

CHILE

2021

TOBACCO
INDUSTRY
INTERFERENCE
INDEX

Introduction

Chile is one of the Latin American countries with high interference from the tobacco industry in its public tobacco control policies. The Industry Interference Index in its 2020 version notes that Chile is the 4th country most seriously affected by this strategy, ranking behind Colombia, Ecuador and Argentina. ¹For this reason, it is very important to update this index annually.

Chile's situation on tobacco industry interference is quite unknown within the country itself. In Chile today the abuse and interference of large business companies in matters of the State and in the lives of people are an issue of high social sensitivity. However, little is known about what happens to the activities of these companies.

The tobacco bill incorporating plain package, ban of additives and ban of display of tobacco products at points of sale, which is currently before the agriculture committee of the Chamber of Deputies, has made no progress due to industry lobbying and other legislative priorities resulting from the COVID 19 pandemic.

In this sanitary context of quarantine and prolonged confinement, cigarette smuggling increased. According to a study by the ALTO consulting the volume of cigarette sales over the Internet increased by 59% in 2020².

Also, due to the effect of the pandemic, it is very possible that the hearings requested by the law on lobbying and transparency have been less than the extra-official contacts made, either by telephone or in person, which prevents to adequately measure the level of contacts and influence of the tobacco industry with the government during the period of this report.

Another aspect of the health context is that messages in favor of the tobacco industry were disseminated by some media that gave coverage to the news of a possible vaccine against COVID-19 produced by tobacco companies³ and the opinion column of a renowned smoker and advisor of the Instituto Libertad y Desarrollo, an entity that in 2103 received funds from BAT-Chile⁴. The column disseminated alleged evidence that tobacco was positive for COVID-19.⁵

¹ Global Tobacco Industry Interference Index. <https://bit.ly/3zmcnfH>

² Estudio sobre la venta de cigarrillos de contrabando por internet, ALTO, Agosto 2020 <https://bit.ly/3vi64Xf>

³ Vacuna contra covid-19 elaborada en base a tabaco se probará en humanos, Suractual 17 Diciembre 2020 <https://bit.ly/3iFhmSD>

⁴ Instituto Libertad y Desarrollo recibe fondos de BAT- Chile. CIPER; 4 Marzo 2014. <https://bit.ly/35inBnP>

⁵ El tabaco es bueno para el coronavirus, Nuevo Poder, 25 Abril 2020 <https://bit.ly/3cEpMpC>

Summary Findings

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

Representatives of the main international tobacco company operating in Chile (BAT and PMI) have been received by the Ministry of Finance, the National Customs Service (SNA) and the Internal Revenue Service (SII).

Delegations of COP have not been invited or assisted by industry representatives.

This item worsened in relation to TIII 2020 as this year the evidence of interference was more robust.

2. INDUSTRY CSR

CSR activities of tobacco companies are prohibited by law since 2013, so there is no record of such actions.

The score remains at the same level as the 2020 report.

3. BENEFITS TO THE INDUSTRY

Only tobacco products purchased at Duty Free premises, mainly at airports, are exempt from tax. Cigarette cartons and packs must include the corresponding health warning even if it is overlaid and not printed on each pack.

This item improved with respect to last year as there were no new benefits for the industry.

4. UNNECESSARY INTERACTION

The meetings of the Observatory of Illicit Trade created by the National Chamber of Commerce (CNC) are permanently attended by BAT Chile representatives together with other private companies and 12 services or institutions of the State.

It remains at the same level as 2020.

5. TRANSPARENCY

Chile has since 2008 a law of transparency that allows anyone to be informed of meetings, hearings, trips and gifts that private companies have made with authorities or government officials. On the other hand, since 2014 there has been the Lobby Law that obliges companies and institutions to register their lobbyists and managers of interest in a special register.

It remains at the same level as in 2020.

6. CONFLICT OF INTEREST

The current board of the main tobacco company operating in Chile (BAT) is composed entirely of people who have held important positions in ministries and government institutions from previous years.

This item is an improvement over the previous year since no evidence was found of the presence of family members or persons in government positions working for the tobacco companies.

7. PREVENTIVE MEASURES

There is no specific code of conduct in Chile for the relationship with the tobacco industry, but it is assumed that the Transparency and Lobby laws are sufficient.

On the other hand, tobacco companies must inform the Internal Revenue Service (SII) of sales of tobacco products in order to calculate the taxes to be paid, and to the Financial Market Commission (CMF) on their annual balance sheets.

It worsened slightly as it was found that there is no special government regulation to prohibit donations of any kind by the tobacco industry.

Recommendations

The drafting team of this report proposes the following recommendations to avoid the undue influence relations of the tobacco industry with state officials and officials:

- 1) Disseminate the interference that the industry has had or has tried to have in high-level decisions in public services, to raise awareness in the population and decision-makers of the wrong act of both tobacco companies and government officials.
- 2) Propose an information program and a code of conduct to all government agencies on Article 5.3 and its guidelines on the influence of the tobacco industry on state decisions and policies.
- 3) Sign the illicit trade protocol that entered into force on September 25, 2018 which is an international treaty that aims to eliminate all forms of illicit trade in tobacco products through a set of measures to be taken by countries in cooperation with each other.
- 4) Propose sanctions and fines for individuals and government authorities who interact unnecessarily with the tobacco industry or who have conflicts of interest with the tobacco industry.
- 5) Create a multisectoral coordination mechanism at the government level involving ministries, public services and civil society organizations to agree on tobacco control measures in the country, including actions to avoid interference by the tobacco industry.

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2021 Tobacco Industry Interference Index Results and Findings

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INDICATOR 1: Level of Industry Participation in Policy-Development						
1. The government accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry in setting or implementing public health policies in relation to tobacco control (Rec 3.1) ⁶⁷⁸				3		
<p>There are two tobacco control bills for discussion in the parliament: the first one had been without any progress since 2018: the second, advanced to the next legislative step on March 2021.</p> <p>BAT Chile met with the Undersecretary of Finance on June 3, 2020 to discuss "the illicit trade in cigarettes in Chile (conventional and vaporizers), the dangers to the population, the losses it entails to the State from tax evasion and measures to combat". There is no tax increase after this meeting.⁹</p> <p>This question was rated with the lowest score in 2020 as the evidence of interference was lower.</p>						
2. The government accepts, supports or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)		1				
<p>In the period included in this report, no proposals or bills have been registered prepared by or in collaboration with the tobacco industry. If such interaction exists, it must be included in the records required by the Lobby Law (20,730) and the Transparency Law (20,880).</p>						
3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. (Rec 4.8)				3		
<p>In Chile there is no intergovernmental or multisectoral mechanism on tobacco control policies.</p> <p>The Ministry of Health received industry representatives to inform about changes in health warnings to be carried by cigarette packs. However, this is a procedure that could be done in a non-face-to-face way as it is a notification that the Ministry of Health makes to the tobacco companies and not an instance of discussion or exchange of opinions on the matter. To these meetings civil society organizations are not invited. Last of these meetings was recorded in 2019.</p> <p>The 2020 Index did not include this meeting, therefore its valuation is lower than that registered this year.</p>						
4. The government nominates or allows representatives from the tobacco industry (including State-owned) in the		1				

⁶ The term "government" refers to any public official whether or not acting within the scope of authority as long as cloaked with such authority or holding out to another as having such authority

⁷ The term, "tobacco industry" includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

⁸ "Offer of assistance" may include draft legislation, technical input, recommendations, oversees study tour

⁹ InfoLobby, Consejo para la Transparencia. Audiencia realizada el 3 de Junio de 2020 <https://bit.ly/3hod2>

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delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG) (Rec 4.9 & 8.3) ¹⁰						
There is no attendance of representatives of the tobacco industry at any meeting of the Conference of the Parties since 2009.						
INDICATOR 2: Industry CSR activities						
5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)	0					
B. The government (its agencies and officials) receives contributions (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4) ¹¹						
No SES activities of major tobacco companies have been detected with government agencies and private agencies. Industry contributions to any state, government or even private institution body such as study centre must be reported annually to the Ministry of Health as required by Tobacco Control Act 20,660. Nothing was reported in 2020.						
INDICATOR 3: Benefits to the Tobacco Industry						
6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)				3		
<p>During the reporting period, no formal applications have been made by the tobacco industry or its front groups to delay or hinder the implementation of tobacco control laws. However, there is a hearing in the committee on agriculture of the Chamber of Deputies in January 2021 attended by the Minister of Health and representatives of the Mesa Ciudadana Tabaco o Salud (civil society NGO) to rush the discussion of the bill.</p> <p>Chambers of Deputy try to delay the bill that has been stuck in that committee since July 2018 and its zero progress is due to pressure from the tobacco industry through tobacco farmers and some members of the agriculture commission who are allies of the industry. That was shown in the video of January 2021 hearing when two deputies discredited a qualitative study carried out by the Ministry of Health with tobacco farmers, which showed the precariousness of work in the field and the absolute dependence of farmers with BAT Chile. This study was shown by the representative of the Mesa Ciudadana Tobacco or Health, who was verbally attacked by both congressmen¹².</p> <p>Both hearings (Minister of Health and Mesa Ciudadana Tabaco o Salud) advocates to expedite the</p>						

¹⁰ Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

¹¹ Political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions.

¹² Cámara de Diputados, Comisión de Agricultura, Silvicultura y Desarrollo Rural, Sesión del 5 de Enero de 2021. <https://bit.ly/3pWUyQ1>

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processing of the law but there were no results in the parliamentary discussion. ¹³						
7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)				3		
There are no tax exemptions or benefits to the tobacco industry except for the sale of duty-free products in duty-free areas at airports and other routes of entry into the country. However, the law requires that all tobacco products sold on these sites must carry the Chilean health warning, even if it is superimposed on packaging. ¹⁴ International travelers can bring into Chile duty free 400 cigarettes and 500 gms of pipe tobacco and 50 large or small cigars ¹⁵						
INDICATOR 4: Forms of Unnecessary Interaction						
8. Top level government officials (such as President/ Prime Minister or Minister) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1) ¹⁶	0					
No record or evidence has been found.						
9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)						5
Chile's National Chamber of Commerce created the Illicit Trade Observatory involving private entities - including BAT Chile - and 12 state agencies, most of them related to economic and cigarette smuggling control aspects. This is a permanent body set up in 2016 and whose objective is to coordinate actions to curb the illicit trade of various products, but with special emphasis on the illegal trafficking of cigarettes. ¹⁷ In October 2020, the Illicit Trade Observatory released a report by the industry that consumption of illegal cigarettes had increased during the pandemic and that total reports between April-August had increased by 94.4%. ¹⁸ The research was conducted by a research group, KANTAR, contracted by the Observatory and BAT Chile. ¹⁹ According to the study it is the high tariff of more than 50% on imported cigarettes that is contributing to the smuggling.						
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.				3		

¹³ Cámara de Diputados, Comisión de Agricultura, silvicultura y Desarrollo Rural, Sesión del 5 de Enero de 2021. <https://bit.ly/2Ssl4ED>

¹⁴ Subsecretaría de Salud Pública. (2013). Ley 20660 art.6. Retrieved from <https://bit.ly/3x8qVxH>

¹⁵ IATA Travel Centre. Chile customs currency airport tax regulations. <https://bit.ly/3vk0eVf>

¹⁶ Includes immediate members of the families of the high-level officials

¹⁷ Observatorio del Comercio Ilícito, Cámara Nacional de Comercio. <https://bit.ly/3figvEh>

¹⁸ Observatorio de Comercio Ilícito, Cámara Nacional de Comercio. <https://bit.ly/3gixDKr>

¹⁹ Insight Crime.org/news 24 Julio 2020 <https://bit.ly/3vWozSe>

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<p>While there are no formal agreements in which the government accepts or participates in alliances with the tobacco industry or entities representing it, the industry has had an active pressure strategy with national customs authorities and officials. At two hearings in 2020, both BAT Chile and Phillip Morris requested the suspension of collection and/or elimination of the payment of taxes associated with cigarettes subject to theft and smuggling offences and called for the recovery of some of the goods subject to the crime.^{20,21}</p> <p>BAT Chile met with Internal Revenue Service (SII) officials to "request information on the traceability system for tobacco products" implemented in Chile in mid-2019, even this is public information so there is no need to meet with the governmental office (SII). The hearing dealt with the error in the tobacco tax return and how to correct it²².</p> <p>The cigarette traceability system that began in June 2019 showed positive figures for higher tax collection, which accounts for a greater control of tobacco trafficking by the Chilean authorities.²³</p>						
INDICATOR 5: Transparency						
I 1. The government does not publicly disclose meetings/ interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)			2			
<p>The government is required to provide information from meetings or interactions with the tobacco industry across all its agencies through the Active Transparency portal, which was created from the entry into force of Laws 20.285 (2008) regulating access to public information of state agencies and Law 20.730 (2014) regulating lobbying and private interest defense activities. Both laws translate into information search platforms that allow any citizen to access meetings, trips and gifts made or received by government authorities or officials. Further details of each meeting can be requested through these portals and State units have a duty to deliver that information^{24 25}.</p>						
I 2. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists (Rec 5.3)				3		
<p>Through the Transparency and Lobby law platforms, the State requires the identification and registration of lobbyists and managers of interest who are persons representing the interests of companies and organizations that relate to officials or authorities of state institutions. Below are the hearings where BAT Chile and PMI's interest managers are identified^{26 27}.</p>						
INDICATOR 6: Conflict of Interest						
I 3. The government does not prohibit contributions from the tobacco industry or any entity working to further its				3		

²⁰ In folobby.cl, 16 de Noviembre de 2020. <https://bit.ly/3eMNU4F>

²¹ Infolobby.cl, 7 de Julio de 2020 <https://bit.ly/3ojepYI>

²² Infolobby.cl, 25 de Marzo de 2021 <https://bit.ly/2RRGbjc>

²³ La Tercera, 22 de Marzo de 2021 <https://bit.ly/3gvNpSz>

²⁴ Biblioteca del Congreso Nacional de Chile, 2008 <https://bit.ly/3tNOQQS>

²⁵ Plataforma Ley de Lobby, 2014. <https://bit.ly/3tOgn4z>

²⁶ Infolobby, 5 de Noviembre de 2020 <https://bit.ly/3hrEZO7>

²⁷ Infolobby, 16 Noviembre de 2020 <https://bit.ly/3wa7hk7>

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interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11)						
<p>The government does not prohibit these contributions, however, it has mechanisms to meet donors and sponsors of political campaigns and candidates through the Electoral Service (SERVEL) that allows to know this information partially.</p> <p>Despite 2021 being an election year, it was not possible to know the details of donations to candidates as it is difficult information to obtain before the election. In any case, BAT Chile expressly states on its website that its policy is not to finance politicians or their campaigns²⁸.</p>						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)						5
<p>The current directory of the main tobacco company operating in Chile (BAT Chile) is composed mainly of former authorities of governments prior to the current one. The current Chairman of the Board, Jorge Rodríguez Grossi, was Minister, Undersecretary and President of public enterprises in several democratic governments after 1990 and until March 2018 while simultaneously serving as Director of BAT Chile. Roberto Guerrero del Río, former board member of BAT Chile was until 2010 a member of the Council for Transparency. [ref] Teodoro Ribera Neumann, former parliamentarian (1990-1998), former Minister of Justice (2011 - 2012) and Foreign Affairs (2019 - 2020) has been on the board of BAT Chile since 2009.^{29 30 31}</p>						
15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)	0					
<p>There is no evidence of the involvement of current government officials or their families in positions or direct advice to the tobacco industry.</p>						
INDICATOR 7: Preventive Measures						
16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)				3		
<p>A specific register for the tobacco industry has not been established on its interactions with state or government agencies. However, transparency is being governed by the Transparency and Lobby laws described above.</p>						
17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the						5

²⁸ BAT Chile, Política sobre contribuciones públicas <https://bit.ly/3oiizo2>

²⁹ Comisión para el Mercado Financiero, Información de fiscalizados, BAT Chile Comité de Directores: <https://bit.ly/3xgVqBo>

³⁰ Guerrero Olivos, Socios <https://bit.ly/3fhclXO>

³¹ BCN, Reseñas Biográficas Parlamentarias <https://bit.ly/3fhQ1D1>

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standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)						
There is no document to indicate what the conduct of government officials and authorities should be about how they should interact with the tobacco industry.						
18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (5.2)			3			
<p>The tobacco industry must report annually to the Ministry of Health the costs it incurs for monetary donations and sponsorships to individuals and institutions whether state or private (Law 20.660, Article 3)³².</p> <p>The industry provides information to government institutions related to tax collection all data on tobacco production and taxes it pays, information that must be requested especially through the transparency portal and state lobby.</p> <p>Moreover, each company operating as a public limited company must send the company's annual balance sheet to the Financial Market Commission. However, this information is only provided in physical form in the offices of this state unit and has therefore not been accessible.</p>						
19. The government has a program / system/ plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2) ³³						5
There's nothing so far on the subject.						
20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)						5
No measures have been explicitly established to prevent gifts or contributions from the tobacco industry but within the transparency portal there is a record of gifts and travel from each authority and government official with some degree of responsibility in decisions.						
TOTAL					56	

³² BCN, Ley 20.660, <https://bit.ly/3eMVKS7>

³³ For purposes of this question, "consistently" means: a. Each time the FCTC is discussed, 5.3 is explained. AND b. Whenever the opportunity arises such when the tobacco industry intervention is discovered or reported.

ANNEX A: SOURCES OF INFORMATION

TOBACCO INDUSTRY ACTIVITY

LOCAL TOBACCO COMPANIES

Top 5 Tobacco Companies/distributors	Market Share and Brands	Source
British American Tobacco Chile	93%	https://bit.ly/2RXMRMM
Phillip Morris International Chile	6%	https://bit.ly/2RXMRMM
Tanasa	0,5%	
Apollo Tobacco	0,5%	

NEWS SOURCES

Top 5 Newspaper/Dailies	Type (Print/Online)	URL
El Mercurio	Print	www.elmercurio.com
La Tercera	Print	www.latercera.com
La Segunda	Print	www.lasegunda.com
El Mostrador	On line	www.elmostrador.cl
CIPER Chile	On lines	www.ciperchile.cl