

ADVANCING TOBACCO CONTROL POLICY IMPLEMENTATION: Lessons Learned and challenges Jamaica



SHERYL DENNIS-WRIGHT
Attorney-at-Law/ Legal Officer
Ministry of Health
Jamaica
August 31, 2018

THE ROAD TO POLICY IMPLEMENTATIO N:

From Regulations to
comprehensive



JAMAICA

- ✓ Signed FCTC in 2003
- ✓ Ratified FCTC on July 7, 2005
- ✓ Enacted the PUBLIC HEALTH(TOBACCO CONTROL) REGULATIONS on July 15, 2013

FCTC, JAMAICA enacted legislation WHICH address some provisions of the FCTC

Article 6 – some obligations of this Article are addressed by Jamaica's General Consumption Tax Act, 1991 and the Excise Duty Act, 1942

Article 12 & 21 (4) – some obligations of this Article are addressed by Jamaica's Access to Information Act, 2002

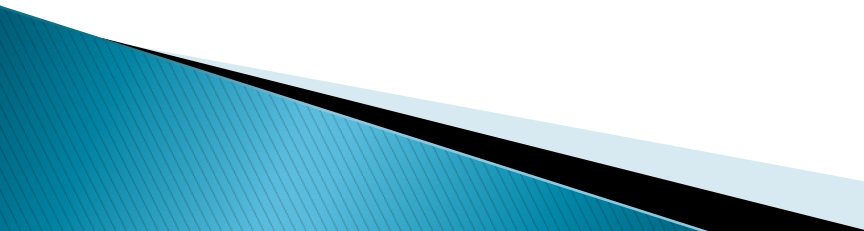
Article 13 – some obligations of this Article are addressed by Jamaica's Broadcasting and Re-Diffusion Act.

Article 15 - some obligations of this Article are addressed by Jamaica's Customs Act, 1941.

Article 16 – the Prohibition on Sales to and by minors is covered under Jamaica's Child Care and Protection Act, 2004.


Article 19 – some obligations of this Article are addressed by Jamaica's Mutual Assistance Act.

The PUBLIC HEALTH (TOBACCO CONTROL) REGULATIONS, 2013 is an implementation of the following articles OF THE FCTC:

- ▶ Protection from exposure to tobacco smoke
– Article 8;
 - ▶ Regulation of tobacco product Contents and tobacco product disclosures – Articles 9 and 10 (in part);
 - ▶ Packaging and labeling of tobacco products
– Article 11
- 

Prohibition under the Regulations

The Regulations prohibit smoking or holding lit or electronic Tobacco or Tobacco Product in:

- Enclosed Public places ***
 - Enclosed Workplaces ***
 - public conveyances
 - government-occupied buildings
 - health facilities (including pharmacies)
 - sports, athletic or other similar facilities (for the use of the public)
 - educational institutions
 - bus stops and departure and arrival waiting areas at a port or station for any form of transportation
- 

The Regulations prohibit smoking or holding lit or electronic Tobacco or Tobacco Product in:

- **areas specifically for use by children**
- **Outdoor dining and service areas**
- **Parks**
- **Sites declared under the Jamaica National Heritage Trust to be “national heritage sites”**

Carreras Limited & British American Tobacco (Brands) Inc. v. The Minister of Health

- ▶ **The Industry also challenged the Minister's Promulgation of the Tobacco Regulations by virtue of a Judicial Review Application against the decision of the Minister ...**
- **A Claim was filed on October 10, 2013**
- **The Applicants**
 - ✓ **applied for orders to quash the labelling provisions of the Regulations**
 - ✓ **Asserted that the Minister acted ultra vires when he promulgated the labelling provisions of the Regulations**
 - ✓ **Asserted that the required size of the GHWs infringes the Applicants' rights to exhibit their products properly**


- Penalties too stringent
- Labelling requirements onerous – breach of international law? Breach of intellectual property rights? trademark infringement?
- Onerous reporting obligations– reveal of trade secrets?
- Law unconstitutional
- Effect on the economy/particular sectors
- Misleading advertisement campaigns regarding the provisions of the Regulations

Carreras subsequently withdrew its claim at the Hearing of the matter before a Judge in Chambers on December 18, 2013

- Various public sentiments against the former Minister of Health

Prohibition...

The following areas except where outdoor smoking solutions (which meet specified conditions) are established :

- Tourist establishments
 - beaches
 - Outdoor markets
 - Bars, restaurants and clubs
 - Outdoor events or activities being used for gathering by individuals
- 

Think carefully about the smoking ban

Wednesday, June 01, 2011

Dear Editor,

I am writing this letter to share my views on the issue of banning tobacco. I am a vendor in the Half Way Tree area, and I sell fast-going items such as banana chips, other snacks, cigarettes, etc.

I must tell you that I lost a leg in an accident about four years ago, and I also did not get to finish school because of financial problems. I am from St Mary but I think that it is easier to make a living in the city area. I am concerned about this matter because when a ban is put on cigarettes I am going to have a harder time trying to earn a dollar.

When a man like me buys a half case of cigarettes, or sometimes "trust" them because I am a regular customer, when I go back into the streets and sell them to the bus drivers and others, I can double what I paid. I have bills to meet and kids to feed so I have to work. I will not say that because I lost a leg I am going to beg or borrow.

Concerns raised ...

- ▶ As to the process of passage of the law
 - ▶ Regulations under the Public Health Act were not subject to Parliamentary scrutiny—outlined in the Act
 - ▶ Minister however admitted that it allows for good governance to bring same to Parliament first
- ▶ Lack of Public Awareness prior to implementation of law
- ▶ Clarity required for effective enforcement
- ▶ General overwhelming support of public based on survey



Review of Provisions to allow for greater enforcement


- ▶ Concerns raised in the senate
- ▶ Ministry mandated to have the law examined by the Human Resource and Social Development (HRSD) Committee of Parliament
- ▶ Report of HRSD Committee:
 - Remove requirement of single stick labelling
 - Revise definitions to allow for clarity

Tobacco industry interference???



Many still saw tobacco industry as any other stakeholder, as opposed to the utter CONFLICT

Sensitization... (and the 2014 revision)

- ▶ Sessions were organized and undertaken with government and other sectors..flyers disseminated
 - ▶ Regulations tweaked to allow for greater clarity as to definition and to ensure greater effectiveness:
 - single sticks labelling removed
 - 75% to 60% GHWs
 - Application to hotels and resort areas tweaked and clarified
 - Outdoor smoking solutions and ENDS added
- 

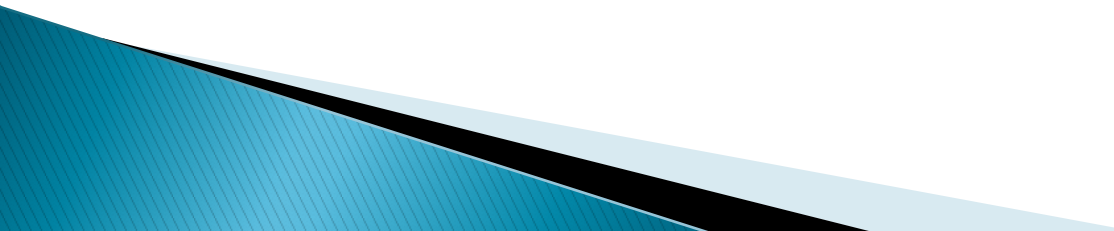
- ▶ PAHO WHO supported an Inter-Ministerial workshop on Tobacco and Trade with other Relevant Ministries and Civil society
 - Article 5.3 Discussed



- ▶ Then Head of Convention Secretariat
 - Dr Haik Nikogosian visited and met with
 - Prime Minister, Cabinet,



NEEDS ASSESSMENT

- ▶ A critical means of advancing FCTC implementation in Jamaica
 - ▶ Joint mission – Convention Secretariat of the FCTC, WHO/PAHO, UN Country Team, MOH
 - ▶ Examination of Gaps
 - ▶ Needs assessed
 - ▶ Report with findings provided and disseminated
 - ▶ Post Needs Assessment Recommendation and Technical and fiscal assistance to address needs/gaps
- 


Tobacco stakeholders meeting 'sell off'

Tuesday, August 19, 2014 | 2:37 PM  1 comment

 Like

Share

0

 Tweet

0



KINGSTON, Jamaica – The start of the tobacco stakeholders meeting convened jointly by the World Health Organisation (WHO) and Jamaica's Ministry of Health at Terra Nova All-Suites Hotel in Kingston was delayed by nearly an hour this morning as a result of an overflow of attendees.

The meeting, which is part of a week-long needs-assessment of the country's implementation of tobacco regulations, was scheduled to begin at 10 o'clock, but it didn't start until close to 11:00.

The time was used to arrange additional seating, as the prepared 50 places proved insufficient for the close to 100 people who turned out.

POST- NEEDS ASSESSMENT ACTIVITIES

- ▶ multi-sectoral workshop in June 2015 - Article 5.3
- ▶ sensitization workshops:
 - Ministry of Justice , Customs Dept., Bureau of Standards, Public health officials, island's Mayors
- ▶ Review of Excise Tax in Jamaica- Corne Van Walbeek
- ▶ Assistance -Legal Consultation - from PAHO/WHO through CTFK for the development of a Draft Model comprehensive Bill using the PAHO Model

Marijuana...

- ▶ Amendments to the dangerous drugs act and the implications for understanding the restrictions on the Tobacco Control Laws



Changing of the guards

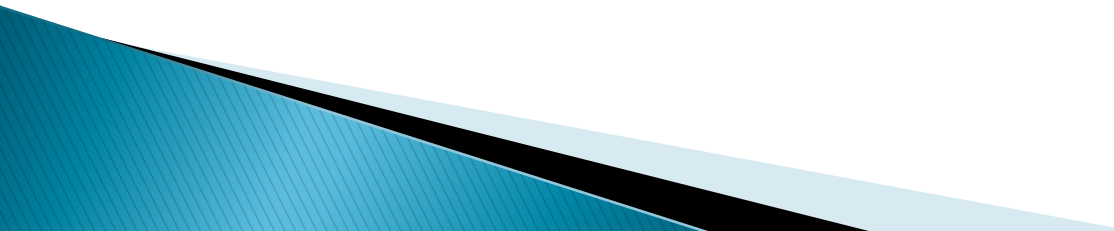
- ▶ Change in Health Minister –
- ▶ Change in Political leadership
- ▶ Re-sensitizing of Minister of Health
- ▶ Understanding tobacco as a major risk factor in NCD prevention and control – the health agenda



Keeping Tobacco control as a part of the Policy– Health Agenda


- ▶ Tobacco control as a part of the SDGs
- ▶ Focus of Tobacco at the WHA
- ▶ Jamaica hosts Sub-Regional Meeting on Law and NCDs - October 2017
- ▶ Jamaica Moves NCD Investment Case

Recent increases in taxation

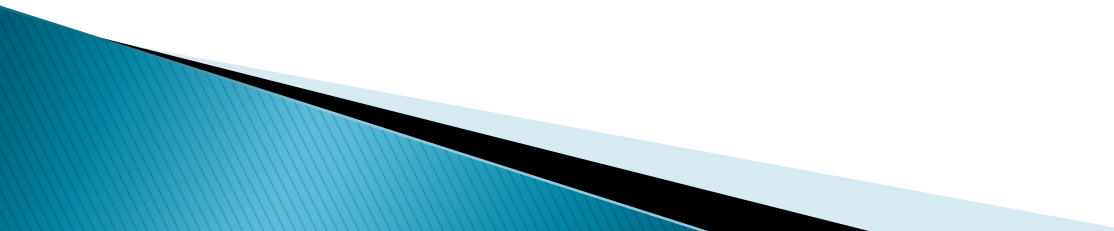
- ▶ Specific Consumption Tax
 - ▶ 2010 – J\$10.50 per stick
 - ▶ 2015 – J\$12.00 per stick
 - ▶ 2016 – J\$14.00 per stick
 - ▶ 2017 – J\$17.00 per stick
- 

LESSONS LEARNED

IMPORTANCE OF PARTNERSHIPS

- Multi-sectorial collaboration
 - Civil Society collaboration
 - Needs Assessment
 - High Level/inter-ministerial meetings and engagements
 - Support and collaboration with WHO/PAHO
 - Support of Convention Secretariat
- 

Cabinet Submission and Decision

- ▶ In June 2018 Cabinet gave approval for the submission of Drafting instructions to the CPC for the development of FCTC (implementation) Bill. Regulations to be subsumed under comprehensive legislation.
 - ▶ Drafting instructions issued
 - ▶ Drafting now in progress
- 

FINISH

