

# TOBACCO INDUSTRY INTERFERENCE IN HEALTH POLICY AND MEASURES IN THE GLOBAL TOBACCO TREATY TO PREVENT IT

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## CONTEXT

There is powerful consensus among health advocates and public officials around the world that the tobacco industry should have no influence on public health policies. The World Health Organization Framework Convention on Tobacco Control (WHO FCTC) enshrines this concept in international law.

The WHO and governments around the world have come together to adopt laws and measures that exclude the tobacco industry from involvement in public health policy:

### Article 5.3 of the FCTC

FCTC Article 5.3 obligates Parties to “*protect these [public health] policies from commercial and other vested interests of the tobacco industry.*” Allowing tobacco corporations to influence tobacco control policy violates both the spirit and letter of the FCTC. World Health Assembly resolution 54.18, the FCTC preamble and FCTC articles 12(e) and 20.4(c) provide governments with the support of the international community to stand up to interference from Big Tobacco.<sup>1</sup>

Unfortunately, Big Tobacco’s interference in health policy is one of the greatest threats to the treaty’s implementation and enforcement. Philip Morris/Altria, British American Tobacco (BAT) and Japan Tobacco (JT) use their political influence to weaken, delay and defeat tobacco control legislation around the world. While the industry claims to have changed its ways, it continues to use sophisticated methods to undermine meaningful legislation.

Now the integrity of the treaty and the effectiveness of national tobacco control policies based on it hinge on the measures Parties are taking to meet their obligations under Article 5.3. WHO and its member states were forward-thinking in their adoption of Article 5.3, but they are not yet following through with explicit legislation or regulations to enforce it. Despite the importance of Article 5.3, not a lot of information is being gathered in this area through the formal reporting process, so NGOs have a vital watchdog role to play.

## SUMMARY

The purpose of this document is to expose tobacco industry interference in countries that have ratified the FCTC, to highlight measures currently being taken to prevent this interference, and to call for coordinated action by Parties to safeguard treaty implementation against commercial and other vested interests of the tobacco industry.

Two years after the FCTC’s entry into force, as Parties submit their first reports on treaty implementation, there are two inescapable conclusions:

- 1) Stronger, more explicit measures are needed at the national level to protect health policies from commercial and other vested interests of the tobacco industry.
- 2) Further guidance is needed at the global level:
  - a) For all Member States of WHO, on policies to ensure transparency and integrity of health policy development, in accordance with WHA resolution 54.18.
  - b) For Parties to the FCTC, on specific measures to implement Articles 5.3, 12(e), 20.4(c), and other obligations the tobacco industry may attempt to subvert.

## HISTORY OF ARTICLE 5.3

Throughout negotiations on the FCTC, the tobacco industry sought to weaken and delay the treaty. The tactics of the three major tobacco transnationals varied.

- Philip Morris (now Altria) hired the notorious PR firm Mongoven, Biscoe and Duchin (MBD) to advise it on how to thwart the FCTC. MBD recommended that if the tobacco corporation could not delay the adoption of the treaty, it should try to make it as weak as possible. The firm also advised Philip Morris on a plan for exploiting WHO's regional structure in its attempts to subvert the treaty.<sup>ii</sup> Philip Morris/Altria also made the most of its close ties to the US government: leading into the second round of negotiations in March 2001, Philip Morris requested that 11 provisions be deleted from the treaty text—and the Bush administration sought to delete 10 of them.<sup>iii</sup> After the treaty's entry into force, Philip Morris/Altria professed ignorance of Article 5.3, and claimed to be working with WHO through its Kraft Foods subsidiary—as a rationale for being included in health policy.<sup>iv</sup>
- BAT sent large delegations of lobbyists to treaty negotiations in Geneva—including at least 12 representatives at the fifth round of negotiations in October 2002.<sup>v</sup> The corporation also worked closely with front groups like the International Tobacco Growers Association (ITGA), which claims to represent the interests of tobacco farmers.<sup>vi</sup>
- The Japanese government owns a 50% stake in Japan Tobacco. The world's third largest tobacco transnational had unparalleled access to FCTC negotiations through representation of the finance ministry on the Japanese delegation.<sup>vii</sup> According to internal documents, Japan Tobacco International also hired conservative British ideologue Roger Scruton to coordinate its response to the treaty.<sup>viii</sup> The corporation developed a plan to place “articles in the influential media, whose effect will be to discredit the FCTC process,” and a strategy to reframe the issue “as one of freedom of choice.”<sup>ix</sup>

In the face of this attempted interference as well as evidence in tobacco industry documents of a long-term strategy to “contain, reorient and neutralize”<sup>x</sup> WHO, governments included unprecedented provisions in the FCTC. They recognized how difficult it is for any individual country to resist the tobacco transnationals' interference: Philip Morris/Altria, BAT and JT have annual revenues that dwarf the gross domestic products (GDPs) of many countries in which they operate.<sup>xi</sup>

## TOBACCO INDUSTRY INTERFERENCE AROUND THE WORLD

National governments and WHO should be alert to a wide array of tactics used by the tobacco transnationals to influence policy, thwart effective regulation and undermine the FCTC, such as:

- Interfering with FCTC ratification
- Suing governments
- Subverting legislation and exploiting loopholes
- Demanding a seat at the table
- Promoting voluntary regulation
- Drafting and distributing tobacco-friendly sample legislation
- Promoting and funding “youth smoking prevention” programs
- Challenging government timelines for implementing laws
- Attempting to bribe legislators
- Gaining favor by bankrolling government health initiatives on other issues
- Providing funds directly to government regulatory bodies
- Taking advantage of government's financial interest in tobacco
- Hiding behind farmers, retailers and other interest groups with a more favorable public image
- Pushing corporate social responsibility PR efforts

- Defending trade at the expense of health

Successful interference means inadequate safeguards. The following examples illustrate limitations in the implementation of Article 5.3 by Parties to the treaty, and underscore the need for more safeguards at the national level, as well as the need for global guidance on essential and effective countermeasures to tobacco industry interference.

## Kenya

### *Attempting to bribe legislators and suing the government:*

Each time that a tobacco control bill has been introduced in Kenya's Parliament since 2000, the bill has not made it past the initial stages. When Kenya ratified the FCTC, things seemed to change—the next Bill introduced was scheduled for a second reading. However, BAT provided Parliamentary legislators with a lavish beach holiday—and hefty allowances—just days before they were to discuss legislation about implementing the treaty.<sup>xiii</sup> During the holiday, BAT recommended major policy changes to the Ministry of Health's draft bill—including giving the industry a role on the tobacco control oversight committee. The government was successful in issuing a ban on public smoking and requiring larger health warnings on cigarette packets, but BAT's subsidiary complained the rules were untenable on the grounds that they were not consulted. Then the tobacco giant sued the government in an attempt to prevent the regulations from taking effect.<sup>xiv</sup>

## South Africa

*Influencing new tobacco control legislation:* South Africa has long been a regional and global leader in tobacco control, and recently advanced a bill to close loopholes and strengthen its tobacco control laws. A month prior to the parliamentary deliberations on the bill, both Swedish Match South Africa and the Tobacco Institute of South Africa sent letters to the Health Portfolio Committee asking for the inclusion of a provision that would empower the health minister to exempt certain tobacco products. These letters were then passed out to members of the Health Portfolio Committee during their deliberations on the legislation.

Swedish Match went so far as to suggest sample wording for several sections of the legislation and to invite members of the Committee to Sweden for a tour of their facilities.<sup>xv</sup> BAT was also in direct communication with the legislators during their deliberations, and proposed specific wording.<sup>xvi</sup> Unfortunately, the tobacco corporations were partially successful in shaping the debate in their favor and winning their proposed changes. The legislation allows the Minister of Health to exempt certain products, but only if it is in the public interest to do so.<sup>xvii</sup>

## Panama

### *Giving donations to government programs:*



First Lady of Panama Vivian Fernández de Torrijos (second from right) and General Manager of Philip Morris Denis Gorkun (middle) celebrate Philip Morris' gift to support the Panamanian government's programs for the disabled. Within months, Philip Morris added gifts in support of the government's program combating domestic violence and improving nutrition. Later in 2005, Panama's President received a decree from his Cabinet limiting smoking in enclosed spaces. The President has yet to sign this decree into force.<sup>xii</sup>

After the publication of this report in June 2007, Panama passed Law 13 of January 24, 2008. This legislation represents a significant step forward in tobacco control in Panama. It includes measures mandated by the FCTC such as a ban on tobacco advertising, promotion and sponsorship, protection from exposure to tobacco smoke and new warning labels on tobacco packaging.

## **Pakistan**

***Partnering with government on tobacco control and in CSR initiatives:*** Pakistan is facing challenges to enforcement and implementation of its 2002 tobacco control laws, as there are tobacco industry representatives serving on the Tobacco Implementation Committee and the Committee on Tobacco Advertisements. These committees are charged with developing guidelines for tobacco advertising, monitoring the implementation of these guidelines and evaluating their effectiveness. In accordance with Pakistan's commitments under Article 5.3 of the FCTC, these tobacco industry representatives should be immediately removed from these committees and not allowed to interfere with the creation and implementation of health policy.<sup>xviii</sup>

The Pakistan Tobacco Company, a BAT subsidiary, has employed an elaborate corporate social responsibility (CSR) program. The tobacco corporation has partnered with the Ministry of the Environment and Prime Minister Shaukat Aziz to create the Ghourgushti Environment Park. Through CSR tactics, tobacco corporations attempt to hide behind glossy image make-overs and curry favor with influential government officials and the public, while continuing to promote tobacco addiction.<sup>xix</sup>

### **EFFECTIVE IMPLEMENTATION OF ARTICLE 5.3**

This section was intended to focus on positive examples of Parties implementing their obligations under Article 5.3, as models for other countries to follow. Unfortunately, we found little evidence of proactive legislative or regulatory measures being taken to prevent tobacco industry interference in health policies.

There are, however, cautionary tales. Two Latin American countries started off the implementation process by working directly with the tobacco industry on tobacco control. Both have since responded to national and international pressure to guard against Big Tobacco's conflicts of interest—in Mexico, by not renewing a voluntary agreement with the tobacco industry, and in Peru, by removing tobacco industry representatives from its FCTC implementation commission.

Exposing and speaking out against interference by tobacco corporations, their subsidiaries and affiliates can go a long way toward stopping it, as demonstrated by these examples.

#### ***Exposing and resisting tobacco industry interference:***

**United Arab Emirates** – Dr. Jasem Klaib, National Coordinator of the Tobacco Control Program at the Ministry of Health, cited “interference from tobacco companies” as one of the reasons that the UAE has not yet passed tobacco control legislation. He elaborated, “Tobacco companies are powerful, but we will try to be more powerful.”<sup>xx</sup>

#### ***Not renewing a voluntary agreement:***

**Mexico** – Three weeks after Mexico ratified the FCTC, the Ministry of Health signed a disturbing agreement with Philip Morris and BAT: if the corporations funded certain health programs, the government would not raise tobacco taxes.<sup>xxi</sup> This agreement led to the defeat of numerous tobacco control regulations, including tax increases and the advertising ban called for by the treaty. When meaningful policies were introduced, policymakers friendly to the tobacco industry argued that the proposals would lead to cuts for these other health programs.<sup>xxii</sup> After international uproar about the agreement, Mexico took a step in the right direction and refused to renew it in 2006. Their Congress had since successfully passed annual tobacco tax increases through 2009.<sup>xxiii</sup>

### ***Removing the tobacco industry from FCTC implementation commission:***

**Peru** – In April 2006, Peru’s Congress passed legislation to implement the global tobacco treaty—a giant step forward for tobacco control in Peru. Meanwhile, the tobacco industry succeeded in securing a seat for the National Society of Industries on Peru’s newly formed Multisector Commission, which was created to implement and monitor tobacco control efforts. In violation of FCTC Article 5.3, the National Society of Industries was represented on the Commission by two BAT employees. After national and international outcry, the Minister of Health removed the BAT employees from the Commission.<sup>xxiv</sup> The Minister of Health named the head of the Permanent National Commission in the Anti-Tobacco Fight, a network of more than 100 governmental and non-governmental organizations in Peru, as head of the Commission, and added another representative from the public health community.<sup>xxv</sup>

## **THE WAY FORWARD: POLICIES AND GUIDELINES**

### **A. WHO Member States**

WHA resolution 54.18 urges all Member States of WHO to be alert to any efforts by the tobacco industry to undermine tobacco control policies, and to assure the integrity of health policy development. Safeguards are necessary in two key areas:

#### **1. Transparency and Disclosure**

- Tobacco corporations should be required to provide full public disclosure of:
  - Location, address and corporate name of all facilities, including tobacco and non-tobacco subsidiaries, affiliates, joint ventures, partners, suppliers, licensees, lobbyists and lobbying firms;
  - Advertising, promotion and sponsorship expenditures;
  - Political contributions, lobbying and public relations expenditures, and membership in trade associations.
  
- Governments should disclose any affiliations between the tobacco industry and their delegations to WHO-related meetings, including:
  - Delegates representing government-owned tobacco companies;
  - Delegates representing NGOs affiliated with or funded by tobacco corporations or their subsidiaries;
  - Any gifts, grants, honoraria, travel, vacations or transfer of assets of value, such as real estate, received by any member of the government delegation from the tobacco industry.

#### **2. Integrity of Health Policy Development**

- Governments should prohibit gifts, grants, honoraria, travel, vacations and transfer of assets of value, such as real estate, from the tobacco industry to any public official.

- In the development of legislation, administrative measures and other public policy initiatives on public health and tobacco control, tobacco corporations, their subsidiaries and agents should be limited to the provision of non-biased product information and relevant scientific research, including production and distribution information.
- Governments should recognize the tobacco industry’s fundamental conflict of interest with health policy, and ensure that the public interest is prioritized in policy development—for example, by prohibiting the use of trade agreements to preempt health policies.

## **B. FCTC Parties**

By ratifying the FCTC, countries accept additional obligations to protect their health policies from interference by tobacco corporations, their subsidiaries and affiliates. Parties should adopt and implement legislation related to these obligations, and share information about it through the reporting process.

In decision FCTC/COP1(15), the Conference of the Parties calls for the development of guidelines for implementing Article 5.3. Support will be needed from the COP and the treaty Secretariat to recommend strong, effective measures—and warn against pitfalls and loopholes—in the following areas.

### **1. Article 5.3**

Model legislation on excluding the tobacco industry from public health policymaking includes:

- Definition of “commercial and other vested interests of the tobacco industry”;
- Prohibition on tobacco industry participation in policymaking—such as the use of tobacco industry-funded research, consultation with scientists who may have a conflict of interest, participation of government-owned tobacco companies in tobacco control, and use of media by the tobacco industry regarding tobacco control policies.<sup>xxvi</sup>

Safeguards must be flexible and comprehensive enough to address the evolution in tobacco industry strategies and tactics described in this report.

### **2. Article 12(e)**

Parties commit to involve public and private agencies and nongovernmental organizations “not affiliated with the tobacco industry” in education and public awareness programs and strategies for tobacco control. As tobacco corporations develop, fund and promote so-called “youth smoking prevention” programs, Parties must be reminded of their obligations in this area—and provided with effective, affordable alternatives.

### 3. Article 20.4(c)

This provision calls for regular collection and dissemination of information on “the activities of the tobacco industry which have an impact on the Convention and national tobacco control activities.” Parties to the FCTC build on WHA 54.18, committing to establish and maintain a global system to monitor the tobacco industry and make its operations transparent. Under Article 13.4(d), for any Party that does not have a comprehensive ban, disclosure of expenditures by the tobacco industry on any advertising, promotion and sponsorship not yet prohibited is also required.

### 4. Other articles

Like education and public awareness or the ban on tobacco advertising, promotion and sponsorship, many other provisions in the FCTC could be undermined by tobacco industry participation. In developing guidelines for Articles 8 to 13, as required by Article 7, the Conference of the Parties should propose specific measures to reinforce Article 5.3 and guard against tobacco industry interference. Parties’ implementing legislation must not only be consistent with Article 5.3—it should also bring this general obligation into effect relative to specific policies on illicit trade, packaging and labeling, product regulation, alternatives to tobacco cultivation, exposure to tobacco smoke and other issues.

## ENDNOTES

<sup>i</sup> World Health Organization; World Health Assembly Resolution 54.18

<[http://www.who.int/tobacco/framework/wha\\_eb/wha54\\_18/en/index.html](http://www.who.int/tobacco/framework/wha_eb/wha54_18/en/index.html)>; Framework Convention on Tobacco Control <<http://www.who.int/tobacco/framework/download/en/index.html>>.

<sup>ii</sup> Stacy M. Carter, “Mongoven, Biscoe & Duchin: Destroying Tobacco Control Activism from the Inside,” *Tobacco Control* 2002, Vol.11, Issue2; Mongoven, Biscoe and Duchin, Inc., “An Analysis of the International Framework Convention Process: Executive Summary, The WHO Tobacco Control Convention,” November, 1997, Philip Morris document #2074292078-2082.

<sup>iii</sup> Henry A. Waxman, Ranking Minority Member of US Congress [*letter to President Bush*], November 19, 2001.

<sup>iv</sup> Louis Camilleri, CEO of Altria Group, Statement at Altria Shareholders’ Meeting, April 27, 2006, East Hanover, NJ. Mr. Camilleri stated: “The FCTC—and I actually read it again this weekend, to ensure I hadn’t missed something—does not prohibit any discussions with industry. . . I believe excluding the tobacco industry is a big mistake. The WHO Strategy on Diet, Physical Activity and Health has a whole set of provisions which describe how the [food] industry should be involved. . . , and it essentially goes to the point I made earlier—exclusion never works.”

<sup>v</sup> Personal accounts by Corporate Accountability International (then Infact) representatives to INB5, October 2002.

<sup>vi</sup> Martin Oldman [*letter to Gaye Pedlow*]. March 13, 1991. British American Tobacco Company. 502555357-502555359. Guildford Document Depository. <<http://bat.library.ucsf.edu>>.

<sup>vii</sup> List of participants, “The World Health Organization, A/FCTC/INB5/DIV/2 Rev. 1, October 21, 2002.

<sup>viii</sup> Kevin Maguire and Julian Borger, “Scruton in media plot to push the sale of cigarettes,” *Guardian Unlimited*, January 24, 2002.

<sup>ix</sup> Sophie Scruton [*email to Quentin Browell*]. October 16, 2001.

<sup>x</sup> WHO/IOCU/UICC: *Strategies and Tactics*. January 31, 1989 Philip Morris Companies, Inc. 25011045143-5147 at 5143 <[www.pmdocs.com](http://www.pmdocs.com)>.

<sup>xi</sup> Philip Morris/Altria, Japan Tobacco and British American Tobacco had combined 2005 revenue of \$103.7 billion, which would have ranked them 67<sup>th</sup> among the gross domestic product of the nations of the world. Source: corporate annual reports; CIA World Factbook <[www.cia.gov](http://www.cia.gov)>.

<sup>xii</sup> “Philip Morris Inc. realize Donación a la Fundación Caminemos Juntos, Sazon Gourmet, <[www.revistasazon.com/archivos/rev\\_165/nvo\\_ciudad2.htm](http://www.revistasazon.com/archivos/rev_165/nvo_ciudad2.htm)>. “Primera dama asiste a toma de posesión de junta directive de Patronato de Nutrición” January 20, 2005 <[www.presidencia.gob.pa](http://www.presidencia.gob.pa)>. Primera dama apoya campaña de FUNDAMUJER

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contra la violencia doméstica. February 24, 2005 <[www.presidencia.gob.pa](http://www.presidencia.gob.pa)>. Reina Roa [email to Yul Dorado] Regalos de Philip Morris en Panamá. May 1, 2007.

<sup>xiii</sup> David Simpson, “Kenya: Beach party helps tobacco bill,” *Tobacco Control Online*, <<http://tobaccocontrol.bmj.com>>

Ngumbao Kithi, “MPs have fun at Tobacco Bill talks,” *Daily Nation* (Kenya) November 22, 2004: pp 1-2. Ngumbao Kithi, “MPS gang up to reject new anti-smoking Bill,” *Daily Nation* (Kenya), November 20, 2004: 1,4.

<sup>xiv</sup> Kenyan smokers win new court reprieve from public puffing ban,” *MediaCorp Press* (July 1, 2006) <<http://www.todayonline.com>>.

<sup>xv</sup> Tobacco Institute of South Africa memo from Francois van der Merwe to Chairman and Members of the Portfolio Committee on Health Parliament, February 7, 2007. Posted by Parliamentary Monitoring Group, [www.pmg.org.za/docs/2007/070306tbsa.htm](http://www.pmg.org.za/docs/2007/070306tbsa.htm).

<sup>xvi</sup> Swedish Match South Africa (PTY) Ltd Memo from Mr. Johnny Ghosal, Managing Director to Chairperson of the Portfolio Committee on Health, The Hon. Mr. James Ngculu, February 5, 2007. Posted by Parliamentary Monitoring Group, [www.pmg.org.za/docs/2007/070306swedish.htm](http://www.pmg.org.za/docs/2007/070306swedish.htm).

<sup>xvii</sup> Tobacco Control Amendment Bill [B 24B -2006], Republic of South Africa, Clause 6A.

<sup>xviii</sup> Zaigham Khan, *From Word to Action: Implementation of Tobacco Control Laws in Pakistan*. Tobacco Free Initiative – Pakistan, 2006.

<sup>xix</sup> Dr. Javaid A. Khan Department of Medicine, The Aga Khan University [email to Bobby Ramakant] Joint Venture of Parkistan Tobacco Company and Government of Pakistan. April 13, 2007.

<sup>xx</sup> Nina Muslim, “Officials Gear Up to Tackle Tobacco Lobby”, Gulf News Online <<http://www.gulfnews.com>> , March 14, 2007.

<sup>xxi</sup> Ernesto Sebríe, “Mexico deal blunts health warnings,” *Tobacco Control Online* (9/25/06) <<http://tobaccocontrol.bmj.com>>.

<sup>xxii</sup> Ernesto Sebríe and Stanton A. Glantz, “The tobacco industry in developing countries,” *British Medical Journal* February 11, 2006: 313-314.

<sup>xxiii</sup> Santos Gabriel Us Ake, “Repudio a nuevos impuestos,” *Por Esto!* December 19, 2006.

<sup>xxiv</sup> Ministerial Cabinet of the Republic of Peru “Ministerial Resolution 256-2006-PCM” July 7, 2006 and Dr. Carlos Farias Alburqueque. *Peru por el camino correcto*, Email to CLACCTA listserve, November 12, 2006.

<sup>xxv</sup> Carlos Farias (email to Yul Dorado and other Latin American tobacco control activists). *Reglament de ley en Perú*. November 11, 2006.

<sup>xxvi</sup> Corporate Accountability International, *Global Tobacco Treaty Action Guide: Challenging Tobacco Industry Interference*. September, 2006, p. 18ff.