

Worldwide news and comment

While the COVID-19 pandemic has shuttered commercial activity in many parts of the world, the tobacco industry continues to use familiar strategies to defend its interests, regardless of the human cost of its activities. Not only is the annual death toll from tobacco many times higher than the death and disability so far from COVID-19, but tobacco use is a risk factor for worse outcomes for people infected by the virus. The tobacco industry's impact during the pandemic is therefore twofold: it places an enormous existing strain on healthcare systems – particularly in low and middle income countries that can least afford it; and it likely magnifies the impact of COVID-19 itself. While the tobacco industry is faring far better than it should in such extraordinary times, it is also suffering some significant damage. In this issue, we look at the mixed fortunes of the industry in different countries, along with issues such as plain packaging and menthol products – which both pre-date, and will likely outlast, the pandemic.

INDIA: COVID-19 A GAME CHANGER FOR SMOKELESS TOBACCO?

India has introduced a range of restrictions to contain the potential for smokeless tobacco use to spread COVID-19. Initiated by two districts, Arwal and Supaul, the state of Bihar has spearheaded local efforts to use tobacco control efforts to contain COVID-19. This has been achieved through a series of measures, building on its existing leadership in this area. Previously, the state government has withstood strong pushback from the tobacco industry in its protracted battle to regulate chewing tobacco. Using a national food safety regulation, the state government has issued an order comprehensively banning the sale and manufacture of (smokeless tobacco products) gutka and paan masala.

The intervention on smokeless tobacco is crucial in the light of COVID-19. The Global Adult Tobacco Survey 2017 estimated that 23.5% of the state's population (17 million adults) currently use smokeless

tobacco in Bihar. This is approximately 40% more than the population of Mumbai, India's largest city. Spitting induced by smokeless tobacco use can exacerbate the spread of COVID-19, among other infections. Spitting increases the chance of infection not only for COVID-19, but also tuberculosis, encephalitis, swine influenza and other serious infectious diseases. Tuberculosis alone kills more than a thousand people in India per day.

Bihar's district-initiated bottom-up approach has been critical for encouraging similar actions by other states. Shortly after Bihar, the neighbouring states of Jharkhand and Uttar Pradesh came out with similar orders. In less than a month to mid-May, states and more than 190 districts had employed a combination of laws to either prohibit the sale and use of smokeless tobacco and/or started enforcement against sale of tobacco products and spitting in public places, including product seizures.

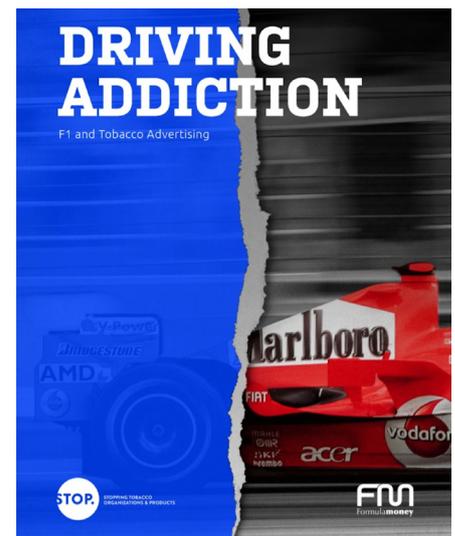
The actions by states took place against a backdrop of national warnings by medical and government bodies. In early April, India's apex medical research body the Indian Council of Medical Research issued an appeal to the general public to not consume and spit smokeless tobacco in public, noting that: "chewing smokeless tobacco products (gutkha, paan masala with tobacco, paan and other chewing tobacco products) and areca nut (supari) increases the production of saliva followed by a very strong urge to spit." This appeal was followed by similar clear directions by the Central Government. On 10th April 2020, a few days before the second phase of the lockdown the Ministry of Health and Family Welfare highlighted spitting as a public health issue, and issued an advisory to its federal units urging them to prevent the *consumption and spitting* of smokeless tobacco in public spaces.

Recognising the health impacts of smokeless tobacco, Indian states have previously enacted bans, under the national food safety law, which prohibited the manufacture and sale of these products in their jurisdictions. However, amidst the pressure to contain the spread of COVID-19, a new regulatory process has been conceived. Giving effect to the central government's advisory, states are now authorised to use provisions of the Epidemic Diseases Act 1897 and the Disaster Management Act 2005 in addition to India's (procedural and substantive) criminal code to combat the spread of COVID-19. This fresh wave of orders operationalises a combination of laws allowing states – like Bihar – to

leverage additional powers to ban both the smokeless tobacco trade itself, as well its use and the act of spitting. States and districts are now equipped with additional (tobacco control) powers. This network of laws encompasses many more smokeless tobacco products, in contrast to the prior framework which had a narrower regulatory focus, and thereby excluded the many other local varieties of tobacco products in India. The extension of new legal mechanism will address the usage of *all* forms of smokeless tobacco by prohibiting *spitting*. Several orders unequivocally recognise that spitting remains a formidable challenge with grave public health implications.

On 26 April, the Prime Minister, in a nationally broadcast radio appeal, reiterated that spitting is harmful to public health, and that during the COVID-19 pandemic it is the responsibility of all to minimise the spread of disease.

This is an edited extract of an article published on the Tobacco Control website at <https://blogs.bmj.com/tc/2020/06/28/indias-regulatory-struggle-to-rein-in-smokeless-tobacco-use-is-covid-19-a-game-changer/>, authored by Deepak



2020 is the 70th year of Formula 1 motor racing. The sport is watched by over 6% of the world's population, and has a high proportion of fans under 25. Despite a ban on advertising in the sport, the tobacco industry spent nearly US\$100 million in 2019 and is expected to spend \$115 million in 2020. A report which analyses advertising and sponsorship, called 'Driving Addiction: F1 and Tobacco Advertising' was published on 29 July by the global industry watchdog STOP. STOP is also coordinating a campaign to urge F1 to stop driving addiction. Visit <https://exposetobacco.org/news/f1-advertises-tobacco/> to support the campaign.

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BANGLADESH: INDUSTRY LOBBIES GOVERNMENT AGENCY DURING PANDEMIC

Bangladesh has seen an unprecedented level of tobacco industry interference during the COVID-19 crisis. While publicly building their image by making donations during the pandemic, the two dominant transnational tobacco companies in the country, British American Tobacco Bangladesh (BATB) and Japan Tobacco International (JTI), privately the two companies lobbied a government department to act on their behalf to ensure they could continue production during the lockdown.

The first evidence of interference came to light when Bangladesh was only 1 week into the nationwide COVID-19 shutdown. On 2 April 2020, BATB wrote to the Secretary of the Ministry of Industries (MOI) urging the Ministry to issue “an order and inform District Administration & Law Enforcement Authority to extend their support and help” to continue the company’s manufacturing, leaf purchase, finished goods supply and distribution. A similar letter from United Dhaka Tobacco Company Limited (UDTCL), owned by JTI, was also sent to the MOI on 4 April, 2020.

The letters from the two tobacco giants focused on their alleged contributions to the economy. For example, BATB’s letter claimed it is “the largest tax paying private sector company in the country” and that in the last financial year, it contributed “almost 10% of total internal revenue collection”. Similarly, JTI’s letter focused on how the company brought US\$1.47 billion as direct foreign investment into the country when it acquired UDTCL in 2018. Both letters also referred to how they contributed towards employment.

The two companies hinged their requests on an old Bangladesh law, the Control of Essential Commodities Act 1956, which classifies cigarettes as “essential commodities”. This law is clearly outdated, having been enacted in the 1950s when evidence on the harmfulness of tobacco was not yet widely known. Each year around 126 000 people die in Bangladesh due to tobacco-caused diseases.

The MOI, which has been identified as being particularly vulnerable to industry interference in the Tobacco Industry Interference Index reports, was quick to facilitate the requests from the two companies.

It forwarded the letters from BATB and JTI to all Divisional Commissioners and District Administrators (Deputy Commissioners) on third April 2020 and fifth April 2020 respectively, advising the addressees to cooperate with the operation of these two tobacco companies during the COVID-19 shutdown.

The MOI instructions to officers in the field attracted widespread criticism. On 7 April 2020 approximately 20 tobacco control organisations issued a joint statement calling for the withdrawal of the two letters, which they described as a “frustrating anti-public health move” and urged the government to “temporarily ban the sale of cigarettes” during the pandemic. The joint statement also cited the WHO’s (WHO) statement that smokers are more vulnerable to COVID-19 and are at grave risk of serious illness once infected with the virus.

On seventh May 2020, frustrated by the inaction of the government, 100 eminent Bangladesh citizens including renowned economists, development activists, former vice-chancellors of public universities, professors, former senior government officials, the former chief of the central bank, the former head of the revenue board, well known journalists and leading health professionals called for a temporary ban on the marketing and sale of all tobacco products during the COVID-19 pandemic to protect public health. The letter, addressed to the Prime Minister, gained significant momentum and prompted the Ministry of Health and Family Welfare (MOHFW) to take bold action. On 18th May 2020, the Coordinator of the National Tobacco Control Cell (NTCC) under the MOHFW, issued a letter to the MOI requesting the withdrawal of the special permissions granted to BATB and JTI. More importantly, the letter called for a temporary ban on tobacco production and sale during the COVID-19 outbreak.

However, 2 days later, on 20th May 2020, the MOI turned down the request. The mounting pressure on the MOHFW forced the ministry to withdraw its own letter of request. According to a BBC Bangla report, the MOHFW decision was made at a virtual meeting attended by the Minister and the Secretary of MOI, high-level representatives from the Ministry of Commerce, the National Board of Revenue (NBR), and the Prime Minister’s Office. The reason cited for this decision was economic: tobacco generates revenue which the government needs, particularly in light of the COVID-19 pandemic.

The industry’s behaviour in Bangladesh during the COVID-19 pandemic has

exposed how it manoeuvres to influence high level policy-making in Bangladesh. While it is not new for the tobacco industry to create divisions between the ministries, mostly between MOHFW and the Ministry of Finance, the NBR, and MOI, this interference is at a new level because the country is at its most vulnerable.

The tobacco industry’s tactics during the COVID-19 pandemic also drive home the importance of implementing Article 5.3 of the WHO FCTC in Bangladesh. A code of conduct for government officials when interacting with the tobacco industry, which is in a limbo, must be adopted. The Control of Essential Commodities Act 1956 must be amended in view of evidence on the harms caused by tobacco use. The to-do list for Bangladesh’s public health advocates grows longer each day and the future looks grim.

This is an edited version of an article published on the *Tobacco Control* website at <https://blogs.bmj.com/tc/2020/07/03/tobacco-industry-lobbies-bangladesh-government-agency-to-champion-its-business-during-covid-19-pandemic/>.

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USA: NEW SMOKE-FREE NORMAL FOR CASINOS AFTER COVID-19 CLOSURES

Since the outbreak of the COVID-19 pandemic, several casinos situated on sovereign land in the US have introduced smoke-free legislation. After being closed since mid-March 2020, Oneida Nation casinos in Wisconsin reopened as smoke-free venues in May 2020. The Stockbridge-Munsee Band of the Mohican Indians also recently implemented smoke-free legislation in its casino in Bowlerd, and Ho-Chunk gaming in Madison was the first tribal-owned casino to ban smoking 5 years ago. Tobacco has played an important role in Native American culture; however vice chairman of the Oneida Nation, Brandon Stevens, said there is a “dichotomy between using tobacco for religious events and for recreation”, as Native Americans have traditionally burned tobacco to pray to the Creator.

In Wisconsin, smoking at indoor areas of workplaces was banned in 2010, however tribes as sovereign nations have jurisdiction over their lands. The decision by Oneida Nation was based on concerns that smoking exacerbates respiratory health issues associated with COVID-19. Brandon Stevens stated: “Masks are

mandatory (inside the casinos), making it a lot more difficult to smoke in the first place". It is unclear how the smoke-free legislation will affect patronage at the casinos; however, the policy will be reviewed in the future.

Several jurisdictions in the US have recently adopted legislation to ban the sale of tobacco products and e-cigarettes, or to limit or ban the sale of menthol or flavoured cigarettes and e-cigarettes, and other tobacco products. Supermarket chain Hannaford also plans to phase out the sale of tobacco products in 183 stores in New England and New York. Hannaford spokesperson Eric Blom stated "We have been moving away from tobacco items for some time, due to our commitment around health and reducing the number of items sold". The specific date for stopping sales will vary by store; however it is anticipated that all tobacco sales will cease by September 2020. Several other major retailers have already phased out the sale of tobacco products: Target stopped selling tobacco products in 1996, while CVS Pharmacies stopped selling in 2014. Walmart and Walgreens continue to sell tobacco products, but increased the minimum purchasing age to 21 years prior to federal laws that were introduced to increase the minimum purchasing age from 18 to 21 years.

The efforts by local jurisdictions and businesses to introduce smoke-free legislation and phase out the sale of tobacco represent important steps towards further denormalization of tobacco products, and the historical special treatment the industry has enjoyed to continue selling its uniquely lethal products. Such local action is particularly important during the coronavirus pandemic, particularly as the US is one of few countries that has not yet ratified the WHO FCTC.

WORLD: TOBACCO INDUSTRY'S MIXED FINANCIAL RESULTS

An article published by the *Financial Times* on 31 July highlighted both good and bad news in relation to tobacco volumes and profits, with US government income support and stimulus spending, together with lower household expenditure on other items, leading to greater resilience for tobacco profits in the US market. Nonetheless, overall volumes were reported to be down, in part due to lower sales in duty-free shopping; and demand was also expected to reduce as emergency economic measures are rolled back.

Encouragingly, there were heavy volume declines in countries such as

Indonesia and the Philippines. As noted by Adam Spielman, a Citi analyst, "The results confirmed the COVID-19 crisis is driving very strong results in tobacco in the US, but also exceptionally weak results in emerging markets".

AUSTRALIA: WTO AFFIRMS PLAIN PACKAGING

In June 2020 The World Trade Organisation (WTO) reconfirmed its earlier decision on Australia's plain packaging for tobacco legislation, after the WTO Appellate Body rejected appeals brought in 2018 by the Dominican Republic and Honduras, bringing to an end 8 years of challenges.

Australia was the first country in the world to adopt plain packaging legislation in December 2012, prompting Cuba, the Dominican Republic, Honduras, Indonesia and Ukraine to bring legal complaints about the laws. Ukraine withdrew its complaint in June 2015. The challenge to Australia's plain packaging laws focused on arguments that the measures were more restrictive of trade than necessary to protect human health, and the laws unreasonably interfered with the use of tobacco company trademarks on packaging. These are common arguments used by the tobacco industry to prevent or delay the implementation of plain packaging in other countries. The WHO and the WHO Framework Convention on Tobacco Control (FCTC) Secretariat provided the WTO panel with a joint amicus brief on global tobacco control and summarised the public health evidence underlying tobacco plain packaging and the relevant provisions of the WHO FCTC and its Guidelines.

In June 2018, the Panel report was released stating Australia's policy on plain packaging was consistent with WTO law. While Cuba and Indonesia accepted the Panel's decision, Honduras and the Dominican Republic appealed against the report.

The latest ruling confirmed the measure was consistent with WTO guidelines and Australia's international trade and investment obligations, thereby ending the litigation proceedings against Australia's laws. The Appellate Body report confirmed the panel's findings that plain packaging is "apt to, and does, contribute" to Australia's objective of improving public health by reducing tobacco use and exposure to tobacco smoke. It also supported the panel's finding that plain packaging is no more trade-restrictive than necessary for achieving that public health objective,

that plain packaging does not "unjustifiably encumber by special requirements" the use of trademarks in the course of trade, and trademark restrictions arising from plain packaging are justified by their contribution to public health objectives. This outcome is in line with litigation in other countries, which has uniformly rejected tobacco industry challenges to plain packaging. It also is likely to accelerate implementation of plain packaging in other countries.

Australia's Health Minister, Greg Hunt said that the decision was "a fantastic win not just for Australia, but for governments around the world who want to reduce the terrible toll of sickness and death caused by smoking".

Dr Adriana Blanco Marquizo, Head of the WHO FCTC Secretariat said: "This decision represents a landmark victory for global health and a major setback for the tobacco industry. Plain packaging is consistent with international trade law as part of a comprehensive approach to tobacco control that protects people from the harms caused by tobacco". This decision allows the 182 Parties to the WHO FCTC to implement Articles 11 and 13 of the Convention, which address effective tobacco packaging and labelling measures and advance the implementation of comprehensive bans (or restrictions) on tobacco advertising, promotion and sponsorship, without breaching WTO law.

UK: TOBACCO COMPANIES INVESTIGATED OVER MENTHOL BAN

In 2016, the European Union (EU) announced that the sale and supply of menthol cigarettes and cigarettes with a 'characterising flavour' other than tobacco would be banned by 20th May 2020. The ban included flavoured roll-your-own tobacco, filters, papers, packages, capsules or other components containing flavourings. Menthol cigarettes may be more attractive to potential and experimental smokers, easier to inhale, and may increase the likelihood of children trying cigarettes, while also making smoking more difficult to quit.

Although the UK left the EU in January 2020, it proceeded with implementation of the EU-based legislation. The UK Office for National Statistics claimed there were 7.4 million current smokers, and 1.3 million smokers in the UK used menthol cigarettes in 2018. The menthol ban was delayed by 3 years after extensive lobbying by the tobacco industry, and analysis of industry data suggests the continued promotion of menthol cigarettes during

that time led to an increase in market share from 14% of sales to 21% between 2014 and 2018.

After the ban on menthol cigarettes came into effect in May 2020, Public Health England launched an investigation to determine whether tobacco companies were flouting the laws after seven cigarette brands were reported by smokers as tasting like menthol. Many of these products are advertised as providing a “fresh” flavour and will be analysed to determine compliance with relevant legislation.

Tobacco companies have introduced menthol filters for use with roll-your-own tobacco and menthol flavoured cigarillos which are not included in the ban. Prior to the introduction of the legislation, Imperial Brands (formerly Imperial Tobacco Group) released a range of “Flavour Infusion cards” which can be inserted into a packet of cigarettes or rolling tobacco to produce a menthol flavour (‘Menthol Chill’ or ‘Fresh Mint’) in an attempt to circumvent the legislation. Imperial Brands argued that the cards are “accessories” and are not classified as tobacco products, which the Department of Health (UK) is investigating.

PMI has also used the ban to promote its IQOS heated tobacco products in the UK, which have been marketed as “the closest alternative to a menthol cigarette”. The company offered promotional menthol kits and trials for new customers, with half-price tobacco HEETS sticks in its four menthol flavours.

Despite considerable progress made in recent years, approximately 80 000 people die from smoking related illnesses each year in the UK. Ensuring compliance with the existing ban on menthol cigarettes and reviewing existing legislation to close loopholes to prevent alternative menthol products from being manufactured and sold will help bring to an end this public health disaster.

USA: FDA SUED OVER MENTHOL INACTION

While the UK is dealing with the tobacco industry undermining its menthol ban, in the US the Food and Drug Administration (FDA) is being sued over its inaction on menthol cigarettes. The African American Tobacco Control Leadership Council (AATCLC) and Action on Smoking and Health (ASH) are calling on the court to require the FDA to fulfil its mandate and stop allowing senseless deaths from mentholated tobacco products.

In 2009, the United States Congress passed—and then President Obama signed into law—the Family Smoking Prevention and Tobacco Control Act. This act implemented a flavour ban in cigarettes, but excluded menthol, subject to further research on the public health impacts of menthol in cigarettes.

In 2011, the FDA’s Scientific Advisory Committee concluded that the “removal of menthol cigarettes from the marketplace would benefit public health in the United States.” It determined that if menthol cigarettes were removed from the marketplace in 2010, then by 2020, roughly 17 000 premature deaths would have been avoided, and about 2.3 million people would not have started smoking. By 2050, the cumulative gains would have resulted in over 300 000 premature deaths avoided, and over 9 million people who would not have started smoking.

Now, 11 years since the law passed, the FDA still hasn’t taken action. This is a dangerous and deadly reluctance to enact public health measures that will protect all Americans, but specifically the African American community. For the African American community, this would have meant that (a) by 2020, roughly 4700 premature deaths would have been avoided, and about 461 000 African Americans would not have started smoking; and (b) by 2050, over 66 000 premature

deaths would have been avoided, and over 1.6 million African Americans would not have started smoking.

Many other countries are already taking action against menthol cigarettes, including Canada, Ethiopia, Uganda, and the European Union, in addition to the UK. The WHO Framework Convention on Tobacco Control (FCTC) Guidelines for Articles 9 and 10 encourage countries to begin ‘Prohibiting or restricting ingredients which may be used to increase palatability in tobacco products,’ which includes menthol. Countries which take menthol off the market are fulfilling their obligations and protecting the right to health of their citizens by taking menthol off the market.

This case takes on an even greater importance now, as the Black Lives Matter movement continues to gain momentum. Banning menthol is a straightforward step that the FDA could take to protect the health and lives of thousands of Black Americans. ASH and AATCLC are calling on the FDA to act on its own evidence that a menthol ban would benefit public health. We hope that this lawsuit will be the push that the FDA needs to protect American citizens from the harms of mentholated cigarettes.

This is an edited version of an article first published on the *Tobacco Control* website at <https://blogs.bmj.com/tc/2020/06/29/us-food-and-drug-administration-sued-over-inaction-on-menthol-cigarettes/>.

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