> *"The enemy, the tobacco industry, has changed its face and its tactics. The wolf is no longer in sheep's clothing, and its teeth are bared."* Dr Margaret Chan, Director-General of WHO, keynote speech, 15th World Conference on Tobacco or Health, Singapore, 20 March 2012

STOP TOBACCO INDUSTRY INTERFERENCE IN TOBACCO CONTROL

CURBING THE TOBACCO EPIDEMIC

Tobacco addiction is a global epidemic that ravages entire countries and regions, wreaking the most havoc in the most vulnerable countries and creating an enormous toll of disability, disease, lost productivity and death. Tobacco use continues to be the leading global cause of preventable death. It kills nearly 6 million people every year through cancer, heart disease, respiratory diseases, childhood diseases and others. It also causes hundreds of billions of dollars of economic losses worldwide every year. If current trends continue, by 2030 tobacco will kill more than 8 million people worldwide every year, with 80% of these premature deaths occurring among people in low- and middle-income countries. Over the course of the 21st century, tobacco use could kill up to a billion people unless urgent action is taken.

We know what works to curb the tobacco epidemic. The action we need to take is laid out in the WHO Framework Convention on Tobacco Control (WHO FCTC). So far, 173 nations (plus the European Union) have pledged to work together to implement the Convention in order to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke. However, these tobacco control efforts are systematically opposed by the tobacco industry. Who or what is the tobacco industry and what forms do its interference with public health efforts take?

> *"The tobacco epidemic is entirely man-made, and it can be turned around through the concerted efforts of governments and civil society."* Dr Margaret Chan, at the launch of the WHO *Report on the global tobacco epidemic*, 2008

TOBACCO INDUSTRY OPPOSITION
What is the "tobacco industry"?

The "tobacco industry" includes manufacturers, importers and distributors of tobacco products and processors of tobacco leaf – an entire group of businesses whose only goal is to make profits, directly or indirectly, from tobacco products.

The tobacco industry has energetically promoted tobacco sales, despite knowing for decades that tobacco use and exposure to secondhand tobacco smoke damaged people's health. Despite a promise to investigate and share all research findings with the public, made in 1954 (1), the tobacco industry has hidden the facts from the public and continues to deny the full impact of tobacco products in order to maintain profits and increase sales. Dependency on tobacco is engineered, in the case of smoking, by careful, calculated formulations of more than 1000 chemical and other ingredients (2,3). The tobacco industry sells a product that, unlike any other legal commercial good, kills up to half its regular users when consumed as directed by the manufacturer.

> *"I want to remind governments in every country of the range and force of counter-tactics used by the tobacco industry – an industry that has much money and no qualms about using it in the most devious ways imaginable."* Dr Margaret Chan, at the launch of the WHO *Report on the global tobacco epidemic*, 2008

The tobacco industry puts profits before people

There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests. In one corner, the tobacco industry produces and promotes a product that has been scientifically proven to be highly addictive, to harm and kill many and to give rise to a variety of social ills, including increased poverty. In the opposite corner, many governments and public health workers try to increase the health of the population by implementing measures to reduce tobacco use. The tobacco industry recognizes the impact of these measures and actively fights against these efforts because of their negative effect on its sales. Time and time again, it has used its resources to halt these public health policies where it can, water them down when it cannot stop them altogether, and undermine their enforcement when they are adopted.

The tobacco industry has decades of experience of operating away from the public eye. Although these covert tactics continue, in recent years tobacco industry opposition has become more aggressive and overt. It increasingly includes direct counter-action against policies and strategies contained in, and promoted by, the WHO FCTC (4). The objective is to extend the tobacco industry's sphere of influence with the aim of reaching all levels and sectors of government, as well as nongovernmental groups including the private sector and civil society, while trying to appear before politicians and the public as indispensable contributors to economic and social welfare.

> *"Tactics aimed at undermining anti-tobacco campaigns, and subverting the WHO Framework Convention, are no longer covert or cloaked by an image of corporate social responsibility. They are out in the open and they are extremely aggressive."* Dr Margaret Chan, keynote speech, 15th World Conference on Tobacco or Health, Singapore, 20 March 2012

Forms of tobacco industry interference

In its efforts to derail or weaken strong tobacco control policies, tobacco industry interference takes many forms. These include:
- manoeuvring to hijack the political and legislative process
- exaggerating the economic importance of the industry
- manipulating public opinion to gain the appearance of respectability
- fabricating support through front groups
- discrediting proven science and
- intimidating governments with litigation or the threat of litigation.

Manoeuvring to hijack political and legislative decisions

In a presentation to the Philip Morris Board of Directors in 1995, the then Senior Vice-President of Worldwide Regulatory Affairs of the company stated: "Our goal is to help shape regulatory environments that enable our businesses to achieve their objectives … [fighting] aggressively with all available resources, against any attempt, from any quarter, to diminish our ability to manufacture our products efficiently, and market them effectively …" (5).

The range of strategies used by the tobacco industry, then and now, to influence the political and legislative process includes conspiring with lobbyists to promote self-interested decisions in preference to those that serve the public good. Existing evidence suggests, for example, that in several countries the tobacco industry tried to undermine the country's position in the negotiation of the WHO FCTC and continues to attempt to derail the treaty's implementation (6,7,8,9,10,11,12,13,14). The tactics used by the tobacco industry included the inciting of controversy between the financial, trade and other ministries on one side and the health ministry on the other side, the use of business associations and other "front groups" to

lobby on the industry's behalf and securing industry access to the WHO FCTC negotiations through its well established links with the International Organization for Standardization (15). Other evidence shows that the industry has sought to weaken legislation in many countries in all regions of the world.

Manoeuvring to influence political and legislative decisions also involves creating and exploiting legislative loopholes, demanding a seat at government decision-making tables, promoting voluntary regulation instead of legislation and drafting and distributing sample legislation that is favourable to the tobacco industry. There have been cases of industry representatives actually writing the language of tobacco control and other legislation, to ensure that any regulatory measures would not be too restrictive on the industry's aggressive marketing practices (16,17).

Another common strategy is entering into industry partnerships with different branches of government to fund joint projects, such as border patrols to prevent illicit trade, sports programmes for children, support for meetings and events and sponsoring of meetings that play on human rights concerns and condemn regulatory initiatives.(18,19,20). All these strategies, along with the pretence of wanting "reasonable" regulation, give the industry constant access to individuals in power and the potential to manipulate the policy-making process – making political campaign contributions, chalking up favours by financing government initiatives on other health issues and defending trade benefits at the expense of health.

Exaggerating the economic importance of the industry

The tobacco industry boosts its efforts to interfere in the political process by exaggerating its own contribution, expressed in terms of employment, tax contributions and other economic indicators, to the economy of a country, region, province or municipality. Not only is the economic information over-hyped, but it also ignores the negative economic impact of tobacco use, including the drain on the public purse caused by the need to treat the millions of people afflicted by tobacco-caused diseases.

The industry claims, for example, to generate a high level of direct and indirect employment. It opposes tobacco control measures on the grounds that they would have a negative impact on employment and therefore on the country's economy. Using this argument, the industry lobbies against tobacco tax increases, predicting catastrophic consequences for its business. In reality, evidence has shown , at least to date, that job losses in the tobacco sector have little to do with stricter tobacco control measures. A recent publication (21) highlights how the tobacco industry lobbied against cigarette taxation and tariffs on the pretext that reduced production costs would preserve jobs. Despite obtaining tax advantages, the industry still reorganized and consolidated its production processes, leading to job losses in the sector. In fact, even if its demands are met, it is not uncommon for the industry to threaten to close a factory or department and move elsewhere, despite its claims to social commitment and responsibility.

 Sound economic studies show that industry claims of potential job and other economic losses resulting from stricter tobacco controls are significantly overstated anyway; in fact, these losses are negligible. If consumption declines, job losses in tobacco-dependent sectors, are more than offset by increases in employment in other sectors with no negative impact on the overall economy (22).

Manipulating public opinion

Public opinion governs the workings of our society, and the tobacco industry devotes considerable resources to trying to twist it. The industry is aware that the views of millions of people every day are influenced by the mass media. The tobacco industry uses public relations firms and other groups to concoct and spin the news to promote its lethal business. Public relations firms have often been used in an attempt to manipulate the media and public opinion about various aspects of tobacco control and to gather the support of persons who oppose government "intrusion" in business and taxation, thus instigating general antiregulatory and antigovernment views.

However, the main way of manipulating public opinion is corporate social responsibility (CSR) activity, also known as "social investment". While CSR activities in many industries reflect an honest commitment to behave ethically and contribute to economic development, while improving the quality of life of the workforce, the local community and society at large, for the tobacco industry it is a self-serving strategy. CSR activities by the tobacco industry may include ineffective youth smoking prevention campaigns which allow the industry to present itself as "caring" for the very youngsters to whom it also markets its deadly products. The industry takes pains to support social programmes for tobacco growers and their children and unrelated social causes such as programmes to combat domestic violence against women, disaster relief efforts and environmental causes and groups. Every time a group accepts funds from or works with the tobacco industry, the industry claws back some of the respectability it has lost through the social, economic, environmental and health damage caused by its products. In summary, the tobacco industry uses CSR to claim that it cares for society and the environment and to present itself as a responsible member of society.

These CSR efforts interfere with health policy by winning goodwill for the industry among politicians and the public. The industry uses CSR to seduce groups not related to tobacco – sometimes not even related to health – into becoming industry allies. In this way, when there are attempts to regulate tobacco marketing, for example, the industry can call on a host of organizations which are well disposed towards it, or in its debt, to speak on its behalf.

This phenomenon has recently been seen in countries from regions as diverse as Africa (23) and Europe (24), where representatives of tobacco companies complained that a proposed ban on sponsorship, a recognized form of marketing, was harmful and unnecessary. A chorus of protests from charities supporting causes such as mental health and care for the elderly was then quoted in the media and presented as opposition to proposed legislation banning tobacco marketing. Media reports focused on the loss of income for the charitable organizations, and not on the health gains to be made by restricting tobacco marketing.

Fabricating support through front groups

Years of deception have so isolated the tobacco industry from business and citizens that it needs to simulate support. To this end, the industry uses front groups. Front groups are organizations that purport to serve a public cause while actually serving the interests of a third party, sometimes obscuring or concealing the connection between them. The tobacco industry uses phony "grassroots" groups to give an impression of social support for its interests, typically "smokers' rights" groups, "citizens' rights" groups and business groups.

"Smokers' rights" groups are created and promoted behind the scenes to preserve the social acceptability of smoking and speak out for allowing smoking in public places. Philip Morris proposed adopting a variety of personas: "Sometimes we will need to speak as independent scientists, scientific groups and businessmen; at other times we will talk as the industry; and, finally, we will speak as the smoker" (25). Since smoke-free policies are widely supported by the population, the "smokers' rights" groups try to maintain a "controversy" about secondhand smoke in the social arena and focus the debate on the smoker rather than the tobacco industry or the harmful effects of the smoke itself. "Smokers' rights" groups oppose clean indoor air laws and policies, and take a stand on other issues as well, such as tobacco taxes and advertising bans (26).

Business front groups are used to argue that tobacco control policies cause economic damage to the businesses they claim to represent. The tobacco industry is known for funding tobacco growers' associations and creating or funding restaurant or bar organizations to oppose smoke-free measures in the hospitality sector. Their role is to insist that banning smoking would cost them business and to create an aggressive mentality in legitimate restaurant and bar operators against government smoke-free policies. The tobacco industry has also created front groups to oppose consumer regulation, depicting it as an attack on individual freedom. It describes these regulation efforts as part of the "nanny culture" led by a "growing

fraternity" of food and anti-tobacco "cops", "health care enforcers", "anti-meat activists" and "meddling bureaucrats" who "know what's best for you" (27).

Discrediting proven science

The scientific evidence about the harm caused by tobacco and secondhand smoke is so strong and extensive that the industry needs to discredit it in order to get around or weaken tobacco control legislation. "Doubt is our product", a cigarette executive once observed, "since it is the best means of competing with the 'body of fact' that exists in the minds of the general public. It is also the means of establishing a controversy" (28).

The efforts of the tobacco industry to deny the lethal effects of secondhand smoke are well known. For decades the industry has known that second-hand smoke is toxic. One company, for example, privately performed extensive research on second-hand smoke in a secret laboratory and demonstrated its toxicity (29, 30). It then designed a global programme with other tobacco companies, hiring scientists and lobbyists to dispute scientific evidence about health risks. The industry hired scientists and briefed journalists, government officials and members of the scientific community in order to keep them confused about the hazards posed by tobacco and secondhand smoke. The majority of tobacco companies continue to deny that second-hand smoke kills (31,32).

Whether it is creating confusion about the harms of secondhand smoke, the addictiveness of nicotine or the deleterious effects of smoking, the tobacco industry's duplicitous tactics have spawned a multimillion-dollar industry which dismisses research conducted by the scientific community as "junk science". Hired consultants have increasingly tried to skew the scientific literature, and have manufactured and magnified scientific uncertainty, in order to divert policy decisions to the industry's advantage. In doing so, they have not only delayed action on tobacco control, but have weakened public health safeguards and put up barriers which make it harder for lawmakers, government agencies and courts to respond to future threats.

Threatening governments with legal action

An often-used threat, increasingly carried out, is the threat of legal retaliation against a specific policy or set of policies. This can be at any level, from global to local. The tobacco industry, employing a veritable army of lawyers, threatens legal action against governments over tobacco control policies that threaten its profits. Legal arguments often question the constitutionality of any policy measure or legislation, claim that due process was not followed in the phase that preceded the adoption of legislation and argue against any implementation or regulatory language that follows adoption.

Since the entry into force of the WHO FCTC, domestic legal challenges by the tobacco industry and its front groups have more and more frequently failed, as courts cite the treaty as the legal foundation for strong tobacco control legislation. Recently, the industry has shifted its litigation strategy, scaling up the use of international bilateral or multilateral agreements to challenge a country's tobacco control policy in the courts. For example, the tobacco industry has recently brought actions against Australia, Norway, Uruguay and other countries which have introduced tougher tobacco control measures in line with the WHO FCTC. The industry has pursued these governments through international mechanisms and using bilateral investment agreements. It seems that these intimidation tactics are deliberately designed to deter other countries from introducing similar tobacco control measures (33).

Tobacco industry interference: always and everywhere a threat to public health

Regardless of the shape or form it takes, tobacco industry interference is always designed to thwart attempts to curb the tobacco epidemic and its negative social, economic, environmental and health consequences. While there is a growing awareness of the tobacco industry's unceasing attempts to sabotage public health, it is less well known that tobacco companies often work hand in glove with their

commercial competitors to keep regulation to a minimum and obtain advantageous conditions from the government to help them run their businesses.

> Three things to keep in mind about tobacco industry interference:
> - it is not always obvious
> - it is not always in the area of tobacco control
> - it is not always even in the area of health

Tobacco industry interference is a threat to public health, whether the industry is private or State-owned. So all countries need to be aware and take action against tobacco industry interference. WHO recognizes that the tobacco industry uses backhanded methods to thwart tobacco control efforts, and urges governments to remain:

> "… alert to any efforts by the tobacco industry to continue its subversive practice and to assure the integrity of health policy development in any WHO meeting and in national governments" (World Health Assembly resolution WHA54.18, 2001) (34)

HOW TO BEAT TOBACCO INDUSTRY INTERFERENCE

Fortunately, to address this global threat there is a global solution. A total of 173 countries plus the European Union (comprising almost 90% of the world's population) have already agreed to implement an international treaty, the WHO FCTC, that sets out policies aimed at controlling this epidemic of disease, death and suffering. Countries that are Parties to this treaty recognize the tobacco industry as a major barrier to achieving global health and have committed themselves to overcoming this barrier, as shown by Article 5.3 of the treaty (35).

> **WHO Framework Convention on Tobacco Control, Article 5.3**
> "In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."

Because the industry interferes in all countries, those countries that are not yet a Party to the WHO FCTC are also urged to counteract the industry's malicious interference and refuse to provide it with a safe haven for its business and litigation.

Everyone can help. Governments, nongovernmental organizations, academia and individual citizens can all act to put an end to tobacco industry interference.

Governments must act to protect public health from tobacco industry interference

All the Parties to the WHO FCTC have agreed on ways to stop tobacco industry interference. They have adopted Guidelines for the implementation of Article 5.3 of the WHO FCTC (36), based on four principles:

> **Principle 1:** There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.
> **Principle 2:** Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.
> **Principle 3:** Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.
> **Principle 4:** Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses.

Based on these principles, governments should take action to prevent tobacco industry interference in tobacco control and public health. They should communicate information relevant to the tobacco industry to policy-makers, decision-makers and stakeholders and establish coordinated approaches involving all sectors of the government to promote full accountability and guide all interactions with the tobacco industry, ensuring that these interactions are limited to what is strictly necessary and transparently disclosed. A monitoring system for the tobacco industry, with relevant exchanges of information at regional and global level, should be considered as an important tool to implement the Article 5.3 Guidelines.

More specifically, in applying the Article 5.3 Guidelines, governments should.

- Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with tobacco control policies.
- Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that do occur.
- Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry. Do not accept funds or help from the tobacco industry. Do not support or endorse tobacco industry attempts to organize, promote, participate in or implement youth, public education or other initiatives that are directly or indirectly related to tobacco control.
- Require that information provided by the tobacco industry be transparent and accurate. Governments should require the tobacco industry and those working to further its interests to submit regular, truthful, complete and precise information on tobacco production, manufacture, market share, marketing expenditures, revenues or any other activity, including lobbying, philanthropy and political contributions, as well as the disclosure or registration of tobacco industry entities, affiliated organizations and individuals acting on their behalf, including lobbyists.
- Denormalize and, to the extent possible, regulate activities described as "socially responsible" by the tobacco industry, including but not limited to activities described as "corporate social responsibility".
- Avoid giving preferential treatment to the tobacco industry.
- Treat State-owned tobacco companies in the same way as the rest of the tobacco industry.
- Avoid conflicts of interest for government officials and employees. Governmental action in this area should include:
  - mandating policy on the disclosure and management of conflicts of interest, binding on all government officials, employees, consultants and contractors;
  - implementing a code of conduct for public officials which prescribes the standards with which they should comply in their dealings with the tobacco industry;
  - prohibiting contributions by the tobacco industry or any entity working to further its interests to the coffers of political parties, candidates or campaigns, or at least requiring full disclosure of such contributions.

Nongovernmental groups and academia need to monitor and denounce interference

Nongovernmental groups and academia have an essential role in implementing the WHO FCTC and Article 5.3 Guidelines. In fact, any institution can help to counteract tobacco industry interference. Here are some possible actions.

- Identify the potential allies and front groups of the tobacco industry, using legislative and regulatory processes, in addition to any legal cases.
- Monitor whether the tobacco industry is complying with national regulations and laws.
- Denounce industry interference to the media, parliamentarians and government.

Individuals: everyone can help

- Be aware of the ways the tobacco industry interferes. Learn its ways and be vigilant.
- Use social media to inform others of tobacco industry interference and share your opposition to it.
- Denounce tobacco industry interference when you see it.
- Join nongovernmental groups working to stop tobacco industry interference.

FURTHER READING[1]

- ✓ Article 5.3 guidelines: http://www.who.int/fctc/guidelines/article_5_3.pdf
- ✓ *Tobacco industry interference with tobacco control* (WHO publication): http://www.who.int/tobacco/publications/industry/interference/en/index.html
- ✓ WHO FCTC Implementation Database with information on implementation of article 5.3 by country http://apps.who.int/fctc/reporting/database AND http://www.who.int/fctc/reporting/party_
- ✓ International Union Against Tuberculosis and Lung Disease. *Article 5.3 toolkit:* http://www.tobaccofreeunion.org/assets/Article%205_3/Flyer%20Design%20%28web%29.pdf
- ✓ Southeast Asia Tobacco Control Alliance Tobacco Control Resource Center: http://www.seatca.org/index.php?option=com_content&view=section&layout=blog&id=12&Itemid=93
- ✓ WHO Regional Office for the Eastern Mediterranean publications on tobacco industry: http://www.emro.who.int/tfi/InPrint.htm
    - o *Tobacco industry activities in Pakistan: 1992 – 2002*
    - o *Review of tobacco industry activities in the Eastern Mediterranean Region: an introduction,* 2008
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    - o *Review of tobacco industry activities in the Eastern Mediterranean Region: voice of truth,* 2008
- ✓ Pan American Health Organization publication *Profits over people: tobacco industry activities to market cigarettes and undermine public health in Latin America and the Caribbean*, 2002: http://www.paho.org/English/DD/PUB/profits_over_people.pdf
- ✓ University of California San Francisco library: *Research into tobacco industry activity: http://www.library.ucsf.edu/tobacco/activity*
- ✓ Framework Convention Alliance reports on tobacco industry interference: www.fctc.org/index.php?option=com_content&view=category&layout=blog&id=44&Itemid=206

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