

Tobacco-free world 3



Exposing and addressing tobacco industry conduct in low-income and middle-income countries

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The tobacco industry's future depends on increasing tobacco use in low-income and middle-income countries (LMICs), which face a growing burden of tobacco-related disease, yet have potential to prevent full-scale escalation of this epidemic. To drive up sales the industry markets its products heavily, deliberately targeting non-smokers and keeps prices low until smoking and local economies are sufficiently established to drive prices and profits up. The industry systematically flaunts existing tobacco control legislation and works aggressively to prevent future policies using its resource advantage to present highly misleading economic arguments, rebrand political activities as corporate social responsibility, and establish and use third parties to make its arguments more palatable. Increasingly it is using domestic litigation and international arbitration to bully LMICs from implementing effective policies and hijacking the problem of tobacco smuggling for policy gain, attempting to put itself in control of an illegal trade in which there is overwhelming historical evidence of its complicity. Progress will not be realised until tobacco industry interference is actively addressed as outlined in Article 5.3 of the Framework Convention on Tobacco Control. Exemplar LMICs show this action can be achieved and indicate that exposing tobacco industry misconduct is an essential first step.

Introduction

The inexorable rise in global deaths from tobacco is increasingly driven by trends in low-income and middle-income countries (LMICs)¹ where, by 2030, it is estimated that 6·8 million of the 8·3 million tobacco-related deaths will occur.² The changing global patterns of tobacco use that underpin these mortality trends reflect the presence and actions of the tobacco industry, whose role in expanding tobacco use globally^{3–5} has led to its label as the vector of the tobacco epidemic.

In recognition that the factors driving the tobacco epidemic, notably the actions of the tobacco industry, transcend national borders, WHO used its treaty-making powers for the first time in developing the Framework Convention on Tobacco Control (FCTC). Given overwhelming evidence of the tobacco industry's efforts to subvert public health policy making,⁶ the treaty includes Article 5.3, which requires parties to protect their public health policies from the “vested interests of the tobacco industry”.⁷ The FCTC, which is legally binding, entered into force in 2005 and, by December, 2014, 180 of the UN's 193 member states were Parties to the Treaty. Yet FCTC implementation has been slow and uneven in large part because of tobacco industry efforts to subvert progress in tobacco control.⁸

In this final paper in a three-part Series on a tobacco-free world, we provide an overview of tobacco industry practices focusing on LMICs given three factors: first, the growing importance of LMICs to the tobacco industry's future; second, the increasing tobacco-related disease burden faced by LMICs,⁹ which will increase the policy priority afforded to this issue; and third, the potential, through effective tobacco control

policy implementation, to prevent full escalation of the tobacco epidemic, particularly in Africa. As well as exploring tobacco industry market expansion tactics and policy influence generally, we examine three mechanisms through which tobacco companies are increasingly attempting to prevent progress in tobacco control—the use of international trade and investment agreements, litigation, and the illicit trade in tobacco. Tobacco companies are also exploiting the opportunities presented by harm reduction^{10,11} and regulatory developments such as Better Regulation to enhance their influence,^{12,13} but these currently have less resonance in LMICs and are not, therefore, covered in detail. Finally, we outline how these problems might be

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This is the third in a [Series](#) of three papers about a tobacco-free world

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Key messages

- The tobacco industry's future depends on increasing tobacco use in low-income and middle-income countries, especially among women and young people, and, contrary to industry claims, tobacco marketing deliberately targets these groups
- Tobacco companies consistently contest and seek to circumvent governments' authority to implement public health measures using highly misleading arguments frequently presented via third parties whose links to industry are obscured
- Tobacco companies harness their resource advantages in, for example, establishing partnerships with governments to address the trade in illicit tobacco in which they have been complicit and using the threat of domestic litigation and arbitration under trade and investment agreements to intimidate governments against implementing comprehensive tobacco control measures
- Article 5.3 of the Framework Convention on Tobacco Control and its guidelines offer governments a set of strategies to protect public health against the tobacco industry's appalling conduct, but are underused
- An essential first step in addressing tobacco industry interference is changing attitudes to the industry through actively monitoring and exposing its conduct

addressed and highlight that, despite the egregious examples of industry influence detailed, some LMICs are exemplars in tobacco control and show what can be achieved by prioritising health over tobacco industry interests.¹⁴

See Online for appendix

	Share of world cigarette volume (%)	Leading brands
Chinese National Tobacco Company	43.2%	Hongtashan, BaiSham Red Dragon, Shuangxi, Hongqiqiu, Huangguoshu, Hongmei
Philip Morris International	14.3%	Marlboro, L&M, Bond Street, Philip Morris, Parliament, Virginia Slims
British American Tobacco	11.6%	Pall Mall, Kent, Dunhill, Derby, Lucky Strike, Kent, Vogue
Japan Tobacco International	9.4%	Winston, Mild Seven, Camel, L&D
Imperial Tobacco	4.9%	Gauloises, Davidoff, West, JPS, Marquise, Fortuna, Ducados, Lambert and Butler
Main private companies in US market: Altria, Reynolds American, Lorillard*, Liggett Vector Brands	4.5%	..
Other private companies outside USA† (most co-owned by one of the transnational tobacco companies)	5.7%	..
State run companies‡ other than Chinese National Tobacco Company	3%	..
Private label (supermarkets' own brand tobacco)	0.1%	..
Others (companies with less than 0.1% global market share)	3.4%	..

Data are from Euromonitor (see appendix for details). *In July, 2014, Lorillard and Reynolds American (RAI) entered into an agreement in which RAI agreed to acquire Lorillard; as part of this acquisition Imperial Tobacco will acquire Lorillard's Maverick cigarette brand and e-cigarette brand Blu, and will also acquire RAI's cigarette brands KOOL, Salem, and Winston. †ITC (India), Gudang Garam (Indonesia), KT&G (South Korea), Djarum PT (Indonesia), Donskoy Tabak (Russia), Neman Tobacco Factory Grodno (Belarus), Nojorono Tobacco Indonesia PT, Mighty Corp (Philippines), Godfrey Phillips India Ltd, VST Industries Ltd (India), Adris Grupa dd (Croatia), Bulgartabac Holding AD (Bulgaria). ‡Vietnam National Tobacco Corp, Eastern Co SAE (Egypt), Thailand Tobacco Company, Société Nationale des Tabacs et Allumettes (Algeria), Iranian Tobacco Co, Taiwan Tobacco & Liquor Corporation, and Régie Nationale des Tabacs et des Allumettes (Tunisia).

Table: The global tobacco industry (2013 data)

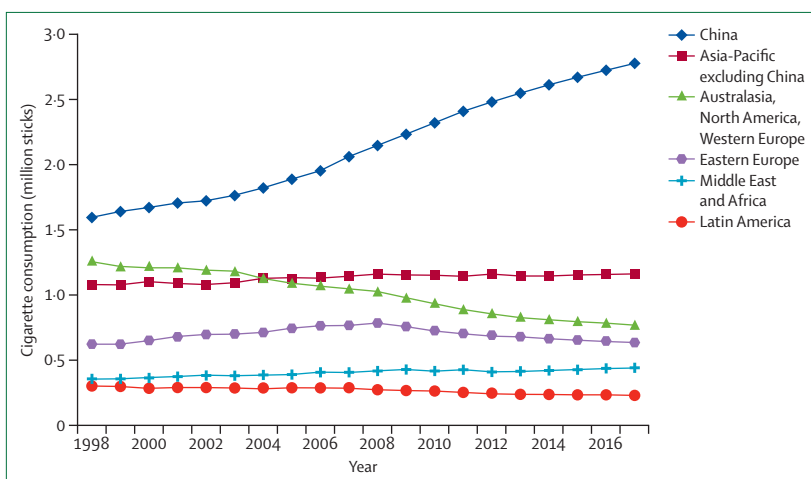


Figure 1: Cigarette consumption by region (historical and forecast data for retail volumes), 1998–2017
Data are from Euromonitor, downloaded May 7, 2014.

The tobacco industry and market expansion

The importance of LMICs

Tobacco industry conduct can be understood in the context of the global tobacco market and the growing importance of and opportunities presented by LMICs. Historically western-based tobacco companies expanded their global sales by using investment and trade liberalisation to enter new markets and acquire smaller companies—Latin America in the 1970s, parts of Asia in the 1980s, and the former communist bloc in the 1990s.^{4,5} So assiduous was this expansion that the global industry is now dominated by just four privately owned transnational tobacco companies (TTCs)—Philip Morris International (PMI), British American Tobacco (BAT), Japan Tobacco International, and Imperial Tobacco (table).¹⁵ Although TTCs persistently seek to make inroads into the world's largest and most rapidly growing market, China (figure 1), it remains dominated by the state-owned Chinese National Tobacco Company (CNTC), the world's largest tobacco company by volume, which has fiercely guarded TTCs' access¹⁶ and is instead emerging as a competitor, producing brands for export to southeast Asia.¹⁷ Beyond this, there are now very few additional state-owned or private companies left to acquire (table).

Consequently, TTCs' future now depends on driving consumption and stretching profit margins in existing markets. With China largely closed to TTCs and consumption falling in most high-income countries (HICs), Latin America, and eastern Europe, their main opportunities for driving consumption arise through promoting smoking in the hitherto underexploited markets of Asia-Pacific, Africa, and the Middle East, where consumption continues to increase (figure 1).¹⁵ The greatest potential lies in Africa, where the largest increases in smoking prevalence are predicted.¹⁸ Population growth¹⁵ and the burgeoning number of adolescents consequent to declining childhood mortality rates⁹ further enhance the attractiveness of LMICs. So too do the limited opportunities elsewhere. In HICs, TTCs have been able to increase profits despite falling sales¹⁹ by overshifting taxes (increasing prices over and above a tobacco excise increase).²⁰ Yet this practice, on which TTCs' share prices depend, looks increasingly threatened.²¹ Finally, the opportunities e-cigarettes presented might be more limited than some had assumed—sales growth in HICs is already slowing²² and profits on e-cigarettes remain lower than on cigarettes with sales accounting for just 0.4% of total value in the combined global nicotine and tobacco market in 2013.²¹ Further, evidence suggests that the tobacco industry might simply seek to harness the reputational and access benefits of e-cigarettes while constraining their ability to genuinely compete with cigarettes.^{10,11} This is supported by media reports that tobacco companies are arguing for greater regulation of more innovative (refillable tank) e-cigarette products than cig-a-like products.²³

Panel 1: Tobacco industry expansion into emerging markets—targeting women and children

Sub-Saharan Africa's rapidly expanding young population and blossoming middle class makes it a prime target for tobacco industry expansion and tobacco companies have been strategically targeting the largely untapped opportunities there. Historical corporate documents indicate that the sale of single stick cigarettes, which continues to this day and makes smoking affordable and accessible particularly for poor and young people, underpins industry expansion in Africa³³⁻³⁵ and efforts to ban their sale have been contested and circumvented.^{36,37} Numerous other efforts are made to market cigarettes to young people. In many African countries, children aged 13–15 years are frequently offered free cigarettes by tobacco company representatives.³⁸ Recent reports document companies marketing candy cigarettes near schools,³⁴ and sponsoring youth-oriented concerts and events.³⁹ Indirectly, youth promotion is also achieved through corporate social responsibility activities such as publicly donating sickle cell anaemia screening machines in the Democratic Republic of Congo⁴⁰ where many children are affected by the disease, and sponsoring the education of hundreds of children in Uganda.⁴¹

Marketing to women and girls who, in low-income and middle-income countries, have lower rates of smoking than men, is also widespread.^{42,43} Efforts include using so-called trend setters to promote and normalise the image of the African woman smoker (figure 2) in an attempt to mollify the cultural barriers to female smoking. The industry's success is evidenced by the rising uptake of smoking in girls in many developing parts of the world.²⁴

Market expansion

The tobacco industry's aggressive approach to market expansion has been widely documented and shown to drive rapid increases in tobacco use.^{3-5,24,25} Historical evidence shows that to drive up sales they market heavily, sell cheaply, systematically flaunt existing tobacco control policies, and prevent future policies by lobbying aggressively.^{4,26-32} Although such strategies are best documented in HICs, Latin America, parts of Asia, and the former Eastern bloc, it is clear they are being repeated worldwide (panels 1 and 2, figure 2).^{33,49-51}

Marketing

Despite tobacco industry claims that it markets only to existing smokers to encourage brand switching, historical industry documents make it abundantly clear that they have deliberately targeted non-smokers, notably young people and women, and that their future depends on driving smoking uptake in these groups.²⁴ For example, as one executive explained "[T]he base of our business is the high school student",⁵² while BAT's marketing plans for its brand Players Gold Leaf referred to targeting those aged "16+" and of "low income low literacy".⁵³



Figure 2: Congo Tobacco Company Celebration of Women in Goma, Eastern Democratic Republic of the Congo, on Women's Day, March 8, 2012

The industry's targeting of women in HICs dates back to the 1920s and linked smoking to emancipation, selling cigarettes as "torches of freedom".^{24,54} Consequently, the gender gap in smoking narrowed in most HICs, parts of Latin America, and eastern Europe, yet elsewhere, particularly in Asia, Africa, and the Middle East, smoking among women remains substantially lower than among men.⁵⁵ Such tactics have, therefore, now been repeated worldwide with the industry capitalising on social and economic change by using marketing to make female smoking more socially acceptable (panel 1).^{24,54,56}

Evidence indicates a causal relationship between tobacco advertising and smoking initiation, and that even brief exposure to advertising has an effect on adolescents.⁵⁷ The high levels of marketing observed across LMICs^{58,59} is therefore of major concern. For example, large numbers of children report being given free cigarettes by tobacco company representatives while most (between 35% and 97% by country) of professional respondents in schools believe the tobacco industry deliberately encourages youth to use tobacco.⁵⁸

Price

Price or tax increases are the most effective means to reduce tobacco use.⁶⁰ A key industry tactic in emerging markets, used as part of its aggressive approach to driving up sales, is to keep prices cheap to encourage uptake and establish use.^{15,61,62} In view of the oligopolistic nature of most tobacco markets, only in some instances are such practices driven by genuine price competition.⁶⁰ Dumping, price discounting, absorbing taxes rather than passing them onto smokers, using smuggling to avoid taxes (see below), and lobbying to keep tobacco taxes low have all been documented as elements of such a strategy.^{4,61,62} BAT has referred to this approach as "share at all costs market dynamics".¹⁵ Once smoking uptake, tobacco sales, and disposable incomes have increased sufficiently, the industry increases prices or encourages consumers to trade up to more expensive brands with

larger profit margins; the aim as one PMI document explains, “to trade consumers up to premium brands as economies develop”.⁶¹

Thereafter, as companies become more established in these markets, the extent of price competition weakens, enabling pricing above competitive levels and generating excess profits.^{19,60} Evidence from as far afield as Ireland, UK, USA, Jamaica, and South Africa suggests that tobacco companies then begin to overshift taxes—ie, increase prices on top of tax rises, at least on premium brands.^{20,60} This enables them to both increase profits and pretend that the government, through tax increases, is solely responsible for the price rise.⁶⁰ Simultaneously they lobby for low tobacco taxes, arguing inter alia that price rises drive illicit trade.^{63,64} Given that the industry itself is responsible for a significant proportion of the price increase, such arguments defy logic.^{20,64} What the industry is effectively appealing for is lower taxes so that it has greater scope to increase prices (and profits).^{20,64} This pattern, and the excess profits enjoyed by tobacco companies in such markets,¹⁹ instead signal scope for governments to further increase tobacco taxes, an opportunity that is frequently overlooked.^{20,64} Where governments have increased taxes, consumption has fallen and tax revenue increased simultaneously.⁶⁰

More detailed analysis shows that, while the overall pattern in established markets is one of overshifting, the tobacco industry simultaneously absorbs the tax increases on its cheapest brands to ensure their real price remains steady or even falls.²⁰ These cheap brands appear to perform two functions—they provide a route into the market for price-sensitive (young) smokers and keep price-sensitive (poorer) smokers in the market.²⁰ Such efforts are combined with price-based marketing, which has increased in importance consequent to restrictions on other forms of marketing and is also targeted at the least well off.⁶⁵ Collectively they undermine the intended effect of tobacco tax policy and are likely to explain inequalities in smoking rates.²⁰

Influencing policy

Political influence in LMICs

The evidence, including systematic reviews of political activity by the tobacco industry, indicates that tobacco companies predominantly use the same tactics and arguments repeatedly over time and across jurisdictions.^{49,63,66} Consequently, the existing literature, despite its predominant focus on HICs, can be used to anticipate and, therefore, counter industry activities elsewhere.⁴⁹ The evidence also suggests some differences in approach, most notably that efforts to influence health policy in LMICs are bolder and, where possible, take advantage of state incapacity and corruption.^{56,67}

Overall tobacco companies continue to place considerable emphasis on economic arguments, rely heavily on third parties, and use litigation aggressively to weaken and prevent public health measures.^{6,14,49,63,66,68}

However, they have also adapted techniques to take account of both challenges to their political legitimacy, now formalised in Article 5.3 of the FCTC, and the opportunities presented by globalisation. For example, in response to their declining political legitimacy, they have increased their use of third parties^{69,70} and attempted to signify a commitment to the public good by rebranding their political activities as corporate social responsibility (CSR) initiatives^{71–74} and exploiting the political opportunities presented by harm reduction.^{10,11} In response to globalisation, tobacco companies are now actively using economic agreements and the opportunities presented by the global trade in illicit tobacco products to undermine progress in tobacco control. As outlined below, both efforts restrict informed scrutiny to experts—international lawyers or experts in illicit tobacco—and particularly threaten countries without the financial means to mount a legal defence or independently investigate the illicit tobacco trade and industry involvement therein.

Misrepresenting costs and benefits of tobacco control

The tobacco industry tends to underplay the potential benefits of proposed policies while emphasising their costs.^{49,75} Consequently, despite the important work of the World Bank showing both the limited economic dependence of LMICs on tobacco and substantial economic benefits of tobacco control,⁷⁶ the industry continues to exploit policymakers’ misconceptions of the economic importance of tobacco, limited knowledge of the socioeconomic benefits of tobacco control and short-term interests in revenue generation.^{29,75,77,78} Its ability to do this is underpinned by efforts to shape understanding of the economic effects of tobacco through the production of lopsided assessments of the economic benefits of tobacco designed to create what, in most cases, is a false choice between health and economic wellbeing.^{79–85} These reports highlight foreign exchange earnings, public revenue, and employment associated with tobacco production (agriculture and manufacturing) and use (retail and hospitality), providing a foundation for alliance building with tobacco supply chain workers.^{84,85} Predictably, however, they ignore the economic and social costs associated with tobacco use and growing, the fact that money not spent on tobacco will be spent on other goods generating alternative employment and public revenue,⁷⁶ and the potential for tobacco farmers, with targeted support, to diversify.⁸⁶

A key audience for such efforts is non-health ministries, whose support is crucial to tobacco companies.^{14,68,87} Recent evidence from Vietnam indicates that concerns over unemployment and public and private debt in LMICs create a particularly receptive policy environment for industry arguments: officials from departments with interests in revenue generation took a so-called politics-as-usual approach to tobacco control, characterised by a low priority for health reform and interdepartmental rivalry.⁷⁸ This reinforces past studies focusing on African and western Pacific countries.^{29,68}

Such efforts appear to enjoy particular influence in tobacco leaf-growing countries (panel 2).²⁹ Yet, it is increasingly apparent that much of the industry's argumentation on tobacco farming is misleading.⁸⁶ Claims that tobacco control measures in leaf-growing nations will suddenly decimate tobacco farming when most of the crop is exported and reductions in local consumption will be small and gradual are simply not credible.⁸⁶ Most LMICs are not dependent on tobacco farming⁷⁶ and economically sustainable alternatives have been identified in various world regions.⁸⁶ Although their application might be complex in some countries, perhaps particularly Malawi and Zimbabwe, the only two heavily dependent on tobacco for foreign exchange earnings,⁷⁶ continued dependence on tobacco also reflects political choices. By refusing to sign the FCTC, countries like Malawi have cut themselves adrift from international efforts to find alternatives to tobacco through FCTC Articles 17 and 18. Government inertia might also be explained by the dead hand of economic conflicts of interest; Malawi has many high-ranking government officials who grow tobacco.⁸⁸ Serious concerns are also being raised about the industry's treatment of tobacco farmers, with bonded labour and child labour key issues.⁸⁶ In the absence of competition, tobacco companies have control over leaf grading and price, and can lock farmers into a repetitive cycle of debt in exchange for supplies.^{29,33} Consequently, tobacco farmers are increasingly supporting tobacco control and diversification efforts. In Uganda, for example, a group of farmers who had switched to growing alternative crops recently submitted a petition to the Speaker of the Parliament in support of the Uganda Tobacco Control Bill 2014, stating that "Tobacco growing is tantamount to making a contract with poverty."

Corporate social responsibility (CSR)

CSR is increasingly central to the tobacco industry's business strategy, yet what appears under the rubric of this ill-defined term indicates that CSR is aimed at maintaining their status as political insiders with a legitimate part to play within health policy making.^{15,71-73} BAT documents indicate that these considerations have driven its CSR programmes from the outset: "The approach should succeed in hauling us closer to a position of co-operation with governments and other important stakeholders in the developed world, while helping to limit the spread of 'demonisation' from the developed world to the emerging markets."⁸⁹

CSR practices work politically by either facilitating conventional political activities (by generating goodwill among policy makers, for instance, charitable donations work to make access to political elites more likely) or creating alternative means of putting conventional political activities, such as constituency building and political access, into effect.^{14,72-74,90,91} Many initiatives do both by exploiting LMICs' acute need for investment in social projects. Thus, BAT-sponsored community water projects and PMI-sponsored education projects in tobacco-farming

Panel 2: Tobacco industry influence in emerging markets—preventing, stalling, and circumventing legislation in Africa

Progress in tobacco control in Africa has been significantly hindered by tobacco industry interference. In Kenya, it took more than 13 years for the Tobacco Control Act 2007 to be approved by Parliament and Namibia's Tobacco Products Control Act, initially introduced in the early 1990s, was not passed until 2010. These delays were attributed in large part to industry interference.^{33,44} In Nigeria, where non-governmental organisations working in tobacco control have pushed for limitations on tobacco industry involvement in policy making, British American Tobacco (BAT) Nigeria ran a full page advert in a July 2014 issue of *The Guardian* (Nigerian) attempting to undermine the non-governmental organisations by informing the public of the "aggressive propaganda against the Tobacco Industry" and claiming the industry had contributed to stronger tobacco control there and therefore "must be part of the solution".⁴⁵ In Uganda, where the Tobacco Control Bill was tabled in 2014, BAT claimed that the bill, although having little effect on demand for leaf, which is almost entirely exported,⁴⁶ would decimate the livelihoods of more than 14 000 farmers with negative economic consequences.⁴⁷ BAT initially cancelled their contracts with the 709 tobacco farmers from the constituency represented by the mover of the bill and later announced they would no longer contract any tobacco farmers in Uganda.^{37,47} Although BAT has now blamed the bill for these decisions, it had previously cited the unpredictability of the tobacco crop in Uganda as the primary reason for withdrawal, while its 2013 closure of a leaf processing plant, relocated to Kenya, hinted that the company had been planning its exit for several years.

Even once legislation is passed, the tobacco industry finds innovative ways to circumvent it. For example, in Kenya, mandated health warnings on cigarette packages are often applied as removable stickers.³³ In Nigeria, BAT has been accused of misleading senior police staff on the definition of "public places" to prevent enforcement of smoke-free legislation.⁴⁸ In Namibia, BAT used legal intimidation to prevent implementation of the 2010 Act.⁴⁴

areas of Sri Lanka, east Africa, and Colombia, for example, build and maintain alliances with farming communities while simultaneously emphasising the value of the industry to social and economic development.^{72,92} This is taken to extreme lengths by aligning industry charitable donations with governments' objectives of achieving the Millennium Development Goals in, for example, Nigeria and Brazil.^{72,93,94} Given the practice of LMICs defending tobacco on the basis of poverty alleviation and development, such approaches promise to be highly effective.⁹⁵ Certainly, internal industry documents claim such activities enabled them to prevent advertising bans in Sierra Leone and Uganda, and to weaken a tobacco bill in Kenya.⁹⁶

Tobacco industry CSR programmes' underlying narrative of cooperation and commitment to "sensible" regulation⁹⁷ also provide a political lubricant for the industry's other activities including the partnerships they are attempting to establish on illicit tobacco (see below). In Ecuador, for example, companies gained acceptance into policy-making networks by emphasising a commitment to regulation under the FCTC, but then using the position to push for weak legislative proposals.^{77,80,98} These are designed to have a limited effect on tobacco consumption and, by filling regulatory space, decrease the likelihood of tobacco legislation being strengthened in the future.^{77,99,100} Continued industry demands to be part of national governments' efforts to develop tobacco legislation^{97,101,102}

underline the ongoing risk that such efforts pose to FCTC implementation. A similar strategy involves voluntarily introducing weak versions of FCTC measures with a view to preventing or delaying the implementation of comprehensive ones. In the mid-2000s, BAT increased the size of weak, text-only warnings on cigarette packs in Colombia, Honduras, Costa Rica, and Trinidad and Tobago, it then taking several years for these countries to eventually approve legislation mandating health warnings aligned with Article 11 guidelines.¹⁰³

Constituency building and third parties

The tobacco industry makes extensive use of third parties to influence health policy in LMICs.^{49,66,80} Third party advocacy carries greater weight with policy elites,¹⁰⁴ colours policy makers' perceptions of the political risks associated with public health measures, and amplifies tobacco industry messaging about the negative effects of policy, not least because news outlets frequently fail to expose the underlying financial conflicts of interest.¹⁰⁵

Different organisations are used to manage different aspects of the regulatory environment. International business organisations, such as the US Chamber of Commerce and US-ASEAN Business Council,¹⁰⁶ are used to lobby officials on the legal and economic implications of public health measures. For example, in 2013 and 2014 when Jamaica and Ireland, respectively, were legislating on tobacco packaging (Jamaica mandated pictorial health warnings covering 75% of the pack while Ireland aims to introduce standardised packaging of tobacco products), the US Chamber of Commerce wrote to both governments claiming the measures would contravene intellectual property obligations under trade and investment agreements.^{107,108} The International Tax and Investment Center (ITIC), which describes itself as an independent clearing house for best practices in taxation is, as acknowledged on its website, sponsored by all four TTCs, which are also represented on its Board of Directors.¹⁰⁹ It hosts seminars, publishes reports, and sponsors conferences on tobacco tax policy and the illicit tobacco trade that promote the tobacco industry's position on these issues and give it "a seat at the policy-making table".¹⁰⁹ Such tactics have proved successful in influencing tax policies in some countries.¹⁰⁹ In October, 2014, it hosted a meeting for finance ministers the day before the FCTC Conference of the Parties meeting (COP) in Moscow where FCTC Article 6 guidelines on tobacco taxation were to be agreed.¹⁰⁹ Clearly intended to threaten progress of the guidelines, ITIC billed the event as a pre-COP meeting giving the impression that it was officially associated with the COP. This prompted WHO to write to all parties explaining that the meeting "is in no manner supported by the Convention Secretariat and cannot be considered as being in any way linked to the COP".¹¹⁰

The International Tobacco Growers Association (ITGA) was established and continues to be funded by the industry as a "front" for its "third world lobby activities".^{87,111}

ITGA presents itself as the voice of the tobacco farmer in contemporary tobacco policy conflicts.¹¹² Its financial links to tobacco companies are rarely disclosed^{111,112} although it is increasingly clear they use ITGA strategically to oppose tobacco control policies.⁸⁷ Farmers are mobilised with misleading arguments about the effects of policies⁸⁷ and encouraged to intervene by various means, including protests, media outreach, policy submissions, and promotion of research, to highlight the negative economic effects of public health measures.^{112,113} The tobacco industry has even managed to have ITGA oppose FCTC Articles 17 and 18, which aim to help farmers by finding viable alternatives to tobacco growing.⁸⁷ Recently, civil society organisations and farmers groups in Africa have launched a campaign highlighting the ITGA's lack of credibility and independence.¹¹⁴

Use of international trade and investment agreements and domestic litigation to deter and challenge progress in tobacco control

The tobacco industry is increasingly using trade and investment agreements, including those overseen by the World Trade Organization (WTO),^{115,116} and domestic litigation,^{49,66} both to challenge existing and deter future tobacco control policies.^{115,116}

Industry documents suggest that tobacco companies developed the argument that innovative health warning policies (including standardised packaging) contravened trade and investment treaties as a deliberate strategy in the 1990s.¹¹⁵ Despite consistent legal advice that the agreements then in existence did not offer protection, the industry successfully used these arguments to deter policy implementation.¹¹⁵ With the growing number of bilateral and multilateral investment treaties including the emerging Transatlantic Trade and Investment Partnership (T-TIP) between the European Union and USA and Transpacific Partnership (TPP), involving 12 countries and around 40% of world trade, this trend looks set to intensify. Moreover, given changes in the nature of such agreements and evidence of industry efforts to influence their content in ways that make it easier to challenge policies, these agreements might now pose even greater challenges to tobacco control.¹¹⁶⁻¹¹⁸ Key concerns are that bilateral investment treaties enhance intellectual property rights and, by contrast with most current major economic agreements, which only allow governments to lodge formal complaints, give corporations legal standing to directly challenge governments' regulation through investor state dispute settlement (ISDS) arrangements. ISDS arbitration can be costly and uncertain and grants compensation (not sanctioned retaliation, like in the WTO), thereby significantly increasing the financial risks to countries facing such disputes.^{116,117}

Although corporations are unable to directly bring a case to WTO, some LMIC governments appear willing to act as tobacco industry puppets. Currently, five countries—Ukraine, Honduras, the Dominican Republic, Cuba, and

Panel 3: British American Tobacco's efforts to challenge health warning legislation in Sri Lanka^{138,139}

In August, 2012, the Sri Lankan Ministry of Health passed regulations requiring pictorial health warnings covering 80% of the front and back of tobacco packs and in February, 2014, the Sri Lankan Parliament approved legislation to this end. Meanwhile, however, Ceylon Tobacco Company (CTC), a British American Tobacco subsidiary, has brought a series of legal challenges against the legislation that have led ultimately to a significant delay in implementation and a shrinking in size of the warnings to 60%.

The initial lawsuit claimed the regulations were impossible to implement, the company would only comply if the requirements were "reasonable" (35% of the pack surface), and that the Ministry of Health did not have the authority to issue such regulations. The case went through several layers of the court system, which at one point suggested that both parties settle with the Ministry of Health reducing the size of the warnings, a suggestion it refused, until CTC ultimately filed the case in the Supreme Court. The Supreme Court first delayed implementation of the warnings before ruling in May, 2014, that the Ministry of Health had the right to impose the health warnings but ordered a reduction in size to 50–60% of the pack surface. The new warnings were due to be in place by July 1, 2014, but, just 2 weeks before that, CTC filed a further appeal with the Supreme Court requesting a 10–11 month extension to the date of implementation for the company to sell already available stocks. On July 11, 2014, a final ruling has delayed the 60% pictorial health warnings until Jan 1, 2015.

Panel 4: Ways in which cigarette smuggling can benefit the tobacco industry and evidence of industry complicity (see appendix for sources)

It is important to note that tobacco companies make their profit when they sell to the distributor and whether the cigarettes are then sold through legal or illegal channels makes little difference. However, sale through illegal channels has three main advantages for the industry (as well as obvious risks). First, it bypasses tariff and non-tariff barriers to trade and thereby gets cigarettes into otherwise closed or protected markets, a key market entry technique that tobacco companies have used extensively in the past. Second, smuggled cigarettes either have no excise duties on them or duties from a lower tax jurisdiction, meaning they are sold more cheaply than they should. This means more sales, particularly to young and poor groups who are the most price-sensitive. Third, despite evidence of involvement in illicit trade, tobacco companies have used it to shape policy in their own interest by arguing that demand for the illicit product, rather than its supply, drives the problem. For example, in countries where they want to invest, they argued that the presence of illicit trade signals a need for foreign investment (rather than the involvement of the potential foreign investors). Elsewhere, they argued that illicit trade is driven by high taxes and will fall if they are reduced.

Through the 1990s overwhelming evidence emerged that cigarette smuggling was a core part of tobacco industry business, actively used on a global basis. This prompted investigations and lawsuits and it had generally been assumed that industry involvement in the trade had ceased. Emerging evidence suggests this might not be the case and that, although the way in which industry cigarettes are smuggled might have changed, some degree of complicity continues and at the very least tobacco companies continue to overproduce or oversupply cigarettes in the apparent knowledge that they will leak into the illicit market.

Indonesia—are complainants in a formal WTO dispute against Australia's standardised packaging legislation. These countries, alongside other (predominantly leaf-producing) LMICs, also challenged Australia for many months before the formal dispute within WTO committees¹¹⁹ and expressed concerns about the European Union's Tobacco Product's Directive when notified to the WTO in 2013.¹²⁰ Similar countries, Malawi among them, continue to vocally challenge other tobacco control measures in the WTO including bans on tobacco additives in Canada and Brazil.^{121,122}

These disputes are rarely genuinely about trade. They are rather about the threat that regulation poses to tobacco companies and their ability to convince governments to challenge such innovation on their behalf. In the case of standardised packs in Australia, the complainants do not export large volumes of tobacco products to Australia, if at all.¹²³ Instead, PMI or BAT funding for four of the five claims against Australia has been acknowledged.^{124,125} In Malawi, the tobacco industry is thoroughly integrated into official international trade policy making—it has leadership roles on the National Working Group on Trade Policy and the Private-Public Dialogue Forum.^{126,127} While the tobacco industry is clearly adept at cultivating strong political ties in countries where tobacco growing is

widespread, it is also apparent that they take advantage of poor governance and corruption: 18 of the 27 countries that directly challenged Canada's ban on tobacco additives scored in the corrupt or highly corrupt range on Transparency International's Corruption Perceptions Index, and only three in the "clean" range.¹²⁸

LMICs have also been subject to industry efforts to use economic treaties to threaten innovative tobacco control policies both historically^{129,130} and recently. Uruguay is currently defending its large, graphic warning labels in international arbitration.¹³¹ PMI (with 2013 revenues of more than US\$59 billion and profits near \$9 billion¹³²) claims that Uruguay (with total budget revenues of around \$17 billion and expenditures of \$19 billion¹³³) is violating the provisions of a bilateral investment treaty that the country has with Switzerland (PMI's corporate home), even though Article 2.1 of the treaty clearly provides for a public health exception.¹³⁴ Without an international non-

Panel 5: The tobacco industry's ongoing attempts to infiltrate and undermine global efforts to address cigarette smuggling

The Illicit Trade Protocol (ITP), a supplementary treaty to the Framework Convention on Tobacco Control, was adopted in November, 2012, and puts technology, via a global track and trace system, at the heart of addressing illicit tobacco. It specifies clearly that the tobacco industry should play no part in such a system. Leaked industry documents show the transnational tobacco companies had prepared for this by secretly developing a plan to promote Codentify, a pack labelling system developed and controlled by Philip Morris International (PMI), as the track and trace system of choice. Not only does Codentify not meet the ITP requirements for a track and trace system,¹⁵⁹ but this would put the transnational tobacco companies in control of a global system seeking to address the illicit tobacco trade in which they have been extensively involved. Further, it directly contravenes both Article 5.3 and the ITP's requirement for the system to be independent of industry.

In 2011, the four transnational tobacco companies collectively established the Digital Coding and Tracking Association (DCTA) in Switzerland to collaborate with governments and international organisations and promote Codentify, and PMI alone donated €15 million to INTERPOL, the world's largest police organisation. By July, 2012, DCTA had begun working with INTERPOL to make Codentify accessible to law enforcement agencies globally via INTERPOL's Global Register. Subsequent to the donation, INTERPOL controversially applied for Observer Status at the November, 2012, Conference of the Parties claiming its ability to coordinate and facilitate international cooperation to eliminate illicit trade would be an asset.^{154,160}

In 2014, the industry's DCTA was a major sponsor of the World Customs Organisation conference on illicit tobacco in Brisbane, Australia. KPMG's Robin Cartwright presented in DCTA's time slot, but his presentation did not mention that he is leading a £10 million project on behalf of PMI.^{154,161} Simultaneously, KPMG and GS1 UK launched a new report promoting Codentify.¹⁶² Although this report acknowledges that KPMG has worked for the tobacco industry and cites funding from DCTA, it fails to note that DCTA is effectively the tobacco industry.

As part of their apparent efforts to further ingratiate themselves with the international law enforcement community, in 2011 PMI donated €55 000 to the International Anti-Corruption Academy,¹⁶³ an organisation initiated by the European Antifraud Office and the UN Office on Drugs and Crime¹⁶⁴ to provide anti-corruption education and research.

governmental organisation, Bloomberg Philanthropies, supporting its legal costs, Uruguay would probably have abandoned its regulatory efforts.¹³⁵

Tobacco companies are aggressive litigants, bringing legal challenges even when their own advisers indicate that action is likely to fail,¹³⁶ and reports suggest a four-fold increase in tobacco industry litigation against public health measures between 2005 and 2011.¹³⁷ Such challenges seek to delay, overturn, or weaken public health measures (allowing, for example, smoking in ventilated areas or limiting the size of health warnings; panel 3).¹⁴⁰ Among other measures, proposals in LMICs to increase the size of health warnings (Thailand,¹⁴¹ Sri Lanka,^{142,138} Nepal¹⁴³) and introduce graphic health warnings (Paraguay,¹⁴⁴ Philippines^{1,145}), restrictions on public smoking (Uganda,¹⁴⁰ Kenya,¹⁴⁰ Mexico,^{84,146} Argentina,^{1,147} Brazil¹), marketing (South Africa,^{140,142} Panama,¹ Colombia,¹ Brazil¹), and additives (Brazil¹⁴⁸⁻¹⁵⁰) have all recently been challenged in national courts. Interestingly, many of these cases fail,^{1,138,140,142,143,151-153} reflecting a similar pattern in Europe.^{1,136,142}

Given the frequency with which court challenges are made and the breadth of measures that have been subject to legal challenge, the number of informal threats of litigation to policy makers that never come to light, but might have deterred progress in tobacco control is likely to be significant.⁴⁹

Tobacco smuggling

The availability of cheap, illicit tobacco undermines attempts to reduce tobacco use and is a public health concern that has prompted the inclusion of an Illicit Trade Protocol (ITP) within the FCTC. Yet a far greater concern is the way the tobacco industry is increasingly manipulating the problem of tobacco smuggling for policy gain in ways that seriously threaten progress in tobacco control. Tobacco companies make their profit when they sell to the distributor and whether the cigarettes are then sold through legal or illegal channels makes little difference. However, the sale of cigarettes through illegal channels has several advantages for tobacco companies (panel 4). Despite overwhelming evidence of the industry's historical involvement in cigarette smuggling (panel 4) and growing evidence of ongoing complicity, for example through overproducing or oversupplying markets with product that then leaks into illicit channels,¹⁵⁴⁻¹⁵⁶ tobacco companies have managed to shift the illicit tobacco issue from a public relations disaster in which they were identified as the pariah supplier of illicit product^{157,158} to a public relations success story in which they are increasingly perceived as the victim of and solution to the problem. Through their assiduous efforts in recent years, tobacco companies have effectively hijacked the ITP (panel 5) and are actively using the threat of illicit trade to counter tobacco control policies by arguing, misleadingly, that tobacco control policies drive increases in illicit trade.^{63,64,165,166}

Tobacco companies have worked assiduously to achieve this position by taking advantage of the complexity of the issue and using their resource advantage to dominate every aspect of the debate. First, by commissioning reports and surveys, tobacco companies have come to control the data and evidence on illicit trade and use this to dominate media coverage, secure access to authorities, and promote industry messaging on illicit trade¹⁶⁷⁻¹⁶⁹—for example, that illicit trade is driven by public health policies rather than weaknesses in customs and law enforcement and that counterfeiting and intellectual property crime are the primary concerns.¹⁶⁰ The volume of industry reports of this nature produced in recent years has been overwhelming, making it impossible for tobacco control groups to adequately respond. Where industry evidence and data from Europe, Africa, Asia, Latin America, and Australia have been examined, they have been found to be seriously flawed, to significantly exaggerate the scale of illicit trade (and the counterfeit element) and underplay industry involvement.^{154,167,169-175}

Second, tobacco companies fund activities under the umbrella of CSR (training for border patrol and customs officials, funding for sniffer dogs^{176–178}) to further cement access and signal the need for partnership between industry and authorities. These activities have enjoyed success as far afield as Azerbaijan, Mali, Namibia, and South Africa, as well as at the supranational level (panel 5).¹⁷⁹ Consequently tobacco companies are now cooperating, both formally and informally, with various governments and intergovernmental agencies, contrary to Article 5.3. Alongside extensive CSR efforts (see above) and claimed commitments to harm reduction (which have hitherto largely featured in HICs^{10,11}), such efforts are undoubtedly intended to counter the TTCs' gradual exclusion from the policy arena and undermine Article 5.3. More worryingly, if the norm of cooperation the industry is seeking to establish in illicit trade seeps over into other areas of policy, it threatens tobacco control more generally.¹⁸⁰

Third, tobacco companies have been funding a growing number of third parties—organisations and individuals (notably ex-policemen)—who provide credibility and are deliberately used as so-called media messengers or report authors, their links to industry rarely disclosed.¹⁸¹ The 2014 report produced by KPMG for the tobacco industry's Digital Coding and Tracking Association (panel 5) and ITIC's activities (see above) are just recent examples. Press coverage frequently fails to expose industry backing for these reports or their inaccuracy.¹⁶⁸

Collectively such efforts are enjoying considerable success and should be seen as part of the industry's audacious attempt to secure control over the Illicit Trade Protocol and ensure it is put in charge of the global track and trace system that the protocol envisages as addressing global cigarette smuggling (panel 5). Yet the danger of regulatory capture with the industry coming to control both the data on and how the illicit trade is dealt with is illustrated by the legally binding deals reached between the four TTCs and the European Commission, which growing evidence suggests have failed. While data show that genuine tobacco industry products are still being smuggled in significant volumes in the European Union, the payments TTCs have had to make have been so tiny as to provide no effective disincentive.^{156,182} If a legally binding deal in a well resourced jurisdiction has failed, this raises major concerns about the deals, binding and voluntary, negotiated elsewhere. As experts note, no deal with the tobacco industry has ever led to a positive outcome for public health.¹⁷⁹

The way forward

Addressing tobacco industry interference should be simple. FCTC Article 5.3 guidelines outline the measures needed,⁷ technical reports flesh these out in detail,^{183–186} and this paper shows that industry tactics are repeated over time and place and could therefore be predicted and countered.⁴⁹ Yet, although growing numbers of countries

Panel 6: Progress in the Philippines

In January, 2013, after a hard-fought political battle against the tobacco industry (led by Philip Morris International) and its allies, and following active efforts to implement Article 5.3,¹⁸³ the Philippines Government implemented a major reform of tobacco excise tax structure and rates including hypothecating the tax for health purposes. The reform sought to eventually eliminate a structure that favoured incumbent firms and kept taxes and therefore prices of tobacco products low. Though the country has long endured a reputation for poor governance and corruption,^{194,195} governments can change. In this case, there was strong overt support for the reform from the highest political levels, including the President, the finance minister, the commissioner of the revenue authority, and the leaders in both houses of the national legislature.^{196,197} More importantly for countries seeking to replicate this success, the government successfully linked the reform strongly to health, both in terms of mitigating tobacco use but also by hypothecating the vast proportion of new revenues to providing universal health coverage to the country's most vulnerable populations. These linkages engendered widespread legislative and public support, which ensured the reform's success. As of mid-2014, early estimates suggest that tax revenues have increased and are going to the hypothecated programmes, and smoking prevalence in young people and those with lower incomes are now falling.^{198,199}

have taken steps to prevent tobacco industry interference, successful implementation of Article 5.3 is almost non-existent.¹⁷⁹

In practice, countering of tobacco industry influence is complex. Even where efforts have been made to implement Article 5.3, tobacco companies offset such efforts by expanding their use of third parties, changing the regulatory architecture in a way that cements corporate access and influence^{12,13,187,188} and influencing economic agreements to enable them to challenge policies.¹¹⁷ Tobacco companies will continue to secure access and influence as long as it remains acceptable to do so. A necessary first step, therefore, and a prerequisite to advancement of tobacco control, is to change attitudes to the tobacco industry. This requires civil society to actively monitor and publicise industry misconduct (as detailed in Article 5.3) and for ministries of health to help to disseminate these findings within government and beyond. Since tobacco companies spend millions each year attempting to rehabilitate their image^{189–192} and because institutional memories are short, such efforts must be ongoing. It is no coincidence that the countries (in all income groups) with the most successful tobacco control policies also have the most active programmes of industry monitoring (witness Thailand, Brazil, UK, Australia)^{14,193} and that recent progress in others has come in part through recognition of industry malfeasance and efforts to implement Article 5.3 (panel 6). Although such efforts currently focus at the national level, industry influence also increasingly occurs at a supranational level (the deals with INTERPOL, lobbying by ITIC and regional business organisations, for example). To address this, parties to the FCTC must cooperate, share knowledge, raise awareness among and hold intergovernmental agencies to account, and ensure that industry activity

beyond national boundaries is monitored and reported. Although WHO has a mandate to monitor the industry's supranational activity, funding for such efforts would need to be met by member states or international non-governmental organisations. Finally, TTCs' HIC host governments should play a more active part in holding TTCs to account. By contrast with Switzerland (now home to two TTCs, PMI and Japan Tobacco International), the UK Government (home to BAT and Imperial Tobacco) has made a start in developing guidelines for diplomatic posts.²⁰⁰

This approach does not overlook the fact that industry influence is a manifestation of the inequalities in power and resources between TTCs on one hand, and nation states and civil society on the other. This is particularly the case in LMICs. Instead it recognises that this resource imbalance can only be directly addressed through radical measures that curtail the tobacco industry's excess profits¹⁹ or fundamentally alter its structure.²⁰¹ The difficulties countries face in implementing even simple tobacco control policies underline that these more radical endgame solutions, although much needed, are unlikely to be achieved without first changing attitudes to the industry through the actions above.

Yet, although the ability of tobacco control policies to rapidly reduce non-communicable diseases in LMICs is widely recognised, the political complexities of implementing such measures are overlooked.⁹ The Gates Foundation and Bloomberg Initiative to Reduce Tobacco Use are exceptional in recognising this problem and supporting policy advocacy for tobacco control, including efforts to address tobacco industry interference. However, until this need is more widely recognised and tobacco control embedded more firmly in the development agenda, progress will remain slow. Economies of scale can be realised by collectively addressing the corporate vectors of non-communicable diseases, including tobacco, alcohol, processed food, and sugary drinks, and the shared mechanisms (eg, international economic agreements) through which their influence is mediated.^{202,203} Governments should also look to polluter pays principles, hypothecated taxes, or price regulation¹⁹ to fund these efforts.

Governments and civil society must also look to implement other elements of Article 5.3 (including limiting interactions with industry and ensuring their transparency, rejecting partnerships with industry, avoiding conflicts of interest for officials, denormalising activities industry describes as "socially responsible"). Most ministries of health are now cognisant of tobacco industry misconduct and the requirements of Article 5.3 and can therefore play a key part in informing other government departments. Although departments seeking to control illicit tobacco might need to meet with and obtain data from the tobacco industry, they should ensure such interactions meet the standards of transparency required of Article 5.3 and learn to treat

industry data with scepticism. Similarly civil society and ministries of health must urge governments to reverse any agreements tobacco companies have hitherto secured with governments. Prospectively, progress on Article 5.3 is likely to be enabled by first implementing the most feasible measures. For example, many countries have codes of conduct for civil service to which guidance for interaction with the tobacco industry could be added and provisions consistent with 5.3 can be added to tobacco control legislation as it is being developed. More broadly, improving standards of governance and transparency in policy making and public life and ensuring greater public health involvement in trade and investment agreement negotiations would help.

Beyond this, several specific technical interventions should help to address industry interference in LMICs and beyond. Technical support and capacity building is needed to enable parties to deal with legal challenges to tobacco control via both domestic courts and international dispute settlement mechanisms and is being addressed via the relevant knowledge hubs.²⁰⁴ Investigative research and capacity building in illicit tobacco is needed to further understand and address this complex issue. Updated research that directly addresses industry economic arguments, including those on tobacco farming, is also needed alongside efforts to accelerate the development of FCTC Article 17 and 18 guidelines on support for economically viable alternatives to tobacco. Moving forward, LMICs must guard against industry efforts to alter the regulatory architecture; for example, through the application of Better Regulation principles and business impact assessments, which have been shown to embed and enable corporate influence.^{12,13,188}

Conclusion

Tobacco industry interference with governments' efforts to implement tobacco control policies remains one of the greatest challenges to prevention of the harm caused by this industry. Tobacco companies continue to promote their lethal product and circumvent or prevent development and implementation of effective tobacco control policies. Select countries in all income groups, including those where the industry is a significant economic player,¹⁹³ show that actively addressing tobacco industry misconduct is achievable and enables effective tobacco control; elsewhere, however, despite a legal obligation to implement the FCTC, progress is lamentably slow and an epidemic that could be prevented continues to escalate. Although debate centres on whether progress can be most rapidly achieved through implementation of FCTC provisions or moving to more radical endgame solutions, active addressing of tobacco industry interference is a prerequisite to both. Changing attitudes to the tobacco industry through actively monitoring and exposing its conduct is an essential first step towards a tobacco-free world.

Contributors

ABG conceived the idea for and developed the framework for the paper, produced the first draft, and led further edits and revisions. JD and SAB provided feedback on the framework for the paper. GF, JD, and RRJ prepared subsections of the paper. SAB prepared case study material. All authors contributed to editing of the paper and approved the final version.

Declaration of interests

We declare no competing interests.

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