



Smokeless tobacco products: **guide to drafting regulation to implement the WHO FCTC**



FCTC

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

SECRETARIAT

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S E C R E T A R I A T

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Foreword

The Secretariat of the WHO Framework Convention on Tobacco Control (WHO FCTC or the Convention) has developed this guide to provide technical support to Parties to the Convention in drafting WHO FCTC-compliant legislation or regulations on smokeless tobacco products. In addition to assisting Parties to meet their obligations under the Convention, the guide may also be useful to the few countries that are not yet Parties but nevertheless want to protect their populations from the risks of tobacco use, including smokeless tobacco products, and may find this guide relevant in their jurisdiction and in their tobacco control efforts.

It is intended that the regulation of smokeless tobacco will be part of comprehensive tobacco control legislation rather than separate legislation. Hence, this guide is intended as a tool for those involved in developing tobacco control legislation or regulations, including WHO FCTC focal points of the Parties and their counterparts in other ministries who are involved in drafting legislation or regulations. Other entities (e.g. tobacco control advocates of civil society organizations, which play a vital role in advocating for and promoting the adoption and implementation of such legislation or regulations) may also find the contents of this guide valuable.

The technical content provided here outlines the key domains of the WHO FCTC and its guidelines for implementation relevant to smokeless tobacco products, highlights country examples and reflects on additional factors to consider when drafting country legislation. The guide also provides a legislation template, which is intended to be used only as an example, while considering specific country contextual factors.

Since the adoption of the WHO FCTC in May 2003, the Convention Secretariat has been providing technical assistance to Parties to support the implementation of national tobacco control legislation in line with the mandates of the Convention and the guidelines for implementation of various Convention articles adopted by the Conference of the Parties, which is the governing body of the Convention. The Convention Secretariat is committed to continuing to help the Parties to accelerate their progress in implementing the Convention in accordance with the decisions of the Conference of the Parties.

The Convention Secretariat

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The first draft of this publication was developed by the Campaign for Tobacco-Free Kids, an Observer to the Conference of the Parties to the WHO FCTC. Special recognition goes to the WHO FCTC Knowledge Hub for Smokeless Tobacco and its Director, Dr Shalini Singh, who contributed to the drafting and reviewing of the text and provided implementation examples.

The document was developed under the leadership of Adriana Blanco Marquizo, Head of the Convention Secretariat, and under the guidance of Tibor Szilagyi, Team Lead for Reporting and Knowledge Management.

Christina Kyriakos and Leticia Martinez Lopez from the Reporting and Knowledge Management team of the Convention Secretariat, along with representatives of other teams in the Secretariat, contributed to the review of the document.

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Abbreviations and acronyms

COP	Conference of the Parties
EU	European Union
GSO	Gulf Cooperation Council Standardization Organization
NCD	noncommunicable disease
PDA	principal display area
SDGs	Sustainable Development Goals
SLT	smokeless tobacco
TAPS	tobacco advertising, promotion and sponsorship
TobReg	WHO Study Group on Tobacco Product Regulation
WHO	World Health Organization
WHO FCTC	WHO Framework Convention on Tobacco Control

1. Setting the scene

Objective

1.1 Objective and use of the guide

The purpose of this guide is to support efforts by Parties to the WHO Framework Convention on Tobacco Control (hereinafter referred to as “WHO FCTC” or “the Convention”) to ensure that their legal measures with respect to smokeless tobacco (SLT) products are covered in their national legislation and regulations on tobacco control and are in line with the Convention. The guide further reflects recommendations from various guidelines for implementation of articles of the WHO FCTC and those of the relevant decisions adopted by the Conference of the Parties (COP). The guide and its accompanying legislation template aim to help Parties identify and fill gaps that may exist in their regulation of SLT products under their existing national tobacco control legislation and regulations. The guide does not aim to promote separate legislation for SLT products; instead, it aims to ensure that Parties’ comprehensive tobacco control legislation or regulations cover SLT products.

This chapter sets out the need for comprehensive regulation of SLT products, discusses SLT products under the WHO FCTC and in relevant COP decisions, and concludes with challenges in regulating SLT products. Chapter 2 highlights the essential components of each article of the WHO FCTC and its guidelines for implementation (where available), assesses the article’s application to SLT products, provides examples from implementing provisions in countries’ laws, and offers key observations to assist with Parties’ efforts to comprehensively regulate SLT products. Chapter 3 offers a legislation template that comprehensively covers articles of the WHO FCTC that require legal measures for implementation.

The template in Chapter 3 is not intended to be inserted verbatim into a given country’s laws. The suggested measures must be tailored and developed in such a way to meet a country’s legal requirements and customs and to otherwise fit within that country’s legal, political and cultural context. Finally, although this guide takes the approach of strictly regulating SLT products, some countries and territories have elected to ban the manufacture, import and sale of these products. Thus, in countries where a ban would be legally feasible *and* reasonably achievable owing to a low prevalence of SLT use and other contextual factors, a ban could be justified on health grounds and under the authority of Article 2.1 of the WHO FCTC, which encourages Parties to enact measures that are stricter than those required by the Convention, as well as Article 5.2(b), which empowers Parties to develop appropriate policies for preventing tobacco consumption and nicotine addiction. In considering the control and prevention of SLTs, the COP has commended in decision FCTC/COP6(8) those Parties that have adopted policies and programmes to prohibit, inter alia, the consumption of SLT products and invited Parties to “consider, as appropriate, developing product specific policies and regulations to protect the health of their citizens...such as prohibition of the import, manufacture and sale of identified SLTs in line with applicable legal provisions and public health priorities”.

1.2 The need for comprehensive regulation to address SLT products

The tobacco industry frequently promotes SLT products as a safer alternative to smoking, yet there is sufficient evidence that SLT use is as addictive as smoking and causes serious – and even deadly – health problems. Health consequences include: oral precancerous lesions; oral cavity cancer; oesophageal cancer; pancreatic cancer; and adverse reproductive and developmental effects that include stillbirth, preterm birth and low birth weight.^{1,2} Some SLT products are associated with an increased risk of fatal ischaemic heart disease, type 2 diabetes and fatal stroke.² However, these risks appear to vary by region and are most likely due to how the products are used.³

SLT products are now widely available around the world, with at least 367 million SLT users in over 140 countries and at least 13 million adolescent SLT users (aged 13–15 years).^{4,5} According to the *2023 Global progress report on implementation of the WHO FCTC*, the percentage of Parties to the WHO FCTC that reported having SLT available in their national market increased from 71% in the 2020 reporting cycle to 76% in 2023 reporting cycle.⁶ Of all Parties, 57% reported enacting an SLT-specific policy or regulation in 2023, demonstrating no change from 2020 (57%). Because many countries still have regulatory gaps, this guide discusses how Parties can ensure that their legal measures cover SLT comprehensively in order to help prevent and reduce tobacco use.

With the global market reach of SLT products and the significant degree of use by young people, the Secretariat of the WHO FCTC has undertaken several actions to assist Parties to strengthen their ability to control SLT products effectively. One of these actions is the launching of the WHO FCTC Knowledge Hub on Smokeless Tobacco which serves as a repository for SLT information. The Knowledge Hub collects and disseminates information related to research on – and prevention and control of – SLT, thus assisting Parties to the WHO FCTC in their implementation of SLT policies. Additionally, the Knowledge Hub shares examples of countries that have successfully implemented comprehensive SLT laws and their potential implementation challenges.⁷

1 Mehrotra R, Sinha DN. Global challenges in smokeless tobacco control. *Indian J Med Res*. 2018;148(1):1–3. https://doi.org/10.4103/ijmr.IJMR_32_18.

2 Timberlake DS, Pechmann C, Tran SY, Au V. A content analysis of Camel Snus advertisements in print media. *Nicotine Tob Res*. 2011;13(6):431–9. <https://doi.org/10.1093/ntr/ntr020>.

3 Smokeless tobacco and public health: a global perspective. Bethesda (MD): US Department of Health and Human Services, Centers for Disease Control and Prevention and National Institutes of Health, National Cancer Institute; 2014. NIH Publication No. 14-7983 (<https://cancercontrol.cancer.gov/brp/tcrb/smokeless-tobacco>).

4 Sinha DN, Gupta PC, Kumar A, Bhartiya D, Agarwal N, Sharma S et al. The poorest of poor suffer the greatest burden from smokeless tobacco use: a study from 140 countries. *Nicotine Tob Res*. 2018;20(12):1529–32. <https://doi.org/10.1093/ntr/ntx276>.

5 WHO report on the global tobacco epidemic 2019: offer to help quit tobacco use. Geneva: World Health Organization; 2019 (<https://www.who.int/teams/health-promotion/tobacco-control/who-report-on-the-global-tobacco-epidemic-2019>).

6 2023 Global Progress Report on Implementation of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2023 (<https://fctc.who.int/publications/m/item/2023-global-progress-report>).

7 WHO FCTC Knowledge Hub on Smokeless Tobacco (website). (<https://extranet.who.int/fctcapps/fctcapps/fctc/kh/slt>).



1.3 The WHO FCTC and SLT regulation

When the WHO FCTC entered into force on 27 February 2005, it became a powerful tool to address the devastating health, social, environmental and economic harms brought by the tobacco epidemic. Because tobacco use is one of the main risk factors for noncommunicable diseases (NCDs) such as cancer, chronic respiratory diseases, diabetes and cardiovascular diseases, the Convention also plays an integral role in advancing the WHO NCD targets and the United Nations Sustainable Development Goals (SDGs). Moreover, implementation of the WHO FCTC has been included among the SDGs as Target 3.a (*“Strengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in all countries, as appropriate”*). When Parties successfully implement the WHO FCTC, their achievements reverberate well beyond the realms of tobacco control and public health.

Since the entry into force of the Convention in 2005, its Parties have made significant progress in implementing it; however, this progress has been uneven across Parties, regions, the articles of the Convention and tobacco product types. SLT products fall within the Article 1(f) definition of “tobacco product” and are subject to all WHO FCTC requirements. Nevertheless, comprehensive regulation of SLT has lagged behind the regulation of cigarettes, even though its use also carries significant health risks and is associated with fatal diseases.⁸

8 Zaatari GS, Bazzi A. Impact of the WHO FCTC on non-cigarette tobacco products. *Tobacco Control*. 2019;28(Suppl 2):s104–12. <https://doi.org/10.1136/tobaccocontrol-2018-054346>.

1.3.1 COP reports and decisions relevant to SLT

The first comprehensive report addressing SLT products was introduced at the fourth session of the COP in 2010.⁹ As a result of this report, the COP, in decision FCTC/COP4(14), requested the Convention Secretariat to collaborate with WHO to prepare a report based on Parties' experiences with SLT to be presented to the COP's fifth session.¹⁰ The Convention Secretariat fulfilled its mandate by presenting another report to the COP entitled *Control and prevention of smokeless tobacco products*,¹¹ which described key facts about SLT products, the prevalence of their use, health impacts, economic and environmental aspects, and Parties' experiences in regulating them.

In response to this report, the COP, in decision FCTC/COP5(10), requested a further report covering three topics, namely: existing best practices on prevention and control of SLT products; existing research and identification of research gaps and priorities for future research; and options for the prevention and control of SLT products.¹² In response, WHO delivered a report to the sixth session of the COP in 2014 titled *Control and prevention of smokeless tobacco products*. In addition to addressing the three topics listed above, the report outlined the results of a WHO survey on tobacco products (also covering SLT products) carried out among WHO's Member States.¹³

This comprehensive report prompted the COP at its sixth session to agree on the need for a series of interventions to promote the control of SLT products. In decision FCTC/COP6(8) on "Smokeless tobacco products" the COP commended Parties that had already acted to prohibit, restrict or reduce the consumption of SLT, while encouraging all Parties to develop product-specific policies in line with the WHO FCTC provisions.¹⁴ This decision also promotes tax and price policies in line with Article 6 of the Convention and its implementation guidelines and in a manner that is aligned with other tobacco products such as cigarettes. The decision endorses strict regulation of new and existing SLT products, including regulation of minors' access to SLT products. It also calls on Parties to consider developing specific cessation support and assessing the effectiveness of SLT cessation interventions in accordance with Article 14 and its guidelines for implementation. This decision further recognizes the need for – and requests the Convention Secretariat to establish – a global knowledge hub on SLT, and to include the matter of SLT in the ongoing working group discussions and in any future review of the existing guidelines.⁸ In line with the decision, the Convention Secretariat, upon proposal by and in collaboration with the Ministry of Health and Family Welfare of the Government of India, established on 6 April 2016 the WHO FCTC Knowledge Hub on Smokeless Tobacco at the National Institute of Cancer Prevention and Research (ICMR-NICPR), based in Noida, Uttar Pradesh, India.

9 FCTC/COP/4/12: Control and prevention of smokeless tobacco products and electronic cigarettes. Report by the Convention Secretariat. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Fourth session, Punta del Este, 15–20 November 2010 (https://apps.who.int/gb/fctc/PDF/cop4/FCTC_COP4_12-en.pdf).

10 Decision FCTC/COP4(14): Control and prevention of smokeless tobacco products and electronic cigarettes. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Fourth session, Punta del Este, 15–20 November 2010 (https://apps.who.int/gb/fctc/PDF/cop4/FCTC_COP4_REC1.pdf (page 63)).

11 FCTC/COP/5/12: Control and prevention of smokeless tobacco products. Report by the Convention Secretariat. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Fifth session, Seoul, 12–17 November 2012 (https://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5_12-en.pdf).

12 Decision FCTC/COP5(10): Control and prevention of smokeless tobacco products and electronic nicotine delivery systems, including electronic cigarettes. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Fifth session, Seoul, 12–17 November 2012 ([https://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5\(10\)-en.pdf](https://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5(10)-en.pdf)).

13 FCTC/COP/6/9: Control and prevention of smokeless tobacco products. Report by WHO. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Sixth session, Moscow, 13–18 October 2014 (https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_9-en.pdf).

14 Decision FCTC/COP6(8): Smokeless tobacco products. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Sixth session, Moscow, 13–18 October 2014 ([https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6\(8\)-en.pdf](https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6(8)-en.pdf)).

In decision FCTC/COP7(14) on “Further development of the partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC (Regulation of the contents of tobacco products and Regulation of tobacco product disclosures)”, the COP requested the Convention Secretariat to invite WHO to assist tobacco testing laboratories, in collaboration with the Knowledge Hub, to carry out various activities related to testing and measuring the contents and emissions of SLT products.¹⁵

The Global Strategy to Accelerate Tobacco Control: Advancing Sustainable Development through Implementation of the WHO FCTC 2019–2025 (the “Global Strategy”) was developed by the Parties to the WHO FCTC and adopted at the eighth session of the COP.¹⁶ The Global Strategy represents the continued effort to strengthen the operations and implementation of the WHO FCTC and its contributions to the 2030 Agenda for Sustainable Development. In particular, Strategic Goal 3 of the Global Strategy seeks to build on achievements and overcome barriers to the full, effective and sustainable implementation of the WHO FCTC and wider tobacco control efforts. As part of this strategic goal, Parties agreed to call for the creation of an implementation review mechanism, which could involve peer-reviewing select Parties’ implementation of the Convention in order to identify and share good practices and help Parties to understand where they might improve their tobacco control policy formulations, implementation and enforcement.^{16,17}

These decisions of the successive sessions of the COP helped to raise the profile of interventions to strengthen the control of SLT and provided a firm foundation for the work done by the Knowledge Hub in recent years. Among other activities, the Knowledge Hub developed a policy review entitled “Global smokeless tobacco control policies and their implementation” that served as the basis for this guide.¹⁸ Against this backdrop, and building on the previous achievements in SLT control, this guide and the accompanying legislation template aim to assist Parties in assessing and strengthening their legal measures to control SLT products.

15 Decision FCTC/COP7(14): Further development of the partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC (Regulation of the contents of tobacco products and Regulation of tobacco product disclosures). Conference of the Parties to the WHO Framework Convention on Tobacco Control, Seventh session, Delhi, 7–12 November 2016 ([https://fctc.who.int/publications/m/item/fctc-cop7\(14\)-further-development-of-the-partial-guidelines-for-implementation-of-articles-9-and-10-of-the-who-fctc-\(regulation-of-the-contents-of-tobacco-products-and-regulation-of-tobacco-product-disclosures\)](https://fctc.who.int/publications/m/item/fctc-cop7(14)-further-development-of-the-partial-guidelines-for-implementation-of-articles-9-and-10-of-the-who-fctc-(regulation-of-the-contents-of-tobacco-products-and-regulation-of-tobacco-product-disclosures))).

16 Global strategy to accelerate tobacco control: advancing sustainable development through the implementation of the WHO FCTC 2019–2025. Geneva: World Health Organization; 2019 (<https://fctc.who.int/publications/i/item/WHO-CSF-2019.1>).

17 Measures to strengthen the implementation of the Convention through coordination and cooperation: rReport by the Working Group. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Eighth session, Geneva, 1–6 October 2018 See: (https://fctc.who.int/docs/librariesprovider12/meeting-reports/fctc_cop_8_11_en.pdf).

18 Mehrotra R, Sinha DN, Szilagyi T. Global smokeless tobacco control policies and their implementation. Noida: WHO FCTC Global Knowledge Hub on Smokeless Tobacco; 2017 (<https://extranet.who.int/fctcapps/sites/default/files/kh-media/Global-smokeless-NICPR-19418-1.pdf>).



Packets of gutka and paan masala.

Challenges

1.4 Challenges when regulating SLT products

One of the most significant challenges facing Parties in their regulation of SLT products is the number of different types of such products on the market. These products have different chemical profiles and differing levels of chemicals that can make it difficult to characterize the harms and risks. Another potential regulatory hurdle is the number of ways in which SLT products are prepared by vendors in the informal sector. There is a variety of production facilities that range from cottage industries to formal or informal market shops and stalls where SLT products are custom-made by the vendors. In some of these places, the consumer creates the mixture for purchase. The numerous types of SLT products and the shapes and sizes of their packages can make it difficult for governments to enforce certain measures such as the requirements under Article 11 of the WHO FCTC – i.e. the utilization of health warnings. Additionally, researchers have found that there are many small-scale products that may not be packaged at all.^{3,19} The lack of packaging – and/or the lack of health warnings on any packaging that may exist – leads to misperceptions propagated by the SLT industry about the products' harms.¹

Parties have the force of the legally-binding WHO FCTC – a widely accepted and respected treaty – on their side, along with strong evidence that supports every treaty measure. The Convention provides a time-tested policy framework for implementing strong and comprehensive life-saving legislative, executive, administrative and other measures that Parties are bound by international law to implement.

19 Chandra A, Yadav A, Chandan K, Mehrotra R. Regulatory compliance: a challenge for unbranded smokeless tobacco products. *Journal of global oncology*. 2018;4(2):197s. <https://doi.org/10.1200/jgo.18.79402>.

2. Assessing the comprehensiveness of legal measures for regulating smokeless tobacco products

2.1 Introduction

This chapter highlights the key components of Articles 1, 5.3, 6 and 8–22 of the WHO FCTC and the accompanying guidelines for implementation, where available; the potential application of those articles to regulating SLT; legal measures countries have enacted to implement a given article (including URL links to the wording of those measures, where applicable); and key observations that could help with drafting strong and comprehensive SLT legal measures specifically, and for tobacco products in general. This information can provide a comprehensive framework for drafting WHO FCTC-compliant legal texts. It is intended both for governments drafting a new tobacco control law and those seeking to fill gaps in an existing law through amendments or (where legally feasible) subsidiary legislation.

2.2 Definitions (Article 1 of the WHO FCTC)

Clear and comprehensive definitions of key terms establish the foundation for a robust law. The WHO FCTC and its guidelines for implementation (adopted for several of its articles) provide such definitions for many of the key terms that should be included in a country's WHO FCTC implementation measures.²⁰ The WHO FCTC definitions were extensively discussed and adopted by the Conference of the Parties to assist Parties in effectively meeting their obligations; hence, they provide a sound foundation for implementation of the Convention. However, Parties can modify the definitions to make them appropriate for their country-specific contexts. This chapter and the legislation template provide recommendations for defining additional key terms.

2.2.1 Application to SLT products

SLT falls within the broad definition of “tobacco products” in Article 1(f) of the WHO FCTC: “products entirely or partly made of the tobacco leaf as raw material which is manufactured to be used for smoking, sucking, chewing or snuffing”. In addition to defining “tobacco products” in accordance with Article 1 of the WHO FCTC definition, it may also be advisable to characterize “smokeless tobacco products” separately by: describing them as products that are produced for consumption by means of sucking, chewing, sniffing, snuffing, dipping, dissolving or consumption by other oral or nasal means that do not involve inhaling aerosols or vapours produced by lighting or heating tobacco; and providing a non-exhaustive list of each of the types of SLT products on the market in a given country. The non-exhaustive list may identify separately each of the types of SLT products on the market, as chewing tobacco requirements may differ from the requirements for snuffing tobacco. For instance, under Articles 9 and 10 of the WHO FCTC, contents and emissions can vary by product type. Similarly, labelling requirements – especially health warnings and contents (ingredients) and emissions information – will need to be tailored to the specific SLT product in some cases since

20 WHO Framework Convention on Tobacco Control. Glossary of terms used in the WHO FCTC and its instruments. Second version. 2015 (<https://fctc.who.int/publications/m/item/glossary-of-terms—who-fctc-and-its-instruments>).

health effects may vary on the basis of the products' ingredients and the ways in which the products are used.

2.2.2 Country practices

This section provides examples of definitions of SLT-relevant terms contained in the legal measures from the Gulf Cooperation Council Standardization Organization (GSO) and the European Union (EU).

GSO

The GSO's standard on labelling of tobacco product packages (GSO 246/2011) defines "tobacco product" according to the definition contained in Article 1(f) of the WHO FCTC and includes examples of the products covered (Article 3.3). The standard also includes definitions of "chewing tobacco" (Article 3.5) and "snuffing tobacco" (Article 3.6).²¹

European Union

Directive 2014/40/EU, also known as the EU Tobacco Products Directive, provides comprehensive definitions for "tobacco" (Article 2(1)), "tobacco products" (Article 2(4)), "smokeless tobacco product" (Article 2(5)), "chewing tobacco" (Article 2(6)), "nasal tobacco" (Article 2(7)) and "tobacco for oral use" (Article 2(8)). The definition of "smokeless tobacco product" is written in a broad way that would be likely to include new non-combustible product iterations.²²

2.2.3 Additional considerations when drafting legislation

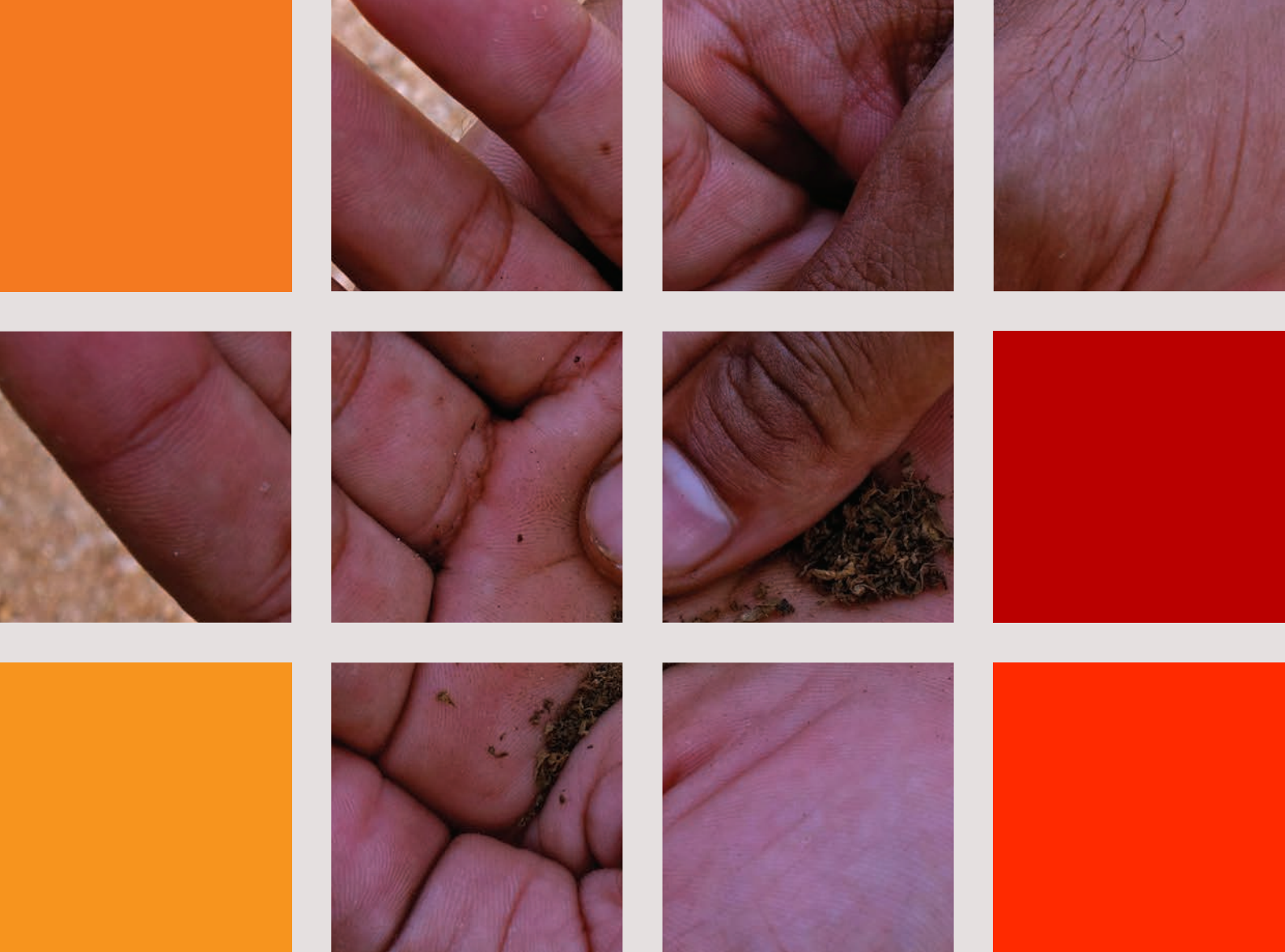
In addition to the WHO FCTC definition for "tobacco products", legal measures could include a definition for "smokeless tobacco products". It may also be advisable to define the various forms of smokeless tobacco available in the country's market.

Other relevant definitions are provided in the template in Chapter 3.

In addition to the WHO FCTC definition for "tobacco products", legal measures could include a definition for "smokeless tobacco products". It may also be advisable to define the various forms of smokeless tobacco available in the country's market.

21 GSO 246/2011: Labelling of tobacco product packages. Riyadh: Standards Organization of the Cooperation Council for the Arab States of the Gulf; 9 August 2011 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Oman/Oman-GSO-2462011.pdf>).

22 Directive 2014/40/EU of the European Parliament and of the Council of 3rd April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC. Strasbourg: European Parliament, Council of Europe; 3 April 2014 (<https://assets.tobaccocontrolaws.org/uploads/legislation/European%20Union/European-Union-TPD-2014-native.pdf>).



"Khaini" is a form of chewing tobacco used in South Asia, made of sun-dried, crushed tobacco leaves which are mixed with slaked lime and rubbed thoroughly. It is held in the mouth and sucked or chewed.

2.3 Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry (Article 5.3 of the WHO FCTC)

Recognizing the need to be alert to the tobacco industry's attempts to undermine and subvert tobacco control efforts,²³ Article 5.3 of the WHO FCTC requires Parties to implement effective measures to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. To assist Parties in meeting their legal obligations under Article 5.3, the guidelines for its implementation²⁴ adopted by the COP in 2008 provide comprehensive recommendations for achieving effective protection against tobacco industry interference. These recommendations include:

- ◆ raising awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies;

23 WHO Framework Convention on Tobacco Control, Preamble. Geneva: World Health Organization; 2003 (<https://fctc.who.int/publications/i/item/9241591013>).

24 Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control. World Health Organization. 2008. (<https://fctc.who.int/publications/m/item/guidelines-for-implementation-of-article-5.3>).

- ◆ establishing measures to limit interactions with the tobacco industry and to ensure the transparency of any interactions that occur (interactions should be limited to only those necessary for effective regulation of tobacco products and the tobacco industry);
- ◆ rejecting partnerships and non-binding or non-enforceable agreements with the tobacco industry (e.g., rejecting assistance from the tobacco industry with drafting or implementing tobacco policies or legal measures, and rejecting policies or measures drafted by the industry);
- ◆ avoiding conflicts of interest for government officials and employees (e.g. mandatory disclosure and management of conflicts of interest; adopting a code of conduct for dealings with the industry; “cooling off” periods after leaving government service and before engaging in occupational activity with the tobacco industry; and banning contributions from the tobacco industry to political parties, campaigns or candidates, where constitutionally and legally permissible);
- ◆ requiring that information provided by the tobacco industry to be transparent and accurate;
- ◆ denormalizing and, as far as possible, regulating activities described as “socially responsible” by the tobacco industry; for example, activities described as “corporate social responsibility” (also covered by the ban under Article 13 of the WHO FCTC on tobacco sponsorship);
- ◆ not giving preferential treatment to the tobacco industry (e.g. incentives, privileges and benefits to establish or run a tobacco business, including state investments in or preferential tax incentives to the industry); and.
- ◆ treating state-owned tobacco industry in the same way as any other tobacco industry; this requires responsibility for policy development and implementation to be separate from the responsibility for overseeing and managing the industry.

The guidelines apply “to government officials, representatives and employees of any national, state, provincial, municipal, local or other public or semi/quasi-public institution or body within the jurisdiction of a Party, and to any person acting on their behalf”. Some recommendations apply regardless of whether the institution or body has responsibility for tobacco control; for example, rejecting any kind of contribution from the industry (Recommendation 6.4) or any partnership described as socially responsible (Recommendation 6.2).

2.3.1 Application to the smokeless tobacco industry

The entire Guidelines for implementation of Article 5.3 apply to the SLT industry since “smokeless tobacco products” fall within the Article 1(f) definition of “tobacco products” and SLT product manufacturers, importers and wholesalers fall within the Article 1(e) definition of “tobacco industry.” Domestic smokeless tobacco companies have been employing common interference tactics (e.g. corporate social responsibility activities) and the global SLT industry is projected to grow significantly, thus underscoring the need for application of Article 5.3 to the SLT industry.^{25,26} Moreover, in recent years the tobacco industry has intensified and become more aggressive in its efforts to interfere with the

25 University of Bath. Tobacco Tactics. CSR Strategy (<https://tobaccotactics.org/article/csr-strategy/>).

26 Cision PR Newswire, 6 September 2018. Global smokeless tobacco market 2018–2023: easy availability and low prices to drive the smokeless tobacco market growth (<https://www.prnewswire.com/news-releases/global-smokeless-tobacco-market-2018-2023-easy-availability-and-low-prices-to-drive-the-smokeless-tobacco-market-growth-300708099.html>).

implementation of the WHO FCTC, as noted by the COP in decisions FCTC/COP8(18) and FCTC/COP8(21).^{27,28}

2.3.2 Country practices

Parties have implemented Article 5.3 and the recommendations in the guidelines for its implementation in different ways; for example, enacting Article 5.3-specific measures in tobacco control legislation or subsidiary legislation, developing official policies to prevent tobacco industry interference, and developing guidelines and changes in practice in the way governments deal with the tobacco industry.

In order to implement Article 5.3, Parties have also invoked generally applicable existing laws and policies, including those that prohibit conflicts of interest on the part of persons or entities working in or with the government, those that provide public access to government records and those that regulate lobbying.²⁹ Although it makes good sense to use all of these approaches, the result should be an enforceable suite of measures that align with Article 5.3 of the Convention and with the recommendations of its implementation guidelines.

Examples of measures for implementing Article 5.3 in the Philippines, Uganda and the United Kingdom of Great Britain and Northern Ireland (United Kingdom) are given below. These examples apply to the tobacco industry in general.

Philippines

The Philippines was an early adopter of Article 5.3 measures when it implemented, in 2010, the Republic of the Philippines Department of Health, Department Memorandum No. 2010-0126,³⁰ and the Joint Memorandum Circular 2010-01,³¹ both of which concern protecting the bureaucracy from tobacco industry interference. Other departments have also adopted the Joint Memorandum Circular. These measures are comprehensive in their content; however, they apply only to the country's civil service rather than to all government branches as recommended in the guidelines.

Uganda

In Uganda, the Tobacco Control Act, 2015 applies Article 5.3 of the WHO FCTC measures to all of government – parliament, ministries and the judiciary – and provides definitions for several terms relevant for implementing Article 5.3, namely: “government,” “occupational activity,” “public office holder,” “relevant or related tobacco control,” “tobacco control,” “tobacco control policies” and “tobacco industry” (Section 2). Sections 4(2)(b)(4) and 19–23 incorporate many recommendations from the guidelines for

27 Decision FCTC/COP8(18): Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Eighth session, Geneva, 1–6 October 2018 ([https://fctc.who.int/publications/m/item/fctc-cop8\(18\)-protection-of-public-health-policies-with-respect-to-tobacco-control-from-commercial-and-other-vested-interests-of-the-tobacco-industry](https://fctc.who.int/publications/m/item/fctc-cop8(18)-protection-of-public-health-policies-with-respect-to-tobacco-control-from-commercial-and-other-vested-interests-of-the-tobacco-industry)).

28 Decision FCTC/COP8(21): Implementation of Articles 9 and 10 of the WHO FCTC (Regulation of contents and disclosure of tobacco products, including water pipe, smokeless tobacco and heated tobacco products). Conference of the Parties to the WHO Framework Convention on Tobacco Control, Eighth session, Geneva, 1–6 October 2018 ([https://fctc.who.int/publications/m/item/fctc-cop8\(21\)-implementation-of-articles-9-and-10-of-the-who-fctc-\(regulation-of-contents-and-disclosure-of-tobacco-products-including-water-pipe-smokeless-tobacco-and-heated-tobacco-products\)](https://fctc.who.int/publications/m/item/fctc-cop8(21)-implementation-of-articles-9-and-10-of-the-who-fctc-(regulation-of-contents-and-disclosure-of-tobacco-products-including-water-pipe-smokeless-tobacco-and-heated-tobacco-products))).

29 Fooks GJ, Smith J, Lee K, Holden C. Controlling corporate influence in health policy making? An assessment of the implementation of article 5.3 of the World Health Organization framework convention on tobacco control. *Glob Health*. 2017;13(1):12. <https://doi.org/10.1186/s12992-017-0234-8>.

30 Department Memorandum No. 2010-0126: on Protection of the Bureaucracy against Tobacco Industry Interference. Manila: Republic of the Philippines Department of Health; 6 May 2010 (<https://assets.tobaccocontrollaws.org/uploads/legislation/Philippines/Philippines-DOH-Dept-Memo-on-Industry-Interference-native.pdf>).

31 Joint Memorandum Circular 2010-01: on Protecting the Bureaucracy from Tobacco Industry Interference. Manila: Republic of the Philippines Civil Service Commission, Department of Health; 29 June 2010 (<https://assets.tobaccocontrollaws.org/uploads/legislation/Philippines/Philippines-JMC-2010-01-native.pdf>).

implementation, including transparency in any interaction between the tobacco industry and the government by requiring any interactions to be recorded and available to the public and by prohibiting partnerships with the tobacco industry.³²

United Kingdom

Some United Kingdom government departments have published guidelines that explain WHO FCTC obligations and instruct staff on how and when to interact with the tobacco industry. The HM Revenue and Customs (HMRC) Department guidance (November 2019), titled *The tobacco industry and HMRC, Article 5.3: the Framework Convention on Tobacco Control (FCTC)* is a useful example.³³ It introduces the WHO FCTC and highlights the responsibilities of HMRC staff when communicating with the tobacco industry. The HMRC guidelines categorize the interactions likely to arise and provide advice to assist with deciding whether to interact with the industry. The three categories can be broadly described as:

- ◆ permissible interactions with the tobacco industry;
- ◆ interactions that would be contrary to HMRC's responsibilities under Article 5.3, or would create an impression of a partnership or cooperation that is unnecessary to its duties; and
- ◆ scenarios where it is not clear whether staff may or may not be able to interact, along with factors to consider and what discussions to avoid.

HMRC also posts quarterly notifications of its meetings with the tobacco industry on the HMRC website, to provide transparency. An example of an interaction report can be found on their website.³⁴

Another example can be found in the guidance provided jointly by the Department of Health and the Foreign & Commonwealth Office (now the Foreign, Commonwealth and Development Office): the *United Kingdom's revised guidelines for overseas posts on support to the tobacco industry*.³⁵ This document outlines the actions that foreign posts are encouraged to take (e.g. offering access to expertise within the United Kingdom government in matters of public health, tobacco control and combatting illicit trade) and those that foreign posts must not take (e.g. involvement in tobacco promotional activities, encouraging investment in the tobacco industry, accepting direct or indirect industry funding).

2.3.3 Additional considerations when drafting legislation

If existing tobacco control laws and regulations do not yet include provisions or regulatory authority for implementing Article 5.3, consideration could be given to developing and enforcing policies enacted by the various ministries or agencies and bodies in each branch of government.

32 Tobacco Control Act, 2015. Kampala: Parliament of Uganda; 18 November 2015 (<https://assets.tobaccocontrollaws.org/uploads/legislation/Uganda/Uganda-TCA-native.pdf>).

33 The Tobacco Industry and HMRC, Article 5.3: the Framework Convention on Tobacco Control (FCTC). London: HM Revenue and Customs; 2019 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844161/Article_5_3_guidance_v3_6_FINAL_External.pdf).

34 HMRC policy meetings with tobacco stakeholders: October to December 2019. London: HM Revenue and Customs (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/858712/HMRC_Officials_meetings_with_tobacco_stakeholders_Oct_2019_to_Dec_2019.csv/).

35 Guidance for overseas posts on support to the tobacco industry (December 2013). London: Department of Health and Social Care/Foreign & Commonwealth Office; 2013 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287119/Guidance_for_Overseas_Posts_on_support_to_the_Tobacco_Industry.pdf).



Chewing tobacco or gutka.

2.4 Price and tax measures to reduce the demand for tobacco (Article 6 of the WHO FCTC)

Price and tax measures to reduce the demand for tobacco typically fall under the authority and expertise of the ministry responsible for finance. This ministry usually develops and implements such policies through legal measures enacted separately from a tobacco control law.

Article 6 of the WHO FCTC on price and tax measures to reduce the demand for tobacco requires Parties to establish and implement tax policies and, where appropriate, price policies to contribute to public health objectives aimed at reducing tobacco consumption; and prohibit or restrict sales to and importations by international travellers of tax-free and duty-free products. Guidelines for implementation of Article 6 are available.³⁶

Raising taxes on tobacco products is highly effective for increasing tobacco product prices and thereby reducing tobacco consumption, which in turn results in a reduction in mortality and morbidity. At the same time, higher tax rates can generate significant government revenue in the short and medium terms.^{37,38,39} This intervention can be especially effective with young and low-income populations, as these groups tend to be more price-sensitive. WHO recommends governments to raise tobacco excise taxes regularly to achieve a rate of at least 70% of the product's retail price. Furthermore, WHO also created a benchmark requiring the total share of indirect taxes to be equal to or greater than 75% of the retail price.⁴⁰

36 Guidelines for implementation of Article 6 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2013 (<https://fctc.who.int/publications/m/item/price-and-tax-measures-to-reduce-the-demand-for-tobacco>).

37 WHO technical manual on tobacco tax policy and administration. Geneva: World Health Organization; 2021 (<https://www.who.int/publications/i/item/9789240019188>).

38 The World Bank. Curbing the epidemic: governments and the economics of tobacco control. Tob Control. 1999;8(2):196–201. <https://doi.org/10.1136/tc.8.2.196>.

39 Economics of tobacco taxation toolkit. Washington (DC): World Bank Group; 2018 (<https://documents1.worldbank.org/curated/en/780151527139236028/pdf/124696-REVISED-PUBLIC-Economicsoftaxationtoolkitjunerevisions.pdf>).

40 WHO technical manual on tobacco tax policy and administration. Geneva: World Health Organization; 2021 (<https://www.who.int/publications/i/item/9789240019188>).

2.4.1 Application to SLT products

Reports show that in many countries excise taxes imposed on non-cigarette tobacco products, and the rates of annual tax increases on these products, are significantly lower than those imposed on cigarettes.³⁸ Taxing SLT products at a lower rate than cigarettes creates a tax and – possibly – a price gap that motivates smokers who are more price-sensitive to switch from cigarettes to cheaper tobacco products.^{3,38} Market reports show that the projected growth in the SLT market and the strong position of chewing tobacco in that market are due in part to the easy availability and lower price of chewing tobacco compared to cigarettes. Market growth in countries of Asia and the Pacific is anticipated to be driven by governments' increased prices and taxes on cigarettes without concomitant increases on SLT products.²⁵

To address this disparity, the periodic SLT tax increases may need to be larger than those on cigarettes.¹⁸ Additionally, tax rates should be standardized across all SLT products in order to discourage substitution with other lower-taxed and lower-priced SLT products. In the end, tax measures should ensure that the minimum retail price per unit of tobacco product is equalized across all tobacco products.¹⁸

Taxing SLT products at a lower rate than cigarettes creates a tax and – possibly – a price gap that motivates smokers who are more price-sensitive to switch from cigarettes to cheaper tobacco products.

2.4.2 Country practices

Descriptions of Article 6 measures from India and Bangladesh are given below.

India

Reform of the Goods and Services Tax (GST) in India took effect on 1 July 2017, imposing the highest rate of 28% on SLT products, along with an additional levy that varies according to the particular SLT product.⁴¹ There is also a National Calamity Contingent Duty of 10% which is imposed on all SLT products in addition to the regular taxes.¹⁸ According to the 2023 *WHO report on the global tobacco epidemic*, ad valorem excise taxes in India accounted for 37.82% and value added tax accounted for 21.88% of the retail sales price per 20g of Khaini, for a total of 59.69%.⁴²

Bangladesh

In Bangladesh, SLT products were taxed for the first time in 2008, with a supplementary duty introduced in 2009 and which has subsequently been revised.^{18,43} According to the latest taxation rates of SLT products announced on 1 June 2023 in the National Budget

41 GST rates for goods and services as on 01.04.2023. Delhi: Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, Goods and Services Tax (<https://cbic-gst.gov.in/gst-goods-services-rates.html>).

42 WHO report on the global tobacco epidemic, 2023: protect people from tobacco smoke. Geneva: World Health Organization; 2023 (<https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2023>).

43 National Board of Revenue, Bangladesh (website). Dhaka; 2024 (<https://nbr.gov.bd/>).

Speech 2023–2024⁴⁴ and issued by the National Board of Revenue in Statutory Regulatory Order No 140 Act 2023/217, the smokeless tobacco products, *jarda* and *gul* each have a supplementary duty of 55%.⁴⁵ According to the 2023 *WHO report on the global tobacco epidemic*, ad valorem tax accounted for 55% and value added tax accounted for 15% of the retail sales price per 20g of chewing tobacco, for a total of 71% (a health development surcharge accounted for 1%).⁴⁰

2.4.3 Additional considerations when drafting legislation

As noted above, tax and price measures typically fall under the authority and expertise of the ministry responsible for finance, whereas many other tobacco control measures fall within the remit and expertise of other ministries or agencies, such as health, trade, consumer protection, police, etc. It is important that, where possible, these different government entities consider using a clear and common definition of tobacco product categories (e.g. SLT products).³⁶

2.5 Protection from exposure to tobacco smoke (Article 8 of the WHO FCTC)

Parties to the WHO FCTC recognized in both the Preamble and Article 8 the unequivocal scientific evidence establishing that tobacco consumption and exposure to tobacco smoke cause death, disease and disability. As a result, Article 8 of the WHO FCTC requires implementation of effective measures providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.

In adopting the Guidelines for implementation of Article 8, the COP acknowledged the scientific findings showing that there is no safe level of exposure to tobacco smoke and that the only effective protective measure is the total elimination of smoking and tobacco smoke in a particular space or environment, to create a totally smoke-free environment. Other approaches, such as designated smoking areas or rooms, even with separate ventilation, cannot provide effective protection.

The guidelines interpret the phrase “other public places” in Article 8 as referring to outdoor or quasi-outdoor public places, and provide that Parties should consider the evidence of possible health hazards in those settings and should adopt the most effective protection measures wherever the evidence shows that there is a hazard.⁴⁶

The recommendations in the Guidelines for implementation of Article 8 provide that duties of compliance should apply to both smokers and persons responsible for the public or workplace premises or means of public transport, with penalties for non-compliance applied to the businesses, and possibly to smokers. The owner, manager or other person in charge of the premises should be required to:

- ◆ post signs at appropriate locations indicating that smoking is not permitted;
- ◆ ensure that ashtrays are not present in the indoor premises or in outdoor areas where smoking is prohibited; and

44 National Budget Speech 2023–2024. Dhaka: Ministry of Finance of the People's Republic of Bangladesh; 2023 (https://nbr.gov.bd/uploads/budget/Budget_Speech_2023-24_English_Final.pdf).

45 Statutory Regulatory Order No. 140 Act 2023/217 by virtue of sub-section (2) of section 58 of the Value Added Tax and Supplementary Duties Act, 2012 (Act No 47 of 2012) (in Bangla). Dhaka: National Board of Revenue, Government of the People's Republic of Bangladesh; 21 May 2023 (<https://nbr.gov.bd/uploads/sros/VATSRO-140.pdf>).

46 Guidelines for implementation of Article 8 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2007 (<https://fctc.who.int/publications/m/item/protection-from-exposure-to-tobacco-smoke>).

- ◆ supervise observance of the smoking ban, including taking specified actions such as asking a person who is smoking to stop, discontinuing service, asking the person to leave the premises, and contacting law enforcement or other appropriate authorities, if necessary.⁴⁴

Strong smoke-free measures are a critical intervention for protecting members of the public and workers from the hazards of exposure to toxic tobacco smoke. In addition, smoking bans are effective in reducing consumption, including by young people, and in denormalizing smoking.^{47,48}

2.5.1 Application to SLT products

SLT products create emissions containing toxic chemicals that are harmful to the user; however, these emissions are not airborne like the emissions from lit or heated tobacco (and nicotine) products. Consequently, Article 8 of the WHO FCTC does not require Parties to include SLT product use within their smoke-free measures. However, some governments have extended the application of smoke-free measures to SLTs to better protect health.

2.5.2 Country practices

Although it is not common for governments to cover the use of SLT in their smoking bans, a small number do so by banning “tobacco use” rather than “smoking” in indoor workplaces, indoor public places, and on public transport. Some states in India and in some other countries have enacted bans on spitting in public places out of concern that spitting may play a role in spreading infectious diseases. The laws in Honduras and Nepal include SLT use in their smoking bans.

Honduras

Decree No. 92-2010 (Special Tobacco Control Law, LECT) bans the consumption of tobacco-derived products (including smoked and smokeless tobacco products and e-cigarettes) in all workplaces, public places, and all public transportation (including terminals) (Article 26).⁴⁹ There are two limited exceptions to the ban: the law permits the consumption of tobacco-derived products in cigar factories and spaces where tobacco tasting takes place, although minors are not allowed to enter these places.

Nepal

The Tobacco Product (Control and Regulation) Act, 2010 (Sections 2(b), (c), (d); 3; 4) and Tobacco Product Control and Regulatory Directive – 2014 (Sections 2(u), (w), (x)) ban both smoking and tobacco consumption in most public places, excluding hotels and airports.^{50,51} Therefore, the use of SLT products is banned in most public places.

2.5.3 Additional considerations when drafting legislation

It may be possible to justify banning the use of SLT products in indoor workplaces, public transport and indoor public places where smoking is banned. Article 2.1 of the

47 The health consequences of smoking: 50 years of progress. A report of the Surgeon General. Atlanta (GA): National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2014 (<https://www.ncbi.nlm.nih.gov/books/NBK179276/>).

48 Kelly BC, Vuolo M, Frizzell LC, Hernandez EM. Denormalization, smoke-free air policy, and tobacco use among young adults. *Soc Sci Med*. 2018;211:70–7. <https://doi.org/10.1016/j.socscimed.2018.05.051>.

49 Decree No.92-2010: Special Tobacco Control Law. Tegucigalpa: National Congress of Honduras; 9 June 2010. (<https://assets.tobaccocontrollaws.org/uploads/legislation/Honduras/Honduras-Decree-No.-92-2010.pdf>).

50 Tobacco Product (Control and Regulatory) Bill, 2010. Kathmandu: Constituent Assembly of Nepal; 2010 (<https://assets.tobaccocontrollaws.org/uploads/legislation/Nepal/Nepal-TPA.pdf>).

51 Tobacco Product Control and Regulatory Directive. Kathmandu: Ministry of Health and Population of Nepal; 2014 (<https://assets.tobaccocontrollaws.org/uploads/legislation/Nepal/Nepal-TP-Directive-2014.pdf>).

WHO FCTC encourages Parties to implement measures stronger than those required by the Convention. The government would need to be prepared to show how the prohibition of SLT use in indoor workplaces, public transport and indoor public places supports tobacco control or public health objectives. Such objectives might include preventing the transmission of infectious diseases due to spitting and denormalization of SLT use.

If a government is interested in banning SLT use in places where smoking is banned under Article 8 of the WHO FCTC, it could do so by banning tobacco use, rather than banning only smoking. Another option might be to consider applying a tobacco use ban that would include SLT use to priority public places such as schools, health-care facilities and other premises where allowing tobacco use of any kind could send a conflicting message about the harms of SLT and undermine the mission of those facilities.



Betel quid with tobacco, commonly known as paan or pan, consists of betel leaf, areca nut, slaked lime and tobacco. The final product is placed in the mouth and chewed.

2.6 Regulation of the contents of tobacco products (Article 9 of the WHO FCTC)

Article 9 of the WHO FCTC requires Parties to test, measure and regulate the contents and emissions of tobacco products. The Partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC, adopted by the COP and developed in an incremental manner, define the term “emissions” as substances that are released when the tobacco product is used as intended. With regard to SLT products for oral use, emissions are the “substances released during the process of chewing or sucking” and, with regard to SLT products for nasal use, emissions are the “substances released by particles during the process of snuffing”. The partial guidelines defer recommendations for regulating product addictiveness and toxicity, pending the availability of further evidence and country experience. In the meantime, the partial guidelines recommend:

- ◆ giving to the authority responsible for tobacco control the responsibility for the approval, adoption and implementation of measures for the testing and measuring of the contents and emissions of tobacco products, and for the regulation of these contents and emissions; and

- ◆ prohibiting or restricting ingredients that make tobacco products more attractive; specifically those ingredients that:
 - are used to increase palatability (e.g. flavourings);
 - have colouring properties;
 - create the impression of a health benefit; or
 - are associated with energy and vitality.⁵²

2.6.1 Application to SLT products

All recommendations of the partial guidelines apply to SLT products. As recognized in the partial guidelines, flavourings contribute to promoting and sustaining tobacco use. Tobacco companies are aware that sweeter, milder flavours increase the appeal to young people by masking the strong tobacco taste and unpleasant feeling in the mouth.^{53,54} Another report on the projected growth of the global SLT market attributes the growth in part to increasing demand for innovative and flavoured products.⁵⁵ This finding underscores the need for governments to take prompt action to heed the partial guidelines' recommendation to prohibit flavoured SLT products as well as to prohibit the manufacture, import and sale of flavouring ingredients that are sold separately and can be added to, or used with, SLT products to give them characterizing flavours.

2.6.2 Country practices

A growing number of countries' tobacco control or related laws prohibit ingredients that make tobacco products more palatable, appealing and attractive or provide the health ministry or other appropriate authority with broad powers to regulate tobacco product contents and emissions.^{56, 57} The latter presents an opportunity for those countries to enact subsidiary legislation that is aligned with the partial guidelines.

A growing number of countries' tobacco control or related laws prohibit ingredients that make tobacco products more palatable, appealing and attractive or provide the health ministry or other appropriate authority with broad powers to regulate tobacco product contents and emissions.

52 Partial guidelines for the implementation of Articles 9 and 10 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2013 (<https://fctc.who.int/publications/m/item/regulation-of-the-contents-of-tobacco-products-and-regulation-of-tobacco-product-disclosures>).

53 Kostygina G, Ling PM. Tobacco industry use of flavourings to promote smokeless tobacco products. *Tob Control*. 2016;25(Suppl 2):ii40–9. <https://doi.org/10.1136/tobaccocontrol-2016-053212>.

54 Huang LL, Baker HM, Meernik C, Ranney LM, Richardson A, Goldstein AO. Impact of non-menthol flavours in tobacco products on perceptions and use among youth, young adults and adults: a systematic review. *Tob Control*. 2017;26(6):709–19. <https://doi.org/10.1136/tobaccocontrol-2016-053196>.

55 Business Wire. Global smokeless tobacco market report 2023: sector to reach \$24.78 billion by 2028 at a CAGR of 4.42% –ResearchAndMarkets.com. 18 April 2023. (<https://www.businesswire.com/news/home/20230418005729/en/Global-Smokeless-Tobacco-Market-Report-2023-Sector-to-Reach-24.78-Billion-by-2028-at-a-CAGR-of-4.42--ResearchAndMarkets.com>).

56 The Tobacco Control Laws legislation database, compiled by Tobacco-Free Kids, provides legal analysis of tobacco control and related laws implemented in each WHO region. To date, 117 countries' laws have been analysed with respect to their implementation measures for FCTC Articles 8, 9, 10, 11, 13 and 16). (www.tobaccocontrolaws.org)

57 Tobacco Control Laws (compilation of laws on tobacco control). Washington (DC): Campaign for Tobacco-Free Kids (www.tobaccocontrolaws.org, accessed 4 March 2024).

Provisions that implement the partial guidelines' recommendations from Bermuda (a British Overseas Territory), Ethiopia and Senegal are provided below.

Bermuda (British Overseas Territory)

The Tobacco Control Act 2015 prohibits the sale of flavoured tobacco products – defined as tobacco products that are represented as being flavoured and contain a flavouring agent – but does not include menthol or tobacco (Sections 2, 26).⁵⁸

Ethiopia

The Food and Medicine Administration Proclamation No. 1112/2019 comprehensively incorporates the partial guidelines' recommendations for prohibiting or restricting ingredients that make tobacco products more palatable, appealing or attractive (Articles 4(16), 47(3)(a)-(e)).⁵⁹

Senegal

Law No. 2014-14 Concerning the Manufacture, Packaging, Labelling, Sale and Use of Tobacco requires tobacco products to conform to regulatory standards (Article 4).⁶⁰ Decree No. 2016-1008 Concerning the Implementation of Law No. 2014-14 provides the regulatory standards and prohibits the importation, distribution and sale of tobacco products that contain specific agents, additives and ingredients (Article 4).⁶¹

2.6.3 Additional considerations when drafting legislation

For those countries with enabling legislation that provides broad authority to regulate contents and emissions, measures implementing Article 9 of the WHO FCTC could be enacted through subsidiary legislation. If not, it might be possible that another law, such as a public health, food safety and standards or consumer protection law, has regulatory authority provisions that could be used. Otherwise, an amendment to the law may be necessary; any such law amendment could consider empowering the Ministry of Health or other appropriate authority with broad regulatory powers to prescribe further requirements relating to the contents and emissions of all tobacco products, including all types of SLT products, without exception.

2.7 Regulation of tobacco product disclosures (Article 10 of the WHO FCTC)

Article 10 of the WHO FCTC requires Parties to implement effective measures requiring tobacco product manufacturers and importers to disclose information to the government about their products' contents and emissions, and to provide for public disclosure of information about the products' toxic constituents and emissions. The recommendations of the Partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC include giving to the authority responsible for tobacco control the responsibility for adopting and

58 Tobacco Control Act 2015. Hamilton: Senate and the House of Assembly of Bermuda; 23 December 2015 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Bermuda/Bermuda-TC-Act-2015-native.pdf>).

59 Food and Drug Administration Proclamation No. 1112/2019. Addis Ababa: Food and Drug Administration of Ethiopia; 28 February 2019 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Ethiopia/Ethiopia-2019-Proclamation-native.pdf>).

60 Law No. 2014-14: concerning the manufacture, packaging, labelling, sale and use of tobacco. Dakar: Ministry of Health and Social Action of the Republic of Senegal; 28 March 2014 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Senegal/Senegal-2014-TC-Law.pdf>).

61 Decree concerning the implementation of Law n° 2014-14 of 28th March 2014, on the manufacture, packaging, labelling, sale and use of tobacco. Dakar: Ministry of Health and Social Action of the Republic of Senegal; 26 July 2016 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Senegal/Senegal-Decree-No.-2016-1008.pdf>).



implementing measures to accomplish the requirements of Article 10. In addition, the following should be required:

- ◆ Manufacturers and importers should be required to provide prescribed information in a standard format at specified periods on the ingredients used in the manufacture of their products and should be required to report information on contents and emissions by product type and for each brand within a brand family, rather than in combined lists.
- ◆ The authority responsible for tobacco control should: specify the analytical methods for product testing that manufacturers and importers must use; require from the testing laboratory a copy of the laboratory report that shows the product analysed and the results; and consider requiring proof of the laboratory's accreditation.⁶²
- ◆ Manufacturers and importers should provide:
 - information on ingredients and their quantities per unit of each tobacco product, including ingredients present in any product components;
 - specified information on the characteristics of the tobacco leaves used;
 - notification of any changes to a product's ingredients (contents) at the time the change is made;
 - a statement of the purpose for including an ingredient and other relevant information, including information on the supplier of each ingredient;
 - information on contents and emissions, as prescribed;
 - information on product characteristics such as design features;
 - notification of any change to the design features of a particular brand and updated information when a change is made;
 - general company information; and
 - sales volume information in units for each brand within a brand family on a national and, if appropriate, a subnational basis.
- ◆ Parties should consider making information about the toxic constituents and emissions of tobacco products and other information disclosed to governmental authorities publicly accessible (e.g. via the Internet, or by request to a governmental authority) in a meaningful way.

⁶² Progress on further development of the partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC. Report by the working group. Geneva: World Health Organization; 2016 (<https://www.who.int/publications/m/item/further-development-of-the-partial-guidelines-for-implementation-of-articles-9-and-10-of-the-who-fctc>).

2.7.1 Application to SLT products

All partial guidelines' disclosure recommendations apply to SLT manufacturers and importers. Given the variety of different SLT product types (for sucking, chewing or snuffing), it is important for disclosures to be by product type and subtypes (e.g. moist snuff and dry snuff rather than simply snuff) and by brand.

2.7.2 Country practices

Some countries' legal measures require tobacco manufacturers and importers to list every ingredient and all concerned emissions for each type of tobacco product, whereas other countries require tobacco companies to list only specific ingredients and emissions. Some countries also require other information; for example, toxicological data, including the health and addictive effects of each ingredient, and research related to the development of new consumer tobacco products.⁶³

The rest of this section provides examples of provisions related to Article 10 of the WHO FCTC and the recommendations of the partial guidelines from Brazil, Canada and Thailand.

Brazil

ANVISA RDC No. 90 of 27 December 2007 requires tobacco manufacturers and importers to register all tobacco products sold in, imported to or exported from Brazil, and to renew that registration annually. Through this process, the government comprehensively obtains disclosures pursuant to Article 10 of the WHO FCTC and the partial guidelines.

Tobacco manufacturers and importers are required to list, by brand, the types of tobacco and additives used and the parameters and compounds present in the total tobacco; provide the report of the laboratory analysis; and report any alteration in the brand composition. The renewal application requires similar, updated information. The ANVISA RDC also requires information about packaging and submission of images of the packaging (Articles 2(I), 3, 4, 7, Annex II).⁶⁴

Canada

The Tobacco and Vaping Products Act (enacted in 2018 to amend the Tobacco Act) requires manufacturers to submit prescribed information on their tobacco products, their emissions and any related research and development information to the Ministry of Health in the prescribed form, manner and period (Article 6(1) and (2)).⁶⁵ The Minister of Health also has authority to require additional information, which manufacturers must supply within the specified time (Article 6.2), and must make information from the reports publicly available, as prescribed (Article 6.2).

Thailand

The Tobacco Products Control Act, 2017 requires that manufacturers and importers disclose information on their products' contents and emissions to government authorities and the public (Article 37).⁶⁶

63 WHO FCTC Secretariat. Best practices in the implementation of WHO FCTC Article 10 (Regulation of tobacco product disclosures) (2015) ([https://fctc.who.int/publications/m/item/best-practices-in-the-implementation-of-who-fctc-article-10-\(regulation-of-tobacco-product-disclosures\)](https://fctc.who.int/publications/m/item/best-practices-in-the-implementation-of-who-fctc-article-10-(regulation-of-tobacco-product-disclosures))).

64 Resolution No. 90 of 27 December 2007. Brasília: Agência Nacional de Vigilância Sanitária (ANVISA); 2007 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Brazil/Brazil-RDC-No.-90.pdf>).

65 Tobacco and Vaping Products Act: S.C. 1997, c. 13. Ottawa: Senate and House of Commons of Canada; 14 February 2019. (<https://assets.tobaccocontrolaws.org/uploads/legislation/Canada/Canada-TVPA-native.pdf>).

66 Tobacco Products Control Act of A.D. 2017. H.M. Vajiralongkorn Bodindradebayavarangkun, National Legislature of Thailand, 2 April 2017 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Thailand/Thailand-TC-Act-2017.pdf>).

2.8 Packaging and labelling of tobacco products (Article 11 of the WHO FCTC)

Article 11 of the WHO FCTC requires Parties to implement effective measures for packaging and labelling of tobacco products. The Guidelines for implementation of Article 11 of the WHO FCTC provide further details to support Parties' implementation of this article.⁶⁷ Four main categories of these measures – a ban on misleading packaging and labelling, health warnings, information on constituents and emissions, and plain packaging – are discussed below.

Ban on misleading packaging and labelling

Article 11 of the WHO FCTC requires effective measures to ensure that packaging and labelling do not promote the product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions. This includes directly or indirectly creating a false impression that a particular tobacco product is less harmful than other tobacco products.

In addition to the misleading terms specifically mentioned in Article 11, the guidelines clarify that any terms that are likely to create a comparison between tobacco products' harmfulness should be prohibited. This prohibition includes terms such as "light," "mild" "natural" "extra", "ultra" and similar terms in any language; it also covers any trademark, figurative or other sign. Examples of "other signs" used by tobacco product manufacturers to mislead consumers are colours, numbers and package or product shape (e.g. slim packs).^{68, 69}

Health warnings

Under Article 11 of the WHO FCTC, all packaging used in the retail sale of the product (e.g. unit packs, cartons, cases) must display prescribed clear and prominent rotating health warnings that are in the principal language or languages of the country. Pursuant to the guidelines for implementation, rotation requirements should include both of the following:

- ◆ the concurrent display of warnings from a set of multiple warnings for a specified period; and
- ◆ replacement of that set of warnings with a new set, with a phase-in period between sets during which both sets may be used concurrently.

Health warnings should cover 50% or more, but not less than 30%, of the principal display areas (PDAs) of the package. The guidelines emphasize that Parties should aim to cover as much of each PDA as possible, because the larger the warning, the more effective it is.⁷⁰ Also, the guidelines specify that combined warnings consisting of both text and full-colour pictures should be required because pictorial warnings are far more effective than text-only messages.⁷¹ Parties should require that health warnings

67 Guidelines for implementation of Article 11 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2008 (<https://fctc.who.int/docs/librariesprovider12/default-document-library/who-fctc-article-11.pdf>).

68 In addition, Parties should be aware of the evidence showing that packaging or labelling which states or suggests that a tobacco product is flavoured may be misleading because flavoured products are perceived by many consumers as less harmful.

69 Pollay RW, Dewhirst T. The dark side of marketing seemingly "Light" cigarettes: successful images and failed fact. *Tob Control*. 2002;11(Suppl 1):i18–i31. https://doi.org/10.1136/tc.11.suppl_1.i18.

70 FCTC Article 11: tobacco warning labels: evidence and recommendations from the ITC project. Waterloo: International Tobacco Control Policy Evaluation Project; 2009 (<https://itcproject.org/findings/reports/fctc-article-11-tobacco-warning-labels-may-2009/>).

71 Fong GT, Hammond D, Hitchman SC. The impact of pictures on the effectiveness of tobacco warnings. *Bull World Health Organ*. 2009;87(8):640–3. <https://doi.org/10.2471/blt.09.069575>.



Pan masala and chewing tobacco.

be permanently displayed and not obstructed by other markings, such as tax stamps or commercial onsets.

To ensure timely introduction of the warnings, legal measures should set a single deadline after which manufacturers, importers and sellers can no longer supply products that do not comply with the new requirements. This deadline is meant to provide only enough time for manufacturers and importers to organize the printing of new packages. Otherwise, it is likely that manufacturers will only start rolling out packaging with the new warnings by the deadline set in the law, with the old stock remaining on the market longer.

Information on constituents and emissions

Pursuant to Article 11 of the WHO FCTC, all packaging used in the retail sale of the product must display prescribed information on relevant constituents and emissions.

The guidelines provide additional details, stating that the prescribed information on constituents and emissions should be in the form of descriptive statements (e.g. a statement that the product contains nicotine, a highly addictive substance) rather than quantitative statements giving yield figures (e.g. a statement that the product contains 10 mg tar, 5 mg nicotine and 5 mg CO). Machine-testing for emission yields does not provide valid estimates of human exposure, and the tobacco industry has used yield figures and deceptive descriptors associated with them to mislead consumers by creating the mistaken belief that the product is less harmful.

Plain packaging (also known as “standardized packaging”)

The Guidelines for implementation of Article 11 provide that Parties should consider adopting plain packaging requirements, such as measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than the brand name and product name displayed in a standard colour and style of font. These

requirements will increase the noticeability and effectiveness of health warnings, reduce the attractiveness of the packaging and disrupt industry tactics to use packaging to mislead consumers.

Other key issues

There should be no exemption for small-volume companies or brands or for different types of tobacco products (e.g. for smokeless or waterpipe tobacco). Health warnings and information on constituents and emissions should be specific to the type of tobacco product and should reflect the product's specific adverse health effects (e.g. those of SLT). It is important to have a comprehensive understanding of the different types of tobacco product packaging on the market in a country, and to specify how the warnings and statements on constituents and emissions must be displayed on each package type and shape.

2.8.1 Application to SLT products

The requirements of Article 11 of the WHO FCTC and the recommendations in its guidelines regarding misleading packaging and labelling, plain packaging, large rotating pictorial health warnings, and information on constituents and emissions (other than constituents and emissions related to combustion) all apply to SLT products. If some types of SLT product are not currently sold in packages, a requirement that they must be packaged could be considered to close this gap.

The Guidelines for implementation of Article 11 of the WHO FCTC call on Parties to consider requiring different health warnings and messages for different tobacco products. Thus, health warnings on SLT product packaging should address the specific harms caused by SLT use.

2.8.2 Country practices

According to the 2023 *WHO report on the global tobacco epidemic*, 103 countries (more than half of all countries) globally require large pictorial health warnings that cover at least 50% of the pack.⁷² At least 137 countries mandate warnings on SLT products, with at least 66 countries requiring warnings to cover 50% or more of the package front and back. Of those countries requiring warnings on SLT products, at least 49 countries require warnings that include a picture/image.

At least 22 countries now require plain packaging. Among those countries, Canada, Ireland, Israel, Saudi Arabia, Türkiye and Uruguay apply standardized packaging to all tobacco products, including SLT products.⁷³

Examples of implementation of Article 11 of the Convention from Canada, India and Norway are given below.

Canada

The Tobacco and Vaping Products Act (Section 15), the Tobacco Products Information Regulations (as amended) (Sections 5, 10-11), and the Tobacco Products Regulations (Plain and Standardized Appearance) (Section 5(1)) mandate that warnings on SLT

72 WHO Report on the Global Tobacco Epidemic, 2023: protect people from tobacco smoke. Geneva: World Health Organization; 2023 (<https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2023>).

73 Plain packaging toolkit: standardized or plain tobacco packaging – international developments. Washington (DC): Campaign for Tobacco-Free Kids; 2022 (<https://www.tobaccofreekids.org/plainpackaging/tools-resources/policy/international-developments>).

products must occupy 50% of the PDAs.^{74,75,76} In addition, amounts of toxic constituents must be displayed on packages of chewing tobacco and snuff, either on a side where there is no health warning or on the bottom of the package. The information must occupy at least 50% of the bottom/side.

India

Several national laws – the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (Sections 7-11); Ministry of Health and Family Welfare Notification G.S.R. 182(E), (G), 15 March 2008; Ministry of Health and Family Welfare Notification G.S.R. 693(E), 29 September 2008; Ministry of Health and Family Welfare Notification G.S.R. 727(E), 15 October 2014; and Ministry of Health and Family Welfare Notification G.S.R. 331(E), 3 April 2018 – provide comprehensive coverage of packaging and labelling measures required under Article 11 of the WHO FCTC.^{77,78,79,80,81} The health warnings' textual and pictorial components together cover 85% of the tobacco product package's front and back panels, with 25% dedicated to text and 60% dedicated to the picture.

The law has strong provisions prohibiting misleading packaging and labelling. The law provides that: "no tobacco product package or label shall contain any information that is false, misleading or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effects, health or other hazards of the tobacco product or its emissions. This prohibition includes but is not limited to the use of words or descriptors, whether or not part of the brand name, such as 'light', 'ultra-light', 'mild', 'ultra-mild', 'low tar', 'slim', 'safer' or similar words or descriptors; any graphics associated with such words or descriptors; and any product package design characteristics, associated with, likely or intended to be associated with, such descriptors."

Norway

Act No. 14 of 9 March 1973 relating to the Prevention of the Harmful Effects of Tobacco (Tobacco Control Act) (as amended) (Sections 30, 30a); and Regulations no. 141 of 6 February 2003 on the contents and labelling of tobacco products (as amended) (Sections 11, 12, 15) mandate standardized (plain) packaging requirements that apply to snus.^{82,83} A quit-line number on both broad sides of the packaging is also required. However, with regard to health warnings on snus packaging, the law requires that a text-only warning covers 30% of only the front side, and only one warning has been prescribed.

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- 74 Tobacco and Vaping Products Act. Ottawa: The Parliament of Canada; 1997 (<https://laws-lois.justice.gc.ca/eng/acts/t-11.5/FullText.html>).
 - 75 Tobacco Products Information Regulations (as amended). Ottawa: Parliament of Canada, Ministry of Health of Canada; 9 November 2019 (<https://laws-lois.justice.gc.ca/eng/regulations/sor-2000-272/FullText.html>).
 - 76 Tobacco Products Regulations (Plain and Standardized Appearance). Ottawa: Parliament of Canada, Ministry of Health of Canada; 23 April 2019 (<https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-107/FullText.html>).
 - 77 Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. Delhi: The Parliament of India, Ministry of Law and Justice; 19 May 2020 (<https://assets.tobaccocontrolaws.org/uploads/legislation/India/India-COTPA.pdf>).
 - 78 Ministry of Health and Family Welfare Notification G.S.R. 182 (E), (G). Delhi: Ministry of Health and Family Welfare; 15 March 2008 (<https://assets.tobaccocontrolaws.org/uploads/legislation/India/India-G.S.R.-182E.pdf>).
 - 79 Ministry of Health and Family Welfare Notification G.S.R. 693(E). Delhi: Ministry of Health and Family Welfare; 29 September 2008 (<https://assets.tobaccocontrolaws.org/uploads/legislation/India/India-G.S.R.-693E.pdf>).
 - 80 Ministry of Health and Family Welfare Notification G.S.R. 727(E). Delhi: Ministry of Health and Family Welfare; 15 October 2014 (<https://assets.tobaccocontrolaws.org/uploads/legislation/India/India-G.S.R.-727E.pdf>).
 - 81 Ministry of Health and Family Welfare Notification G.S.R. 331(E). Delhi: Ministry of Health and Family Welfare; 3 April 2018 (<https://assets.tobaccocontrolaws.org/uploads/legislation/India/India-G.S.R.-331E.pdf>).
 - 82 Act No. 14 of 9 March 1973 relating to the Prevention of the Harmful Effects of Tobacco (Tobacco Control Act) (as amended). Oslo: Ministry of Health and Care Services; 1 July 2020 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Norway/Norway-Tobacco-Ctrl.-Act-No.-14-of-1973.pdf>).
 - 83 Regulations no. 141 of 6 February 2003 on the contents and labelling of tobacco products. Oslo: Ministry of Health and Care Services; 6 February 2003 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Norway/Norway-Labeling-Regs-No.-141-of-2003.pdf>).

2.8.3 Additional considerations when drafting legislation

Plain packaging should be required for all tobacco products, including SLT products. Consideration should also be given to extending standardization of the design features and appearance of the tobacco product or product components (e.g. SLT pouches), as applicable.

2.9 Education, communication, training and public awareness (Article 12 of the WHO FCTC) and Demand reduction measures concerning tobacco dependence and cessation (Article 14 of the WHO FCTC)

Full implementation of the WHO FCTC creates a favourable policy environment for behaviour change. Articles 12 and 14 of the WHO FCTC are designed to provide the population with information and tools to facilitate rejecting tobacco use initiation and to assist with quitting.

Article 12 requires Parties to implement effective measures to promote comprehensive public education, training and awareness programmes, including:

- ◆ broad programmes about the health risks and addictive nature of tobacco use and exposure to tobacco smoke, the benefits of cessation and tobacco-free lifestyles, information about the tobacco industry and its interference tactics, and information on the adverse economic and environmental consequences of tobacco production and consumption; and
- ◆ training and awareness programmes aimed at health workers, community workers, media professionals, educators, decision-makers, public and private agencies, and civil society organizations not affiliated with the tobacco industry;



and encouragement of their involvement in developing and implementing intersectoral tobacco control programmes and strategies.

The Guidelines for implementation of Article 12 of the WHO FCTC provide further guidance to Parties in establishing the infrastructure required to support public education, training and awareness programmes.⁸⁴

Article 14 requires Parties to design and implement integrated guidelines to promote cessation programmes and adequate treatment for tobacco dependence in various locations, with the participation of health workers, community workers and social workers, as appropriate. In addition to education, these programmes should include diagnosis, counselling, prevention and treatment of tobacco and nicotine dependence. The Guidelines for implementation of Article 14 identify specific actions that Parties should take for effective implementation, including:

- ◆ developing an infrastructure to support tobacco use cessation and tobacco dependence treatment by conducting a national situation analysis and developing a national tobacco cessation strategy, as well as developing tobacco dependence treatment guidelines based on the best available scientific evidence and practices;
- ◆ establishing population-level approaches, such as mass communication programmes and quit-lines, in addition to more intensive individual treatment services, accessible and affordable medicines and other novel approaches to cessation and treatment; and
- ◆ monitoring and evaluating all related strategies and programmes.

2.9.1 Application to SLT products

It is especially important to target SLT use when implementing Articles 12 and 14 of the Convention since SLT products in general have not received the same level of regulatory attention as cigarettes. As a result, SLT products are relatively affordable in many countries due to generally lower tax rates and are displayed at points of sale in almost half of all Parties' jurisdictions – a practice that undermines efforts to denormalize their use.

Furthermore, the packaging of SLT products does not as effectively inform consumers of the harms of use since, with some notable exceptions, the warnings tend to be text only, smaller and thus less noticeable. Additionally, the content of warnings on SLT products may not address SLT-specific harms.

In terms of cessation services, the COP agreed in decision FCTC/COP6(8) on the need to consider developing specific cessation support for people who use SLT and to assess the effectiveness of SLT cessation interventions in accordance with the Guidelines for implementation of Article 14.⁸⁵

2.9.2 Country practices

Articles 12 and 14 of the WHO FCTC can be implemented by way of government policy (e.g. as part of a national tobacco control strategy, plan or programme developed in accordance with Article 5 of the Convention), through legal measures, or via a

84 Guidelines for implementation of Article 12 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2008 (<https://fctc.who.int/publications/m/item/education-communication-training-and-public-awareness>).

85 Decision FCTC/COP6(8): Smokeless tobacco products. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Sixth session, Moscow, 13–18 October 2014 ([https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6\(8\)-en.pdf](https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6(8)-en.pdf)).

combination of both. This section provides examples of provisions that include legal mandates for implementing Articles 12 and 14 from Azerbaijan, Kenya, and Mexico.

Azerbaijan

Law No. 887-VQ on Restriction of Tobacco Use requires that the public be educated about tobacco harms, including but not limited to the advantages of tobacco use cessation and the negative medical, demographic and socioeconomic consequences of tobacco use and exposure to tobacco smoke (Article 11 of the law). The law also requires the development of educational programmes about the negative effects of tobacco use for broadcast on television and radio stations operating in the Republic of Azerbaijan territory (Article 12). Relevant executive authorities, scientific institutions and nongovernmental organisations are to provide support in developing these programmes. Medical aid to stop tobacco use – including prevention, diagnosis and treatment of tobacco dependence and tobacco use – is provided free of charge (Article 15).⁸⁶

Based on the definition of “tobacco use” in Azerbaijan’s law (Article 1), these otherwise comprehensive provisions do not apply to SLT use, possibly because of its low prevalence of SLT use. This example is provided to show the breadth of the types of information and services that are legally mandated, including medical cessation assistance without charge.

Kenya

The Tobacco Control Act, 2007 (Sections 9–11) provides for a comprehensive nationwide information and education programme conducted by the government through the relevant ministries, departments, authorities and other agencies.⁸⁷ The programme raises public awareness about the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke. It additionally sheds light on the harmful effects of growing and handling tobacco.

Mexico

The General Law on Tobacco Control (Articles 9, 10) requires the Ministry of Health to coordinate tobacco control activities; promote and organize services for early detection and cessation of tobacco use; promote healthy lifestyles at home, in the workplace and in the community; develop deterrents to tobacco use, especially by children, adolescents and vulnerable groups; and establish guidelines for the execution and evaluation of the tobacco control programme.⁸⁸

As part of its comprehensive national cessation strategy, the government developed a competency standard for primary health care teams that provide brief cessation advice. The standard includes:

- ◆ an interview questionnaire to identify tobacco (and alcohol) users;
- ◆ counselling on the consequences of use of those products; and
- ◆ guidance on cessation resources and the advantages of quitting.

The government also developed guidelines for the delivery of cessation services that ensure quality care.⁸⁹

86 Law of the Republic of Azerbaijan on Restriction of Tobacco Use (Law No. 887-VQ). Baku: 1 December 2017 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Azerbaijan/Azerbaijan-TC-Law-2017.pdf>).

87 The Tobacco Control Act, 2007. Nairobi: The Parliament of Kenya; 8 October 2007 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Kenya/Kenya-Tobacco-Control-Act-native.pdf>).

88 General Law on Tobacco Control. Mexico City: General Congress of the United Mexican States; 26 February 2008 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Mexico/Mexico-GLTC.pdf>).

89 Good country practices in the implementation of WHO FCTC Article 14 and its guidelines. Geneva: Secretariat of the WHO Framework Convention on Tobacco Control and the Protocol to Eliminate Illicit Trade in Tobacco Products; 2019 (<https://fctc.who.int/publications/m/item/good-country-practices-in-the-implementation-of-who-fctc-article-14-and-its-guidelines>).

2.9.3 Additional considerations when drafting legislation

Implementation of Articles 12 and 14 of the WHO FCTC may usually be undertaken as a matter of government policy, without the need for a specific legislation. However, legal measures may provide a better path forward if the requirement of these programmes would trigger the appropriation of an adequate budget or would more effectively propel the government to action. Public education, training and cessation services should address a variety of challenges, including the sociocultural and religious practices involving SLT and misperceptions of health harms.^{18,90}

2.10 Tobacco advertising, promotion and sponsorship (Article 13 of the WHO FCTC)

Article 13 of the WHO FCTC requires Parties to implement a comprehensive ban on all tobacco advertising, promotion and sponsorship (TAPS), in accordance with their constitutional principles. Based on the favourable outcomes for governments in most of the constitutional challenges to TAPS bans brought by the tobacco industry or its allies, it is unlikely that constitutional constraints will prevent the majority of Parties from enacting comprehensive TAPS bans.⁹¹

The Guidelines for implementation of Article 13 of the WHO FCTC make it clear that a “comprehensive ban” applies to all forms of TAPS without exception, recognizing that mere restrictions or a ban on only some forms of TAPS have a limited effect because tobacco companies will simply shift their vast resources to promotional forms that are still allowed.⁹² As a result, a complete ban on all direct and indirect domestic and cross-border TAPS is necessary for regulation to be effective. However, the guidelines recognize that a comprehensive ban should not prevent certain limited communications, such as legitimate journalistic, artistic or academic expression, or legitimate political or social commentary.

Article 13 of the WHO FCTC requires Parties to implement a comprehensive ban on all tobacco advertising, promotion and sponsorship (TAPS), in accordance with their constitutional principles.

The appendix to the guidelines provides an indicative, non-exhaustive list of a broad range of forms of TAPS that fall within the scope of a comprehensive ban. The guidelines make it clear that, to be effective, a comprehensive TAPS ban should hold all persons or entities involved in the marketing chain responsible for compliance, including:

- ◆ initiators of the TAPS (usually the manufacturer, importer or wholesaler);

90 Farhadmollashahi L. Sociocultural reasons for smokeless tobacco use behavior. *Int J High Risk Behav Addict*. 2014;3(2):e20002. <https://doi.org/10.5812/ijhrba.20002>.

91 Zhou SY, Liberman JD, Ricafor E. The impact of the WHO Framework Convention on Tobacco Control in defending legal challenges to tobacco control measures. *Tob Control*. 2019;28(Suppl 2):s113–8. <https://doi.org/10.1136/tobaccocontrol-2018-054329>.

92 Guidelines for implementation of Article 13 of WHO Framework Convention on Tobacco Control (Tobacco Advertising, Promotion and Sponsorship). Geneva: World Health Organization; 2008 (<https://fctc.who.int/publications/m/item/tobacco-advertising-promotion-and-sponsorship>).

- ◆ content producers, publishers and persons who disseminate the content (in the case of digital or analogue media, removing or disabling access should be required upon becoming aware of the content); and
- ◆ media and event organizers, sportspersons, celebrities.

At its tenth session, the Conference of the Parties to the WHO FCTC adopted the Specific guidelines to address cross-border tobacco advertising, promotion and sponsorship and the depiction of tobacco in entertainment media for implementation of Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO FCTC (“the Specific Guidelines”). The Specific Guidelines include the following recommendations:

- ◆ The application of comprehensive bans on TAPS to apply to all types of media, including digital media communication platforms, in accordance with national law;
- ◆ Cooperation among Parties to the WHO FCTC systematically monitor, identify, remove and/or prevent outgoing and incoming cross-border TAPS and TAPS across digital media communication platforms; and
- ◆ The development or further implementation of legislation, regulations or administrative measures to reduce tobacco depictions in entertainment media.

The Specific Guidelines also include an indicative (non-exhaustive) list illustrating forms of cross-border TAPS in digital media communication platforms and the depiction of tobacco in entertainment media, which may vary between Parties and may be categorized differently in different jurisdictions.

2.10.1 Application to SLT products

A complete TAPS ban could apply to all tobacco products, including SLT products. As the guidelines recognize, it is well known that exposure to TAPS increases tobacco use, and that comprehensive bans on TAPS reduce tobacco use.⁸⁸ About one third of young people’s experimentation with tobacco occurs because of exposure to TAPS.⁹³ SLT products, like other tobacco products, are often targeted at vulnerable groups, including young people. These products are also often advertised as less harmful than cigarettes to encourage smokers to switch to these products.^{18,53}

Tobacco companies are stealthily promoting tobacco products, including SLT products, on YouTube and other social media.^{3,94} These companies have consistently employed brand-stretching to undermine existing TAPS regulations and to promote tobacco products, including SLT products.⁹⁵ Point-of-sale tobacco product displays are one of the industry’s most influential forms of advertising, as they are a highly effective means of promoting tobacco brands, targeting young people, triggering impulse purchases and normalizing tobacco use.^{96,97} However, almost one half of Parties still allow the display of SLT products

93 Ban tobacco advertising to protect young people. World No Tobacco Day 2013 News release, 29 May 2013. Geneva: World Health Organization; 2013 (<https://www.who.int/news/item/29-05-2013-ban-tobacco-advertising-to-protect-young-people>).

94 Liang Y, Zheng X, Zeng DD, Zhou X, Leischow SJ, Chung W. Exploring how the tobacco industry presents and promotes itself in social media. *Journal of medical Internet research* 2015;17(1):e24. <https://doi.org/10.2196/jmir.3665>.

95 Yadav A, Ling P, Glantz S. Smokeless tobacco industry’s brand stretching in India. *Tob Control*. 2020;29(e1):e147–9. <https://doi.org/10.1136/tobaccocontrol-2019-055382>.

96 Brown A, Boudreau C, Moodie C, Fong GT, Li GY, McNeill A et al. Support for removal of point-of-purchase tobacco advertising and displays: findings from the International Tobacco Control (ITC) Canada survey. *Tob Control*. 2012;21(6):555–9. <https://doi.org/10.1136/tobaccocontrol-2011-050153>.

97 Institute for Global Tobacco Control. Technical report on flavoured cigarettes at point of sale in Latin America: availability and marketing around primary and secondary schools in five countries. Baltimore (MD): Johns Hopkins Bloomberg School of Public Health; 2017 (<https://www.globaltobaccocontrol.org/en/resources/technical-report-flavored-cigarettes-point-sale-latin-america>).

at points of sale in spite of documentation on good practices.⁹⁸ It is important that legal measures pay particular attention to these forms of TAPS.

2.10.2 Country practices

Many countries have implemented comprehensive TAPS bans that apply to all tobacco products, with some specifically including SLT products within these bans. This section provides examples of TAPS bans from Bangladesh, Djibouti, Gambia and Uruguay.

Bangladesh

The Smoking and Using of Tobacco Products (Control) Act, 2005 (Article 5) and the Smoking and Tobacco Products Usage (Control) (Amendment) Act, 2013 (Act No. 16 of 2013) (Articles 2(c), 5) prohibit most forms of tobacco advertising, promotion and sponsorship, including all tobacco advertising in print and electronic media and at points of sale.^{99,100} Free and discounted tobacco products are also prohibited. However, the law does not appear to prohibit all brand-stretching and brand-sharing, or so-called “corporate social responsibility” donations that do not promote tobacco products or tobacco use.

Djibouti

Law No. 175/AN/07/5ème Concerning Organization for the Protection of Health against Tobacco Consumption (Articles 25–28) provides a comprehensive ban on all types of advertising, promotion and sponsorship for all tobacco products – which aligns with Article 13 of the WHO FCTC.¹⁰¹

Gambia

The Tobacco Control Act, 2016 (Sections 12, 16(2), 16(3), Second Schedule) and the Tobacco Control Regulations, 2019 (Section 11) ban the import, manufacture, distribution and sale of SLT products. However, the law provides an example of a strong TAPS ban that includes product display at points of sale. Products must not be visible but must be stored under an opaque front counter or in an opaque cabinet above or behind the front counter. In addition, the law prohibits all forms of domestic and cross-border tobacco advertising, promotion and sponsorship.^{102,103}

Uruguay

Law No. 18.256 on Smoking Control Regulations (Article 7); Decree No. 284/008 on Regulations under Law No. 18.256 (Articles 7, 8); and Law No. 19.244 Amending Law No. 18.256 prohibit all forms of tobacco advertising, promotion and sponsorship.^{104,105,106}

98 Best practices on implementation of the tobacco advertising and display ban at point of sale (Article 13 of the WHO FCTC): a four-country study: Ireland, Norway, Finland and the United Kingdom. Geneva: WHO FCTC Secretariat; 2021 ([https://fctc.who.int/publications/m/item/best-practices-on-implementation-of-the-tobacco-advertising-and-display-ban-at-point-of-sale-\(article-13-of-the-who-fctc\)-a-four-country-study-ireland-norway-finland-and-the-united-kingdom](https://fctc.who.int/publications/m/item/best-practices-on-implementation-of-the-tobacco-advertising-and-display-ban-at-point-of-sale-(article-13-of-the-who-fctc)-a-four-country-study-ireland-norway-finland-and-the-united-kingdom)).

99 Smoking and Using of Tobacco Products (Control) Act, 2005. Dhaka; 15 March 2005 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Bangladesh/Bangladesh-Tobacco-Control-Act.pdf>).

100 Smoking and Tobacco Products Usage (Control) (Amendment) Act, 2013. Dhaka: Bangladesh National Parliament; 2 May 2013 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Bangladesh/Bangladesh-TC-Amdt.-Act-2013.pdf>).

101 Law n°175/AN/07/5ème Concerning Organisation for the Protection of Health against Tobacco Consumption. The National Assembly of the Republic of Djibouti; 22 April 2007 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Djibouti/Djibouti-Law-No.-175AN07.pdf>).

102 Tobacco Control Act, 2016. Banjul: The President and the National Assembly; 30 December 2016 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Gambia/Gambia-TCA-2016-native.pdf>).

103 Tobacco Control Regulations, 2019. Banjul: Minister of Health; 1 July 2019 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Gambia/Gambia-TC-Regs-2019-native.pdf>).

104 Law No. 18,256: Smoking Control Regulations. Montevideo: The Senate and House of Representatives of the Republic of Uruguay; 29 February 2008 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Uruguay/Uruguay-Law-No.-18.256.pdf>).

105 Decree No. 284/008 on Regulations under Law No. 18.256. Montevideo: President of the Republic of the Republic of Uruguay; 2008 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Uruguay/Uruguay-Decree-No.-284008.pdf>).

106 Law No. 19.244. Montevideo: The Senate and House of Representatives of the Republic of Uruguay; 8 July 2014 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Uruguay/Uruguay-Law-No.-19.244.pdf>).

2.10.3 Additional considerations when drafting legislation

An indicative list of TAPS, based on the list in the appendix to the Guidelines for implementation of Article 13, could be included in legal measures. Those drafting legal measures should consider ensuring that the list cannot be interpreted as representing an exhaustive list that would exclude any other forms, methods or means of TAPS not listed, such as by using the term “including” or “including but not limited to” and/or with a “catch-all” phrase at the end of the list – such as “...and other forms, media or means of tobacco advertising and promotion or tobacco sponsorship”. No exemptions or exceptions should be allowed, such as for point-of-sale product displays or other forms of advertising and promotion at points of sale. To ensure there is no ambiguity, it may be advisable for legal measures to state specifically that the retail display of any tobacco product is a prohibited form of TAPS.

If an existing TAPS ban provides for exemptions or has gaps in coverage, it may be possible to close such gaps through subsidiary legislation if there is regulatory authority to do so in the tobacco control law or other law (e.g. an advertising law). Otherwise, a law amendment may be necessary.

2.11 Illicit trade in tobacco products (Article 15 of the WHO FCTC)

Legal measures for the prevention and control of illicit trade commonly fall under the authority of and expertise of ministries of customs, finance, revenue, police, and justice, in coordination with health. Such measures may be developed and implemented by ministries separately from a tobacco control law.

Article 15 of the WHO FCTC sets out general requirements for effective measures aimed at eliminating illicit trade in tobacco products. These measures include: package markings indicating where the products can be sold legally; monitoring, collecting data about and sharing information on illicit trade among relevant control authorities; controlling the storage and distribution of products held or moving under suspension of taxes or duties; applying penalties and remedies that include confiscation of products and illicit trade proceeds; and disposal of products and manufacturing equipment (using



environmentally friendly methods, if feasible). Parties are also encouraged to develop a tracking and tracing regime, and to adopt additional measures (e.g. licensing) to regulate the production and distribution of tobacco products.

Building on and complementing Article 15 of the WHO FCTC, the *Protocol to Eliminate Illicit Trade in Tobacco Products* (the Protocol) makes tracking and tracing and licensing mandatory, and elaborates further on Article 15 obligations.¹⁰⁷ Key to successful elimination of illicit trade is heeding the recommendations of the Guidelines for implementation of Article 5.3 of the WHO FCTC; in particular, engaging with the tobacco industry only when strictly necessary for effective regulation, ensuring transparency in necessary interactions, and rejecting partnerships and contributions of any kind. To this end, the Protocol provides that governments must not delegate any tracking and tracing obligations to the tobacco industry.¹⁰⁸

2.11.1 Country examples

This section provides examples of measures aimed at eliminating illicit trade in tobacco products from Benin and Sweden.

Benin

Law No. 2017-27 of 18 December 2017 Concerning the Production, Packaging, Labelling, Sale and Use of Tobacco, its Derivatives and Similar Items in the Republic of Benin requires retail traders in tobacco products to obtain prior authorization to sell tobacco products, including SLT products.¹⁰⁹

Sweden

In Sweden, alongside the European Union, track-and-trace systems went into effect for cigarettes and roll-your-own tobacco on 20 May 2019. In line with Commission Implementing Regulation (EU) 2023/448 amending Implementing Regulation (EU) 2018/574 on technical standards for the establishment and operation of a traceability system for tobacco products,¹¹⁰ the Act on Tobacco and Similar Products (SFS 2018:2088), as amended,¹¹¹ and Decree on Tobacco and Similar Products (SFS 2019: 223)¹¹² which contains additional provisions, require that traceability system rules apply to all tobacco products as of 20 May 2024, although there are transitional provisions. The traceability system includes snus (a type of SLT) which is prohibited in all Member States of the European Union except in Sweden. In addition to the traceability system, all units packets of tobacco products must carry security features, which are visible and invisible elements that have the purpose of facilitating the verification of whether or not tobacco products are authentic, such as colour-changing ink and holograms.

2.11.2 Additional considerations when drafting legislation

The definition of “tobacco products” contained in Article 1(13) of the Protocol is identical to the definition contained in Article 1(f) of the WHO FCTC: “products entirely or partly

¹⁰⁷ Protocol to Eliminate Illicit Trade in Tobacco Products: 2–13. Geneva: World Health Organization; 2013 (<https://fctc.who.int/publications/i/item/9789241505246>).

¹⁰⁸ University of Bath: Tobacco Tactics. Protocol to Eliminate Illicit Trade in Tobacco Products. (<https://tobaccotactics.org/wiki/illicit-trade-protocol-itp/>).

¹⁰⁹ Law No. 2017-27 of 18 December 2017 concerning the production, packaging, labeling, sale and use of tobacco, its derivatives and similar items in the Republic of Benin. Porto-Novo: The President of the Republic and the National Assembly; 18 December 2017 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Benin/Benin-Law-No.-2017-27.pdf>).

¹¹⁰ Commission Implementing Regulation (EU) 2023/448 of 1 March 2023 amending Implementing Regulation (EU) 2018/574 on technical standards for the establishment and operation of a traceability system for tobacco products. Brussels: European Commission; 2 March 2023 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0448>).

¹¹¹ Act on Tobacco and Similar Products (SFS 2018:2088) (as amended). Stockholm: Ministry of Health and Social Affairs; 21 December 2018 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Sweden/Sweden-SFS-20182088.pdf>).

¹¹² Decree on Tobacco and Similar Products (SFS 2019: 223). Stockholm: Ministry of Health and Social Affairs; 8 May 2019 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Sweden/Sweden-SFS-2019223.pdf>).

made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing". The wording is broad and encompasses SLT products. Therefore, as noted previously, use of this definition in implementing measures may ensure that SLT is covered in any provisions that refer to a "tobacco product".

2.12 Sales to and by minors (Article 16 of the WHO FCTC)

Article 16 of the WHO FCTC requires Parties to adopt and implement effective measures to prohibit the sales of tobacco products to (and by) persons under the age of 18 years or the age set by domestic or national law. Additional measures may include:

- ◆ requiring sellers to prevent consumers from directly accessing tobacco products;
- ◆ banning the sale of products in any manner by which they are directly accessible to consumers;
- ◆ prohibiting the manufacture and sale of sweets, snacks, toys or other objects that appeal to minors in the form of tobacco products (also covered under the Guidelines for implementation of Article 13 of the WHO FCTC);
- ◆ ensuring that tobacco vending machines are not accessible to minors and do not promote the sale of tobacco products to minors (or banning vending machine sales altogether, pursuant to the recommendations of the Guidelines for implementation of Article 13);
- ◆ prohibiting the free distribution of tobacco products (also covered under the Guidelines for implementation of Article 13);
- ◆ prohibiting the sale of single cigarettes or cigarettes in small packets, so they are not more affordable for young people; and
- ◆ requiring signage inside retail establishments stating that sales to persons below the legal age for sale are prohibited and requiring verification of age when in doubt.

Guidelines for implementation of Article 16 of the WHO FCTC have not been developed.

Although Article 16 addresses only the banning of sales of cigarettes in small packets, the same principle can be applied to SLT products by requiring a minimum or standardized package weight or number of individual units

2.12.1 Application to SLT products

The full suite of measures provided in Article 16 of the WHO FCTC are applicable to SLT products. Although Article 16 addresses only the banning of sales of cigarettes in small packets, the same principle may be applied to SLT products by requiring a minimum or standardized package weight or number of individual units (e.g. for SLT in the form of pouches or newer forms such as dissolvable strips and sticks).

2.12.2 Country practices

Laws in many countries may contain more stringent requirements than the measures set out in Article 16 of the WHO FCTC, including bans on the sale of tobacco products within a specified distance of schools and other youth-centred premises; bans on sales of any tobacco product that is unpackaged or that does not meet requirements for a specified weight or number of product units; bans on tobacco product sales through vending machines; and raising the minimum age for sale of any tobacco product or accessory to 21 years.

This section provides examples of sales restrictions from Ethiopia, Maldives, and Uganda.

Ethiopia

The Food and Medicine Administration Proclamation No. 1112/2019 prohibits the sale of tobacco products to and by any person under the age of 21 years and prohibits the sale of tobacco products within 100 metres of schools and youth centres (Articles 49(1)-(2)).¹¹³

Maldives

Regulation 2019/R158 on the Packaging and Labelling of Tobacco Products prohibits the sale of SLT products in unit packages weighing less than 30 grams (Section 5(d)).¹¹⁴

Uganda

The Tobacco Control Act, 2015, bans the sale of SLT products (Section 16(2)(c)). However, the law provides a good example of strong language implementing Article 16 of the WHO FCTC. The law establishes the minimum sales age for the purchase of other tobacco products as 21 years (Sections 2, 17(1)), and bans internet sales and vending machine sales of all tobacco products (Sections 14(1), 16(4)(a), Third Schedule). Further, the law provides that “a person shall not import, manufacture, distribute, sell or offer for sale a sweet, snack, toy, or any other object in the form of tobacco or a tobacco product including an object which resembles, mimics or imitates a tobacco product which may appeal to a minor” (Section 17(2)).³¹

2.12.3 Additional considerations when drafting legislation

Based on the experience of many Parties that have already incorporated measures required under Article 16 of the Convention, legal measures could also:

- ◆ establish or increase the minimum age for sale of any tobacco product to age 21 years or higher in order to prevent nicotine-caused harm to the developing brain of young people¹¹⁵ – because of the particularly harmful effects of nicotine on young people, raising the minimum age for sale could be justified even if the minimum age is lower than 21 years for other rights or privileges (e.g. the ability to work, leave school or vote);
- ◆ prohibit, rather than restrict, the sale of tobacco products and accessories from vending machines, both as a means to ensure that young people cannot

113 Food and Medicine Administration Proclamation No. 1112/2019. Addis Ababa: Food and Medicine Administration of Ethiopia; 28 February 2019 (<https://assets.tobaccocontrollaws.org/uploads/legislation/Ethiopia/Ethiopia-2019-Proclamation-native.pdf>).

114 Regulation on Packaging and Labelling Tobacco Products. Malé: Health Protection Agency of the Maldives; 27 February 2019 (<https://assets.tobaccocontrollaws.org/uploads/legislation/Maldives/Maldives-Reg-2019R158-PL-Regs.pdf>).

115 E-cigarette use among youth and young adults. A report of the Surgeon General: Executive Summary. Atlanta (GA): National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016 (<https://www.cdc.gov/tobacco/sgr/e-cigarettes/index.htm>).

access them and to further the ban on retail product displays under Article 13 of the WHO FCTC;

- ◆ require that tobacco products, including SLT products, can be sold only in intact packages that meet the minimum weight or units specified, so that the products are not more affordable for young people; and
- ◆ prohibit the sale of SLT products within a specified distance of educational institutions and playgrounds, to prevent exposure to and access by minors.

If existing enabling legislation does not cover these requirements or provide the ministry of health with regulatory authority to prescribe additional requirements, legal amendments may be needed, unless there is regulatory authority under another law, such as a youth protection law.

2.13 Liability (Article 19 of the WHO FCTC)

Article 19 of the WHO FCTC is to be read in conjunction with Article 4 of the WHO FCTC, the guiding principles of the Convention, which states that issues related to liability are an important part of comprehensive tobacco control. At its fifth session, in decision FCTC/COP5(9), the COP established an expert group on liability.¹¹⁶ That group produced two reports – FCTC/COP/6/8¹¹⁷ and FCTC/COP/7/13¹¹⁸ – with options for developing legislation on liability and scenarios to strengthen civil liability mechanisms, the latter being instrumental in the development of the WHO FCTC Article 19 Civil liability toolkit.¹¹⁹ The toolkit includes recommendations for pursuing potential legal actions, including those for government civil health care cost recovery, class action civil claims for compensation for tobacco-caused harms, criminal legal violations, injunctive and corrective relief, and



Snus, a type of chewing tobacco

116 Decision FCTC/COP5(9): Implementation of Article 19 of the WHO FCTC: "Liability". Conference of the Parties to the WHO Framework Convention on Tobacco Control, Fifth session, Seoul, 12–17 November 2012 ([https://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5\(9\)-en.pdf](https://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5(9)-en.pdf)).

117 FCTC/COP/6/8: Implementation of Article 19 of the Convention: "Liability". Report of the expert group. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Sixth session, Moscow, 13–18 October 2014 (https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_8-en.pdf).

118 FCTC/COP/7/13: Implementation of Article 19 of the WHO FCTC: "Liability". Report by the expert group. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Seventh session, Delhi, 7–12 November 2016 (<https://fctc.who.int/publications/m/item/fctc-cop-7-13-implementation-of-article-19-of-the-who-fctc-liability>).

119 Civil liability toolkit for implementing WHO FCTC Article 19. Geneva: World Health Organization (https://portal-uat.who.int/fctcapps/civil-liability-toolkit#).

public interest enforcement. The toolkit notes examples of countries' legal measures that provide avenues for holding tobacco companies accountable for the harms caused by their products and for their destructive actions. In addition to the toolkit, the Convention Secretariat established the WHO FCTC Knowledge Hub on Legal Challenges¹²⁰ at the McCabe Centre for Law and Cancer in Melbourne, Australia.

2.13.1 Country practices

In 2023, approximately two thirds of the Parties reported having criminal liability provisions in their tobacco control enforcement provisions, and more than one third reported having civil liability measures specific to tobacco control. Many others reported having generally applicable civil liability measures that could apply to tobacco control or that provide for compensation. Private rights of action by individuals are reported in a small minority of countries.^{6,115}

As noted by the expert group on liability in document FCTC/COP/6/8, several governments have undertaken legal actions for health care cost-recovery, with varying outcomes.¹¹³ Brazil – a WHO FCTC Party – and the United States of America – a WHO FCTC signatory – used generally applicable legal measures in pursuing lawsuits against the industry. Each of the 10 Canadian provinces, on the other hand, introduced and adopted specific legislation to enable the provincial governments to bring health care cost-recovery actions.¹²¹

Further information about countries' experiences with tobacco liability can be found in Annex 1 of the report of the expert group to COP6¹¹³ and the WHO FCTC Article 19 Civil liability toolkit.¹¹⁵

2.13.2 Additional considerations when drafting legislation

Several governments and their citizens have sued the tobacco industry – including for cost-recovery, injunctive relief and corrective action, and damages – under existing applicable legal provisions or under provisions enacted specifically to facilitate litigation against the tobacco industry. Whether there is a need to enact new legal measures to initiate and facilitate such actions will depend on what generally applicable measures already exist in each country. These measures might include laws on evidence, procedure, and liability and damages.

For governments interested in undertaking civil legal action against the tobacco industry, the interactive web-based WHO FCTC Article 19 Civil liability toolkit provides a useful starting point. The toolkit assists users to understand the different options for pursuing redress and to assess potential obstacles that might suggest there is a need to enact new legal measures. The toolkit also provides examples of good country practices and innovative legal reforms that would help users to hold the tobacco industry accountable.

2.14 Other Articles of the WHO FCTC (Articles 17, 18, 20–22)

Articles 17, 18 and 20–22 of the WHO FCTC require Parties to:

- ◆ promote, as appropriate, economically viable alternatives for tobacco workers, growers and possibly individual sellers (Article 17);

120 WHO FCTC Knowledge Hub on Legal Challenges. Geneva: World Health Organization (<https://extranet.who.int/fctcapps/fctcapps/fctc/kh/legalchallenges>).

121 Moulton D. All provinces can now sue big tobacco. CMAJ: Canadian Medical Association journal. 2014;186(18):E662. <https://doi.org/10.1503/cmaj.109-4929>.

- ◆ pay due regard to the protection of the environment and health with respect to tobacco cultivation and manufacture (Article 18);
- ◆ establish national, regional and global health surveillance programmes; and initiate, cooperate with and promote tobacco control-related research and the exchange of tobacco control-related information, including information regarding practices of the tobacco industry (Article 20);
- ◆ provide regular updates on measures taken to implement the Convention, constraints and barriers encountered in implementation, and surveillance and research (Article 21); and
- ◆ cooperate in promoting the transfer of technical, scientific and legal expertise and technology to establish and strengthen national tobacco control strategies, plans and programmes (Article 22).

These articles can typically be implemented without the need for legislative measures, with the understanding that some Parties still choose to make reference to any of these articles in their laws and regulations.

2.14.1 Application to SLT products

All of these articles apply equally to SLT products. Requirements for information, surveillance, and research-sharing and cooperation are especially important for regulating SLT products, given the lack of internationally agreed approaches to testing of SLT products.

Additional challenges include insufficient resources and capacity for SLT-testing in some countries, limited examples of health warnings specific to SLT products, and limited experience with SLT-specific media campaigns.¹²²

2.15 Countries with legal measures that ban the sale of SLT products

Although this guide describes how to strictly regulate SLT products, several governments have taken the approach of completely banning the manufacture, import or sale of SLT products.

The following are examples of countries that ban the sale of SLT products:

- ◆ Bahrain;¹²³
- ◆ Bhutan;¹²⁴
- ◆ Fiji;¹²⁵
- ◆ Finland;¹²⁶

122 National Cancer Institute and Centers for Disease Control and Prevention. Smokeless Tobacco and Public Health: A Global Perspective. Bethesda, MD: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention and National Institutes of Health, National Cancer Institute. NIH Publication No. 14-7983; 2014. (<https://cancercontrol.cancer.gov/brp/tcrb/smokeless-tobacco>).

123 The WHO Report on the global tobacco epidemic 2019 under Table 6.6 (Characteristics of health warnings on smokeless tobacco packages) listed this country as an example of a country where smokeless tobacco products are banned. However, the relevant law was not located. Therefore, this legislation's contents cannot be independently verified.

124 Tobacco Control Act of Bhutan, 2010, Section 11; Tobacco Control (Amendment) Act of Bhutan 2012, Section 3 (<https://assets.tobaccocontrollaws.org/uploads/legislation/Bhutan/Bhutan-TC-Amdt.-Act-2012.pdf>).

125 Tobacco Control Decree 2010 (Decree No. 63 of 2010), Section 18(1) (<https://assets.tobaccocontrollaws.org/uploads/legislation/Fiji/Fiji-TCD-2010-native.pdf>).

126 Tobacco Act (No. 549/2016), Section 51 (<https://assets.tobaccocontrollaws.org/uploads/legislation/Finland/Finland-Tobacco-Act-No.-5492016.pdf>).

- ◆ Gambia;¹²⁷
- ◆ China (Hong Kong Special Administrative Region);¹²⁸
- ◆ Latvia;¹²⁹
- ◆ Lithuania;¹³⁰
- ◆ China (Macao Special Administrative Region);¹³¹
- ◆ Malta;¹³²
- ◆ Republic of Moldova;¹³³
- ◆ New Zealand;¹³⁴
- ◆ Niue;¹³⁵
- ◆ Oman;¹³⁶
- ◆ Republic of Korea;¹³⁷
- ◆ Singapore;¹³⁸
- ◆ Sri Lanka;¹³⁹
- ◆ Uganda;¹⁴⁰
- ◆ United Republic of Tanzania;¹⁴¹
- ◆ Vanuatu.¹⁴²

127 Tobacco Control Act, 2016, Section 16(2) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Gambia/Gambia-TCA-2016-native.pdf>).

128 Smokeless Tobacco Products (Prohibition) Regulations (Cap. 132BW) (as amended), Regulation 3(1) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Hong%20Kong%20%28SAR%29/Hong-Kong-SAR-Smokeless-Tobacco-Regs-native.pdf>).

129 Law on Trade in Tobacco Products, Herbal Smoking Products, Electronic Smoking Devices and Associated Liquids (as amended), Sections 3(1)(1–2) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Latvia/Latvia-Law-on-Trade-in-Tobacco-Products.pdf>).

130 Law No. I-1143 on Tobacco, Tobacco Products and Associated Products (as amended), Article 13 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Lithuania/Lithuania-TC-Law.pdf>).

131 Law No. 5/2011, Regime for Prevention and Control of Tobacco Use (as amended by Law No. 9/2017), Article 15 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Macau%20%28SAR%29/Macau-SAR-Law-No.-92017.pdf>).

132 Ban on Smokeless Tobacco Regulations, Article 3 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Malta/Malta-Ban-on-Smokeless-Tobacco.pdf>).

133 Law No. 278-XVI on Tobacco and Tobacco Products (as amended), Article 24(1) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Moldova/Moldova-Contravention-Code.pdf>).

134 New Zealand Smoke-free Environments Act 1990 (Public Act 1990 No. 108) (as amended), Section 29(2) (<https://assets.tobaccocontrolaws.org/uploads/legislation/New%20Zealand/New-Zealand-SF-Act-1990-native.pdf>).

135 Tobacco Control Act 2018, Sections 29(1)–(2) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Niue/Niue-TC-Act-2018-native.pdf>).

136 Ministerial Decree No. 38/2010 to Ban the Importing and Sale of Chewing Tobacco (Smokeless), Article 1; Public Authority for Consumer Protection Resolution No. 256/2015 Banning the Trading of Chewing (Smokeless) Tobacco, Article 1 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Oman/Oman-Min.-Decree-No.-382010.pdf>).

137 The *WHO Report on the global tobacco epidemic 2019* under Table 6.6 (Characteristics of health warnings on smokeless tobacco packages) listed this country as an example of a country where smokeless tobacco products are banned. However, the relevant law was not located. Therefore, this legislation's contents cannot be independently verified.

138 Tobacco (Control of Advertisements and Sale) Act (as amended), Sections 15(1)(a), 15(1)(b) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Singapore/Singapore-Control-of-Ads-Sale-native.pdf>).

139 Prohibited Tobacco Products Regulations, No. 1 of 2016, Article 3, Schedule 1 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Sri%20Lanka/Sri-Lanka-Prohibited-Products-Regs-2016.pdf>).

140 Tobacco Control Act, 2015, Section 16(2)(c) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Uganda/Uganda-TCA-native.pdf>).

141 Tobacco Products Regulations, 2014, Sections 3, 9 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Tanzania/Tanzania-Tobacco-Products-Regs-2014-native.pdf>).

142 Tobacco Control Act No. 19 of 2008, Articles 14(1)–(2) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Vanuatu/Vanuatu-TC-Act-of-2008-native.pdf>).

3. Sample legislation template for the comprehensive regulation of smokeless tobacco products

3.1 Introduction

This legislation template for the comprehensive regulation of SLT products offers provisions that implement WHO FCTC requirements and also incorporates recommendations from the various guidelines for implementation of the Convention. The template deals solely with SLT, in isolation from other tobacco products; the aim is to illustrate and highlight how the full suite of tobacco control measures could be applied to SLT and to address regulatory issues specific to SLT.

In practice, governments must deal with SLT products as part of a comprehensive tobacco control strategy that covers the full range of tobacco and nicotine products, and the devices used to consume them. A sufficiently comprehensive strategy would involve regulation of all of the following: smoked tobacco products; SLT products; heated tobacco products and devices; electronic nicotine delivery systems (e-cigarettes); oral nicotine products (e.g. nicotine pouches and dissolvable nicotine lozenges or strips); and possibly alternative non-tobacco plant-based products that are harmful in that they may serve as gateway products to the initiation of tobacco or nicotine use, as in the case of herbal waterpipe products and other forms of herbal smoked products.

This sample template provides text that may be used for law or regulations implementing the articles of the WHO FCTC that Parties are bound to implement through legal measures, and that would commonly fall within the remit and expertise of the ministry or authority responsible for health. The template does not include measures to address other articles of the WHO FCTC that typically fall within the remit and expertise of ministries or authorities other than health (e.g. tobacco taxation or illicit trade in tobacco products) or articles that may not require laws or regulations to be implemented.

Finally, in accordance with Article 2 of the WHO FCTC, nothing in the Convention or its protocols prevents Parties from imposing stricter requirements that are consistent with their provisions and are in accordance with international law.

3.2 How to use the template

Most of the Parties to the WHO FCTC have enacted legislative, executive, administrative and other measures to implement the Convention. As recognized in the *Impact assessment of the WHO FCTC*, carried out at the request of and under the guidance of the COP, significant gains have been made in tobacco control, although they vary across countries and WHO FCTC policy domains.¹⁴³ To date, Parties have generally placed greater emphasis on regulating cigarettes than on regulating non-cigarette tobacco products such as SLT.¹³⁷ Parties that have not comprehensively implemented the Convention with respect to SLT products can use the template provided to assess the comprehensiveness and strength of their measures and identify any gaps in coverage; they can then use any

¹⁴³ FCTC/COP/7/6: Impact Assessment of the WHO FCTC. Report by the Expert Group. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Seventh session, Delhi, 7–12 November 2016 (<https://fctc.who.int/publications/m/item/fctc-cop-7-6-impact-assessment-of-the-who-fctc>).



template provisions they believe would be appropriate to strengthen their measures, adapting them as necessary.

Where any gaps or weaknesses are found in domestic legal measures, it may be possible to fill the gaps and strengthen legislative measures through subsidiary measures, amendments to existing laws, enactment of new legislation, or a combination of those options. To enact subsidiary measures for any particular provision, the minister or other appropriate authority would need to have sufficiently broad powers under the existing enabling legislation, such as a tobacco control law; a public health, consumer, environmental or youth protection law; an advertising law; or other relevant law that has a connection to WHO FCTC policies. Any subsidiary measures would have to fall within the scope of the regulatory powers granted by the enabling law and could not conflict with the law.

As an example, if a Party were looking to assess its legal measures for packaging and labelling of SLT products, the Party could compare its current legislation with the relevant template article or articles, identify the areas where its current legislation is not as strong as the template measures (and thus the requirements under Article 11 of the WHO FCTC and the details contained in the guidelines for implementation), and determine the best means to address those gaps (e.g. an amendment to the law or subsidiary measures). In drafting language to strengthen its legislation, the Party can then adapt the template language to fit its country context (e.g. specifying the principal language or languages for messages required to appear on product packaging and labelling, and requiring that SLT products appear in plain, or standardized, packaging).

3.3 Template

Italicized blue text in the template is a **note** that is used to signal that legislative provisions must originate from the legal drafters in the country based on their legal customs or to provide explanatory context.

Part I

ACT TITLE

Introduction

PART I – Preliminary

[Note: Preliminary matters may include a short title, preamble, commencement date, objects/purpose statements and similar matters, as appropriate and customary in the jurisdiction.]

Objects of the Act

Article 1. The objects of this Act are to –

[Note: The Act's objectives can play an important role in justifying the policies and provisions of the Act. In the event of a legal challenge, courts often seek to determine whether and how the Act's provisions are likely to accomplish the Act's objectives. In drafting objectives, consideration might be given to articulating aims that include: those expressed in Article 3 (Objectives) and Article 5.2(b) (General obligations) of the WHO FCTC; those fulfilling the government's WHO FCTC obligations and relevant to other treaties to which the country is a party; those preventing SLT product initiation, with special regard to young people and other vulnerable population groups; and those encouraging quitting and preventing relapse.]

Part II

Part II – Use of terms

Article 2. In this Act, unless the context otherwise requires –

“Accessories” means items produced for use in connection with smokeless tobacco products, or that are labelled or otherwise promoted as being for use with smokeless tobacco products.

“Additive” means a substance, other than tobacco, added to a smokeless tobacco product during processing, manufacturing or packaging.

“Advertising and promotion” means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product, including any type of smokeless tobacco product or tobacco use, whether directly or indirectly.

“Characterizing flavour” means a clearly noticeable taste or smell, other than one of tobacco, including a taste or smell of candy, menthol, mint, fruit, chocolate, vanilla, spice, alcohol or other flavour.

“Constituents” means endogenous substances found in tobacco leaf or processed tobacco.

“Contents” means “constituents” with respect to processed tobacco and “ingredients” with respect to tobacco products.

“Cross-border” with respect to advertising, promotion and sponsorship means that which originates within the territory of _____ *[Note: name of country]* and enters or could be received in another national territory, as well as that which originates outside the territory of _____ *[Note: name of country]* and is received or accessible within the territory.

“Design feature” means a characteristic of the design of a tobacco product that has an immediate causal link with the testing and measuring of contents and emissions.

“Emissions” means substances released when a smokeless tobacco product is used as intended.

“Flavouring” refers to substance or mixture, including a substance or mixture manufactured for use in food or represented directly or indirectly as a food ingredient, that is added during the production of a smokeless tobacco product or that is produced to be added to the product by the user or other person.

“Health warning” means information in the prescribed form and manner, conveying the health and other consequences of tobacco use, including of smokeless tobacco products, and any other prescribed messages.

“Indoor” means any space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used and regardless of whether the structure is permanent or temporary.

“Ingredients” means the tobacco, components (e.g. paper and filters) and the materials used to manufacture them, additives, processing aids, residual substances found in the tobacco after processing and storage, and other substances or materials present in the finished product, including substances that migrate from the packaging material into the product.

“Minister” means the minister responsible for health *[Note: or other appropriate ministry responsible for carrying out the Act]* and “Ministry” shall have the corresponding meaning.

“Outdoor” means any space that is not an “indoor” space, as that term is defined in this Act.

“Packaging” refers to any packaging used for retail sale of a tobacco product.

“Person responsible for the premises” means the owner, manager or other person in charge of a public place, workplace, or public transport.

“Person with responsibility for tobacco control” refers to –

- a. a governmental institution or body with executive, legislative or judicial authority;
- b. a quasi-governmental institution or body; or
- c. a natural or juridical person working in or on behalf of the institutions or bodies in (a) or (b), who has or is likely to have responsibilities that involve developing or implementing tobacco control policies, whether at the national or a subnational level.

“Prescribed” means prescribed in regulations.

[Note: this definition will not be necessary if it is already clear from an existing Act on interpretation of laws.]

“Public place” means a place accessible to the general public or a segment of the public or a place for collective use, regardless of ownership or right to access.

“Public transport” means any vehicle used for carriage of members of the public, usually for reward or commercial gain, including a taxi.

“Sell” means to supply or offer to supply a smokeless tobacco product or accessory at wholesale or directly to the consumer at retail in _____ *[Note: name of country]* for a fee or other consideration, and “seller” shall have a corresponding meaning.

A wholesaler who sells directly to consumers shall be considered to be both a wholesaler and a seller for purposes of this Act, and the place of sale of that person shall be considered as both a wholesale and retail place of sale.

“Smokeless tobacco products” means tobacco products that are produced for consumption by means of sucking, chewing, sniffing, snuffing, dipping, dissolving or consumption by other oral or nasal means that do not involve inhaling aerosols or vapours produced by lighting or heating tobacco, and include, without limitation, chewing tobacco, dry snuff, moist snuff, snus, betel quid or paan with tobacco, guthka, zarda, khaini, gul, gudaku, toombak, nasvay, and dissolvable tobacco products.

[Note: it may be advisable to list and define separately each of the smokeless tobacco product types available in the market in the country.]

“Sponsorship” means any form of contribution (direct or indirect) to any event, activity, organization or individual with the aim, effect or likely effect of directly or indirectly promoting tobacco products, including smokeless tobacco products, or their use.

“Standardized (or “plain”) packaging” means–

- a. packaging required to have a uniform appearance; a plain colour and texture; and standardized shape, size, means of opening, and packaging material;
- b. packaging prohibited from having any branding, logos or other promotional elements on, inside or attached to the packaging or to the product or the device, other than the brand name and product name appearing in a standard size, colour and typeface, together with other mandatory information;
- c. requirements as to the standard appearance of an individual tobacco product, and the quantity or weight of product contained in an individual package or container; and
- d. any other requirements about any feature, appearance or element of the packaging of a smokeless tobacco product.

“Tobacco control” means a range of supply, demand, including cessation, and harm reduction strategies that aim to improve the health of a population by eliminating or reducing the consumption of tobacco products, nicotine addiction and exposure to tobacco smoke.

“Tobacco industry” means manufacturers, wholesale distributors and importers of tobacco products, including smokeless tobacco products. For the purposes of Part X, the term also includes any entity working on behalf of the tobacco industry. Where the context allows, “tobacco industry” also refers to a natural person working in or on behalf of an entity in the industry.

“Tobacco products” means products made entirely or partly from any part of the tobacco plant as raw material produced to be used for smoking, sucking, chewing, inhaling or snuffing or other means of human consumption, including smokeless tobacco products.

“Workplace” means any place used by one or more persons during their employment, contract, voluntary or other work, including any area used in or incidental to the course of work, as well as work vehicles.

Part III – Administration

[Note: Depending on country-specific factors, provisions for this part might include:

- *the establishment of a tobacco control coordination mechanism, as required by Article 5.2(a) of the WHO FCTC, and its membership and functions;*
- *identification and appointment of the ministries or authorities with inspection powers and duties, what those powers and duties are, how inspection authorities will coordinate with one another, etc., unless this is already comprehensively specified in another law that would be applicable to inspection and enforcement under the tobacco control law; and*

Part IV

- *licensing of product manufacturers, importers, wholesalers, retailers, and other businesses (see the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products for a list of businesses that should be subject to licensing), unless adequate licensing provisions already exist under another law that would be adequate to achieve tobacco and nicotine control purposes.]*

Part IV – Tobacco-free environments

Article 3.

1. A person shall not smoke or use a tobacco product -
 - a. in any part of any indoor workplace;
 - b. in any part of any indoor public place;
 - c. anywhere on any means of public transport.
2. A person shall not smoke or use a tobacco product in any outdoor area that is –
 - a. within ___ metres of a doorway or intake vent of any indoor public place or workplace;
 - b. a bar, restaurant, café or other area for the service or consumption of food or drink;
 - c. a stadium, arena, or performance or entertainment space of any kind;
 - d. a waiting area or queue, including a public transport stop, or within ___ metres of the waiting area or queue;
 - e. a public park;
 - f. designated by the owner as an area where a tobacco product shall not be used; or
 - g. prescribed by the Minister as an area where tobacco use is not allowed.
3. A person shall not smoke or use a tobacco product anywhere on the entire premises of –
 - a. a childcare facility or an educational or vocational facility at any level of instruction;
 - b. a health care facility;
 - c. a playground or amusement park;
 - d. a public park; or
 - e. any other prescribed premises.

[Note: If the government's policy objectives do not include banning all tobacco use in all of the places where smoking is banned, the smokeless ban could be applied to priority places instead.]

Duties of persons responsible for the premises

Article 4. Persons responsible for the premises or the means of public transport in Article 3 shall ensure that –

1. signs are displayed notifying persons of the prohibition on any tobacco product use in a manner as may be prescribed;

[Note: Ideally, the Minister would prescribe details for sign content, placement, etc. and provide a template for the signs. However, if there is concern that there may be delay in promulgating regulations, the law could specify the basic requirements for signs and authorize the Minister to supplement those requirements through regulations.]

Part V

2. ashtrays and spitting receptacles are not present within the indoor place or in any outdoor area where smokeless tobacco product use is prohibited;
3. reasonable steps are taken to stop a person from using a smokeless tobacco product where prohibited under Article 3, including the following –
 - a. directing the person to discontinue use and properly dispose of the product;
 - b. if the person refuses to comply with the direction given in (a), discontinuing service to that person;
 - c. directing the person to leave the premises or, in the case of a public transport vehicle, to leave the vehicle when it is safe to do so; and
 - d. contacting law enforcement or other appropriate authority if the person refuses; and
4. any complaints by workers or members of the public are investigated and necessary action is taken.

Part V – Prohibition on advertising, promotion and sponsorship

Article 5.

1. All forms, methods and means of domestic and cross-border advertising, promotion, and sponsorship of smokeless tobacco products and accessories are prohibited. For the avoidance of doubt, this prohibition includes digital media communication platforms..
2. A person shall not –
 - a. initiate any advertising and promotion or sponsorship;
 - b. produce or publish any advertising and promotion or sponsorship content;
 - c. disseminate or broadcast any advertising and promotion or sponsorship content, subject to sub-article (3); or
 - d. participate in or facilitate any sponsorship as a media or event organizer, venue owner, sportsperson, celebrity, artist or other performer, as a provider or recipient of any sponsorship contribution, or as an intermediary that facilitates the sponsorship.
3. The Minister *[Note: or other appropriate authority]* may prescribe actions that persons involved in disseminating content by providing access to or hosting content through the internet or other electronic means must take to fulfil their responsibilities under this article.
4. Without limiting the broad application of this article, the Schedule provides a non-exhaustive list of forms, methods and means of advertising and promotion, and sponsorship under the Act.

Article 6.

1. A person shall not cause or permit the display of a smokeless tobacco product or accessory, or the packaging of a smokeless tobacco product or accessory, at a retail place of sale.
 - a. In this sub-article, a display occurs when any smokeless tobacco product or accessory, or the packaging of a smokeless tobacco product or accessory, is visible to any member of the public.
 - b. A prohibited display under this sub-article does not occur during the course of a transaction for the sale of a specific smokeless tobacco product or accessory.
 - c. A person in the tobacco trade shall not be considered a member of the public under this sub-article.

2. The owner or person in control of a store where smokeless tobacco products are offered for sale may –
 - a. display a sign in black writing on a white background that states that tobacco products are available for sale, provided that the size, nature and location of the sign are as prescribed; and
 - b. make available upon request a black and white text-only list of tobacco products and accessories for sale and their prices in the manner and size prescribed.

Incidental promotional effect

Article 7.

1. Notwithstanding Article 6, the following shall not be considered advertising and promotion or sponsorship subject to the prohibition in Article 6 –
 - a. depiction of a smokeless tobacco product where the depiction is justified by reasons of legitimate journalistic, artistic or academic expression, provided no payment or other consideration was offered or made in exchange for the depiction by a manufacturer, importer, wholesale distributor or retailer of the product or accessory, or any person acting on their behalf;
 - b. genuine political, social, editorial or scientific commentary, provided no payment or other consideration was offered or made in exchange for the commentary or publication of the commentary by a manufacturer, importer, wholesale distributor or retailer, or any person acting on their behalf;
 - c. communications necessary for business administration or for required corporate reporting, but only to the extent that access is limited to persons who need to receive it for business administration or corporate reporting;
 - d. product information made accessible to businesses within the smokeless tobacco product or accessory trade who need the information for trading decisions, but only to the extent that access is limited to those persons; and
 - e. manufacturers' newsletters destined for and distributed only to the manufacturers' employees, contractors, suppliers and other related business partners, and only to the extent that their distribution is limited to such persons.

[Note: Sub-article (1) is based on the Guidelines for implementation of Article 13 of the WHO FCTC (under the headings of Legitimate expression, Depictions of tobacco in entertainment media, and Communication within the tobacco trade). It may be advisable to make any qualifiers to (a)–(c) as appropriate to the domestic context.]

2. Any communication or action pursuant to sub-article (1) shall not be false, misleading or deceptive and shall be subject to any other requirements the Minister may prescribe.

[Note: Additional requirements might include a mandate for warnings attached to the communications in sub-articles (1)(a)–(e); certification by a corporate officer that no payment or other consideration was offered or made in exchange for any of the activities under sub-articles (1)(b)–(e); reporting to the government on communications and actions undertaken under this part that could help the government to monitor compliance.]

Part VI

Article 8. The Minister *[Note: or other appropriate authority]* may prescribe any additional requirements for the effective implementation of this part.

Part VI – Packaging and labelling of smokeless tobacco products

General requirement

Article 9. A person shall not sell a smokeless tobacco product unless it is contained in an intact package that meets all packaging requirements.

Minimum package contents

Article 10. An individual package or packet made available for retail sale shall contain a minimum of 30 grams of the product *[Note: or other weight (or number of units for smokeless oral tobacco pouches) that would prevent the product from being easily affordable]*.

Health warnings requirements for smokeless tobacco products

Article 11.

1. A person shall not manufacture, import or sell a smokeless tobacco product unless its retail packaging displays the prescribed warnings in the manner prescribed.
2. Only prescribed warnings shall be displayed anywhere on or in the package.
3. Health warnings in the form of pictures and corresponding text in the _____ language *[Note: specify the country's principal language or languages]* shall be displayed, at a minimum, on each principal display area of the retail packaging of smokeless tobacco products.
4. The combined warnings in sub-article (3) shall cover the proportion of each principal display area of the packaging determined by the Minister *[Note: or other appropriate authority]*, which shall be no less than ____%.

[Note: To keep up with other countries' practices on warnings, the surface area of the PDAs should be at least 65%, and preferably larger since the larger the warning, the more effective it is.]

5. The Minister *[Note: or other appropriate authority]* may prescribe requirements for the display of health warnings and the form the warnings must take on any other areas of the packaging of the products, and may prescribe requirements for warnings by means of package inserts.

Rotation of health warnings

Article 12.

1. The Minister shall prescribe a set of multiple health warnings to be displayed on packaging for a prescribed time period, referred to as the "rotation period".

[Note: The purpose of rotating sets of warnings is to keep the warnings from becoming stale and diminishing their effectiveness. Each set might provide anywhere from six to 12 or more warnings, so that the warnings can highlight the dangers of addiction, risks of different diseases affecting different body organs, benefits of cessation, adverse social and economic effects. The guidelines recommend a rotation period length between 12 and 36 months.]

2. Within a rotation period, each health warning from the prescribed set of combined warnings shall appear concurrently on an equal number of packages for each brand within a brand family, and each package size and type, as prescribed.

[Note: If standardized packaging is required, the reference to package size and type should be deleted.]

Protection of the warnings

Article 13.

1. All prescribed health warnings shall be permanently displayed on the packaging and their full visibility and integrity must not be, and must not be susceptible to being, damaged, concealed, obstructed, obscured, disrupted, covered or changed by any package design feature or mechanism.
2. Tax stamps and any other required markings shall be placed on the packaging a way that ensures the full visibility of both the warnings and the markings.
3. The Minister *[Note: or other appropriate authority]* may prescribe minimum dimensions of the packaging to effectuate the requirements of sub-articles (1) and (2).

Contents and emissions information

Article 14.

1. The packaging of smokeless tobacco products shall display prescribed descriptive-only information on the products' contents and emissions in the form and manner prescribed by the Minister *[Note: or other appropriate authority]*.
2. No emissions yield figures shall be displayed anywhere on or in the packaging.
3. Only the prescribed information on contents and emissions shall be displayed.
4. The Minister *[Note: or other appropriate authority]* may prescribe requirements for rotation and concurrent display of contents and emissions information.

Single supply deadline

Article 15. After ____ days from the date a set of prescribed health warnings and contents and emissions information is published in the gazette *[Note: or published by the appropriate means in the country]*, manufacturers, importers and sellers shall not supply a smokeless tobacco product unless its packaging complies with the new requirements for warnings and contents and emissions information under this Part.

[Note: This article is meant to give sufficient time (e.g. 3 to 6 months) for the manufacturer to print the new warnings on the packaging and to prevent the manufacturer from only beginning to supply some packages with the new warnings, leaving packages with older non-compliant warnings on the market.]

Electronic files

Article 16. The Minister *[Note: or other appropriate authority]* may provide electronic files containing the health warnings, contents and emissions information, and any other prescribed information required to be displayed. Where the Minister has provided electronic files, images and information from those files must be displayed with the same quality and clarity, using electronic imaging derived from the original images provided by the Minister.

[Notes:

- 1) Development of the warnings, contents and emissions information, and other required information, should begin at an early stage so that the regulations and availability of the electronic images can be published/made available at the time of enactment of the law or shortly after enactment to prevent implementation delays.*
- 2) Article 15 of the WHO FCTC requires that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: "Sales only allowed in (insert name of the country, subnational, regional or federal unit)" or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market.*

This requirement may be placed in provisions implementing illicit trade measures, which may be developed under the authority of the Ministry of Finance/Trade. The Ministry of Health could also address the legal place of sale requirement in this Act or its implementing regulations.]

Prohibition on misleading packaging labelling and misleading product features

Article 17.

1. The packaging of a smokeless tobacco product shall not promote the product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions.
2. The prohibition in sub-article (1) includes using any term, descriptor, trademark, figurative (whether or not part of the brand name), colour, number, shape or other sign or feature, in whole or in part, that directly or indirectly creates or is likely to create the false impression that a particular tobacco product is less harmful than others, including by using terms such as, “mild”, “smooth”, “natural”, “flavoured”, “menthol”, “smoke-free”, “healthy”, “safe”, “safer” and other terms in any language that are likely to mislead consumers, including when used as part of a brand name or trademark.
3. The products, themselves, shall not contain misleading colours, signs, design or other features, such as shape or dimensions, mentioned in sub-article (2).

Authority of the Minister

Article 18. The Minister may prescribe regulations regarding –

1. the content, size, font, colours, print quality, layout, design, placement, display, rotation periods and any other details for health warnings and contents and emissions information for smokeless tobacco products;
2. the display of any additional information on or inside the packaging;
3. prevention of the false or misleading packaging of smokeless tobacco products, and any misleading features of the products themselves;
4. prohibition of promotional descriptors, such as “relax”, “enjoy”, “convenient” and other elements of packaging of smokeless tobacco products, and of the products themselves; and
5. requirements for standardized (plain) packaging and for standardized smokeless tobacco product features.

Part VII – Sales of smokeless tobacco products and accessories

Article 19.

1. A person shall not sell a smokeless tobacco product or accessory to a person under 21 years of age.

[Note: Because most people who use tobacco initiate tobacco use when they are young, consideration could be given to setting a minimum age that is 21 years of age or older, to deter young adults from starting.]

- a. Prior to sale, the seller shall verify the age of the purchaser by checking a reliable form of identification, as may be prescribed.
- b. A seller of smokeless tobacco products or accessories shall place a clear and prominent sign inside the retail place of sale notifying consumers of the legal prohibition on sales of these products to persons under the age of 21 years.
2. A seller shall ensure that a smokeless tobacco product or accessory is not directly accessible to a retail consumer prior to the sales transaction.

Part VIII

3. A person responsible for the premises of a place of sale or of any public place shall not place or allow the placement of a vending machine or other self-service device for the sale of a smokeless tobacco product anywhere on the premises.
4. A person shall not sell or arrange for the retail sale, payment or delivery of a smokeless tobacco product or accessory through any means by which the purchaser and seller are not in the same physical location. This includes but is not limited to sales by mail, through the internet, or through other remote means.

[Note: Internet sales are considered by the Guidelines for implementation of Article 13 of the WHO FCTC to be a form of advertising and promotion, so the Schedule providing examples of advertising, promotion and sponsorship includes internet sale. As a result, any penalty applicable for a violation of this provision would need to be consistent with any penalty provided in Chapter V on tobacco advertising, promotion and sponsorship, to prevent conflicting penalties.]

5. For purposes of sub-article (4), a person in the tobacco trade shall not be considered a consumer.
6. A person shall not sell or permit the sale of a smokeless tobacco product anywhere on the premises of an educational facility at any level of instruction, a facility or premises that caters to minors, such as playgrounds or amusement parks, or other prescribed facility or premises, or within ___ metres of the property boundary of those premises, or any other premises prescribed by the Minister *[Note: or other appropriate authority]*.
7. The Minister *[Note: or other appropriate authority]* may prescribe additional requirements related to the sale of smokeless tobacco products and accessories in furtherance of the objectives of the Act.

Part VIII – Education, public awareness and cessation services

Article 20. The Minister *[Note: and any other appropriate ministries or authorities]* shall develop and institutionalize multisectoral programmes, strategies and training in collaboration with educators, health workers, community workers, social workers and their institutions, civil society organizations and other persons, as appropriate, to –

1. promote and strengthen education and public awareness of the health, economic, social and environmental harms caused by smokeless tobacco use and nicotine addiction;
2. develop and disseminate evidence-based guidelines and take effective measures to promote cessation and adequate treatment for nicotine dependence in order to facilitate cessation;
3. provide for training and integration of cessation in various health programmes;
4. carry out any other appropriate interventions to promote education, awareness and cessation; and
5. monitor and evaluate implementation and effectiveness of interventions undertaken to implement the requirements of this article, and make the results publicly available.

Part IX

Part IX – Contents and emissions regulation and disclosure requirements

Article 21.

1. Persons shall not manufacture, import or sell a smokeless tobacco product that –

- a. has a characterizing flavour or that contains any concentration of flavouring or mixture that exceeds an amount as may be prescribed by the Minister;
 - b. contains an additive or mixture with properties associated or likely to be associated with energy or vitality, a health benefit or reduced health risk, such as amino acids, caffeine, taurine and other stimulants, vitamins and minerals;
 - c. is represented directly or indirectly or suggested as containing any such additives or having any of the properties specified in sub-article (a) or (b);
 - d. contains an additive or mixture with colouring properties;
 - e. has any feature allowing the addition or modification of a smell or taste of the product by the user;
 - f. is represented directly or indirectly, including through words, images, pictures, symbols, smells, colours, or other signs or signals on or inside the packaging or on the product, as having any of the additives, properties or features described in sub-articles (a)–(e).
2. Persons shall not manufacture, import or sell, or make available in the course of their business an ingredient or mixture specified in sub-article (1) that is –
 - a. produced for use with, or produced to be added by the user or other person to, a smokeless tobacco product; or
 - b. directly or indirectly represented as being for the purpose specified in sub-article (a).
 3. A person shall not use tobacco in the production or preparation of a food item, or for use with a food item.
 4. The Minister *[Note: or other appropriate authority]* may prescribe requirements for the comprehensive regulation of smokeless tobacco products with respect to –
 - a. contents and emissions;
 - b. design features;
 - c. attractiveness;
 - d. testing of the products and the methods to be used in testing for conformity with requirements;
 - e. any other requirements for effective regulation of smokeless tobacco products' toxicity and addictiveness, or otherwise in furtherance of the objectives of the Act.

Article 22.

1. Manufacturers and importers of smokeless tobacco products shall submit prescribed information, periodically and upon request, to the Minister *[Note: or other appropriate authority]* on contents and emissions, design features, testing methods, testing conformity results and any other information as may be prescribed by the Minister *[Note: or other authority]*.
2. Manufacturers and importers shall submit the prescribed information in sub-article (1) in accordance with the method, manner, form, timing and frequency prescribed.
3. The Minister shall make information from the reports readily accessible to the public in a timely manner, subject to exclusion of particular information that is legally mandated, if any, or that might be misleading or promotional in nature.

Part X

Part X – Protection of tobacco control policies

[Note: The following measures to implement Article 5.3 of the WHO FCTC apply to the tobacco industry and is not limited to the smokeless tobacco industry, and should be considered and developed in the context of other relevant tobacco control laws in the country's legal framework.]

Article 23. Government shall protect tobacco control policies from the commercial and other vested interests of the tobacco industry, including the smokeless tobacco industry.

Duties of persons involved in the formulation and implementation of tobacco control measures

Article 24.

1. Persons involved in the formulation and implementation of tobacco control measures -
 - a. shall interact with the tobacco industry or any entity or individual working on behalf of the industry only when strictly necessary for effective regulation of the industry or its products, and only to the extent necessary;
 - b. shall ensure interactions and contacts covered under sub-article (a) are transparent, including by –
 - i. providing advance public notice of any meeting or other interaction or contact, unless advance notice would jeopardize regulation of the industry or products;
 - ii. creating a record of any meeting, interaction or contact and making information from the record publicly available in a timely manner, subject to the exclusion of particular information that would jeopardize effective regulation or that is legally mandated, if any; and
 - iii. any other transparency measures as may be prescribed;
 - c. shall not accept or solicit any legal measure or policy drafted by or in collaboration with the industry, or any drafting assistance from the industry; and
 - d. shall not accept or solicit any involvement, financial or otherwise, by the industry in any manner in any initiative, campaign, programme or activity directly or indirectly related to tobacco control or public health.

Duties on all governmental and quasi-governmental institutions or bodies

2. A governmental or quasi-governmental institution or body, whether or not it has responsibility for tobacco control, and any natural or juridical person working on its behalf –
 - a. shall not engage in a partnership of any kind with the industry and shall correct any impression of a partnership with the industry that may have been created;
 - b. shall not provide any incentives or privileges to any person to establish or run a smokeless tobacco product manufacturing, wholesale distribution, import or retail business, or related to any phase of the production or marketing of tobacco or for growing tobacco, including subsidies, investment incentives, direct investments or loans, tax exemptions or favourable treatment, and research and development grants or loans;

[Note: If there are already privileges or incentives granted by a pre-existing law, that law would need to be amended or superseded by new legal provisions, as below. Any new laws generally granting subsidies, tax benefits, government procurement benefits, foreign direct investments or the like, would likely to need to exclude application of those benefits to the tobacco industry.]

- c. shall not make any investment in the industry and shall divest from any investment currently held; and
- d. shall not accept or solicit a contribution of any kind from the industry.

Prevention and management of conflicts of interest

3. The _____ *[Note: specify any body having authority over all of government, or authorities if there is no single body with such authority]* shall take all necessary actions to prevent and manage industry-related conflicts of interest by individuals with responsibility for tobacco control, including conflicts related to previous, concurrent and post-government service with respect to –
 - a. occupational activity;
 - b. financial or business interests; and
 - c. any other interests or activities that give rise to, or may give rise to, a conflict of interest or an appearance of a conflict of interest.
4. Actions referred to in sub-article (3) shall include formulating and implementing practices, such as screening and disclosure requirements, contractual obligations, and policies and procedures, guidelines and other measures to prevent and manage conflicts of interest.

[Note: Measures to prevent and manage conflicts of interests might include, for example, requiring a waiting period before a person may undertake government service with responsibility for tobacco control; imposing appropriate limitations on participation in decisions or actions while engaged in occupational activity with responsibility for tobacco control; or any other limitations.]

Industry reporting requirements

5. Tobacco manufacturers, importers and wholesale distributors shall submit periodic reports to the Minister *[Note: or other appropriate authority]* containing information on their activities, practices, products, and other information as prescribed.

[Note: The recommendations in the Guidelines for implementation of Article 5.3 of the WHO FCTC include requiring submission of information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities not prohibited or not yet prohibited under Article 13 of the WHO FCTC.]
6. The Minister shall make information from the reports readily accessible to the public in a timely manner, subject to exclusion of particular information that is legally mandated, if any, or that might be misleading or promotional in nature.

State ownership of the tobacco industry [where applicable]

[Note: In countries where there is state ownership of the tobacco industry, provisions should be made in the applicable law for the state to: (1) relinquish its ownership interest or, at a minimum, separate tobacco control policy functions from the functions of overseeing or managing the tobacco industry; and (2) ensure that representatives from the state-owned industry are not members of the state's delegations to any meetings of the Conference of the Parties, its subsidiary bodies, or other bodies established by decisions of the Conference of the Parties.]

Part XI

Part XI – Penalties for non-compliance**Article 25. Availability of penalties**

[Note: Penalties should reflect the country's legal requirements, customs and practices, following a clear establishment of offences. Penalties should be effective, proportionate and dissuasive. Effective sanctions can include warnings for first-time minor violations, licensure sanction for serious or repeated violations, fines, confiscation and destruction of non-compliant products using environmentally friendly means, and, where justified, civil and criminal liability of corporate entities and their officers. Penalties should be graded in accordance with the duty of the person involved in a violation and that person's ability to control the circumstances that gave rise to the violation. For example, a manufacturer that violates packaging requirements should be held to a higher degree of responsibility and culpability and penalized more severely than a retailer who sells the product in non-compliant packaging. Similarly, the initiator of tobacco advertising, promotion and sponsorship should be held to a higher degree of responsibility and receive a more severe penalty than others in the marketing chain. Penalties should increase for repeated and ongoing offences. Publication of violations could also be undertaken.]

Part XII

Part XII – Miscellaneous**Evaluation**

Article 26. The Minister *[Note: or other authority or authorities]* shall periodically monitor and evaluate the effectiveness of the Act, including the effectiveness of the inspection and enforcement activities. Information on monitoring and evaluation shall be made readily accessible to the public.

Civil society participation

Article 27.

1. In implementing this Act, the Minister *[Note: or other authority or authorities]* shall promote the participation of civil society not affiliated with the tobacco industry.
2. Any person may file a complaint about any violation of the Act or its implementing regulations, and the responsible government authority or authorities shall establish institutional channels for the presentation of and action upon such complaints.

[Note: A tobacco control law could also address the establishment of a tobacco control or public health fund.]

Authority to make regulations

Article 28. Without prejudice to the regulatory authority granted in other parts of this Act, the Minister *[Note: or other appropriate authority]* may make regulations –

1. that are necessary or appropriate to further the objectives of the Act or to fulfil the government's obligations under the WHO FCTC and related international and regional commitments aimed at improving health, environmental, social or development outcomes for which tobacco- or nicotine-caused harms are contributing factors; and
2. for any consequential, incidental, supplementary or transitional provisions relating to the provisions of this Act.

Part XIII

Part XIII – Concluding clauses

[Note: These may include repeals, amendments to other Acts, transitional provisions and other customary clauses.]

SCHEDULE**Indicative and not-exhaustive list of the forms, media and means of advertising, promotion and sponsorship under Part V the Act**

1. Communication through audio, visual or audiovisual means, such as print (e.g. newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters and signs), television and radio (including terrestrial and satellite), streaming content, films, DVDs, videos and CDs, games (e.g. computer games, video games and online games), other digital communication platforms (e.g. the internet, mobile phones and mobile phone applications), and theatre and other live performances
2. Communication through digital sharing platforms, including paid product promotions, sponsored event promotions, competitions, boosting of promotional content by content hosts, influencer paid promotions, and industry corporate (branded) promotion
3. Direct person-to-person communications
4. Brand-marking at entertainment venues and retail outlets and on vehicles and equipment or fixtures, such as by use of words, designs, images, sounds, colours, brand names, trademarks or logos, and any other indicia associated or likely to be associated with tobacco products, manufacturers, importers or wholesalers
5. Display of smokeless tobacco products at retail points of sale
6. Sales of smokeless tobacco products through vending machines
7. Sales of smokeless tobacco products through the internet, telecommunications or any evolving technology-based modes of sale
8. Use of a smokeless tobacco product brand name, emblem, trademark, logo, trade insignia or any other distinctive feature, in whole or in part, including colour combinations, on or in connection with a non-tobacco product or service in such a way that the smokeless tobacco product and the non-tobacco product or service are likely to be associated
9. Use of a brand name, emblem, trademark, logo, trade insignia or any other distinctive feature, in whole or in part, including colour combinations, of a non-tobacco product or service in connection with a smokeless tobacco product manufacturer, importer or wholesaler in such a way that the smokeless tobacco product or company and the non-tobacco product or service are likely to be associated
10. Product placement, such as the inclusion of or reference to a smokeless tobacco product, service or trademark in the context of communication in return for payment or other consideration
11. Provision or offer of gifts or discounted products, such as key rings, T-shirts, baseball caps, cigarette lighters, CDs, other trinkets, or tobacco products, in connection with the purchase of a smokeless tobacco product or accessory
12. Supply or offer of free samples of a smokeless tobacco product or accessory, including in conjunction with marketing surveys and taste-testing
13. Incentive promotions or loyalty schemes, such as redeemable coupons provided with the purchase of a smokeless tobacco product or accessory

14. Competitions associated with smokeless tobacco products or their brand names, whether requiring the purchase of the product or not
15. Direct targeting of individuals with promotional material, including informational material, such as direct mail, telemarketing, consumer surveys or research
16. Promotion of discounted products
17. Sale or supply of toys or sweets or other non-tobacco or non-nicotine products that resemble tobacco products
18. Payments or other contributions of any kind to retailers aimed at encouraging or inducing them, or having the effect or likely effect of encouraging or inducing them, to sell smokeless tobacco products or accessories, including retailer incentive programmes such as those that provide rewards to retailers for achieving certain sales volumes
19. Promotional packaging and product design features
20. Payment or other consideration in exchange for the exclusive sale or display of a particular smokeless tobacco product or accessory, or a particular manufacturer's product, in a retail outlet or at a venue or an event
21. Sale, supply, placement or display of smokeless tobacco products at educational establishments or at hospitality, sporting, entertainment, music, dance and social venues or events
22. Provision of financial or other support to events, activities, individuals or groups, such as sporting or arts events, individual sportspeople or teams, individual artists or artistic groups, welfare and other public interest organizations, government institutions or organizations, politicians, political candidates and political parties, whether or not in exchange for attribution, acknowledgement or publicity, including corporate social responsibility activities of any kind
23. Provision of financial or other support to venue operators such as, but not limited to pubs, clubs or other recreational venues, in exchange for building, renovating or decorating premises to promote a smokeless tobacco product or accessory, or the use or provision of awnings, sunshades or other items that promote such products
24. Tobacco advertising, promotion and sponsorship of smokeless tobacco products on digital media-sharing platforms, including but not limited to, direct product promotion through paid advertisements, influencer promotions, commercial promotions of posts by consumers of their own tobacco usage, event promotion, corporate and campaign promotions, tobacco use depictions embedded in commercial content where those depictions are not legitimate expression, product integration, sponsored news or infotainment content, or advertising promotion, and sponsorship of a device or devices that enable the consumption of tobacco products.
25. Any smokeless tobacco product or accessory advertising, promotion or sponsorship in any form and by any method or means

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