



OPEN ACCESS

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

Łukasz Balwicki,¹ Michał Stokłosa,² Małgorzata Balwicka-Szczyrba,³ Wioleta Tomczak⁴

► Additional material is published online only. To view please visit the journal online (<http://dx.doi.org/10.1136/tobaccocontrol-2015-052582>).

¹Department of Public Health and Social Medicine, Medical University of Gdansk, Gdańsk, Poland

²Economic and Health Policy Research, American Cancer Society, Atlanta, Georgia, USA

³Department of Civil Law, University of Gdansk, Gdańsk, Poland

⁴Department of Oncological Propedeutics, Medical University of Gdansk, Gdańsk, Poland

Correspondence to

Michał Stokłosa, Economic and Health Policy Research, American Cancer Society, 250 Williams St Atlanta, GA 30303, USA; michal.stoklosa@cancer.org

Received 8 July 2015

Accepted 4 September 2015

Published Online First

28 September 2015

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.¹ 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).² These premature deaths and disability cause tremendous economic costs and constrain economic development potential.³

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),⁴ 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,⁵ 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 laws⁶ and incomplete advertisement, promotion⁷ and sponsorship bans.⁸ At the European Union (EU) level, Poland actively opposed tobacco control measures proposed during revision of the Tobacco Products Directive from 2010 to 2014.^{9 10}

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,¹¹ 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.^{10 12–16} 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 litigation¹⁷ and manipulating science.¹⁸ It also uses countries with weaker political processes to interfere with tobacco control policies in countries with stronger public policy standards.¹⁷ In 2012, the issue of the tobacco industry's interference was the theme of the WHO World No Tobacco Day.¹⁹

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.²⁰ Two other studies exposed the tobacco industry's practices of exaggerating and misrepresenting the cigarette smuggling problem.^{21 22} 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.



CrossMark

To cite: Balwicki Ł, Stokłosa M, Balwicka-Szczyrba M, et al. *Tob Control* 2016;**25**:521–526.

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 (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).²³ 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.²⁴

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 2006,¹¹ 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).²⁵ The industry also used Members of Parliament^{26–28} and the local governments^{29–30} 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).²⁰ Corporate social responsibility reports were sent directly to policymakers.³¹ The industry also expressed gratitude for favourable policies,³² and sent congratulations to newly appointed members of the government.³³

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,^{31–33–35} and expressed their willingness to actively participate in policymaking.^{36–37} In the Ministry of Finance alone, there were at least 30 meetings between government officials and industry representatives between 2006 and 2012.³⁸ The industry claimed that they were a necessary party in the policymaking process.³⁹ Industry representatives provided the government with numerous reports presenting their viewpoint on proposed new legislation,^{40–44} and even provided the government with prewritten legislative proposals.³⁴

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 2012.⁴⁵ 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.⁴⁶

Exerting pressure

Economic arguments

The industry was eager to mention how vital the tobacco sector is for the economy, job market and government revenue.^{32 36 39 44 47–49} 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,⁵⁰ while the Business Centre Club used economic arguments when contacting the Ministry of Health directly.⁴⁷

Many industry arguments were factually incorrect. The industry often claimed that its existence was vital for the Polish job market,^{36 47 48} emphasising also the government revenue from excise, value-added, corporate income and even personal income taxes.^{39 47 51} 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.¹⁷ In particular, the industry claimed that the tobacco sector created nearly 600 000 jobs in Poland.⁴⁸ 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,⁵² 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.⁵³ 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.¹¹ 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,⁴⁰ banning retail displays,⁵⁴ banning menthol cigarette sales,⁵⁵ banning certain additives in cigarette production⁵⁶ and implementing pictorial health warnings.⁴⁷ The industry also used this argument against EU proposals for standardised plain cigarette packaging.^{43 55 57 58}

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),⁵⁹ the tobacco lobby in numerous documents claimed that the illicit trade was actually increasing.^{40 44 47} 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)...”⁴⁰ Smoking kills more than half and as many as two-thirds of cigarette users,⁶⁰ 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.⁶¹

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,⁵⁴ standardised plain packaging^{47 49} and bans on additives.^{56 62}

The industry often manipulated and misrepresented evidence.^{40 54} 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”,⁶³ even though there had been at least 30 studies confirming the effectiveness of pictorial health warnings published by that time.⁶⁴ The very same letter from Business Center Club presents results from a report by the Deloitte consulting company,⁶³ but fails to mention that this report was commissioned and paid for by British American Tobacco.⁶⁵

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”.⁵⁴ 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).⁶⁶ 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.⁶⁷

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.⁶⁰ The mere threat of such litigation can discourage a country from taking legislative and regulatory actions.⁶⁸ In Poland, such legal arguments were used to forestall implementation of standardised plain packaging,^{43 47} display bans⁵⁴ and pictorial health warnings.^{50 69} The industry claimed that these regulations would constrain free enterprise and would violate the Polish constitution, as well as international trade agreements.⁵⁴ 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.⁴⁸

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.⁷⁰ 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.³⁵ 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.¹¹ 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 2007.¹¹ Since the ad valorem-based excise tax structure benefits cheaper cigarettes,⁷¹ 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 2007.⁷² 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.³² Companies producing cigarettes from the bottom price category also lobbied against minimum excise tax levels, because higher minimum taxes would affect their bestselling brands.^{40 73} 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.³⁸ 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.⁷⁴

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.¹⁷ For example, Ukraine, Honduras, the Dominican Republic, Cuba and Indonesia initiated formal proceedings against Australia within the World Trade Organization.⁶⁸ In Poland, which scores lower than most developed countries on the World Bank's government effectiveness index,⁷⁵ the industry tried to push the government to oppose UK display bans⁵⁴ as well as the Australian plain packaging law.⁴²

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.⁴¹ 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 2012.⁷⁶

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,¹⁰ and the only country that sued the Directive in the European Court of Justice.⁷⁷ 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.⁷⁸

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.¹⁷ 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.⁷⁹ 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.⁸⁰ 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.

Correction notice This article has been corrected since it was published Online First. The Acknowledgements and Funding statements have been updated.

Acknowledgements The authors would like to thank the late Patti White for her help with the study concept and design, as well as Mateusz Boike, Michał Brzeziński, Anna Kozieł, Krzysztof Izdebski, and Marzena Zarzeczna-Baran for their valuable contributions. The authors would also like to thank John Daniel for his edits and comments.

Contributors ŁB and WT collected and analysed the documents. MB-S analysed the legal aspects of the industry's practices. MS wrote the first draft of this manuscript. All authors edited and prepared the manuscript for publication.

Funding This article was produced based on documents obtained within a research project conducted by the Polish Society for Health Programs (PTPZ) with the help of a grant from the International Union Against Tuberculosis and Lung Disease (The Union) and the Bloomberg Philanthropies (Project ID: POLAND-OC-400).²⁴ Open

access to this article has been funded by the Campaign for Tobacco-Free Kids. The contents of this article are the sole responsibility of the authors and can under no circumstances be regarded as reflecting the positions of The Union nor those of the Donors.

Competing interests None declared.

Provenance and peer review Not commissioned; externally peer reviewed.

Data sharing statement Please contact the authors for the documents obtained through the Freedom of Information Act.

Open Access This is an Open Access article distributed in accordance with the Creative Commons Attribution Non Commercial (CC BY-NC 4.0) license, which permits others to distribute, remix, adapt, build upon this work non-commercially, and license their derivative works on different terms, provided the original work is properly cited and the use is non-commercial. See: <http://creativecommons.org/licenses/by-nc/4.0/>

REFERENCES

- Institute for Health Metrics and Evaluation. *Global burden of disease study 2010*. Seattle, USA, 2013. <http://www.healthmetricsandevaluation.org/gbd> (accessed 8 May 2014).
- Sliwiński P, Górecka D, Jassem E, et al. Polish respiratory society guidelines for chronic obstructive pulmonary disease. *Pneumonol Alergol Pol* 2014;82:227.
- Jamison DT, Summers LH, Alleyne G, et al. Global health 2035: a world converging within a generation. *Lancet* 2013;382:1898–955.
- World Health Organization. *WHO Framework Convention on Tobacco Control*. Geneva: 2003 <http://apps.who.int/iris/bitstream/10665/42811/1/9241591013.pdf> (accessed 21 Sept 2015)
- Ustawa z dnia 9 listopada 1995 r. o ochronie zdrowia przed następstwami używania tytoniu i wyrobów tytoniowych. 1995. <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19960100055> (accessed 23 Apr 2015).
- Balwicka-Szczyrba M, Balwicki Ł. Ustawowy zakaz palenia wyrobów tytoniowych. *Kwart Prawa Publicznego* 2012;12:157–174.
- Balwicka-Szczyrba M, Balwicki Ł. Zakaz reklamowania i promocji wyrobów tytoniowych oraz wyrobów i symboli związanych z tytoniem. *Przegląd Legis* 2012;19:47–60.
- Balwicka-Szczyrba M, Balwicki Ł. Zakaz sponsorowania przez podmioty branży tytoniowej. *Kwart Prawa Publicznego* 2013;13:65–78.
- Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products. Brussels: 2001. http://ec.europa.eu/health/tobacco/docs/dir200137ec_tobaccoproducts_en.pdf (accessed 21 Sept 2015).
- Peeters S, Costa H, Stuckler D, et al. The revision of the 2014 European tobacco products directive: an analysis of the tobacco industry's attempts to "break the health silo". *Tob Control* 2016;25:108–17.
- Euromonitor International. *Passport database*. London, UK, 2015.
- Lee S, Ling PM, Glantz SA. The vector of the tobacco epidemic: tobacco industry practices in low and middle-income countries. *Cancer Causes Control CCC* 2012;23 (Suppl 1):117–29.
- Smith KE, Savell E, Gilmore AB. What is known about tobacco industry efforts to influence tobacco tax? A systematic review of empirical studies. *Tob Control* 2013;22:144–53.
- Evans-Reeves KA, Hatchard JL, Gilmore AB. "It will harm business and increase illicit trade": an evaluation of the relevance, quality and transparency of evidence submitted by transnational tobacco companies to the UK consultation on standardised packaging 2012. *Tob Control* 2015;24:e168–77.
- Southeast Asia Tobacco Control Alliance, Health Justice Philippines. Preventing Tobacco Industry Interference: A Toolkit for Policy Makers and Advocates based on the Guidelines for the Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control. 2012. <http://seatca.org/dmdocuments/Art%205.3%20Toolkit%202012.pdf> (accessed 23 Apr 2015).
- Shirane R, Smith K, Ross H, et al. Tobacco industry manipulation of tobacco excise and tobacco advertising policies in the Czech Republic: an analysis of tobacco industry documents. *PLoS Med* 2012;9:e1001248.
- Gilmore AB, Fooks G, Drope J, et al. Exposing and addressing tobacco industry conduct in low-income and middle-income countries. *Lancet* 2015;385:1029–43.
- Brandt AM. *The cigarette century: the rise, fall, and deadly persistence of the product that defined America*. Basic Books, 2009.
- World Health Organization. World no Tobacco Day 2012: Tobacco Industry Interference. 2012. http://www.who.int/tobacco/wntd/2012/industry_interference.pdf (accessed 1 Jul 2015).
- Manko Association. *PR and CSR practices of the tobacco industry in Poland*. Krakow: 2013. http://ash.org/wp-content/uploads/2013/08/PR-and-CSR-practices-of-the-Tobacco-Industry-in-Poland_MANKO-Association.pdf (accessed 23 Apr 2015).
- Stoklosa M, Ross H. Contrasting academic and tobacco industry estimates of illicit cigarette trade: evidence from Warsaw, Poland. *Tob Control* 2014; 23:e30–4.
- Stoklosa M. Is the illicit cigarette market really growing? The tobacco industry's misleading math trick. *Tob Control* 2016;25:360–1.
- Act of 6 September 2001 on Access to Public Information. 2004. <http://unpan1.un.org/intradooc/groups/public/documents/unpan/unpan034035.pdf> (accessed 16 Aug 2015).
- Tomczak W, Balwicki Ł, Boike M, et al. *Analiza działań przemysłu tytoniowego przeciwstawiających się skutecznej kontroli rynku i konsumpcji wyrobów tytoniowych w Polsce w latach 2006–2012*. Gdańsk, Poland: Polskie Towarzystwo Programów Zdrowotnych, 2013. <http://ptpz.pl/images/publikacje/PTPZ/analiza%20dzialan%20przemyslu%20tytoniowego%202006%202012.pdf> (accessed 23 Apr 2015).
- Business Centre Club. Members of BCC. 2015. <http://www.bcc.org.pl/Czlonkowie-BCC.297.0.html> (accessed 27 Aug 2015).
- Chrabkiewicz D. Letter dated 3 March 2011 to Grzegorz Schetyna, Marshal of the Sejm. *Biuro Poselskie Posła na Sejm RP Daniela Chrabkiewicza*. Starogard Gdański: 2011
- Siedlaczek H. Letter dated 20 January 2012 to Marek Sawicki, Minister of Agriculture and Rural Development. *Klub Parlamentarny Platformy Obywatelskiej*. Warszawa:2012.
- Lipiński D. Letter dated 14 March 2011 to Waldemar Pawlak, Minister of Economy. *Klub Parlamentarny Platformy Obywatelskiej*. Warszawa:2011
- Kuropatwa P, Sęczkowski P, Rytter R. Letter dated 20 July 2011 to the Ministry of Health. *Samorząd Powiatu Poddębickiego, Samorząd Gminy Poddębice, Samorząd Gminy Wartkowie*. Wartkowie:2011.
- Barczyk K. Letter dated 14 July 2011 from Kazimierz Barczyk to Donald Tusk, Prime Minister of the Republic of Poland. *Przewodniczący Sejmiku Województwa Mazowieckiego*. Kraków:2011.
- Heeren LA. Letter dated 5 June 2007. *British American Tobacco Polska*. Warszawa:2007
- Dejoue S, Skubiszewski A, Moede D, et al. Letter dated 6 June 2008 from the National Tobacco Industry Association to Marek Sawicki, the Minister of Agriculture and Rural Development. *Altadis Polska, Gallaher Polska, Imperial Tobacco Polska and Scandinavian Tobacco S.A.* 2008.
- Sobacka G, Szafański P. Letter dated 10 January 2006 to Zyta Gilowska, Minister of Finance of the Republic of Poland. Polish Tobacco Industry Association. 2006.
- Kepiński K. Letter dated 10 November 2006 to Wojciech Bronicki, Ministry of Finance. *British American Tobacco Polska*. 2006.
- Sokolowska G, Skubiszewski A, Mierzejewski M, et al. Letter dated 19 August 2010 from the National Tobacco Industry Association to Jan Vincent-Rostowski, the Finance Minister of Poland. *British American Tobacco Polska Trading Sp. z o.o., Imperial Tobacco Polska S.A., JTI Polska Sp. z o.o. Philip Morris Polska Distribution Sp. z o.o.* 2010.
- Malinowski A. Letter dated 28 February 2011 to Marcin Korolec, Ministry of Economy. *Pracodawcy RP*. 2011.
- Gierała R, Pietrzyk R. Letter dated 28 September 2009 to Marek Sawicki, Minister of Agriculture and Rural Development of the Republic of Poland. Polish Tobacco Industry Association. 2009.
- Kapica J. Letter dated 22 June 2012 to Polskie Towarzystwo Programów Zdrowotnych. Ministry of Finance. 2012.
- Wójtusiak-Janusz R, Wielgosz M. Letter dated 22 June 2009 to Jacek Kapica, Ministry of Finance. *Keranis*. 2009.
- Filipowicz P. Letter dated 30 August 2011 to Waldemar Pawlak, Deputy Prime Minister and Minister of Economy of the Republic of Poland. *JTI Polska*. 2011.
- Kopijowska-Nowak B. Letter dated 8 February 2012 from Ministry of Economy to Lech Piławski (Lewiatan). 2012.
- Piławski L. Letter dated 3 February 2012 to Mieczysław Nogaj. *Lewiatan*. 2012
- Bochniarz H. Letter dated 2 June 2011 from Henryka Bochniarz to Waldemar Pawlak the Deputy Prime Minister of the Republic of Poland. *Lewiatan*. 2011.
- Goliszewski M. Letter dated 15 November 2011 to Donald Tusk, the Prime Minister of the Republic of Poland. *Business Centre Club*. 2011.
- Rusiecka A. Prośba o Stanowisko, an e-mail sent on 2012-02-27 to the National Association of the Tobacco Industry, Polish Association of the Tobacco Industry, and Polish Chamber of Commerce. Ministry of Economy. 2012.
- Joossens L, Gilmore AB, Stoklosa M, et al. Assessment of the European Union's illicit trade agreements with the four major Transnational Tobacco Companies. *Tob Control* 2016;25:254–60.
- Goliszewski M. Letter dated 5 July 2011 to Andrzej Włodarczyk, Ministry of Health. *Business Centre Club*. 2011.
- Malinowski A. Letter to Waldemar Pawlak, the Deputy Prime Minister of the Republic of Poland. *Pracodawcy RP*. 2011.
- Włodarczyk M. Letter dated 20 February 2012 to Zbigniew Kamiński, Ministry of Economy. *National Tobacco Industry Association*. 2012.
- Filipowicz P. Letter dated 20 July 2011 to Waldemar Pawlak, the Deputy Prime Minister of Poland. *JTI Polska*. 2011.
- Maj M. Letter dated 13 December 2007 to Jan Vincent-Rostowski, Minister of Finance of the Republic of Poland. *Zakłady Tytoniowe w Lublinie*. 2007

- 52 American Cancer Society, World Lung Foundation. The Tobacco Atlas. Fifth Edition. Growing Tobacco. Government Subsidies. 2015. <http://www.tobaccoatlas.org/topic/growing-tobacco/> (accessed 30 Apr 2015).
- 53 Główny Urząd Statystyczny. Pracujący w gospodarce narodowej w 2012 r. 2013. <http://stat.gov.pl/obszary-tematyczne/rynek-pracy/pracujacy-zatrudnieni-wynagrodzenia-koszty-pracy/pracujacy-w-gospodarce-narodowej-w-2012-r-,7,9.html> (accessed 1 May 2015).
- 54 Nowakowski W. Letter dated 16 April 2012 to Anna Rusiecka, Polish Chamber of Commerce. 2012.
- 55 Ministry of Economy. Notatka ze spotkania Pana Andrzeja Dychy, Podsekretarza Stanu w MG na temat zmiany Dyrektywy tytoniowej (2001/37/WE) z British American Tobacco Polish Trading Sp. z o.o. (13 września 2012 r). Ministry of Economy. 2012.
- 56 Skiba J. Letter dated 10 June 2010 to Jacek Kapica, Ministry of Finance. National Tobacco Industry Association. 2010.
- 57 Nowakowski W. Letter dated 10 June 2011 to Rafał Baniak, the Vice-Minister of Economy. Komitet Handlu przy Krajowej Izbie Gospodarczej. 2011.
- 58 Noworyta P. Letter dated 22 November 2010 to Adam Fronczak, the Ministry of Health. Polski Związek Plantatorów Tytoniu. 2010.
- 59 KPMG. Project Sun. A study of the illicit cigarette market in the European Union. 2013 Results. 2014. http://www.pmi.com/eng/media_center/media_kit/documents/sun%20report%202013.pdf (accessed 9 Apr 2015).
- 60 Eriksen M, Mackay J, Schluger N, et al. *The tobacco atlas*. 5th edn. Atlanta, GA: The American Cancer Society, Inc., 2015. <http://tobaccoatlas.org/> (accessed 9 Apr 2015).
- 61 Służba Celną. Nielegalny obrót wyrobami tytoniowymi w Polsce w latach 2011–2012. 2013. <http://www.mf.gov.pl/documents/764034/6107396/Opracowanie+tytoniowe+2011-2012-biuletyn+zatwierdzony.pdf> (accessed 30 Apr 2015).
- 62 Noworyta P, Zwolicki K, Bubilek M, et al. Letter from Tobacco Farmers Associations to Donald Tusk, Prime Minister of the Republic of Poland. Polski Związek Plantatorów Tytoniu w Krakowie, Krajowy Związek Plantatorów Tytoniu w Lublinie, Związek Plantatorów Tytoniu w Krasnymstawie, and Okręgowy Związek Plantatorów Tytoniu w Lublinie. 2011.
- 63 Potocka A. Letter dated 3 April 2012 to Bartosz Arłukowicz, the Minister of Health of the Republic of Poland. Business Centre Club. 2012.
- 64 The Campaign for Tobacco-Free Kids. Tobacco Warning Labels: Evidence of Effectiveness. 2013. <http://www.tobaccofreekids.org/research/factsheets/pdf/0325.pdf> (accessed 30 Apr 2015).
- 65 Deloitte. *Tobacco packaging regulation: an international assessment of the intended and unintended impacts*. London, UK, 2011. [http://www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9DKJEB/\\$FILE/medMD9FRKWC.pdf](http://www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9DKJEB/$FILE/medMD9FRKWC.pdf) (accessed 1 May 2015).
- 66 Canadian Convenience Stores Association. *Contraband Tobacco in Canada: Time for Action*. 2009. <http://stopcontrabandtobacco.ca/wp-content/themes/stopcontrabandtobacco/pdf/timeforaction2009.pdf> (accessed 3 May 2015).
- 67 Canadian Convenience Stores Association. Partners & Sponsors. 2015. <http://theccsa.ca/partners?language=en> (accessed 27 Aug 2015).
- 68 Gruszczynski L. Trade, investment and risk: Australian plain packaging law, international litigations and regulatory chilling effect. *Eur J Risk Regul* 2014;2:242–7.
- 69 Włodarczyk M. Letter dated 11 June 2011 to Ewa Kopacz, Minister of Health. National Tobacco Industry Association. 2011.
- 70 Blecher E, Ross H, Stoklosa M. Lessons learned from cigarette tax harmonisation in the European Union. *Tob Control* 2014;23:e12–4.
- 71 World Health Organization. *WHO technical manual on tobacco tax administration*. World Health Organization, 2010.
- 72 Altadis Polska, Imperial Tobacco Polska, Scandinavian Tobacco. Letter dated 26 April 2007 to Andrzej Lepper, the Deputy Prime Minister of the Republic of Poland. National Tobacco Industry Association. 2007.
- 73 Świergiel A, Skubiszewski A. Letter to Donald Tusk, the Prime Minister of the Republic of Poland. Imperial Tobacco Polska, JTI Polska. 2010.
- 74 Philip Morris International. Opodatkowanie wyrobów tytoniowych. http://www.pmi.com/pl_pl/tobacco_regulation/tobacco_taxation/pages/tobacco_taxation.aspx# (accessed 1 May 2015).
- 75 Kaufman D, Kraay A, Mastruzzi M. The Worldwide Governance Indicators (WGI) project. 2014. <http://info.worldbank.org/governance/wgi/index.aspx#home> (accessed 29 Jun 2015).
- 76 UN Comtrade. United Nations Statistics Division—Commodity Trade Statistics Database. 2015. <http://comtrade.un.org/data/> (accessed 24 Apr 2015).
- 77 European Court of Justice. Action brought on 22 July 2014—Republic of Poland v European Parliament and Council of the European Union (Case C-358/14). 2014. <http://curia.europa.eu/juris/document/document.jsf?text=&docid=156981&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=191696> (accessed 6 May 2015).
- 78 Drewnowska B. Burza wokół papierosów bez logo. *Bloomberg* Published Online First: 2014. <http://www.ekonomia.rp.pl/artukul/1163808.html?print=tak&p=0> (accessed 6 May 2015).
- 79 FCTC. Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. 2008. http://www.who.int/fctc/guidelines/article_5_3.pdf (accessed 19 Dec 2014).
- 80 Malone RE, Bialous SA. WHO FCTC article 5.3: promise but little progress. *Tob Control* 2014;23:279–80.

Appendix 1 Legal background of tobacco industry's ability to interfere with public health policies in Poland

Although the freedom of association in Poland permits groups to take collective action when pursuing the interests of their members, both the Constitution of the Republic of Poland (Article 31.3) and the Freedom of Association Act (Article 1.2) allow this freedom to be constrained in several instances, including the need to protect public health.[1,2] However, there is currently no regulation in Poland constraining the tobacco industry's freedom to associate. Due to the lack of such regulation, there are numerous associations representing the interests of the tobacco industry: tobacco producers as well as manufacturers and importers of tobacco products. They exercise their rights in different ways, including lobbying at the highest levels of the Polish government.

There is also no regulation constraining the scope of tobacco industry's lobbying. Article 5.3 of the WHO FCTC, ratified by Poland in September 2006, requires the parties to protect public health policies with respect to tobacco control from commercial and other vested interests. It is Poland's duty to implement the treaty's measures into existing law, yet the measures of this treaty are not directly enforceable in Poland. However, Poland has never implemented any measures that would protect public health policies from the tobacco industry's interference. Such regulations are absent from both the Act of 9 November 1995 on protection of health against the effects of using tobacco and tobacco products (with subsequent amendments) and the Act of 7 July 2005 on lobbyist interference with policy-making.[3,4] Consequently, it is lawful for the tobacco industry in Poland not only to freely associate, but also to lobby against policies aimed at improving public health in the country.

References:

- 1 Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. uchwalona przez Zgromadzenie Narodowe w dniu 2 kwietnia 1997 r., przyjęta przez Naród w referendum konstytucyjnym w dniu 25 maja 1997 r., podpisana przez Prezydenta Rzeczypospolitej Polskiej w dniu 16 lipca 1997 r. 1997. <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483> (accessed 23 Apr2015).
- 2 Ustawa z dnia 7 kwietnia 1989 r. Prawo o stowarzyszeniach. 1989. <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19890200104> (accessed 23 Apr2015).
- 3 Ustawa z dnia 9 listopada 1995 r. o ochronie zdrowia przed następstwami używania tytoniu i wyrobów tytoniowych. 1995. <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19960100055> (accessed 23 Apr2015).
- 4 Ustawa z dnia 7 lipca 2005 r. o działalności lobbingsowej w procesie stanowienia prawa. 2005. <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051691414> (accessed 23 Apr2015).

ABSTRACT IN POLISH:

Tytuł artykułu:

Wpływ branży tytoniowej na politykę antytytoniową w Polsce: aspekty prawne i praktyki przemysłu

Streszczenie:

Tło: Po ratyfikacji przez Polskę w 2006 r. Ramowej Konwencji Światowej Organizacji Zdrowia o Ograniczeniu Użycia Tytoniu podjęto liczne działania, aby polepszyć prawne unormowania z zakresu prawa antytytoniowego. W tym samym czasie na poziomie Unii Europejskiej Polska brała udział w dyskusji nad zmianą dyrektywy dotyczącej opodatkowania tytoniu i dyrektywy tytoniowej. Poniższy artykuł ma na celu zbadanie taktyk podmiotów działających w interesie branży tytoniowej podejmowanych w celu ograniczenia działań antytytoniowych w Polsce zarówno w aspekcie prawnym, jak i praktycznym.

Metody: Analiza 257 dokumentów pozyskanych w trybie dostępu do informacji publicznej.

Wyniki: Zidentyfikowano trzy metody wykorzystywane przez podmioty działające w interesie branży tytoniowej, aby wpływać na polityki antytytoniowe w Polsce tj. tworzenie pozytywnego wizerunku branży tytoniowej, wyrażanie przez podmioty branży tytoniowej woli bycia częścią procesu politycznego oraz wywieranie nacisku na najważniejsze instytucje w państwie. Okazało się, że te taktyki były często używane w nieetyczny sposób, poprzez nadmierne eksponowanie przez podmioty branży tytoniowej swojej roli dla gospodarki, a zwłaszcza wpływów budżetowych, wykorzystywanie nieprawdziwych informacji co do nielegalnego przemytu papierosów, a także poprzez nadużywanie dowodów naukowych.

Podmioty działające w interesie branży tytoniowej podnosiły także groźby o charakterze prawnym, włączając zastosowanie dwustronnych umów handlowych, aby nie dopuścić do wdrożenia nowych metod ograniczania konsumpcji tytoniu. Wszystkie większe podmioty branży tytoniowej lobbowały wspólnie bezpośrednio lub z wykorzystaniem instytucji pośredniczących. Wyjątkiem był temat struktury opodatkowania wyrobów tytoniowych, który stał się przedmiotem sporu między nimi. Przemysł tytoniowy manipulował także polskim rządem w celu sprzeciwiania się politykom antytytoniowym w innych krajach z silniejszymi standardami polityki prozdrowotnej, takim jak brytyjski zakaz eksponowania wyrobów tytoniowych oraz australijskie prawo ujednociające opakowania.

Wnioski: Przemysł tytoniowy będący przedmiotem regulacji stał się poprzez intensywny lobbying partnerem rządowych prac legislacyjnych. Skuteczne wdrożenie Art. 5.3 Ramowej Konwencji mogłoby zapobiec dalszym ingerencjom.