

**Intergovernmental Negotiating Body
WHO Framework Convention on Tobacco Control
German Coalition against Smoking commentary on the Chair's text
on the basis of the commentary of ASH (London)
March 2001**

This document provides commentary by the German Coalition against Smoking on the basis of the commentary of Action on Smoking and Health (London) on the Chair's January 2001 text: A/FCTC/INB2/2. The Chair's text will form the basis for further work by the Inter-governmental Negotiating Body (INB) at its second meeting from 30 April to 5 May 2001 in Geneva.

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Chair's Text	German Coalition views
<p>A. Preamble (to be formulated at a later session of the Intergovernmental Negotiating Body)</p>	<p>Has to concern that over one-third of internationally-traded tobacco products are ultimately sold illegally, and that the system of international trade in tobacco products is unacceptably linked to organised crime and that normal trading freedoms have been abused.</p>
<p>B. Definitions (to be formulated at a later session of the Intergovernmental Negotiating Body)</p>	
<p>C. Objective</p>	
<p>The ultimate objective of this Convention and of the related protocols is to provide a framework for integrated tobacco-control measures to be implemented through the engagement of the Parties in order continually and substantially to reduce the prevalence of tobacco use and thus protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.</p>	<p>The objective of this convention and of the related protocols is to reduce tobacco consumption and prevalence of tobacco use and thus protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.</p>
<p>D. Guiding principles</p>	
<p>In their actions to achieve the objective of this Convention and to implement its provisions, the Parties shall be guided inter alia by the principles set out below:</p>	<p>Agree</p>
<p>1. Reducing the current impact, and halting the growth, of tobacco consumption is crucial in protecting the health of individuals, as well as national and global public health, and requires comprehensive multisectoral national actions and coordinated international responses.</p>	<p>Agree</p>
<p>2. Every person should be fully informed about the addictive and lethal nature of tobacco consumption, and non-smokers should be adequately protected from exposure to tobacco smoke.</p>	<p>Agree</p>
<p>3. The importance of technical cooperation in helping to establish and implement effective tobacco-control programmes in Parties in which public health resources are limited should be recognized.</p>	<p>Agree</p>
<p>4. The importance of financial assistance to aid the economic transition of tobacco growers and workers that may be displaced as a future consequence of successful tobacco-control programmes should be recognized.</p>	<p><i>There should be no in-principle agreement to compensate growers or any other part of the tobacco industry for the impact of a public health treaty. This should be replaced with a provision related to financial support for implementing the provisions of the treaty – the more appropriate [and politically feasible] use of public funds.</i> 4. The importance of financial assistance to assist Parties with low per capita income meet their obligations under this convention and its protocols should be recognised.</p>
<p>5. Tobacco-control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade.</p>	<p><i>This places the commercial priorities of tobacco trade above health and cannot be justified. Economists generally accept that increased trade brings greater total welfare benefits, but this idea does not so easily apply to trade in products – such as tobacco products - that are harmful and whose production places a net burden on economies.</i></p> <p>5. Tobacco-control measures adopted under this convention do not constitute a means of arbitrary or unjustifiable discrimination in international trade. <i>[Declaratory language asserting that the measures in the FCTC are not arbitrary or unjustified]</i></p> <p>5b. In the event of a conflict between this Convention or any of its Protocols and another international agreement, this Convention and its Protocols shall take precedence. <i>['Supremacy' clause for the FCTC in the case of tobacco]</i></p>

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6. The tobacco industry should be held responsible for the harm its products cause to public health and the environment, with each Party determining the scope of such responsibility within its jurisdiction.	Agree
7. The participation of all elements of civil society is essential in achieving the objective of this Convention.	Agree
8. The provisions of this Convention should be recognized as minimum standards, and Parties are encouraged to implement measures beyond those required by the Convention.	Agree
E. General obligations	
1. Each Party shall develop, implement, periodically update and enforce, where appropriate, comprehensive, multisectoral, national tobacco-control strategies, policies, legislation and other measures, such as standards, in accordance with the provisions of this Convention and, as relevant, its protocols.	Agree.
2. To this end each Party shall, to the extent possible within the means at its disposal and its capabilities:	Agree
(a) establish or, where it already exists, reinforce, and adequately finance a national coordinating mechanism for tobacco control, with inputs from relevant government and civil society sources;	Agree
(b) adopt legislative, executive and administrative measures and cooperate with other Parties in harmonizing appropriate policies;	(b) adopt legislative and administrative measures and cooperate with other Parties in developing and extending appropriate policies to reduce tobacco consumption.
(c) reduce tobacco consumption and exposure to tobacco smoke in accordance with the provisions of this Convention and, as relevant, its protocols.	Agree
3. The Parties shall undertake to adopt legislative, executive and administrative measures to regulate and to prohibit the export of tobacco products that do not conform to the exporting country's own domestic standards.	3.i The Parties agree to take all necessary measures to ensure that no person acting on their behalf shall attempt to (a) remove, weaken, undermine or otherwise interfere with tobacco control measures in force or under consideration in another State or (b) promote tobacco product exports or tobacco use in another State. <i>The Chair's text will be difficult to introduce, because importing and exporting countries may choose to have different and incompatible standards. For example, this would prevent exports from Canada to the EU, given the different warning regimes .</i> <i>It would be better at this point to stress Parties role in obstructing global tobacco control in other countries.</i>
4. The Parties shall cooperate in the formulation of agreed measures, procedures and standards for the implementation of this Convention.	Agree
5. The Parties shall cooperate with competent international bodies in order to implement effectively this Convention and the protocols to which they are parties.	Agree
6. The provisions of the Convention shall in no way affect the right of Parties to adopt domestic measures in addition to those referred to above, nor shall they affect measures already taken by a Party, provided that such measures are compatible with its obligations under this Convention and the protocols to which it is a party.	Agree
7. The provisions of the Convention shall in no way affect the right of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to this Convention, provided that such agreements are compatible therewith. Copies of such agreements shall be communicated to the secretariat of the Convention by the Parties concerned.	Agree

Chair's Text	German Coalition views
<p>F. Price and tax measures to reduce the demand for tobacco</p>	
<p>1. The Parties recognize that price measures are an effective mechanism to reduce tobacco consumption, and that progressive harmonization of tobacco product prices is an important means of discouraging illicit traffic in tobacco products.</p>	<p>The Parties recognize that price measures are an effective mechanism to reduce tobacco consumption, and that progressive real increases in the price of tobacco products will contribute to a reduction in disease caused by tobacco use.</p> <p><i>[harmonization as an anti-smuggling measure misses the point - most smuggling is not exploiting x-border tax differences, but is based on the avoidance of all duty]</i></p>
<p>2. Each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt legislative, executive and administrative measures, and cooperate with other Parties in harmonizing appropriate tax policies, in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include the following:</p>	<p>2. Each Party shall adopt legislative, executive and administrative measures, and cooperate with other Parties in developing appropriate tax policies, in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include the following:</p>
<p>(a) prohibition of tax-free and duty-free sales of tobacco products;</p>	<p>a) i. Parties shall prohibit tax-free and duty-free sales of tobacco products within [2] years of the entry into force of this convention;</p> <p>ii. Parties shall not permit tax-free and duty free tobacco allowances to travellers, diplomats, and military or other government personnel.</p>
<p>(b) imposition of taxes on tobacco products so as to achieve a stable and continuous reduction in tobacco consumption;</p>	<p>(b) imposition of taxes on tobacco products so as to ensure that tobacco products do not become more affordable over time and thereby to achieve a continuing reduction in tobacco consumption;</p> <p><i>Stable and continuous is too prescriptive – and there is no evidence that stable/continuous is better than sharp and abrupt in promoting response to price changes.</i></p>
<p>(c) adoption of other price and tax measures that may be recommended by the Conference of the Parties.</p>	<p><i>Delete - superfluous. Parties agree to adopt amendments to the convention and protocols they sign and ratify.</i></p>
<p>G. Non-price measures to reduce the demand for tobacco</p>	
<p>1. Each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt legislative, executive and administrative measures, and cooperate with other Parties in harmonizing appropriate non-price policies, in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include the following:</p>	<p>1. Each Party shall adopt legislative, executive and administrative measures, and cooperate with other Parties in developing effective non-price policies, in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include the following:</p> <p><i>[harmonizing policies may be counter-productive - the aim should be to promote best practice]</i></p>

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<p>(Passive smoking) (a) implementation of legislation and other effective measures at the appropriate governmental level that provide for systematic protection from exposure to tobacco smoke in indoor workplaces, enclosed public places, and public transport, with particular attention to special risk groups such as children and pregnant women;</p>	<p>(Passive smoking) (a).i Each party shall adopt appropriate legislation, policies and/or measures to protect the health and welfare of non-smokers by reducing or eliminating exposure to second hand tobacco smoke in workplaces; public places; and in the home – with special regard to the vulnerability of children, pregnant women and the rights of employees to a healthy working environment. ii. Each party shall report on its activities under this article within two years of the entry into force of this Convention using a format agreed by the Conference of the Parties at its first meeting. <i>This is an area in which it is difficult to envisage world-wide harmonisation to say, California standards. The role of the FCTC should be to promote and encourage and to provide technical and scientific advice. The requirement to report will stimulate some activity among parties.</i></p>
<p>(Regulation of contents of tobacco products) (b) adoption of standards for the regulation of the contents of tobacco products, including standards for testing and measuring, designing, manufacturing and processing such products, and cooperation in the development and harmonization of such standards under the auspices of the World Health Organization;</p>	<p>(Regulation of tobacco products) (b).i. Parties shall take measures to reduce the harm associated with continued tobacco or nicotine use by the following means:</p> <ul style="list-style-type: none"> a) adoption of standards for the regulation of the contents of tobacco products, including standards for testing and measurement, design, manufacturing and processing, permitted toxicity, smoke composition, and ingredients; b) adoption of standards or regulatory mechanisms to assess the public interest and public health consequences of marketing claims made for reduced risk, safety or any other direct or indirect claims made for tobacco products that have the aim or effect of promoting benefits. c) the preparation of a protocol on tobacco product regulation to define and implement best practice in the setting of such standards. <p><i>Harmonisation is not appropriate in this area as it would tend to constrain best practice</i></p> <p><i>There are two regulatory challenges - the product standards applied to require reduced risk, and the communication of risk to the consumer. The use of ISO standards has not so far served the cause of public health at all well and involvement of the tobacco-industry dominated ISO, which has no public health mandate, should be subordinate to the WHO.</i></p>
	<p>ii. Parties shall co-operate under the auspices of the World Health Organisation and with involvement if appropriate of the International Standards Organisation, to share best practice and develop and promote standardised evidence-based methodologies for assessing the harmfulness of tobacco products for the purpose of:</p> <ul style="list-style-type: none"> a) Providing meaningful risk communication to consumers and health professionals b) Defining criteria that would assist Parties in the public health regulation of tobacco products under section (i). <p>iii. Costs arising in achieving and demonstrating compliance with regulation in para (i) and (ii) shall be borne by the tobacco product manufacturer.</p>

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<p>(Regulation of tobacco-product disclosures) (c) implementation and taking of necessary steps to enforce measures for tobacco-product disclosures by all manufacturers, including all ingredients and additives, and major constituents of tobacco smoke, and promotion of availability of such information to the public. Each Party shall apply these measures to all tobacco products manufactured or sold under its jurisdiction;</p>	<p>(Regulation of tobacco-product disclosures) (c).i. Parties shall ensure consumers and public health bodies have access to appropriate tobacco product disclosures, including ingredients, additives, smoke constituents, design, manufacturing and processing of tobacco products;</p> <p>ii. Costs arising in creating and disseminating disclosures shall be borne by the tobacco product manufacturer.</p> <p>iii. Parties shall co-operate to share disclosure information and reduce administrative and regulatory costs.</p> <p><i>[The burden of collecting data and presenting it in meaningful form etc may be too great for some countries – so a regional or multilateral approach may be most efficient]</i></p>
<p>(Packaging and labelling) (d) adoption of appropriate measures to ensure that:</p>	<p>(Packaging and labelling) (d) Agree</p>
<p>(i) the terms “low tar”, “light”, “ultra light”, “mild” or any other similar term that has the aim or the direct or indirect effect of conveying the impression that a particular tobacco product is less harmful than others are not used on any unit packet or package of tobacco products;</p>	<p>Agree</p>
<p>(ii) tobacco packaging and labelling does not otherwise 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;</p>	<p>Agree</p>
<p>(iii) each unit packet or package of tobacco products carries the statement and product information specified in Article [Measures Related to the Supply of Tobacco];</p>	<p>Agree</p>
<p>(iv) each unit packet or package of tobacco products carries a general health warning, including a picture or pictogram illustrating the harmful consequences of tobacco consumption, in accordance with Annex [INSERT]; these warnings shall:</p>	<p>Each Party shall require that each unit packet or package of tobacco products carry a health warning, a message discouraging smoking, or other mandatory message such that the messages:</p>
<p>(1) clearly indicate the prohibition of sales of tobacco products to persons under the age of 18;</p>	<p>Agree</p>
<p>(2) provide clear information about the toxic contents of the tobacco product, specifically tar, nicotine and carbon monoxide, including actual measurements of smoke yields;</p>	<p>Provide clear communication of risks, hazards and costs associated with tobacco product use with the aim of discouraging tobacco use; including qualitative communication, and where appropriate, relevant and quantitative data where this serves to improve communication of risk.</p> <p><i>[The existing system of using ‘yields’ to communicate risk or consumer information is highly misleading – as they do not account for realistic smoking behaviour which modifies to control exposure to nicotine. Tar and CO are not part of the ‘contents’ but products of combustion. It would be wrong to codify this highly flawed system into the FCTC]</i></p>
<p>(3) appear in the principal language or languages of the country in whose territory the product is placed on the market.</p>	<p>Agree</p>
	<p>Are in an area covering not less than 50% of the exterior of the package; and <i>New para specifying space to given to warnings</i></p>
	<p>Include pictures or pictograms for at least some messages. <i>Use of pictures should be mentioned as best practice</i></p>
<p>(Education, training and public awareness) (e) facilitation and strengthening of education, training, and public awareness campaigns, including counter-advertising. To this end, each Party shall, as appropriate:</p>	<p>(Education, training and public awareness) Agree</p>

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(i) develop and assure universal access to effective and comprehensive educational and public awareness programmes on the health risks of tobacco consumption and exposure to tobacco smoke, that include the use of various print and audiovisual media;	Agree
(ii) ensure that the general public and, notably, children, young persons, and vulnerable groups are fully informed about the health risks of tobacco consumption and exposure to tobacco smoke, and about the benefits of smoking cessation and tobacco-free lifestyles;	Agree
(iii) facilitate public access to information on the tobacco industry;	Agree
(iv) develop and implement effective and appropriate training programmes on tobacco control for health professionals, educators and other concerned persons;	Agree
(v) develop and implement effective and appropriate promotion and prevention measures for tobacco control designed for students at various levels of education;	Agree
(vi) endeavour to promote the participation of public agencies and nongovernmental organizations in the development of strategies for tobacco control.	Agree
<p>(Advertising, promotion and sponsorship) 2. In addition to obligations related to other non-price measures specified in Article [INSERT], all Parties shall commit themselves specifically to:</p>	<p>(Advertising, promotion and sponsorship) 2.i Each party shall ban all advertising, sponsorship and promotional activity for tobacco products or tobacco use (that is any use of the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable colour or pattern of colours, or any other indicia of product identification, identifiable with, those used for any brand of tobacco product). ii. Parties may specify such exemptions to para (i) as are strictly necessary to comply with constitutional constraints, only where these exist, on a complete prohibition of tobacco advertising, promotion and sponsorship. The approach here is to specify a total ban on advertising (etc), but allow parties with constitutional constraints to work within those while going as far as possible.</p>
	<p>iii. In order to adopt best practice in meeting the obligation in paragraph i above, Parties shall prepare for signing at the earliest opportunity a protocol specifying:</p> <ol style="list-style-type: none"> I. Definitions II. Duty to prohibit advertising, sponsorship and promotional activity aimed at promoting tobacco or tobacco brands III. Responsible persons and offences IV. Burden of proof, taking a precautionary approach V. Defences VI. Precise and narrowly defined exemptions for any essential purposes VII. Other rules and procedures governing tobacco advertising, promotion and sponsorship including tobacco branding used with non-tobacco products VIII. Applicability of the prohibition to the display and presentation for sale IX. Timetable and any essential transitional arrangements X. Enforcement procedures, including international co-operation XI. Penalties XII. Disclosure requirements XIII. Reporting requirements <p>iv. Parties may specify exemptions to para (i) only in accordance with the provisions in para (ii) and (iii). The idea here is to specify terms of reference for the protocol within the Convention, thus establishing a negotiating agenda and giving a clear signal as to what is required of the protocols.</p>

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	<p>v. In meeting the obligation in paragraph (i) parties shall cooperate to phase out cross-border advertising, promotion and sponsorship, including, inter alia, tobacco advertising, promotion and sponsorship on cable and satellite television, the Internet, newspapers, magazines and other printed media.</p> <p><i>This is a particularly important area for the Convention – and it is this area in which only a convention can be effective.</i></p>
	<p>vi. For the purposes of constitutional law or other international agreements, tobacco advertising shall be recognised as having serious health consequences, which include addiction, disease and death as a result of the resulting increased tobacco use.</p> <p><i>The aim of this is to require each party to go as far as possible in banning tobacco advertising in all its forms – with just two classes of exemption:</i></p> <p><i>1. Where the party's constitution places constraints on bans on tobacco advertising.</i></p> <p><i>2. For reasons of practicality as specified in the protocol.</i></p> <p><i>The practical effect of this will be to require the protocol to be negotiated in parallel with the general provision in the convention. In reality, banning advertising requires a detailed specification, and the protocol should be given great priority – it certainly should not be delayed until the conference of the parties can initiate its preparation. Development of the protocol on advertising should be within the remit of the INB and substantial progress made by 2003.</i></p>
(a) prohibiting all forms of direct and indirect tobacco advertising, promotion and sponsorship targeted at persons under the age of 18;	<p><i>Delete – an impossible to specify and, in any case, undesirable objective which will be unenforceable. All tobacco advertising reaches under-18s, advertising notionally targeted at adults appeals to teenagers, and there are many good reason to tobacco advertising for adults.</i></p>
(b) imposing strict restrictions on all forms of direct and indirect tobacco advertising, promotion and sponsorship targeted at persons 18 years of age and older, including incentives such as gifts, coupons, rebates, competitions and frequent-purchaser programmes, with the aim of reducing the appeal of tobacco products to all segments of society;	<p><i>Agree</i></p>
(c) requiring that tobacco companies disclose all expenditures on advertising and promotion and make those figures available to the public;	<p>(C). i. Each party shall require that tobacco companies disclose all expenditures on advertising and promotion on a brand-by-brand basis and make those figures available to the public;</p> <p>ii. The Conference of the Parties shall approve rules governing standard definitions and reporting format for the disclosures in paragraph 1.</p> <p>iii. Each party shall report data on promotional activity to the [World Health Organisation] according to a procedure agreed by the Conference of the Parties.</p> <p><i>It is important to achieve reporting in a standardised and globally comparable format – without prejudice to parties that wish to collect more or different data as well.</i></p>
(d) adopting national measures and imposing appropriate regulatory restrictions 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;	<p>Parties shall take all measures necessary to ensure that in the labelling, presentation for sale and advertising of tobacco products, the wording, use of names, trade marks, images or other signs, figurative or otherwise, suggesting a characteristic which the products in question do not possess, shall be prohibited.</p> <p><i>[based on EU cosmetics directive 76/768/EEC]</i></p>
(e) adopting measures and imposing appropriate regulatory restrictions in order progressively to phase out tobacco sponsorship of sporting and cultural events;	<p><i>Delete – unnecessary – should be included in a broad based ban on advertising, promotion and sponsorship with a protocol specifying any transitional arrangements.</i></p>

Chair's Text	German Coalition views
(f) adopting national measures and cooperating in order to phase out cross-border advertising, promotion and sponsorship, including, inter alia, tobacco advertising, promotion and sponsorship on cable and satellite television, the Internet, newspapers, magazines and other printed media.	See above 2.v
	Parties shall consider the role of tobacco packaging in promotion of tobacco products, and place appropriate restrictions on the promotional messages on tobacco packaging, including consideration of a requirement for generic (unbranded) packaging. The pack remains a powerful advertising space and should come under marketing controls – including the possibility of generic packaging.
3. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the area of tobacco advertising, promotion and sponsorship. [Note] This provision would be omitted if the Intergovernmental Negotiating Body prepares a protocol on this subject to be adopted simultaneously with the Convention.	See above 2.iii - the Protocol MUST be negotiated in parallel. To wait for the COP (ie. until after entry into force) could possibly mean the protocol would be delayed for many years - yet it would be useful as a driver of national legislation if it existed - even if not in force or widely ratified. In the formulation above, the protocol is integral to then Convention [as it specifies where exemptions for practicality and and proportionality are permitted] See below, protocols should be negotiated simultaneously for both the advertising and smuggling areas.
4. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the areas of regulation of the contents of tobacco products, tobacco-product disclosures, and packaging and labelling of tobacco products.	Agree
H. Demand reduction measures concerning tobacco dependence and cessation	H. Demand reduction measures concerning tobacco dependence and cessation
1. Each Party shall take all practical and effective measures to treat tobacco dependence and to promote cessation of tobacco use.	Agree
2. Taking into account national circumstances and priorities, each Party shall undertake the following measures:	Agree
(a) implementation of promotional and educational campaigns aimed at encouraging cessation of tobacco use;	Agree
(b) integration of treatment of tobacco dependence and routine advice on cessation of tobacco use into all national health programmes, plans and strategies, including primary care programmes, reproductive health programmes such as “safe motherhood”, and tuberculosis control programmes. Support for such actions shall be provided by health professionals, including physicians, health practitioners, nurses, pharmacists, community workers and social workers, based on primary care in rural and urban areas;	Agree
(c) establishment, as a priority in health centres, of programmes for diagnosis, medical advice and treatment of tobacco dependence.	Agree (d) Quality standards and financing: Smoking cessation should be carried out at the highest level of scientific evidence and effectiveness. Guidelines shall be determined accordingly by the member states. Counseling and therapy of nicotine dependence will be mediated on the basis of certified curricula for training and continued education of health professionals. Counseling and therapy of nicotine dependence will be adequately compensated so that every person willing to give up smoking has access to qualified assistance at a reasonable price, or for free.

Chair's Text	German Coalition views
I. Measures related to the supply of tobacco	
<p><i>(Illicit trade in tobacco products)</i> 1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling and counterfeiting, is an essential component of tobacco control.</p>	<p><i>(Illicit trade in tobacco products)</i> Agree</p>
<p>2. The Parties agree that measures to this end shall be transparent, non-discriminatory and implemented in accordance with their international obligations.</p>	<p><i>Delete or replace with:</i> “Parties agree that measures taken to tackle tobacco smuggling and organised crime take priority over commercial liberalisation when being examined for compatibility with international trade agreements.</p> <p><i>Add a recital:</i> “Concerned that over one-third of internationally-traded tobacco products are ultimately sold illegally, and that the system of international trade in tobacco products is unacceptably linked to organised crime and that normal trading freedoms have been abused.</p>
<p>3. Each Party shall adopt appropriate measures to ensure that all unit packets or packages of tobacco products and any outside packaging of tobacco products for retail or wholesale use that are sold or manufactured under its jurisdiction:</p>	<p>Agree</p>
<p>(a) carry a statement indicating the name of the manufacturer, the country of origin, and the product batch-number, including the date of production and expiry;</p>	<p>(a) i. Carry overt or covert markings that allow enforcement authorities to identify the manufacturing plant, production batch, and at least the first customer to whom the product was sold and all future customers known to the manufacturer at the time of manufacture.</p> <p><i>There should be careful distinction between information needed for tracking and tracing contraband, and what needs to be visible to the consumer. Covert marking, for example, may assist in differentiating ‘genuine’ and counterfeit contraband. Each marking specified in the FCTC should be considered carefully for its intended use and user before specifications are drawn up. Production batches could be very large and not allow identification of which wholesaler the product was shipped to. It is much better at this point to specify the objectives to be achieved by a markings regime than to try to define it.</i></p>
<p>(b) carry the statement: “Sales only allowed in [the country where the product is to be placed on the market].”</p>	<p>(b) Each Party shall adopt appropriate measures to ensure that all tobacco products sold or manufactured under its jurisdiction carry a statement indicating the country or sub-national tax jurisdiction in which the product is to be sold to the final consumer.</p> <p>(c) Parties shall not permit the sale of any tobacco products unless the product carries a label indicating that the product is for sale in that country or the appropriate sub-national tax jurisdiction.</p>
<p>4. Each Party shall adopt appropriate measures to ensure that the packaging information specified in paragraph 3 above shall appear in the principal language or languages of the country in whose territory the product is placed on the market.</p>	<p>4. Each Party shall adopt appropriate measures to ensure that the packaging information specified in paragraph 3.b above shall appear in the principal language or languages of the country in whose territory the product is placed on the market.</p> <p><i>It may not be necessary to specify any language for tracking information (3a)– for example it could be a covertly printed serial number which the manufacturer must provide certain data about.</i></p>
<p>5. Each Party shall undertake the following legislative, executive, and administrative measures in order to prevent and combat illicit trade in tobacco products:</p>	<p>Agree</p>
<p>(a) monitoring and collection of data on cross-border trade in tobacco products, including illicit trade;</p>	<p>Agree</p>

Chair's Text	German Coalition views
(b) enactment and/or strengthening of criminal legislation, with appropriate penalties, that prohibits the production of, and trade in counterfeit and contraband cigarettes and other such tobacco products, and taking of appropriate steps to enforce such prohibition	Agree
(c) appropriate steps to ensure that all confiscated counterfeit and contraband cigarettes and other such tobacco products are destroyed.	<p>(c) i. Appropriate steps to ensure that all confiscated counterfeit and contraband cigarettes and other such tobacco products are disposed of in a manner that does not create incentives for tobacco manufacturers to facilitate smuggling or generate additional income for any tobacco manufacturer.</p> <p>ii. Parties shall hold original manufacturers of confiscated tobacco products responsible for the payment of duty on any seizures plus an appropriate uplift</p> <p><i>Destruction of confiscated tobacco products creates perverse incentives for manufacturers to facilitate smuggling. It means that the confiscated cigarettes are effectively sold twice in the wholesale part of the distribution chain – once to the smuggler from who they were seized and a second time to meet the same demand that the original smuggler would have supplied. This means that the most profit is made when there are sufficient seizures to gain the double sales, but not so many as to deter smuggling altogether. Having <u>no</u> seizures is not in the interest of a profit-maximising tobacco manufacturer. Nor is having too many seizures.</i></p>
6. The Parties shall strengthen cooperation between different national and international agencies in promoting investigations, judicial prosecutions and proceedings relating to illicit trade in tobacco products. The Parties shall further cooperate to promote regular exchange of information to prevent such trade pursuant to Annex [INSERT] to this Convention.	Agree

Chair's Text	German Coalition views
<p>7. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures for the elimination of all forms of illicit trade in tobacco products.</p> <p>This provision would be omitted if the Intergovernmental Negotiating Body prepares a protocol on this subject to be adopted simultaneously with the Convention.</p>	<p>7 i. The parties shall prepare for signing at the earliest opportunity a protocol setting out appropriate rules and procedures for the elimination of all forms of illicit trade in tobacco products.</p> <p>ii. The protocol shall include, but not be limited to, the following aims and approaches:</p> <ul style="list-style-type: none"> a) Securing the distribution system for tobacco products by developing a chain of custody. b) The introduction of a system of <i>tracking</i> in which the final market is known at the point of manufacture and each intermediary may be identified. c) Creating a duty of care on all participants in the distribution chain to ensure that the product is ultimately sold legally. d) A system of to allow <i>tracing</i> of tobacco products that have been seized as contraband. e) A system of liability and compensation to recover lost excise duties from manufacturers and wholesalers f) A licensing system for manufacturers, wholesalers, import-export traders and warehousing operations. g) Controls on the trade in second hand cigarette manufacturing machinery with a view to reducing counterfeit production. h) Co-operation between enforcement authorities. <p><i>The approach of a custody chain, duty of care and liability follows the form of the Basel Convention on the transboundary shipment of hazardous waste.</i></p> <p><i>Tracking and tracing are essential for the control of distribution and enforcement action against smugglers.</i></p> <p><i>It is important that the Convention specifies the broad scope of the protocol – without detail. The in-principle agreement of the FCTC Parties to the shape of the protocol will both aid its concurrent negotiation and expedite its ratification.</i></p> <p><i>The Protocol MUST be negotiated in parallel with the Convention. To wait for the COP (ie. until <u>after</u> entry into force) which may be several years away as it has to occur after ratification and entry into force of the FCTC would create unacceptable delay. Development of the protocol on illicit trade should be within the remit of the INB and substantial progress made by 2003.</i></p>
	<p>8. Each Party shall prohibit international delivery or sending of tobacco products, and mail order sales and internet sales, unless (i) there is no consideration or (ii) the delivery or sending is within the tobacco trade.</p> <p>Mail order</p>
<p>8. Each Party shall prohibit tobacco sales to persons under the age of 18. To this end, each Party shall:</p>	<p><i>Agree</i></p>
<p>(a) require that all sellers of tobacco products request that each tobacco purchaser provide appropriate evidence of having reached the age of 18;</p>	<p><i>Agree</i></p>
<p>(b) prohibit tobacco vending-machines in locations accessible to any person under the age of 18.</p>	<p><i>Agree</i></p>
<p>9. Each Party shall take appropriate measures to prohibit the sale of tobacco products by persons under the age of 18.</p>	<p><i>Agree</i></p>
<p>10. Each Party shall, to the extent possible within the means at its disposal and its capabilities, prohibit the sale of cigarettes individually or in packets of fewer than 20 cigarettes.</p>	<p><i>Agree</i></p>

Chair's Text	German Coalition views
11. Each Party shall implement appropriate legal and other measures to verify compliance with paragraphs 8 to 10 above. Such measures shall include appropriate penalties against sellers and distributors for the violation of measures prohibiting sales of tobacco products to persons under the age of 18.	Agree
12. Each Party shall take appropriate legal and other measures to ensure that no criminal penalties are imposed against persons under the age of 18 for buying and selling tobacco products.	Agree
(Licensing) 13. The Parties recognize that an effective licensing system for retailers of tobacco products is an important mechanism to curb illicit trade in tobacco products and to prevent sales of tobacco products to children and young persons.	Agree
14. Each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt legislative, executive and administrative measures to licence all tobacco-product retailers.	14.i Each Party shall adopt legislative, executive and administrative measures to licence all tobacco product manufacturers, wholesalers, importers, exporters and warehousing operations. ii. Each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt legislative, executive and administrative measures to licence all tobacco-product retailers. <i>It is more important to license the wholesale trade for smuggling reasons. Licensing retailers will cause insurmountable administrative problems in some jurisdictions.</i>
(Government support for tobacco manufacturing and agriculture) 15. Each Party shall gradually eliminate subsidies for tobacco growing and manufacturing of tobacco products and, in accordance with the means at its disposal and its capabilities, promote alternative economic activities for tobacco workers and growers.	Agree
J. Compensation and liability	
[Chair's note: As announced during the first session of the Intergovernmental Negotiating Body, WHO is convening a panel of legal experts to make recommendations to the Negotiating Body on the nature and scope of potential liability and compensation provisions.]	<i>Liability for illicit trade in tobacco products</i> i. Parties undertake to hold tobacco product manufacturers responsible for proper and legal final sale of tobacco products they have manufactured and liable for lost excise duties arising from tobacco smuggling or other illegal activities. ii. The parties shall define appropriate rules and procedures in the field of liability and compensation related to the recovery of lost excise duties arising through tobacco smuggling and other illegal activities. iii. The rules and procedures described in paragraph ii. shall be specified within a broader protocol on illicit trade in tobacco smuggling as described in I.7. <i>Liability for health impacts arising from tobacco use.</i> <i>[Health related measures on liability and compensation – to be defined]</i>

Chair's Text	German Coalition views
K. Surveillance, research and exchange of information	
1. The Parties shall establish joint or complementary programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences of tobacco consumption. To the extent possible, the Parties shall integrate tobacco surveillance programmes into national, regional and global health surveillance programmes. To this end, each Party shall, in accordance with the means at its disposal and its capabilities:	<i>Agree</i>
(a) establish, progressively and as appropriate, a national system for the epidemiological surveillance of tobacco consumption, periodically updating economic and health indicators so as to monitor the evolution of the problem and the impact of tobacco consumption control;	<i>Agree and add: "Surveillance of tobacco consumption, environmental tobacco smoke..."</i>
(b) cooperate with international bodies, including the World Health Organization, in regional and global tobacco surveillance and exchange of information on the indicators specified in Annex [INSERT].	<i>Agree</i>
2. The Parties undertake to develop, promote and coordinate as far as possible national, regional and global research programmes for the purpose of this convention. To this end, each Party shall, in accordance with the means at its disposal and its capabilities:	<i>Agree</i>
(a) initiate and cooperate, directly or through competent international bodies, in the conduct of research and of scientific assessments, as detailed in Annex [INSERT];	<i>Agree</i>
(b) promote and encourage research that contributes to reducing tobacco consumption and harm from tobacco use, particularly in developing countries, taking fully into account the recommendations of the Conference of the Parties.	<i>Agree</i>
3. The Parties shall facilitate the exchange of information, taking into account the special needs of developing countries. To this end, the Parties, in accordance with their national legislation and without prejudice to their obligations under other applicable international agreements, shall, within the framework of the Conference of the Parties and bilaterally, promote and cooperate in the full, open and prompt exchange of scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry, relevant to this convention. Each Party shall, in accordance with the means at its disposal and its capabilities:	<i>Agree</i>
(a) compile and maintain a database of national and subnational laws and regulations on tobacco control and enforcement, and cooperate in the development of complementary programmes for national, regional and global tobacco control;	<i>Agree</i>
(b) compile and maintain a base of data from national surveillance programmes in accordance with Article [INSERT] above.	<i>Agree</i>
4. Information to be exchanged pursuant to Article [INSERT] above shall be provided to the Conference of the Parties.	<i>Agree</i>

Chair's Text	German Coalition views
L. Scientific, technical and legal cooperation	
1. Each Party shall cooperate, in accordance with its national laws, regulations, practices and international obligations, and taking particular account of the needs of developing countries, in promoting, directly or through the secretariat of the Convention or other competent international bodies, the following:	<i>Agree</i>
(a) facilitation of the development, transfer and acquisition of technology related to tobacco control by other Parties;	<i>Agree</i>
(b) provision of technical, scientific, legal and other expertise to establish and strengthen national tobacco-control programmes, policies and measures aiming at, inter alia:	<i>Agree</i>
(i) building a strong legislative foundation as well as technical programmes, and assisting in the treatment of tobacco dependence;	<i>Agree</i>
(ii) assisting tobacco workers in the development of alternate livelihoods;	<i>Agree</i>
(iii) assisting tobacco growers in shifting agricultural production to alternate crops in an economically viable manner;	<i>Agree</i>
(iv) carrying out other activities to achieve the objective of this convention and its protocols;	<i>Agree</i>
(c) support for the establishment and maintenance of training programmes for appropriate personnel as provided in Article [INSERT];	<i>Agree</i>
(d) supply of necessary equipment for tobacco-control programmes and activities.	<i>Agree</i>
2. The Conference of the Parties shall determine how to establish a mechanism to promote and facilitate scientific, technical and legal cooperation.	<i>Agree</i>
M. Conference of the Parties	
1. A Conference of the Parties is hereby established. The first session of the Conference shall be convened by the Director-General of the World Health Organization not later than one year after the entry into force of this convention. Thereafter, ordinary sessions of the Conference shall be held every year [and convened in conjunction with the World Health Assembly] unless otherwise decided by the Conference.	<i>Agree</i>
2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat of the Convention, it is supported by at least one-third of the Parties	<i>Agree</i>
3. [The rules of procedure of the Conference of the Parties and of any subsidiary body shall be the Rules of Procedure of the World Health Assembly.] The Conference shall agree upon and adopt by [simple majority vote][two-thirds majority vote] [rules of procedure and] financial rules for itself and for any subsidiary body it may establish.	<i>Agree</i>

Chair's Text	German Coalition views
4. The Conference of the Parties shall keep under regular review the implementation of this convention and its protocols and take the decisions necessary to promote the effective implementation of these instruments [and may adopt protocols, annexes and amendments to the convention, its protocols and annexes in accordance with Article [Development of the convention]]. To this end, it shall:	<i>Agree</i>
(a) periodically examine the obligations of the Parties and the institutional arrangements under the convention, in the light of its objective, the experience gained in its implementation, and the evolution of scientific and technological knowledge, as well as prevailing socioeconomic conditions;	<i>Agree</i>
(b) promote and facilitate the exchange of information pursuant to Article [Surveillance, Research and Exchange of Information];	<i>Agree</i>
[(c) facilitate, at the request of two or more Parties, the coordination of measures adopted by them relevant to the implementation of this Convention and any applicable protocols;]	<i>Agree</i>
(d) promote and guide the development and periodic refinement of comparable methodologies, in addition to those provided for in Article [Surveillance, Research and Exchange of Information] and Annexes [INSERT], relevant to the implementation of the Convention and its protocols;	<i>Agree</i>
[(e) promote, in accordance with Articles [INSERT] as appropriate, the harmonization of appropriate strategies, plans, programmes, policies, legislation and other measures;]	<p>[(e) promote, in accordance with Articles [INSERT] as appropriate, the adoption of appropriate strategies, plans, programmes, policies, legislation and other measures with the aim of promoting the best evidence-based practice.]</p> <p><i>Inappropriate reference to harmonization.</i></p>
(f) promote programmes to assist Parties in implementing their obligations pursuant to Articles [INSERT];	<i>Agree</i>
(g) assess the implementation of the provisions of this Convention and its protocols by the Parties, on the basis of information made available in accordance with Article [Reporting and Implementation];	<i>Agree</i>
(h) consider and adopt regular reports on the implementation of the Convention and its protocols and arrange for their distribution;	<i>Agree</i>
(i) make recommendations to the Parties, the World Health Organization, other United Nations bodies and other international organizations and bodies on any matters necessary for the implementation of the Convention and its protocols;	<i>Agree</i>
(j) seek to mobilize financial resources to support secretariat services pursuant to Article [Secretariat] and to support the implementation of the Convention and its protocols in accordance with Articles [Financial Resources; Reporting and Implementation];	<i>Agree</i>
[(k) establish such subsidiary bodies as it deems necessary for the implementation of the Convention, review their reports, and provide guidance to them;].	<i>Subsidiary mechanisms are important and should be established in the Convention itself – as specified in the working group documents.</i>
(l) seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent intergovernmental and nongovernmental organizations and bodies as a means of monitoring activities under the convention and its protocols;	<i>Agree</i>
(m) exercise such other functions as are required for achieving the objective of the convention, as well as all other functions assigned to it thereunder.	<i>Agree</i>

Chair's Text	German Coalition views
[5. The United Nations, specialized agencies of the United Nations, regional economic integration organizations not parties to the convention, nongovernmental organizations qualified in matters covered by the convention, as well as any State not party to this Convention, may be represented by observers at meetings of the Conference of the Parties, subject to the relevant Rules of Procedure and decisions of the Conference of the Parties.]	<i>Agree</i>
N. Secretariat	
1. The secretariat of this Convention shall be provided by the World Health Organization.	<i>Agree</i>
2. The functions of the secretariat shall be:	<i>Agree</i>
(a) to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;	<i>Agree</i>
(b) to compile and transmit reports submitted to it pursuant to this Convention and any of its protocols;	<i>Agree</i>
(c) to facilitate support to the Parties, particularly developing-country Parties, on request, in the compilation and communication of information required in accordance with the provisions of this Convention;	<i>Agree</i>
(d) to prepare reports on its activities under this Convention and any of its protocols and submit them to the Conference of the Parties;	<i>Agree</i>
(e) to ensure, under the overall guidance of the Conference of the Parties, the necessary coordination with other relevant international bodies;	<i>Agree</i>
(f) to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;	<i>Agree</i>
(g) to perform the other secretariat functions specified in this Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.	<i>Agree</i>
O. Support by the World Health Organization	
1. The Conference of the Parties may call upon the World Health Organization to provide technical cooperation in achieving the objective of this Convention or in connection with questions falling within its mandate arising out of the application of the Convention and its protocols. The Organization shall accord such support in accordance with its programmes and within the limits of its resources	<i>Agree</i>
2. The World Health Organization may, on its own initiative, make proposals to the Conference of the Parties.	<i>Agree</i>
P. Reporting and implementation	
1. In accordance with guidelines agreed upon by the Conference of the Parties, each Party shall submit to the Conference the following data:	<i>Agree</i>
(a) information on tobacco control institutions, strategies, plans, programmes, policies, legislation and other measures initiated or implemented in accordance with the provisions of Articles [INSERT], together with information on enforcement, where appropriate;	<i>Agree</i>
(b) information on steps to carry out actions taken in accordance with Article [Financial Resources];	<i>Agree</i>

Chair's Text	German Coalition views
(c) information on the economic, social and other consequences of various response strategies adopted to implement this convention and its protocols;	Delete – creates a potentially burdensome cost-benefit analysis requirement for the measures to be introduced under the FCTC.
(d) information on measures, in addition to those described above, that the Party has taken to implement the provisions of this convention and their effectiveness in meeting its objective;	Agree
(e) description of measures planned by the Party to implement this convention.	Agree
2. Each developed-country Party and each other Party included in Annex [INSERT] shall make its initial report within six months of the entry into force for that Party of this Convention. Each Party not so listed shall make its initial report within two years of the entry into force for that Party of the Convention. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.	Agree
3. To assist the Conference of the Parties in the monitoring, assessment and review of the effective implementation of this Convention, the Conference may establish a subsidiary body which shall report regularly to the Conference. The guidelines for participation in this body, as well as its monitoring functions, will be determined by the Conference.	Agree
4. In order to provide timely advice in the implementation of this Convention, the Conference of the Parties may, as it deems necessary, appoint, taking into account the rules and practices of the World Health Organization, ad hoc panels to provide it with information and advice on specific issues regarding the current state of fields of science and technology relevant to the objective of the Convention. The members of these panels shall be appointed by the Conference on the recommendation of the Director-General of the World Health Organization, and shall serve in their personal capacity. The Conference shall decide on the terms of reference and the modalities of work of these panels.	Agree
5. Starting at its first session, the Conference of the Parties shall arrange for the provision to developing-country Parties of technical support, on request, in compiling and communicating information under this Article. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate	Agree
Q. Financial resources	
1. Each Party undertakes to provide financial support and incentives in respect of its national activities intended to achieve the objective of this Convention, in accordance with its national plans, priorities and programmes.	Agree

Chair's Text	German Coalition views
<p>2. A voluntary mechanism for the provision of financial resources on a grant or concessional basis, including the transfer of technology, is hereby established to function under the guidance of, and be accountable to, the Conference of the Parties. Its operation shall be entrusted to the World Health Organization. Pursuant to the objective of this Convention, the Conference shall determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for, access to, and use of, the financial resources, including regular monitoring and evaluation of such use. The Conference shall decide on the arrangements to give effect to this provision after consultation with the World Health Organization.</p>	<p>2. i. To assist Parties in meeting their obligations under this Convention and its protocols, a mechanism for the provision of financial resources on a grant or concessional basis, is hereby established. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programmes and priorities, and on eligibility criteria related to this Convention. Its operation shall be entrusted to the [World Bank] [World Health Organisation.]</p> <p>ii. Pursuant to the objective of this Convention, the Conference of the Parties shall determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources, including regular monitoring and evaluation of such utilization. The Conference of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the body entrusted with the operation of the financial mechanism.</p> <p>iii. The developed country Parties and other developed Parties included in Annex [?] shall provide new and additional financial resources to meet agreed costs incurred by developing country Parties in complying with their obligations under Articles [n to n]. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.</p> <p><i>This language is derived from the articles establishing the financial mechanism in the climate convention. It is not clear which institution has the necessary resources to manage project and programme funding.</i></p> <p><i>It is unclear what is meant by "transfer of technology" in the context of a tobacco control treaty.</i></p>
<p>3. The Parties recognize the important role that bilateral, regional and other channels can play in achieving the objective of this Convention. They shall consider providing, in accordance with their capabilities and national law, voluntary funding through such channels for comprehensive tobacco-control programmes in support of this objective, taking into account the needs of developing countries.</p>	<p><i>Agree</i></p>
<p>[4. The Parties recognize that developed-country Parties that export manufactured tobacco products, or have branches of international tobacco companies exporting tobacco products from third countries, have a special responsibility to provide technical support to developing-country Parties to strengthen their national tobacco control programmes.]</p>	<p><i>Move to preamble</i></p>

Chair's Text	German Coalition views
	<p><i>(economic and agricultural transition)</i></p> <p>5.i. At the direction of the Conference of the Parties, the Secretariat shall from time to time prepare a report on world tobacco demand and tobacco production by region.</p> <p>ii. Where the economy of a party is especially dependent on tobacco growing, the party shall undertake diversification with the aim of reducing such dependence.</p> <p>iii. In meeting obligations relating to the removal of subsidies [section I] each Party shall take account of the need for economic and agricultural transition in parties with a high dependence on tobacco growing.</p> <p>iv. In meeting its obligation under paragraph 2 above, parties with high dependence on tobacco growing may avail themselves of support from international and regional multi-lateral development banks and institutions, and bi-lateral assistance from other parties to this convention.</p> <p>v. Acting within their respective capabilities and powers, Parties shall ensure as far as possible that the country assistance programs of the World Bank and programmes of other multi-lateral institutions shall take into account the need for economic and agricultural transition in countries with high economic dependence on tobacco growing.</p> <p>vi. Funds made available within the Financial Mechanism of this Convention and its Protocols are available to meet the objectives of the Convention and assist developing country parties in meeting their obligations under the Convention.</p> <p>viii. The parties cannot accept liability for economic or other impacts arising from reductions in tobacco demand that result from tobacco control policies introduced under this convention or otherwise.</p> <p><i>The aim here is to show that economic and agricultural transition should be facilitated within the normal processes of development. Funds in the FCTC should be strictly used for implementing health measures. World tobacco demand is projected to increase over the coming decades, so the total effect of the FCTC may be simply to reduce growth.</i></p>
R. Settlement of disputes	
1. If a dispute arises between two or more Parties concerning the interpretation or application of this Convention or any of its protocols, those Parties shall consult among themselves with a view to resolving the dispute by negotiation.	<i>Agree</i>
2. If the parties to the dispute cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.	<i>Agree</i>
3. Failure to reach agreement by negotiation or mediation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depository that, for a dispute not resolved in accordance with paragraph 1 or 2 above, it accepts, as compulsory, arbitration in accordance with procedures to be adopted by the Conference of the Parties.	<i>Agree</i>

Chair's Text	German Coalition views
4. [If all the parties to the dispute have not, in accordance with paragraph 3 above, accepted arbitration, the dispute shall, unless the parties otherwise agree, be submitted to conciliation. A conciliation commission shall be established as set out in paragraph 5 below at the request of one or more parties to the dispute.	<i>Agree</i>
5. Unless the parties agree otherwise:	<i>Agree</i>
(a) If the dispute is between two parties, each party shall appoint one member of the commission, and the two members so appointed shall appoint a third, who shall serve as chair. If within three months of the appointment of the first member the second member has not been appointed, or within three months of the appointment of the second member the third has not been appointed, such appointment shall be made by [INSERT] at the request of either party.	<i>Agree</i>
(b) If the dispute is between more than two parties, the parties shall agree on three members of the commission and designate one of these as chair. If within three months of the first request for the establishment of the commission no such agreement shall have been reached, the members of the commission shall be appointed and the chair designated by [INSERT] at the request of any party.	<i>Agree</i>
6. Unless the parties agree otherwise, all matters concerning the conciliation shall be determined by the commission, acting by simple majority. The commission shall render a recommendatory award, which the parties shall consider in good faith.]	<i>Agree</i>
7. The provisions of this Article shall apply with respect to any protocol, unless otherwise provided therein.	<i>Agree</i>
S. Development of the Convention	
[To be formulated at a later session of the Intergovernmental Negotiating Body]	
T. Final Clauses	
[To be formulated at a later session of the Intergovernmental Negotiating Body]	