

WHO FCTC ARTICLE 2.1: THE OVERLOOKED ARTICLE'S IMPACT ON ENDGAME



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.

SPEAKERS



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WHO FCTC Article 2.1: Going Beyond the Basics

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Global Center for
Good Governance
in Tobacco Control

Article 2.1

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.



Global Center for
Good Governance
in Tobacco Control

Oct 2000 – Feb 2003

FCA - Civil society: Long days & nights during negotiations

Photo: FCA



Small group of organizations from FCA, 2002



Huber, 2003Photo: Laurent





Global Center for
Good Governance
in Tobacco Control

FCA – played a crucial watch dog role in INB negotiations



16 Oct 2000



22 March 2002

26 February 2003





Daily activities: FCA Bulletin, report card, death clock, policy brief

**Dirty Ashtray
Lifetime Achievement
Award**

THE UNITED STATES,
For their unwavering commitment to watering down a Convention they will never ratify.



Orchid Awards

 India for pointing out that `restrictions` on duty free are entirely meaningless.

AFRO for taking a strong stance on health over trade.



Awards to reward & shame countries during negotiations



Global Center for
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in Tobacco Control

Participation of NGO is Essential in Tobacco Control



Article 4.7
**“The participation
of civil society is
essential in
achieving the
objective of the
Convention and
its protocols.”**



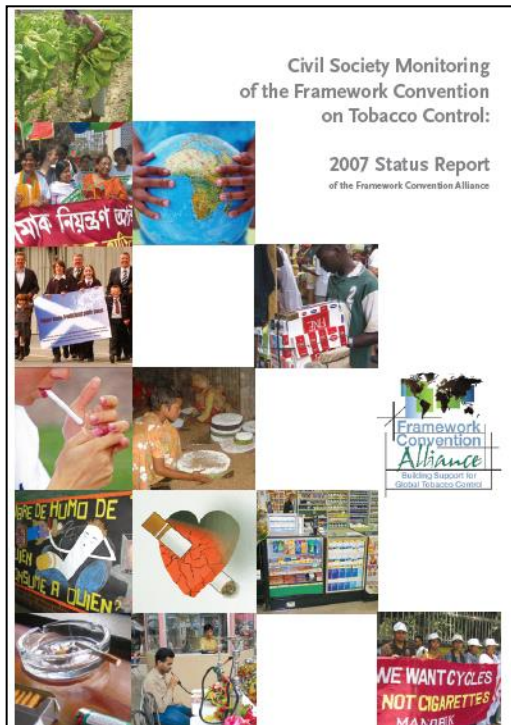
Flexibility of the FCTC

1. Non-binding language – text is flexible, provides escape routes
The word “*may*” appears 27 times in 16 Articles
2. FCTC “encourages” (not compels) Parties to take action
3. Very few deadlines:
 - Article 11: tobacco packaging & labelling (3 years);
 - Article 8: Smoke-free public places (5 years)
 - Article 13: Ban on advertising, promotions & sponsorship (5 years)
4. Compliance mechanism
 - Implementation Review Mechanism



Global Center for
Good Governance
in Tobacco Control

Assessment of FCTC Implementation: Civil Society Shadow Reports



FCA's Shadow report on
FCTC Implementation



TC Scale Europe, Joossens



Cigarette Package Health
Warning, Canadian Cancer Soc



Global Tobacco Industry
Interference Index, STOP



Global Center for
Good Governance
in Tobacco Control

The tobacco industry quotes the FCTC/Protocol – to undermine/derail it

BAT
A BETTER TOMORROW

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About us Our products How we work **Our industry**

Our industry

The global market

Corporate behaviour

Regulation

- Potentially reduced-risk products regulation
- Plain packaging
- Retail display bans
- Alternative crops
- Ingredients bans
- Pricing and tax

The Framework Convention on Tobacco Control

Our views on global tobacco control treaty's key issues

From 1 to 6 October 2018, representatives from 181 national governments gathered in

Philip Morris International
Delivering a Smoke-Free Future

OUR TRANSFORMATION OUR SCIENCE OUR INITIATIVES SMOKE-FREE LIFE SUSTAINABILITY CAREERS OUR BUSINESS

MEDIA CENTER

PMI NEWS

JUNE 29 2018

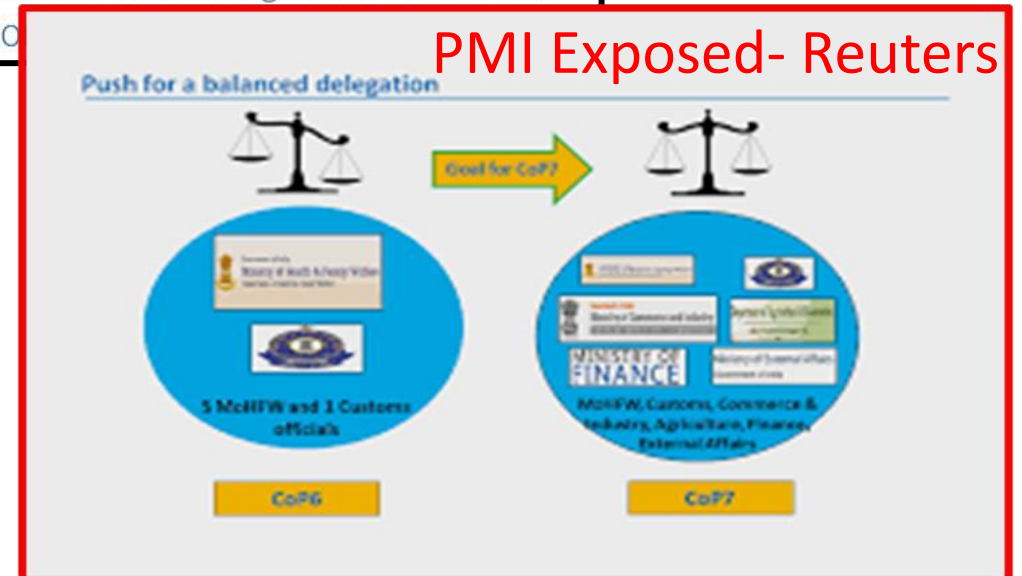
PMI welcomes WHO Protocol against illicit trade

JTI

News & Views **About us** Careers

FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

The Framework Convention on Tobacco Control (FCTC) is one of the key drivers of the tobacco control reg globally. It is the first international treaty in the field of public health, which was adopted by the Member St World Health Organization in May 2003, and entered into force in 2005. To date, 180 countries ratified the



Applying Article 2.1 in 2020s

Measures beyond those required by the FCTC?



Global Center for
Good Governance
in Tobacco Control



Measures beyond those required by the FCTC

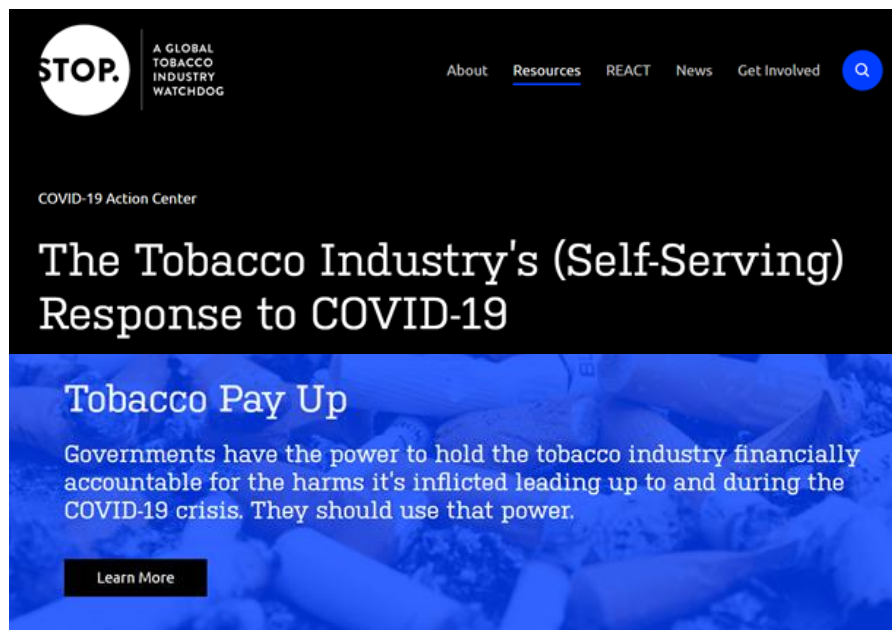
Every year, tobacco causes economic loss of at least **US\$1.4 trillion** globally

- End game strategies
- Licensing smokers, Tobacco-free generation policy
- Short-circuit TI's use of non-health sector – remove incentives to TI
- Penalize the industry & make industry pay up



**Bans/ Contemplated Bans
on Tobacco/ Vaping Products**

Post COVID-19: Make the industry pay: STOP's Pay up Campaign



- Governments should hold TI financially accountable for the harms it has caused before and during COVID-19 pandemic;
- Apply WHO FCTC Art. 19 - The tobacco industry must be held accountable for health care costs, compensation to victims, corruption, environmental damage, etc.

<http://exposetobacco.org/>



FCA's position on trade is not reflected in FCTC



ALLIANCE BULLETIN

Framework Convention on Tobacco Control • Geneva, Switzerland • 4 May 2001 • Issue Eleven

Today's Weather: Cloudy
High 18 C Low 10 C
66 F 50 F

Exchange Rate: 20 Swiss FR =
Seychelles Rupee 67.36
Trinidad/Tobago Dollar 71.442

Jamaican Dollar 526.261
Bermudian Dollar 11.463

INB-2 FRIDAY

Inside this issue:

- Today's Schedule 2
- Views from the Alliance 3-4
- La Convention Cadre pour la Lutte Antitabac, une chance à saisir par les autorités africaines 5
- Etiquetado. Dónde estamos y hacia dónde 5

Delegates Favour Health Over Trade

The vast majority of delegates speaking during a working group Thursday called for including a provision in the FCTC to make it clear that public health measures to deal with the tobacco epidemic would take precedence over trade considerations. Such a provision would help ensure that tobacco control measures could not be attacked under trade agreements.

The delegates called for revising or deleting Guiding Principal 5 of the Chair's text, which currently states that "Tobacco control measures should not be subjected to undue scrutiny should be applied to a challenged tobacco control measure."

THANK YOU DELEGATES

For your loyal readership and attendance at our briefings. Alliance materials are available online at <http://www.fctc.org> We'll see you at INB-3.

Many delegates agreed:

Uruguay: "The right to health and life should prevail over economic interests."

India (for the Southeast Asian Region): "Tobacco control measures taken for public health reasons should prevail over trade."

Jamaica: "(The current language) seems to water down the principle we are working towards. Tobacco control measures should not be subjected to undue scrutiny."

May 4, 2001

The vast majority of delegates speaking during a working group called for including a provision in the FCTC to make it clear that public health measures to deal with the tobacco epidemic would take **precedence over trade** considerations.

Trans Pacific Partnership Agreement 2013:

Ch 29: ISDS – option to exclude

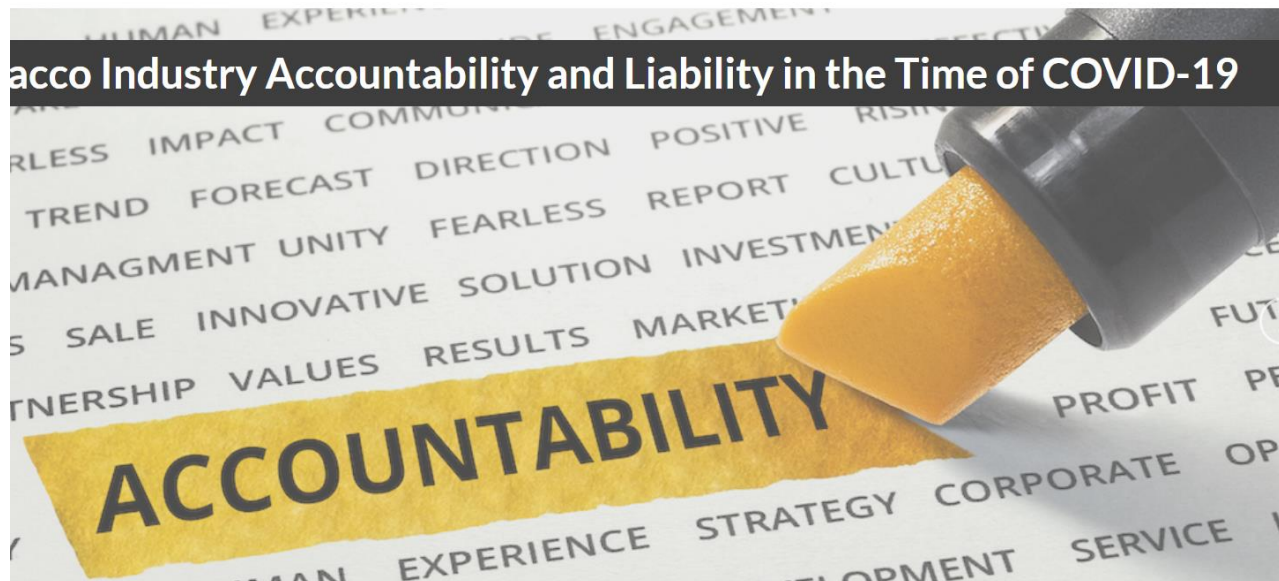
October 2016 – SAFTA

An amendment to the [Singapore-Australia Free Trade Agreement](#) excluded tobacco control measures from the scope of ISDS.
This is the first such exclusion to come into force anywhere in the world.

SAFTA - Article 13

2. This Section shall not apply to any dispute concerning any measure adopted or maintained or any treatment accorded to investors or investments by a Party in respect of tobacco or tobacco-related products.

Apply maximum tobacco control measures for public health



For more information:

Pay up campaign: exposetobacco.org

Global Tobacco Index: globaltobaccoindex.org

Article 5.3 online course

<https://untobaccocontrol.org/elearning/article53/login/>

GGTC website: <https://ggtc.world/>



Tobacco points of sale

State of play in the Netherlands



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Hartstichting



LONG
FONDS



KWF

Guy Muller

Public Affairs Consultant

Dutch Cancer Society

Health Funds for a Smokefree Netherlands

About us

- Health Funds for a Smokefree Netherlands
 - In Dutch: Gezondheidsfondsen voor Rookvrij
 - Collaboration Heart Foundation, Dutch Cancer Society & Lung Foundation
 - Goal: build a society in which nobody suffers from consequences of smoking and vaping
- Launch of 'Smokefree Generation' movement in 2015
 - In Dutch: Rookvrije Generatie
 - Goal: let Dutch children grow up smokefree, i.e.
 - Smokefree environments
 - Making tobacco & related products less attractive (price, marketing, availability etc)



Content

- Tobacco Control in the Netherlands
- Article 2.1 FCTC & tobacco points of sale
- Tobacco points of sale: our goal and approach
- Tobacco points of sale: developments in the Netherlands
 - Societal developments
 - Political developments
- Tobacco points of sale: what's to expect?



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Tobacco control in the Netherlands



- National Prevention Agreement
 - Concluded by societal organizations & government in 2018
 - Goal: Smokefree Generation by 2040
 - = no-one starts smoking anymore, no kids smoking, smoking adults < 5%
 - Package of actions and measures, e.g.:
 - Societal actions (e.g. smokefree sports clubs, hospitals, playgrounds)
 - Tax increases
 - Smoking cessation campaigns & improved cessation aid (incl. funding)
 - Display ban
 - Plain packaging
 - **Reducing number of tobacco points of sale**



Article 2.1 FCTC & tobacco points of sale

- Article 2.1 FCTC
 - “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.”
 - FCTC is the floor for tobacco control, not the ceiling
- Example of going beyond FCTC: reducing number of tobacco points of sale



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Tobacco points of sale: Our goal and approach

- Our goal:
 - Significant reduction number of tobacco points of sale
 - Sale of tobacco and related products eventually only in tobacconist shops
- This goal helps to create a Smokefree Generation, because this way:
 - Tobacco products become less accessible for children
 - Tobacco products become less visible to children
 - The idea is strengthened that smoking is not a normal activity
 - Lower accessibility supports smokers who want to quit



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Tobacco points of sale: Our goal and approach

- Our approach:
 - Increase awareness and support for measures and actions among Dutch population, e.g. via Smokefree Generation campaigns
 - Support for reduction of points of sale increased significantly:

% that (totally) agrees	2016	2017	2018	2019	2020
The government should reduce the number of tobacco points of sale to prevent smoking initiation among youth	62%	68%	66%	64%	71%
The government should make sure that tobacco products can only be sold in tobacconist shops to prevent smoking initiation among youth	61%	64%	66%	64%	73 %

*Research by Kantar in commission of Health Funds for a Smokefree Netherlands,
N (2020)= 1,358*

- Influence government action through lobbying

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Tobacco points of sale: Developments in the Netherlands

- Societal developments
 - 2018-2020: Drug store chain (Kruidvat & Trekpleister) phased out sale of tobacco
 - 2019-2022: Supermarket chain (Lidl) is phasing out sale of tobacco
 - 2020: National railway service started to phase out sale of tobacco at train stations



Tobacco points of sale: Developments in the Netherlands

- Political developments, National Prevention Agreement (2018):
 - Display ban implies ban on cigarette vending machines
→ leads to reduction of an estimated 13.000 points of sale
 - Further substantial reduction necessary
 - Ministry of Health conducts research into:
 - current number of tobacco selling points
 - how to achieve goal of substantial reduction
 - By March 2021: clear how and when further reduction will be realized



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Tobacco points of sale: Developments in the Netherlands

- Political developments, parliamentary motions from recent years:

2015 Parliamentary motion

investigate
possibility of
licensing system

create policy plan
to reduce tobacco
points of sale

Rejected

2019 Parliamentary motion

conduct research
into number of
tobacco points of
sale & monitor this
annually

legal measures to
limit sale to
tobacconists, if
number of selling
points has not
decreased before
2022

Passed

2020 Parliamentary motion

repeats motion
from 2019

discuss phasing
out sale of
tobacco with
supermarkets &
gas stations, to
see if legal
measures are
needed

Passed



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Hartstichting



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Tobacco points of sale – Expected developments

- This month Dutch government expects to present:
 - Results of research into current number of tobacco selling points and ways to reduce tobacco points of sale
 - Policy plan stating how and when tobacco points of sale will be reduced
- Our hope:
 - A plan with an ambitious timeline
 - Leading to significant reduction of points of sale
 - (Eventually) limiting sale to tobacconist shops only
 - Including related products e.g. e-cigarettes
 - Taking into account online sale



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Putting FCTC Article 2.1 to work: Project Sunset

November 9, 2020

Chris Bostic

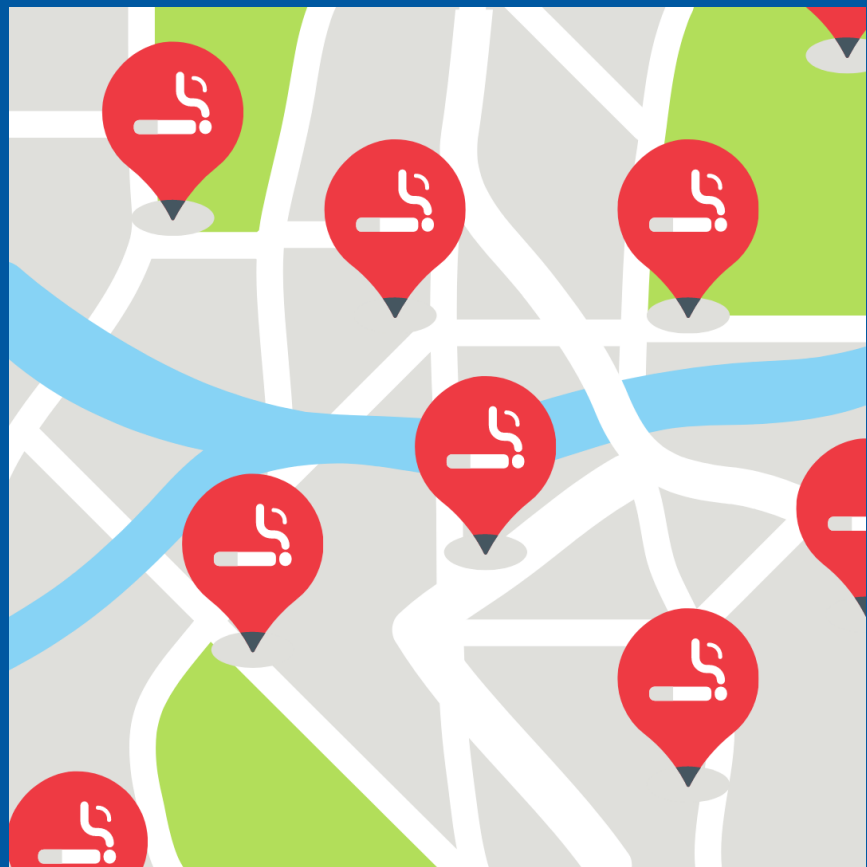
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“Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use.”

- United Nations Guidelines for Consumer Protection, *First adopted 1985*

The Big Question:

How is *the single most deadly consumer product ever made* still sold on every street corner?





PROJECT SUNSET

ash.org/sunset



U.S. Goal

Phase out the sale of
commercial ~~combustible~~
tobacco products





Sunset USA Basics

- Phase-in approach
- Focused on advocacy rather than policy development
- Focused on human rights, disparities and health equity
- Not about traditional use





Cardinal Rules

- ✓ Sales, not possession or use
- ✓ Access to cessation imperative
- ✓ Ensure against inequitable enforcement



California Tobacco Control Program (CTCP) Endgame

By 2035, transform California by eradicating the commercial tobacco industry's influence and reducing the harm caused by tobacco products to the health, environment, and economic well-being of California's diverse populations



Trailblazers – 1/1/21



Public Support

ASH USA survey (2019, unpublished)

“To what extent would you support a government policy to ban/end/phase-out the sale of *tobacco products*?”

- Support among never smokers = 67%
- Among former smokers = 57%
- Among smokers = 53%

“To what extent would you support a government policy to ban/end/phase-out the sale of *cigarettes*?”

- Support among never smokers= 81%
- Among former smokers = 76%
- Among smokers = 50%

Beverly Hills, CA:

First US city
ordinance
ending sale of
cigarettes





Thank you

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<https://ash.org>

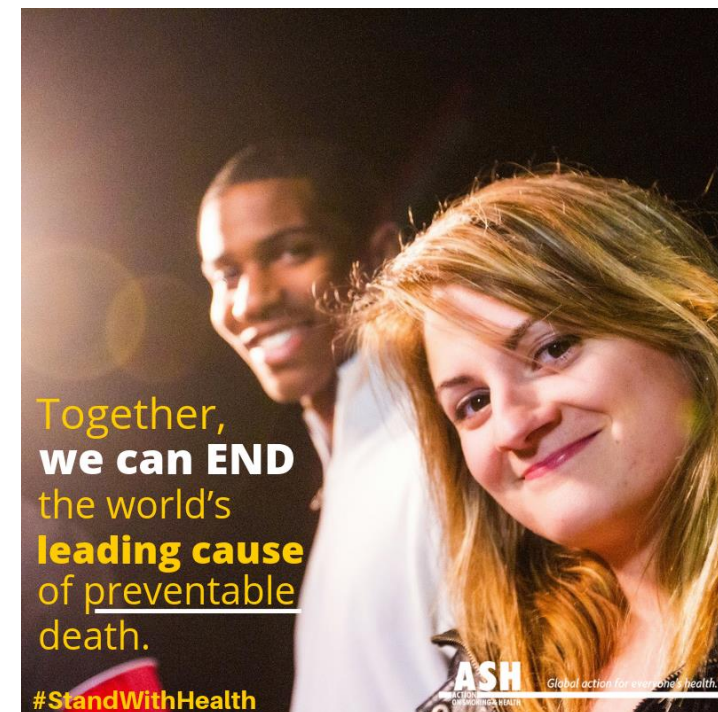
#PhaseOutCigs



@ASHorg



@ASHglobalAction



Project Sunset International



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9 November 2020

Conflicts of interest declaration

I do not, and have never, received any funding from the tobacco, e-cigarette or related industries or third party organisations funded by them, nor from the pharmaceutical industry. I have received grant funding from Australian governments and Heart Foundation Australia.

Why Project Sunset?

Subverting Philip Morris' "Project Sunrise":

- Program to renormalise the tobacco industry and PMI, 1995-2006
- Ensure social acceptability of smoking
- Divide and conquer tobacco control: 'extremists' vs 'moderates'

"....it seems reasonable to assume that PM would label as moderate tobacco control organisations with a limited, non-industry focused agenda, such as reducing youth smoking through educational efforts."

McDaniel PA, Smith EA, Malone RE Philip Morris's Project Sunrise: weakening tobacco control by working with it *Tobacco Control* 2006;**15**:215-223.

Ending tobacco industry exceptionalism

- The tobacco industry has received special treatment for >50 years
- The tobacco industry is unique in not having to comply with consumer safety requirements
- There is no fundamental right to sell tobacco products
- Ending legally permitted sales is not prohibition – it is a consumer safety issue
- The potential for a black market is not a reason to continue legal cigarette sales
- Retailers and governments need to prepare for a future without tobacco revenue

Defective products should not be sold

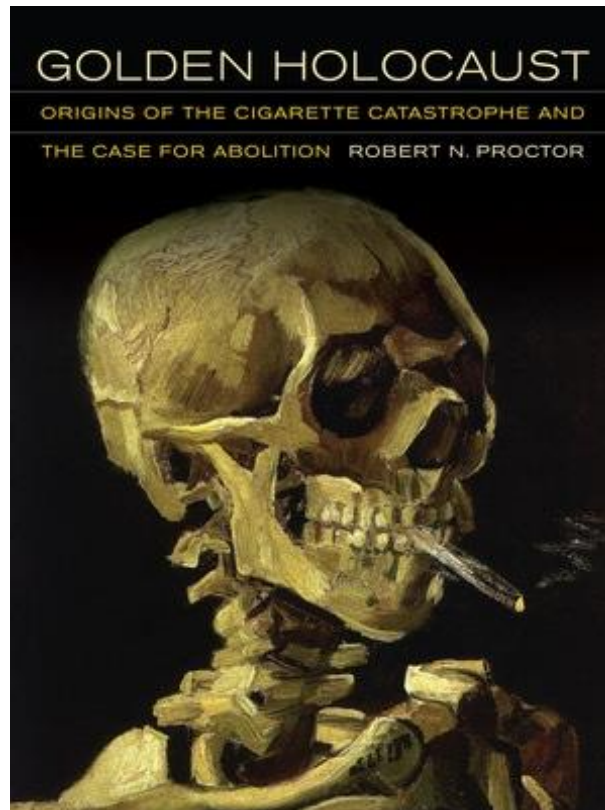


How smoking became history: looking back to 2012

Richard A Daynard

Geneva, 21 March 2032: As we all know, the work of tobacco control today is focused on reducing the prevalence and harm from non-smoked tobacco products, caring for ex-smokers with cigarette-caused diseases with long latencies and stamping out cigarette smuggling where it still arises. But many of our readers are old enough to have spent most of their tobacco control careers fighting cigarettes. They were facing over five

of cigarettes that could be sold in a particular country.¹⁰ Others advocated picking a date to end sales of cigarettes and other smoking tobacco and sticking to it (backed up by other policies to ease the transition).¹¹ Still others suggested picking an age cohort (say, anyone born after 1999) and making it illegal to sell cigarettes to them.¹² And some said, 'just remove the nicotine from the cigarettes, and let the smokers finally make



Towards Quantifiable Metrics Warranting Industry-Wide Corporate Death Penalties

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Received: 18 December 2018; Accepted: 8 February 2019; Published: 18 February 2019

Abstract: In the singular search for profits, some corporations inadvertently kill humans. If this routinely occurs throughout an industry, it may no longer serve a net positive social purpose for society and should be eliminated. This article provides a path to an objective quantifiable metric for determining when an entire industry warrants the corporate death penalty. First, a theoretical

An argument for phasing out sales of cigarettes

Elizabeth A Smith , Ruth E Malone 

ABSTRACT

The successes of tobacco control in some countries and locales have led to discussions of ending the tobacco epidemic, often called the 'endgame'. In this paper, we recommend articulating the endgame goal as phasing out sales of cigarettes, a goal once called 'unthinkable'. We develop a logic and argumentation for ending cigarette sales intended to move the discussion beyond the shadow of 'prohibition', proposing an approach that appeals to consumer protection standards and suggesting that the effort be led by low-prevalence communities. While phasing out cigarettes will not happen everywhere all at once, and may unfold differently along several lines, we argue that the

ending cigarette sales, led by jurisdictions with already-low smoking prevalence, should be articulated publicly as the endpoint goal. Ending sales of cigarettes, widely acknowledged to be the most deadly consumer product on the market, would advance public health by treating them like many other (unsafe) products.

As a global oligopoly, the tobacco industry has enough money to influence policy-makers, outspend political opponents, and create social, political and scientific institutions to act on its behalf. These activities have created the current situation, in which jurisdictions struggle to conceptualise a workable policy regime to end the tobacco

- Global tobacco endgame campaign to end commercial sales
- Focused on combustible tobacco products
- Fully aligned with WHO FCTC
- Neutral about policy approaches
- The industry and its products are the target

Join the movement!



<https://ash.org/global-sunset/>

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Smith EA, Malone RE. An argument for phasing out sales of cigarettes *Tobacco Control* 2020;**29**:703-708.

Q&A

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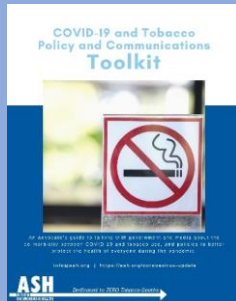
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Recordings from previous webinars and Live Chats on social media: <https://ash.org/webinars>



Toolkit for Advocates

Talking with government and media about the COVID-19 and tobacco use co-morbidity and policies to protect the health of everyone during the pandemic.

ash.org/covid19

NEXT WEBINARS:

Daily THIS WEEK at 9:00am ET

ASH with support from its partners, including the Framework Convention Alliance and Corporate Accountability International, will host **a week of webinars**. These webinars are focused on the FCTC and at times may be more technical than some of our previous webinars, but the topics we will cover, including endgame, liability, human rights, and COVID, will be useful to advocates from every background.

Tuesday, Nov. 10th: Using the Judicial System to Fight Tobacco

Wednesday, Nov. 11th: Incorporating Human Rights into the WHO FCTC

Thursday, Nov. 12: COVID-19's Impact on the FCTC, Cessation, and Tobacco Policy

Friday, Nov. 13th: Closing the Funding Gap for FCTC Implementation at the Global and National Level

Full Descriptions & Registration Links:

<https://ash.org/cop2020>

