



**U.S. Positions on Selected Issues at the Third Negotiating Session of  
the Framework Convention on Tobacco Control**

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**Minority Staff  
Committee on Government Reform  
U.S. House of Representatives  
[www.house.gov/reform/min](http://www.house.gov/reform/min)**

**March 5, 2002**

## I. BACKGROUND

The Framework Convention on Tobacco Control (FCTC) is an international agreement currently being negotiated under the auspices of the World Health Organization. The goal of the treaty is to serve as a mechanism for international cooperation to reduce tobacco consumption and curb the vast toll of death and disability caused by tobacco products.

Three negotiating sessions have been held thus far. The first took place from October 16-21, 2000, the second from April 30-May 5, 2001, and the third from November 22-28, 2001.

Rep. Henry A. Waxman, the ranking minority member of the Government Reform Committee, has analyzed U.S. positions at the first two sessions of the negotiations in two letters to President Bush.<sup>1</sup> This report describes selected U.S. positions at the third session in November. It is based upon publicly available documents and observations of the negotiations.

## II. U.S. POSITIONS ON SELECTED ISSUES

### A. Smuggling

At the start of the negotiating session, on November 22, the United States put forward a proposal for a protocol on smuggling to be negotiated concurrently with the FCTC (Addendum A).

### B. Taxes

The United States proposed that tax measures be nonmandatory options for countries ratifying the FCTC. The key element of the draft text referring to taxation is Section F.2. For this section, a U.S. delegate proposed, "Each party *may*, taking into account its means and its capabilities, adopt measures and cooperate with other parties in developing tax policies in order to reduce tobacco consumption and exposure to tobacco smoke" (Addendum B). The use of "may" instead of "shall" indicates the nonmandatory nature of the provision.

### C. Advertising and Promotion

On November 22, at the opening of the session, the United States proposed that nations wishing to ban advertising do so via a separate protocol, not the FCTC itself.

For the FCTC, the United States proposed a prohibition on "all forms of direct and indirect tobacco advertising, promotion and sponsorship targeted at persons under the age of 18" (Addendum

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<sup>1</sup>Letter from Henry A. Waxman to President Bush (Aug. 2, 2001); Letter from Henry A. Waxman to President Bush (Nov. 19, 2001).

C).

**D. Labeling**

The United States proposed that each tobacco package carry “a clear, conspicuous and prominent health warning” with several characteristics, including that the warning “shall appear in the principal language or languages of the country in which the product is sold” (Addendum D).

The United States also proposed that “terms such as ‘low tar’, ‘light’, ‘mild’ or any other similar term are not used on any tobacco package in any manner that has the direct or indirect effect of conveying a false or misleading impression that a particular tobacco product is less harmful than others” (Addendum E).

**E. Passive Smoking**

The United States position on passive smoking restrictions had two components. The first component (Section G.1) addressed whether the restrictions would be optional or mandatory. In several statements, the United States did not accept the mandatory word “shall” without qualifications.

For example, one U.S. delegate proposed that “shall” be modified with the words “as appropriate,” with the definition of “appropriate” left to individual countries’ legislatures. This would have the effect of making the passive smoking restrictions optional.

The second component of the U.S. position was a proposal for the restrictions themselves (Addendum F).

**F. Trade**

The United States proposed that all tobacco control measures be nondiscriminatory, transparent, and consistent with existing international trade obligations (Addendum G).

The United States also proposed deletion of a provision that would require that tobacco exports conform to the domestic standards of the exporting country.

**G. Tobacco Surveillance**

The United States proposed that measures to support a global surveillance system for tobacco consumption be included in the FCTC (Addendum H).

**Addendum A**

[DRAFT PROPOSAL]

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FCTC SMUGGLING PROTOCOL AS AMENDED BY THE UNITED STATES

*Preamble*

The Parties to this Protocol,

Recalling that the objective of the framework convention on tobacco control includes the reduction of tobacco use,

Mindful that illicit trade has grown worldwide and has become an important feature of the tobacco market,

Acknowledging that tobacco smuggling is a major source of lost revenue of governments,

Affirming that taxation is considered one of the most effective measures for reducing tobacco consumption,

Concerned that policies aimed at reducing tobacco use, based on the promotion of health, are undermined by tobacco smuggling

Acknowledging that differences in the prices of tobacco products between countries may also increase the incentive to smuggle cigarettes and other tobacco products,

Affirming that there is reason to believe that tobacco smuggling is being perpetrated by criminals with connections to other illegal activities,

Convinced that effective anti-smuggling measures can combat crime, and do not require the reduction of taxes or the suspension of tax increases,

Recognizing that collaboration with other international organizations, such as the World Customs Organization and the International Criminal Police Organization (Interpol) is necessary

Acknowledging that the control of smuggling requires the multi-sectoral cooperation of health, tax customs and police departments,

Have agreed as follows :

*Definitions*

Tobacco smuggling - involves the selling, storing, transport and purchasing of tobacco products without payment of all applicable taxes

*Objective*

1. The objective of the Protocol is to combat tobacco smuggling at local, national, regional and global levels through the measures provided for in the present protocol.

*Section I – Basic Obligations*

2. Each party shall take all practical and effective measures to combat smuggling of tobacco products.
3. Each party shall develop and implement a national program for the delivery and assessment of measures taken under [paragraph 2]
4. Each Party shall undertake legal, administrative and other measures to ensure the collection of revenue and to prevent and combat the illicit trade in tobacco products. Such measures shall include:
  - (a) establishment of a closed uniform distribution system for regulating interstate commerce in tobacco products:
    - (i) in which all manufacturers, importers, exporters, and wholesalers are licensed (based on specified criteria);
    - (ii) in which all retailers must maintain records of receipt (disclosing date of receipt, from whom such products were received, and the quantity of the tobacco products received) and such records shall be available for inspection;
  - (b) improving cooperation between different national administrations;
  - (c) monitoring and collecting data on illegal and cross-border trade in tobacco products;
  - (d) implementing other measures which ensure the collection of revenue and prevent and combat illicit trade in tobacco products;
5. The Conference of the Parties shall take into account the particular needs of developing countries and assist in improving their national capacities and capabilities to participate in the measures referred to [paragraphs 2 and 3] above

## *II – International Cooperation between Parties*

6. Parties shall cooperate, consistent with their national laws, regulations and practices and particularly taking into account the needs of developing countries in promoting, directly or through competent international bodies, the following measures:
  - (a) the identification, monitoring and prosecution of persons, organizations and companies involved in smuggling tobacco products and/or criminal activities;
  - (b) investigations, prosecutions and judicial proceedings
7. Each Party shall promote, within the framework of the Conference of the Parties and bilaterally cooperation between different organizations required to implement the present Protocol.

## *III-Exchange of Information and Provision of Technical Support*

8. Each Party shall cooperate in exchange of information and skills relevant to meeting the objectives of the Protocol. Each Party in a position to do so shall include in its national program measures to be taken to assist other Parties in meeting the objectives of this Protocol either bilaterally or under the auspices of the Convention or Protocol.
9. The Conference of the Parties at its first meeting, shall consider the establishment of a technical body *inter alia* to assist the Parties in undertaking effective cooperation and exchange of information and skills, and to determine guidelines for common statistical approaches to facilitate comparability of data gathered, taking existing surveillance systems into account.

## *IV-National Reports*

10. Each Party shall report the measures taken to implement the present Protocol to the [Conference of the Parties] followed immediately by [Secretariat] of the [Convention] [Protocol] within [...] months of the entry into force of this Protocol and [...] months before each meeting of the Conference of the Parties to the [Convention] [Protocol].

## *V-Research and Development*

11. Each Party shall support and further develop, as appropriate, national and international programs and networks or organizations aimed at defining,

conducting, assessing and financing research and data collection, taking into account the need to minimize duplication of effort.

**Addendum B**

Working Group 2

Textual proposal from Brian Miller

Representing the U.S.A.

F 2

Each party may, taking into account its means and its capabilities, adopt measures and cooperate with other parties in developing tax policies in order to reduce tobacco consumption and exposure to tobacco smoke.

**Addendum C**

Textual Proposal

Working Group	1
Textual proposal from	K. Bernard
Representing the delegation of	United States of America

Referring to	
Section	G
Paragraph	2
Paragraphs	(a)-(f)

Continued from attached form:

- (a) prohibiting all forms of direct and indirect tobacco advertising, promotion and sponsorship targeted at persons under the age of 18;
- (b) having restrictions consistent with an existing domestic constitution and domestic law on tobacco advertising, promotion and sponsorship, including incentives such as gifts, coupons, rebates, competitions, and frequent purchase programmes;
- (c) requiring that tobacco companies disclose all expenditures on sales, advertising and promotion to appropriate government authorities and making those figures available in the aggregate to the public;
- (d) adopting national measures and imposing appropriate regulatory strictures to ensure that tobacco advertising, promotion and sponsorship does not promote a tobacco product by any means that are false, misleading or deceptive or that are likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;
- (e) participating in discussions to address issues of mutual concern concerning cross-border advertising, promotion and sponsorship such as tobacco advertising and sponsorship on cable or satellite television or the Internet; and
- (f) to the extent advertising is permitted, requiring that each tobacco advertisement carry a clear, conspicuous and prominent health warning about the harmful consequences of tobacco use.

**Addendum D**

Submission by United States of America  
Offered by D. Hohman  
G 1 (d) (iv)

G.1. ... Such measures and policies shall include the following:

(iv) each tobacco package carries a clear, conspicuous and prominent health warning about the harmful consequences of tobacco consumption; these warnings:

(1) may include a picture or pictogram illustrating the harmful consequences of tobacco consumption;

(2) shall clearly indicate the prohibition of sales of tobacco products to persons under the age of 18; and

(2) shall appear in the principal language or languages of the country in which the product is sold.

**Addendum E**

Submission by United States of America  
Offered by D. Hohman  
G 1 (d) (i)

G.1. ... Such measures and policies shall include the following:

(d) adoption of appropriate measures to ensure that:

(i) terms such as “low tar”, “light”, “mild” or any other similar term are not used on any tobacco package in any manner that has the direct or indirect effect of conveying a false or misleading impression that a particular tobacco product is less harmful than others;

**Addendum F**

**Text proposed by United States of America**

- (a) implementation of legislation and other effective measures at the appropriate governmental level:
- (i) prohibiting smoking in places providing services to children, such as schools, libraries and day care, health care and early childhood development settings;
  - (ii) prohibiting smoking in enclosed public places, public transport, and the indoor premises of government agencies and authorities and comparable bodies intended for the public and clients;
  - (iii) promoting systematic protection from exposure to tobacco smoke in restaurants and indoor private workplaces;
  - (iv) promoting the implementation of effective educational campaigns informing the general public of the health risks associated with exposure to second-hand smoke, with special emphasis on the subject of smoke-free homes and protecting the most vulnerable groups, including children, pregnant women, persons with chronic lung diseases such as asthma, and persons with heart disease;
  - (v) States should be encouraged to promote voluntary smoke-free policies in indoor environments and enforce second-hand smoke restrictions through innovative actions.

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## **Addendum G**

Submission by United States of America  
Presented by A. Gash  
D 5

The Parties agree that measures to control tobacco shall be transparent, non-discriminatory, and implemented in accordance with their international obligations.

## **Addendum H**

Working Group 2

Textual Proposal from Terry Pechacek

Representing the U.S.A.

K 1 (b)-(c)

1. Insert new 3<sup>rd</sup> sentence: "Additionally, the Parties shall, to the extent possible, cooperate in their tobacco surveillance programmes so that data are comparable and can be analyzed at the regional and global level, as appropriate."

(b) Delete phrase: "on the indicators specified in Annex [INSERT]."

Insert new (c) "Cooperate under the auspices of the World Health Organization in the development of general model standards or procedures defining the surveillance data elements specified in the agreed upon Annex [INSERT], including recommended survey sampling or data collection methods, and related technical issues."