understanding of the health risks of smoking, help to reduce their cigarette

consumption and in some cases help them to give up smoking altogether. Please see Figure 2.3 below for the warnings utilised in the UK.

FIGURE 2.3: UNITED KINGDOM CIGARETTE WARNINGS



Source: <http://info.cancerresearchuk.org/publicpolicy/briefings/prevention/tobacco-control/packaging/> (20th July 2006)

In New Zealand the government had implemented warnings on their packages which need to be larger than before and include stronger health warnings which are displayed in both English and Maori (Action on Smoking and Health, 2006). The New Zealand has also regulated that as from 1st January 2000, all of the tobacco products manufactured or imported for sale in New Zealand must display, in rotation, one of the following health messages Smoking kills, Smoking is addictive, Smoking when pregnant harms your baby, Smoking causes heart disease, Smoking causes lung cancer or Your smoking can harm others

An additional health message in Maori - *Ka mate koe i te kai hikareti* (smoking kills) will also be carried on each packet. These messages are required to take up no less than 25 percent of the front of packets of tobacco products and more detailed

information will take up a third of the rear of the packets. See figure 2.4 below for examples of the New Zealand cigarette packaging.

According to Action on Smoking (2006) the ministry of health in New Zealand is considering placing graphic pictures on the cigarette packages in their country which will come into effect during 2007 and will depict smokers with throat cancer, rotting teeth and gums and gangrenous feet as well as now covering 60 percent of the box. Please see figure 2.4 below for examples of the New Zealand cigarette packaging.

FIGURE 2.4: NEW ZEALAND CIGARETTE WARNINGS



Source: http://www.bestsyndication.com/Articles/2006/dan_wilson/health/05/051006_new_zealand_graphic_warnings_on_cigarette_packs.htm (20th July 2006)

2.3 INTRODUCTION TO LEGISLATION IN OTHER COUNTRIES

The remainder of this section will be focusing specifically on the legal frameworks of five different countries, namely Australia, Canada, England and New Zealand with

specific reference to their tobacco legislation and their achievement of acceptable advertising standards.

2.3.1 Countries

The aims and achievements, format of legislation as it pertains to the four countries discussed hereafter namely Australia, Canada, England and New Zealand as well as the policies they implemented are discussed in this section. The above will be done in order to discover what trends show prominence against the efforts being made in the South African context which the writer will discuss in Chapter three.

2.3.1.1 Australia

This section attends to the aims, achievements, legislation and policies relevant to tobacco control in Australia.

Aims/ achievements

According to the Australian National Tobacco Strategy (1999 –2002/3) the main aim of the Australian government is to improve the health of all Australians by eliminating or reducing their exposure to tobacco in all its forms. The National Expert Advisory Committee on Tobacco developed the Australian National Tobacco Strategy on behalf of the Ministerial Council on Drug Strategy (MCDS) in consultation with the Commonwealth, States and Territories, tobacco control stakeholders and the broader community.

The objectives which were formulated to help in this regard centred around four main topics, firstly the prevention on the uptake of tobacco use in non-smokers, especially children, the reduction of the number of users of tobacco products, the reduction of exposure of users to the harmful health consequences of tobacco products, and the reduction to tobacco smoke exposure

The Australian National Government formulated six strategies out of the objectives stated above:

- Strengthening community action for tobacco control

The first of these six strategies was focused on increasing public awareness of the harm associated with any level of tobacco use, increasing the strategies, programs and guidelines that educationally support and enhance State and Territory tobacco education and primary prevention initiatives. The government also hoped to increase the range and number of community-based programs that aim to prevent uptake of smoking, increase the capacity of the community to actively contribute to tobacco control activity at the local level and lastly to increase the range, accessibility and appropriateness of information, education and resources for targeted population groups.

- Promoting cessation of tobacco use

In the second of their six strategies the Australian government aimed at increasing the public awareness of the benefits of smoking cessation and the incentives for smokers to quit. They also aimed at increasing the range and number of health professionals and allied workers with skills and resources to help smokers quit while promoting the accessibility of a range of resources and services to assist smokers to quit. Through this strategy they also aimed for an increase in the accessibility of appropriate, affordable smoking cessation interventions for low-income earners and targeted population groups as well as a decreasing maternal smoking.

- Reducing availability and supply of tobacco

There will be a focus on reducing the affordability of tobacco products and the illegal sale and supply of tobacco to minors.

- Reducing tobacco promotion

The Australian government wanted to reduce the exposure of the public to messages and images that may persuade them to start smoking, continue to smoke, or to use, or continue to use, tobacco products

- Regulating tobacco

The tobacco industry would start having to disclose the ingredients of, including additives to, tobacco products, and identifying appropriate interventions to regulate tobacco products.

- Reducing exposure to environmental tobacco smoke

In the Australian government's final strategy they put forward the wanted to establish smoke free public places as the norm, increase the public awareness and understanding of the health risks to exposure of environmental tobacco smoke (ETS)

as well as increasing accessible and appropriate strategies for targeted population groups nominated in the Strategy.

Australian legislation

The Australian tobacco laws are regulated through Commonwealth, State and Territory legislation and this legislation covers:

- a. Packaging and labelling requirements,
- b. Advertising and promotion restrictions,
- c. Public smoking bans, and
- d. Taxation (excise and business franchise fees).

See Appendix 3 for the relevant data which indicates the exact criteria each territory in Australia needs to follow with reference to each criteria of the legislation.

Australian Policies

Australia has a number of tobacco policies which it regulates over certain periods, namely their taxation on tobacco products which gets automatically readjusted for the Consumer Price Index (CPI) every February and August, Health & Social Policy (2004). The funding organizations and programs which are run throughout Australia to help people quit smoking have set up free quit lines and allow for subsidies through the Pharmaceutical Benefits Scheme (BPS) for bupropion scripts. In 2001 more than 350 000 bupropion scripts were filled which amounted for 11 percent of the tobacco consuming population.

The penalties in Australia for smoking in prohibited areas are either an infringement notice of \$104 or a fine of \$524 if the offence is proven in court (Better Health Channel, 2006). Occupiers, namely a person aged over 16 years of age who is in control of the area or premises, may also face similar penalties if they allow smoking in their premises or fail to display acceptable No Smoking signage.

There are severe penalties in place for the Australian market and these are applicable for the selling tobacco products to people under the age of 18 years, unlawfully displaying or advertising tobacco products, displaying or selling tobacco

products at underage 'music/dance' events and the placement of vending machine in any unlawful areas.

2.3.1.2 Canada

This section attends to the aims, achievements, legislation and policies relevant to tobacco control in Canada.

Aims/ achievements

According to the International Development Research Centre (2006) the principal factor behind the large reduction in Canadian tobacco consumption has been the implementation of a comprehensive package of antismoking interventions, mainly by the Canadian government. There have been other factors which have played a role such as, social pressure and a better public understanding of health risks, which have contributed to Canada's leadership in tobacco consumption reduction as shown by the country's record of achievement.

Canada's record of achievement, according to The International Development Research Centre (2006), has been that the annual per capita (age 15+) consumption of cigarettes (including roll-your-own) in 1992 was 40% lower than in 1982. The prevalence of smoking among 15–19 year olds fell from 47% in 1979 to 22% in 1991. Over the same period, daily smoking fell from 42% to 16%. Some surveys in 1994, however, found a rise in youth smoking compared to 1991. Canada was the first country to ban smoking on all domestic and international flights of its domestic airlines. They were also the first country to require health warnings covering 20% of the package front and back; and black and white health warnings at the top of the package and covering more than 30% of the front and back (25% plus a border).

Canada was one of first countries to require health warnings on addiction and on second-hand smoke and one of few countries to require health warnings on packages sold in duty-free stores. Canada was the second country in the Western Hemisphere (after Cuba) and the second English-speaking country (after Singapore) to ban tobacco advertising, although this ban was struck down as unconstitutional in 1995.

New Brunswick, followed by other provinces, was the first jurisdiction to legislatively require stand-alone antismoking publicity at point of sale. Ontario was the first jurisdiction in North America to prohibit pharmacies from selling tobacco.

Canada hosted the first smoke-free Olympics (1988 Calgary Winter Games). All Olympic venues were smoke free, and tobacco advertising and sponsorships were not allowed in association with Olympic events.

Canada was the first country to require manufacturer reporting to government of ingredients in tobacco products on a brand-by-brand basis [unfortunately, the reports are not publicly available] and the first country to have a parliamentary committee conduct a detailed investigation into the feasibility of plain packaging.

In 1993, Canada implemented perhaps the most advanced tobacco-control policy for any navy in the world at the time, banning smoking on the interior of any ship; restricting smoking in shore facilities; ending ship-board cigarette sales and introducing smoking-cessation and education programs.

Canada was one of the first countries to establish a national ban on packs with fewer than 20 cigarettes and they are one of the few countries with a meaningful program to help farmers exit from tobacco growing. The federal government was one of the first governments to produce antismoking promotional material mocking the tobacco industry and its denials that it does not market to young people.

Canada proposed a resolution, adopted in 1992 by the International Civil Aviation Organization (a United Nations agency), that called on countries “to take necessary measures as soon as possible to restrict smoking progressively on all international passenger flights with the objective of implementing complete smoking bans by 1 July 1996.” Canada was the initiative behind the resolutions at the World Health Assembly in 1995 and 1996 calling for the adoption of an international convention on tobacco control. .

According to The International Development Research Centre (2006) Canada has enjoyed the success it has due to three factors, namely: political will, bureaucratic

support and expertise and effective advocacy outside government. These three are key to the success of tobacco control — had any one of these factors been absent, Canada's progress in tobacco control would have been impeded.

Canadian Format

The purpose of the Canadian Tobacco Act 1997, c. 13 is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular it focuses on four main objectives namely,

- To protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases,
- To protect young persons and others from inducements to use tobacco products and the consequent dependence on them,
- To protect the health of young persons by restricting access to tobacco products, and
- To enhance public awareness of the health hazards of using tobacco products.

Appendix 4 contains all the relevant data which applies to the Canadian Tobacco Act, including the amendments which have been made over the years.

Canadian Policies

A major step was taken on the 5th of April 2001 according to Health Canada (2002) in the enhancement of the Canadian Governments tobacco control measures with the launch of the Federal Tobacco Control Strategy (FTCS) which focuses on five objectives which are set to be achieved by 2011, these were the reduction of smoking prevalence from 25% (the level in 1999) to 20%, the reduction of cigarette sales by 30%, increasing retailer compliance related with youth access to tobacco from 69% to 80%, reducing the number of people exposed to environmental tobacco smoke in enclosed public places and exploring how to mandate changes to tobacco products to reduce health hazards.

The FTCS which is a made-in-Canada approach is intended to fit Canadian realities. According to the Health Canada (2002) the FTCS is built on successful interventions drawn from Canada and elsewhere in the world, where comprehensive, integrated and sustained government actions have been the keys to success. A strong

emphasis is placed on the importance of collaboration between the federal government and other levels of government in recognition of the fact that effectiveness in implementation of the Strategy will depend on actions of those stakeholders.

The key strategic components which are taken into account by the FTCS and which are mutually reinforcing are firstly, according to Health Canada (2002) the protection component which will lead to the creation of an environment (physical, legal and regulatory) that supports non-smoking as the norm in Canada. Secondly, according to Health Canada (2002) the component of prevention is aimed at discouraging people, especially the youth, from ever beginning to smoke. Thirdly, the initiative by the Canadian government aimed at helping people give up smoking. Lastly, because there will always be smokers will continue to smoke despite the best efforts made by government to encourage quitting, the focus is at reducing the health hazards of tobacco products to the greatest extent possible.

In addition to these four strategic components there will also be an extensive use by the Canadian government of mass media campaigns and public education in order to strengthen and support each of these components.

2.3.1.3 England

This section attends to the aims, achievements, legislation and policies relevant to tobacco control in England.

Aims/ achievements

The main avoidable cause of premature deaths in England is that of smoking. Due to this the English government has taken a stand and promises new actions which will be taken in order to combat tobacco consumption to help reduce the 86 500 deaths caused by smoking every year. (Department of Health, 2006)

The department has split its tobacco programme into six areas of focus, which will all contribute to the overall reduction of smoking. Since 1998 the rates of adult smoking in England had fallen from 28% to 25% in 2004, which relates to 1.2million fewer

smokers, (Department of Health, 2006). The six new actions which the department is focusing on are firstly, the reduction in exposure to secondhand smoke. Secondly, the provision of the ongoing media and education campaign as a key strand of the government's tobacco control programme. Thirdly, reducing the availability of tobacco products and regulating supply, which has ended up being a successful tool used in the UK in order to reduce smoking as well as aiding people to become non-smokers has been that of price increases, whereby budget changes to the tobacco duty have resulted in saving lives and preventing serious illnesses. Fourthly, the National Health Service's, 'Stop Smoking Services and Nicotine Replacement Therapy' campaign. Fifthly, the reduction of tobacco advertising and promotion, whereby the UK has placed a comprehensive ban on all tobacco advertising due to strong evidence that links the decrease in smoking levels with the ban on tobacco advertising. Lastly, regulating the contents of tobacco products and the labelling of packaging. The UK had to comply with a 2001 European Directive on tobacco products and labelling therefore they drew up the legislation of Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002, in order to comply with this Directive.

England's Legislation Format

The tobacco legislation document in England according to Action on Smoking and Health (2006) is the Tobacco legislation, regulations and voluntary agreements, which forms Appendix 5.

The Tobacco legislation, regulations and voluntary agreements document is a reference guide to tobacco related legislation, policy and voluntary agreements that are particular to the UK and the European Union. According to Action on Smoking and Health (2006) the Tobacco legislation, the regulations and voluntary agreements document also includes legislation that has been passed but has yet to come into effect, legislation in preparation and global initiatives such as the Framework Convention on Tobacco Control.

The Tobacco legislation, regulations and voluntary agreements document focus around many different issues and consists of different sections, namely: Overall policy, International Tobacco Control, Advertising, promotion & sponsorship,

Broadcasting guidelines, Smoking in the workplace, Smoking in public places, Youth access, Customs and Excise, Taxation, Product regulation and labelling, Smoking cessation, Consumer protection, Agriculture and European Union treaty and case law.

Appendix 5 contains all the relevant data which applies to the United Kingdom and European Union legislation.

England's Policies

The UK Government is focused on reducing the consumption of tobacco products through many different means and according to Action on Smoking and Health (2006), the Governments plans are set out in a number of white papers and plans namely:

Firstly, this White Paper sets out the Government's proposals to tackle a range of health issues including smoking. The key tobacco policies include a proposal to ban smoking in all workplaces except for some membership clubs and pubs where food is not sold; a commitment to maintain, and maximise use of, the stop smoking clinics; greater enforcement of the law to stop sales of tobacco to children; plans for pictorial health warnings and further efforts to combat tobacco smuggling

Secondly, this document outlines the key steps to be taken over the next three years to deliver the Choosing Health White Paper. The Department of Health will report on progress every six months.

Thirdly, this White Paper is the prime statement of government policy to tackle tobacco use in Britain and spells out a package of measures each of which are intended to add to the impact of the others to reduce smoking prevalence – it includes banning tobacco advertising, use of taxation, support for smokers wanting to quit, smoke-free policies and a range of targets.

Fourthly, the NHS Cancer Plan seeks to address issues relating to cancer, from prevention, to detection and treatment of the disease. The document recognises smoking to be a major contributor to prevalence of the disease and hence sets out

targets for improving prevention which include reducing tobacco use in disadvantaged groups.

Lastly, the section “Saving Lives: Our Healthier Nation” sets out a broad strategy for improving health and tackling health inequalities. It also sets out targets for the reduction of cancer and coronary heart disease and stroke by 2010.

2.3.1.4 New Zealand

This section attends to the aims, achievements, legislation and policies relevant to tobacco control in New Zealand.

Aims/ achievements

There are four goals that support the best-practice strands of a comprehensive tobacco programme namely to (Clearing the Smoke, 2004): significantly reduce levels of tobacco consumption and smoking prevalence; reduce inequalities in health outcomes, reduce Maori smoking prevalence to at least the same level as non-Maori, and reduce exposure to second-hand smoke for all New Zealanders.

New Zealand’s Legislation Format

According to About the Smoke Free Law (2005) the New Zealand Smoke-free Environments Act (the Act) was passed in 1990 and the purpose of this Act was to: reduce the exposure of non-smokers to second-hand smoke, regulate the marketing, advertising and promotion of tobacco products, monitor and regulate the presence of harmful constituents in tobacco products and tobacco smoke, and to establish a Health Sponsorship Council (HSC).

The Tobacco Act in New Zealand placed restrictions on smoking in workplaces, required that all workplaces have a policy on smoking and to review that policy annually, ban smoking on public transport and certain other public places, and restricted smoking in cafes, restaurants and casinos, regulated the marketing, advertising, and promotion of tobacco products and the sponsorship by tobacco companies of products, services and events, ban the sale of tobacco products to

people under the age of 16 years (raised to 18 years in 1998), and provide for the control, and disclosure, of the contents of tobacco products.

The regulations which were put into place have regulated the size, placement and wording of labels and health warning messages on tobacco products, including the Maori warning message 'Ka mate koe i te kai hikareti' (smoking kills), and require annual testing or returns and reports on 'harmful constituents' for classes of tobacco products.

Appendix 6 contains all the relevant data which applies to the New Zealand Smoke-free Environments Act.

New Zealand's Policies

According to Health and Social Policy (2004) New Zealand has a number of tobacco policies which it regulates. These policies focus specifically on specific areas such as taxation, funding, quit lines, assistance through hospitals and subsidies.

The taxation on tobacco products in New Zealand gets adjusted for the CPI automatically on an annual basis. The funding organizations and programs which are run throughout New Zealand to help people quit smoking have set up free quit lines and subsidies for people who qualify through the Nicotine Replacement Therapy (NRT). The funding subsidies 92 per cent of the cost of NRT quit packs, which includes a NRT voucher which is redeemable at any pharmacy, where by in 2003 41 000 smokers had made the effort to contact the free call centres and of which 73% had redeemed their NRT vouchers. There are even certain hospitals and health care services in New Zealand which offer access to the services of quit councillors to patients who smoke. In addition to this several hospitals the New Zealand Health Care Organisation is introducing systems to ensure the termination of smoking to those admitted.

2.4 ACADEMIC STUDIES

The health impacts of tobacco have been a major problem for decades but, only since the 1970's and 1980's have governments around the world really start taking

notice of the actual impact and destruction tobacco products are causing (Sandford, 2003).

According to Jeffs and Le Page (1997) a Government White Paper stated that smoking was the largest single causes of preventable death in the UK, and even through all the legislation placed on tobacco products and advertising since then until now smoking has retained this horrible status.

New Zealand's approach involves a comprehensive tobacco control programme that incorporates the internationally recommended strategies of legislation, taxation, health promotion and smoking cessation services.

The aims of the New Zealand government, according to the National Drug Policy (2003) are to enable New Zealanders to increase control over and improve their health by limiting the harms and hazards of tobacco, alcohol, illicit and other drug use and to reduce the prevalence of tobacco smoking and exposure to environmental tobacco smoke

According to the National Drug Policy (2003) New Zealand initiated a multimedia campaign called, Why start? This initiative increased the sponsorship of smoke free sporting and cultural events, smoke free schools initiatives, increased enforcement of laws against the sale of tobacco products to under-age children, and new legislation to raise the minimum age at which young people can legally obtain cigarettes from 16 to 18 years of age. This initiative brought anecdotal evidence which suggested that it was becoming more and more difficult for young people to purchase cigarettes. There has also been an increase in the number of retail outlets which display signs advising customers of the ban on selling cigarettes to under-aged young people.

Even though there have been positive evaluations which have emerged through the Why Start? multimedia campaign, the main question which needs to be answered is whether or not these successes will be translated into a reduction in the number of young people who smoke or who are exposed to environmental tobacco smoke.

Governments on a global scale need to instil a "healthy public policy" in their own countries. If something as simple as this could be achieved there would no longer be

a need for any tobacco production. If every nation had the notion of being healthy they would no longer need tobacco products as these products would be deemed unhealthy and unnecessary in the new way of living. According to Jeffs and Le Page (1997) “healthy public policy” requires that health promotion goes beyond the normal healthcare and in actual fact makes health an agenda item for policy makers in all areas of government and organization action.

For a “healthy public policy” on tobacco control to be achieved governments will be required to introduce a thorough and integrated package of legislative, financial, educational and social change according to Jeffs and Le Page (1997). Such a thorough and integrated approach according to Jeffs and Le Page (1997) should aim to firstly, restrict the supply in order to reduce the number of tobacco retail outlets, raise the legal age of purchase, enforce legislation regarding the lawful sale of cigarettes to minors, and restrict children’s access to cigarette vending machines.

Secondly, reduce the demand in order to provide targeted health education in schools, etc, restrict smoking on public transport, Government and public buildings, encourage more smoke-free workplaces and increase the number of commercial establishments, restaurants, etc. promoting “No Smoking” areas, restrict tobacco advertising and sponsorship, increase the real price of tobacco and promote differentials in favour of non-smokers in life assurance/medical insurance, etc.

Thirdly, to help the addicted by urging general practitioners to identify smokers and use proven “short interventions”, make use of the “teachable moment”, e.g. pregnancy booking-in clinics, routine health checks, etc, make Quit Programmes and Smoking Clinics more readily available, subsidize nicotine replacement therapy and promote better general health, with which smoking is incompatible.

In order for governments to achieve substantial reduction in smoking they need to employ a number of strategies, such as taxation on cigarettes, eradicate tobacco smuggling, a ban on tobacco advertising, correct packaging and labelling of tobacco products with health warnings, regulating the amounts of tar and nicotine, ensuring there are smoke-free public places and workplaces, making available public information and releasing information campaigns on the harms of tobacco, smoking

cessation, prohibiting sales to children, and phasing out tobacco production (Sandford, 2003).

To illustrate the work of Jeffs and Le Page (1997) and Sandford (2003) Brazil will be utilised as an example through the work done by Da Costa and Goldfarb (2003) which shows how a government's involvement in tobacco control and regulation can have some astonishing results.

According to Da Costa & Goldfarb (2003) Brazil is seen as a world leader in tobacco control through their continuous professional and voluntary efforts. They have found that the impact of tobacco production on people and the environment is just another addition to the already gloomy health data associated with smoking. Tobacco crops around the world are produced with the help of intensive chemical additions, such as soil sterilizers, fertilizers and pesticides which all have a harmful impact on people and the environment.

Brazil is the largest tobacco exporter and third largest producer in the world according to Da Costa & Goldfarb (2003), but they have found that changing the tobacco economy of Brazil may not be as difficult as many assume, due to the fact that the Brazilian economy is not dependant on tobacco production. Tobacco controls are increasing worldwide and due to this the industry is shifting its sources of supply. Brazil as a tobacco exporter therefore needs to prepare for the global changes in consumption and would benefit greatly by redirecting its investments away from tobacco and towards future global consumption and trade patterns. Other countries which also

The Government in Brazil stepped in and according to Da Costa & Goldfarb (2003) in 1994 proposed a bill banning any and all direct and indirect advertising and promotion of tobacco products, including a requirement that all packaging of tobacco products would need to display one of the six rotating health warnings instilled by the ministry of health. Through this in 1995 the Brazilian National Tobacco Control Program (NTCP) decided that they would add economic measures to existing tobacco control efforts, due to the fact that there had been published evidence according to Da Costa & Goldfarb (2003) that an increase in the price leads to a

decrease in consumption of tobacco products. Throughout the world there has been a major increase in the restriction of above the line advertising by governments towards tobacco advertising. However, unlike the Brazilian example, tobacco companies in other countries such as South Africa are still able to communicate with the marketplace through indirect or below the line marketing techniques which are generally innovative enough to grab the attention of their users or nonusers, such as Peter Stuyvesant's initiative of using the concept of the Amazing Race in order to instil excitement in their consumers.

Another technique which the Brazilian government utilised was that educating the population and found that through education and the legislation they had in place major achievements could be realized. Their first major system they launched was the "Cascade" System for training, whereby this system worked in such a way that the federal team (a.k.a. the NTCP team) would train staffs of state health and education secretariats, who would in turn train municipal health and education secretariats. The municipal staff would then train professional workers at workplaces – schools, health units, and so on – and then they would use what they have learnt to reach out to the public in general. According to Da Costa & Goldfarb (2003) this NTCP program was set out to prepare local state and municipal agents for action at four activity levels, namely at Level one the focus is on deciding on the local political, physical, and administrative structures for tobacco control initiatives, planning and evaluating local programs and activities, conducting public and media relations and keeping the tobacco control theme on the media agenda, giving general information talks on tobacco and the implications of its use and production, coordinating tobacco control activities at the local level and learning epidemiology basics.

At Level 2 the focus is placed within the local partnership of health and education secretariats, developing and coordinating continuous educational actions throughout the year across three community channels—schools, health units, and workplaces—with agents from the Family Health Program and the Community Agents for Health Program.

At Level 3 a partnership with those responsible for epidemiology, carrying out surveys and research projects and implementing local initiatives of the National System of Evaluation and Surveillance on Tobacco is the key focus.

Finally at Level 4 the main focus is to encourage the development of, proposing, and lobbying for adequate legislation and economic measures, namely providing techniques and support materials for the treatment of nicotine addiction

From the article by Da Costa and Goldfarb (2003) on Brazils experience with tobacco control seven key lessons can be drawn out, which can be used as guidelines by other nations demonstrating how a public health program can exceed despite economic and administrative challenges and strong resistance from commercial interests.

These seven key lessons are as follows, firstly, the Development and fostering of public commitment towards tobacco control. Without this commitment, coupled with strong leadership, the NTCP and other advocates could not have achieved as much as they have.

Secondly, the utilisation of a decentralized strategy to get their message out, such as in the case of Brazil. They benefited from a strategy based on trainers instructing other trainers so that the message could be spread across the country.

Thirdly, seeking the political support of those in power. Public commitment would accomplish little without the political will to sponsor legislation.

Fourthly, the participation of partnerships within all sectors of society. Examples of such partners would be namely, professional associations (particularly those in the health sector), the media, politicians, well-known artists and sports people, and religious organizations. These partnerships, based on respect and accurate information, were a great help in the Brazilian process. They provided another means of getting the message out and helped persuade government ministers and the president to support tobacco control efforts.

The fifth key lesson is to actually carry out the work that needs to be done and support it with relevant research. Evaluations, prevalence surveys, econometric studies, opinion polls, political assessments, and other studies build a strong evidence base that allows sound decisions to be made and actions to be taken quickly.

Another key lesson was that once a goal has been set there action must be taken quickly. Speed is essential in developing and approving legislation and educational programs and improving them. Changes should arise from the interaction between education and legislation.

The last lesson to be taken out from all of this is that there can be no folding from industry pressures. No matter how innocuous the demands might seem. Agreements with the industry must be avoided; they only delay the adoption of new measures. There is not a second to be lost in this race.

2.5 CONCLUSION

The health impact on tobacco usage is extremely severe, and Sandford (2003) believes that governments must ensure that the health of the public is protected by implementing tobacco control measures through a comprehensive tobacco control policy. It has been seen over the years that voluntary measures are rarely effective and generally exploited by tobacco companies. The major goal of any nation is to ensure that there laws and policies are enforced and kept under review.

Throughout this chapter there has been an analysis of different countries, their achievements, formats of legislation and policies which they utilize in their own countries. Combating tobacco production and consumption needs to be achieved on a national scale, through initiatives and legislation set out by national governments who understand their own economies and boundaries, however it can be seen that working internationally with the help of the World Health Organisation major developments and initiatives can be achieved. Also in this chapter the writer has shown the efforts made by four separate governments and the WHO in actually achieving these goals that were set out years before. The challenge of combating

tobacco production and consumption will be an uphill one, but as shown governments are making inroads and as long as they continuously reassess their legislation and don't neglect the good work they have already achieved, further achievements will be most definitely be gained with further advancement in the eventual discontinuation of smoking all together.

It seems that all governments around the world learn from each others initiatives in combating tobacco usage and utilize the positive efforts made in other countries in order to strengthen their own regulations to curb the negative effects which tobacco has on the environment and on people in general.

In the following Chapter the South African environment is analysed in respect of tobacco legislation passed and the successes and failures which it has achieved over the years. This analysis will be contrasted to what is happening on a global scale.

CHAPTER 3: GOVERNMENT CONTROL OF PROMOTION OF TOBACCO CONSUMPTION IN SOUTH AFRICA

3.1 INTRODUCTION TO SOUTH AFRICAN TOBACCO ENVIRONMENT

At the end of the 1980's the tobacco environment in South Africa was similar to that of any other lower middle income country in the world because of a number of factors, (Salojee, 2001). Firstly, there was a powerful tobacco industry with interests in mining, financial services and the media, making the industry both politically and economically powerful. Secondly, even though tobacco had been recognised as a health threat by the Department of Health, it had many competing economic, social and health priorities. Lastly, there was no real information on the impact and damage tobacco was having on the national situation.

A shocking example in the South African context during this period was when the successive Ministers of Health were questioned on the number of deaths caused by tobacco in South Africa, they could not respond. However, when the question of "how much does tobacco contribute to the economy in taxes and jobs?" was asked both the Ministers of Finance and Agriculture provided exact figures (Salojee, 2001).

Tobacco control was not a national priority before the 1990's and according to Van Walbeek (2002), a senior researcher of the University of Cape Town's (UCT) Economics of Tobacco Control Project, the tobacco industry and government were allies. The tobacco industry was the sole advisor on this industry to government on issues such as employment and revenue.

In 1991 a number of different existing organisations joined forces to form an organisation known as the Tobacco Action Group (TAG) in South Africa in the fight against tobacco, consisting of the National Council Against Smoking, Cancer Association of South Africa and Heart Foundation of South Africa.

These three organisations, under their new flagship of TAG, achieved considerable success as they lobbied against the tobacco industry, using media advocacy to raise

the awareness amongst the general public on the necessity of tobacco control. Along with this coalition a strong need for a secondary movement to support the drive for legislation was recognised and thus the coalition broadened to involve churches, trade unions and health groups. (World Health Organization (WHO), 1997). During this period a strong alliance was formed between the Department of Health, TAG, the Medical Research Council and Non-Governmental Organisations (NGOs).

3.2 RUN-UP TO CONTROL MEASURES

Tobacco control was never really a priority in South Africa before 1993 as there were no health warnings required on either tobacco products or advertisements, and there were no legal restrictions on tobacco advertising, as the tobacco industry was regulating itself.

However, during the last decade significant progress has been made in South Africa regarding tobacco control. The tobacco control measures which were implemented by the new democratic government which took power in 1994 were strongly opposed by the tobacco industry, advertising agencies, and some sections of the media and the general public. The results gained from these measures have been encouraging because the aggregate cigarette consumption has decreased by a third within a decade, smoking prevalence has decreased and the State's revenue from cigarette excise tax has increased. (Van Walbeek, 2002)

In the early 1990's the first tentative moves were made toward a change in policy, but after 1994 this became a solid move forward with the introduction of the 'The Tobacco Products Control Act of 1993' which for the first time posted tobacco restrictions. This Act was supported throughout the 1990's, but more so in the late 1990's, by rapid rises in tobacco excise tax. The South African Parliament passed the Tobacco Products Control Amendment Act in 1999, which was widely regarded as among the most progressive tobacco control legislation in the world.

3.2.1 Pre-1993

In order to regain control of the tobacco industry where cigarette sales had been increasing at a rate well in excess of the population growth rate and to place it in the public spot light, several medical associations joined forces and lobbied the government; the main two organisations being the South African Medical Research Council (SAMRC) and the National Council Against Smoking (NCAS). The then Minister of Health, Doctor Rina Venter, achieved some success in 1990 when she embarked on a nationwide anti-smoking campaign, aimed at educating the public, and especially the youth, about the dangers of smoking. The SAMRC published a report in 1988 on the health and economic impact of smoking in South Africa, which in turn implemented this campaign by Dr Venter, as it illustrated that the costs of smoking far outweighed the benefits. The report also brought to her attention the rapid increase in smoking prevalence amongst Africans, Coloureds, Indians, and those of lower socio-economic status. This fact was rather disturbing because of the implications it would have with regard to the rising healthcare costs of treating smokers in the years to come.

The main determinant of tobacco product consumption which came to the forefront in the 1988 SAMRC report was indeed the question of “price” (van Walbeek, 2002). This implied that an effective smoking deterrent would be an increase in cigarette excise taxes. In the report there was a statement that along with an increase in cigarette excise taxes there was also a need for a multifaceted anti-smoking campaign in order to reduce smoking which should comprise of a ban on cigarette advertising, restrictions on smoking in public places, health warnings and tax increases anchored by a doubling of the level of excise tax on cigarettes. As a result of this report, the Control of Smoking and Advertising of Tobacco Products Draft Bill was introduced by Dr Venter in July 1991.

It was recommended in this draft legislation that the advertising code be strengthened. However, it did not fully address an outright ban on tobacco advertising. The draft legislation in 1993 did, however, include provisions that all cigarette packs and commercials would have to carry health warnings, the regulation of smoking in public places, the prevention of youth smoking, and the sale of cigarettes to those under the age of 16 would be prohibited. There was no comment

by the tobacco industry of South Africa on this draft legislation because it was, and to some extent still is, powerful and influential.

Instead of publicly commenting on the draft legislation, the tobacco industry rather opted to hold talks with the Minister of Health behind closed doors, which seemed to be a successful strategy according to van Walbeek (2002). The government subsequently announced a delay in the publication of the draft legislation. However, after an eight-month delay, the draft legislation resurfaced in March 1992, when it was published in the Government Gazette as the Tobacco Products Control Bill. Three months after this publication an announcement was made by the Department of Health in June 1992 that the draft bill would not come before Parliament during the year, because the Minister of Health was still discussing the matter with interested parties and according to van Walbeek (2002) the process was being delayed by the tobacco industry as the Tobacco Institute of Southern Africa (TISA) had been given the opportunity to make further representations to the Minister of Health.

According to the WHO (1997) President Nelson Mandela demonstrated his support for the tobacco control movement in South Africa by issuing a statement on World No-Tobacco Day 1992, and thus became a powerful symbol for the tobacco control lobby, whereas former President F.W. De Klerk's government had been delaying tobacco control efforts. This can be seen from a cartoonist's perspective according to Malan and Leaver (2003) in Figure 3.1.

FIGURE 3.1: DE KLERK PREPARES TO TAKE LEAVE OF POWER AND THE TOBACCO CONTROL DEBATE: A CARTOONIST'S PERSPECTIVE.



"It would be better for all if you stopped smoking."

State President de Klerk was known to be a heavy smoker but supported weak tobacco control efforts. Future president Mandela had made a strong statement of support for the tobacco control bill, which de Klerk's government was delaying.

Source: Malan & Leaver (2003)

3.2.2 The Tobacco Products Control Act, Act No. 83 of 1993

The Tobacco Products Control Bill was tabled in Parliament in March 1993 after a delay of over a year. The bill was criticised for falling short of international recommendations on the complete ban on cigarette advertising, but was, however, praised by the tobacco control lobby as a good start. The National Council Against Smoking (NCAS) claimed that a total restriction on advertising had dramatically reduced smoking in countries in which they had been implemented, but lobbyists were generally satisfied with the government's support for the new Bill.

The tobacco control lobbyists' call for a complete ban on tobacco advertising was rather worrying to the Tobacco Manufacturers Association and Tobacco Institute of South Africa (TISA, 2006). TISA argued that cigarette advertising should not be banned, because international research had shown that advertising did not increase

smoking prevalence, but encouraged current smokers to either switch brands or to remain brand-loyal. In addition, TISA said that there was a specific code in place administered by the Advertising Standards Authority (ASA) which monitored tobacco advertising. However, it was questionable how independent and objective the advertising code was, seeing that it had been developed by the tobacco industry itself.

Parliament approved the Tobacco Products Control Act (see Appendix 7) on 17 June 1993 and it was promulgated on 1 February 1994. The draft regulations for mandatory and explicit health warnings on tobacco products and advertisements were published in the Government Gazette in June 1994 and these regulations specified the size of the health warnings required to be carried on written and visual advertisements and on cigarette packets. See Figure 3.2 for examples of health warnings on tobacco packages in South Africa.

FIGURE 3.2: SOUTH AFRICAN CIGARETTE WARNINGS



Source: <http://www.smokes.co.za/> (Accessed 22nd July 2006)

The sponsoring of sporting events by the tobacco industry was not affected by the directives, because these events were examples of “indirect advertising.” Since this

proved to be a loophole in the proposed legislation, the tobacco industry exploited this weakness as much as it possibly could.

3.2.3 Post-1993

The increase in the consumption of tobacco in South Africa by the end of the 1990s came to a halt and in actual fact began to decline. What brought about this change in the tobacco consumption? The most notable difference between the 1980s and the 1990s was the attitude change of government towards tobacco control.

In 1993 this attitude change came into affect with increasing pressure from health groups and with the strong leadership of the Minister of Health the Tobacco Product Control Act was implemented by government which introduced health warnings and banned smoking on public transport.

There were no historic ties between the new Government of National Unity which took power in South Africa in 1994 and the tobacco industry. When the new Minister of Health, Dr. Nkosazama Zuma, was appointed tobacco control was a high priority according to Eberlee (2001) and her drive to implement policies to reduce tobacco consumption was supported by a number of different groups. These included the National Council Against Smoking, Research for International Tobacco Control (RITC) funded researchers at the University of Cape Town (UCT) and the Medical Research Council.

3.2.4 Amendment of 1999

The Minister of Health announced in January 1998 that a Tobacco Products Control Amendment Bill would be discussed in Parliament that year. Dr. Zuma stressed that the main purpose of the proposed legislation was that of protecting children and to prevent them from being bombarded with pro-smoking messages. The tobacco industry was not pleased with the announcement made by Dr. Zuma, but the tobacco control lobbyists applauded it, and according to van Walbeek (2002, 12) Dr. Zuma had at her disposal research from the Economics of Tobacco Control Project, which

indicated that the demand for cigarettes would decrease by between 0.18 and 0.24 per cent for every one per cent decrease in cigarette advertising expenditure.

There was concern from farmers, trade unions and cigarette manufacturers alike that what they had dubbed as the “irresponsible” Bill being discussed in parliament, would result in the destruction of thousands of jobs and inadvertently affect the tobacco industries of South Africa’s neighbouring countries. Along with these a number of sporting organisations were also strongly opposed to the proposed Bill, because they stood to lose major sponsorships by tobacco companies.

Despite the tobacco industry’s protestations, the Tobacco Products Control Amendment Bill was tabled in Parliament and unanimously approved by Cabinet on 29 July 1998, despite the arguments from the tobacco industry. The Tobacco Products Control Amendment Bill was published in the Government Gazette on 14 August 1998 for public comment.

The Bill was approved by the Parliament’s Portfolio Committee on Health on 23 October 1998, but the legislation was not passed until 14 April 1999 after it was signed into law by President Mandela after some further fine-tuning. The tobacco control lobbyists were satisfied with the new legislation, and the South African Medical Research Council (SAMRC) remarked that the gazetting of the Act was “a fitting finale to President Mandela’s term of office as it would entrench laws that will protect children for generations to come”.

3.2.5 Synopsis of Legislation of Tobacco Control Measures

The South African government has passed two tobacco laws, the first in 1993, namely the Tobacco Products Control Act (Appendix 7) and then in 1999 an amendment to this Act was introduced (Appendix 8).

The laws which were introduced by these Acts prohibit all tobacco advertising, sponsorship and promotion, smoking in all enclosed public places, including the workplace, except in specially designated smoking areas, the free distribution of

tobacco products, awards or prizes for purchasing tobacco products, and the sale of tobacco to children under 16.

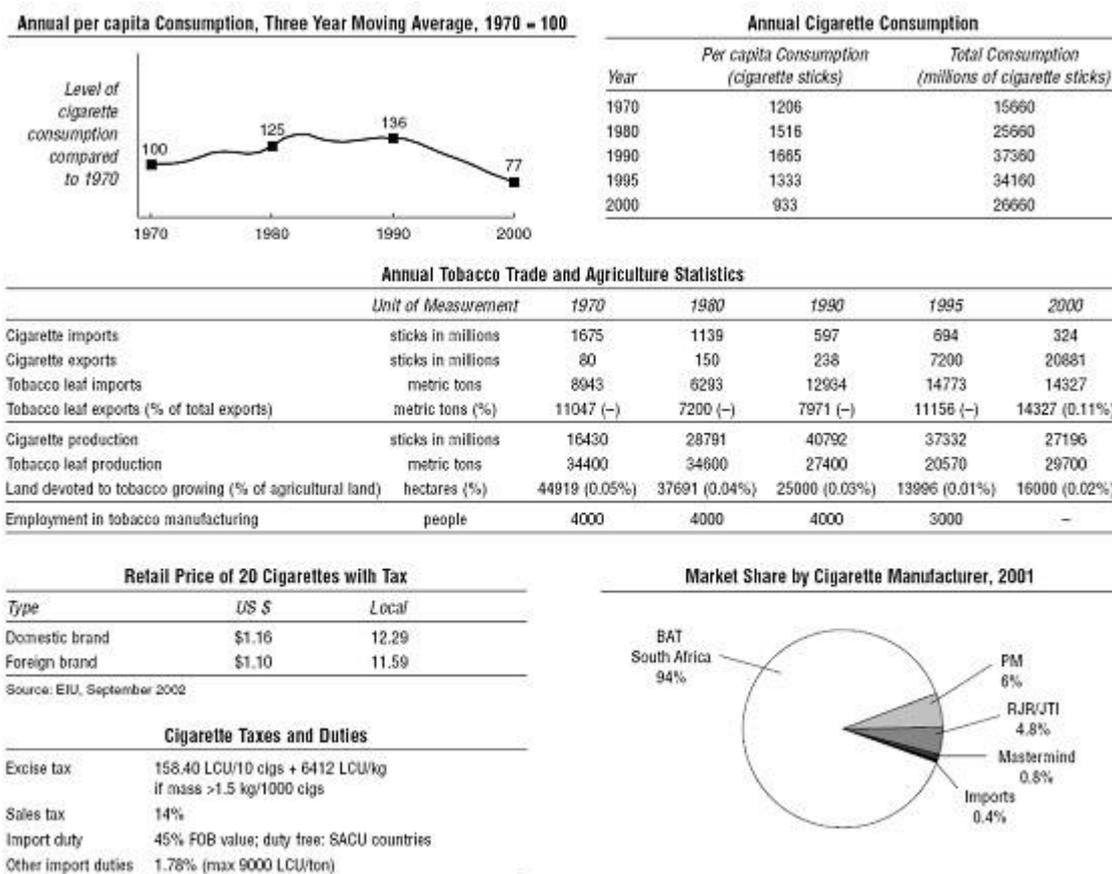
The law also regulates the labelling of tobacco packages with health warnings, the maximum amounts of nicotine, tar and other hazardous chemicals in tobacco products and their combustion products, and the location of cigarette vending machines.

South Africa's infrastructure for tobacco control and all the provisions it has made to date is clearly illustrated in Figure 3.3:

3.3 ECONOMICS OF TOBACCO CONTROL

The tobacco industry was forced to change its pricing strategies arising from the higher excise taxes placed on them by government. This was indeed one of the most effective steps taken by government in its campaign against tobacco products (Eberlee, 2001). Instead of absorbing all or part of the tax to keep cigarette prices relatively on the same level, the tobacco industry maintained its focus on its profit margins and, therefore, passed the amount of tax levied onto its consumers through considerably higher prices. Since the tobacco industry passed the buck, ironically it in turn helped government in decreasing tobacco consumption even more than it would have from the excise tax increases alone, as may be seen in Figure 3.4 below (American Cancer Society, 2004).

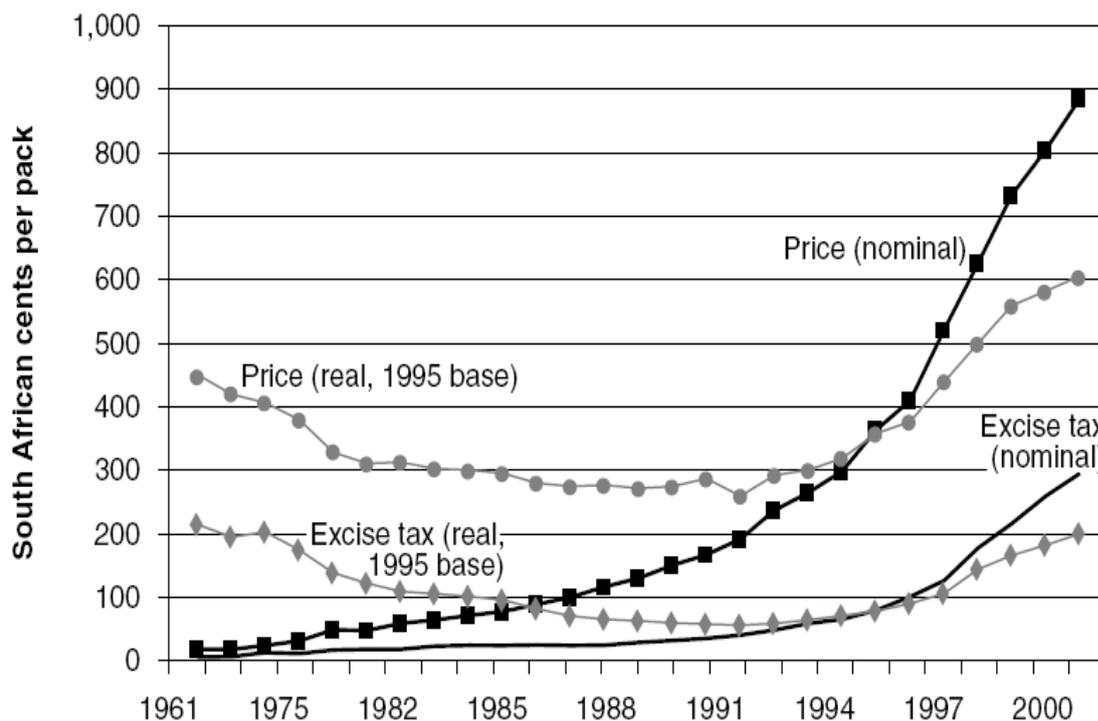
FIGURE 3.4: SOUTH AFRICAN TOBACCO ECONOMY



Source: American Cancer Society (2004).

The retail price of cigarettes increased by 375 percent between 1993 and 2001 based on the combined efforts of higher excise taxes, industry imposed price increases and inflation. This led to a doubling in real terms of the price of cigarettes during the same period, as can be seen in Figure 3.5.

FIGURE 3.5: REAL AND NOMINAL CIGARETTE PRICES AND TAXES, SOUTH AFRICA, 1961–2000



Source: Malan & Leaver (2003)

The standpoint taken by the Minister of Health led to definite success being achieved in the fight against the tobacco industry in South Africa. There have been other key developments too, namely the Medical Research Council and economists providing sound epidemiological and economic data on the national smoking situation (Salojee, 2001). This was well publicised and was vital in winning commitment from government for radical action. Non-Governmental Organisations (NGO's) played a key advocacy role in making the case for legislation, not just to the government, but also to the public and the media. The NGO's were led by the Tobacco Action Group (TAG), a coalition established in 1991 between the Cancer Association, Heart Foundation and the Council Against Smoking. Previously a great deal of good work

was done by the NGO's, but the work was uncoordinated and less effective than it may have been.

The Department of Health took the lead, but other Public Service Departments were also lobbied and the key Departments of Finance and of Agriculture also shared the goal of reducing tobacco control. Since international developments affect national policy, the contrast between South Africa's tobacco control policies and that in the rest of the world helped convince politicians that the country was falling behind global trends.

3.4 LOBBYING AGAINST THE TOBACCO PRODUCTS CONTROL ACT IN 1993

New momentum was gained for South Africa's tobacco control policy following the 1994 elections. The African National Congress (ANC) revealed its policy towards tobacco in November 1993 when Dr. Nkosazana Zuma committed the party to a comprehensive tobacco control programme if it were elected to government the following year, while the President elect, Nelson Mandela, gave his full support to the programme.

In 1994 when Dr. Zuma was appointed to office as the new Minister of Health, she announced that one of her main aims was to have smoke free offices, shops, and places of entertainment as soon as possible and threatened companies with legislation if they did not voluntarily introduce anti-smoking policies. A substantial increase in the level of excise tax on cigarettes was another policy which Dr. Zuma wished to implement in order to reduce tobacco consumption and its associated health risks.

Tobacco control policy lobby groups who had been lobbying for years for an increase in the excise tax on tobacco products were impressed with Dr. Zuma's announcement, but they highlighted the fact that excise taxes on tobacco products had generally failed to keep up with inflation, resulting in a 70 per cent decrease in the real level of cigarette excise tax between 1970 and 1990. Their argument was that evidence from international sources had shown that price was the single most

important determinant of tobacco demand and, therefore, an increase in the cigarette excise tax rate would act as a deterrent to smoking.

The tobacco industry was strongly opposed to the proposed cigarette excise tax hikes because it claimed it would result in an increase in cigarette smuggling and other illegal activities.

3.5 LOBBYING AGAINST THE TOBACCO PRODUCTS CONTROL AMENDMENT ACT OF 1999

One of the most vocal organisations was the Freedom of Commercial Speech Trust in its disapproval of the proposed legislation, namely the Tobacco Products Control Amendment Bill. The founding principle of the Freedom of Commercial Speech Trust was that if it was legal to manufacture and sell a product, then that product had the right to be promoted, as long as it was done in a responsible manner. The Freedom of Commercial Speech Trust stated that if government were successful in achieving its ban on tobacco advertising, who knows what would be next, because there would be nothing to stop government from banning the advertising of other products, such as milk substitutes, red meat, dairy products, alcohol, motor racing and cellular phones.

Opponents complained about the proposed amendment legislation, slating it as an undemocratic process because they claimed that during the drafting process of the Bill the tobacco and other related industries had been disregarded, whereas the tobacco control lobbyists had been given months of access to the Bill's drafting process. This claim was denied by the Department of Health, maintaining that the Bill was still a proposal and that the Minister's door was still open for discussions.

The tobacco industry tried to stall the 1999 Tobacco Products Control Amendment Bill twelve days after it was published in the Government Gazette, on the basis that there was a lack of consultation in the Bill's drafting process and asked the South African High Court to rule that the Department of Health had to make all the information available which it utilised in drafting the Bill (TISA, 2006). The case was dismissed and after the second house of parliament, the National Council of

Provinces, approved the Bill on 7 October 1998, it was subjected to parliamentary public hearings later that month. The Freedom of Commercial Speech Trust announced that it would withdraw from the parliamentary process, in protest against the government's lack of consultation, just five days before the hearings were due to begin (Van Walbeek, 2002).

In the end there were more than 70 groups and individuals who attended the hearings and opponents to the proposed legislation argued that there was another solution and that the government was being too rash in its approach and should consider alternatives, such as broadening education about the harmful effects of smoking, and fostering greater consideration between smokers and non-smokers. Another argument by the industry was that there would be a major economic cost to advertising agencies if a complete ban was placed on tobacco advertising and it suggested that a partial ban would be able to achieve the objectives of the legislation without any resulting economic consequences.

However, tobacco control lobbyists countered this argument by showing international evidence that clearly illustrated that partial bans on advertising were in no way as effective in achieving the reduction of cigarette consumption as complete bans would. Another important issue that arose at the public hearings was the constitutionality of prohibiting smoking in public places and the definition thereof, since it did not seem fair that government had the right to determine what one may do in the privacy of one's own home. However, the tobacco control lobby countered this by highlighting medical reasons for implementing the ban and an expected decrease in state expenditure associated with these illnesses.

3.5.1 Tobacco Lobby Organisations

In the 1994 Budget speech the Minister of Finance, Mr. Derek Keys, announced that the government would increase the rate of cigarette excise tax from 20 to 50 per cent of the retail price of cigarettes, but that the increases would be phased-in over a period of time. The government raised the level of cigarette excise tax by only 25 per cent, which was not anywhere near the hoped doubling. This did not please either the tobacco control lobby or the tobacco industry. They were, however, displeased

for different reasons. The lobby groups described the increase as “puny”, and the industry stated that the increase was “unfair and discriminatory”.

The next strategy of the tobacco control groups was to actively lobby government in order to ban tobacco advertising and sponsorship. The World Health Organization recommended, in a tobacco control conference held in August 1996, that South Africa establish a complete, rather than a partial, ban on tobacco advertising and sponsorship.

3.5.2 Tobacco Industry

The tobacco, advertising, hospitality, and media industries had strong objections to the draft regulations. They regarded a ban on tobacco advertising as a form of censorship which would deprive manufacturers of property rights in respect of registered trademarks. Industry also put forward an argument that its right to freedom of expression would be violated because manufacturers were compelled to include propagandist messages and warnings without stating the source thereof.

It was estimated that print media alone would lose around R59-million on advertising revenue each year if the regulations were implemented (Van Walbeek, 2002). Another industry which was against the draft regulations was the tobacco growing sector which claimed they would destroy many jobs in the agricultural sector. In December 1994 the draft regulations were published in the Government Gazette in spite of fierce opposition. They were only enforced after the 31st of May 1995, World No-Tobacco Day, to allow the tobacco industry sufficient time in order to exhaust its existing stocks of packaging material.

The tobacco industries and other pro-tobacco groups argued against the implementation of the Tobacco Products Control Act that it would result in 30 000 fewer jobs in the tobacco and other related sectors in South Africa and thus lead to a loss in revenues.

3.6 CONTROL MEASURES

In 1998 the Minister of Health implemented a further policy, which was the foundation of a new legislation which imposed a ban on all tobacco advertising and industry sponsorship, prohibited smoking in public places, prevented the sale of cigarettes to people under 16 years of age and banned the distribution of free cigarettes.

The Tobacco Controls Amendment Act 1999 (hereafter referred to as 'The Act' (1999)) stated that, "The smoking of tobacco products will be prohibited in any public place which includes the workplace, however a private dwelling is not constituted as a public place unless used for commercial childcare activities and schooling. In such a situation a specifically designated area by the employer, owner, tenant or possessor which complies with the prescribed requirements in 'The Act' is allowed as a smoking area."

The advertising, sponsorship or promotion and required information with respect to packages of tobacco products dealt with in 'The Act' can be divided into five sections:

Firstly, no person shall be able to advertise, which includes the use of tobacco trade marks, logos, brand names or company names used on tobacco products or utilise any of the above mentioned for the purposes of advertising any organisation, service activity or event. Secondly, no manufacturer, importer, distributor or retailer of tobacco products will be able to organise or promote any organised activity that is to take place in whole or in part in the Republic. They will also be prohibited from making any financial contribution to an organised activity that is take place, taking place or taken place in whole or part in the Republic or make any financial contribution to any person in respect to the organisation or promotion of any organised activity that is to take place, or is taking place in whole or in part in the Republic. Thirdly, a retailer of tobacco products may post signs at the point of sale that indicates the sale of tobacco products and their price as long as it is in accordance to 'The Act'. Fourthly, 'The Act' also states that no person shall sell or import for subsequent sale or any prescribed tobacco products, unless the product is packaged. This packaged tobacco product, which is sold, has to bear the prescribed warning concerning health hazards incidental to smoking of tobacco products and the quantities of the constituents present in the tobacco product concerned should also

be stated on the packaging. And finally, the Minister may, by regulations, provide exemptions for unintended consequences or the phasing out of existing sponsorship or contractual obligations.

3.6.1 Policy Implications

There are a number of important policy implications, according to Van Walbeek (2002), which may be derived from the South African example.

3.6.1.1 Importance of strong and consistent lobbying by civil society

The effective tobacco control policy in South Africa could be attributed to the strong and consistent lobbying by civil society, including professional associations. Medical societies made use of public forums and the media in order to warn the public against the dangers of tobacco, to call on the government to introduce effective counter-measures, and to discredit the industry's claims about its products and the importance of the industry.

After almost 25 years the medical societies finally saw some results to their hard work when early in the 1990s, lobbying persuaded the Minister of Health to implement tobacco control legislation. Now that the political door had been opened, the lobbyists' role changed in the sense of they were no longer lobbying against the policy makers but were working hand in hand with them publicising the positive aspects of the proposed tobacco control measures.

3.6.1.2 Tobacco control policies require contributions from a variety of disciplines

The relevant medical associations within South Africa were the driving force in the fight against tobacco. They argued the need for effective tobacco control measures primarily on medical and epidemiological grounds and often publicised the results of their surveys which indicated that there was an increase in smoking prevalence, especially among the youth, a desire but inability to quit, and that the public were generally in favour of tobacco control measures (Department of Health, 2006).

An economic cost-benefit study on tobacco was performed for the first time in South Africa by the medical fraternity in 1988 and through their results the study showed that the costs associated with consumption of tobacco products outweighed the benefits. The tobacco industry responded to this study stating that the results were flawed and misleading. In turn this response drew a number of professional economists into the debate, and led to the formation of the Economics of Tobacco Control in South Africa (ETCSA) Project. Legal and marketing experts were utilised by the tobacco control lobby in order to gain the justification needed to legally impose an advertising ban when this was debated in the late 1990's.

According to van Walbeek (2002) the main lesson emanating from the South African example is that there is a need for a multidisciplinary approach when forming a tobacco control lobby. This grouping would never have achieved nearly as much in lobbying against tobacco if other disciplines had not supported the medical association and enhanced its influence and credibility.

3.6.1.3 Political changes could be used to good effect in accelerating tobacco control measures

In 1994 the tobacco control cause found strong backing when the African National Congress became the dominant party in the Government of National Unity. The new party had no alliances with the tobacco industry and, therefore, had the ability to accelerate the tentative tobacco control measures which the previous government had tried to implement. The new government had a strong primary health care focus and regarded tobacco control as a priority. Dr Nkosazana Zuma, the new Minister of Health, was a tough and astute politician with a strong focus on primary health care, including tobacco control. From the outset of her term she made it clear that she would do all in her power to reduce smoking.

3.6.1.4 Tax increases are an extremely effective tobacco control measure

Based on the simple macroeconomic theory of the inverse price-consumption relationship, tobacco control lobbyists in South Africa lobbied for large increases in cigarette excise taxes in order to reduce cigarette consumption and stated that an increase in the cigarette excise tax would increase State revenue.

With government increasing the real excise tax in the early 1990's the tobacco control lobby predictions were proved to be true with the real prices for cigarettes increasing, the decrease in cigarette consumption and the real State revenue being boosted.

From this it can be said that large increases in the real level of tobacco excise tax are the single most effective, and definitely the most cost-effective, tobacco control measure. According to van Walbeek (2002) this statement can only be made if the tax increases made do not result in a major increase in the smuggling of tax-free cigarettes into the country concerned.

3.6.1.5 The industry has an interest in exaggerating the threat of cigarette smuggling

The explanation given by the tobacco industry with regard to tobacco smuggling was that it would be a rational response to the government's proposed rise in the excise tax and price differentials.

However, to ensure that the claims made by the tobacco industry about the rise in tobacco smuggling remain unjust one would have to objectively investigate the possible effect of smuggling, probably by increasing the level of cigarette excise tax by smaller increments initially, and monitoring consumption and smuggling effects closely (TISA, 2006).

3.6.1.6 The industry's pricing strategy has aided the tobacco control cause

The government's logic behind increasing the level of cigarette excise tax was that it would have the same effect on the retail price of cigarettes and a reduction in cigarette consumption should be achieved. However, the actual result was a higher increase in the real retail price of cigarettes against that of the level of the cigarette excise tax in South Africa.

The South African cigarette industry could be regarded as a virtual monopoly with British American Tobacco (BAT) controlling almost 95 percent of the market. The

strategy BAT implemented ironically made the increase of industry pricing possible. Even though smokers may have felt that the cigarette industry was exploiting them, the consequences from this pricing strategy certainly had positive implications towards tobacco control.

3.6.1.7 The tobacco industry will always try to water down tobacco control measures

When formulating a tobacco control policy the role of the tobacco industry should be clarified from the outset. Legislators in many countries may be obligated to be even-handed to all parties in the legislative process. The downside is that, should the tobacco industry play a significant role in the formulation of tobacco control legislation, it will invariably try to weaken and delay the process as much as possible as was evident from the South Africa example before 1993. However, this situation was rectified by Dr Zuma in her amendment in 1999, even though she was criticised as being “undemocratic” and “authoritarian”.

3.6.1.8 Non-smokers’ rights need formal recognition

The South African Government debated in the late 1990’s the clean indoor air legislation. Opponents to the legislation argued that such legislation would be impossible to enforce, given that the South African Police Services were already over-stretched and the Department of Health made it clear that the legislation would be largely self-enforcing. The legislation granted the right to smoke-free air to non-smokers. Admittedly a clean indoor air policy would be difficult to enforce, but it has been proven since that a high measure of compliance was achieved through public pressure.

3.6.1.9 The excise taxes are regressive, but become less so as the tax increases

A recurring phenomenon can be observed in most countries, including South Africa, whereby the poor generally spend a greater percentage of their income on cigarettes than richer people. Therefore, the burden of tobacco excise taxes would fall heavier on the poor, making the tax regressive (WHO, 2006).

3.6.2 Success gained by South Africa's Tobacco Policy

According to Eberlee (2001) the results in South Africa are really encouraging with average cigarette consumption falling by 20 percent, which is from 223 to 176 packs per smoker per year, between 1993 and 1999. All age groups have also seen a decrease in smoking rates with the most significant among 16 – 24 year olds who are least able to afford more expensive tobacco.

The main success point which can be taken from the South Africa situation towards tobacco control is the strong advances by the South African Government. The Minister of Health, with support of parliament, initiated some of the strongest tobacco policies in the world. Because of these measures South Africa can be used as an example to other developing countries wishing to pass legislation against their tobacco industries. According to van Walbeek (2002) any country wishing to enforce a strong tobacco control policy should follow certain guidelines and ensure that its policy

- focuses on strong and effective lobbying power by medical and other associations' thorough and unbiased research that can effectively counter the (usually exaggerated) claims of the industry,
- public support for the intended tobacco control measures,
- and the political will by the ruling government to stand against the vested interests of a powerful industry.

Another success gained was with the implementation of the amendment to the legislation in 1999 whereby employers were obligated to implement written policies within the workplace by 1 January 2001. Hospitality establishments were given an additional six months in order to make the necessary structural changes to comply with the new law. Tobacco advertising and sponsorships was similarly given a phasing out period of four months, but in December 2000 the industry announced the termination of all its tobacco advertising at the end of that year. According to a national survey, approximately 90 per cent of businesses and hospitality establishments are complying with the law. However, the biggest challenge for the State is to ensure compliance in restaurants and bars.

3.7 CONCLUSION

Over the last decade South Africa's tobacco control has progressed in leaps and bounds, specifically because of the comprehensive policy implemented by government that included both tough legislation and significant tobacco tax increases. Changing societal values and perceptions, as well as positive results from government policies, have de-glamorised smoking in South Africa. Consequently large sections of the population no longer regard smoking as socially acceptable. The short-term outcomes of South Africa's tobacco control policy have been positive with total cigarette consumption decreasing by one third since 1991, a per capita consumption decrease by more than 40 per cent, and the smoking prevalence has been reduced, especially among young people.

Despite some very significant opposition from the tobacco industry and other industries that stood to lose from these measures, South Africa was able to implement very effective measures in tobacco control. According to van Walbeek (2002) surveys conducted revealed that the public was generally supportive of the tobacco control initiatives, but the media were split on the issue because of some segments supporting measures to curb smoking (specifically for medical reasons), while others were strongly opposed to the new measures, mainly because the interventions were seen as unnecessary, authoritarian and paternalistic. However, even with the strong opposition South Africa has seen a high degree of compliance with its new tobacco control legislation.

As already stated, South Africa displays many characteristics of a developing country, and has achieved considerable success in tobacco control in a very short time span and it could possibly serve as a model for other developing countries to follow.

On 17 October 2003, according to the Tobacco Institute of South Africa (2006), members of the public were invited to comment on the Tobacco Products Control Amendment Bill 2004 (Appendix 9). However, according to this institute, this amendment bill called for submissions and comments about the proposed changes to current legislation. These were formulated by the tobacco industry (Appendix 10) and delivered to the Department of Health in Pretoria on 17 November 2003, as per

the published deadline. This Amendment Bill 2004 has never been passed and has not come into law. It is therefore not fit to refer to this and to comment only on the laws in place, but this Amendment Bill was nevertheless added to the appendix for perusal.

In the following Chapter some of British American Tobacco's activities will be analysed in order to reveal how the tobacco industry was affected by the measures, because it holds a majority share of the tobacco market. Specific reference will be made to how its marketing and advertising efforts were affected after the implementation of the 1999 amendment to the Tobacco Products Act 1993.

CHAPTER 4: TOBACCO INDUSTRY OF SOUTH AFRICA

4.1 INTRODUCTION

In 1991 The Tobacco Institute of South Africa (TISA) was formed in order to represent the non-commercial, common interests of both the manufacturers of tobacco products and tobacco growers. Since the formation of The TISA up until 1998 a public relations organisation served as the Secretariat for their organisation. The TISA had a number of focuses at the time, the main one being to improve the quality of public debate on the use of tobacco. According to the TISA (2006) amongst other responsibilities, the Secretariat monitored legislative developments, coordinated the production of information pamphlets on the tobacco industry as well as public smoking issues and monitored the press on tobacco-related issues.

The Department of Health announced proposed amendments to the Tobacco Products Control Act of 1993 during the course of 1997. To counter act this The TISA formed an in-house administration in order to deal with these proposed changes to legislation and non-commercial matters of common interest to the industry and resulting in the first CEO and staff being appointed in January 1998 (TISA, 2006). The TISA established the administrative and financial processes which were to be followed, along with determining the needs of the tobacco industry and a way forward was developed to address these needs.

The members who make up this organisation are: British American Tobacco South Africa (BATSA) (also a member of Tobacco RSA), JT International South Africa Tobacco RSA, whose members include SA Golden Leaf, Gamtoos Tobacco Co-operative, Swedish Match South Africa (Leonard Dingler & Best Blend), World Class Connection Trading, SA Nicecentury Trading CC, Universal Leaf SA, Dimon SA, Tribac CC, Limpopo Tobacco Processors and Tobacco Traders CC.

Changes in both the local and global markets have highlighted the need for a more consolidated focus within the South African tobacco industry (TISA, 2006). Members of TISA and Tobacco RSA, as well as new players in the local market, have

recognised the need for the South African tobacco industry to be more united resulting in a process of integration of Tobacco RSA's operations into TISA.

The focus will be on British American Tobacco South Africa (BATSA) as the case of the tobacco industry due to BATSA's share of the legitimate cigarette market in South Africa being over 90 percent. However, in terms of the total legitimate tobacco market, BATSA share is around 70 percent. The ranking of tobacco companies and the Top 10 cigarette brands in South Africa are illustrated in Table 4.1 and 4.2

TABLE 4.1: TOP RANKED TOBACCO COMPANIES

Rank of tobacco companies by share of the total tobacco market (end 2005)	
1.	British American Tobacco South Africa (BATSA)
2.	Swedish Match
3.	Illicit Trade (estimated rank)
4.	Japan Tobacco International
5.	Mastermind
6.	Golden Leaf Tobacco Company
7.	Philip Morris International
8.	Other tobacco companies

Source: The Tobacco Market South Africa (2006).

TABLE 4.2: TOP RANKED TOBACCO BRANDS

Top 10 cigarette brands in South Africa (end 2005)	
1.	Peter Stuyvesant
2.	Rothmans
3.	Benson & Hedges
4.	Courtleigh
5.	Dunhill
6.	Camel
7.	Chesterfield
8.	Princeton
9.	Royals
10.	Craven A

Source: The Tobacco Market South Africa (2006).

4.2 AREA'S OF OPERATIONS AFFECTED

Throughout the remainder of this chapter the focus will be on the impact which the implementation of the Tobacco Products Control Amendment Act in 1999, referred to as 'The Act' in Chapter three, had on the tobacco industry and the modifications which they had to make to their marketing standards, utilising BATSA as the prime example, focusing on four main areas namely, Media Usage Standards, Promotion and Event Standards, Sponsorship Standards and Packaging, Sales and Distribution Standards.

An analysis of the effect of tobacco on the youth as well as how BATSA collaborate with the South African government in order to restrict the access of tobacco products to the youth. The enforcement of minimum age laws and how 'The Act' effected BATSA marketing spend from its introduction in 1993, revision in 1999 and finally to date.

4.2.1 Media Usage and Standards

According to BATSA (2001) and Government Gazette (1999) these are the areas of BATSA which were affected after the implementation of the Tobacco Amendment Act in 1999.

Firstly, according to 'The Act' no advertisement shall be placed in any printed publication, be placed on the packaging or outside cover of a magazine, newspaper or similar printed publication intended to be read by consumers. Secondly, no advertising may be allowed to be placed on any billboard, wall mural or transport stop or station. Thirdly, no advertising of tobacco products will be allowed to be displayed in a cinema. Fourthly, no advertisement may be placed on television or radio within the Republic and this is inclusive where a broadcast is viewed in such countries, namely South Africa, where law restricts such advertisements. This would be in reference to channels on DSTV whereby South African viewers receive overseas material, e.g. MTV.

Fifthly, no advertisements will be placed on the Internet unless and until each individual trying to access a specific Internet site on which such advertising is placed provides adequate proof that he or she is indeed an adult. Sixthly, there will be no allowance for electronic advertisement within any video or audio cassette, compact disk, digital video disk or any associated or similar media unless sufficient measures have been taken to ensure that the intended recipients of such goods are indeed adults. Lastly, with regard to product placement of tobacco products, advertisements or any items bearing tobacco brand names there will be no direct or indirect payment or contribution within any means of motion picture, television programme, theatrical production or other live performance, live or recorded performance of music, commercial film or video, video game, or any similar medium where the medium in question is intended for the general public.

4.2.2 Promotion and Event Standards

Promotional offers and programs for specific tobacco brands which used to appear on the package, at the retail point of sale, by mail or through other communications is prohibited by law in South Africa and is only allowed to occur with the written and authenticated approval of a smoker and these specific measures have been taken to ensure the exclusion of the youth and non-smokers from direct mailing lists. At promotional events each participant must ensure that only adults, through consent, are allowed access.

Promotional items may not include any advertisement placed on any item marketed to the general public, such as shopping bags, or any item of clothing which is offered for sale or distribution.

Measures must be taken to ensure that sample tobacco products are not offered to the youth or non-smokers. Samples may only be offered in a specified segregated area whereby the general public and the youth have no access. Tobacco product samples may not be distributed, either directly or indirectly through a third party, by mail.

4.2.3 Sponsorship Standards

With regard to any sponsored events in South Africa, no sponsorship at an event or activity may be provided if it bears a tobacco product name as stipulated by 'The Act' or a team or an individual which bears a tobacco products brand name. There shall also be no sponsorship advertisement either in whole or in part within South African borders as stipulated by 'The Act'.

4.2.4 Packaging, Sales and Distribution Standards

There are specified restrictions and measures which have to be adhered to when packaging, selling and distributing tobacco products and they are, firstly that no cigarettes may be sold or distributed to consumers in packages containing less than ten sticks. Secondly, fine cut tobacco may not be sold or distributed in pouches smaller than ten grams. Thirdly, no incentives or materials shall be provided to support the sale of cigarettes in single sticks. Fourthly, all cigarette packages and all primary packaging for other tobacco products must carry a visible health warning. Lastly, reasonable measures must be taken to prevent the youth from having access to cigarettes in vending machines as stated in 'The Act'.

4.2.5 Youth Access and Minimum Age Restrictions

When targeting the youth with prevention strategies in order to ensure that the access is restricted the most effective tool to reduce/deter use of tobacco products by young people: price increases (Tobacco Control, 2003). The bans on tobacco product sales to young people are difficult and costly to enforce. The policies in South Africa are tailored to affect the usual sources from which young people get their cigarettes or other tobacco products, namely by reducing youth access to tobacco products (especially cigarettes) by banning sales through vending machines.

Participants in the tobacco industry are required to enforce minimum age restrictions for the lawful sale or purchase of tobacco products and must support efforts by government, manufacturers of tobacco products, distributors and retailers to ensure the effective enforcement of such restrictions, namely no sale of tobacco products to members of the public who are under 16 years of age.

4.3 TYPICAL AD/ PROMOTION SPEND PER MEDIA

The focus in this section will be on what change, if any, occurred during the period from 1999 to the 2005 with regards to the introduction of tobacco legislation on South Africa.

TABLE 4.3: REGIONAL DATA 1999

Regional Data

	<u>Cigarette Volumes</u>		<u>Net Revenue</u>		<u>Operating Profit</u>	
	1999	1998	1999	1998	1999	1998
	bns	bns	£m	£m	£m	£m
American Pacific	84	93	3,204	2,491	544	535
Asia Pacific	85	71	1,208	959	257	179
Latin America	167	196	1,461	1,671	333	309
Europe	171	132	2,359	1,552	316	164
Amesca	214	190	1,350	913	268	110
Imasco	32	32	1,600	1,662	304	253
	753	714	11,182	9,248	2,022	1,550
US restructuring costs					- 24	- 613
Integration costs					- 357	
Goodwill amortisation					- 162	
Sales tax recovery						74
					1,479	1,011
Operating profit, before goodwill and exceptional items, restated at comparable rates of exchange					2,025	1,550
British American Tobacco South Africa (1999)						

4.3.1 After Legislation in 1999

The effect the revision in legislation had on the advertising and marketing spend of the tobacco industry with the loss of mass media advertising.

TABLE 4.4: REGIONAL DATA 2000

	<u>Cigarette</u>		<u>Net Revenue</u>		<u>Operating Profit</u>	
	<u>Volumes</u>					
	2000	1999	2000	1999	2000	1999
	bns	bns	£m	£m	£m	£m
American Pacific	109	116	4,092	4,804	878	848
Asia Pacific	87	85	1,405	1,208	361	235
Latin America	165	167	1,615	1,461	425	333
Europe	208	171	2,904	2,359	541	338
Amesca (South Africa)	238	214	1,599	1,350	370	268
	807	753	11,615	11,182	2,575	2,022
US restructuring costs					- 119	
Acquired Stock					- 83	
US tobacco settlements						- 24
Integration costs					- 126	- 357
Goodwill amortisation					- 376	- 162
Imasco restructuring costs					- 71	
					1,800	1,479
Operating profit, before goodwill and exceptional items, restated at comparable rates of exchange					2,508	2,022
British American Tobacco South Africa (2000)						

TABLE 4.5: REGIONAL DATA 2001

	<u>Cigarette</u>		<u>Net Revenue</u>		<u>Operating Profit</u>	
	<u>Volumes</u>					
	2001	2000	2001	2000	2001	2000
	bns	bns	£m	£m	£m	£m
American Pacific	106	109	4,128	4,092	1,019	878
Asia Pacific	82	87	1,472	1,405	414	361
Latin America	163	165	1,619	1,615	428	425
Europe	223	208	3,165	2,904	512	541
Amesca						
		(South Africa)				
	233	238	1,655	1,599	398	370
	807	807	12,039	11,615	2,771	2,575
US restructuring costs						- 119
Acquired Stock						- 83
Integration costs					- 82	- 126
Goodwill amortisation					- 392	- 376
Imasco restructuring costs						- 71
					2,297	1,800
Operating profit, before goodwill and exceptional items, restated at comparable rates of exchange					2,753	2,575
British American Tobacco South Africa (2001)						

4.3.2 BATSA 2005 figures

A focus on where BATSA now redirects its advertising and marketing spend in light of the legislation in place in order to maintain the dominance of its brand and relationship with its clientele in the tobacco market.

TABLE 4.6: REGIONAL DATA 2005

Regional Data		<u>Cigarette</u>		<u>Net Revenue</u>		<u>Operating Profit</u>	
		<u>Volumes</u>					
		2005	2004	2005	2004	2005	2004
		bns	bns	£m	£m	£m	£m
American Pacific		45.0	68.4	1,110	2,075	436	639
Asia Pacific		137.1	131.7	1,758	1,629	531	495
Latin America		149.3	147.6	1,555	1,273	530	448
Europe		244.0	240.2	3,497	4,452	784	750
	(South						
Africa and middle east	Africa)	102.6	97.6	1,405	1,339	434	360
		678	686	9,325	10,768	2,715	2,692
Unallocated costs						- 96	- 103
Operating profit before exceptional items						2,619	2,589
Revenue and operating profit, before exceptional items, restated at comparable rates of exchange				9,014	10,768	2,515	2,589
British American Tobacco South Africa (2005)							

4.4 FOCUS OF BATSA AFTER LEGISLATION

BATSA in conjunction with seven other tobacco companies worldwide have developed new International Marketing Standards, Appendix 11, which are globally consistent in order to ensure the responsible promotion and distribution of tobacco products.

According to BATSA (2006) the Standards which were developed represent a 'raising of the bar', and establish a benchmark for the industry world wide. Resulting from this, BATSA has tightened its own marketing code of conduct that adheres to both the global marketing standards and the legislation in South Africa.

4.4.1 Code of conduct

After the new Tobacco Control Amendment Act (Act 12 of 1999) came into effect in 2001 BATSA launched their marketing code of conduct, Appendix 12, which was established in order to achieve the affirmation of their commitment, which was to ensure that the communication about their product was undertaken responsibly and stayed within the confines of the law.

BATSA's commitment to ensure that the communication of their products was only directed at consenting adult smokers over the age of 18 years was central to their code of conduct.

4.4.2 Marketing Restrictions

According to BATSA (2006) they maintain the viewpoint that manufacturers and retailers of tobacco products have a right to freedom of speech. Along with the universal awareness of the health risks associated with tobacco consumption, they believe that manufacturers and retailers should be entitled to communicate responsibly with adults who are in the market for such products. However, due to the risks these products pose to health and society there are reasonable concerns about how such products should be promoted, and BATSA strongly believes that all marketing activities should meet reasonable expectations.

According to BATSA (2006) their marketing practices are designed in order to attract adult smokers to their brands so they select BATSA's brands rather than those of their competitors, and retain the loyalty of their customers so they do not lose them to competitor's brands. They are not trying to persuade people, regardless of whether they're adults or youth, to begin or continue smoking. Due to experience gained by BATSA in the tobacco market showing that there is a substantial proportion of adult smokers in every country who choose to smoke, whether or not tobacco marketing is permitted, generally because they simply enjoy smoking, BATSA feels they have a strong argument in order to compete for the custom of adult smokers in an appropriate manner.

4.5 BATSA'S REPRESENTATIVES VIEWS

The views of David Smythe, Brand Manager of Dunhill South Africa, were obtained in order to gain an understanding of the workings within BATSA and how an organisation of their magnitude intend and attend to the challenges placed upon them by the introduction of the tobacco legislation in South Africa. (Appendix 11)

4.5.1 Comments on the change of advertising techniques

Marketing tobacco products pose significant health risks, they should be marketed responsibly. This means, among other things, that the marketing activities should be directed only at existing adult tobacco consumers. To meet changing expectations about how a responsible tobacco company should market its products, the British American Tobacco group developed globally consistent International Marketing Standards (IMS). The IMS lays down the minimum rules that companies subscribing to the policy should follow, across the full range of tobacco marketing and communication activities.

In addition to these global standards, at BATSA several further voluntary restrictions have been imposed on the marketing activities. These standards set out in BATSA's Marketing Code of Conduct apply to more than 360 distributors, 60 000 retail outlets and 140 Consumer Relationship representatives as well as to the brand communication with adult consumers. Both the IMS and BATSA's Marketing Code of Conduct can be viewed on their website www.batsa.co.za. or as Appendices 12 and 13.

With the promulgation of 'The Act' all traditional above the line advertising was abolished. This led BATSA to employ one-to-one communication techniques still permissible in terms of 'The Act'.

In line with BATSA's stance, no marketing activities are aimed at attracting any new smokers. All marketing activities are targeted at existing adult smokers.

4.5.2 The change in BATSA consumer base in the years after the implementation of 'The Act' (1999)

Overall the incidence of smoking in South Africa is declining, that is to say that less people smoke today than before. In addition the average daily consumption of cigarettes is also declining. Today consumption is less than 10 sticks per day. This has been driven to a large extent by annual increases (comprising both excise and manufacturers' increases) in the price of cigarettes above inflation and also by a greater awareness of health risks associated with tobacco consumption.

4.5.3 The changing role of new clientele development by BATSA with the loss of above the line mass media advertising techniques

BATSA employs below the line advertising to communicate with existing adult smokers (both own and those consuming competitor brands). BATSA does not target non-smokers and therefore new entrants into BATSA brands originate from competitor brands.

4.5.4 Main below the line techniques incorporated by BATSA

The below the line techniques utilised at BATSA are Customer Relationship Management (CRM) techniques, direct marketing e.g. Dissemination of product and packaging information, new product launches and product changes, and in-store communication (permissible if kept within 1m of Point of Sale).

4.5.5 What below the line advertising techniques are now relied upon for the development of new clientele

All one-to-one communication is permission based i.e. consent must be given by an adult smoker for any BATSA brand to communicate with them. Once permission is granted, BATSA may utilise any of the following communication tools Customer Relationship Management (CRM) techniques, direct marketing e.g. Dissemination of product and packaging information, new product launches and product changes and in-store communication (point of sale) may be placed in-store to communicate the availability and pricing of products. This must be done within one meter from where cigarettes are sold.

4.5.6 What brand loyalty techniques are utilised by BATSA

BATSA currently holds a database of adult smokers who have granted permission for BATSA to communicate with them via permissible communication channels. These consumers are assigned to specific BATSA brands.

4.5.7 Loyalty programs

BATSA may only communicate with an adult smoker over the age of 18 if the smoker has granted permission for the company to do so. Once permission has been granted, a BATSA brand may communicate with them through one-to-one communication. This is the way BATSA maintains the loyalty of their consumers.

4.5.8 Customer Relation programs

Consumer Relations Amplifiers, otherwise known as sales representatives, may only communicate with an adult smoker over the age of 18 if the smoker has granted permission for the company to do so. Written approval by way of a signature from the consumer must be obtained, their age must be verified and they must be a smoker.

Engagement with consumers is conducted on a one-to-one basis and must comply with the following. A BATSA representative will communicate only with smoking adults, or adults who are visibly in possession of cigarettes. A BATSA representative will not communicate with smokers accompanied by non adults (or are deemed to be under the legal smoking age). All communication will be conducted on a one-to-one basis. This does not preclude BATSA employees from speaking to more than one smoker at the same time, after acquiring the consent of them all. BATSA employees will introduce themselves as representing our company or a specific British American Tobacco brand. The representative will ask the smoker's permission to communicate with him or her about the brand. If the smoker declines, the employee will thank him or her and withdraw. The employee will inform the smoker that the communication is intended only for smokers 18 years of age or older. Employees may not urge any person to accept any offer if he or she declines to do so. A cigarette may not be offered in areas where smoking is prohibited. Adherence to this code is the personal responsibility of every BATSA employee.

4.5.9 Envisaged future activities of BATSA

BATSA has and will continue to abide by conditions stipulated in 'The Act'. Looking ahead, BATSA can envisage tobacco marketing being less reliant on mass media communication channels. The responsibility of BATSA is to ensure the marketing activities continue to be consistent with the principle that tobacco marketing should be directed at adult consumers only.

BATSA's main role is to recognise the relevant health authorities as the prime public voice on the health risks of tobacco consumption, while at the same time making the views clear.

BATSA will ensure that all their advertising, all cigarette packs and primary packaging shall carry a clearly visible health warning even where not prescribed by law, and when communicating, for example, through their websites, base the views on sound science.

BATSA should take the lead in striving to develop new generation tobacco products with critical mass appeal that will, over time, be recognised by scientific and regulatory authorities as posing substantially reduced risks to health, understanding that this is a significant challenge.

BATSA will also ensure that we have a robust effort for the development of a new generation of products, acceptable to the consumer and with the potential for substantially reducing the exposure to substances identified by public health groups as being harmful and seek the views of public health groups on such products

BATSA's responsibility is to ensure that their marketing activities continue to be consistent with the principle that tobacco marketing should be directed at adult consumers only.

BATSA expect their Group companies to operate in accordance with the IMS and report on Group companies' performance against those Standards.

4.5.10 Formation of Customer Relation Management (CRM)

As a one-to-one communication channel, the CRM function is effective in terms of it is able to recruiting existing adult smokers onto the database for ongoing communication regarding product and packaging information. It is helpful in building relationships with smokers of BATSA brands to maintain loyalty and gaining competitor brand smokers to drive trial and conversion for BATSA brands.

The CRM function is able to identify and document key consumer insights and trends (beyond the tobacco category) and conduct personal calls in response to quality deviations.

4.6 CONCLUSION

The tobacco industry of South Africa has had to comply with the legislation and changes to the legislation put forward by the South African government since 1993. However, they continue to conduct business and contest that the restrictions against their advertising don't have any real impact on their sales, and as can be seen from the views of BATSA they have gone through their restructuring process in order to abide by the legislation of government as well as maintaining the relationship with their clientele.

In the following chapter the writer will be focusing on and analysing the alcoholic beverage industry in South Africa with the help of information supplied by South African Breweries (SAB) to establish whether or not there are similarities in respect to the government involvement and the advertising means utilised between the tobacco industry and the alcoholic beverage industry.

This is going to be done with the view of establishing whether or not alcoholic beverage advertising would fall under the same scrutiny as tobacco advertising. An analysis will also be done in respect of the position taken by a major company in the alcoholic beverage industry, namely SAB, in working with government in order to curb any legislation that may be placed upon them.

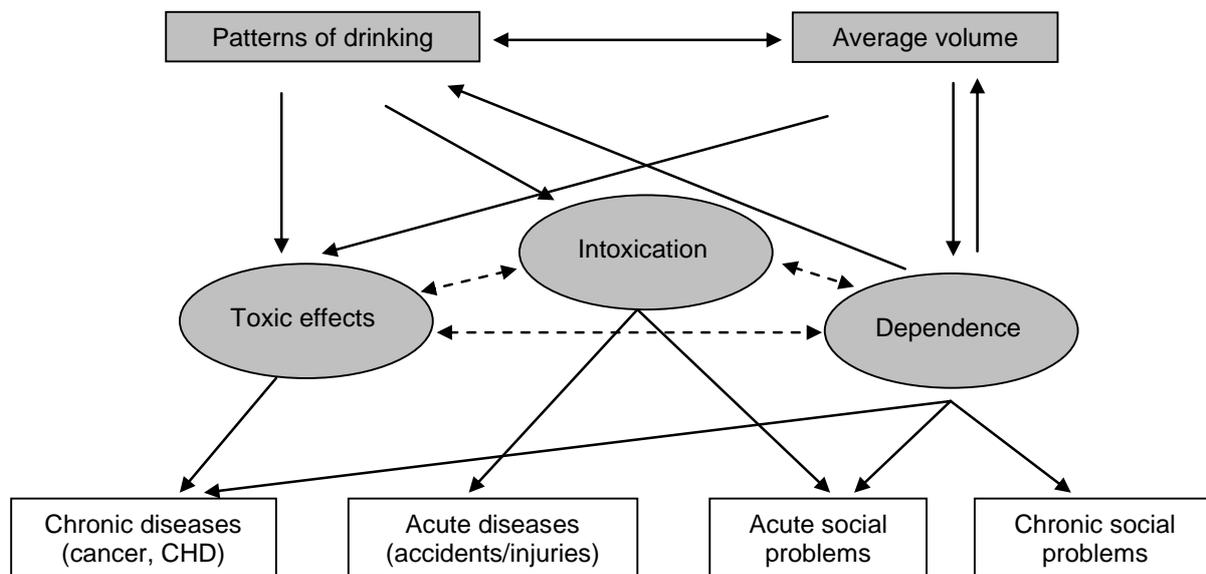
CHAPTER 5: A GUIDELINE FOR THE ALCOHOLIC BEVERAGE INDUSTRY IN SOUTH AFRICA

5.1 INTRODUCTION

In any society alcohol has multiple functions which makes it an important commodity, and alcoholic beverages have important cultural and symbolic meanings. In many countries, the production and sale of alcoholic beverages is an important economic activity due to the profits it generates for farmers, manufacturers, advertisers and investors, the employment opportunities it provides in the economy, the foreign currency it brings in for exported beverages, and the tax revenues it generates for the government.

The benefits connected with the production, sale and use of this commodity come at an enormous cost to society which can be shown using three important mechanisms which explain the ability for the overindulgence of alcohol to cause different types of problems according to Babor, Caetano, Casswell, Edwards, Giesbrecht, Graham, Grube, Gruenwald, Hill, Holder, Homel, Osterberg, Rehm, Room and Rossow (2003):2. Problem 1, toxic effects which result from the long-term usage of alcohol which effects the body organs and may influence chronic diseases. Problem 2, intoxication which can be defined as a short-term state of impairment of psychological and psychomotor performances and results from drinking a large amount of alcohol on one occasion (Babor ,et *al.*, 2003:2). Problem 3, is that of dependence, there are many different contributory causes associated with alcohol dependence including genetic vulnerability, but it is a condition that is contracted by repeated exposure to alcohol: the more an individual drinks, the greater their risk becomes. In Figure 5.1 alcohol dependence is shown to likely have both direct and indirect effects on chronic diseases and behaviour, as well as showing the complex relationship between the alcohol consumption, characterized by patterns of drinking and volume of drinking, and various type of harm.

FIGURE 5.1: DIRECT AND INDIRECT EFFECTS OF ALCOHOL DEPENDANCE



Source: Babor (et al). (2003):3.

According to Babor et.al. (2003:3) the ways in which people consume alcohol are closely linked to the mechanisms of toxicity, intoxication and dependence. Rapidly elevated blood alcohol levels which result from certain drinking patterns can lead to problems associated with acute intoxication, such as accidents, injuries and violence. Similarly, drinking patterns that promote frequent and heavy alcohol consumption are associated with chronic health problems such as liver cirrhosis, cardiovascular disease and depression. Finally, sustained drinking may result in alcohol dependence. Once dependence is present, it impairs a person's ability to control the frequency and amount of drinking. In general, WHO data indicates that there is a strong relationship between estimates of total consumption in a region and the estimated rate of alcohol dependence and therefore alcohol can not be deemed as an ordinary commodity (Babor et. al. 2003:3).

5.2 ALCOHOL ADVERTISING

Alcohol advertising, according to Wikipedia (2006), is the promotion of alcoholic beverages by alcohol producers through a variety of media. Scientific research around the world conducted by governments, health agencies and universities has,

over decades, been unable to demonstrate any causal relationship between alcohol beverage advertising and alcohol consumption. However, effective alcohol campaigns have been demonstrated to increase both a producer's market share and also brand loyalty (Wikipedia, 2006).

5.2.1 Target markets

The intended audience of the alcoholic beverage advertising campaigns has changed throughout the years, with some brands being specifically targeted to a particular demographic group, namely men or women.

The alcoholic beverage industry has been faced with a certain amount of criticism and tightened legislation with regards to any kind of advertising allegedly targeted at young people and the main area of concern focuses on the development of alcopops – which are sweet-tasting, brightly coloured drinks with names that may appeal to a younger audience (Wikipedia, 2006).

5.2.2 Advertising of alcoholic beverages around the world

According to Wikipedia (2006), the European Union and World Health Organization (WHO) have both specified that the alcohol advertising should not be strictly controlled. However, some countries, such as Kenya and Norway, have banned all alcohol advertising on television and billboards. Appendix 14 has a break down of allowances towards alcohol advertising in countries around the world.

5.2.3 Responsible drinking campaigns

Many governments around the world, including South Africa, have pursued various campaigns to help prevent alcoholism, under-age drinking as well as drinking and driving.

In South Africa combinations of car keys and alcohol as shown below in Figure 5.2 have been banned due to the responsible driving campaigns being run through the media (Industry Association for Responsible Alcohol Use (ARA), 2006), due to the

subliminal messages which could be transmitted to the public that it is okay to drink and drive. Therefore no association may be made between the two arenas.

FIGURE 5.2: BANNED ALCOHOLIC ADVERTISING CONTENT



Source: Wikipedia (2006).

5.3 SELF-REGULATION OF ALCOHOLIC BEVERAGE ADVERTISING

An important element of public policy is developing standards regarding how the private sector communicates information about their products. Ideally, advertising is meant to inform the public so that they can be aware of products and make informed choices among different products or brands. Advertising is, of course, also of benefit to businesses in assisting them to sell their products, which in most countries is a commercial right.

5.4 THE FUNCTIONING OF SELF-REGULATION

According to the International Center for Alcohol Policies (2001) self-regulation is the process whereby industry actively participates in and is responsible for its own regulation. This process can vary quite significantly and advertising self-regulation is based on the principles embodied in the International Code of Advertising, issued by the International Chamber of Commerce. In the introduction of this code it states, according to the International Center for Alcohol Policies (2001) that advertising should be legal, decent, honest and truthful, prepared with a sense of social responsibility to the consumer and society, and with proper respect for the rules of fair competition.

This is accomplished through rules and principles of best practice to which advertisers and the advertising industry agree to be bound. In South Africa these rules are set out by the Industry Association for Responsible Alcohol Use a self-regulatory body to which a given alcohol beverage company must adhere regarding commercial communications. These regulations (rules) are as follows (International Center for Alcohol Policies, 2001):

5.4.1 Alcoholic Beverage Advertising Regulations

Irresponsible drinking can't be featured in any advertising in particular the amount of alcohol being consumed. Alcoholic beverage advertising must focus on brand selling to develop brand loyalty, or to persuade people into brand switching

The focus of alcoholic beverage advertising can't be directed at any member of the public who is under the age of 18 years and no person under the age of 25 years may be depicted drinking in any advertisement. The implication of alcohol consumption being essential in doing business or in achieving social acceptance as well as non consumption being a sign of weakness can't be portrayed in any advertisement.

Any alcohol advertising may not imply that the consumption of alcoholic beverages can be directly contributed to any sexual success or seduction. There may also be no nudity or implied nudity by any means.

In no way can any advertising claim that alcohol has any curative qualities, or that it may boost performance through consumption. No advertising may suggest consumption of alcohol pertaining to any improper, illegal or inadvisable circumstance, namely driving, work or sporting activity which requires heavy physical effort. No pregnant woman may be depicted in any alcoholic beverage advertising. Advertising may not depict anti social or aggressive behaviour in connection with alcoholic beverages.

All advertisements must carry the message: “Not for sale to persons under the age of 18”. When the advertisement is in, print the message must be clearly legible and not smaller than the smallest print size in the advertisement’s copy.

5.4.2 Rules relating to Promotions

According to the rules and regulations put forward by the Industry Association for Responsible Alcohol Use (ARA) events and competitions directed primarily at persons under the age of 18 may not be linked to any alcoholic brand or product through sponsorship. Events or activities which form part of a member’s Corporate Social Responsibility activities are acceptable.

When launching a new product or running promotion activities the encouragement of excessive or irresponsible consumption must be excluded e.g. drinking competitions which encourage increased consumption. When attending promotions consumers will be encouraged to assume personal responsibility for their decision to drink or not drink, and for the quantity consumed. All promotions whether during lunch or the evening will not be confined to the consumption of alcoholic beverages alone. Appropriate snacks or meals should be available.

University authorities must approve any campus promotions arranged and care must be taken to avoid serving alcoholic beverages to under-age consumers. On-premise promotions may use price factors as long as it isn’t done over a limited period of time; however members of the ARA can not run promotions which encourage increased consumption over a limited time frame e.g. happy hours, two for the price of one, or half price promotions. In accordance with the law, members of ARA are not permitted to deliver or sell to unlicensed outlets.

5.4.3 Rules for Packaging

When transporting or selling alcoholic beverages packaging of the highest practical quality and attractiveness must be used, in order to assist with the promotion of responsible alcohol beverage usage. Packaging which improves the convenience of storage, transport and serving is acceptable, however it may not encourage the impression that alcohol is a bulk commodity.

The alcoholic strength of a product will not be used as the principal subject of a label; however South African legislation states that the alcohol strength must be provided as a guide for the consumer. No packaging of alcoholic beverages may be directed at persons under the age of 18 and labels may not convey any sexual innuendo.

5.4.4 Media Rules

The ARA members subscribe to the following rules, regardless of any regulations required by the media owners: Advertisements may not be transmitted in the commercial breaks immediately before, during or immediately after children's programmes on television or radio and will not be placed in any medium aimed specifically at children.

5.4.5 Warning Labels

The reasons that motivated the use of warning labels in South Africa (ARA 2006: 12th September 2006) are that they remind and warn people of the dangers of excessive / irresponsible use of beverage alcohol; warn people about adverse effects of beverage alcohol; serve to remind the public of the potential risks associated with beverage alcohol use; can change behaviour through awareness and education and they reduce excessive or irresponsible use of beverage alcohol.

5.4.6 The Industry Association for Responsible Alcohol Use (ARA) Position

The ARA is committed to the prevention of abuse and misuse of beverage alcohol in South Africa. It fully supports the right of the public to correct and updated information on beverage alcohol and, in fact, devotes resources to facilitate this.

The weight of evidence compiled by the ARA suggests that warning labels are not effective instruments to achieve these goals. In addition, in South Africa the industry has a voluntary restraint on drawing the attention of the public, through its product advertisements, to scientifically established health benefits of moderate alcohol consumption. The imposition of warning labels on the industry runs the risk of the

voluntary restraint being abandoned. If this had to come into effect we could well see, a health warning and a health benefit message on the same label.

5.4.7 Proposed Alcoholic Beverage Health Warnings in South Africa

The South African Government put forward a draft legislation on the 11th February 2005 titled Foodstuffs, Cosmetics and Disinfections Act 1972 Regulations relating to the labelling of Alcoholic Beverages, Appendix 15, stating that alcoholic beverages will need to display warning labels on their containers. The SA government put together a seven different labels, namely: 1. Alcohol reduces driving ability. Don't drink and drive, 2. Don't drink and walk on the road, Alcohol kills, 3. Alcohol reduces your risk to personal injuries, 4. Alcohol is a major cause of violence and crime, 5. Alcohol abuse is dangerous to your health, 6. Alcohol is addictive and 7. Drinking during pregnancy is dangerous to your unborn baby.

According to Tshabalala-Msimang (2005) these health warnings would be required to be visible, legible and indelible and the legibility thereof not to be affected by any matter, printed or otherwise. These warnings need to be in black and on a white background with a designated space which may not be any smaller than an eighth of the size of the advertisement, container label or promotional item. Any one of the official South African languages can be used for these printed warnings.

The draft legislation also stated that there will be certain information which will be prohibited from being printed on container labels such as words, pictorial representations or descriptions which may create the impression that any alcoholic beverage has been manufactured according to recommendations made by a health professional, any health organisation, association or foundation. The words heal, health, healthy, cure, restorative or any other words or symbols claiming that alcoholic beverages have any medicinal, health giving or therapeutic properties were also prohibited.

5.4.8 Policy Overview

According to the International Center for Alcohol Policies (2001), the Centre for Information on Beverage Alcohol, a private research group, compiled data on

different countries and what approaches they used in order to regulate their alcohol beverage advertising. The survey which was conducted in 119 countries. The results of this survey are illustrated in Appendix 14, and were derived from a variety of sources including government departments, advertising associations and the alcohol beverage industry (International Centre for Alcoholic Policies, 2001).

The policies regarding advertising restrictions are divided in six categories. The category assigned to each country was derived by reviewing the restrictions that were in place regarding alcohol advertising on television, radio, cinema, print media, outdoors and sponsorship. The policy categories are 1. Self-regulation, 2. Statutory legislation, 3. A Combination [of self-regulation and statutory legislation], 4. Banned [advertising of alcohol], 5. Some controls and 6. No controls.

The data shown in Appendix 14 indicates that there are 45 countries which restrict advertising of alcohol beverages through statutory legislation, followed by 21 countries that use a combination of statutory legislation and self-regulation, 23 countries that have no controls on alcohol advertising and 17 countries that employ self-regulatory mechanisms. Five countries have some controls over alcohol advertising, while seven countries ban the advertising of alcohol altogether.

The alcohol beverage industry recognizes that the advertising and promotion of beverage alcohol may need more careful regulation than that for some other products. In addition, individual companies, such as SAB, often have their own codes of conduct. The self-regulatory codes that industry organizations sponsor generally address placement and content of advertisements and in many cases, like The Netherlands and South Africa, packaging.

5.4.9 Effectiveness of Self-Regulation

The effectiveness of self-regulation on alcohol advertising has rarely been studied systematically, although the issue is often hotly debated in alcohol policy circles. Further study in this arena would be of great use mainly because such evaluation and/ or studies would help in the determination of whether or not the alcoholic beverage industry is in actual fact effective when policing itself through their specific

self regulatory measures when communicating to either commercially or to the public at large. One definite sign that shows that the alcoholic beverage industry prefers self-regulation to government controls is how it behaves when it is threatened with government intervention. This can be seen below through the three case studies of Australia, UK and South Africa.

5.4.10 Selected brief Case Studies of Self-regulations

The case studies below are from a report by the International Center for Alcohol Policies (2001). These three brief case studies were chosen as they relate to Chapter two where the same countries tobacco legislation was analysed, therefore tying in the relationship between the two commodities and seeing whether or not the Alcoholic Beverage Industry needs to have similar or the same measures of legislation place upon it as the Tobacco Industry had.

5.4.10.1 Australia

Australia has minimal legislation and few mandatory requirements concerning the advertising of alcohol beverages. In the 1980's and early 1990's, concern was mounting about the perceived harmful effects of alcohol beverage advertising. Blakeney and Barnes (1982) noted a lack of sanctions in Australia for offending parties, the variable nature of adjudication, and the protracted delays in determining complaints which run counter to the industry's interest and the lack of health and welfare representation on adjudicating bodies.

Saunders and Yap (1991: 23), who studied the system of self-regulation of alcohol beverages advertising based on 16 advertisements, concluded: "...the system of self-regulation of alcohol advertising does not serve the public interest." Hawks (1993: 131) editorialized that unless the industry demonstrates that it could regulate its members, "the public have a right to demand that governments exercise more control of the industry.

The alcohol beverage industry did react. In 1928, the Australian Association of National Advertisers was established and in 1998 a self-regulatory Alcohol Beverages Advertising Code and Complaints Management System (ABAC) was

organized. Members commit to abide by the decisions of the independent Complaints Adjudication Panel.

All key alcohol beverage sectors — marketing, advertising, media and consumer associations as well as government ministers and departments — were involved in its design. In addition, an Alcohol Advertising Pre-vetting System was established by the Australian Associated Brewers and the Distilled Spirits Industry Council of Australia. Its prime function is to ensure that beer and spirits advertisements are consistent with the ABAC code.

The Commonwealth Minister for Health endorsed and launched the code and stated that the code will be monitoring advertising closely to ensure that the spirit of the code is upheld so that all alcohol advertising is responsible and reflects community expectations (International Center for Alcohol Policies, 2001: 8).

5.4.10.2 United Kingdom

Responsibility for self-regulation in the United Kingdom is split between non-broadcast media and broadcast media (International Center for Alcohol Policies, 2001: 9). The Advertising Standards Authority (ASA) was established in 1962 to ensure that all non-broadcast media adhere to the basic principles contained in the International Code of Advertising. The ASA code contains specific rules on alcohol beverages. The Portman Group, an industry-funded social aspects organization, introduced its voluntary Code of Practice on the naming, packaging and merchandising of alcohol beverages in April 1996. This was chiefly in response to public and government concern regarding the introduction of alcoholic lemonade and other so called “alcopops” in the UK, which some argued were targeted at young people under the legal drinking age of 18. The code was welcomed, but was also criticized for its lack of independence in monitoring its members.

In September 1997, a second edition of the Code was released which included strict criteria, including bolder statements of alcohol content and a focus on more adult labelling (International Center for Alcohol Policies, 2001: 10). It also included an independent review panel, chaired by the former banking ombudsman. The results of

the review are published, and there is also a pre-vetting component, which allows manufacturers to submit relevant new products to the Portman Group for pre-launch clearance. The Chairman of the Ministerial Group on under-age drinking welcomed the revised Code and also indicated that there would be no need for government intervention on alcopops.

It appears that these revisions have won government approval as well as industry compliance, as is clear from the remarks made on the 23rd October, 2000 in the House of Commons by the Secretary of State for the Home Office. The Secretary of State for the Home Office stated that “the numbers of complaints and upheld complaints have both fallen; the finding of the independent panel...have enjoyed a high degree of compliance and the [Portman] Group’s Retailer Alert Bulletins, advising retailers not to stock offending products in their original packaging, has reduced their availability to the public” (International Center for Alcohol Policies, 2001: 10).

5.4.10.3 South Africa

In South Africa, advertising of alcoholic beverages is permitted on television, radio, in the cinema, in print and outdoors. This is, however, subject to the code of the Industry Association for Responsible Alcohol Use (ARA), an association of whose membership includes the major alcohol producers in South Africa. The code, for example, specifies that advertisements may not be transmitted in the commercial breaks immediately before, during or immediately after children’s programs. The ARA set up a self-regulatory code in 1989 which regulates advertising, packaging and promotional activity. Since 1989, the code has been amended twice. In addressing advertising issues, the code prohibits a range of activities, including appeal to young people, inclusion of youth under-25 drinking alcohol, special promotion of higher alcohol content beverages and promotion of aggressive or anti-social behaviour. The packaging requirements include using packaging of the “highest practical quality and attractiveness,” and not promoting the alcohol strength of the beverage as the principal subject of the label (International Center for Alcohol Policies, 2001: 10).

In 1996, the Advertising Standards Authority of South Africa accepted the advertising clauses of the code, in *toto*, as their own code, thus making the ARA code applicable to non-members of the ARA as well. With the addition of the packaging and promotional clauses, the ARA code in fact is more stringent than the Code of the Standards Authority of South Africa. An external ombudsman settles code disputes within the ARA. Generally, it is believed that these guidelines and codes are being followed. (International Center for Alcohol Policies, 2001).

5.5 CONCLUSION

As can be seen throughout the chapter the main difference between alcoholic beverage advertising and tobacco product advertising is the different approaches and solutions that both industries took when dealing with government and lobbyists. The tobacco industry decided to fight them and go at deriving a solution alone whereas the alcoholic beverage industry made the informed decision to work hand in hand with the government and lobbyists in order to find a combined solution to any problems arisen or still to arise. Most parties in the South African Alcoholic beverage industry work together with the self regulating body The Industry Association for Responsible Alcohol Use (ARA) in order to comply with any changes the SA Government makes regarding alcoholic beverage advertising.

At the time of writing this assignment the alcoholic beverage industry in South Africa is under self regulatory controls as has been shown in this chapter and as long as they adhere to these practises and continue to work hand in hand with government in order to maintain the work already being done there should be no reason why they would have to be placed under such stringent legislation as the tobacco industry in South Africa.

CHAPTER 6: COMPARISON OF THE TOBACCO AND ALCOHOLIC BEVERAGE INDUSTRIES FOR SELF REGULATION OF THE ALCOHOLIC BEVERAGE INDUSTRY

6.1 INTRODUCTION

Alcohol can be an enjoyable part of adult social experience. People hurt themselves and society when they drink in excess, drinking while underage or drinking and driving. One of the greatest challenges that society needs to address is people who drink irresponsibly, as there is no single action that is likely to reduce the problems that result from such irresponsible behaviour.

In order to reduce the harm related to alcohol a combination of existing laws that govern the consumption and sale of alcohol, targeted interventions, and individuals taking responsibility for their drinking choices is the appropriate route which needs to be taken. The promotion of responsible consumption of alcoholic beverages by the alcoholic beverage industry is in the best interests of its consumers as well as its own business practices, whether it be on a local or global scale. In addition to this the alcoholic beverage industry also needs to continuously invest in education programmes and marketing campaigns to remind the public of the vital role it plays in preventing alcohol-related harm to clients, to others and to society overall.

There is legislation in almost every country around the world on alcohol marketing. However, there is still a great need for the alcoholic beverage industry to support self-regulated marketing and advertising in order to establish self-imposed restraints and standards that often go beyond legislation. Many companies collaborate with their local trade associations and other stakeholders in order to establish culturally relevant marketing and advertising standards.

This assignment has analysed both the tobacco industry and the alcoholic beverage industry on a global scale, and also in a South Africa context. The main goal was to discover whether or not the alcoholic beverage industry could learn from the experiences through which the tobacco industry passed when it changed from a self-

regulating industry to an industry being controlled by government regulations and legislation. In this regard certain similarities were found. In concluding this assignment certain issues will be addressed and assumptions made namely focusing on how the alcoholic beverage industry should behave in terms of what legislation and/or the control measures it should implement through self-regulation and working with government in order to ensure that it would not fall under similar legislation and government regulations like those relating to the tobacco industry.

6.2 SIMILARITIES BETWEEN TOBACCO PRODUCTS AND ALCOHOLIC BEVERAGES

When comparing tobacco and alcohol, it is striking how both of them have addictive qualities, are frequently used from a very young age and both have laws prohibiting sale to minors. However, according to Fairweather and Mosher (2003), both industries utilised marketing strategies which were youth orientated and both industries were highly successful in blocking public health reforms through the legislative process in the past. However, the South African tobacco industry is now subject to extensive legislation.

The success gained in South Africa with regard to anti-tobacco initiatives and government legislation since the induction of the first Tobacco Act in 1993, has led to certain members of society proposing that similar, if not the same, strict strategies and / or legislative measures should be used to address the public health problems relating to alcohol.

Government and lobbyists have done and achieved a lot in South Africa with regard to legislation in respect of tobacco products. Smokers have been banished to corners in restaurants, outside of office buildings or in demarked areas in airports. According to Mulligan, Hacker, Doonan, Berkowitz and Becker (1998:1), this has changed the perception of the tobacco industry being that of an untouchable entity to being deemed a public enemy.

The South African government's justification for its broad restrictions and tax increases on the tobacco industry was aimed at reducing the demand for tobacco

products, while promoting and funding public health initiatives. The question could now be posed: Should the South African government control the alcohol industry in a similar fashion as the tobacco industry?

The main argument attacking the alcoholic beverage industry is that in terms of the magnitude of health and social costs, alcohol abuse is more damaging than tobacco in certain areas (Mulligan et al. 1998:1). Alcohol policy advocates, however, should carefully examine the lessons of the Tobacco Wars and the legislation with which the tobacco industry has been forced to deal over the last decade before embracing any public and legal action strategy against the alcoholic beverage industry.

6.2.1 Lessons for Alcohol Policy

There were three lessons identified from the tobacco industry context according to Fairweather and Mosher (2003:12) that could help guide the development of a alcohol policy:

- Firstly, an examination of new theories on liability, specifically theories which are not susceptible to an assumption of risk defence;
- Secondly, any evidence of corporate misconduct, including internal company documents, which expose efforts to mislead the public, target young people or promote addiction. These are critical components in both substantiating any legal claims and in influencing public opinion. Legal success which require substantial resources include, forming partnerships with public health groups, in order to match the industries deep pockets and aggressive defence strategies.
- Thirdly, another component for legal success is the building of favourable press coverage and the sympathy of the public which combined will have an impact on any legal action which government intends on taking.

6.2.2 Increased scrutiny Facing the Promotion of Alcoholic Beverages

McDaniel and Mason (1999: 482) state that alcohol promotion is starting to face more and more scrutiny similar to what the tobacco industry has experienced. With the public awareness of alcohol abuse being more prominent in today's society the

pressure to regulate the advertising and sponsorship of alcoholic beverages is increasing.

According to McDaniel and Mason (1999: 482) areas which have received a great deal of attention by public policy makers, scholars in health and general marketing and sports marketing disciplines, are alcohol promotion vs. past tobacco promotion, the potential effects of use by children and subsequent regulatory strategies addressing this issue.

One of the major companies in the alcoholic beverage industry, namely South African Breweries (SAB), has already started with self-regulation, working hand in hand with Public Sector officials in order to ensure that their self-regulating practices are up to standard, and running their social responsibility campaigns in order to inform the South African public about the harmful effects of over-indulgence, drinking and driving and alcohol abuse. SABMiller's commitment to promote alcohol responsibly is evidenced in the marketing messages it sends, or will not send out to the public.

The responsible marketing guideposts which SABMiller use are the SABMiller Alcohol Manifesto and the Code of Commercial Communication (Appendix 16 and 17). According to SABMiller (2007) the Alcohol Manifesto establishes ongoing employee educational requirements in order to achieve compliance with its Code of Commercial Communication.

6.3 CURRENT CONTROL MEASURES ON ALCOHOLIC BEVERAGES IN SOUTH AFRICA

At present the alcoholic beverage industry in South Africa has to adhere to certain guidelines which have been set out by the government, namely the introduction of warning labels on all alcohol containers. Further to this, as stated above, the industry is self-regulated and it works hand in hand with government and industry self-regulating control bodies in running consumer awareness campaigns relating to the harmful effects of over-indulgence with regard to alcoholic beverages.

6.3.1 Warning Labels

Regulations have been published by the Department of Health stating that alcoholic beverage container labels need to carry health messages that highlight the negative effect of alcohol consumption (Department of Health, 2007). The regulations, published under the Foodstuffs, Cosmetics and Disinfectants Act 54, 1972 (Appendix 14) have come about after several years of consultation with key members in order to address the challenge of alcohol abuse in South Africa. In cases of violence and trauma alcohol consumption plays a major factor and contributes significantly to non-natural causes of death in the country.

According to the Department of Health (2007) the publication of the regulations will come into effect within the next 18 months as part of its ongoing campaign to promote healthy lifestyles in South Africa.

The health messages which the Department of Health feel should be printed on the labels of all alcoholic beverages include the following: Alcohol reduces driving ability; don't drink and drive; don't drink and walk on the road, you may be killed; alcohol increases your risk to personal injuries; alcohol is a major cause of violence and crime; alcohol abuse is dangerous to your health and drinking during pregnancy can be harmful to your unborn baby.

Stated in the regulations are the requirements that the health messages should be visible and be on a space specifically devoted for it, which must be at least one eighth of the total size of the container label, be in any of the South African languages, but must be in the same language as that of the container label and that the use of words such as 'health,' 'healthy' or other words or symbols claiming that the alcoholic beverage has health properties be prohibited.

6.4 SELF-REGULATION

The process of self-regulation is to provide on agreed standards for socially responsible advertising. It has gained ground internationally because it can evolve quickly and flexibly in the areas where legal procedures and principles are more static, it adapts easily to embrace new social standards and new marketing trends, it

is able to take into account subtle differences in cultural and commercial practices at every level, it operates in a way that is free and readily available to consumers and it engages the support and commitment of all stakeholders because it respects consumers and recognises that all companies should operate on an equal basis (A Workshop on Self Regulation – African Region, 2006).

6.5 SELF-REGULATING CONTROL BODIES

The two major self-regulating bodies in South Africa on which the focus will fall, are the Advertising Standards Authority of South Africa (ASA) and the Industry Association for Responsible Alcohol Use (ARA). These two bodies are the main driving forces that work hand in hand with government and the alcoholic beverage industry in order to maintain the self-regulation of alcoholic beverage marketing and advertising while, conforming to the constraints which government have in place according to its regulations, as set out in the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972.

6.5.1 Advertising Standards Authority

The Advertising Standards Authority (ASA) is an independent body set up and paid for by the marketing communications industry of South Africa to regulate advertising in the public interest by means of a system of self-regulation. The ASA works in conjunction with the South African government, statutory bodies, consumer organisations and the specific industry in order to ensure that the content of the advertising meets the requirements of the Code of Advertising Practice in South Africa.

6.5.1.1 Advertising Standards Authority Alcoholic Beverage Advertising Standards

The ASA has a number of criteria which need to be adhered to when advertising alcoholic beverages. According to the ASA (2007) these requirements are set out as follows: Firstly, advertisements will not feature or foster irresponsible drinking. This applies, for example, to the quantity of drink being consumed or shown in the

advertisement. Secondly, advertisements will be directed towards brand selling to develop brand loyalty or to persuade people to change brands or type of alcoholic beverage. Advertisements will not set out to encourage a general increase in the consumption of alcohol. Thirdly, liquor advertising will not be directed at persons under the age of 18 years. No one associated with the act of drinking in an advertisement will be younger than 25. Persons under the age of 18 will not be depicted in advertisements, except where it would be usual for them to appear, e.g. in family scenes or in background crowds. They will not be shown drinking alcoholic beverages, nor may it be implied that they are. Fourthly, advertisements will not imply that alcoholic beverage consumption is essential to business and social success or acceptance, or that refusal is a sign of weakness. Advertising will also not be based on a dare or imply any failing in those who do not accept the challenge of a particular alcoholic beverage.

Advertisements will not be suggestive of sexual indulgence or permissiveness, portray nudity or present an improper portrayal of near nudity, present any situation derogatory to the virtue of either sex or claim or suggest that alcoholic beverages can contribute directly to sexual success or seduction. Advertisements will not induce people in an improper manner to prefer a drink because of its higher alcoholic content or intoxicating effect. Factual information for the guidance of consumers about the alcoholic strength may be included. Advertisements will not claim that alcohol has curative qualities, nor offer it expressly as a stimulant, sedative or tranquiliser. Advertisements may refer to the refreshing attributes of an alcoholic beverage, but will not imply that performance can be improved through the consumption of such a drink. Advertisements will not suggest or propagate the consumption of liquor under circumstances which are generally regarded inadvisable, improper or illegal, e.g. preceding or during any operation requiring sobriety, skill or precision. Examples of such operations are motor vehicle driving, aeronautics, other forms of transport, work or sport requiring intense physical effort.

Advertisements will also not depict pregnant women. Alcoholic drinks will not be advertised in a context of aggressive or anti-social behaviour. All advertisements in print, television and cinema media will carry the message "Not for sale to persons under the age of 18". The minimum specifications for this message are: for A4 print

advertisements, the font and size have to be Arial black 11, for A5 and A6 print advertisements, the font size has to be Arial black 9. For all other advertisements in print, television and cinema media, the size must be proportionately increased or decreased, as the case demands. The message line needs to be centred at the bottom of the advertisement and be horizontally depicted. The message line must contrast with the background so that it is clearly visible and there may not be any variation in the wording of the message line. Advertisements should be mindful of sensitivities relating to culture, gender, race and religion and must not employ religion or religious themes. Advertisements may not employ creative devices which have a special appeal to children. Advertisements will not contain expressions which tend to degrade liquor as a beverage. Advertisements may not suggest consumption of liquor by members of a class who are opposed to the consumption of liquor e.g. teetotallers, prohibitionists, or are generally regarded as immature or otherwise unfit, e.g. destitutes, criminals. Advertisements may not suggest the consumption of liquor for other than religious purposes, in proximity of churches, burial places and places held sacred, unless a beverage was first produced in such a location and the location is used only when depicting the actual history of the product (ASA, 2007). Advertisements may not suggest the consumption of liquor at any place specifically prohibited by the Liquor Act 27 of 1989 or in squalid, poverty stricken or disgusting surroundings. Advertisements may not suggest, or commend, or make fun of over-indulgence or its after-effects. Lastly, advertisements may not suggest that noticeable after-effects of liquor abuse, such as flushed complexion, unsteady gait, slurred speech, and bloodshot eyes are not present if a particular product is consumed; or can be simply cured, concealed or removed by remedial treatment after consumption.

6.5.2 Industry Association for Responsible Alcohol Use

The highly competitive South African alcoholic beverage industry, due to pressures from government and lobbyists, felt the need to sharpen its focus on the private and social problem associated with the industry before these became public problems. With a view to ensuring that its objectives were met, problems were solved and policies were put into place after the Social Aspects of Alcohol Committee (SAAC) was formed. It took almost five years for the alcoholic beverage industry to create this

loosely constituted forum, but in 1986 it officially came into being. The SAAC was renamed in 1996 to the Association for responsible Alcohol Use (ARA) and specific corporate members were nominated, namely: Distell, Douglas Green Bellingham, Brandhouse, KWV, Mooiuitsig Wynkelders, E Snell & Co. and SABMiller.

The activities of the ARA are based on and driven by sound scientific research, which is concerned with the growth and responsible development of the South African alcoholic beverage industry. In order for the growth and development objectives to be achieved, a clear distinction needed to be made between the responsible use of alcohol and the misuse and abuse of alcohol. The members of the ARA are focused on a balanced growth strategy, which is based on responsible marketing and distribution practices of their products.

A major concern of the ARA is that legislative measures, policies and programmes which are in place to prevent alcohol related problems should be focused on the minority who abuse alcoholic beverages and not on the responsible majority of people in South Africa.

The activities of the ARA are best explained through the four major areas on which it concentrates namely: All the members of the ARA comply with self-regulatory measures and they follow a strict and comprehensive marketing code as discussed above under the ASA alcoholic beverage advertising standards. Secondly, encouragement and support is given by the ARA towards the primary prevention through education and research by firstly identifying the biological or generic factors relating to alcohol addiction. The ARA helped substantially in setting up the Foundation for Alcohol Related Research (FARR) in 1996 in order to achieve the research objectives as stated above (ARA, 2007). The ARA supports other initiatives which have been set up to help and educate the population on the harmful effects caused by the misuse and abuse of alcohol, an example of which being the Sensible Drinking Project in Western Cape. Thirdly, the ARA is focused on the prevention of underage consumption of alcoholic beverages through its Age Watch Campaigns, which target retail traders. The ARA also funds a BUDDY project which is aimed at preventing alcohol related road mishaps in conjunction with a number of university and technikon campuses. Lastly, the ARA serves on various official State bodies,

through invitation, to deal with alcohol related issues and prevention strategies. The ARA is aligned with other organisations, which are actively involved in alcohol-related issues and policy formulation. These organisations include: The International Council of Alcohol and Addictions, The Centre for Information on Beverage Control, The South African Alliance for the Prevention of Substance Abuse, The International Centre for Alcohol Policies (ICAP) and the Institute for Health Training and Development (ARA, 2007).

6.6 SELF-REGULATION OVER THE ALCOHOLIC BEVERAGE INDUSTRY

ICAP was established in 1995 in order to promote public and private partnerships on a global scale with reference to alcohol policy. ICAP is a non-profit organisation supported by eleven major international beverage companies with their main focus on the reduction of alcohol abuse worldwide and the promotion of the role of alcohol in society through discussions and partnerships involving the beverage industry, the public health community, and others interested in alcohol policy. ICAP is active in the provision of opportunities to exchange best practices on self-regulation of advertising and marketing of alcoholic beverages.

According to ICAP (2006) there are three key issues with regard to the various practices that could be considered in the creation of new self-regulation schemes or used by existing self-regulatory bodies to enhance their efficiency and effectiveness. The key issues with regard to self-regulation in the alcoholic beverage industry are the recognition of cultural differences, suggestions for a better self-regulatory practice and continual self-regulation improvement. The self-regulation of alcoholic beverages takes different forms in different markets around the world, and is appropriately reflected in many ways with regard to the products which are regulated, sold and consumed.

While emphasising these differences between regions and cultures, ICAP through global workshops involving governments, industry members and regulatory bodies, has noted the need to improve the understanding of self-regulation, as well as the need for continual improvement in implementing self-regulatory systems internationally, regionally, and locally. According to ICAP (2006) the regional

workshops which it has conducted provide opportunities to discuss matters relating to self-regulation with representatives of major beverage alcohol companies, self-regulatory bodies, advertisers, official State bodies and the public health community on a regional basis; review the current best practice in self-regulation both internationally and regionally, as well as examining areas for improvement in the future; stimulate constructive discussions across the sectors with an emphasis on opportunities for establishing self-regulatory systems (where they do not already exist) and identifying mechanisms for improvement; assess and evaluate mechanisms for strengthening self-regulation; establish and/or strengthen partnerships with regional organisations involved in self-regulation issues; and raise awareness through local media about the importance of industry efforts to strengthen the effectiveness of self-regulation schemes around the world.

ICAP organised a regional workshop, on 19-20 October 2006, on self-regulation in Cape Town, South Africa, in an effort to support self-regulation in the alcohol beverage industry on the African continent. The invitation to participate in this African regional workshop was extended to governments, international organisations, public health and non-governmental organisations, the advertising industry, beverage alcohol companies, trade bodies and social aspect organisations.

In South Africa, as mentioned under Section 6.5 in this chapter, the two main self-regulating bodies are the ARA and the ASA. The ARA is an example of a code of commercial communication and conduct. The ARA includes provisions on advertising, packaging, promotions and media rules, complaints handling procedures, compliance and monitoring procedures, and the required practices for the supply, sale and consumption of alcohol beverages. The ASA represents an example of self-regulation by the advertising and media industries. The ASA is an independent body set up and paid for by the marketing communications industry to regulate advertising in the public interest through a system of self-regulation.

In order to improve the scope and the effectiveness of alcohol policy and self-regulation there is a need to encourage the State, industry, and public health partnerships on alcohol policy development; encourage beverage alcohol companies and ICAP to support governments in the development of alcohol policies; set

standards for alcohol production, distribution, retail, and consumption; address and engage informal production, distribution and consumption of alcohol; encourage affordable alternatives to illicit alcohol; create a safe and responsible drinking culture; create accessible mechanisms to address deviation from self-regulation codes and standards; and to ensure the effective enforcement of regulations and self-regulation. (ICAP, 2006)

6.7 RECOMMENDATIONS

The alcoholic beverage industry can certainly learn a great deal from the past experiences of the tobacco industry and its transformation from a self-regulated industry to an industry as it is known today, governed by numerous regulations and legislation.

According to the ARA (2007) there is no scientific evidence, which supports the idea that alcoholic beverage advertising has any significant impact on the rate of alcohol abuse and alcoholism. All evaluations which have been conducted suggest that advertising is not a contributing factor in influencing the overall level of alcohol consumption. Therefore, the notion of placing restrictions or bans on alcoholic beverage advertising as an instrument of public policy with respect to the prevention of alcohol-related damage is highly questionable.

There has been no evidence to date supporting the argument that suggests alcoholic beverage advertising induces young people to drink and no literature has been written suggesting that teenagers begin to drink in response to a set of learned cultural definitions and social expectations. According to the ARA (2003) the primary transmitters of these definitions and expectations are parents, other adult role models, and peer group members, all existing within a socio-cultural context of value and belief patterns about alcoholic beverages. Exhaustive reviews of the literature regarding the quantitative effect of alcohol advertising on consumption and abuse have found no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse.

The main goal of the alcoholic beverage industries advertising is to try and capture the largest possible proportion of the business of those who have already made the choice to drink.

There is good reason to believe that if alcohol advertising were completely eliminated, it would merely add to the mystique or engender the “forbidden fruit syndrome”, and would have the counterproductive effect of enticing young people to experiment with alcohol - something they have been doing in any event since long before television or radio existed as mass media (ARA, 2007). Patterns of use of illicit drugs amongst the young, where advertising is totally absent, add credibility to this argument.

If alcohol advertising does not increase consumption and related problems, then the limited resources available for prevention should be focused on other areas, which promise greater effectiveness.

It is important for all sectors of the alcoholic beverage industry to participate in effective alcohol policy development in order to maintain the self-regulatory practices of the industry. This includes establishing and strengthening self-regulatory systems for marketing and advertising of alcoholic beverages in South Africa. For these systems to be effective, they need to reflect different market, cultural and regional contexts and circumstances. The main lesson to be learnt from the tobacco industry is to work hand in hand with Government and not try and continue as if the relevant industry is untouchable, which was a major error that the tobacco industry committed.

6.8 CONCLUSION

The alcoholic beverage industry in South Africa will always fall under scrutiny from both State and public forums because of the nature of the business. However, if the industry should continue to ensure the effective enforcement of self-regulatory practices, continually improve on its self-regulatory practices, work in conjunction with the State, public health organisations, non-governmental organisations and the self-regulating bodies there should be no reason for government to enforce regulatory measures and legislation, as it did with the tobacco industry. The alcoholic beverage

industry should maintain its self-regulatory standing, but continues to be focused on educating the community and ensuring that all State and other concomitant requirements are adhered to.

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APPENDICES

Appendix 1

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Geneva, Switzerland

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FOREWORD

The WHO Framework Convention on Tobacco Control (WHO FCTC) is the first treaty negotiated under the auspices of the World Health Organization. The WHO FCTC is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The WHO FCTC represents a paradigm shift in developing a regulatory strategy to address addictive substances; in contrast to previous drug control treaties, the WHO FCTC asserts the importance of demand reduction strategies as well as supply issues.

The WHO FCTC was developed in response to the globalization of the tobacco epidemic. The spread of the tobacco epidemic is facilitated through a variety of complex factors with cross-border effects, including trade liberalization and direct foreign investment. Other factors such as global marketing, transnational tobacco advertising, promotion and sponsorship, and the international movement of contraband and counterfeit cigarettes have also contributed to the explosive increase in tobacco use.

From the first preambular paragraph, which states that the “Parties to this Convention [are] determined to give priority to their right to protect public health”, the WHO FCTC is a global trend-setter.

The core demand reduction provisions in the WHO FCTC are contained in articles 6-14:

- Price and tax measures to reduce the demand for tobacco, and
- Non-price measures to reduce the demand for tobacco, namely:
 - Protection from exposure to tobacco smoke;
 - Regulation of the contents of tobacco products;
 - Regulation of tobacco product disclosures;
 - Packaging and labelling of tobacco products;
 - Education, communication, training and public awareness;
 - Tobacco advertising, promotion and sponsorship; and,
 - Demand reduction measures concerning tobacco dependence and cessation.

The core supply reduction provisions in the WHO FCTC are contained in articles 15-17:

- Illicit trade in tobacco products;
- Sales to and by minors; and,
- Provision of support for economically viable alternative activities.

Another novel feature of the Convention is the inclusion of a provision that addresses liability. Mechanisms for scientific and technical cooperation and exchange of information are set out in Articles 20-22.

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The WHO FCTC opened for signature on 16 June to 22 June 2003 in Geneva, and thereafter at the United Nations Headquarters in New York, the Depositary of the treaty, from 30 June 2003 to 29 June 2004. The treaty, which is now closed for signature, has 168 Signatories, including the European Community, which makes it the most widely embraced treaties in UN history. Member States that have signed the Convention indicate that they will strive in good faith to ratify, accept, or approve it, and show political commitment not to undermine the objectives set out in it. Countries wishing to become a Party, but that did not sign the Convention by 29 June 2004, may do so by means of accession, which is a one-step process equivalent to ratification.

The Convention entered into force on 27 February 2005 -- 90 days after it has been acceded to, ratified, accepted, or approved by 40 States. Beginning on that date, the forty Contracting Parties are legally bound by the treaty's provisions. For each State that ratifies, accepts or approves the Convention or accedes thereto after the conditions set out in paragraph 1 of Article 36 for entry into force have been fulfilled, the Convention shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession. For regional economic integration organizations, the Convention enters into force on the ninetieth day following the date of deposit of its instrument of formal confirmation or accession.

The global network developed over the period of the negotiations of the WHO FCTC will be important in preparing for the implementation of the Convention at country level. In the words of WHO's Director General, Dr Jong-wook LEE:

"The WHO FCTC negotiations have already unleashed a process that has resulted in visible differences at country level. The success of the WHO FCTC as a tool for public health will depend on the energy and political commitment that we devote to implementing it in countries in the coming years. A successful result will be global public health gains for all."

For this to materialize, the drive and commitment, which was so evident during the negotiations, will need to spread to national and local levels so that the WHO FCTC becomes a concrete reality where it counts most, in countries.

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Preamble

The Parties to this Convention,

Determined to give priority to their right to protect public health,

Recognizing that the spread of the tobacco epidemic is a global problem with serious consequences for public health that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and comprehensive international response,

Reflecting the concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke, *Seriously concerned* about the increase in the worldwide consumption and production of cigarettes and other tobacco products, particularly in developing countries, as well as about the burden this places on families, on the poor, and on national health systems,

Recognizing that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, and that there is a time lag between the exposure to smoking and the other uses of tobacco products and the onset of tobacco-related diseases,

Recognizing also that cigarettes and some other products containing tobacco are highly engineered so as to create and maintain dependence, and that many of the compounds they contain and the smoke they produce are pharmacologically active, toxic, mutagenic and carcinogenic, and that tobacco dependence is separately classified as a disorder in major international classifications of diseases,

Acknowledging that there is clear scientific evidence that prenatal exposure to tobacco smoke causes adverse health and developmental conditions for children,

Deeply concerned about the escalation in smoking and other forms of tobacco consumption by children and adolescents worldwide, particularly smoking at increasingly early ages,

Alarmed by the increase in smoking and other forms of tobacco consumption by women and young girls worldwide and keeping in mind the need for full participation of women at all levels of policy-making and implementation and the need for gender-specific tobacco control strategies,

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Deeply concerned about the high levels of smoking and other forms of tobacco consumption by indigenous peoples,

Seriously concerned about the impact of all forms of advertising, promotion and sponsorship aimed at encouraging the use of tobacco products,

Recognizing that cooperative action is necessary to eliminate all forms of illicit trade in cigarettes and other tobacco products, including smuggling, illicit manufacturing and counterfeiting,

Acknowledging that tobacco control at all levels and particularly in developing countries and in countries with economies in transition requires sufficient financial and technical resources commensurate with the current and projected need for tobacco control activities,

Recognizing the need to develop appropriate mechanisms to address the long-term social and economic implications of successful tobacco demand reduction strategies,

Mindful of the social and economic difficulties that tobacco control programmes may engender in the medium and long term in some developing countries and countries with economies in transition, and recognizing their need for technical and financial assistance in the context of nationally developed strategies for sustainable development,

Conscious of the valuable work being conducted by many States on tobacco control and commending the leadership of the World Health Organization as well as the efforts of other organizations and bodies of the United Nations system and other international and regional intergovernmental organizations in developing measures on tobacco control,

Emphasizing the special contribution of nongovernmental organizations and other members of civil society not affiliated with the tobacco industry, including health professional bodies, women's, youth, environmental and consumer groups, and academic and health care institutions, to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts,

Recognizing the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts,

Recalling Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, which states that it is the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

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Recalling also the preamble to the Constitution of the World Health Organization, which states that 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,

Determined to promote measures of tobacco control based on current and relevant scientific, technical and economic considerations,

Recalling that the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, provides that States Parties to that Convention shall take appropriate measures to eliminate discrimination against women in the field of health care,

Recalling further that the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, provides that States Parties to that Convention recognize the right of the child to the enjoyment of the highest attainable standard of health,

Have agreed, as follows:

PART I: INTRODUCTION

Article 1

Use of terms

For the purposes of this Convention:

- (a) “illicit trade” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity;
- (b) “regional economic integration organization” means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters;¹
- (c) “tobacco advertising and promotion” means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;
- (d) “tobacco control” means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke;
- (e) “tobacco industry” means tobacco manufacturers, wholesale distributors and importers of tobacco products;
- (f) “tobacco products” means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing;
- (g) “tobacco sponsorship” means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

¹ Where appropriate, national will refer equally to regional economic integration organizations.

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Article 2

Relationship between this Convention and other agreements and legal instruments

1. In order to better protect human health, Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and are in accordance with international law.

2. The provisions of the Convention and its protocols shall in no way affect the right of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to the Convention and its protocols, provided that such agreements are compatible with their obligations under the Convention and its protocols. The Parties concerned shall communicate such agreements to the Conference of the Parties through the Secretariat.

PART II: OBJECTIVE, GUIDING PRINCIPLES AND GENERAL

OBLIGATIONS

Article 3

Objective

The objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.

Article 4

Guiding principles

To achieve the objective of this Convention and its protocols and to implement its provisions, the Parties shall be guided, *inter alia*, by the principles set out below:

1. Every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke and effective legislative, executive, administrative or other measures should be contemplated at the appropriate governmental level to protect all persons from exposure to tobacco smoke.

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2. Strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multisectoral measures and coordinated responses, taking into consideration:

- (a) the need to take measures to protect all persons from exposure to tobacco smoke;
- (b) the need to take measures to prevent the initiation, to promote and support cessation, and to decrease the consumption of tobacco products in any form;
- (c) the need to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to their needs and perspectives; and
- (d) the need to take measures to address gender-specific risks when developing tobacco control strategies.

3. International cooperation, particularly transfer of technology, knowledge and financial assistance and provision of related expertise, to establish and implement effective tobacco control programmes, taking into consideration local culture, as well as social, economic, political and legal factors, is an important part of the Convention.

4. Comprehensive multisectoral measures and responses to reduce consumption of all tobacco products at the national, regional and international levels are essential so as to prevent, in accordance with public health principles, the incidence of diseases, premature disability and mortality due to tobacco consumption and exposure to tobacco smoke.

5. Issues relating to liability, as determined by each Party within its jurisdiction, are an important part of comprehensive tobacco control.

6. The importance of technical and financial assistance to aid the economic transition of tobacco growers and workers whose livelihoods are seriously affected as a consequence of tobacco control programmes in developing country Parties, as well as Parties with economies in transition, should be recognized and addressed in the context of nationally developed strategies for sustainable development.

7. The participation of civil society is essential in achieving the objective of the Convention and its protocols.

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Article 5

General obligations

1. Each Party shall develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this Convention and the protocols to which it is a Party.
2. Towards this end, each Party shall, in accordance with its capabilities:
establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control; and
adopt and implement effective legislative, executive, administrative and/or other measures and cooperate, as appropriate, with other Parties in developing appropriate policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.
3. In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.
4. The Parties shall cooperate in the formulation of proposed measures, procedures and guidelines for the implementation of the Convention and the protocols to which they are Parties.
5. The Parties shall cooperate, as appropriate, with competent international and regional intergovernmental organizations and other bodies to achieve the objectives of the Convention and the protocols to which they are Parties.
6. The Parties shall, within means and resources at their disposal, cooperate to raise financial resources for effective implementation of the Convention through bilateral and multilateral funding mechanisms.

**PART III: MEASURES RELATING TO THE REDUCTION
OF DEMAND FOR TOBACCO**

Article 6

Price and tax measures to reduce the demand for tobacco

1. The Parties recognize that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.

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2. Without prejudice to the sovereign right of the Parties to determine and establish their taxation policies, each Party should take account of its national health objectives concerning tobacco control and adopt or maintain, as appropriate, measures which may include:

- (a) implementing tax policies and, where appropriate, price policies, on tobacco products so as to contribute to the health objectives aimed at reducing tobacco consumption; and
- (b) prohibiting or restricting, as appropriate, sales to and/or importations by international travellers of tax- and duty-free tobacco products.

3. The Parties shall provide rates of taxation for tobacco products and trends in tobacco consumption in their periodic reports to the Conference of the Parties, in accordance with Article 21.

A r t i c l e 7

Non-price measures to reduce the demand for tobacco

The Parties recognize that comprehensive non-price measures are an effective and important means of reducing tobacco consumption. Each Party shall adopt and implement effective legislative, executive, administrative or other measures necessary to implement its obligations pursuant to Articles 8 to 13 and shall cooperate, as appropriate, with each other directly or through competent international bodies with a view to their implementation. The Conference of the Parties shall propose appropriate guidelines for the implementation of the provisions of these Articles.

A r t i c l e 8

Protection from exposure to tobacco smoke

1. Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.

2. Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.

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*Article 9**Regulation of the contents of tobacco products*

The Conference of the Parties, in consultation with competent international bodies, shall propose guidelines for testing and measuring the contents and emissions of tobacco products, and for the regulation of these contents and emissions. Each Party shall, where approved by competent national authorities, adopt and implement effective legislative, executive and administrative or other measures for such testing and measuring, and for such regulation.

*Article 10**Regulation of tobacco product disclosures*

Each Party shall, in accordance with its national law, adopt and implement effective legislative, executive, administrative or other measures requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco products. Each Party shall further adopt and implement effective measures for public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce.

*Article 11**Packaging and labelling of tobacco products*

1. Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that:

- (a) tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as “low tar”, “light”, “ultra-light”, or “mild”; and
- (b) each unit packet and package of tobacco products and any outside packaging and labelling of such products also carry health warnings describing the harmful effects of tobacco use, and may include other appropriate messages. These warnings and messages:
 - (i) shall be approved by the competent national authority,

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- (ii) shall be rotating,
- (iii) shall be large, clear, visible and legible,
- (iv) should be 50% or more of the principal display areas but shall be no less than 30% of the principal display areas,
- (v) may be in the form of or include pictures or pictograms.

Each unit packet and package of tobacco products and any outside packaging and labelling of such products shall, in addition to the warnings specified in paragraph 1(b) of this Article, contain information on relevant constituents and emissions of tobacco products as defined by national authorities.

Each Party shall require that the warnings and other textual information specified in paragraphs 1(b) and paragraph 2 of this Article will appear on each unit packet and package of tobacco products and any outside packaging and labelling of such products in its principal language or languages.

For the purposes of this Article, the term “outside packaging and labelling” in relation to tobacco products applies to any packaging and labelling used in the retail sale of the product.

Article 12*Education, communication, training and public awareness*

Each Party shall promote and strengthen public awareness of tobacco control issues, using all available communication tools, as appropriate. Towards this end, each Party shall adopt and implement effective legislative, executive, administrative or other measures to promote:

- (a) broad access to effective and comprehensive educational and public awareness programmes on the health risks including the addictive characteristics of tobacco consumption and exposure to tobacco smoke;
- (b) public awareness about the health risks of tobacco consumption and exposure to tobacco smoke, and about the benefits of the cessation of tobacco use and tobacco-free lifestyles as specified in Article 14.2;
- (c) public access, in accordance with national law, to a wide range of information on the tobacco industry as relevant to the objective of this Convention;

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- (d) effective and appropriate training or sensitization and awareness programmes on tobacco control addressed to persons such as health workers, community workers, social workers, media professionals, educators, decision-makers, administrators and other concerned persons;
- (e) awareness and participation of public and private agencies and nongovernmental organizations not affiliated with the tobacco industry in developing and implementing intersectoral programmes and strategies for tobacco control; and
- (f) public awareness of and access to information regarding the adverse health, economic, and environmental consequences of tobacco production and consumption.

Article 13

Tobacco advertising, promotion and sponsorship

1. Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.
2. Each Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban on all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory. In this respect, within the period of five years after entry into force of this Convention for that Party, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21.
3. A Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles shall apply restrictions on all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, restrictions or a comprehensive ban on advertising, promotion and sponsorship originating from its territory with cross-border effects. In this respect, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21.
4. As a minimum, and in accordance with its constitution or constitutional principles, each Party shall:
 - (a) prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;

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- (b) require that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship;
 - (c) restrict the use of direct or indirect incentives that encourage the purchase of tobacco products by the public;
 - (d) require, if it does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited. Those authorities may decide to make those figures available, subject to national law, to the public and to the Conference of the Parties, pursuant to Article 21;
 - (e) undertake a comprehensive ban or, in the case of a Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles, restrict tobacco advertising, promotion and sponsorship on radio, television, print media and, as appropriate, other media, such as the internet, within a period of five years; and
 - (f) prohibit, or in the case of a Party that is not in a position to prohibit due to its constitution or constitutional principles restrict, tobacco sponsorship of international events, activities and/or participants therein.
5. Parties are encouraged to implement measures beyond the obligations set out in paragraph 4.
6. Parties shall cooperate in the development of technologies and other means necessary to facilitate the elimination of cross-border advertising.
7. Parties which have a ban on certain forms of tobacco advertising, promotion and sponsorship have the sovereign right to ban those forms of cross-border tobacco advertising, promotion and sponsorship entering their territory and to impose equal penalties as those applicable to domestic advertising, promotion and sponsorship originating from their territory in accordance with their national law. This paragraph does not endorse or approve of any particular penalty.
8. Parties shall consider the elaboration of a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship.

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Article 14

Demand reduction measures concerning tobacco dependence and cessation

1. Each Party shall develop and disseminate appropriate, comprehensive and integrated guidelines based on scientific evidence and best practices, taking into account national circumstances and priorities, and shall take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence.
2. Towards this end, each Party shall endeavour to:
 - (a) design and implement effective programmes aimed at promoting the cessation of tobacco use, in such locations as educational institutions, health care facilities, workplaces and sporting environments;
 - (b) include diagnosis and treatment of tobacco dependence and counselling services on cessation of tobacco use in national health and education programmes, plans and strategies, with the participation of health workers, community workers and social workers as appropriate;
 - (c) establish in health care facilities and rehabilitation centres programmes for diagnosing, counselling, preventing and treating tobacco dependence; and
 - (d) collaborate with other Parties to facilitate accessibility and affordability for treatment of tobacco dependence including pharmaceutical products pursuant to Article 22. Such products and their constituents may include medicines, products used to administer medicines and diagnostics when appropriate.

**PART IV: MEASURES RELATING TO THE REDUCTION
OF THE SUPPLY OF TOBACCO**

Article 15

Illicit trade in tobacco products

1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control.
2. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status. In addition, each Party shall:

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- (a) require that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: “*Sales only allowed in (insert name of the country, subnational, regional or federal unit)*” or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market; and
- (b) consider, as appropriate, developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.
3. Each Party shall require that the packaging information or marking specified in paragraph 2 of this Article shall be presented in legible form and/or appear in its principal language or languages.
4. With a view to eliminating illicit trade in tobacco products, each Party shall:
- (a) monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among customs, tax and other authorities, as appropriate, and in accordance with national law and relevant applicable bilateral or multilateral agreements;
- (b) enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes;
- (c) take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or disposed of in accordance with national law;
- (d) adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction; and
- (e) adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.

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5. Information collected pursuant to subparagraphs 4(a) and 4(d) of this Article shall, as appropriate, be provided in aggregate form by the Parties in their periodic reports to the Conference of the Parties, in accordance with Article 21.

6. The Parties shall, as appropriate and in accordance with national law, promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and subregional levels to combat illicit trade of tobacco products.

7. Each Party shall endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.

Article 16*Sales to and by minors*

1. Each Party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen. These measures may include:

- (a) requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age;
- (b) banning the sale of tobacco products in any manner by which they are directly accessible, such as store shelves;
- (c) prohibiting the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors; and
- (d) ensuring that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.

2. Each Party shall prohibit or promote the prohibition of the distribution of free tobacco products to the public and especially minors.

3. Each Party shall endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.

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4. The Parties recognize that in order to increase their effectiveness, measures to prevent tobacco product sales to minors should, where appropriate, be implemented in conjunction with other provisions contained in this Convention.

5. When signing, ratifying, accepting, approving or acceding to the Convention or at any time thereafter, a Party may, by means of a binding written declaration, indicate its commitment to prohibit the introduction of tobacco vending machines within its jurisdiction or, as appropriate, to a total ban on tobacco vending machines. The declaration made pursuant to this Article shall be circulated by the Depository to all Parties to the Convention.

6. Each Party shall adopt and implement effective legislative, executive, administrative or other measures, including penalties against sellers and distributors, in order to ensure compliance with the obligations contained in paragraphs 1-5 of this Article.

7. Each Party should, as appropriate, adopt and implement effective legislative, executive, administrative or other measures to prohibit the sales of tobacco products by persons under the age set by domestic law, national law or eighteen.

Article 17

Provision of support for economically viable alternative activities

Parties shall, in cooperation with each other and with competent international and regional intergovernmental organizations, promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.

PART V: PROTECTION OF THE ENVIRONMENT

Article 18

Protection of the environment and the health of persons

In carrying out their obligations under this Convention, the Parties agree to have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture within their respective territories.

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PART VI: QUESTIONS RELATED TO LIABILITY

Article 19 Liability

1. For the purpose of tobacco control, the Parties shall consider taking legislative action or promoting their existing laws, where necessary, to deal with criminal and civil liability, including compensation where appropriate.
2. Parties shall cooperate with each other in exchanging information through the Conference of the Parties in accordance with Article 21 including:
 - (a) information on the health effects of the consumption of tobacco products and exposure to tobacco smoke in accordance with Article 20.3(a); and
 - (b) information on legislation and regulations in force as well as pertinent jurisprudence.
3. The Parties shall, as appropriate and mutually agreed, within the limits of national legislation, policies, legal practices and applicable existing treaty arrangements, afford one another assistance in legal proceedings relating to civil and criminal liability consistent with this Convention.
4. The Convention shall in no way affect or limit any rights of access of the Parties to each other's courts where such rights exist.
5. The Conference of the Parties may consider, if possible, at an early stage, taking account of the work being done in relevant international fora, issues related to liability including appropriate international approaches to these issues and appropriate means to support, upon request, the Parties in their legislative and other activities in accordance with this Article.

**PART VII: SCIENTIFIC AND TECHNICAL COOPERATION AND
COMMUNICATION OF INFORMATION**

Article 20

Research, surveillance and exchange of information

1. The Parties undertake to develop and promote national research and to coordinate research programmes at the regional and international levels in the field of tobacco control. Towards this end, each Party shall:

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- (a) initiate and cooperate in, directly or through competent international and regional intergovernmental organizations and other bodies, the conduct of research and scientific assessments, and in so doing promote and encourage research that addresses the determinants and consequences of tobacco consumption and exposure to tobacco smoke as well as research for identification of alternative crops; and
- (b) promote and strengthen, with the support of competent international and regional intergovernmental organizations and other bodies, training and support for all those engaged in tobacco control activities, including research, implementation and evaluation.

2. The Parties shall establish, as appropriate, programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences of tobacco consumption and exposure to tobacco smoke. Towards this end, the Parties should integrate tobacco surveillance programmes into national, regional and global health surveillance programmes so that data are comparable and can be analysed at the regional and international levels, as appropriate.

3. Parties recognize the importance of financial and technical assistance from international and regional intergovernmental organizations and other bodies. Each Party shall endeavour to:

- (a) establish progressively a national system for the epidemiological surveillance of tobacco consumption and related social, economic and health indicators;
- (b) cooperate with competent international and regional intergovernmental organizations and other bodies, including governmental and nongovernmental agencies, in regional and global tobacco surveillance and exchange of information on the indicators specified in paragraph 3(a) of this Article; and
- (c) cooperate with the World Health Organization in the development of general guidelines or procedures for defining the collection, analysis and dissemination of tobacco-related surveillance data.

4. The Parties shall, subject to national law, promote and facilitate the exchange of publicly available scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco, which is relevant to this Convention, and in so doing shall take into account and address the special needs of developing country Parties and Parties with economies in transition. Each Party shall endeavour to:

- (a) progressively establish and maintain an updated database of laws and regulations on tobacco control and, as appropriate, information about their enforcement, as well as pertinent

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jurisprudence, and cooperate in the development of programmes for regional and global tobacco control;

- (b) progressively establish and maintain updated data from national surveillance programmes in accordance with paragraph 3(a) of this Article; and
- (c) cooperate with competent international organizations to progressively establish and maintain a global system to regularly collect and disseminate information on tobacco production, manufacture and the activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.

5. Parties should cooperate in regional and international intergovernmental organizations and financial and development institutions of which they are members, to promote and encourage provision of technical and financial resources to the Secretariat to assist developing country Parties and Parties with economies in transition to meet their commitments on research, surveillance and exchange of information.

Article 21

Reporting and exchange of information

1. Each Party shall submit to the Conference of the Parties, through the Secretariat, periodic reports on its implementation of this Convention, which should include the following:

- (a) information on legislative, executive, administrative or other measures taken to implement the Convention;
- (b) information, as appropriate, on any constraints or barriers encountered in its implementation of the Convention, and on the measures taken to overcome these barriers;
- (c) information, as appropriate, on financial and technical assistance provided or received for tobacco control activities;
- (d) information on surveillance and research as specified in Article 20; and
- (e) information specified in Articles 6.3, 13.2, 13.3, 13.4(d), 15.5 and 19.2.

2. The frequency and format of such reports by all Parties shall be determined by the Conference of the Parties. Each Party shall make its initial report within two years of the entry into force of the Convention for that Party.

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The Conference of the Parties, pursuant to Articles 22 and 26, shall consider arrangements to assist developing country Parties and Parties with economies in transition, at their request, in meeting their obligations under this Article.

The reporting and exchange of information under the Convention shall be subject to national law regarding confidentiality and privacy. The Parties shall protect, as mutually agreed, any confidential information that is exchanged.

Article 22*Cooperation in the scientific, technical, and legal fields and provision of related expertise*

1. The Parties shall cooperate directly or through competent international bodies to strengthen their capacity to fulfill the obligations arising from this Convention, taking into account the needs of developing country Parties and Parties with economies in transition. Such cooperation shall promote the transfer of technical, scientific and legal expertise and technology, as mutually agreed, to establish and strengthen national tobacco control strategies, plans and programmes aiming at, *inter alia*:

(a) facilitation of the development, transfer and acquisition of technology, knowledge, skills, capacity and expertise related to tobacco control;

(b) provision of technical, scientific, legal and other expertise to establish and strengthen national tobacco control strategies, plans and programmes, aiming at implementation of the Convention through, *inter alia*:

(i) assisting, upon request, in the development of a strong legislative foundation as well as technical programmes, including those on prevention of initiation, promotion of cessation and protection from exposure to tobacco smoke;

(ii) assisting, as appropriate, tobacco workers in the development of appropriate economically and legally viable alternative livelihoods in an economically viable manner; and

(iii) assisting, as appropriate, tobacco growers in shifting agricultural production to alternative crops in an economically viable manner;

(c) support for appropriate training or sensitization programmes for appropriate personnel in accordance with Article 12;

(d) provision, as appropriate, of the necessary material, equipment and supplies, as well as logistical support, for tobacco control strategies, plans and programmes;

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- (e) identification of methods for tobacco control, including comprehensive treatment of nicotine addiction; and
- (f) promotion, as appropriate, of research to increase the affordability of comprehensive treatment of nicotine addiction.

2. The Conference of the Parties shall promote and facilitate transfer of technical, scientific and legal expertise and technology with the financial support secured in accordance with Article 26.

**PART VIII: INSTITUTIONAL ARRANGEMENTS AND
FINANCIAL RESOURCES**

A r t i c l e 2 3

Conference of the Parties

1. A Conference of the Parties is hereby established. The first session of the Conference shall be convened by the World Health Organization not later than one year after the entry into force of this Convention. The Conference will determine the venue and timing of subsequent regular sessions at its first session.

2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat of the Convention, it is supported by at least one-third of the Parties.

3. The Conference of the Parties shall adopt by consensus its Rules of Procedure at its first session.

4. The Conference of the Parties shall by consensus adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.

5. The Conference of the Parties shall keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation and may adopt protocols, annexes and amendments to the Convention, in accordance with Articles 28, 29 and 33. Towards this end, it shall:

- (a) promote and facilitate the exchange of information pursuant to Articles 20 and 21;

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- (b) promote and guide the development and periodic refinement of comparable methodologies for research and the collection of data, in addition to those provided for in Article 20, relevant to the implementation of the Convention;
- (c) promote, as appropriate, the development, implementation and evaluation of strategies, plans, and programmes, as well as policies, legislation and other measures;
- (d) consider reports submitted by the Parties in accordance with Article 21 and adopt regular reports on the implementation of the Convention;
- (e) promote and facilitate the mobilization of financial resources for the implementation of the Convention in accordance with Article 26;
- (f) establish such subsidiary bodies as are necessary to achieve the objective of the Convention;
- (g) request, where appropriate, the services and cooperation of, and information provided by, competent and relevant organizations and bodies of the United Nations system and other international and regional intergovernmental organizations and nongovernmental organizations and bodies as a means of strengthening the implementation of the Convention; and
- (h) consider other action, as appropriate, for the achievement of the objective of the Convention in the light of experience gained in its implementation.

6. The Conference of the Parties shall establish the criteria for the participation of observers at its proceedings.

Article 24

Secretariat

1. The Conference of the Parties shall designate a permanent secretariat and make arrangements for its functioning. The Conference of the Parties shall endeavour to do so at its first session.

2. Until such time as a permanent secretariat is designated and established, secretariat functions under this Convention shall be provided by the World Health Organization.

3. Secretariat functions shall be:

- (a) to make arrangements for sessions of the Conference of the Parties and any subsidiary bodies and to provide them with services as required;

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- (b) to transmit reports received by it pursuant to the Convention;
- (c) to provide support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;
- (d) to prepare reports on its activities under the Convention under the guidance of the Conference of the Parties and submit them to the Conference of the Parties;
- (e) to ensure, under the guidance of the Conference of the Parties, the necessary coordination with the competent international and regional intergovernmental organizations and other bodies;
- (f) to enter, under the guidance of the Conference of the Parties, into such administrative or contractual arrangements as may be required for the effective discharge of its functions; and
- (g) to perform other secretariat functions specified by the Convention and by any of its protocols and such other functions as may be determined by the Conference of the Parties.

Article 25

Relations between the Conference of the Parties and intergovernmental organizations

In order to provide technical and financial cooperation for achieving the objective of this Convention, the Conference of the Parties may request the cooperation of competent international and regional intergovernmental organizations including financial and development institutions.

Article 26

Financial resources

1. The Parties recognize the important role that financial resources play in achieving the objective of this Convention.
2. Each Party shall provide financial support in respect of its national activities intended to achieve the objective of the Convention, in accordance with its national plans, priorities and programmes.
3. Parties shall promote, as appropriate, the utilization of bilateral, regional, subregional and other multilateral channels to provide funding for the development and strengthening of

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multisectoral comprehensive tobacco control programmes of developing country Parties and Parties with economies in transition. Accordingly, economically viable alternatives to tobacco production, including crop diversification should be addressed and supported in the context of nationally developed strategies of sustainable development.

4. Parties represented in relevant regional and international intergovernmental organizations, and financial and development institutions shall encourage these entities to provide financial assistance for developing country Parties and for Parties with economies in transition to assist them in meeting their obligations under the Convention, without limiting the rights of participation within these organizations.

5. The Parties agree that:

(a) to assist Parties in meeting their obligations under the Convention, all relevant potential and existing resources, financial, technical, or otherwise, both public and private that are available for tobacco control activities, should be mobilized and utilized for the benefit of all Parties, especially developing countries and countries with economies in transition;

(b) the Secretariat shall advise developing country Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate the implementation of their obligations under the Convention;

(c) the Conference of the Parties in its first session shall review existing and potential sources and mechanisms of assistance based on a study conducted by the Secretariat and other relevant information, and consider their adequacy; and

(d) the results of this review shall be taken into account by the Conference of the Parties in determining the necessity to enhance existing mechanisms or to establish a voluntary global fund or other appropriate financial mechanisms to channel additional financial resources, as needed, to developing country Parties and Parties with economies in transition to assist them in meeting the objectives of the Convention.

PART IX: SETTLEMENT OF DISPUTES***Article 27******Settlement of disputes***

1. In the event of a dispute between two or more Parties concerning the interpretation or application of this Convention, the Parties concerned shall seek through diplomatic channels a settlement of the dispute through negotiation or any other peaceful means of their own choice, including good offices, mediation, or conciliation. Failure to reach agreement by good offices,

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mediation or conciliation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it.

2. When ratifying, accepting, approving, formally confirming or acceding to the Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this Article, it accepts, as compulsory, ad hoc arbitration in accordance with procedures to be adopted by consensus by the Conference of the Parties.

3. The provisions of this Article shall apply with respect to any protocol as between the parties to the protocol, unless otherwise provided therein.

PART X: DEVELOPMENT OF THE CONVENTION***Article 28****Amendments to this Convention*

1. Any Party may propose amendments to this Convention. Such amendments will be considered by the Conference of the Parties.

2. Amendments to the Convention shall be adopted by the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the Secretariat at least six months before the session at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories of the Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to the Convention. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For purposes of this Article, Parties present and voting means Parties present and casting an affirmative or negative vote. Any adopted amendment shall be communicated by the Secretariat to the Depositary, who shall circulate it to all Parties for acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 of this Article shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least two-thirds of the Parties to the Convention.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

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Article 29

Adoption and amendment of annexes to this Convention

1. Annexes to this Convention and amendments thereto shall be proposed, adopted and shall enter into force in accordance with the procedure set forth in Article 28.
2. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto.
3. Annexes shall be restricted to lists, forms and any other descriptive material relating to procedural, scientific, technical or administrative matters.

PART XI: FINAL PROVISIONS

Article 30

Reservations

No reservations may be made to this Convention.

Article 31

Withdrawal

1. At any time after two years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

Article 32

Right to vote

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2 of this Article.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their Member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice versa.

Article 33

Protocols

1. Any Party may propose protocols. Such proposals will be considered by the Conference of the Parties.
2. The Conference of the Parties may adopt protocols to this Convention. In adopting these protocols every effort shall be made to reach consensus. If all efforts at consensus have been exhausted, and no agreement reached, the protocol shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For the purposes of this Article, Parties present and voting means Parties present and casting an affirmative or negative vote.
3. The text of any proposed protocol shall be communicated to the Parties by the Secretariat at least six months before the session at which it is proposed for adoption.
4. Only Parties to the Convention may be parties to a protocol.
5. Any protocol to the Convention shall be binding only on the parties to the protocol in question. Only Parties to a protocol may take decisions on matters exclusively relating to the protocol in question.
6. The requirements for entry into force of any protocol shall be established by that instrument.

Article 34 *Signature*

This Convention shall be open for signature by all Members of the World Health Organization and by any States that are not Members of the World Health Organization but are members of the United Nations and by regional economic integration organizations at

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the World Health Organization headquarters in Geneva from 16 June 2003 to 22 June 2003, and thereafter at United Nations Headquarters in New York, from 30 June 2003 to 29 June 2004.

Article 35*Ratification, acceptance, approval, formal confirmation or accession*

1. This Convention shall be subject to ratification, acceptance, approval or accession by States and to formal confirmation or accession by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval, formal confirmation or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes a Party to the Convention without any of its Member States being a Party shall be bound by all the obligations under the Convention. In the case of those organizations, one or more of whose Member States is a Party to the Convention, the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the Member States shall not be entitled to exercise rights under the Convention concurrently.
3. Regional economic integration organizations shall, in their instruments relating to formal confirmation or in their instruments of accession, declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

Article 36*Entry into force*

1. This Convention shall enter into force on the ninetieth day following the date of deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.
2. For each State that ratifies, accepts or approves the Convention or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, the Convention shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.
3. For each regional economic integration organization depositing an instrument of formal confirmation or an instrument of accession after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, the Convention shall enter into force on the

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ninetieth day following the date of its depositing of the instrument of formal confirmation or of accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States Members of the organization.

Article 37

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Convention and amendments thereto and of protocols and annexes adopted in accordance with Articles 28, 29 and 33.

Article 38

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at GENEVA this twenty-first day of May two thousand and three.

**Annex 1: WHA 56.1 WHO Framework Convention
on Tobacco Control**

The Fifty-sixth World Health Assembly,

Recalling resolutions WHA49.17 and WHA52.18 calling for the development of a WHO framework convention on tobacco control in accordance with Article 19 of the Constitution of WHO;

Determined to protect present and future generations from tobacco consumption and exposure to tobacco smoke;

Noting with profound concern the escalation in smoking and other forms of tobacco use worldwide;

Acknowledging with appreciation the report of the Chair of the Intergovernmental Negotiating Body on the outcome of the work of the Intergovernmental Negotiating Body;²

Convinced that this convention is a groundbreaking step in advancing national, regional and international action and global cooperation to protect human health against the devastating impact of tobacco consumption and exposure to tobacco smoke, and mindful that special consideration should be given to the particular situation of developing countries and countries with economies in transition;

Emphasizing the need for expeditious entry into force and effective implementation of the convention,

1. ADOPTS the Convention attached to this resolution;
2. NOTES, in accordance with Article 34 of the Convention, that the Convention shall be open for signature at WHO headquarters in Geneva, from 16 June 2003 to 22 June 2003, and thereafter at United Nations Headquarters in New York, from 30 June 2003 to 29 June 2004;
3. CALLS UPON all States and regional economic integration organizations entitled to do so, to consider signing, ratifying, accepting, approving, formally confirming or acceding to the Convention at the earliest opportunity, with a view to bringing the Convention into force as soon as possible;

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4. URGES all States and regional economic integration organizations, pending entry into force of the Convention, to take all appropriate measures to curb tobacco consumption and exposure to tobacco smoke;
5. URGES all Member States, regional economic integration organizations, observers and other interested parties to support the preparatory activities referred to in this resolution and effectively to encourage prompt entry into force and implementation of the Convention;
6. CALLS UPON the United Nations and invites other relevant international organizations to continue to provide support for strengthening national and international tobacco control programmes;
7. DECIDES to establish, in accordance with Rule 42 of the Rules of Procedure of the World Health Assembly, an open-ended intergovernmental working group that shall be open to all States and regional economic integration organizations referred to in Article 34 of the Convention in order to consider and prepare proposals on those issues identified in the Convention for consideration and adoption, as appropriate, by the first session of the Conference of the Parties; such issues should include:
 - (1) rules of procedure for the Conference of the Parties (Article 23.3), including criteria for participation of observers at sessions of the Conference of the Parties (Article 23.6);
 - (2) options for the designation of a permanent secretariat and arrangements for its functioning (Article 24.1);
 - (3) financial rules for the Conference of the Parties and its subsidiary bodies, and financial provisions governing the functioning of the secretariat (Article 23.4);
 - (4) a draft budget for the first financial period (Article 23.4);
 - (5) a review of existing and potential sources and mechanisms of assistance to Parties in meeting their obligations under the Convention (Article 26.5);
8. FURTHER DECIDES that the Open-ended Intergovernmental Working Group shall also oversee preparations for the first session of the Conference of the Parties and report directly to it;
9. RESOLVES that decisions that had been taken by the Intergovernmental Negotiating Body on the WHO framework convention on tobacco control concerning the participation of nongovernmental organizations shall apply to the activities of the Open-ended Intergovernmental Working Group;

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10. REQUESTS the Director-General:

- (1) to provide secretariat functions under the Convention until such time as a permanent secretariat is designated and established;
- (2) to take appropriate steps to provide support to Member States, in particular developing countries and countries with economies in transition, in preparation for entry into force of the Convention;
- (3) to convene, as frequently as necessary, between 16 June 2003 and the first session of the Conference of the Parties, meetings of the Open-ended Intergovernmental Working Group;
- (4) to continue to ensure that WHO plays a key role in providing technical advice, direction and support for global tobacco control;
- (5) to keep the Health Assembly informed of progress made toward entry into force of the Convention and of preparations under way for the first session of the Conference of the Parties.

Annex 2: History of the WHO FCTC process

The idea of an international instrument for tobacco was initiated with the adoption of Resolution WHA 48.11 in May 1995, requesting the Director-General to report to the Forty-ninth Session of the World Health Assembly on the feasibility of developing an international instrument such as guidelines, a declaration, or an international convention on tobacco control.

As a result of Resolution WHA48.11, WHO was requested to draft a feasibility study which was presented by the Director-General to the Ninety-seventh Session of the WHO Executive Board ("The Feasibility of an International Instrument for Tobacco Control" (EB97/ INF.DOC.4)). During that same session, the Executive Board adopted Resolution EB97.R8, "International framework convention for tobacco control." Later that year, the Forty-ninth Session of the WHA adopted Resolution WHA49.17, "International framework convention for tobacco control", requesting the Director-General to initiate the development of a Framework Convention on Tobacco Control. As a result of this resolution, WHO's first treaty-making enterprise was formally launched.

In 1998 newly-elected WHO Director-General, Dr Gro Harlem Brundtland made global tobacco control a priority through the establishment of a Cabinet Project, the Tobacco Free Initiative, to focus international attention, resources and action upon the global tobacco epidemic. New multisectoral partnerships reflecting the nature of the action were developed. More importantly, Dr Brundtland worked with Member States to secure a negotiating mandate for the Framework Convention on Tobacco Control and set about the task of mobilizing public and political opinion in favour of global rules for tobacco control.

In May 1999 the Fifty-second World Health Assembly paved the way for multilateral negotiations on the WHO Framework Convention on Tobacco Control and possible related protocols. Resolution WHA52.18 established two bodies to draft the framework convention, to complete negotiations and to submit the final text for consideration by the Fifty-sixth World Health Assembly. These two bodies included a technical working group to prepare the proposed draft elements of the Framework Convention; and an intergovernmental negotiating body to draft and negotiate the proposed Framework Convention and possible related protocols. Both bodies were open to all Member States and regional economic integration organizations to which their Member States had transferred competence over matters related to tobacco control.

The working group held two sessions in Geneva (25-29 October 1999 and 27-29 March 2000). Its output was a document with provisional texts of proposed draft elements for the Framework Convention, submitted to the Fifty-third World Health Assembly with the comments of the working group¹. In Resolution WHA53.16, the Health Assembly called upon the Intergovernmental Negotiating Body to commence negotiations with an initial focus

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on the draft Framework Convention without prejudice to future discussions on possible protocols, to report progress to the Fifty-fourth World Health Assembly, and to examine the question of extended participation by nongovernmental organizations as observers.

The first session of the Intergovernmental Negotiating Body (Geneva, 16-21 October 2000) was preceded by a public hearing on issues surrounding the Framework Convention. The Director-General convened this hearing in order to provide a forum for the public health community, the tobacco industry and farmers' groups to submit their case; records of the proceedings were made available to the Negotiating Body and, through the WHO web site, to the public. At the first session, Ambassador Celso Amorim of Brazil was elected as Chair, and a bureau was established with Vice-Chairs from Australia, India, Islamic Republic of Iran, South Africa, Turkey and the United States of America. The provisional texts of the proposed draft elements for a WHO Framework Convention on Tobacco Control ², which had been prepared by the working group, were accepted as a sound basis for initiating negotiations. Subsequently, Ambassador Amorim prepared a Chair's text of the Framework Convention on Tobacco Control ³; this first draft was released in January 2001 as a basis for further negotiations at the second session.

A report on participation of nongovernmental organizations in the work of the Negotiating Body was presented to the Executive Board at its 107th session in January 2001. In accordance with the provisions of decision EB 107(2) of the Executive Board, the Chairman of the Board acting jointly with the Chairman of the Standing Committee on Non-Governmental Organizations admitted two nongovernmental organizations, the International Nongovernmental Coalition Against Tobacco and Infact, into official relations with WHO as of 26 April 2001.

In further preparation for the second session of the Negotiating Body, regional intersessional consultations were convened in most regions and subregions. Additional regional and subregional intersessional consultations took place in preparation for each of the subsequent sessions of the Negotiating Body.

At the second session of the Negotiating Body (Geneva, 30 April – 5 May 2001), responsibility for consideration of the proposed draft elements was divided between three working groups. The principal output was the set of three Co-Chairs' working papers, an inventory of textual proposals made at the session merged with the Chair's original text. These working papers became the rolling draft text of the Framework Convention. At the third session (Geneva, 22-28 November 2001), two working groups issued revised texts and Working Group One later drafted a text. These documents were used to further negotiations during the fourth session.

Having taken over as Permanent Representative of Brazil in Geneva in replacement of Ambassador Amorim, Ambassador Seixas Corrêa was elected as Chair of the

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Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control during its fourth session (Geneva, 18-23 March 2002).

It was agreed that Ambassador Seixas Corrêa should prepare a new Chair's text, which would form the basis of negotiations during the fifth session of the Negotiating Body (14-25 October 2002). The text was released in July 2002. An international technical conference on illicit trade in tobacco products was hosted by the United States of America at the United Nations Headquarters in New York (30 July – 1 August 2002).

The first four sessions of the Negotiating Body had considered numerous textual alternatives. Concerted deliberations at the fifth session narrowed the options, resulting in more focused negotiations. After a first reading, in plenary, of the new Chair's text, six issues were identified and discussed in open-ended informal meetings: advertising, promotion and sponsorship; financial resources; illicit trade in tobacco products; liability and compensation; packaging and labelling; and trade and health. Informal groups also held discussions on legal, institutional and procedural issues and use of terms. Substantial advances in the negotiations were made and consensus was reached in several areas. On the basis of the outputs of the informal sessions and the intersessional consultations with various delegations and groups of delegations, Ambassador Seixas Corrêa issued a revised Chair's text of a Framework Convention on Tobacco Control on 15 January 2003.

The sixth and final session of the Negotiating Body ran from 17 February - 1 March 2003. The negotiations were intense and broad ranging. Two important issues, advertising, promotion and sponsorship and financial resources, were discussed in two informal groups. At the final plenary meeting, the Negotiating Body agreed to transmit the text to the Fifty-sixth World Health Assembly for consideration for adoption in accordance with Article 19 of the Constitution. It also agreed that the discussion of protocols should be postponed until that Health Assembly, at which there would be time for consideration of the matter. At its final plenary meeting, the Negotiating Body agreed that the Chair of the Negotiating Body should draft a resolution recommending adoption of the WHO Framework Convention on Tobacco Control by the Health Assembly⁶. The final draft of the WHO Framework Convention on Tobacco Control⁷ was thus submitted to the Health Assembly for consideration for adoption, pursuant to Resolution WHA52.18.

On 21 May 2003, the 56th World Health Assembly, unanimously adopted the WHO Framework Convention on Tobacco Control⁸. The Convention was opened for signature, for a period of one year, from 16 June 2003 to 22 June 2003 at WHO headquarters in Geneva and thereafter at United Nations Headquarters in New York, from 30 June 2003 to 29 June 2004.

The WHO Framework Convention on Tobacco Control is a landmark for the future of global public health and has major implications for WHO's health goals. The conclusion of the negotiating process and the

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unanimous adoption of the WHO Framework Convention on Tobacco Control, in full accordance with Health Assembly resolutions, represents a milestone for the promotion of public health and provides new legal dimensions for international health cooperation.

1 Document A53/12.

2 Document A/FCTC/INB1/2.

3 Document A/FCTC/INB2/2.

4 Document EB107/19.

5 Document A/FCTC/INB2/6 Add. 1.

6 This draft resolution is contained in document A56/8/REV.1.

7 See document A56/8, Annex.

8 *WHO Document WHA56.1*

Appendix 2

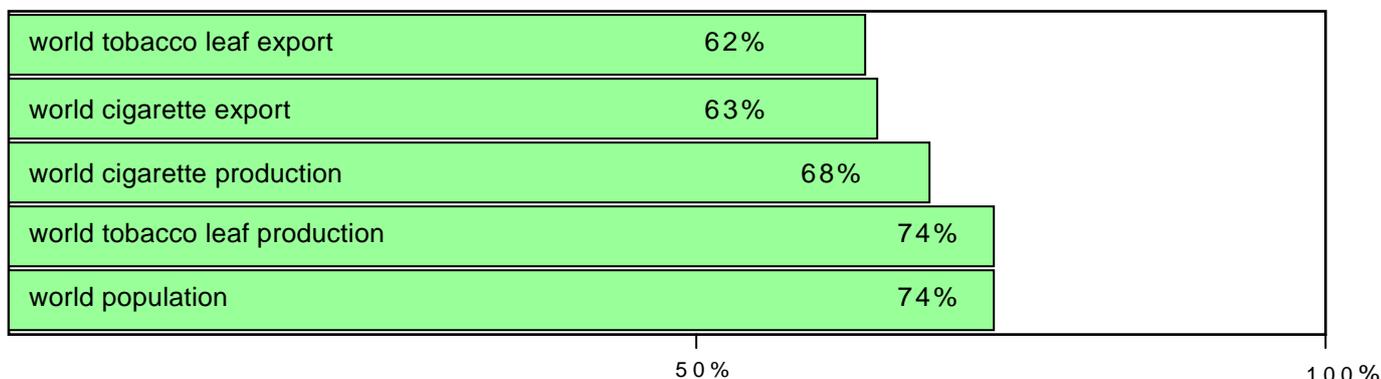
First Conference of the Parties to the
WHO Framework Convention on Tobacco Control
Geneva, 6-17 February 2006



Facts and figures about tobacco

- Tobacco is the leading preventable cause of death in the world.
- Tobacco is the only consumer product that kills when used as intended by its manufacturers.
- Tobacco causes 1 in 10 adult deaths worldwide.
- Tobacco causes nearly 5 million deaths a year, or one death every 6.5 seconds.
- The current death toll will nearly double by 2020 if current trends continue.
- Total global smoking prevalence is 29%. By gender, 47.5% of men and 10.3% of women smoke.
- Tobacco kills 50% of its regular users. Of the 1.3 billion smokers alive today, 650 million will eventually be killed by tobacco. Of them, 325 million between the ages of 35 and 69.
- 900 million smokers, or 84% of the world total, live in developing and transitional economy countries.
- By 2030, 70% of deaths attributable to tobacco will occur in the developing world.
- 100 million deaths were caused by tobacco in the 20th century. If current trends continue, there will be one billion deaths in the 21st century.

First session of the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC).



- There are 113 full Parties to the first COP. They represent including:

3 out of the 5 top tobacco leaf exporters:

4 out of the 5 top cigarette exporters:

8 out of the 11 Mega Countries:



- Current status (as of 30 Jan) of the WHO FCTC counts 121 Contracting Parties. Another 73 countries are still eligible to become Parties to the WHO FCTC

First Conference of the Parties to the**WHO Framework Convention on Tobacco Control Geneva,****6-17 February 2006****There are currently 73 countries still eligible to become Parties to the WHO FCTC (as of 30 Jan 2006)***

Countries in bold have not signed and therefore need to deposit instrument of accession

Africas (21)	Americas (19)	South-East Asia (2)	Europe (20)	Eastern Mediterranean	Western. Pacific (2)
Algeria	Antigua and Barbuda	Indonesia	Albania	Afghanistan	Lao's People Republic
Angola	Argentina	Nepal	Andorra	Bahrain	Papua New Guinea
Burkina Faso	Bahamas		Bosnia and Herzegovina	Iraq	
Cameroon	Colombia		Croatia	Kuwait	
Congo	Costa Rica		Czech Republic	Morocco	
Cote d'Ivoire	Cuba		Georgia	Somalia	
Eritrea	Dominica		Italy	Tunisia	
Ethiopia	Dominican Republic		Kazakhstan	Yemen	
Gabon	Ecuador		Kyrgyzstan		
Gambia	El Salvador		Moldova (Republic of)		
Guinea Bissau	Grenada		Monaco		
Guinea	Haiti		Poland		
Liberia	Nicaragua		The former Yugoslav Republic		
Malawi	Paraguay		Russian Federation		
Mozambique	Saint Kitts and Nevis				
Sao Tome and Principe	Saint Vincent & the Grenadines		Switzerland		
Sierra Leone	Suriname		Tajikistan		
Uganda	United States of America		Turkmenistan		
United Republic of	Venezuela (Bolivarian Republic of)		Ukraine		
Zambia			Uzbekistan		
Zimbabwe					

Note: Liechtenstein, although not a WHO Member State, is eligible to become a Party to the WHO FCTC as a UN Member State.

6 February 2006

Tobacco Free Initiative
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Appendix 3

NATIONAL TOBACCO LEGISLATION CHART
Summary of Existing Legislation (compiled by Commonwealth Dept of Health, February 2004)

Jurisdiction	Commonwealth	NSW	VIC	QLD	SA	TAS	ACT	WA	NT
	<i>Smoking and Tobacco Products Advertisements (Prohibition) Act 1989</i> <i>Tobacco Advertising Prohibition Act 1992</i> <i>Tobacco Advertising Prohibition Regulations 1993</i> <i>Tobacco Advertising Prohibition Amendment Act 1995</i> <i>Trade Practices Act 1974</i> <i>Trade Practices Consumer Product Information Standards (Tobacco) Regulations & Amendment 1994</i> <i>Air Navigation Act 1920</i> <i>Air Navigation Regulations (Amendments) 1987, 1990, 1995 & 1996</i> <i>Broadcasting Services Act 1992</i> <i>Interstate Road Transport Act 1985</i> <i>Interstate Road Transport Regulation (Amendment) 1988</i> <i>Federal Airports Corporation Act 1986</i> <i>& Federal Airports (Amendment) By-Laws Act 1986</i> <i>Excise Amendment (Compliance Improvement) Act 2000</i> <i>Therapeutic Goods Act 1989 (amended 1990)</i> <i>National Health Act 1953 (relevant to Pharmaceutical Benefits issues)</i>	<i>Public Health Act 1991</i> <i>Public Health (Tobacco) Regulation 1999</i> <i>Smoke free Environment Act 2000</i>	<i>Tobacco Act 1987</i> <i>Tobacco (Labelling) Regulations 1999</i> <i>Tobacco Regulations 1997</i> <i>Tobacco (Victorian) Health Promotion Foundation Regulations 2003</i> <i>Tobacco (Amendment) Regulations 1998</i>	<i>Tobacco and Other Smoking Products Act 1998</i> <i>Tobacco and Other Smoking Products Regulation 1998.</i>	<i>Tobacco Products Regulation Act 1997</i> <i>Tobacco Products Regulation Act, 1997, 1998 & 1999</i> <i>Metropolitan Taxicab Act (prohibits smoking in all metropolitan cabs)</i> <i>State Transport Act 1974 (regulations under the Act pertaining to buses, trams & trains)</i>	<i>Public Health Act 1997 - Part 4 - Tobacco Products Guidelines under the PHA97</i> <i>N 10 No Guidelines for Packaging and Labelling of Tobacco Products</i> <i>No 12 Proof Age of (Tobacco Products) 2001</i> <i>No 13 Guidelines for Price Tickets and Other Matters (Tobacco Products) 2000</i> <i>No 15 Guidelines for Smoke Free Areas (Snacks) 2001</i>	<i>Tobacco Act 1927</i> <i>Tobacco Regulations 1991</i> <i>Smoke free Areas (Enclosed Public Places) Act 1994</i> <i>Smoking (Prohibition in Enclosed Public Places) Act 2003</i>	<i>Tobacco Control Act 1990, Tobacco Control Amendment Act 1993</i> <i>Tobacco Control (General) Regulations 1991</i> <i>Tobacco (Warning Labels) Regulations 1987</i> <i>Tobacco Control (Package Labels) Regulations 1992 & 1993</i> <i>Health (Smoking in Enclosed Public Places) Regulations 2003</i> <i>Occupational Safety & Health Regulations 1996</i>	<i>Tobacco Control Act 2002</i> <i>Tobacco Regulation 1992</i> <i>Tobacco Amendment Act 1993</i> <i>Cigarette Containers (Labelling) Ordinance 1972</i> <i>Cigarette Containers (Labelling) Amendment Act 1986</i>

DEMAND REDUCTION STRATEGIES									
MARKETING & PROMOTION									
Activity:	Commonwealth	NSW	VIC	QLD	SA	TAS	ACT	WA	NT
Published Ads	Prohibited by legislation.	Prohibited by legislation.	Prohibited by legislation.	Prohibited by legislation.	Prohibited by legislation.	Prohibited by legislation.	Commonwealth legislation applies.	Prohibited by legislation.	Prohibited by legislation from 31 May 2003.
Broadcast Ads	Prohibited by legislation.	Prohibited by legislation.	Commonwealth legislation applies.	Commonwealth legislation applies.	Commonwealth legislation applies.	Prohibited.	Commonwealth legislation applies.	Commonwealth legislation applies.	Prohibited by legislation from 31 May 2003.
Sponsorship	Acknowledgments restricted by legislation.	Prohibited by legislation, Minister may grant an exemption.	Health Promotion Foundation replaces tobacco sponsorship. Sponsorship prohibited by <i>Tobacco Act 1987</i> except where Governor in Council declares exemptions.	Commonwealth legislation applies.	Prohibited by legislation; government funded health promotion sponsorship program.	Nil.	Prohibited by legislation, Minister may grant an exemption.	Prohibited by legislation, Minister may grant an exemption; Health Promotion Foundation replaces tobacco sponsorship.	Any tobacco advertising or naming associated with sponsorship prohibited.

Activity:	Commonwealth	NSW	VIC	QLD	SA	TAS	ACT	WA	NT
Point-of-sale Advertising	<i>Tobacco Advertising Prohibition Act 1992</i> sets minimum	Prohibited by legislation.	Restricted by legislation. As of 1 January 2002, no point of sale advertising except product display & price information. Product display to be regulated.	Prohibited by legislation.	Minimal restrictions. Currently being reviewed.	Prohibited by legislation.	No point of sale advertising except limited product display & price information.	Advertising inside shops or retail outlets directly adjacent to where tobacco products sold permitted. Regulations prescribe size, position & health warnings required for such advertising.	Prohibited by legislation from 31 May 2003. Product display restrictions apply from 31 May 2003.
	Point of sale advertising permitted in shops providing it (a) is within the boundaries of the shop; (b) not affixed to an outside wall, window or door of the shop; (c) faces the inside of the shop if placed on a window.								
Value-added Promotions		Prohibited by legislation.	Prohibited by legislation.	Prohibited by legislation.	Prohibited by legislation.	Prohibited by legislation.	Prohibited by legislation.	Legislation prohibits schemes & competitions. Value added promotions such as free lighters, discounting permissible.	Prohibited from 31 May 2003.
Minimum Pack Size		Regulated by legislation.	Regulated by legislation (20).	Regulated by legislation (20).	Regulated by legislation (20).	Regulated by legislation (20).	Regulated by legislation (20).	Regulated by legislation.	Regulated by legislation (20).

Appendix 4

Tobacco Act

1997, c. 13

[Assented to April 25, 1997]

An Act to regulate the manufacture, sale, labelling and promotion of tobacco products, to make consequential amendments to another Act and to repeal certain Acts

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title 1. This Act may be cited as the *Tobacco Act*.

INTERPRETATION

Definitions 2. The definitions in this section apply in this Act.

“accessory”
« *accessoire* » “accessory” means a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigar clip, lighter and matches.

“analyst”
« *analyste* » “analyst” means a person designated as an analyst under subsection 34(1).

“brand element”
« *élément de
marque* » “brand element” includes a brand name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design or slogan that is reasonably associated with, or that evokes, a product, a service or a brand of product or service, but does not include a colour.

“emission”
« *émission* » “emission” means a substance that is produced when a tobacco product is used.

“entity”
« *entité* » “entity” includes a corporation, firm, partnership, association, society, trust or other organization, whether incorporated or not.

“furnish”
« *fournir* » “furnish” means to sell, lend, assign, give or send, with or without consideration, or to barter or deposit with another person for the performance of a service.

“inspector”
« *inspecteur* » “inspector” means a person designated as an inspector under subsection 34(1).

<p>“manufacture” « <i>fabriquer</i> »</p>	<p>“manufacture”, in respect of tobacco products, includes the packaging, labelling, distributing and importing of tobacco products for sale in Canada.</p>
<p>“manufacturer” « <i>fabricant</i> »</p>	<p>“manufacturer”, in respect of tobacco products, includes any entity that is associated with a manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer.</p>
<p>“Minister” « <i>ministre</i> »</p>	<p>“Minister” means the Minister of Health.</p>
<p>“package” « <i>emballage</i> »</p>	<p>“package” means the container, receptacle or wrapper in which a tobacco product is sold.</p>
<p>“prescribed” <i>Version anglaise seulement</i></p>	<p>“prescribed” means prescribed by regulation.</p>
<p>“retailer” « <i>détaillant</i> »</p>	<p>“retailer” means a person who is engaged in a business that includes the sale of a tobacco product to consumers.</p>
<p>“sell” « <i>vendre</i> »</p>	<p>“sell” includes offer for sale and expose for sale.</p>
<p>“tobacco product” « <i>produit du tabac</i> »</p>	<p>“tobacco product” means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves. It includes cigarette papers, tubes and filters but does not include any food, drug or device that contains nicotine to which the <i>Food and Drugs Act</i> applies.</p>
<p>“young person” « <i>jeune</i> »</p>	<p>“young person” means a person under eighteen years of age.</p>

HER MAJESTY

Binding on Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

PURPOSE

- Purpose of Act
4. The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,
- (a) to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;
 - (b) to protect young persons and others from inducements to use tobacco products and the consequent dependence on them;
 - (c) to protect the health of young persons by restricting access to tobacco products; and
 - (d) to enhance public awareness of the health hazards of using tobacco products.

PART I

TOBACCO PRODUCTS

- Product standards
5. No person shall manufacture a tobacco product that does not conform with the standards established by the regulations.

- Information required from manufacturer
6. Every manufacturer of a tobacco product shall provide to the Minister, in the prescribed manner and within the prescribed time, information about the product and its emissions, as required by the regulations.

- Regulations
7. The Governor in Council may make regulations
- (a) establishing standards for tobacco products, including
 - (i) prescribing the amounts of substances that may be contained in the product or its emissions, and
 - (ii) prescribing substances that may not be added to tobacco products;
 - (b) prescribing test methods, including methods to assess conformity with the standards;
 - (c) prescribing information that manufacturers must provide to the Minister about tobacco products and their emissions, including sales data and information on product composition, ingredients, hazardous properties and brand elements;
 - (d) prescribing the means, including electronic, by which the information referred to in paragraph (c) may be communicated to the Minister; and
 - (e) generally for carrying out the purposes of this Part.

PART II

ACCESS

- | | |
|---------------------------------|--|
| Furnishing tobacco products | 8. (1) No person shall furnish a tobacco product to a young person in a public place or in a place to which the public reasonably has access. |
| Defence | (2) A person shall not be found to have contravened subsection (1) if it is established that the person attempted to verify that the person was at least eighteen years of age by asking for and being shown documentation prescribed for the purposes of verifying age, and believed on reasonable grounds that the documentation was authentic. |
| Signs | 9. Every retailer shall post, at retail, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or giving of a tobacco product to a young person is prohibited by law, or that contain a prescribed health message, unless that retailer is exempted by the regulations from the requirement to post the signs. |
| Number of cigarettes in package | 10. (1) No person shall sell cigarettes except in a package that contains at least twenty cigarettes or at least a prescribed number of cigarettes, which number shall be more than twenty. |
| Number of tobacco products | (2) No person shall sell a tobacco product, other than cigarettes, that is prescribed for the purposes of this subsection, in a package that contains fewer than the prescribed number or less than the prescribed quantities or portions of the product. |
| Self-service display | 11. No person, unless exempted by the regulations, shall sell a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it. |
| Dispensing device | 12. No person shall furnish or permit the furnishing of a tobacco product by means of a device that dispenses tobacco products except where the device is in

(a) a place to which the public does not reasonably have access; or
(b) a bar, tavern or beverage room and has a prescribed security mechanism. |
| Deliver or mail | 13. (1) No person shall, for consideration, cause a tobacco product to be delivered from one province to another or to be sent by mail unless the delivery or mailing is between manufacturers or retailers or the person is otherwise exempted by the regulations. |
| Advertising an | (2) No person shall advertise an offer to deliver a tobacco product from one |

offer province to another or to mail a tobacco product.

- Regulations **14.** The Governor in Council may make regulations
- (a) prescribing the documentation that may be used to verify the age of a person for the purposes of subsection 8(2);
 - (b) exempting persons from the application of sections 9, 11 and 13;
 - (c) prescribing signs that are required by section 9 to be posted, including their form, size, content, number and placement;
 - (d) prescribing tobacco products for the purposes of subsection 10(2);
 - (e) respecting exemptions from the application of section 12;
 - (f) prescribing anything that by this Part is to be prescribed; and
 - (g) generally for carrying out the purposes of this Part.

PART III

LABELLING

Information required on packages **15.** (1) No manufacturer or retailer shall sell a tobacco product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions, and about the health hazards and health effects arising from the use of the product or from its emissions.

Information required on leaflet (2) If required by the regulations, every manufacturer or retailer shall provide, in the prescribed form and manner, a leaflet that displays the information required by the regulations about a tobacco product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

Attribution (3) The information referred to in subsections (1) and (2) may be attributed to a prescribed person or body if the attribution is made in the prescribed manner.

Existing obligations saved **16.** This Part does not affect any obligation of a manufacturer or retailer at law or under an Act of Parliament or of a provincial legislature to warn consumers of the health hazards and health effects arising from the use of tobacco products or from their emissions.

Regulations **17.** The Governor in Council may make regulations

- (a) respecting the information that must appear on packages and in leaflets about tobacco products and their emissions and the health hazards and health effects arising from the use of the products and from their

emissions;

(b) prescribing anything that by this Part is to be prescribed; and

(c) generally for carrying out the purposes of this Part.

PART IV

PROMOTION

Definition of “promotion”	18. (1) In this Part, “promotion” means a representation about a product or service by any means, whether directly or indirectly, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behaviours about the product or service.
Application	(2) This Part does not apply to <ul style="list-style-type: none"> (a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a tobacco product or tobacco product-related brand element, whatever the mode or form of its expression, if no consideration is given directly or indirectly for that use or depiction in the work, production or performance; (b) a report, commentary or opinion in respect of a tobacco product or a brand of tobacco product if no consideration is given by a manufacturer or retailer, directly or indirectly, for the reference to the tobacco product or brand in that report, commentary or opinion; or (c) a promotion by a tobacco grower or a manufacturer that is directed at tobacco growers, manufacturers, persons who distribute tobacco products or retailers but not, either directly or indirectly, at consumers.
Prohibition	19. No person shall promote a tobacco product or a tobacco product-related brand element except as authorized by this Act or the regulations.
False promotion	20. No person shall promote a tobacco product by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects or health hazards of the tobacco product or its emissions.
Testimonials or endorsements	21. (1) No person shall promote a tobacco product by means of a testimonial or an endorsement, however displayed or communicated.
Depiction of person	(2) For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product.

Exception	(3) This section does not apply to a trade-mark that appeared on a tobacco product for sale in Canada on December 2, 1996.
Advertising	22. (1) Subject to this section, no person shall promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element of one or that evokes a tobacco product or a brand element.
Exception	(2) Subject to the regulations, a person may advertise a tobacco product by means of information advertising or brand-preference advertising that is in <ul style="list-style-type: none"> (a) a publication that is provided by mail and addressed to an adult who is identified by name; (b) a publication that has an adult readership of not less than eighty-five per cent; or (c) signs in a place where young persons are not permitted by law.
Lifestyle advertising	(3) Subsection (2) does not apply to lifestyle advertising or advertising that could be construed on reasonable grounds to be appealing to young persons.
Definitions	(4) The definitions in this subsection apply in this section.
“brand-preference advertising” « <i>publicité préférentielle</i> »	“brand-preference advertising” means advertising that promotes a tobacco product by means of its brand characteristics.
“information advertising” « <i>publicité informative</i> »	“information advertising” means advertising that provides factual information to the consumer about <ul style="list-style-type: none"> (a) a product and its characteristics; or (b) the availability or price of a product or brand of product.
“lifestyle advertising” « <i>publicité de style de vie</i> »	“lifestyle advertising” means advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.
Packaging	23. No person shall package a tobacco product in a manner that is contrary to this Act or the regulations.

Prohibition — sponsorship promotion	<p>24. No person may display a tobacco product-related brand element or the name of a tobacco manufacturer in a promotion that is used, directly or indirectly, in the sponsorship of a person, entity, event, activity or permanent facility.</p> <p>1997, c. 13, s. 24; 1998, c. 38, s. 1.</p>
Prohibition — name of facility	<p>25. No person may display a tobacco product-related brand element or the name of a tobacco manufacturer on a permanent facility, as part of the name of the facility or otherwise, if the tobacco product-related brand element or name is thereby associated with a sports or cultural event or activity.</p> <p>1997, c. 13, s. 25; 1998, c. 38, s. 2.</p>
Accessories	<p>26. (1) Subject to the regulations, a manufacturer or retailer may sell an accessory that displays a tobacco product-related brand element.</p>
Promotion	<p>(2) No person shall promote an accessory that displays a tobacco product-related brand element except in the prescribed manner and form and in a publication or place described in paragraphs 22(2)(a) to (c).</p>
Non-tobacco product displaying tobacco brand element	<p>27. No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or is used with a service, if the non-tobacco product or service</p> <p>(a) is associated with young persons or could be construed on reasonable grounds to be appealing to young persons; or</p> <p>(b) is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.</p>
Exception — tobacco product	<p>28. (1) Subject to the regulations, a person may sell a tobacco product, or advertise a tobacco product in accordance with section 22, if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or used with a service, if the non-tobacco product or service does not fall within the criteria described in paragraphs 27(a) and (b).</p>
Exception — non-tobacco product	<p>(2) Subject to the regulations, a person may promote a non-tobacco product, other than an accessory, that displays a tobacco product-related brand element, or a service that uses a tobacco product-related brand element, to which section 27 does not apply.</p>
Sales promotions	<p>29. No manufacturer or retailer shall</p> <p>(a) offer or provide any consideration, direct or indirect, for the purchase of a</p>

tobacco product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, lottery or contest;

(b) furnish a tobacco product without monetary consideration or in consideration of the purchase of a product or service or the performance of a service; or

(c) furnish an accessory that bears a tobacco product-related brand element without monetary consideration or in consideration of the purchase of a product or service or the performance of a service.

Retail display of tobacco products **30.** (1) Subject to the regulations, any person may display, at retail, a tobacco product or an accessory that displays a tobacco product-related brand element.

Signs (2) A retailer of tobacco products may post, in accordance with the regulations, signs at retail that indicate the availability of tobacco products and their price.

Communication media **31.** (1) No person shall, on behalf of another person, with or without consideration, publish, broadcast or otherwise disseminate any promotion that is prohibited by this Part.

Exception (2) Subsection (1) does not apply to the distribution for sale of an imported publication or the retransmission of radio or television broadcasts that originate outside Canada.

Foreign media (3) No person in Canada shall, by means of a publication that is published outside Canada, a broadcast that originates outside Canada or any communication other than a publication or broadcast that originates outside Canada, promote any product the promotion of which is regulated under this Part, or disseminate promotional material that contains a tobacco product-related brand element in a way that is contrary to this Part.

Report to Minister **32.** Every manufacturer shall provide the Minister, in the prescribed manner and within the prescribed time, with the prescribed information about any promotion under this Part.

REGULATIONS

Regulations **33.** The Governor in Council may make regulations
(a) respecting the promotion of tobacco products and tobacco product-related brand elements and the packaging of tobacco products, including the form, manner and conditions of the promotion and packaging, and

the promotion of services and non-tobacco products for the purposes of section 28;

(*b*) respecting the advertisement of tobacco products for the purposes of subsection 22(2);

(*c*) and (*d*) [Repealed, 1998, c. 38, s. 3]

(*e*) respecting, for the purposes of subsection 26(1), the manner in which a tobacco product-related brand element may appear on an accessory;

(*f*) respecting the display of tobacco products and accessories at retail;

(*g*) respecting signs that a retailer may post under subsection 30(2), including the placement of the signs and their number, size and content;

(*h*) requiring manufacturers to disclose the particulars of their tobacco product-related brand elements and promotional activities;

(*i*) prescribing anything that by this Part is to be prescribed; and

(*j*) generally for carrying out the purposes of this Part.

1997, c. 13, s. 33; 1998, c. 38, s. 3.

PART V

ENFORCEMENT

INSPECTION

Designation of inspectors and analysts

34. (1) The Minister may designate any person or class of persons as an inspector or analyst for the purposes of this Act and must provide every inspector and analyst with a certificate of designation, in the form determined by the Minister.

Certificate must be produced

(2) An inspector entering a place under this Act must, on request, show the certificate to the person in charge of the place.

Places inspectors may enter

35. (1) For the purpose of ensuring compliance with this Act, an inspector may, subject to section 36, at any reasonable time, enter any place, other than a means of transportation, in which the inspector believes on reasonable grounds

(*a*) a tobacco product is manufactured, tested, stored, packaged, labelled or sold;

(*b*) there is anything used in the manufacture, testing, packaging, labelling, promotion or sale of a tobacco product; or

(*c*) there is any information relating to the manufacture, testing, packaging,

labelling, promotion or sale of a tobacco product.

Powers of
inspector

- (2) In carrying out an inspection, an inspector may
- (a) examine a tobacco product or thing referred to in paragraph (1)(b);
 - (b) require any person in the place to produce for inspection, in the manner and form requested by the inspector, the tobacco product or thing;
 - (c) open or require any person in the place to open any container or package found in the place that the inspector believes on reasonable grounds contains the tobacco product or thing;
 - (d) take or require any person in the place to produce a sample of the tobacco product or thing;
 - (e) conduct any test or analysis or take any measurements; or
 - (f) require any person found in the place to produce for inspection or copying any written or electronic information that is relevant to the administration or enforcement of this Act.

Use of
computers and
copying
equipment

- (3) In carrying out an inspection, an inspector may
- (a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act;
 - (b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying; and
 - (c) use or cause to be used any copying equipment in the place to make copies of any data, record or document.

Entry of
dwelling-place

- 36.** (1) An inspector may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (2).

Authority to
issue warrant

- (2) On *ex parte* application, a justice, as defined in section 2 of the *Criminal Code*, may issue a warrant authorizing the inspector named in the warrant to enter and inspect a dwelling-place, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath
- (a) that the dwelling-place is a place referred to in subsection 35(1);
 - (b) that entry to the dwelling-place is necessary for the administration or enforcement of this Act; and
 - (c) that the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be

refused.

- Use of force (3) An inspector executing the warrant shall not use force unless the inspector is accompanied by a peace officer and the use of force is specifically authorized in the warrant.
- Certificate of analysis **37.** An analyst who has analysed or examined a thing under this Act, or a sample of it, may issue a certificate or report setting out the results of the analysis or examination.
- Assistance to inspectors **38.** (1) The owner of a place inspected by an inspector under this Act, the person in charge of the place and every person found in the place shall
- (a) provide all reasonable assistance to enable the inspector to carry out the inspector's duties under this Act; and
- (b) furnish the inspector with the information that the inspector reasonably requires for that purpose.
- Obstruction (2) No person shall obstruct or hinder, or knowingly make a false or misleading statement to, an inspector who is carrying out duties under this Act.

SEIZURE AND RESTORATION

- Seizure **39.** (1) During an inspection under this Act, an inspector may seize any tobacco product or other thing by means of which or in relation to which the inspector believes on reasonable grounds that this Act has been contravened.
- Storage and removal (2) The inspector may direct that any tobacco product or thing seized be kept or stored in the place where it was seized or that it be removed to another place.
- Interference (3) Unless authorized by an inspector, no person shall remove, alter or interfere in any way with any tobacco product or other thing seized.
- Application for restoration **40.** (1) Any person from whom a tobacco product or thing was seized may, within sixty days after the date of seizure, apply to a provincial court judge within whose jurisdiction the seizure was made for an order of restoration, if the person sends a notice containing the prescribed information to the Minister within the prescribed time and in the prescribed manner.
- Order of restoration (2) The provincial court judge may order that the tobacco product or thing be restored immediately to the applicant if, on hearing the application, the

judge is satisfied

(a) that the applicant is entitled to possession of the tobacco product or thing seized; and

(b) that the tobacco product or thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

Order of later restoration

(3) Where, on hearing an application made under subsection (1), the provincial court judge is satisfied that the applicant is entitled to possession of the tobacco product or thing seized but is not satisfied with respect to the matters mentioned in paragraph (2)(b), the judge may order that the product or thing seized be restored to the applicant

(a) on the expiration of one hundred and eighty days after the date of the seizure if no proceedings in respect of an offence under this Act have been commenced before that time; or

(b) on the final conclusion of any such proceedings, in any other case.

No restoration where forfeiture by consent

(4) The provincial court judge may not make an order under this section for restoration of a tobacco product or thing if it has been forfeited by consent under subsection 41(3).

Forfeiture

41. (1) Where no application has been made under subsection 40(1) for the restoration of a tobacco product or thing seized under this Act within sixty days after the date of the seizure, or an application has been made but on the hearing of the application no order of restoration is made, the product or thing is forfeited to Her Majesty and may be disposed of as the Minister directs.

Forfeiture on conviction

(2) Where a person has been convicted of an offence under this Act, any tobacco product or thing seized under this Act by means of or in respect of which the offence was committed is forfeited to Her Majesty and may be disposed of as the Minister directs.

Forfeiture with consent

(3) Where an inspector has seized a tobacco product or thing and the owner or the person in whose possession it was at the time of seizure consents in writing to its forfeiture, the product or thing is forfeited to Her Majesty and may be destroyed or disposed of as the Minister directs.

REGULATIONS

Regulations

42. The Governor in Council may make regulations

(a) respecting the powers and duties of inspectors and analysts;

(b) respecting the taking of samples;

- (c) prescribing anything that by this Part is to be prescribed; and
- (d) generally for carrying out the purposes of this Part.

PART V.1

LAYING OF PROPOSED REGULATIONS

Laying of proposed regulations	42.1 (1) The Governor in Council may not make a regulation under section 7, 14, 17, 33 or 42 unless the Minister has first laid the proposed regulation before the House of Commons.
Report by committee	(2) A proposed regulation that is laid before the House of Commons is deemed to be automatically referred to the appropriate committee of the House, as determined by the rules of the House, and the committee may conduct inquiries or public hearings with respect to the proposed regulation and report its findings to the House.
Making of regulations	(3) The Governor in Council may make a regulation under section 7, 14, 17, 33 or 42 only if <ul style="list-style-type: none">(a) the House of Commons has not concurred in any report from a committee respecting the proposed regulation within the thirty sitting days following the day on which the proposed regulation was laid before the House, in which case the regulation may only be made in the form laid; or(b) the House of Commons has concurred in a report from a committee approving the proposed regulation or an amended version of it, in which case the Governor in Council may only make the regulation in the form concurred in.
Definition of "sitting day"	(4) For the purpose of this section, "sitting day" means a day on which the House of Commons sits.

PART VI

OFFENCES AND PUNISHMENT

- Packaging and promotion offences
- 43.** Every person who contravenes section 5 or 19 is guilty of an offence and liable
- (a) on summary conviction, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding one year, or to both; or
- (b) on conviction on indictment, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding two years, or to both.
- Summary offence
- 44.** Every person who contravenes section 6, subsection 10(1) or (2), 26(1) or (2) or 31(1) or (3), section 32 or subsection 38(1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both.
- Sales to youth, promotions
- 45.** Every person who contravenes section 8, 9, 11 or 12, or any retailer who contravenes section 29, is guilty of an offence and liable on summary conviction
- (a) for a first offence, to a fine not exceeding \$3,000; and
- (b) for a subsequent offence, to a fine not exceeding \$50,000.
- Offence by retailer
- 46.** (1) Every retailer who contravenes subsection 15(1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.
- Offence by manufacturer
- (2) Every manufacturer who contravenes subsection 15(1) or (2) or section 29 is guilty of an offence and liable on summary conviction to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding two years, or to both.
- General offence
- 47.** Every person who contravenes subsection 13(1) or (2), section 20, subsection 21(1) or 22(1) or section 23 or 27 is guilty of an offence and liable on summary conviction to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding two years, or to both.
- Where no other penalty
- 48.** Every person who contravenes a provision of this Act or the regulations for which no other penalty is provided in this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000.
- Continuing offence
- 49.** A person who commits or continues an offence under this Act on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

Offence by director or officer of corporation	<p>50. Where a corporation commits an offence under this Act, any director or officer of the corporation who authorized or acquiesced in the offence is guilty of an offence and liable on conviction to the penalty provided for by this Act in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted.</p>
Limitation period	<p>51. No prosecution for a summary conviction offence under this Act may be instituted after two years after the time when the subject-matter of the proceedings arose.</p>
Venue	<p>52. A prosecution for an offence under this Act may be instituted, heard, tried and determined by a court in any jurisdiction in which the accused carries on business, regardless of where the subject-matter of the prosecution arose.</p>
Exception need not be pleaded	<p>53. (1) No exception, exemption, excuse or qualification prescribed by law is required to be set out or negated, as the case may be, in an information or indictment for an offence under this Act or under section 463, 464 or 465 of the <i>Criminal Code</i> in respect of an offence under this Act.</p>
Proof of exemption	<p>(2) In a prosecution for an offence referred to in subsection (1), the burden of proving that an exception, exemption, excuse or qualification prescribed by law operates in favour of the accused is on the accused and the prosecutor is not required, except by way of rebuttal, to prove that it does not operate in favour of the accused, whether or not it is set out in the information or indictment.</p>
Offence by employee or agent	<p>54. In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused and that the accused exercised all due diligence to prevent its commission.</p>
Certified copies and extracts	<p>55. In a prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified by the inspector to be a true copy is admissible in evidence and is, in the absence of evidence to the contrary, proof of its contents.</p>
Certificate or report of analyst as proof	<p>56. (1) Subject to subsections (2) and (3), a certificate or report purporting to be signed by an analyst stating that the analyst has analysed anything to which this Act applies and stating the results of the analysis, is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official</p>

character of the person appearing to have signed the certificate or report.

Notice (2) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate or report.

Attendance of analyst (3) The party against whom the certificate or report is produced may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination.

Evidentiary presumptions **57.** In a prosecution for a contravention of this Act,
 (a) information on a package indicating that it contains a tobacco product is, in the absence of evidence to the contrary, proof that the package contains a tobacco product; and
 (b) a name or address on a package purporting to be the name or address of the person by whom the tobacco product was manufactured is, in the absence of evidence to the contrary, proof that it was manufactured by that person.

Additional fine **58.** If an offender has been convicted of an offence under this Act and the court is satisfied that as a result of the commission of the offence the offender acquired any monetary benefits or that monetary benefits accrued to the offender, the court may order the offender to pay, despite the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of those monetary benefits.

Orders of court **59.** When the court is sentencing an offender who has been convicted of an offence under this Act, in addition to any other punishment that may be imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:
 (a) prohibiting the offender from doing any act or engaging in any activity that is likely to result in the continuation or repetition of the offence;
 (b) prohibiting the offender from selling tobacco products for a period of not more than one year, in the case of a subsequent offence under section 8, 9, 11, 12 or 29;
 (c) directing the offender to publish, in the manner directed by the court, the facts relating to the commission of the offence;
 (d) directing the offender to post any bond or pay any amount of money into

court that will ensure compliance with an order made pursuant to this section;

(e) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister as a result of the act or omission that constituted the offence; and

(f) directing the offender to pay an amount for the purposes of conducting research into any matters relating to tobacco products that the court considers appropriate.

PART VII

AGREEMENTS

Administrative agreements **60.** (1) The Minister may enter into agreements with provinces or other bodies respecting the administration and enforcement of this Act, including the designation of provincial or other officials and bodies as inspectors under this Act and the appointment of federal officials as inspectors under provincial legislation in respect of tobacco.

Equivalency agreements (2) The Minister may enter into equivalency agreements with a province where there are in force, under the laws of that province, provisions that are equivalent to the provisions of this Act.

Order (3) The Governor in Council may, on the recommendation of the Minister, by order, declare that certain provisions of this Act or the regulations, other than those creating an absolute prohibition, do not apply within a province in which an equivalency agreement is in force.

Table in Parliament (4) A copy of an equivalency agreement in respect of which an order is made under subsection (3) must be tabled in Parliament within fifteen days after the order is made.

PART VIII

CONSEQUENTIAL AMENDMENTS, REPEALS AND COMING INTO FORCE

CONSEQUENTIAL AMENDMENTS

61. to 63. [Amendments]

REPEALS

64. and 65. [Repeals]

COMING INTO FORCE

Subsections 24(2) and (3) *66. (1) Subsections 24(2) and (3) come into force on October 1, 1998 or on any earlier day that the Governor in Council may fix by order.

* [Note: Subsections 24(2) and (3) in force October 1, 1998.]

Application delayed — sponsorship before April 25, 1997 (2) If a tobacco product-related brand element was displayed, at any time between January 25, 1996 and April 25, 1997, in promotional material that was used in the sponsorship of an event or activity that took place in Canada, subsections 24(2) and (3) do not apply until (a) October 1, 2000 in relation to the display of a tobacco product-related brand element in promotional material that is used in the sponsorship of that event or activity or of a person or entity participating in that event or activity; and (b) October 1, 2003 in relation to the display referred to in paragraph (a) on the site of the event or activity for the duration of the event or activity or for any other period that may be prescribed.

Promotional material (3) Subsections 24(2) and (3) apply beginning on October 1, 2000 and ending on September 30, 2003 to prohibit the furnishing to the public, on the site of an event or activity to which paragraph (2)(b) applies, of promotional material that displays a tobacco product-related brand element otherwise than in conformity with subsection 24(2).

1997, c. 13, s. 66; 1998, c. 38, s. 4

Tobacco Act (1997, c. 13)

Disclaimer: These documents are not the official versions ([more](#)).

Source: <http://laws.justice.gc.ca/en/T-11.5/text.html>

Act current to March 3, 2006

Subject: Health

CHAPTER 38

(Bill C-42)

Tobacco Act, An Act to amend the

SUMMARY

This enactment provides for a five-year phased-in transition period towards a prohibition of tobacco sponsorship promotions. The existing section 24 will continue to apply in limited circumstances during the transition period.

An Act to amend the Tobacco Act

[Assented to 10th December, 1998]

1997, c. 13

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Section 24 of the *Tobacco Act* is replaced by the following:

Prohibition --
sponsorship
promotion

24. No person may display a tobacco product-related brand element or the name of a tobacco manufacturer in a promotion that is used, directly or indirectly, in the sponsorship of a person, entity, event, activity or permanent facility.

2. (1) Section 25 of the Act is replaced by the following:

Prohibition --
name of facility

25. No person may display a tobacco product-related brand element or the name of a tobacco manufacturer on a permanent facility, as part of the name of the facility or otherwise, if the tobacco product-related brand element or name is thereby associated with a sports or cultural event or activity.

(2) Section 25 of the Act, as it read immediately before the coming into force of subsection (1), continues to apply until October 1, 2003 in relation to the display, on a permanent facility, of a tobacco product-related brand element that appeared on the facility on the day on which this Act comes into force.

3. Paragraphs 33(c) and (d) of the Act are repealed.

4. (1) Section 66 of the Act is renumbered as subsection 66(1).

(2) Subsection 66(1) of the English version of the Act is replaced by the following:

Subsections
24(2) and (3)

66. (1) Subsections 24(2) and (3) come into force on October 1, 1998 or on any earlier day that the Governor in Council may fix by order.

(3) Section 66 of the Act is amended by adding the following after

subsection (1):

Application delayed -- sponsorship before April 25, 1997

(2) If a tobacco product-related brand element was displayed, at any time between January 25, 1996 and April 25, 1997, in promotional material that was used in the sponsorship of an event or activity that took place in Canada, subsections 24(2) and (3) do not apply until

(a) October 1, 2000 in relation to the display of a tobacco product-related brand element in promotional material that is used in the sponsorship of that event or activity or of a person or entity participating in that event or activity; and

(b) October 1, 2003 in relation to the display referred to in paragraph (a) on the site of the event or activity for the duration of the event or activity or for any other period that may be prescribed.

Promotional material

(3) Subsections 24(2) and (3) apply beginning on October 1, 2000 and ending on September 30, 2003 to prohibit the furnishing to the public, on the site of an event or activity to which paragraph (2)(b) applies, of promotional material that displays a tobacco product-related brand element otherwise than in conformity with subsection 24(2).

Coming into force

5. (1) Sections 1 and 3 come into force on October 1, 2003.

Coming into force

(2) Subsection 66(2) of the Act, except paragraph (b), as enacted by section 4, is deemed to have come into force on October 1, 1998.

Coming into force

(3) Paragraph 66(2)(b) and subsection 66(3) of the Act, as enacted by section 4, come into force on October 1, 2000

Appendix 5

Tobacco legislation, regulations and voluntary agreements
(England and European Union)
 Action on Smoking on Health
 Updated January 2006

Overall policy
International
Advertising, promotion & sponsorship
Broadcasting guidelines
Smoking in the workplace
Smoking in public places
Youth access
Customs and Excise
Taxation
Product regulation and labelling
Smoking cessation
Consumer protection
Agriculture
European Union treaty and case law

Introduction

This document is a reference guide to tobacco related legislation, policy and voluntary agreements that apply in the UK, including European Union and international measures.

Official texts of legislation and voluntary agreements that apply in England and European Union directives relevant to tobacco are available from this page. Some of this legislation also applies in Wales, Scotland and Northern Ireland. European Union legislation applies in each EU member state, but there will be different regulations to implement the legislation in each country.

The page also includes legislation that has been passed but has yet to come into effect, legislation in preparation, and global initiatives such as the Framework Convention on Tobacco Control.

Please notify [Enquiries](#) at ASH of any omissions, errors or other suggestions

Overall policy	
Regulation	Description
<p>UK Choosing Health: Making healthy choices easier - A White Paper Policy document November 2004</p> <p>Choosing Health Delivery Plans Policy document March 2005</p>	<p>This public health White Paper sets out the Government's proposals to tackle a range of health issues including smoking. The key tobacco policies include a proposal to ban smoking in all workplaces except for some membership clubs and pubs where food is not sold; a commitment to maintain, and maximise use of, the stop smoking clinics; greater enforcement of the law to stop sales of tobacco to children; plans for pictorial health warnings and further efforts to combat tobacco smuggling.</p> <p>This document outlines the key steps to be taken over the next three years to deliver the Choosing Health White Paper. The Department of Health will report on progress every six months.</p>
<p>UK Smoking Kills - A White Paper Policy document December 1998</p> <p>The NHS Cancer Plan Policy document September 2000</p> <p>Saving Lives: Our Healthier Nation Policy document July 1999</p>	<p>This White Paper is the prime statement of government policy to tackle tobacco use in Britain.</p> <p>The White Paper spells out a package of measures each of which are intended to add to the impact of the others to reduce smoking prevalence – it includes banning tobacco advertising, use of taxation, support for smokers wanting to quit, smoke-free policies and a range of targets.</p> <p>The NHS Cancer Plan seeks to address issues relating to cancer, from prevention, to detection and treatment of the disease. The document recognises smoking to be a major contributor to prevalence of the disease and hence sets out targets for improving prevention which include reducing tobacco use in disadvantaged groups.</p> <p>Saving Lives: Our Healthier Nation sets out a broad strategy for improving health and tackling health inequalities. It also sets out targets for the reduction of cancer and coronary heart disease and stroke by 2010.</p>
<p>EU EU Council Recommendation [pdf] Council Recommendation on the prevention of smoking and on initiatives to improve tobacco control</p>	<p>2 December 2002: This is a non-binding policy statement from the Council to the member states of the EU, covering issues that are not regulated at EU level, including retailing, vending machines, passive smoking, indirect advertising and disclosure of marketing budgets.</p> <p>It may be used for forming EU positions in international negotiations.</p> <p>The German delegation voted against the proposed recommendation</p>

International	
Regulation	Description
UK Government policy on international tobacco control Policy Document December 1998	<i>This is the international section in the Government's White Paper "Smoking Kills". In it, the Government lays out its policy on tobacco in the immediate EU context and reaffirms its commitment to international tobacco action through the World Health Organisation's Framework Convention on Tobacco Control.</i>
WHO Framework Convention on Tobacco Control Treaty	The WHO Framework Convention on Tobacco Control (FCTC) is the first global health treaty negotiated under the auspices of the World Health Organization. The FCTC was developed in response to the globalisation of the tobacco epidemic. It commits countries to implement a range of tobacco control measures such as a ban on tobacco advertising, protection of people from secondhand smoke, and the regulation of tobacco products.
EU EC Treaty Article 300 Co-operation rules of the European Union in international agreements EU Treaty Article 11 Common foreign policy and international co-operation	Establishes rules requiring EU member states to co-operate in negotiating international agreements.
UK Guidance to UK embassies on tobacco promotion Foreign Office guidelines	In answer to a parliamentary question from an MP, the Government revealed the specific instructions issued to UK embassies and diplomatic staff so as not to promote tobacco or attend tobacco sponsored events. These instructions were issued as part of guidelines to overseas missions following the publication of the government white paper Smoking Kills.
Links Further links to relevant documents on International Tobacco Control	
Advertising, promotion & sponsorship	
Regulation	Description
For television advertising and promotion see Broadcasting Guidelines below	

<p>UK Tobacco Advertising and Promotion Act 2002</p> <p>In Force.</p> <p>Commencement order Transitional regulations (sponsorship) Brandharing regulations Point of Sale regulations</p> <p>DH consultation on draft regulations relating to brand-sharing, sponsorship and point of sale materials and ASH response</p>	<p>The Tobacco Advertising and Promotion Act received Royal Assent on 7 November 2002 and came into force on 14 February 2003.</p> <p>The Tobacco Advertising and Promotion Act 2002 comprehensively bans the advertising and promotion of tobacco products including the use of brand-sharing and sponsorship of cultural and sport events. The ban was implemented in stages as follows:</p> <p>14 February 2003 – From that date it became illegal to advertise tobacco products on billboards, in newspapers and magazines. Direct mail was banned in May 2003</p> <p>21 December 2004 - Regulations governing advertising at the point of sale came into effect. These limit advertising to one A5 sized ad per outlet.</p> <p>31 July 2003 – Tobacco sponsorship of domestic sporting events was banned.</p> <p>31 July 2005 – The ban on tobacco sponsorship of international events such as Formula One motor racing entered into force. In addition, regulations on brand-sharing came into effect.</p> <p>More information on implementation timetable: www.ash.org.uk/?adban</p>
<p>EU COD 2001/0119 [pdf] Agreed <input type="checkbox"/> DH consultation on inclusion of cigarette papers in the ban and ASH response</p> <p>Directive on the banning of tobacco advertising and promotion -</p>	<p>On 2 December 2002 the Council reached a political agreement on a proposed directive to ban tobacco advertising. The text that was agreed for this directive is formulated to act within the Commission's conservative view of the narrow boundaries of EU competence established by the treaty as interpreted by the European Court of Justice. The directive covers four areas of cross border advertising (printed publications, internet, radio and sponsorship), but does not include indirect advertising and will be easily circumvented by modern promotional techniques or moving promotional activity - such as sports sponsorship - outside the EU.</p> <p>During earlier discussions on the proposals some member states had suggested that any ban on tobacco advertising should include a ban on the advertising of cigarette papers. In August 2000, the UK government issued a consultation document, inviting comments on this specific matter.</p> <p>A previous EC directive to ban tobacco advertising 98/43/EC was struck down by a European Court of Justice ruling (Case C-376/98) on account of its legal base.</p> <p>The court argued that the Directive must contribute to <i>“eliminating appreciable distortions of competition”</i> and <i>“eliminating obstacles to the free movement of goods and to the freedom to provide services”</i>. The Court found the directive failed these tests.</p>

<p>EU Directive 2000/31/EC In force</p> <p>Regulation of information society services– “the e-commerce directive”</p>	<p>This directive establishes a free internal market in information society products such as services offered over the web. Its relevance to tobacco is that uses a particular definition for ‘commercial communication’ (advertising) – see article 2(f) and provides in-principle exemptions from general freedom for public health.</p> <p>Exemption for public health <i>Article 1 (3). This Directive complements Community law applicable to information society services without prejudice to the level of protection for, in particular, public health and consumer interests, as established by Community acts and national legislation implementing them in so far as this does not restrict the freedom to provide information society services</i> Article 3 (4) defines exemptions from single market rules more specifically.</p>
<p>EU COM 546 2001 final [pdf] Proposal <input type="checkbox"/> DTI consultation on draft EU regulations relating sales promotion and ASH response</p> <p>Sales promotions in the Internal Market</p>	<p>In the interest of a strong internal market, emphasis of this EU proposal falls on the primacy of free movement of goods and services within member states. It seeks to harmonise differing sales promotion regulations between countries to minimise distortions in trade. It describes sales promotion as financial discounts, free gifts, promotional contests or games offered by a producer in order to expand markets.</p> <p>Though the proposal makes reference to public health in Article 5 (protection of children and adolescents), it remains highly controversial - article 3 of the proposed regulation prohibits member states from restricting commercial communications of a sales promotion unless required by community law. In the absence of an EU directive explicitly prohibiting tobacco promotion, the proposal carries the potential to undermine any effort to ban the promotion of tobacco products at national levels.</p>
<p>Links Further links to relevant documents on tobacco advertising and promotion</p>	

Broadcasting guidelines	
Regulation	Description
<p>EU Council Directive 89/552/EEC In Force</p> <p>Television without Frontiers</p> <p>Amended by: Directive 97/36/EEC In Force</p> <p>Implemented in England via The Broadcasting Act 1990. Section 93 of the Act in turn confers responsibility for control of advertisements to Ofcom.</p>	<p>Set of protocols that seek to harmonise broadcasting activities of member states. Trans-national broadcasting via satellite necessitates that content of national broadcasts do not prejudice the laws of other member states. Under this Directive, all television advertising promoting cigarettes and other tobacco products is prohibited including indirect advertising. This directive prohibits the advertising of all tobacco products on television including indirect advertising, which whilst not directly mentioning the tobacco product, seeks to circumvent the ban on advertising by using brand names, symbols or other distinctive features of tobacco products.</p> <p>Article 13 states: Art 13 "All forms of television advertising for cigarettes and other tobacco products shall be prohibited."</p> <p>This was amended in 1997 (97/36/EC) to ban teleshopping for cigarettes: Art 13 "All forms of television advertising and teleshopping for cigarettes and other tobacco products shall be prohibited"</p> <p>The Directive also bans programme sponsorship by tobacco companies: Art 17. a.2 Television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.;</p>
<p>UK Ofcom Codes</p> <p>Protecting the Under 18s</p> <p>Guidance notes for broadcasters</p> <p>Section One (Rule 1.10): Drugs, smoking, solvents and alcohol abuse (PDF)</p>	<p>The Office of Communications (Ofcom) is the regulator for the UK communications industries, with responsibilities for television, radio, telecommunications and wireless communications services. It was established on 29 December 2003. Ofcom replaces the Broadcasting Standards Commission, the Independent Television Commission and the Radio Authority. Ofcom is required by the Communications Act 2003 to draw up a Code or Codes setting standards for programmes, sponsorship, and fairness and privacy.</p> <p>This section of the Broadcasting code includes the portrayal of smoking and other drugs.</p> <p>This is to assist broadcasters interpret and apply the Broadcasting code.</p> <p>This section gives guidance on the inclusion of smoking and other drugs. It states that inclusion of such substances "at times when children are particularly likely to be listening must be editorially justified".</p>

Smoking in the workplace	
Regulation	Description
<p>EU Council Directive 89/391/EEC In Force</p> <p>The Management of Health and Safety at Work</p> <p>Council Directive 89/391/EEC is implemented in England by Statutory Instrument 1992 No. 2051 as 'The Management of Health and Safety at Work Regulations 1992'.</p>	<p>Health and safety of workers framework directive, has wide-ranging provisions and sets down minimum requirements for the effective managerial control of health and safety matters at work.</p> <p>Although this directive does not make specific references to tobacco, provisions laid out in articles defining the responsibilities of employers do oblige them to pay regard to risks to exposure. For example, provisions demand that particularly sensitive risk groups must be protected against the dangers which specifically affect them. This could offer protection to asthmatics from exposure to passive smoke in the workplace.</p>
<p>EU Council Directive 89/654/EEC In Force</p> <p>Minimum safety requirements at work</p> <p>Council Directive 92/85/EEC is implemented in England by Statutory Instrument 1996 No. 1592 as part of The Construction (Health, Safety and Welfare) Regulations 1996 (Schedule 6).</p>	<p>If staff restrooms are provided appropriate measures must be taken for the protection of non-smokers against discomfort caused by tobacco smoke.</p> <p>This means that where there is a single rest area, it should be non-smoking.</p>
<p>EU Council Directive 92/85/EEC In Force</p> <p>Safety and Health at Work of Pregnant Workers</p> <p>Council Directive 92/85/EEC is implemented in England by Statutory Instrument 1994 No. 2865 as part of The Management of Health and Safety at Work (Amendment) Regulations 1994.</p>	<p>This EU Directive lays out measures to encourage improvements in the safety and health at work of workers who are pregnant, who have recently given birth or are breastfeeding.</p> <p>The above workers must be considered a specific group – and exposure to dangerous agents, processes or working conditions must be assessed – and provisions made to protect such workers.</p> <p>In the case of pregnant women being exposed to passive smoke, this legislation requires the employer to make an assessment of the risks involved, take measures to limit or eliminate those risks, or relocate the employee affected in another position.</p>

<p>EU Council Directive 90/394/EEC In Force</p> <p>Protection of Workers from Carcinogens at Work</p> <p>The UK Control of Substances Hazardous to Health (COSHH) Regulations Statutory Instrument 1994 N. 3246 (6,7) implements this.</p>	<p>The carcinogens at work directive aims to protect workers against the health and safety risks that might arise from exposure to known carcinogens. Where there are workplace carcinogens (not including tobacco smoke itself!) then the employer must warn employees of the additional risks arising from tobacco use.</p> <p>Article 11 Information and training of workers 1. Appropriate measures shall be taken by the employer to ensure that workers and/or workers' representatives in the undertaking or establishment receive sufficient and appropriate training, on the basis of all available information, in particular in the form of information and instructions, concerning: (a) potential risks to health, including the additional risks due to tobacco consumption;</p> <p>Bizarrely, the COSHH regulations also require: 7.(3) Without prejudice to the generality of paragraph (1), where the assessment made under regulation 6 shows that it is not reasonably practicable to prevent exposure to a carcinogen by using an alternative substance or process, the employer shall apply all the following measures, namely— [...] (e) the prohibition of eating, drinking and smoking in areas that may be contaminated by carcinogens;</p> <p>Banning smoking (the emission of carcinogens) where people smoke doesn't seem to be the intention of this law – it seems the carcinogens have to arise in the process of work itself.</p>
<p>UK Employment Rights Act 1996 In Force Legislation England, Wales, and Scotland only</p>	<p>Legislation to ban smoking in the workplace is currently being debated by Parliament – see below – and has been passed into law in Scotland . Until the Health Bill is enacted, employees may be given some protection in law by the Employment Rights Act and Health & Safety at Work Act.</p> <p>Non-smokers may claim that smoking at work has caused them distress or forced them to leave their job and can cite the employer as being in breach of the Employment Rights Act 1996.</p> <p>The contract of employment which regulates the relationship between employer and employee is subject to general principles of statute law. In addition to expressed terms within the contract there will also be 'implied terms'. These may be implied by statute such as the Health and Safety at Work Act 1974, or by common law. Such implied terms include the common law obligation placed on employers to take care of employees. This obliges employers to take all reasonable steps to protect employees as soon as they are aware of a risk, or could be expected to be aware of a risk.</p>

<p>UK Health and Safety and Work Act (1974) In Force Legislation England, Wales, and Scotland only</p>	<p>Section 2(2)(e) of the Health and Safety at Work Act places a specific duty on the employer in respect of employees:</p> <p><i>"to provide and maintain a safe working environment which is, so far as is reasonably practicable, safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work".</i></p> <p>This means that if a risk to health can be demonstrated, for example if a worker with a respiratory condition is forced to work in a smoky atmosphere which may make that condition worse, the employer must take action to deal with the risk. Health and safety inspectors can take enforcement action if necessary in these circumstances, but ultimately it would be for the courts to decide in a particular case whether the risk to health was significant.</p>
<p>UK Scotland Smoking, Health and Social Care (Scotland) Act 2005 The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006</p> <p>England Health Bill - Draft Legislation 2006</p> <p>Wales</p> <p>Northern Ireland</p>	<p>Scotland is the first country in the UK to implement a legal ban on smoking in the workplace. The law applies to most indoor workplaces and public places, with limited exceptions, such as prisons and designated rooms in residential care homes. These are set out in the regulations.</p> <p>Following the proposals outlined in the Choosing Health White Paper, this Bill sets out the Government's proposals to prohibit smoking in most indoor workplaces and public places in England . In February 2006, MPs voted against proposed exemptions for private membership clubs and pubs that do not serve food. The Bill is expected to be passed by the House of Lords and to be enacted by mid 2006. It is due to enter into force in mid 2007. The Welsh Assembly does not have law-making powers but has voted in favour of comprehensive smokefree legislation. The necessary powers to implement such legislation will be granted under the Health Bill.</p> <p>An Order to implement smokefree regulations has been made. This will mirror legislation in the rest of the UK and the Republic of Ireland .</p>

Smoking in public places	
Regulation	Description
<p>England Environmental Protection Act 1990 In Force Legislation</p> <p>Protection from second-hand smoke in the home</p>	<p>A common source of complaint in civil disputes is the seepage of cigarette smoke from one premises into the premises of a non-smoker. This is especially true when a smoker lives in an apartment below, and the problem can lead to awkward stand offs.</p> <p>Section 79 of the Environmental Act commits any fumes, gases, or smoke deemed to be prejudicial to health or a nuisance to be a “statutory nuisance” . Section 80 of the Act allows for local authority to intervene in such a situation, evaluate the nuisance caused and require the party responsible for the nuisance to ‘prohibit or restrict its occurrence or recurrence’.</p> <p>If this fails, Section 82 of the Act allows the appellant to take their case to a magistrates court for adjudication.</p>
<p>UK Public Places Charter Voluntary Agreement In Force</p>	<p>Agreement between the government and bodies representing the hospitality industry that recognises that non-smoking is the norm and that there should be increasing provision of facilities for non-smokers. The Public Places Charter was set up in 1998 and warrants a written smoking policy, implementation of non-smoking areas and installation of ventilation systems as appropriate, by pubs. However, a progress report published in April 2003 found that 46% of restaurants and pubs surveyed still allowed smoking throughout. Until legislation prohibiting smoking in public places and workplaces is implemented, this voluntary agreement remains in force.</p>
<p>UK The Food Safety (General Food Hygiene) Regulations 1995 In Force Legislation England, Wales, and Scotland only</p> <p>Personal hygiene requirements of food handlers</p>	<p>Chapter VIII of Schedule I of The Food Safety Regulations 1995 sets out the basic levels of personal hygiene expected from any individual handling food. This means that people preparing food in pubs and restaurants for example are not allowed to smoke.</p> <p>The accompanying Guide to General Food Hygiene Regulations 1995, in its section on general guidance on personal hygiene specifically demands that “anyone whose work involves handling food should never smoke in food handling areas”.</p>

Youth access	
Regulation	Description
EU COM(2002) 303 final Proposal Recommendation on prevention of smoking and initiatives to improve tobacco control	<p>This council recommendation seeks to tighten tobacco control measures with particular emphasis on youth access to tobacco.</p> <p>Amongst the proposals:</p> <ul style="list-style-type: none"> <input type="checkbox"/> adult only access to cigarette machines <input type="checkbox"/> removal of tobacco products from display <input type="checkbox"/> young people to prove their age prior to purchase <input type="checkbox"/> banning sales of packets of 10 <p>These recommendations do not call for primary legislation but propose changes to existing legislation such as directives on product regulation and labelling.</p>
UK Children and Young Persons (Protection from Tobacco) Act 1991 In Force Legislation England, Wales, and Scotland only	<p>The Act amended and strengthened the existing Children and Young Persons Act 1933 and the Children and Young Persons Act (Scotland) 1937 regarding the sale of tobacco to minors.</p> <p>This Act increased the penalties for the sale of tobacco to persons under the age of 16, prohibited the sale of unpackaged cigarettes and made provision for local authorities to undertake enforcement action relating to offences connected to the sale of tobacco.</p>

Customs and Excise	
Regulation	Description
<p>UK Notice of change in tobacco duty rates In force</p> <p>Official notice of duty rates following 2002 Budget</p>	<p>Tobacco taxes are usually raised in the annual Budget at least in line with inflation. This notice gives details of the tobacco duty rates in force.</p> <p>This notice by Customs explains how new duty rates are to be applied.</p>
<p>EU Council Directive 92/12/EEC In Force</p> <p>'Personal Consumption' Guidelines for Tobacco and Alcohol</p>	<p>This directive rules on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.</p> <p>In addition, the directive lays down arrangement for products that are subject to excise duties and other taxes that are levied directly or indirectly on the consumption of these products.</p> <p>Importantly, in the absence of restrictions on the movement of products such as tobacco and alcohol between member states, Article 9 of Directive 92/12/EEC sets out guidelines for national governments on quantities considered not to be of commercial volumes.</p>
<p>UK Tobacco Product Regulations 2001 In Force</p> <p>Fiscal markings on tobacco products</p>	<p>In 1999, amidst concern for the rise in tobacco smuggling, The Chancellor of the Exchequer commissioned Martin Taylor to conduct an independent evaluation into the government anti-smuggling strategy. The result was a series of recommendations represented in a report Tackling Tobacco Smuggling, which is the main statement of policy on tackling tobacco smuggling. One of the recommendations adopted by the Government from Mr Taylor's study was to print prominent fiscal markings on tobacco product packaging to indicate 'UK Duty Paid' to distinguish between legitimate trade and contraband trafficking.</p> <p>The Tobacco Product Regulations 2001 requires tobacco products to carry a 'UK Duty Paid' marking and any retailers failing to comply are liable to a fine up to £5000.</p>
<p>England The Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2000 In Force</p>	<p>With the Channel Tunnel an increasingly popular thoroughfare between the UK and mainland Europe, this legislation deems goods being brought into Britain via France to be commensurate to goods being imported as soon as they enter the control zone of the French side.</p> <p>This enables determinations to be made on imported tobacco and alcohol via the tunnel in the same way that they are in the United Kingdom.</p> <p>This order applies to certain provisions relating to the relief from payment of excise duty on imported alcohol and tobacco conferred on Community travellers.</p>

Taxation	
Regulation	Description
UK Finance Act 2001 Legislation In Force	Provisions in the Act set out rates of duty on tobacco products. A breakdown of tobacco tax can be obtained by using ASH's Tax Calculator . The calculator shows how the different elements of tobacco tax contribute to the retail price (can be edited and downloaded as MS Excel spreadsheet). This also includes a calculator for showing how much it costs to be a smoker.
EU Council Directive 92/79/EEC Council Directive 92/80/EEC Council Directive 95/59/EC Excise Duties	The EU has applied limits governing the structure of tobacco duties (see directives 92/79/EEC on cigarettes, 92/80/EEC on products other than cigarettes and 95/59/EC). These may have had some effect in raising minimum duties, but their prime purpose is to stop the use of the excise tax system acting as a protectionist barrier to trade. A new proposal to restructure and raise minimum excise duties (Council Proposal COM/2001/0133 final) had been proposed by the Commission. The proposal included measures to discourage traffic flows of contraband tobacco products from low tax bracket member states to higher rate member countries. But the proposal suffered a defeat in the European Parliament and was not adopted.
Product regulation and labelling	
Regulation	Description
EU Council Directive 2001/37/EC In Force Consumer Protection. The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 Statutory Instrument 2002 N. 3041 implements this. <input type="checkbox"/> DH Consultation on Tobacco regulation directive 2001/37/EC EU Council Directive 2001/37/EC In Force Consumer Protection. The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 Statutory Instrument 2002 N. 3041 implements this. <input type="checkbox"/> DH Consultation on Tobacco regulation directive 2001/37/EC	This directive replaces two previous directives on labelling (see 89/622/EEC , 92/41/EC) and tar levels (90/239/EEC). Directive 2001/37/EC requires a range of measures to be taken by manufacturers of tobacco products such as dedicating more surface area to health warnings on tobacco product packaging, the proscribing of misleading descriptors such as 'mild', 'low-tar', 'light', 'ultra-low' and setting ceilings to the yields of tar (10mg), nicotine (1mg) and carbon monoxide (10mg) for all cigarettes manufactured within the community irrespective of whether for consumption or export. Council Directive 2001/37/EC also incorporates measures from directive 92/41/EC, which bans the sale of oral tobacco in the EC countries with the exception of Sweden . Time-table for implementation of Council Directive 2001/37/EC measures is as follows:

Product Regulation and Labelling

The provisions of the directive enter force over several years – this means that previous UK statutory instruments implementing the EC directives still stand until they are superseded. The remaining instrument still in force is:
Part of Council Directive 92/41/EEC (ban on oral tobacco) is implemented in England by [UK Statutory Instrument 1992 No 3134](#) as The Tobacco for Oral Use (Safety) Regulations 1992

[First Review by the European Commission on the Tobacco Products Directive](#) (pdf)

July 2005

UK

[Voluntary agreement on the use of new additives in tobacco products](#)

Voluntary Agreement
In Force

Tobacco Additives

30 Sept 2002: New warnings on packs

31 Dec 2002: Picture specifications proposed by the Commission - delayed until late 2005

31 Dec 2002: Ingredients disclosure

30 Sept 2003: Branding – misleading descriptors etc banned

1 Jan 2004 : Max tar, nicotine, CO yields to apply

31 Dec 2004: Review of directive to be completed – see below

31 Dec 2004: Commission proposal for common ingredients list – delayed due to lack of agreement on data collection

1 Jan 2007: Max yields applied to exports

This directive was subject to a challenge by British American Tobacco over the proscription of descriptors such as 'mild' and 'light'. However, on 10 September 2002 an [opinion by the Advocate General](#) declared provisions contained in the directive as valid. [See press release](#). On 10 December 2002, [ECJ ruling C-491/01](#) deemed the banning of descriptors for tobacco products intended for the European market as valid. [See press release](#). Tobacco products for export, however, are exempt from the restrictions on descriptors.

The report makes the following observations:

Maximum tar/nicotine/CO yields: All 15 EU countries complied with the deadline. The accession countries did not request transitional periods for compliance.

Measurement of tar, nicotine and carbon monoxide levels: The Commission acknowledges that the use of machines to measure yields does not reflect actual smoker intake of these substances. However, the Commission is not proposing to revise the current standards until "solid evidence shows that better methods exist to replace them".

Labelling: Implementation overall is satisfactory but there have been reports of industry attempts to circumvent the legislation by attempting to hide the warnings, e.g. by the placing of cardboard covers or stickers over the warnings. However such practices are now limited.

Evidence suggests that the large warnings are having an impact, with smokers being more motivated to quit smoking. The warnings appear to have been particularly effective among 15-24 year olds.

Ingredients: There has been little progress in developing a proposal for a common list of ingredients. The Commission argues that the WHO should co-ordinate regulatory efforts through the Framework Convention on Tobacco Control.

Over 600 additives are allowed in the manufacture of tobacco products in the UK. Additives are controlled under a loose and decentralised regulatory framework.

The scrutiny of the additives rests with the Department of Health and its Technical Advisory Group (TAG).

The agreement also includes mutual recognition arrangements that **require** additives approved in other EU countries to be permitted in the UK. This is a major loophole.

A report - [Tobacco Additives: cigarette engineering and nicotine addiction](#) - provides a comprehensive overview of the various voluntary agreements, regulations and agencies involved in the control of additives in tobacco.

Smoking cessation	
Regulation	Description
England The National Health Service (General Medical Services) Regulations 1992 (amendment) Legislation In Force Terms of Service for Doctors	Paragraph 12 of Schedule 2 of this piece of legislation requires doctors to advise patients about the significance of diet, the use of tobacco, consumption of alcohol and the misuse of drugs. Wherever appropriate, doctors must advise against smoking as part of the service they provide to their patients.
England The National Health Service (General Medical Services) Regulations 2001 (amendment) Legislation In Force NRT on prescription on the National Health Service	On National No Smoking Day 2001, the public health minister Yvette Cooper announced that nicotine replacement therapies (NRT) such as patches, lozenges and gum were to be made available on prescription from local general practitioners. Prior to the announcement, NRT drugs were included in schedule ten of the General Medical Services, which lists drugs that GPs cannot prescribe. From 17 April 2001 in England and from May 1 2001 in Wales, nicotine replacement therapies were made available to the general public on prescription. The therapies are available to smokers aged over 18 years of age and to smokers under 18 years on the recommendation of a healthcare professional.
England The Medicines General Sale List Order 2001 (amendment) Legislation In Force Availability of NRT on the High Street	This amendment to the Medicines General Sales List altered the status of many nicotine replacement therapies from being a controlled drug available when supplied under the supervision of a pharmacist (Pharmacy only), to one available on the high street (General sales). These amendments came into force on 31 May 2001.
Back to Top Consumer protection	
Regulation	Description
EU Council Directive 92/59/EEC In Force Product Safety The EC directive was implemented in England by Statutory Instrument 1994 No. 2328 as The General Product Safety Regulations 1994.	General provisions set out by this directive could apply, in part at least, to tobacco products, although the regulations are not tobacco specific The regulations stipulate that no producer shall place a product on the market unless the product is a safe product. The status of these regulations as applied to tobacco is unclear.

Agriculture	
Regulation	Description
<p>EU Directory of Community legislation in force relating to Raw Tobacco In Force</p> <p>Common Agricultural Policy (CAP) and Tobacco Subsidies</p>	<p>Currently, the growth and cultivation of raw tobacco is governed by EU regulation and legislation under the Common Agricultural Policy (CAP). Tobacco is produced by several member countries, primarily Spain, Italy and Greece. Under the terms of CAP, producing countries are eligible to claim EU subsidies on tobacco crops. In 1998, €870m (£524m) worth of subsidies were paid out through CAP.</p> <p>The basic modus operandi of the CAP tobacco subsidy regime is set out in Regulation 2075/92 (as amended) with specific implementation in Regulation 2848/98, which introduced a series of reforms. The subsidy regime now pays according to three criteria – quantity produced, quality and price (previously there was a set payment per kilo). Farmers that produce higher quality receive higher subsidy payment. The system is a ‘deficiency payment’ arrangement in which premiums are paid to growers to compensate for the difference between standardised European production costs and world prices.</p> <p>Article 26 of Regulation 2075/92 as amended by Regulation 1636/98 requires a review of the tobacco subsidy regime. In April 2004, the Council of Agriculture Ministers agreed to a package of reform measures including the gradual phasing out of tobacco subsidies. The reform will lead to a decoupling of subsidies starting in 2006, to be completed by 2010. This means that subsidies will no longer be linked to production. From 2010, half of the cash currently destined for crop production will be used to fund wider rural development with the remainder being paid to farmers in the form of a single farm payment that does not encourage tobacco production.</p>
<p>Links Further links to relevant documents on the Common Agricultural Policy</p>	

European Union treaty and case law	
Regulation	Description
<p>EU Consolidated treaty establishing the European Union In Force</p> <p>Consolidated treaty establishing the European Community In Force</p>	<p>The European Union treaty was agreed at Maastricht in 1992, subsequently amended at Amsterdam (1997) and Nice (2000 – not in force).</p> <p>The European Union incorporates and reshapes the European Economic Community (established in the Treaty of Rome of 1957) and renames it the 'European Community'. This was also amended at Amsterdam and Nice.</p>
<p>EU Article 152 of the Treaty of the European Community In Force</p> <p>Public Health Policy</p>	<p>Public health in the treaty The fundamental weakness in EU tobacco policy is that the treaty article on public health (Article 152) does not allow binding EU legislation – directives or regulations – except in areas that do not apply to tobacco (blood products, human body parts etc).</p> <p>Public health legislation on tobacco regulation and promotion has been shoehorned in as 'single market' legislation under Article 95.</p> <p>Though Article 152 encourages public health measures, it explicitly does not permit harmonisation of laws of member states under this article:</p> <p><i>152.4(c) incentive measures designed to protect and improve human health, excluding any harmonisation of the laws and regulations of the Member States.</i></p> <p>This may not simply be an oversight - some member states are reluctant to give power to the EU by widening the scope of the treaty unless there is a benefit from pooling sovereignty – i.e. some cross border or international rationale for agreeing to be bound by a qualified majority decision of the member states. This is sometimes known as the subsidiarity principle.</p>

<p>EU Article 153 of the Treaty of the European Community In Force</p> <p>Consumer Protection Policy</p> <p>EU Green Paper on European Union Consumer Protection Policy statement</p> <p>Consultation document on future heading of Consumer Protection Policy</p>	<p>Consumer protection Like public health, consumer protection legislation is similarly constrained. Article 153 on consumer protection, promotes encouragement of consumer protection and requires it to be taken into account, but it requires the use of Article 95 on the single market for more concrete measures. It only allows legislation that is ancillary (see 3b) to support, supplement and monitor the policy pursued by the Member States.</p> <p>“1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests. 2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities. 3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through: (a) measures adopted pursuant to Article 95 in the context of the completion of the internal market; (b) measures which support, supplement and monitor the policy pursued by the Member States.”</p>
<p>EU Article 136 and 137 of the Treaty of the European Community In Force Social Chapter: Protection of workers</p>	<p>Workplace The directives on worker protection were written under what is now Article 136 & 137 of the Social Chapter of the Maastricht treaty.</p>

<p>EU Article 28 and Article 30 of the Treaty of the European Community In Force</p> <p>Quantitative Import and Export Policy</p> <p>EU Article 49 of the Treaty of the European Community In Force</p> <p>Freedom to provide cross border services</p>	<p>Trade-related challenges to public health measures The treaty is dominated by an emphasis on free trade and the single market. A particular concern is the possible use of Treaty provisions on free movement of goods and services (Article 28) to undo national public health legislation. For example, national advertising legislation could be challenged as a barrier to entry. Article 30 allows a public health defence <u>but</u> the burden of proof is on the public health authority to show the measure is 'proportionate' and not 'arbitrary discrimination' or a disguised restriction on trade between Member States'. A challenge to the Swedish law banning alcohol advertising has been brought before the ECJ using Article 28 and 30. An opinion by the Advocate General (Opinion case 405/98) concludes that there are circumstances where the treaty can be used to block national legislation...</p> <p>"A national rule banning the commercial advertising of alcoholic beverages directly to the general public constitutes a measure equivalent to a quantitative restriction on imports of such beverages, prohibited by Article 30 [now 28] of the EC Treaty, and a restriction on the freedom to provide cross-border advertising services, prohibited by Article 59 [now 49]. Such a rule may be justified by reason of its aim to protect the health and life of humans from the dangers of excessive consumption of alcohol, but only in so far as that aim cannot be achieved just as effectively by less restrictive measures. A ban which extends to commercial advertising in periodicals a significant part of whose subject-matter is lawfully devoted to alcoholic beverages is in principle unnecessary and ineffective in that regard, and thus incapable of such justification."</p>
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Appendix 6

About the smokefree law

Smoke-free Environments Act 1990

[The Smoke-free Environments Act](#) (the Act) was passed in 1990. The purpose of the Act was to:

- reduce the exposure of non-smokers to second-hand smoke
- regulate the marketing, advertising and promotion of tobacco products
- monitor and regulate the presence of harmful constituents in tobacco products and tobacco smoke
- establish a [Health Sponsorship Council](#) (the Health Sponsorship Council originally replaced tobacco sponsorship of sporting and cultural events. Now this requirement has passed, the HSC focuses on promoting health and healthy lifestyles through social marketing).

The Act:

- placed restrictions on smoking in workplaces
- required all workplaces to have a policy on smoking and to review that policy annually
- placed bans on smoking in public transport and certain other public places, and restricted smoking in cafes, restaurants and casinos
- regulated the marketing, advertising, and promotion of tobacco products and the sponsorship by tobacco companies of products, services and events
- banned the sale of tobacco products to people under the age of 16 years (raised to 18 years in 1998)
- provided for the control, and disclosure, of the contents of tobacco products.

Regulations have:

- regulated the size, placement and wording of labels and health warning messages on tobacco products, including the Maori warning message 'Ka mate koe i te kai hikareti' (smoking kills)
- required annual testing/returns and reports on 'harmful constituents' for classes of tobacco products.

About the smokefree law

Overview of the 2003 smokefree law changes

Changes to the law as a result of the 2003 Amendment Act included:

Workplaces

From 10 December 2004 smokefree restrictions were expanded so that all indoor workplaces became 100 percent smokefree, including offices, warehouses, factories, 'smoko' rooms, taxis, internal areas of trains and ships, prisons and travel premises such as terminals and passenger lounges.

Limited exceptions apply for some work vehicles and home-like environments such as individual prison cells, rest homes, hospitals, hotel rooms and residential care facilities.

Hospitality venues

From 10 December 2004 hospitality venues (bars, clubs, restaurants, cafés, casinos and gaming machine venues) were required to become 100 percent smokefree indoors (if they were workplaces, served alcohol or had a gambling venue licence).

Schools and early childhood centres

From 1 January 2004 schools and early childhood centres were required to be 100 percent smokefree, both indoors and outdoors, 24 hours a day, seven days a week.

Other early childhood centres that are on non-exclusive premises, such as creches on university grounds or playgroups using a church hall, are required to be smokefree when and where young children are present.

Volunteers

Volunteers are also protected from second-hand smoke exposure in indoor workplaces.

Under-18 sale and supply ban

It is an offence to sell or supply, in a public place, tobacco products, toy cigarettes or herbal smoking products to people under 18 years; retailers have a defence to under-age selling if they can prove they saw an evidence of age document (with photo ID) showing the buyer was at least 18 years old; and herbal smoking product retailers need signs informing the public that the under-18 sale of herbal smoking products is banned.

Repeat offenders of under-18 sale offences may be ordered by the courts not to sell any tobacco products for up to three months.

Vending machines

From 10 December 2004 vending machines became accessible only to staff of the premises, for example, by remote control (to restrict under-18 access to smoking products).

Consumer information/pictorial health warnings

Future regulations may impose stronger requirements for consumer information and warnings on the packages of smoking products.

This could include pictorial warnings on tobacco products showing their health effects, and improved information for smokers about the contents and health effects of tobacco products.

Display restrictions

From 10 December 2004 the retail display of tobacco products at each point of sale was limited to 100 packages and 40 cartons (unless the retailer is a specialist tobacconist), and limited to no more than two per brand display (within existing maximum size dimensions).

Tobacco products cannot be displayed on counter tops and should be at least one metre away from products that are marketed primarily for children, including all confectionery.

Point-of-sale warnings

From 10 December 2004 a prominent 'smoking kills' sign was required at each point of sale.

Co-packaging and discounts

From 10 December 2004 tobacco products could no longer be packaged with other products, such as lighters or radios, and from 10 December 2003 there was a technical clarification to the reduced charge/normal trade discount provision.

Manufacturer reports and returns

From February 2004 future regulations may require testing and annual reports, not only of all additives or constituents in tobacco products by class, but also their respective brands and brand variants.

From this date the Director-General of Health must also make annual tobacco returns information publicly available on a website and elsewhere; and from 10 December 2004 may require further testing of constituents in tobacco products.

Offences and fines

There are employer or proprietor offences for failing to take all reasonably practicable steps to prevent someone from smoking in an internal area (a maximum of \$400 for individual employers, and a maximum of \$4,000 for bodies corporate). Employers or proprietors are not liable for someone

smoking if they have taken all [reasonably practicable steps](#) to prevent it.

Individual smoking offences

The only individual smoking offence is for smoking on an aircraft.

Enforcement powers

Smokefree Officers gained limited powers to enter and inspect premises at a reasonable time, take photographs, inspect advertising or display material, and require some limited identifying information.

There is a fine for obstructing an enforcement officer exercising their powers or failing to provide the information required. The maximum fine is \$1000.

Herbal cigarettes

The smokefree law extends the existing provisions to cover herbal smoking products as well as tobacco in areas such as under-18 sale and supply, vending machine restrictions and future health warnings.

About the smokefree law**Table of provisions and commencement dates**

Smokefree law provisions	Came into effect
Smokefree indoor workplaces – all offices, warehouses, factories, work vehicles, etc Smokefree licensed premises/hospitality venues indoors – bars, pubs, clubs, restaurants, cafes, casinos, gaming venues	10 December 2004
100 percent smokefree schools and early childhood centres (indoors and grounds, 24 hours a day, 7 days a week)	1 January 2004
Under 18 limits: Prohibition against under-18 supply (in public) of tobacco products (including offence provisions) Prohibition against under-18 sale of toy cigarettes, tobacco and herbal smoking products (including offence provisions)	10 December 2003
Public notice (sign) for herbal product sellers stating that under-18 sale of herbal smoking product is banned and technical changes to discount/reduced charge provisions	10 December 2003
Requirements on tobacco manufacturers and importers to test products and provide annual returns may require more detail by brand breakdown in any future regulations	1 February 2004 (fixed date) /enforced from date in regulations
Director-General of Health is required to ensure returns and reports are publicly available on a website (note, this applies to 2004 returns and reports, which will not be received by the Ministry until 2005)	1 February 2004
Limited enforcement powers for smokefree officers	10 March 2004
Repeat offenders (of under-18 sale offences) may be ordered by the courts not to sell any tobacco products for up to three months	10 March 2004
Restrictions on retail display of tobacco products – max. 100 packages/40 cartons, 2 per type limit, no counter displays, no display near children's products, no co-packaging etc	10 December 2004
Restriction on the use of automatic vending machines	10 December 2004
Tobacco product controls: labelling and health messages must comply with any future regulations (list/quantity of harmful constituents, pictorial health warnings, leaflet/info in packages etc); and Director-General of Health may require future	10 December 2004 (enforced from date in

testing of tobacco product constituents	regulations)
Herbal smoking products can be included in future in regulations for labelling, health message and annual testing requirements	10 December 2004 (enforced from date in regulations)
Requirements on manufacturers and importers to meet prescribed limits on harmful constituents in smoking products may also apply to herbal smoking products in any future regulations	1 February 2005 (enforced from date in regulations)

About the smokefree law

Background to the 2003 smokefree law changes

The Smoke-free Environments Amendment Act 2003 was first introduced to Parliament by Tukoroirangi Morgan, MP, in 1999. Judy Keall, MP, introduced the SOP (No. 148), which made a number of significant changes to the Bill in 2001. Steve Chadwick, MP subsequently took charge of the Bill.

The Bill and SOP were referred to the Health Select Committee in 2001. The Committee considered 397 submissions on the Bill during 2001 and 2002 before reporting back to Parliament on 18 March 2003.

The Bill and SOP were consolidated into a single Bill, with the title Smoke-free Environments Amendments Bill. It was a combination of the following:

- Smoke-free Environments (Enhanced Protection) Amendment Bill 1999
- a Supplementary Order Paper (SOP) introduced by Judy Keall in 2001
- recommendations of the Health Select Committee following a process of public submissions and consultation 2001-2003.

[Click here for a copy of the Bill and the Health Select Committee report \(PDF, opens in new window\)](#), as at March 2003.

Between March 2003, when the Bill was reported back to Parliament, and November 2003, Parliament considered the Smoke-free Environments Amendment Bill, which passed into law on 3 December 2003, and received Royal Assent on 10 December 2003.

Hansard

You can read the [Hansard reports](#) of speeches made in the House in relation to the Smoke-free

Environments Amendment Bill. In 2003, debates on the Bill took place on Members' Days (Wednesdays) 25 June, 30 July, 13 August, 17 September, 18 October 2003 and 12 November 2003.

[Text of the Smoke-free Environments Amendment Bill 2003 \(PDF, opens in new window\)](#) and Health Select Committee Report on the Bill (March 2003).

The second reading of the Bill concluded on 12 November 2003. The following changes to the Bill were voted by Parliament during the Bill's second reading:

- removal of individual smoking offences provisions
- addition of a ban against the under-18 sale of toy cigarettes
- technical amendments to clarify some of the commencement and tobacco product display provisions.

The following amendments to the Bill were not accepted by Parliament during the Bill's second reading:

- exempted premises proposal to exempt about 200 named hospitality venues (mostly bars, pubs and taverns)
- ventilation proposal with a "minimum air quality standard" by 2006.

The Bill had a third reading on 3 December 2003 and received Royal Assent on 10 December, becoming the [Smoke-free Environments Amendment Act 2003](#).

Appendix 7

TOBACCO PRODUCTS CONTROL ACT

Act No. 83 of 1993

To prohibit or restrict smoking in public places; to regulate the sale and advertising of tobacco products in certain respects and to prescribe what is to be reflected on packages; and to provide for matters connected therewith.

Preamble

ACKNOWLEDGING that tobacco use-

- Is extremely injurious to the health of both smokers and nonsmokers and warrants, in the public interest, a restrictive legislation;
- Is a widely accepted practice among adults, which makes it inappropriate to ban completely;

REALISING that the association of smoking with social success, business advancement and sporting prowess through the use of advertising and promotion may have the particularly harmful effect of encouraging children and young people to take up smoking;

CONSIDERING that the extent of the effects of smoking on health calls for strong action to deter people from taking up smoking and to encourage existing smokers to give up smoking; and

RESOLVING to align the health system with the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens by discouraging the use, promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death.

1. Definitions

In this Act, unless the context otherwise indicates-

"advertisement"

In relation to any tobacco product, means any drawn, still or moving picture, sign, symbol, other visual image or message or audible message aimed at the public and designed to promote or publicise a tobacco product or to promote smoking behaviour and includes the use in any advertisement or promotion aimed at the public of a tobacco product manufacturer's company name where the name or any part of the name is used as or is included in a tobacco product trade mark, and "advertise" has a corresponding meaning;

"Constitution"

Means the Constitution of the Republic of South Africa, 1996 (Act No, 108 of 1996);

"Constituent"

In relation to any tobacco product, means nicotine, tar and any other constituent of a tobacco product or of tobacco smoke which the Minister may by notice in the *Gazette* declare to be a constituent for the purposes of this Act;

"Director-General"

Means the Director-General: Health;

"employed" or "employment"

Means employed or employment as an employee as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No, 75 of 1997);

"local authority"

Means any institution or body established by or under any law with a view to performing local government functions in respect of a particular area or region;

"Minister"

Means the Minister of Health;

"nicotine"

Means nicotine alkaloids;

"officer"

Means an officer in the Department of National Health and Population Development mentioned in section 5;

"organised activity"

- a) Means any activity or event- i) which the public attend or participate in; ii) which is organised for the purposes of entertainment, sport or recreation or for educational or cultural purposes; and iii) where a tobacco product, or brand name, trade mark, logo or company name in relation to a tobacco product, is used in the name of or portrayal of the activity or event; but
- b) Excludes any private activity or event arranged by a manufacturer, importer, distributor or retailer of a tobacco product where only its shareholders or its employees or their spouses or partners attend;

"package"

Means any packing, carton, wrapping or any other container in which tobacco products are generally sold by retail;

"prescribe"

Means prescribe by regulation under this Act;

"private dwelling"

- a) Means any part of- any room or apartment of a building or structure which is occupied as a residence; or
- b) any building or structure or outdoor living area which is accessory to, and used wholly or principally for, residential purposes;

"public place"

Means any indoor or enclosed area which is open to the public or any part of the public and includes a workplace and a public conveyance;

"smoke"

Means to inhale, exhale, hold or otherwise have control over any ignited tobacco product, weed or plant, and "smoked" and "smoking" have corresponding meanings;

"tar"

Means the anhydrous and nicotine-free condensate of the smoke of a tobacco product;

"this Act"

Includes a regulation made under this Act;

"tobacco product"

Means any product manufactured from tobacco and intended for use by smoking, inhalation, chewing, sniffing or sucking;

"trade mark"

Includes- any mark whether registered or registrable for trade purposes or any recognised version thereof that is likely to be taken as, or confused with, that trade mark; ii) certification trade mark or collective trade mark; and iii) 'trade mark' as defined in section 1 of the Trade Marks Act, 1993 (Act No, 194 of 1993); and

"workplace"

- a) Means any indoor or enclosed area in which employees perform the duties of their employment; and
- b) Includes any corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment; but
- c) Excludes any private dwelling, and any portion of an area mentioned in paragraph (a)

specifically designated by the employer as a smoking area and which complies with the prescribed requirements.

2. Control over smoking of tobacco products

1)

- a) The smoking of tobacco products in any public place is prohibited.
- b) Notwithstanding the provisions of subsection (1)(a), the Minister may by notice in the *Gazette* declare specified public places permissible smoking areas, subject to any conditions that may be specified in such notices.
- c) Notwithstanding the fact that a private dwelling is excluded from the definition of "workplace", if a private dwelling is used for commercial child care activities or for schooling the smoking of tobacco products in such dwelling or on the terrain of such dwelling is prohibited, except in an area of the private dwelling which is specifically designated by the employer, owner, tenant or possessor as a smoking area and which complies with the prescribed requirements.

2) The Minister may at the request of any local authority, but subject to subsection (3), grant any or all of his or her powers contemplated in subsection (1) to such local authority.

3) A power contemplated in subsection (1) shall not be granted to a local authority under subsection (2) in respect of-

- a) A public place owned by the State or which is occupied by officers or employees in the employment of the State; or
- b) Such other public places or particular kinds of public places as the Minister may determine by notice in the *Gazette*.

4) When a local authority issues regulations by virtue of subsection (2), it shall do so by notice in the *Official Gazette*.

5) The Minister may issue regulations prescribing conditions to which the exercise of a power by a local authority in terms of, subsection (2) shall be subject.

6) A local authority which has made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty and obligation to enforce the regulations in its area of jurisdiction.

7) A local authority which has not made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty and obligation to enforce any national regulations in connection therewith in its area of jurisdiction.

3. Advertising, sponsorship, promotion and required information in respect of packages of

tobacco products

1) No person shall-

- a) Advertise, including the use of tobacco trade marks, logos, brand names or company names used on tobacco products; or
- b) Use tobacco trademarks, logos, brand names or company names used on tobacco products for the purposes of advertising any organisation, service activity or event.

2) No manufacturer, importer, distributor or retailer of tobacco products shall-

- a) Organise or promote any organised activity that is to take place in whole or in part in the Republic;
- b) Make any financial contribution to any organised activity that is to take place, or is taking place, or has taken place in whole or in part in the Republic;
- c) Make any financial contribution to any person in respect of-
 - i. The organisation or promotion of any organised activity in the Republic by that person;
 - ii. The participation, by that person, in any organised activity that is to take place, or is taking place in whole or in part, in the Republic.

3) A retailer of tobacco products may post in accordance with the regulations passed in relation to this Act, signs at the point of sale that indicate the availability of tobacco products and their price.

4) No person shall sell or import for subsequent sale any prescribed tobacco product, unless-

- a) Such product is in a package;
- b) The package in which the tobacco product is sold bears the prescribed warning concerning the health hazards incidental to the smoking of tobacco products; and
- c) The quantities of the constituents present in the tobacco product concerned are stated on the package.

5) Notwithstanding the provisions of section 3, the Minister may, by regulations, provide for exemptions for unintended consequences or the phasing out of existing sponsorship or contractual obligations.

4. Prohibition of sale of tobacco products to persons under a2e of 16 years

1) No person shall sell or supply any tobacco product to any person under the age of 16 years, whether for his personal use or not.

- 2) [Subsection (2) deleted by s.6 of Act No. 12 of 1999].
- 3) [Subsection (3) deleted by s.6 of Act No. 12 of 1999]. 4A. Free distribution and reward prohibited

1) No manufacturer, distributor, importer or retailer of a tobacco product shall for free, or at a reduced price, other than a normal trade discount-

- a) Distribute any tobacco product; or
- b) Supply any tobacco product to any person for subsequent distribution. No person shall offer any gift; cash rebate or right to participate in any contest, lottery or game, to any person in consideration of the purchase of a tobacco product, or the furnishing of evidence of such a purchase.

5. Restrictions on use of vending machines

1) The sale of tobacco products from vending machines shall be restricted to places in which purchases from such machines are inaccessible to persons under the age of sixteen years.

2) It shall be the responsibility of any person during such time as he or she is responsible for or has control of the premises in which any vending machine is kept to ensure that no person under the age of sixteen years makes use of any such machine.

3) The Director-General may in writing direct the owner of the vending machine in question or the person in control thereof-

- a) To take such precautionary measures as are specified in the direction to prevent the vending machine being used by persons under the age of 16 years; or
- b) To remove the vending machine from the premises within the period specified in the direction.

4) [Subsection (4) deleted by s.8 of Act No. 12 of 1999].

6. Regulations

1) The Minister may make regulations regarding-

- a) The manner and form in which information contemplated in section 3 is to be reflected on the package of a tobacco product or in which it is to appear in any advertisement of such product;
- b) The manner or method of determining the quantities of hazardous constituents in tobacco products;
- c) The properties of a tobacco product, the claims in respect of such product and the representations in respect of the use thereof that may not appear in any advertisement;

- d) The returns, reports and other information to be furnished to the Director-General by manufacturers and importers of tobacco products;
 - e) Any other matter required or permitted to be prescribed in terms of a provision of this Act to achieve the objects of this Act.
- 2) Regulations made under subsection (1)(b) may prescribe for the determination of the quantities of hazardous constituents in tobacco products any manner or method set out in a publication which in the opinion of the Minister is generally recognized as authoritative.
- 3) The Minister shall, not less than three months before issuing any regulation under this Act, cause a draft of the regulation to be published in the *Gazette*, together with a notice declaring his intention to issue such a regulation and inviting interested persons to furnish him with any comments thereon or representations in connection therewith within a specified period.
- 4) The provisions of subsection (3) shall not apply in respect of-
- a) A regulation which, after the provisions of the said subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by him in pursuance of the notice published in terms of the said subsection;
 - b) Any regulation in respect of which the Minister is of the opinion that it is in the public interest that it be issued without delay.

7. Offences and penalties

- 1) Any person who contravenes or fails to comply with any notice issued in terms of section 2(1) shall be guilty of an offence and liable on conviction to a fine not exceeding R200 or to such penalties as may be determined.
- 2) Any person who contravenes or fails to comply with the provisions of section 4(1) or 5 shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to such imprisonment as may be determined.
- 3) Any person who contravenes or fails to comply with the provisions of section 3 or 4A or any notice issued in terms of section 3A shall be guilty of an offence and liable on conviction to a fine not exceeding R200 000 or to such imprisonment as may be determined.

8. Short title and commencement

- 1) This Act shall be called the Tobacco Products Control Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- 2) Different dates may under subsection (1) be fixed in respect of different provisions of this Act.

Appendix 8

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

VAN DIE REPUBLIEK VAN SUID_AFRIKA

*Registered at the Post Office as a Newspaper
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Vol. 406

CAPE TOWN, 23 APRIL 1999

No. 19962

KAAPSTAD, 23 APRIL 1999

OFFICE OF THE PRESIDENT
PRESIDENT

KANTOOR VAN DIE

No. 494.
April 1999

23 April 1999

No. 494.

23

It is hereby notified that the President has assented to the following which is hereby published for general information
No. 1999: Tobacco Products Control Amendment Act, 1999.

Hierby word bekend gemaak dat die president sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:-
No 12 van 1999: Wysigings wet op die Beheer van Tabakprodukte. 1999

Act No. 12, 1999 TOBACCO PRODUCTS CONTROL

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments
_____		Words underlined with a solid line indicate insertions in existing enactments

(English text signed by the President)
(Assented to 14 April 1999.)

ACT

To amend the Tobacco Products Control Act, 1993, so as to amend and insert certain definitions; to provide for the prohibition of advertising and promotion of tobacco products; to provide further, for the prohibition of advertising and promotion of tobacco products in relation to sponsored events; to prohibit the free distribution of tobacco products and the receipt of gifts or cash prizes in contests, lotteries or games to or by the purchaser of a tobacco product in consideration of such purchase; to provide for the prescription of maximum yields of tar, nicotine and other constituents in tobacco products; to increase fines; and to provide for matters connected therewith,

BE IT THEREFORE. ENACTED by the Parliament of the Republic of South Africa, as follows: —

Insertion of Preamble in Act 83 of 1993

1. The following preamble shall be inserted in the Tobacco Products Control Act, 1993 (hereinafter referred to as the principal Act); 5

“PREAMBLE

ACKNOWLEDGING that tobacco use—

is extremely injurious to the health of both smokers non-smokers and warrants, in the public interest, a restrictive legislation; 10

is a widely accepted practice among adults, which makes it inappropriate to ban completely;

REALISING that the association of smoking with social success, business advancement and sporting prowess through the use of advertising and promotion may have the particularly harmful effect of encouraging children and people to up smoking; 15

CONSIDERING that the extent of the effects of smoking on health calls for strong action to deter people from taking up smoking and to encourage existing smokers to give up smoking; and

RESOLVING to align the health system with the democratic values of the Constitution and 20

enhance and protect the fundamental of citizens by discouraging the use, promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death.”.

Amendment of section 1 of Act 83 of 1993

2. Section 1 of the principal Act is hereby amended--
(a) by the substitution for the definition of “advertisement” of the following definition:

“ ‘advertisement’, in relation to any tobacco product, means any [state ment, communication, representation or reference distributed to members of the public or brought to their notice in any other manner and which is intended]	5,
<u>drawn, still or moving picture, sign, symbol, other visual image or message or audible message aimed at the public and designed to promote [thesale of such] or publicise a tobacco product or [encourage the use thereof or draw attention to the nature, properties, advantages or uses thereof] to promote smoking behaviour and includes the use in any advertisement or promotion aimed at the public of a tobacco product manufacturer’s company name where the name or any part of the name is used as or is included in a tobacco product trade mark, and ‘advertise’ has a corresponding meaning;”;</u>	10
(b) by the insertion after the definition of “advertisement” of the following definition: “ ‘Constitution’ means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996),”	15
(c) by the substitution for the definition of “hazardous constituent” of the following definition: “ ‘constituent’, in relation to any tobacco product, means nicotine, tar and any other constituent of a tobacco product or of tobacco smoke which the Minister may by notice in the <i>Gazette</i> declare to be a constituent for the purposes of this Act;”;	20
(d) by the substitution for the definition of “Director-General” of the following definition: “ ‘Director-General’ means the Director-General: [National] Health [and Population Development] ;”;	25
(e) by the insertion after the definition of “Director-General” of the following definition: “ ‘employed’ or ‘employment’ means employed or employment as an employee as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of	30
(f) by the substitution for the definition of “Minister” of the following definition: “ ‘Minister’ means the Minister of [National] Health ;”;	35
(g) by the after the definition of “officer” of the following definition: “ ‘organised activity’—	
(a) means any activity or event—	40
(i) which the public attend or participate in;	
(ii) which is organised for the purposes of entertainment, sport or recreation or for educational or cultural purposes; and	
(iii) where a tobacco product, or brand name, trade mark, logo or company name in relation to a tobacco product, is used in the name of or portrayal of the activity or event; but	45
(b) excludes any private activity or event arranged by a manufacturer, importer, distributor or retailer of a tobacco product where only its shareholders or its employees or their spouses or partners attend;”;	
(h) by the insertion after the definition of “prescribe” of the following definition: “ ‘dwelling’ means any part of—	50
(a) any room or apartment of a building or structure which is occupied as a residence; or	
(b) any building or structure or outdoor living area which is accessory* to, and use wholly or principally for, residential purposes;”;	55
(i) by the substitution for the definition of “public place” of the following definition: “ public place ’ any indoor or enclosed area which is open to the public or any part of the public and includes <u>a workplace and a public conveyance</u> ;”;	60

- (j) by the substitution for the definition of “smoke” of the following definition:
 .. ‘smoke’ **[includes sniff, suck, or chew a tobacco product, and also have]** means to inhale, exhale, hold or otherwise have control over an ignited tobacco product [or any device containing an ignited tobacco product], weed or plant, and ‘smoked’ and have corresponding meanings.”; 5
- (k) by the substitution for the definition of “tobacco product” of the following definition:
 " ‘tobacco product’ means any product manufactured from tobacco and intended **[to be smoked]** for use by smoking, inhalation, chewing, sniffing or sucking.”; 10
- (l) by the insertion after the definition of “tobacco product” of the following definition:
 “**trade mark**” includes–
- (i) any mark whether registered or registrable for trade purposes or any recognised version thereof that is likely to be taken as, or confused with, that trade mark; 15
- (ii) certification trade mark or collective trade mark; and
- (iii) ‘trade mark’ as defined in section of the Trade Marks Act, 1993 (Act No. 194 of 1993);” 20
- (m) by the insertion after the definition of “trade mark” of the following definition:
 “**work place**”–
- (a) means any indoor or enclosed area in which employees perform the duties of their employment; and 25
- (b) includes any corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment; but
- (c) excludes any private dwelling, and any portion of an area mentioned in paragraph (a) specifically designated by the employer as a smoking area and which complies with the prescribed requirements.”. 30
- Amendment of section 2 of Act 83 of 1993**
3. Section 2 of the _____ principal Act is hereby amended
- (a) by the substitution for subsection (1) of the following subsection: “(1)(a), The smoking of tobacco products in any public place is prohibited. 35
- (b) Notwithstanding the provisions of subsection (1)(a), the Minister may by notice in the Gazette declare specified public places permissible smoking areas, subject to any conditions that may be specified in such notices. 40
- (c) Notwithstanding the fact that a private dwelling is excluded from the definition of “workplace”, if a private dwelling is used for commercial child care activities or for schooling the smoking of tobacco products in such dwelling or on the terrain of such dwelling is prohibited, except in an area of the private dwelling which is specifically designated by the employer, owner, tenant or possessor as a smoking area and which complies with the prescribed requirements.”; 45
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) The Minister may at the request of any local authority but subject to subsection (3), grant any or all of his or her powers contemplated in subsection (1) to such authority.”; 50
- (c) by the insertion after subsection (5) of the following subsections:
“(6) A local authority which has made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty and obligation to enforce the regulations in its area of jurisdiction, (7) A local authority which has not made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty obligation to enforce any national regulations in connection therewith in its area of jurisdiction.”. 55

Substitution of section 3 of Act of 1993

4. The following section is hereby substituted for section 3 of the principal Act:

“Advertising, sponsorship, promotion and required information in respect of packages of tobacco products

- | | | |
|-----|--|----|
| 3. | (1) No person shall— | 5 |
| | (a) advertise, including the use of tobacco trade marks, logos, brand names or company names used on tobacco products; or | |
| | (b) use tobacco trade marks, logos, brand names or company names used on tobacco products for the purposes of advertising any organisation, service activity or event. | 10 |
| (2) | No manufacturer, importer, distributor or retailer of tobacco products shall— | |
| | (a) organise or promote any organised activity that is to take place in whole or in part in the Republic; | 15 |
| | (b) make any financial contribution to any organised activity that is to take place, or is taking place, or has taken place in whole or in part in the Republic; | |
| | (c) make any financial contribution to any person in respect of— | |
| | (i) the organisation or promotion of any organised activity in the Republic by that person; | 20 |
| | (ii) the participation, by that person, in any organised activity that is to take place, or is taking place in whole or in part, in the Republic. | |
| (3) | A retailer of tobacco products may post in accordance with the regulations passed in relation to this Act, signs at the point of sale that indicate the availability of tobacco products and their price. | 25 |
| (4) | No person shall sell or import for subsequent sale any prescribed tobacco product, unless— | |
| | (a) such product is in a package; | |
| | (b) <i>the</i> package in which the tobacco product is sold bears the prescribed warning concerning the health hazards incidental to the smoking of tobacco products; and | 30 |
| | (c) the quantities of the constituents present in the tobacco product concerned are stated on the package. | |
| (5) | Notwithstanding the provisions of section 3, the Minister may, by regulations, provide for exemptions for unintended consequences or the <u>phasing out of existing sponsorship or contractual obligations.</u> ”. | 15 |

Insertion of section 3A in Act 83 of 1993

5. The following section is hereby inserted after section 3 of the principal Act:

“Maximum yields of tar and other constituents in a tobacco product

3A.	The Minister may, by notice in the <i>Gazette</i> , declare the maximum permissible levels of tar, nicotine and other constituents which tobacco products may contain and the <u>maximum yield of any such substance that may be obtained therefrom.</u> ”.	40
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Amendment of section 4 of Act 83 of 1993

6. Section 4 of the principal Act is hereby amended by the deletion of subsection (2) and subsection (3).

Insertion of section 4A in Act 83 of 1993

7. The following section is hereby inserted after section 4 of the principal Act:

“Free distribution and reward prohibited

4A. (1) No manufacturer, distributor, importer or retailer of a tobacco product shall for free, or at a reduced price, other than a normal trade discount—

- (a) distribute any tobacco product; or
- (b) supply any tobacco product to any person for subsequent distribution.

(2) No person shall offer any gift, cash rebate or right to participate in any contest, lottery or game, to any person in consideration of the purchase of a tobacco product, or the furnishing of evidence of such a purchase.”.

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Amendment of section 5 of Act 83 of 1993

8. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The sale of tobacco products from vending machines shall be restricted to places in which purchases from such machines are inaccessible to persons under the age of sixteen years.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) It shall be the responsibility of any person during such time as he or she is responsible for or has control of the premises in which any vending machine is kept to ensure that no person under the age of sixteen years makes use of any such machine.”;

(c) by the deletion of subsection (4).

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Substitution of section 7 of 83 of 1993

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9. The following section is substituted for section 7 of the principal Act:

“Of fences and penalties

7. (l) Any person who contravenes or fails to comply with any notice issued in terms of section 2 (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R200 or to such penalties as may be determined.

(2) Any person who contravenes or fails to comply with the provisions of section 4(1) or 5 shall be guilty of an and liable on conviction to a fine not exceeding R10 000 or to such imprisonment as may be determined.

(3) Any person who contravenes or fails to comply with the provisions of section 3 or 4A or any notice issued in terms of section 3A shall be guilty of an offence and liable on conviction to a fine not exceeding R200 000 or to such imprisonment as may be determined.”.

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Extension and application of Act 83 of 1993

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10. The Tobacco Products Control Act, 1993, and all amendments thereof apply throughout the Republic.

Short title and commencement

11. (1) This Act be called the Tobacco Products Control Amendment Act, 1999, and shall come into operation on a date fixed by the President by proclamation in the 45 *Gazette*.

(2) Different dates may be fixed in respect of different provisions of this Act.

Appendix 9

REPUBLIC OF SOUTH AFRICA

**TOBACCO PRODUCTS CONTROL
AMENDMENT BILL**

(As introduced)

(Minister of Health)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Tobacco Products Control Act, 1993, so as to insert definitions of 'brand element', 'composition', 'distribute', 'emission', 'manufacturer', 'promotion', 'public conveyance' and 'vending machine'; to amend definitions of 'advertisement', 'package', 'public place' and 'tobacco product'; to provide for the enforcement of national regulations; to prohibit and restrict sales to and by minors; to restrict tobacco sales from vending machines; to prohibit the tax-free and duty-free sale of tobacco products; to provide measures to prevent illicit trade in tobacco products; to increase the penalties; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of the Preamble

1. The Preamble of the Tobacco Products Control Act, 1993 (hereinafter referred to as the "principal Act"), is hereby amended by the substitution for the Preamble of the following:

"Preamble

ACKNOWLEDGING that tobacco use-

is extremely injurious to the health of both smokers or non-smokers and warrants, in the public interest, a restrictive legislation;

is a widely accepted practice among adults, which makes it inappropriate to ban completely;

"'emission' means any substance or combination of substances that is produced as a result of a tobacco product being lit;"

have the particularly harmful effect of encouraging children and young people to take up smoking;

CONSIDERING that the extent of the effects of smoking on health calls for strong action to deter people from taking up smoking, to protect people, especially young people from the harmful effects of tobacco products and to encourage existing smokers to give up smoking; and

RESOLVING to align the health system with the democratic values of the Constitution and the international Framework Convention of Tobacco Control and to enhance and protect the fundamental rights of citizens by discouraging the use, promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death;”.

Amendment of section 1 of Act 83 of 1993

2. Section 1 of the Tobacco Products Control Act, 1993 (hereinafter referred to as the “principal Act”), is hereby amended by the -

(a) substitution for the definition of “advertisement” of the following definition:

“ **‘advertisement’**, in relation to any tobacco product means any drawn, still or moving picture, sign, symbol, brand element, other visual image or message or audible message aimed at the public and designed to promote or publicise a tobacco product or has the effect of promoting or publicising a tobacco product or to promote smoking behaviour **[and includes the use in any advertisement or promotion aimed at the public of a tobacco product manufacturer’s company name where the name or any part of the name is used as or is included in a tobacco product trade mark,]** and includes product stacking and product displays of any kind or size, and ‘advertise’ has a corresponding meaning;”;

(b) insertion after the definition of “advertisement” of the following definitions:

“ **‘brand element’** includes the brand name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognizable colour or pattern of colours, or any other indicia of product identification identical or similar to, or identifiable with those used for any brand tobacco product;”;

“ **‘composition’** refers to the content, arrangement or combination of substances included in the processing and manufacture of tobacco products;”;

- (c) insertion after the definition of “employed” or “employment” of the following definitions:

“ ‘**manufacturer**’ includes any entity that is associated with the manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer;”;

- (d) substitution for the definition of “package” of the following definition:

“ ‘**package**’ means the container, receptacle or wrapper in which tobacco products are sold, supplied or distributed;”;

- (e) insertion after the definition of “private dwelling” of the following definitions:

“ ‘**promotion**’ is the practice of fostering awareness of and positive attitudes towards a tobacco product, brand or manufacturer for the purpose of selling the tobacco product or encouraging tobacco use, through various means including direct advertisement, discounts, incentives, rebates, free distribution, entertainments, organised activities, questionnaires or surveys, promotion of brand elements by means of related events and products through any public medium of communication including cinematographic film, television production, radio production or the Internet, and ‘promote’ has a corresponding meaning;”;

“ ‘**public conveyance**’ includes any commercial or chartered aircraft, ship, boat, train, bus, mini-bus or taxi;”;

- (f) substitution for the definition of “public place” of the following definition:

“ ‘**public place**’ means any indoor, [or] enclosed or semi-enclosed area which is open to the public or any part of the public, and includes a workplace and a public conveyance as well as the area within five metres of any doorways or entrances to the public place, workplace or public conveyance;”;

- (g) the insertion after the definition of “public place” of the following definition:

“ ‘**sell**’ in relation to this Act means to sell, offer to sell, expose for sale, distribute, give, supply, exchange, convey, consign, deliver, furnish, or transfer possession for commercial purposes, or offer to do so, whether for a fee or other consideration or as a sample, gift, prize, bonus or otherwise without charge, and ‘sale’ has a corresponding meaning;”;

- (h) substitution for the definition of “tobacco product” of the following definitions:

“ ‘**tobacco product**’ means any product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves, and including cigarette papers, tubes and filters;”;

- (i) insertion after the definition of “trade mark” of the following definition:“

‘vending machine’ means any means of distribution of tobacco products that is not monitored in the prescribed manner by a human being.”.

Amendment of section 2 of Act 83 of 1993

3. Section 2 of the principal Act is hereby amended by-

- (a) by the substitution for subsection (2) of the following subsection:

“(2) The Minister may by notice in the *Gazette* prohibit or restrict smoking in specified outdoor public spaces where persons are likely to congregate within close proximity to one another or where smoking may pose a fire or other hazard.”;

(b) the substitution for subsection (3) of the following subsection:

“(3) A municipality shall have the power, duty and obligation to enforce this Act and the regulations made in terms thereof in its area of jurisdiction.”;

(c) the substitution for subsection (4) of the following subsection:

“(4) An employer, owner, lessee or person in control of a public place or specified outdoor space shall, in accordance with regulations made in terms of this Act, post signs informing employees and the public of the prohibitions on smoking.”;

(d) the substitution for subsection (5) of the following subsection:

“(5) The Minister may make regulations-

(a) prescribing the location, content, size and format of any signs required in terms of this Act; and

(b) generally as needed to carry out this section.”;

(e) the substitution for subsection (6) of the following subsection:

“(6) All public places, workplaces and public conveyances and any outdoor spaces designated as non-smoking areas in terms of this Act shall post signs, in accordance with the regulations.”;

(f) the substitution for subsection (7) of the following subsection:

“(7) Children under the age of 18 years shall not be permitted in a permissible smoking area.”.

Amendment of section 3 of Act 83 of 1993

4. Section 3 of the principal Act is hereby amended by-

(a) the substitution for the heading of section 3 of the following heading:

“Advertising, sponsorship, promotion and distribution of tobacco products and [required] information that is required in respect of [packages] the packaging and labelling of tobacco products.”.

(b) the substitution for subsection (1) of the following subsection:

“(1) No person shall advertise or promote or cause to advertise or promote by any other person, a tobacco product or a tobacco product-related brand element through direct or indirect means, including through sponsorship of any organization, event, service, physical establishment, programme, project, bursary, scholarship or any other vehicle of any kind.”;

(c) the insertion after subsection (2) (c) of the following subsection:

“(d) make any financial contribution to any person in respect of any organization, event, service, physical establishment, programme, project, bursary scholarship or any other vehicle of any kind.”;

(d) the substitution for subsection (3) and subsection (4) of the following subsections:

“(3) No person shall sell or offer to sell tobacco products except in a package containing the quantities or number of units prescribed by regulation.

(4) Notwithstanding any regulation made under this Act, no person shall sell or offer to sell tobacco products in the following places:

(a) health institutions, including hospitals, pharmacies and clinics; more than 50% of the learners are under the age of 18 years.”;

(b) any educational or training institutions, including primary and secondary schools, and educational institutions where

(e) the insertion after **subsection (5)** of the following subsections:

“(6) No person shall sell or offer to sell a tobacco product unless it is hidden from view of the general public at the point of sale, except where the sole purpose of the retailer is to sell tobacco products.

(7) Notwithstanding subsection (6), retailers may post, in accordance

with regulations passed in terms of this Act, a notice indicating that tobacco products are available for sale, the specific brands available for sale, and their

respective prices, provided that brand elements other than the brand names are displayed.

not

(8) No person shall sell or offer to sell a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it.

(9) No person shall sell or offer to sell tobacco products at retail unless signs bearing prescribed health warnings and other prescribed information

are posted at the point of sale in accordance with regulations passed in terms of this Act.

(10) No person shall sell, offer to sell, supply or distribute to the public or any member of the public tobacco products through direct offers, the

postal services or the Internet.

(11) No person shall, at any place or premises in which tobacco or tobacco-related products are sold at retail, display any sign concerning the legal

age at which tobacco products may be purchased unless the sign is consistent with the regulations made in terms of this Act.

(12) No person shall manufacture, distribute, or import a tobacco product unless the package containing it displays, in the prescribed form and

manner, including through an enclosed leaflet if prescribed, the information

required by the regulations about the product and its emissions, about the health hazards and health effects arising from the use of the product or from its

emissions, other health related messages such as, inter alia, advice on how to quit

smoking, and markings designed to facilitate efforts to identify illegally manufactured or distributed tobacco products or products on which tax has not

been paid and the messages may be in the form of pictures or pictograms.

(13) No person shall package or label a tobacco product in any way that is false, misleading, deceptive or likely to create any erroneous, deceptive

or misleading impression about its characteristics, properties, health effects, toxicity, composition, merit, safety, hazards or emissions, including any term,

descriptor, trademark, figurative or other sign that directly or indirectly creates

that impression that a particular tobacco product is less harmful than another

tobacco product, and this includes, inter alia, terms such as “low tar”, “light”, “ultra-light”, or mild.

(14) Any requirements arising from the above-mentioned clauses do not relieve a manufacturer or retailer of further legal obligations or other

liabilities in terms of any other law to warn consumers of the risks of using tobacco products.

(15) The Minister may make regulations in terms of the objects of the Act for purposes of achieving the objects of this Act:

- (a) regarding the content and format of information described in subsection 12 of this Act that must appear on packages and in leaflets;
- (b) regarding information that may not appear on packages or in leaflets;
- (c) prescribing quantities of tobacco to be sold in a single package;
- (d) prescribing places where tobacco products may not be sold;
- (e) prescribing notices and signage at points of sale; and
- (f) generally as needed to carry out this section of this Act.”.

Amendment of section 3A of Act 83 of 1993

5. Section 3A of the principal Act is hereby amended by the substitution for section 3A of the following section:

“3A Product Regulation

- (1) No person shall manufacture, sell, or import a tobacco product except in compliance with this Act and regulations made in terms of this

Act.”

- (2) Every manufacturer and importer of a tobacco product shall provide the Minister, in the prescribed manner and within the prescribed time prescribed information about the product and its emissions as required by the regulations.

- (3) The Minister may make regulations:

- (a) establishing standards for the manufacture of tobacco products, including
 - (i) prescribing the amount of substances that may be contained in the product or its emissions;
 - (ii) prescribing substances that may not or may not be added to tobacco products; and
 - (iii) prescribing product design standards to meet the health and safety objectives of the Act.
- (b) prescribing test methods, including methods to assess conformity with the standards;
- (c) prescribing information that manufacturers and importers must provide to the Minister or the public about tobacco products and their emission, including sales data on product promotion and information on product composition, ingredients, hazardous properties and brand elements;
- (d) generally as needed to carry out this section of this Act.”.

Amendment of section 4 of Act 83 of 1993

6. Section 4 of the principal Act is hereby amended by-

- (a) the substitution for the heading of section 4 of the following heading:

“4 Prohibition of sale of tobacco products to and by persons under the age of [16] 18 years.”.

(b) the substitution for subsection (1) of the following subsection:

“(1) No person shall sell or supply any tobacco product to any person under the age of [16] 18 years [, **whether for his personal use or not**].”.

(c) The insertion after subsection (1) of the following subsections:

“(2) No person under the age of 18 years shall sell or offer to sell tobacco products.”

“(3) It shall not be a defence to subsection (1) that the person appeared to be 18 years old or older.”

Amendment of section 5 of Act 83 of 1993

7. Section 5 of the principal Act is hereby amended by-

(a) the substitution for the heading of section (5) of the following heading:

“ Restriction on [use of vending machines] specific forms of the sale of tobacco products”

(b) the substitution for subsection (1) of the following subsection:

“(1) The sale of tobacco products [**from**] through vending machines shall be restricted [**to places in which purchases from such machines are inaccessible to persons under the age of sixteen years**] and the Minister may make regulations regarding the sale of tobacco products through vending machines”.

(c) the substitution for subsection (2) of the following subsection:

“(2) The sale of tax- and duty- free tobacco products shall be prohibited within a period of three months after the coming into operation of this Act .”.

(d) the deletion of subsection (3)

Amendment of section 6 of Act 83 of 1993

8. Section 6 of the principal Act is hereby amended by-

(a) the substitution for subsection (1) of the following subsection:

“(1) In addition to the regulations specified in this Act, the Minister may make regulations regarding any matter required or permitted to be prescribed in terms of a provision of this Act, or any regulations that may reasonably be prescribed in order to achieve the objects of this Act.”.

(b) the deletion of subsection (2).

(c) the substitution for subsection (3) of the following subsection:

“(3) The Minister shall, not less than [**three months**] one month before issuing any regulations under this Act, cause a draft of the regulation to be published in the *Gazette*, together with a notice declaring his or her intention to issue such regulation and inviting interested persons to furnish him or her with any comments thereon or representations in connection therewith within a specified period.”.

Amendment of section 7 of Act 83 of 1993**9.** Section 7 of the principal Act is hereby amended by-

(a) the substitution for subsection (1) of the following subsection:

“(1) Any person who contravenes section 2(1) or fails to comply with any notice issued in terms section 2(1) shall be guilty of an offence and liable on conviction to a fine not exceeding [R200] R20 000 or to such penalties as may be determined for the first offence, and in the case of a any subsequent offences to a fine of not less than R20 000 and not more than R 100 000 or such penalties as may be determined;”.

(b) the substitution for subsection (2) of the following subsection:

“(2) Any person who contravenes or fails to comply with any provisions of sections 4(1) or 5(1) or fails to comply with any notice issued in terms section 4(1) shall be guilty of an offence and liable on conviction to a fine not exceeding [R10 000] R50 000 or such [imprisonment] penalties as may be determined for the first offence, and in the case of a any subsequent offences to a fine of not less than R50 000 and not more than R 150 000 or such penalties as may be determined;”.

(c) the substitution for subsection (3) of the following subsection:

“(3) Any person who contravenes or fails to comply with the provisions of section 3, 3A or 4A or any notice issued in terms of section 3, 3A or 4A shall be guilty of an offence and liable on conviction to a fine not exceeding [R200 000] R500 000 or to such [imprisonment] penalties as may be determined for the first offence, and in the case of a any subsequent offences to a fine of not less than R500 000 and not more than R 900 000 or such penalties as may be determined;”.

(d) the insertion after subsection (3) of the following subsections:

“(4) Any person who contravenes or fails to comply with any provisions of sections 5(2) shall be guilty of an offence and liable on conviction to a fine not exceeding R250 000 or such penalties as may be determined for the first offence, and in the case of a any subsequent offences to a fine of not less than R250 000 and not more than R 700 000 or such penalties as may be determined.

(5) Any person found guilty of smoking in a place where smoking is prohibited shall be liable to a fine of not less than R300 and not more than R 500 for the first offence, and of not less than R500 and not more than R1 000 for subsequent offences;”.

10. Transitional arrangements

(1) Any notice or regulation issued by the Minister prior to the coming into operation of this Act shall remain in force until amended, repealed or replaced by a notice or regulation made by the Minister in terms of this Act.

11. Short title and commencement

(1) This Act shall be called the Tobacco Products Control Amendment Act, 2003, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed in respect of different provisions of this Act.

Appendix 10**SUBMISSIONS ON THE PROPOSED TOBACCO PRODUCTS CONTROL AMENDMENT BILL, 2004**

1. The Tobacco Institute of South Africa ("TISA") represents the growers and manufacturers of tobacco products in South Africa.
2. TISA is concerned about the motivation for and content of the proposed Tobacco Products Control Amendment Bill, 2004 ("the draft Bill"), which was published for public comment on 17 October 2003.
3. The draft Bill, if enacted, will over-regulate the tobacco industry to such an extent that its important contribution to the economy and the country will be negated. Amongst other things, the draft Bill will make it impossible for tobacco manufacturers to communicate with consumers of tobacco products, make it very difficult for consumers to receive information concerning tobacco products, outlaw corporate social responsibility programmes by companies across the tobacco products supply chain and deprive manufacturers of a number of well known brands and trade marks. If enacted, the draft Bill may result in the proliferation of illegal tobacco products.

The economic and social importance of the tobacco industry

4. Tobacco is grown in four provinces in South Africa: Eastern Cape, Limpopo, Mpumalanga and North West. There are 630 tobacco farmers. They employ approximately 46 000 workers, who in turn have approximately 200 000 dependants. A further 2 400 people are employed by the tobacco co-operatives, all of which are owned by the farmers and are involved in community development, providing facilities such as clinics and schools.
5. Each year an average of 30 million kilograms of tobacco valued at R800 million is produced by South Africa's tobacco farmers. About 60% is exported. A range of tobacco products, including cigarettes, are manufactured in South Africa. Others, such as cigars, are imported. Approximately 3 000 people are employed in the South African tobacco manufacturing sector, which contributes more than R6 billion annually in VAT and excise duties alone. This contribution excludes income tax.
6. Tobacco retailing is handled by approximately 345 wholesalers, 55 000 formal retailers and 60 000 informal traders.
7. The tobacco industry has been established in this country for many years and has consistently worked closely with government agencies such as the South African Revenue Service (through the Tobacco Compliance Task Group) in combating the illegal tobacco trade, and with the Departments of Finance, Agriculture and Trade and Industry.

8. The tobacco industry is involved in a number of black economic empowerment projects. For example, it initiated the Hereford project at Groblersdal, the aim of which is to establish small-scale black tobacco farmers. The project, which is a joint venture between the tobacco industry, the Government and Eskom, has involved the provision of suitable land and the construction of an irrigation dam and irrigation facilities. Other projects currently under investigation include ones at Swartkoppies and Pella.
9. The tobacco industry also makes significant social investments in the areas of HIV/Aids awareness, community upliftment, black economic empowerment, crime prevention and academic bursaries. For example, this year, British American Tobacco South Africa, which is the largest manufacturer of tobacco products in South Africa, made social investments of more than R36 million. This includes funding for 50 university students who have received BATSA bursaries.

The dangers of over-regulation

10. Given that there are real risks associated with tobacco use, TISA acknowledges that tobacco-use should be regulated to further the government's primary objectives of reducing the incidence of smoking and reducing the health impact of tobacco use.
11. In this regard TISA supports the increasing endeavours to protect young people from the harmful effects of tobacco products. Long before the proposed amendment aimed at increasing from 16 to 18 years the age limit in respect of the sale of tobacco products to or by minors (the proposed new section 4), TISA took proactive steps in this direction. Through its members, it launched a retail awareness programme in March this year to raise awareness among retailers about the tobacco industry's stance on smoking by people under the age of 18. Material was distributed to more than 18 000 retailers advising them that no tobacco products should be sold to customers under the age of 18.
12. Restrictive regulation is however not the only way of achieving those primary objectives. Sensible regulation should be combined with sound scientific research, public health education and public health campaigns aimed at such matters as ensuring that the public is appropriately informed of the risks of smoking.
13. The tobacco industry contributed constructively to the debates leading to the 1993 Tobacco Products Control Act, the substantial 1999 amendments to it and the regulations made under it. The industry has consistently complied with this legislation and it regards the existing regulatory measures as sufficient to achieve the government's objectives.
14. TISA is very concerned that if the draft Bill is enacted, it will have a dramatic negative impact on the legal tobacco industry – thereby threatening jobs and the industry's contributions to the economy, the national treasury and society at large – without significantly furthering the government's objectives.

15. The draft Bill may even undermine the government's objectives. One of the effects of the draft Bill will be to force the sale of tobacco products literally "under the counter". The importance of publicly distinguishing the legal, visible tobacco trade from the illicit trade cannot be overstated. If stock remains hidden it will be very difficult to enforce tax and anti-counterfeit laws and the public will be less able to distinguish between the legal and illegal trade.
16. The incidence and adverse consequences of illegal trafficking in tobacco products should not be underestimated. Cigarettes are normally smuggled in 6 metre and 12 metre containers, which translates into 5 million and 10 million units of cigarettes respectively. At the current excise rates, the potential illegal gains from illegal trafficking amount to R1.9 million (excise only) per container. It is estimated that between 1.2 and 2.4 billion cigarettes are smuggled into South Africa each year, with a total excise loss of up to R466 million. Every year British American Tobacco SA conducts a general consumer survey into the illicit trade in cigarettes. Of those smokers that were interviewed, 65% confirmed that contraband (i.e. smuggled and counterfeit) cigarettes were generally cheaper and 82% agreed that contraband cigarettes were easily accessible.
17. TISA is concerned that the draft Bill will facilitate and encourage the expansion of the illegal trade and the associated criminal activities that invariably accompany it, including tax avoidance, disregard for the statutory public health warnings, etc.

The World Health Organisation Framework Convention of Tobacco Control

18. On 21 May 2003 the World Health Organisation ("WHO") adopted a "Framework Convention on Tobacco Control" ("the Convention"). The Convention is however not yet in force. Article 36 of the Convention provides that that will occur 90 days after forty countries have ratified the Convention, which has not yet occurred. Moreover, South Africa has signed the Convention, but has not ratified it. For ratification, section 231(2) of the Constitution requires a resolution of both the National Assembly and the National Council of Provinces. South Africa will become a party to the Convention only if it ratifies it.
19. The draft Bill wrongly presumes that the Convention is in force and that South Africa has ratified it. This is apparent from paragraphs 1 and 2.1 of the memorandum on its objects ("the Memorandum") and the insertion of a reference to the Convention in the last paragraph of the Preamble to the Act.
20. As a result, the draft Bill wrongly presumes that it is open to Parliament to enact parts of the Convention into South African law. Section 231(4) of the Constitution however requires that the Convention first be in force and ratified by South Africa before that is done. Parliament cannot now be asked to enact what is a lifeless instrument both internationally and nationally. With specific reference to ratification, the Constitution requires that Parliament be given an opportunity to debate and decide on whether or not to ratify the Convention as it stands (i.e.

without any amendments), before being asked to pass legislation enacting parts of it into South African law.

21. The Convention contains provisions that, if implemented in South Africa, will have serious adverse impacts on the economy and employment. For example, article 17 is aimed at the abolition of tobacco farming, which in many areas of the country is the most viable crop option.

The proposed new point of sale restrictions

22. Currently, section 3(3) of the Act, read with the point of sale regulations (Government Notice R976 of 29 September 2000), allows a retailer to place a sign at the point of sale indicating the availability and price of tobacco products. The sign must be placed within one metre of the point of sale, be at most one square metre in size and contain a prescribed health message (e.g. "SMOKING CAN KILL YOU") as well as the following statement at the top of the sign and across its full width in letters that are at least 2cm high and 1,5cm wide: "WE CANNOT, BY LAW, SELL TOBACCO PRODUCTS TO ANYONE UNDER THE AGE OF 16 YEARS".
23. Subject to those restrictions, the point of sale signs may include tobacco trade-marks and other tobacco product identifiers. In addition, retailers may display tobacco products, as is commonly done at "cigarette counters" in supermarkets or behind the tills in cafes. In this way, the current legal regime balances the aim of curbing business activities that promote tobacco products against the right to distinguish various tobacco products from each other as part of the legitimate inter- and intra-brand competitive market in South Africa.
24. The draft Bill contains drastic new point of sale restrictions. It proposes that all retailers, other than tobacconists, be required to hide tobacco products from view of the general public at the point of sale (the proposed new section 3(6)). It also proposes that the point of sale signs currently permitted be replaced with signs indicating only the names of the brands and the prices of the tobacco products for sale; no tobacco trade-marks and other tobacco product identifiers will be permitted (the proposed new section 3(7)). In addition, it proposes that retailers be required to display at the point of sale further signs bearing prescribed health warnings and other prescribed information (the proposed new section 3(9)). Finally, it proposes that tobacco sellers be prohibited from creating displays that permit people to handle tobacco products before paying for them (the proposed new section 3(8)).
25. The proposed new restrictions amount to a virtual ban on the display of tobacco trade-marks and other tobacco product identifiers at retail outlets, other than tobacconists. The ban on tobacco advertising (discussed below) means that currently the display of tobacco products at the point of sale offers the only method by which manufacturers can publicly distinguish their products from one another and from those of their competitors. Now, even simple reminders of package appearance at points of sale will be banned. The proposed new restrictions will therefore make it virtually impossible for manufacturers to compete for market share and for consumers to distinguish one product from another.

26. In addition, the proposed new measures will be an unreasonable barrier to entry for newcomers to the manufacturing market. They will not be able to make their brands known and therefore compete with established participants. This is contrary to the government's black economic empowerment, foreign direct investment and competition policies.
27. The proposed new restrictions infringe the rights to freedom of expression in section 16 of the Constitution and to freedom of trade in section 22 of the Constitution. The right to freedom of expression, which is particularly important, includes advertising and other forms of commercial expression and embodies the right to receive information. The manufacturers of legal products – which tobacco products are – have the right to impart information concerning their products to the consumers of those products. The consumers have the right to receive the information with a view to deciding such matters as whether to purchase products of that sort and, if so, which products to purchase. The right to freedom of trade includes the right of the manufacturers of legal products to enter the market and to compete with one another.
28. The question therefore is whether the drastic new point of sale restrictions are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, as required by section 36(1) of the Constitution. The factors to be considered include the nature and extent of the limitation, the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose. The Memorandum does not explain why the additional restrictions – amounting to a virtual ban – are now needed to achieve the government's objectives of reducing the incidence of smoking and reducing the health impact of tobacco use, let alone reveal whether their adverse impacts on the right to freedom of expression and the right to trade and whether there are less restrictive means to achieve the government's objectives, have been considered. The Department is constitutionally bound to justify the additional restrictions now proposed. It must explain such matters as why the existing restrictions are inadequate to achieve the government's objectives, how the additional restrictions will achieve the government's objectives and the extent to which they will do so, the alternatives to the additional restrictions which were considered and why they were rejected, and why the additional restrictions are reasonable and proportionate given their adverse impacts on the rights to freedom of expression and trade.

Advertising

29. As it stands, the Act prohibits advertisements aimed at the public and designed to promote or publicise tobacco products or to promote smoking behaviour (section 3(1)). The current ban extends to the use of a tobacco product manufacturer's company name where the name or part of it is used as or is included in a tobacco product trade mark (section 3(1)(a), read with the definition of "*advertisement*"), and the use of tobacco trade marks, logos, brand names or company names used on tobacco products, for the purposes of advertising any organisation, service activity or event (section 3(1)(b)). The Act also prohibits a range of actions in relation

to “*organised activities*” in South Africa (section 3(2)). These are widely defined to mean activities or events which the public attend or participate in, which are organised for the purposes of entertainment, sport, recreation, education or culture, and where a tobacco product, brand name, trade mark, logo or “*company name in relation to a tobacco product*”, is used in the name of or portrayal of the activity or event. The manufacturers, importers, distributors or retailers of tobacco products are prohibited from organising or promoting “*organised activities*” or making any financial contributions to them or to anyone else who is organising, promoting or participating in them.

30. The draft Bill dramatically widens the breadth of the existing prohibitions. The definition of “*advertisement*”, and hence the ban on advertising, is extended to “*brand elements*”, which in turn are defined to include a recognisable colour or pattern of colours or any other indicia or product identification similar to or identifiable with those used for any brand tobacco product. The definition of “*advertisement*” is also extended to advertisements which, though not designed to promote or publicise a tobacco product, have “*the effect of promoting or publicising a tobacco product*”. The ban itself is extended to “*promotion*”, in addition to “*advertising*”, “*tobacco product-related brand elements*” in addition to “*tobacco products*” and to advertising or promotion “*through direct or indirect means*”. This means, for example, that it will become illegal to advertise articles other than tobacco products (e.g. clothing) containing a recognisable colour or pattern of colours similar to those used for a brand tobacco product. Lastly, the definition of advertising is extended to cover “*product stacking and product displays of any kind and size*” (emphasis added).
31. The constitutionality of these new prohibitions is open to serious doubt for reasons similar to those set out in paragraph 28 above. In addition, the term “*tobacco product-related brand element*” is not defined and, given the breadth of the term “*brand element*” itself, is hopelessly vague and overbroad. The rule of law, which is a founding value of the Constitution, requires that legislation be clear and precise.
32. In short, there is no warrant for the proposed further bans on tobacco advertising, which are entirely unexplained in the Memorandum and may well be unconstitutional.

Definitions - overbreadth

33. Some of the proposed new definitions are overbroad.
34. The definitions of “*package*”, “*promotion*” and “*sell*” should be limited to retail packaging and supply only. Health warnings on packaging or labelling which are intended for wholesale supply serve no legitimate purpose and would therefore have no rational connection to the government’s objectives of reducing the incidence of smoking and reducing the health impact of tobacco use (compare the new section 3(12)). “*Promotion*” should be limited to “*fostering awareness*” and “*positive attitudes*” in the retail market only. The definition should be qualified

by the phrase “*aimed at the public*” and should expressly exclude up-stream marketing to distributors and retailers themselves. “*Sell*” should also expressly exclude non-retail sales.

35. It is difficult to understand why the definition of “*sell*” has been created. The remainder of the draft Bill uses the word in its normally accepted meaning. The definition therefore does not serve any clear purpose. If the intention is to equate “*selling*” with “*promotion*”, that is unnecessary as “*promotion*” is to be banned anyway. The definition is also unclear, not least because it extends “*sell*” to “*offer to sell*” and later, after the disjunctive “*or*”, further extends to “*offer to do so*”, i.e. an offer to make an offer to sell. In any event, the relevant operative provisions in the draft Bill invariably use a formulation such as “*sell or offer to sell*” (see e.g. the proposed new sections 3(8) to (10)). The definition of “*sell*” is accordingly unnecessary and confusing and should be deleted.
36. The reference to “*questionnaires or surveys*” in the definition of “*promotion*” should be deleted as this prohibition unreasonably infringes a manufacturer's right to improve and enhance its product and to compete fairly in the marketplace.
37. The definition of “*tobacco products*” should be expressly limited to products actually containing tobacco leaf and should not include “*papers, tubes and filters*” sold without any tobacco content. The proposed legal fiction will turn papers, tubes and filters into “*tobacco products*”. It will thereby create a host of indefensible consequences: The suppliers of these items, even at the level of supplies to factories, will now be “*tobacco manufacturers*”, and will be affected by e.g. the proposed corporate social responsibility contribution ban (the proposed new section 3(2)(d), discussed below). Papers, tubes and filters will have to be sold in prescribed quantities only (the proposed new section 3(3)). They may not be handled before sale (the proposed new section 3(8)). They will have to have health warnings and standards can be prescribed for them (the proposed new sections 3(12) and 3A). They may not be sold tax and duty-free (the proposed new section 5(2)).

The ban on financial assistance

38. The draft Bill contains an unexplained and entirely unwarranted proposal that anyone involved in the tobacco products supply chain be prohibited from making social investments. The proposal is that no manufacturer, importer, distributor or retailer of tobacco products shall be permitted to “*make any financial contribution to any person in respect of any organisation, event, service, physical establishment, programme, project, bursary, scholarship or any other vehicle of any kind*” (the proposed new section 3(2)(d)). This is in addition to the restriction in the proposed new section 3(1), which prohibits advertising or promoting tobacco products or tobacco-related brand elements through the sponsorship of such vehicles.
39. The industry's social responsibility programmes are embarked upon under the names of the manufacturers or without any corporate association at all. None are undertaken using the brand names of the tobacco products produced by the manufacturers. The proposal is that

these programmes will be banned despite the fact that they do not entail or result in tobacco advertising or promotion and will not in any way undermine the government's objectives of reducing the incidence of smoking and reducing the health impact of tobacco use. It would also outlaw any tobacco industry organisation, such as TISA.

40. The proposed ban infringes the right to freedom of association in section 18 of the Constitution. It must accordingly be justified.
41. At a meeting with the Department of Health ("the Department") on 29 October 2003 TISA was told that the Minister "*does not want to see tobacco industry profits made from spreading death and disease used in uplifting the community*". If this is indeed the Minister's view and the only purpose of the ban, it will not pass constitutional muster. The tobacco industry is a legal and legitimate industry which makes a substantial contribution to the economy and the country, and which in any event is the source of substantial, tailor-made tax revenues (excise duties) which are used by the government. Moreover, the proposed ban is not limited to companies whose main business is tobacco-related. As explained, it operates across the supply chain with the result that it applies with equal force to tobacco product manufacturers and to tobacco product retailers who only supply tobacco as one of many consumer products. The practical effect of the proposed ban will therefore be to put a stop to the entire social responsibility effort of not only the tobacco producers and manufacturers which TISA represents, but also of retailers such as Pick 'n Pay, Shoprite-Checkers and Spar and petrol companies such as BP, Caltex and Shell. This will have a dramatic adverse impact on the community at large.

Package information

42. The Act currently requires certain prescribed tobacco products to be sold or imported for subsequent sale in packages which bear the prescribed health warning and a statement of the relative quantities of nicotine and tar in the emissions of a tobacco product (section 3(4)).
43. The draft Bill proposes that these requirements be replaced with a ban on the manufacture, distribution and importation of any tobacco products if the packages containing them do not display, in the form and manner required by the regulations, including through an enclosed leaflet if required by the regulations and pictures or pictograms, the information required by the regulations about the product and its emissions and the health hazards and health effects arising from the use of the product or from its emissions, other health related messages such as advice on how to quit smoking, and markings designed to facilitate efforts to identify illegally manufactured or distributed tobacco products or products on which tax has not been paid (the proposed new section 3(12)).
44. In the absence of any information relating to the intended packaging regulations, it is difficult to comment on this proposal at this stage.

45. The tobacco industry will require a reasonable opportunity thoroughly to investigate the feasibility and technological implications of any prescribed leaflets to be included in tobacco packages. As far as TISA knows, the machines that would be required for such inserts are very expensive and not readily available in South Africa. It is also currently technologically impossible to insert leaflets into soft packs for cigarettes and tobacco. The industry will accordingly have to engage and consult with the print and packaging supply industry, and thereafter will need a reasonable opportunity to implement any leaflet requirements that may be imposed by the intended regulations.
46. Careful consideration will also have to be given to avoiding repetition (e.g. the same messages in writing and in pictograms on the same package) and to the extent of the visible surface area of the package to be covered by the required information. As regards the latter, in the meeting with the Department on 29 October 2003 TISA was told that the Department intended prescribing that “*up to 70% of the pack be covered in health warnings*”. The resulting virtual obliteration of the trade marks will seriously prejudice tobacco product manufacturers and may sustain a constitutional challenge.

Trade marks, including “*false, misleading or deceptive*” packaging or labelling

47. The draft Bill proposes a new provision stating that no person shall package or label a tobacco product in any way that is false, misleading, deceptive or likely to create any erroneous, deceptive or misleading impression about its characteristics, properties, health effect, toxicity, composition, merit, safety, hazards or emissions, including any term, descriptor, trademark, figurative or other sign that directly or indirectly creates the impression that a particular tobacco product is less harmful than another tobacco product, and this includes, amongst others, terms such as “*low tar*”, “*light*”, “*ultra light*” or “*mild*” (the proposed new section 3(13)).
48. There are two basic problems with this proposal.
49. The part before the word “*including*” is too widely stated, with the result that it even extends to packaging or labelling that, for example, overstates the adverse health effects of a tobacco product. In addition, the use of synonyms like “*misleading*”/ “*deceptive*” and “*characteristics*”/ “*properties*”/ “*composition*”, and the antonyms “*safety*”/ “*hazards*”, is confusing. That said, TISA is not opposed to a ban on misleading statements.
50. Terms such as “*light*”, “*ultra light*” or “*mild*” serve the necessary commercial purpose of distinguishing products to cater for consumers’ preferences as to such matters as flavour, taste, strength, and relative tar and nicotine yields.
51. A further consequence of the proposed new restrictions is that they will deprive manufacturers of any inducement to spend time and resources on research into possibly less harmful tobacco products. This will be counter-productive, given the objectives of the legislation. The Minister herself apparently accepts that reductions of the tar and nicotine yields of cigarettes

are needed to further the government's objectives of reducing the incidence of smoking and reducing the health impact of tobacco use (see Government Notice R974 of 29 September 2000, read with section 3A of the Act, which requires these levels to be lowered over time).

Duty free sales

52. The ban on duty-free sales will have a serious adverse impact on the duty-free shops at South Africa's airports. In addition, as its effect would be to impose a tax and duty on products that are currently tax and duty free, the ban can only be imposed by a money Bill introduced by the Minister of Finance. Section 77(1) of the Constitution defines a Bill that imposes taxes, levies or duties as a money Bill, and provides that a money Bill may not deal with any other matter except a subordinate matter incidental to its main purpose. The draft Bill is not a money Bill.

Legislation by regulation

53. The draft Bill includes the delegation of a wide range of legislative powers to the Minister, including the specification of public places where smoking is restricted or prohibited (the proposed new section 2(2)), regulations prescribing the location, content, size and format of any signs required by the Act (the proposed new section 2(5)(a)), regulations prescribing the quantities or number of units of tobacco products in packages (the proposed new sections 3(3) and (15)(c)), regulations regarding point of sale notices (the proposed new sections 3(7), (9), (11) and (15)(e)), regulations regarding the information to be displayed on packages and package inserts (the proposed new sections 3(12) and (15)(a) and (b)), regulations regarding places where tobacco products may not be sold (the proposed new section 3(15)(d)), regulations governing the manufacturing, sale and importing of tobacco products (the proposed new sections 3A(1) and (3)(a) and (b)), regulations governing the information to be provided to the Minister about tobacco products and their emissions (the proposed new section 3A(2)) or the Minister and the public (the proposed new section 3A(3)(c)) and regulations regarding the sale of products through vending machines (the proposed new section 5(1)).
54. In addition to the legislation on those topics, the draft Bill proposes that the Minister be empowered to make regulations "*generally necessary to carry out*" the section dealing with the control over smoking of tobacco products (the proposed new section 2(5)(b)), regulations "*generally as needed to carry out*" the section dealing with advertising, sponsorship, promotion and distribution of tobacco products information that is required in respect of the packaging and labelling of tobacco products (the proposed new section 3(15)(f)), regulations "*generally as needed to carry out*" the section dealing with product regulation (the proposed new section 3A(3)(d)) and, in addition to regulations specified in the Act and regulations regarding matters required or permitted to be prescribed in terms of the Act, "*any regulations that may reasonably be prescribed in order to achieve the objects of the Act*" (the proposed new section 6(1)).

55. The draft Bill further proposes that the period for comment on proposed regulations be shortened from three months to one month (the proposed new section 6(3)).
56. Viewed together, the aim of these provisions appears to be to permit the Minister to make regulations on a wide range of issues on short notice. Moreover, given the proposed new general regulatory powers to be conferred on the Minister, if the draft Bill is enacted what is likely to happen is that further material changes to the system of tobacco products control will be made by regulation, with only limited public participation and without any debate in Parliament. The extensive regulatory powers to be conferred on the Minister are therefore not merely undesirable, but may also amount to or result in an unconstitutional abdication by Parliament of its power and duty to legislate on a matter of considerable public importance and debate.

Criminalisation and penalties

57. The proposed insertion of the concept "*has the effect of promoting or publicising a tobacco product*" into the definition of "*advertisement*", as an alternative to the concept "*designed to promote or publicise a tobacco product*", when read with clause 4(b) (the proposed new section 3(1)) and clause 9(c) (the proposed new section 7(3)), creates a very serious strict liability offence for which fault, in the form of intention, is not required. This is unwarranted and may be unconstitutional.
58. Three of the four proposed new penal provisions (section 7(1) to (4)) specify a maximum fine followed by the words "*or such penalties as may be determined*". If by this it is intended that the presiding officer in the criminal proceedings is at large to impose imprisonment instead of a fine, that should be stated in terms and the maximum period of imprisonment specified. If on the other hand the intention is that the presiding officer may impose imprisonment as an alternative to a fine – i.e. imprisonment if the fine is not paid – that is unnecessary because section 287(1) of the Criminal Procedure Act, 51 of 1977, says so already.

Conclusion

59. The draft Bill, if enacted, would be the third major overhaul of our tobacco control legislation in the space of a decade. The last major amendments were put into operation just over three years ago. What is now suggested is not only seriously flawed (as the detailed analysis above demonstrates), but it is not supported by any cogent information or justifications. The adverse consequences of the draft Bill for an industry which contributes significantly to our country highlight the need for caution, for proper and extensive consultations with the wide range of stakeholders (which include civil society and other affected government departments) and a compelling justification for any further legislative intervention. TISA accordingly proposes that, pending consultations and the presentation by the Department of a compelling justification, the draft Bill be withdrawn.

Appendix 11



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To whom it may concern,

I am currently involved in my Master's study at Stellenbosch University and have focused my thesis on the effects that the legislation, namely 'The Tobacco Products Control Amendment Act, 1999 (act no. 12 of 1999)', has had on the tobacco industry, specifically its advertising and marketing techniques.

Throughout my thesis however I have focused on British American Tobacco as my case study company, and focused on press releases and techniques that BAT had incorporated at the time the legislation was implemented until the present day.

Through to the closure of my thesis I veer off and use the example of the Tobacco Industry as a basis for my hypothetical situation of, what would the Alcoholic beverage industry do if the same type of legislation were to be placed upon their advertising and marketing techniques, in this case I am going to focus on South African Breweries (SAB) as my case study company. Through which I was hoping to use the ideas from how the Tobacco Industry restructured its above the line to below the line marketing and advertising techniques in order to construct a conceptual model which would be a base for any company that was forced to alter their advertising and marketing techniques from above the line to below the line marketing due to a ban or legislation implementation.

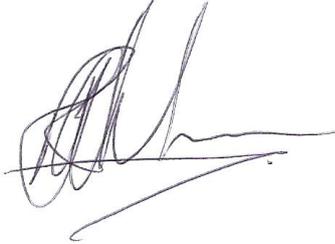
In order to finish my thesis as well as give it more credibility from the market place perspective and not just kept it completely theoretical I had hoped I may be able to ask someone within the marketing or brand marketing department a few broad questions about BAT views on:

- Below the line vs. above the line advertising and the discontinued use of one technique and the emergence of another due to the implementation of 'The Act'.
- A broad overview on the techniques, which were incorporated after the implementation of the 'The Act' in 1999 (just in a broad sense no major specifics necessary as I understand the techniques utilised by BAT are specific to BAT).

- The value added in brand loyalty, relationship marketing and new client development, as well as any hardships or ease in these sectors since the implementation of 'The Act'.

I hope that you find everything to be in order and have time to help me in this regard.

Yours faithfully

A handwritten signature in black ink, appearing to be 'RW', with a long horizontal flourish extending to the right.

Ryan Wilson

Masters Student Stellenbosch University



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Questionnaire for British American Tobacco

Glossary of terms

- Throughout this study, "the Act" or "Act" means the Tobacco Products Control Amendment Act, 1999 (Act No. 12 of 1999).
- Brand Loyalty is expressed by six conditions, namely (1) the biased (i.e., nonrandom), (2) behavioral response (i.e., purchase), (3) expressed over time, (4) by some decision-making unit, (5) with respect to one or more alternative brands out of a set of such brands, and (6) is a function of psychological (decision-making, evaluative) processes.
- Relationship Marketing is defined as "all marketing activities directed towards establishing, developing and maintaining successful relationship exchanges."
- Above the line advertising seeks to change minds and create a unique image for the brand. Traditionally above the ATL advertising makes use TV, posters and press to do this.
- Below the line advertising focuses on the practice of Direct Marketing and Promotional Marketing. Because brands are important almost all of their activity is also building the brand. Many clients are now putting their money below the line as it is closer to the sale and is more accountable.

Questionnaire

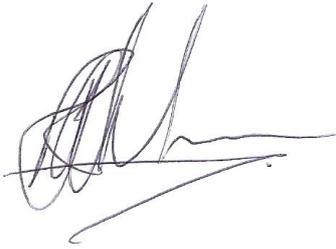
1. How did advertising techniques change when 'The Act' was implemented?
 - Namely loss of above the line advertising and marketing and the rise of below the line advertising techniques.
 - Any loss of new clientele due to the change in advertising techniques.
2. What was the change in BAT consumer base in the years after the implementation of 'The Act'?
3. How has the role changed in the development of new clientele for BAT with the loss of above the line mass media advertising techniques?
4. Due to the change in advertising availability what below the line advertising techniques are now relied upon for the development of this new clientele?

5. Was there a change in advertising practice, namely a change to in house advertising from out house advertising when 'The Act' was implemented?
 - Specific focus on the change of roles if any between the parent company and advertising agency, if any.
6. Did brand loyalty techniques and measures change after 'The Act' was implemented?, and if so was there a specific need for this change to ensure the continued growth of BAT products?
7. What criteria does BAT have to comply with since the implementation of 'The Act'?
 - Loyalty programs
 - Customer Relation programs
 - Namely other criteria which is not laid out in the legislation
8. Did the change in advertising techniques impact on the sales of BAT products and if so, how?
9. What has the impact been on the sales of BAT products?

Change in Sales	Tick Appropriate Area
Major Increase	
Increase	
Remained Stable	
Decrease	
Major decrease	

- Brief explanation of change selected with specific focus on the effect of the change due to the loss of above the line advertising?
10. What are the main below the line techniques incorporated by BAT to maintain their sales, relationships with clientele as well as new clientele development?
 11. Has the loss in sponsorship activities had a major impact on the sales and new clientele development of BAT?
 12. Since the change and the formation of CRA's (consumer relationship ambassador's), how effective have they been for maintaining the reputation of their specified brands, enhancing the brands image and maintaining brand loyalty and relationships with consumers?
 13. How effective has the launch of the new 10packs without the use of the conventional above the line techniques?
 14. Where does BAT see itself in the future? With the main focus on this question being on the
 - Maintenance of customer relationships
 - Maintenance of brand loyalty
 - Creation of new clientele, and
 - Advertising techniques.

Regards

A handwritten signature in black ink, appearing to be 'RW', with a long horizontal stroke extending to the right.

Ryan Wilson

Masters Student Stellenbosch University

Appendix 12



Marketing Code of Conduct

South African Code of Conduct

Summary

British American Tobacco South Africa is a responsible company in an industry seen as controversial. We acknowledge the right of the Government to regulate the marketing of tobacco products, and will at all times comply with the law. However, we will continue to assert our right to market tobacco products to adult smokers. This includes communicating with adult smokers with their consent.

We believe that the decision to smoke is a matter of informed choice only to be made by adults. Because we are committed to ensuring that communication about our products is undertaken responsibly we direct our marketing only to smokers over the age of 18. The legal age at which individuals are allowed to purchase tobacco products in South Africa is 16.

Our Marketing Code

1. All communication about tobacco products will be restricted to adult smokers who have indicated that they have no objection to receiving such material.
2. Our communications with consumers will not contain images aimed at, or of particular appeal to youth. They will not feature a celebrity or contain an endorsement, implied or expressed, by a celebrity. In addition, they will not depict any person under, or appearing to be under, 25 years of age; nor will they suggest that smoking contributes to sporting or athletic achievement, popularity, or professional or sexual success. There will also be no suggestion that most people are smokers.
3. Personnel employed directly or indirectly by British American Tobacco South Africa to handle consumer relations communications and explore brand preferences with consumers will be at least 21 years of age.
4. Consumer relations communications and exploration of brand preferences with consumers will only be carried out with adult smokers, with their consent.
5. Reasonable measures will be taken to ensure that such marketing activities will take place only in a segregated area where access is restricted to adults.
6. No personal communication will take place with adult smokers when accompanied by non-adults.
7. Items given to adult smokers will always be for personal use and will only be given as part of consumer relations management programme. Where such items include clothing, this will only be offered in adults' sizes.
8. Evidence will be required that each consumer is 18 years of age or older, a smoker, and has no objection to receiving communication about tobacco products.
9. Company databases that are used for marketing purposes will only include smokers 18 years of age or older who have given their written consent.
10. Adult smokers invited to any brand event or activity hosted by British American Tobacco South Africa, may be accompanied only by other adults.
11. Cigarettes will not be sold or distributed to consumers in packages containing less than ten sticks.
12. We will provide no incentive to support the sale of single sticks.
13. We will provide our business partners with a copy of this code and make them aware of their responsibilities under the code.
14. Adherence to this code is the personal responsibility of every British American Tobacco South Africa employee.
15. Non-compliance with, or disregard of, this code will subject our employees to appropriate corrective measures, which may include disciplinary action.

Face to Face Communication

1. We will communicate only with smoking adults, or adults who are visibly in possession of cigarettes.
2. We will not communicate with smokers who are accompanied by non-adults.
3. All communication will be conducted on a one to one basis. This does not preclude our employees from speaking to more than one smoker at the same time, after acquiring the consent of them all.
4. Our employees will introduce themselves as representing our company or a specific British American Tobacco brand.

5. The representative will ask the smoker's permission to communicate with him or her about the brand.
6. If the smoker declines, the employee will thank him or her and withdraw.
7. The employee will inform the smoker that the communication is intended only for smokers 18 years of age or older.
8. A smoker will only be offered a cigarette under circumstances where it would be expected as a normal courtesy. The free distribution of cigarettes is prohibited, which means that cigarettes may not be given away indiscriminately.
9. Employees may not urge any person to accept any offer if he or she declines to do so.
10. A cigarette may not be offered in areas where smoking is prohibited.
11. Adherence to this code is the personal responsibility of every British American Tobacco South Africa employee.
12. Non-compliance with, or the disregard of, this code will subject British American Tobacco South Africa employees to appropriate corrective measures, which may include disciplinary action.

Appendix 13



11 September 2001

INTERNATIONAL TOBACCO PRODUCTS MARKETING STANDARDS

- The parties subscribing to these Standards (the "Participants") wish to record their belief that tobacco products should be marketed in a responsible manner and that reasonable measures should be taken to ensure that the promotion and distribution of tobacco products is:
 - directed at adult smokers and not at youth, and
 - consistent with the principle of informed adult choice.
 - These Standards should be observed in both their letter and intent.
- In subscribing to these Standards, the Participants wish to encourage:
 - all others who manufacture or market tobacco products to join them as Participants; and
 - all others who are associated with the manufacture, sale, distribution or marketing of tobacco products to embrace the principles of these Standards.
- The practices of the Participants should not be less restrictive than these Standards unless required by law, but any more restrictive legal requirement or voluntary undertaking shall take precedence over these Standards.
- The Participants should incorporate these Standards into their own internal codes.
- The Participants intend to support the comprehensive incorporation of these Standards into national laws.
- These Standards do not apply to the relationship between Participants and their suppliers, distributors or other trade partners, although those parties are encouraged to comply with the Standards in any dealings they have with consumers.
- The Participants shall take reasonable measures to prevent third parties from using their tobacco product brand names or logos in a manner which violates these Standards.
- These Standards are not intended to prohibit the use of any trademarks as brand names or on packaging.
- A Participant shall comply with these Standards as quickly as possible, and in any event no later than 12 months from the date that it subscribes to the Standards or, where existing contractual provisions prevent earlier compliance, in any event by December 31, 2002, provided in all cases compliance is not in breach of relevant laws. The timetable for compliance with the Sponsorship Standards is set out in paragraphs 17 and 19.

Definitions

The following definitions are provided to assist in the interpretation of these Standards.

Term used in these Standards	Explanation
adult	A person who is at least 18 years old, except where legal requirements or voluntary undertakings entered into by the Participants specify a higher minimum age for the lawful sale, purchase, possession or consumption of tobacco products, in which case the term "adult" means a person of at least that minimum age.
advertisement	Any communication by or on behalf of a Participant to consumers which has the aim of encouraging them to select one brand of tobacco products over another.
promotional	An event or activity organised by or on behalf of a Participant with the aim of promoting a brand of tobacco product, which event or activity would not occur but for the support given to it by or on behalf of the Participant.
sponsorship	Any public or private contribution to a third party in relation to an event, team or activity made with the aim of promoting a brand of tobacco product, which event, team or activity would still exist or occur without such contribution.
tobacco products	Manufactured cigarettes, cigars, cigarillos, pipe tobacco, fine cut tobacco, and pre-formed tobacco rolls.
youth	Any person who is not an adult. The term also includes the plural.

Content Standards

1. The following Content Standards are intended to cover all communications by or on behalf of a Participant to consumers which have the aim of encouraging them to select one brand of tobacco products over another. Certain communications associated with sponsorship activities are subject to separate requirements set out in paragraph 19.
2. No advertisement shall:
 - be aimed at or particularly appeal to youth
 - feature a celebrity or contain an endorsement, implied or express, by a celebrity
 - depict any person under or appearing to be under 25 years of age
 - suggest that any of the following is enhanced by smoking:
 - sporting or athletic success,
 - popularity,
 - professional success, or
 - sexual success, or
 - suggest that most people are smokers.
3. All new advertisements published or disseminated after subscription to these Standards, including renewals and replacements of existing advertisements, shall contain a clearly visible health warning except those which:

- appear on point of sale material the advertising display area of which is smaller than 250 square centimetres,
- are, either individually or in deliberate combination with other advertisements, smaller than 25 square centimetres and are placed on promotional merchandise, or
- until December 1, 2006 are used at and connected with sponsored activities

Media Usage Standards

4. **Print:**

- 4.1 No advertisement shall be placed in any printed publication unless there is a reasonable basis upon which to believe that
- (a) at least 75% of the readers of such publication are adults, and
 - (b) the number of youth who read it constitute less than 10% of all youth in the country of circulation.
- 4.2 No advertisement shall be placed on the packaging or outside cover of a magazine, newspaper or similar printed publication intended to be read by consumers.
- 4.3 Reasonable measures shall be taken to ensure that no advertisement is placed in printed publications adjacent to material that particularly appeals to youth.

5. **Outdoor and Billboard:**

- 5.1 No advertisements shall be placed on any billboard, wall mural or transport stop or station which:
- is located closer than 100 metres from any point of the perimeter of a school attended predominantly by youth, or
 - either individually, or in deliberate combination with other such advertisements, exceeds 35 square metres in total size.

6. **Cinema:** No advertisement shall be displayed in a cinema unless there is a reasonable basis upon which to believe that at least 75% of the audience are adults.

7. **Television or Radio:** No advertisement shall be placed on television or radio unless and until:

- (a) each person seeking access to the channel or programme on which such advertisement is placed provides verification that he or she is an adult, and
- (b) the broadcast is restricted to countries where such advertisements are not prohibited by law.

8. **Internet:** No advertisement shall be placed on the Internet unless and until:

- (a) each person seeking access to the Internet site on which such advertisement is placed provides verification that he or she is an adult, and
- (b) access is restricted to those countries where such advertisements are not prohibited by law.

9. **Video, Audio and Computer:** No electronic advertisement shall be incorporated within any video or audio cassette, compact disk, digital video disk or similar medium unless reasonable measures have been taken to ensure that the intended recipients of the item are adults.

For the avoidance of doubt, Participants may distribute video or audio cassettes, compact disks, digital video disks and similar media provided that the contents, cover, packaging and means of distribution comply with these Standards.

10. **Product Placement:** There shall be no direct or indirect payment or contribution for the placement of tobacco products, advertisements or items bearing tobacco brand names, within the body of any:

- motion picture,
- television programme,
- theatrical production or other live performance,
- live or recorded performance of music,
- commercial film or video,
- video game, or
- any similar medium where such medium is intended for the general public.

Promotion and Event Standards

11. All activities and communications concerned with

- promotional offers
- promotional events
- promotional items, or
- sampling

shall comply with the Content Standards.

12. *Promotional Offers*

12.1 Promotional offers and programs for specific brands which appear on the package, at the point of retail sale, by mail or through other communications shall be directed only to adults and, unless prohibited by law, only to smokers.

12.2 Reasonable measures shall be taken to ensure that youth and (unless prohibited by law) non-smokers are excluded from direct mailing lists.

12.3 Participation in promotional offers by the general public will be conditional upon evidence of age eligibility and (unless prohibited by law) confirmation of smoker status.

12.4 Where promotional offers permit an adult smoker to be accompanied by other persons at a third party event or in an activity, such other persons shall be adults.

13. **Promotional Events:** Each Participant shall ensure that only adults are allowed access to promotional events.

14. **Promotional Items:** 14.1 No advertisements

shall be placed on:

- items where those particular items are marketed to, or intended to be used predominantly by, youth, or
- shopping bags.

14.2 No advertisement larger than 25 square centimetres - either on its own or in deliberate combination with other advertisements - shall be placed on any items (other than on items with a smoking-related function) which are to be sold, distributed or offered to the general public.

14.3 Any item of clothing which is offered for sale or distribution by or on behalf of a Participant shall only be offered in adult sizes.

15. **Sampling:** Reasonable measures shall be taken to ensure that:

- (a) sample tobacco products are not offered to youth or to non-smokers
- (b) samples are only offered in a segregated area access to which is restricted to adults

- (c) personnel employed directly or indirectly by Participants to offer sample tobacco products or to conduct promotional activities
 - (i) are at least 21 years of age, and
 - (ii) verify the age and (unless prohibited by law) smoker status of those to whom the samples and promotions are offered, and
- (d) unsolicited tobacco product samples are not distributed, either directly or through a third party, by mail.

Sponsorship Standards

Sponsored Events

16. No sponsorship shall be provided for:
- an event or activity which bears a tobacco product brand name, unless there is a reasonable basis upon which to believe that all persons who compete, or who otherwise take an active part, in the sponsored events or activities are adults, or
 - a team or an individual which bears a tobacco product brand name, unless all persons sponsored by Participants are adults.
17. As from December 1, 2006, no sponsorship shall be provided unless:
- (a) there is a reasonable basis upon which to believe that attendance at the sponsored event or activity will comprise no less than 75% adults, and
 - (b) there is a reasonable basis upon which to believe that the sponsored event or activity will not be of particular appeal to youth, and
 - (c) the Participant does not anticipate that the sponsored event or activity will receive exposure, other than as a news item, on television or radio or the Internet, unless such exposure complies with these Standards, and
 - (d) success in the principal activity associated with the sponsorship does not require above-average physical fitness for someone of the age group of those taking part.

Sponsorship Advertising

18. All individuals authorised to bear tobacco product advertisements, logos or brand names at sponsored events or activities shall be adults.
19. All forms of advertising associated with or ancillary to sponsorship shall comply with the provisions of these Standards. The following are excluded from these Standards until December 1, 2006:
- on-site signage at sponsored events
 - incidental television and radio broadcasts of sponsored events
 - applications of trade marks or logos to people or equipment participating in sponsored events.

Packaging, Sales and Distribution Standards

20. Cigarettes shall not be sold or distributed to consumers in packages containing fewer than ten sticks.
21. Fine cut tobacco shall not be sold or distributed to consumers in pouches smaller than 10 grams.
22. No incentive or materials shall be provided to support the sale of cigarettes in single sticks.
23. All cigarette packs and all primary packaging for other tobacco products shall carry a clearly visible health warning.
24. All cartons and bundles offered for sale duty-free shall carry a clearly visible health warning.

25. Reasonable measures shall be taken to prevent youth having access to cigarettes in vending machines.

Youth access and minimum age restrictions

26. **Youth Access:** The Participants shall make sustained efforts, in co-operation with governments and other regulatory agencies, customers and others to prevent youth having access to tobacco products. They shall also seek ways in which to reinforce and give effect to measures that will prevent youth having access to tobacco products.
27. **Minimum Age Restrictions:** The Participants are committed to the enactment and enforcement of minimum age restrictions for the lawful sale or purchase of tobacco products in every country in which their tobacco products are sold. The Participants support efforts by appropriate authorities, manufacturers of tobacco products, distributors and retailers to ensure the effective enforcement of such restrictions.

Appendix 14

Policies on Alcohol Advertising Restrictions

POLICIES ON ALCOHOL ADVERTISING RESTRICTIONS						
Country	Self-Regulation	Statutory Legislation	Combination	Banned	Some Controls	No Controls
Africa & Middle East						
Bahrain				X		
Benin						X
Botswana	X					
Cameroon		X				
Ethiopia					X	
Gabon		X				
Ghana	X					
Israel						X
Jordan					X	
Egypt				X		
Kenya	X					
Kuwait				X		
Lebanon						X
Madagascar						X
Malawi						X
Mauritius	X					
Namibia						X
Nigeria			X			
Reunion		X				
Senegal				X		
South Africa	X					
Syria				X		
Gambia						X
The Seychelles		X				
Togo					X	
Uganda						X
Zaire						X
Zambia						X
Zimbabwe	X					
Country	Self-Regulation	Statutory Legislation	Combination	Banned	Some Controls	No Controls
Asia						
Bangladesh						X
Cambodia						X
China		X				
Hong Kong			X			
India		X				
Indonesia			X			
Japan			X			
Kazakhstan		X				
Korea (North)		X				

POLICIES ON ALCOHOL ADVERTISING RESTRICTIONS						
Country	Self-Regulation	Statutory Legislation	Combination	Banned	Some Controls	No Controls
Africa & Middle East						
Korea (South)		X				
Kyrgyzstan						X
Laos						X
Malaysia			X			
Mongolia		X				
Nepal		X				
Pakistan		X				
Papua New Guinea		X				
Singapore	X					
Sri Lanka			X			
Taiwan		X				
Tajikistan						X
Thailand		X				
The Philippines	X					
Turkmenistan		X				
Uzbekistan						X
Vietnam						
Country	Self-Regulation	Statutory Legislation	Combination	Banned	Some Controls	No Controls
Australia						
Australia	X					
New Zealand	X					
Country	Self-Regulation	Statutory Legislation	Combination	Banned	Some Controls	No Controls
Europe						
Armenia		X				
Austria			X			
Azerbaijan						X
Belarus				X		
Belgium			X			
Bulgaria		X				
Croatia						X
Cyprus			X			
Czech Republic			X			
Denmark			X			
Estonia		*				
Finland		X				
France		X				
Georgia						X
Germany	X					
Hungary		X				
Greece		X				
Iceland		X				
Ireland			X			

POLICIES ON ALCOHOL ADVERTISING RESTRICTIONS						
Country	Self-Regulation	Statutory Legislation	Combination	Banned	Some Controls	No Controls
Africa & Middle East						
Italy			X			
Latvia	**				X	
Lithuania		X				
Luxembourg			X			
Macedonia						X
Malta		X				
Moldova						X
Norway		X				
Poland	**	X				
Portugal			X			
Romania						X
Russia		X				
Slovak Republic		X				
Slovenia	**	X				
Spain			X			
Sweden		X				
Switzerland		X				
The Netherlands	X					
Turkey		X				
Ukraine				X		
United Kingdom	X					
Country	Self-Regulation	Statutory Legislation	Combination	Banned	Some Controls	No Controls
North America						
Canada		X				
Mexico		X				
USA			X			
Country	Self-Regulation	Statutory Legislation	Combination	Banned	Some Controls	No Controls
South America						
Argentina	X					
Barbados	X					
Bolivia					X	
Brazil			X			
Chile	X					
Colombia		X				
Costa Rica		X				
Ecuador		X				
Guadeloupe		X				
Guatemala		X				
Guyana						X
Honduras		X				
Jamaica			X			
Martiniqués		X				

POLICIES ON ALCOHOL ADVERTISING RESTRICTIONS						
Country	Self-Regulation	Statutory Legislation	Combination	Banned	Some Controls	No Controls
Africa & Middle East						
Panamá		X				
Paraguay		X				
Perú		X				
Puerto Rico			X			
Uruguay	X					
Venezuela			X			

Note: * Statutory legislation is pending in Estonia

** Self-regulation is under consideration in Latvia, Poland, and Slovenia

Appendix 15

SA Gazettes

Database Results

Found 514 results for "kw. foodstuffs"

- Government Gazettes : 514

Click on the mark button to mark the record to be e-mailed or printed.

Use e-mail button to e-mail records

Use full display button to format records for printing. Use browser's print option.

Database Matches

Record. 2

Jump to 1 11 21 31 41 51

511

Record 2: **Be(marked)**

Database: Government Gazettes

Gazette No: 27236

Notice No: **109**

Regulation: 8147

Gazette No:

G a z e t t e: G O V

Date: 20050211

No. R. 109

11 February 2005

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972

REGULATIONS RELATING TO THE LABELLING OF ALCOHOLIC BEVERAGES

The Minister of Health intends, in terms of section 15 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), to make the regulations in the Schedule.

Interested persons are invited to submit written comments or presentations on the proposed regulations to the Director-General: Health (for the attention of the Director: Mental Health and Substance Abuse, Department of Health, Private Bag X828, PRETORIA 0001).

SCHEDULE

Definitions

1. In these regulations, "the Act" means the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), and any word or expression to which a meaning has been assigned in that Act, shall have that meaning and, unless the context indicates otherwise.

"alcoholic beverage" means any drink Ordinarily consumed by humans or purporting to be suitable, or manufactured or sold for human consumption with an ethyl alcohol content above 10ml per 100ml (one percent (1%) alcohol, volume).

Health warnings on container labels

2. (1) Container labels for alcoholic beverages must contain one of the health warnings set out in annexure A of these regulations.

(2) A health warning referred to in subregulation (1) shall-

- (i) be visible, legible and indelible and the legibility thereof shall not be affected by any other matter, printed or otherwise;
- (ii) be on a space specifically devoted for it which must be at least one eighth of the total size of such advertisement, container label, or promotional material;
- (iii) be in black on a white background; and
- (iv) be alternated on an equal quantity for each brand every 12 months from the date of commencement of these regulations.

Language

3. A health warning shall be in any of the South African official languages but must be in the same language as that of the container label.

Prohibited statements

4. The following information or declarations shall not appear on any container label of an alcoholic beverage:

- (a) Words, pictorial representations, descriptions which may create the impression that such an alcoholic beverage has been manufactured in accordance with recommendations made by-
 - (i) a health professional registered in terms of any law;
 - (ii) any health organization, association or foundation;
- (b) the words "health", "healthy", "heal", "cure", "restorative" or other words or symbols claiming that the alcoholic beverage has health giving, medicinal, therapeutic or prophylactic properties as part of the name or description of the alcoholic beverage; or
- (c) the words: Subject to the provisions of the Medicines and Related Substances Act, 1965 (Act no. 101 of 1965) or similar wording that makes reference to the said Act.

Offences and Penalties

5. Any person who contravenes the provisions of these regulations shall be guilty of an offence and upon conviction be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Commencement of regulations

6. These regulations come into operation 12 months from the date of publication.

(signed)

ME TSHABALALA-
MSIMANG MINISTER OF
HEALTH

ANNEXURE A: HEALTH WARNINGS

1. Alcohol reduces driving ability, Don't drink and drive.
2. Don't drink and walk on the road, alcohol kills.
3. Alcohol increases your risk to personal injuries.
4. Alcohol is a major cause of violence and crime.
5. Alcohol abuse is dangerous to your health.
6. Alcohol is addictive.
7. Drinking during pregnancy can be harmful to your unborn baby.

Appendix 16

SABMiller Alcohol Manifesto

SABMiller alcohol policy as contained in the Alcohol Manifesto

SABMiller believes it has a legitimate and positive role to play in promoting responsible drinking, and in helping to combat alcohol abuse.

In order to accomplish these goals, the following policy will apply to all SABMiller plc group companies:

- In addition to complying with existing national legislation, statutory regulations and industry self-regulatory codes, group companies adhere to the SABMiller plc Code of Commercial Communication.
- Internal compliance committees monitor and review commercial communications and ensure that these comply with the letter and the spirit of the Code.
- Wherever appropriate, SABMiller plc group companies include responsible messages in commercial communication.
- SABMiller plc group companies have an employee alcohol policy in place, which provides guidelines on responsible behaviour.
- SABMiller plc group companies take steps to educate the retail trade on the responsible use of the company's products and, in particular, to prevent the serving of underage or intoxicated patrons.
- SABMiller plc group companies take steps to educate consumers on the responsible use of the company's products and in particular on such issues as underage drinking, and drinking and driving.
- SABMiller plc group companies encourage, where possible, efforts to collect data on patterns of alcohol consumption and associated problems, and encourage research projects that will provide data to direct efforts to combat misuse.
- SABMiller plc group companies co-operate with, and positively influence, the alcohol industry nationally and internationally to promote the responsible use of alcohol.
- SABMiller plc group companies collaborate with relevant national and international authorities, and non-governmental organisations, to develop effective controls and programmes to promote responsible alcohol use.
- SABMiller plc group companies formally report on progress made in terms of the policy.

Appendix 17

Code of Commercial Communication

Engaging with stakeholders

In addition to our own actions country by country, SABMiller works with others in our industry, helping to fund consumer education campaigns, supporting research into more effective ways to curb excessive drinking and participating in dialogues with external stakeholders, locally and internationally.

At international level, we are active members of ICAP, the International Center for Alcohol Policies, along with nine other leading producers of beverage alcohol. Based in Washington DC, ICAP is an industry-led body seeking to reduce the abuse of alcohol worldwide, promote understanding of the role of alcohol in society and foster dialogue between the industry and its stakeholders.

SABMiller Code of Commercial Communication for Alcohol Beverages

The object of the Code is to provide guidance for the commercial communication of alcohol beverages. As such, the Code is in addition to all regulatory and/or self-regulatory requirements, which may already exist in a particular country.

Commercial communication includes advertising in all media (including the internet and text messaging), packaging, promotions, product placement, merchandising and sponsorship.

Commercial communication must:

be legal, decent, honest and truthful and conform to accepted principles of fair competition and good business practice

- be in keeping with local cultural values
- be prepared with a due sense of social responsibility and be based on principles of fairness and good faith
- comply with all regulatory requirements
- not be unethical or otherwise impugn human dignity or integrity
- be mindful of sensitivities relating to culture, gender, race and religion
- not employ themes, images, symbols or figures, which are likely to be considered offensive, derogatory or demeaning
- Commercial communication may not be directed at persons under the legal drinking age (or in countries without a legal drinking age, to persons under the age of 18).
- Commercial communication will not incorporate images of people who are, or look as if they are, under the legal drinking age pertaining to the particular market (or in countries without a legal drinking age, to persons under the age of 18), unless there is no suggestion that they have just consumed, are consuming or are about to consume alcohol.
- Commercial communication may not employ characters or icons which have unique appeal

to children.

- Commercial communication may not feature or encourage irresponsible, risky or excessive drinking.
- Commercial communication may not portray persons in a state of intoxication nor in any way suggest that intoxication is acceptable.
- Commercial communication may not encourage the choice of a product because of its higher alcohol content or intoxicating effect. Factual information for the guidance of consumers about alcoholic strength may be included, dependent on existing regulatory requirements.
- Commercial communication may not depict or suggest consumption of alcohol beverages under circumstances that are generally regarded as irresponsible, improper or illegal, e.g. before or during any operation requiring sobriety, skill or precision.
- Commercial communication may not depict or include pregnant women.
- Commercial communication may not have an association with violent or antisocial imagery or behaviour, or with illicit drugs or drug culture.
- Commercial communication may not imply that alcohol beverage consumption is essential to business, academic, sporting or social success.
- Commercial communication may not present refusal, abstinence or moderate consumption in a negative light.
- Commercial communication may not claim that alcohol has curative qualities, nor offer it expressly as a stimulant, sedative or tranquilliser.
- Commercial communication may not portray nudity or suggest that alcohol beverages can contribute directly to sexual success or seduction.