“Our reason for not inviting the tobacco industry to our deliberations is simple. They are not welcome. They cannot expect to sit at the same table as us.”

Ahmed Ouma
Convention Secretariat
Framework Convention on Tobacco Control

**ARTICLES 9 & 10**

The Framework Convention on Tobacco Control (FCTC) is a treaty negotiated under the auspices of the World Health Organization. The Conference of the Parties (COP) is the governing body and comprises all 171 Parties to the FCTC. The COP promotes and keeps under regular review the implementation of the FCTC.

In implementing the Articles of the FCTC, the COP may establish such subsidiary bodies as are necessary to achieve the objective of the Convention. One example is the Intergovernmental Negotiating Body for the elaboration of a Protocol on Illicit Trade in Tobacco Products. The COP may also establish working groups with the mandate to elaborate guidelines and recommendations for the implementation of the different treaty provisions.

Article 9 of the FCTC makes provision for the COP to propose guidelines for the testing, measuring and regulation of contents and emissions of tobacco products. Similarly, Article 10 of the FCTC, provides that each party shall in accordance with its national laws implement effective legislation that requires manufacturers and importers of tobacco to disclose to government authorities information about the contents and emissions of tobacco products.

In 2006 the COP established a working group to draft guidelines on the implementation of Articles 9 and 10 of the FCTC. The sixth working group meeting, facilitated by Canada, the European Community and Norway published their draft recommendations on the FCTC website. These proposals were discussed at the fourth session of the Conference of the Parties.

The recommendation from the working group on Articles 9 and 10 are that Parties should either prohibit or restrict ingredients that may be used to increase palatability, such as sugars and sweeteners, flavouring substances and spices and herbs in tobacco products.
The Use of Ingredients in Tobacco Products

The draft guidelines for the implementation of Articles 9 and 10 of the WHO Framework Convention on Tobacco Control have included the following definitions:

- “Contents” means “constituents” with respect to processed tobacco, and “ingredients” with respect to tobacco products. In addition:

- “Constituents” include substances that occur naturally in tobacco and substances found in tobacco as a result of agricultural practices.

- “Ingredients” include tobacco, components (e.g. paper, filter), including materials used to manufacture those components, additives, processing aids, residual substances found in tobacco (following storage and processing), and substances that migrate from the packaging material into the product.

Most commonly cigarettes fall into two categories; Traditional American blend cigarettes and Virginia cigarettes. Virginia type cigarettes are primarily composed of Virginia tobacco and typically do not use flavourings, however ingredients are used during the manufacturing process.

Traditional American blend cigarettes are usually made up of three tobacco varieties, namely Virginia, Burley and Oriental. Traditional American blend cigarettes use flavouring to confer on each brand its unique taste and ingredients as manufacturing aids. Ingredients are therefore used to maintain the quality of the tobacco product by retaining its moisture, protecting it from deterioration and holding the tobacco product together. Flavourings used in tobacco products balance out the characteristics of the tobacco taste.

Nicotine occurs naturally in tobacco plants and is known to have addictive potential. There is no scientific evidence that ingredient-free tobacco products are safer than tobacco products containing added ingredients.

Tobacco ingredients are used for a variety of reasons relating to maintaining the quality of the product, including to help retain the moisture in the product, to protect the product from deterioration, to bulk or help hold the product together, as colouring, or as flavourings to help balance out the characteristic tobacco taste.
The Use of Ingredients in Tobacco Products

Ingredients and Addiction

There have been a number of papers, discussion documents and regulatory initiatives proposing that certain ingredients added to tobacco products are either themselves ‘addictive’ or can enhance the pharmacological effects of nicotine.

A related allegation is that certain ingredients enhance the "attractiveness" of tobacco products to the under age. Additional allegations maintain that tobacco ingredients increase the health risks of tobacco products.

All tobacco products, whether or not they contain ingredients, have addictive potential.

While nicotine, which occurs naturally in all varieties of tobacco plants, is addictive and has well known pharmacological effects, nicotine is not added during the manufacturing process, it is found naturally in the tobacco leaf itself.

There is no evidence to suggest that any of the ingredients used in commercial tobacco products are addictive.

There is no evidence to suggest that any of the ingredients used in commercial tobacco products enhance the pharmacological effects of nicotine.

Tobacco products with and without ingredients are equally addictive.

No credible scientific authority maintains that Traditional American blend style cigarettes (which contain added ingredients) are more addictive than, for example, Virginia-style cigarettes (which have very few or no added ingredients) or that, as a consequence of ingredients usage, it is any harder for US-blended style cigarette smokers to quit smoking than it is for Virginia-style cigarette smokers.

Market research studies do not support the hypothesis that tobacco products containing ingredients, compared with those that do not, lead to greater initiation rates or reduced quit rates.

FCTC Article 9

Regulation of the contents of tobacco products

The Conference of the Parties, in consultation with competent international bodies, shall propose guidelines for testing and measuring the contents and emissions of tobacco products, and for the regulation of these contents and emissions. Each Party shall, where approved by competent national authorities, adopt and implement effective legislative, executive and administrative or other measures for such testing and measuring, and for such regulation.

FCTC Article 10

Regulation of tobacco product disclosures

Each Party shall, in accordance with its national law, adopt and implement effective legislative, executive, administrative or other measures requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco products. Each Party shall further adopt and implement effective measures for public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce.

There is no available scientific evidence to suggest that tobacco products with added ingredients are more difficult to quit than those that do not contain added ingredients.
The Use of Ingredients in Tobacco Products

Attractiveness of Ingredients

The recommendation from the FCTC working group on Articles 9 and 10 are that Parties should either prohibit or restrict ingredients that may be used to increase palatability, such as sugars and sweeteners, flavouring substances, and spices and herbs, in tobacco products.

The draft guidelines for the implementation of Articles 9 and 10 of the WHO Framework Convention on Tobacco Control define Attractiveness as “the factors such as taste, smell and other sensory attributes, ease of use, flexibility of the dosing system, cost, reputation or image, assumed risks and benefits, and other characteristics of a product designed to stimulate use”.

No legal tobacco manufacturer would condone the use of additives for the purpose of making tobacco products more attractive to the under age and there is no evidence to support the claim that the inclusion of any ingredient has this effect.

The legal Tobacco Industry supports the enforcement by governments of appropriate regulation limiting the sale of tobacco products to those above the nationally permitted age and is concerned that certain regulators have used the term "attractiveness" in the context of tobacco product ingredients’ use without defining its meaning, scope or context.

It is critically important that attributes such as "attractiveness" are defined and measurable if they are to be used as the basis for regulation.

Clarity in regulation is essential to ensuring regulatory proposals are proportionate to meeting public health objectives and that regulations can be complied with and enforced.

Clear definitions and science-based determinations are essential to avoid arbitrary and unjustifiably over-broad regulations.

Should regulators seek to restrict or ban the use of particular ingredients based on their perceived addictive nature or attractiveness, it is critical that clear definitions and scientific bases for objectively measuring these perceived qualities be established.

The Tobacco Industry would support research to establish the principles for any future framework for assessing the addictive nature or attractiveness of relevant tobacco ingredients through evidence-based assessment.

TISA rejects “attractiveness” as a valid public policy objective for the regulation of ingredients: “Attractiveness” is not a legitimate self-standing public policy objective: it fails established criteria for issue definition and no scientific criteria have been developed to assess the “attractiveness” of tobacco products.
Message from the TISA Chairman

Despite the fact there is no scientific evidence which supports the theory that cigarettes with ingredients are any more addictive or attractive than cigarettes without ingredients, vague and partial guidelines on the use of ingredients, were adopted by governments gathered in Uruguay for the World Health Organisation’s tobacco control conference.

At the week long event held in Uruguay in November 2010, known as the Conference of the Parties, delegates from around the world were asked to approve far-reaching recommendations similar to legislation recently passed in Canada which bans the use of almost all ingredients in cigarettes.

Regrettably the tobacco industry was not given an opportunity to make meaningful input or to voice its opinion concerning the unintended consequences that a ban on the use of ingredients would have on tobacco growers, particularly in Africa. At an early stage, the WHO publicly stated: “The tobacco industry, its trade associations and key allies should be kept from the negotiating process.”

Ironically though, in its own papers, the WHO have also stated that tobacco growers should be involved in the process. Regrettably, this undertaking was grossly violated by the WHO.

Ingredients are used for a whole range of reasons including to replace natural sugars lost in the tobacco curing process or to help prevent the product from deteriorating. Key ingredients are essential in the manufacture of traditional blended cigarettes which contain Burley, Oriental and Virginia tobaccos and account for 50% of global cigarette consumption. A reduction in the demand for traditional blended cigarettes translates directly into a reduction in the demand for burley and oriental tobacco. Virginia cigarettes which contain only Virginia tobacco and do not require the use of ingredients are, to a large extent, unaffected by the guidelines and will continue to be available to smokers in the market despite the WHO’s own admittance that both types of cigarettes are equally harmful. It therefore makes little sense to discriminate against traditional blended cigarettes.

The International Tobacco Growers Association (ITGA), which represents 30 million farmers with a thorough understanding of the crop, argued that the guidelines would have disastrous social and economic consequences without making any difference to peoples’ health. In spite of ringing the alarm bells, the ITGA’s request for a seat at the table was rejected by the World Health Organisation who dismissed farmers as “interferences”.

However this did not stop farmers from demonstrating outside the conference venue, nor from handing over a petition signed by almost 240,000 farmers calling on the delegates to “Stop the Conference of the Parties of the FCTC from destroying tobacco farmers’ livelihoods and to reject the draft guidelines for Articles 9 and 10 and the recommendations for Articles 17 and 18.”

An independent Economic Impact Assessment commissioned by the ITGA shows that the WHO recommendations are set to cause economic devastation in Africa. It concludes that the role of burley tobacco in African economies and the expected impact of a decline in the crop’s production shows that more than 3.6 million people in Malawi, Mozambique, Uganda, Zambia and Zimbabwe are directly dependent on tobacco production for their livelihoods. A further 12 million people are directly and indirectly affected by developments in the countries’ tobacco sectors.

The report highlights the fact that in a worst case scenario in which global demand for burley collapses, the economy of Malawi could shrink by 20% within a year. The report goes on to note that such a once-off economic shock would take Malawi several decades to recover. Governments of affected countries may well have to contend with declining GDP, reduced exports and rising poverty and unemployment.

This leaves African nations with very little chance of achieving the UN Millennium Development Goals.

It is envisaged that a further unintended consequence of banning ingredients is that illicit trade in Africa will accelerate. Tobacco growing nations will be negatively affected because surplus Burley tobacco will be bought at reduced rates by illicit operators. Even non-growing countries will be negatively affected by the influx of illicit cigarettes.
The end result is that African countries will lose out on revenue, economic growth will be hindered and hundreds of thousands of jobs will be lost.

Recognising the threat that this poses to African development, the Common Market for Southern and Eastern Africa’s (COMESA) nineteen Heads of State endorsed a position at the Heads of State Summit on 1 September opposing the guidelines. The position also urged members to inform the FCTC that its guidelines to Articles 17 &18 on alternative crops are inadequate and that the FCTC should ensure broader consultation with affected stakeholders.

In addition, the Zimbabwean Prime Minister, speaking about his country’s economic recovery at an Economist Conference on 16 September 2010 expressed concern about the guidelines. He encouraged the FCTC to “…strike a workable balance between compelling health considerations and the viability concerns of the global tobacco industry.”

Opposition to the guidelines was seen in other parts of the world as well. In September 2010, the Caribbean Community and Common Market (CARICOM) adopted an official position against the guidelines since they discriminate in favour of Virginia tobacco and have the potential to increase tobacco smuggling therefore resulting in a loss of income to the region.

Notwithstanding the objections from many tobacco growing countries across the world, and a highly-charged debate culminating in a ten hour committee meeting, the end result of the FCTC Conference of the Parties in Uruguay, was the decision that the unfinished guidelines on this complex subject be accepted – regardless of the lack of clarification on key aspects and the absence of sound scientific evidence to support them. In the rush to force these guidelines through, governments are now left with a confusing and unhelpful document which offers them little direction on what to do next.

The text of the partial guidelines however does make clear that they are not mandatory or legally binding explaining that governments should only make decisions on potential measures in this area in accordance with their national laws and taking into account their national circumstances and priorities.

It also states that governments “should consider scientific evidence, other evidence and experience of other countries when determining new measures on ingredients of tobacco products”.

In addition to the guidelines on Articles 9&10 that primarily dealt with tobacco ingredients, the guidelines on Article 12 (education, communication, training and public awareness) were accepted as were the guidelines on Article 14 (cessation policy).

The mandate of the Articles 17&18 working group was extended. It was concluded that the report around alternative crops did not provide governments with enough information to make an informed decision. Tobacco growing nations had not been properly consulted; no recommendations were given for suitable alternative livelihoods; and the proposals failed to present any robust evidence or concrete findings. As a result, the work on economically sustainable alternatives to tobacco growing will be extended in order to find appropriate policy options and recommendations.

The Parties also agreed to create a working group to draft guidelines on Article 6 (price and tax measures).

The Illicit Trade Protocol negotiations will continue through to 2012. Next year, an informal working group will tackle the unresolved issues from the last formal negotiating session (held in March 2010). A final negotiating session will take place in 2012. A mandate for an expert group on cross-border advertising was also agreed.

As governments look to interpret the FCTC into their own laws, we will continue to offer constructive views and solutions and urge them to ensure those most affected by the proposals are consulted.

Finally, it is a great pity and a shame that the South African Ministry of Health has gone against the spirit and decisions of many African countries by strongly advocating for the ban on ingredients, showing disrespect for the consequences it will have on developmental issues in Africa. It is time that South Africa, through its Government in general, and particularly the Health Ministry, realizes the importance of the tobacco sector in SA and Africa, and starts engaging with the sector in a mature way, treat it like other legal industries, and jointly develop proper regulations which could balance the health and economic aspects pertaining to tobacco.

Credit has to be given to National Treasury, SARS and Law Enforcement Agencies for constructive, professional and successful engagement with the sector, to achieve mutually beneficial objectives. Sadly this cannot be said about Health, and even Agriculture. TISA will continue its efforts to engage and demonstrate willingness to work with Governments, in SA and the region, to build economies and achieve health objectives.

François van der Merwe
Chairman: The Tobacco Institute of Southern Africa

The Tobacco Institute of Southern Africa
Are we heading for another Prohibition?

FROM TEMPERANCE TO TOTAL ABSTINENCE

The prohibition of alcohol in the 1920’s and 30’s in the United States is one of most famous, or infamous, times in recent American history. It was a period characterized by speakeasies, glamour, gangsters and rum-runners. It was a time in which even the average citizen broke the law.

The push for Prohibition began in earnest in the nineteenth century. Spearheaded by religious groups as part of a new Temperance movement their aim was to reduce crime and corruption, improve health, solve social problems and reduce the tax burden created by prisons and poorhouses.

First, these organizations advocated moderation, but after several decades, the movement’s focus changed to a complete prohibition of alcohol consumption. By 1916, over half of the U.S. states had statutes that prohibited alcohol. On the 16th of January 1920 prohibition of the sale and manufacture of alcohol came into effect.

The Prohibition, called "the noble experiment" by Herbert Hoover, was however doomed to fail. Initially, a number of Americans endorsed the prohibition but the public rapidly grew disenchanted with it. Every community of any size had their "speakeasies", where both imported and homemade alcohol could be purchased. These underground saloons did a booming business. Demand exceeded supply and a new breed of gangster was all too prepared to satisfy this demand, at a profit.

All too often, rivalries and differences of opinion resulted in gang-land warfare and murder. Because the illegal distribution of alcohol was impossible to enforce, it provided the underworld thugs with their primary source of revenue, thus creating another set of problems entirely. Highly toxic wood alcohols found their way into much of the available bootleg liquor. When denatured industrial alcohol was not sufficiently diluted, or was consumed in large quantities, the result was paralysis, blindness and death. In 1927, almost twelve thousand deaths were attributed to alcohol poisonings, many of these among the urban poor who could not afford imported liquors.

Are we heading for another Prohibition? Bootleggers in the 1920's in America

Speakeasies were underground bars that discreetly served patrons liquor, often including food service, live bands and shows. The term speakeasy is said to come from bartenders telling patrons to "speak easy" when ordering so as not to be overheard during the prohibition era.

The Tobacco Institute of Southern Africa
Are we heading for another Prohibition?

Many rural Americans began to make their own hooch, supplying bootleggers with their moonshine. In 1930, U.S. public health officials estimated that fifteen thousand persons were afflicted with "jake foot," a debilitating paralysis of the hands and feet brought on by drinking denatured alcohol flavored with ginger root. In 1925 after Al Capone assumed control of the "Outfit" that controlled the distribution network in Chicago one of the bloodiest gang wars in history ensued.

These gangsters would hire men like Bill McCoy to smuggle in rum from the Caribbean (rum-runners) or hijack whiskey from Canada and bring it into the U.S. Others would buy large quantities of liquor made in homemade stills. The gangsters would then open up secret bars (speakeasies) for people to come in, drink, and socialize. During this period, newly hired Prohibition agents were responsible for raiding speakeasies, finding stills, and arresting gangsters, but many of these agents were under-qualified and underpaid leading to a high rate of bribery and corruption.

Almost immediately after the ratification of the 18th Amendment, organizations formed to repeal it. As the perfect world promised by the Temperance movement failed to materialize, more people joined the fight to bring back liquor. The anti-Prohibition movement gained strength as the 1920s progressed.

Additionally, the Stock Market Crash in 1929 and the beginning of the Great Depression started changing people’s opinion. People needed jobs. The government needed money. Making alcohol legal again would open up many new jobs for citizens and generate additional sales taxes for the government.

On December 5, 1933, the 21st Amendment to the U.S. Constitution was ratified. The 21st Amendment repealed the 18th Amendment, making alcohol once again legal. This was the first and only time in U.S. history that an Amendment has been repealed.

Because of Prohibition, organized crime increased, especially in major cities.

Gangsters got richer and more violent as they fought over control of liquor sales and other illegal activities such as prostitution and gambling, which also grew during the 1930s.

By 1932, only the more remote areas of the U.S. remained dry. Many small farmers and fruit growers were in favor of Prohibition, and economies in their areas benefited from the sales of moonshine. But the costs in human suffering, flagrant violations of law, and the chaos of lawlessness were too great to endure.

The term “The Real McCoy” came out of this era. It’s attributed to Captain William S. McCoy who facilitated most of the rum running via ships during prohibition and would never water down his imports, making his the “real” thing.

Prohibition clearly benefited some people.
Notorious bootlegger
Al Capone made $60,000,000... sixty million dollars per year (untaxed!) while the average industrial worker earned less than $1,000 per year

Dutch Schultz - notorious gangster and bootlegger

Today's historians argue the evidence from the "noble experiment" affirms sound economic theory, which predicts prohibition of any mutually beneficial exchange is doomed to fail.
New Tobacco Control Regulation in South Africa

DRAFT REGULATION - R.I.P.

The Minister of Health has requested comments on the draft regulation published on 4 December 2009 concerning Reduced Ignition Propensity (RIP) cigarettes.

The purpose of the draft regulations are aimed at reducing the risk of fire sometimes associated with the smoking of cigarettes.

TISA acknowledges that the draft Regulations are aimed at reducing the risk of fire sometimes associated with the smoking of cigarettes. However, in the course of pursuing this objective, the draft Regulations have given rise to certain consequences which are almost certainly unintended. If implemented in its current form, the draft Regulations will potentially have a very serious and negative impact on the South African economy. This negative consequence can easily be avoided if the amendments suggested by TISA were to be accepted, in particular the proposed amendment to Regulation 19.

Regulation 19(a) states:

“All cigarettes manufactured in, imported into, or exported from South Africa must comply with these regulations no later than 12 months from the date the regulations are published in the Gazette; provided that, if the importing country has its own ignition propensity requirements, those must be met instead;”

The final Regulations on the Standards for Manufacturing of Reduced Ignition Propensity (RIP) Cigarettes has still to be published in the government gazette.
New Tobacco Control Regulation in South Africa

**Draft Regulation R.I.P. Continued**

One of TISA’s concerns with the draft Regulation relates to the export of cigarettes from South Africa. Regulation 19(a) requires that, when a South African manufacturer exports cigarettes to another country, those cigarettes will be required to meet South Africa’s RIP standards unless the country of import has its own RIP standards.

A negative unintended consequence of this regulation can best be illustrated with reference to a concrete set of facts:

- One of TISA’s leading members has a factory which currently operates at approximately 68% capacity. This particular member is a global company which manufactures cigarettes in a number of jurisdictions throughout the world;
- In recent years this particular factory has increased its export volume in order to reduce overhead costs and thereby maintain or improve profitability;
- Any reduction in export volume will undoubtedly affect its competitiveness;
- Many of the cigarettes manufactured in this particular factory are exported to countries which do not have RIP standards;
- If the draft Regulations are promulgated in its current form, these cigarettes will now need to be manufactured in accordance with the RIP standards;
- Our members’ export customers which are importing products from South Africa will now be faced with a choice: do they continue to import from South Africa or do they source their product elsewhere?
- For two reasons, there is little doubt that they will elect to source their product elsewhere. Firstly, research has shown and it is accepted internationally that RIP cigarettes are not as pleasurable to smoke. Consumers in the country of import will therefore switch to brands which do not meet South African RIP standards. Secondly, because of the manufacturing costs associated with the production of RIP cigarettes, the price of those cigarettes will inevitably rise. The country of import will for this reason, too, prefer to purchase from a country which does not have RIP standards;
- Already our members’ export customers have stated that they will simply source their products from other countries rather than have the RIP cigarettes forced on their customers;
- The almost inevitable consequence will be the serious damage to the export potential of the South African factory referred to above, as well as other factories which may export in future. If its export orders are terminated, the production capacity will drop from approximately 68% to approximately 52%. It is not viable for a factory to continue to operate on this basis.
- In these circumstances, it is highly possible, indeed almost certain, that the global manufacturing company will seriously consider to cease its manufacturing operations in South Africa and elect instead to manufacture cigarettes in a country which does not have RIP standards. This will have a massively detrimental effect not only on the factory itself, but on all those employed by the factory, their dependents and even the wider community, particularly as the factory is the largest employer in its municipal area.

The Tobacco Institute of Southern Africa
New Tobacco Control Regulation in South Africa

Draft Regulation R.I.P. Continued

- Furthermore this factory buys almost all the flue cured tobacco leaf produced in South Africa. If the factory closes, farmers will lose a stable market built up over many years, and in such an event might decide to quit tobacco production resulting in job losses for thousands of families in deep rural areas.

- The consequential loss to the South African economy will be significant, both in terms of employment and export revenue; these extremely negative consequences will not be compensated by any obvious benefit to the country of import. Those countries will simply switch their loyalty and commence purchasing from countries which do not have RIP standards. The Health Department has a history of bad or no enforcement of its own legislation in South Africa. If there is no enforcement, there will be unscrupulous players in the market who will deliberately flout the law, not comply and be able to obtain a competitive advantage in the market place.

- As these regulations will substantially raise the cost of compliance for those who do comply, those that don’t will profit at the expense of the legal industry.

The economic and social importance of the tobacco industry

- Tobacco is grown in five provinces in South Africa: Eastern Cape, Limpopo, Mpumalanga, North West and the Western Cape. There are 177 tobacco farmers. They employ approximately 10,000 workers, who in turn have approximately 40,000 dependents. Tobacco farming is a labour-intensive business providing crucial job opportunities in deep rural areas of South Africa. Many of the larger farmers are involved in community development by providing facilities such as clinics and schools.

- A range of tobacco products, including cigarettes, pipe tobacco, snuff and roll-your-own, are manufactured in South Africa. Many of these products are exported, generating significant foreign exchange for South Africa.

- Approximately 2,500 people are employed in the South African tobacco manufacturing sector, which contributes more than R10 billion annually in value-added tax and excise duties alone. This contribution excludes the income tax paid by the manufacturing companies.

- In its submission to the Department of Health, TISA requested that the clause relating to “exports” be omitted from the regulation.

Reduced Ignition Propensity

The Tobacco Institute of Southern Africa
New Tobacco Control Regulation in South Africa

DRAFT REGULATION - DISPLAY OF TOBACCO PRODUCTS AT WHOLESALE AND RETAIL

Draft regulations on display of tobacco products at wholesale and retail were published in the Government Gazette 33692, R983 on Friday, 29 October 2010.

In terms of this regulation advertising at point of sale, previously allowed albeit with restrictions, will now be prohibited.

“Premises” is defined as including: land; a building or part of a building; a structure or part of a structure; fences, walls, outbuildings, service installations and other appurtenances of a structure; a tent, stall or other temporary structure; a boat or pontoon; a vehicle.

From the definition of premises, it is clear that regulations will include both formal and informal traders selling tobacco products. The concern is that presently the law regulating tobacco control is not enforced in the informal sector.

Consideration should be given as to whether the informal sector will be able to comply with clause 14.

Regulation 14

“At a sale’s unit a rectangular sign must be displayed, with its longer sides horizontal and its shorter sides vertical, and the message “Smoking can kill you” and beneath it: “We cannot by law sell tobacco products to anyone under 18 years” printed in black across it.

Should the regulations be enforced equally, as they should be, many informal traders that do not comply due to lack of resources will face being found guilty of an offense and liable to fines not exceeding R100 000,00.

It will be equally difficult for the informal sector to comply with Regulation 16(d).

Regulation 16(d)

“A sales unit shall not be positioned so that any packet of tobacco product faces more or less towards a window or public entrance unless the window or public entrance is at least two metres from the display”.

The phrase “more or less” is imprecise and requires further elaboration in order for wholesalers and retailers to comply with regulation, while hawkers and informal businessmen will not be able to comply at all, given their informal and temporary structures.

Implementation date

Regulation 17 provides that the regulations will come into operation 6 months from the date of publication in the Government Gazette.

These regulations once again raise the question of laws being made without consultation with all the relevant stakeholders. The regulations are unachievable for most outlets in the informal sector, yet up to 40% of all tobacco products are sold through the informal sector. Therefore, how will the objectives be achieved with partial compliance, and by criminalizing thousands of small entrepreneurs overnight who will not be able to comply.

The product display of both retailers above will be prohibited in terms of the new regulations.

The Tobacco Institute of Southern Africa
Combating Illicit Trade in Partnership with Government

Cross-border liaison

TISA continues to expand its role in SACU and SADC in dealing with a wide range of industry matters. Governments in the region continually state that they prefer to engage with organised industry on industry matters relating to illicit trade, regulation and matters affecting growers, rather than engaging with different sectors and individual companies in the industry.

During 2010, TISA liaised with government and industry officials in Angola, Botswana, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The combating of illicit trade in tobacco and tobacco products requires a continued coordinated effort.

TISA’s aim is to have the legal tobacco sector working together within a country to address the problem of illicit trade with their respective governments. Thereafter the objective is to ensure countries coordinate their efforts across borders within the region to collectively combat this scourge.

Zambia has recently established a tobacco industry body called The Tobacco Institute of Zambia (TIZA). This body will focus on liaison between Zambian tobacco industry role players to deal with non-competitive issues like illicit trade as an organised sector rather than individual companies. The tobacco industry in Mozambique intend establishing a similar body in the near future.

These organisations will be affiliated to TISA and TISA has pledged to assist these bodies to establish their structures and develop work procedures, whilst overseeing the coordination of tobacco sector related activities in the region.

Information Sessions on Illicit Trade

During 2010, TISA provided 1000 SARS and SAPS officials with training in how to combat illicit trade in tobacco and tobacco products as well as a comprehensive guide document for reference purposes.

Destruction of seized Illicit Tobacco Products

7,400 master cases of cigarettes have been destroyed by TISA through the use of the hammer mill and through incineration where this practice is still allowed.

Previous destruction methods involved the open fire burning and incineration of seized cigarettes, with both processes proving to be unfriendly to the environment, costly and extremely time consuming.

The rate of destruction of the hammer mill is one display carton per second. The machine if fully utilised during an 8 hour time period can destroy 900 to 1000 master cases per day.

The resulting material is ploughed into land fill sites where it is naturally bio-degraded.

Affidavits

During 2010, TISA submitted close to 50 affidavits to assist in various legal cases involving the smuggling of cigarettes.
Dear Sir / Madam

Illicit Trade in Cigarettes

The Tobacco Institute of Southern Africa is the representative body for the legal tobacco sector in South Africa, and our mandate is to protect the interests of the legal tobacco industry in South and Southern Africa. We write this letter to you on the subject of illicit trade in cigarettes.

In recent times we have seen the trade in illicit cigarettes grow into a major threat to the legal tobacco industry as well as to the revenue authorities who rely on the tobacco industry for a substantial contribution to the fiscus annually. Illicit cigarettes are cigarettes that are produced locally or imported into South Africa where the manufacturer or importer; 1) has failed to pay the relevant taxes applicable to cigarettes; and/or 2) the product is non-compliant with regard to health regulation and/or 3) does not have the required SARS diamond stamp impression.

We have also become aware of the fact that there seems to be some uncertainty among retailers and consumers about the legality of certain lower priced cigarettes. We hope that this letter serves to provide greater clarity regarding the pricing of legal cigarettes.

Currently the excise duty per pack of 20 cigarettes amounts to R8.94. If one makes reasonable allowance for the costs of manufacture, excise duties and VAT, a pack of 20 cigarettes which is offered to the retail trade for less than R11.33, (with or without an invoice) should be regarded as suspicious.

TISA is working closely with the South African Revenue Service on this issue and have undertaken to pass on to SARS all information concerning cigarette brands that are offered to the retail trade at prices lower than R11.33 per pack of 20 cigarettes for further investigation. We are pleased to say that SARS has indicated that, if persons are found guilty of trading in illicit cigarettes, they are prepared to use the full force of their legislative capability in prosecuting these matters which would result in criminal liability and severe penalties.

We are also aware of a sales practice among certain distributors, whereby brands are offered to you in a consignment that is not entirely reflected on the proffered invoice. This practice is used to hide non-duty paid product amongst legitimate duty paid product.

Recently, the National Prosecuting Authority secured sanctions of R 1.5 million or six years imprisonment as well as three years correctional supervision (with house arrest) and 480 hours of community service against a Cape Town businessman for possession of illegal goods including cigarettes. Apart from fines and/or imprisonment, asset forfeiture applications may result from the proceeds of crime.

We take this opportunity to warn you about distributors who sell cigarette brands below R11.33 per pack of 20s as they are likely to be engaging in the illicit trade in cigarettes. We further request that you forward to us all information of suppliers who offer cigarettes at suspiciously low prices. We will pass this information on to law enforcement agencies for their urgent investigation. There are also regional wholesalers who have listed some of these products. We urge you to also pass pricing and listing information pertaining to these products on to us.

Apart from the pricing issue, as referred to above, there is other legislation which, if not complied with, also results in illicit trading in tobacco products. TISA will be in contact with you on these matters as well in due course. We are determined to ensure that only legal and compliant tobacco products are manufactured, imported, distributed and ultimately offered to consumers who choose to use these products.

The content of this letter has been approved and is fully endorsed by the South African Revenue Service.

01 October 2010

Yours faithfully

Francois van der Merwe
Chairman and CEO

The Tobacco Institute of Southern Africa
The fact is illicit trade in tobacco products continues to be a major concern for all key stakeholders involved in the manufacture of tobacco products as well as those involved in the administration and collection of applicable duties. Domestic market indicators in South Africa suggest that illicit trade in tobacco products has increased significantly in the last 10 years. There is a real concern that if the prevalence of illicit cigarette products continues at current levels, there is a risk that consumers might start to perceive illicit products as an acceptable alternative to legal products and start to disregard and ignore the use of illicit products as an illegal and therefore unethical activity. TISA is committed to assisting authorities in combating the illicit trade of tobacco products in South Africa and the region in various ways.

**Campaign Elements**

A letter addressed to the retailer highlighting the consequences of dealing in illegal cigarettes. A plaque stating “No illegal cigarettes are sold here”. A leaflet dispenser and leaflets to inform and educate consumers of the consequences of buying illegal tobacco products.

**The Retail Awareness Campaign**

**Objectives**

To positively change attitude & behaviour of those who participate in or condone this illicit activity.

To inform and educate retailers and consumers of the personal and societal consequences of buying and selling illegal cigarettes.

**Campaign Positioning**

A bold, simple, factual and unapologetic approach to elicit feelings of accountability in those who participate and support the illicit trade in tobacco products by highlighting the consequences.

**Key Message**

“The fact is...illegal cigarettes support organised crime”

---

The Tobacco Institute of Southern Africa
Tobacco Production in South Africa

RSA Primary Industry

South African leaf production volumes are increasing and growers are positive about the new season. In both flue cured and dark air cured tobacco, the yields per hectare and quality have improved significantly over the past two years which has stimulated renewed interest from individual commercial farmers to return to the farming of tobacco. Apart from increasing yield per hectare, the focus for the new season is on producing quality leaf in a socially responsible manner in both the flue cured and dark air cured industries. Almost 100% of leaf produced in South Africa is used in local manufacturing.

Did you know:

(PHILADELPHIA) Researchers from the Biotechnology Foundation Laboratories at Thomas Jefferson University have identified a way to increase the oil in tobacco plant leaves, which may be the next step in using the plants for biofuel. Their paper was published online in Plant Biotechnology Journal.

According to Vyacheslav Andrianov, Ph.D., assistant professor of Cancer Biology at Jefferson Medical College of Thomas Jefferson University, tobacco can generate biofuel more efficiently than other agricultural crops. However, most of the oil is typically found in the seeds – tobacco seeds are composed of about 40 percent oil per dry weight.

"Tobacco is very attractive as a biofuel because the idea is to use plants that aren’t used in food production," Dr. Andrianov said. "We have found ways to genetically engineer the plants so that their leaves express more oil".
Tobacco Production in South Africa

Agricultural Research Council
Institute of Industrial Crops

Post Harvest Information Day
22 July 2010

The ARC-IIC held a successful Post Harvest Information day on 22 July 2010. Ms Jody Terblanche, the coordinator of tobacco research at the Institute noted that farmer days are usually held at the beginning of a season or when the tobacco is fully grown and felt that a Post Harvest information day, i.e. looking at the crop after it has been harvested and cured; how it is classified and graded may be of interest to industry stakeholders.

The day commenced with a welcoming note from the head of the Institute Dr. Graham Thompson and Opening Remarks by the TISA CEO, Francois van der Merwe where he emphasized the importance of research and dedicated researchers without which the tobacco industry in the RSA could not exist. Mr Jaco Malan of Universal Leaf SA also expressed their appreciation for the work done at the ARC-IIC.

The attendees were divided into groups and visited the various soil, plant and water analytical laboratories; plant protection initiatives and viewed cured tobacco from the different production areas. A number of practical demonstrations were held in the ARC Grading Shed where attendees could view a display of different tobacco styles and a practical demonstration of air cured tobacco grading.

The day ended with a lucky draw and informal get-together enjoyed by all.
Tobacco in South Africa
Research and Development

R & D Priorities

R & D priorities for the new season include cultivar development, improving fertilization and plant nutrition; the use of rotational crops in nematode control and effective curing to minimize losses in curing barns. Researchers continue to focus on the use of good agricultural practices and minimizing the use of hard chemicals for disease and pest control through integrated pest management.

For the new season, researchers will also be conducting detail profiling and establishing the percentage prevalence of tobacco viruses in the Vaalwater production region. The plan is to repeat this research in each of the other flue cured tobacco growing regions in future seasons. Preliminary surveys have found that one cannot rely solely on the visual expression of symptoms for identification of viruses. It is at times necessary to confirm the symptoms through lab tests to ensure that the correct treatment is applied.

Did you know:
Tobacco plants tapped to grow solar cells

Tobacco plants could help wean the world from fossil fuels, according to scientists from the University of California, Berkeley.

In a paper in the journal ACS Nano Letters, Matt Francis and his colleagues used tobacco plants, infected with a genetically engineered virus, to produce artificial photovoltaic and photochemical cells. The technique is more environmentally friendly than traditional methods of making solar cells and could lead to cheap, temporary and biodegradable solar cells.
Alcohol Prohibition Was a Failure - Mark Thornton

“National prohibition of alcohol (1920-33)--the "noble experiment"--was undertaken to reduce crime and corruption, solve social problems, reduce the tax burden created by prisons and poorhouses, and improve health and hygiene in America. The results of that experiment clearly indicate that it was a miserable failure on all counts. The evidence affirms sound economic theory, which predicts that prohibition of mutually beneficial exchanges is doomed to failure. Although consumption of alcohol fell at the beginning of Prohibition, it subsequently increased. Alcohol became more dangerous to consume; crime increased and became "organized"; the court and prison systems were stretched to the breaking point; and corruption of public officials was rampant. No measurable gains were made in productivity or reduced absenteeism. Prohibition removed a significant source of tax revenue and greatly increased government spending. It led many drinkers to switch to opium, marijuana, patent medicines, cocaine, and other dangerous substances that they would have been unlikely to encounter in the absence of Prohibition. Those results are documented from a variety of sources, most of which, ironically, are the work of supporters of Prohibition--most economists and social scientists supported it. Their findings make the case against Prohibition that much stronger.

The lessons of Prohibition remain important today. They apply not only to the debate over the war on drugs but also to the mounting efforts to drastically reduce access to alcohol and tobacco and to such issues as censorship and bans on insider trading, abortion, and gambling”.

Mark Thornton is the O. P. Alford III Assistant Professor of Economics at Auburn University.