

Tobacco industry tactics: tax policies

Tobacco industry interference has been particularly strong against efforts to increase tobacco taxes. The industry aims to ensure that tobacco products remain affordable, while protecting their own profits – at the expense of public health. Tobacco companies target governments and finance ministries with “studies” claiming exaggerated and inaccurate economic impacts from higher taxes. Tobacco transnationals also use illicit trade as a key argument against tax increases, despite their own complicity in smuggling.

Introduction

Price and tax increases remain the single most effective means to reduce tobacco use (1). At least 1 billion people globally are now protected by high tobacco taxes, as more countries adopt policies raising levels of taxation (2). In 2017, countries of the Gulf Cooperation Council (GCC) agreed on significant increases in excise taxes on tobacco, and are now in different stages of implementation (3). However, in other countries of the Eastern Mediterranean Region tobacco taxes remain low (4). Based on the reports of 19 Parties to the WHO Framework Convention on Tobacco Control (WHO FCTC) from the Region, the price of a packet of cigarettes ranges from a minimum of US\$ 0.42 to a maximum of US\$ 6.04 (3).

Tobacco industry interference is a major obstacle to tax and price increases in the Region. One of the industry’s key strategies to drive up sales and allow expansion of the market is to keep excise taxes low and prices affordable (5). Internal documents of the tobacco industry show how it strategically worked to delay and defeat unified tax increases across GCC countries. In the 1980s and 1990s, the industry directed its lobbying activities to Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates, specifically aiming to prevent consensus on harmonized and unified tobacco taxation (6).

Philip Morris International’s leaked 2014 plan (7) underscores their tactic of distracting from public health objectives by focusing on other “real” government problems, deflecting opponents’ reactions, politicizing the debate and using corporate affairs tools (see Box 1). It should be stressed that many of the activities listed would undermine tobacco control policies and result in violation of Article 5.3 of the WHO FCTC and its Guidelines. For instance, building goodwill with policy-makers and proposing “tailored solutions” would involve interactions with officials that are not necessary for regulating the industry. The strategy also suggests the continued use of so-called corporate social responsibility (CSR) activities and third parties, through corporate affairs tactics and engagement of third-party networks to undermine fiscal policies.

Box 1. Leaked: the 10-year corporate plan of Philip Morris

The leaked documents reveal the company's strategic plans aiming to address issues including, "Tax increases above inflation rates, Profits taxes ... Lack of forestalling regulations ... RRP taxation,¹ Earmarking of taxes".

The company is pursuing these fiscal strategies and actions with the objective of ensuring that their products remain affordable and to increase their profits.

The company's fiscal policy is to:

- improve fiscal competencies and research capabilities
- establish Philip Morris International as tax and economic experts, and leverage on this expertise
- provide "tailored solutions," "supported by credible 3rd-party networks"
- "politicize the tax debate" and engage other industries (especially regarding profit taxes and earmarking
- "approach fiscal reform using tested "recipe" and with a campaign approach", including:
 - identify "real" government problems to create a sense of urgency"
 - "develop a solid win/win lose solution" and "build broad political support"
 - anticipate and deflect reactions from opponents
 - deploy a fiscal campaign using all corporate affairs tools and tactics relevant for the market, led by the market
 - pro-actively build political goodwill towards Philip Morris International
- "avoid upward fiscal harmonization", including avoiding extreme interpretations of Article 6 Guidelines, and addressing regional developments (European Union Excise Directive, Russia Customs Union, etc.).

Source: Tobacco industry corporate strategies: then and now. Bangkok: Global Center for Good Governance in Tobacco Control (GGTC), Stopping Tobacco Organizations and Products (STOP) project (forthcoming publication).

¹ RRP means "reduced risk products", a term used by tobacco companies to refer to electronic nicotine delivery devices and heated tobacco products.

Tobacco industry arguments

The tobacco industry's arguments against tax policies are the same in different jurisdictions.

What the tobacco industry says	What studies show
Higher taxes will lead to illicit trade (especially smuggling and proliferation of counterfeits) (8). Tobacco companies use this argument despite being complicit or directly involved in illicit trade.	Countries with high taxes do not necessarily have high smuggling levels (9). In Europe, high levels of illicit tobacco trade are found in the countries with the lowest tobacco taxes (10).
Tobacco tax is regressive, so higher taxes are unfair on poorer and more marginal groups in society (8).	Tobacco tax increases are considered progressive, because poorer smokers are more price-sensitive. Therefore, high taxes discourage smoking due to related costs (11). The Asian Development Bank estimates in Thailand that – for a 50% increase in tobacco prices – 60% of averted deaths would be from the lowest socioeconomic group (who would pay only a 6% increase in taxes) (12).
Higher taxes will exacerbate poverty.	Global evidence shows that tobacco taxes help to reduce poverty (12).
Tobacco taxes are unfair on, and punitive towards, smokers (who want to smoke more) (8).	Smokers smoke because they are addicted; over 70% of smokers want to quit (13). An increase in taxes will help smokers to quit (14).
Tax increases will lead to a decline in government revenue (or less revenue than projected) (8).	Tobacco tax increases have led to increases in government revenue (as seen in the Philippines and South Africa) (12).
Tax increases will have negative economic impacts on local businesses and employment levels, as they will lead to greater cross-border trade and/or purchases from shops with tax breaks on tobacco products (8).	The public health benefits and net economic gain from tobacco tax increases are far more significant (15) than any potential business loss. Job losses are largely attributable to tobacco companies' automation and consolidation (11). Cross-border purchases are not associated with significant negative economic impacts, such as unemployment.
Farmers will lose their livelihoods.	Tax revenues can be used to support alternative livelihoods for tobacco growers (11).
There is no link between increased tobacco prices (as a result of increased taxes) and reduced consumption.	Tax/price increases lead to reduced consumption (11). The effectiveness of increasing taxes/prices to reduce smoking has been tested and proven (16).
At the same time, the tobacco industry argues that tax increases result in business losses due to less consumption) (8).	The United Nations Development Programme (UNDP) and WHO estimates show that a tobacco price increase of 50% in China would yield US\$ 66 billion in revenues every year, and avert 20 million deaths over 50 years (17).

Tobacco industry tactics

With the key objective of undermining or pre-empting any attempts to increase taxes, the tobacco industry tries to access top government officials in finance, revenue, customs, trade and investment ministries, and even heads of state, with its warning messages

about tobacco tax increases. In addition, the industry employs a strong public relations strategy, focused on building alliances, to propagate its misinformation campaign. The most common forms of these research, legal and public relations tactics, and related examples, are given below.

Research tactics – discrediting proven science, and exaggerating the economic importance of the industry

Tactic	Description/example	Outcome/how to overcome
Commissioning research	Oxford Economics was commissioned by a tobacco industry-backed think tank, the International Trade & Investment Center (ITIC), to publish studies such as the Asia Illicit Tobacco Indicator. The paper overestimated smuggling and recommended that tax increases should be modest to avoid further losses from illicit trade (18). The think tank disseminated the study to Asian governments as part of its technical input on tobacco taxes to finance ministries (18). Oxford Economics continues to be funded by the tobacco industry through British American Tobacco and Philip Morris International Impact (18). Industry research typically overestimates smuggling rates and misrepresents the impact on the economy and employment.	<p>Raise awareness: enforcement and monitoring (Article 5.3, recommendation 1).</p> <p>Between 2015 and 2016, a regional civil society group, the Southeast Asia Tobacco Control alliance (SEATCA), exposed Oxford Economics' and ITIC's links with the tobacco industry, and challenged the results of studies. SEATCA countered their claim that significant increases in tobacco taxes lead to smuggling, which undermine the tobacco tax policy efforts being advanced in the region (18). ITIC responded negatively to the expose (19), but cut tobacco industry funding after much public pressure (20).</p>

Legal tactics – conspiring to hijack the political and legislative process, and intimidating governments with litigation or the threat of litigation

Tactic	Description/example	Outcome/how to overcome
Providing political/campaign contributions or gifts to policy-makers	<p>In countries that regulate campaign financing, or have laws that require campaign funding to be disclosed, tobacco companies are shown to regularly make campaign contributions (e.g. in Australia, United Kingdom and United States) (21).</p> <p>Studies show that key officials responsible for tax decisions are targeted (22) and funds are given through third parties, such as advertising firms, so that the industry source is not apparent (23). Many instances of political contributions/support by the tobacco industry have been observed by advocates in low- and middle-income countries; however, publicly accessible information is unavailable (24).</p>	<p>Raise awareness; require information from the tobacco industry (Article 5.3, recommendations 1 and 5).</p> <p>According to Article 5.3 Guidelines, Parties to the WHO FCTC should require the tobacco industry and those working to further its interests to periodically submit information on lobbying, philanthropy, political contributions and all other activities. Parties also should require rules for the disclosure or registration of the tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists.</p>

Tactic	Description/example	Outcome/how to overcome
<p>Making payments to public officials, with a view to seeking reductions in taxes or preventing adoption of a law (bribery)</p>	<p>Reports show the tobacco industry paid bribes to interfere with tobacco-related policy in Africa (British American Tobacco, 2015), Dominican Republic (Philip Morris, 1970s) and Czech Republic (Philip Morris, 1988) (23). Philip Morris admitted paying foreign government employees “for the purpose of expediting administrative action”. The tobacco industry argues that they adapt to “local ethical standards” in lobbying, even when observed to be bribing officials (23).</p>	<p>Raise awareness; limit interactions and require interactions to be transparent; require information from the tobacco industry (Article 5.3, recommendations 1, 2 and 5).</p> <p>Any payments or contributions made towards undermining tobacco control policy must be exposed. Since 2017, after the exposure of British American Tobacco’s internal documents showed bribery in Africa, the United Kingdom Serious Fraud Office has initiated investigation of corrupt practices to undermine tobacco control laws (25). In 2010, the United States Securities and Exchange Commission sanctioned tobacco companies “for having paid more than US\$ 5 million in bribes to public officials in Thailand in order to secure tobacco sales contracts for subsidiaries of the Thailand Tobacco Monopoly in Brazil and Europe” (26).</p> <p>Interactions with the tobacco industry must be limited to those strictly necessary for regulation, and any such meeting must be transparent in order to be above suspicion.</p>

Public relations tactics – faking support through front groups, and manipulating public opinion to gain the appearance of respectability

Tactic	Description/example	Outcome/how to overcome
<p>Using front groups and third parties to represent its interests</p>	<p>ITIC, a think tank funded by major tobacco companies (27), had tobacco officials on its board until 2017. ITIC regularly brought together economic experts, including from the World Bank and World Customs Organization, and finance officials from all over the world, to high-level meetings where pro-tobacco-industry publications and studies (28) (e.g. from Oxford Economics) were presented. Essentially, these front groups warned against significant tobacco tax increases on the basis that it would cause an increase in illicit trade.</p> <p>In 2014, ITIC invited public officials, including delegates, to the sixth session of the Conference of the Parties (COP) in Moscow to briefings (29) to promote policies that fall short of Article 6 (price and taxes) and Article 15 (illicit trade) requirements.</p>	<p>Raise awareness; limit interactions (Article 5.3, recommendations 1 and 2).</p> <p>Tobacco control advocates exposed ITIC for its funding and consistently warned government officials about attending its events. This resulted in positive outcomes in many countries, including Cambodia, India and Malaysia.</p> <p>Prior to the COP, the WHO FCTC Secretariat reminded Parties that “Article 5.3 of the Convention and its Guidelines calls upon them not to interact with the tobacco industry and its front groups, including meetings organized by such entities” (or limit their interactions to those strictly necessary for regulation) (30).</p> <p>The WHO FCTC Secretariat raised awareness about this “purported independent think tank that strives to influence governments to adopt measures in contravention of the treaty,” by exposing its tobacco-funding, the tobacco representatives’ role in the think tank, and its publications in contravention of the treaty (30).</p> <p>In 2015, due to public pressure, the World Bank and Indian officials withdrew their participation in an ITIC event (20).</p>

Tactic	Description/example	Outcome/how to overcome
<p>Using so-called CSR to advance its agenda</p>	<p>In Indonesia,¹ the former CEO of Sampoerna's (Philip Morris) charity arm heads a think tank, also contracted by the tobacco company, which developed a "tobacco road map" for the finance ministry.</p> <p>The road map sought to promote the growth of the tobacco sector, in opposition to evidence-based tobacco tax reforms for health, which resulted in the defeat of proposals for tax increases in 2019 (31).</p>	<p>Avoid conflicts of interest; require information from the tobacco industry; denormalize so-called CSR (Article 5.3, recommendations 4, 5 and 6).</p> <p>According to Article 5.3 Guidelines, Parties should denormalize and, to the extent possible, regulate activities described as "socially responsible" by the tobacco industry. To avoid conflicts of interest, Parties should adopt rules (e.g. code of conduct) prescribing the standards with which they should comply in their dealings with the tobacco industry, including disclosure of interest for all those involved in tobacco control, including consultants and contractors. Parties should not award contracts for carrying out any work related to setting and implementing tobacco control policies to candidates or tenderers who have conflicts of interest with established tobacco control policies (32).</p>
<p>Creating media content to oppose taxes</p>	<p>During tax increase deliberations, tobacco industry arguments are reflected in published statements of tobacco allies and front groups in key media outlets. This has resulted in misinformation that sows public confusion. Tobacco advocates also observe a spike in news about increased smuggling activity. This is even though that tobacco companies themselves were complicit in smuggling.</p> <p>For instance, in 2011, the Organized Crime and Corruption Reporting Project revealed that Japan Tobacco International failed to act on its own employees' report of smuggling hubs that were run by its distributors in Russia and the Middle East (including duty-free goods in Syrian Arab Republic and United Arab Emirates) (33).</p> <p>Attempts by Japan Tobacco International to detract attention from its reported complicity in smuggling in the Middle East can be seen in its sponsorship of the Global Illicit Trade Forum in United Arab Emirates in 2018 (34).</p>	<p>Raise awareness; require information from the Tobacco Industry (Article 5.3, recommendations 1 and 5).</p> <p>Parties should raise awareness about the tobacco industry's tactics, including overestimation, complicity in smuggling and its practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf (32). Requiring submission of the tobacco industry's public relations and other marketing-related expenditures will help to reveal the identity of front groups and spokespersons.</p> <p>Requiring submission of information, including details of production, shipment and customers (32), will also help prevent cigarettes from reaching the illicit trade market. To ensure the accuracy of information submitted, the tobacco industry must be made accountable and penalized for wrong information submitted (32).</p>

¹ Indonesia is not a Party to the WHO FCTC, but it has, in the past, adopted policies/practices that are aligned with Article 5.3 of the WHO FCTC.

Other tactics

Whenever tobacco tax increases enter the public debate, tobacco industry front groups and third parties become prominent in the media, so-called CSR activities increase, lobbying activities increase and economic studies are commissioned. An accompanying strategy to challenge the “earmarking of taxes for health” is observed in many jurisdictions (35). Even when tobacco taxes are increased, the tobacco industry employs methods such as dumping, price discounting, absorbing taxes and smuggling to keep prices low (see Box 2 for more examples) (36).

Box 2. Tobacco industry tactics after tax increases

- Stockpiling
- Changing the attributes of tobacco products or their production processes
- Lowering prices
- Over-shifting or increasing prices more than a tax increase
- Under-shifting
- Timing of price increase
- Price discrimination/price-related promotional activity
- Changing the number of cigarettes in a pack
- Exploiting complex tax structure

Third parties or front groups tapped by the tobacco industry to promote its interests include: farmers’ groups, business associations (e.g. United States Chamber of Commerce), smokers’ associations, labour unions, tax payer groups and tax reform groups.

Dealing with the tobacco industry

Without fully understanding the devastating economic impacts of tobacco, many finance ministries typically view the tobacco industry as an ally in economic growth – to the extent that the industry will be invited to assist in combating smuggling (37) and raising revenues, which is ironic due to evidence of the tobacco industry’s complicity in smuggling and tax avoidance/evasion (38, 39). There is often a lack of awareness among non-health ministries about the nature of the tobacco industry and its tactics.

Economic and finance ministries need to treat the tobacco industry differently from other industries to be consistent with the drive towards the Sustainable Development Goals, which incorporate the WHO FCTC (40). Both the United Nations General Assembly and WHO recognizes the fundamental conflict of interest between tobacco control and public health (41). The tobacco industry is not a partner in development, but an industry that requires strict regulation based on international legal obligations. One of the basic regulatory responsibilities is to require the tobacco industry to submit information under pain of penalty (32).

The Protocol to Eliminate Illicit Trade in Tobacco Products¹ provides guidance on information that can be required from the tobacco industry by customs and finance

¹ The Protocol to Eliminate Illicit Trade in Tobacco Products, the first protocol to the WHO FCTC, which entered into force in September 2018, builds upon Article 15 of the WHO FCTC, which addresses means of countering illicit trade in tobacco products.

ministries to prevent the industry from spreading misinformation and causing public confusion about the link between smuggling and tobacco tax increases. This includes information relating to due diligence akin to “know your customer” rules, tracking and tracing (product and shipment data) and various types of records on sales and marketing (records, history, trends and forecasts) (42). The Protocol also reflects global consensus¹ to put the tobacco industry in its place, and makes clear provisions that the tobacco industry must be strictly regulated, is not a partner in anti-smuggling activities, and can instead be required to bear the costs of anti-smuggling initiatives (42).

Recommendations

The Guidelines for implementation of Article 5.3 of the WHO FCTC provide clear ways to counter tobacco industry tactics. For instance, banning so-called CSR activities by the tobacco industry reduces the industry’s opportunity to access policy-makers and potential “allies” or front groups. Requiring information from the tobacco industry, including its political contributions, helps to identify and expose its tactics. Furthermore, raising awareness about tobacco industry tactics helps to address the industry’s interference in tobacco control policies. To prevent undue influence on policy-makers, governments should adopt a code of conduct that prescribes measures to avoid conflicts of interest and unnecessary interactions with the tobacco industry, as well as to ensure the transparency of interactions that occur. Underpinning these measures is raising awareness about the nature of tobacco products themselves, and the true purpose of “socially responsible” activities performed by the tobacco industry.

Article 5.3 Guidelines

Recommendations

1. **Raise awareness** about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.
2. Establish **measures to limit interactions** with the tobacco industry and **ensure the transparency** of those interactions that occur.
3. **Reject partnerships** and non-binding or non-enforceable agreements with the tobacco industry.
4. **Avoid conflicts of interest for government officials and employees.**
5. **Require that information collected** from the tobacco industry **be transparent and accurate.**
6. **Denormalize** and to the extent possible, regulate **activities described as “socially responsible”** by the tobacco industry, including but not limited to activities described as “corporate social responsibility”.
7. **Do not give privileged treatment to tobacco companies.**
8. Treat State-owned tobacco companies in the same way as any other tobacco industry.

Enforcement

Parties should put in place enforcement mechanisms or, to the extent possible, use existing enforcement mechanisms to meet their obligations under Article 5.3 of the Convention and these guidelines.

Monitoring implementation of Article 5.3 and of the Guidelines

Nongovernmental organizations and other members of **civil society not affiliated with the tobacco industry could play an essential role** in monitoring the activities of the tobacco industry.

¹ The Protocol to Eliminate Illicit Trade in Tobacco Products was adopted by consensus at the fifth session of the Conference of the Parties to the WHO FCTC in 2012.

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