World Health Organization
REGIONAL OFFICE FOR Europe

TOBACCO CONTROL

Playbook

ABSTRACT

Tobacco control is difficult and complex and obstructed by the tactics of the tobacco industry and its allies to oppose effective tobacco control measures. This document was developed by the WHO Regional Office for Europe by collecting numerous evidence-based arguments from different thematic areas, reflecting the challenges that tobacco control leaders have faced while implementing various articles of the WHO FCTC and highlighting arguments they have developed in order to counter and succeed against the tobacco industry.

KEY WORDS

TOBACCO CONTROL
WHO FCTC
HEALTH EFFECTS
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ARGUMENTS

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INTRODUCTION

Tobacco is an extraordinary problem, requiring extraordinary action. The WHO European Region has made significant progress in tobacco control in recent decades, including through the adoption and the implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC) and development of a Roadmap of Actions which was signed by health ministers of the WHO European Region in 2015. Despite these commitments and progress, tobacco control remains difficult and complex, and the use of and harm from tobacco in the Region remains too high.

While the tobacco industry and its allies have always opposed effective tobacco control, their strategies and efforts to subvert the policy process have become even more determined, focused, misleading, aggressive and sophisticated. Policy makers need to be well equipped with clear facts and well-founded arguments to counter the myths generated by the tobacco industry. In light of this, the Tobacco Control Playbook is a series of arguments compiled to help anyone involved in tobacco control to understand how tobacco industry players act and how governments and the public health community can respond and counteract to their arguments.

The Playbook addresses many of the myths about tobacco that are often presented as fact by the tobacco industry. It aims to equip policy-makers and the general public alike with the evidence-based facts about tobacco consumption. In the face of ruthless and cynical opposition from the tobacco industry, it is necessary to do more than simply cite evidence-based research. For this reason, the Playbook offers a well-developed narrative that directly challenges the most common tactics and lines taken by the industry to obstruct effective control. The Playbook's content reflects the challenges that tobacco control leaders have faced while implementing various obligations of the WHO FCTC and highlights arguments they have developed in order to counter and succeed against the tobacco industry.

Health ministries and tobacco control advocates are committed to the shared goal of a European Region free from tobacco-related morbidity and mortality. The hope is that the Playbook will prove to be a valuable resource for sharing experiences and best practices for countering the tactics of the tobacco industry, and that this will, in turn, strengthen tobacco control efforts across the Region and reduce harm in the population.

COMPREHENSIVE SMOKEFREE LEGISLATION IS ESSENTIAL IN PROTECTING THE HEALTH OF OTHERS

KEY MESSAGE: Evidence strongly and consistently indicates that second-hand smoke has serious effects on the health of others and that the only way to protect people from it is to implement comprehensive smokefree legislation in all indoor places where others are present. The tobacco industry has tried to deter the implementation of smokefree legislation by shifting focus onto other issues using industry-funded so-called science, and front groups to spread the misleading argument that ventilation or partial smoking restrictions are adequate.

Second-hand smoke, an important health threat, contains hundreds of carcinogenic or toxic chemicals such as arsenic, formaldehyde, vinyl chloride and benzene, and is a known human carcinogen [1]. It contains higher concentrations of many toxic chemicals than the smoke inhaled by smokers, because second-hand smoke is not filtered and is burned at a lower temperature which results in a more incomplete, impure combustion [2]. Evidence shows that exposure to second-hand smoke has cardiovascular effects that are akin to active smoking [3]. Even brief exposure to second-hand smoke can have an immediate effect on the cardiovascular system, causing blood platelets to stick together, damage to blood vessel walls [4], and other cardiovascular effects which increase the risk of heart attack [5]. Irritants in second-hand smoke, when breathed in, can trigger asthma attacks in asthmatic people even upon brief exposure [6,7].

Children, whose bodies are still developing, are especially sensitive to the toxicants in second-hand smoke. Children exposed to second-hand smoke are at a 50–100% higher risk of acute respiratory illness and are more likely to suffer from asthma, middle ear infections, behavioural disorders, and sudden infant death syndrome. They are also more likely to start smoking in the future [8]. Adults exposed to second-hand smoke on a daily basis are also at increased risks of disease: they are 25–30% more likely to develop heart disease, have a 20–30% higher risk of developing lung cancer [9], and are at a higher risk of developing other fatal conditions such as breast cancer [10].

Smoking in pregnancy can result in complications such as miscarriage, stillbirth, premature birth, and low birth weight which predisposes the child to chronic diseases later in life. It also increases the risk of developmental conditions such as cleft lip, limb reduction, or congenital heart defects [11]. Heavy smoking during pregnancy can result in the child being born with nicotine dependence [12]. Paternal smoking can also affect child development, as it affects sperm quality and can increase the child's risk of suffering from postnatal health problems such as childhood cancer, genetic disorders, sudden infant death syndrome, and physical malformations [13]. Despite these risks, smoking in pregnancy remains the leading cause of poor pregnancy outcome and prenatal death in the European Region [14].

No level of second-hand smoke exposure can therefore be considered safe, and second-hand smoke can still be harmful if it travels from one room to another, when airing out a room or filtering through a ventilation system [15]. The only proper protection from second-hand smoke therefore is a complete ban on smoking in all enclosed spaces where others are present [16]. Nevertheless, exposure to second-hand smoke remains common in the WHO European Region. In 2004, an estimated 58% of children and 60% of adults in the Region were exposed to second-hand smoke. This corresponded to a burden of roughly 130 000 deaths, mostly from ischaemic heart disease, and represented the highest rate of death (over 30 per 100 000 capita) in any WHO region [17]. Currently, roughly half (54%) of children under the age of 15 in the Region are exposed to second-hand smoke inside the home, and most (74%) are exposed to second-hand smoke outside the home [18]. Exposure to second-hand smoke, particularly for children, thus remains an important problem in the European Region and justifies calls for stricter regulations [19].

The tobacco industry has always viewed second-hand smoke as an important challenge to its reputation and profits. When incontrovertible evidence on the health effects of second-hand smoke was published from the early 1980s onwards [20], the industry was concerned that this would result in litigation, smoking bans, and reduced tobacco sales. Tobacco companies responded by funding front groups to argue that smokefree legislation would negatively affect the hospitality industry, that they violated the so-called right to smoke, and that they had no scientific basis. All of these arguments are incorrect and were simply an attempt of the tobacco industry to avoid, dilute or delay effective smokefree legislation [21] (see "Smokefree legislation does not harm the hospitality industry").

The tobacco industry also sought to discredit legitimate research on second-hand smoke by sponsoring so-

called scientific activities designed to shift focus onto other issues, such as other factors that may contribute to poor air quality [22,23]. In tobacco industry-funded research, chronic diseases among non-smokers were then attributed to everything except second-hand smoke: engine pollution, incense burning, heat and humidity (in places such as southeast Asia), and cooking with barbecues or coal burners [24]. However, none of these factors come close to the health effects created by second-hand smoke exposure, which currently causes the deaths of approximately 600 000 non-smokers globally per year, most of them women and children [25].

The tobacco industry has also opposed the implementation of indoor smoking bans by arguing that a partial ban or ventilation is sufficient. This has often been done through industry-funded consultants, who are presented as industry independent. Such consultants have frequently promoted their so-called ventilation solution to the hospitality sector and legislative bodies [26], although these solutions are based on inaccurate science as evidence clearly shows that only a complete ban offers adequate protection from the health effects of second-hand smoke [9].

There is strong evidence that complete smoking bans provide significant health benefits to others in the long and short term, while partial bans or so-called harm reduction strategies offer very little – if any – benefit. In Spain, for example, respiratory symptoms among hospitality workers decreased by 72% in venues that became completely smokefree, but no large decreases in symptoms were observed among workers in venues that became partially smokefree [27]. Full smoking bans are highly effective: in Italy, for example, two years after the introduction of complete smoking bans in bars and clubs, the lifetime excess lung cancer mortality rates among workers decreased from 10–20 times higher to negligible [28]. Evidence, for example, from California (United States of America) shows that smokefree laws can lead to significant improvements in respiratory health among workers within just two months of implementation [29].

There is also evidence that exposure to second-hand smoke in public outdoor areas, such as *al fresco* dining areas and sidewalk cafes, and places where children may be exposed, is harmful to the health of others [30,31]. This has led to implementation of legislation and regulations in some jurisdictions to further protect the health of non-smokers who visit these outdoor areas.

KEY ARGUMENTS

- According to Article 12 of the International Covenant on Economic, Social, and Cultural Rights [32], everyone has a right to the highest attainable standard of health and, according to Article 3 of the Universal Declaration of Human Rights [33], everyone has a right to life. It follows that the public, particularly children, should be protected from the demonstrated harms of second-hand smoke.
- According to the Convention on the Rights of the Child, children have a right to life (Article 6) and a right to a clean and safe environment (Article 24) [34]. Protecting children from second-hand smoke is essential to ensure these rights.
- Guidelines for implementation of Article 8 of the WHO Framework Convention on Tobacco Control [35] on the protection from exposure to tobacco smoke state that smoking should be banned in all indoor public spaces, workplaces, transport, and in other public places as appropriate, and that proper enforcement mechanisms should be secured.
- In line with Article 12 of the WHO Framework Convention on Tobacco Control on education, communication, training and public awareness [36], everyone should be made aware of the health threats posed by second-hand smoke.

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LARGE PICTORIAL PACK WARNINGS AND PLAIN PACKAGING WORK

KEY MESSAGE: Evidence has consistently shown that pictorial warnings on tobacco packs effectively communicate the health risks of tobacco use to wider audiences, including children and illiterate people, and that the positive effects of pictorial warnings are strengthened with larger graphic warnings and plain packaging. Implementing these measures is key in protecting people from tobacco; however, the tobacco industry has consistently fought the implementation of large, pictorial warnings and plain packaging in favour of either no warnings or, at best, vague text warnings.

Evidence consistently shows that large, pictorial warnings on tobacco packaging are effective at educating people on the health risks of smoking. They also encourage quitting among smokers and discourage young people from taking up smoking [1]. Research shows that, in general, knowledge of tobacco-related health risks increases when pack warnings are strengthened [2] and that the effects of pictorial warnings are strengthened with plain packaging [3].

Evidence-based pack warnings are essential for communicating the health risks of smoking. Smokers, as consumers, have a right to this information [4]. A large proportion of smokers are unaware of many of the health effects of smoking. Pictorial warnings promote awareness to a wider audience as they are more effective at reaching people in low- and middle-income countries (LMICs), illiterate people who cannot understand text warnings, people in lower socioeconomic groups, and children [5]. Surveys indicate that smokers are more aware of tobacco-related conditions (such as heart disease, lung cancer and impotence) in countries where large, pictorial warnings have been implemented [6]. Evidence also shows that, due to enhanced knowledge of the health risks of smoking, pictorial warnings tend to encourage positive trends such as public acceptance of other tobacco control measures [7] or quitting among smokers [8].

Pictorial warnings are far more effective than text-only warnings in terms of raising awareness on the health risks related to smoking, reaching wider audiences, and motivating smokers to quit [1]. They can be made more effective by placing them on the front of the pack, increasing their size, and designing them in a way that triggers an emotional reaction [9]. However, their effects tend to be diluted by branding elements – such as logos or attractive colours – on the packaging that promote a positive association or identity associated with smoking, such as glamorous, or positive product images such as mild. These misleading associations can be diluted by increasing the size of pictorial warnings [10,11] or they can be completely eliminated by implementing plain packaging which removes all logos, colours, brand images and other promotional information on tobacco packs. Plain packaging was implemented in Australia in 2012. Since then, several other countries, such as France, Ireland and the United Kingdom, have legislated to introduce plain packaging and many other countries are committed to follow suit.

The tobacco industry has vehemently resisted the implementation of pack warnings and plain packaging in favour of either no warnings or inconspicuous, vague text warnings [12]. One common industry tactic is the use of litigation. The legal arguments made by the tobacco industry, however, have repeatedly shown to have little merit and are essentially a strategy to intimidate countries, particularly LMICs, from implementing effective tobacco control measures (see “Governments can enact tobacco control public health measures without infringing the tobacco industry’s commercial rights”).

The tobacco industry also puts in substantial efforts to delay the appearance of pictorial warnings on tobacco packs after such warnings have been adopted. In 2009, for example, the Parliament of Ukraine adopted legislation on pictorial warnings and the Government was responsible for selecting pictures for the warnings. The Ministry of Health proposed a set of pictures taken from the European Union library of health warnings, but due to tobacco industry lobbying, the Government returned the proposal to the Ministry of Health for improvement without indicating any substantial reasons. Twice in 2010 the Government returned proposals for pictorial warnings. After the fourth time, the Government adopted the proposal with a request to replace the two strongest warnings. After a Government decree was published, tobacco companies were given 18 months to replace the old text-only warnings with pictorial warnings. However, tobacco packs with pictorial warnings did not appear in shops until 1 October 2012, three days before the deadline [13].

A similar strategy was used to delay the implementation of pictorial warnings in Kyrgyzstan. In December 2014, the Kyrgyzstan Government adopted a decree for pictorial warnings and requested that, until January 2016, old text-only warnings should be replaced by new pictorial warnings [14]. The tobacco industry responded

by substantially increasing its import of cigarettes with old warnings from late 2014 to early 2015 (average monthly import in August–December 2014 was 637 million cigarettes), and then sharply decreasing it (to an average of 106 million cigarettes per month in August–December 2015). The tobacco industry also – successfully – pressured the Kyrgyzstan Government to amend the decree to permit the sale of cigarettes with old text-only warnings after January 2016 if they were imported before this date.

The tobacco industry uses aggressive strategies to avoid, dilute or delay effective regulations on tobacco packaging, because tobacco packaging is a crucial aspect of its marketing strategy [15]. Much of this marketing is targeted at children and young people, to recruit replacement smokers to replace those who have quit smoking or died from diseases caused by smoking (see "Tobacco marketing is targeted at children and young people"). As marketing activities – such as on television and radio, and at event sponsorships and promotions – are increasingly restricted, tobacco companies increasingly rely on tobacco packs as their advertising medium. As quoted in a 1986 internal tobacco industry report, "The increasing imposition of advertising restriction on the tobacco industry inevitably results in the visual impact of the cigarette pack itself assuming more importance as a means of attracting consumer attention to the product." [16].

The pack colour, design, and branding is used to create certain perceptions of the product and to target specific groups. Tobacco companies know from their own research, for example, that pastel-coloured packs convey freshness and innocence, and appeal more to young women and girls; that a lower health risk or mildness can be implied with light-coloured packaging; and that packs can be designed in a way that encourages smoking among youth [17]. Similarly, independent research has found that false beliefs about the safety of some cigarette varieties (e.g. light) persist even when descriptors are removed due to the way the product is packaged and branded [18,19]. Brand extensions or variants that are presented alongside one another in the course of trade can mislead consumers, because people try to find attributes among brand variants [20]. By removing the tobacco industry's last major means of promoting and glamourizing its products, plain packaging is an important component of a comprehensive tobacco advertising ban.

Research indicates that plain packaging increases the salience of health warnings, reduces consumer demand, and minimizes opportunities for the tobacco industry to market its products to youth [15]. This is because plain packaging is associated with a less attractive brand imagery or smoker identity, and thereby reduces the industry's ability to target children or other specific groups. Evidence from Australia shows that plain packaging has exceeded expectations in terms of its role in changing smoking-related attitudes and behaviours. Since 2012 (when plain packaging was implemented), there have been substantial declines in smoking prevalence in children and adults, and in tobacco sales [21]. An independent post-implementation review for the Australian Government confirmed that in just under the first three years, a quarter of the decline in adult smoking – along with substantial economic benefits to the Australian Government – could be attributed to plain packaging. The review indicated that its conclusions are conservative, and that the effects of plain packaging on overall smoking prevalence and tobacco consumption are likely to continually grow [22].

The strength of the tobacco industry's opposition to plain packaging is a strong indication of the importance it attaches to its packaging, and its concerns about the impact of this measure. Tobacco industry arguments made against plain packaging – that plain packaging will result in illicit tobacco trade, decreased tobacco prices and issues for retailers such as more in-store crimes, or that the measure is unlawful – were decisively rejected in Australia [21], as well as the United Kingdom [23] and have been shown to have no validity. The case of Australia demonstrates that plain packaging is "a casebook example of effective tobacco control–a policy measure driven by evidence, carefully designed and implemented, and now rigorously assessed" [24], and an important demand reduction measure as part of a comprehensive approach to tobacco control in line with the WHO Framework Convention on Tobacco Control [25].

KEY ARGUMENTS

- Guidelines for implementation of Article 11 of the WHO Framework Convention on Tobacco Control (WHO FCTC), on packaging and labelling of tobacco products [26], state that pictorial health warnings on tobacco packs should be clear, visible, and legible. They should be positioned on the front and back, covering at least 50% of the display area. The Guidelines also recommend Parties to consider the adoption of plain packaging.
- Guidelines for implementation of Article 12 of the WHO FCTC, on education, communication, training and public awareness, stress the importance of educating everyone on the harms of tobacco use, taking into account socioeconomic status, literacy, age, educational background and any other factors [27]. Pictorial warnings are essential in communicating the risks to children, people in LMICs, people who are illiterate, or anyone else who may not understand the risks from vague text warnings.
- In the Roadmap of actions to strengthen implementation of the WHO FCTC in the European Region 2015–2025 [28], the protection of children and a gender-sensitive approach are among the guiding principles. Children and females should be protected from tobacco marketing by removing all logos, descriptors or other branding elements on tobacco packaging that target them.

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SMOKEFREE LEGISLATION DOES NOT HARM THE HOSPITALITY INDUSTRY

KEY MESSAGE: Smokefree legislation has a positive impact on the hospitality industry. Damage to the industry is a myth: rigorous studies have shown that these measures have a positive or neutral effect, discounting industry claims that are mostly based on poorly designed studies.

Smokefree legislation in public places such as hotels, bars and restaurants can benefit the hospitality industry in a number of ways. One way is by reducing exposure to second-hand smoke, which can have serious health consequences. A global study of the effects of second-hand smoke found that 1% of deaths and 0.7% of disability-adjusted life years were attributable to second-hand smoke. Of these, 25% were children and 47% women, and the deaths per capita in the WHO European Region were more than double compared to other regions [1]. Second-hand smoke is therefore a significant health hazard in the European Region, and therefore implementing comprehensive smokefree legislation in order to protect the health of others is essential (see "Comprehensive smokefree legislation is essential in protecting the health of others").

Comprehensive smokefree legislation improves the health of workers who are subjected to significant health risks from second-hand smoke. A Scottish study found that health symptoms associated with smoking, including reported quality of life, among bar workers improved within four months of smokefree legislation taking effect in March 2006 [2]. Smokefree policies introduced in 2005 in Italy caused nicotine concentrates in the air to drop significantly, which was associated with decreasing long-term lung cancer risks. The decrease in nicotine was 10–20 times higher in bars and discos compared to restaurants [3]. These measures, in turn, improve worker productivity and contribute to economic benefits. A study of Swedish workers between 1988 and 1991, for example, found that non-smokers used 8–11 fewer sick days per year than smokers [4].

Net revenue in hospitality venues can also increase because most people are non-smokers. Additionally, smokers' support for smokefree restaurants was found to increase after the implementation of such policies in France, Germany, the Netherlands, and Norway [5,6].

Studies, including a recent meta-analysis [7], using objective measures such as changes in sales, employment and the number of establishments have shown no adverse impact as a result of implementing completely smokefree bars, restaurants and tourist areas in most developed countries. In many countries, the overall economic impacts have been positive [8] (see "Case study: Hungary"). Although earlier studies came to mixed conclusions, a 2003 review which examined 97 studies explained these differences. The studies were divided based on their methodological rigour. The 21 that were considered to be well designed all found that full smoking bans had either neutral or positive impacts on sales or employment in bars and restaurants. Of the studies that reported a negative economic impact, 94% were funded by the tobacco industry or its allies [9]. A United Kingdom study found a net increase of 155 000 jobs in the leisure and entertainment industries, since smokers who quit are then more likely to spend a larger proportion of their income on recreation and entertainment [10]. A number of recent studies of individual European countries including Belgium, Cyprus, Italy, Norway, and Spain have shown no negative effects on revenues, profitability or employment [6,11–14].

Smoking bans should be complete, since partial smoking bans or air filtering solutions do not provide adequate protection from second-hand smoke (see "Comprehensive smokefree legislation is essential in protecting the health of others"). Nevertheless, the tobacco industry, along with some in the hospitality industry, has often tried to resist the implementation of complete smoking bans by arguing that they would have a negative economic impact on the industry. The proposed so-called solution is often a partial smoking ban or an expensive air filtering system, neither of which offers adequate health protection (see "Case study: Hungary"). Although many of these arguments seem to come from hospitality industry representatives, it is now known that the tobacco industry has been involved in manipulating the hospitality industry, primarily via financial contributions to hospitality associations or the formation of its own front groups, often – and misleadingly – positioned as grassroots movements independent of the tobacco industry [15].

Smokefree legislation in hospitality venues protects the health of workers and customers, brings financial benefits to the venues, and is an important component of a comprehensive approach to tobacco control as recommended by WHO [16].

KEY ARGUMENTS

- Guidelines for implementation of Article 8 of the WHO Framework Convention on Tobacco Control on protection from exposure to tobacco smoke [17] state that all indoor public places should be completely smokefree. The Guidelines also state that industry-proposed so-called solutions such as partial smoking bans and ventilation systems have repeatedly proven to be ineffective [16].
- Article 5.3 of the WHO Framework Convention on Tobacco Control [18] states that the development of public health policy should be protected from the commercial and vested interests of the tobacco industry. This includes the industry's manipulation of the hospitality sector and use of front groups to delay, dilute or avoid comprehensive smokefree legislation.

CASE STUDY

Hungary

Hungary passed an amendment in April 2011 that called for a total smoking ban in all hospitality venues (and other public places), with a three-month grace period. It was enforced by fines: a fine of US$ 90–225 for smoking in a prohibited area, US$ 450–1120 for an individual's failure to enforce, and US$ 4500–11 200 for an institution's failure to enforce the legislation.

Two months before the amendment passed, the hospitality and tobacco industries applied significant pressure, through media campaigns, to permit smoking in indoor areas with air filtering systems. Soon after the Hungarian National Tax and Customs Administration published an impact assessment which predicted a national loss of US$ 248 000 as the direct result of a complete smoking ban. This assessment was based on literature selected by the tobacco industry, but its conclusions were featured in the media. A few days before the parliamentary vote, hospitality industry representatives held a widely publicized press conference in which they argued that hospitality sectors in other European countries had deteriorated as a consequence of smoking bans. A "Smoke and Talk" cabin was also presented, and it was – misleadingly – argued that air strained by the cabin's filter system was cleaner than normal air. WHO issued a press release the following day, correcting these unscientific claims. On the basis of the WHO release, the amendment passed with 82% approval.

A 2012–2013 impact assessment reported good enforcement and compliance. Between 2011 and 2013, income had increased by US$ 142 million as had the number of hospitality venues. Guest flows in accommodation establishments had also increased. The health of Hungarians and the revenues of the country's hospitality industry both benefitted from the smoking ban [19].

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TOBACCO MARKETING IS TARGETED AT CHILDREN AND YOUNG PEOPLE

KEY MESSAGE: The tobacco industry has targeted children and young people for decades in its advertising, promotion and sponsorship programmes, primarily to recruit replacement smokers – to replace those who have quit or died from diseases caused by smoking – and to create new markets. In protecting children from tobacco, it is essential to restrict all tobacco advertising, promotion and sponsorship, and to take steps to normalize tobacco-free lifestyles.

There is overwhelming evidence from tobacco industry documents, academic studies, and the industry's marketing activities that tobacco companies have been targeting children and young people in their marketing for decades. This was mainly to recruit replacement smokers, to replace those who had quit or died from tobacco-caused diseases [1]. For example, a 1978 tobacco industry memo states that "the base of our business is the high school student" [2]. The industry researched teenagers' patterns of smoking behaviour with keen interest, knowing that, in the words of a 1981 industry memo, "today's teenager is tomorrow's potential customer, and the overwhelming majority of smokers first begin to smoke while still in their teens" [3].

Evidence indicates that the tobacco industry was deliberately targeting children as young as 13 years old [4], though some advertising campaigns had strong impacts on far younger children. In the 1980s, for example, marketing for the Camel cigarette brand featured a cartoon camel character named Joe Camel [1]. According to a 1991 study on children in the United States of America, Joe Camel had reached audiences as young as three years old. It is also striking that 91% of children aged six years recognized Joe Camel as much as they recognized Mickey Mouse, and associated Joe Camel with cigarettes [5].

Though the Joe Camel campaign was blatantly targeted at children, tobacco companies have also consistently targeted their products to young adults, knowing that this is essentially a strategy for attracting teenage children to smoking as a rite of passage into adulthood. In the words of a 1969 tobacco industry memo,

> Smoking a cigarette for the beginner is a symbolic act... "I am no longer my mother's child." "I am tough," "I am an adventur[er]..."
>
> As the force from the psychological symbolism subsides, the pharmacological effect takes over to sustain the habit" [6].

In tobacco industry communications, terms such as young adult or new smoker became euphemisms for child or teenager, while more openly tobacco marketing was claimed to be targeted at young adults. Tobacco companies ensured, however, that their products would get exposure to young audiences. Tobacco products were heavily promoted on a wide range of media, much of it accessed by children and young people: on television, on the radio, in the press, on posters, on billboards, at the point of sale in shops, and more indirectly via promotions and the sponsorship of popular events such as music concerts. In countries with no comprehensive restrictions on all direct and indirect tobacco marketing activities, tobacco companies continue to market their products in diverse ways, reaching a wide array of young audiences.

Sports sponsorships, for example, remain a highly effective – and therefore commonly used – marketing strategy for tobacco companies. Sports sponsorships create associations with sporting idols, athleticism, success and risk-taking, and form smoker identities that promote youth smoking. Companies have also been active in sponsoring popular music events that will appeal to children and young people, as well as providing free cigarette samples to adults but in areas frequented by teenagers: rock concerts, sports events, and shopping malls [7]. These strategies have been very effective in encouraging smoking uptake among children, though the tobacco industry – more openly – claims that they were specifically targeted to adults [8,9]. Tobacco sponsorship of sports events has also been an important means for tobacco companies to generate influential support and to oppose bans on tobacco advertising and promotion.

The tobacco industry also has a long and well-documented history, dating from the 1920s to today [10], of collaborating with film industries to promote smoking in movies. This is a highly effective way for tobacco companies to promote their products and to create perceptions – particularly among children and young people – that smoking is a normal or desirable social activity. It also creates associations between smoking

and a popular celebrity or character that children and young people look up to, or a desirable lifestyle depicted on-screen [11,12]. The normalization and glamourization of smoking in movies, in turn, affects the smoking-related attitudes and behaviour of children and young people: compelling evidence from population surveys, longitudinal studies, experimental studies and internal tobacco industry documents shows that depictions of smoking in movies cause smoking initiation among youth [13,14].

Concerns about the promotion of tobacco products through the Internet and social media are also increasing. Tobacco products are often promoted online, with poor controls on potential Internet sales to underage youth [15]. Sites promoting tobacco products often have interactive features, culture content, games and apps that may appeal to children and young people. Tobacco companies are also known to engage with highly popular websites such as iTunes, YouTube and Facebook. On iTunes, for example, the iShisha app encourages its users to "figure out your favourite tobacco!" [16]. Another study documented that a tobacco company was promoting cigarette brands by joining and administrating Facebook groups, joining pages, and posting photos about its tobacco products and promotional events [17]. The Internet and social media sites, due to their ubiquity and popularity among children and young people, have the potential to reach large youth audiences, create positive associations with smoking and ultimately encourage smoking initiation. Tobacco product placements have also been observed in video games, where smoking is portrayed as a normal or desirable adult activity. Yet, these games are legally accessible to children as young as 13 years old [18].

Meanwhile, the tobacco industry insists that it only markets tobacco products to adult smokers. Tobacco companies have, for example, publicly claimed that "We don't want young people to smoke" [19]. More privately, however, tobacco companies acknowledged that "the base of our business is the high school student" [2]. They also knew that a campaign advising teenagers that smoking is strictly for adults would not be successful from a public health perspective as it reinforces the rite of passage effect, thereby encouraging smoking among children and young people [20]. Studies have found that youth smoking prevention campaigns funded by tobacco companies actually result in more positive attitudes towards smoking and stronger intentions to smoke among youth [21], and that youth exposed to these campaigns have more favourable attitudes towards tobacco companies even after the campaigns have ended [22–24]. Such corporate responsibility initiatives are also a means of improving the tobacco industry's image while gaining access to policy-makers in a bid to ultimately delay or avoid effective tobacco control measures. For example, a 1982 internal tobacco industry document noted that: "a program to discourage teens from smoking... might prevent or delay further regulation of the tobacco industry..." [25].

The tobacco industry has fiercely resisted any regulations on tobacco advertising, promotion or sponsorship, and has attempted to persuade governments to instead pursue voluntary codes and restrictions [26]. These are invariably ineffective as tobacco companies tend to look for indirect means, such as event sponsorship, to market their products. One recent tobacco marketing campaign, for example, targeted young people in its brand, inviting them to "Don't Be A Maybe. Be Marlboro". This brand is widely promoted with imagery of young people and slogans such as "Maybe never fell in love" and "Maybe wouldn't take a chance". The brand is marketed using diverse media such as billboards, in cinemas and at promotional events, in countries with porous regulations on tobacco advertising, promotion and sponsorship [27]. As part of a comprehensive approach to tobacco control which in particular aims to prevent smoking initiation among children and young people, it is essential to restrict *all* forms of tobacco advertising, promotion and sponsorship, as well as any industry-funded corporate social responsibility programmes such as youth anti-smoking campaigns.

KEY ARGUMENTS

- In line with Article 13 of the WHO Framework Convention on Tobacco Control (WHO FCTC), there should be comprehensive bans on all direct and indirect forms of tobacco advertising, sponsorships, and promotions [28].
- According to Article 36 of the Convention on the Rights of the Child, children have a right to be protected from any activity that takes advantage of them or that harms their welfare and development [29]. This includes their targeting by tobacco marketing, which is a clear impediment to their healthy development and exploitative of their young age.
- In the *Roadmap of actions to strengthen implementation of the WHO FCTC in the European Region 2015–2025* [30], a key focus area is reshaping social norms. In the Health 2020 policy framework [31], focus is on creating a culture of health, in which children want to grow up healthily. Key to these is the social normalization of a tobacco-free lifestyle, and preventing tobacco industry efforts to market (and thereby normalize) smoking.

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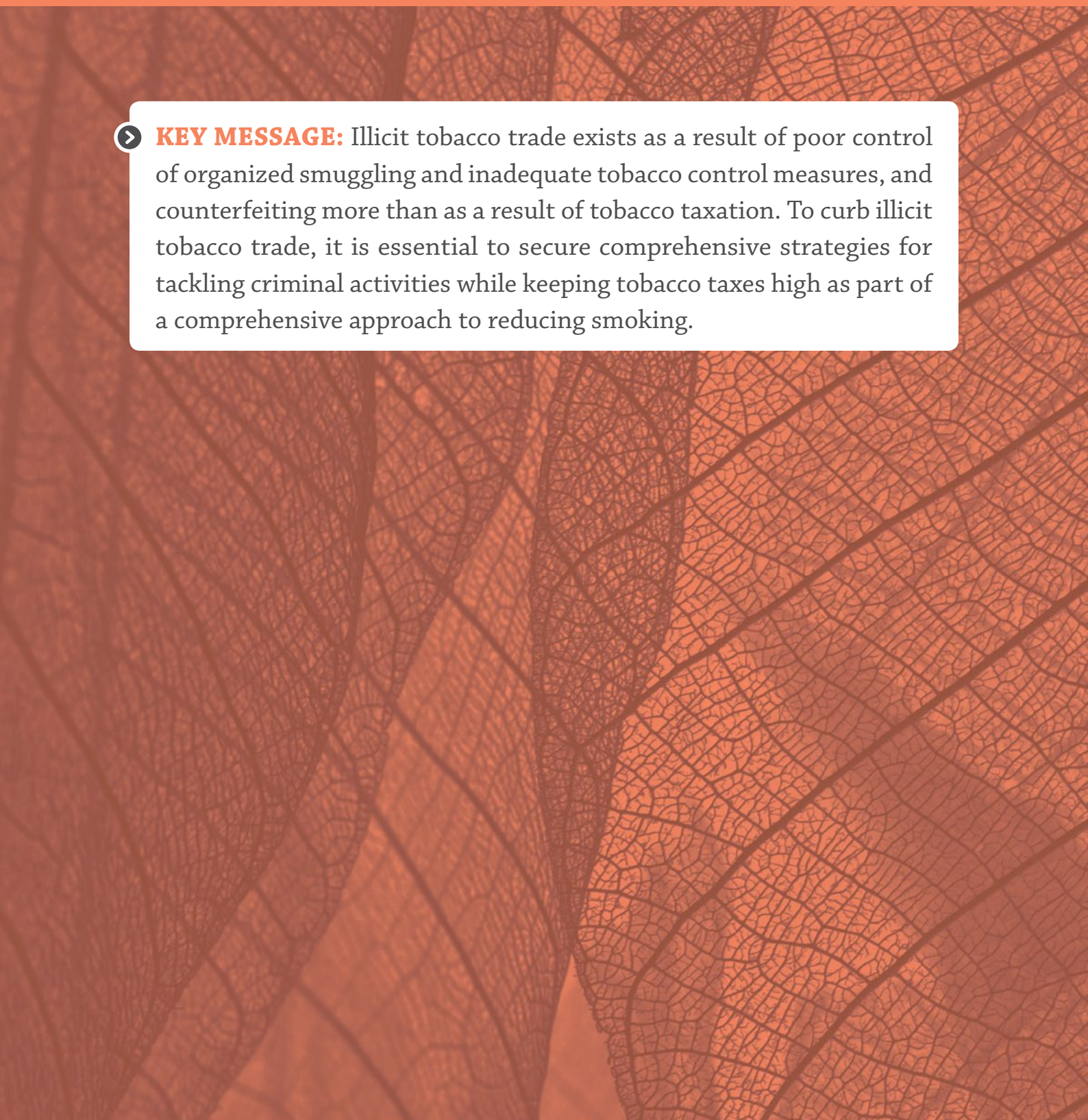
TOBACCO TAXATION DOES NOT RESULT IN ILLICIT TRADE



KEY MESSAGE: Illicit tobacco trade exists as a result of poor control of organized smuggling and inadequate tobacco control measures, and counterfeiting more than as a result of tobacco taxation. To curb illicit tobacco trade, it is essential to secure comprehensive strategies for tackling criminal activities while keeping tobacco taxes high as part of a comprehensive approach to reducing smoking.

High tobacco taxes have not been shown to be associated with high levels of illicit trade [1]; instead illicit trade is more common in countries where governance is poor, whether taxes are high or low [1]. For example, in countries such as the United Kingdom where governance is good – i.e. tax administration and customs are effective and taxes are high – illicit trade fell by more than half from its peak of 20% in 2000 (see "Case study: United Kingdom").

Nevertheless, the misleading argument that higher tobacco tax results in illicit trade is used to influence decisions on tobacco tax policy both within governments and in the media. This argument is usually supported by tobacco industry-funded studies, which are often carried out by tobacco industry-linked organizations that present themselves as independent of the tobacco industry [2]. An example is the International Tax and Investment Center, a tobacco industry-funded lobby group which poses as an independent, non-profit research and education foundation [3,4]. Often, the research methodology used by such industry-funded organizations is not explicitly clarified which makes their studies difficult to interpret or replicate. The research methods of private sector market research companies such as Euromonitor or ERC Group are not publically available and thus results cannot be replicated [5].

This may explain, in part, why claims about the extent of illicit trade presented by the tobacco industry and its third parties are often much higher than those from independent researchers or official figures. KPMG's Project Star, funded by the tobacco company Philip Morris International, used discarded packs along with industry data for its estimates [6]. An independent study of 18 European countries, also using discarded packs, found that illicit cigarettes made up on average 6.5% of the total tobacco market. The independent study's estimates were less than Project Star's estimates in 11 of the 18 countries [5–7]. The independent study also found that a border with Belarus, the Republic of Moldova, the Russian Federation or Ukraine was significantly associated with higher levels of illicit cigarettes, while cigarette price was not [7]. In Poland, the Project Star estimate for illicit trade levels in 2011 was 22.9% [6], but an independent study found that the illicit trade share was 14.9% using two different methods, including discarded packs [8]. In Ukraine, tobacco industry estimates of illicit trade levels in 2010 were between 3.5 and 10% [9,10], but the 2010 Global Adult Tobacco Survey found that just 1.5% of smokers in the survey had packs without Ukrainian health warnings, indicating that they were illegal [11].

Types of illicit tobacco trade include large-scale organized smuggling, small-scale smuggling, and counterfeiting. The vast majority of illicit trade is large-scale illegal import of cigarettes by organized groups. The probability of getting caught and the harshness of sanctions along with the ease and cost of smuggling, the existence of organized crime and informal distribution networks, overall levels of corruption, and the extent of tobacco industry participation have the greatest impact on this part of illegal trade [1,12]. Countering these factors, rather than lowering tobacco taxes, is therefore key to combating illicit tobacco trade.

Small-scale smuggling is triggered when there are differences in tobacco prices between areas. People may buy more than the legal limit of tax-free imports, for example. The total amounts of this kind of illegal trade are relatively small. Another declining type of illegal trade is counterfeiting. A large share of illicit cigarettes are no longer counterfeit or non-tax paid brands, but so-called cheap whites, which are cigarettes not sold legally anywhere but produced solely for smuggling. An example is the Jin Ling cigarette brand which, with help from tobacco companies, is smuggled from the Russian Federation and east European countries into the European Union (EU) [13].

The experience of Canada in 1980–2002 illustrates several of these issues. By 1984, after a number of tax increases, Canada had raised average tobacco taxes to levels five times that of the average price in the United States of America. The share of illicit tobacco rose to 30% by 1993, partly as a result of the high proportion of Canadians living close to the long, poorly controlled border with the United States. Most of these illegal

cigarettes were produced in Canada, but had been exported into the United States and then routed back to Canada via a Native American reservation (reservations are not subject to United States federal laws). Further, it was found that tobacco companies were colluding with criminal networks and selling the reservations the equipment needed to manufacture bootleg cigarettes. The problem still exists: in 2010, a survey of high school students in Ontario province found that 43% of those who smoked daily had smoked at least one illegal cigarette from the Native American reservation across the United States border [14]. The tobacco industry successfully persuaded Canadian policy-makers to lower tobacco taxes in 1998. Smuggling rates fell in all provinces after 1998, including in those which retained higher tax rates. Overall tobacco consumption increased and, despite more tobacco sales, tax revenues fell [15]. Clearly from both revenue and public health viewpoints, lowering taxes was not a solution to illicit trade.

A related form of illicit trade is the illegal import of cigarettes from countries with low cigarette prices where taxes have been paid to high tobacco tax countries where they have not been paid. In the WHO European Region, these cigarettes mostly come from low tobacco tax countries such as Belarus, the Republic of Moldova, the Russian Federation and Ukraine and are legal if consumed in these countries. The cigarettes become illegal when they are imported into another country without taxes being paid. Tax rates and cigarette prices are far lower in these source countries than in the EU. Since the source country governments collect the tax revenue, they have little incentive to limit these sales. Within the EU, proximity to these countries is strongly associated with high levels of illicit trade [6].

Illicit trade can be prevented in various ways, as outlined in the WHO Protocol to Eliminate Illicit Trade in Tobacco Products [16]. These include supply chain control mechanisms such as requiring licenses to produce, transport and sell tobacco products; requirements that sellers of tobacco products know their customers, particularly at the factory and wholesale levels; and track and trace systems. Steps can be taken to improve supply chain control even in countries without the means to introduce highly sophisticated systems. In California (United States), for instance, the use of new tobacco tax stamps resulted in the seizure of millions of illegal cigarettes and the identification of several tobacco smuggling rings, while revenue from tobacco increased by over US$ 124 million within 20 months [17]. In recent years, Brazil, Kenya and Turkey have successfully introduced systems that include many of these mechanisms [18].

Legitimate concerns about illicit trade in many countries are being used by the tobacco industry to try to keep taxes low. Yet increasing tobacco taxes as part of a comprehensive tobacco control strategy effectively decreases smoking prevalence while also increasing government revenue, regardless of levels of illicit trade.

KEY ARGUMENTS

- Implementation guidelines for Article 6 of the WHO Framework Convention on Tobacco Control on price and tax measures [19] state that the development of tobacco tax policies should be protected from the tobacco industry and any arguments made by its front groups.
- The Protocol to Eliminate Illicit Trade in Tobacco Products [16] calls for stronger, cooperative systems to curb illicit tobacco trade. This includes measures such as licensing, regulations on international transit, and sanctions applicable to those complicit in illicit tobacco trade.
- Given the tobacco industry's complicity in illicit tobacco trade, the Protocol also calls for transparency in any interactions with the tobacco industry related to illicit trade matters.

CASE STUDY

United Kingdom

In 1993, the Government of the United Kingdom introduced an automatic annual increase in tobacco taxes of 3% above inflation. In 2001–2008, the extra 3% increase was removed and taxes rose only in line with inflation. In 2009, tobacco taxes were again increased to 2% over inflation. A rate of 1% above inflation was introduced in 2010, and then raised to 2% in 2011 and 5% in 2012. Currently, total tobacco taxes comprise 82% of the retail price.

The share of illicit tobacco trade increased from below 5% in the early 1990s to 20% in 2000, in large part due to the tobacco industry facilitating tobacco smuggling. The tobacco industry used the increase in illicit trade to argue for reduced tobacco taxes. In 2000, an anti-smuggling strategy was introduced and strengthened in 2006, 2008, and 2011. As a result of this evolving strategy, illicit tobacco trade decreased from 21% to approximately 9% in 2012, while tobacco taxes increased. In 1994–2000, adult smoking prevalence did not change but dropped from 27% to 20% in 2000–2012, after a comprehensive tobacco control strategy, including tackling illicit tobacco trade, was introduced. In 1992–2011, government excise revenue from cigarettes increased from £5.9 billion to £8.5 billion, even as tobacco sales declined [20].

Despite this, in 2010 Japan Tobacco International argued that "This tax rise is further good news for criminals who already view the UK as a smugglers' paradise and do not care what age their customers are." [21]. The tobacco industry and its front groups continue to argue that tobacco taxes result in illicit trade, even though industry-independent evidence and the United Kingdom's experience demonstrate otherwise.

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TOBACCO TAXATION IS ONE OF THE MOST COST-EFFECTIVE HEALTH INTERVENTIONS: GOVERNMENT REVENUES INCREASE WHILE SMOKING RATES FALL

KEY MESSAGE: Tobacco taxes are a fast and effective way to reduce tobacco consumption while simultaneously generating revenues for the state, at relatively little cost. The tobacco industry argues that increasing tobacco taxes will lead to a loss of jobs and revenue due to declining smoking rates; the truth, however, is that increased taxes create a win-win situation for public health and the economy as revenue increases even as smoking rates fall.

Tobacco taxes are recommended by health authorities as an effective way to reduce tobacco consumption while also generating revenue. Further, WHO estimates that, on average, tobacco tax revenues are 269 times higher than public expenditure on tobacco control interventions [1]. Tobacco taxes are the cheapest of all tobacco control measures to implement, with an estimated cost of just US$ 0.005 per person each year in low and middle-income countries (LMICs) [2]. Taxes that increase the price of tobacco products cause people to consume less which, in turn, results in reduced smoking prevalence, a lower incidence of tobacco-related diseases, and all the associated economic benefits such as reduced health care expenditure, improved worker productivity, fewer claims for sickness and disability benefits, and so on. This has been the case in the vast majority of countries where tobacco taxes have been raised [3].

For example, France began to substantially increase its tobacco tax in 1990, resulting in a three-fold increase in the inflation-adjusted price of cigarettes. In that time period, cigarette consumption was reduced from about 6 to 3 cigarettes per adult per day [4]. Between 2005 and 2011, Turkey raised tobacco taxes sufficiently to raise the prices of tobacco by 195%. Meanwhile, revenues from tobacco taxes increased by 124% while tobacco sales dropped by 16% over the same period [5]. In South Africa, tobacco taxes were increased from 32% to 52% of retail price between 1993 and 2009; real prices (net of inflation) increased by 212% and tobacco tax revenues increased by 800%, while smoking prevalence fell by 25% [6]. In Ukraine, excise taxes were increased six times in 2010–2011; revenues increased five times along with a 26% decline in tobacco sales [7].

Eventually, when tobacco taxes – and therefore tobacco prices – are continuously raised, cigarette consumption will decrease to the point at which revenues will begin to fall. This point, however, has not been reached in most places, even in those with very high tobacco tax rates such at the United Kingdom (see "Case study: United Kingdom"). Most countries – all but 33 globally – have tax levels that comprise less than 75% of the retail price, the level recommended by WHO, which means they have ample room to increase taxes further [1]. Tax revenues do not decline with consumption in part because tobacco is highly addictive and therefore has a low price elasticity of demand. Low price elasticity means that any increase in price causes a less than proportional decline in smoking. Although individual countries differ, research shows that, for most countries, the average price elasticity of cigarettes is between –0.4 and –0.5 [9]. This means that as prices increase by 10%, demand falls by 4–5%, on average.

The price elasticity of tobacco can vary over time since people adjust to price increases and continue to reduce their consumption. For instance, in Poland the price elasticity of tobacco was estimated at –0.4 in the short term and –0.7 in the long term [3]. Price elasticity also varies depending on age and socioeconomic status. Young people have been found to be approximately 2–3 times more responsive to price changes than adults, which means that increasing tobacco taxes can prevent smoking initiation and sustained smoking among young people [1,3,8]. People with low incomes also respond more readily to tax increases, which mean that taxes can help to minimize tobacco-related health inequalities [9]. This is especially important as an increasing number of smokers live in LMICs. To help reduce tobacco-related health inequality burdens, revenue generated from tobacco taxes can be used to fund health care and social programmes for more socioeconomically disadvantaged populations [1,9].

For tax increases to be effective in reducing tobacco consumption over time, they need to reduce the affordability of tobacco. Prices should be increased more for tobacco than for other goods: that is, more than general price inflation, as well as increases in income (adjusted for inflation) which affects the ability to buy more products (including tobacco). If a country experiences high inflation and a high growth in incomes,

increases in tobacco tax – unless it increases more than the rate of inflation – will not necessarily reduce the affordability of tobacco. If a country has very low excise taxes, even a large percentage increase in excise rates may only result in a relatively small increase in the price of tobacco products, which may not reduce consumption. In the Russian Federation, tax increases between 2008 and 2014 reduced the affordability of cigarettes by more than 70%. That is, cigarette prices increased more than inflation and income growth making cigarettes more expensive than other goods and more expensive relative to people's incomes [1].

Tobacco taxes are, as explained above, highly effective in reducing tobacco consumption; the tobacco industry therefore considers tobacco taxation as a major threat to its profits. For example, one tobacco company noted in 1985 that:

> Of all the concerns, there is one – taxation – that alarms us the most. While marketing restrictions and public [sic] and passive smoking do depress volume, in our experience taxation depresses it much more severely. Our concern for taxation is, therefore, central to our thinking about smoking and health [10].

The tobacco industry has responded by attempting to reduce or limit increases in tobacco taxes in several ways [11]. Some tobacco companies have engaged in illicit tobacco trade while also using this as an argument to deter governments from increasing tobacco taxes (see "Tobacco taxation does not result in illicit trade") [12]. Tobacco companies have also adjusted their profit margins in order to increase or decrease tobacco prices.

In Kyrgyzstan, for example, despite a four-fold increase in tobacco excise rates and a five-time increase in tax revenues between 2011 and 2014, tobacco consumption did not decrease, since the rise in excise tax did not reduce the affordability of tobacco [13].

Another pricing strategy used by tobacco companies to undermine the impact of tobacco taxes is the development of low-price brands [14]. The tobacco industry generally categorizes tobacco brands into four price segments: premium, economy, mid, and ultra-low price. When tobacco taxes are increased, tobacco companies can increase prices on the more expensive brands (over-shifting or increasing prices more than the amount of the tax increase). Higher prices can be blamed on tax increases. Meanwhile, tax increases are absorbed by lowering profit margins for ultra-low price brands, such that prices of these brands remain the same or even decrease, in spite of tax increases (undershifting). The result is an increase in the price gap between ultra-low price brands and more expensive brands. The market share for ultra-low price brands increases as people switch to cheaper brands. It is possible, however, to get around this industry strategy by increasing the fixed – or specific – portion of tobacco taxes, which will increase the price on cheaper brands disproportionately, and by monitoring price changes by price category [14].

The two main types of excise taxes are a single amount per pack (specific tax), and a percentage of the value measured at the retail, wholesale, import or factory price (ad valorem tax). Each type has its own advantages and disadvantages.

Specific taxes affect all types of cigarettes equally if the tax amount is the same for all cigarettes, that is, a uniform rate. Increasing a specific tax raises the price of cheaper cigarettes proportionally more than expensive brands, since the amount is the same regardless of price. A specific tax is also the easiest to administer since it is only necessary to count the number of packs to establish the amount of tax. The main disadvantage is that since it is a specified amount, the tax will become less effective over time as cigarettes become more affordable, especially in countries with high levels of inflation or income growth.

Some kind of automatic adjustment is needed to increase this tax (over inflation plus income growth) on a regular basis, usually annually.

A single ad valorem tax rate takes the same percentage of the price for all types of cigarettes. This means that taxes increase automatically with inflation, since the price also increases. However, ad valorem taxes maintain the gap between more expensive and cheaper brands, which encourage switching to less expensive brands as tobacco taxes and prices on other brands increase. Ad valorem tax is also more difficult to administer and more prone to fraud, since it is based on stated value rather than a physical amount. An ad valorem system with a minimum level of tax, however, can help to limit the price differences between brands. The European Union tobacco tax system requires a mix of both specific and ad valorem components, along with a minimum level of tax [15].

The experiences of various countries show that tobacco taxes are a highly effective way to reduce smoking prevalence, improve the public's health and generate government revenue at the same time. Although tobacco companies have used various strategies in attempts to undermine the impact of tobacco taxes, these can be overcome with a well-designed tobacco tax strategy.

KEY ARGUMENTS

- According to guidelines for WHO FCTC Article 6 on price and tax measures to reduce tobacco demand [16], when establishing or increasing national levels of tobacco taxation, Parties should make tobacco products less affordable over time in order to reduce tobacco consumption.
- An effective tobacco tax policy should lead to higher prices, taking into account factors such as inflation and changes in household incomes. Taxes should be increased on a regular basis.
- The simplest and most efficient tax system should be implemented, considering in particular specific or mixed excise systems with more reliance on the specific component or a minimum specific tax floor in favour of purely ad valorem systems.
- In line with the Protocol to Eliminate Illicit Trade in Tobacco Products, tax policy should include efficient tax administration systems to enhance compliance, and mechanisms to prevent forestalling [17].

CASE STUDY

United Kingdom

Cigarette prices in the United Kingdom are among the world's highest. Since 1993, tobacco taxes have been increasing at rates greater than inflation, with the exception of 2001–2008 when taxes only increased at the same rate as inflation. The affordability of tobacco index, which measures tobacco affordability relative to real household income, has also consistently decreased in the United Kingdom: between 2004 and 2014, tobacco became 30% less affordable [18]. Meanwhile, smoking prevalence has been falling steadily, from 29% (1992)

to 20% (2014), and average tobacco consumption per smoker has dropped from 13.6 (1992) to 10.5 (2014) cigarettes per day [19].

Data on tobacco duty receipts show that, from 1980 to 2015, revenues from tobacco taxes have increased with each year from just over £6 billion (1992/1993) to almost £10 billion (2014/2015) despite consistent drops in smoking prevalence [19]. Tobacco tax revenues dropped briefly in 1999/2000 due to increased illicit trade activity, but this was followed by counter-mechanisms from 2000 onward that successfully suppressed illicit trade. Revenues from tobacco taxes in the United Kingdom have remained consistently high since 2011/2012.

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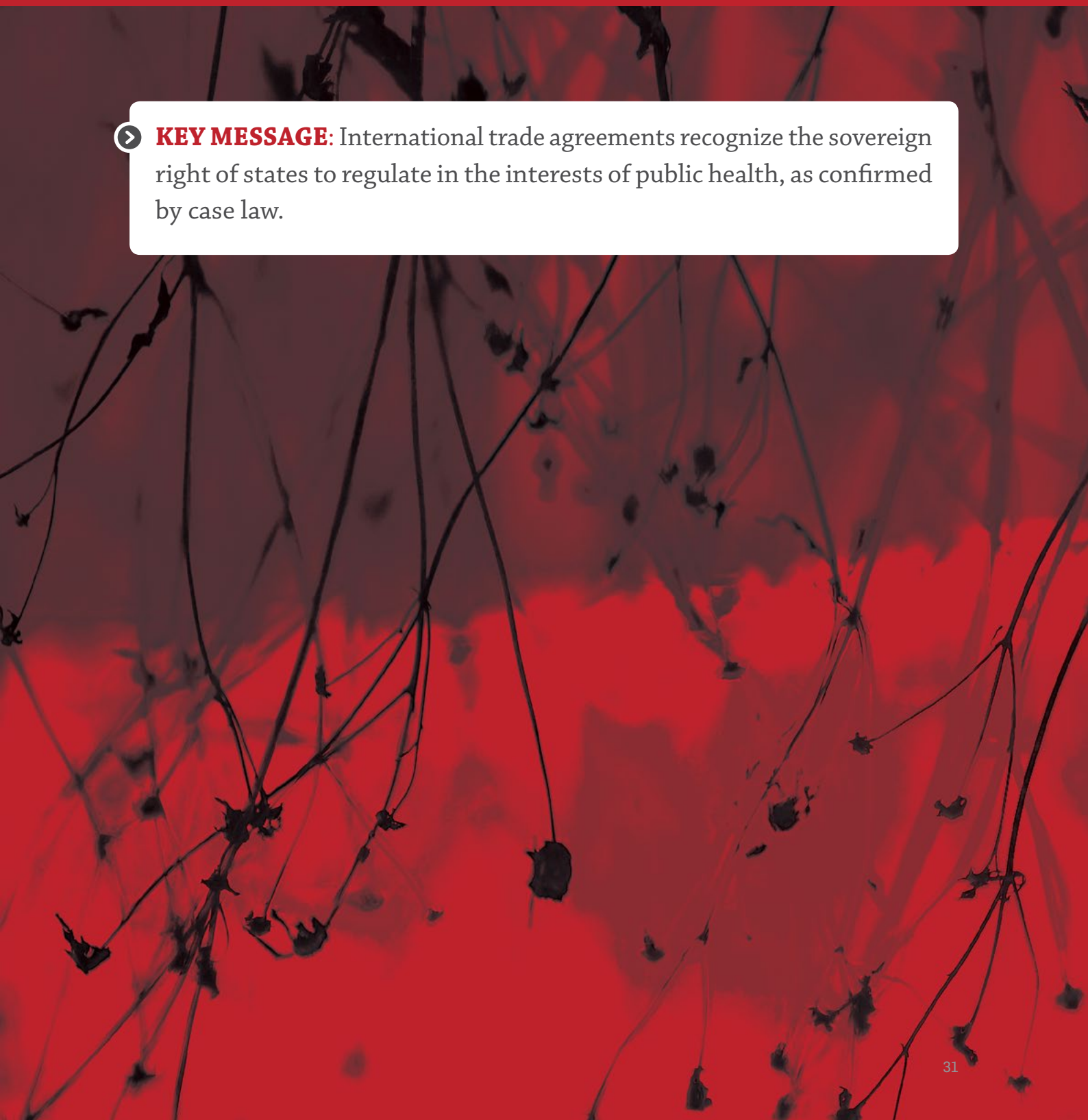
WTO LAW PROVIDES REGULATORY SPACE FOR TOBACCO CONTROL MEASURES



KEY MESSAGE: International trade agreements recognize the sovereign right of states to regulate in the interests of public health, as confirmed by case law.

World Trade Organization (WTO) agreements provide regulatory space for states to regulate in the public interest, including for the protection of public health. The tobacco industry routinely claims that tobacco control measures breach the provisions of international trade agreements. WTO is the central multilateral body dealing with the rules of international trade [1]. The rules of the WTO — the agreements — are the result of negotiations between its members. As indicated in the preamble to the Marrakesh Agreement establishing the WTO, WTO agreements aim to reduce obstacles to international trade in goods and services, and provide minimum standards with respect to the protection of intellectual property rights:

> ...with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development [2].

Three WTO agreements have been invoked in relation to tobacco control regulation – the General Agreement on Tariffs and Trade ('GATT')[1] [3], the Agreement on Technical Barriers to Trade ('TBT Agreement')[2] [4] and the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement')[3] [5].

A WTO dispute may arise where one member adopts measures that one or more fellow WTO members consider to be in breach of WTO agreements [6]. Over the last few years, a number of tobacco control measures, including plain packaging and bans on additives and flavourings, have been discussed in the WTO's TBT Committee and TRIPS Council, and WTO dispute proceedings have been brought against WTO members under the TBT, GATT and TRIPS agreements. While only WTO members may bring a legal claim against another member under WTO law, multinational tobacco companies have been publicly reported to be providing support to complainant countries in the WTO disputes against Australia's tobacco plain packaging measures [7].

Domestic tobacco control measures implemented by members have been challenged under WTO agreements on the basis of three major grounds: trade-restrictiveness, discrimination, and failure to provide required intellectual property protections.

Tobacco control measures have been alleged to constitute technical regulations that restrict international trade in a manner that exceeds what is necessary to achieve a legitimate objective contrary to Article 2.2 of the TBT Agreement [8, 9]. Measures have also been challenged on the ground that they discriminate against imported products by providing less favourable treatment compared to like domestic products or like imported products from a different WTO member contrary to Article 2.1 of the TBT Agreement and Articles III:4 and I:1 of the GATT Agreement [10]. Ordinarily, tobacco control measures are applied equally to tobacco products regardless of origin. However, the concept of discrimination includes not only de jure discrimination (discrimination in law) but also de facto discrimination (discrimination in fact). This means that, for example, claims may be made that a tobacco control measure that applies equally to all tobacco products discriminates in effect against imported tobacco products or imported tobacco products from certain countries. The lawfulness of plain packaging measures has also been challenged under Articles 16.1 and 20 of the TRIPS Agreement on

1 The WTO's Agreement on GATT, Annex 1A of the Marrakesh Agreement establishing the WTO, covers international trade in goods [3].

2 The TBT Agreement, Annex 1A of the Marrakesh Agreement establishing the WTO, "aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade. At the same time, it recognises WTO members' right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or protection of the environment". WTO members/observers "use the TBT Committee to discuss specific trade concerns...usually in response to notifications" and "exchange experiences on the implementation of the Agreement with a view to making implementation more effective and efficient" [4].

3 The WTO's Agreement on TRIPS, Annex 1C in the Marrakesh Agreement, introduced standards of intellectual property protection into the multilateral trading system. The TRIPS Council, open to all members of the WTO, is responsible for administering the TRIPS Agreement [5].

grounds that they are an unjustifiable encumbrance by special requirements on the use of trademarks and do not protect rights required to be conferred on trademark owners [11].

Currently, a WTO challenge to Australia's plain packaging laws is pending [11]. Four members of the WTO – Cuba, the Dominican Republic, Honduras and Indonesia – have challenged Australia's plain packaging measures arguing that the measures are more trade restrictive than necessary, and constitute an unjustifiable encumbrance on the use of trademarks and do not protect rights required to be conferred on trademark owners.

WTO agreements expressly provide regulatory space for states to regulate in the public interest, including for the protection of public health. For example, the preamble to the TBT Agreement provides that WTO members recognize that no country should be prevented from taking measures necessary for the protection of human health, provided they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination. Article 2.2 of the TBT Agreement explicitly specifies that protection of human health and safety is a legitimate objective for the purpose of determining whether a technical regulation is more trade-restrictive than necessary to fulfil a legitimate objective. An otherwise GATT-inconsistent tobacco control measure can be justified under Article XX(b) if the measure is necessary to protect human health and the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries and is not a disguised restriction on international trade. Article 8.1 of TRIPS states that "members may…adopt measures necessary to protect public health" provided that such measures are consistent with the TRIPS Agreement, while Article 7 of the TRIPS Agreement references the need to protect and enforce IP rights 'in a manner conducive to social and economic welfare and to a balance of rights and obligations'.

WTO Panel and Appellate Body decisions have confirmed the regulatory space available to governments for the protection of human health and that WTO members have the right to determine the level of protection of health that they consider appropriate in a given situation[4] [12]. Preservation of human life and health has been described by the WTO Appellate Body as "vital and important in the highest degree"[5] [6][12, 13]. In the cases of *Thailand — Cigarettes*[7] [14] and *US – Clove Cigarettes*[8] [8], the WTO Panel recognized that tobacco consumption poses a serious risk to health, and that measures designed to reduce cigarette consumption fall within the scope of regulatory measures designed to protect human health.

WHO FCTC measures designed to protect public health, and implemented in a non-discriminatory manner, should not be found inconsistent with WTO agreements, as recognized in paragraph 58 by the United Nations Ad Hoc Inter-Agency Task Force on Tobacco Control:

> One important issue which needs to be clarified in the global trade fora is that the WTO Agreements and implementation of the [WHO Framework Convention on Tobacco Control] WHO FCTC are not incompatible as long as the WHO FCTC is implemented in a non-discriminatory fashion and for public health [15].

In respect of the TRIPS Agreement in particular, in 2001 the WTO Ministerial Conference adopted the Doha Declaration on the TRIPS Agreement and public health, which states in paragraph 4:

> We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment

4 Appellate Body Report, *European Communities – Measures affecting asbestos and asbestos-containing products* ('*EC — Asbestos*') WT/DS135/AB/R (12 March 2001), paragraph 168. [12].
5 *EC- Asbestos*, paragraph 172. [12].
6 Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres ('Brazil — Retreaded Tyres')*, WT/DS332/AB/R (3 December 2007), paragraph 144. [13].
7 Panel Report, *Thailand – Restrictions on importation of and internal taxes on cigarettes ('Thailand-Cigarettes')*, DS10/R – 37S/200 (adopted 7 November 1990), paragraph 73. [14].
8 Panel Report, *US – Clove Cigarettes*, paragraph 7.415 [8].

> to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health ...[16].

In responding to arguments that tobacco control measures infringe international trade law, global recognition of the harms of tobacco use and of the need to take action to combat the global tobacco epidemic will strengthen the legal position of governments responding to tobacco industry threats and claims. This recognition finds expression in the WHO FCTC, decisions of the Conference of the Parties to the WHO FCTC – the governing body of the WHO FCTC comprised of all the treaty's parties – including implementation guidelines of the WHO FCTC[9] [17, 18] and in a range of other instruments adopted by the international community dealing with noncommunicable diseases (NCDs), sustainable development and human rights.

Implementation of the WHO FCTC has been recognized as critical in reducing the burden of NCDs in the Political Declaration adopted at the September 2011 United Nations General Assembly High-level Meeting on the Prevention and Control of NCDs [19], the Outcome document of the 2014 High-Level Meeting of the United Nations General Assembly on the comprehensive review and assessment of the progress achieved in the prevention and control of NCDs [20], and in goal 3.a of the 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly [21].

Collectively, these instruments provide evidence of an international consensus on the harms caused by tobacco and the effective measures required to address these harms. They reflect a global commitment to tobacco control to achieve the right to the highest attainable standard of health and sustainable development, and global recognition that tobacco control falls within the sovereign right of states to regulate in the interests of public health. These instruments strengthen the position of governments enacting tobacco control measures by establishing international norms and by constituting a source of evidence that can be expected to inform the consideration of WTO panels and Appellate Body examining the lawfulness of such measures.

KEY ARGUMENTS

- Governments have a sovereign right to regulate to protect public health, including through tobacco control measures.
- Regulatory space is recognized in international trade agreements and clarified in case law.
- Preservation of human life and health has been described by the WTO Appellate Body as "vital and important in the highest degree" [12, 13]. The WTO Appellate Body has recognized that WTO members have the right to determine the level of protection of health that they consider appropriate in a given situation [12].
- In addition, states have committed to implement effective tobacco control measures under the WHO FCTC and a range of other international instruments. These instruments establish obligations and provide evidentiary support for governments implementing WHO FCTC measures.

9 Article 2.2 of the TBT Agreement, Article XX (b) of GATT, Article 8 of the TRIPS Agreement and the Doha Declaration are all included in the Punta del Este Declaration on the Implementation of the WHO FCTC, adopted by the Conference of the Parties (COP) to the WHO FCTC in 2010. In the Punta del Este Declaration, the COP, inter alia, "recogniz[ed] that measures to protect public health, including measures implementing the WHO FCTC and its guidelines fall within the power of sovereign States to regulate in the public interest, which includes public health" and declared the Parties' "firm commitment to prioritize the implementation of health measures designed to control tobacco consumption in their respective jurisdictions" [17]. This was reiterated at the COP's most recent session, held in October 2014, in a decision which noted that "the tobacco industry has used and might use international trade and investment rules taken to challenge tobacco control measures to implement the WHO FCTC." [18].

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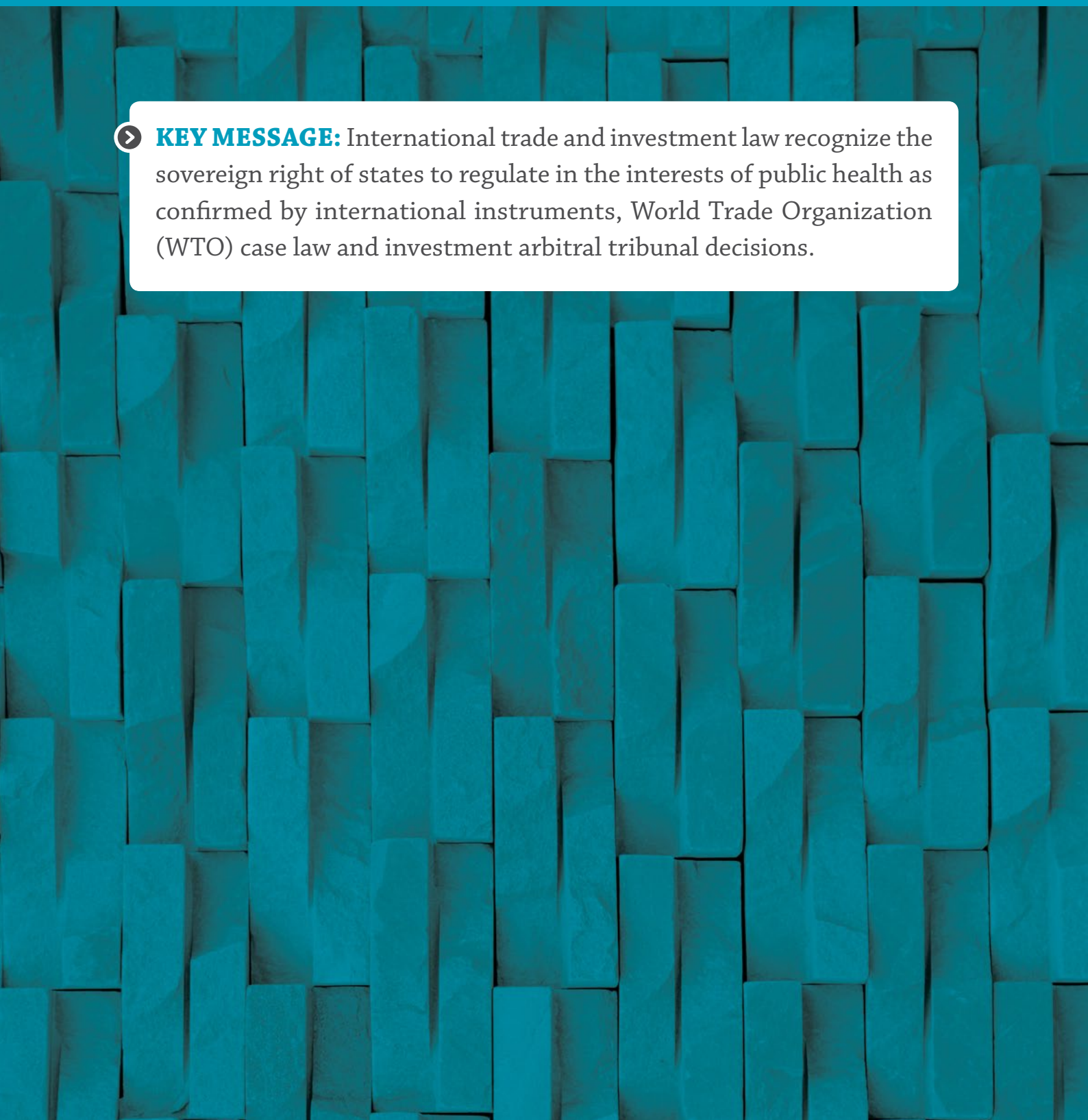
GOVERNMENTS CAN ENACT TOBACCO CONTROL PUBLIC HEALTH MEASURES WITHOUT INFRINGING THE TOBACCO INDUSTRY'S COMMERCIAL RIGHTS



KEY MESSAGE: International trade and investment law recognize the sovereign right of states to regulate in the interests of public health as confirmed by international instruments, World Trade Organization (WTO) case law and investment arbitral tribunal decisions.

In implementing effective, evidence-based tobacco control measures, governments have faced legal threats and claims from the tobacco industry that tobacco control measures infringe its commercial rights and interests including in intellectual property, economic freedom and commercial expression.

In international law, these claims invoke alleged breaches of state obligations under international trade agreements and international investment agreements. WTO is the central multilateral body dealing with the rules of trade between states, covering goods, services and intellectual property. In the preamble to the Marrakesh Agreement Establishing the World Trade Organization [1], Parties recognize:

> that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

International Investment agreements – comprised of a variety of agreements including bilateral investment treaties (BITs), investment chapters in free trade agreements and investment contracts between the State and investors – aim to promote and protect foreign investment in order to stimulate economic growth and development in a country [2].

Over the last few years, a number of tobacco control measures, including plain packaging and bans on additives and flavourings, have been discussed in the WTO's Technical Barriers to Trade ('TBT') Committee[10] [3] and Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS') Council[11] [4–6], and WTO dispute proceedings have been brought against WTO members under the TBT, the General Agreement on Tariffs and Trade ('GATT') [7] and TRIPS agreements. A WTO challenge to Australia's plain packaging laws is currently pending [8]. While only WTO members may bring a legal claim against another member under WTO law, multinational tobacco companies have been publicly reported to be providing support to complainant countries in the WTO dispute against Australia's plain packaging measures [9]. The arguments made against tobacco control measures in relation to the tobacco industry's commercial interests include, in the context of WTO law, that the laws do not provide sufficient protection for intellectual property rights including registered trademark owners' purported right to use trademarks (Article 16.1 in the TRIPS Agreement [4]), and constitute an unjustifiable encumbrance by special requirements on the use of trademarks (Article 20 in the TRIPS Agreement [4]).

Claims have also been brought under investment law agreements against countries seeking to implement tobacco control measures. Both claims were unsuccessful. On 8 July 2016, an arbitral tribunal dismissed an investment treaty challenge brought by Philip Morris Switzerland under a Switzerland-Uruguay BIT against Uruguay's tobacco packaging laws (graphic health warnings covering 80% of the front and back of packaging and a single presentation requirement [10][12] for tobacco products) [10][13]. The tribunal held the measures under challenge did not constitute an expropriation of Philip Morris Switzerland's investments, did not deny fair

10 The TBT Agreement "aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade. At the same time, it recognises WTO members' right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or protection of the environment". WTO members/observers "use the TBT Committee to discuss specific trade concerns…usually in response to notifications" and "exchange experiences on the implementation of the Agreement with a view to making implementation more effective and efficient" [3].

11 The WTO's Agreement on TRIPS, Annex 1C in the Marrakesh Agreement, introduced standards of intellectual property protection into the multilateral trading system [5]. The TRIPS Council, open to all members of the WTO, is responsible for administering the TRIPS Agreement [6].

12 *Philip Morris Brands Sàrl v. Uruguay*, Award, 8 July 2016, paragraph 9 [10].

13 *Philip Morris Brands Sàrl v. Uruguay*, Award [10].

and equitable treatment, and did not impair use and enjoyment of the relevant investments. On 17 December 2015, the arbitral tribunal hearing a challenge by Philip Morris Asia against Australia's tobacco plain packaging laws under a 1993 Australia-Hong Kong BIT issued a unanimous decision agreeing with Australia's position that the tribunal had no jurisdiction to hear Philip Morris Asia's claim. The tribunal found that Philip Morris undertook a corporate restructuring carried out for the principal, if not sole, purpose of gaining protection from the Australia-Hong Kong BIT. The restructure occurred after the Australian Government had announced its intention to introduce plain packaging, thus occurring when there was a reasonable prospect that the dispute under the Australia-Hong Kong BIT would materialize, and therefore the initiation of the arbitration constituted an abuse of rights [11][14].

In the context of international investment agreements, the primary arguments made by the tobacco industry are that tobacco control measures breach obligations with respect to expropriation and fair and equitable treatment [10, 11][15,16] While variations exist in the provisions of international investment agreements (ILAs), they generally provide a broad range of protections to investors and their investments including protection against expropriation and unfair and inequitable treatment. For example, tobacco companies argue that tobacco control measures, such as plain packaging, constitute an action equivalent to expropriation of their intellectual property, or indirect expropriation, due to the effective loss of investors' enjoyment or control over their investments [10, 11][17,18]. They also claim such measures breach IIA provisions in relation to fair and equitable treatment, claiming that tobacco control measures interfere with their legitimate expectations to the maintenance of stable regulatory environment [10,11].[19,20]

In response to these claims from the tobacco industry, governments may rely on their sovereign right to regulate in the interests of public health.

In relation to international trade law, WTO agreements provide space for states to regulate in the public interest, including for the protection of public health. With respect to the protection of intellectual property rights, Article 8.1 of TRIPS states that "[m]embers may…adopt measures necessary to protect public health" provided that such measures are consistent with the TRIPS Agreement [4]. Article 7 of the TRIPS Agreement references the need to protect and enforce Intellectual property rights "in a manner conducive to social and economic welfare, and to a balance of rights and obligations" [4]. In response to arguments that tobacco control measures such as plain packaging violate trademark owners' right to use their trademarks, governments would point to the generally accepted position that the TRIPS Agreement does not provide trademark owners with a positive right to use trademarks, but rather a negative right to exclude use by third parties, which is not violated by tobacco control measures such as plain packaging.[21]

The importance of health, and the regulatory space in TRIPS, was reinforced when members at the Fourth WTO Ministerial Conference adopted the Declaration on the TRIPS Agreement and Public Health which states:

> We agree that the TRIPS Agreement does not and should not prevent members from

14 *Philip Morris Asia Limited v. The Commonwealth of Australia*, Award on Jurisdiction and Admissibility, 17 December 2015, paragraph 588 [11].
15 *Philip Morris Brands Sàrl v. Uruguay*, Request for Arbitration, 19 February 2010 [10].
16 *Philip Morris Asia Limited v. The Commonwealth of Australia*, Notice of Arbitration, 21 November 2011 [11].
17 *Philip Morris Brands Sàrl v. Uruguay*, Request for Arbitration, 19 February 2010, paragraphs 77b and 83 [10].
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19 *Philip Morris Brands Sàrl v. Uruguay*, Request for Arbitration, 19 February 2010, Paragraphs 77c and 84 [10].
20 *Philip Morris Asia Limited v. The Commonwealth of Australia*, Notice of Arbitration, 21 November 2011, paragraphs 7.6–7.8 [11].
21 *Panel Report, European Communities – Protection of trademarks and geographical indications for agricultural products and foodstuffs*, (WT/DS174/R, 15 March 2005, footnote 558) in which the WTO Panel commented that "Article 16.1 of the TRIPS Agreement only provides for a negative right to prevent all third parties from using signs in certain circumstances". *Philip Morris Brands Sàrl v. Uruguay* (ICSID Arbitral Tribunal, Case No ARB/10/7) at paragraph 262: "In any case, nowhere does the TRIPS Agreement, assuming its applicability, provide for a right to use. Its Article 16, dealing with 'Rights Conferred,' provides only for the exclusive right of the owner of a registered trademark to prevent third parties from using the same mark in the course of trade". See also *British American Tobacco & others v. Department of Health* (2016) EWHC 1169 (Admin) Case at paragraph 177 "Article 16 identifies the rights conferred. The rights are expressed to be in the negative, namely 'the exclusive right to prevent.'"

> taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health ... [13][22].

WTO Panel and Appellate Body decisions have recognized regulatory space available to governments for the protection of human health. Specifically in relation to tobacco control measures, in the cases of *Thailand – Cigarettes* [14][23] and *US – Clove Cigarettes* [15][24], the WTO Panel recognized that tobacco consumption poses a serious risk to health and that measures designed to reduce cigarette consumption fell accordingly within the scope of regulatory measures designed to protect human health.

In respect of international investment agreements, obligations relating to expropriation and fair and equitable treatment are applied and interpreted in the context of recognizing the sovereign right of governments to regulate in the public interest. Certain IIAs provide express protections to governments to regulate in the interests of public health. Governments would also point to tribunal decisions in investor-state disputes that have held that legislation/regulation or other government action implemented for public policy reasons do not amount to a breach of international investment agreement provisions. A government may argue that regulatory measures pursued for the purpose of protecting public health, such as tobacco control, do not constitute indirect expropriation. A state's sovereign power to regulate is recognized as customary international law in the police powers doctrine [16]. In accordance with this doctrine, arbitral tribunals have found that non-discriminatory regulation for a public purpose such as the protection of health, enacted with due process, will not be deemed to effect an indirect expropriation and will not be compensable unless specific commitments have been made by the government that they would refrain from such regulation [17][25].

The tribunal in *Philip Morris Brands Sàrl v. Uruguay* [10] held that Uruguay's single presentation requirement and graphic health warnings covering 80% of cigarette packs were bona fide for the purpose of protecting the public welfare, non-discriminatory and proportionate [10][26], and were therefore a "valid exercise by Uruguay of its police powers for the protection of public health" [10][27] and therefore could not constitute an expropriation of the claimant's investment. In *Chemtura v. Canada* [16], the tribunal held that a ban on the use of a toxic pesticide did not constitute expropriation because (among other reasons) the measure was adopted for important public health and environmental reasons and was a valid exercise of the State's police powers.

Governments can show that tobacco industry investors should be aware that tobacco control is an area "traditionally subject to extensive regulation" [18][28] and therefore investors are not entitled to hold a legitimate expectation that the regulatory environment affecting an investment will remain unchanged. The tribunal stated in *Philip Morris Brands Sàrl v Uruguay* that in the absence of specific undertakings or representations made to them by Uruguay at the time of the investment or subsequently, "[m]anufacturers and distributors of harmful products such as cigarettes can have no expectation that new and more onerous regulations will not be imposed" [10].[29] The tribunal indicated "in light of widely accepted articulations of international concern for the harmful effect of tobacco, the expectation could only have been of progressively more stringent regulation of the sale and use of tobacco products" [10,17].[30,31]

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22 Paragraph 4 [13]
23 Paragraph 73 [14]
24 Paragraph 7.415 [15].
25 *Methanex Corporation v. United States of America (Award)*,Part IV, Chapter D, paragraph 7 [17].
26 *Philip Morris Brands Sàrl v. Uruguay*, paragraph 305 [10].
27 *Philip Morris Brands Sàrl v. Uruguay*, paragraph 307 [10].
28 *Grand River Enterprises Six Nations Ltd v. United States,* Award, paragraph 144 [18].
29 *Philip Morris Brands Sàrl v. Uruguay*, Award, paragraph 429 [10].
30 *Philip Morris Brands Sàrl v. Uruguay, Award*, paragraph 430. See also paragraph 422 [10].
31 *Methanex Corporation v. United States of America* (Award), Part IV, Chapter D, paragraph 9 [17].

World Health Organization

Furthermore, recognition of the right of governments to regulate in the interests of public health finds expression in the WHO Framework Convention on Tobacco Control (WHO FCTC), decisions of the Conference of the Parties to the WHO FCTC – the governing body of the WHO FCTC comprised of all the treaty's parties – including implementation guidelines to the WHO FCTC[32] [19], and in a range of other instruments adopted by the international community dealing with noncommunicable diseases (NCDs), sustainable development and human rights.

In respect of human rights, the WHO FCTC operates in combination, and in a mutually reinforcing manner, with international and regional human rights instruments. The preamble to the WHO FCTC indicates that Parties are determined to give "priority to their right to protect public health" [21], and recalls relevant human rights treaties including Article 12 of the International Covenant on Economic, Social and Cultural Rights which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Convention on the Rights of the Child and the Convention on the Elimination on All Forms of Discrimination against Women.

The WHO FCTC, Political Declaration adopted at the September 2011 United Nations General Assembly High-level Meeting on the Prevention and Control of NCDs [22], the Outcome document of the 2014 high-level meeting of the United Nations General Assembly on the comprehensive review and assessment of the progress achieved in the prevention and control of NCDs [23] and the recently adopted 2030 Agenda for Sustainable Development (Goal 3.a) [24] recognize the harms associated with tobacco use, the need to address these harms through effective, evidence-based measures and the critical role of such measures to achieving a reduction in the burden of NCDs and to the attainment of sustainable development and human rights. These instruments enshrine state commitments to respond to NCDs, provide evidentiary support of an international consensus on the harms related to tobacco and the importance of effective tobacco control measures. They reflect a global commitment to tobacco control to achieve the right to the highest attainable standard of health and sustainable development, and indicate global recognition that tobacco control falls within the sovereign right of states to regulate in the interests of public health. This will support governments implementing evidence-based, effective tobacco control measures, and can be expected to inform the consideration of international investment and trade law dispute bodies examining the lawfulness of such measures.

KEY ARGUMENTS

- Governments can demonstrate that international trade and investment agreements provide regulatory space for bona-fide, non-discriminatory public health measures as recognized in case law interpreting the agreements and confirmed under a range of international instruments.
- This recognition will be critical to governments in refuting claims that such measures violate protections that states are obliged to provide, such as intellectual property protections under TRIPS and protections against expropriation and unfair and inequitable treatment under international investment agreements.

32 Article 2.2 of the TBT Agreement, Article XX (b) of GATT, Article 8 of the TRIPS Agreement and the Doha Declaration are all included in the Punta del Este Declaration on the Implementation of the WHO FCTC, adopted by the Conference of the Parties (COP) to the WHO FCTC in 2010. In the Punta del Este Declaration, the COP, inter alia, "recogniz[ed] that measures to protect public health, including measures implementing the WHO FCTC and its guidelines fall within the power of sovereign States to regulate in the public interest, which includes public health" and declared the Parties' "firm commitment to prioritize the implementation of health measures designed to control tobacco consumption in their respective jurisdictions" [19]. This was reiterated at the COP's most recent session, held in October 2014, in a decision which noted that "the tobacco industry has used and might use international trade and investment rules taken to challenge tobacco control measures to implement the WHO FCTC." [20].

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IS TOBACCO SMOKING A FREE AND INFORMED CHOICE?

KEY MESSAGE: Tobacco smoking is highly addictive and, in most cases, starts in childhood. The tobacco industry's marketing, research and public relations activities are a source of misinformation. These issues make it difficult for people to make free and informed choices about tobacco smoking.

What is the issue?

It is sometimes claimed that smoking is a free and informed choice.

What is the evidence for concern?

The tobacco industry and its allies argue that:

- Smoking is a free and informed choice, made by adult consumers who are well-informed about the risks of smoking;
- There is no certainty about various aspects of the harms of smoking, including addiction;
- The tobacco industry has made significant contributions to educating the public about the negative health effects of smoking, and long supported research and products designed to make smoking less harmful;
- Tobacco control interventions are part of an authoritarian "nanny state" which imposes unnecessary regulations, restricts free choice, and treats smokers as victims who cannot act responsibly for themselves [1]; and
- The tobacco industry should be permitted to sell and market its products freely to consumers without curbs and regulations.

What is the reality?

- Smoking is highly addictive, due particularly to the role of nicotine [2]. Cigarettes are also highly engineered: many varieties contain added chemicals such as ammonia and bronchodilators such as liquorice to amplify the effects of nicotine [3].
- Although many smokers have quit without assistance [4], quitting smoking can be difficult for some. The vast majority of smokers want to quit, but an estimated 3–7% unaided quit attempts are successful [5]. Around 90% of smokers regret that they ever started smoking [6], and in any given year approximately 40–50% attempt to quit [7].
- Most smokers start as children or adolescents, long before they can appreciate the risks and addictiveness of smoking. Many young people also overestimate their ability to quit later in life [8], and tend to focus on short-term reasons for smoking, such as acquiring a socially desired identity [9].
- Many smokers are not fully aware of all the harms of smoking, the magnitude of the problem, the extent of the risks that apply to them personally, or the suffering likely to result for them and their families [10].
- Tobacco companies have denied the evidence, while supporting and promoting research and other activities to undermine the advice of health authorities and, in the industry's own words, to "spread doubt over strong scientific evidence [so] the public won't know what to believe" [11].
- The tobacco industry has a long history of marketing cigarettes to children and young people [12]. Tobacco

companies do this using cleverly targeted marketing campaigns and diverse media such as television, billboards and displays at the point of sale, as well as more indirect strategies such as tobacco product placements in movies and video games, event sponsorships, and tobacco promotions on websites and social media.

- Tobacco industry marketing entails a wide range of deliberately misleading practices which make it difficult for people to make informed choices about smoking [13]. Also, education programs run by tobacco companies have been shown to have no positive impact and in all likelihood to be counter-productive [14].
- Tobacco industry marketing and public relations have placed a strong focus on implying a lower health risks for some brands. For example, tobacco companies market some tobacco brands using descriptors such as light or mild, using light- or pastel-coloured packaging. These brand variations are intended to convey a lower health risk and are essentially a strategy to have more health-conscious smokers "kept in the market" longer [15], even though these cigarette varieties provide no health benefits over other brands.
- Tobacco companies also use additives such as menthol in many cigarette brands to mask the harshness of tobacco and to create the illusion of a reduced health risk which, in particular, encourages smoking initiation and sustained smoking among children and young people [16].
- Tobacco companies have forcefully opposed measures that might increase public awareness of the harms of smoking, encourage smokers to quit, and prevent the onset of smoking among children.
- An important role for government is to inform the public about possible harms to health, and act to protect the community, as it has done in relation to both communicable and non-communicable diseases in areas such as safe food, safe water, road safety, and many others.

KEY ARGUMENTS

- Smoking is not a free choice – it is addictive; most smokers start as children, long before they can understand either the harms or the concept of addiction; and quitting smoking can be very difficult.
- Smokers are not well informed about the harms of smoking, the risks to themselves, and the suffering likely to result in them and their families.
- Tobacco companies have a long history of denying and undermining the evidence, marketing to children, promoting products as though they conferred health benefits, and opposing measures that would inform smokers properly and reduce smoking.
- Governments have a responsibility to inform the community about harmful products and behaviours and take action that will protect public health.

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IS SMOKING CESSATION BENEFICIAL FOR PEOPLE WITH MENTAL ILLNESS, AND CAN THEY QUIT?

KEY MESSAGE: Quitting smoking improves mental health conditions. People with mental illness are as motivated and able to quit as those without. To improve the physical and mental health of patients, encouraging and supporting smoking cessation should be a priority in the mental health treatment setting.

What is the issue?

There have been claims over the years that people with mental illness benefit from smoking, do not want to or cannot quit, and that this is not a priority area for action.

What is the evidence for concern?

- Smoking rates are high among people with mental health disorders, especially the most severe cases [1], and people with schizophrenia or Post-Traumatic Stress Disorder (PTSD). A review of studies on smoking and schizophrenia in 20 countries, including 12 countries in the European Region, estimated a smoking prevalence of 62% among people with schizophrenia [2]. Another review estimated smoking rates among people with clinical PTSD at 40-86% [3].
- Smoking rates are also high among those with depression, bipolar disorder, anxiety disorders, stress [4], ADHD [5-6], and Alzheimer's Disease [7].
- Smoking is often not seen as a high priority by those working in the mental health setting. This is largely due to popular misconceptions about smoking and mental illness [8], including that:
- Many clinicians and others see smoking and mental illness as being inextricably linked, and difficult if not impossible to treat;
- Some people believe that smoking is beneficial or a necessary self-medication for those with mental illness;
- Some believe that people with mental illness are not interested in quitting, not able to quit, or that quitting will interfere with their recovery from mental illness; and
- Some people believe that implementing smoke-free mental health facilities is difficult and will create further problems.

What is the reality?

- Smoking is the single largest contributor to the 10-15 year reduced life expectancy in people with conditions such as depression, bipolar disorder, schizophrenia and other serious mental health disorders [9-11].
- Smoking has a negative impact on mental health. Levels of stress, irritability, and depressed mood are often higher in smokers than in non-smokers [12], and smoking has a negative impact on conditions such as anxiety and depression [13-15]. Smoking is also associated with more severe symptoms and suicidal ideation or attempts in bipolar disorder [16-17].
- Smoking may be a causal factor in mental illnesses such as major depression [18] and Alzheimer's Disease [7].
- While mental health professionals are ideally positioned to address smoking among their patients, many are reluctant to actively do so, in terms of both treatment and public health advocacy [19-20].
- The tobacco industry is an important reason why there are still misconceptions about smoking and mental health. Tobacco companies have funded research to support the self-medication hypothesis [8], and the idea that smoking relieves stress [21] or symptoms of Alzheimer's Disease [22]. Many such studies were

poorly designed; later, more robust studies not funded by tobacco companies show otherwise [7].

- Tobacco companies have also targeted people with mental health disorders in their marketing [8], given donations and free cigarettes to mental health facilities [23], and opposed smoking bans in psychiatric hospitals, arguing that these were 'inhumane' [24].
- Quitting smoking has a positive impact on mental health. It is associated with reduced levels of depression, anxiety and stress, improved mood, and better quality of life compared with continuing to smoke [25], and can improve the symptoms of disorders such as Attention Deficit Hyperactivity Disorder (ADHD) [26].
- Smoking cessation also allows patients on certain medications to reduce their dosage. For some antipsychotic medications, dosage can be reduced up to 25% which reduces the side effects and long-term risks associated with taking these medications [27].
- There is also good evidence that quitting smoking among people with mental illness does not lead to further mental health concerns [25].
- Although some smokers with mental health disorders tend to experience nicotine withdrawal symptoms more than other smokers [28], these can be easily addressed with nicotine replacement therapy (NRT), varenicline, bupropion, cessation counselling and other evidence-based interventions [29-30].
- Smokers with mental health disorders are frequently motivated to quit [31-32], and capable of doing so with appropriate encouragement and support [33].
- When restrictions and bans on smoking in mental health facilities are carefully implemented, with appropriate supports, the negative outcomes predicted do not occur, and overall experiences for patients are very positive [1, 34-35]. Facilities in the UK, for example, saw better sleeping patterns among patients, reduced risk of self-harm with cigarette lighters, and the conversion of smoking rooms into new recreational spaces [36].

KEY ARGUMENTS

- Action to reduce smoking among people with mental illness should be a very high priority, whether through health systems or by clinicians. There is nothing that would do more to reduce the life expectancy gap.
- High rates of smoking among people with mental illness bring devastating consequences to their mental and physical wellbeing, and are the largest single contributor to the massive life expectancy gap for this already disadvantaged group.
- People with mental illness want to quit as much as other smokers and can do so with appropriate help and support.
- When properly planned and implemented, bans on smoking in mental health facilities work well and do not result in the negative consequences that some predict.
- Action to reduce smoking in people with mental illness should be a very high priority, consistent with the WHO Framework Convention on Tobacco Control and human rights treaties including the Convention on the Rights of Persons with Disabilities [37] and the Universal Declaration on Human Rights [38], which state that everyone has a right to health without discrimination.

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IS THERE PUBLIC SUPPORT FOR TOBACCO CONTROL MEASURES?

KEY MESSAGE: There is strong public support for tobacco control measures, even from people who smoke. Surveys in various countries show that comprehensive measures such as smoke-free indoor and outdoor areas, bans on point-of-sale tobacco displays, plain packaging and tobacco taxation are welcomed by the public.

What is the issue?

The tobacco industry often argues that there is public opposition to tobacco restrictions and that people do not want governments to implement measures such as clean indoor air laws, tobacco tax and plain packaging.

What is the evidence for concern?

- A common tobacco industry tactic is to create an impression of public opposition to tobacco regulations. As part of this, tobacco companies often use third parties or front groups.
- Astroturfing is a common approach, in which industry-funded groups are made to appear as a grassroots movement. This includes 'smoker's rights' groups such as the 'Freedom Organisation for the Right to Enjoy Smoking Tobacco' (FOREST). FOREST frames itself as a grassroots movement to support smoker's rights, but it was created with tobacco industry funding [1], and still receives the vast majority of its funding from tobacco companies [2,3].
- Another tobacco industry tactic is generating responses to public consultations. In the UK's consultation on plain packaging, for example, 87% of the opposition was from tobacco companies or third parties financially linked to them. The tobacco companies lobbied government, while public communication and research activities were outsourced to third parties. These third parties were not transparent about their links to tobacco companies [4].

What is the reality?

- Most people, including those who smoke, support tobacco control measures.
- There is strong public support for clean indoor air laws and this support is increased if the law is comprehensive, and after implementation when people have experienced the benefits [5]. Before smoke-free workplaces (including bars and restaurants) were implemented in Ireland, 67% of the general public and 40% of smokers supported the law. Only a few months after the law was implemented, 82% were in support [6], and 83% of Irish smokers rated it as 'good' or 'very good' [7].
- There is strong majority public support for measures such as smoke-free outdoor regulations [8], and smoke-free cars carrying children. A review of 15 studies from 1988-2008 found that most people supported smoke-free cars carrying children, and that support increased over time. In surveys in or after 2005, support was 77% or more among smokers [9]. Most people also support smoking bans in outdoor settings, especially where children are present [10].
- There is strong public support for plain packaging. Australia was the first country to implement this measure in 2012; even before its implementation there, three quarters of the general public and two thirds of smokers supported the measure [11].
- There is public support for stronger regulations on the retail environment. A point of sale tobacco display ban is supported by 73% of the UK's general public [12], and most smokers in Canada [13]. There is also majority support in the UK (77%) for a ban on tobacco sales from vending machines [12].
- There is good public support for tobacco taxation if the money is used to fund tobacco control activities.

A survey in the UK in 2008-2009 found that 71%, including 47% of smokers, supported this measure [14].

- In the USA, where several states have implemented "Tobacco 21", there is strong public support for raising the minimum age of tobacco sales to 21. A 2013 survey of over 3,200 people showed that most (71%) supported Tobacco 21 [15].
- Public attitudes towards tobacco control tend to be more favourable where there are already comprehensive tobacco regulations in place [16,17]. However, even where there are weak tobacco regulations, the public is generally welcoming of more government action. In a 2007 survey in Russia, before effective tobacco regulations were implemented, 86% of the general public thought tobacco control in Russia was inadequate and over 70% supported a ban on tobacco sales from street kiosks [18].
- Public support for tobacco control, as well as people's intentions to quit can be maximized by denormalizing the tobacco industry [19].

KEY ARGUMENTS

- The tobacco industry – often via front groups, third parties and fake grassroots organizations – often argues that there is strong public opposition to tobacco regulations. However, this opposition tends to be funded primarily by tobacco companies, and is usually not as 'grassroots' as it appears.
- Public support is strong, including among those who smoke, even for very comprehensive tobacco control measures such as plain packaging, smokefree outdoor areas, and comprehensive bans on tobacco advertising and promotions including bans on point-of-sale tobacco displays.
- Public support for any given tobacco control measure can be increased by educating the public on its rationale, making sure the measures are part of a comprehensive approach, and denormalizing the tobacco industry.

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DOES EVERY TOBACCO CONTROL MEASURE RESULT IN CATASTROPHE?

KEY MESSAGE: In countries where effective tobacco control measures have been implemented, catastrophic outcomes predicted by the tobacco industry – such as public uproar, illicit trade or negative economic impacts – have simply not materialized.

What is the issue?

When evidence-based tobacco control measures are proposed or implemented, the tobacco industry generally predicts that they will have catastrophic effects, in the form of responses such as illicit trade, public uproar, negative economic impacts, crime, job losses, or other inconveniences.

What is the evidence for concern?

- There are many examples of the tobacco industry predicting catastrophic outcomes as a result of evidence-based tobacco control interventions.
- When plain packaging was considered in Australia, tobacco companies orchestrated substantial advertising, public relations and lobbying campaigns predicting that plain packaging would result in various disastrous outcomes. It was argued that plain packaging would result in delays in shops and more in-store crime, that sales would shift from small retail outlets to supermarkets, illicit tobacco trade would increase, and that the government would be liable for massive compensation costs following litigation [1].
- In countries where bars and restaurants have gone completely smokefree, the tobacco industry and bar owner representatives argued that this would result in non-compliant, angry customers, threats to the safety of bar staff, and a loss of revenue for hospitality businesses [2,3].
- The tobacco industry, often working through front groups such as the International Tax and Investment Center (ITIC), argues that tobacco taxes result in illicit trade [4].
- The tobacco industry has also predicted that tobacco control measures will lead to a loss of jobs. They have argued, for example, that tobacco taxation will result in the loss of jobs for people whose jobs depend on tobacco business [5], or that bans on tobacco sponsorships will result in a loss of jobs that depend on the events they sponsor [6].
- When bans on tobacco advertising and sponsorship have been proposed, tobacco companies have argued that this would be disastrous for the media and sponsored sports events [7].
- Tobacco companies also argue that tobacco control measures are unconstitional and violate international trade laws or commercial rights, which would lead to lawsuits and the loss of millions, or even billions of dollars to governments.

What is the reality?

- The catastrophic outcomes predicted by tobacco companies or its front groups have not materialized. By contrast, evidence-based tobacco control measures such as smokefree laws, tobacco taxes and plain packaging have been successful and are welcomed by the general public (see: Is there public support for tobacco control measures?).
- In Australia, the tobacco industry and its allies predicted a range of damaging consequences, including major negative legal and financial outcomes – which failed to materialise [1]. Indeed, after plain packaging was implemented in 2012, tobacco consumption fell to record lows, and an independent review concluded that even in the short term this measure was responsible for a quarter of the decline in smoking [8].

- In many countries, leisure venues such as bars are completely smokefree and this has not negatively affected sales, employment and the number of establishments; in many countries, economic impacts have been positive [3]. Compliance and public support for smokefree bars are also high, and tend to increase when people start to experience the benefits [2].
- The experience of various countries, where tobacco taxes are high, has shown that tobacco taxes boost the economy and do not increase illicit tobacco trade [9,10].
- Measures such as tobacco taxation and bans on tobacco sponsorships do not result in a loss of jobs. Tobacco industry studies that have made these predictions grossly overestimated figures and did not take into account the fact that many jobs counted as 'tobacco-dependent' were not fully dependent on tobacco, that money not spent on tobacco is spent on other goods, and that events not sponsored by tobacco companies will find sponsorship elsewhere [5,11].
- Based on studies in numerous countries, bans on tobacco advertising, sponsorship and promotion reduce smoking initiation by an estimated 6% and smoking prevalence by an estimated 4%. A comprehensive advertising ban also reduces tobacco consumption by roughly 24% per capita [12].
- Tobacco control measures do not violate international trade law, as these laws have provisions that allow governments to protect the public's health. The tobacco industry has led high-profile lawsuits against Australia and the UK for plain packaging, and against Uruguay for its strict tobacco control law. The tobacco industry has so far lost all of these lawsuits [13-15].

KEY ARGUMENTS

- When effective tobacco control measures are proposed or implemented, a common tactic of the tobacco industry is to argue that the proposed measure will result in a catastrophe: illicit trade, crime, economic loss, job losses, expensive lawsuits that will be lost, and so on.
- The experience of various countries, however, shows that these predictions simply do not materialize. In many countries, evidence-based tobacco control measures such as tobacco taxes, smokefree laws, plain packaging and bans on tobacco marketing have been implemented with great success.

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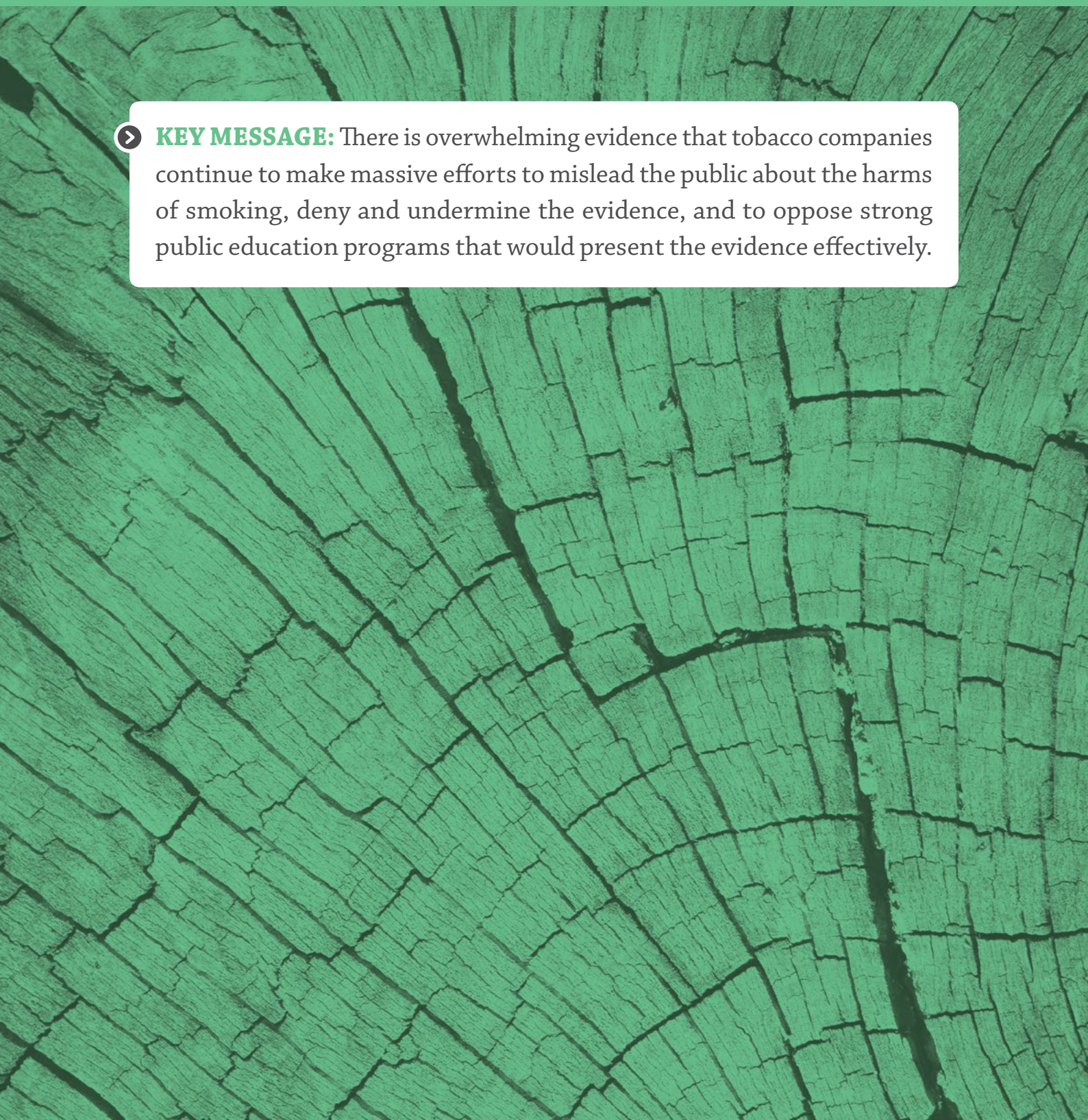
DO TOBACCO COMPANIES TAKE A RESPONSIBLE APPROACH TO EDUCATION AND INFORMATION?



KEY MESSAGE: There is overwhelming evidence that tobacco companies continue to make massive efforts to mislead the public about the harms of smoking, deny and undermine the evidence, and to oppose strong public education programs that would present the evidence effectively.

What is the issue?

Tobacco companies present themselves as being responsible organisations that provide appropriate information about the health consequences of smoking, and have played a valuable role in education of children, young people and the community.

What is the evidence for concern?

- Tobacco companies have historically sought to give the impression that they are interested in ensuring that the public is accurately informed about health aspects of smoking, accepting "an interest in people's health as a basic responsibility, paramount to every other consideration in our business" [1].
- They have funded research programs purportedly designed to elicit more information about smoking and health [1].
- The companies claim that they do not want children to smoke, and that this is a behaviour only "adults who fully understand the risks" should engage in [2-4].
- The companies have developed many "education" programs, some specifically designated as "youth smoking prevention", including through schools and youth development programs [2,3,5-8]. They also provide support for activities for parent education programs and organisations that "positively influence kids and their decision not to engage in risky behaviours like tobacco use" [3].
- The companies provide information about smoking and health on their websites and elsewhere, often citing authoritative reports and with links to reputable government and health agencies [9,10]. Some have developed their own programs such as "QuitAssist" purportedly to support smokers who want to quit [3,11]. Some also even have websites dedicated to disseminating tobacco industry-funded research on products that reduce the impact of "cigarette smoking on public health" [12].
- The industry presents smoking as an adult behaviour or "adult choice", with the implication that this will discourage children from smoking [5,6,13].
- Tobacco industry approaches to education have also focused heavily on themes such as peer pressure, parental role modelling, emphasis on "the law", and penalising children and adolescents for purchasing and possessing cigarettes [6].
- There have been partnerships between tobacco companies, retailers and others, including health and education ministries and non-government organizations, purportedly aimed at preventing smoking by children [2,3,8,14].
- The companies depict provision of information on smoking and health, "product transparency" and industry education programs as examples of social responsibility [3,15].
- The companies claim to support legislation setting a minimum age to purchase tobacco products, and assert that they work with governments to introduce the legislation where none exists [13].
- The companies take credit for complying with mandated health warnings and product information, along with claims that their marketing is responsible [3].

What is the reality?

- There is overwhelming and incontrovertible evidence that tobacco companies have made massive efforts to mislead the public about the harms of smoking, deny and undermine the evidence, attack scientists and others presenting evidence about the dangers of smoking, and to oppose strong public education programs that would present the evidence effectively [16].
- There is similarly overwhelming evidence that tobacco industry "research" programs were a smokescreen from the earliest years. They were used to present an impression that tobacco companies were concerned about possible harms – but in reality aimed at confusing both public and policymakers, and giving the impression that more research was needed to determine whether smoking was indeed harmful [16].
- While the companies have consistently claimed that they do not want children to smoke, there is evidence of their interest in smoking among children and early commencement of smoking. They have targeted young people through advertising and use of themes widely accepted as being appealing to children (e.g. Joe Camel) [7]. They have also strongly opposed the measures that would be most effective in preventing the onset of smoking among children and young people [6]. Further, youth-focused programs have served to justify tobacco industry market research on young people [5].
- Information provided about smoking and health on company websites and elsewhere is minimalist and misleading. It uses phrases and terminology that, while in recent years accepting that there may be some harms, presents them in a very low-key manner, does not cover all the harms, still denies some of the evidence (e.g. on passive smoking) [1], and fails dismally to present the magnitude and urgency of the problem – or indeed the companies' responsibilities in promoting further death and disease from tobacco use and opposing measures recommended by health authorities. Evidence from industry documents further shows that in various contexts tobacco companies have worked assiduously to avoid mentioning the harms of smoking in the documentation [5,17]. Even the "QuitAssist" program starts by stressing the difficulties of quitting, and fails dismally to present the massive health risks of smoking as the primary cause for quitting [11].
- Presentation of smoking as an "adult choice" is widely perceived as encouraging smoking by children through presenting smoking as a behaviour to which children should aspire [5,7]. Youth education programs by the tobacco industry are complemented by tobacco advertising, which has over the years further presented smoking as "forbidden fruit" and an act of rebellion [5].
- The approaches to education adopted by tobacco companies have in sum focused almost entirely on themes least likely to be effective, and have avoided those that would have most impact. Research shows clearly that tobacco industry education programs for young people have been at best ineffective, and at worst likely to encourage smoking [18]. Industry documents indicate that such evaluations as have been carried out by the companies are more concerned about public relations impact than actually preventing or reducing smoking. There is further evidence that such programs have been presented by the industry primarily in the hope that they will serve as an alternative to effective action by governments [5,17].
- Use of third parties has been an important strategy for tobacco companies in ensuring further support for their activities and presenting ineffective programs as a worthwhile approach [14].
- "Big Tobacco" is the world's least reputable and most irresponsible industry. Tobacco companies have used terms such as "air cover" to describe activities claimed to display social responsibility [19]. In recent years, the companies have placed an increasing focus on "corporate social responsibility", providing information through a range of media about their activities supporting communities, charitable organisations and

other apparently socially desirable objectives [20]. This is manifestly all part of a public relations program designed to present the industry as being socially responsible and acceptable, rather than responsible for more than seven million deaths each year around the world [21], targeting vulnerable communities and ruthlessly opposing any action that might reduce its sales.

- Any claims for support of a minimum purchase age should again be seen as a public relations mechanism. The companies are well aware that children and young people are often freely able to breach such legislation – in both developed and low and middle income countries, and have indeed frequently opposed proposals to raise the legal purchase age.
- The tobacco industry has fiercely opposed effective health warnings and product information as recommended by health authorities. There is no more irresponsible advertising and marketing than that for tobacco, yet the industry has fought tooth and nail to prevent curbs on its promotional activities, and has sought to delay and circumvent these wherever possible despite strong recommendations over decades from the World Health Organization [22].

KEY ARGUMENTS

- Tobacco companies have been remain defiantly irresponsible.
- Their "corporate social responsibility" activities are no more than (in their own words) "air cover".
- Their "education" programs have been either ineffective or counter-productive.
- The tobacco industry is the last group that should be considered as appropriate to provide any form of education on matters relating to smoking and health.

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IS ACTION ON SMOKING THE FIRST STEP ON A SLIPPERY SLOPE?

KEY MESSAGE: Tobacco is uniquely harmful, requiring unique approaches. There are some similarities with other preventable health problems and harmful behaviours, but also differences. Action on tobacco recommended by health authorities is evidence-based, proportionate to the magnitude of the problem and will prevent millions of unnecessary deaths.

What is the issue?

The tobacco industry and its allies claim that action on smoking is the first step on a slippery slope that will affect many other products, industries and behaviours.

What is the evidence for concern?

- From very early days, the tobacco companies have argued that any action on smoking is just a start, and that other products and industries will follow [1].
- They also argue that restrictions on smoking will extend to other behaviours [2].
- They claim that public health campaigners, organisations and authorities see tobacco as a testing ground, and the model for further action and restrictions, and even that advocacy groups for tobacco control are "health fascists" and "nicotine Nazis" [3,4].
- It is claimed that exactly the same arguments and objectives are used for other areas in public health as for tobacco [5,6].
- The Legacy/Truth industry documents show several thousand references to the "slippery slope". These include not only discussions and lobbying documents, but also even press and television advertisements using the "slippery slope" as an argument against action on smoking [7].
- As part of the "what's next?" case, examples used to worry other industries (and the public) are advertising bans, tax increases, health warnings and plain packaging [8-10].
- The tobacco industry has strong links (often including co-ownership and common board membership) with other industries such as alcohol and junk food. Tobacco companies seek to enlist the support of such companies on the basis that action on tobacco brings action in their areas one step closer [11]. They further, however, express concern that some organisations involved in action on tobacco also press for action on other health issues such as alcohol [12].
- Tobacco companies and their supporters regularly use slogans such as "nanny state" as part of their argument that there is a broader, more sinister agenda [6,10,18].
- Tobacco industry and allies also claim that while campaigners and health organisations claim their approaches to tobacco and other issues are not identical, these denials cannot be believed - today it's tobacco, tomorrow it may be cars, sporting goods or chocolates [8,10].
- The essence of these claims is that in reality action on smoking is part of a prohibitionist, anti—industry push.

What is the reality?

- Tobacco is unique. It is the only product which, when used precisely as intended, kills half of its consumers [13].
- The action on tobacco recommended by health authorities is evidence-based [14].

- Action recommended to reduce smoking is proportionate to the magnitude of the problem, and will save millions of lives [15].
- There are some similarities between tobacco and other health problems, but also differences. Some of the same approaches may indeed be appropriate, but each issue needs to be taken on its merits [16].
- It is entirely appropriate that organizations concerned for the public's health, such as the World Health Organization, national medical and public health associations, cancer and heart charities and indeed governments should be involved in addressing not only tobacco but also major health and social problems such as those related to alcohol and obesity.
- The ultimate objective for tobacco is to end all use of the product. The same objective does not apply in areas such as alcohol or obesity [16,17].
- It is simply untrue to claim that tobacco control is part of a broader anti-industry push. It is reasonable that people working on other issues should learn from the tobacco example (including dealing with harmful industries and misleading arguments). It is also not surprising that other harmful industries seeking to oppose effective action believe that they can learn from the tobacco experience.
- Terms such as "nanny state" are meaningless clichés, used by those without substantive arguments. Any civilised society recognises that states have a responsibility to protect their communities. This is particularly the case in relation to public health, where objections to action aimed at reducing smoking have no more validity than opposition centuries ago to ensure safe food and water, or more recently to action that protects the community in areas ranging from immunisation to road safety [10,18].
- The aim of public health authorities is to benefit and improve public health, which in the case of tobacco control entails seeking to prevent the seven millions tobacco-related deaths that occur annually [19].
- Suggestions of a dark, prohibitionist, anti-industry agenda are a fabrication.

KEY ARGUMENTS

- Tobacco is uniquely harmful, requiring unique approaches.
- There are some similarities with other preventable health problems and harmful behaviours, but also differences.
- Action recommended by health authorities is evidence-based, proportionate to the magnitude of the problem and will prevent millions of unnecessary deaths.
- There is no prohibitionist, anti-industry agenda. Any such claims are fabrications.

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DOES TOBACCO CONTROL HARM TOBACCO GROWERS?

KEY MESSAGE: Tobacco control measures do not harm growers. It does not lead to a sudden drop in leaf demand. It is the extremely monopolized tobacco industry that creates a weak bargaining position for farmers, causing poverty and other harms in tobacco farming regions.

What is the issue?

Tobacco industry and industry front groups such as the International Tobacco Growers' Association (ITGA) claim that tobacco control measures, by reducing leaf demand, cause poverty in tobacco producing regions and a desperate situation for smallholders who they claim have no alternative but to grow the crop.

What is the evidence for concern?

- Tobacco farmers' livelihoods are often used as an argument against the introduction of tobacco control measures, e.g. against the ratification of the WHO Framework Convention on Tobacco Control (FCTC) in Argentina and Malawi, the introduction of graphic health warning labels in India, the ban of small tobacco packets without a transition period in Malaysia and the introduction of a comprehensive tobacco control bill in Uganda. In the case of the adoption of plain packaging in countries like Ireland, Australia and France, the protest originated in tobacco growing countries such as the USA or Indonesia. It is claimed that these tobacco control measures could lead to a reduction in leaf demand and increase illicit trade as well as pressure on prices [1–8].
- The tobacco industry, through its front group ITGA, time and again mobilises farmers to oppose regulations related to the implementation of the FCTC. For example, when guidelines for the FCTC Articles 9 and 10 (on contents of tobacco products) were on the agenda of the 4th session of the Conference of the Parties (COP4) in Punta del Este, Uruguay, in 2010, the ITGA staged a global campaign and promoted misinformation that the guidelines would mean a ban of certain types of tobacco, putting millions of farmers out of work. Furthermore, COP4 delegations from several tobacco growing countries included representatives of Tobacco Boards and Ministries of Agriculture and voiced opposition to the draft Guidelines for Articles 9 and 10 with the aim to delay a decision. The European tobacco growers' association UNITAB supported the protest campaign and wrote a letter to the European Commission President José Manuel Barroso [9–12].
- After the 6th session of the Conference of the Parties (COP6) in Moscow, Russia, in 2014, Philip Morris International (PMI) congratulated its staff for successfully lobbying on a watering down of the recommendations for Article 17 and 18 (on alternative livelihoods for tobacco farmers and tobacco workers' health): "recommendations that governments should seek to shift tobacco farmers to alternative livelihoods have been removed. This is a very positive result." [13,14]
- Internal PMI documents speak of the arrangement of farmers' protests in the run-up to the 7th session of the Conference of the Parties (COP7) in New Delhi, India, in 2016. It is not known if PMI in fact arranged such protests, but tobacco farmers together with the tobacco industry led Tobacco Institute of India, sent a 6,000 page petition to the Indian government and farmers protested in front of WHO offices, demanding to be protected from FCTC regulations [13,15].
- The International Union of Tobacco Growers (UNITAB), which represents European tobacco farmers and is sponsored by the tobacco industry, lobbied against the development of the European Union Tobacco Products Directive (TPD), which regulates the production and sale of tobacco in the EU. This came into force in 2014, after a 5 year delay partly due to the lobbying efforts of the tobacco industry and industry-related front groups. UNITAB's Secretary General François Vedel argued that the proposed TPD provisions would benefit the mafia and destroy rural employment [12,16,17].

- Scaremongering messages were also promoted around the development and adoption of recommendations for Articles 17 and 18 that specifically aim at supporting alternative livelihoods for tobacco farmers and workers. It was wrongly claimed that these recommendations would ban or restrict tobacco farming [9, 18–21].
- Tobacco control is often presented as being pitted against economic and development goals such as the fight against poverty and hunger that is important for many tobacco farming regions in the Global South, where 90% of tobacco leaf is grown. It is then claimed that tobacco control would have disastrous consequences for tobacco growing countries such as Malawi, which derives 50% of foreign exchange earnings from leaf exports. This Southeast African country, which is not a Party to the FCTC, is often found at the center of a narrative that exaggerates the effects of tobacco control. The narrative states that regulations would cause an instant drop in leaf demand without alternative income opportunities, and is summarized as „No Tobacco, no life in Malawi" [19,22,23].
- In September 2017, the PMI funded Foundation for a Smoke-Free World was created. PMI will support the foundation with about $80m a year for the next 12 years for research in electronic nicotine delivery systems and alternative livelihoods for tobacco farmers. All major tobacco control organizations, including the WHO and the FCTC Secretariat have condemned the foundation as yet another avenue of tobacco industry interference in tobacco control policymaking. The foundation's targeting of tobacco farmers is concerning. It is worth noting that the alleged aims of the Foundation are contradicted by PMI's internal stance towards alternative livelihoods: After COP6 in 2014, the company celebrated that it had succeeded to convince governments not to seek alternatives for tobacco farmers (see above) [13,14,24-27].

What is the reality?

- The majority of global tobacco leaf production is traded internationally, and controlled by a very small number of multi-national companies, therefore tobacco control measures in any one country are unlike to impact on tobacco farmers in that country. Exceptions are China, where most of the tobacco production is consumed domestically, the local production and consumption of bidis in India, and in Argentina, where farmers receive subsidies from taxes on local cigarette consumption. Thus, in only a very small number of countries, national tobacco control measures affect the country's own growers.
- On the basis of current trends, global tobacco consumption, and therefore leaf demand, is likely to slowly decline over the next decades, slowed down in part by factors independent from tobacco control such as population growth and rising incomes in low- and middle-income countries that make cigarettes more affordable. The current generation of tobacco growers will remain largely unaffected by tobacco control measures. As the reduction is already happening but it is slow, there is time to start implementing measures to support the weakest link in the tobacco chain, tobacco growers [28].
- Even when the majority of leaf production is for domestic use, a reduction of tobacco prevalence in the country would likely free household resources in formerly smoking households that create demand in other industries, thereby also supporting alternative livelihoods for tobacco growers and workers [28,29].
- The tobacco industry claims to benefit countries by tobacco farming. Often, the same countries are the ones that bear the highest burden of the global tobacco epidemic - low- and middle-income countries, where 80% of tobacco related deaths occur. In addition to the tragic consequences for affected families, the tobacco epidemic causes direct and indirect costs to governments, economy and society. In Indonesia

alone, diseases caused by smoking run up a bill of US$ 7 billion in direct and indirect costs every year. Nevertheless, the tobacco industry continues to aggressively promote smoking to youth and other vulnerable groups and undermines tobacco control policy through all possible means, including direct and hidden lobbying tactics, threats, bribery and costly international lawsuits [5, 30–32].

- The implementation of strict tobacco control measures in a majority of countries with high tobacco consumption rates will ultimately lead to a reduction in global leaf demand and gradual decline of jobs in tobacco farming in the next decades. Tobacco industry technology developments can have a more immediate effect, independent from tobacco control measures. Over the past decades, the industry has managed to reduce the amount of tobacco leaf necessary for cigarette production, using technologies such as dry ice expanded tobacco („DIET"). Since the 1960s, global tobacco leaf production has doubled, while the number of cigarettes has tripled [28,30].

- Prices and demand for tobacco leaf are controlled by two multinational leaf buying companies and a handful of multinational cigarette companies. The industry's corporate strategies include putting tobacco farmers in a weak bargaining position and shifting production to countries and regions with lowest labour costs and environmental standards. It has an interest in leaf oversupply to be able to control prices and leaf buying companies have repeatedly been found to collude on prices, e.g. in Malawi, Spain and Italy. To subsidise the low prices they are paid by the companies, farmers often use the unpaid labour of their children, in violation of ILO Convention No 182 (Worst Forms of Child Labour) and the UN Convention on the Rights of the Child. Tobacco production has a negative impact on several of the UN Sustainable Development Goals (SDGs) such as "No Poverty", "Zero Hunger", "Good Health and Well-Being", "Quality Education" and "Life On Land" (goals 1, 2, 3, 4, and 15) [23,30, 33–38].

- The International Tobacco Growers' Association (ITGA) is not a legitimate representation of tobacco smallholder farmers and workers. It is a tobacco industry front group that was promoted by British American Tobacco and other cigarette companies with the aim to use its „integrity" against tobacco control policies, and to „ensure growers stick to politics and do not seek to use the global organization to gang up on manufacturers", as the 1988 ITGA concept of the tobacco industry think tank INFOTAB reads. Tobacco companies are supporting members of ITGA even to the present day, affecting ITGA's stance on growers' rights to decent pay and other labour rights [9,10,39–41].

- Sustainable alternatives to tobacco growing are already being implemented in a number of tobacco growing countries worldwide, e.g. a national diversification programme in Brazil, bamboo growing and processing in Kenya, kenaf production in Malaysia, food crops in Bangladesh and stevia cultivation in the European Union. International cooperation and more research is conducted with, among others, support from the European Union. Countries like Malawi and Zimbabwe need more urgent support on alternatives – not because of tobacco control measures and reduction in leaf demand, but because of the economic dependency on tobacco exports that makes these countries vulnerable to fluctuations in global leaf demand and tobacco industry pressure on prices that have contributed to a major economic crisis in Malawi in 2011 [4,10,23,42–47].

- High-income countries should support tobacco growing countries to invest in researching and stepping up extension services to introduce alternative crops or livelihoods. The Global North has a special obligation since the largest part of the burden of tobacco production and consumption is borne by the Global South, while profits (and therefore taxes) from tobacco multinationals flow to the Global North. Further South-South and triangular cooperation is necessary, and in line with Articles 17, 18, 20 and 26 of the FCTC and the UN Sustainable Development Goal 17 (Global Partnership) [30,38,45,48].

KEY ARGUMENTS

- When tobacco control measures are being discussed and implemented in a tobacco growing country or during sessions of the Conference of the Parties of the WHO Framework Convention on Tobacco Control (FCTC COPs), tobacco industry and farmers' groups often argue that they will reduce income or even ban the farming of tobacco, alleging that tobacco is a lucrative crop that helps alleviate poverty.
- Tobacco control measures are leading to a slow decline in leaf demand mostly from non tobacco growing countries, but not a sudden drop. The majority of tobacco leaf is traded internationally, therefore a decline in consumption in an individual country has little impact on tobacco farmers in that country.
- Tobacco companies' pricing and other strategies put farmers in a weak bargaining position and cause poverty, food insecurity and child labour in tobacco farming regions. There are several models of implementing sustainable alternative livelihoods, in line with Article 17 of the FCTC, already implemented in several countries, but more research and pilot projects are needed to be ready to help farmers be prepared ahead of leaf demand declines in future.
- The WHO regards the PMI funded Foundation for a Smoke-Free World and all projects or parties associated with it as an arm of the tobacco industry. As such, cooperation with them is prohibited for WHO and all Parties to the FCTC under Article 5.3 of the convention.
- The major threat posed over time by tobacco to any country remains the threat to the health of smokers and those affected by second-hand smoke, and the associated health, environmental and social costs.

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DO LONGER, HEALTHIER LIVES HAVE A POSITIVE OVERALL EFFECT ON THE ECONOMY?

KEY MESSAGE: Tobacco-free initiatives help people to live longer and more healthily, which in turn has a positive economic impact. The financial benefits gained from investing in a more productive, healthy society far outweigh the costs, and there is plenty of evidence from various countries to support this.

What is the issue?

Tobacco-related diseases place massive economic burdens on healthcare systems and reduce work productivity, which has net negative impacts on economies even when all the economic 'benefits' of growing, manufacturing, or selling tobacco are taken into account.

What is the evidence for concern?

- Most smoking-related diseases are chronic and expensive to treat. In 2012, smoking accounted for 6.5% of all health expenditures in the European Region, and cost the total global economy $1.4 trillion (USD), or 1.8% of the world's annual GDP [1]. Smoking is estimated to cost countries 2-7% of the national health system expenditure and 0.2-0.9% of a country's gross domestic product [2].
- In terms of smoking-related healthcare costs, it is estimated that the annual cost of smoking on healthcare systems was $422 billion (USD) worldwide. For individual countries in the European Region, studies have estimated the direct healthcare burden of smoking at $144 million (USD) in the Czech Republic (2002), $13.7 million (USD) in Estonia (1998), $17.3 million (USD) in Uzbekistan (2005) [1], €16.6 billion in Germany (1996) [3], and $482 million (USD) in Israel (2014) [6]. In other countries, recent economic burdens were estimated to be $170 billion (USD) in the USA (2010) [4] and $21.3 billion (CAD) in Canada (2012) [5].
- Losses in work productivity as a result of smoking also carry a substantial economic burden [1]. A recent study in the USA estimated that smoking costs employers, on average, an extra $5816 (USD) annually for each employee who smokes [7]. In Israel in 2014, the estimated annual cost of smoking-related losses in work productivity was $548 million (USD) [6]. In Sweden, the cost of smoking, calculated based on healthcare expenditure and loss in worker productivity, was $804 million (USD) in 2001 [8].
- In low-income countries, the costs of treating tobacco-related diseases contribute to poverty. Tanzania, for example, is the world's 8th largest producer of tobacco, but tobacco-related cancers alone cost Tanzania 80% of its earnings from tobacco production [9-10]. Another issue is that, in some low-income countries, the poorest households spends 10-15% of the household income on tobacco which means they end up foregoing essentials such as medicines and food [1].
- Smoking is also responsible for an estimated 10% of global fire death costs. It was estimated that the global financial burden of fire-related deaths and injuries was $27.2 billion in 1998 alone [11].

What is the reality?

- With fewer smokers, more people survive to retirement age and pay taxes. With higher rates of survival, there are fewer survivor benefits paid out to the families of those who would otherwise have died from tobacco-related diseases. A healthy, more productive workforce also earns more, retires later, and claims fewer benefits for sickness or disability [1].
- Though tobacco control measures require some financial investment, they have been consistently cost-effective [12-13].
- Tobacco taxation is the least costly to implement, and is a fast, effective way to generate revenue while

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reducing tobacco consumption [1]. Smokefree laws are another highly effective intervention, which save on tobacco-related costs and do not harm the hospitality industry [14].

- Media and awareness campaigns are also cost-effective. In Scotland, estimates of the cost per life-year saved as a result of a mass media campaign are in the range of £304-£656. This campaign included mass media advertising on television, radio, outdoor posters and press, a telephone quitline, and booklets to provide advice on smoking cessation [15].
- Large, pictorial health warnings are also effective at discouraging smoking particularly among youth, and were predicted to have a net benefit of over $2billion AUD in Australia which corresponds to a benefit:cost ratio of over 2:1 [16].
- If taxes were increased enough to raise retail prices by around 30%, long-term total health expenditures on tobacco-related diseases would decline by $53 million (USD) in Kazakhstan, Russia and Ukraine [17].
- A 30% price increase would save $2.2 billion (USD) in Russia, and $180 million (USD) in Ukraine on public and private health care costs. In Kazakhstan, long-term public health expenditures on the treatment of tobacco-related diseases would decrease by $31 million (USD) and total health expenditures would decrease by $53 million (USD). In all three countries, savings in healthcare costs would be highest for the poorest 40% [17].
- A US study estimated that, if all smokers in the USA were to quit smoking (compared to the current scenario), there would be little net change in Social Security outlays [18].
- The tobacco industry has argued that, in the Czech Republic, smoking benefits the economy because many smokers die before they reach retirement age [19]. This argument is incorrect. In the Czech Republic, the costs of smoking were shown to outweigh any savings in healthcare costs by 13 times: thus the net economic burden of smoking in the Czech Republic is $372 million (USD), all economic 'benefits' considered [20].

KEY ARGUMENTS

- Tobacco control interventions are good economic investments, all costs and benefits considered. Effective tobacco control is achieved by implementing all measures under the WHO Framework Convention on Tobacco Control, such as smokefree legislations, price and tax measures, and pictorial warning labels.

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SMOKING IS AN ADULT BEHAVIOUR AND SMOKERS ARE AWARE OF THE RISKS

KEY MESSAGE: Smoking is not an adult behaviour. Most smokers start as children, and around the world millions of children are smokers. Tobacco companies have a long history of targeting children and young people, exposing them to a wide range of advertising and other forms of marketing, and seeking to prevent measures that will reduce smoking in children and young people.

What is the issue?

Tobacco companies claim that smoking is an adult behaviour, and that they market and sell their products responsibly, and only to informed adult smokers [1].

What is the evidence for concern?

- For decades tobacco industry publications, statements, media comments, websites and other materials have maintained the same mantra – that tobacco is a product for adults (whose "choice should be respected" [2]) and that the industry does not market to children, non-smokers [3] and "unintended audiences" [4].

  Companies support these positions with claims such as "We market and sell to adult smokers. Adults are capable of making an informed decision to smoke. Our products and marketing and sales activities are not meant for minors or nonsmokers. We have a responsibility as a leading tobacco company to do our part in preventing youth smoking. We warn consumers about the health effects of our products. All advertising and packaging for consumers must have health warnings, even if the law does not require these warnings" [5].

- Further, the industry claims that it does not want children to smoke [6, 7] and that it is active in promoting prevention, for example through supporting "youth smoking prevention" activities [6], while also providing information to the public about the harms of smoking [8].

- The companies also claim that smokers are aware of the risks of smoking, which therefore is an informed choice for adults [9].

- They argue that smokers are "informed", that "informed adults have rights to consume them and to choose the brands they prefer", which also serves as a rationale for maintaining tobacco advertising and promotion and to pursue the argument that "We have a role in helping to preserve our consumers' rights" [10].

- The companies further draw attention to governmental and health agency education or cessation activities [11], implying that as they currently stand these are adequate to inform smokers about the harms of smoking.

- As well as asserting that their marketing is specifically targeted only to adults, they claim that children and other non-smokers are not influenced by their advertising and promotion [12].

- The argument that smokers can be made aware of the risks is used as part of the rationale and further basis for arguing against tobacco control measures, on the basis that further measures opposed by the industry are not required [13].

- Some tobacco companies provide information on their websites about some aspects of the harms of smoking [14] and refer to carefully selected governmental other reports as demonstration of their purportedly responsible approach [15].

- The companies claim to be active in promoting processes to ensure that retailers do not sell to children [6], and even to run their own education and support programs for children and schools [7].

- Simply put, tobacco industry approaches on this issue are clear: they do not want children to smoke, smoking is an adult behaviour, they do everything they can to protect children and to ensure an informed community, and everybody knows that smoking is harmful.

What is the reality?

- Smoking is not solely an adult behaviour. Around the world millions of children are smokers, in LMICs as well as in more affluent countries, and they are targets for tobacco marketing [16].
- The vast majority of smokers started as children or adolescents [17], long before they might have been aware of the harms of smoking or be able to understand issues ranging from cancer and heart disease to addiction.
- It is in the tobacco industry's interests to ensure that as many children and young people as possible start smoking. It is also in the industry's interests to portray smoking as an adult behaviour to which children and young people can aspire.
- It is misleading to present smoking as solely an adult behaviour with products marketed and sold to children. Despite legislation on sales to minors, in most if not all countries, children are fairly readily able to access cigarettes. Even in countries where tobacco control policies are advanced, many children smoke. In LMICs it is commonplace to see children purchasing and smoking single cigarettes as part of the process towards becoming a regular smoker.
- There is massive and incontrovertible evidence from tobacco industry documents and the broader literature (including many papers and reports) demonstrating that tobacco companies are aware that children are a crucial market for them, and have specifically targeted children and young people [16].
- Similarly, there is incontrovertible evidence that children, young people and adult smokers are heavily exposed to tobacco promotion (including that claimed to be directed only to adult smokers) and influenced by it [16]. It is indeed impossible to market a product such as cigarettes to adult consumers only.
- Far from supporting education about smoking, the industry has from the outset sought to cast doubt on evidence about the harms, denied much of the evidence, and attacked and undermined governments, health authorities (including WHO) and research institutions seeking to make smokers aware of the evidence.
- Further, tobacco companies have fiercely opposed both measures that would be effective in preventing the onset of smoking in children, and in making children, other non-smokers and smokers adequately aware of the harms of smoking, and also measures to ensure that adults and children are better informed, such as strong, well-funded, sustained and hard-hitting evidence-based media campaigns, evidence-based pack health warnings and plain packaging.
- Activities presented by the tobacco industry as evidence of responsible behaviour are both ineffective and counter-productive. Their so-called "education" programs for children and others are ineffective and counter-productive, designed only to support claims of responsible behaviour and to pre-empt stronger, more effective educational activities [18,19].
- Smokers are not aware of the harms of smoking. While some governments and health authorities have run public education programs (through mass media, etc.) about the harms of smoking, these are typically very modest, with budgets minimal in comparison with tobacco promotion budgets, short-term, and often for various reasons not hard-hitting.

There is overwhelming evidence that many smokers are not aware of the extent of the problem, its magnitude, the vast range of diseases and other harmful consequences of smoking, the suffering that results from diseases caused by smoking, its impacts on families and communities, the economic costs of smoking all the likelihood that they themselves will suffer and ultimately died because they smoked, some are not aware at all, and even when they are aware of some of the risks, they may not believe these apply to them [20].

KEY ARGUMENTS

- Smoking is not an adult behaviour. Most smokers start as children, and around the world millions of children are smokers.
- Tobacco companies have a long history of targeting children and young people, exposing them to a wide range of advertising and other forms of marketing, and seeking to prevent measures that will reduce smoking in children and young people.
- Smokers are not aware of the risks of smoking, and even when they are aware that smoking is harmful, often believe that the risks do not apply to them.
- The tobacco industry has fiercely opposed evidence-based measures that will prevent the onset of smoking in children and make both children and adult smokers aware of the risks of smoking.

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IS THE TOBACCO INDUSTRY A NORMAL, LEGITIMATE INDUSTRY?

KEY MESSAGE: Tobacco is not a normal industry: it is the world's most lethal industry, which products cause 7 million deaths each year around the world. The tobacco industry has not changed despite the evidence for the harm it causes: its primary role remains to sell as many cigarettes as possible, and it still seeks to oppose any action that might reduce sales.

What is the issue?

The tobacco industry seeks to present itself as a normal, ethical and responsible industry selling a legitimate consumer product.

What is the evidence for concern?

- Tobacco companies have for decades argued that their industry is a responsible industry that should be treated similarly to other industries, and should be allowed to play a full part in policy and other discussions with the government and community. It should be recognised as responsible in areas ranging from marketing to product claims and should not be subject to many of the constraints that are proposed by tobacco control [1-3].
- Notwithstanding Article 5.3 of the FCTC, the industry seeks to engage actively in discussions with government and others on the basis that it is fully entitled to this form of engagement [4-6].
- The tobacco industry specifically seeks to engage with governmental agencies outside Health that are not always aware of Article 5.3 or that it applies to all parts of government, and further seeks to exploit areas for co-operation such as reducing the illicit tobacco trade [7, 8].
- Tobacco companies present themselves and seek to engage with governments and the community as part of industry groups. They also seek to engage indirectly as well as directly, through public relations organisations, lobbyists, front groups and political donations [9].
- Tobacco companies seek to be seen as contributing to the community across a range of areas, including tax revenue and employment. They promote their "Corporate Social Responsibility" through a wide range of philanthropic and community contributions, and publishing and promoting reports on social responsibility, sustainability, environmental and other activities, from promoting human rights and diversity to clean neighbourhoods [10-14].

Through industry events they also seek to promote an image of public service, for example through an award for the "Most Impressive Public Service Initiative" at the Global Tobacco and Nicotine Forum conference, or awards and recognition for their roles as employers [14,15].

- The industry presents itself as health-conscious, aiming to benefit society through development of less harmful products [16,17].
- Tobacco companies promote an apparent interest in and support of research into the consequences of smoking, and about possible approaches to reducing or eliminating the harm. Recent initiatives from tobacco companies even include funding of new research processes and claims such as that they want to see a Smokefree World, although these have met with substantial criticisms and rejection by WHO and other health authorities [18-25].
- Tobacco companies claim not to promote their products irresponsibly, for example claiming that they see smoking as an adult behaviour and do not advertise to children [26].
- Even when there is recognition of previous wrongdoing, the case has long been made, even in advertising, that "that was then... this is now..."[27]. The companies seek to promote a perception that they have changed, and are now concerned for the public good.

What is the reality?

- The tobacco industry's products cause 7 million deaths each year around the world. The World Health Organisation and US National Cancer Institute (NCI) estimate that this will rise to 8 million deaths by 2030 [28,29].
- Tobacco is the only industry whose product kills at least half of its regular consumers when used precisely as intended. Recent research from Australia shows that cigarettes in a country with a mature epidemic are likely to cause the deaths of two thirds of regular smokers [30].
- Tobacco consumption imposes massive economic burdens. The WHO/NCI report concludes that tobacco costs more than $US 1 trillion globally in health care and lost productivity costs, and that tobacco control reduces the disproportionate burden that tobacco use imposes on the poor [29].
- The health, social and economic burdens of smoking are borne increasingly by low- and middle-income countries (LMICs), which have been heavily targeted by the tobacco industry. The WHO/NCI report notes that around 80% of smokers live in LMICs, and, of the anticipated increase in global deaths to 8 million annually, more than 80% will occur in LMICs [29].
- The tobacco industry sees their greatest potential for the future in LMICs and other "emerging markets" [31].
- There has been incontrovertible evidence that smoking is lethal for more than 75 years. Despite this tobacco companies have continued to promote and sell their products wherever possible, targeted children and vulnerable communities, fiercely opposed any action that might result in reduced smoking, and directly and indirectly targeted and attacked organisations and individuals seeking to reduce smoking [32,33].
- Through lies, deceit, and corruption, the tobacco industry has a long history of opposing anything that might reduce sales of its products. Much of this evidence comes from the industry's own documents, made available for public scrutiny following the 1998 US Master Settlement Agreement. In 1967, at the First World Conference on Smoking and Health, the late Senator Robert Kennedy said, "The industry we seek to regulate is powerful and resourceful. Each new effort to regulate will bring new ways to evade. Still we must be equal to the task. For the stakes involved are nothing less than the lives and health of millions all over the world..." [33,34].
- Many reports from governments and health authorities have condemned the tobacco industry's past and present activities. A recent UK High Court judgment noted that the tobacco industry "....facilitates and furthers, quite deliberately, a health epidemic. And moreover, a health epidemic which imposes vast negative health and other costs upon the state" [35].
- Activities presented as being responsible, from education to self-regulation, are either ineffective or counter-productive, and likely to be part of public relations and distraction strategies. The tobacco industry's research and other scientific activities are highly selective, never focused on reducing use of its products, and based solely on promoting the industry's interests. The tobacco industry's approach to corporate social responsibility and similar activities was well described by a British American Tobacco executive as providing "air cover" to distract governments and others [36].

- As stated in WHO resolution supporting Article 5.3 of the FCTC, "the tobacco industry has operated for years with the express intention of subverting the role of governments and of WHO in implementing public health policies to combat the tobacco epidemic" [37,38]. Claims that tobacco companies want to see a Smokefree World are inconsistent with the industry's fierce opposition to measures that will reduce smoking and its continuing promotion in both LMIC and other countries, as well as the companies' own comments about the long-term prospects for smoking, and confirmation that tobacco remains the "core" product. The most recent research funding proposal has been widely criticised, including by WHO and the FCTC Secretariat, with similar recognition that any involvement with it by governments would breach Article 5.3 of the FCTC [23,24,39].
- There is now growing international momentum for major investment funds to cease investing in the tobacco industry [40].
- The tobacco industry has been subjected to a series of damning legal judgements, many requiring substantial payments arising from the death and disease caused by its products. Further tobacco companies in the US will now have to run court-ordered corrective advertising telling the truth about their lethal products including even their role in intentionally designing cigarettes to make them more addictive [35,41,42].

KEY ARGUMENTS

- Tobacco is not a normal industry: it is the world's most lethal industry.
- The tobacco industry has not changed despite the evidence for the harm it causes: its primary role remains to sell as many cigarettes as possible, and it still seeks to oppose any action that might reduce sales.
- The tobacco industries' "Corporate Social Responsibility" and related activities are part of a broader public relations program.
- The tobacco industry is promoting smoking to LMICs and other vulnerable populations and "emerging markets".
- Article 5.3 is there for good reason and should be fully observed by all parts of government.

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SPECIAL ISSUE

JUDICIAL STATEMENTS FROM LEGAL ACTION INVOLVING THE TOBACCO INDUSTRY

As recognised in the Guidelines to Article 5.3 of the WHO FCTC, there is a fundamental and irreconcilable conflict between the interests of the tobacco industry and public health interests.

This fundamental and irreconcilable conflict has been recognised in judicial opinions in both the EURO region and other regions. Judgments have recognised that:

- The tobacco industry has continually and deliberately misled the public as to the harmful and addictive nature of its products, as well as its own marketing practices in relation to those products
- The evidence provided by the tobacco industry when challenging tobacco control measures in courts is frequently of low quality and/or misleading
- The interests that the tobacco industry seeks to protect in litigation are essentially interests to continue to promote and sell its products in ways that harm public health
- The uniquely harmful nature of tobacco products means that the tobacco industry cannot be expected to be treated the same as makers of other consumer products
- The tobacco industry has on many occasions attempted to frustrate legal processes to prevent people who have suffered tobacco-related harm from being able to bring claims against the industry.

This papar presents some of the judicial statements that have been made about the tobacco industry in litigation. It covers both cases where the tobacco industry has initiated litigation, for example in bringing legal challenges against governments seeking to regulate tobacco, and cases where the tobacco industry is a defendant, for example in class actions brought by persons suffering from tobacco-related illness.

Tobacco industry 'evidence' and deception of the public

Many judicial statements recognise that tobacco companies have deliberately misled the public in relation to the harmful and addictive nature of tobacco products, the harms of tobacco use and exposure to tobacco smoke, and the tobacco industry's marketing practices. Courts have in particular commented on the practice of marketing to children and young people, and on the use of 'health reassurance' tobacco products (such as 'light' or 'mild' cigarettes) to convey a false impression that one tobacco product is less harmful than another.

These comments can be summarised by the statement of the High Court of England and Wales in *British America Tobacco v Secretary of State for Health* that:

- '... the tobacco companies have over multiple decades set out, deliberately and knowingly, to subvert attempts by government around the world to curb tobacco use and promote public health.' – *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016), para 18 [1].

Specific findings related to deceptive practices by the industry were made in *Létourneau v JTI-McDonald Corp*, a class action brought in Canada by persons affected by tobacco-related illness, and *United States v Philip Morris USA, Inc*, a fraud action brought by the United States federal government against major US tobacco companies [2],[3]. These cases made the following statements regarding the practices of the tobacco industry:

General statements:

- 'Over the nearly fifty years of the Class Period, and in the seventeen years since, the Companies earned billions of dollars at the expense of the lungs, the throats and the general well-being of their customers' *Létourneau v JTI-McDonald Corp* (Superior Court of Québec, 2015) para 1037 [2].
- 'In this case, the evidence of Defendants' fraud is so overwhelming that it easily meets the clear and convincing standard of proof. The Findings of Fact lay out in exhaustive detail the myriad ways in which Defendants made public statements, often directly to consumers, which were flatly contradicted by their internal correspondence, knowledge, and understanding.' – *United States v Philip Morris USA, Inc* (US District Court, District of Columbia, 2006), page 888 [3].

Misleading the public as to the addictive nature of tobacco:

- 'Notwithstanding the understanding and acceptance of each Defendant that smoking and nicotine are addictive, Defendants have publicly denied and distorted the truth as to the addictive nature of their products for several decades. Defendants have publicly denied that nicotine is addictive, have suppressed research showing its addictiveness, and have repeatedly used misleading statistics as to the number of smokers who have quit voluntarily and without professional help.' *United States v Philip Morris USA, Inc* (US District Court, District of Columbia, 2006) para 829-830 [3].

Misleading the public as to the harms of tobacco use and exposure to tobacco smoke:

- 'In spite of overwhelming scientific acceptance of the causal link between smoking and disease, [Imperial Tobacco Limited (ITL)] continued to preach the sermon of the scientific controversy well into the 1990's ...' *Létourneau v JTI-McDonald Corp* (Superior Court of Québec, 2015) para 1078 [2].
- 'By choosing not to inform either the public health authorities or the public directly of what they knew, the Companies chose profits over the health of their customers. Whatever else can be said about that choice, it is clear that it represent[s] a fault of the most egregious nature and one that must be considered

in the context of punitive damages.' *Létourneau v JTI-McDonald Corp* (Superior Court of Québec, 2015) para 239 [2].

- 'Thus, one can only wonder whether the people making such comments [to create doubts about the link between smoking and lung disease] were remarkably naïve, wilfully blind, dishonest or so used to the industry's mantra that they actually came around to believe it. Their linguistic and intellectual pirouettes were elegant and malevolent at the same time. They were also brutally negligent.' *Létourneau v JTI-McDonald Corp* (Superior Court of Québec, 2015) para 268 [2].
- 'Here again, ITL's attitude and behaviour portray a calculated willingness to put its customers' well-being, health and lives at risk for the purpose of maximizing profits.' *Létourneau v JTI-McDonald Corp* (Superior Court of Québec, 2015) para 288 [2].
- 'On the basis of the preceding and, in particular, the clear and uncontested role of the [Canadian Tobacco Manufacturers' Council] in advancing the Companies' unanimous positions trivializing or denying the risks and dangers of smoking, we hold that the Companies indeed did conspire to maintain a common front in order to impede users of their products from learning of the inherent dangers of such use.' *Létourneau v JTI-McDonald Corp* (Superior Court of Québec, 2015) para 475 [2].
- '... Defendants crafted and implemented a broad strategy to undermine and distort the evidence indicting passive smoke as a health hazard. Defendants' initiatives and public statements with respect to passive smoking attempted to deceive the public, distort the scientific record, avoid adverse findings by government agencies, and forestall indoor air restrictions.' *United States v Philip Morris USA, Inc* (US District Court, District of Columbia, 2006) para 3303-3305 [3].

Falsely denying that tobacco industry marketing is targeted at children and young people:

- 'The evidence is clear and convincing—and beyond any reasonable doubt—that Defendants have marketed to young people twenty-one and under while consistently, publicly, and falsely, denying they do so.' *United States v Philip Morris USA, Inc* (US District Court, District of Columbia, 2006) para 3296-8 [3].
- 'Defendants' marketing activities are intended to bring new, young, and hopefully long-lived smokers into the market in order to replace those who die (largely from tobacco-caused illnesses) or quit. Defendants intensively researched and tracked young people's attitudes, preferences, and habits. As a result of those investigations, Defendants knew that youth were highly susceptible to marketing and advertising appeals, would underestimate the health risks and effects of smoking, would overestimate their ability to stop smoking, and were price sensitive. Defendants used their knowledge of young people to create highly sophisticated and appealing marketing campaigns targeted to lure them into starting smoking and later becoming nicotine addicts.' *United States v Philip Morris USA, Inc* (US District Court, District of Columbia, 2006) para 3298 [3].

The practice of 'health reassurance' marketing:

- 'It is clear, based on their internal research documents, reports, memoranda, and letters, that Defendants have known for decades that there is no clear health benefit from smoking low tar/low nicotine cigarettes as opposed to conventional full-flavor cigarettes. ... Despite this knowledge, Defendants extensively—and successfully—marketed and promoted their low tar/light cigarettes as less harmful alternatives to full flavor cigarettes. ... By engaging in this deception, Defendants dramatically increased their sales of low tar/light cigarettes, assuaged the fears of smokers about the health risks of smoking, and sustained

corporate revenues in the face of mounting evidence about the health dangers of smoking.' *United States v Philip Morris USA, Inc* (US District Court, District of Columbia, 2006) paras 2627-2629 [3].

The practice of 'health reassurance marketing' was also recognised in Philip Morris v. Uruguay, a case brought by Philip Morris under a 1988 bilateral investment treaty between Switzerland and Uruguay [4]. In this case, Philip Morris challenged Uruguay's tobacco packaging laws restricting the use of brand variants. In rejecting this challenge and finding in favour of Uruguay, the investment tribunal noted internationally available evidence that tobacco companies had misled consumers through the use of health reassurance marketing:

- 'At the time the measures were adopted, evidence was available at the international level regarding in particular consumers' misperception of the health risks attached to "light" and "lower tar" cigarettes (so called "health reassurance" cigarettes). That evidence included the tobacco industry's own records, including those of PMI, showing that "cigarettes brand variants ... were strategically positioned to offer health reassurance." – *Philip Morris Brands Sàrl v Oriental Republic of Uruguay* (2016) ICSID Case No. ARB/10/7, para 392 [4].

Tobacco industry 'evidence' in litigation

The tobacco industry often argues that tobacco control measures will infringe its legal rights, and threatens, or actually initiates, litigation to challenge such measures. In doing so, it frequently prepares its own evidence about whether or not a measure is 'working'.

Courts have been highly critical of the low quality, and sometimes the misleading character, of this evidence.

The strongest illustration of such scrutiny is provided by the UK standardised packaging litigation in the High Court and Court of Appeal of England and Wales [1]. This case concerned a challenge by four major tobacco companies to the UK standardized tobacco regulations on 17 grounds, including property interests and whether or not the policymakers had adequately considered the industry evidence. In rejecting the challenge on all grounds, the High Court extensively considered the industry evidence, and stated:

- 'As a generality, the Claimants' evidence *is* largely: not peer reviewed; frequently not tendered with a statement of truth or declaration that complies with the [Civil Procedure Rules]; almost universally prepared without any reference to the internal documentation or data of the tobacco companies themselves; either ignores or airily dismisses the worldwide research and literature base which contradicts evidence tendered by the tobacco industry; and, is frequently unverifiable.' – *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016) para 23 [1].

- 'In conclusion, I am of the clear view that if and insofar as only "*limited*" weight was attached to the Claimants' evidence then this was reasonable, justified and proper." *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016) para 375-376 (emphasis in original) [1].

These findings were later confirmed by the Court of Appeal.

In making these findings, the UK courts considered that the tobacco industry is known to create its own unreliable evidence to advance its commercial interests, including as recognised in WHO FCTC article 5.3 and its guidelines:

- 'The analysis conducted of these documents by bodies such as WHO, and by the US courts, has led to

some stark and, from the perspective of public health, unpalatable conclusions: in particular that the outward facing public statements of the tobacco companies are contradicted by their own inward facing private deliberations and analyses. One instance of this concerns the claim by the tobacco companies that they do not market their products towards children. This proposition (repeated in this litigation) has been rejected in the US courts and by the WHO upon the basis, *inter alia*, of internal tobacco company documents.' – *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016) para 19 [1].

- 'The conclusions which have arisen from the US courts about the sharp discord between what the tobacco companies think inside their own four walls and what they then say to the outside world (especially through experts), are so damning and the evidence of the discord so compelling and far reaching that it is not at all surprising that the WHO concluded that there was an *evidence base* upon which to found their recommendations to contracting states to apply vigilance and demand accountability and transparency in their dealing with the tobacco companies.' – *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016) para 21 (emphasis in original) [1].
- "We do not accept that the judge fell into any legal error in relation to article 5(3) of the FCTC or the guidelines. He was entitled to treat them as telling in favour of subjecting the evidence of the tobacco companies to rigorous scrutiny." – *British American Tobacco v Secretary of State for Health* (England and Wales Court of Appeal, 2016) para 205 [5].

The nature of the legal interests asserted by the industry in litigation

Courts have also made a number of statements about the true nature of the interests that the tobacco industry aims to protect when bringing legal challenges against public health regulation.

For example, in *British American Tobacco v Secretary of State for Health*, BAT argued that standardised packaging of tobacco products interfered with its property rights in its trademarks. In rejecting these claims, the High Court of England and Wales stated that:

- 'The Claimants seek compensation for the loss of the ability to promote a product that is internationally recognised as pernicious and which leads to a health "epidemic". It is as such unlike any other case in which the Courts have granted compensation. ...' – *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016) para 794 [1].
- 'The property rights in the present cases directly serve the promotion of a trade which is profoundly adverse to the public interest, and acknowledged by all concerned to be so because of the harm the products cause to health.' – *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016) para 797 [1].
- 'There is no precedent where the law has provided compensation for the suppression of a property right which facilitates and furthers, quite deliberately, a health epidemic. And moreover, a health epidemic which imposes vast negative health and other costs upon the very State that is then being expected to compensate the property right holder for ceasing to facilitate the epidemic.' – *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016) para 38 [1].
- 'In my judgment the law is very clear: It is *no* part of international, EU or domestic common law on

intellectual property that the legitimate function of a trade mark (i.e. its essence or substance) should be defined to *include* a right to *use* the mark to *harm* public health, and the Member States have a broad power to adopt health legislation even when it intrudes upon other rights belonging to manufacturers of products which cause the health problem. The technical arguments to the contrary were advanced with forensic skill but stripped down to below their respectable veneers their bare essentials are exposed as unsustainable.' – *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016) para 40 (emphasis in original) [1].

- 'So far as the latter is concerned the protection of public health is recognised in law as one of the highest of all public interests that can be prayed in aid .... To be set against this are the rights of the tobacco manufacturers in their trade marks and other property rights to use those marks to promote the consumption of tobacco. The bottom line interest of the tobacco companies in the right to promote their property is "*profit*".' – *British American Tobacco v Secretary of State for Health* (England and Wales High Court, 2016) para 682-683 (emphasis in original) [1].

Similarly, courts in Canada have considered the nature of the tobacco industry's interests in commercial expression, in the context of legal challenges to advertising, promotion, and sponsorship bans. They have contrasted the high importance of life and health with the considerably less important interest of the tobacco industry in continuing to market a harmful and addictive product. They have emphasised the low value of commercial expression when it relates to marketing of such products:

- 'On the one hand, the objective is of great importance, nothing less than a matter of life or death for millions of people who could be affected, and the evidence shows that banning advertising by half-truths and by invitation to false inference may help reduce smoking. The reliance of tobacco manufacturers on this type of advertising attests to this. On the other hand, the expression at stake is of low value — the right to invite consumers to draw an erroneous inference as to the healthfulness of a product that, on the evidence, will almost certainly harm them.' – *Canada (Attorney-General) v JTI-McDonald Corp*, concerning a tobacco industry challenge to a ban on mass-media and 'lifestyle' advertising of tobacco products (Canadian Supreme Court, 2007) para 68 [6].

- 'Unlike most, if not all other consumer products that are lawful to sell or buy, nicotine is a highly addictive poison that is unsafe when consumed as intended. ... When expression is used for the purpose of selling harmful and addictive products, its value becomes tenuous ... The nature of the expressive activity, although deserving of scrutiny is not close to the core values underlying s. 2(b) whereas the legislation might reduce tobacco consumption and thereby reduce tobacco-related disease, disability and death.' – *R v Mader's Tobacco Store*, concerning a tobacco industry challenge to a ban on retail display of tobacco products (Provincial Court of Nova Scotia, 2013) para 95-96 [7].

Tobacco industry as compared to makers of other consumer products

Courts have responded to arguments that a regulation 'discriminates' against the tobacco industry by pointing out the uniquely harmful nature of tobacco products and the need to regulate the tobacco industry accordingly:

- 'However, tobacco manufacturers and other manufacturers exerting adverse effects on human health are not, given the intensity of the effects induced by smoking on human health, placed in a similar situation, so it is open to Parliament, with the aim of strengthening the protection of public health, to apply different

treatments.' Conseil d'Etat, 23 décembre 2016, *Société JT International SA, Société d'exploitation industrielle des tabacs et des allumettes, société Philip Morris France SA et autres*, concerning a tobacco industry challenge to tobacco plain packaging laws in France (translation adapted from unofficial translation by Campaign For Tobacco Free Kids, available at http://tobaccocontrollaws.org/files/live/litigation/2525/FR_Japan%20Tobacco%20International%20an_3.pdf) para 33 [8].

- 'The tobacco industry cannot be compared to manufacturers of other products. The need for regulation and control is apparent from the Tobacco Act. Players in the tobacco industry cannot expect equal treatment with other industries as due to the harmful effect of tobacco products, the State is under obligation to protect the health of its citizens, both consumers and non-consumers of tobacco products' *British American Tobacco Kenya Ltd v Cabinet Secretary for Health*, concerning a tobacco industry challenge to Kenya's Tobacco Control Regulations (Court of Appeal of Kenya, 2017) para 64 [9].

Conduct of the tobacco industry in frustrating legal processes

Finally, courts have been highly critical of the conduct of the tobacco industry in litigation and in arranging their corporate affairs so as to prevent those affected by tobacco-related disease from claiming compensation.

- 'The foregoing Findings of Fact demonstrate that, over the course of approximately fifty years, different Defendants, at different times, took the following actions in order to maintain their public positions on smoking and disease-related issues, nicotine addiction, nicotine manipulation, and low tar cigarettes, in order to protect themselves from smoking and health related claims in litigation, and in order to avoid regulation which they viewed as harmful: they suppressed, concealed, and terminated scientific research; they destroyed documents including scientific reports and studies; and they repeatedly and intentionally improperly asserted the attorney-client and work product privileges over many thousands of documents (not just pages) to thwart disclosure to plaintiffs in smoking and health related litigation and to federal regulatory agencies, and to shield those documents from the harsh light of day.' *United States v Philip Morris USA, Inc* (US District Court, District of Columbia, 2006) para 4034 [3].

- 'There is thus no doubt that [Imperial Tobacco Limited (ITL)] used the destruction as a way to avoid producing the documents, based on the assertion that they were not in its control or possession. ... There is enough for us to conclude that ITL's actions in this regard constitute an unacceptable, bad-faith and possibly illegal act designed to frustrate the legal process.' *Létourneau v JTI-McDonald Corp* (Superior Court of Québec, 2015) para 369 [2].

- 'We therefore find that it was ITL's intention to use the lawyers' involvement in order to hide its actions behind a false veil of professional secrecy....This constitutes an unacceptable, bad-faith and possibly illegal act designed to frustrate the legal process.' *Létourneau v JTI-McDonald Corp* (Superior Court of Québec, 2015) para 377-378 [2].

- 'The Interco Contracts [which moved assets between different parts of the corporate structure so that they would not be available to pay compensation claims] represent a cynical, bad-faith effort by [JTI-McDonald Corp] to avoid paying proper compensation to its customers whose health and well-being were ruined, and the word is not too strong, by its wilful conduct.' *Létourneau v JTI-McDonald Corp* (Superior Court of Québec, 2015) para 1103 [2].

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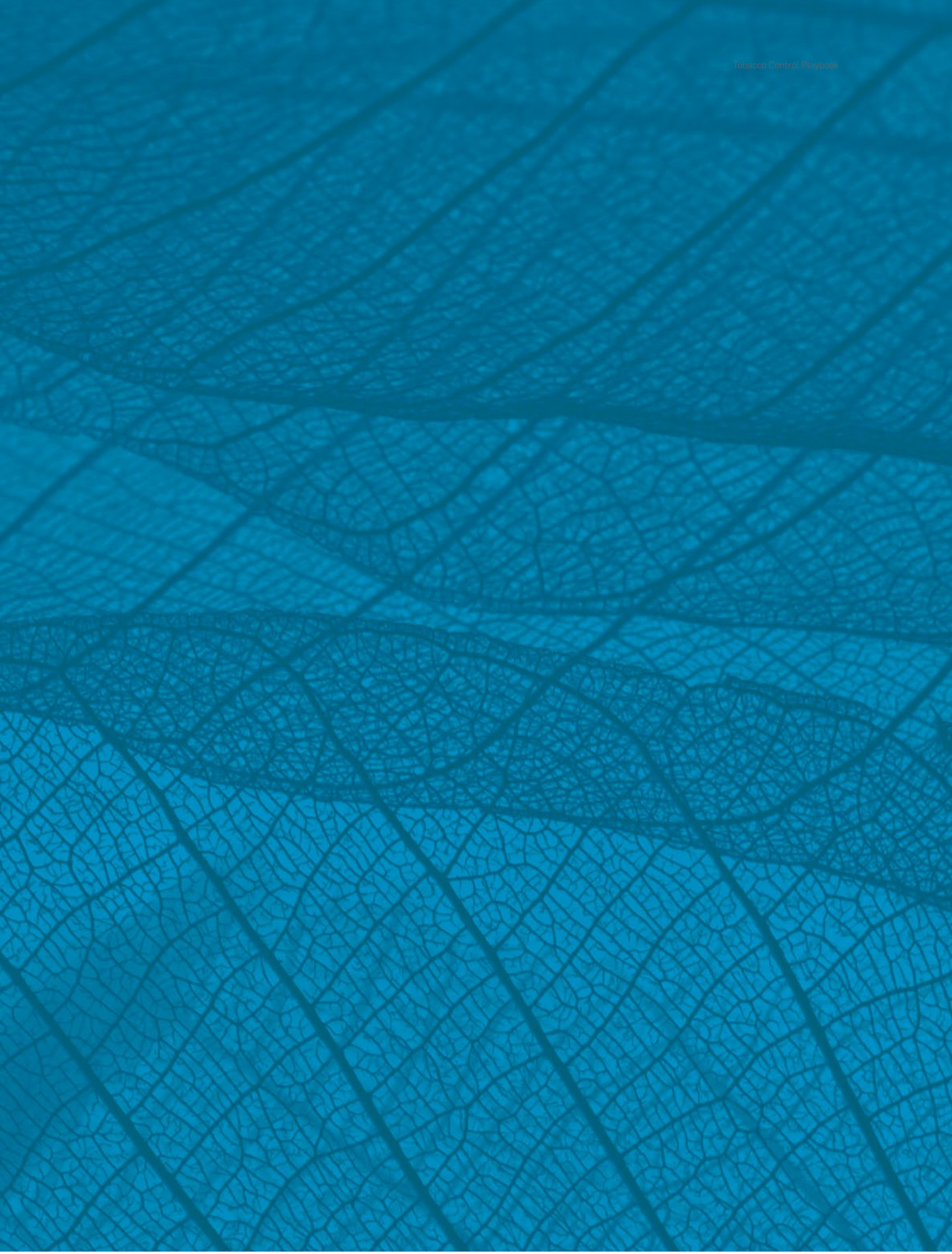

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