

PE1580/F

11th January 2016

Michael McMahon
Convener
Public Petitions Committee
Scottish Parliament
Edinburgh
EH99 1SP

Dear Convener and Committee Members

Petition PE1580

After making my 5th January 2016 submission to the Committee, I received from the Committee Clerks the submissions made by Japan Tobacco International (JTI) and by the Tobacco Manufacturers' Association (TMA), and am taking up the invitation to respond. I would like to make a couple of key overall points to assist the Committee in its further consideration, and will move on to address some of the more detailed points raised in the two submissions in case these come up in the Committee's discussions.

Key points:

As I said both in the November evidence session and reiterated in my recent written submission, this petition was brought to ask the Scottish Parliament to reflect on how it views its obligations under an international public health treaty to which we are signatories and to issue guidance for its staff on meeting these obligations. Both tobacco industry submissions imply that the petition is somehow about excluding the industry. This is untrue, and wrongly implies either a completely open door or completely shut door approach to the industry. Under the treaty, Governments and Parliaments are not precluded from engaging with tobacco companies, but the obligations of this treaty require guidance on how that is done. Such guidance currently does not appear to exist in any form in the Scottish Parliament.

For the Scottish Parliament to deliver on Scotland's obligations under this treaty - even if it were to decide that its only relevant obligation is a degree of transparency as part of normal practice - I would suggest that something needs to be written down to formalise and define the approach specifically in relation to the FCTC treaty, Article 5.3. Both the

[Action on Smoking and Health \(Scotland\) \(ASH Scotland\)](http://ashscotland.org.uk) is a registered Scottish charity (SC 010412) and a company limited by guarantee (Scottish company no 141711).

Scottish Government and the Westminster Dept. of Health have previously put in writing their approaches to implementing Article 5.3, and both regularly use written declaration of interest requirements as part of their normal practice - for example in public consultations relating to proposed tobacco regulation, and at meetings of the Scottish Government's Ministerial Group on Tobacco.

Detail of tobacco industry submissions from JTI and the TMA:

JTI submission

'UK Dept of Health': What JTI calls the 'UK Dept of Health' has never restricted its compliance with FCTC Article 5.3 to just a requirement for transparency. The UK Government has for example developed and issued guidelines for overseas staff in the Foreign and Commonwealth Office to guide their compliance with FCTC Article 5.3.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287119/Guidance_for_Overseas_Posts_on_support_to_the_Tobacco_Industry.pdf

The quote from Anna Soubry MP in no way contradicts either my representations to the Committee or the provisions of Article 5.3 and the associated guidelines on implementation.

Catherine Day, former Secretary General EC: JTI quotes the words of a former Secretary General of the European Commission, Catherine Day. Researchers at the University of Bath have noted Day's close involvement with the tobacco industry, evidenced by her repeated meetings with industry representatives during consideration of the Tobacco Products Directive, followed by her interventions (using arguments that echoed tobacco industry arguments) with the effect of delaying the progress of the Directive and proposing the removal of measures such as plain packaging and the point of sale display ban from the TPD. They also argue that the Framework Convention on Tobacco Control Article 5.3 was poorly understood and implemented within the Commission, in particular by non-health Directorates.

<http://tobaccocontrol.bmj.com/content/early/2015/02/06/tobaccocontrol-2014-051919.full.pdf+html>

Stakeholder engagement: JTI attempts to broaden the issue and redefine it as relating to normal democratic processes and to general stakeholder engagement. However this petition is not about normal commercial stakeholders, it is about how Scotland's Parliament interprets and implements the only international public health treaty in existence, to which we are signatories, and which refers exclusively to dealings with the tobacco industry.

Netherlands legal action: JTI brings in a reference to a legal case in the Netherlands. This is a red herring because the legal systems and mechanisms for adopting treaties are different. Interpreting this treaty article and its associated guidance for Scotland is a task for the Scottish Government and Parliament. Unlike Scotland, the Netherlands' approach to regulating tobacco to date has also been widely criticised by national and international health organisations:

http://www.fctc.org/images/stories/2011_Dutch_Schadowreport_010312.pdf

TMA submission

Tobacco as a legitimate business: The TMA makes much of its statement that tobacco is a “legitimate” business, but not being illegal does not equate to either moral desirability or to ethical legitimacy. There are many products, from asbestos to fireworks, which are not banned but which cause harm and are therefore subject to appropriate regulation. The TMA’s statement however misses the point of the petition, which is that tobacco companies and their vested interests are the subject of an international treaty. A request to Parliament to consider this treaty and issue guidance to staff is the foundation of the petition.

Previous engagement with the Scottish Parliament: The TMA presents in a negative way my previous attempts to engage with the Scottish Parliament on this issue, however the petitions process specifically asks about previous attempts to resolve issues before a petition is brought, and I note that the Presiding Officer's letter does not refer either to the FCTC treaty or to Article 5.3. It refers to current staff codes of conduct within Parliament, leaving the issue of the Scottish Parliament's implementation of the treaty untouched.

I look forward to hearing the outcome of the Committee's discussion in due course.

Kind regards.

Yours sincerely

Sheila Duffy
Chief Executive