

# **Global Tobacco Treaty Action Guide:**

**Protecting National Health Policies  
from International Tobacco Industry  
Interference**



**September 2005**



Corporate Accountability International (formerly Infact) is a membership organization that protects people by waging and winning campaigns challenging irresponsible and dangerous corporate actions around the world. For over 25 years, Corporate Accountability International and its members have scored major victories that protect people and save lives. Corporate Accountability International is an NGO in official relations with the World Health Organization (WHO) and a founding member of NATT.



The Network for Accountability of Tobacco Transnationals (NATT) consists of more than 100 consumer, human rights, environmental, faith-based and corporate accountability NGOs in 50 countries. NATT was formed in the spring of 1999 to ensure a strong, unified voice for a Framework Convention on Tobacco Control (FCTC) that will:

- Institute effective controls over tobacco transnationals that are spreading tobacco addiction, disease and death; and
- Contribute to the establishment of broad global standards that hold corporations accountable for policies, practices and products that endanger human health and the environment.

**Credits:** A special thank-you to the many people around the world who contributed to this *Global Tobacco Treaty Action Guide* by sharing their stories and lending their insight. Thank you to all of the FCTC campaigners, including members of NATT, who are working toward FCTC ratification and implementation and to expose and challenge tobacco industry interference in health policy.

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**This document is a complement to the *Handbook for FCTC Ratification Campaigns*, published in 2004 by Corporate Accountability International and NATT.**

## How to Use This Action Guide: A Message from Corporate Accountability International's Executive Director

After more than a decade of arduous campaigning by many, we now have a tool that has the capacity to protect public health in an unprecedented way: the WHO Framework Convention on Tobacco Control (FCTC), the first global public health treaty. The FCTC, a milestone in the history of corporate accountability, is considered one of the most rapidly embraced United Nations treaties of all time. Presently ratified in more than 70 countries, the FCTC is already protecting almost half of the world's population. On 27 February 2005, the treaty went into force after the initial 40 countries ratified it through their domestic processes.

But this significant progress is under threat from interference by the international tobacco industry. Transnational tobacco corporations—Philip Morris/Altria, British American Tobacco (BAT), and Japan Tobacco International (JTI)—often have annual revenues greater than the Gross Domestic Product (GDP) of the countries in which they operate. With tremendous wealth and power, these giant corporations pose the greatest risk to effective, meaningful tobacco control measures around the world.

While these victories continue to inspire and empower more countries to protect their citizens from tobacco, this success has also strengthened the tobacco industry's resolve to interfere.

From the treaty's initial negotiations to today, the international tobacco industry has attempted persistently to stop, weaken and delay it. Now that the fight for people's lives is in the hands of individual countries, the tobacco industry is working at the country level to undermine the treaty's progress. The good news is, you can help stop transnational corporate influence over the national health policies in your country.

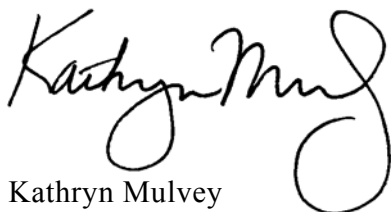
As the ratification numbers reflect, the movement challenging the tobacco industry's interference in health policy is strong and growing. As part of our commitment to protecting people around the world, our network wants to share success stories, tips and tactics for challenging the tobacco industry in your country. We created this action guide to help public health advocates, non-governmental organizations, government officials and concerned citizens stop the tobacco industry's attempts to use their money and influence to manipulate the debate over FCTC ratification.

As you work to protect people by campaigning for your country to ratify and implement the FCTC, please share news of your activities — and the tobacco industry's tactics — with allies, including Corporate Accountability International. If you are a member of the Network for Accountability of Tobacco Transnationals (NATT), please share your news with that listserv as well.

Together we are challenging some of the most powerful and dangerous corporations in the world and making incredible progress. Our hope is that this Action Guide will strengthen and advance our collective work.

For electronic versions of this *Global Tobacco Treaty Action Guide*, the *Handbook for FCTC Ratification Campaigns* and other valuable tools for protecting people from dangerous and irresponsible corporate actions, visit [www.stopcorporateabuse.org](http://www.stopcorporateabuse.org).

Onward,



Kathryn Mulvey  
Corporate Accountability International Executive Director

## The Tobacco Industry Does NOT Have the Right To Participate in the Development of Public Health Policy

Tobacco corporations have an inherent conflict of interest with effective tobacco control legislation. The World Health Organization (WHO) and governments around the world have been very clear: Philip Morris/Altria and the rest of the tobacco industry do NOT have a right to participate in the development of public health policy. The tobacco industry and its allies continue their attempts to influence tobacco control at both the domestic and international level, but WHO resolutions and the FCTC exclude industry participation:

**World Health Assembly resolution 54.18** finds that *“the tobacco industry has operated for years with the expressed intention of subverting the role of governments and of WHO in implementing public health policies to combat the tobacco epidemic,”* and urges governments to ensure the integrity of health policy development.

The **Preamble of the FCTC** recognizes *“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.”*

In **Article 5.3**, the FCTC obligates parties to *“protect these [public health] policies from commercial and other vested interests of the tobacco industry.”* The treaty also affirms the importance of civil society participation in achieving its objectives, while restricting such involvement, in **Article 12(e)**, to *“nongovernmental organizations not affiliated with the tobacco industry.”*

The FCTC and WHO resolutions on tobacco control provide governments with the support of the international community to stand up to the tobacco industry and its attempts to influence policy. In Article 20.4(c), the FCTC also requires parties to collect and disseminate information on tobacco industry activities that have an impact on the treaty or national policies.

While the tobacco industry may try to pressure governments to include “all stakeholders” in the discussions around tobacco control legislation, the FCTC clearly excludes the industry from participating. **For this reason, any tobacco industry inclusion in public health policymaking violates both the spirit and the letter of the FCTC.**

## Tobacco Industry Interference in Public Health Policy

**The tobacco industry uses its political influence** to weaken, delay and defeat tobacco control legislation around the world—and tobacco corporations have attempted to derail the FCTC process from the beginning. According to *Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization*, a July 2000 report by a committee of experts on tobacco industry documents, the “tobacco companies have operated for many years with the deliberate purpose of subverting the efforts of the World Health Organization to address tobacco issues. The attempted subversion has been elaborate, well-financed, sophisticated, and usually invisible.” In order to ensure that the FCTC protects people around the world from the tobacco industry, the public health community must be vigilant in identifying, exposing and ultimately defeating tobacco industry attempts to interfere.

**Stories from around the world** show that the tobacco industry is taking a country-by-country approach, but the industry favors four strategies for thwarting FCTC ratification and public health policy in general. Transnational tobacco corporations Philip Morris/Altria, BAT and JTI—with combined annual revenues greater than the GDPs of Costa Rica, Kenya, Nicaragua, Uganda, Honduras and Lebanon combined—set the pace.

**Please help us track tobacco industry use of these four strategies by filling out the form on pages 19-22.**

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### 1) Spreading Misinformation About the Legal Process

The tobacco industry has been misinforming country governments and civil society organizations about the ratification process—asserting that countries need to pass domestic tobacco control legislation before they can ratify the FCTC. This is not true. After ratifying the FCTC, countries will be given a reasonable amount of time, depending on their individual circumstances and in consultation with the Conference of the Parties, to implement the FCTC.

### 2) Asking for a Seat at the Table

The tobacco industry has an inherent conflict of interest and should therefore be disqualified from having a role in the development of public health policy. Furthermore, the FCTC clearly excludes the industry from participating. Yet corporations like Philip Morris/Altria and BAT still attempt to derail ratification and implementation by not always articulating their opposition, faking “support” for the treaty, and trying to win a seat at the table. While tobacco corporations like Philip Morris/Altria claim to support the treaty, they oppose its central provisions, such as the ban on tobacco advertising, promotion and sponsorship.

### 3) Demanding Voluntary Self-Regulation

The tobacco industry has a long history of proposing voluntary regulation as a strategy to fight effective and enforceable protections. However, voluntary codes are non-binding, lack independent oversight and often do not include consequences; in practice they have proven ineffective at curbing the tobacco industry's most successful forms of spreading tobacco addiction.

Through the FCTC process, a majority of the world's countries came together to reject the industry's calls for voluntary regulation and instead set aggressive, binding global limits on how the industry operates. This hard-fought victory will seriously limit the ability of Philip Morris/Altria, BAT and JTI to spread addiction, disease and death with images like the Marlboro Man and a host of other tactics. Nevertheless, in countries around the world, the tobacco industry continues to pressure governments to take no direct action and to let the industry regulate itself through voluntary measures.

Here is an example:

In Mexico, BAT and Philip Morris joined forces to undermine Mexico's health policy. According to a 1992 internal memo from Philip Morris International, the corporation was "evaluating the possibility of developing with BAT an industry self-regulating advertising and promotional code" in Latin America. The intent was to "help improve the industry's image and reduce the chances of government restrictions."

Unfortunately, it seems the industry has succeeded with these plans. Just three weeks after Mexico ratified the FCTC, the government signed a voluntary agreement with Philip Morris and BAT. Mexico's voluntary agreement with Philip Morris and BAT is a clear example of voluntary self-regulation that could distract the government from implementing effective and meaningful health laws. This example should alert us to the ever-present danger of industry interference.

### 4) Slick PR Campaigns

Corporate Social Responsibility describes the inclusion of social and environmental concerns into a corporation's business practices with actions to back up the words. With the tobacco industry, however, Corporate Social Responsibility is part of a slick PR campaign to try to re-brand its deadly image. British American Tobacco (BAT) and Philip Morris/Altria spend millions annually in an attempt to brand themselves as "socially responsible" corporations. This allows them to hide behind glossy image makeovers while continuing to promote tobacco addiction to children and adults around the world.

While the tobacco industry claims to have changed and evolved, internal documents show their corporate social responsibility initiatives are merely part of a coordinated attempt to improve their image and gain access to politicians.

## Help Us Track Emerging Efforts by the Tobacco Giants to Interfere in Health Policy!

According to survey data from NGOs and government officials in more than 20 countries, the tobacco industry attempts to influence public health policy in many ways. No country escapes. Many countries that have become parties to the FCTC continue to face pressure from the tobacco industry. In Kenya, which has ratified the FCTC, BAT sponsored a beach holiday for members of Parliament, just days before they were set to discuss the implementing legislation for the treaty.

Ongoing monitoring and exposure of tobacco industry tactics are a key component of FCTC implementation. In addition to the four major strategies described previously, be on alert for the following:

- *Giving campaign contributions* to political parties in order to influence their decision making;
- *Organizing roundtable discussions* on the FCTC's implementation or other "social issues";
- *Providing government officials* with recommendations or a sample health policy;
- *Funding government health initiatives* like malaria control and HIV/AIDS treatment programs;
- *Sponsoring* major sporting and cultural events;
- *Conducting* purposefully ineffective "youth smoking prevention" programs;
- *Supporting environmental* protection and tree-planting programs;
- *Funding* "smokers' rights" groups;
- *Drawing attention* to the alleged economic benefits of tobacco addiction;
- *Funding university research* on health issues;
- *Providing scholarships* to journalism students;
- *Recruiting public relations* spies to infiltrate health groups; and,
- *Setting up fake NGOs* to gain access to health policy or other meetings.

## Case Studies & Success Stories: Three Stories Illustrating Tobacco Industry Interference and How Activists Are Pushing Back

### **Guatemala: Ratifying the FCTC Despite Philip Morris' Slick PR & Lobbying**

In response to activist pressure at the Philip Morris/Altria annual shareholders' meeting in April 2005, CEO Louis Camilleri declared that the corporation is working with Ministries of Health and Ministries of Education in countries around the world. This is not only alarming, but in countries that have ratified, it violates the spirit and letter of Articles 5.3 and 20.4(c) of the FCTC.

The tactics being used by Tabacalera Centroamerica S.A., the Philip Morris/Altria subsidiary in Central America, reflect those of its parent company. In the media, the CEO of Tabacalera Centroamericana in Guatemala publicly declared his support for the FCTC. Months later, the corporation sent Guatemalan legislators a letter, referencing the FCTC but detailing the regulations it would support that fell far short of the regulations the FCTC mandate. Not surprisingly, in its letter to Guatemalan legislators the corporation called for regulations that are significantly weaker than the FCTC. Philip Morris fought against key FCTC protections, such as the ban on tobacco advertising, promotion and sponsorship and the promotion of a higher tobacco tax.

This is an increasingly common tobacco industry tactic: publicly claiming support for the tobacco treaty then pressing for implementing legislation that is significantly weaker than the treaty itself. With this approach, tobacco corporations try to cultivate positive public recognition for supporting the treaty, while working behind closed doors to undermine its most central provisions.

At the same time in Guatemala, Philip Morris/Altria employed one of the most insidious tobacco industry tricks: a so-called youth anti-smoking campaign. According to historical internal industry documents, Philip Morris discussed expanding this type of program to other countries in Latin America to "strengthen relationships with governments and community."

As the ratification process progresses in Guatemala and the Senate begins the process of drafting implementation legislation, activists will remain vigilant and ensure the Senate dismisses the tobacco industry's weak recommendations. The progress of public health advocates in the face of a powerful industry is an inspiring example for activists around the world that it is possible to protect people from one of the deadliest industries. ■

## Nigeria: Taking on British American Tobacco's Bribes and Lies

As Africa's most populous country, Nigeria is a prime target for the tobacco industry to market its deadly products. British American Tobacco (BAT), which controls 75 percent of Nigeria's cigarette market, is notorious for using its financial resources and government contacts to ensure steady profits and weak tobacco control legislation. A short list of BAT's tactics to prevent positive health policy in Nigeria includes attempting to bribe the media and giving expensive gifts to regulatory agencies and government officials.

In Nigeria, BAT depends on a misinformed public and easily influenced government, so the media is a top target. In an orchestrated campaign to buy the media in Nigeria, the corporation hosts expensive meals for media owners and editors, sponsors journalist association meetings, syndicates articles favoring the company and tobacco products and leverages its advertising power to stop the publication of critical articles.

The corporation's "British American Tobacco Industry Reporter of the Year Award" rewards reporters who write favorable stories about the company with a new laptop and 100,000 Nigerian Naira (US\$750). Between January 2003 and January 2005, BAT sponsored three meetings between media executives and BAT executives at the prestigious Lagos Sheraton Hotel and awarded attending journalists with gifts for participating. The tobacco giant has a track record of cultivating journalists to write pro-BAT articles that attack the FCTC. Uncovered evidence showed that a reporter, John Ozeze-Langley—who recently wrote an article in the *Daily Independent* titled "BAT: Not the Enemy to Fear" and pleaded to "please let the tobacco companies be!"—was given the information to write the article by the tobacco company.

Political gifts and lobbying are also a major tactic. Operating from its "Political Liaison Office" in Nigeria's capital, BAT's dirty lobbying activities include expensive holidays and gifts. The corporation's lobbying tactics are so extreme that during the tobacco advertising bill debate, a member of Parliament openly accused the tobacco transnational of employing tactics to stop passage of the bill.

Specific examples include donating three sport utility vehicles to the Standards Organization of Nigeria, the government agency charged with ensuring products (like cigarettes) do not endanger consumers. BAT also donated three SUVs to the enforcement unit of the Nigerian Custom Service.

These donations to regulatory bodies in Nigeria demonstrate a conflict of interest that puts people at risk. Unfortunately, BAT's activities are being replicated around the world in order to weaken the implementation and enforcement of laws protecting people from the tobacco industry.

Activists in Nigeria have worked to expose and denounce these instances of dirty politics. By organizing press conferences and rallies and meeting directly with key government officials, Environmental Rights Action and a range of organizations in Nigeria are building critical support for FCTC ratification and strong, effective implementation, even in the face of BAT's heavy-handed influence. ■

## Costa Rica: Overcoming the Tobacco Industry's Influence over Legislators

The FCTC calls for strong, enforceable protections from tobacco products. Considering the tobacco industry's dependence on weak regulation for its expansion, it's no surprise they're working against an enforceable treaty that protects people. And since Costa Rica is a political leader in the region and home to British American Tobacco's (BAT) Central American headquarters, the country is a high priority for public health advocates and the tobacco industry. While Costa Rica signed the FCTC on 3 July 2003, it has not yet ratified the treaty.

In June 2005, an international coalition of public health advocates met in Costa Rica to call on Costa Rica's government to ratify the FCTC swiftly. The delegation joined AMBIO-ALERTA, a NATT member based in Costa Rica, to meet with Representatives of Congress and talk to the media about why the FCTC needed Costa Rica's ratification.

In a related event, at a June 2005 forum on national tobacco control policy convened at the National Assembly by health advocates, BAT used a slick PowerPoint presentation to push its own regulatory agenda. Presenting itself as a "responsible" tobacco corporation and legitimate "partner," BAT advocates for policies that would do more to protect its bottom line than public health.

This is a tactic that the tobacco industry has used for years to thwart effective regulation. In response the countries of the world have been clear: the tobacco industry shall play no role in public health policy making. They unanimously adopted Article 5.3 of the treaty that obligates parties to "*protect these [public health] policies from commercial and other vested interests of the tobacco industry.*"

AMBIO-ALERTA and IAFA, the leading public health advocates, are resisting. At the June 2005 public forum, they laid out a clear case for why BAT's proposals won't work and why a ratified and implemented FCTC is best for reducing the burden of tobacco-related death and disease. As the battle in Costa Rica continues, NGOs and the public will continue to pressure the government to stand up to the tobacco industry and protect people by ratifying and implementing the global tobacco treaty. ■

## Profiles of the Biggest Tobacco Transnationals

In many countries Philip Morris/Altria, British American Tobacco and Japan Tobacco International are more commonly known by a local subsidiary name. Many times, the local tobacco company is owned by one of these transnational corporations.

### Philip Morris/Altria

**Chair and CEO: Louis Camilleri**

**Headquarters Address:**

120 Park Ave.  
New York, NY 10017  
USA

**International Subsidiary:**

Philip Morris International  
President and CEO: André Calantzopoulos

**Address:**

Avenue de Cour 107  
Casa Postale 1171  
1171 Lausanne, CH-1001  
Switzerland

**Notable Facts:**

- Largest and most profitable tobacco corporation in the world
- Created the Marlboro Man—one of the most effective promotional images globally—with strong appeal to young people
- Claims to support FCTC but opposes central provisions like ban on advertising, promotion and sponsorship

### 2004

Philip Morris/Altria  
Revenues: **\$64 billion**

Philip Morris International  
Revenues: **\$17.58 billion**

Philip Morris/Altria  
Profits: **\$9.4 billion**

**British American Tobacco (BAT)**

**CEO:** Paul Adams

**Headquarters Address:**

Globe House, 4 Temple Place  
London  
WC2R 2PG  
United Kingdom

2004	
Revenues:	\$60.1 billion
Profits:	\$2.1 billion

**Notable Facts:**

- Second-largest tobacco corporation in the world
- Maintained highly visible lobbying presence throughout FCTC negotiations, including representation by BAT's Director of International Political Affairs, Manager of International Regulatory Affairs, and Manager of Legal Division

**Japan Tobacco Inc. (JT)**

**President and CEO:** Katsuhiko Honda

**Headquarters Address:**

2-1, Toranomom 2-chome, Minato-ku  
Tokyo, 105-8422  
Japan

2004	
Revenues:	\$43.8 billion
Profits:	\$72 million

**Notable Facts:**

- 50% owned by Japanese government
- Throughout FCTC negotiations, Japan attempted to block progress toward the comprehensive ban on advertising, promotion and sponsorship. Japan's opposition to effective treaty provisions was not surprising, given the heavy industry representation on its delegation, including the Finance Ministry, which controls the country's stake in JT.

## **Exposing and Defeating Tobacco Industry Interference: Take Action!**

As you uncover tactics that Philip Morris/Altria, BAT and JTI are employing in your country, there are several simple things you can do to challenge their dirty tricks. Please share your findings and stories via email to [natt@list.stopcorporateabuse.org](mailto:natt@list.stopcorporateabuse.org) or [mrising@stopcorporateabuse.org](mailto:mrising@stopcorporateabuse.org) if you are not a NATT member.

### **1. Involve key allies**

- ❖ Distribute this *Global Tobacco Treaty Action Guide* to Parliamentarians, Ministry of Health officials, NGOs and the media.
- ❖ Encourage allies and members of Parliament to challenge tobacco industry involvement and interference in FCTC ratification and implementation.
- ❖ Ask government allies about what the tobacco industry is doing to interfere in policy. Use the report form in this *Global Tobacco Treaty Action Guide* to collect their stories, track and share evidence of industry activity in your country.

### **2. Media**

- ❖ Build relationships with reporters and ask them to write stories on the FCTC and to expose tobacco transnational attempts to interfere.

### **3. Challenge the tobacco industry face-to-face**

- ❖ Stand up in a meeting to challenge the tobacco corporations' presence and rhetoric. The tobacco industry is working very hard to gain access to government decisionmakers and you may be in a meeting where a representative from a tobacco corporation is also present. It is important to identify this person and remind participants that the FCTC obligates decisionmakers to protect health policy from tobacco industry interference.

### **4. Draw international attention**

- ❖ Let other FCTC campaigners know about this interference. Share what is happening in your country with domestic and international allies. If you are a NATT member, use the NATT listserv to draw international attention to the problems.

### **5. Promote legislation to keep the tobacco industry out of policy development**

- ❖ Pass legislation for implementing Article 5.3 of the FCTC so that keeping the tobacco industry out of health policy is included in your national law. Send copies of the sample legislation found on pages 17-18 of this *Global Tobacco Treaty Action Guide* to all legislators urging them to include it as a part of your tobacco control bill.

## Talking Points

### Why should the tobacco industry be excluded from public health policymaking?

- Tobacco is a product that causes addiction, disease and death, and therefore places an unwarranted financial burden on existing resources for health.
- The tobacco industry attempted to water down the FCTC from its inception.
- The tobacco industry's primary concern is maintaining or increasing its enormous profits and sharing that wealth with rich shareholders in the North—not protecting public health.
- After decades of deception and deceit, tobacco corporations should simply never have been allowed to participate in public health policymaking.
- Internal corporate documents outline a well-funded, highly coordinated, covert campaign to thwart protections for public health.
- While the industry claims to have changed its ways, it continues its attempts to use sophisticated methods to undermine meaningful tobacco control legislation around the world.
- There are many ways that tobacco corporations such as Philip Morris/Altria use their economic and political muscle to influence public policy—including by hiding behind subsidiaries like Kraft Foods and public relations campaigns like Corporate Social Responsibility.
- The WHO and governments around the world have come together to pass provisions clearly excluding the industry from participation in the formation of public health policymaking.

*Note:* It is important that limits on political activities include activities by subsidiaries of the tobacco corporations, such as Philip Morris/Altria's Kraft Foods. Internal documents and the Committee of Experts Report, *Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization*, demonstrate how Philip Morris/Altria has tried to influence national and international policy through Kraft. According to industry analysts, Philip Morris/Altria is likely to spin-off Kraft by early 2006. This separation will be a major step toward reducing the wealth, power and influence of the world's largest tobacco corporation.

## **FCTC Preamble Statement, Articles 5.3, 12 (e) and 20.4 (c)**

The following sections of the FCTC clearly exclude the tobacco industry from participating in public health policymaking and call for the collection and dissemination of information on tobacco industry activities that have an impact on tobacco control.

### ***Preamble***

*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;*

### ***Article 5 — General Obligations***

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.*

### ***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:*

- (e) *awareness and participation of public and private agencies and nongovernmental organizations not affiliated with the tobacco industry in developing and implementing intersectoral programs and strategies for tobacco control.*

### ***Article 20 — Research, surveillance and exchange of information***

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:*

- (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.*

**The following page suggests model legislation for implementing these sections.**

## Model Legislation to Exclude the Tobacco Industry and Implement the FCTC

The model legislation below suggests ways in which countries can insulate tobacco control policy, as well as their tobacco control legislation, from the influence of the tobacco industry.

Comprehensive, effective model legislation to implement the FCTC has been created by the WHO, PAHO and the International Union for Health Education and Promotion. The purpose of these legislative suggestions below is to provide guidance specifically on industry exclusion. They should be used in tandem with other existing sources of comprehensive model legislation. Many existing sources of model legislation provide guidance on implementation of Article 20.4(c).

### Principles/Preamble/Purpose

*Recognizing the need to safeguard the development, implementation, review and enforcement of tobacco control policies from interference by commercial and other vested interests of the tobacco industry;*

This suggested legislative text would give effect to the concepts contained in the FCTC. While preambles are not necessarily an essential component of any piece of legislation, if they are used, they can give expression to aspects of policy that lie behind the legislation. In doing so, they can educate people about the context for the legislation and also assist the courts in interpreting the law if it is challenged. Including clear language like that given in our example in a preamble to a piece of legislation would help indicate that, if questions of tobacco industry involvement ever arose, the country's law should be interpreted in such a way that it restricts or prevents any industry involvement.

### Definitions/Interpretations/Preliminaries

*“Vested interests of the tobacco industry” means people or groups who stand to benefit, financially or otherwise, from legislation, policies, or programs that promote or protect the interests of the tobacco industry. They include, but are not limited to, people or groups that own shares in a tobacco corporation or any of its subsidiaries, and people or groups that directly participate in tobacco advertising, promotion, or sponsorship.*

Having a definition like the one we have suggested above in a piece of tobacco control legislation provides a clear indication of the types of people or groups whose interests would be in direct or indirect conflict with public health interests. This definition is consistent with existing treaty law, other FCTC provisions and the ordinary meaning and interpretation of the phrase. Articulating a clear definition of this term will help countries to thwart tobacco industry attempts to influence legislation and implementation through subsidiaries and affiliates. Governments should be urged to define this important term in a way that affords maximum protection for domestic tobacco control policies. A broad definition is critical to target actions that may not constitute direct interference by the tobacco industry, and this idea is captured in the phrase “who stand to benefit financially or otherwise.”

## Administration

***Prohibition on tobacco industry participation***—*The Minister of Health [or other governing authority] shall implement policies and procedures to prohibit commercial and other vested interests of the tobacco industry, including government agencies and wholly or partially government-owned tobacco companies, from participating in the development, implementation, and review of all policies under this Act. This prohibition shall include, but not be limited to:*

- (i) The use of tobacco industry-funded research in developing, implementing, and reviewing tobacco control policies;*
- (ii) Consultation with or participation by scientists or other individuals who may have a conflict of interest as defined [in previous sections of this legislation];*
- (iii) The participation of commercial and other vested interests of the tobacco industry, including government agencies and wholly or partially government-owned tobacco companies, in any official proceedings conducted under this Act; and*
- (iv) The use of print, electronic, or other public media by commercial and other vested interests of the tobacco industry, including government agencies and wholly or partially government-owned tobacco companies, regarding any topic covered by this Act.*

This suggested legislative text goes to the heart of excluding the tobacco industry from participation in policymaking. It captures all of the obligations required in FCTC Articles 5.3, and 12.

The inclusion of these three provisions in any domestic tobacco control legislation will ensure that policy, legislation and implementation are all insulated from tobacco industry interference. In addition, they will provide policymakers, legislators, implementers and enforcers with legally binding tools to uphold tobacco control measures and protect them from interference by tobacco corporations, their subsidiaries and affiliates.

## Tobacco Industry Interference Reporting Form

Please share your country's stories of activities and interference with allies around the world. Sharing your stories will help FCTC advocates around the world more effectively counter tobacco industry interference. For an online version of the survey visit [www.stopcorporateabuse.org/reportform](http://www.stopcorporateabuse.org/reportform), or

- ▶ If you are a NATT member, email it to [natt@list.stopcorporateabuse.org](mailto:natt@list.stopcorporateabuse.org).
- ▶ If you are not a NATT member, email it to [mrising@stopcorporateabuse.org](mailto:mrising@stopcorporateabuse.org).

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

ORGANIZATION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/ STATE/ PROVINCE: \_\_\_\_\_ POSTAL CODE: \_\_\_\_\_

COUNTRY: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

EMAIL/WEBSITE: \_\_\_\_\_

### DIRECTIONS:

On pages 6-7, we detailed four of the main strategies giant tobacco corporations are using to undermine health policy. Please use the questions below to share information about the tobacco industry's tactics in your country.

*PLEASE USE DETAIL & PROVIDE SOURCES/EVIDENCE WHEREVER POSSIBLE*

### 1. Spreading Misinformation About the Legal Process

The tobacco industry has been misinforming country governments and civil society organizations about the ratification process — asserting that countries need to pass domestic tobacco control legislation before they can ratify the FCTC. This is not true.

- A. Which transnational tobacco corporations are active in your country? How would you characterize their presence generally? Do you have specific information on trends, etc.?

- B.** Has the tobacco industry told government officials or civil society organizations in your country that your government needs to pass domestic tobacco control legislation before ratifying the FCTC? If so, what were the circumstances of the conversation? Who was present?

- C.** List all companies and organizations (including business groups) currently opposing the FCTC, tobacco control and/or public health legislation in your country. *Note: Tobacco transnationals often use trade unions, advertising agencies, farmers, business councils and chambers to lobby on their behalf.*

## 2. Asking for a Seat at the Table

**The FCTC clearly excludes the industry from participating in public policy. Yet corporations like Philip Morris/Altria still attempt to derail ratification and implementation by not always articulating their opposition, faking “support” for the treaty, and trying to win a seat at the table. While tobacco corporations like Philip Morris/Altria claim to support the treaty, they oppose its central provisions, such as the ban on tobacco advertising, promotion and sponsorship.**

- A.** Has Philip Morris/Altria, BAT or JTI taken a public position on the FCTC in your country? If so, what is it? How have they communicated this position?

**B.** Is the government holding consultations with the industry or its affiliates? If so, what do these consultations look like? What is the industry saying?

**C.** Is the tobacco industry organizing meetings of “stakeholders” about tobacco control policies or other topics on your country? If yes, please describe.

### **3. Demanding Voluntary Self-Regulation**

**The tobacco industry has a long history of proposing voluntary regulation as a strategy to fight effective and enforceable protections. However, voluntary codes are non-binding, lack independent oversight and often do not include consequences; in practice they have proven ineffective at curbing the tobacco industry’s most successful forms of spreading tobacco addiction.**

**A.** Are you aware of any voluntary self-regulation agreement between a tobacco corporation and your government? If yes, please describe in detail. What has the tobacco corporation agreed to do?

- B.** Are any major tobacco corporations promoting voluntary self-regulation as an alternative to legal, binding regulations? If yes, please provide details.

#### 4. Slick Public Relations

**While the tobacco industry claims to have changed and evolved, internal documents show their corporate social responsibility initiatives are merely part of a coordinated attempt to improve their image and gain access to politicians.**

- A.** Does Philip Morris/Altria, or any other tobacco transnational, advertise its philanthropy/charitable giving or social responsibility (on TV, magazines, other)? If yes, please describe. **Do you have print examples?** Fax or .pdf and email or mail please!

- B.** Are any of the tobacco transnationals promoting their so-called corporate responsibility? If so, how?

- C.** Are any of the tobacco transnationals running advertisements or campaigns they say are designed to stop youth smoking, or funding any youth smoking prevention programs in your country? If yes, please describe.

If you prefer to send by mail, please send to • Corporate Accountability International •  
• c/o Megan Rising • 46 Plympton Street Boston, MA 02118 • USA •

## Positive Impact of the FCTC: Story Form

With the global tobacco treaty we are on the road to reversing the global tobacco epidemic. Along the way there are significant victories and milestones that are important to celebrate. From Bangladesh to Palau and from Thailand to South Africa, we have heard many stories of positive policy change, growing civil society momentum and noticeable changes in everyday life because of the FCTC.

In Thailand, for example, Philip Morris worked for years to undermine tobacco control legislation. But because of the vigilance of NGOs and officials in the Thai Health Promotion Institute, Thailand has been able to counter this interference effectively and is setting a high standard for tobacco control policy. According to an internal industry document from 1994, Philip Morris developed strategies and an action plan to “mitigate the impact of the Tobacco Control Bill.” Despite Philip Morris’s plans, public health advocates in Thailand have moved forward with some of the strongest tobacco control legislation in the world.

**In September 2005, the world will celebrate with Thailand as they implement an advertising law that raises the standard for controlling Big Tobacco’s marketing.**

In September 2005, the world will celebrate with Thailand as they implement an advertising law that raises the standard for controlling Big Tobacco’s marketing. It bans all point-of-sale advertising and promotions—outlawing one of the primary ways that tobacco corporations market tobacco.

Philip Morris attempted to stop this point-of-sale advertising ban by lobbying and sending letters to key government decisionmakers, including the Public Health Minister and the Chair of the Senate Health Committee. When this tactic failed, Philip Morris (Thailand) joined BAT (Thailand), JTI and the Thailand tobacco monopoly in threatening to sue the Thai Ministry of Public Health for implementing this law! Public health advocates continue to move forward in the face of this interference and pressure by meeting with key decisionmakers and holding news conferences to assert the importance of this order and ensure its implementation. The Public Health Ministry has declared that all point-of-sale advertising must be removed by 24 September 2005 and retailers are pledging their compliance. Congratulations to all who made this victory happen in Thailand!

We invite you to take a few minutes to reflect on the impact that the FCTC has had on your country, its people and health policy. As your country takes steps toward ratification and implementation, please share this progress with allies around the world, by sending an email to the NATT list at [natt@list.stopcorporateabuse.org](mailto:natt@list.stopcorporateabuse.org) or [mrising@stopcorporateabuse.org](mailto:mrising@stopcorporateabuse.org) if you are not a NATT member. For an online version of the survey visit [www.stopcorporateabuse.org/storyform](http://www.stopcorporateabuse.org/storyform).

## **Impact of the FCTC: Question Form**

Have you noticed a change in tobacco control in your country or region since the FCTC negotiations began in 2000?

If your country has ratified, has the ban on advertising, promotion and sponsorship passed into law yet? What is the timeline for the ad ban? When will it take effect? Are ads coming down already? What changes have you seen since the FCTC was adopted in May 2003? Examples may include: labels, promotional activities, TV, magazines, etc. Please be as detailed as possible and include specific dates to demonstrate the progress.

What positive impact of the FCTC have you seen in your country? Are there specific practices of tobacco corporations that have changed? Concrete examples will be most helpful.

How do you think ratifying the FCTC will improve the lives of people in your country? What are you most hopeful about for the impact of the FCTC in your country?

For NATT members, how has being part of NATT helped you to be a more effective advocate?

For government officials, how have NGOs in NATT supported you in advancing effective legislation?

## Appendix 1: WHO Regional Information

### WHO Headquarters

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Switzerland  
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### Regional Office for Africa

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Fax: +242 839 501/+47 241 395018  
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Regional Director: Dr. L. Sambo

### Regional Office for Europe

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Email: [postmaster@euro.who.int](mailto:postmaster@euro.who.int)  
Regional Director: Marc Danzon

### Regional Office for the Western Pacific

P.O. Box 2932  
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Regional Director: Dr. Shigeru Omi

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Plianbangchang

### Regional Office for the Americas

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Regional Director: Dr. Mirta Roses

## Appendix 2: NATT FCTC Working Group

### **Action for Integrated Development (Ghana)**

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### **Consumer Information Network (Kenya)**

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### **Consumers International Regional Office for Latin America and the Caribbean (CIROLAC, Chile)**

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### **ConsumerVOICE (India)**

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### **Corporate Accountability International (US), NATT Secretariat**

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### **Corporate Accountability International, Latin America Coordinator**

Yul Francisco Dorado, [yuldorado@stopcorporateabuse.org](mailto:yuldorado@stopcorporateabuse.org)

### **Environmental Rights Action (Nigeria)**

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### **National Consumers and Environmental Alliance of Togo**

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### **Zambia Consumers Association**

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## Appendix 3: FCTC and the United States

### Decision to Sign

The Bush Administration's decision to sign the Framework Convention on Tobacco Control (FCTC) with great fanfare in May 2004 appears to have been one in a series of public relations maneuvers to gain positive recognition while working to undermine the world's first public health treaty. Throughout the FCTC negotiating process, the US government consistently took positions that would dilute the treaty at the expense of people's lives in the US and around the world. For example, the US opposed a comprehensive ban on tobacco advertising, promotion and sponsorship—even with exceptions based on constitutional constraints; fought to prioritize trade agreements over public health; and opposed excluding the tobacco industry from public health policymaking.

### Obstructionist Tactics

At the Intergovernmental Working Group meetings in June 2004 and February 2005, the Bush Administration continued to engage in its obstructionist tactics, especially with regard to treaty funding. This Administration's past track record and current inaction on this lifesaving treaty call into question whether the US government is truly committed to the FCTC and accountable to the US public or more concerned with splashy PR.

### Signatory Inaction

According to the Vienna Convention on the Law of Treaties, once a country signs a treaty it is bound to uphold the spirit and intent of the agreement. Signature provides a way to maintain momentum from the negotiations and gives countries the opportunity to demonstrate good faith in accepting treaty obligations. Unfortunately, the US has abused the process and not followed this practice with many humanitarian treaties it has signed. There is a clear pattern in recent history of the US negotiating down to the lowest common denominator, then failing to support environmental, human rights and other treaties. Since signing the FCTC, the Bush Administration has made no demonstrable progress—the treaty has not yet been introduced to the Senate Foreign Relations Committee for approval. Although the US is considered a leader in tobacco control, continued inaction on this life-saving agreement means it will not have a seat at the table as countries come together at the first Conference of the Parties. ■



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