

## Literature review of tobacco industry responses to tobacco control measures: plain packaging and tobacco product display ban

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### Background

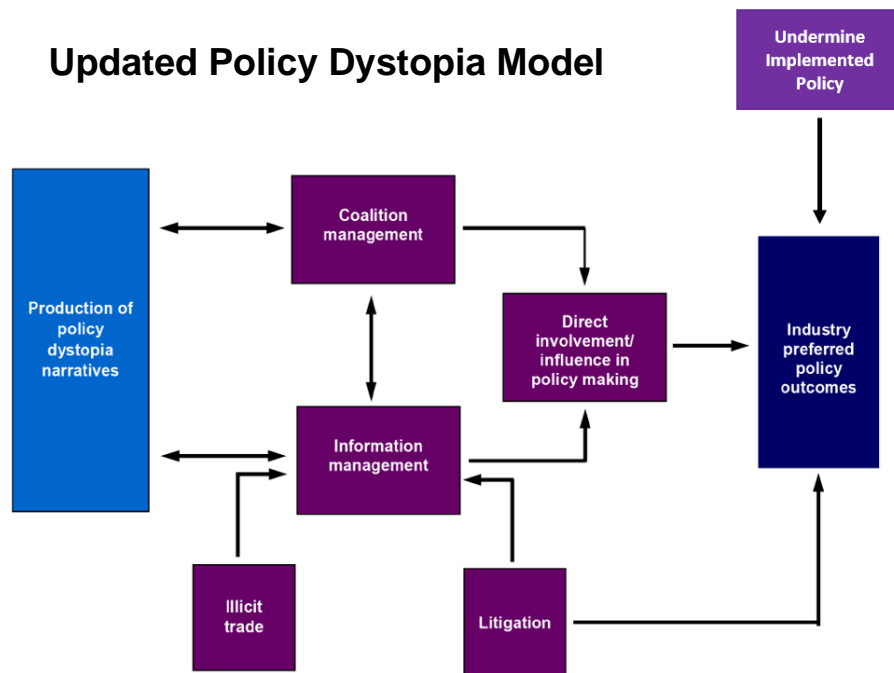
As part of the National Prevention Agreement, the tobacco control measures of plain (or standardised) packaging and a point-of-sale display ban of tobacco products are to be implemented in The Netherlands in 2020. It is anticipated that the tobacco industry will attempt to weaken or delay these measures. As part of a broader project, IVO Research Institute performed a review of the current scientific literature into the arguments and strategies employed by the tobacco industry against these measures. This review aimed to provide an update of the Policy Dystopia Model, by Uluçanlar and colleagues (2016) which demonstrates tobacco industry political activity in the areas of tobacco product taxation and marketing.

### Literature Selection

Published articles were retrieved from EMBASE, MEDLINE, PubMed, Web of Science and Google Scholar and screened for relevance. This resulted in an initial number of 5364 journal articles. A final selection of 19 articles were included in the review.

All articles were published within the last 10 years and focussed on tobacco industry efforts to influence plain packaging and/or a display ban.

### Updated Policy Dystopia Model



### Updated Model

The Policy Dystopia Model depicts how tobacco control policies are manipulated to produce outcomes favoured by the tobacco industry (*right*). Industry arguments are created (*left*) and propagated through various instrumental strategies (*centre*).

The box 'Undermine Implemented Policy' (*top right*) has been added to the Policy Dystopia Model based on our literature review. Once a policy is implemented, this strategy weakens policy outcomes in their favour.

Industry arguments under 'unanticipated costs to the economy and society' were also added to the updated model as a result of this review and help to create a fuller picture of the kind of policy dystopia narratives that are produced and disseminated by the tobacco industry.

## Strategies of the Tobacco Industry

### Most Common Strategies

The literature most commonly reported on how the tobacco industry produces their own evidence to contest legal and public health arguments. This is then widely disseminated through various media channels, externally recruited groups and heavily cited in legal action. Much of this was coordinated by the 'Plain Pack Group' (formed in 1993 of PMI, BAT, Imperial Tobacco, Rothmans International, RJ Reynolds and Reemtsma & Gallaher) whose aim was to halt the global spread of plain packaging.

### Undermining Implemented Policy

Once a policy is implemented or a policy transition period has begun (i.e. replacing branded packaging with plain packaging), the industry exerts its influence over downstream stakeholders such as retailers to dictate how the policy will be translated into the 'real world'. This influence is maintained through loyalty programmes and other financial incentives. Tobacco companies ensure that products are still sold until the end of the transition period, with standardised packs slowly integrated to reduce the impact of standardised packaging. They use 'mystery shoppers' to ensure products are verbally promoted and they cover the costs of complying with display ban legislation to ensure the products remain signposted and in a prominent location.

Instrumental Strategy		Technique	
Coalition Management		Constituency recruitment	Internal (tobacco companies and their staff) External (e.g. low-income workers, companies)
		Constituency fabrication	
		Constituency fragmentation	
		Production	
Information Management	Amplification	Producing a skewed evidence base as corroboration for projected policy failure	
	Suppression	Intelligence gathering	
	Credibility	Wide dissemination of industry-sponsored information/evidence	
	Reputation Management	Contesting/suppressing public health evidence <b>and legal advice</b>	
		Fronting: concealing industry links to information/evidence	
Direct Involvement and influence in policy		Rehabilitating industry reputation	
		Discrediting public health advocates	
		Access	
		Incentives and threats	
Litigation		Actor in legislative process	
		Actor in government decision-making	
Illicit trade		Legal action to contest/obstruct legislation/regulation	
Undermine Implemented Policy <sup>1</sup>		Facilitating/conducting smuggling	
		Micro-management of downstream stakeholders	Retailers incentivised to verbally promote products
			Free display cover installation offered to retailers to ensure tobacco products remained signposted in a prominent location in the store
		Implement changes as late as possible in policy transition period	

***“A tobacco company paid for the new arrangements as this enabled them to retain a strong relationship with the retailer, offered some control over the alternative display unit and ensured the retailer still stocked tobacco” – Hoek et al. 2011***

<sup>1</sup> New strategy and techniques added to the Policy Dystopia Model in blue

## Arguments of the Tobacco Industry

Discursive Strategy	Domain	Argument <sup>1</sup>	Voice
<b>Expanded / Created</b>			
<b>Unanticipated costs to economy and society</b>	The economy	Policy will lead to lost sales/jobs	Economist
		Policy will lead to lost/unreliable tax revenue	Economist
		Increased enforcement costs (border and product control)	Intellectual Property Rights (IPR) Lawyer
		Economic losses to (small) businesses	Small business owners and retailers
		Government will have to pay industry compensation	Trade representative
	Law enforcement	Policy will increase illicit trade	Law enforcer / Professor / Small business owners / IPR Lawyer
		Policy will criminalise the public	Criminologist
	The law	Breach of intellectual property laws	Corporate Lawyer / Trade representative
		Breach of trade agreements	Trade Lawyer / Trade representative
		Public body acting beyond jurisdiction	Administrative Lawyer
		Policy goes against domestic/international laws	Tobacco Industry
	Politics / Governance	Government is anti-free-enterprise	Concerned citizen/ Business owner
		Nanny state/slippery slope	Concerned citizen
		Government is unreasonable/unaccountable	Concerned citizen / Public ethicist / Retailer
		Country will experience reputational damage	Tobacco Industry
	Social justice	Policy is unfair to smokers	Public ethicist
Policy is regressive		Social reformer	
<b>Unintended benefits to undeserving groups</b>	Smugglers will profit	Concerned citizen / Public ethicist	
	Big business will profit	Concerned citizen / Public ethicist	
<b>Unintended costs to public health</b>	Policy will be counterproductive	Public health policy analyst	
<b>Contained / Denied</b>			
<b>Intended public health benefits</b>	There is not (good) enough evidence	Scientist	
	Policy will not work	Public health policy analyst	
	Policy is not needed	Public health policy analyst	
<b>Expected tobacco industry costs</b>	Policy will lead to reduced sales/jobs	Business owner / Packaging sector	
	Cost of compliance will be high	Business owner	

For Plain Packaging, the most commonly reported arguments were that the legislation would 'breach **intellectual property laws** and **international trade agreements**', increase **illicit trade** and that there is **no evidence** or insufficient high-quality evidence for the effectiveness of plain packaging.

Very few articles reported industry arguments against the display ban, however **criticism of the evidence base** and emphasis of **economic losses to small businesses** through increased serving time, theft and traffic to larger retailers were most commonly reported.

<sup>1</sup> New arguments added to the Policy Dystopia Model in blue

## How the Tobacco Industry Reframes the Discussion

The tobacco industry utilises various voices to get across their arguments against a policy in order to reframe the discussion to fit their narrative of policy dystopia. Internal documents reveal that there is a very intentional shift from discussion of policy in a health sphere, to one of intellectual property and potential negative economic consequences (e.g. loss of jobs and increased illicit trade). To achieve this, arguments are often presented by trade representatives, intellectual property rights lawyers and small business owners.



***“The tobacco companies’ public position in each country was that SP [standardised packaging] would result in the ‘destruction’, ‘acquisition’, ‘expropriation’ or ‘deprivation’ of their trademark property rights.” – Crosbie et al. 2019***

## Previous Industry Tactics against Plain Packaging in The Netherlands

A bill for Plain Packaging was defeated in 2016. In the run-up to this defeat, legal and public relations firm Bird&Bird was hired by Philip Morris to challenge the bill. VNO-NCW lobbied Brussel and The Hague and BAT planned a media and online campaign similar to that in Australia and the UK. Small businesses were also called to fight against the bill.



In opposition to the bill, familiar arguments were used: there would be negative economic consequences for small business; plain packaging would violate intellectual property and design rights and national, European and international laws; plain packaging would increase illicit trade as packaging would be easier to reproduce; the introduction of plain packaging was called a symptom of the ‘nanny state’ (seen in the VNO-NCW magazine ‘Forum’, July 2014) and the industry stated that the measure lacks evidence.

## Conclusions

- The Policy Dystopia Model is updated to include additional arguments under the discursive strategy of unanticipated costs to economy and society. The model is also updated with the instrumental strategy of undermining the policy once it is implemented to secure favourable policy outcomes.
- The tobacco industry tries to reframe the policy discussion in line with industry-preferred narratives with the use of experts from the legal and economic spheres
- The same arguments and strategies are repeatedly employed in different countries, with the message content tweaked to tailor to the country targeted
- More research is needed to better understand industry arguments and pre-implementation strategies in opposition to the point-of-sale display ban

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