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# Tobacco industry interference with tobacco control policies in Poland: legal aspects and industry practices

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## ABSTRACT

**Background** Since 2006, when Poland ratified the WHO Framework Convention on Tobacco Control (FCTC), there have been efforts to improve tobacco control regulation in the country. At the same time, at the European Union level, Poland took part in discussions over revision of the Tobacco Tax Directive and the Tobacco Products Directive. This study aims to explore the tobacco industry's tactics to interfere with the creation of those policies.

**Methods** Analysis of 257 documents obtained through freedom of information request.

**Results** We identified three means that the tobacco industry used to interfere with tobacco control policies: creating a positive attitude, expressing a will to be a part of the policymaking process, and exerting pressure. We found that those tactics have often been used unethically, with the industry providing the government with ready legislation proposals, overstating its contribution to the economy and the government revenues, misrepresenting the illicit cigarette problem and misusing scientific evidence. The industry also used legal threats, including use of bilateral trade agreements, against implementation of tobacco control measures. The companies lobbied together directly and through third parties, with the cigarette excise tax structure being the only area of disagreement among the companies. The industry also pushed the Polish government to challenge tobacco control policies in countries with stronger public policy standards, including UK display bans and the Australian plain-packaging law.

**Conclusions** From an object of regulation, the tobacco industry in Poland became a partner with the government in legislative work. Implementation of provisions of Article 5.3 of the WHO FCTC could prevent further industry interference.

## INTRODUCTION

Poland is among the countries with the highest death rate due to cigarette smoking, with 74 000 Poles dying annually from tobacco use.<sup>1</sup> Additionally, millions of Poles suffer disability due to smoking-related chronic diseases, such as chronic obstructive pulmonary disease (with over 2 million people suffering from this disease in Poland).<sup>2</sup> These premature deaths and disability cause tremendous economic costs and constrain economic development potential.<sup>3</sup>

Those deaths and suffering could be largely prevented, and the socioeconomic costs avoided, by introduction of tobacco control measures. In 2006, Poland ratified the WHO Framework Convention on Tobacco Control (WHO FCTC),<sup>4</sup> but since then

has had only moderate success in implementing its provisions. Poland's tobacco control law underwent revision in 2010 and 2011 to extend smoke-free areas and improve point-of-purchase regulation,<sup>5</sup> however, the scope of the revision has been greatly reduced during the legislative process. Despite ratifying the WHO FCTC, many tobacco control regulations still do not meet its requirements. For example, Poland still has partial smoke-free laws<sup>6</sup> and incomplete advertisement, promotion<sup>7</sup> and sponsorship bans.<sup>8</sup> At the European Union (EU) level, Poland actively opposed tobacco control measures proposed during revision of the Tobacco Products Directive from 2010 to 2014.<sup>9 10</sup>

Poland's limited progress in implementing tobacco control measures has been shaped by the tobacco industry's influence on government institutions. Poland, the second-largest cigarette producer in the EU,<sup>11</sup> is an important player in the industry's battle against tobacco control policies on the continent. No regulation constrains the tobacco industry's lobbying in Poland (see online supplementary appendix 1 for a more legal background).

Evidence suggests that the tobacco industry works aggressively to prevent or delay progress in tobacco control policies.<sup>10 12–16</sup> The industry uses the same tactics and arguments over time and across jurisdictions, including presenting highly misleading economic arguments, using corporate social responsibility to gain governments' favour, using litigation or threat of litigation<sup>17</sup> and manipulating science.<sup>18</sup> It also uses countries with weaker political processes to interfere with tobacco control policies in countries with stronger public policy standards.<sup>17</sup> In 2012, the issue of the tobacco industry's interference was the theme of the WHO World No Tobacco Day.<sup>19</sup>

Literature on the tobacco industry's influence over policymakers and the public in Poland is scarce. One study evaluated the tobacco industry's public relations and corporate social responsibility efforts to create a positive attitude towards the industry.<sup>20</sup> Two other studies exposed the tobacco industry's practices of exaggerating and misrepresenting the cigarette smuggling problem.<sup>21 22</sup> However, no study has analysed directly the tobacco industry's interference with Polish tobacco control policies. This study is the first to systematically catalogue and examine the tobacco industry's intrusion in the policymaking process in Poland.



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**Table 1** Time frame for the documents received through the Freedom of Information requests

| Ministry                                                                             | Note                                                    | Number of documents provided |      |      |      |      |      |      |
|--------------------------------------------------------------------------------------|---------------------------------------------------------|------------------------------|------|------|------|------|------|------|
|                                                                                      |                                                         | 2006                         | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| Ministry of Agriculture and Rural Development                                        |                                                         | 25                           | 25   | 36   | 18   | 23   | 67   | 20   |
| Ministry of Economy                                                                  | Forwarded documents from the years 2009–2012 only       | 0                            | 0    | 0    | 1    | 7    | 17   | 14   |
| Ministry of Finance                                                                  |                                                         | 15                           | 5    | 9    | 14   | 11   | 6    | 10   |
| Ministry of Foreign Affairs                                                          | Failed to respond to our official request               | 0                            | 0    | 0    | 0    | 0    | 0    | 0    |
| Ministry of Health                                                                   | Sent only sample documents                              | 0                            | 0    | 0    | 0    | 0    | 10   | 2    |
| Ministry of the Interior                                                             |                                                         | 0                            | 0    | 0    | 0    | 0    | 3    | 2    |
| Ministry of Labor and Social Policy                                                  |                                                         | 0                            | 0    | 0    | 0    | 5    | 8    | 2    |
| Ministry of Regional Development<br>(now Ministry of Infrastructure and Development) | Did not receive any documents from the tobacco industry | 0                            | 0    | 0    | 0    | 0    | 0    | 0    |

The industry lobbying activities cannot be measured by the number of documents submitted to the government, but rather by the impact that those documents had on the policymaking.

## METHODS

To examine the transnational tobacco industry's influence over Polish tobacco control policy in Poland, we analysed correspondence between the industry, its associations and government agencies. In April 2012, we submitted requests for access to public information to eight Polish Ministers using the Act on Access to Public Information (Poland's Freedom of Information Act).<sup>23</sup> We requested any document concerning tobacco control laws received since 2006 (the date of Poland's WHO FCTC ratification).

In response, we received copies of 355 documents via mail or email (table 1). After examining these documents, we identified 257 relevant documents containing messages aimed at delaying, preventing or influencing the content of tobacco control policies in Poland. The messages were categorised into three groups: (1) creating positive attitudes towards entities representing the interests of the tobacco industry and building trust in those entities; (2) expressing lobbyists' interest in being engaged in and aiding the creation of tobacco control policies; (3) exerting pressure on public institutions.<sup>24</sup>

## RESULTS

The collected documents show that between 2006 and 2012 there was extensive tobacco industry interference with health policy in Poland. Documents came from tobacco companies as well as from tobacco product importers and associations representing the interests of the tobacco industry. Eight tobacco companies, representing 99% of the Polish cigarette market in 2006,<sup>11</sup> lobbied the Polish government directly by sending documents and organising meetings, as well as acting through third-party groups (box 1). These groups included tobacco industry associations as well as organisations without explicit industry ties, but that are financed by the industry (eg, Business Centre Club).<sup>25</sup> The industry also used Members of Parliament<sup>26–28</sup> and the local governments<sup>29–30</sup> to represent their interests.

### Creating positive attitudes

The first type of messages served to create a positive attitude towards the industry. The industry used 'corporate social responsibility' to divert policymakers' attention from the tremendous mortality and morbidity burden that its products create and to achieve 'innocence by association' (for more information, see Manko Association 2013).<sup>20</sup> Corporate social responsibility reports were sent directly to policymakers.<sup>31</sup> The industry also expressed gratitude for favourable policies,<sup>32</sup> and sent congratulations to newly appointed members of the government.<sup>33</sup>

### Becoming part of the policymaking process

Another type of approach is to become a part of the policymaking process. Industry lobbyists invited government officials for meetings,<sup>31–33–35</sup> and expressed their willingness to actively participate in policymaking.<sup>36–37</sup> In the Ministry of Finance alone, there were at least 30 meetings between government officials and industry representatives between 2006 and 2012.<sup>38</sup> The industry claimed that they were a necessary party in the policymaking process.<sup>39</sup> Industry representatives provided the government with numerous reports presenting their viewpoint on proposed new legislation,<sup>40–44</sup> and even provided the government with prewritten legislative proposals.<sup>34</sup>

From an object of regulation, the industry successfully transformed into being the government's partner in legislative work.

### Box 1 Tobacco companies and business associations lobbying to delay, prevent or influence the content of tobacco control policies in Poland from 2006 to 2012

#### Tobacco companies

- ▶ Altadis Polska S.A. (acquired by Imperial Tobacco in January 2008)
- ▶ British American Tobacco Polska
- ▶ Gallaher Polska (acquired by Japan Tobacco International in 2007)
- ▶ Imperial Tobacco Polska
- ▶ Japan Tobacco International Polska
- ▶ Philip Morris Polska
- ▶ Scandinavian Tobacco S.A. (acquired by British American Tobacco in 2008)
- ▶ Zakłady Tytoniowe w Lublinie

#### Business associations representing interests of the tobacco industry

- ▶ Alliance of the Tobacco Industry Trade Unions
- ▶ Business Centre Club
- ▶ Employers of Poland
- ▶ European Smoking Tobacco Association
- ▶ National Tobacco Industry Association
- ▶ National Tobacco Farmers Association
- ▶ Polish Tobacco Industry Association
- ▶ Polish Tobacco Farmers Association
- ▶ Polish Chamber of Commerce
- ▶ Polish Organisation of Private Sector Employers Lewiatan

For example, the Ministry of Economy asked for the industry's opinion when working on the government's official statement for the meeting of the Intergovernmental Negotiating Body over the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products in Geneva in March 2012.<sup>45</sup> The government sought the industry's opinion on anti-illicit trade measures even though the tobacco industry has previously been sued by the EU for its role in organising illicit cigarette trade to Europe—an obvious conflict of interest.<sup>46</sup>

## Exerting pressure

### Economic arguments

The industry was eager to mention how vital the tobacco sector is for the economy, job market and government revenue.<sup>32 36 39 44 47–49</sup> Economic arguments were used even when lobbying the Ministry of Health: JTI Poland asked the Ministry of Economy to approach the Ministry of Health to oppose new tobacco control regulations,<sup>50</sup> while the Business Centre Club used economic arguments when contacting the Ministry of Health directly.<sup>47</sup>

Many industry arguments were factually incorrect. The industry often claimed that its existence was vital for the Polish job market,<sup>36 47 48</sup> emphasising also the government revenue from excise, value-added, corporate income and even personal income taxes.<sup>39 47 51</sup> Those claims, however, fail to account for the fact that money not spent on tobacco will be spent by Polish households on other goods and services, generating consumption, jobs and public revenue in other sectors of the economy.<sup>17</sup> In particular, the industry claimed that the tobacco sector created nearly 600 000 jobs in Poland.<sup>48</sup> Those estimates included tobacco farmers, even though from 2004 to 2011 the majority of the money that Polish tobacco farmers received for their crops was from government subsidies and not from tobacco companies,<sup>52</sup> so the jobs of tobacco farmers were technically created by the government, not the industry. The industry also included retail jobs in their estimates, although these would still exist if people switched from purchasing cigarettes to some other goods. In fact, in 2012, only 5610 people (4 in every 10 000 employees) were directly employed in the manufacture of tobacco products.<sup>53</sup> Finally, the economic analyses produced by the industry also fail to account for the fact that most of the cigarettes produced in Poland between 2006 and 2012 were exported, and the introduction of domestic tobacco control measures would not have harmed these sales.<sup>11</sup> A commonly used economic argument was that new tobacco control measures would increase illicit trade. The threat of increased illicit trade has been used by the tobacco lobby to dissuade the government from increasing tobacco taxes,<sup>40</sup> banning retail displays,<sup>54</sup> banning menthol cigarette sales,<sup>55</sup> banning certain additives in cigarette production<sup>56</sup> and implementing pictorial health warnings.<sup>47</sup> The industry also used this argument against EU proposals for standardised plain cigarette packaging.<sup>43 55 57 58</sup>

According to a study commissioned by the tobacco industry itself, although illicit cigarette consumption in Poland declined from 7.07 billion cigarettes in 2009 to 6.1 billion cigarettes in 2013 (a 14% decline),<sup>59</sup> the tobacco lobby in numerous documents claimed that the illicit trade was actually increasing.<sup>40 44 47</sup> Additionally, the industry tried to build arguments on health claims. In a letter sent to the Deputy Prime Minister of the Republic of Poland, the Legal and Corporate Affairs Director at JTI Polska wrote that “the further increase in trading of smuggled and counterfeit cigarettes, *which do not meet any of the Polish health requirements*, obviously do not help to meet

the country's goals (both health and fiscal)...”<sup>40</sup> Smoking kills more than half and as many as two-thirds of cigarette users,<sup>60</sup> and there is no epidemiological evidence that legal cigarettes are any healthier than illegal ones. Further, a vast majority of illicit cigarettes seized in Poland are genuine cigarettes from Belarus, Russia, Ukraine and Moldova produced under license from, or directly by, the same tobacco companies that operate in Poland.<sup>61</sup>

### Scientific arguments

The industry has also argued that there was insufficient evidence on the effectiveness of the proposed tobacco control measures. This argument was used against display bans,<sup>54</sup> standardised plain packaging<sup>47 49</sup> and bans on additives.<sup>56 62</sup>

The industry often manipulated and misrepresented evidence.<sup>40 54</sup> For example, in 2012, the vice-president of Business Centre Club (members: British American Tobacco Polska, Imperial Tobacco Polska and JTI Polska) wrote to the Minister of Health that “according to BCC, there are no irrefutable scientific evidence on the effectiveness of pictorial health warnings”,<sup>63</sup> even though there had been at least 30 studies confirming the effectiveness of pictorial health warnings published by that time.<sup>64</sup> The very same letter from Business Center Club presents results from a report by the Deloitte consulting company,<sup>63</sup> but fails to mention that this report was commissioned and paid for by British American Tobacco.<sup>65</sup>

In another document to the Ministry of Economy, the Chair of the Board of the Polish Chamber of Commerce wrote that “according to 2009 studies by the Canadian Convenience Store Association (2009)... introduction of tobacco product display bans triggered an explosion of illegal cigarette sales, with their market share reaching 61% in Ontario province and as much as 75% in Quebec province, just a year after introduction of the ban”.<sup>54</sup> This reference is fundamentally wrong, since the percentages in the Canadian study referred to the share of smokers who had *ever* smoked illicit cigarettes (including cigarettes from First Nations reservations).<sup>66</sup> The Chamber of Commerce letter also fails to mention that the Canadian Convenience Store Association, which commissioned the report, is an organisation sponsored by Imperial Tobacco Canada and Japan Tobacco International.<sup>67</sup>

### Legal arguments

The industry also threatened with litigation. Legal challenges by the industry against government regulations have been launched in at least 10 countries around the world.<sup>60</sup> The mere threat of such litigation can discourage a country from taking legislative and regulatory actions.<sup>68</sup> In Poland, such legal arguments were used to forestall implementation of standardised plain packaging,<sup>43 47</sup> display bans<sup>54</sup> and pictorial health warnings.<sup>50 69</sup> The industry claimed that these regulations would constrain free enterprise and would violate the Polish constitution, as well as international trade agreements.<sup>54</sup> One legal opinion sent by the industry representative to the Deputy Prime Minister of Poland explicitly stated that implementation of plain packaging in Poland would have legal consequences.<sup>48</sup>

### Disagreement among companies

Although the companies agreed on most issues, there has been some disagreement among companies around cigarette excise taxes. The industry was aware that the cigarette taxes were to increase over time, because of the 2002 and the 2010 EU Tobacco Tax Directives with which Poland was required to comply.<sup>70</sup> All the major tobacco companies wanted the tax to be

as low as possible and collectively lobbied for the *tax levels* to not exceed the minimums imposed on Poland by the EU.<sup>35</sup> Among themselves, however, the companies had different approaches on the tobacco *tax structure*. In 2006, Philip Morris Polska was the leading seller of more expensive cigarettes: their mid-price category L&M brand had 13.5% of the Polish market, while the premium-price category Marlboro had 6.2% of the market.<sup>11</sup> At that time, the portfolios of the other major tobacco companies were dominated by cheaper cigarettes: British American Tobacco's Viceroy brand (5.3% of the Polish market in 2006), Imperial Tobacco's Mocne brand (4.8%), Scandinavian Tobacco's Nevada brand (4.2%), Altadis's Fox brand (2.6%) and Gallaher's LD brand (2.1%) acquired by Japan Tobacco International in 2007.<sup>11</sup> Since the ad valorem-based excise tax structure benefits cheaper cigarettes,<sup>71</sup> the companies selling cheaper cigarettes lobbied for the tax structure to be based primarily on the ad valorem tax. First, they strongly opposed the Ministry of Finance's plan to move from an ad valorem-based tax structure toward a specific-based tax structure in 2007.<sup>72</sup> Then, when the government revised its plans and the move from ad valorem to specific tax was not as drastic as originally announced, these companies expressed gratitude.<sup>32</sup> Companies producing cigarettes from the bottom price category also lobbied against minimum excise tax levels, because higher minimum taxes would affect their bestselling brands.<sup>40 73</sup> On the other hand, Philip Morris Polska, the main seller of the more expensive brands, met with the Ministry of Finance on 14 February 2012 to present its standpoint on the structure of the tobacco taxes.<sup>38</sup> The company supports minimum tax levies, because those affect only the bottom-price category and the specific-tax-based structure, because this tax, percentage-wise, burdens more expensive cigarettes the least.<sup>74</sup>

### Using Poland to interfere with tobacco control policies in other countries

Poland is also another case where the industry tries to use a country with weaker political processes to interfere with tobacco control policies in countries with stronger public policy standards. Many less-developed countries already appear to be under the industry's influence.<sup>17</sup> For example, Ukraine, Honduras, the Dominican Republic, Cuba and Indonesia initiated formal proceedings against Australia within the World Trade Organization.<sup>68</sup> In Poland, which scores lower than most developed countries on the World Bank's government effectiveness index,<sup>75</sup> the industry tried to push the government to oppose UK display bans<sup>54</sup> as well as the Australian plain packaging law.<sup>42</sup>

The industry has been successful in at least one of these attempts. After receiving a legal opinion on the Australian Tobacco Plain Packaging Bill from the tobacco industry, the Ministry of Economy thanked the industry and promised to actively pressure Australia through the EU structures to abandon implementation of plain packaging.<sup>41</sup> This commitment was made by the government even though Australia has never been a major partner in Poland's cigarette trade, receiving only 0.02% (two of every 10 000) of Poland's exported cigarettes from 2006 to 2012.<sup>76</sup>

The industry also had Polish support in the fight against the EU Tobacco Products Directive, with Poland being one of only four countries that in June 2013 opposed the EU Council's consensus on the revised Directive,<sup>10</sup> and the only country that sued the Directive in the European Court of Justice.<sup>77</sup> Poland is also the only country that within the EU structures critically commented about both the UK's and Ireland's introduction of plain packaging.<sup>78</sup>

## DISCUSSION

Tobacco companies, like all corporations, have a fiduciary duty to maximise profits to shareholders. For that reason, they use all legal or quasi-legal means to prevent, delay or change policies that could potentially harm their profits, even if those policies are aimed at protecting the health and welfare of the public. Evidence from countries that have already implemented comprehensive tobacco control policies show that these policies are very effective in preventing smoking-caused disease and death and do not harm the local economy.<sup>17</sup> Therefore, governments around the world, including the government of Poland, should not heed the tobacco industry's misleading arguments and threats.

Shielding public health policies from tobacco industry interference should be the first step to protect citizens from smoking-related harm. Separation of tobacco control policies from commercial and other vested interests is required by Article 5.3 of the WHO FCTC.<sup>79</sup> Yet, to date, only a few countries have instituted any policies concerning contact between the government and the industry, and no country has full protection.<sup>80</sup> In Poland, which currently has no regulation constraining tobacco industry lobbying, implementation of the provisions of Article 5.3 is needed to limit interactions between the government and the tobacco industry, ensure transparency of such interactions and, foremost, denormalise tobacco industry interference with policymaking.

### What this paper adds

- ▶ The tobacco industry uses a variety of tactics to interfere with creation of tobacco control policies in countries where measures to protect those policies from commercial interests are not in place. It also uses governments of countries with weaker political processes to challenge tobacco control policies internationally on behalf of tobacco companies.
- ▶ Poland, the second largest cigarette producer in the European Union, is an important player in the industry's battle against tobacco control policies. This study aims to systematically catalogue the tobacco industry's activities and their scope, and to increase awareness about industry practices in Poland, as well as in other countries where similar industry tactics are being used.
- ▶ The study also confirms that the use of Freedom of Information requests to access communications between the tobacco industry and various government agencies could be a model for public health and tobacco control advocates in other countries to follow.

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