

FEATURE



TOBACCO CONTROL

Slaying the dragon: how the tobacco industry refuses to die

The tobacco industry is using an increasing range of techniques to regain its influence over public policy making—with some alarming success, reports **Jonathan Gornall**

Jonathan Gornall *freelance journalist, Suffolk, UK*

On 11 March, the UK's House of Commons took a bold and exemplary step, voting into law legislation that will introduce plain packaging for cigarettes in England by May 2016. Following Australia and, by just a few weeks, Ireland, England becomes only the third country to open up this latest front in the battle against tobacco harm.

The decision was exemplary, says the global tobacco control campaigner Judith Mackay, because it will encourage other countries with fewer resources to follow suit. But it was bold because inevitably the UK will now be engulfed in a storm of legal challenges from an industry determined to fight for every inch of ground, even as its products continue to kill millions around the world (fig 1⇓).

The UK has voted itself into membership of a select club of countries that since 2010 have been embroiled in legal actions launched by the industry. They include pathfinder Australia, which has been fighting challenges to its Tobacco Plain Packaging Act since 2011.

"I would say that nowadays no country can pass seriously useful legislation without a legal challenge," says Mackay, senior adviser to the World Lung Foundation and the World Health Organization.

"The courts throw out almost all these cases, but the problem is they intimidate and leave other countries very reluctant to step into the fray."

Within days of the vote in the House of Commons, the industry made plain its determination to fight plain packaging all the way, contesting the loss of its intellectual property rights—pack designs and branding—and alleged breaches of World Trade Organisation rules on international trade.

"Legal action is not something we want to undertake; nor is it something we enter into lightly," said Jerome Abelman, corporate and regulatory affairs director for British American Tobacco (BAT), in a statement after the vote. "But the UK Government has left us with no other choice . . . Any business that has property taken away from it by the state would inevitably want to challenge and seek compensation."¹

There was a similar message from Imperial Tobacco. "We have long been making the point that plain packaging legislation would be a big mistake," said Axel Gietz, director of group corporate affairs in a press release.

"We have a fundamental right to differentiate our brands from those of our competitors and, should plain packaging pass into law, we would regrettably be left with no choice but to defend our legal rights in court."²

Continuing threat

By chance, the UK vote on plain packaging served as a prelude to the launch last month of the fifth edition of the *Tobacco Atlas*, published by the American Cancer Society in conjunction with the World Lung Foundation.

The atlas, available online, systematically lays bare the grotesque nature and impact of the tobacco industry, using maps and graphs to highlight everything from the global cost of smoking in health and lives to the efforts the industry is making around the world to hold back the tide of tobacco control legislation.³

It serves as a timely reminder that, in the words of WHO, "it's important to understand that tobacco products are the only legally available products that can kill up to one half of their regular users if consumed as recommended by the manufacturer."⁴

It is true that the prevalence of smoking in some countries, such as the UK, is in decline. Data from the Office for National Statistics shows that the proportion of the UK adult population that smokes has fallen by more than half in the past 40 years, from 46% in 1974 to 19% in 2013.⁵

Likewise, although overall profits continue to rise—BAT's 2013 annual report, for example, noted it was "positioned to continue to deliver strong profit and dividend growth for many years to come"⁶—the industry's big four players all report the overall volume of cigarettes sold worldwide is in decline. BAT sold 667 billion cigarettes in 2014, "a decline of 1.4% against an estimated industry decline of 2.5%."⁷

Nevertheless, says Mackay, a coauthor of the *Tobacco Atlas*, it would be a grave mistake to regard the tobacco industry as a slain dragon and smoking as a public health threat in retreat (fig 2)).

“If you are very successful in tobacco control, you can bring the prevalence down by about 1% to 2% a year,” she says. “That’s a real success, and you have to fight to achieve that.”

But with the current global population of just over 7 billion predicted to increase by one billion in the next decade, reaching 9.6 billion by 2050, the reality is that population expansion, in creating more smokers throughout the world, will nullify any global decrease in prevalence.⁸ By 2030 or 2040, says Mackay, “we will have a lot more smokers in the world than we do today and the industry is certainly going to be selling a lot more cigarettes than it does today.”

Mackay says no tobacco farmer or manufacturer needs to worry about their job in their lifetime and “that seems quite depressing. On the other hand, if we did nothing it would be very much worse, so we do have to keep going.”

New products

Bombarding governments with legal challenges is just one of the tactics employed by an industry which, though supposedly declared *persona non grata* by the WHO’s Framework Convention on Tobacco Control,⁹ is using an increasing range of techniques to reclaim its seat in the regulatory and public health debates.

Electronic cigarettes, says Mackay, are a key tool in this process, and the industry is exploiting them for all it is worth.

The development of e-cigarettes has moved so fast that the public health jury is still out on whether they will reduce the consumption of cigarettes or serve as a gateway to smoking.^{10 11} “We won’t have the behavioural science in for some years to come,” says Mackay.

But regardless, she sees another, more insidious threat. The industry, she says, is exploiting public health confusion over e-cigarettes “to skirt laws—should they be banned in smoke-free areas or not?”—and to “renormalise smoking.”

E-cigarettes are also an increasingly important part of the industry’s determined attempt to regain the moral high ground. Self imposed “tobacco harm reduction” is, of course, greatly preferable to draconian regulation.

E-cigarettes, developed in China, were first sold in Europe in 2006. It took the industry a while to realise the potential, but over the past few years many of the small entrepreneurial firms who kickstarted the trend have been taken over by one or other of the big four tobacco firms (fig 3)), which have also launched their own brands.

In the past few months alone, Japan Tobacco International (JTI), the third largest of the big four firms, has acquired vaporisation patents and trademarks from Ploom, a company that makes pods for e-cigarettes containing actual tobacco,¹² and bought Zandera, a company that produces the UK’s leading e-cigarette brand, E-Lites.¹³

Imperial, the fourth largest global tobacco company, has a non-tobacco subsidiary called Fontem Ventures which recently launched the Puritane e-cigarette brand in the UK and has also acquired the blu brand.¹⁴

BAT is “confident that our investments in both high growth markets and new product categories will help us drive growth and build shareholder value in the years ahead,” but is also investing in “a portfolio of innovative new tobacco and

nicotine-based products alongside our traditional tobacco business.”¹⁵ In addition to e-cigarettes, these “next-generation” products include nicotine inhalation and so-called “heat not burn” devices.

By entering the e-cigarette market, the tobacco industry is repositioning itself as a player in the public health debate. Despite the fact that it sells more than 660 billion cigarettes a year around the world, and that as the second largest global tobacco company it must bear responsibility for a large share of the six million deaths caused each year by smoking, BAT insists it is “serious about harm reduction” and says it is “working with scientists and regulators” to achieve this.¹⁵

Its approach includes “nicotine-based alternatives” such as e-cigarettes developed by its offshoot Nicoventures. But, acknowledging that “our core business continues to be tobacco,” it says it is focusing on “scientific research and clinical studies into reduced-risk tobacco products . . . including reduced toxicant cigarettes and innovative next generation tobacco products.”

What these might be remains to be seen, though a public health response to BAT’s insistence that “we want to reduce the public health impact of our products” might be, “So stop making and selling them.”

However, what is clear is that the industry hopes “harm reduction” will reopen doors in government and elsewhere that have been closed to it for years—and, according to a passage in one BAT document, that process is already under way.

“We’re seeking widespread support for tobacco harm reduction through our engagement and work with scientists and public health professionals,” said BAT in a 2013 report on sustainability. “We’re also asking for regulatory changes that will support the commercialisation of reduced-risk, scientifically assessed products.”¹⁶

Parliamentary relations

But if the industry is hoping to be invited in once again through the front door, it is clear that it continues to sneak in around the back, engaging with sympathetic parliamentarians in the battle against tobacco controls.

The UK government has been a signatory to the WHO’s Framework Convention on Tobacco Control since its adoption in 2003 and thus bound by its edict that “parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.”

Despite this, and the convention’s recognition of the “fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests,” a large number of MPs and members of the House of Lords continue to maintain relationships with the industry.

For example, a review of the declarations of interest of the members of both Houses shows that since 2010 38 MPs have accepted invitations, mainly from JTI, to attend events such as the Chelsea Flower Show, test match cricket at the Oval, pop concerts, tennis at Wimbledon, and operas at Glyndebourne.¹⁷

Of these, 20 voted against plain packaging on 11 March, 10 abstained, and seven voted in favour of the measure.¹⁸

In the House of Lords, where the measure was subsequently passed without being put to a vote on 16 March, 18 peers declare they are members of the Lords and Commons Cigar Club, through which they receive “regular hospitality and invitations to events . . . all of which are paid for by the Tobacco

Manufacturers' Association." Another nine declare shareholdings in tobacco companies.¹⁹

Lord Naseby, who assured his fellow peers he had "no interests to declare in relation to the tobacco world" as he led a failed attempt to block the legislation in the Lords, had to be reminded by Lord Warner that in 2014 he had accepted a gift from JTI of tickets to an Eagles concert.

It is unclear why any of these MPs and Lords consider it compatible with their roles as parliamentarians to accept hospitality from the tobacco industry, or what might have been discussed at such social gatherings, but these are relationships *The BMJ* will be examining in more detail in a subsequent article.

Of course, the government itself is locked in a morally paradoxical embrace with the tobacco industry. While it edges forward cautiously with questionably effective tobacco control measures, such as plain packaging and the tobacco display ban, which came into force in small shops on 6 April, it wields the ultimate weapon at its disposal—taxes—with self interested restraint.

"Most governments," notes JTI in its most recent annual report, "are aware that a substantial tax increase or repeated tax increases can reduce their revenue and they take a rational approach." Just in case, the company assures its shareholders—in the process perhaps revealing something of its access to corridors of power—that the company "promote[s] the understanding of relevant authorities that a disruptive tax increase does not necessarily serve their purpose."²⁰

The UK exchequer currently earns about £10bn (€14bn; \$15bn) a year from tobacco duty (figs 4 and 5), plus the estimated £2bn yielded by VAT, to say nothing of the taxes paid by the tobacco companies domiciled in the UK. In 2014 BAT paid £1.45bn in taxes.²¹ It remains to be seen whether Labour, should it win power in May, follows through on its conference pledge last year to impose an additional tax on tobacco companies, which it said make "soaring profits on the back of ill health."²² In the wake of the pledge, in December the government unveiled its own plan for a "tobacco levy," putting it out for a 10 week consultation that ended on 18 February.²³

Competing interests: I have read and understood BMJ policy on declaration of interests and have no relevant interests to declare.

Provenance and peer review: Commissioned; not externally peer reviewed.

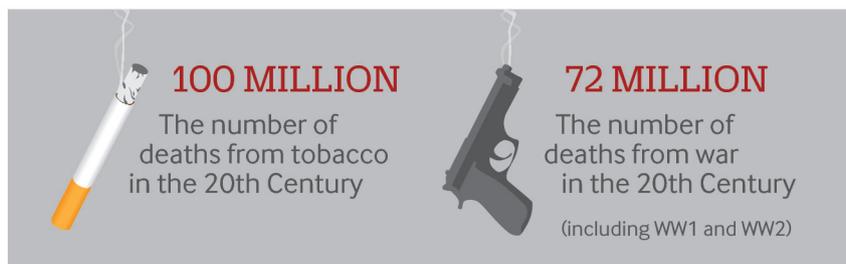
- 1 British American Tobacco will launch legal challenge over plain packaging in the UK. Press release, 11 Mar 2015. www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO9UHE53?opendocument&SKN=1.
- 2 Imperial Tobacco. Statement on UK plain packaging. 11 Mar 2015. www.imperial-tobacco.com/index.asp?page=78&newsid=2133.
- 3 Eriksen M, Mackay J, Schuger N, Gomeshtapah FI, Drope J. The tobacco atlas. 5th ed. 2015. www.tobaccoatlas.org.
- 4 WHO Tobacco Free Initiative. Watching and countering the industry. www.who.int/tobacco/industry/background/en/.
- 5 Office for National Statistics. Opinions and lifestyle survey: adult smoking habits in Great Britain, 2013. 2014. www.ons.gov.uk/ons/rel/ghs/opinions-and-lifestyle-survey/adult-smoking-habits-in-great-britain--2013/index.html.
- 6 British American Tobacco. Annual report: delivering today, investing in tomorrow. 2013. [www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9DCL3B/\\$FILE/medMD9UXE9Q.pdf?openelement](http://www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9DCL3B/$FILE/medMD9UXE9Q.pdf?openelement).
- 7 British American Tobacco. Strong performance in a tough environment. Preliminary announcement, year ended 31 December 2014. 2015. [www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO72TJQU/\\$FILE/medMD9U3P2J.pdf?openelement](http://www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO72TJQU/$FILE/medMD9U3P2J.pdf?openelement).
- 8 United Nations. World population prospects: the 2012 revision. 2013. <http://esa.un.org/wpp/>.
- 9 WHO Framework Convention on Tobacco Control. Article 5.3. www.who.int/tobacco/wntd/2012/article_5_3_fctc/en/.
- 10 Kmietowicz Z. E-cigarettes are "gateway devices" for smoking among young people, say researchers. *BMJ* 2014;348:g2034.
- 11 Hawkes N. E-cigarettes work better than nicotine replacement and willpower to help people quit smoking. *BMJ* 2014;348:g3419.
- 12 JTI. JTI acquires Ploom intellectual property rights from Ploom Inc. Press release, 16 Feb 2015. www.jti.com/media/news-releases/jti-acquires-ploom-intellectual-property-rights-ploom-inc/.
- 13 JTI. JT completes acquisition of e-cigarette brand E-Lites. Press release, 19 Nov 2014. www.jti.com/media/news-releases/jt-completes-acquisition-e-cigarette-brand-e-lites/.
- 14 Imperial Tobacco. Annual report and accounts 2014. www.imperial-tobacco.com/files/financial/reports/ar2014/files/pdf/annual_report_2014.pdf.
- 15 BAT. Delivering today. Investing in tomorrow: annual report 2013. [www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9DCL3B/\\$FILE/medMD9HEGPT.pdf?openelement](http://www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9DCL3B/$FILE/medMD9HEGPT.pdf?openelement).
- 16 BAT. A focus on harm reduction—why it matters. 2013. [www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO964UGU/\\$file/A_Focus_on_Harm_Reduction_Report_2013.pdf](http://www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO964UGU/$file/A_Focus_on_Harm_Reduction_Report_2013.pdf).
- 17 House of Commons. Register of members' financial interests. www.publications.parliament.uk/pa/cm/cmregmem.htm.
- 18 Deferred division, public health. *Hansard* 2015 Mar 11:col 379. www.publications.parliament.uk/pa/cm/201415/cmhansrd/cm150311/debtext/150311-0003.htm#15031186000002.
- 19 House of Lords. Register of Lords' interests. www.publications.parliament.uk/pa/ld/ldreg.htm.
- 20 Japan Tobacco. Annual report, FY2013. www.jt.com/investors/results/annual_report/pdf/annual.fy2013_E_all.pdf.
- 21 BAT. Preliminary announcement, year ended December 31 2014. Press release, 26 Feb 2015. http://www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO9U3JD?opendocument&SKN=1.
- 22 Wintour P. Ed Miliband: tax on tobacco giants will boost NHS. *Guardian* 2014 Sep 22. www.theguardian.com/politics/2014/sep/22/ed-miliband-speech-tax-tobacco-nhs-labour-conference.
- 23 HM Treasury. Tobacco levy consultation, 10 Dec 2014. www.gov.uk/government/consultations/tobacco-levy.

Cite this as: *BMJ* 2015;350:h2052

© BMJ Publishing Group Ltd 2015

Figures

A global pandemic



Data sources: WHO; White M. Historical Atlas of the Twentieth Century, 2010.

Design by Will Stahl-Timmins. © 2015 BMJ Publishing group Ltd.

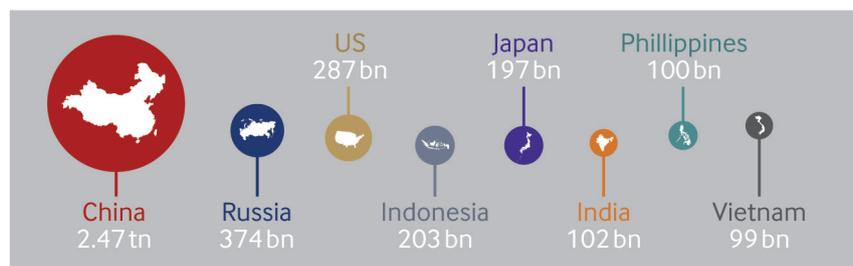
The tobacco industry

5,800,000,000,000 (5.8 trillion)

The number of cigarettes smoked globally in 2012

2,470,000,000,000 (2.47 trillion)

The number of cigarettes smoked in China, the world's largest single market, in 2012

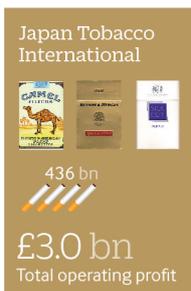


Data sources: Euromonitor, JTI 2013 annual report

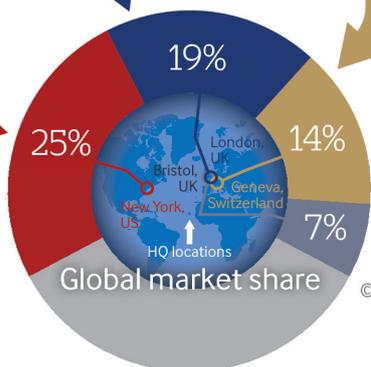
Design by Will Stahl-Timmins. © 2015 BMJ Publishing group Ltd.

The big four

Four companies account for 2.4 trillion of the 5.8 trillion cigarettes smoked annually (41%).



☞ = 1 bn cigarettes sold annually



Data sources: Philip Morris Int. 2013; British American Tobacco plc, 2014; Japan Tobacco Inc. 2013; Imperial Tobacco Group PLC 2014.

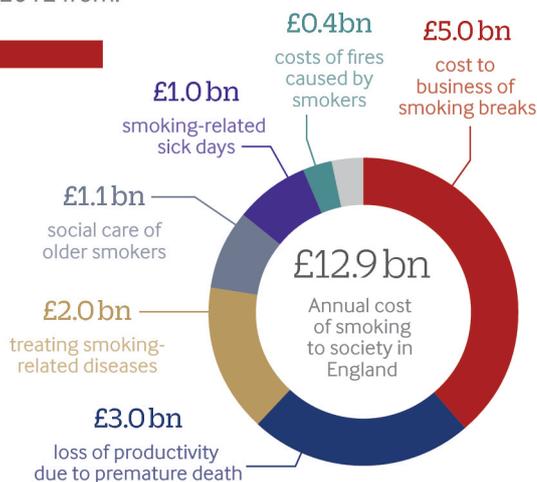
Design by Will Stahl-Timmins. © 2015 BMJ Publishing group Ltd.

The cost of smoking in the UK

Number of UK deaths in 2012 from:



Data sources: Action on Smoking and Health fact sheet, November 2014; Health and Social Care Information Centre; Dept for Transport; National AIDS Trust.



Design by Will Stahl-Timmins. © 2015 BMJ Publishing group Ltd.

UK tax receipts

