



## Why Do We Treat the Tobacco Industry Differently from Other Industries?

This fact sheet explains why over 180 countries that are Parties to the WHO Framework Convention on Tobacco Control (the FCTC) determined that special rules were required to limit governments' interaction with the tobacco industry to protect public health policy and law-setting processes from the interference of the tobacco industry.

### What makes the tobacco industry different from other industries?

*"Tobacco is the only legally available consumer product which kills people when used entirely as intended."*<sup>vi</sup>

There is a strong body of evidence from authoritative bodies demonstrating how tobacco is inherently deadly.<sup>ii</sup> Unlike any other consumer product, it cannot be used without risk. Despite this, decades of evidence show that the tobacco industry actively and consistently acts to delay, dilute and defeat domestic tobacco control measures.

As a result of two United States litigation settlements in 1998, tobacco corporations operating in the United States and abroad were forced to turn over millions of previously secret internal documents dating from the 1950s to the 1990s.<sup>iii</sup> Several U.S. tobacco companies remain legally obligated to continue to produce internal records in smoking and health-based litigation in the United States.<sup>iv</sup> The industry documents, many now reviewed and cited in over 750 reports and peer-reviewed publications<sup>v</sup> provide evidence of how the tobacco corporations operated. The findings of these reviews have shown that tobacco companies:

- knew their products were harmful and killed their consumers;<sup>vi</sup>
- knew that nicotine was highly addictive;<sup>vii</sup>
- hid this knowledge while publicly denying the dangers of tobacco use and exposure to second-hand smoke and the addictiveness of tobacco;<sup>viii</sup>
- targeted young people with advertising and promotions to perpetuate the use of their products;<sup>ix</sup>
- relied on the illegal sales of cigarettes in Africa<sup>x</sup>, Asia<sup>xi</sup>, Europe<sup>xii</sup>, the Middle East<sup>xiii</sup>, South and Central America<sup>xiv</sup>, and North America<sup>xv</sup> as part of their business strategy to increase their market shares.

A number of subsequent reports and investigations have shown how the industry has taken active steps over several decades to undermine efforts of independent researchers, policymakers and regulators to build an evidence base around tobacco use and harms. The industry also actively undermined (and continues to undermine) efforts to implement effective measures to discourage tobacco use and protect people from second-hand smoke.<sup>xvi</sup>

*"[For nearly fifty 50 years] each and every one of these Defendants repeatedly, consistently, vigorously -- and falsely -- denied the existence of any adverse health effects from smoking. Moreover, they mounted a coordinated, well-financed, sophisticated public relations campaign to attack and distort the scientific evidence demonstrating the relationship between smoking and disease, claiming that the link between the two was still an "open question." Finally, in doing so, they ignored the massive documentation in their internal corporate files from their own scientists, executives, and public relations people. . ."*<sup>xvii</sup>

The tobacco industry also initiated a decades-long campaign to undermine the World Health Organization's tobacco control efforts in low- and middle-income countries and ultimately attempted to stop the WHO Framework Convention on Tobacco Control (FCTC) from coming into force.<sup>xviii</sup>

The industry was unsuccessful in its efforts and the FCTC came into force in 2004. This international treaty has been explicitly created to discourage the use of tobacco products and openly confront the tobacco industry. Article 5.3 of the FCTC requires all Parties when setting and implementing their public health policies with respect to tobacco control to “. . . act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.

### **What does this mean for how governments interact with the tobacco industry?**

It is common practice for government policy-makers and decision-makers to engage with affected industries and consult closely on matters of policy and regulation. This is a principle of good government endorsed by many international bodies such as the Organization for Economic and Social Development. However, the past (and ongoing) behaviour of the tobacco industry and the fact that there is no safe means of using tobacco products (unlike any other consumer product) have led governments and international agencies to conclude that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests<sup>xix</sup>.

This conflict therefore demands a unique approach to engagement with the tobacco industry to confront not only the industry's direct strategies, including active lobbying, provision of financial incentives, advertisements and corporate social responsibility initiatives, but also more subtle industry activities. These include building relationships with officials, feeding decision-makers supposedly 'evidence-based' policy documents and building trust and confidence in what tobacco company representatives say.

Certain policy and legislative interventions necessary to prevent interference by the tobacco industry are generic. That is to say they are interventions that should be implemented in relation to all industries, including the tobacco industry (e.g. management of conflict of interest, transparency of engagements, public official codes of conduct, scrutiny to avoid bribery, etc.). Other interventions beyond those deemed necessary for most other industries will need to be developed that deliberately target the tobacco industry.

This is not to say or imply that the tobacco industry should not be consulted on proposed policy or regulation that directly affects it. However, the industry should not have a seat at the table in deciding what tobacco control measures should be developed, implemented, funded or evaluated. Nor should any permitted engagements with the tobacco industry be conducted in secret: there should be full transparency.

### Examples of Tobacco Industry Tactics

- **“We support sensible legislation, and we’re here to help.”** You receive an offer from a tobacco company to help with developing a national tobacco control policy or to draft tobacco control legislation for you. The company assures you that it supports ‘sensible’ and ‘effective’ policy and legislation. When you receive the draft policy or statement, it looks good at first, but then you start to notice some loopholes.
- **New lobby group out of the blue.** Your department/ministry of health is proposing new legislation to restrict smoking in public places and work places. A new, previously unheard of lobby group for hospitality venue owners is suddenly established and runs a well-funded campaign against the legislation.
- **The invisible editing hand.** With no warning, you are suddenly directed to change draft tobacco policies or legislation by senior managers or ministers. You later find out that they have been meeting regularly with senior industry officials.
- **“We strongly support youth prevention programmes.”** A tobacco company offers funding for youth smoking prevention programmes, claiming they are very concerned that young people should not smoke. These campaigns, if accepted, turn out to be ineffective and raise concerns that they may even increase awareness about tobacco among young people. The industry’s emphasis that “tobacco is for adults” may actually have the opposite effect sparking young people’s interest in using tobacco.
- **The never-ending committee process.** A senior tobacco executive suggests establishing a tobacco control committee, or asks to join an existing one. The participation of the tobacco executive on that committee is strongly recommended by the executive because this person “can bring insights into tobacco use that could be helpful for government agencies in setting tobacco controls.” However, for some reason, the committee never agrees on implementing those measures that international health agencies recommend, such as strict legislation and increased tobacco taxation.
- **Money talks I: Political donations.** You hear that large campaign donations are being made to a political party that opposes certain tobacco control measures.
- **Money talks II: Corporate social responsibility.** Substantial donations are made to environmental or social causes in your country. Considerable publicity coverage is given to the fact that tobacco companies provided the funding, and you are surprised about how much this increases people’s acceptance of the tobacco industry as a caring industry and a normal part of society. It seems that people have forgotten, or perhaps don’t want to think about, the fact that thousands of people die each year from the products the tobacco industry promotes.

<sup>i</sup> *The Oxford Medical Companion*. 1994. Oxford: Oxford University Press.

<sup>ii</sup> For example, see: Peto R, et al. 2006. Mortality from smoking in developed countries 1950 – 2000 (2<sup>nd</sup> edition, revised June 2006) Available at: [www.deathfromsmoking.net](http://www.deathfromsmoking.net), accessed 1 February 2012; U.S. Department of Health and Human Services. 2004. *The Health Consequences of Smoking: A Report of the Surgeon General*. US. Department of Health and Human Services, Centres for Disease Control and Prevention, National Centre for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

<sup>iii</sup> *The State of Minnesota and Blue Cross Blue Shield of Minnesota v. Philip Morris et al.* Consent Judgment. Court File No. C1-94-8565. May 8, 1998. Paragraph VII(E). Available at:

<http://www.publichealthlawcenter.org/sites/default/files/resources/mn-settlement-agreement.pdf>; Master Settlement Agreement. Paragraphs IV(c) and IV(d). November 23, 1998. Available at:

<http://www.publichealthlawcenter.org/sites/default/files/resources/master-settlement-agreement.pdf>.

<sup>iv</sup> *United States v. Philip Morris, et al.* Final Order, paragraph. II(C) (2006) Available at:

[http://www.justice.gov/civil/cases/tobacco2/ORDER\\_FINAL.pdf](http://www.justice.gov/civil/cases/tobacco2/ORDER_FINAL.pdf); Order #27-Remand: Consent Order Between The United States, The Public Health Intervenors, Philip Morris USA, Inc., Altria Group, Inc., And R.J. Reynolds Tobacco Company Concerning Document Disclosure Obligations Under Order #1015; Order #28 – Remand: Consent Order Between The United States, The Public Health Intervenors, And Lorillard Tobacco Company Concerning Document Disclosure Obligations Under Order #1015.

<sup>v</sup> For example, see: Tobacco Documents Bibliography at University of California, San Francisco:

<http://www.library.ucsf.edu/tobacco/docsbiblio>, accessed 1 March 2012.

<sup>vi</sup> See, for example: World Health Organization. 2004. *Building Blocks for Tobacco Control: A Handbook*. Geneva: World Health Organization. Available at: [http://whqlibdoc.who.int/publications/2004/9241546581\\_eng.pdf](http://whqlibdoc.who.int/publications/2004/9241546581_eng.pdf), accessed 16 February 2012.

<sup>vii</sup> For example, see: World Health Organization / Norbert Hirschhorn. 2008. *Evolution of the tobacco industry positions on addiction to nicotine: a report prepared for the Tobacco Free Initiative*. Geneva: World Health Organization. Available at: [http://whqlibdoc.who.int/publications/2009/9789241597265\\_eng.pdf](http://whqlibdoc.who.int/publications/2009/9789241597265_eng.pdf), accessed 16 November 2012.

<sup>viii</sup> Ibid, and, for example, also see: Tong E, Glantz G. Tobacco Industry Efforts Undermining Evidence Linking Secondhand Smoke With Cardiovascular Disease. *Circulation* (Journal of American Heart Association). 2007; 116: 1845-1854.

<sup>ix</sup> See, for example: Campaign for Tobacco Free Kids. 2008. Tobacco Company marketing to Kids. Washington DC: CTFK. Available at: <http://www.tobaccofreekids.org/research/factsheets/pdf/0008.pdf>, accessed 16 February 2012.

<sup>x</sup> LeGresley E, et al. British American Tobacco and the "insidious impact of illicit trade" in cigarettes across Africa. *Tobacco Control* 2008; doi:10.1136/tc.2008.025999; U.K. Action on Smoking and Health. Submission to the House of Commons Health Select Committee. February 16, 2000. Available at: [http://www.ash.org.uk/files/documents/ASH\\_567.pdf](http://www.ash.org.uk/files/documents/ASH_567.pdf), Accessed 1 March 2012; International Consortium of Investigative Journalists. *Tobacco companies linked to criminal organizations in cigarette smuggling, Africa*. Washington DC: Center for Public Integrity, 2001. Available at: <http://www.corpwatch.org/article.php?id=898>, Accessed 1 March 2012; Campbell D. *Further Evidence By Duncan Campbell in Respect of Smuggling in Africa by British American Tobacco Plc, Obstruction of Access to Evidence*. UK House of Commons Health Select Committee, Inquiry into the Tobacco Industry and the Health Risks of Smoking. London. January 15, 2000. Available at: [http://duncan.gn.apc.org/bat/Health\\_Committee\\_Evidence\\_2.htm](http://duncan.gn.apc.org/bat/Health_Committee_Evidence_2.htm), accessed 1 March 2012.

<sup>xi</sup> International Consortium of Investigative Journalists. *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling, China*. March 3, 2001. Washington DC: Center for Public Integrity. Available at: <http://www.corpwatch.org/article.php?id=898>, accessed 1 March 2012; Collin J, et al. Complicity in Contraband: British American Tobacco and Cigarette Smuggling in Asia. *Tobacco Control* 2004;13((Supp II)):ii96-ii111.

<sup>xii</sup> Joosens L, Raw M. Cigarette smuggling in Europe: Who really benefits? *Tobacco Control* 1998;7:66-71; Gilmore A, McKee M. Moving east: How the transnational tobacco companies gained entry to the emerging markets of the former Soviet Union. Part I: Establishing cigarette imports. *Tobacco Control* 2004;13:143-150; The Campaign for Tobacco Free Kids. *Illegal Pathways to Illegal Profits: The Big Cigarette Companies and International Smuggling*. April 2001. Available at: [http://www.tobaccofreekids.org/content/what\\_we\\_do/international\\_issues/illicit\\_trade/Smuggling.pdf](http://www.tobaccofreekids.org/content/what_we_do/international_issues/illicit_trade/Smuggling.pdf), accessed 1 March 2012; Joosens L, Raw M. *Turning off the tap: An update on cigarette smuggling in the UK and Sweden, with recommendations to control smuggling*. Available at:

[http://www.sourcewatch.org/index.php?title=Turning off the tap: An update on cigarette smuggling in the UK and Sweden, with recommendations to control smuggling](http://www.sourcewatch.org/index.php?title=Turning_off_the_tap:_An_update_on_cigarette_smuggling_in_the_UK_and_Sweden,_with_recommendations_to_control_smuggling), Accessed 1 March 2012.

<sup>xiii</sup> World Health Organization. *The cigarette "transit" road to the Islamic Republic of Iran and Iraq. Illicit tobacco trade in the Middle East*. Cairo: WHO\_EM/TFI/011/E/G/07.03/1000). Available at <http://www.emro.who.int/tfi/TFIIranIraq.pdf>, accessed 1 March 2012.

<sup>xiv</sup> The Campaign for Tobacco-Free Kids. *Illegal Pathways to Illegal Profits: The Big Cigarette Companies and International Smuggling*. April 2001. Available at: <http://www.tobaccofreekids.org/research/factsheets/pdf/0044.pdf>, Accessed 1 March 2012.

<sup>xv</sup> Ibid, and Marsden W. *How To Get Away With Smuggling Canada's Billion-Dollar Deal for Big Tobacco*. October 19, 2008. Available at: <http://www.publicintegrity.org/investigations/tobacco/articles/entry/765/>, accessed 1 March 2012. A series of reports from the International Consortium of Investigative Journalists released in October 2008 are also available online at: <http://www.publicintegrity.org/investigations/tobacco/pages/introduction/>, Accessed 1 March 2012.

<sup>xvi</sup> See, for example: World Health Organization. 2004. *Building Blocks for Tobacco Control: A Handbook*. Geneva: WHO. Available at: [http://whqlibdoc.who.int/publications/2004/9241546581\\_eng.pdf](http://whqlibdoc.who.int/publications/2004/9241546581_eng.pdf), accessed 16 February 2012; and WHO. 2008. *Tobacco industry interference with tobacco control*. Geneva: World Health Organization. Available at: [http://www.who.int/tobacco/resources/publications/tob\\_ind\\_int\\_cover\\_150/en/](http://www.who.int/tobacco/resources/publications/tob_ind_int_cover_150/en/), accessed 16 February 2012.

<sup>xvii</sup> Judge Kessler, in *United States v. Philip Morris, et al.*, 449 F. Supp. 2d 1 (D.D.C. 2006). Available at: <http://publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/united-states-v-philip-morris-doj-lawsuit> at page 330-331, Accessed 1 March 2012.

<sup>xviii</sup> See: World Health Organization. 2008. *Tobacco industry interference with tobacco control*. Geneva: World Health Organization. Available at: [http://www.who.int/tobacco/resources/publications/tob\\_ind\\_int\\_cover\\_150/en/](http://www.who.int/tobacco/resources/publications/tob_ind_int_cover_150/en/), accessed 16 February 2012; and Hadii M, et al. Project Cerberus: Tobacco Industry Strategy to Create an Alternative to the Framework Convention on Tobacco Control. *Am J Public Health*. 2008 September; 98(9): 1630–1642. Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2509616/>, accessed 1 March 2012.

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<sup>xix</sup> FCTC Conference of the Parties. 2008. *Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry*. Geneva: World Health Organization. Available at: [http://www.who.int/fctc/protocol/guidelines/adopted/article\\_5\\_3/en/index.html](http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html), accessed 16 February 2012.

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