

CANADA

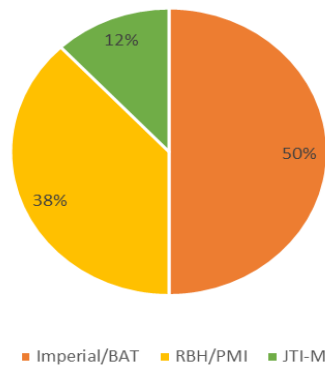
2020

TOBACCO
INDUSTRY
INTERFERENCE
INDEX

Background and Introduction

The cigarette market share in Canada is dominated by 3 main transnational tobacco companies: BAT's subsidiary Imperial Tobacco Canada, PMI's subsidiary - Rothmans, Benson & Hedges Inc. (RBH) and Japan Tobacco's subsidiary JTI-Macdonald Corp. The Canadian subsidiaries are wholly owned by their multinational parent companies. Figure 1 provides the cigarette market share of the companies.

Figure 1: Cigarette market share in Canada



NOTE

Methodology of this report is based on the Tobacco Industry Interference Index initiated by the South-East Asia Tobacco Control Alliance (SEATCA) and the 20 questions are based on Article 5.3 recommendations. A scoring system (0 – 5) is used where the higher score indicates the stronger tobacco industry interference.¹

This report was prepared by ASH Canada.

¹ Assunta, M. Dorotheo, E. U. SEATCA Tobacco Industry Interference Index: a tool for measuring implementation of WHO Framework Convention on Tobacco Control Article 5.3. April 2015
<http://tobaccocontrol.bmj.com/content/early/2015/04/23/tobaccocontrol-2014-051934>

Summary of Findings

There are no significant changes in the 2020 report.

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

No restrictions. In its policy consultations, the Federal Department of Health regularly invites policy proposals from all parties including the tobacco industry. The Ministry has accepted industry recommendations for delayed implementation of regulations on repeated occasions.

However, Health Canada reports that it not using policies or legislation drafted by or in consultation with the tobacco industry, although there may be some specific amendments that arise as part of a public consultation process.

The Canadian government does not include any representative of the tobacco industry in its delegation to the COP or its other related meetings.

2. INDUSTRY CSR ACTIVITIES

Some government agencies continue to identify partnerships with the tobacco industry and acceptance of funding. There are no prohibitions in place to prevent such violations.

3. BENEFITS TO THE INDUSTRY

The government of Canada continues to give special privileges to tobacco companies despite maintaining a relatively robust tobacco control strategy. The government continues to grant delays on tobacco policy implementation at the request of tobacco companies.

It is not uncommon for Canadian governments to postpone the implementation of tobacco control laws when under pressure from the tobacco industry or its allies. While most plain packaging requirements have been implemented, new slide-and-shell packaging has been delayed until October 2021 under pressure from the tobacco industry.

4. UNNECESSARY INTERACTION

Limitations on interactions with tobacco companies only extend to the Federal Department of Health staff and officials. There is no such limitation on interactions with the Public Health Agency of Canada or any other government department, agency, board or institution.

The government reports that *“generally in Canada the primary channels of communication between governments and the tobacco industry are limited to technical discussions in regard to both health and tax-related regulations and (ii) litigation related responses.”* Without stronger disclosure and reporting requirements for other federal government departments and other levels of government, it is not possible to conclude that this is generally the case.

Tobacco lobbyists report numerous and ongoing meetings with government officials in various government departments and agencies in the *Federal Lobbyist Registry*.

5. **TRANSPARENCY**

The Federal Department of Health is now disclosing the details of meetings with tobacco companies but this does not apply to other government departments or entities. However the Federal lobbyist register records the interactions but not with the same level of detail as the department of health.

6. **CONFLICT OF INTEREST**

The government continues to invest in tobacco companies through the Canada Pension Plan even though subnational governments are suing the same companies to recover health care costs resulting from industry negligence and deception.

7. **PREVENTIVE MEASURES**

The Federal Department of Health recently launched a website that discloses the attendees and minutes of meetings with the tobacco industry. However, this disclosure is limited only to meetings with the Federal Department of Health and no other government Ministries or agencies. As of May 2020 no tobacco industry meetings have been reported since August 2018.

The Tobacco Reporting Regulations require disclosure of some, but not all, tobacco industry activities.

There is no code of conduct for interactions with tobacco companies.

Recommendations

Although Health Canada limits its interactions with the tobacco industry and publicly reports these interactions, these controls do not extend to other federal government departments or agencies or to subnational governments. The tobacco industry continues to actively participate in Federal policy development through various means.

The Federal government needs to extend Health Canada's restrictions on tobacco industry lobbying to all government departments and agencies in order to fully comply with Article 5.3. These restrictions also need to be extended to subnational (provincial) governments. Only one provincial government (Alberta) has taken concrete steps to comply with Article 5.3.

Canada maintains a robust Federal lobbyist registry that allows for the tracking of tobacco industry lobbying activities although there are no restrictions placed on tobacco lobbyists that exceed the general requirements of the *Lobbyist Registration Act*. Additional restrictions on tobacco lobbyists are needed in order to fully comply with Article 5.3.

The tobacco industry continues to obtain significant implementation delays on key regulatory measures including plain packaging (2019) and the menthol flavour ban (2017).

The tobacco industry continues to partner with a number of Federal government departments and agencies on a variety of initiatives that are beneficial to the industry.

The Federal government continues to invest in tobacco industry holdings through the Canada Pension Fund.

Specific recommendations for the Government of Canada:

1. Launch a government-wide initiative to fully implement Article 5.3 across all Federal departments and agencies with robust policies, instruments, monitoring and public reporting.
2. Assist subnational governments with the full implementation of Article 5.3.
3. Provide funding for independent monitoring of and reporting on industry actions and government adherence to Article 5.3.
4. Prohibit all Federal government partnerships and collaborations with the tobacco industry.
5. Divest tobacco industry holdings from the Canada Pension Fund and all Federal government investment vehicles.

Results and Findings

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INDICATOR 1: Level of Industry Participation in Policy-Development						
1. The government ² accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry ³ in setting or implementing public health policies in relation to tobacco control ⁴ (Rec 3.1)			2			
<p>The Federal Department of Health has a policy of “<i>not partnering with the tobacco industry on tobacco control programming</i>,” but similar policies with respect to partnering with the industry on health issues or partnering by other government departments are not in place.</p> <ul style="list-style-type: none"> The <i>Federal Lobbyist Registry</i> reveals that the tobacco industry is currently engaging with at least 20 departments and agencies including Health Canada, the Public Health Agency of Canada, the Canada Revenue Agency, Finance Canada, the Treasury Board, the House of Commons, the Senate of Canada, the Prime Minister’s Office, the Privy Council, the Royal Canadian Mounted Police, and Justice Canada on matters pertaining to Constitutional Issues, Health, Intellectual Property, Justice and Law Enforcement, Small Business, Taxation and Finance, etc. 						
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				

² 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

³ The term, “tobacco industry” includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

⁴ “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour

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<p>No restrictions. In its policy consultations, the Federal Department of Health regularly invites policy proposals from all parties including the tobacco industry. The Ministry has accepted industry recommendations for delayed implementation of regulations on repeated occasions.</p> <p>However, Health Canada reports that it not using policies or legislation drafted by on in consultation with the tobacco industry, though there may be some specific amendments that arise as part of a public consultation process.</p>						
<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)</p>		1				
<p>There are no known infractions of this recommendation. There are no known prohibitions in place to prevent these infractions.</p>						
<p>4. The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG)⁵ (Rec 4.9 & 8.3)</p>		1				
<p>There are no known infractions of this recommendation.</p>						
INDICATOR 2: Industry CSR activities						
<p>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)</p> <p>B. The government (its agencies and officials) receives contributions⁶ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)</p>				3		
<p>In its reports to the FCTC Secretariat since 2010, Canada said it had “adopted administrative measures” which included Health Canada’s “policy of not partnering with the tobacco industry on tobacco control programming.”</p> <p>However, no mention was made of policies of other departments or of whether there were other issues on whether a partnership with the industry would be acceptable to government.</p> <p>Some government agencies continue to identify partnerships with the tobacco industry and acceptance of funding. There are no prohibitions in place to prevent these violations.</p> <p>Here are examples of such partnerships:</p>						

⁵ Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

⁶ political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

- The National Sciences and Engineering Research Council of Canada identifies Imperial Tobacco among its NSERC project partners.¹
- The National (Art) Gallery lists Imperial Tobacco among its Founding Partners.²
 1. [Natural Sciences and Engineering Research Council of Canada. Partner List.](#) Accessed May 20, 2020.
 2. [National Gallery of Canada. Website: Founding Partners.](#) Accessed May 20, 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)					4	
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It is not uncommon for Canadian governments to postpone the implementation of tobacco control laws when under pressure from the tobacco industry or its allies.

Recently, the implementation of slide-and-shell packaging was postponed for two years following the implementation of standardized packaging on tobacco products. Slide-and-shell packaging was vigorously opposed by the tobacco industry in favour of flip-top packaging that dissect the health warnings when opened. However, most plain packaging requirements other than the slide and shell format were implemented in October 2019. The slide-and-shell packaging has been delayed until October 2021 under pressure from the tobacco industry.

7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)				3		
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A general Federal tax exemption is provided for advertising and promotion expenses for Canadian businesses and this exemption also applies to tobacco industry advertising and promotion.

A federal tobacco farming transition program was established in 2006 to help farmers switch to other crops but the program did not significantly impact domestic tobacco production.

The Alberta government has divested tobacco industry stocks from all holdings and portfolios including pension funds. However, the Canada Pension Fund continues to invest in tobacco company equities.

British American Tobacco’s Canadian subsidiary, Imperial Tobacco Canada (ITCAN) has obtained an Initial Order from the Ontario Superior Court of Justice granting it protection under the Companies’ Creditors Arrangement Act (CCAA). This has the effect of staying all current tobacco litigation in Canada against ITCAN and other Group companies.⁷

Philip Morris International’s Canadian subsidiary, Rothmans, Benson & Hedges (RBH) has obtained an initial order from the Ontario Superior Court of Justice granting it protection under the Companies’ Creditors Arrangement Act (CCAA).⁸

⁷ <https://tobaccoreporter.com/2019/03/13/seeking-a-grand-settlement/>

⁸ <https://tobaccoreporter.com/2019/03/25/creditor-protection-granted-2/>

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International travellers are allowed to bring 200 <i>cigarettes</i> , 50 cigars, and 200 grams (7 ounces) of manufactured <i>tobacco into Canada for trips of 48 hours or greater</i> .						
INDICATOR 4: Forms of Unnecessary Interaction						
8. Top level government officials (such as President/ Prime Minister or Minister ⁹) 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)				3		
<p>Limitations on interactions with tobacco companies only extend to the Federal Department of Health staff and officials. There is no such limitation on interactions with the Public Health Agency of Canada or any other government department, agency, board or institution.</p> <p>The government reports that <i>“generally in Canada the primary channels of communication between governments and the tobacco industry are limited to technical discussions in regard to both health and tax-related regulations and (ii) litigation related responses.”</i></p> <p>Without stronger disclosure and reporting requirements for other federal government departments and other levels of government, it is not possible to conclude that this is generally the case.</p> <p>Tobacco lobbyists report numerous and ongoing meetings with government officials in the <i>Federal Lobbyist Registry</i>.</p>						
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)	0					
No recorded evidence on this issue.						
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) <i>NOTE: This must not involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</i>						5
<p>The Federal Department of Health has a policy of “not partnering with the tobacco industry on tobacco control programming. However, similar policies with respect to partnering with the industry on other health issues or partnering by other government departments, agencies and institutions are not in place.</p> <p>Revenue Canada entered into long-term agreements with each of the tobacco companies as part of a court-enforceable settlement over tax losses resulting from industry-fueled contraband. These agreements give the companies “an active role in developing solutions that see all tobacco manufacturers and retailers competing fairly under the laws and regulations established by the Governments.”¹</p>						

⁹ Includes immediate members of the families of the high-level officials

The Canada Border Services Agency has signed a partnership agreement with Imperial Tobacco Canada Ltd. as part of its “partners in protection” program, although the details of the agreement have not been disclosed.²

1. Agreement between JTI-Macdonald Corp and Her Majesty the Queen in Right of Canada. April 13, 2010. Agreement between Imperial Tobacco Canada Ltd and Her Majesty the Queen in Right of Canada, July 31, 2008. Agreement between Rothmans, Benson and Hedges and Her Majesty the Queen in Right of Canada, July 31, 2008.

INDICATOR 5: Transparency

11. 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			
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Restrictions on meetings/interactions with the tobacco industry are limited only to the Federal Department of Health and do not apply to any other ministry, agency or institution including Finance, Trade, Agriculture and Economic Development or the House of Commons.

The Federal Department of Health launched a new website in 2019 that contains details of previous meetings with tobacco and vaping representatives. However, the latest entry in the website is dated August 2018 (as of May 3, 2020).¹⁰

Here is an example of disclosure of meeting: Health Canada and Imperial Tobacco meeting providing date, subject matter, attendees and outcome: Proposed regulatory requirements for vaping products.¹¹

The meetings that are currently listed on the site are limited to the last calendar year (2018). There does not seem to be a requirement for the reports to be updated within a specific time frame (e.g. within 30 days of meeting).

The Federal Department of Health has proposed new regulations to “improve the information collected by Health Canada from manufacturers and importers of tobacco products and to require that the Minister disclose certain information to the public”. However, no regulations have been approved to date.¹²

Canadian tobacco companies recently initiated “settlement” discussions with the provincial governments following a \$15 billion judgement in favour of Quebec smokers who filed a class action against the tobacco companies in 1998. All federal, provincial and territorial lawsuits have been suspended against the tobacco industry under creditor protection provisions of the Companies’ Creditors Arrangement Act. Canada’s major tobacco companies applied for and received creditor protection following the ruling on the Quebec class action lawsuit in March

¹⁰ <https://www.canada.ca/en/health-canada/services/health-concerns/tobacco/meeting-summaries-tobacco-vaping-industry.html>

¹¹ <https://www.canada.ca/en/health-canada/services/health-concerns/tobacco/meeting-summaries-tobacco-vaping-industry/january-30-2018.html>

¹² <https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/acts-regulations/forward-regulatory-plan/plan/ammendments-tobacco-reporting-regulations-bill-s-5.html>

2019. Health groups are urging the provincial governments to exercise transparency in their discussions with the industry. Health Canada could facilitate a transparency process that is consistent with Article 5.3.

UPDATE: Quebec’s Court of Appeal has upheld a Quebec Superior Court ruling that awarded CDN\$15 billion in damages to 100,000 smokers as part of two class-action lawsuits against tobacco companies, according to a CBC – Canadian Broadcasting Corporation.¹³ The tobacco companies involved have obtained temporary court-ordered protection from this lawsuit and all others under the Companies’ Creditors Arrangement Act (CCAA).

12. 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)			2			
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The *Lobbyist Registration Act* requires all tobacco company lobbyists to register including consulting lobbyists. However, there are no special restrictions on these lobbying activities other than the general restrictions contained within the Act. Tobacco-industry sponsored or affiliated organizations are not required to report their funding sources or commercial alliances.

No measures have been adopted in Canada to formally or informally impose a different style of interaction between government (legislative, executive or judiciary) and the tobacco industry than exists with any other citizen or business.

The *Lobbyist Registration Act* requires some disclosure of financing (regarding receipt of government funding), but does not require lobbyists to declare whether they have received funding from tobacco companies. Since the FCTC came into force, there have been at least four opportunities to include such a provision when amendments to this Act were before Parliament.

INDICATOR 6: Conflict of Interest

13. The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11)			1			
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In its reports to the Secretariat since 2010, Canada identifies only one measure in place which conforms to these recommendations: The banning of donations to political campaigns for electoral purposes. This prohibition applies to all corporations, trade unions and non-governmental organizations, not just to tobacco companies.

There are several other measures which were not identified in these reports that are in place to reduce conflicts of interest between government and any commercial interest. These include the federal *Conflict of Interest Act*, Treasury Board policies on Conflict of Interest and Post-Employment, and the Departmental Code of Conduct which significantly limits the acceptance of gifts, hospitality or any benefits. These are intended to apply a high standard of protection against conflicts of interest. Although these policies were adopted or revised after

¹³ <https://tobaccoreporter.com/2019/03/04/billion-dollar-award-upheld/>

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<p>the FCTC came into force, there is no acknowledgement of the potential benefit of having even more stringent measures in place for tobacco than for any other commercial sectors.</p> <p>The Federal Department of Health requires participants in consultation processes to declare perceived or actual conflicts of interest in making their submissions.</p>						
<p>14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)</p>			2			
<p>There are no policies to guide public office holders in accepting positions with tobacco companies other than those which apply to other industries.</p> <p>Prime Ministers, Senators, Cabinet Ministers, Members of Parliament, senior government advisors and officials from the health ministry have moved from the tobacco industry to federal government lobbying roles or vice-versa. Even after the ratification of the FCTC, a tobacco control regulator was able to move sequentially from Health Canada to Imperial Tobacco to the Public Health Agency of Canada.</p>						
<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)</p>		1				
<p>There are no known infractions of this provision and there are no measures which extend beyond those which apply to other industries.</p>						
INDICATOR 7: Preventive Measures						
<p>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)</p>				3		
<p>The Tobacco Reporting Regulations require disclosure of some, but not all, tobacco industry activities.</p> <p>The Federal Department of Health recently launched a website that discloses the attendees and minutes of meetings with the tobacco industry. However, this disclosure is limited only to meetings with the Federal Department of Health and no other government Ministries. No tobacco industry meetings have been reported since August 2018.</p>						
<p>17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)</p>					4	
<p>There is no code of conduct for public officials dealing with the tobacco industry which extends beyond the code for other industries.</p> <p>There are several other measures that are in place to reduce conflicts of interest between government and any commercial interest. These include the federal <i>Conflict of Interest Act</i>, Treasury Board policies on Conflict of Interest and Post-Employment, and the Departmental Code of Conduct which significantly limits the acceptance of gifts, hospitality or any benefits.</p>						

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Although these policies were adopted or revised after the FCTC came into force, there is no acknowledgement of the potential benefit of having even more stringent measures in place for tobacco than for any other commercial sectors.						
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>Through the Tobacco Reporting Regulations, the Federal Department of Health requires information on research and promotional activities, sales and sponsorship and provides some disclosure of this information. The Tobacco Reporting Regulations were amended in 2005 and in 2019. The latest changes address recommendations of the Standing Joint Committee for the Scrutiny of Regulations and update requirements to make them more relevant to the current environment and to eliminate redundant requirements.¹⁴</p> <p>There are no requirements for lobbying and philanthropy which extend beyond those in place for other industries.</p> <p>Information on lobbying activities and political contributions are reported as requirements of the <i>Lobbyist Registration Act</i> and the <i>Elections Act</i> with requirements for reporting and public disclosure.</p>						
19. The government has a program / system/ plan to consistently ¹⁵ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)					4	
<p>Through regulated health warning messages on many but not all tobacco products, government informs consumers and many members of the public of the addictive and harmful effects of tobacco products.</p> <p>Canada has not taken steps to inform the public of the strategies and tactics taken by the industry other than through federal and provincial lawsuits initiated by government.</p> <p>There are no active government efforts to raise awareness about the use of individuals, front groups and affiliated organizations. However, Health Canada has provided grants to health NGOs that has supported these efforts.</p> <p>In recent public consultations, the federal Department of Health has requested that those making submissions indicate whether they receive funding from the tobacco industry.</p>						
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,				2		

¹⁴ <https://www.canada.ca/en/health-canada/services/health-concerns/tobacco/legislation/federal-regulations/tobacco-reporting-regulations.html>

¹⁵ 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.

	0	1	2	3	4	5
or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)						
There are no measures which extend beyond those required for other industries.						
TOTAL						47