

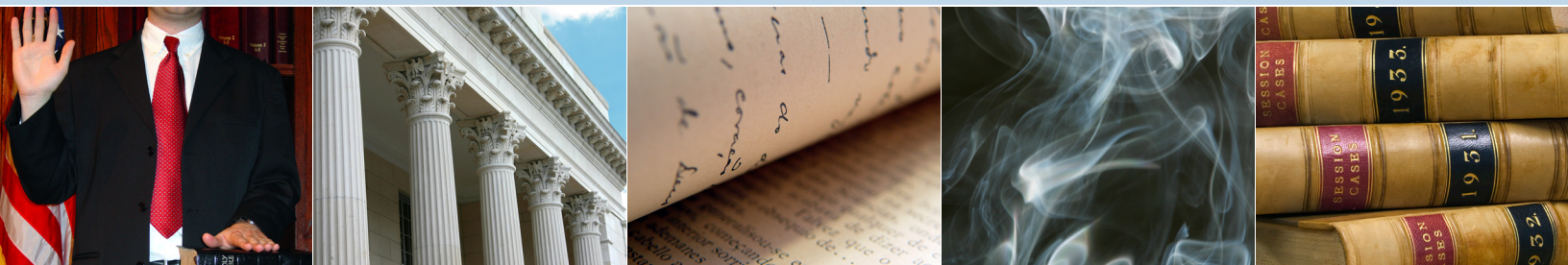
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Global Tobacco Control: What the U.S. Can Learn from Other Countries

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Tobacco Control
Legal Consortium



Law. Health. Justice.

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Global Tobacco Control: What the U.S. Can Learn from Other Countries

Leslie Zellers

I. Introduction

Although tobacco use is decreasing in the United States, globally the tobacco epidemic kills nearly six million people each year, with 80% of the deaths occurring in low- and middle-income countries. If trends continue, tobacco will kill more than eight million people each year by 2030.¹

Much of the U.S. success can be attributed to effective tobacco control laws, such as requiring smoke-free areas and increasing the tobacco tax. However, other countries have adopted far more effective and stringent tobacco control policies, such as graphic warnings, higher taxes, and comprehensive prohibitions on tobacco advertising and promotion. While not all of these policies may be legally feasible in the U.S., the experiences of other countries still offer insight on effective strategies as well as reactions by the tobacco industry. Imagine how the U.S. would look were the following laws in place:

- Tobacco sold in plain tobacco packages with no brand logos or colors (as in Australia)
- Pictorial warning labels covering 80% of the front and back of packages (as in Uruguay)
- No point-of-sale advertising (as in Thailand) or product displays at the point of sale (as in Norway)
- Completely smoke-free bars, restaurants, and even casinos (as in Panama)

This paper summarizes ten different tobacco control policy strategies in effect around the world as of June 30, 2013. Each section describes the particular strategy, highlights which countries are

implementing the strategy, discusses opposition to the particular strategy (usually from the tobacco industry), reviews any unintended consequences or challenges in implementing the policy, and finally, provides information on the strategy's effectiveness as a public health measure. In a few instances, information is not available on opposition, unintended consequences, or effectiveness.

Framework Convention on Tobacco Control

In 2005, the world's first public health treaty — the Framework Convention on Tobacco Control (FCTC) — was adopted. The FCTC was negotiated under the World Health Organization (WHO) and to date more than 170 countries have become parties. Although the United States signed the treaty in 2004, it has never ratified the FCTC and is not bound by its terms.²

The FCTC provides an internationally coordinated response to the tobacco epidemic and includes more than a dozen articles specifying both demand reduction and supply reduction strategies such as creating smoke-free places, requiring prominent health warnings on tobacco packages, and increasing tobacco taxes to reduce consumption.³ Although this publication references the Framework Convention's provisions when relevant, it is not limited to strategies required by the FCTC.

II. Tobacco Control Strategies

The following ten tobacco control strategies include four of the World Health Organization's package of six proven tobacco control demand reduction strategies known as MPOWER: **M**onitor tobacco use and prevention policies; **P**rotect



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people from tobacco smoke; **O**ffer help to quit tobacco use; **W**arn about the dangers of tobacco; **E**nforce bans on tobacco advertising, promotion, and sponsorship; and **R**aise taxes on tobacco.⁴

A. Tobacco Packaging

1. Graphic warning labels

As part of the 2009 Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), the United States finally mandated that graphic health warnings replace the U.S. Surgeon General’s textual warnings, which had appeared on tobacco packages since 1984.⁵ Unfortunately, due to a series of court challenges, these graphic warnings have yet to be implemented.⁶ The U.S. can learn from the experiences of other countries that require graphic health warnings that are larger and indeed more graphic than those originally proposed by the U.S. Food and Drug Administration.

Article 11 of the FCTC requires that package health warnings cover at least 30% (and preferably 50% or more), on average, of the package’s front and back. The use of pictures is optional.⁷ However, the WHO considers the most effective graphic warnings to cover at least 50% of the principal display area of the pack, to include seven specific warning criteria, and to prohibit the use of deceitful terms.⁸

a. Where it’s happening

The number of countries adopting picture-based health warnings for tobacco packages is rising rapidly, with approximately 50 countries mandating pictorial warnings.⁹ According to the WHO, as of 2010, 19 countries (representing 15% of the world’s population), meet the best practices for graphic health warnings, including the United States, even though the U.S. has not yet implemented these graphic warnings. People

in high- and middle- income countries are more likely to be protected by strong warning labels.¹⁰

Currently, Uruguay has the largest overall warning requirements, with 80% of the packaging covered.¹¹ Australia requires 75% of the front of the pack and 90% of the back covered (resulting in an 82.5% coverage). Thailand is set to increase the size of its graphic warnings to 85% of packs in late 2013. Sri Lanka is also planning to implement 80% warnings, pending regulations.¹² Canada, which was the first country in the world to require color package warnings, has strengthened its law from 50% to 75% coverage of the pack.¹³

Some countries, such as Argentina and Canada, require a toll-free number for smoking cessation help along with the color package warnings.¹⁴ Ecuador's new pictorial health warnings law also requires information about toxic emissions on 70% of a one-side panel.¹⁵

A number of websites reproduce actual pictorial graphic warnings.¹⁶ Thailand's are particularly explicit.

b. Opposition

The tobacco industry has attempted to block the adoption of graphic health warnings by arguing that such laws compromise its trademark rights under international treaties. The tobacco industry was successful in using this tactic to deter plain packaging laws in Australia and Canada, which helped delay large graphic warning labels for over a decade. In those countries, the tobacco industry publicly argued that international treaties would prohibit plain packaging laws, despite privately receiving legal advice that international treaties do not prohibit government limitation on the use of their trademarks.¹⁷ More recently, Thailand has been sued by Japan Tobacco, which claims that the country's plans for larger graphic health warnings violate the Thailand Constitution.¹⁸ Uruguay is also defending its graphic warning laws through international arbitration.¹⁹ In 2010, Philip Morris

International (PMI) filed a claim in the World Bank's [International Center for Settlement of Investment Disputes](#) claiming violations of the Switzerland-Uruguay bilateral investment treaty (PMI is based in Switzerland).²⁰ PMI claims that Uruguay's warning law harms the company's trademarks by limiting the amount of space on the cigarette package that can be devoted to the trademark.

c. Unintended consequences

If the tobacco industry is unsuccessful in blocking the adoption of graphic health warnings, it could end up offering stickers or pack sleeves to help smokers cover up the warnings. For example, British American Tobacco is furnishing stickers in packs of Dunhill cigarettes that say "exclusively Dunhill" and are exactly the size to cover the pack's health warnings. The company claims the sticker is only designed to help keep the pack fresh.²¹ Australia and New Zealand have seen the appearance of sleeves to cover cigarette packs.²²

Another tactic is to introduce cigarette packs in different shapes and designs to reduce the effects of the health warnings, as in Malaysia, where the law does not require a minimum pack size. In Malaysia, tobacco companies also have added colorful graphic designs on the bottom half of the pack to distract viewers from the health warnings, taking advantage of the unrestricted use of colors and designs.²³

d. Impact

Large pictorial health warnings have a broad reach and have been shown to be effective in communicating the risks of tobacco use to smokers and non-smokers. Data from a variety of studies found that more smokers reported getting information about the risks of smoking from cigarette packages than from any other source except television.²⁴ Picture-based warnings are especially important in developing countries where there are higher rates of illiteracy and low literacy.²⁵

Additionally, effective warnings have been associated with reduced tobacco consumption, an increased likelihood of quitting, increased use of cessation services, and long-term abstinence among former smokers. Large graphic warnings also may discourage youth from smoking.²⁶ For example, a study of Singapore's graphic health warnings found that, because of the warnings, 28% of the smokers surveyed reported smoking fewer cigarettes; 14% said that they tried to avoid smoking in front of children; and 8% said that they smoked less at home.²⁷

To be effective, warnings should be large, feature graphic images (such as depictions of disease), and be rotated. Text warnings, such as those currently used by the United States, are significantly less effective than large warnings with pictures.²⁸

2. Plain packaging requirements

Even in countries with large graphic warnings, the industry continues to have influence through its brand imagery on the package. The next step in reducing the impact of the tobacco package itself is to remove tobacco logos, brands, and colors from the packaging, leaving only a "plain" package with the name of the product (brand) and the health warnings.

a. Where it's happening

The first country to adopt plain packaging requirements was Australia, whose law took effect December 1, 2012. New Zealand has announced its intention to follow Australia by introducing a similar law, although it will delay implementation until Australia's legal issues are resolved (see below).²⁹ Ireland has announced it will become the first European Union country to tackle the issue.³⁰ France, India, South Africa, the United Kingdom, and the European Union are also considering stricter packaging laws for tobacco products.³¹

b. Opposition

Reflecting the vehemence of the tobacco companies on this issue, Australia's plain packaging law was challenged immediately by Japan Tobacco International and British American Tobacco, which were later joined by Philip Morris Ltd. and Imperial Tobacco. The tobacco companies argued that the law unlawfully takes their property since the packages were no longer allowed to feature brand imagery, logos, or colors. In August 2012, Australia's High Court ruled in favor of the Australian government, finding that the law did not violate Australia's constitution, and the law is currently in effect.³²

Additional legal challenges are pending by Philip Morris under the Australia-Hong Kong Bilateral Investment Treaty and by a number of countries in the World Trade Organization.³³ Ukraine, Honduras, the Dominican Republic and Cuba, among others, have filed a dispute with the WTO claiming that plain packaging threatens their international property by preventing the use of trademarks and designs on the packaging.³⁴

Opponents of plain packaging laws (specifically the tobacco industry) have raised a number of arguments, including that: counterfeiting will be easier, black market sales will increase, customers will face longer retrieval times at the point of sale, and staff mistakes are likely to increase due to the difficulty in recognizing and distinguishing among brands.³⁵ Two recent studies in *Tobacco Control* have disputed the latter claims, showing that retrieval times for tobacco products have not increased.³⁶ Another study predicts, if anything, a decrease in transaction time and mistakes with plain packaging.³⁷

c. Unintended consequences

As with any new tobacco control law, tobacco companies are already looking for ways to subvert the restrictions. For example, one company is creating wraparound stickers to go on ciga-

rette packs as a way to foil the plain packaging law.³⁸ Additionally, advocates are worried about manufacturers changing the package design and package openings to increase the attractiveness of the pack and distract from the health warnings.³⁹

d. Effectiveness

The impact of plain packaging laws is not yet known. However, one study in France found the plain packs may be more likely than regular branded packs to promote cessation among adult smokers who are motivated to quit.⁴⁰ In a Canadian study, one quarter of the Ontario students surveyed said that young smokers would smoke less and one third said that young nonsmokers would be less likely to start if all cigarettes were sold in plain packages.⁴¹ Plain packages also may lead to a better recall of health warnings.⁴²

B. Advertising, Marketing, and Promotion

1. Comprehensive advertising limits

The United States has successfully eliminated a few key types of tobacco advertising, such as television ads and most billboards, and limited others, such as sponsorship. However, because of the protections contained in the First Amendment to the U.S. Constitution, more comprehensive ad restrictions are unlikely. Other countries have experienced much greater success in prohibiting tobacco advertising, promotions, and sponsorship, including advertising at the point of sale, advertising in magazines, and product placement in movies.

Article 13 of the FCTC requires parties to undertake a “comprehensive ban of all tobacco advertising, promotion, and sponsorship.”⁴³ The theme for the 2013 World No Tobacco Day was to ban tobacco advertising, promotion, and sponsorship.⁴⁴ Enforcing bans on advertising, promotion, and sponsorship is part of the WHO’s MPOWER package of six proven policies (the “E” standing for Enforce).

a. Where it’s happening

As of 2010, 19 countries with 425 million people, representing 6% of the world’s population, had comprehensive laws to fully prevent tobacco industry marketing tactics. An additional 101 countries prohibit national television, radio and print tobacco advertising, as well as some but not all other forms of direct and/or indirect advertising. Only 7 of the 19 countries with comprehensive advertising prohibitions were rated as having “complete” enforcement.⁴⁵

The WHO best practice is to prohibit all forms of “direct” and “indirect” advertising. Direct advertising is defined by the WHO as advertising on national television and radio; local magazines and newspapers; billboards and outdoor advertising; and point of sale. Indirect advertising is defined by the WHO as the free distribution of tobacco products in the mail or through other means; promotional discounts; non-tobacco goods and services identified with tobacco brand names (brand extension); brand names of non-tobacco products used for tobacco products; appearance of tobacco products in television and/or films; and sponsored events.⁴⁶

Other strong laws (which include prohibiting some but not all indirect advertising) can be found in Australia, Singapore, New Zealand, and most of Western Europe. In comparison, the U.S. was rated at the lowest level, indicating the complete absence of a ban or a ban that does not cover national television, radio, and print media.⁴⁷

In 2008, Panama became the first country in the Americas to prohibit all advertising, promotion and sponsorship of tobacco products. The law completely prohibits all forms of direct or indirect tobacco advertising and promotion, including product placement in television and movies, and promotional price discounting.⁴⁸

Turkey has a law prohibiting nearly all tobacco advertising, promotion and sponsorship. The law

contains a few exceptions, such as for internet sales by authorized dealers and for point-of-sale advertising which cannot be seen or accessed by minors.⁴⁹ In 2012, Turkey amended its laws to limit “brand stretching” (where a tobacco brand is connected with a non-tobacco product) and “brand sharing” (where a non-tobacco product brand is connected with a tobacco product.)⁵⁰

The WHO considers sponsorship of events by tobacco companies to be a form of indirect advertising. A European Union directive prohibited the display of tobacco advertising in motor racing and other sports in 2005.⁵¹ Despite this directive, Marlboro has continued to sponsor a Formula 1 team, using red colors and barcode designs to evoke its brand.⁵² Tobacco sponsorship remains a problem at other events. In Indonesia, tobacco control advocates enlisted the media as active partners creating negative publicity, which helped tobacco sponsorship to be withdrawn for concerts by singers such as Alicia Keys and Kelly Clarkson.⁵³

When tobacco sponsorship of sports and other events is prohibited, tobacco companies often still participate in corporate social responsibility (CSR) programs to promote their organizations. CSR campaigns can take the form of scholarships, donations to nonprofits, or event sponsorship in the corporate versus the brand name. Article 5.3 of the FCTC encourages countries to regulate CSR campaigns and some countries have done so. For example, Mauritius and Namibia have prohibited tobacco industry CSR campaigns by law.⁵⁴ Other countries, like Vietnam, have restricted CSR activities to certain causes, such as hunger eradication, poverty reduction, and the prevention and control of natural disasters. Vietnam’s law also prohibits publicizing these campaign contributions in the media.⁵⁵

b. Opposition

Because advertising is critical to maintaining and increasing tobacco sales, tobacco companies

are fiercely protective of their rights in this area. In South Africa, British American Tobacco waged a multi-year war against the country’s advertising law, ultimately losing in 2012.⁵⁶ In the United States, tobacco companies have aggressively challenged local, state, and federal limits on tobacco advertising, including a challenge to the Tobacco Control Act’s limits on tobacco marketing and sponsorship.⁵⁷

c. Unintended consequences

Tobacco companies have been particularly creative in subverting or exploiting loopholes in tobacco advertising laws through the use of new media, brand stretching, event promotion, retailer incentives, sponsorship and advertising through international media, cross-border advertising, and promotional packaging.⁵⁸

For example, in Lebanon, companies have been using cigarette brand colors and designs to maintain an association with their product after a law prohibiting tobacco advertising took effect in 2012.⁵⁹ When South Africa prohibited tobacco advertising in 1999, cigarette companies claimed a loophole allowed them to continue advertising via social media and direct promotions, such as “cigarette parties” and viral or “buzz” marketing, which were particularly effective at reaching youth. Eventually, the law was amended to directly prohibit such marketing activities.⁶⁰

As with other tobacco control issues, enforcement of advertising limits is critical. In 2011, Marlboro ads appeared in several newspapers and magazines in Pakistan, exceeding the law’s size limit and failing to carry the required health warnings of at least one-fifth of the total ad. In response, tobacco control officials in Pakistan sued Philip Morris for violation of the country’s advertising law. A magistrate found that Philip Morris had violated the law. Although the resulting fine was miniscule (approximately \$50 US) the action demonstrated Pakistan’s commitment to enforcing the law.⁶¹

d. Impact/effectiveness

Laws prohibiting tobacco advertising, promotion and sponsorship can reduce tobacco consumption. A law prohibiting all tobacco advertising, promotion and sponsorship could decrease tobacco consumption by an average of about 7%, with some countries experiencing a decline in consumption of up to 16%.⁶² Comprehensive limits on tobacco advertising, marketing, sponsorship, and promotion are effective at reducing overall smoking rates.⁶³ Partial restrictions are less effective because tobacco companies redirect their marketing efforts to other available venues. Voluntary agreements are also inadequate because they are unenforceable.⁶⁴

2. Point of Sale

Once traditional forms of tobacco advertising, such as television, magazines, and billboards, are eliminated, tobacco companies have focused increased attention at the point of sale. In the U.S., tobacco industry spending on advertising has continued to increase, with an overwhelming 83.6% of the \$8.37 billion spent by cigarette companies in 2011 going to price discounts. An additional \$357 million was spent in 2011 on promotional allowances to retailers for the sale or placement of cigarettes, such as payments for stocking, shelving, displaying, and merchandising brands.⁶⁵

Article 13 of the FCTC includes point-of-sale promotion among its best practices on advertising bans, including prohibitions of all tobacco advertising, promotion, and sponsorship at the point of sale, as well as the display of tobacco products at the point of sale.⁶⁶

a. Where it's happening

More than 50 countries completely prohibit advertising at the point of sale, including Ireland, New Zealand, Norway, Spain, Thailand, Turkey, and Venezuela.⁶⁷ In Norway, retailers may place a sign saying that tobacco products

are sold on the premises. New Zealand allows for a single price list.

Countries such as Australia, Brazil, and Canada partially limit tobacco promotions at the point of sale. For example, a number of states in Australia prohibit point-of-sale advertising and limit the display of tobacco packs to no more than one packet of each product line. Some countries, such as Canada and Ireland, prohibit the advertising and promotion of tobacco products except in stores that sell tobacco only and/or don't allow minors.⁶⁸

Fewer than 10 countries have passed laws to prohibit visible pack displays.⁶⁹ Ireland's display prohibition includes the label, container, wrapper or package used for the product. Thailand prohibits tobacco product displays at the point of sale except for duty-free shops for people leaving the country.⁷⁰

b. Unintended consequences

As with any effective tobacco control policy, tobacco companies will look for ways to subvert the restrictions. For example, after Victoria, Australia implemented a point-of-sale display law, some retailers used price boards to highlight particular brands.⁷¹ Additionally, a point-of-sale display law must be comprehensive. In Turkey, tobacco companies get around the point-of-sale law by constructing elaborate cases using brand colors to display hundreds of packs at a time.⁷²

c. Impact/effectiveness

A number of studies indicate that laws prohibiting point-of-sale tobacco displays result in lower exposure to tobacco marketing and less frequent impulse purchasing of cigarettes. For example, a review of point-of-sale tobacco marketing restrictions in Australia and Canada found smokers' reported exposure to tobacco marketing declined markedly in Australia compared to the U.S. and the U.K. where there were no such restrictions during the study period

(2006–2010). In Canada, the percentages noticing point-of-sale tobacco displays declined from 74.1 to 6.1%, and reported exposure to point-of-sale tobacco displays decreased from 40.3 to 14.1%.⁷³ In Australia, research has found that policies to remove tobacco products from line of sight at the point of sale are highly likely to impact unplanned purchases.⁷⁴

In Norway, retailer compliance with the point-of-sale display law has been high. Consumers believe that the restriction could help prevent smoking initiation among young people and to some extent also support cessation efforts.⁷⁵ A study in Ireland also found high compliance (97%) with a 2009 law prohibiting point-of-sale tobacco displays immediately following implementation.⁷⁶ Support for the law was significant and increased after implementation. The study found signs that the law helped to denormalize smoking as 14% of adults thought the law would make it easier to quit smoking and 38% of teenagers thought the law would make it easier for children not to smoke.⁷⁷

C. Smoke-free Laws

There is no safe level of exposure to secondhand tobacco smoke. More than 600,000 people die each year due to exposure from secondhand smoke.⁷⁸ When smoke-free areas are created, levels of smoke exposure are more than 90% lower than in areas where smoking is permitted.⁷⁹

Article 8 of the FCTC requires parties to adopt and implement measures to provide “protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.”⁸⁰ Protecting people from tobacco smoke is also one of the WHO’s set of six proven tobacco control policies known as MPOWER (the “P” stands for **P**rotect People from Tobacco Smoke).⁸¹

1. Where it’s happening

According to the WHO, 31 countries have comprehensive smoke-free laws as of 2010, which it defines as *all* public places completely smoke-free or at least 90% of the population covered by complete state or local smoke-free laws.⁸² Visitors and residents of these countries can enjoy smoke-free bars, restaurants, and pubs. Of these 31 countries, 10 have been rated as having “complete” enforcement.⁸³ Although the U.S. has many strong state and local smoke-free laws, as a country the U.S. is ranked in the lowest category with only two or more public places required by law to be smoke-free out of eight categories: health-care facilities; universities; educational facilities other than universities; government facilities; indoor offices and workplaces; restaurants or facilities that serve mostly food; pubs and bars or facilities that serve mostly beverages; and public transport.⁸⁴ Other countries with the same ranking include Sweden and Belize. In contrast, Canada is rated as having a comprehensive smoke-free law.

Many of the completely smoke-free countries are in Europe although Latin America has recently had a great deal of success in adopting comprehensive smoke-free laws. In 2004, Ireland was the first country to require smoke-free indoor workplaces, including restaurants, bars, and pubs. Norway and New Zealand followed shortly thereafter with similar laws. In Africa, Uganda and Niger also have comprehensive smoke-free laws.⁸⁵ Uruguay was the first Latin American country to pass a law requiring all public places to become smoke-free. The 2006 Uruguay law prohibits smoking in public places and workplaces, including restaurants, bars, and casinos.⁸⁶

Some countries are going beyond traditional smoke-free laws to accommodate recent trends. For example, Turkey has recently prohibited the smoking of hookah in public places.⁸⁷

2. Opposition

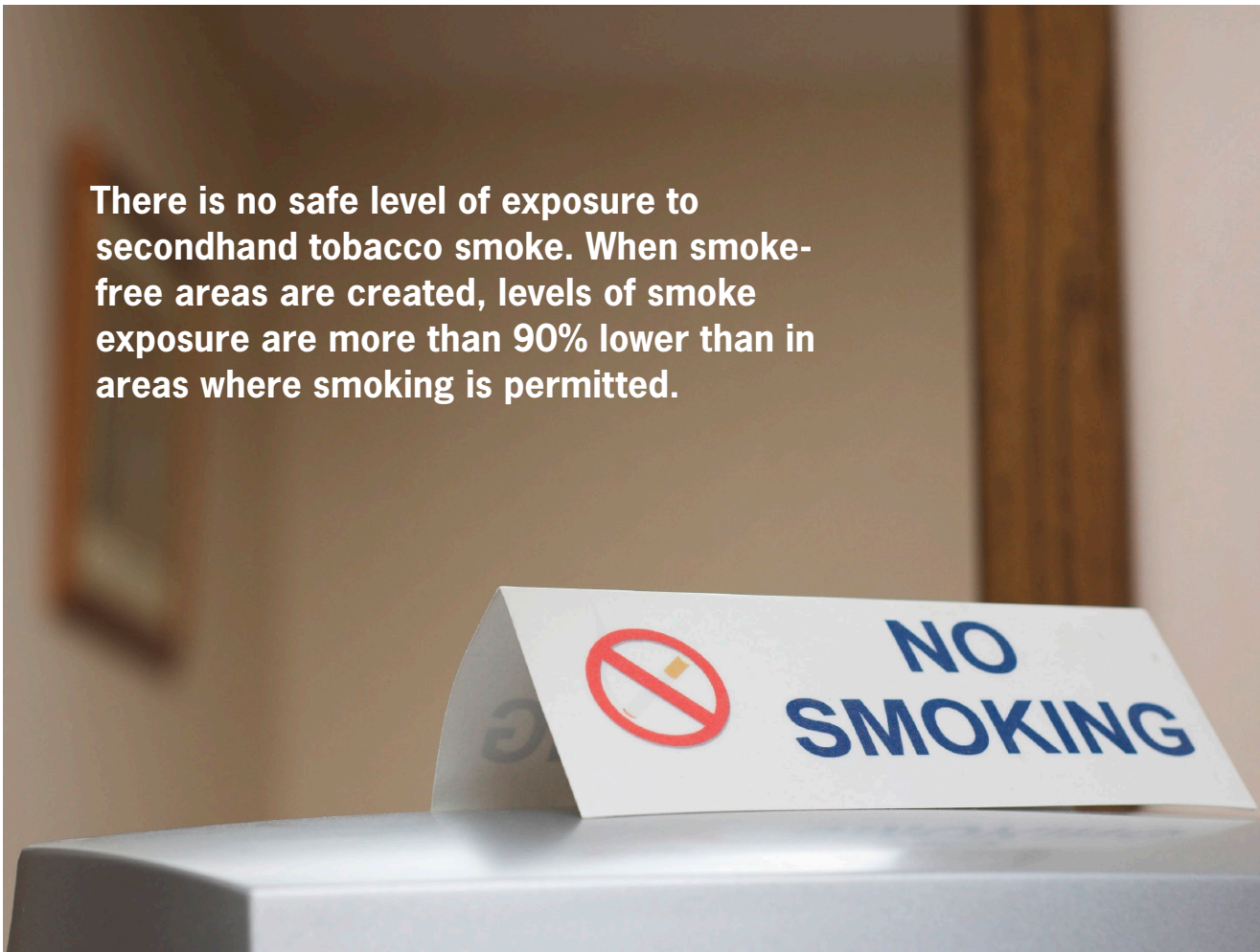
The arguments outside the U.S. that are raised against smoke-free policies will sound familiar to U.S. tobacco control advocates. These arguments include claims that such policies are not supported by the public, that enforcing compliance with the policies would be difficult, that businesses would lose revenue as a result of such policies, and that ventilation standards are sufficient to protect the health of both customers and employees. Researchers have successfully countered each of these arguments, finding that the vast majority of the population prefers smoke-free places, compliance with policies is generally high, businesses do not lose revenue because of such policies, and ventilation systems do not eliminate the health risks posed by secondhand smoke exposure.⁸⁸

Additionally, the tobacco industry has used a variety of techniques to weaken and delay smoke-free laws, including conducting their own research to contest the harmful effects of secondhand smoke, endorsing weak ventilation standards, and advocating for smoking sections to “accommodate” smokers.⁸⁹

3. Unintended consequences

Partial restrictions are not effective in protecting people from exposure to secondhand smoke. For example, Spain’s smoke-free law contained a significant exception for bars, pubs, taverns, restaurants, and hotels. Known as the “Spanish model,” such an approach was advocated by the tobacco industry in other countries. Data has shown that Spain’s law was not effective. In a study conducted two years after the law was

There is no safe level of exposure to secondhand tobacco smoke. When smoke-free areas are created, levels of smoke exposure are more than 90% lower than in areas where smoking is permitted.



implemented, nicotine levels were significantly higher (by 40%) than before the law was implemented in places that allowed smoking such as bars and restaurants.⁹⁰ As of January 2011, the exception in Spain's law was eliminated and a new comprehensive law was finally implemented.⁹¹

Enforcement of smoke-free laws is also critical. Countries such as China, India, and Russia have seen weak enforcement, which undermines the effectiveness of their laws.⁹²

4. Impact/effectiveness

Smoke-free laws have been shown to decrease exposure to secondhand smoke by 80% to 90% in high exposure settings and lead to overall decreases in exposure of up to 40%.⁹³ Research has consistently shown that smoke-free laws reduce exposure to secondhand smoke in workplaces, restaurants, pubs, and public places.⁹⁴ For example:

- In Turkey, exposure to secondhand smoke fell by 77% in restaurants — from 55.9% in 2008 to just 12.9% in 2012.⁹⁵ Turkey saw a 20% drop in smoking-related hospital admissions following implementation of its smoke-free law in 2008.⁹⁶
- In the three years following the implementation of Ireland's smoke-free law, reductions in exposure to secondhand smoke prevented almost 4,000 deaths, including a 13% reduction in deaths from all causes, a 26% reduction in deaths from ischemic heart disease (IHD), a 32% reduction in deaths from stroke, and a 38% reduction in deaths from chronic obstructive pulmonary disease (COPD).⁹⁷
- In Toronto, Canada, a smoke-free law for bars implemented in 2004 led to a 68% reduction in urinary cotinine levels of bar workers.⁹⁸
- In New Zealand, comprehensive smoke-free legislation enacted in 2004 appears to have reduced exposure of bar patrons to secondhand tobacco smoke by approximately 90%.⁹⁹

- A study in Uruguay found a significant drop (17%) in hospital admissions for acute myocardial infarction after implementation of Uruguay's smoke-free law.¹⁰⁰

D. Tobacco Taxes

Raising the price of tobacco products through tobacco tax increases is one of the most effective tobacco control strategies. An increase in tobacco prices encourages existing smokers to quit or cut down and deters youth from beginning smoking.¹⁰¹ Higher taxes also increase government revenue, which can be devoted to tobacco control efforts as is done in several U.S. states, such as California.

Raising tobacco taxes is part of Article 6 of the FCTC and is one of the WHO's MPOWER package of six proven policies (the "R" stands for **R**aise Taxes on Tobacco). The WHO recommends that at least 75% of the retail price of tobacco products come from excise taxes.¹⁰² The World Bank recommends that countries should attain tax rates of at least two-thirds to four-fifths of the retail price of tobacco products.¹⁰³

Best practices in tobacco taxes include: a simple tax structure (rather than imposing different rates based on price or product characteristics), increasing taxes regularly to keep up with inflation and purchasing power, and earmarking a portion of tobacco tax revenues to support public health or tobacco control efforts.¹⁰⁴

1. Where it's happening

As of 2010, 26 countries and one territory met the WHO best practices for tobacco taxation, with a tax representing 75% or more of the retail price.¹⁰⁵ For reference, the tax rate in the U.S. is currently 45% of retail price. (This represents only the federal tobacco tax; state tobacco taxes increase this rate.) Many countries have demonstrated success in increasing government revenue and decreasing tobacco use through tax increases. For example:

- Between 1992 and 2011, the price of cigarettes in the United Kingdom increased more than 200%. During the same period, cigarette sales declined 51% and government revenue from tobacco taxes increased 44%. Adult smoking prevalence dropped from 27% in 2000 to 20% in 2010.¹⁰⁶
- Between 2005 and 2011, the price of cigarettes in Turkey increased by 195%. During the same period, cigarette sales dropped by 15.5% and government revenue increased by 124%.¹⁰⁷ Between 2005 and 2011, revenue from tobacco taxes increased by 124%, even as sales declined.
- In Thailand, tax increases between 1994 and 2007 raised cigarette excise taxes from 60% to 80% of wholesale price, increasing tax revenue from 20,002 million THB in 1994 to 41,528 million THB in 2007 even as consumption decreased.¹⁰⁸

Some countries use a portion of tobacco taxes to fund public health efforts. For example, a comprehensive tobacco control law in Vietnam created a tobacco control fund as of May 1, 2013. The fund is financed by a 1% levy on the pre-tax excise price of tobacco products; the levy increases in future years.¹⁰⁹ In Thailand, a 2% tax surcharge is devoted to the Thai Health Promotion Foundation, which supports a variety of health promotion programs.¹¹⁰

2. Opposition

A frequent argument by tobacco companies is that higher tobacco taxes will lead to an increase in smuggling, counterfeiting, and black market sales. This argument is generally overstated and experience has shown that tax increases still generate an increase in government revenue even if tax evasion increases. Governments that have strengthened their tax administration and enforcement capacities have the best chance of maximizing government revenue and minimizing tax evasion.¹¹¹

Another often-used argument against tax increases is the disproportionate impact that such taxes will have on low-income populations. While tobacco tax increases may have a higher impact on those with low incomes who continue to smoke, a counter-argument is that such populations stand to receive greater health benefits from quitting. Additionally, whether or not tax increases fall more heavily on low-income groups depends on how tobacco use changes among these groups in response to the tax increases.¹¹² For example, studies in high-income countries have found that people of low socioeconomic status are more responsive to price than those with higher incomes. However, similar studies in low- and middle-income countries have shown mixed results, with some studies finding little difference in the impact of the tax increase among people of different income levels.¹¹³

3. Unintended consequences

As with all tobacco control strategies, the industry will exploit any available loopholes. For example, if tobacco taxes are not equal on all types of tobacco products, tobacco companies can disproportionately lower the price of other tobacco products, such as roll-your-own or smokeless tobacco products. This was the case in Spain, where an increased tobacco tax aimed mainly at cigarettes led to fine-cut tobacco being offered at cheaper prices to attract smokers.¹¹⁴

4. Impact/effectiveness

More than 100 studies, including from low-income and middle-income studies, clearly demonstrate that tobacco excise taxes are a powerful tool for reducing tobacco use.¹¹⁵

According to the WHO, tobacco taxes are the most effective way to reduce tobacco use, especially among young people and poor people. A 10% increase in tobacco taxes decreases tobacco consumption by about 4% in high-income countries and by up to 8% in low- and middle-income countries.¹¹⁶

E. Comprehensive Laws

Some countries have taken a comprehensive approach to tobacco control, adopting multiple effective tobacco control strategies in a single law or in multiple laws over time. The U.S. Centers for Disease Control and Prevention recommends a comprehensive approach to tobacco control, including smoke-free policies, increasing the price of tobacco products, promoting cessation, and limiting minors' access to tobacco.¹¹⁷ The most comprehensive law passed in the U.S. — the Tobacco Control Act — does not address smoke-free areas.

1. Where it's happening

A number of countries have adopted and effectively implemented comprehensive tobacco control laws either as individual laws or as a package of laws adopted over time. Six of those countries are highlighted here.¹¹⁸

Uruguay: Uruguay has implemented a series of strong measures to reduce tobacco use, including a comprehensive law requiring smoke-free workplaces and public places, which extends to casinos; a prohibition of tobacco advertising, promotion, and sponsorships (except at the point of sale); and a number of tobacco tax increases (taxes currently make up 72% of the retail price of cigarettes). In 2010, Uruguay implemented the world's largest graphic warning labels, which cover 80 percent of the front and back of cigarette packs. Uruguay also prohibited deceptive cigarette labels such as "light" and "low-tar" and became the first country to limit each cigarette brand to a one-pack design.¹¹⁹

Thailand: Thailand's law requires smoke-free public places and workplaces with two exemptions: designated smoking areas in international airports and in areas where food and drink is not served for non-air-conditioned facilities serving food and/or drink. Thailand has one of the strongest tobacco marketing laws, including a prohibition of point-of-sale-advertising. Both

Thailand's smoke-free and advertising laws are strongly enforced. Thailand was an early adopter of graphic health warnings, which are now required on 55% of the front and back of each cigarette package.¹²⁰ The tax rate for cigarettes represents 69% of the retail price. The Thai government has announced that it will prohibit the sale of tobacco products to people under 20 years old and prohibit the addition of flavors to cigarettes.¹²¹

Turkey: Since July 2009 Turkey has outlawed smoking in all cafes, cafeterias, restaurants and bars, and strongly enforces these laws. Turkey has a law prohibiting all tobacco advertisement, promotion and sponsorship. Combined picture and text warnings are required on smoked tobacco products. Turkey has increased its tobacco tax, which is now 78% of the retail price of cigarettes.¹²²

Ireland: Ireland was the first country to require smoke-free indoor workplaces and public places, including restaurants, bars, and pubs. Ireland also prohibits advertising and promotion of tobacco products with a few limited exceptions, such as point-of-sale advertising at shops that sell only tobacco. Ireland plans to adopt plain packaging. Compliance with smoke-free and advertising laws is high. Graphic health warnings are required as of February 2013. Tobacco is taxed at 79% of the retail price.¹²³

Panama: Panama prohibits smoking in all indoor public places, indoor workplaces, and public transport as well as outdoor sports venues. Panama also has a law prohibiting all forms of tobacco advertising, promotion, and sponsorship, including point-of-sale advertising and pack displays. Enforcement of smoke-free and advertising laws is high. Graphic health warnings must cover 50% of the pack.¹²⁴

New Zealand: Smoking is prohibited in indoor workplaces and public places, with a few exceptions. There is a near comprehensive law prohibiting tobacco advertising and promotion, as well as the display of all tobacco products at

points of sale. Both the smoke-free laws and the advertising restrictions have a high level of compliance. Graphic warnings are required on 60% of the principal display areas and the sale of smokeless tobacco products is prohibited.¹²⁵

2. Impact/effectiveness

When fully implemented, comprehensive laws that address the major components of the FCTC have repeatedly been proven effective at reducing tobacco use.¹²⁶ For example, Uruguay's comprehensive tobacco-control campaign has been associated with a substantial decrease in overall prevalence of tobacco use by an estimated 3.3% per year from 2005 to 2011.¹²⁷ Countries, such as Brazil, Thailand, and Turkey that have adopted comprehensive laws also experienced dramatic declines in adult smoking.¹²⁸

F. Regulating the Tobacco Product

Many countries are also regulating the content of tobacco products or at least requiring disclosure of the content. Because of nicotine's addictiveness, researchers support reducing nicotine levels in tobacco products for public health goals.¹²⁹ In the U.S., the Food and Drug Administration has the authority to regulate the nicotine levels of tobacco products under the Tobacco Control Act, although the agency has yet to take action.¹³⁰

Articles 9 and 10 of the FCTC address the regulation of the contents and disclosures of tobacco products. These articles require parties to adopt laws or regulations to test the contents and emissions of tobacco products and to disclose the results of the tests on a regular basis.¹³¹ Mandatory reporting for all nicotine and tobacco products should include design components (such as filter ventilation level and paper porosity), tobacco constituents, emissions for combustible products, as well as measures of abuse liability.¹³²

A related idea is to prohibit the sale of certain types of tobacco or nicotine products. The U.S.

Tobacco Control Act prohibits the use of flavoring in cigarettes but it contains exceptions for menthol and for the use of flavors in other tobacco products such as little cigars and smokeless tobacco.

One of the world leaders in tobacco product regulation is Canada, which requires periodic emissions testing and emissions disclosure based on all characteristics of the tobacco product. Significantly, the Canadian regime requires a more intensive testing regimen than the ISO smoking machine testing protocol (which is not recognized as valid by the WHO since it can be manipulated by tobacco companies).¹³³

The European Union sets maximum limits for tar, nicotine, and carbon monoxide yields of cigarettes. This information must be disseminated to consumers, in part by listing the maximum yields for cigarettes on at least 10% of the surface area of the pack. Additionally, the European Union Directive requires the tobacco industry to report annually on the ingredients used in its products.¹³⁴

Singapore and Australia also set limits on tar and nicotine yields. Other countries, such as Canada, Brazil, and Venezuela, require tobacco companies to measure and report cigarette emissions data.¹³⁵ Seychelles and Mexico require the tobacco industry to submit information to the government on ingredients and emissions, measures of constituents, etc.¹³⁶

As a related public health strategy, some countries have outlawed the sale of certain types of tobacco or nicotine products. For example, Brazil and Chile made history recently by prohibiting the use of menthol and other flavorings in tobacco products.¹³⁷ (Brazil's law is on hold pending resolution of a tobacco industry lawsuit.) New Zealand prohibits the sale of smokeless tobacco.¹³⁸ The European Union outlaws the sale of certain forms of smokeless tobacco, such as snus (with an exception for Sweden)¹³⁹ and it plans to prohibit the use of menthol and other flavorings in cigarettes.¹⁴⁰

A number of countries are taking steps to address the proliferation of e-cigarettes. Brazil and Singapore outlaw the sale of e-cigarettes altogether.¹⁴¹ France is planning to prohibit their use in public places and the U.K. has announced its intention to regulate e-cigarettes as non-prescription medicine, similar to nicotine gum and patches.¹⁴² The European Union plans to classify certain e-cigarettes as medicinal products requiring approval prior to marketing.¹⁴³ In the U.S., the FDA has the authority to regulate e-cigarettes as tobacco products but it has yet to do so.¹⁴⁴

In what is believed to be a world first, a court in India issued an historic order stating that chemical nicotine is a poisonous substance and cannot be used in the two states affected by the ruling. The decision applies to chemical nicotine, which is added to products such as hookah, as opposed to naturally occurring nicotine in tobacco leaves.¹⁴⁵

G. Controlling Tobacco Industry Interference

As mentioned elsewhere in this paper, the tobacco industry has openly and aggressively opposed a variety of countries' tobacco control laws, which it believes will threaten its business. Some countries are taking steps to ensure that the industry does not interfere in public health efforts. Article 5.3 of the FCTC, which was created to protect tobacco control public health policies from commercial and other vested interests of the tobacco industry, backs these actions.

Article 5.3 is designed to prevent tobacco industry interference, such as attempting to hijack the political and legislative process; exaggerating the economic importance of the industry; discrediting proven science; and intimidating governments with litigation or the threat of litigation.¹⁴⁶ The Article 5.3 Guidelines recommend that countries:

- Raise awareness about tobacco industry interference with Parties' tobacco control policies;

- Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur;
- Reject partnerships and voluntary agreements with the industry (e.g., voluntary codes of conduct on industry-sponsored youth or public education campaigns);
- Avoid conflicts of interest for government officials and employees; and
- Require accurate and transparent information from the industry.¹⁴⁷

It is also important to monitor and enforce compliance with Article 5.3 and its Guidelines on an ongoing basis.

1. Where it's happening

Many countries have implemented Article 5.3 by actively prohibiting tobacco involvement in the development of tobacco control laws. For example, Colombia removed tobacco industry representatives from the negotiating table and ended up with a strong national bill that regulates smoking in public places; tobacco advertising, promotion and sponsorship; and tobacco packaging and labeling. Kenya codified Article 5.3 Guidelines in its Tobacco Control Act, preventing interference, collaboration, or consultation with the tobacco industry in the formulation and implementation of all tobacco control policies.¹⁴⁸ In Latvia and Lebanon, the tobacco industry was barred from participating in tobacco control policy development.¹⁴⁹ Other countries have included the text of 5.3 as part of tobacco control laws (e.g., Djibouti,¹⁵⁰ Burkina Faso,¹⁵¹ Philippines¹⁵²).

Additional strategies to implement Article 5.3 are to:

- Require lobbyists to register and hold them to a code of conduct (Australia¹⁵³ and Canada¹⁵⁴);
- Create conflict of interest policies for government officials, such as prohibiting the receipt

of gifts and services from the tobacco industry or prohibiting research funded by the industry (Australia, Brazil, and Serbia¹⁵⁵); and

- Record and publish details of all policy-related meetings between the tobacco industry and government officials (Australia, U.K., Mexico, and Panama,¹⁵⁶ Philippines, Singapore, and Thailand¹⁵⁷).

Actions to denounce tobacco industry involvement in public health have made news. The Indian government severed ties with a conference on tobacco that included industry representatives, citing Article 5.3.¹⁵⁸ Australia withdrew from a New Zealand-based party sponsored by tobacco companies in protest at Philip Morris' involvement.¹⁵⁹ In light of the Article 5.3 Guidelines, the Chinese government withdrew the nominations of several state-owned tobacco companies, who were to be recognized for their philanthropic contributions.¹⁶⁰

2. Unintended consequences

When tobacco companies are barred from participating in tobacco control policymaking, or it is politically infeasible for them to participate, the industry often has hidden behind front groups or other allies. Additionally, tobacco companies have attempted to influence government officials in ways that are not transparent to the public. As a result, the WHO has developed broad guidelines and other resources to help implement Article 5.3, which require accountability and transparency from the tobacco industry and its partners.¹⁶¹

3. Impact/effectiveness

Increasingly, countries are demonstrating success in reducing or eliminating the tobacco industry's impact on the development of strong tobacco control laws. Many of these success stories have been collected by the WHO and by Corporate Accountability International.¹⁶²

H. Novel Ideas: Age-of-birth cutoff

Some countries are considering other novel approaches to reduce or even eliminate tobacco use, such as the "tobacco-free generation proposal" first put forward by A. J. Berrick, a mathematics professor in Singapore. This proposal would prohibit the sale of cigarettes to those born after a set date, such as 2000.

1. Where it's happening

The Australian state of Tasmania is considering such a law. In August 2012, the Tasmanian parliament unanimously passed a motion to explore a law prohibiting the sale of tobacco products to anyone born after the year 2000.¹⁶³ Singapore and Finland are also considering a law prohibiting cigarette sales to those born after a particular year.¹⁶⁴

2. Opposition

In a recent *Tobacco Control* article, the author rebuts a number of arguments against the age-of-birth cutoff proposal, including (1) retailer resistance; (2) alternative supply; (3) a denial of choice; and (4) age discrimination.¹⁶⁵ Retailer compliance would not be difficult, the author argues, because retailers only need to check the date of birth rather than calculating age. Additionally, there would be insufficient demand for a black market because those affected by the proposal would not have an opportunity to become addicted to tobacco, assuming they are not able to use and become addicted to tobacco via other means. The author argues that the denial of choice argument is unconvincing with a drug as highly addictive as tobacco. Finally, the author argues that the proposal is ethical and that age-related measures already occur widely to protect youth in other areas, such as compulsory education and immunization.¹⁶⁶

In other media, critics claim that such a proposal is an example of "draconian government overreach,"¹⁶⁷ an abuse of human rights,¹⁶⁸ and



could result in a potential increase in the black market. One tobacco control advocate argues that border crossing and smuggling would be minimal and that young people, who are not yet addicted and who are unlikely to have smoking peers, are even less likely to go to another state or cross county lines to buy tobacco products.¹⁶⁹

A New Zealand study of adult smokers found that nearly half (46%) of those surveyed supported outlawing the sale of cigarettes in 10 years, provided nicotine substitutes were available.¹⁷⁰

Because no country has passed a law prohibiting the sale of tobacco products to those born after a certain date, no data are available on the impact of such a law or unintended consequences associated with its adoption.

III. Conclusion

Although smoking rates are down in the U.S., the tobacco industry continues to market its products actively to new and existing consumers. Other countries have achieved dramatic success in reducing the demand for tobacco products by adopting

laws that are much stronger than those in the U.S. For example, Australia is a world leader in requiring “plain” tobacco packaging, with no brand logos, colors, or imagery. Thailand plans to increase the size of its graphic warning labels to cover 85% of the front and back of the cigarette pack. Residents of Uruguay can enjoy 100% smoke-free public places, including bars, restaurants, and even casinos. Chile and Brazil have prohibited the use of menthol in cigarettes. Aggressive strategies adopted in other countries — such as larger graphic warning labels, higher tobacco taxes, more comprehensive smoke-free laws, and restrictions on tobacco advertising and promotions (to the extent legally feasible) — should be explored in the U.S. Otherwise, the public health community will continue to be outmatched by a well-funded tobacco industry that continues to actively market and sell its deadly products to a new generation of Americans.

IV. Additional Resources

The Tobacco Control Legal Consortium’s *International Tobacco Control Organizations and Resources*, a compilation of leading organiza-

Global Tobacco Control Strategies: Highlights from Around the World

STRATEGY: PACKAGING

<i>Graphic Health Warnings</i>	Uruguay	Warnings must cover 80% of the front and back of the package.
	Canada	First country to require graphic warnings. Warnings must cover 75% of the front and back of the package
<i>Plain Packaging</i>	Australia	No brand colors, logos, or imagery on tobacco packages.

STRATEGY: ADVERTISING

<i>Advertising & marketing</i>	Panama	Comprehensive law that prohibits tobacco advertising on TV, in newspapers and magazines, on the internet, at the point of sale, and through the mail. Tobacco sponsorship and payments for product placement are also prohibited.
<i>Point-of-sale advertising</i>	New Zealand, Norway	Complete prohibition on tobacco advertising at the point of sale. New Zealand allows for a single price list; Norway allows a sign saying that tobacco products are sold on the premises.

STRATEGY: SMOKE-FREE AREAS

<i>Smoke-free public places</i>	Panama, Spain, & Uruguay	100% smoke-free indoor public places, including bars, restaurants, and casinos.
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STRATEGY: TOBACCO TAXES

	United Kingdom	<ul style="list-style-type: none"> Tobacco taxes are 77% of the retail price of cigarettes. Between 1992 and 2011, the price of cigarettes increased more than 200%. Adult smoking prevalence dropped from 27% in 2000 to 20% in 2010.¹⁷¹
	Turkey	<ul style="list-style-type: none"> Tobacco taxes are 78% of the retail price of cigarettes. Between 2005 and 2011, the price of cigarettes increased by 195%. During the same period, cigarette sales dropped by 15.5% and government revenue increased by 124%.

STRATEGY: COMPREHENSIVE LAWS

	Thailand	<ul style="list-style-type: none"> Smoke-free public places and workplaces (with limited exceptions). Comprehensive restrictions on tobacco marketing, including a ban on point-of-sale advertising. Strong enforcement of smoke-free and advertising laws. Graphic health warnings required on 55% of the front and back of each cigarette package. Cigarette tax represents 69% of the retail price. Plans to prohibit the sale of tobacco to people under the age of 20 and to prohibit the addition of flavors to cigarettes.
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STRATEGY: PRODUCT REGULATION

	Canada	<ul style="list-style-type: none"> Requires periodic emissions testing and emissions disclosure based on all characteristics of the tobacco product. Requires tobacco companies to measure and report cigarette emissions data.
	Brazil	Requires tobacco companies to measure and report cigarette emissions data. Prohibits the use of menthol and other flavorings. Prohibits the sale of e-cigarettes.

STRATEGY: NOVEL IDEAS

<i>Age-of-birth cutoff</i>	Not yet adopted	The Australian state of Tasmania is considering a law prohibiting the sale of tobacco products to people born after a certain year.
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tions that work to advance tobacco control efforts worldwide, along with links to several of their most useful resources, is available at http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-international-tobacco-resources-2013_0.pdf.

The Consortium published a special edition of its *Legal Update* newsletter in spring 2013, which focuses on international tobacco control and features contributions from an impressive group of international experts in tobacco law and policy, including assessments of the greatest challenges facing tobacco control in ten countries: <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-legal-update-spring-2013.pdf>.

Updates on the WHO's Framework Convention on Tobacco Control, including the full text of the Convention, are available at <http://www.who.int/fctc/en>. General information on the WHO's Tobacco-Free Initiative, including many of the publications cited in this document, is available at <http://www.who.int/tobacco/en/index.html>.

Information about the Framework Convention Alliance, which includes more than 350 organizations from more than 100 countries working on the development, ratification and implementation of the FCTC, can be found at <http://www.fctc.org>.

The Campaign for Tobacco-Free Kids' International Legal Consortium provides regularly updated information about tobacco control legislation and litigation worldwide on its Tobacco Control Laws database at <http://www.tobaccocontrollaws.org/learn-more/about-us>.

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About the Tobacco Control Legal Consortium

The Tobacco Control Legal Consortium is a network of legal programs supporting tobacco control policy change throughout the United States. Drawing on the expertise of its collaborating legal centers, the Consortium works to assist communities with urgent legal needs and to increase the legal resources available to the tobacco control movement. The Consortium's coordinating office, located at William Mitchell College of Law in St. Paul, Minnesota, fields requests for legal technical assistance and coordinates the delivery of services by the collaborating legal resource centers. Our legal technical assistance includes help with legislative drafting; legal research, analysis and strategy; training and presentations; preparation of friend-of-the-court legal briefs; and litigation support.