

Abstract

Tobacco industry public relations campaigns have played a key role in challenges to standardised cigarette packaging. This paper presents a comparative analysis of industry campaigns in Australia and the United Kingdom, which have implemented standardised packaging legislation; Canada, where policy has been adopted but not yet implemented; and the Netherlands, which has considered, but not enacted regulation. Campaigns were identified via Google searches, tobacco industry websites, media coverage, government submissions and previous research; analysis focused on issue framing and supporting evidence. Public relations campaigns in all case study countries drew on similar frames - the illicit trade in tobacco products, the encroaching ‘nanny state’, lack of evidence for the effectiveness of standardised packaging, a slippery slope of regulation, and inherent threats to intellectual property rights. These claims were supported by industry research, front groups and commissioned reports by accountancy firms, but were not with verifiable research. Independent evidence that contradicted industry positions was overlooked. Similarities in structure and content of public relations campaigns in countries that have enacted or considered regulation points to a strategic co-ordinated approach by cigarette manufacturers. Countries considering standardised packaging policy can expect powerful opposition from the tobacco industry. Tobacco control communities and policy makers can learn from previous experience, and share best practise in countering industry arguments.

Introduction

In 2008, the Framework Convention on Tobacco Control's (FCTC) Conference of the Parties urged member countries to adopt standardised (or 'plain') packaging of tobacco products that restricted or prohibited logos, colours, brand images and other promotional material, leaving only brand names in a standard colour and font style and large health warnings [1]. The recommendation was based on experimental studies undertaken in Australia, the United Kingdom (UK), the United States (US) and other countries [2] that indicated that restricting all but the most basic identifying information on packaging would reduce the appeal of cigarettes, the capacity of packaging to misrepresent the harms of smoking, and increase the visibility and effectiveness of health warnings.

The value of packaging in differentiating brands and the importance of design and colour in creating brand identity and consumer loyalty is emphasised in marketing literature [3]. Analysis of previously confidential tobacco industry documents demonstrates tobacco industry awareness of the importance of packaging in communicating with consumers, and significant investment into research on pack size, shape, colour and designs that attract consumers and establish brand loyalty [4-6]. Standardised packaging legislation poses an explicit threat to industry promotional strategies by removing a key medium, particularly in markets where other forms of advertising are restricted.

Australia became the first country to require standardised packaging in 2011[7], and legislation has since come into force in France, the UK, Norway, New Zealand and Ireland, while Hungary, and Slovenia have set implementation dates. In May 2018, the Canadian bill introducing standardised packaging received royal assent, and a number of other countries have taken formal steps to enact similar regulations [8]. Existing analyses of standardised packaging processes has focused on policy development [7], potential as a tobacco control measure [9 -10] and on tobacco industry opposition to proposals for legislation which has demonstrated coordinated and highly integrated strategies to oppose such policies that have included legal challenges, public relations campaigns and political lobbying [11], involvement of allied organisations [12] and commissioning of research [13]. The messages of these campaigns have been that packaging guidelines breach intellectual property rights (IPR), violate international trade agreements, and establish an unwelcome precedent that could affect other industries [3]. These assertions underpinned tobacco industry legal challenges [14]; complaints under bilateral trade and investment agreements and disputes at

the World Trade Organization (WTO) [15-16]; and efforts to influence and obstruct the policy processes in countries contemplating standardised packaging [11].

This paper focuses on one element of industry response to standardised packaging - the public relations (PR) campaigns implemented by transnational tobacco companies (TTCs) to challenge proposed legislation. We use Grunig and Hunt's widely-cited definition of PR as the production of content and management of communication between an organisation and its publics to shape perceptions of policy issues and governmental responses [17]. Recent studies of such TTC campaigns in the UK [18], New Zealand [19] and Australia [3] found that industry arguments frequently misrepresented the intent of standardised packaging or made vague claims regarding negative impacts of proposed legislation, and that supporting evidence for industry positions was irrelevant or of poor quality.

The paper builds on previous studies by taking a comparative approach to analysing tobacco industry PR campaigns across countries that have introduced standardised packaging legislation (Australia, and the UK); have very recently passed legislation (Canada); or have considered such policy but have not enacted related measures at this point (the Netherlands). Identification and analysis of how the industry has framed key issues, and the evidence employed across multiple campaigns provides insights that will be useful for public health communities in countries that are seeking to enact standardised packaging legislation. Our analysis also contributes to existing knowledge of the ongoing efforts by the tobacco industry to influence the policy-making process more broadly, and underlines the relevance of applying frame analysis (defined below) to health policy debates [20]. It adds to existing literature on the tobacco industry's 'think global - act local' approach to adapting global political and market strategies to local markets and policy contexts [21]. Finally, it highlights the 'regulatory chill' that can be created by industry challenges to policy proposals such as standardised packaging [15, 22] that may delay or dissuade countries from implementing policies in line with FCTC recommendations.

Materials and methods

Four countries were selected as cases representative of a continuum of implementation, ranging from full enactment (Australia and UK), to planned (Canada), to rejected (Netherlands). These countries are comparable as high income democratic states, with similar

opportunities for corporations to engage in public relations campaigns facilitated by press freedom, access to populations through various media channels, and open economic systems.

Public relations campaigns were identified purposively via a range of sources including Google searches using tobacco company names and search terms ‘plain packaging’ and ‘standardized/standardised packaging’. Further searches were conducted of tobacco industry websites, government submissions and previous research on standardised packaging procedures in each country. Collection of media reports using Factiva covered the period from first announcement of government intention to enact legislation until its passage in each country. Searches were conducted for PR campaigns initiated since April 2010, when Australia announced plans to implement standardised packaging. As some campaign sources mentioned in the media and secondary literature are no longer currently available (i.e. websites no longer active) we used the waybackmachine (<http://archive.org/web/>) to search internet archives, as well as archives compiled by Tobacco Tactics (tobaccotactics.org) and the Coalition Québécoise pour le Contrôle du Tabac (www.cqct.qc.ca/documents/documents.asp).

Analysis adapted methods used by Hatchard *et al* [18] and Waa *et al* [19] in previous studies of industry strategies in the UK and New Zealand respectively. For each case study we situated campaigns within their political context, considered which channels (press releases, broadcast, print, social media, website content, etc.) were used, by whom (tobacco companies, front groups, others, etc.), how each campaign framed standardised packaging and what evidence was used to support this framing.

Frame analysis refers to ways in which issues are presented, defined and interpreted so as to promote closure and discourage consideration of an issue outside the parameters of the frames employed [23-24]. The concept of *framing* “offers a more dynamic and potentially politically aware engagement” that explores the framing not only of a policy issue, but also of relations among policy actors and of the policy-making process itself [20]. Previous analyses have found that the tobacco industry frequently frames unfavourable legislation and other issues relevant to its operations in ways that portray the industry as the protector of individual rights while simultaneously framing public health initiatives as overbearing and extremist [25-26]. Research has demonstrated that in the case of standardised packaging strategies, tobacco industry campaigns have applied the following frames: a threat to intellectual

property rights (IPR); lacking credible evidence; restricting individual choice and freedoms precipitating the growth of a creeping ‘nanny state’; creating a slippery slope toward further legislative restriction; harmful to small business; and likely to contribute to increases in the illicit trade [3, 27-28].

We assessed whether frames used were supported with evidence by determining what sources, if any, were used, and the quality of this evidence. Quality was assessed by applying Hatchard *et al’s* [18] approach, based on previous analyses of (quality of) evidence used by the tobacco industry opposition to unfavourable regulation. Key criteria used to evaluate evidence in this study are potential bias and objectivity. Potential for bias can result in cases where the material cited is authored by an individual or organisation that receives funding or other support from the tobacco industry; from reports commissioned by the tobacco industry; and/or unsubstantiated interpretation of existing information. Objectivity of resources cited was largely determined by whether specific sources were peer-reviewed or, in the case of non-academic reports, met accepted norms of fairness and accuracy [29]. Data gathered were initially coded by country by respective authors (Australia, RM; Canada, AM and JS; the UK, BH; Netherlands, JE) and all data presented in Table 1 were then assessed by all authors for consistency and accuracy.

Results

We identified a total of 17 campaigns mounted by TTCs across the four case study countries. Table 1 provides detail on which cigarette manufacturer was behind each campaign; the key frames deployed in each; involvement of front groups; and evidence in the campaign material to support claims made. Table 2 summarises these findings, and provides a breakdown of the campaigns by source (TTC, front group); frame used; and channels of dissemination (media; social media; policy statement etc) of the industry’s message.

Australia

On 1 September 2009, Australia’s Health Minister Nicola Roxon released the final report of the National Preventative Health Taskforce, which included recommendations for implementation of ‘plain’ packaging as part of broad platform of public health initiatives. In April 2010, the government announced that it would introduce plain pack legislation as a long-term measure aimed at people who had not taken up smoking by making it “less attractive for people to experiment with tobacco in the first place” [30]. The ensuing

legislative process included stakeholder consultation, Australia's notification to the World Trade Organization (WTO) that it intended to implement standardised packaging, and debate in both chambers of parliament. The *Tobacco Plain Packaging Act 2011* which "aims to discourage people from taking up smoking, encourage smokers to give up smoking and discourage relapse" [31] received Royal Assent on 1 December 2011, and came into effect on 1 December 2012 [32-33].

The industry's response was immediate and robust, and ensuing legal challenges, trade agreement-related complaints [34] and multimillion dollar lobbying and media campaigns [35] reflected concerns that Australia's legislation would create an unwelcome global precedent. Enactment of legislation requiring text and graphic health warnings on cigarette packs by more than 100 countries in less than two decades would have no doubt strengthened industry resolve to oppose Australia's proposal [36-37]. Legal and trade challenges mounted by the three companies that accounted for 97.5% of cigarette sales in the country - British American Tobacco Australia (BATA), Imperial Tobacco and PMI Australia - as well as Japan Tobacco International, which had no discernible market share [38 - 41] were predicated on the argument that standardised packs would infringe on commercial ownership of brand logos and compromise intellectual property rights (IPR). PMI also warned that legal action could result in as much as AUS \$3 billion in annual compensation to the annually [42]. The challenges were ultimately unsuccessful and tobacco companies ordered to pay Australia's legal fees [43].

The industry also embarked on aggressive public relations campaigns that reiterated arguments used in legal action, and introduced new claims. BATA, which reportedly spent AUD 4.5 million [35] to fight the legislation, PMI Australia and Imperial Tobacco Australia, the Alliance of Australian Retailers (AAR), an industry front group, and the Institute of Public Affairs (IPA), a right-wing think tank with industry links [44] all mounted campaigns that incorporated use of print, broadcast and electronic media (see Table 1).

The assertion that there was no evidence to support claims made for standardised packaging frequently framed the proposal in terms of whether it could reduce smoking rates in the short term. This ignored the government's consistent message that the legislation was aimed at long term benefits [30, 33]. BATA's Chief Executive demanded, for example, "a 100 per cent guarantee that taxpayers' dollars won't be wasted" [45] by ineffective policy. The 'no

evidence’ frame was summarised in BATA’s submission to the Department of Health and Ageing’s consultation on the standardised packaging bill which argued that there was “no real world data to demonstrate that plain packaging of tobacco products will be effective in discouraging youth smoking, encouraging cessation by existing smokers, or increasing the salience of health warnings.” [46]. This message was widely disseminated by the industry through the media and press releases, but failed to mention that as Australia would be the first country to enact such legislation, no national-level evidence existed, and also ignored extensive findings from a large body of experimental studies [3].

Not only would standardised packaging not work and potentially cost taxpayers billions of dollars in compensation, the industry suggested that implementation would also lead to a range of unintended negative consequences. BATA argued, through various channels, including the website plainpack.com, that the proposals would lead to a rise in illicit trade which, in turn, would increase consumption as smokers opted for cheaper smuggled and counterfeit cigarettes. The ostensible impacts on illicit trade were summarised by the company’s 2010 statement that “the plainer the pack, the easier it is to counterfeit” [47]. In support, the industry cited commissioned reports by accountancy firms Deloitte and KPMG that have subsequently been criticized for their methodologies and findings [48].

The proposed legislation was also framed as a threat to free market values. BATA stated that it would “defend the intellectual property within our packs”, positioning its IPR as being under attack. This threat to IPR framing was also promoted by the IPA, whose 2010 report [49] argued that the government would have to use taxpayer dollars to deal with IPR-related lawsuits with tobacco companies, a claim that was picked up by the media [41].

Australian subsidiaries of TTCs also used print media, television commercials and media releases to caution against the growth of the nanny state, associated loss of individual freedom of choice, and the threat of similar regulation being imposed on alcohol and fast food products (see Table 1). Imperial Tobacco’s nanny state strategy featured a stern-looking woman in television commercials who stated “I make the rules around here, so I’m going to remove all branding so every cigarette pack looks the same” [50]. A subsequent voice-over advised audiences to contact their MP to complain about the contribution of standardised packs to creeping state interference in society, suggesting tobacco packaging was the first step in a slippery slope to similar regulations on other products [50]. This framing was

reiterated by PMI's *I Deserve to be Heard* website, and through cards inserted in packs of cigarettes, which asked smokers, "What's next?" in terms of other products that could be similarly regulated [51].

Another approach, taken in a range of outputs, was to emphasise the threat posed by standardised packs to the small business. A 2011 Deloitte report commissioned by BATA argued that the proposed legislation would result in less efficient service at small retail outlets because retailers would take longer to retrieve cigarettes in standardised packs, for reasons not made clear. This, it was argued, would lead in increased theft, and drive customers to more efficient supermarkets [52]. The industry-funded AAR [3] argued that increased time required for retailers and customers to select cigarettes and associated errors that would be made in identifying brands, would increase operating costs to individual shop owners by as much as AUS \$34,000 annually, or approximately AUS \$460 million across the industry [53]. 'It won't work, so why try it' television commercials [54] funded by the AAR featured forlorn-looking shopkeepers describing ways in which standardised packs would cause difficulties in serving customers, resulting in millions of dollars in losses.

United Kingdom

In March 2011, the UK Department of Health (DoH) published a White paper announcing that it would consider the introduction of standardised packaging. Following consultations with the Australian government during which included requests for impact assessments undertaken there, the DoH , launched a consultation on its proposals in April 2012. In July 2013, the UK government published a summary report on the consultation but announced that it would adopt a 'wait and see' approach, delaying the introduction of standardised packaging until the effects of the policy (and the outcomes of the various legal challenges) in Australia became clear. In November of that year, the government announced that it had reversed its decision and would again consider the introduction of standardised packaging, commissioning a review to look into the relevant evidence (the Chantler Review), and a month later proposed amendments to Children & Families Bill to introduce standardised packaging [55].

Industry opposition to standardised packs in the UK was disseminated in three principle ways: company websites; political advertising campaigns in traditional and social media including online video sharing platforms such as YouTube; and third party actors. This last

category included ‘astroturf’ organisations such as the industry funded ‘smokers rights’ organisation FOREST (Freedom Organisation for the Right to Enjoy Smoking Tobacco) and associated trade bodies, but also less controversial sectors such as small retailers via, for example, the Tobacco Retailers Association [56]. Widespread funding of anti-standardised packaging campaigns by BAT through a series of third party organisations with varying degrees of connectedness to the tobacco manufacturer has been described elsewhere [55]. We found the following campaigns implemented by the tobacco industry and its allies.

The *Hand Off Our Packs!* (HOOPS) [57] campaign organized by FOREST was the main industry-funded campaign against standardised packaging and acted as an umbrella for other, more targeted activities. A central plank of HOOPS was that standardised packaging was the first step in a slippery slope that would result in branding being removed from a range of product packaging. Launched in early 2012, the campaign utilised a dedicated website, and Twitter and Facebook accounts that served as a conduit for anti-standardised pack materials, and YouTube clips which visitors were encouraged to share via individual social media accounts. Less tech-savvy viewers were able to request leaflets that outlined the main industry arguments against standardised packs [57].

The focus on individual smokers’ rights in the YouTube clip titled ‘Welcome to Nanny Town’ [58] for example, mirrored the nanny state framing seen in Australia [50]. Moreover, the campaign repeated claims about the apparent lack of evidence for standardised packaging [57], and mounted a robust defence of IPR both from the perspective of copyright owners (tobacco companies) and the detrimental effect their removal would have on consumers. A blog post entitled ‘Stop Thief!’ cited John Noble, Director of the British Brands Group who noted the ostensible impacts on both groups:

“Branding fulfills many significant and positive functions for both consumers and markets. Take it away and consumers lose out and markets become commoditised, with price rather than quality being the influencing factor” [59].

FOREST launched a second campaign website in February 2013 as part of the wider HOOPS campaign. *Say No to Plain Packs* encouraged smokers to write to their local Members of Parliament (MPs) to oppose the standardised pack legislation using preformatted emails that contained key industry messages. The arguments in the email closely reflected those of the HOOPS campaign more generally, and emphasised the lack of evidence for the benefits claimed for standardised packaging, the potential to encourage organised crime through the

illicit trade, and a lack of political authority given the exclusion of the policy from the 2010 Conservative Party manifesto. [60]

Following the May 2014 publication of the Chantler report which found that standardised packaging could contribute to reducing both smoking prevalence and initiation [61], FOREST launched another campaign, *No, Prime Minister*, which replicated the approach of *Say No to Plain Packs* but also enabled website visitors to send pre-formatted letters to both their local MPs and then Prime Minister David Cameron, with additional industry arguments added to the range of responses [62]. Added to arguments about lack of evidence and the ineffectiveness of the policy, *No, Prime Minister* emphasised ‘nanny state’ frames against standardised packs and sought to generalise the relevance of the campaign beyond tobacco, arguing that the proposed legislation represented a ‘slippery slope’ which could see other products such as alcohol and food being sold in standardised packaging. The policy, it was claimed, was little more than “gesture politics” which “infantilised” adult consumers. [62]

The UK government’s decision to extend its 2012 consultation on standardised packaging prompted JTI to launch its own campaign. Estimated to cost around £2 million [63], it was aimed at both government decision makers and the general public, the campaign included advertisements online and in leading broadsheet newspapers that questioned the evidence underpinning the proposed regulation. Later broadsheet advertisements timed to coincide with the main political party conferences in the Autumn of 2012 focused on the allegedly detrimental effects of the policy in facilitating illicit trade, as well as the unintended impacts on small businesses such as retailers and newsagents [64]. Following complaints by the anti-smoking non-governmental organisation, ASH UK, [65] the advertising standards agency ruled that both these campaigns were misleading. A third wave of advertisements was launched in April 2013 and reproduced a letter sent by the UK Department of Health to its Australian counterparts in 2011 requesting evidence of the effectiveness of standardised packaging [64].

Canada

Canada first attempted to enact standardised packaging in 1994. Determined opposition by the tobacco industry based on trade, rather than health, grounds was ultimately successful in defeating the proposed legislation [66]. Two decades later, in May 2016, the Canadian government announced plans to implement standardised packaging with a three-month open

public consultation on the proposed regulation [67]. Tobacco companies and allied groups responded with campaigns using websites, posters, radio advertisements, and social media platforms that echoed many, but not all, of the arguments against packaging legislation used in other jurisdictions.

At the end of the first round of public consultation, JTI-MacDonald, the third-largest tobacco company in Canada, launched “*Both Sides of the Argument*”, a campaign that listed the “facts” against standardised packaging [68] using websites, posters, advertisements, social media, and third party commissioned research. The *Both Sides* campaign claimed that no credible evidence had emerged from the Australian experience to support assertions for the effectiveness of standardised packs as a tobacco control measure and adopted many of the messages used to challenge standardisation in Australia and the UK. These included warnings of increases in crime and counterfeiting through the illicit trade, and threats to freedom of choice posed by the creeping nanny state which were disseminated through a variety of French and English print media. A poster campaign, for example, that featured a box of cigarettes containing French fries was intended to represent the inherent threat of standardised packaging being applied to other consumer products under a nanny state. To support its claims, the campaign commissioned research by the private firm Forum, and referenced industry funded studies from Australia [68].

The *Both Sides of the Argument* Facebook and Twitter campaign accounts that emerged in July 2016 have been sporadically maintained. Several Facebook posts have encouraged the public to contact their MPs, echoing strategies employed in the UK and Australia to mobilise governments against standardised packaging in an attempt to sway provincial and federal legislation. Campaign strategists may have misjudged public opinion however, as comments posted on social media sites suggest a considerable degree of general awareness and disdain for the campaign, with many noting the direct tobacco industry links and funding [69].

JTI-MacDonald’s submission to the Federal Government [70] stressed its contributions to the Canadian economy as a long-time, credible employer, and reiterated much of the *Both Sides* rhetoric, as well as arguments used by BAT’s consultation submission in the UK [71]. Economic and employment contribution claims were supported by letters in French and English newspapers from The Bakery, Confectionary, Tobacco Workers, Grain Millers

Union which emphasised the impacts of standardised packaging on illicit trade and restricting individual freedoms through nanny state regulations [72].

Advocacy groups with links to the tobacco industry also played a key role. The National Coalition Against Contraband Tobacco, which receives funding from the Canadian Tobacco Manufacturer's Council, produced press releases and website content that evoked the illicit trade frame, including images of cigarettes and guns, and argued that illicit trade fuels organised crime and terrorism. The organisation's website maintained that "plain packaging has increased contraband tobacco in other countries and will likely do the same in Canada. Before the government implements plain packaging, it should introduce meaningful anti-contraband measures" [73]. While there no evidence was provided of increased illicit activity in "other countries", the aim of this framing was to suggest the illicit trade was the most pressing tobacco control issue (described as "low-hanging fruit for reducing smoking" in a press release) [74] and that the government was wasting its time on ineffective packaging regulations.

The Canadian Convenience Store Association (CCSA), which has received funding from the tobacco industry [75], provided another third party perspective. Video clips posted on social media by small business owners argued that standardised packaging would adversely affect small businesses based on predictions of increased illicit tobacco. The CCSA also released media statements that questioned evidence that plain packaging was effective [76] and referred "to detailed studies from Australia" on the impact in illicit trade including reports by Deloitte and KPMG commissioned by BATA and PMI Australia [48].

The Netherlands

The issue of standardised packs has been discussed in the Netherlands since the European Commission first announced plans to adopt a new directive in 2012 [77], and there have been several rounds of debate in the Dutch parliament. In 2016, a bill to introduce standardised packs was defeated by a majority that included all MPs of the two parties comprising the then coalition government, the Conservative VVD party and the Labour Party PvdA. This was not unexpected as the government has repeatedly spoken out against standardised pack legislation and had made its position clear in its submission to the EU Commission's consultation process:

“The Netherlands cannot support the introduction of standardised packaging because there is insufficient evidence as to the effectiveness of such a measure, and important legal questions on intellectual property rights remain. The Netherlands furthermore considers that there is no added value in regulating the format of the packaging beforehand” [78].

However, during the 2016 proceedings parliament did vote in favour of an amendment requiring that tobacco may only be sold in simple packaging with a matte finish, and that distinctive colours, relief and holograms were prohibited from July 2017 [79]. The junior minister of health also indicated that “if tobacco firms don’t comply with the new rules, they face even tougher packaging rules and could be restricted to standard boxes which only carry the name of the company” [80-81]. Yet, standardised packaging remains unlikely in the near future. Following the March 2017 general elections a centre-right coalition was eventually formed in October 2017 [82] comprising parties that had not voted for standardised packs in 2016.

The two TTCs most active in the Dutch case have been BAT and Philip Morris, who both launched campaigns against standardised packs immediately after the EU published its proposal to revise the Tobacco Products Directive at the beginning of 2013 [83]. BAT targeted its campaign primarily at small shopkeepers and retailers who sold tobacco products, who were likely to be perceived by the public much more sympathetically than the tobacco industry to win “the hearts and minds” of politicians [84], evoking the negative effects on small businesses frame. For instance, in a two-page advertisement in the February 2013 issue of the magazine Tabak2day, a free monthly magazine distributed to all small tobacco sellers who are members of the Dutch Association of Tobacco Retailers (NSO), the Director of British American Tobacco Benelux warned small shopkeepers about standardised pack legislation and urged them to take action against the proposed legislation, “Wake up, and let’s all fight together against this useless and threatening regulations. You need to make a fist because this can really threaten the survival of your business [trans]” [84].

BAT was also able to count on support from other industrial sector allies including the Confederation of Netherlands Industry and Employers (VNO-NCW) and the Federation of the Dutch Food and Beverage Association (FNLI). The VNO-NCW magazine *Forum* published an article by one of its editors that invoked the nanny state frame, referring to “an Orwellian 1984-society” [85]. The organisation has also lobbied heavily against standardised packs in Brussels and The Hague [16, 86]. In 2013, BAT announced a much broader

campaign against standardised packs that would echo those used in Australia and the UK, and include creation of related websites and extensive use of the media [87]. The campaign, however, did not materialise, possibly as it became clear that the Dutch Government had no intention of introducing relevant legislation.

Philip Morris (PM) Benelux hired the Dutch branch of the legal and public relations firm Bird&Bird [88] to develop challenges to standardised packs. The firms' IPR lawyers Pors and Rieger-Jansen [89] published a 23-page paper in English and Dutch in May 2013 entitled "Paper regarding the legality of Standardised Packaging and other pack standardization measures in the Netherlands" which focused mainly on IPR issues such as trademark and design rights, and argued that standardised packs would violate national, European and international law. The document also refers to other familiar arguments used in other countries, a lack of evidence and illicit trade, that were subsequently disseminated in PM Benelux press releases [90-91]. On the former, the report stated that:

"There is no credible evidence that plain packaging ... will reduce overall tobacco consumption or prevent young people from starting to smoke. By contrast, the various studies conducted so far testify to the fact that plain packaging is a useless measure in the fight against addiction and resulting smoking related diseases" [89].

While on illicit trade, it argued:

"Standardized ... packaging makes the production of counterfeit tobacco products much easier and less costly. It will become simpler to reproduce packaging, cheaper to produce counterfeit and more difficult to identify counterfeit products [it] therefore, involves extra costs for border and product control and comes as a welcome incentive for illicit traders" [89].

Discussion

Our analysis of PR campaigns indicates the apparent willingness of TTCs to strategically set aside commercial rivalries and to adopt a united front in response to threats to their common interests, reflecting findings of previous studies [92 - 95]. The fact that Japan Tobacco International was a plaintiff in the legal challenge to standardised packs in Australia [96], despite having no appreciable share of the country's cigarette market [40], is a particularly relevant example of such industry pragmatism.

A common feature of the campaigns was the key role played by front groups and allied organisations (see Table 2). In cases such as the Canadian Convenience Store Association

for example, links to the tobacco industry are increasingly recognised [97]. Industry ties and funding of front groups are often less well-known, allowing ostensibly independent organisations to contribute to discourse around packaging regulation. This can also enable the tobacco industry to exploit public sympathy, particularly in the case of small shop owners, in arguing against legislation. The credibility of retailers, and other small businesses is particularly valuable to tobacco companies in countries with advanced tobacco control agendas, in which the industry is viewed with scepticism arising from litigation and academic analyses that have revealed a history of unethical behaviour and deception [98]. The campaign by the VNO-NCW in the Netherlands, for instance, seemingly added authenticity to industry claims that standardised packaging would have unintended consequences for small business owners.

While similar channels (websites, media releases, paid advertisements (print and broadcast) and social media platforms) were used to communicate a limited range of messages across the campaigns, differences in approach and the emphasis in campaigns analysed did exist. Certainly, not all frames used in Australia were redeployed in the UK, Canada or the Netherlands, suggesting a tobacco industry strategy of adjusting key messages for individual markets. Using a ‘think global - act local’ approach, tobacco companies have identified local norms, needs and operating conditions, and adapted broad corporate guidelines to enhance local impact.

The IPR frame, an ultimately unsuccessful and costly argument used in Australia was, for instance, not replicated in Canada, possibly due to its notable lack of return on investment in Australia. Canadian campaigns also linked standardised packs and illicit trade to organised crime and terrorism to a far greater degree than was the case in other countries. Arguably, this reflected concerns deriving, in part, from material published by the right-wing Macdonald-Laurier Institute that maintained that illegal tobacco helped to fund terrorist organisations [99]. PR campaigns in the Netherlands did not refer to the slippery slope frame, although this may have been included in the campaign announced by BAT in 2013 that was ultimately not needed as relevant regulation was dropped from the legislative agenda. In terms of channels, social media featured most prominently in JTI-MacDonald’s *Both Sides of the Argument* campaign in Canada. As the most recent case study, it may indicate an evolving industry strategy that will place greater emphasis on using such platforms. Public engagement on

social media, however, allows for negative comments such as those posted in response to the *Both Sides* campaign, and suggests the need for closer monitoring by site administrators.

Evidence used in campaign frames came from industry material, findings from commissioned research reports by accountancy firms such as Deloitte and KPMG, or were unsupported by any evidence; independent peer-reviewed research was not cited (see Table 1). Industry data are particularly relevant to the illicit trade frame, the most popular overall (see Table 2). Obtaining reliable information on illicit trade is inherently difficult given its criminal nature, and the tobacco industry provides data from commissioned studies which are often referenced in the media without recognition of tobacco industry funding [75].

A notable example of the industry's selective use of evidence centres on its dismissal of claims for the effectiveness of standardised packaging. Industry messaging in Australia ignored findings from experimental studies published prior to enactment of the legislation there [100]. When used in subsequent campaigns, the 'no evidence' argument has ignored a growing number of studies conducted in Australia and elsewhere that demonstrate that "plain packaging is delivering on its hypothetical promise" [9]. Another example of questionable use of evidence involves the Deloitte report into the potential impacts on uniform cigarette packaging on Australian retailers. The industry-funded retail group the AAR used the report to argue that the cost of standardised packs to small shop owners would exceed AUS \$450 million annually, but this figure was later shown to have been derived from interviews with a total of six retailers who were asked to provide cost estimates [53].

Implications for countries considering standardised packaging

Industry campaigns have been costly. Tobacco companies in Australia spent an estimated AUS \$9 million, while JTI spent an estimated £2 million in the UK. This, coupled with the recent announcement that PM Asia must pay Australia's estimated legal costs of AUS \$50 million [43] related to arbitration under the terms of the country's investment treaty with Hong Kong, suggest that the industry is willing to invest significant resources into challenges against standardised packaging.

Given that three of the four case study countries have adopted standardised packaging, industry return on investment may appear modest. Industry PR campaigns likely contributed to the decision not to implement the policy in the Netherlands, and delayed (but ultimately

failed to stop) it in the UK, and these outcomes must be understood in their specific context. Previous studies have demonstrated the historically strong political standing of the tobacco industry in the Netherlands [101], and it is reasonable to assume that the industry's relationship with the government, combined with PR campaigns targeted at public opinion, successfully blocked moves to institute standardised packaging. Conversely, the ability of Canada, the UK and Australia to pass plain packaging legislation, despite multidimensional well-resourced campaigns, suggests relatively greater limitations to industry influence in those countries.

Yet, such investment can have value to the industry in its ability to create a 'chilling effect' that can cause governments to dilute, delay or abandon proposed regulation in order to avoid potential trade or investment disputes, and associated costs, that may be threatened by aggrieved corporate actors [15-16, 22]. The lengthy delay in New Zealand's standardised packaging legislation coming into force has been attributed, for example, to the threat of litigation under that country's trade and investment agreements [102]. Importantly, the arbitration tribunal decision on the Hong Kong-Australia bilateral investment treaty was based on procedural grounds, specifically that PM Asia had restructured its regional operations to take advantage of the treaty [103] and not the complaint itself. This means that the result does not necessarily provide a precedent that would dissuade the company from mounting a similar challenge elsewhere.

Uruguay's legal battle with PMI around the country's decision to introduce health warning labels covering 80% of the surface area of the pack in 2010 is relevant to discussion of regulatory chill [16, 104]. While the World Bank's International Centre for Settlement of Investment Disputes in 2016 dismissed PMI's claims, a direct chilling effect was evident in the government's dilution of proposed regulations due to concerns about the costs of countering industry challenges [105]. Indirectly, the experience of Uruguay played a role in deterring four African nations, Namibia, Gabon, Togo and Uganda [16, 106], as well as Costa Rica and Paraguay from introducing more stringent packaging requirements for fear of facing similar legal challenges [107]. Despite losing its case against Uruguay, the executive director of Washington-based Action on Smoking and Health argued that PMI had in fact "accomplished its primary goal" of causing "regulatory chill in other countries, preventing tobacco legislation that would have saved lives" [108].

As these suggest, regulatory chill has particular relevance to low and middle-income countries (LMICs) where legal action and trade disputes would be prohibitively expensive. Further, in many LMICs awareness among policymakers and the public of tobacco industry tactics and past practices to discourage public health measures is overshadowed by high profile industry corporate social responsibility initiatives that are used to gain access to policy-makers [109]. Findings reported above suggest that PR campaigns can contribute to regulatory chill by convincing government officials that the potential costs of enacting proposed legislation will be too high. LMIC economic realities may provide more fruitful contexts for PR campaigns than those presented in the high-income countries presented here, which, to varying extent, more rigorously restrict industry advertising and access to health policy-makers.

Post-implementation

Countries considering standardised pack legislation should also be alert to industry tactics post-implementation. Significantly, the industry has been able to frame, with some success [110], reductions in smoking rates as the critical measurement of the effectiveness of standardised packs. This disregards the fact that the long-term goals of the legislation are to discourage people from taking up smoking, encourage smokers to quit, and to avoid relapse [31]. Based on this reframing of the objectives of the legislation and how it is to be assessed, the industry, its allied organisations, and some media outlets have argued that standardised packs have been a failure [111-112].

More practical strategies have included expansion of the range of brand variants, and introduction of price labelling [113] in an effort to convey information previously available on cigarette packs. Analysis of BATA products post-implementation found that more than 70 brand variants appeared on the Australian market between 2012 and 2014, including 11 variations of Dunhill and 9 versions of Winfield. Variant names have also been altered to include some combination of brand names, colour, flavour and a descriptive adjective to replace information previously available on cigarettes packs; examples include Winfield Optimum Crush Blue; B&H Deluxe Kings Smooth; and Dunhill Distinct Blue [114]. Less sophisticated tactics apparently aimed at testing government commitment to enforcement have included creation of container tins that closely resemble pre-regulation cigarette packs [115], and selling cigarettes with a lift out inner pack devoid of mandated health warnings [116].

Limitations

Our study could have included other countries that have enacted or have taken steps to introduce standardised packaging regulation, but limitations of space precluded a more expanded analysis. Instead, we elected to focus on detailed analyses of tobacco industry PR campaigns in comparable but discrete contexts. It is also the case that standardised packaging is a rapidly evolving policy field. The WTO's June 2018 rejection of complaints against Australia's legislation, and the anticipated impetus that the ruling will provide for other countries to enact similar regulation [117], notwithstanding Honduras' appeal against the ruling [118], are particularly explicit examples of the pace of developments. Finally, it was beyond the scope of this paper to comprehensively assess the impacts of tobacco industry campaigns using interviews with key policy actors.

Conclusion

Countries contemplating standardised packaging legislation can expect powerful opposition from the tobacco industry. Findings presented here indicate that a key element of anticipated challenges will be costly PR campaigns designed to influence public and policy-maker opinion through a combination of discrediting standardised packaging, claims of unsubstantiated risks such as increases in illicit trade, and highlighting the potential cost to government of fighting legal challenges to proposed legislation. The content and channels of dissemination of these campaigns has been similar in countries that have enacted or considered standardised packaging, suggesting a co-ordinated strategic approach by cigarette manufacturers. Tobacco control communities can learn from previous experience, and share best practise in challenging and countering industry arguments. The experience of the four countries in this study suggests that it is crucial that claims made in any future industry campaigns be rigorously analysed to determine the validity of evidence provided in support.

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