

From: [REDACTED] ASH  
 Sent: 30 June 2012 11:49  
 To: [REDACTED] FCO  
 Cc: [REDACTED]  
 Subject: RE: Guidelines to overseas posts on the tobacco industry  
 Attachments: US\_Tobacco\_Executive Order\_Embassies\_13193 1-18-01.doc

Here are the US guidelines which I forgot to attach to the previous email.  
 Deborah.

From: [REDACTED] ASH  
 Sent: 29 June 2012 14:06  
 To: [REDACTED] FCO  
 Cc: [REDACTED]  
 Subject: Guidelines to overseas posts on the tobacco industry

Dear [REDACTED]

Good to meet up with you yesterday. I thought it might be helpful to summarise where we got to for the benefit of those not at the meeting from DH and the FCO.

You stated that in your opinion the Ambassador's letter was not in conflict with the FCO guidelines. I restated my opinion that if that were the case then the guidelines needed updating. For the Ambassador to offer, as he did in his letter, to work with the government and the 'legal industry', that is to say BAT, to come up with solutions to the illicit trade is definitely not in accordance with our FCTC obligations.

I also raised my concern that updating the guidelines needs to be done asap. Guidelines on tax and the illicit trade protocol to the FCTC are both coming to the FCTC Conference of the Parties in November for adoption that tobacco industry lobbying, particularly on tax and smuggling, will intensify between now and then. And that since two of the top five tobacco manufacturers are British (British American Tobacco and Imperial) and that BAT in particular is predominant in Commonwealth countries, such lobbying could well involve posts overseas. As was the case with Panama, if posts overseas are involved in such lobbying it is likely to be received very badly by Parties to the FCTC, which currently number 176 in total.

#### Follow up actions

1. You mentioned that the 1999 guidelines had been updated in 2005 and said that once you had checked there was no problem with doing this you would provide me with this version. I can't see how this could be a problem as the original guidelines were published in parliament.
2. Updated guidelines – I said I would provide you with my suggestions about how the guidelines could be improved. Clearly it would help if I could be provided with the current guidelines.
3. Since the guidelines were updated in 2005 the **Article 5.3 guidelines** were adopted in 2009 by all Parties including the UK. Article 5.3 of the FCTC states that when Parties are setting and implementing public health policies related to tobacco control, they shall '*act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.*' As the FCTC includes policies on tax and smuggling these are included. Here is the link to the guidelines.  
[http://www.who.int/fctc/protocol/guidelines/adopted/article\\_5\\_3/en/index.html](http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html)
4. Subsequently **the Coalition Tobacco Plan**, was published in March 2011. Chapter 10 which covers Article 5.3 states: '*The government takes very seriously its obligations as a party to the World Health organization's framework convention on Tobacco control, (FCTC). The FCTC places obligations on parties to protect the development of public health policy from the vested interests of the tobacco industry.*'
5. **The Illicit Trade protocol** has been finalized by the Parties ready for adoption and is available from:  
[http://apps.who.int/gb/fctc/E/E\\_cop5.htm](http://apps.who.int/gb/fctc/E/E_cop5.htm) The references that are specifically refer to the tobacco industry are as follows:  
In the preamble  
*Mindful of Article 5.3 of the WHO Framework Convention on Tobacco Control in which Parties agree that in setting and implementing their public health policies with respect to tobacco control, Parties shall act to*

protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law;

*Emphasizing* the need to be alert to any efforts by the tobacco industry to undermine or subvert strategies to combat illicit trade in tobacco products and the need to be informed of activities of the tobacco industry that have a negative impact on strategies to combat illicit trade in tobacco products;

**Article 4.2**

In implementing their obligations under this Protocol, Parties shall ensure the maximum possible transparency with respect to any interactions they may have with the tobacco industry.

**Article 4.3.12**

Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry.

**Article 4.3.13**

Each Party shall ensure that its competent authorities, in participating in the tracking and tracing regime, interact with the tobacco industry and those representing the interests of the tobacco industry only to the extent strictly necessary in the implementation of this Article.

**Article 4.3.14**

Each Party may require the tobacco industry to bear any costs associated with that Party's obligations under this Article.

**Article 34.2 (g)**

34.2 The functions of the Convention Secretariat with regard to its role as the secretariat of this Protocol shall be to:

(g) receive and review applications by intergovernmental and nongovernmental organizations wishing to be accredited as observers to the Meeting of the Parties, while ensuring that they are not affiliated with the tobacco industry, and present the reviewed applications to the Meeting of the Parties for its consideration;

**Article 36.7**

Parties may require the tobacco industry to bear any costs associated with a Party's obligations to achieve the objectives of this Protocol, in compliance with Article 5.3 of the WHO Framework Convention on Tobacco Control.

6. I said I would let you know if I was informed of any further breaches of our obligations under Article 5.3 of the FCTC.

7. **Guidance from other Parties** - I said I would look for information about how other Parties deal with this issue. I have not found any guidance by Parties as yet. The US is not a Party so this is not directly relevant but it did publish guidelines in 2001 before the FCTC was adopted which you might find of interest. See attached. My understanding is that these have not been updated subsequently. There is also a relevant reference in the following Act  
P.L. 112-55.

SEC. 510. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr2112enr/pdf/BILLS-112hr2112enr.pdf>

I look forward to hearing from you.

Best wishes.

  
  
Chief Executive  
Action on Smoking & Health  
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W: <http://www.ash.org.uk>

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## ASH DRAFT REVISED FCO GUIDELINES ON INTERACTION WITH THE TOBACCO INDUSTRY

1. Updated guidance on contact with tobacco companies.

### BACKGROUND

2. In 1999 the FCO issued guidelines to overseas posts stating that *'Posts should not be associated in any way with the promotion of the tobacco industry'*. The guidelines went on to say that *'Posts should bear in mind that the international tobacco control lobby is increasingly well organised, and pressure groups may seek to highlight any apparently controversial involvement in an event sponsored by the tobacco industry.'*
3. Subsequently in 2005 the UK government became a Party to the Framework Convention on Tobacco Control (FCTC), which requires Parties to adopt and implement effective public health measures for preventing and reducing tobacco consumption and exposure to tobacco smoke. The role of civil society in supporting the Treaty is recognised in the preamble and Article 4.7 which states *'The participation of civil society is essential in achieving the objective of the Convention and its protocols.'*
4. Article 5.3 of the FCTC states that when Parties are setting and implementing public health policies related to tobacco control, they shall *'act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.'* Public health policies related to tobacco control includes, for example tax, price, trade, agriculture, and any other policies that affect or are likely to affect tobacco control policies.
5. In 2009 Parties adopted, by consensus and based on the best available evidence and Parties' experiences, guidelines on Article 5.3 to assist them in meeting their legal obligations under Article 5.3 of the Convention. These implementing guidelines enshrine the principle that *'There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests'*. Subsequently the DH Tobacco Plan published in March 2011 states: *'The government takes very seriously its obligations as a party to the World Health organization's Framework Convention on Tobacco control (FCTC). The FCTC places obligations on parties to protect the development of public health policy from the vested interests of the tobacco industry.'*
6. In 2011 HM Government published its outcomes framework for global health 2011-2015, *Health is Global*. Numbers 6,9 and 10 of the guiding principles are highly relevant:  
Principle six: Set out to do no harm and, as far as possible, evaluate the impact of our domestic and foreign policies on global health to ensure that our intention is fulfilled.  
Principle nine: Ensure that the effects of foreign and domestic policies on global health are much more explicit and that we are transparent about where the objectives of different policies may conflict:  
Principle ten: Use health as an agent for good in foreign policy, recognising that improving the health of the world's population can make a strong contribution towards promoting a low-carbon, high-growth global economy.

### ATTACHMENTS

WHO FCTC <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>

WHO FCTC Article 5.3 guidelines [http://www.who.int/fctc/guidelines/article\\_5\\_3.pdf](http://www.who.int/fctc/guidelines/article_5_3.pdf)

## DH Tobacco Control Plan

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_124960.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_124960.pdf) Health is Global

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_088702](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_088702)

### GUIDELINES

7. Posts should limit interactions with the Tobacco Industry, and any person or entity likely furthering its interests to only those necessary for effective regulation of the tobacco industry or tobacco products. There should be no involvement in activities which promote the sale, export or import of tobacco or tobacco products, or any activity which seeks the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type. Posts should not encourage investment in, or the provision of incentives to, the tobacco industry.
8. Posts should not contact governments or their representatives on behalf of the Tobacco Industry to argue against implementation of measures contained in the WHO FCTC its guidelines and protocols.
9. Posts should not endorse, support, form partnerships with or participate in activities of the Tobacco Industry described as socially responsible or that relate to public education or any initiative that is directly or indirectly related to tobacco control.
10. Posts should avoid the creation of any perception of a real or potential partnership resulting from or on account of any such interaction. Posts should ensure that in the event that the Tobacco Industry engages in any conduct that may create such a perception that they act to prevent or correct this perception.
11. Where interactions with the tobacco industry are necessary, Posts should ensure that such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example through public hearings, public notice of interactions, disclosure of records of such interactions to the public.
12. Posts should support Parties in implementing the WHO FCTC in line with Articles 20 and 22, by putting them in touch with the relevant UK government bodies as appropriate e.g. HMT and HMRC on tax and smuggling and DH on smoking cessation.
13. Posts should refer to the DH as the lead body on the WHO FCTC if they have any queries about implementation of these guidelines.
14. These guidelines will take effect from....

[REDACTED]

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**From:** [REDACTED] ASH  
**Sent:** 31 August 2012 11:09  
**To:** [REDACTED]@co.gov.uk FCO  
**Cc:** [REDACTED]@co.gov.uk;  
[REDACTED]@co.gov.uk  
**Subject:** Guidelines to overseas posts on the tobacco industry  
**Attachments:** FCO eGram FCOLN 129 08\_05 Update (deleted email addresses).doc ASH draft revised FCO guidelines\_v3.docx

Dear [REDACTED]

Thank you for providing me with the 2005 updated guidelines. Apologies for not getting back to you before but I've been away on holiday. Having read the revised guidelines carefully it is clear they need to be enhanced and updated to ensure that they support the UK government in living up to its legal obligations under FCTC Article 5.3 overseas as well as at home. They also need to be updated to ensure that they support the cross government outcomes framework *Health is Global*.

For example the current guidelines dated 2005 state (point 7), "There is no/no reason why officials cannot meet or deal with representatives of the tobacco industry, for example to discuss corporate social responsibility issues." This is out of line with recommendation 6.2 of the guidelines which state that "Parties should not endorse, support, form partnerships with or participate in activities of the tobacco industry described as socially responsible."

Our suggestions for how the FCO guidelines can be updated are set out in the attached document.

I hope this is helpful and look forward to hearing from you.

Best wishes  
[REDACTED]

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**From:** [REDACTED]@co.gov.uk [REDACTED]@co.gov.uk] FCO  
**Sent:** 02 August 2012 14:13  
**To:** [REDACTED] ASH  
**Subject:** RE: Guidelines to overseas posts on the tobacco industry

Dear [REDACTED]

Apologies for the delay. I attach the FCO's Guidelines on Contact with Tobacco Companies issued to our overseas posts in 2005. The 2005 guidelines did not rewrite the 1999 position but refer to the existence of the WHO Framework Convention, the (UK) Tobacco Advertising and Promotion Act 2002 and the Directive on Tobacco Advertising and Promotion (2003) which came into force in 2005.

*Please note, I have deleted colleagues' email addresses at the bottom of the attached. You will see I have replaced it with the word (deleted).*

I hope this helps and so sorry it has taken so long.

Best regards,  
[REDACTED]

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This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus

[REDACTED]

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**From:** [REDACTED] ASH  
**Sent:** 14 November 2013 08:52  
**To:** [REDACTED]  
**Cc:** [REDACTED] FCO  
**Subject:** RE: Guidelines to overseas posts on the tobacco industry

Dear [REDACTED]

Sorry to chase you but it is now nearly two months since I last heard from you and as you know there is a WHO meeting on Article 5.3 in the UK hosted by DH in December and it's very important that the guidelines are in the public domain by then.

I do hope you can reassure me that that will be the case?

[REDACTED]

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**From:** [REDACTED] fco.gov.uk [REDACTED] FCO  
**Sent:** 19 September 2013 11:51  
**To:** [REDACTED]  
**Cc:** [REDACTED] ASH  
**Subject:** RE: Guidelines to overseas posts on the tobacco industry

[REDACTED]

LEOACT ( [REDACTED]

But the good news is that DoH and FCO sat down earlier this week and have agreed on revised guidance (taking account of your earlier proposals) which will serve as a useful reminder of Posts responsibilities, provide more detail re the FCTC and will be more prescriptive and therefore of more help to our Embassies. We need to run the guidance past our respective Ministers - once approved we will issue to Posts and share with you.

[REDACTED]

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**From:** [REDACTED] ASH  
**Sent:** 29 August 2013 12:25  
**To:** [REDACTED] FCO  
**Cc:** [REDACTED]  
**Subject:** RE: Guidelines to overseas posts on the tobacco industry

Dear [REDACTED]

LEOACT ( [REDACTED] Now summer's coming to an end I wondered how it was going finalising the guidance and if there was anything you could share with me for comment?

Best wishes.

[REDACTED]

[REDACTED]

Chief Executive  
Action on Smoking & Health  
Suites 59-63, 6<sup>th</sup> Floor, New House

[REDACTED]

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**From:** [REDACTED] ASH  
**Sent:** 10 December 2013 10:29  
**To:** [REDACTED] to.gov.uk' FCO  
**Cc:** [REDACTED] to.gov.uk [REDACTED]  
**Subject:** RE: Guidelines to overseas posts on the tobacco industry

Dear [REDACTED]

I'm speaking at the DH and WHO meeting tomorrow on Article 5.3 and was hoping I could say that the new guidelines had been issued – any chance that will be the case and if so could you share them with me – I'd like to be able to say something publicly about them.

Otherwise all I can do is refer to the Panama case and say over 18 months after we met the FCO about this the updated guidelines have still not been signed off and published

[REDACTED]  
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**From:** [REDACTED]@fco.gov.uk [REDACTED] FCO  
**Sent:** 15 November 2013 16:07  
**To:** [REDACTED] ASH  
**Cc:** [REDACTED] to.gov.uk; [REDACTED]  
**Subject:** RE: Guidelines to overseas posts on the tobacco industry

[REDACTED]

I certainly hope we'll have the green light from Ministers by then.

[REDACTED]

**From:** [REDACTED] ASH  
**Sent:** 14 November 2013 08:52  
**To:** [REDACTED] (restricted) FCO  
**Cc:** [REDACTED]  
**Subject:** RE: Guidelines to overseas posts on the tobacco industry

Dear [REDACTED]