

FREE TRADE and TOBACCO

ESSENTIAL FACTS

- Tobacco is not like any other consumer product because it kills at least half of all its users.
- Making tobacco products less affordable leads to reduced consumption of tobacco products.
- Increasing price and tax on tobacco products is the most effective strategy to reduce tobacco demand.

THE CASE FOR A POLICY TO EXCLUDE TOBACCO

Research proves that if the price of tobacco products is increased by 10%, consumption could decrease by 3-4%, particularly in developing countries. As tobacco taxes are increased at the national level, it is also imperative to ensure that ***tobacco products are not given tariff reductions, incentives, or any preferential treatment related to trade investments*** at the international level. As Parties strive to implement the FCTC, liberalized trade of tobacco can defeat the purpose of domestic tobacco taxes and other tobacco control measures. Trade openness makes tobacco products more easily available, with a greater negative impact on tobacco consumption in low-income countries where most of today's tobacco consumers live.

Relevant FCTC Provisions

Article 2 encourages Parties to implement measures beyond those required by FCTC to protect human health, and requires that any bilateral or multilateral agreements shall be compatible with their obligations under the FCTC and its protocols.

The objective of FCTC (Article 3) is to protect people from the devastating health, social, environmental, and economic consequences of tobacco consumption by measures at the national, regional & international levels.

Guiding principles of the FCTC (Article 4) state that multi-sectoral measures at national, regional, and international levels are essential to protect the population from tobacco.

Article 5.5 requires Parties to 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 and to cooperate with international and regional intergovernmental organizations to achieve the objectives of the Convention.

Article 6 strongly recommends that Parties take account of their tobacco control objectives to reduce tobacco consumption when implementing their taxation policies.

Article 15 recognizes that elimination of all forms of illicit trade in tobacco, and development and enforcement of related national, regional and global agreements are essential for tobacco control.

The Punta del Este Declaration of the FCTC Conference of Parties recalls that GATT, TRIPs, and TBT provide options for the protection of human health in the context of trade agreements.

NEGATIVE IMPACT OF INCLUDING TOBACCO IN FREE TRADE AGREEMENTS (FTAs)

“Cheaper” and “more” are not better: The objective of FTAs is *market competition that increases product availability and diversity and reduces prices to the consumer*. However, these goals are inappropriate for tobacco, as they would result in considerable harm to health.

Legal, but not like any other: It is argued that free trade leads to economic welfare. However, the social impact of free trade of tobacco differs from that of other goods. Tobacco is not like any other product, as it is the only consumer product that kills half its users prematurely.

Implications on tobacco control policies:

- TRIPS¹ permits the registration of trademarks. Tobacco companies exploit this provision by using terms like 'light' or 'mild' (suggesting that one tobacco product is less harmful than another) as part of a brand name. When challenged by a ban on misleading or deceptive descriptors, tobacco companies claim it as a registered trademark protected under TRIPS.
- In Canada, Brazil, Thailand and elsewhere, tobacco companies have falsely argued that

¹ The Agreement on Trade-Related Aspects of Intellectual Property Rights

large, pictorial health warnings, plain packaging, and bans on the use of misleading descriptors ("light" and "mild") violate their rights under TBT and TRIPS, which states that use of a trademark in the course of trade shall not be obstructed by special requirements.

- Some FTAs like NAFTA² have investor protection provisions that permit investors directly to bring suit against, and seek compensation from, governments that have infringed on their investment rights.

Proven impact: When Asian markets opened to US cigarettes in the 1980s, the smoking rates increased by 10%. After South Korea opened its market to U.S. companies in 1988, the smoking rate among male teens rose from 18.4% to 29.8% and among female teens from 1.6% to 8.7% in one year.

The World Bank says that reductions in the barriers to tobacco-related trade will likely lead to greater competition in the markets for tobacco and tobacco products [and] reductions in the prices for tobacco products. As a result, the death and disease from tobacco use will also increase.

REGIONAL TRADE AGREEMENTS: AFTA, SAFTA, AND PICTA³

It is important to exclude tobacco products from all future free trade agreements, while all existing trade agreements already are already equipped with provisions that prioritize health concerns in trade negotiations.

Provision to protect human health			
AFTA: Article 9 provides for steps to protect the health of the people of member states	PICTA: Article 16 lists measures necessary to protect human health as exception to trade	SAFTA: Article 14(b) provides for measures necessary for protection of human health	NAFTA: Article 2101 provides for protection of human health as "General Exceptions"

Tobacco products in FTAs: Progressive or Regressive?

AFTA was signed in 1992 and aimed to reduce intra-ASEAN import tariffs to 0-5% within 10 years. AFTA has evolved its tobacco trade provisions along these lines, which has led to negative impacts on public health measures because the reduction or elimination of duties on imported leaf and tobacco products results in cheaper cost of production and increased consumption of tobacco products.

Somewhat Progressive - Under the Common Effective Preferential Tariff (CEPT) scheme in 2001, tobacco featured in the Temporary Exclusion List for Cambodia, Lao PDR and Myanmar, the Sensitive List for Malaysia and Lao PDR, and under the General Exception list for Brunei Darussalam and Viet Nam. **But**, except for Vietnam, there was a "phase in" schedule laid down for all countries in the region to transfer tobacco to their inclusion list.

Regressive? Most ASEAN member states have reduced the tariff rates in tobacco trade in the last 10 years. For the Philippines, the government has progressively reduced tariff rates since 1981. The tobacco tariff rate was 50% in 1993, and currently the rate is 5%. In Thailand the tariff rate before 1996 was at 60%; after 2003, the rates were reduced to 5%.

SAFTA Article 7(3)(a) clearly states that member countries may not apply the Trade Liberalization Programme (tariff reduction) to products included in the Sensitive Lists.⁴ The Sensitive List is subject to review every four years or as may be decided by the SAFTA Ministerial Council, with a view to reducing the number of items in the Sensitive List. As of today, after much deliberation and effort the 'Working Group on Reduction in the Sensitive Lists' under SAFTA has completed its assignment of reducing the Sensitive Lists by 20%. Maldives

² North American Free Trade Agreement

³ AFTA = ASEAN Free Trade Area Agreement; SAFTA = South Asia Free Trade Agreement; PICTA = Pacific Island Countries Trade Agreement

⁴ Sensitive list is a list with every country that does not include tariff concession

has reduced it by 78%, and India has reduced its Sensitive List for Least Developed Member States almost by 95%. ***The important point to note here is that tobacco and tobacco products have remained in the sensitive list of these countries.***

Signed in 2001, **PICTA** provides for the gradual elimination of tariffs on all goods traded between participating countries, in accordance with agreed tariff elimination schedules, except trade in alcohol and tobacco products, which are excluded from the commitments on reducing and eliminating tariffs (Article 8).

CONCLUSION: EXCLUDING TOBACCO FROM FREE TRADE AGREEMENTS

In order to effectively achieve the objective of the FCTC, Parties should have policy coherence, where trade policies complement and support tobacco control policies.

- There is a simple solution to the problems posed by FTAs to tobacco control: tobacco products should be excluded from their purview.
- FTAs are designed to facilitate trade and remove tariff on products, which is an inappropriate goal for tobacco products, consumption of which is harmful.
- If tobacco products were excluded, countries would not be challenged for enforcing tobacco control policies like a ban on misleading descriptors on tobacco products, plain packaging for tobacco products, imposition of pictorial health warnings, etc.
- Under most FTAs, regulations must not be more trade restrictive than necessary to achieve a public health or other objective. FTAs contain very narrow exceptions for public health regulations that conflict with the agreements' overarching rules. Such public health measures must be "necessary."
- A simple declaration that the agreement does not apply to tobacco products would be sufficient.
- If countries do not exclude tobacco products from FTAs then they are inevitably weakening their own authority to reduce tobacco use and encouraging the tobacco industry's efforts to use trade agreements to undermine tobacco control policies.
- A policy of exclusion of tobacco in just one FTA will be insufficient to reduce the consumption of tobacco to the extent the tobacco control advocates call for. It is therefore, imperative to make it a universal policy in all FTAs.

On the way:

- ✓ The US-Vietnam FTA excludes tobacco from its tariff regulation, subject to regular review.
- ✓ Tobacco was taken out of the tariff reduction schedule for the US-Jordan FTA.
- ✓ SAFTA, a regional trade agreement, includes tobacco in the sensitive list



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