

Novel and Emerging Tobacco Products

This document relates to item 6.3 of the provisional COP agenda and corresponds to documents [FCTC/COP/10/9](#) and [FCTC/COP/10/10](#)

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Key recommendations

- GATC commends the work carried out by the WHO, the WHO Tobacco Laboratory Network (TobLabNet) and the WHO Study Group on Tobacco Regulation (TobReg). We welcome the reports by the WHO to counteract challenges posed by the classification of *new and emerging* tobacco products (10/9) and its comprehensive report on research and evidence on *novel and emerging* tobacco products, in particular heated tobacco products in response to paragraphs 2(a) – (d) of decision FCTC/COP8(22) (10/10).
- Given the rapid evolution of products that continue to flood the market, GATC requests the WHO to continue to carry out and expand its research to cover these *emerging* products that have evolved since its most recent report. This may include areas such as flavors, disposable ENDS and ENNDS, nicotine pouches and other new products, particularly those targeted towards youth.
- GATC recognizes the sovereignty of Parties in regulating *emerging* products in accordance with national law. Therefore, we encourage WHO regional offices to conduct assessments on the evolving needs and challenges faced by Parties and encourage Parties to reach out to WHO and regional offices for more technical support as needed.
- The term “*novel*” gives both the industry and its products an undeserved platform to promote itself and its products as being innovative and progressive. GATC therefore urges the WHO and Parties to move away from using the term “*novel*” when referring to the tobacco industry’s *new and emerging* products.

What is being proposed

There are two documents presented on new and emerging products for COP10.

- The first document (10/9) examines the challenges that new and emerging tobacco products are posing for the comprehensive application of the WHO FCTC, in particular those articles and guidelines referring to definitions and terminology and to tobacco smoke, and provides information on the adequate classification of such products, such as heated tobacco products, to support regulatory efforts, as requested in paragraph 3 of decision FCTC/COP8/(22). Furthermore, the report includes considerations for Parties to overcome these challenges and calls for the COP to note the present report and provide further guidance.
- The second document (10/10) summarizes *Technical Report Series 1029*, the eighth report of the WHO Study Group on Tobacco Product Regulation, and the outcomes of the Heated

Tobacco Product (HTP) Expert meeting held in February 2020, both of which respond to paragraphs 2(a)–(d) of decision FCTC/COP8(22). It also reports on changes to the 2022 World Customs Organization Harmonized System Codes for nicotine and tobacco products. The report also includes updated evidence, market developments and some recent updates related to HTPs, including policy measures adopted up to 31 December 2022.

The first report includes considerations for Parties to overcome the challenges that *new and emerging* tobacco products are posing for the comprehensive application of the WHO FCTC and both reports invite the COP to note the reports and provide further guidance.

Why this is important

The rapid introduction onto the market of *new and emerging* products continues to pose significant regulatory challenges to Parties. Evidence around the potential population harm from use of these products is still evolving as is evidence of effectiveness of different approaches to regulation. In addition, a number of Parties have existing regulatory regimes at the national level that capture some of these products, but not others, while other Parties have no existing regulation under which *new and emerging products* are captured. Moreover, many of these new products are highly flavoured and packaged and geared towards youth, and youth uptake is highly alarming around the globe. This makes for a complex environment in which to seek and provide guidance on the most appropriate way forward. These challenges are further exacerbated by the tobacco and e-cigarette industry's aggressive interference in policymaking.

Ongoing and timely research and reporting by WHO will assist Parties in making evidence-based regulatory decisions, as will sharing of intelligence between Parties. Parties needing further technical support should be encouraged to seek assistance from their WHO regional offices.

Background

- In 2016 the WHO presented a report (FCTC/COP/7/11) to COP7 updating the evidence of the health impact of ENDS/ENNDS, their potential role in tobacco cessation and their impact on tobacco control efforts, as well as an assessment on regulatory options. COP7 adopted decision FCTC/COP7(9) inviting Parties to consider applying regulatory measures such as prohibition or restriction of the manufacture, importation, distribution, presentation, sale and use of ENDS/ENNDS, as appropriate to the Parties' national laws and public health objectives.
- Decision FCTC/COP7(9) requested the WHO to report on the development of methods by regional and international standards-development organizations for the testing and measuring of the contents and emissions of these products, at the next session of the COP.
- At COP8, decision FCTC/COP8(22) on "Novel and emerging tobacco products" reminded Parties that heated tobacco products (HTPs) are tobacco products and, therefore, subject to the provisions of the WHO FCTC.
- The decision also invited Parties to prioritize the following measures: prevention of initiation; protection of people from exposure to their emissions by including these products in the scope of the smoke-free legislation; prevention of unproven health claims; prohibition of advertising, promotion and sponsorship; regulation of contents and disclosure of contents; and protection of tobacco control policies from commercial and other vested interests related to these products. The decision also requested Parties to consider whether to "regulate, including restrict, or prohibit, as appropriate the manufacture, importation, distribution, presentation, sale and use of novel and emerging tobacco products" and to apply the aforementioned measures to the devices designed for consuming these products.