On this page:

Vending machines are a form of tobacco advertising, promotion, and sponsorship, and challenges to vending machine bans therefore overlap with challenges to comprehensive bans on tobacco advertising, promotion and sponsorship. This page covers additional arguments that are specific to challenges to vending machine bans, which may be framed slightly differently to challenges to bans on other forms of tobacco advertising, promotion and sponsorship.

Under the WHO FCTC article 16, parties must adopt and implement effective measures to prevent sales of tobacco products to minors. This includes ‘ensuring tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors’ and banning the sale of tobacco products in any manner by which the products are directly accessible. Parties may also make a binding declaration that they will prohibit the introduction of tobacco vending machines or institute a total ban on tobacco vending machines.

Parties must also implement a ban on tobacco advertising, promotion, and sponsorship that is as comprehensive as possible. The article 13 guidelines recommend that ‘vending machines should be banned because they constitute, by their very presence, a means of advertising and promotion’. Tobacco product vending machines are included in the indicative list of forms of advertising, promotion and sponsorship annexed to the article 13 guidelines. The obligation in article 13 to implement a comprehensive ban on tobacco advertising, promotion and sponsorship applies to advertising, promotion and sponsorship directed toward both minors and adults, and is therefore not limited to the situations covered by article 16.

Vending machine bans have been challenged on the grounds of

- Property rights in the vending machines or in the business more generally
- Economic freedoms such as freedom of trade in an internal market
- The powers of legislatures to adopt the ban

Arguments also often focus on alternative measures the state could have adopted, such as the ability of the state to require age restriction technology on vending machines.

Responses that have successfully been used by parties include:

- That the measure promotes public health by reducing the availability and attractiveness of tobacco products, and therefore falls within state powers to regulate for health
That alternative measures such as requiring age restriction technology on machines are not as effective because of the risk of circumvention.

20 default 3. Illustrative case examples line Item 2
The cases below illustrate how tobacco vending machine bans have been challenged in WHO FCTC parties since the WHO FCTC came into force; how parties have framed their defences to such challenges; and how courts have considered the issues at stake. The list is not exhaustive but rather shows examples of how issues have been framed in different legal challenges.

**R (Sinclair Collis Ltd) v. Secretary of State for Health** [2011] EWCA Civ 437 (United Kingdom)

Sinclair Collis, a manufacturer of tobacco vending machines, challenged a ban on such machines in England and Wales, on the grounds that it violated the right to property and was a measure equivalent to a quantitative restriction (i.e. that the measure restricted trade). The Court of Appeal of England and Wales found that both the incursion on the right to property and its effect on restricting trade were justified by public health, and that there was no less restrictive alternative to a total ban. In rejecting proposed alternative measures, the court took into account evidence that children disproportionately obtained tobacco products from vending machines; that existing age restrictions under a voluntary code were frequently circumvented; and that the ban was projected to have positive impacts on both child and adult health due to reduced availability and promotion of tobacco products; and concluded that it was reasonable for the Secretary of State to have decided that a total ban was the preferable policy to age restrictions. The Court noted the fact that the ban implemented the recommendation to ban vending machines in the article 13 guidelines.

**Imperial Tobacco v. Lord Advocate (Scotland)** [2012] UKSC 61 (United Kingdom)

Imperial Tobacco challenged a Scottish law banning vending machines and retail display of tobacco products, arguing that the Scottish Parliament did not have powers to pass the legislation under its devolution agreement with the United Kingdom. The Scottish Parliament has the power to implement laws to protect public health, but not to regulate ‘the sale and supply of goods and services to consumers’, or to modify laws guaranteeing freedom of trade within the United Kingdom. Imperial Tobacco argued that the ban on vending machines and retail display were not health measures, but measures regulating the sale and supply of goods and services to consumers and measures that impeded freedom of trade. The Supreme Court of the United Kingdom rejected this argument, finding that the meaning of ‘regulating the sale and supply of goods and services to consumers’ was to regulate product safety and the terms and conditions of sales agreements with consumers. It found that the retail display ban was neither a measure to regulate product safety nor the terms of sale to consumers, but was instead a public health measure – it aimed to protect public health by reducing
the availability and attractiveness of tobacco products. The Court also held that any effect on trade was incidental to the public health purpose of the measure and did not modify the legal framework for free trade within the UK. The measure therefore fell within the powers of the Scottish Parliament to protect public health.