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Susan Meyer

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# COMMENTS

## **New Players for the Old Tobacco Game: the Czech Republic and Romania; It's Time to Change the Rules**

*Susan Meyer\**

### I. INTRODUCTION

Just a few years ago, any Romanian mother and child could have enacted the following scene:

A mother and young son are driving in downtown Bucharest. As the woman slows her car to a stop, her son exclaims,

“Mommy, Mommy, I see a camel!”

In an unperturbed tone, his mother responds, “Yes, dear.”

“Really, really Mommy! I saw a camel!” the boy shouts.

Without taking her eyes off the road, his mother responds, “I saw it too, Honey.”

“Mommy, why is there a camel on the traffic light?”

“It’s an ad,” his mother says.

“An ad for what?” her son asks.

“Cigarettes,” she responds, slowing down for another yellow, camel-covered traffic light.

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\* 1997 J.D. Candidate, Northwestern University School of Law.

"I like Camels," her young son says.<sup>1</sup>

Cigarette and tobacco advertisements have become a part of life in the Czech Republic and Romania. In the Czech Republic, Camel cigarettes, manufactured by R.J. Reynolds, sponsored weddings in which taxis bearing the Camel logo transported guests from the wedding to the reception.<sup>2</sup> In Romania, Kent cigarettes, manufactured by British and American Tobacco Company (BAT), sponsored the extremely popular television show "Dallas."<sup>3</sup> Unfortunately, the health consequences of cigarette use, which lead to the annual death of three million people around the world,<sup>4</sup> have also become a part of daily life. In 1995, almost 20% of the Czech Republic's death rate, 22,000 deaths out of a total 125,000, was attributable to deaths from smoking-related illnesses.<sup>5</sup> In Romania, an increase in the incidence of lung cancer in Bucharest was reported.<sup>6</sup> In Eastern Europe as a whole, the projected smoking-related deaths for the decade will be three million.<sup>7</sup>

Tobacco transnational corporations (TNCs) are currently targeting Eastern Europe because their previously profitable markets in the West are being squeezed by stricter regulations and restrictions.<sup>8</sup> Previous tobacco marketing and advertising targets have included Latin America in the 1960's, Asia in the 1980's, and China and Africa in the

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<sup>1</sup> In 1993, Simona Goncea-Botorog, previous head of Rom-Ku Advertising and current marketing manager for R. J. Reynolds Tobacco International, arranged for Bucharest to receive a free year's supply of traffic lights with the stipulation that the yellow lights bear the Camel logo. Sam Loewenberg, *International Business Western Advertisers Struggle to Conquer the Wild Romanian Frontier Europe: The Culture Clash is an Example of What Happens When U.S. Marketing Meets a Post-Communist Country*, L.A. TIMES, June 15, 1995, at 4.

<sup>2</sup> *American Tobacco Companies Find Many Lighting Up from Asia to Europe*, ATLANTA J. & CONST., Nov. 25, 1994, at F3.

<sup>3</sup> Lowenberg, *supra* note 1; "Western cigarette companies have swamped unregulated, smoker-friendly Eastern European capitals like Bucharest with advertising, to displace cheap but unfashionable local brands." *Bucharest Bans Public Tobacco Advertising*, REUTERS EUR. BUS. REP., Nov. 30, 1995, available in LEXIS, World Library, ALLNWS file.

<sup>4</sup> Ron Scherer, *Worldwide Trend: Tobacco Use Grows*, CHRISTIAN SCI. MONITOR, July 17, 1996, at 1, available in LEXIS, World Library, ALLNWS file. The World Health Organization estimates that by 2025, ten million people a year will die from smoking-related illness. *Id.*

<sup>5</sup> *Smoking Claims 22,000 Lives a Year*, CTK NAT. NEWS WIRE, Dec. 19, 1995, available in LEXIS, World Library, ALLNWS file [hereinafter *Smoking Claims*]. In the United States, tobacco use causes over 400,000 deaths and over 50 billion dollars in direct medical expenses annually. Pat Griffith, *Annual Tobacco Toll: 400,000 deaths, \$50 billion*, PITTSBURGH POST-GAZETTE, January 26, 1996, at A8. In 1994, Medicaid spent three billion dollars and Medicare spent 16 billion dollars on in-patient hospital care for people with tobacco-related illnesses. Joseph A. Califano, Editorial, *Revealing the Link Between Campaign Financing and Deaths Caused by Tobacco*, 272 JAMA 1217, 1218 (1994).

<sup>6</sup> *Bucharest Bans Public Tobacco Advertising*, *supra* note 3.

<sup>7</sup> Wayne Hearn, *Emptying the World's Ash Trays; International Medical Community May Support Smoking Cessation Policy*, AM. MED. NEWS, Oct. 3, 1994, at 19.

<sup>8</sup> See *infra* Section III.

1990's.<sup>9</sup> Recent Eastern European favorites have included Poland, Hungary, and the Ukraine.<sup>10</sup> The large tobacco TNCs, such as Phillip Morris, BAT, and R.J. Reynolds, have also shown a particular interest in the Czech Republic and Romania.<sup>11</sup> Phillip Morris, the largest cigarette manufacturer in the world,<sup>12</sup> purchased 77%<sup>13</sup> of Tabak, the Czech Republic's state-owned cigarette manufacturer, in May of 1992 for \$413 million.<sup>14</sup> Tabak had profits of \$1.5 million in 1993 and \$36 million in 1994.<sup>15</sup> Phillip Morris' total profits in Central and Eastern Europe increased by 71% between 1993 and 1994.<sup>16</sup> In 1994, Tabak was responsible for 17.6% of Phillip Morris' total profits in Central and Eastern Europe.<sup>17</sup> In addition, Phillip Morris currently produces 46.3% of the total volume of cigarettes sold in Eastern Europe.<sup>18</sup> BAT which entered the Czech cigarette market in January 1995, one year later held 3% of that market,<sup>19</sup> and is building a new factory there.<sup>20</sup>

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<sup>9</sup> Tom Hundley et al., *East Europeans Lighting Up Companies' Hopes*, CHI. TRIB., Feb. 11, 1996, at 10, zone C, in LEXIS, World Library, ALLNWS.

<sup>10</sup> Patricia Koza, *US Tobacco Giants Stalk Poland's Smoking Classes*, TIMES, July 22, 1992, available in LEXIS, World Library, ALLNWS file. "Polish legislators, alarmed at new figures showing that their country has the highest tobacco-related death rate in Europe, are fighting back against a multimillion-pound marketing campaign by the world's giant tobacco firms." *Id.* Hungary: *Cigarette Companies Publish Illegal Adverts to Force Change in Advertising Law*, HETI VILAGGAZDASAG, Oct. 17, 1992, at 29, available in LEXIS, World Library, ALLNWS file; Betsy McKay & Ken Kasriel, *Eastern Europe: Mixed Reaction to Cigarette Advertising*, INTER PRESS SERV., Sept. 16, 1992, available in LEXIS, World Library, ALLNWS file. "Late last month BAT, Philip Morris and R.J. Reynolds, all with majority or total stakes in privatized Hungarian tobacco factories, formed a manufacturers' association to lobby for new advertising regulations. . . ." *Id.* James Rupert & Glenn Frankel, *American Tobacco's Seizure of Ukraine*, INT'L HERALD TRIB., Nov. 20, 1996, available in LEXIS, World Library, ALLNWS.

<sup>11</sup> The tobacco industry has also been active in Poland, Ukraine, Turkey, Hungary, Finland and Tanzania. George Georgiopoulos, *Anti-Smoking Campaign Leaves E. Europe Smokers Unfazed*, REUTERS EUR. COMMUNITY REP., Aug. 27, 1996, available in LEXIS, World Library, ALLNWS file. In January, 1996, Phillip Morris purchased 65% of Poland's largest cigarette factory. Hundley et. al., *supra* note 9.

<sup>12</sup> *BKS Dimon International, Inc.*, WALL ST. TRANSCRIPT, July 24, 1995, available in WL 2547043 [hereinafter *BKS Dimon*].

<sup>13</sup> *New Worlds to Conquer*, NEWS & OBSERVER (Raleigh N.C.), Apr. 10, 1995, at A6.

<sup>14</sup> Emily DeNitto, *The New Frontier; The Collapse of Communism in Eastern Europe Has Created New Opportunities for U.S. Suppliers*, SUPERMARKET NEWS, June 1, 1992, at 23.

<sup>15</sup> Bob Williams, *News; Looking East for Salvation*, NEWS & OBSERVER (Raleigh N.C.), Apr. 10, 1995, at A1.

<sup>16</sup> *BKS Dimon*, *supra* note 12. Phillip Morris' profit in Central and Eastern Europe was \$120 million in 1993 and \$205 million in 1994. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Philip Morris Reports Third-Quarter Results Net Earnings Per Share Up 20.4%, to \$1.71 Per Share Net Earnings Up 16.5% Operating Companies Income Up 11.8% Operating Revenues Up 6.7%*, BUS. WIRE, Oct. 17, 1995, available in LEXIS, World Library, ALLNWS file.

<sup>19</sup> *B.A.T. Producing Cigarettes in Czech Republic*, DOW JONES INT'L NEWS, Jan. 11, 1996 at 13:33:00.

In April 1995, R.J. Reynolds, another giant U.S. tobacco company,<sup>21</sup> spent \$40 million<sup>22</sup> to open the first foreign cigarette plant in Romania.<sup>23</sup> The company plans to invest another \$40 million in Romania in the next ten years.<sup>24</sup> BAT plans to build a \$70 million cigarette factory in Ploiesti, Romania,<sup>25</sup> which it declares will be "the bridgehead for BAT in Central and Eastern Europe."<sup>26</sup>

The development of the Czech Republic and Romania further explains why the tobacco TNCs are targeting these two countries. In comparison to the United States or members of the European Community, the Czech and Romanian democracies are still in their infancy. Both nations removed their former communist governments in 1989<sup>27</sup> and adopted new Constitutions in 1992.<sup>28</sup> Both have implemented laws to encourage foreign TNCs to purchase their state-owned companies and invest in their countries.<sup>29</sup> Serious economic pressures in the Czech Republic and Romania have created political quagmires and stimulated fraud and corruption, retarding these countries' ability to respond to the actions of foreign tobacco TNCs. As a result, many of the advertising and promotional activities of the tobacco TNCs in these two countries would be illegal in the European Community and the United States. To address this problem, the international community must regulate the activities of tobacco TNCs to

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<sup>20</sup> Thom Calandra Bloomberg, *Secrets of the Annual Report: Discovering Corporations' Curious Businesses and Suprising Profits*, FIN. POST, April 29, 1995, at 75.

<sup>21</sup> Williams, *supra* note 15.

<sup>22</sup> *Greek Papastratos Eyes Romania Deal*, REUTERS EUR. BUS. REP., Aug. 10, 1995, available in LEXIS, World Library, ALLNWS file [hereinafter *Papastratos*].

<sup>23</sup> Richard L. Holman, *International: World Wire*, WALL ST. J., Apr. 28, 1995, at A8. With the new plant, the company can produce 6% of the market volume in Romania, or 480 million cigarettes a year. *Papastratos*, *supra* note 22.

<sup>24</sup> Holman, *supra* note 23.

<sup>25</sup> *British BAT Said to Plan Romania Factory*, REUTERS EUR. BUS. REP., Oct. 30, 1995, available in LEXIS, World Library, ALLNWS file.

<sup>26</sup> *BAT to Invest 70 mln dlr in Romanian Cigarette Factory*, AFX NEWS, Nov. 29, 1995, at 12:32:00, available in WESTLAW, ALLNEWSPLUS Library.

<sup>27</sup> Ben Barber, *Eastern Europe; Once a Rebel with Cause, Havel Eyed as U.N. Head*, WASH. TIMES, Oct. 24, 1995, at A15; 2 *Legacies Haunting E. Europe; Communism, History Bedevil Transitions Series: AFTER THE REVOLUTION; EASTERN EUROPE SINCE 1989*, WASH. POST, Oct. 23, 1994, at A01, \*2, available in WESTLAW, ALLNEWSPLUS, 1994 WL 244104.

<sup>28</sup> UST.ZAK.Cr. [CONSTITUTION OF THE CZECH REPUBLIC], available in WESTLAW, Foreign Laws Library, 1992 WL 562865; [CONSTITUTION OF ROMANIA], available in WESTLAW, Foreign Laws Library, 1992 WL 485469.

<sup>29</sup> See *infra* notes 68-72, 78-79 and accompanying text.

force them to abide by, and be responsive to, evolving world standards.<sup>30</sup>

In order to provide a detailed consideration of why and how tobacco TNCs have concentrated on post-communist, developing countries, by way of example this comment will focus on the Czech Republic and Romania instead of providing brief discussions of every Eastern European country currently targeted by the tobacco TNCs. Section II of this comment discusses the ability of tobacco advertising to recruit adolescent smokers and the subsequent health risks associated with adolescent smoking in order to explain why such advertising must be regulated. Section III describes the developed world's move toward increased regulation of tobacco advertising in reaction to the health consequences of cigarette smoking. Section IV discusses how the current economic situations in the Czech Republic and Romania make them attractive to tobacco TNCs and demonstrates, through a discussion of conflict of interest and advertising legislation, how economic pressures in the Czech Republic and Romania have negatively impacted these countries' ability to regulate TNCs generally. Finally, Section V considers various methods by which the international community could control the activities of tobacco TNCs and proposes specific regulations and modes of implementation.

## II. TOBACCO MARKETING WHICH RECRUITS ADOLESCENT SMOKERS RESULTS IN INCREASED HEALTH RISKS

The tobacco industry maintains that its advertising is aimed at adult consumers; however, studies continue to show that children and adolescents recognize tobacco advertising and are affected by it.<sup>31</sup> Even young children are aware of tobacco advertising. Advertising researchers have found that the younger a person is, the better his or her recall for advertisements.<sup>32</sup> As an example, one research team had three to six-year-old children match brand logos, which included

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<sup>30</sup> For a consideration of current tobacco advertising standards all over the world, see RUTH ROEMER, *LEGISLATIVE ACTION TO COMBAT THE WORLD TOBACCO EPIDEMIC* (1993) (World Health Organization 2d ed. 1993).

<sup>31</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *PREVENTING TOBACCO USE AMONG YOUNG PEOPLE: A REPORT OF THE SURGEON GENERAL 194* (1994) [hereinafter *HEALTH*]. For a detailed history of tobacco advertising campaigns directed at young people, see *Id.* at 164-179. "Imperial Tobacco Limited's Project Huron. . .evaluated the feasibility of a flavored cigarette targeted primarily at males 15 through 25 years old. The project was the subject of at least 33 different market research reports supplied by at least six external research sources over the space of just four years." *Id.* at 175.

<sup>32</sup> Joel S. Dubow, *Advertising Recognition and Recall By Age—Including Teens*, *J. ADVERTISING RES.*, Sept. 1995, at 55.

Camel's Old Joe, with the product being sold.<sup>33</sup> The research team found that the six-year-olds in the study recognized Camel's Old Joe cartoon character nearly as well as the Disney Channel's Mickey Mouse.<sup>34</sup> A separate study funded by R.J. Reynolds reported similar results.<sup>35</sup> Clearly, regardless of its intentions, the tobacco industry is teaching six-year-olds about their brand products through its advertising.<sup>36</sup>

Tobacco advertising does more than just teach adolescents; it persuades them as well.<sup>37</sup> In one study, researchers considered the degree to which cigarette advertising and other variables encouraged adolescents who had never used cigarettes to start.<sup>38</sup> The researchers found a strong relationship between an adolescent's susceptibility to smoking and his or her receptivity to tobacco marketing.<sup>39</sup> Another research team studied the exposure rate of 602 junior high students to cigarette advertising by measuring the number of cigarette advertise-

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<sup>33</sup> Paul M. Fischer et al., *Brand Logo Recognition By Children Aged 3 to 6 Years: Mickey Mouse and Old Joe the Camel*, 266 JAMA 3145, 3146 (1991).

<sup>34</sup> *Id.* at 3147. "Old Joe, the cartoon character promoting Camel cigarettes, had the highest recognition rate among the tested cigarette logos. More than half of the subjects correctly matched this figure with a picture of a cigarette." *Id.* at 3146. "Huang et. al. (1992) reported on the preferences of seventh-and eighth-grade children (average age 14) concerning three categories of cigarette advertisement. . . . Students preferred advertisements with cartoons; ads with human models were the next most popular, and tombstone ads were liked least." HEALTH, *supra* note 31, at 189-90.

<sup>35</sup> Richard Mizerski, *The Relationship Between Cartoon Trade Character Recognition and Attitude Toward Product Category in Young Children*, J. MARKETING, Fall 1995, at 58, available in LEXIS, Health Library, MEDLINE file. "High levels of product and trade character recognition were found, including that of Joe Camel and the Marlboro Man with cigarettes." *Id.* See also Joseph R. DiFranza et al., *RJR Nabisco's Cartoon Camel Promotes Camel Cigarettes to Children*, 266 JAMA 3149 (1991).

<sup>36</sup> Fischer et. al., *supra* note 33, at 3148.

<sup>37</sup> One advertising executive who worked on the Marlboro account wrote, "Successful cigarette advertising involves showing the kind of people most people would like to be, doing the things most people would like to do, and smoking up a storm. I don't know any way of doing this that doesn't tempt young people to smoke." HEALTH, *supra* note 31, at 173 (citation omitted).

<sup>38</sup> Nicola Evans et al., *Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibility to Smoking*, 87 J. NAT'L CANCER INST. 1538 (1995).

<sup>39</sup> *Id.* at 1542. An adolescent's receptivity to tobacco advertising was calculated using the following five criteria: 1) whether an adolescent who had seen a tobacco advertisement could identify at least one of nine messages contained in such advertisements, 2) whether an adolescent had the ability to name a brand name cigarette, 3) whether an adolescent already knew what brand cigarette he or she would buy if he or she were going to buy one tomorrow, 4) whether an adolescent had ever bought or received for free a product which promoted tobacco products, and 5) whether an adolescent would use a tobacco promotional item. *Id.* at 1539. An adolescent was considered susceptible to cigarette use if "he or she [could not] definitely rule out the possibility of future smoking." *Id.* Such adolescents were two to three times more likely to have started smoking when later surveyed. *Id.*

ments which appeared in reading material to which they were frequently exposed.<sup>40</sup> The research team found that exposure to cigarette advertising significantly correlated with adolescent smoking behavior and strongly predicted an adolescent's smoking status.<sup>41</sup> When the research team separated the research subjects into two groups according to their level of exposure to cigarette advertising, the research team found that the adolescents in the high exposure group were between 1.44 and 1.93 times more likely to be smokers than those in the low exposure group.<sup>42</sup>

Several longitudinal studies also indicate the degree to which cigarette marketing campaigns have affected the rate of smoker initiation among adolescents. One study examined the relationship between smoking initiation in adolescents and marketing campaigns from 1890-1977.<sup>43</sup> The researchers found that during four periods, 1890-1910, 1910-1925, 1926-1939, and 1968-1977, they could relate smoking uptake in the United States to the impact of cigarette marketing campaigns.<sup>44</sup> A British study similarly found an increase in smoking initiation among eleven to fifteen-year-olds following an advertisement campaign which was popular among that age group.<sup>45</sup> In the United States, adolescents most commonly purchased the most heavily advertised brands: Marlboro, Camel, and Newport.<sup>46</sup> Finally, the

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<sup>40</sup> Gilbert J. Botvin, *Smoking Behavior of Adolescents Exposed to Cigarette Advertising*, PUB. HEALTH REP., March 1993, at 217, 219-20 (1993).

<sup>41</sup> *Id.* at 221; The smoking status of an adolescent's friends and his or her exposure to cigarette advertising were the two most significant predictors of an adolescent's smoking status. *Id.*

<sup>42</sup> *Id.* at 222.

<sup>43</sup> John P. Pierce & Elizabeth A. Gilpin, *A Historical Analysis of Tobacco Marketing and the Uptake of Smoking by Youth in the United States: 1890-1977*, 14 HEALTH PSYCHOL. 500 (1995).

<sup>44</sup> *Id.* at 504; "Between 1967 and 1970, four different women's cigarette brands were launched with major marketing campaigns." From 1968-1977, "the initiation rate among adolescent males (10 to 17 years old) remained fairly steady. . . . However, smoking initiation rates among female adolescents aged 10 to 17 years, particularly 14 to 17-year-olds, increased rapidly until 1974 to 1976." *Id.* at 506. See also John P. Pierce et al., *Smoking Initiation by Adolescent Girls, 1944 through 1988: An Association With Targeted Advertising*, 271 JAMA 608 (1994) [hereinafter *Adolescent Girls*].

<sup>45</sup> G.B. Hastings et al., *Cigarette Advertising and Children's Smoking: Why Reg was withdrawn; Character Used to Advertise Imperial Tobacco's Embassy Regal Cigarettes*, 309 BRIT. MED. J. 933 (1994). The Reg campaign was more popular among 14 to 15-year-olds than its supposedly adult target market. *Id.* at 936. "Regular smoking among 11 to 15-year-olds increased from 8% to 10% between 1992 and 1993 ( $P < 0.05$ ) in the north of England, where Reg was prominent, and remained stable at 7% in the South, where [Reg] did not appear." *Id.* at 936-37.

<sup>46</sup> *Changes in the Cigarette Brand Preferences of Adolescent Smokers—United States, 1989-1993; From the Centers for Disease Control and Prevention*, 272 JAMA 843 (1994) [hereinafter *Changes*]; "The increase in adolescents' brand preference for Camel cigarettes and the decrease in preference for Marlboro cigarettes from 1989 to 1993 are not explained by changes in overall



fact that 70% of all smokers in the United States were regular smokers by age eighteen,<sup>47</sup> and that 65,000 Czech smokers under the age of sixteen smoke over ten cigarettes a day,<sup>48</sup> further supports the conclusion that the tobacco industry successfully markets and recruits adolescent smokers.<sup>49</sup>

Many of these young, freshly-recruited smokers will grow-up and become part of the death rate statistic because the earlier in life someone begins to smoke, the heavier he or she will smoke.<sup>50</sup> As may be expected, heavy smokers are more likely to develop health problems and least likely to quit smoking.<sup>51</sup> For example, childhood smokers who continue to smoke as adults are more likely to develop lung cancer than adults who start smoking later in life.<sup>52</sup>

Childhood cigarette smoking also directly affects the health of young smokers. Smoking during childhood reduces the rate at which a child's lungs grow, resulting in a lower rate of lung function as an adult.<sup>53</sup> This lower level of lung function increases a person's risk of developing Chronic Obstructive Pulmonary Disease above and beyond the risk associated with smoking during adulthood.<sup>54</sup> Cigarette smoking also adversely affects the levels of lipids (or fats) in a child's blood.<sup>55</sup> The lipid levels of a child smoker are in a pattern predictive

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market share for these brands. These changes reflect variability in brand-specific advertisement expenditures: from 1989 to 1993, Marlboro advertising decreased from \$102 million to \$75 million while Camel advertising increased from \$27 million to \$43 million." *Id.* at 843 (citation omitted). See also John P. Pierce et al., *Does Tobacco Advertising Target Young People to Start Smoking? Evidence from California*, 266 JAMA 3154 (1991).

<sup>47</sup> *Changes*, *supra* note 46, at 843. "The average age at which smokers try their first cigarette is 14 1/2 years." *Id.*

<sup>48</sup> *Smoking Claims*, *supra* note 5. In 1994, a survey of school children 11 to 15-years-old revealed that 12% of English, 12% of Scottish, 9% of Welsh, and 12.5% of Northern Irish school children were regular smokers. Jonathan Foulds & Christine Godfrey, *Counting the Costs of Children's Smoking*, 311 BRIT. MED. J. 1152 (1995).

<sup>49</sup> For a detailed history of tobacco advertising directed at young people, see HEALTH, *supra* note 31, at 164-79.

<sup>50</sup> *Id.* at 30.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 29; "Both epidemiologic [sic] and experimental evidence suggests that the risk for lung cancer varies more strongly with the duration of cigarette smoking than with the number of cigarettes smoked." *Id.*

<sup>53</sup> *Id.* at 29, 17; One study found that "adolescents who smoked at least 10 cigarettes per week had about a 5 percent lower expiratory flow rate than non-smokers." *Id.* at 24. See also Diane R. Gold et al., *Effects of Cigarette Smoking on Lung Function in Adolescent Boys and Girls*, 335 NEW ENG. J. MED. 931 (1996).

<sup>54</sup> HEALTH, *supra* note 31, at 29. "The proportionate impeding effect of childhood smoking on lung growth greatly exceeds the loss of lung function associated with smoking during adulthood. (Tager et al. 1985, 1988)." *Id.*

<sup>55</sup> *Id.*

of an increased risk of cardiovascular disease and may explain why child smokers have more atherosclerosis than their non-smoking peers.<sup>56</sup> Not surprisingly, childhood smoking is associated with an earlier onset of coronary heart disease.<sup>57</sup> Finally, even though the risks associated with smoking initiation in childhood are greater than the risks associated with smoking initiation in adulthood, both children and adults are equally likely to become irrevocably addicted to the nicotine in cigarettes, which is as addictive as heroin or cocaine.<sup>58</sup>

### III. THE DEVELOPED WORLD, INCLUDING MANY PREVIOUS TARGETS OF THE TOBACCO INDUSTRY, ARE MOVING TOWARD INCREASED REGULATION OF TOBACCO

Countries all over the world are severely limiting the advertising of tobacco products in response to the health issues previously discussed and political and religious concerns.<sup>59</sup> Several countries, many of which were previous targets of the tobacco industry, have completely banned cigarette advertising. These countries include Algeria, Bulgaria, China, Italy, Iraq, Jordan, Lithuania, Moldova, New Zealand, Portugal, Singapore, and the Ukraine.<sup>60</sup>

Russia, a previous target of the tobacco industry, banned tobacco advertising from television, daytime radio, and from the front and back pages of print media on January 1, 1996.<sup>61</sup> The United States and the European Community ban tobacco advertising on television and require warning labels on cigarette packages.<sup>62</sup> Both governmental bodies also recently proposed tighter tobacco regulations. In the United States, after the Food and Drug Administration announced

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<sup>56</sup> *Id.* at 28-29.

<sup>57</sup> *Id.* at 29.

<sup>58</sup> *Id.* at 30-31. "Moreover, because the typical pattern of tobacco use entails daily and repeated doses of nicotine, addiction is more common among all users than is true of other drug use, which tends to occur on a far less frequent basis." *Id.* at 31. Nicotine addiction is the most common type of drug addiction. *Id.* at 30. Every year, 20 million of those people try to quit smoking; unfortunately, only three percent of those people have long-term success. *Id.* at 31.

<sup>59</sup> ROEMER, *supra* note 30, at 32.

<sup>60</sup> Bob Williams, *News: As U.S. Cigarette Makers Enter Eastern Europe, Opponents aren't far behind. But Even Though Regulations Developed Here Over 30 Years, Other Countries Are Determining Restrictions Almost Overnight. War on Smoking Goes Overseas*, NEWS & OBSERVER (Raleigh N.C.), Apr. 11, 1995, at A1; Ross D. Petty, *Advertising Law and Social Issues: The Global Perspective*, 17 SUFFOLK TRANSNAT'L L. REV. 309, 342 (1994); ROEMER, *supra* note 30, at 182, 205, 211, 237. Scherer, *supra* note 4.

<sup>61</sup> Scherer, *supra* note 4.

<sup>62</sup> 15 U.S.C.A. §§ 1331, 1333 (WEST 1995); Council Directive 89/552, art. 13, 1989 O.J. (L 298) 28; Council Directive 92/41, art. 4, 1992 O.J. (L158) 30.

that nicotine was the addictive ingredient in cigarettes,<sup>63</sup> President Clinton gave the FDA jurisdiction over tobacco<sup>64</sup> and discussed curbing the sale of cigarettes to minors.<sup>65</sup> The FDA placed tobacco products under its general regulations and plans to classify such products in the future.<sup>66</sup>

The European Community has considered even more drastic regulation of the tobacco industry. In 1991, the European Commission proposed a complete ban, which is still pending,<sup>67</sup> on both direct and indirect advertising of tobacco products in the European Community.<sup>68</sup> In France, Phillip Morris was sued by French officials and eventually fined, at \$200,000 per infraction, for print ads which stated that second hand smoke was statistically less dangerous than eating a cookie or drinking water.<sup>69</sup> As might be expected, the increased regulation of tobacco advertising in the United States and the European community has made these markets less profitable and less attractive to tobacco TNCs.<sup>70</sup>

#### IV. ECONOMIC PRESSURES HAVE IMPACTED THESE COUNTRIES' POLITICAL DECISIONS AND AFFECTED THEIR REGULATORY LEGISLATION

Economic pressures in the Czech Republic and Romania, which are similar and representative of such pressures in other Eastern Eu-

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<sup>63</sup> *INSYNCH*, RICHMOND TIMES-DISPATCH, Aug. 12, 1994, at E4. For more information on the addictiveness of nicotine and the FDA's assertion of jurisdiction over tobacco products, see The Food and Drug Administration's Jurisdiction Over Nicotine-Containing Cigarettes and Smokeless Tobacco Products, 60 Fed. Reg. 41,453, 41,453-41,787 (1995). Following the announcement, the Department of Justice began investigating the tobacco industry to determine whether it deliberately attempted to conceal the addictiveness of nicotine. *Tobacco; Clinton Reviews Implication of Regulation; Justice Plans Criminal Inquiry of Industry*, BNA FED. CONTRACTS DAILY, 1995, available in WESTLAW, BNA-DNEWS Library. The House and Senate also banned companies, including Phillip Morris, from entertaining members of Congress and staff at luxury golf resorts and overseas junkets. Morton Mintz, *Where There's Smoke*, WASH. POST, Dec. 3, 1995, at W20.

<sup>64</sup> *Public Health: Cigarette Manufactures Sue FDA, Saying Agency Cannot Regulate Tobacco*, BNA HEALTHCARE DAILY, Aug. 14, 1995, available in WESTLAW, BNA-DNEWS Library.

<sup>65</sup> *News: Evening; Health*, CHI. TRIB., Aug. 23, 1995, at 7.

<sup>66</sup> *Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents*, 61 Fed. Reg. 44,396, 44,404, 44,412, 44,615-44,618 (1996).

<sup>67</sup> Melissa N. Kurnit, *The Uncertain Future of Tobacco Advertising in the European Community*, 17 B.C. INT'L & COMP. L. REV. 177 (1994).

<sup>68</sup> Jennifer A. Lesny, *Tobacco Proves Addictive: The European Community's Stalled Proposal to Ban Tobacco Advertising*, 26 VAND. J. TRANSNAT'L L. 149, 150 (1993).

<sup>69</sup> Ron Scherer, *supra* note 4, at \*3.

<sup>70</sup> Williams, *supra* note 15; Timothy Aepfel, *Phillip Morris Is Hot in Eastern Germany: Preserving Local Smokes' Bad Old Features Spurs Sales*, WALL ST. J., Feb. 12, 1992, at A14.

ropean countries, have had wide-ranging effects.<sup>71</sup> They have created political crisis,<sup>72</sup> produced legislation which encourages fraud and corruption<sup>73</sup> and have led to the development of advertising standards which are either impossible or difficult to enforce. These results of economic pressure have impeded the manner in which both countries regulate tobacco TNCs.

#### A. The Current Economic Status of the Czech Republic and Romania Make them Attractive to TNCs

The Czech Republic and Romania have significant economic and political obstacles to overcome before they can meet Western standards.<sup>74</sup> The economic issues faced by these two countries revolve around their attempts to stabilize and strengthen new open market economies.<sup>75</sup> To boost revenue, both countries have implemented major privatization and foreign investment schemes.<sup>76</sup> Foreign tobacco companies have used these privatization and direct investment programs to successfully enter the Czech and Romanian markets.<sup>77</sup>

The Czech Republic has made significant economic progress due to its adoption of the rule "privatize or die."<sup>78</sup> Such progress is demonstrated by the Czech Republic's admission into the Organization for Economic Co-operation and Development (OECD) on November 28, 1995.<sup>79</sup> Unfortunately, many of the new statutes, which

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<sup>71</sup> Sergio Salani & Jerry Sloan, *An Overview of Legal and Financing Aspects for Doing Business in Hungary, Poland, and the Czech Republic*, 9 TEMP. INT'L L. J. 27 (1995); Tomislav Peraic, *Symposium: Doing Business in Central and Eastern Europe; Introduction: The Changing Face of Central And Eastern Europe*, TRANSNAT'L L., Spring, 1994, at 1.

<sup>72</sup> *Glamours and Shadows of Klaus' Ministerial Castling—Paper*, CTK NAT. NEWS WIRE, Oct. 12, 1995, available in LEXIS, World Library, ALLNWS file [hereinafter *Glamours and Shadows*]; *Central European Economic Review; Politics & Economics; Political Briefs*, WALL ST. J. EUR., Nov. 6, 1995, at 19 [hereinafter *Central European*].

<sup>73</sup> See *infra* notes 112-141 and accompanying text.

<sup>74</sup> Salani & Sloan, *supra* note 71, at 28-29, 53; Peraic, *supra* note 71, at 1.

<sup>75</sup> Sarah Andrus, *The Czech Republic and Slovakia: Foreign Participation in Changing Economies*, 17 HASTINGS INT'L & COMP. L. REV. 611, 628-29 (1994); *Section: Major Leader Special Transcript; Headline: National Press Club Luncheon Speaker Romanian President Ion Iliescu*, FED. NEWS SERV., Sept. 27, 1995, available in LEXIS, World Library, ALLNWS file [hereinafter *Ion Iliescu*].

<sup>76</sup> Andrus, *supra* note 75; Ion Iliescu, *supra* note 75.

<sup>77</sup> See *supra* notes 12-26 and accompanying text.

<sup>78</sup> Neil King, *World Business (A Special Report): How It Works; Faster, Faster: The Czech Voucher System Had One Overriding Aim: Get the Job Done Quickly*, WALL ST. J. EUR., Oct. 23, 1995, at R11.

<sup>79</sup> Jan Kristiansen, *Czech Republic Becomes OECD's 26th Member*, AGENCE FRANCE PRESSE, Nov. 28, 1995, available in LEXIS, World Library, ALLNWS file; The OECD is an association of the world's most advanced countries. Patricia Koza, *Section: Internatepublic Be-*

made possible the privatization of more than 1,700 companies during the period of 1991-1994,<sup>80</sup> failed to include statutory provisions requiring checks on the privatization program for the protection of the health of Czech citizens.<sup>81</sup> If health regulations had been placed in these statutes, the Czech Republic might have had more control over the activities of the tobacco TNCs. Clearly, and understandably, these statutes were created to spur economic progress,<sup>82</sup> not national health. Despite economic gains due to its rapid privatization,<sup>83</sup> the Czech Republic still faces numerous economic challenges. While the Czech Statistical Office reported a trade deficit of approximately \$2.6 billion<sup>84</sup> for the first nine months of 1995,<sup>85</sup> the reported trade deficit for 1996 was approximately \$5.6 billion, an increase of 67%.<sup>86</sup> The balance foreign trade deficit was \$650 million in December of 1996.<sup>87</sup> In addition, analysts suggest that approximately \$500 million in investment funds left the Czech Republic at the end of 1996 and beginning of 1997 due to investor dissatisfaction with poorly enforced securities laws and the lack of an independent market regulator.<sup>88</sup>

In contrast to the Czech Republic, Romania has been privatizing at a slow rate. Many of its privatization statutes include provisions which allow for checks on the system that could be used to protect the

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comes OECD's 26th Member, *ional*, UNITED PRESS INT'L, Dec. 21, 1995, available in LEXIS, World Library, ALLNWS file.

<sup>80</sup> King, *supra* note 78. Four hundred and ninety-two state-owned companies were privatized during the period of 1991 and 1992. Eight hundred and sixty-one state-owned companies were privatized in 1994. *News; World Briefs; Economic Analysts Laud Czech Republic*, NEWS & OBSERVER (Raleigh N.C.), Oct. 21, 1995, at A12.

<sup>81</sup> See, e.g., Czechoslovak Act of Feb. 25, 1991 on Conditions of Transfer of State Property To Other Persons "Large Privatization Law," Art. 6, 2/91, available in WESTLAW, Foreign Laws Library, 1991 WL 501310; Czech and Slovak Law on Transfer of State property, Sec. 6, 2/91, available in WESTLAW, Foreign Laws Library, 1991 WL 501327; Czechoslovak Law on Investment Companies and Investment Fund of 4/92, art. 8, 4/92, available in WESTLAW, Foreign Laws Library, 1992 WL 563340.

<sup>82</sup> King, *supra* note 78.

<sup>83</sup> Ramesh Jaura, *Czech-Republic/Slovakia-Economy: Stable Prague Records More Growth*, INT'L PRESS SERV., Aug. 7, 1995, available in WESTLAW, ALLNEWSPLUS Library, 1995 WL 226298; *Privatization to Be Completed in Eighth Year of Reforms*, CTK NAT. NEWS WIRE, Feb. 6, 1997, available in LEXIS, World Library, ALLNWS.

<sup>84</sup> *Czechs Detain Former Bank Manager on Fraud Suspicion*, DOW JONES INT'L NEWS SERV., Aug. 31, 1995, at 12:18:00. This article provided an exchange rate of \$6.3 million for 165 million koruna. *Id.* This is equal to 26.2 koruna to the dollar.

<sup>85</sup> *Czech Foreign Trade -2: Imports Up 29%, Exports Up 9.3%*, DOW JONES INT'L NEWS SERV., Oct. 26, 1995, at 06:00:00.

<sup>86</sup> *Foreign Trade Deficit 67 Per Cent Up In 1996*, BBC SUMMARY OF WORLD BROADCASTS, Jan. 30, 1997, at EE/WO471/WC, available in LEXIS, World Library, ALLNWS.

<sup>87</sup> *Id.*

<sup>88</sup> James Drake & Karen Lowry, *Heading for the Exits in Prague*, BUS. WK., Feb. 10, 1997, at 49.

health of Romanian citizens.<sup>89</sup> Romania has 7,000 companies in its privatization program but sold only 1,000 of those companies from 1991 through 1995.<sup>90</sup> The International Monetary Fund (IMF) has been pressuring Romania to accelerate its privatization program.<sup>91</sup> Toward that end, the IMF stopped payment on a \$198 million stand-by loan, with \$113 million of the loan yet to be paid out, because Romania was not reforming its economy fast enough.<sup>92</sup> The World Bank had similar concerns.<sup>93</sup> In response to the concerns of these organizations, the Romanian parliament passed a law to privatize another 4,000 companies before the end of 1996.<sup>94</sup> In January of 1997, President Constantinescu resumed negotiations with both the IMF and the World Bank, promising to implement a strict economic stabilization program in return for approximately \$1 billion.<sup>95</sup> Romania's National Privatization Agency also promised to further increase the speed of privatization.<sup>96</sup>

In addition to pressures to privatize, Romania is daunted by several other economic problems.<sup>97</sup> In 1996, while Romania's inflation rate reached 56.9%, most Romanian workers were earning an average of just \$100 a month.<sup>98</sup> The nation also sustained a \$2.5 billion trade deficit and a budget deficit comprising 5.7% of the gross domestic

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<sup>89</sup> See Romania-Criteria for Selecting Units for Privatization, Sec. 2, 10/91, available in WESTLAW, Foreign Laws Library, 1991 WL 501370; Romanian Law No. 35 of 4/91 on Foreign Investments, art. 4c, 4/1991, available in WESTLAW, Foreign Laws Library, 1991 WL 501356; Romanian Foreign Investment Law, Art. 20, 3/91, available in WESTLAW, Foreign Laws Library, 1991 WL 501349.

<sup>90</sup> *Romania's Iliescu Pitches 'Big Privatization' to U.S.*, DOW JONES INT'L NEWS SERV., Oct. 24, 1995, at 18:09:00.

<sup>91</sup> *IMF Team in Romania to Negotiate Stand-by Extension*, DOW JONES INT'L NEWS SERV., Oct. 25, 1995, at 20:21:00.

<sup>92</sup> *Id.*

<sup>93</sup> *Romania's Iliescu Courts U.S. Investors with Plan for More Privatization*, WALL ST. J. EUR., Sept. 28, 1995, available in WESTLAW, ALLNEWSPLUS Library, 1995 WL 9088747.

<sup>94</sup> Ernest Beck, *Bucharest's Bourse Prepares for Reopening; While Analysts Say Market May Lift the Economy, Will Romanians Buy It?*, WALL ST. J., Nov. 6, 1995, at A19G; Ion Iliescu, *supra* note 67.

<sup>95</sup> Alan Friedman & Jonathan Gage, *Romania Seeks Large IMF Loan*, INT'L HERALD TRIB., Feb. 3, 1997, at 11, available in LEXIS, World Library, ALLNWS; *IMF Starts New Loan Talks with Romania*, REUTERS FIN. SERV., Jan. 23, 1997, available in LEXIS, World Library, ALLNWS.

<sup>96</sup> *Romania Privatisation Body Steps Up Sales*, REUTERS FIN. SERV., Jan. 28, 1997, available in LEXIS, World Library, ALLNWS. "The government is now planning privatizations totalling two billion dollars by the end of the year." Andrew McCathie, *Romania's New Government Speeds Up Reforms*, DEUTSCHE PRESSE-AGENTUR, Feb. 4, 1997, available in LEXIS, World Library, ALLNWS.

<sup>97</sup> See also Robert Juelke, *The Economic Consequences of Constitutional Reform in Eastern Europe*, 34 WM. & MARY L. REV. 1367, 1383 (1993).

<sup>98</sup> McCathie, *supra* note 96.

product.<sup>99</sup> Economic growth dropped to 4.5%, from 6.9% in 1995.<sup>100</sup> Moreover, government plans to boost the economy by opening the Bucharest Stock Exchange at the end of 1995 stalled because the Exchange failed to announce an opening and officially register a single company for trading.<sup>101</sup> In summary, both the Czech Republic and Romania suffer from economic instability. The countries' recent shifts to market economies have forced aggressive pursuit of foreign investors, including transnational tobacco corporations.

#### B. Economic Pressures in the Czech Republic and Romania have Directly Influenced Political Decisions

In both the Czech Republic and Romania, many political decisions have been directly influenced by the economic pressures previously described. In the Czech Republic, economic pressures in the health sector directly influenced political decisions and may seriously impact future tobacco regulation. On November 1, 1995, the 6,000 members of the Doctor's Trade Union participated in a one-day strike because their request for a 50% pay increase was not met.<sup>102</sup> The pressure from the medical community ultimately led to the first cabinet reshuffle of the new Czech Republic.<sup>103</sup> Vaclav Klaus, the chain-smoking Prime Minister of the Czech Republic, replaced his previous health minister, a physician, with the first heavily smoking post-communist Health Minister, Jan Strasky, who stated "if cancer rather than the lack of finance were the health sector's biggest problem, [I] wouldn't have taken the job."<sup>104</sup> Considering Strasky's stated posi-

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<sup>99</sup> *Romania to Cut Trade Gap To \$1.4 BLN in 1997-PM*, REUTERS FIN. SERV., Feb. 14, 1997, available in LEXIS, World Library, ALLNWS; Jonathan Clayton, *Romanian President Expects Warm Welcome in West*, REUTER EUR. COMMUNITY REP., Feb. 3, 1997, available in LEXIS, World Library, ALLNWS.

<sup>100</sup> McCathie, *supra* note 96.

<sup>101</sup> Beck, *supra* note 94.

<sup>102</sup> *Health Minister Ludek Rubas Dismissed—Profile*, CTK NAT. NEWS WIRE, Oct. 9, 1995, available in LEXIS, World Library, ALLNWS file. Joe Schneider, *Doctors Go for Strike, But Just for One Day*, PRAGUE POST, Nov. 1, 1995, available in LEXIS, World Library, ALLNWS file. Doctors in the Czech Republic earned an average of \$300 a month. *Id.* Joe Cook, *News; Czech Republic Doctors Strike: Another Symptom of Malaise in Health-Care System*, VANCOUVER SUN, Nov. 4, 1995, at A12. When the doctors originally threatened to go on strike, then Health Minister Ludek Rubas, a former physician, responded by stating, "the only response to a doctor refusing to provide necessary medical care. . . will be immediate dismissal." *Rubas Insists on Sanctions Against Striking Doctors*, CTK NAT'L NEWS WIRE, Oct. 5, 1995, available in LEXIS, World Library, ALLNWS. In reply, the doctors stated they would strike if Rubas was not dismissed. *Id.*

<sup>103</sup> *Glamours and Shadows*, *supra* note 72.

<sup>104</sup> *Id.*; *Filtered Out*, FIN. TIMES, Oct. 11, 1995, at 13. *Thanks to Czech Adaptability, Prague Reformed*, THE ECONOMIST, Nov. 18, 1995, at S17. In February of 1997, each of the seventeen

tion, it is not surprising that the Czech Republic's one anti-smoking program, NCPZ, was canceled on December 31, 1995, to reduce state budget expenditures.<sup>105</sup>

Romania's former President Ion Iliescu made similar, economically driven political choices. For example, two days before Iliescu left Romania for a promotional tour of the United States to publicize investment opportunities in Romania, Iliescu found it necessary to weaken his political standing by separating the Greater Romanian Party from his ruling coalition in order to appease foreign investors upset by the Greater Romanian Parties' anti-Semitic leader.<sup>106</sup> President Constantinescu has made similar choices. In an attempt to secure a loan package worth approximately \$1 billion from the IMF and World Bank, Constantinescu suggested he would subject Romania to financial regulations which could result in a 10 to 12 percent unemployment rate, zero growth and "harsh reactions."<sup>107</sup>

Romania's economic constraints have also amplified the tension between the needs of its new government and the needs of its new market economy.<sup>108</sup> To make a successful transition from communism to democracy and a free market economy, Romania has required extensive new legislation.<sup>109</sup> Romania's new bicameral government which "provides excessive opportunities for dissension and obstructionism," has impeded the process, resulting in criticism of the government's structure and demands for its revision. In summary, in both the Czech Republic and Romania, economic pressures have dictated political choices.<sup>110</sup>

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hospitals operated by the Health Ministry had an average debt of \$3.57 million. *Hospitals Have Problems*, CTK NAT. NEWS WIRE, Feb. 12, 1997, available in LEXIS, World Library, ALLNWS.

<sup>105</sup> *Smoking Claims*, *supra* note 5.

<sup>106</sup> *Central European*, *supra* note 72. While on that promotional tour, Iliescu told the National Press Club that Romania "count[s] very much on attracting foreign capital and on foreign investments generally." *Id.*; see also Tina Kelly, *Try Romania, Iliescu Urges Business Leaders President Touts Gains Since '89 Revolution*, SEATTLE POST-INTELLIGENCER, Sept. 30, 1995, at A2. Ion Iliescu, Address at the *National Press Club Luncheon* (Sept. 27, 1995), in FED. NEWS SERV., Sept. 27, 1995, available in LEXIS, World Library, ALLNWS file (alteration added).

<sup>107</sup> Friedman & Gage, *supra* note 95.

<sup>108</sup> Elena Stefoi-sava, *Organizing Legislative Impotence; Romania*, E. EUR. CONST. REV., Spring 1995, at 78.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*



C. Legislation in the Czech Republic and Romania Reflects  
Economic Pressures

Legislation in the Czech Republic and Romania, which reflects the economic pressures previously described, provides evidence of the vulnerability of developing nations' legislation to both internal and external economic demands. These countries' lack of conflict of interest laws and health and advertising laws which successfully control tobacco advertising are examples of the effects of such economic influence. As a result, the Czech Republic and Romania, like other developing countries, are particularly vulnerable to the activities of Machiavellian TNCs.<sup>111</sup>

1. *Economic Pressures Have Led to Soft-Conflict of Interest Laws Which Encourage Fraud and Corruption that Impedes the Regulation of TNCs*

Economic pressures in the Czech Republic and Romania have resulted in the creation of soft conflict of interest laws which encourage fraud and corruption.<sup>112</sup> Many Eastern European governments, including the governments of the Czech Republic and Romania, cannot compete with the salaries offered by the private sector to well-trained, talented people.<sup>113</sup> To respond to this problem, countries in Eastern Europe implicitly condone the supplement of government employees' income with second jobs or business transactions in the private sector.<sup>114</sup>

In the Czech Republic, the constitution implicitly allows government officials to hold public and private positions simultaneously.<sup>115</sup>

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<sup>111</sup> For a fuller discussion of the strengths and weaknesses of the bargaining position of developing countries, see TRANSNATIONAL CORPORATIONS AND MANAGEMENT DIVISION, U.N. DEPARTMENT OF ECONOMIC AND SOCIAL DEVELOPMENT, FORMULATION AND IMPLEMENTATION OF FOREIGN INVESTMENT POLICIES: SELECTED KEY ISSUES, U.N. Doc. ST/CTC/SER. B/10, U.N. Sales No. E.92.II.A.21 (1992). According to the division, "TNCs. . . may act in their own interests to influence the conditions and policies in their external environment than have adverse effects on their operations." *Id.* at 3. In addition, the division concluded that "[t]he goals of TNCs are to make higher profits than it can earn elsewhere. They are not directed toward fostering the achievement of the development goals of the host country, except to the extent that the value their operations create for host countries is at least equal to the host country's reserve position. . ." *Id.* at 7-8.

<sup>112</sup> Cass Sunstein, *A Constitutional Anomaly in the Czech Republic?*, E. EUR. CONST. REV., Spring, 1995, at 55; Stefoi-sava, *supra* note 108, at 82.

<sup>113</sup> Sunstein, *supra* note 112, at 82.

<sup>114</sup> *Id.* at 55.

<sup>115</sup> Article 22 of the Constitution is considered defective because it fails to explicitly restrict legislators from involvement in private sector business deals. Milos Calda & Mark Gillis, *Czech Republic*, E. EUR. CONST. REV., Spring 1995, at 70.

Confusion over the legality and illegality of certain activities has led to several scandals,<sup>116</sup> including corruption in the government's privatization program.<sup>117</sup> In October of 1995, former director of the voucher privatization scheme and the Securities Registry, Jaroslav Lizner, was found guilty of abuse of power and bribery when he accepted 8.3 million koruna, approximately \$315,589, in exchange for allowing "illegal access to a majority stake" in the Klatovy Dairy.<sup>118</sup> At his trial, Mr. Linzer raised the soft conflict of interest laws as a defense.<sup>119</sup> He argued that as a middleman, he was entitled to a 1% commission on the sale of the dairy.<sup>120</sup>

Foreign businesses have also witnessed and participated in the fraud and corruption in the Czech privatization program. For example, the Ritz-Carlton Hotel was cheated out of three different potential sites for a new \$100 million hotel in Prague by city officials who breached agreements with it in favor of other parties.<sup>121</sup> Czech licensing officials are bribed so often that the business community terms such bribery a "processing fee."<sup>122</sup> Finally, fraud and corruption in the area of finance and banking has become so common in the Czech Republic that its foreign minister, Joseph Zieleniec, stated that money-laundering was essential to the Czech Republic's economic

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<sup>116</sup> *Id.*

<sup>117</sup> Bart Edes, *Opinion; Democracy Requires Action to Cut Public-Sector Red Tape*, PRAGUE POST, Sept. 27, 1995, available in LEXIS, World Library, ALLNWS file.

<sup>118</sup> *Ex-Czech Privatization Chief Jailed for Corruption*, REUTER EUR. BUS. REP., Oct. 18, 1995, available in LEXIS, World Library, ALLNWS file. *Czech Privatization Chief Jailed*, FIN. TIMES, Oct. 20, 1995, at 2. Lizner was sentenced to seven years in jail and fined one million koruna (\$38,000). *Id.* Using this exchange rate, one dollar is equal to 26.3 koruna. *Former Czech Privatization Chief Sentenced to Seven Yrs Jail*, DOW JONES INT'L NEWS SERV., Oct. 18, 1995, at 14:24:00. *Constitution Watch*, E. EUR. CONST. REV., Winter 1995, at 10.

<sup>119</sup> Shailagh Murray, *East of Eden: The Free Market Looks for Guidance*, WALL ST. J. EUR., Nov. 6, 1995, at 20.

<sup>120</sup> The law did allow on the job profit; however, it did not permit special deals or the selling of inside information. *Id.*

<sup>121</sup> Bruce Konviser, *Land of the Velvet Scam*, ASIAN WALL ST. J., Oct. 18, 1995, at 11. On the first occasion, the city of Prague rescinded an agreement with the Ritz Carleton and gave a piece of downtown property to a French firm instead. On the second occasion, the Ritz-Carlton was negotiating to buy a piece of river front property when it learned that the Four Seasons Hotel also wanted the property. Thereafter, a public tender was scheduled to take place but never occurred because the Four Seasons made an unexpected deal with the current tenant of the property. Prague's Mayor Kondr was removed primarily as a result of this scandal. On the third occasion, the new mayor of Prague, Mayor Koukal, refused to sign a final contract with the Ritz-Carlton despite having already signed a letter of intent. *Id.*

<sup>122</sup> Murray, *supra* note 119, at 20.

transformation.<sup>123</sup> There are numerous other examples of fraud and corruption in this area.<sup>124</sup>

The Czech government has begun addressing some of the inadequacies in its legislation. In one of its more direct actions, the Czech Republic banned donations from state-owned firms to political parties.<sup>125</sup> In addition, on September 12, 1995, representatives of Vaclav Klaus' ruling coalition proposed securities law reforms which would protect the banking sector from conflicts of interest.<sup>126</sup> However, proposals to curb conflicts-of-interest are difficult to pass.<sup>127</sup> Commenting on the wide range of activities in which Parliament members can engage, Petra Buzkova, vice chairwoman of the CSDP stated, "basically we can do anything we want."<sup>128</sup>

Parliament members in Romania also take advantage of soft conflict-of-interest laws. Ninety percent of Parliament deputies in Romania have taken advantage of legislation which allows them to hold private sector jobs.<sup>129</sup> Many deputies have amassed fortunes through the privatization program by participating in seemingly im-

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<sup>123</sup> Konviser, *supra* note 121; In the Czech Republic, no government official with the power to delay or expedite anything is above suspicion for fraud. *Id.*

<sup>124</sup> *Rampant Corruption in the Czech Republic*, CTK NAT. NEWS. WIRE, Oct. 1, 1996, available in LEXIS, World Library, ALLNWS. Such fraud includes the fraudulent handling of party finances by the former head of the Civic Democratic Alliance Secretariat, Josef Reichman. *Constitution Watch; Czech Republic*, E. EUR. CONST. REV., Spring 1995, at 8. The initial threat of Reichman's arrest for fraud created a political crisis for Klaus' coalition, of which the CDA Secretariat is a part. *Id.* Fraud at the COOP bank in Brno resulted in 165 million koruna (\$6.3 million dollars) worth of damage. The former bank president "issued false bills of exchange and fraudulently acquired loans from other banks." *Czechs Detain Former Bank Manager on Fraud Suspicion*, DOW JONES INT'L NEWS SERV., Aug. 31, 1995, at 12:18:00. Finally, theft of ten million koruna, approximately \$384,615, worth of shares in the Komerční Bank from an account at the Securities Registry and an unsuccessful attempt to steal nine million koruna, approximately \$346,154, from the National Property Fund's Securities Registry account were also reported. *European Corporate and Economic News Survey; Czech Republic*, DOW JONES INT'L NEWS SERV., Nov. 6, 1995, at 11:31:00. Thirty-eight and one-half million dollars was equal to one billion Czech crowns at the time. *Grey Economy Has 1 Billion Crown Turnover*, CTK NAT. NEWS WIRE, Oct. 4, 1995, available in LEXIS, World Library, ALLNWS. This represents an exchange rate of 26.0 Czech crowns per dollar.

<sup>125</sup> *Constitutional Watch; Czech Republic*, E. EUR. CONST. REV., Spring 1995, at 8.

<sup>126</sup> *Czech's ODA Party Proposes Complex Changes in Cap Mkt Laws*, DOW JONES INT'L NEWS SERV., Sept. 12, 1995, at 14:58:00.

<sup>127</sup> Two years ago, the Czech Republic's opposition party, the Social Democratic Party (CSDP), proposed a conflict-of-interest law which would affect government officials. The law would prohibit government officials from receiving sales commissions, working as contractors, or serving as board members. The proposal still has not been passed by Parliament. Murray, *supra* note 119, at 20. These securities laws have also proven difficult to enforce. Drake & Lowry, *supra* note 88.

<sup>128</sup> *Id.*

<sup>129</sup> Stefoi-sava, *supra* note 108, at 82.

proper activities.<sup>130</sup> President Constantinescu even stated that "Romania has been savagely robbed through the privatization process."<sup>131</sup> Fraud and corruption have also infiltrated and infected many of Romania's other economic programs.<sup>132</sup> The problem is so widespread that in 1995 over one-third of the country's Gross National Product was estimated to result from some type of illegal business activity.<sup>133</sup> That same year, the General Police Inspectorate recorded over 55,181 economic crimes and 17,814 acts of corruption involving over 6,100 public service employees.<sup>134</sup> A large amount of those illegal activities occurred in Romania's state-owned and semi-state-owned companies.<sup>135</sup>

The Romanian banking system has also suffered from the effects of fraud and corruption. The Romanian Intelligence Service reported that mafia-type structures were forming in the areas of banking and business.<sup>136</sup> Some banks have provided financing and credit to private companies in which bank board members are directly or indirectly involved.<sup>137</sup> In order to address this problem, former President Iliescu charged Parliament Members in general with corruption.<sup>138</sup> He asked Parliament Members currently holding positions in state-owned companies to resign from those positions.<sup>139</sup> In addition, Iliescu accused Parliament Members of accepting money in exchange for the protection of local interests.<sup>140</sup> In 1997, President Constantinescu estab-

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<sup>130</sup> As a result of their public and private work in the privatization plan, many members have become owners of "land, factories, and other business enterprises." *Id.*

<sup>131</sup> *President Vows to Fight Corruption*, BBC SUMMARY WORLD BROADCASTS, Jan. 24, 1997, at EE/D2825/B, available in LEXIS, World Library, ALLNWS.

<sup>132</sup> *Romania President Weighs Behind U.S. Investment*, REUTER EUR. BUS. REP., Oct. 18, 1995, available in LEXIS, World Library, ALLNWS file.

<sup>133</sup> *Illegal Business Said to Make Up Over a Third of Romania's Economy*, DEUTSCHE PRESSE-AGENTUR, Nov. 17, 1995, available in LEXIS, World Library, ALLNWS file [hereinafter *Illegal Business*].

<sup>134</sup> *Law and Order; Crime Rate Up in Romania*, BBC SUMMARY OF WORLD BROADCASTS, Jan. 14, 1996, available in LEXIS, World Library, ALLNWS file.

<sup>135</sup> *Illegal Business*, *supra* note 133.

<sup>136</sup> *Black Market Report*, FIN. E. EUR., Dec. 15, 1995, at 11.

<sup>137</sup> *Id.* The Renasterea Creditului Romanesc Credit Bank was placed under surveillance by the National Bank of Romania after bank audits revealed mismanagement. The bank's president was eventually arrested and charged with fraud. *Bank Placed Under "Surveillance,"* NEWSBYTES NEWS NETWORK, Dec. 7, 1995, available in WESTLAW, ALLNEWSPLUS Library, 1995 WL 13696817. Another bank, Dacia Felix, was recently placed under surveillance, *Id.*, following rumors that the bank had liquidity problems. *Romanian Economic Package*, E. EUR. MKT., Dec. 8, 1995, at 6, available in WESTLAW, ALLNEWSPLUS Library, 1995 WL 8551306.

<sup>138</sup> *Constitutional Watch; Romania*, E. EUR. CONST. REV., Spring 1995, at 23.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* Iliescu described corruption as a "malignant tumor [which] has to be removed in a decisive way and as soon as possible. . .to have a sane and prosperous society. It has to be

lished the National Council for Fighting Corruption and Organized Crime and enlisted the aid of the FBI to address the continuing problem.<sup>141</sup> In summary, soft conflict of interest laws and the fraud and corruption they foster in these countries' privatization and economic programs demonstrate how economic pressures can inhibit the regulation of TNCs.

2. *Advertising Regulations, Including Limitations on Cigarette Advertising, Have Been Negatively Affected by Economic Pressures*

Economic pressures have had the same affect on advertising regulations as they have had on the ability of the Czech Republic and Romania to regulate their economic programs. Advertising regulations throughout Eastern Europe's transitioning countries have been challenged and violated by aggressive tobacco and advertising industries.<sup>142</sup> Prior to the fall of their communist governments in 1989,<sup>143</sup> the Czech Republic and Romania banned tobacco advertising.<sup>144</sup> The Czech Republic's ability to implement and enforce tobacco advertising regulations, like other post-communist developing countries, has been affected by pressure from tobacco manufacturers and western advertisers.<sup>145</sup> The Czech Republic reversed its complete ban on tobacco advertising in 1991 when it adopted a new law regulating radio

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countered with no hesitation, irrespective of the level it appears at." *Part 2 Central Europe, the Balkans; Romania; Hungarian President's Visit; President Lauds Romania's Achievements Since 1989*, BBC SUMMARY WORLD BROADCASTS, Oct. 11, 1995, at EE/D2431/B.

<sup>141</sup> *President Calls for Tough Police Action Against Crime*, BBC SUMMARY WORLD BROADCASTS, Jan. 18, 1997, at EE/D2820/B, available in LEXIS, World Library, ALLNWS; *FBI to Open Office in Romania Following Adviser's Talks in USA*, BBC SUMMARY WORLD BROADCASTS, Feb. 12, 1997, at EE/D2841/B, available in LEXIS, World Library, ALLNWS.

<sup>142</sup> Leslie Adler, *Czech Republic: Western Advertisers Seek Eastern European Markets*, REUTERS NEWS SERV.-CIS & E. EUR., Oct. 16, 1996, available in LEXIS, World Library, ALLNWS file. "Advertisers hope Eastern Europe will offer a double bonus: shoppers keen to buy Western goods and a lack of restrictions that limit promotion of goods like tobacco and alcohol products in the West." *Id.*; Dariusz Styczek, *Smoking Adds Debate, Just Butt Out, Okay?*, WARSAW VOICE, February 26, 1995, available in LEXIS, World Library, ALLNWS file. Ken Kasriel, *Hungarian Government vs. Cigarette Industry Goliaths*, CHRISTIAN SCI. MONITOR, April 27, 1993, at 9, available in LEXIS, World Library, ALLNWS file.

<sup>143</sup> CONSTITUTION OF THE CZECH REPUBLIC and CONSTITUTION OF ROMANIA, *supra* note 28.

<sup>144</sup> The Czech Republic initially banned cigarette advertising in March of 1989. ROEMER, *supra* note 30, at 211-12. Romania banned it in July of 1978. *Id.* at 273-274, 283; Law of 6 July 1978 on the Safeguarding of the Health of the Population, Sec. 84, 115(d), 188, 7/78, reprinted in 30 INT'L DIG. HEALTH LEGIS. 263, 287, 295, 307 (1979).

<sup>145</sup> Leslie Adler, *supra* note 142. Similar pressures were documented in Poland and Hungary. Dariusz Styczek, *supra* note 142. Ken Kasriel, *supra* note 142 at 9. "Here in Hungary, Phillip Morris, R.J. Reynolds, British-American Tobacco (BAT), and Reemstma of Germany are lobby-

and television broadcasting.<sup>146</sup> Just a year later the Czech Parliament passed the Law on Consumer Protection which banned all tobacco advertising.<sup>147</sup> Tobacco advertisers ignored this law and pasted tobacco advertisements on city trams.<sup>148</sup> In 1993, the law was removed due to pressure from the advertisement lobby, which argued against it in Parliament, conducted a billboard campaign focusing on freedom-of-speech and claimed that "the Czech economy would lose 6.1 billion koruna (\$2.1 billion) over the next four years if the advertisements remained prohibited."<sup>149</sup>

In November of 1994, the Czech Parliament approved legislation banning cigarette advertising from television, billboards, public transportation, cinema, and print media.<sup>150</sup> However, the law, Tobacco Act 303/1993, allowed advertising contracts signed before January 1, 1994, to operate until February 28, 1994.<sup>151</sup> Parliament subsequently extended the expiration date for such contracts amidst press claims that five parliament deputies had allowed Phillip Morris to take them on a free trip to its Swiss plant prior to the vote.<sup>152</sup> As a result, even

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ing against the country's ban on most cigarette ads. Meanwhile they are breaking the law. Each owns recently privatized factories here." *Id.*

<sup>146</sup> ROEMER, *supra* note 30, at 212. The radio and broadcasting law permitted tobacco advertising on the radio between ten p.m. and six a.m., on billboards, and in the press. *Legal and Ethical Regulation of Tobacco Advertising*, CTK NAT. NEWS WIRE, Aug. 13, 1995, at \*1, available in LEXIS, World Library, ALLNWS file [hereinafter *Legal and Ethical*]. The new law also required tobacco advertising to contain tar and nicotine content as well as a warning that smoking was harmful. ROEMER, *supra* note 30, at 212.

<sup>147</sup> *Tobacco Producer Disagrees with Consumer Protection Law*, CTK BUS. WIRE, March 4, 1993, available in LEXIS, World Library, ALLNWS file; Debate Continues on Role of Advertising in Business, CTK BUS. WIRE, Sept. 9, 1993, available in LEXIS, World Library, ALLNWS file (citing Consumer Protection Law 634/92).

<sup>148</sup> *Prague Transport Told to Remove Tobacco Ads from Trams*, CTK NAT. NEWS WIRE, Feb. 16, 1993, available in LEXIS, World Library, ALLNWS file.

<sup>149</sup> However, the ban on televised tobacco advertisements remained. *Czech Market is Cheap but Restricted*, ECONOMIST INTELLIGENCE UNIT BUS. E. EUR., Aug. 2, 1993, available in LEXIS, World Library, ALLNWS file [hereinafter *Czech Market*]; *Tobacco in Eastern Europe; Gasping*, ECONOMIST, August 21, 1993, at 52, available in LEXIS, World Library, ALLNWS file; *Czech Republic: Parliament Overturns Proposed Ban on Tobacco*, HOSPODARSKE NOVINY, July 12, 1993, at 3, available in LEXIS, World Library, ALLNWS file.

<sup>150</sup> *USA: A Roundup of Activity*, ADVERTISING AGE, Nov. 21, 1994, available in LEXIS, World Library, ALLNWS file [hereinafter *Roundup*]. *Czech Republic: Czech Republic Bans Tobacco Advertising*, EUROMARKETING, Dec. 7, 1993, available in LEXIS, World Library, ALLNWS file.

<sup>151</sup> *Czech Republic: New Law to Ban Tobacco Advertising From 1994*, HOSPODARSKE NOVINY, December 3, 1993, at 3, available in LEXIS, World Library, ALLNWS file. *End of Tobacco Monopoly*, E. EUR. BUS. L., Feb. 1994, available in LEXIS, World Library, ALLNWS file (citing Tobacco Act 303/1993).

<sup>152</sup> *Czech Tobacco Ban Delay*, EUROMARKETING, March 1, 1994, vol. 7, no. 24, available in LEXIS, World Library, ALLNWS file.

though tobacco advertising was technically banned at the beginning of 1994, such advertising still existed all over the Czech Republic after that period.<sup>153</sup>

On May 23, 1995, President Vaclav Havel rejected the 1994 tobacco legislation because he felt it did not give manufacturers enough time to comply with new labeling standards and because it would have a negative impact on the country's economy.<sup>154</sup> Had Havel approved it, the legislation would have been in effect almost immediately.<sup>155</sup> In addition to its advertising regulations, the legislation would have restricted smoking in restaurants and bars to special sections,<sup>156</sup> restricted it in meetings, symposiums, and news conferences,<sup>157</sup> required more visible warning labels on cigarette packs and raised the buying age for cigarettes from 16 to 18 years.<sup>158</sup> In June 1995, the Czech Republic implemented another law to regulate tobacco advertising.<sup>159</sup> The new law, however, is generally unclear; it requires the government to consult the private Advertising Council regarding the administration of the new advertising regulations and is less stringent than the voluntary Advertising Code supposedly in effect.<sup>160</sup> Immediately after the law passed, tobacco advertisements re-emerged on billboards even though what could legally be part of such advertisements still was unclear.<sup>161</sup>

The Czech Republic's voluntary Advertising Code was implemented in 1994<sup>162</sup> and was created to prevent advertisements from breaking with moral norms or depicting the human body in a fashion

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<sup>153</sup> Will Tizard, *Tobacco-Government Alliance 'Fruitful'*, PRAGUE POST, Aug. 10, 1994, available in LEXIS, World Library, ALLNWS file.

<sup>154</sup> *Czech Chief Rejects Anti-Smoking Law*; SAN DIEGO UNION & TRIB., May 25, 1995, at A19 [hereinafter *Czech Chief Rejects*]; Tomas Kellner, *Havel Vetoes Tobacco Legislation on Economic Grounds*, PRAGUE POST, May 31, 1995, available in LEXIS, World Library, ALLNWS file.

<sup>155</sup> *Havel Rejects Smoking Curbs*, PATRIOT LEDGER (Quincy Mass.), May 24, 1995, at 04.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Czech Chief Rejects*, *supra* note 154.

<sup>159</sup> *Legal and Ethical*, *supra* note 146, at \*1; *Czech Republic: Czech Self Regulation Win*, EUROMARKETING, March 21, 1995, available in LEXIS, World Library, ALLNWS file [hereinafter *Czech Republic: Czech Self Regulation*]. *Confusion Prevents Enforcement of Tobacco Advertisement Law*, CTK BUS. NEWS, April 13, 1995, at \*2, available in LEXIS, World Library, ALLNWS file [hereinafter *Confusion Prevents*].

<sup>160</sup> *Legal and Ethical*, *supra* note 146, at \*1; *Czech Republic: Czech Self Regulation*, *supra* note 159. *Confusion Prevents*, *supra* note 159.

<sup>161</sup> *Confusion Prevents*, *supra* note 159, at \*1.

<sup>162</sup> *Legal and Ethical*, *supra* note 146, at \*1.

degrading to human dignity.<sup>163</sup> The Advertising Code also specifically instructed tobacco advertisers not to market tobacco products to minors or children.<sup>164</sup> However, because the Advertising Code is implemented by a private body, it can only make recommendations; it cannot impose penalties for violations of the Code.<sup>165</sup> Many advertisers have clearly and consistently violated the Advertising Code just as they have ignored previous advertising bans. For example, one advertiser placed a tobacco advertisement on a billboard near a school in violation of the Advertising Code.<sup>166</sup> The billboard was eventually removed after the Advertising Council made a recommendation;<sup>167</sup> however, the code obviously did not discourage the advertiser from placing the advertisement near the school in the first place. Other advertisers violated the Advertising Code when they placed ads containing naked women in television, billboard, and magazine advertisements.<sup>168</sup> A Czech newspaper article which addressed these improper advertisements suggested that the advertisers who created these advertisements, and the manufacturers of the products being advertised, would continue to violate the Advertising Code because the advertisements effectively sold their products.<sup>169</sup> The Czech Council for Radio and Broadcasting, which supposedly watches and sanctions advertisers for violations of the Advertising law,<sup>170</sup> has gone so far as to state that nothing can be done about violations of Advertising and Broadcasting laws by economically influential or popular groups.<sup>171</sup> Clearly, neither the voluntary Advertising Code, nor the Czech Advertising law, are consistently followed or enforced.

Like the Czech Republic, Romania revoked a previously established ban on advertising after it opened its market; the Law on Audiovisual Communication, which guaranteed freedom of expression

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<sup>163</sup> *Most People Are Outraged at Naked Women in Ads*, CTK NAT. NEWS WIRE, Oct. 12, 1995, available in LEXIS, World Library, ALLNWS file [hereinafter *People Outraged*].

<sup>164</sup> *Legal and Ethical*, *supra* note 146, at \*1.

<sup>165</sup> *Id.* at \*2.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *People Outraged*, *supra* note 163.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Czech Berlusconi in the Dock?*; CTK NAT. NEWS WIRE, Oct. 17, 1995, available in LEXIS, World Library, ALLNWS file. When a new radio station violated its operating license, the Radio and Broadcasting Council refused to take action because doing so might require them to revoke the license of its popular parent company, NOVA TV. A spokeswoman for the Council said "nothing can be done about it. . .we won't take their license—have you any idea what that would mean?" *Id.* at \*2.



and opinions, was adopted on May 25, 1992.<sup>172</sup> The 1992 law did not include any cigarette advertising regulations; however, it did create a National Audiovisual Council which could "establish compulsory regulations regarding . . . advertising."<sup>173</sup> In November of 1995, the National Audiovisual Council, spurred by reports of an increase in lung cancer in Bucharest, finally took advantage of its ability to regulate advertising and instituted a complete ban on public tobacco advertising in that city.<sup>174</sup> In the rest of Romania, tobacco products are still advertised on television and health warnings are not required.<sup>175</sup>

Similar to the situation in the Czech Republic, tobacco companies and advertisers have actively lobbied against the Romanian government's attempts to regulate tobacco advertising.<sup>176</sup> An American advertiser, Radu Florescu, proudly described how he brought the TV show "Dallas" to Romania with the sponsorship of Kent cigarettes.<sup>177</sup> When Romania wanted to ban the television advertising of cigarettes to comply with European Union standards, the advertiser threatened to take the extremely popular show away if Kent were not allowed to continue to advertise.<sup>178</sup> Not surprisingly, Kent was allowed to continue its television advertisements.<sup>179</sup> Although Romania has taken measures to provide for the eventual health consequences of smoking-related illness by using money raised by taxes on cigarette advertisements to help finance their health-care system;<sup>180</sup> these actions will not prevent the recruitment of new smokers. In both the Czech Republic and Romania, tobacco advertisers and marketers have ignored tobacco regulations because regulatory bodies have refused to enforce them when faced with serious economic and public pressure. The activities of the tobacco TNCs in the Czech Republic and Romania are

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<sup>172</sup> ROEMER, *supra* note 30, at 283. Romanian Law on Audiovisual Communication of 5/92, Art. 32(1), 5/92, available in WESTLAW, Foreign Laws Library, 1992 WL 563324.

<sup>173</sup> *Id.*

<sup>174</sup> *Bucharest Bans Public Tobacco Advertising*, REUTERS EUR. BUS. REP., Nov. 30, 1995, available in LEXIS, World Library, ALLNWS file. Simona Miculescu, Press Secretary for the Romanian Embassy in Washington, D.C., stated that the tobacco advertising ban in Bucharest resulted from an action taken by the National Audiovisual council. *Id.*

<sup>175</sup> *RJR Warns Romanian Smokers to Give Up*, REUTERS FIN. SERV., June 12, 1996, available in LEXIS, World Library, ALLNWS file.

<sup>176</sup> Loewenberg, *supra* note 1, at \*2.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* Currently, Dallas is no longer being shown on Romanian television. It ended after 16 episodes. Susan Milligan, *Dallas on the Danube; Romanian 'J.R.' Builds a South Fork for Eastern Europe*, S.F. EXAM., Oct. 22, 1995, at T5.

<sup>180</sup> *USA: A Roundup of Activity*, ADVERTISING AGE, Nov. 21, 1994, available in LEXIS, World Library, ALLNWS file. Romanian Order on Financing of Health Care of 8/92, Art. 1, 8/92, available in WESTLAW, Foreign Laws Library, 1993 WL 592136.

typical of their actions throughout Eastern Europe, suggesting that only international control of tobacco TNCs will prevent similar activities in other parts of the world.<sup>181</sup>

## V. PROPOSED REGULATORY SCHEMES TO CONTROL THE ACTIVITIES OF TOBACCO TNCs IN DEVELOPING COUNTRIES

A variety of regulatory schemes have been proposed by nations and international organizations to control the activities of TNCs in developing countries like the Czech Republic and Romania. The five dominant regulatory schemes are (1) self-regulation; (2) "extraterritorial enforcement of home country regulations;"<sup>182</sup> (3) voluntary guidelines; (4) involuntary or "true"<sup>183</sup> codes; and (5) a mixture of voluntary guidelines and involuntary codes, sometimes termed "zebra" codes.<sup>184</sup> Most nations agree on the desirability of the international regulation of TNCs.<sup>185</sup> Both the United Nations (U.N.) and the OECD have recognized the need to regulate TNCs.<sup>186</sup> The U.N. Commission on Transnational Corporations stated, "national regulation and control are inadequate to deal effectively with the global

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<sup>181</sup> Poland, Hungary, Slovakia, and the Ukraine have also had problems implementing legislation in the face of economic pressure and pressure from the tobacco lobby. Dariusz Styczek, *supra* note 142. Marcin Grajewski, *Poland Moves to Crack Down on Smoking*, REUTER EUR. BUS. REP., Aug. 25, 1995 available in LEXIS, World Library, ALLNWS file; Gabor Jelinek, *New Law Liberalizes Smoking Advertising*, BUDAPEST BUS. J., May 27, 1996, available in LEXIS, World Library, ALLNWS file; Normandy Madden, *Czech Republic: Slovakia Loosens Law for Tobacco Ads New Rule Defines 'Advertising'*, ADVERTISING AGE, September 9, 1996, available in LEXIS, World Library, ALLNWS file; James Rupert & Glenn Frankel, *American Tobacco's Seizure of Ukraine*, INT'L HEARLD TRIB., Nov. 20, 1996, available in LEXIS, World Library, ALLNWS file.

<sup>182</sup> Robert J. Fowler, *International Environmental Standards for Transnational Corporations*, ENV'T'L L., Winter 1995, at 27.

<sup>183</sup> Steven Salbu, *True Codes Versus Voluntary Codes of Ethics in International Markets: Towards the Preservation of Colloquy in Emerging Global Communities*, 15 U. PA. J. INT'L BUS. L. 327, 355 (1994).

<sup>184</sup> Seymour Rubin, *Transnational Corporations and International Codes of Conduct: A Study of the Relationship Between International Legal Cooperation and Economic Development*, 10 AM. U. J. INT'L & POL'Y 1275, 1284 (1995).

<sup>185</sup> *Id.*

<sup>186</sup> "Advances made by multinational enterprises in organizing their operations beyond the national framework may lead to abuse of concentrations of economic power and conflicts with national policy objectives." *Annex to the Declaration of 21st June, 1976 by Governments of OECD Member Countries on International Investment and Multinational Enterprises: Guidelines for Multinational Enterprises*, reprinted in 15 I.L.M. 969 (1976) [hereinafter *OECD Guidelines*]; *United Nations Commission on Transnational Corporations: Information Paper on the Negotiations to Complete the Code of Conduct on Transnational Corporations*, Special Sess. 3/7-18/1983 and 5/9-20/1983, Agenda Item 4, at 3, U.N. Doc. E/C.10/1983/S/2 (1983), reprinted in 22 I.L.M. 177, 178-9 (1983) [hereinafter *U.N. Commission*].

strategies of transnational corporations. Many states, particularly small developing countries, have encountered difficulties in regulating transnational corporate conduct.<sup>187</sup> This section will discuss the five dominant regulatory schemes and propose the implementation of a zebra code specifically designed to address tobacco TNCs.

The first type of regulation, self-regulation, is the tobacco industry's method of choice.<sup>188</sup> The Czech Republic's Advertising Code reflects the problem intrinsic to self-regulation; the government's inability to enforce such regulations.<sup>189</sup> When advertising regulations cannot be enforced and do not carry legal penalties, advertisers can, and do, choose to ignore them.<sup>190</sup> As indicated above, a tobacco advertiser in the Czech Republic ignored the Advertising Code when he or she placed a tobacco advertisement on a billboard near a school.<sup>191</sup> As a result, this method of regulation is undesirable.

The second type of regulation, extraterritorial enforcement of a home countries' advertisement regulations, would be more effective than self-regulation because it is involuntary.<sup>192</sup> Extraterritorial enforcement allows the United States or the European Community to enforce its laws on the operations of their TNCs' subsidiaries in foreign countries.<sup>193</sup> Extraterritorial enforcement has been suggested as a means of implementing environmental regulations on TNCs' subsidiaries in developing countries.<sup>194</sup> The Foreign Corrupt Practices Act (FCPA) is an example of a law which is enforced extraterritorially.<sup>195</sup> Extraterritorial enforcement would effectively regulate the activities of tobacco TNCs because the United States or the European Community could fine or sanction the violators until they stopped their illegal actions. Like the FCPA, an extraterritorially enforced law regulating tobacco advertisements and marketing practices might be tolerated by foreign countries because of a "commonality of interest" in the reduc-

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<sup>187</sup> U.N. Commission, *supra* note 186.

<sup>188</sup> ROEMER, *supra* note 30, at 160; Leslie Adler, *supra* note 142. "Western advertisers seeking new consumer markets in the former Soviet bloc urged East European countries to adopt liberal self-regulation of their emerging advertising industries." *Id.*

<sup>189</sup> Czech Chief Rejects, *supra* note 154.

<sup>190</sup> See *supra* notes 159-171 and accompanying text. ROEMER, *supra* note 30, at 42. *Legal and Ethical*, *supra* note 146.

<sup>191</sup> *Legal and Ethical*, *supra* note 146, at \*2.

<sup>192</sup> Fowler, *supra* note 182, at 27.

<sup>193</sup> *Id.* at 15.

<sup>194</sup> *Id.* at 15.

<sup>195</sup> Foreign Corrupt Practices Act, 15 U.S.C.S. § 78dd-1 (1996).

tion of smoking-related diseases.<sup>196</sup> The disadvantage of this regulatory scheme is its interference with the sovereignty of the nation in which the subsidiary is located.<sup>197</sup> Such an interference is a violation of international law.<sup>198</sup>

Guidelines, or voluntary codes, are a third possible method of regulation. Guidelines simply encourage groups or organizations to act in a manner considered appropriate.<sup>199</sup> They operate as a proposed set of ideal values or regulations.<sup>200</sup> The World Health Organization's proposals on the regulation of tobacco<sup>201</sup> and the OECD's Governing Council Recommendation on Information Exchange Related to the Export of Banned and Severely Restricted Chemicals<sup>202</sup> are examples of such guidelines. Guidelines are useful because they can become effective models for involuntary codes,<sup>203</sup> the fourth type of regulatory scheme. Guidelines are easier to negotiate than involuntary codes and do not require implementation or legislation.<sup>204</sup> They can modify social and cultural values by raising the awareness of the public and the TNCs.<sup>205</sup> However, guidelines, like self-regulation, are not enforceable;<sup>206</sup> as a result, they cannot regulate TNCs which refuse to follow their suggestions.<sup>207</sup>

Involuntary or true codes are the fourth type of regulatory scheme. Involuntary codes have the advantage of being enforceable.<sup>208</sup> Treaties, U.N. Conventions, and U.N. protocols generally take the form of involuntary codes.<sup>209</sup> If The Draft United Nations Code

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<sup>196</sup> M. SORNARAJAH, *THE INTERNATIONAL LAW ON FOREIGN INVESTMENT* 182, 185 (1994). "Where there is such commonality of purpose within the international community, the objections to extraterritoriality will be muted or even non-existent." *Id.* at 182.

<sup>197</sup> *Id.*; Phillip I. Blumberg, *Responsibility of the Corporate Parent for the Activities of a Subsidiary, Nation-States and Multinational Corporations*, 646 PRACTISING L. INST. 149, at \*25 (1989).

<sup>198</sup> *United Nations: Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, opened for signature* March 21, 1986, art. 34-36, U.N. Doc. A/CONF.129/15, reprinted in 25 I.L.M. 543, 544, 564-565 [hereinafter *Vienna*].

<sup>199</sup> Salbu, *supra* note 183, at 355.

<sup>200</sup> *Id.* at 332.

<sup>201</sup> See ROEMER, *supra* note 30.

<sup>202</sup> Sean Murphy, *Prospective Liability Regimes for the Transboundary Movement of Hazardous Wastes*, 88 AMER. J. INT'L L. 24, 46 n.103 (1994).

<sup>203</sup> Salbu, *supra* note 183, at 367-68.

<sup>204</sup> Murphy, *supra* note 202, at 46.

<sup>205</sup> Salbu, *supra* note 183, at 360; Murphy, *supra* note 202, at 46.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> Salbu, *supra* note 183, at 332.

<sup>209</sup> Examples of such involuntary codes include: U.N. Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulfur Emissions, June 14, 1994, 33 I.L.M. 1540 (1994) [hereinafter *Sulfur Emissions*]; U.N. Convention Against Illicit Traf-

of Conduct on Transnational Corporations (the Code)<sup>210</sup> had been implemented, it would have been a true or involuntary code.<sup>211</sup> Unfortunately, involuntary codes tend to be overly broad and generic because they attempt to cover too many issues and please too many parties.<sup>212</sup> The lack of specificity in involuntary codes makes them difficult to adopt and interpret.<sup>213</sup> Involuntary codes also require ratification or accession which can be difficult if the countries involved in the code development process do not share similar traditions or laws.<sup>214</sup> In addition, they generally take longer to implement than voluntary codes<sup>215</sup> and are less responsive to criticism.<sup>216</sup>

The fifth and last method of regulation, the zebra code, is a mixture of both guidelines and involuntary codes. Such a mix-type regulation would allow for the enforcement of accepted international standards, such as the banning of cigarette advertisements from television, radio and products marketed to children, while remaining flexible enough to evolve with changing world standards.<sup>217</sup> The U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, an involuntary code, specifically names voluntary codes which contain "appropriate measures" for adoption by parties to the convention.<sup>218</sup> The U.N. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons (Convention on Chemical Weapons) is a true zebra code because it includes, along with its involuntary requirements, rules for the creation of a conference which would implement and provide guidelines

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fic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 28 I.L.M. 497; U.N. Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1456.

<sup>210</sup> *Draft United Nations Code of Conduct on Transnational Corporations*, Special Sess. 3/7-18/1983 and 5/9-20/1983, U.N. Doc. E/C.10/1982/6 (1984), reprinted in 23 I.L.M. 626 (1984) [hereinafter *Draft Code*].

<sup>211</sup> Salbu, *supra* note 183, at 341-42; the U.N. has abandoned its attempt to produce the code after 15 years of discussion. Fowler, *supra* note 182, at 3.

<sup>212</sup> Salbu, *supra* note 183, at 341-42. They are also often the result of diplomatic settlements. Rubin, *supra* note 184, at 1288.

<sup>213</sup> *Id.*

<sup>214</sup> Murphy, *supra* note 202, at 47-48.

<sup>215</sup> *Id.* at 47.

<sup>216</sup> Salbu, *supra* note 183, at 358-59. "Once adopted, a true code can be seen as static unless levels of dissatisfaction reach a high threshold, thus driving legislative decisionmakers to adopt modification. . . The substantive issues resolved in the process of codification are unlikely to be reexamined without a critical event capable of shifting social and political perception of the issue." *Id.* at 359.

<sup>217</sup> See generally ROEMER, *supra* note 30.

<sup>218</sup> U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, art. 14(4), 28 I.L.M. 497, 517.

for the convention.<sup>219</sup> The OECD Guidelines for Multinational Enterprises also incorporates both guidelines and involuntary codes.<sup>220</sup> Unfortunately, the OECD Guidelines are so vague they are almost impractical.<sup>221</sup>

After considering the five possible regulatory schemes, this comment concludes that a zebra code would most effectively regulate tobacco TNCs. Such a code would specifically address the activities of tobacco TNCs, and no other group, in order to avoid the vagueness inherent in most involuntary codes.<sup>222</sup> In addition, a tobacco advertising zebra code would be derived from the following parts of the Consumer Protection section of the Code.<sup>223</sup> The Consumer Protection section states, "transnational corporations shall/should also perform their activities with due regard to relevant international standards, so that they do not cause injury to the health or endanger the safety of consumers."<sup>224</sup> If this section of the Code had been adopted and enforced in its strictest form, Kent cigarettes would have violated the Code when it placed Camels on Romania's traffic lights without visible warning labels.<sup>225</sup> The same section of the Code further states, "transnational corporations shall/should be responsive to requests from Governments of the countries in which they operate and be prepared to cooperate with international organizations in their efforts to develop and promote national and international standards for the protection of the health and safety of consumers."<sup>226</sup> If this section had been similarly adopted and enforced, the tobacco TNCs in the Czech Republic, Romania, Hungary and Poland would have violated the

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<sup>219</sup> U.N. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Jan. 13, 1993, art. VIII(B)(20), 32 I.L.M. 800 [hereinafter Convention on Chemical Weapons].

<sup>220</sup> Salbu, *supra* note 183, at 335 n.30; e.g., "Member countries will give their full support to the efforts undertaken in co-operation with non-Member countries, and in particular with developing countries." *OECD Guidelines*, *supra* note 186, at 970; JOHN M. KLINE, INTERNATIONAL CODES AND MULTINATIONAL BUSINESS: SETTING GUIDELINES FOR INTERNATIONAL BUSINESS OPERATIONS 46 (1985).

<sup>221</sup> Salbu, *supra* note 183, at 341-42.

<sup>222</sup> Murphy, *supra* note 202, at 63.

<sup>223</sup> *Draft Code*, *supra* note 210, at 632-33.

<sup>224</sup> *Id.*

<sup>225</sup> The United States requires warning labels on all cigarette advertisements. The law states, "It is the policy of the Congress, and the purpose of this chapter, to establish a comprehensive Federal Program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby (1) the public may be adequately informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement of cigarettes." 15 U.S.C.A. § 1331(1) (West 1995).

<sup>226</sup> *Draft Code*, *supra* note 210, at 632-33.

Code when they ignored these nations' attempts to ban tobacco advertising.<sup>227</sup>

This proposed zebra code also would require tobacco TNCs to adhere to specifically defined, international tobacco advertising standards. Such international standards would include a ban on tobacco advertising on television and radio and a ban on the advertising and marketing of tobacco products to children and adolescents.<sup>228</sup> The tobacco advertising code would include such bans because studies have confirmed that tobacco advertising bans reduce the incidents of smoking.<sup>229</sup> Researchers also suggest that cigarette advertising bans will have their greatest effect on under-age smoking because children have a higher awareness and appreciation for cigarette advertising than adults.<sup>230</sup>

The zebra code would further require tobacco TNCs to respect and follow the involuntary and voluntary guidelines on tobacco advertising which exist in the countries in which they operate. The enforcement of these standards would prevent tobacco TNCs from adhering to one standard in developed countries and a second, less strict standard, in developing countries.<sup>231</sup> The zebra code would also contain its own set of guidelines in order to develop models for future involuntary tobacco advertising regulations. Such guidelines would include recommendations on such issues as the minimum age of people in advertisements, the ability of tobacco producers to sponsor sporting events, the content of tobacco advertisements,<sup>232</sup> and any other issue which is incorporated or discussed in the voluntary codes in both developed and developing countries.<sup>233</sup> These guidelines would allow the zebra code to evolve with developing world standards.

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<sup>227</sup> See *infra*, section IV.

<sup>228</sup> ROEMER, *supra* note 30, at 120-26. This list is not intended to be all inclusive.

<sup>229</sup> Joy Townsend, *Department of Health Reports on Tobacco Advertising: A Ban Would Significantly Cut Consumption; Editorial*, 305 BRIT. MED. J. 1110 (1992); See *infra* section II. Researchers who observed the results of advertising bans in four different countries witnessed "a fall in smoking on a scale which [could not] reasonably be attributed to other factors." Gerard Hastings et al., *Children, Smoking and Advertising: the Evidence Is There for Those Who Wish to See It, Response to McDonald, International Journal of Advertising*, vol. 12, p.279, 1993, 13 INT'L J. ADVERTISING 195, at \*4 (1994)(quoting ECONOMICS AND OPERATIONAL RESEARCH DIVISION (EORD), EFFECT OF TOBACCO ADVERTISING ON TOBACCO CONSUMPTION (1992)) available in LEXIS, Health Library, MEDLINE file. "The prudent public health approach to prevent another increase in initiation among young people is urgent action to extend the ban on tobacco advertising." *Adolescent Girls, supra* note 44, at 611.

<sup>230</sup> Hastings, *supra* note 229, at \*5.

<sup>231</sup> Fowler, *supra* note 182, at 12.

<sup>232</sup> ROEMER, *supra* note 30, at 38-41.

<sup>233</sup> *Id.*

Finally, a zebra code would fine violators, depending on the egregiousness of the violation, in an amount representing a certain percentage of the TNC's advertising budget in the country in which the violation occurred. An account of the violation, the ensuing fine and its means of calculation would be published in newspapers of the country in which the tobacco TNC was based and in which the violation occurred. These actions would not only make illegal forms of advertising less profitable but would inform the public of the current tobacco advertising laws and those who consistently violate them.

Like the form of the regulation itself, there are several ways in which a zebra code could be implemented. Potentially, a zebra code could be implemented by the OECD,<sup>234</sup> by a treaty between the United States and the European Community,<sup>235</sup> by bilateral treaties,<sup>236</sup> or by an international convention. Implementation of a zebra code by the OECD would be difficult because OECD countries generally insist that all regulations of TNCs be voluntary.<sup>237</sup> Implementation of a treaty between the United States and the European Union would be similarly difficult. Unless such a treaty included, or was approved by, the Czech Republic and Romania, it would be enforceable only to the degree to which these countries could tolerate it politically.<sup>238</sup> As a result, economic pressure from tobacco TNCs could affect the degree to which such a treaty is tolerated, just as it affects the creation and implementation of national legislation.<sup>239</sup>

Bilateral treaties, the third option, have all the benefits and none of the disadvantages intrinsic to extraterritorial enforcement. Bilateral treaties, however, generally favor the stronger party,<sup>240</sup> which would be the home countries of the tobacco TNCs, such as the United States and the United Kingdom. The United States and the United

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<sup>234</sup> The OECD can create two types of agreements for its member countries, an OECD Council Act or a Council Recommendation. An OECD Council Act is legally binding on all member countries. A Council Recommendation encourages organization members to endorse a set of principals. *OECD Pollution Prevention Control Group Endorses Council Act on Reporting*, BNA INT'L ENV'T DAILY, Dec. 11, 1995, available in LEXIS, World Library, ALLNWS file. A mix-type code would incorporate both of these types of OECD agreements.

<sup>235</sup> Vienna, *supra* note 198, at 564.

<sup>236</sup> KLINE, *supra* note 220, at 34-35.

<sup>237</sup> SIDNEY DELL, *THE UNITED NATIONS AND INTERNATIONAL BUSINESS* 77, 83 (1990); see also Kline, *supra* note 220, at 46-48; see generally Oran R. Young, *International Organizations and International Institutions: Lessons Learned from Environmental Regimes* in ENVIRONMENTAL POLITICS IN THE INTERNATIONAL ARENA 148 (Sheldon Kamieniecki ed., 1993).

<sup>238</sup> SORNARAJAH, *supra* note 196, at 181-182, 185. Extraterritoriality can also create international conflict. Kline, *supra* note 220, at 34.

<sup>239</sup> See generally *infra*, section IV.

<sup>240</sup> Kline, *supra* note 220, at 34-35.



Kingdom currently tolerate the considerable disparity between the tobacco advertising and marketing regulations in their countries and the practices of their tobacco TNCs in post-communist, developing countries.<sup>241</sup> This tolerance suggests that they would condone such disparities in any bilateral treaty created to regulate their tobacco TNCs.

The final mode of implementation, the creation of an international convention, would probably be the most fruitful. The convention itself would be modeled after the structure of the Convention on Chemical Weapons, as previously discussed.<sup>242</sup> The optimal creator of such a convention would be the Inter-Organization Program for the Sound Management of Chemicals (IOMC) in conjunction with UNCTAD and the U.N.'s Transnational Corporations and Management Division (U.N. TNCs).<sup>243</sup> UNCTAD and the U.N.'s TNCs would be included in the convention because they consider and safeguard the interests of developing countries.<sup>244</sup> The IOMC is an optimal organization for the creation and subsequent implementation of this zebra code because it was created for the regulation of chemicals, includes clauses which allow the organization to expand its functions upon agreement of the organization and includes organizations which have an interest and expertise in the type of regulations which would be necessary to regulate the tobacco industry effectively.<sup>245</sup> In addition, those structures necessary for the enforcement of the IOMC could be used for the enforcement of the zebra code.<sup>246</sup> If the IOMC

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<sup>241</sup> See *infra*, sections III. and IV(C).

<sup>242</sup> Convention on Chemical Weapons, *supra* note 219.

<sup>243</sup> FAO-ILO-OECD-UNEP-UNIDO-WHO: Memorandum of Understanding Concerning Establishment of the Inter-Organization Programme for the Sound Management of Chemicals, March 13, 1995, 34 I.L.M. 1311 (1995) [hereinafter IOMC].

<sup>244</sup> Young, *supra* note 237, at 148; see generally Transnational Corporations and Management Division, Department of Economic and Social Development, *Formulation and Implementation of Foreign Investment Policies: Selected Key Issues*, U.N. Doc. ST/CTC/SER. B/10., U.N. Sales No. E.92.II.A.21 (1992); SORNARAJAH, *supra* note 196, at 223 ("[A] satisfactory code must address both the issue of how foreign investors conduct themselves in the host states as well as the treatment of foreign investors by the host states. For historical reasons, the two bodies that have produced recent instruments are identified with different camps in the debate.") UNCTAD and U.N. TNC's could actually join IOMC if the IOMC agreed to it. IOMC, *supra* note 243, art. 1.3, at 1315.

<sup>245</sup> IOMC, *supra* note 243, article 5.3, at 1318. Young, *supra* note 237, at 157 ("[T]he nature of the organizations needed will be closely tied to the character of the regimes or international arrangements they are intended to serve.") The organizations that make up the IOMC are the United Nations Conference on Environment and Development (UNCED), the United Nations Environment Program (UNEP), the International Labor Organization (ILO), the Food and Agricultural Organization of the United Nations (FAO), the World Health Organization (WHO), the United Nations Industrial Development Programme (UNIDO), and the Organization for Economic Development (OECD). IOMC, *supra* note 243, at 1311.

<sup>246</sup> See generally IOMC, *supra* note 243.

lacks the funds for the administration and enforcement of the zebra code, the IOMC could enforce the convention by borrowing or “piggybacking” on the administrative and enforcement structures of one or several other international conventions, such as: the Convention on Chemical Weapons, the U.N. Convention on the Rights of the Child, the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the U.N. Convention on Long-Range Transboundary Air Pollution.<sup>247</sup> While piggybacking may allow for the implementation of a convention which would otherwise go unenforced, it cannot give a convention the degree of regulatory power a convention with the ability to tailor its own administrative structures would have.<sup>248</sup>

Finally, except for extraterritorial enforcement, all of the implementation structures considered above would be in accord with current international trade agreements because GATT and the Central European Free Trade Agreement (CEFTA) both provide exceptions to the trade rules for measures which address health issues.<sup>249</sup> Although the U.S.-Romania Trade Agreement (U.S.-R.) and the U.S.-Czech and Slovak Republic Treaty on Investment (U.S.-C.) do not include such exemptions, the U.S.-R specifically incorporates the rights and obligations of GATT and the U.S.-C. states that it will not derogate other international legal obligations.<sup>250</sup> In conclusion, a tobacco advertising zebra code derived from the Consumer Protection Section of the Code and implemented by an international convention created by the IOMC would best address the problems associated with the regulation of tobacco advertising by TNCs.

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<sup>247</sup> Young, *supra* note 237, at 157 (“[T]here is much to be said for taking seriously the ideas of piggybacking on existing organizations or sharing organizational arrangements between regimes.”) Chemical Weapons, *supra* note 219; U.N. Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1456; U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 28 I.L.M. 497; U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 28 I.L.M. 497; Sulfur Emissions, *supra* note 209.

<sup>248</sup> Young, *supra* note 237, at 157-58.

<sup>249</sup> Peter Carney et al., *International Environmental Law and Policy*, in *ECONOMIC DEVELOPMENT, FOREIGN INVESTMENT AND THE LAW: ISSUES OF PRIVATE SECTOR INVOLVEMENT AND THE RULE OF LAW IN A NEW ERA* 150 (Robert Pritchford ed., 1996)(citing GATT article XX(b)). Central European Free Trade Agreement, December 21, 1992, art. 18, 34 I.L.M. 3, 11 (1995). Trade Agreement of 10/91, Oct. 1991, U.S.-Rom., art. 1.1, available in WESTLAW, Foreign Laws Library, 1991 WL 501373.

<sup>250</sup> Trade Agreement of 10/91, Oct. 1991, U.S.-Rom., art. 1.1, available in WESTLAW, Foreign Laws Library, 1991 WL 501373. Treaty Concerning the Reciprocal Encouragement and Protection of Investment, Oct. 22, 1991, art. IX, available in WESTLAW, Foreign Laws Library, 1992 WL 563343.

## VI. CONCLUSION

Tobacco advertising and marketing campaigns effectively recruit new, adolescent smokers who are more likely to die from smoking-related illnesses than smokers who start as adults. To combat this health threat, countries all over the world have successfully instituted complete and partial bans on cigarette advertising. In reaction to these increased regulations and the resulting depression in the tobacco markets, tobacco TNCs have focused their attention on fledgling Eastern European democracies, such as Czech Republic and Romania. These countries are particularly enticing to tobacco TNCs because the instability of their relatively new open markets force them to aggressively seek foreign investment.

The economic pressures which have forced the Czech Republic and Romania to court foreign investors have had a pervasive influence. They have produced political crises and soft conflict of interest laws which breed fraud and corruption. They also have affected the creation and implementation of Czech and Romanian advertising regulations. Considered together, these effects of economic pressure have impeded the ability of the Czech Republic and Romania, like other developing nations, to successfully regulate tobacco TNCs.

To address this health threat, the international community must work together to prevent tobacco TNCs from taking advantage of the precarious political and economic situations of countries like the Czech Republic and Romania. International regulations must be created which prevent tobacco TNCs from initiating advertising and marketing schemes in developing countries which would be illegal and repugnant in developed countries. A potentially effective regulation would incorporate both involuntary codes to enforce world standards and guidelines to develop future standards in a tobacco advertising zebra code. The involuntary part of such a zebra code would be derived from the Consumer Protection section of the Code. The voluntary part of the zebra code would be derived from the voluntary codes of developed and developing countries. Implementation of this zebra code by an international convention organized and implemented by the IOMC would probably provide the most effective regulation of tobacco TNCs. The regulation this comment proposes cannot cure the victims of lung cancer in Budapest, nor can it help Czech adolescents overcome their addiction to the nicotine in cigarettes; however, it might prevent tobacco TNCs from playing their deadly game in other developing countries.