Elements not discussed at INC-2, such as principles and scope of the instrument

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<tr>
<th>Name of country (for Members of the committee)</th>
<th>Asia &amp; European Union</th>
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<tbody>
<tr>
<td>Name of organization (for observers to the committee)</td>
<td>Asian Consultancy on Tobacco Control &amp; Smoke Free Partnership Both are members of the Stop Tobacco Pollution Alliance</td>
</tr>
<tr>
<td>Contact person and contact information for the submission</td>
<td>Judith Mackay - <a href="mailto:jmackay1@netvigator.com">jmackay1@netvigator.com</a> Chloé Momas - <a href="mailto:chloe.momas@smokefreepartnership.eu">chloe.momas@smokefreepartnership.eu</a></td>
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<td>Date</td>
<td>21 August</td>
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Elements not discussed at INC-2

1. **Scope**

*What is the proposed scope for the future instrument?*

*Which types of substances, materials, products and behaviors should be covered by the future instrument?*
Proposed scope:

**Tobacco Plastics**
The future instrument should explicitly cover tobacco’s toxic plastics due to the unique nature of the plastic cigarette filters/butts, the cigarettes to which these are attached, and the tobacco industry. This implies that the tobacco sector should be explicitly dealt with because it is subject to a litany of evidence-based policies adopted at the global level and further developed and implemented at the national level. The future instrument should provide a tailored approach for cigarette filters/butts and the tobacco industry. The special provisions can be incorporated throughout the text or within a specific section/provision.

**Explanatory Text:**
**WHY INCLUDE TOBACCO PLASTICS?**
Cigarette butts are plastics but unlike ordinary plastics, they are highly toxic, not substitutable, and not recyclable. Furthermore, the tobacco industry cannot be relied on to provide solutions.

Cellulose acetate in cigarette butts is considered a plastic that sheds microplastic into the environment while it is being used and once it is disposed. An estimated 0.3 million tons of cellulose acetate filters are disposed of annually across the globe and just a single filter releases approximately 100 microplastic fibers a day (less than 0.2 mm in size).

Cigarette butts top the list of plastic items that comprise total debris collected (33%) in ocean clean-ups, and municipal litter collection. Cigarette butts are also one of the most common plastic items that are floating in the harbors (29%) and that sink in the seabed (5.14%). Over 4.5 trillion cigarette butts are littered annually, making them consistently the topmost littered item in coastal clean-ups. This number will continue to rise for as long as the tobacco industry continues to impede tobacco control efforts in governments worldwide.

A wide range of pollutants leach from disposed cigarette butts and enter the oceans as well as the atmosphere. The risk of contamination through leachates is high: Toxic chemicals are leached to the environment if cigarette butts are not properly disposed. This causes significant harm among marine invertebrates as well as to the soil biosystem.

For instance, a study showed that 1% mass of cigarette butts added to landfill waste increases its heavy metal contamination by 5%. This is aggravated by the fact that nanoplastics and other toxic substances are easily absorbed by cigarette butts. The rate of contamination is also rapid; one cigarette butt can contaminate a liter of water with nicotine, up to levels that would be toxic to microorganisms.

**WHY THE DOES THE CURRENT FRAMEWORK TO ADDRESS PLASTICS NOT APPLY TO CIGARETTE BUTTS?**
Circular economy does not apply to cigarette butts because cigarette butts cannot be easily and safely recycled without very tedious, resource-intensive processes (due to the high rate of toxic properties). It is unclear if all the toxic constituents are safely removed during the waste treatment processes such as pyrolysis; UV rays, and other undisclosed/proprietary treatment process. Notably, there appears to be some success in isolating and encapsulating the cigarette butt (depending on what material is used) but this does not guarantee that there will be no leakage in the long run. There are
also studies showing the transformation of cigarette butts into carbon powder but the process is capital and energy-intensive (e.g., carbonization using 800 degrees for 2 hours in a furnace) in any case, these processes will not likely be feasible or scalable in low and middle income countries (LMICs) where most of the cigarette butts are littered. These recycling experiments would not outweigh the health and environmental costs involved.

**Cigarette butts take a long time to biodegrade, from 5-15 years however, unlike in other forms of plastics; substitution or alternatives cannot be used to solve the problem.** Any change to the filter design (e.g., biodegradable) could further generate misinformation that cigarettes can be safe. The tobacco industry appears to be going in the direction of biodegradable filters. (e.g., Philip Morris, Greenbutts, an organization working with tobacco producers) but such a new feature could inevitably serve as a marketing tool and would undermine tobacco control measures (advertising bans) that are in place.

**Cigarette butts are not only problematic and avoidable, they are a toxic and unnecessary part of a deadly product.** Cigarettes kill one in two users when used as intended by manufacturers; and the filters are an accessory designed to make smoking more appealing by creating the illusion that toxins are being filtered out. This gives an impression of increased safety thereby making the product more attractive to potential and current users. In reality, cigarette filters have no proven ability to make cigarettes safer and are linked to a more aggressive form of cancer.

**WHY CAN’T THE TOBACCO INDUSTRY BE CONSIDERED A STAKEHOLDER?**
The tobacco industry recognized early on that filters are flawed in that it cannot be used to reduce toxic constituents and that microplastic fibers inevitably fall out while smoking. A single cigarette filter has 12,000–15,000 cellulose acetate strands and releases approximately 100 microplastic fibers a day. Notably, plastic fibers have been observed in deceased smokers’ lungs. And yet the tobacco industry has since continued to use filters as marketing tools, adding flavors, capsules, and colors, including chemicals that would allow the filter to stain when used to give the impression that toxins are filtered out.

Because the tobacco industry produces products that kill half of its consumers, it has long been recognized as actors whose functions are fundamentally inconsistent with the core values of the UN; and have thus been excluded by various UN agencies (eg UN Global Compact, WHO, UNDP, etc.)
2. **Principles**

*What principles could be set out in the future instrument to guide its implementation?*
Proposed principles and Explanatory Text:

A. To address the problem posed by cigarette filters, the future instrument should be guided by the general principle of prioritizing the realization of human rights, including the human right to health and to a clean, healthy, and sustainable environment. This is consistent with the WHO FCTC Parties’ commitment to prioritizing health and the WTO’s recognition of measures to protect public health and public interest, of the primacy of health over trade, and of the duty to protect and preserve the environment. The primacy on environment would also be consistent with various multilateral environment agreements and the recent declaration of the right to a clean, healthy, and sustainable environment as a human right.

A.1. This calls for the adoption and application of the precautionary principle consistent with Article 3 of the United Nations Framework Convention on Climate Change (UNFCCC) which provides: “parties should take precautionary measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.” Similarly, Art 15 of the Rio Declaration on Environment and Development provides: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

Applying this principle to cigarette butts could suggest that cigarette butts must be immediately treated as hazardous waste, and not recycled further; because of what is already known on the chemical and heavy metal toxicity to plant/animal life and human health. Notably, research in laboratory settings have already found cigarette butts to be highly toxic to various organisms, plants, and marine animals. Policy decisions to protect health and the environment can be taken without waiting for further studies to elaborate on the full potential for environmental harm or long-term harm to humans.

A.2. This also calls for the adoption of the polluters pay principle, as enunciated in Art 16 of the Rio Declaration, to wit: “National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.” The WHO FCTC Art 6 Guidelines further elaborates on this concept by taking into account the negative externalities of tobacco and recommending the use of effective tobacco taxes to internalize the costs. The Guidelines further set out a principle to protect tobacco tax policies from vested interests of the tobacco industry: “The development, implementation and enforcement of tobacco tax and price policies as part of public health policies should be protected from commercial and other vested interests of the tobacco industry, including tactics of using the issue of smuggling in hindering implementation of tax and price policies, as required under Article 5.3 of the WHO FCTC and consistent with the guidelines for its implementation as well as from any other actual and potential conflicts of interests.”
Tobacco incurs a net economic loss to the tune of at least 1.4 trillion per year for the world economy. The total environmental costs has not been estimated but a conservative estimate of the tobacco’s plastic marine pollution cost per country is available, estimated at around 20B per year globally. Financing mechanisms should be designed to require mandatory payments/fees from the tobacco industry to fully compensate for past, present, and future plastic pollution and the actual costs of managing the litter and treating the waste.

A.3. Corollary to making the tobacco polluter pay and holding the industry to account, is the call to **adopt principles relating to liability as this is an important part of comprehensive measures, to serve as a deterrent and to serve the ends of justice.** One of the seven Guiding Principle in the WHO FCTC establishes that “Issues relating to liability, as determined by each Party within its jurisdiction, are an important part of comprehensive tobacco control.” Indeed, liability can serve as an inherent deterrent for environmentally harmful activities. Producers of polluting items should be made accountable and liable not only for past and present harms (e.g., via remedies such as litigation and compensation, mandated product warnings, and mandated product changes), but also for future or potential harms (e.g., via financial guarantees to mitigate environmental damages caused by products).

In the WHO FCTC provision on liability, Parties “shall consider taking legislative action or promoting their existing laws, where necessary, to deal with criminal and civil liability including compensation, where appropriate,” including affording one another assistance in legal proceedings. States are urged to assist one another in holding the tobacco industry liable including to compensate victims and the State.

In addition to providing access to remedies, liability principles/provisions can foster strengthening compliance, as much with environment/health laws as with human rights laws. According to the **Guiding Principles** on Business and Human Rights, States must “Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.” Harming the environment, e.g., by ignoring laws, standards, and regulations, should be considered contributing to human rights abuse; and hence, addressing such a risk should be a legal compliance issue. According to the **Third revised Draft of the Binding Treaty on Business and Human rights**, human rights violations should be subject to effective, proportionate, and dissuasive sanctions.

The tobacco industry’s accountability for past, present, and future harms including through dissuasive sanctions and effective remedies is crucial in protecting the environment. This would prevent the industry from perpetuating environmental harms. In the field of health, allowing the tobacco industry to apply “innovation” to transform its products to “smoke-free” ones paved the way for novel products such as e-cigarettes, which invited a whole new vaping epidemic especially among the youth. A similar scenario can be expected if the tobacco industry is enabled to provide “innovative solutions” to cigarette filters, instead of being penalized for harms caused. The tobacco industry’s solutions can potentially lead to significant unintended consequences that could further exacerbate environmental and health harms. For instance, if it is allowed to introduce biodegradable cigarette filters, the “biodegradable filters” would no longer have plastic components but will remain toxic; but smoking could increase on account of the increased attraction to the novel feature. Both smoking and littering would also increase due to the false impression of increased safety or eco-friendliness, thus further devastating the environment in a different mode.
Polluters pay principle and the liability principle/provisions are inextricably linked. Payment is a good mechanism to exact liability. Notably, some Parties have imposed “surcharges” on the tobacco industry in the spirit of the Polluters Pay Principle; these should also be encouraged as tax and price measures which are effective means to reduce tobacco consumption, in accordance with WHO FCTC Art 6.

A.3 This also calls for a robust participation of civil society or NGOs as indicated in UN FCCC as a commitment of Parties to “promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations;” The WHO FCTC’s proviso is more general: “The participation of civil society is essential in achieving the objective of the Convention and its protocols.” Unlike the UNFCCC, the WHO FCTC places an important qualifier for civil society participation in that only “those that are not affiliated with the tobacco industry” are welcome to participate, to wit:

WHO FCTC preamble provides: “Emphasizing the special contribution of nongovernmental organizations and other members of civil society not affiliated with the tobacco industry, including health professional bodies, women’s, youth, environmental and consumer groups, and academic and health care institutions, to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts,”

Guidelines that mention civil society involvement specifies “Nongovernmental organizations and other members of civil society not affiliated with the tobacco industry.”

B. To ensure policy coherence, it should adopt the same or substantially similar principles as those enshrined in the WHO FCTC, to wit:

1. Every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke and effective legislative, executive, administrative or other measures should be contemplated at the appropriate governmental level to protect all persons from exposure to tobacco smoke.

2. Strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multisectoral measures and coordinated responses, taking into consideration: (a) the need to take measures to protect all persons from exposure to tobacco smoke; (b) the need to take measures to prevent the initiation, to promote and support cessation, and to decrease the consumption of tobacco products in any form; (c) the need to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to their needs and perspectives; and (d) the need to take measures to address gender-specific risks when developing tobacco control strategies.

3. International cooperation, particularly transfer of technology, knowledge and financial assistance and provision of related expertise, to establish and implement effective tobacco control programmes, taking into consideration local culture, as well as social, economic, political and legal factors, is an important part of the Convention.

4. Comprehensive multisectoral measures and responses to reduce consumption of all tobacco products at the national, regional and international levels are essential so as to prevent, in accordance with public health principles, the incidence of diseases, premature disability and mortality due to tobacco consumption and exposure to tobacco smoke.

5. Issues relating to liability, as determined by each Party within its jurisdiction, are an important part of comprehensive tobacco control.
6. The importance of technical and financial assistance to aid the economic transition of tobacco growers and workers whose livelihoods are seriously affected as a consequence of tobacco control programmes in developing country Parties, as well as Parties with economies in transition, should be recognized and addressed in the context of nationally developed strategies for sustainable development.
7. The participation of civil society is essential in achieving the objective of the Convention and its protocols.

C. Due to the tobacco industry's peculiar status as an industry whose business fundamentally violates human rights; it is also important to adopt guiding principles to protect tobacco-related policies from the commercial and vested interests of the tobacco industry. At a high-level meeting in 2012, the UNGA recognized the fundamental conflict of interest between the tobacco industry and public health. The fundamental and irreconcilable conflict of interest was also recognized by the ECOSOC which urged UN agencies to adopt a Model Policy. The instrument can adopt the guiding principles similar to those found in the Guidelines of the WHO FCTC, particularly Art 5.3 Guidelines.

**GUIDING PRINCIPLES**

**Principle 1:** There is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests.
13. The tobacco industry produces and promotes a product that has been proven scientifically to be addictive, to cause disease and death and to give rise to a variety of social ills, including increased poverty. Therefore, Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.

**Principle 2:** Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.
14. Parties should ensure that any interaction with the tobacco industry on matters related to tobacco control or public health is accountable and transparent.

**Principle 3:** Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.
15. The tobacco industry should be required to provide Parties with information for effective implementation of these guidelines.

**Principle 4:** Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses.
16. Any preferential treatment of the tobacco industry would be in conflict with tobacco control policy.

D. It bears stressing that the guiding principles relating to excluding tobacco industry engagement/participation is in fact, aligned with the core values of the UN and UN Agencies such as UNEP/INC Secretariat. The UN’s rules on partnerships consistently exclude the tobacco industry because its operations violate the UN’s core values. UN Sustainable Development Group (UNSDG) Common Approach to Due Diligence for Private Sector Partnerships adopted in 2019 places tobacco in the exclusionary criteria. This embodies guidance from both the UN Global Compact (UNGC) and the UN Guiding Principles on Business and Human Rights. In 2017, the UN Global Compact adopted a policy to exclude tobacco companies. In 2011, UNEP adopted Partnership Policies and Procedures that require the consideration of excluding organizations from arm, tobacco, and alcohol industry.
3. **Additional considerations**

Provide any other relevant inputs, proposals or priorities here that have not been discussed at INC-2 (e.g. preamble; institutional arrangements, including governing body, subsidiary bodies, scientific and technical cooperation and coordination, and secretariat; final provisions including dispute settlements; and if appropriate annexes).

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<th>Proposed inputs:</th>
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<tr>
<td><strong>Tobacco Sector</strong></td>
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<td>Policy options that are perceived to work for most plastics (such as circular economy, recycling, substitution, extended producer responsibility, stakeholder engagement) will not work for the tobacco sector since these would undermine the objectives and implementation of the WHO FCTC. Addressing tobacco’s toxic plastics such as cigarette butt pollution (as well as the increasing e-cigarette waste) will require specific solutions to be formulated in order to ensure compliance with WHO FCTC and national tobacco control goals. Any measure that does not align with the WHO FCTC’s objectives would inadvertently promote or increase tobacco consumption which is inimical to public interest. Thus, a sectoral approach should be considered for tobacco.</td>
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<td>A technical working group on tobacco can be established under the auspices of or in collaboration with the WHO FCTC Secretariat. Any work done on the tobacco sector should be protected from the commercial and vested interests of the tobacco industry.</td>
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A number of documents prepared by the secretariat for INC-1 and INC-2 are of relevance to this submission, including:

**UNEA resolution 5/14** on 'End plastic pollution: towards an international legally binding instrument'

**UNEP/PP/INC.1/5** on 'Potential elements, based on provisions in paragraphs 3 and 4 of United Nations Environment Assembly resolution 5/14, including key concepts, procedures and mechanisms of legally binding multilateral agreements that may be relevant to furthering implementation and compliance under the future international legally binding instrument on plastic pollution, including in the marine environment'

**UNEP/PP/INC.1/6** on 'Glossary of key terms'

**UNEP/PP/INC.1/8** on 'Description of standard articles on final provisions that are typically included in multilateral environmental agreements'

**UNEP/PP/INC.2/4** on 'Potential options for elements towards an international legally binding instrument, based on a comprehensive approach that addresses the full life cycle of plastics as called for by United Nations Environment Assembly resolution 5/14'

**UNEP/PP/INC.2/INF/4** on 'Additional information linked to the options for the potential elements towards an international legally binding instrument'

**UNEP/PP/INC.2/INF/7/REV.1** on 'Information submitted by the Secretariat of the Basel, Rotterdam and Stockholm conventions'