Title: Review of policy conflicts and coherence between WHO Framework Convention on Tobacco Control and WTO agreements

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ABSTRACT

Background and rationale: In 2010, the World Health Organization (WHO) estimated that there are 1.3 billion smokers in the world. In response to this emerging tobacco pandemic, the WHO promulgated in 2003 the Framework Convention on Tobacco Control (WHO FCTC), which came into effect on 27 February 2005. The global rise in tobacco consumption is mainly caused by global marketing and advertising, promotion and sponsorship from the Transnational Tobacco Companies, trade liberalization and direct foreign investment, and the international movement of counterfeit cigarettes. The WHO recommendations for comprehensive tobacco control programs are to some extent countered by the WTO’s trade agreements which prioritize trade over health.

Objectives of the study: The objective is to review the effects of WTO agreements on implementation of WHO FCTC and explore possible strategies for policy coherence between them.

- To describe documented effects of WTO agreements on WHO FCTC;
- To review documented dispute cases related to tobacco trade and tobacco control;
- To explore literatures on the use of WTO Agreements’ Health exception provision by countries and their evidence of protection for public health;
- To explore the challenges faced by countries in enforcing the WHO FCTC in presence of WTO agreements;
- To review possible strategies for policy coherence between the WHO FCTC and WTO agreements.

Methodology: The review study is based on the documentary research. The source materials were identified using a Boolean search in the following databases:

• Public access search engines such as Google scholar and Google web for WHO, WTO and World Bank reports, International conventions and agreements dated from 1947 to 2002. The Non English language papers and papers with only abstract and summary available were excluded. Altogether 300 documents were found relevant based upon the title of the document. Out of which, 154 most relevant documents were included after reviewing the entire content.

**Results:** The WHO FCTC provisions, such as tobacco taxation, clean indoor air, tobacco product content and emission disclosure, warning labels and packaging and a ban on tobacco advertising were found to in conflict with the WTO agreements. As a result, 9 disputes cases are registered into the Dispute Settlement Body of WTO from one country to other countries. Dispute cases were mainly related to discrimination between the domestic and foreign products. There were also claims made by big tobacco companies regarding the tobacco control measures adopted by the countries, arguing that such measures are inconsistent with the WTO principles. Despite the WTO declaration that there are provisions for protection of public health in the WTO agreements, its usefulness has been limited. There was only one case related to tobacco trade and tobacco control registered in the WTO health exception provision in 1990 when US claimed Thailand’s restriction on importation of cigarettes. But WTO’s requirement of non-discriminatory treatment between domestic and foreign products superseded health protection provision. In fact, the GATT’s health exception case had succeeded only once when France ban on importation of asbestos as there was not discrimination between like products and that was only measure to meet public health measures.

**Conclusion:** The WHO FCTC member states should enforce the tobacco control measures with consideration of the principles of WTO of non-discrimination and least trade restrictive measure. It is noticed from the dispute cases that tobacco control measures face challenges from WTO agreements if these principles of the WTO are not strictly followed. So there is possibility of policy coherence between WHO FCTC and WTO agreements if tobacco control measures do not impose arbitrary or unjustified discrimination or disguised restriction to international trade. There is also need of inter-institutional synchronization between WHO and WTO through joint committees on trade and health and improving the efficiency of the Inter-Agency Task Force for Tobacco Control. Cooperation within ministries of health, trade, commerce and finance at the national level and cooperation among countries is a must. Hazardous substances are excluded from trade agreements, there is ground to exclude tobacco from trade. Excluding tobacco from any form of trade agreement is justifiable due to its similar addictiveness as other narcotic substances and providing priority to health will be highlighted. This should be the ultimate goal of an effective tobacco control.

**Key words:** Tobacco control, trade, policy, coherence