Chapter 3
Tobacco industry pricing, price-related marketing and lobbying

Introduction

The effectiveness of tobacco taxation and other price-related policies depends in large part on how tobacco companies respond through both their lobbying efforts to prevent tax increases or influence excise policies and their pricing and price-reducing marketing strategies. In general, tobacco product tax increases will lead to increases in the price of these products, with the extent of the price increase varying based on how much or little of the tax increase the industry decides to pass on to consumers (which may vary brand by brand within the same market) and whether it raises prices on top. Two 2009 tax increases illustrate this clearly. In April 2009, the federal cigarette excise tax in the United States was increased by US$0.6167 per pack, with US cigarette companies passing on the full amount of the tax increase and raising prices further (e.g. Philip Morris USA raised prices on its leading brands by US$0.71 per pack and on other brands by US$0.78 per pack). In contrast, in May 2009, China modified its tax structure and increased taxes on most cigarette brands, but the State Tobacco Monopoly Administration and Chinese National Tobacco Co. kept retail cigarette prices at the same level as they were before the tax increase.

In addition to its direct pricing strategies, tobacco companies can influence price through a variety of price-reducing marketing efforts. These include: the distribution of free samples of their products, the distribution of coupons through print advertising and direct mail, on packaging, and via their web sites; retail value-added promotions that involve free cigarettes (e.g. buy-one-get-one-free offers); and direct price discounts implemented through payments to distributors and retailers (e.g. through "buy-downs" trade programs). In addition, other marketing techniques provide added value at the same price and can be thought of as price-reducing marketing, broadly defined. These include: retail value-added promotions that involve non-tobacco items (e.g. a free lighter with the purchase of two packs of cigarettes); and specialty item distribution (e.g. giveaways of various branded or unbranded products upon redemption of coupons or other proof of purchase, as in the "Marlboro Miles" and "Camel Cash" programmes). From the tobacco companies' perspective, such price-reducing marketing efforts have advantages over direct pricing strategies in that they can be more narrowly targeted to particular segments of the market. For example, price-reducing promotions can be used subnationally to reduce the immediate impact of subnational tax increases, can be applied to a limited number of brands (e.g. those used by populations of particular interest, such as young people), or directed to more price-sensitive consumers (e.g. distribution of coupons via direct mail to selected users).

Finally, tobacco companies can use their political influence to lobby policymakers to oppose tobacco tax increases or support tax rollbacks, alter tax structures in a way favourable to at least some companies, resist earmarking of tobacco tax revenues for tobacco control programs, and/or minimize the use and impact of other policies that aim to increase tobacco product prices. Similarly, tobacco companies work behind closed doors with Ministries of Finance and others to provide guidance on tax levels and tax structures, as well as other aspects of tax administration (Gilmore *et al.*, 2007). Such overt and covert activities can weaken the effectiveness of tax and price policies in reducing tobacco use and its consequences.

This chapter provides a review of these issues. The first section provides a discussion of industry pricing strategies generally and of how tobacco product prices change in response to changes in tobacco taxes specifically. This is followed by a review of the variety of price-related marketing strategies used by tobacco companies, and the limited empirical evidence on the use of price-reducing promotions in response to tax increases and other tobacco control policies. We then turn to a discussion of industry lobbying efforts to shape policy decisions concerning tobacco excise taxes, providing a systematic review of the limited empirical evidence on these activities between 1985 and 2010. The final section discusses interventions to reduce industry-related price manipulation and lobbying.

Methods

A systematic approach was taken to searching for literature relevant to this chapter. In total, 13 electronic databases were searched between October 2009 and March 2010. These covered academic research and grey literature (i.e. manuscripts, reports, technical notes or similar documents produced and distributed by governmental agencies, academic centers or other non-commercial publishing entities). Full details of the electronic databases and web sites, and the keywords, and terms used to drive searches are available in **Appendix**.

We also consulted several key experts in the field (many of whom are involved in authoring this volume) and put a call on GLOBALink, the most commonly used information-exchange point for tobacco control researchers and practitioners, to identify other papers. Although our search strategy should have captured most studies that explore the issues covered in this chapter in any detail, it is possible that some references have been missed, particularly those in languages other than English.

While we had aimed to limit the evidence to scientific publications obtained via the search strategies above, the evidence base, particularly in relation to parts (a) (tobacco industry pricing strategies), (b) (price-related marketing) and (d) (interventions to reduce industry price manipulation and lobbying), was limited, with most of the empirical studies limited to the USA and a few other high- or high-middle income countries. For this reason, the first two sections explain industry behaviour using theory and observation before turning to the empirical evidence, and the fourth section outlines policy options, highlighting any relevant academic literature.

Tobacco industry pricing strategies

Background: Market structure

Historically, industry pricing strategies have varied considerably across countries given the significant differences in the structures of tobacco product markets in different countries. Many markets were controlled by a domestic, often government-run, tobacco monopoly whose primary objective may not have been profit maximization. Others were more fragmented, with several smaller companies competing more aggressively with others. Still others were oligopolistic, dominated by a few large firms that together controlled nearly the entire market. As a result, pricing strategies varied widely, with more competitive markets likely to see lower prices and more price competition than more concentrated markets.

Over the past two decades, the markets for tobacco products have become increasingly concentrated and globalized as a result of privatization of government-run tobacco monopolies, reduced barriers to trade in tobacco and tobacco products, increased direct investments by multinational tobacco companies, and consolidation through mergers and acquisitions. Together, worldwide, the top five cigarette companies (Chinese National Tobacco Co. (CNTC), Philip Morris International (PMI), British American Tobacco (BAT), Japan Tobacco (JT), and Imperial Tobacco Group (ITG)) account for more than 80% of global cigarette production and consumption (Euromonitor International, 2009). Excluding CNTC, which operates almost entirely in China with little competition from other companies, the top four companies account for about 70% of global production and consumption. As shown in Table 3.1 for leading cigarette markets globally and in Europe, in most countries cigarette markets are dominated by some combination of these four companies. The 3-firm concentration ratio illustrates the highly concentrated nature of these markets—other than in Indonesia, just three firms control at least 80% of the market, and in many markets the top three firms account for more than 90% (Gilmore *et al.*, 2010).

Table 3.1. Cigarette market shares (%) by global brand owner for the major cigarette markets, 2008

Company	Brazil	Canada	China	Germany	India	Indonesia	Italy	Japan	Russian Federation	UK	USA
Philip Morris International Inc	9.7	21.3	0.1	36.2	12.1	22.6	52.9	24.4	25.4	6.3	
British American Tobacco Plc	86.3	59.0	0.6	20.0		2.7	24.1	10.2	19.6	8.1	
Japan Tobacco Inc		10.8	0.2	5.0	1.3		16.2	64.9	36.9	38.8	0.4
Imperial Tobacco Group Plc				25.6			2.9		9.2	43.9	4.0
China National Tobacco Corp (CNTC)			98								
ITC Group*					58.3						
Golden Tobacco Ltd					10.9						
VST Industries Ltd					9.2						
Godfrey Phillips India Ltd**					0.4						
Gudang Garam Tbk Ltd**						28.3					
Djarum PT						13.8					
Bentoel Internasional investama Tbk PT						5.9					
Nojorono Tobacco Indonesia PT						5.5					
Philip Morris USA Inc											48.4
Reynolds American Inc*											26.5
Lorillard Inc											10.1
Liggett Vector Brands Inc											1.8
Societé industrielle des Tabacs du Cameroun SA	1.4										
Donskoi Tabak OAO									3.7		
Private label				9.9						1.7	
Others	2.6	8.9	1.2	3.3	7.8	21.2	4	0.5	5.2	1.3	8.8
Total	100	100	100	100	100	100	100	100	100	100	100
No. of companies with market share >10%	1	3	1	3	3	3	3	3	3	2	3
No. of companies with market share over 25%	1	1	1	2	1	1	1	1	2	2	2
3-firm concentration ratio (cumulative share of market of 3 biggest companies by market share)	97.4	91.1	98.8	81.8	81.3	64.7	93.2	99.5	81.9	90.8	85

Table reproduced with permission from Gilmore *et al.*, 2010. Source: Euromonitor International from trade sources/national statistics. Data obtained: 23 September 2009

Data given for the world's largest cigarette markets (China, Russia, USA, Japan, Indonesia, Ukraine, Brazil, India), plus the 2 largest European markets (Italy and Germany) and the UK
NB – where companies other than those listed have a market share of 1% or less, their share has been added to the «other» category
*Part owned by BAT. **Part owned by Philip Morris International

This market concentration gives the tobacco companies greater pricing power and profitability, which in turn may present problems to public health as further explored below (Gilmore *et al.*, 2010).

Similar patterns are emerging in markets for other tobacco products, although to a lesser extent than in cigarette markets and with greater variability across countries. Globally, non-cigarette product markets are becoming increasingly concentrated, and distinctions between cigarette companies and other tobacco product companies are disappearing as major cigarette manufacturers have acquired leading smokeless tobacco product manufacturers (e.g. Altria's (parent company for Philip Morris USA) acquisition of US Smokeless Tobacco Co. in 2008 and Reynolds American's acquisition of Conwood in 2006) and have begun using the same brands across product lines (e.g. Marlboro and Camel cigarettes and snus) (McNeill and Sweanor, 2009). The acquisition of independent smokeless manufacturers will, by reducing competition between cigarettes and smokeless products, increase the market power (their ability of to set prices) of the resulting multiproduct tobacco companies. However, in some countries, where a much wider variety of tobacco products is available, the markets for non-cigarette tobacco products remain fragmented and highly competitive (e.g. India, where there are thousands of small bidi producers).

Background: Individual company interests

Different companies vary in their brand portfolios and thus in their preference for excise structures. This is illustrated through industry lobbying on tobacco taxes in Europe, where different Member States must agree on a shared excise framework. Historically the southern European countries had state monopolies or small national industries and thus sought *ad valorem* systems to both protect their cheaper cigarettes made using domestic tobacco and to enable them to compete with higher-priced premium brands from the larger producers (Gilmore and McKee, 2004a). By contrast, the transnationals favoured a wholly specific system to help protect their more expensive brands. A similar pattern continues to this day with, for example, PMI (whose high-price brand Marlboro is the leader in many markets) favouring a fully specific system, Imperial Tobacco (which has a mixed portfolio) favouring a mixed *ad valorem* and specific system, and the small Greek companies lobbying for a fully *ad valorem* system. This issue is covered further in the third section.

Tobacco industry pricing strategies

In general, tobacco product markets that have large numbers of producers producing slightly differentiated products will see a relatively high degree of price competition, with prices largely reflecting the costs of production and distribution (including taxes). At the other extreme, markets that are entirely or nearly monopolized by a single, profit-maximizing firm will see prices well above costs and relatively little price competition. However, most tobacco product markets in most countries are at neither extreme, but are instead highly concentrated with a small number of highly profitable companies accounting for most sales (see Table 3.2). As a result, the nature of price competition can vary widely, both across countries and over time, although globally competition is tending to decrease with the trend toward greater industry consolidation described above.

Unfortunately, there has been little research to date on pricing strategies in tobacco product markets, with the exception of some limited research largely from the USA but also covering Jamaica, Europe and South Africa on the relationships between tobacco taxes and prices (discussed below). Instead, a few stylized facts emerge from observations of pricing strategies in various countries, from industry analyst and market reports and from internal tobacco company documents released following a series of litigation cases in the USA, which led to several major tobacco companies being required to make internal documents public.

Limited price competition. The oligopolistic nature of most tobacco product markets (Table 3.1) tends to result in relatively stable prices with limited price competition, particularly in more mature markets in high-income countries where companies are better established. This appears less true for markets in low- and middle-income countries, particularly where the transnational tobacco companies are relatively new players in the market and more likely to use price as one strategy for gaining market share for their brands (Vateesatokit *et al.*, 2000; Szyilágyi and Chapman, 2003). However, as companies become more established, the extent of price competition appears to diminish, particularly in countries where incomes are rising more rapidly and consumers, influenced by industry marketing, increasingly switch to higher-priced brands. To the extent that price competition does remain, it tends to appear in the form of multiple price tiers (e.g. premium, mid-priced and economy brands). The existence of multiple price tiers, more likely in

Table 3.2. Profitability (measured using EBITA Margin (%)) for Europe's two major tobacco companies and comparator European consumer staple companies

Company	2004	2005	2006	2007	2008*	2009*	2010*	2011*
Tobacco companies								
British American Tobacco	24.0	28.1	28.7	30.0	30.7	31.1	32.1	33.7
Imperial Tobacco Group	40.2	41.5	42.9	45.0	28.2	37.7	39.4	39.5
Food companies								
Cadbury	15.6	15.9	14.4	13.5	12.0	13.0	13.8	14.9
Danone	12.7	13.1	13.3	12.1	14.4	16.9	15.7	15.9
Nestle	12.7	12.9	13.5	14.0	14.3	14.4	13.0	13.2
Premier Foods	12.9	13.7	13.8	12.5	11.9	12.0	11.9	11.7
Consumer products companies								
Unilever NV	15.5	14.8	14.3	14.5	14.6	14.7	14.9	15.1
Henkel	9.4	9.7	10.2	10.5	10.3	9.0	10.6	11.6
L'Oreal	15.3	15.6	16.4	16.6	15.5	14.3	14.9	15.5
Reckitt Benckiser	19.3	20.1	21.5	22.6	23.4	23.9	23.2	23.6
Beverage companies								
Heineken NV	13.6	13.1	13.0	14.8	13.2	13.5	14.0	14.4
SABMiller	18.1	20.2	16.9	16.8	16.6	16.8	17.3	18.5
Carlsberg	8.8	8.7	9.6	11.5	13.2	16.0	16.3	17.1
Diageo	28.7	29.0	28.2	28.3	28.5	28.9	31.5	31.8

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* Estimated values

markets with wholly *ad valorem* or mixed tax systems (as explained in Chapter 2), will facilitate downtrading to cheaper brands, which may be of particular importance in markets at the end stage of the tobacco epidemic when smoking increasingly becomes a habit of the more economically deprived. However, in oligopoly markets, companies tend to have brands in every price tier; thus the existence of multiple price tiers will not necessarily result in genuine competition.

Price leadership. In more concentrated, oligopolistic markets, pricing strategies tend to be characterized by price leadership, with one firm (usually the firm with highest market share) initiating a change in prices and others almost immediately matching that change. As Chaloupka (2007) describes, cigarette pricing in the USA has been characterized by this type of strategy for the past century, with the “leader” changing over time, but the strategy staying constant. This is further described in a 1976 report on “Pricing Policy” from Philip Morris’ Business Planning and Analysis division:

> “The cigarette industry is characterized by economists as a ‘kinky oligopoly’. This charming term implies that the general price level is determined by a small number of firms (price leaders); that no economic advantage can be obtained by any one firm pricing below the general price level; and that major disadvantages accrue to a firm which attempts to price above the general level. In short, the general price level results from some sparring among the potential price leaders, after which the rest of the industry accepts the resulting price structure.”

The report goes on to describe how Philip Morris had historically been one of the followers in the US cigarette marketing, matching the price changes initiated by American Tobacco Co. or R.J. Reynolds, but noting that by the 1970s, Philip Morris had become the leader:

> “We no longer follow the market; whether we initiate a price increase or not, our decision is a key factor in establishing a new industry price level, and we must examine any price move in light of our own judgement of the appropriate level.”

The report further describes how the relative absence of price competition in the market allowed prices to remain above competitive levels, generating high profits which were then used to support the other marketing activities through which US cigarette companies competed more directly.

A similar pattern of price leadership, limited price competition and high profitability is seen in Europe, although markets where PMI is the market leader (most markets in western Europe) tend to differ from the United Kingdom and Irish markets because PMI is less prepared to lose market share by increasing prices, and thus price increases have traditionally been lower in these markets than the United Kingdom and Ireland (Spielman and Loveless, 2008a). This makes the United Kingdom market particularly interesting as a case study of industry attempts to maximize short-term profitability, as outlined below. A further issue worth noting is that of price-fixing, recently documented in the United Kingdom. The Office of Fair Trading recently fined two tobacco manufacturers and ten leading retailers £225m for price-fixing, decisions which are being appealed. The tobacco manufacturers involved were Imperial Tobacco and Gallaher, who jointly account for around 80% of the United Kingdom market (see Table 3.1). Each manufacturer had a series of individual arrangements with each retailer whereby the retail price of a tobacco brand was linked to that of a competing manufacturer’s brand (Office of Fair Trading. http://www.oft.gov.uk/shared_oft/press_release_attachments/Parties_and_fines.pdf; http://www.guardian.co.uk/business/2010/apr/16/oft-levies-225m-for-cigarette-price-manipulation).

Prices below short-run, industry profit maximizing level. While prices in highly concentrated tobacco product markets are above the competitive level, they have historically been well below the level that would maximize short-run industry profits. This is likely to be explained by two factors. First, prices well above competitive levels would create opportunities for new firms to gain a foothold in the market by selling cigarettes at relatively low prices. As Chaloupka (2007) describes, this happened in US cigarette markets in the 1930s, when the leading companies at the time (American Tobacco Co., R.J. Reynolds and Liggett & Myers) set prices well above competitive levels (US$0.14–0.15 per pack), using profits to compete primarily through their advertising campaigns. This created an opportunity for new firms to enter the market and for existing small firms to gain market share by selling at considerably lower (but still profitable) prices. Many did so with their “ten-cent” brands before the industry leaders responded by cutting their prices. The ensuing price war drove most of the new firms from the market, but two – Philip Morris and Brown & Williamson – survived, going on to become major players in the US cigarette market.

More recently, the tobacco transnationals attempted to gain market share in newly opened markets (e.g. Thailand and Hungary in the 1990s) by price discounting (Vateesatokit *et al.*, 2000; Szyilágyi and Chapman, 2003). In addition, there were numerous new entrants to the US market after the 1998 Master Settlement Agreement (MSA) in part because loopholes in the agreement created opportunities for non-participating companies to enter the market and undercut prices. In most established markets, however, marketing restrictions make it increasingly difficult for new market entrants to compete effectively with established brands, and reputational and litigation risks provide further barriers to market entry (Gilmore *et al.*, 2010).

A second factor explaining price levels below the short-run industry profit-maximizing level, and one perhaps more relevant currently in at least some declining markets, is the trade-off between short-run and long-run profitability. As Becker and his colleagues (1994) describe, the greater price sensitivity of young people (as discussed below in Chapter 6) and the addictive nature of tobacco use may lead companies with market power to set prices lower than the short-run profit-maximizing level to "get more consumers 'hooked' on the addictive good" so that long-run profits will be higher than they would be if prices were set higher in the short run and fewer young people took up tobacco use. To the extent that tobacco product markets are on the decline in some countries (e.g. in response to adoption and implementation of effective tobacco control strategies, including higher taxes), it becomes more likely that industry prices will rise to nearer the short-run industry profit-maximizing level as future prospects grow dimmer and companies try to profit more from the existing pool of users in the short run.

This pattern is, for example, observed in western Europe where competition in most markets is limited (see Table 3.1), giving the industry considerable pricing power and making these markets the industry's most profitable globally (Spielman, 2008a, 2008b; Euromonitor International, 2009). The United Kingdom market, as outlined above, is one of the most interesting, and analyst reports suggest that the industry has been able to increase prices sufficiently to offset both volume declines and negative mix (downtrading to cheaper brands) (Spielman, 2008a, 2008b). The fact that this may have been facilitated by tax policies is further outlined below.

Furthermore, by virtue of having diverse brand portfolios in multiple price tiers, companies can utilize both strategies—keeping some brands cheap to "hook" new smokers while maintaining prices on higher-end brands to offset the negative mix and maintain profits. It would appear such practices may be occurring in the United Kingdom, for example, because despite a marked growth in discount brands (Devlin *et al.*, 2003, Talking Retail, 2006) the industry is managing to grow its profits, and the United Kingdom market is among the most profitable (Spielman *et al.*, 2008a, 2008b).

Tobacco tax increases and prices

The effectiveness of tobacco tax increases in reducing tobacco use and its consequences depends, in part, on how increases in taxes are passed on to users in price increases. The extent to which prices rise following a tax increase depends on multiple factors, most notably industry structure and tax structure. With respect to industry structure, economic theory suggests that tobacco taxes will be fully passed on to users through an equivalent price increase in a perfectly competitive market with constant long-run costs of production. At the other extreme, a profit-maximizing monopolist will pass on only part of the tax in price, with the pass-through greater as demand is more inelastic.

In an oligopolistic market, however, how much or little of the tax is passed through can vary based on how the industry reacts. Harris (1987), for example, suggests that companies in a highly concentrated tobacco product market can use a tobacco tax increase as an opportunity for a coordinated price increase that leads to an overshifting of the tax, with prices rising by more than the amount of the tax. Using data from the years around the doubling of the US federal cigarette excise tax (from US$0.08 to US$0.16 per pack) on 1 January 1983, Harris observed that industry prices rose by more than manufacturing costs in the months leading up to the tax increase, with the rise in industry prices starting after the tax increase was announced. In the end, he concludes that prices rose by more than twice the amount of the tax increase.

Harris' (1987) hypothesis appears to be confirmed by internal industry documents. When asked for his thoughts about how to pass on an anticipated additional increase in the US federal cigarette tax in 1987, Philip Morris economist Myron Johnston recalled the industry's pricing strategies around the 1983 increase (Johnston, 1987):

> "Last time, of course, we increased prices five times between February of 1982 and January of 1983. In less than a year, the price went

> from $20.20 to $26.90 per thousand ($2.70 more than the tax), and this fact was not lost on consumers, who could legitimately blame the manufacturers for the price increases. While price increases of this magnitude might have been tolerated during the rapid escalation in the overall inflation rate between 1977 and 1981, the increase in the price of cigarettes in 1982-83 was made even more dramatic by the fact that the overall rate of inflation was slowing considerably."

Industry reactions, particularly by the dominant firm, however, can vary with circumstances. In the same memo, Johnston goes on to note how the overshifting of the 1983 tax increase had a particularly negative impact on Philip Morris because of its greater impact on smoking among young people, where Marlboro's market share was greatest. This led him to write (Johnston, 1987):

> "I have been asked for my views as to how we should pass on the price increase in the event of an increase in the excise tax. My choice is to do what I suggested to Wally McDowell in 1982: Pass on the increase in one fell swoop and make it clear to smokers that the government is solely responsible for the price increase, advertise to that effect, suggest that people stock up to avoid the price increase, and recommend that they refrigerate their cigarettes 'to preserve their freshness.'... Then when people exhaust their supply and go to the store to buy more, they will be less likely to remember what they last paid and will be less likely to suffer from 'sticker shock.' As a result, they should be less likely to use the price increase as an incentive to stop smoking or reduce their consumption."

Experiences with several federal tax increases in the 1990s and early 2000s show that wholesale cigarette prices rose by the amount of the tax increases or, at times, being absorbed by the industry (e.g. the US$0.05 increase in 2002). Most recently, however, the much larger (US$0.6167 per pack) 1 April 2009 increase in the US federal cigarette excise tax did lead to some overshifting; Philip Morris, for example, raised prices on its 'growth and support brands' (including Marlboro) by US$0.71 per pack and on its 'non-support brands' by US$0.78 per pack. Given its role as the market leader in the USA over the past few decades, other US cigarette companies have generally followed Philip Morris' lead in responding to the US tax increases.

The limited empirical evidence on this issue, almost entirely from high-income countries, reflects this variability. Older US studies found that cigarette taxes led to less-than-comparable price increases (Sumner and Ward, 1981; Bishop and Yoo, 1985; Ashenfelter and Sullivan, 1987); others found that taxes were fully passed on (Sumner and Wohlgenant, 1985); and still others found that prices rose by more than the tax (Barzel, 1976; Johnson, 1978; Sumner, 1981). Most recent US-based analysis, however, find that cigarette taxes are overshifted in the USA, leading to increases in retail cigarette prices greater than the tax (Barnett *et al.*, 1995; Keeler *et al.*, 1996; Hanson and Sullivan, 2009; Sullivan, 2010). van Walbeek (2010) observes similar overshifting of tax increases in South Africa (since 1994) and Jamaica (in 2005), while Delipalla and O'Donnell (2001) found undershifting of cigarette taxes in 12 European Union countries in the early 1990s, particularly in markets that were less concentrated.

Although there are no recent empirical studies in the European Union, as noted above the market has seen considerable consolidation in recent years (Hedley, 2007), and other evidence suggests that the undershifting observed in the 1990s (Delipalla and O'Donnell, 2001) has reversed (Spielman and Loveless, 2008b). Although the countries in eastern Europe are in general at a different stage of the tobacco epidemic with volumes of consumers and tobacco sold still increasing, profits are also increasing as a result of industry price increases and consumers trading up to more expensive brands (Euromonitor International, 2009).

With regards to tax structure, both theoretical and empirical evidence suggest that specific excise taxes tend to increase consumer prices relatively more than *ad valorem* excises, and hence lead to relatively higher reductions in consumption (Delipalla and Keen, 1992; Delipalla and O'Donnell, 2001; Chaloupka *et al.*, 2010). The higher impact of specific excise taxes on consumer prices is consistent with a greater possibility of overshifting of specific taxation relatively to *ad valorem* (Delipalla and Keen, 1992). Under specific taxation, any increase in producer price will go to the producer as revenue and therefore would increase producers incentive to raise price. Economic theory also shows that industry profits are relatively higher under specific taxation (Delipalla and Keen, 1992). Moreover, a tax increase may lead to an increase in profits when tax overshifting takes place: as a higher tax increases consumer price and reduces demand, for profits to rise, the after-tax mark up must rise.

All this suggests that relying heavily on specific excise taxation is likely to increase market concentration and industry profits in the long run. With respect to the public health perspective, while specific taxes offer greater public health benefits, there is a danger that the greater industry profits that emerge may in turn be used to damage public health, because these profits can be used to increase industry marketing, or fund lobbying or litigation efforts to challenge public health policies. For this reason, along with increases in the specific tax (and its associated great effect on price), governments may find they need to implement other policies to counteract the tobacco industry's increased market power.

As described in the previous chapter, this hypothesis is supported by descriptive data on taxes and prices globally, with prices higher on average in countries that rely on specific taxes than in those relying on *ad valorem* taxes (World Health Organization, 2010). Chaloupka and colleagues (2010), in their empirical analysis using data from EU countries over the period from 1998 through 2007, provide additional support for this hypothesis. They conclude that average cigarette prices are higher in EU countries relying more heavily on specific cigarette excises than on *ad valorem* excises.

Tobacco industry price-related marketing efforts

Background

In addition to directly setting prices to tobacco products, tobacco companies can engage in a variety of marketing activities that lower the price of or otherwise add value to their products. These activities are clearly defined by the US Federal Trade Commission (FTC) in its annual reports to the US Congress on cigarette and smokeless tobacco company marketing activities (Federal Trade Commission, 2009a, 2009b); as defined for cigarettes, these include:

• Price discounts: price discounts paid to cigarette retailers or wholesalers to reduce the price of cigarettes to consumers, including off-invoice discounts, buy-downs, voluntary price reductions and trade programs, but excluding retail-value-added expenditures for promotions involving free cigarettes and expenditures involving coupons.

• Sampling: sampling of cigarettes, including the cost of the cigarettes, all associated excise taxes, and increased costs under the Master Settlement Agreement, and the cost of organizing, promoting, and conducting sampling. Sampling includes the distribution of cigarettes for consumer testing or evaluation when consumers are able to smoke the cigarettes outside of a facility operated by the Co., but not the cost of actual clinical testing or market research associated with such cigarette distributions. Sampling also includes the distribution of coupons for free cigarettes, when no purchase or payment is required to obtain the coupons or cigarettes.

• Specialty item distribution, branded: all costs of distributing any item (other than cigarettes, items the sole function of which is to advertise or promote cigarettes, or written or electronic publications), whether distributed by sale, redemption of coupons, or otherwise, that bears the name, logo, or an image of any portion of the package of any brand or variety of cigarettes, including the cost of the items distributed, but subtracting any payments received for the item. The costs associated with distributing non-cigarette items in connection with sampling or retail-value-added programmes are reported in those categories, not as specialty item distribution.

• Specialty item distribution, non-branded: all costs of distributing any item (other than cigarettes, items the sole function of which is to advertise or promote cigarettes, or written or electronic publications), whether distributed by sale, redemption of coupons, or otherwise, that does not bear the name, logo, or an image of any portion of the package of any brand or variety of cigarettes, including the cost of the items distributed, but subtracting any payments received for the item. The costs associated with distributing non-cigarette items in connection with sampling or retail-value-added programmes are reported in those categories, not as specialty item distribution

• Retail-value-added, bonus cigarettes: Retail-value-added expenditures for promotions involving free cigarettes (e.g. buy two packs, get one free), whether or not the free cigarettes are physically bundled together with the purchased cigarettes, including all expenditures and costs associated with the value added to the purchase of cigarettes (e.g. excise taxes paid for the free cigarettes and increased costs under the Master Settlement Agreement).

• Retail-value-added, non-cigarette bonus: Retail-value-added expenditures for promotions involving free non-cigarette items (e.g. buy two packs, get a cigarette lighter), including all expenditures and costs associated with the value added to the purchase of cigarettes.

• Coupons: All costs associated with coupons for the reduction of the retail cost of cigarettes, whether redeemed at the point-of-sale or by mail, including all costs associated with advertising or promotion, design, printing, distribution, and redemption. However, when coupons are distributed for free cigarettes and no purchase or payment is required to obtain the coupons or the cigarettes, these activities are considered to be sampling and not couponing.

The Federal Trade Commission (2009b) defines similar marketing activities for smokeless tobacco products in the USA; the reporting of these marketing expenditures is required by federal legislation in the USA. Canadian legislation also requires tobacco companies to report to the federal government on their promotional expenditures (http://laws-lois.justice.gc.ca/en/SOR-2000-273/FullText.html); however, such mandated reporting is rare and the detailed information contained is rarely made publicly available.

These and other marketing practices are prohibited in some countries. Globally, WHO Report on the Global Tobacco Epidemic (World Health Organization, 2009) data indicate that 79 countries, including many LMICs, have implemented some form of restriction on price-based marketing. For example, a 2003 EU Council Recommendation (2003/54/EC) recommended that Member States adopt various tobacco control measures including those to prohibit "the use and communication of sales promotion, such as a discount, a free gift, a premium or an opportunity to participate in a promotional contest or game." A subsequent evaluation (SEC(2009)1621) suggested that most Member States had implemented the recommended measures but failed to specify the proportion implementing. However, few countries have comprehensive enough bans to cover all forms of price-based promotions (an issue explored in a later section). Various of the marketing techniques outlined above may therefore be used throughout much of the world. For example, the United Kingdom Tobacco Advertising and Promotions Act (which was fully implemented in 2005) bans, inter alia, the use of voucher schemes and direct consumer communication. However, recent evidence indicates both that tobacco companies still provide display cabinets and incentives for displaying their products (Rooke *et al.*, 2010), and that the use of price-based marketing has increased following full implementation of this legislation (Moodie and Hastings, 2009). Although price-based, this marketing is not necessarily price-reducing and includes, for example, price-marked packaging for discount brands visible from the display cabinets (Moodie and Hastings, 2009).

Unfortunately, with the exception of the USA, detailed data on how extensively the industry uses these price-related marketing strategies is virtually non-existent. However, trends in the use of price-related marketing strategies in the USA are informative given that these illustrate how tobacco companies have adapted their marketing strategies over time in response to new evidence on the impact of price on tobacco use and to implementation of restrictions on other marketing activities.

Figure 3.1 illustrates trends in cigarette company marketing expenditures in the USA from 1975 through 2006, as well as changes in the composition of these expenditures over time. Two striking trends are apparent from this figure. First, overall cigarette company marketing expenditures in the USA have risen dramatically, from just over US$491 million in 1975 to a peak of over US$15.1 billion in 2003, before declining to about US$12.5 billion in 2006. This rise in marketing spending is even more dramatic when one considers that US cigarette sales during this period fell by over 43%.

Second, price-related marketing has gone from accounting for a minor share of overall cigarette company marketing expenditures in the 1970s to accounting for most of marketing spending in the 1990s and 2000s. In 2006, for example, spending on marketing activities that directly reduced cigarette prices (price discounts, coupons, retail value added promotions involving free cigarettes, and distribution of free samples) amounted to more than 85% of total cigarette company marketing expenditures, as compared to an estimated less than 19% in 1975. In contrast, spending on promotions involving merchandise (non-cigarette retail value added promotions and specialty item distribution) rose from a minimal share of total spending in the 1970s to a peak of about 18 percent in 1994, before declining to less than 2% in recent years (largely as a result of the limits on this type of marketing included in the Master Settlement Agreement of 1998).

Price-related marketing and tobacco use among young people

In his testimony on price-related marketing as part of the US tobacco litigation (USA v. Philip Morris *et al.*), Chaloupka (2004) described how the shift in tobacco company marketing strategies towards increased use of price-reducing and other price-related promotions accelerated following the publication of early economic research on the influence of price on smoking behaviour, particularly among young people (Lewit *et al.*, 1981; Lewitt and Coate, 1982). In their review of internal industry documents (now available online at http://legacy.library.ucsf.edu/), Chaloupka and colleagues (2002) describe how the two studies by Lewit and colleagues generated considerable attention among leading US cigarette companies. Of most interest were the findings on the greater price sensitivity of smoking among young people, given the importance of youth and young adults to future profitability. For example, in a 1982 memo, Diane Burrows, a market researcher at R.J. Reynolds, wrote about the short and long-run impact of cigarette price increases based on the findings from the Lewit and colleagues studies (Burrows, 1982a):

> "In terms of the immediate impact, the effect of price on males 35+ is the most important. Half (50%) of the total drop in industry volume is attributable to males 35+, compared to 24% from younger adult males and 7% from teenagers. But, the loss of younger adult males and teenagers is more important to the long term, drying up the supply of new smokers to replace the old. This is not a fixed loss to the industry: its importance increases with time. In ten years, increased rate per day would have been expected to raise this group's consumption by more than 50%."

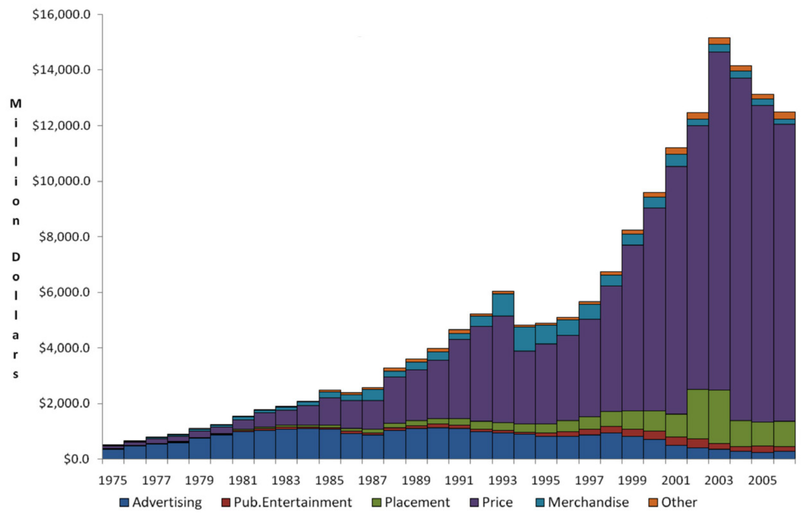
In related memos and reports, Burrows (1982b, 1984) discussed the marketing implications of the greater price sensitivity and importance of imagery to young people. For example, in a 1984 Strategic Research Report, Burrows wrote:

> "Tactically, extended periods of closely targeted pack promotions (B1G1F (buy-one-get-one-free), sampling) in selected sites (e.g., convenience stores, military exchanges, special events) could lead to brand loyalty from repeated trials. This should be considered an investment program." (Burrows, 1984).

As Chaloupka and colleagues (2002) describe, the combination of price-reducing promotions with more traditional advertising campaigns played a key role in the growth of R.J. Reynolds' Camel brand among young people (most notably young males) in the late 1980s and early 1990s. For example, a 1986 memo reported on the effectiveness of these efforts, which included 'six pack' promotions (buy-three-get-three-free), the "Camel Cash" program, and other retail value added promotions:

> "The major factor contributing to CAMEL's dramatic growth among Mid-West 18–24 year old males appears to be the increased level of Mid-West promotional support, and in

Figure 3.1. Cigarette company marketing expenditures, by category, 1975-2006



Sources: Federal Trade Commission, 2009a; Working Group's calculations.
Notes to Figure 3.1:

• Advertising includes: newspapers and magazines, outdoor and transit, and point-of-sale (reported separately beginning in 1975).

• Public Entertainment includes: general audience and adult-only public entertainment, reported in a single category in earlier years and reported separately beginning in 2002.

• Placement includes promotional allowances paid to retailers, wholesalers, and others, reported separately beginning in 2002 and estimated for earlier years based on the percentage of the combined promotional allowances category accounted for by these categories in 2002.

• Price includes: price discounts and retail-value-added bonus cigarettes (reported separately beginning in 2002); coupons (reported separately beginning in 1997); and sampling distribution. Estimates for earlier years are based on shares in the previously aggregated categories that included these in the first years data are reported for disaggregated categories.

• Merchandise includes: branded and non-branded specialty item distribution (reported as a single category before 2002 and separately beginning in 2002); and retail-value-added non-cigarette bonus (reported separately in 2002 and estimated for earlier years based on the share of combined retail-value added as reported in 2002).

• Other includes: all other categories reported by FTC, including direct mail, telephone, Internet (company websites and other), and other; in earlier years, a portion of the FTC-reported other and direct mail expenditures are allocated to other categories (e.g. coupons and retail value added) based on shares of expenditures in the first year that expenditures in more disaggregated categories are reported.

> particular, CAMEL's targeted promotions (which were implemented the same time as the boost in CAMEL's share and completed just prior to the downward trend)." (Creighton, 1986).

The changes over time in the composition of cigarette marketing expenditures (shown in Figure 3.1) suggest that the importance of price-related marketing efforts described in these selected documents was recognized throughout the industry.

Tobacco company price and price-related marketing and tobacco control

Feighery *et al.* (2004) examined the extent and impact of retailer participation in industry incentive programmes in 468 stores in 15 US states. They found that cigarette companies engaged approximately two thirds of tobacco retailers in an incentive program. The study shows that stores that participate in cigarette company incentive programmes may have cheaper cigarette prices (and more prominent placement of cigarettes and advertising) than do stores that do not participate. Although participation in a Philip Morris incentive programme was not significantly related to the price of (Philip Morris brand) Marlboro cigarettes, the price of Lorillard's Newport cigarettes was significantly lower in stores participating in a Lorillard incentive programme. The study was however somewhat limited in its ability to detect links between incentive programmes and price reductions because the questions were limited to participation in company- rather than brand-specific incentive programmes.

Limited research from the USA documents tobacco companies' use of price and price-related marketing to at least partly offset the impact of tax increases and other tobacco control efforts. Based on their review of internal documents, Chaloupka and colleagues (2002) described how companies increased distribution of coupons and use of multipack promotions to soften the impact of state and federal tax increases, with some of the print ads used to distribute coupons referring to them as "tax relief." Similar efforts were observed after the April 2009 federal tobacco tax increases, with Philip Morris, for example, contacting smokers to let them know that they were increasing prices because of the tax increase but that they could "register at Marlboro.com to become eligible for cigarette coupons and special offers."

Similarly, Ruel and colleagues (2004), using observationally collected data on cigarette marketing, and Loomis and colleagues (2006), using scanner-based data, documented the increased prevalence of various price-reducing promotions following the significant price increases resulting from the pass-through of costs associated with the MSA and the subsequent implementation of the marketing restrictions included in the agreement. Similarly, researchers have used observationally collected and scanner-based data to conclude that price-reducing promotions are more prevalent in states where more is spent on comprehensive tobacco control programmes than in states spending less (Slater *et al.*, 2001; Loomis *et al.*, 2006). Finally, Keeler and colleagues (1996) found that cigarette companies price-discriminated by setting lower prices in states with stronger state and local tobacco control policies.

Tobacco industry tax-related lobbying efforts

Background

In addition to the systematic searches for relevant literature, we also took a systematic approach to reviewing studies included in this section. Hence, we tried to identify all empirical studies (qualitative and quantitative) focusing significantly on tobacco industry tax-related lobbying activities, and then applied inclusion/exclusion criteria to potentially relevant studies (see Figure 3.2).

Of the 2638 abstracts/titles located for this chapter overall, 2443 were excluded from this section on the basis of the title and abstract alone. The remaining 195 papers were retrieved for full paper analysis to assess their relevance to this section, at which stage 164 further studies were excluded. Full analysis was conducted on the 31 remaining studies that met the full inclusion criteria.

Figure 3.2. Inclusion and exclusion criteria

To be included in this section, studies had to:

- Significantly focus on tobacco industry lobbying activities that related to taxation (studies were included that did not primarily focus on this issue, but they had to focus on it significantly and meet the other inclusion criteria; studies in which tax-related lobbying activities were only a minor/tangential issue were excluded);
- Draw on empirical evidence to support any claims made about tobacco industry tax related lobbying;
- Be written in English or another language spoken by a member of the IARC review team;
- Be concerned with lobbying from 1985 onwards (studies which were only concerned with a period prior to 1985 were excluded; studies which concerned periods both before and after this date were included).

The data from these studies were extracted and the studies were critically appraised using critical appraisal criteria for qualitative papers, adapted from Rees *et al.* (2006) and the United Kingdom Public Health Resource Unit (2006) (see Figure 3.3). The appraisal and inclusion/exclusion criteria, were piloted by two reviewers on five relevant papers and then revised accordingly.

As is common practice with reviews of qualitative data (Smith *et al.*, 2009), the critical appraisal criteria were used for descriptive purposes only and to highlight variations in the quality of studies (i.e. no quality score was calculated but this assessment allows us to comment on the quality of the included studies). Narrative synthesis was performed to combine the qualitative and quantitative evidence. Results are tabulated (see Table 3.3) as well as summarized in the following text.

Figure 3.3. Critical appraisal criteria

These criteria were used to assess all of the included studies. The results of this process are presented under the critical appraisal section of the results in Table 3.3.

1) How clear is/are the research question(s) and/or aim(s)?

2) Was the methodology appropriate for addressing the stated aims of the study?

3) Where applicable, was the recruitment/search strategy appropriate and/or was an adequate sample obtained to support the claims being made (i.e. was the data collection adequate and appropriate)?

4) Were the methods of data analysis appropriate to the subject matter?

5) Is the description of the findings provided in enough detail and depth to allow interpretation of the meanings and context of what is being studied? [Are data presented to support interpretations, etc?]

6) Are the conclusions justified by the results?

7) If applicable, are the theoretical developments justified by the results?

8) Have the limitations of the study and their impact on the findings been considered?

9) Do researchers discuss whether or how the findings can be transferred to other contexts or consider other ways in which the research may be used?

10) If the answer to 9 is ‘yes’, do you agree these suggestions are appropriate, based on the research?

Source : Rees *et al.* ; 2006 ; United Kingdom Public Health Resource Unit

Results

The majority of 31 studies identified focused on North America (22 focused on the USA, or states within the USA, and two focused on Canada), although it should be noted that several of the studies concerning state-level excise propositions related to the same policy development (Table 3.4). The rest covered a diverse set of countries (Table 3.5). We found no studies relating to tobacco industry tax-related lobbying in South America, South Asia, Australasia or Africa or examining influence on supranational (e.g. European Union) tax policy.

The studies covered two main topics. The majority (27) discussed tobacco industry efforts to counter proposed excise tax increases (Begay *et al.*, 1993; Moon *et al.*, 1993; Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Bialous and Glantz, 1999; Goldman and Glantz, 1999; Balbach *et al.*, 2000; Givel and Glantz, 2001; Morley *et al.*, 2002; Yerger and Malone, 2002; Szilágyi and Chapman, 2003; Alamar and Glantz, 2004; Levenstein *et al.*, 2005; Balbach *et al.*, 2006; Givel, 2006, 2007; Gilmore *et al.*, 2007; Nakkash, 2007; Campbell and Balbach, 2008, 2009; Balbach and Campbell, 2009; Lum *et al.*, 2009; Raebeck *et al.*, 2009) or, in some cases, to lower existing taxes (Joossens and Raw, 2003; Breton *et al.*, 2006; Kelton and Givel, 2008). Of these, only four covered policy influence outside North America (Joossens and Raw, 2003; Szilágyi and Chapman, 2003; Gilmore *et al.*, 2007; Nakkash, 2007). As Table 3.3 summarizes, most of the US studies focused on policy proposals that included plans to substantially increase taxes and to earmark (hypothecate) all or most of the revenue raised by these tax increases for tobacco control programmes. This means it is difficult to ascertain to what extent the industry was concerned about tax increases per se, as opposed to being concerned about significant tax increases which would be used to fund tobacco control activities. Nevertheless, we can distinguish arguments and strategies used to counter the increases from those use to counter/undermine the proposed earmarking.

The other main topic (covered in seven studies) concerned tobacco industry efforts to influence excise structures (O’Sullivan and Chapman, 2000; Szilágyi and Chapman, 2003; Gilmore and McKee, 2004b; Gilmore *et al.*, 2005; Delnevo *et al.*, 2007; Gilmore *et al.*, 2007; Nakkash, 2007), and these have a very different geographic profile (Table 3.5). As there are far fewer studies on this issue, and as this is not the main focus of most of these studies, the picture that emerges is far less clear than that relating to industry activities to influence excise rates. Nevertheless, between them, these studies provide some important insights into how different companies have sought to influence tobacco excise structures to their advantage.

Table 3.3. Summary of studies concerning tobacco industry (TI) tax-related lobbying. Closely related studies are assessed together. Numbers in the column "CA criteria met" represent the quality criteria that each study met; see* at the end of the table for further details.

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	**Arguments used**	**Mechanisms employed**	**Success of TI**
Studies concerned with tobacco industry efforts to influence tobacco tax rates (and, where applicable, associated plans for earmarking of taxes)						
Begay *et al.*, (1993)	- Analysis of reports by the California Fair Political Practices Commission, statements filed with the California secretary of state's Political Reform Division, and data on Proposition 99 expenditures from various official budget documents. - Also conducted "a multivariate simultaneous equations statistical analysis of data on campaign contributions from the tobacco industry to legislators in the 1991-1992 election, their records on tobacco control policy as scored by tobacco control advocates, members' personal characteristics, and constituents' attitudes towards tobacco control."	1-3,6,9, 10	To prevent a significant tax increase being proposed in the McCain bill	Not specified in this article	- Found the TI was investing heavily in the Californian legislature, spending political money more intensively there than in the US Congress. - Powerful individuals in the legislature seem to have been particularly targeted, e.g. "In 1991-1992, the Speaker received $221 367, making him the largest single legislative recipient of tobacco industry contributions in the United States" (explains the Speaker of the Assembly, the single most powerful member of the legislature and second only to the governor in influence). - TI lobbying expenditures grew 10-fold from 1985–86 to 1987–88, when Proposition 99 passed. - The TI also reorganized its lobbying efforts, hiring large, private firms to lobby legislators and state officials since Proposition 99 passed, rather than relying on organizations like the Tobacco Institute, as they previously had. Some of the firms hired also worked for medical groups which TI wanted to side with in efforts to divert revenue. - "In 1989, the Tobacco Institute offered to	- Proposition 99 passed in 1988, so the TI failed to prevent it, but did experience success in diverting funds. - Claims "Although there is little evidence showing that the tobacco industry has «bought» legislators' votes, early research strongly suggests that tobacco industry's campaign contributions are influencing the behaviour of California legislators in matters related to tobacco policy-making, independent of constituents' support for tobacco control." Notes the multivariate simultaneous equations statistical analysis of data on campaign contributions from the tobacco industry to legislators indicated that the TI had "a statistically detectable effect on legislative behaviour". - "Only 14.7% of revenues were spent on tobacco education and prevention, not the mandated 20%. The underfunding amounts to $174.7 million redirected to medical care programs from fiscal years 1989-1990 through 1993-1994, despite clear language in Proposition 99 specifying how the

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Begay *et al.*, (1993) (contd)					contribute $250 000 to the California Medical Association to divert Health Education Account funds to medical care programmes through a Medical Association-sponsored ballot initiative."	money should be spent."
Moon *et al.*, (1993)	Methodology is not described but the article appears to be based on an analysis of various data sources, including media coverage of the issue and other academic articles	1,9,10	To prevent a proposal for a state-wide tobacco tax initiative in Montana, USA, which would have added an extra $0.25 to cigarettes, with money to be dedicated to TC programmes	- The tax was framed as «a trap set by 'special interests' to subsidize those people who live in cities". - TI highlighted that passage of the initiative would give Montana the highest cigarette tax in the nation. - Undertook advertisements during the last week of the campaign, which built on above (informing voters that although they could not do anything about outrageous property taxes, they could vote against the "selective sales tax increase")	- Opponents to proposal 'operated under the name «Citizens Against More Tax and Bureaucracy»' and they 'had $1.47 million at their disposal.' '[M]ore than 88% of the money came from Philip Morris, R. J. Reynolds, Brown & Williamson, and the Tobacco Institute.' - While the initiative was still in draft form, opponents conducted numerous telephone tracking surveys to measure the possible impact of various campaign themes. Increased state taxes and bureaucracy emerged as pivotal issues, and extensive television, radio, and newspaper advertisements emphasized these concerns.' - Linked the proposed increase tobacco tax with proposed property tax increases in rural areas that were happening at the same time (so framed as part of broader debates about tax rises); - Brochures were sent to businesses asking whether the business could afford the increase.	On November 6, 1990, Montana voters defeated Initiative 115 by 59% to 41%, so the TI succeeded.

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Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Moon *et al*., (1993) (contd)					- Multiple mailings were sent to voters from a Helena tobacco retailer portraying the increased tax as «a trap set by 'special interests' to subsidize those people who live in cities».' "The Montana Alliance for Progressive Policy (MAPP), a liberal group opposing the increase as an unfair tax on poor people, received $22,500 from a tobacco industry lobby group to produce and send brochures to its 50,000 members urging rejection".	
Koh (1996)	Methodology is not described but the article appears to be based on an analysis of various data sources, including media coverage of the issue, personal correspondence with some key players and other academic articles	1,9,10	To prevent the passage of Question 1, a proposal to raise the tobacco tax in Massachusetts by $0.25 to fund tobacco education programmes	- The tax was unfair and regressive, disproportionately affecting people with low incomes - On that basis, it would contribute to class warfare (argued the tax pitted upper middle class liberals – mostly white – against lower middle class working people – mostly minority). - Warned that tax-generated monies would be diverted from their intended purposes, as had occurred in California. - Argued the tax would harm small business in the state by motivating people to buy cigarettes outside the state.	- The TI outspent the Coalition for a Healthy Future by 10:1. - TI put forward an alternative, compromise proposal. - TI legally challenged earmarking of funds. - TI organised and funded a group to lobby against the tax increases, called 'The Committee Against Unfair Taxes' - An ultra-conservative, out of state Catholic organisation working with the EU to distribute thousands of letters claiming that the Q1 funds would be used to fund abortion counselling and condom distribution in schools. Unclear if/how TI connected.	- TI failed to disrupt the signature gathering (two rounds). In round one, the sheer volume put TI off questioning signatures. - TI alternative proposal ignored. - TI legal challenge on earmarking failed. - The proposition passed so TI failed to prevent it. - Overall, state-wide tobacco consumption subsequently declined by more than three times the national average. - However, TI political pressure led to governor and legislature diverting more than $220 million out of the tobacco education account, prompting a subsequent round of lawsuits.

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Koh (1996) (contd)				- Claimed the tax was unfair on smokers	- TI stepped up its media campaign in final weeks before vote. - TI focused on tax as a generic category, rather than specifically discussing tobacco taxes. - Employed a key former legislator	
Traynor and Glantz, (1996)	Analysis of published reports, public documents, personal correspondence, internal memos, polling data, and interviews with representatives form organizations that participated in the Proposition 99 campaign.	1,2,5-7,9,10	- To defeat Proposition 99 in California (which proposed to add $0.25 to state cigarette tax and use 20% of the revenue on tobacco education and prevention programmes); - Once Proposition 99 had based, the aim was to divert earmarked funds away from tobacco control activities/programmes.	- Tried to move the issue away from smoking by focusing on generic increased taxation arguments. - Emphasised government mismanagement of tax money - Suggested $0.25 was too much of an increase on a single product. - Claimed the increased tax would lead to increased smuggling and small-scale smuggling. - Built on this to claim police attention would be diverted away from other business and that more money would be spent on guns and drugs. - Argued tobacco tax was just another way for special interests, such as physicians, to become richer. - Framed tobacco tax as a regressive tax that would negatively affect blue-collar workers. - Argued Proposition 99 violated California's 1978 property tax-cutting initiative and other tax rules.	- TI invested significant resources into lobbying Californian legislature. Worked with healthcare organisations to ensure funds were diverted away from TC programmes to medical care programmes. - Hired a political consulting firm and formed the Californians Against Unfair Tax Increases (CAUTI). - CAUTI circulated its own petition in 1988, as the pro Proposition 99 effort was underway to gather supportive signatures, called 'The Tobacco Tax Ripoff'. This was not official and was merely used as a way of reducing the pool of available paid signature-gatherers (by paying them more) and to confuse voters about Prop 99. - CAUTI held a press conference to present its argument that the proposed tobacco tax was just another way for special interests, such as physicians, to become richer.	- TI's legal challenge failed. - But polls indicated the TI's ads did have an effect, reducing public support for the initiative. - However, various factors undermined one of TI's most popular arguments, that concerning smuggling and police work, including an official report that concluded the effect on smuggling was likely to be negligible, which criticized CAUTI's ads. Police groups which had supported the TI position subsequently dropped their support. In addition, it was revealed that the 'undercover policeman' in the TI's most effective ad had nothing more than a desk job for the policy and was also a part-time actor. All of this largely destroyed the small-scale smuggling/crime arguments the TI was using. - In the end, Proposition 99 passed in 1988, so the TI failed to prevent it.

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Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Traynor and Glantz, (1996) (contd)					- TI, through CAUTI, saturated TV, radio and print media with paid ads to promote TI position. Their most effective ad featured an alleged undercover police officer discussing the crime implications arguments (more time would be spent on smuggled cigarettes, hence less time on other issues, and the increased criminal money from smuggling, etc would be spent on drugs and guns). - TI legally challenged Proposition 99 on the basis it violated California's 1978 property tax-cutting initiative and other tax laws. - CAUTI secured the endorsements of the Californian Sheriffs' Association and the California Peace Officers' Association, which gave credibility to their crime/smuggling related arguments.	- However, the TI was influential in helping ensure the subsequent underfunding of tobacco education and prevention program.
Heiser and Begay, (1997)	Analysis of internal memos, meeting minutes, newspaper articles, other internal documents, letters, newsletters, news and press releases (many of which were provided	1-3,5,9,10	To challenge/undermine the development, then implementation of, Question 1, a proposal to raise the tobacco tax in Massachusetts by $0.25 to fund tobacco education programmes, in order to reduce smoking related deaths in the state	- Cigarette tax is regressive; - The proposed tax would hurt the state economy because it would increase cross-border shopping; The legislature would use the extra money raised for purposes other than those intended (e.g. to balance budget);	- Legally challenged the draft proposal, on basis it violated the state constitution, and filed subsequent legal challenges at later stages. - Used a signatures expert to try to disqualify signatures supporting the ballot proposal;	- Legal challenges failed. - Signatures expert was unable to disqualify enough signatures to challenge the ballot. - TI ad campaign was effective, however, in shifting public opinion, according to poll data.

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Heiser and Begay, (1997) (contd)	through the American Cancer Society). Also used available polling data and undertook some interviews (although these are not discussed in the Methods section)			- The proposal was not legal	- During the second required signature drive, the TI tried to disrupt matters by offering two compromises – both of which involved smaller tax increase, with fewer funds being allocated to tobacco control programmes; - Funded a Committee Against Unfair Taxes to oppose the initiative; - Undertook a major advertising initiative (TV, radio and direct mail) to garner public support for opposing initiative	- Q1 nevertheless passed so TI failed to prevent it. However, funds were subsequently diverted, with only just over 25% being spent on tobacco education, apparently justifying one of the TI's arguments (article does not make any specific claims about TI's influence over this diversion).
Bialous and Glantz, (1999)	Case study using data from semi-structured interviews "with key players in the initiative" and written records (documentary data gathered from written records and newspaper clippings).	1-3,5-7,9,10	To prevent Proposition 200 in Arizona and then divert funds away from TC programmes (NB the Proposition aimed to increase the cigarette excise tax by US$0.40, with proportional increases in the tax on other tobacco products. Increased revenues were earmarked: 23% for tobacco prevention/ education programs, 5% for tobacco-related diseases and prevention research, 70% to provide medical care for the poor, and 2% to offset future loss of tobacco tax revenues by the Arizona Department of Corrections)	- Framed initiative as an attempt by proponents to divert large amounts of taxpayer money to their own benefit. - Used the diversion of health education funds into medical services by the California legislature as an example of how the tobacco tax funds were going to benefit only the hospitals.' - Claimed that California's tobacco control programme was misusing public funds	- Used front-groups - "Enough is Enough" and "No More Taxes", which were 99.96% financed by Philip Morris and the Tobacco Institute, respectively, to campaign against the initiative. - Increased lobbying of the state legislature, with the number of paid tobacco industry lobbyists rising from approximately four to 18. - Once Proposition had been passed, the TI legally challenged some of the contracts agreed with health education funds. - Threatened local level boards with legal action over tobacco control programs. - Tried to pass pre-emptive legislation to limit local TC programs	- The Proposition passed so TI failed to prevent it. - The TI also failed to divert funds away from TC programmes. - However, the tobacco education programme experienced a range of other problems and was never fully implemented as planned. Authors suggest TI lobbying played a role in this

Table 3.3. Summary of studies concerning tobacco industry (TI) tax-related lobbying. Closely related studies are assessed together. Numbers in the column "CA criteria met" represent the quality criteria that each study met; see* at the end of the table for further details.

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Goldman and Glantz, (1999)	Interviews with key informants and analysis of public documents, internal memoranda, and news reports	1-3,5-7,9,10	- To prevent Measure 44 becoming law, notably by preventing it from gaining a majority public vote. Ballot Measure 44 was a proposal to raise cigarette taxes in Oregon by US$0.30 per pack and to use the funds to support an Oregon Health Plan and tobacco control (it proposed a dedicated 10% of the revenues would be used for tobacco control). - Once Measure 44 had passed, to prevent the funds from being spent on tobacco control programmes	- Taxing smokers to pay for healthcare for everyone is unfair. - Measure 44 contained no controls on how money would be spent and were likely to be wasted on bureaucracy, etc, rather than being spent on health care and health education; - Healthcare providers and insurance companies were being greedy in wanting these taxes; - The Measure would allow cuts in spending on programmes that were currently funded by tobacco tax [NB authors say this was incorrect]	- Legally challenged the initiative on various grounds (language used; failure to specify all the types of taxes that would be raised; and a misleading summary). - "While signatures were being collected to qualify Measure 44 for the ballot, the tobacco industry began contributing money to a different ballot measure campaign", which the authors suggest was designed "to disrupt the signature-gathering process and to dilute support for Measure 44" and "to divert the energy and financial resources of the health insurers away from Measure 44." The money the industry gave to this alternative campaign, meant the signature-gatherers could be paid significantly more than those for Measure 44, which enabled more signature-gatherers to focus on the other campaign and the tobacco control lobby, eventually, to have to pay more for signatures. - TI formed and funded a registered campaign committee, called Fairness Matters to Oregonians Committee (FMOC). Of the US$4 614 292 in cash contributed to FMOC to fight for Measure	- The legal challenge initially met with some success but was eventually ignored as submitted late. - Other TI lobbying efforts also initially met with some success but later failed. - Although TI outspent Measure 44's supporters 7 to 1, the initiative passed with 56% of the vote. - TI also failed to divert tobacco control funds to other uses or limit the scope of the program. - Nevertheless, only 10% of the revenues were devoted to tobacco control activities, even though public health groups provided 37% of the campaign money (notes that this was partly because public health groups were not involved in the early phases of the tobacco tax effort and therefore missed an opportunity to affect the allocation of funds). Overall, article concludes: 'Despite being outspent more than 7 to 1, Measure 44 passed with 56% of the vote on 5 November 1996. 'The end result was an 11% decline in per capita cigarette consumption in Oregon since 1996 and a decline of 35 000 in the number of Oregonians who smoke'.

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Goldman and Glantz, (1999) (contd)					39 and against Measure 44, all but US$30 came from the Tobacco Institute. - Much of the above money was used to run ads on radio, TV and via direct mail (TI significantly outspent the public health campaigners on advertising). - TI hid its involvement in some advertising campaigns (though advertisers were eventually required to declare this). - TI hired a former Oregon governor. - Used the support of a dentist (i.e. medical care worker). - Once measure had been passed, TI lobbied legislators about how the money should be spent, hoping to weaken the anti-tobacco ad programme. This included lobbying a Subcommittee which consisted of three senators and which had to (by majority) had to approve the budget	- Philip Morris concluded they ought to use third parties more heavily in future campaigns in order to make voters 'more persuadable' of their views
Balbach *et al*., (2000)	Analysis of relevant documents (published reports, public documents, personal correspondence, newspaper accounts, press releases, internal memos and some industry documents). Files made available by various public health / tobacco control groups, and lawsuits in 1994 and	2-7, 9,10	- To defeat Proposition 99 in California (which proposed to add US$0.25 to state cigarette tax and use 20% of the revenue on tobacco education and prevention programmes); - Once Proposition 99 had based, the aim was to divert earmarked funds away from tobacco control activities/programmes	- Not made clear in this article, which merely notes that the TI built on anti-tax, anti-regulation and freedom-of-choice themes	- Direct lobbying of legislature (investing huge financial resources). - Worked with private healthcare and groups representing medics to ensure funds were diverted away from tobacco control education programmes and towards medical care programmes (which went against the specifications of the public	Proposition 99 passed in 1988, so the TI failed to prevent it. - However, the tobacco education and prevention programmes which had been earmarked for receiving 20% of the revenue did not receive their full allocation, which was instead diverted (largely to healthcare organizations).

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			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Balbach *et al.*, (2000) (contd)	1995. Interviews were also undertaken with 38 "key participants" (although TI refused to be interviewed)				ballot). This provided 'crucial political coverage for the tobacco industry and the politicians that supported it' - Helped establish the Californians for Smoker's Rights (CSR) group to promote TI arguments and target tobacco control programmes. - Paid key officials (money often went via advertising agencies and law firms so did not appear to be TI money)	- Following lawsuits by public health groups, and extensive media coverage of the issue, the health education account finally received its full allocation in 1996
Givel and Glantz, (2001)	Analysis of tobacco industry documents, plus reviewed existing case studies of TI state level lobbying, plus data from on the status of state tobacco control legislation from the US Centers for Disease Control and Prevention, National Center for pre-emption data Chronic Disease Prevention and Health Promotion, Office of Smoking and Health. Also used 1990 Coalition on Smoking or Health pre-emption data	1-3,6,9,10	Oppose all tobacco excise tax increases proposed at state level in USA	No arguments are mentioned specifically in relation to taxation but study notes tendency of TI to frame issues as important because they impact on public / other sectors, rather than because they impact on the TI itself	For many of the lobbying tactics/mechanisms outlined, it is unclear if they are related to taxation. On the issue of tobacco excises specifically, the following are highlighted: - work with and fund anti-tax groups - contribute funds to "national groups not directly related to tobacco that make policy recommendations, which can effect state legislation while allowing the tobacco lobby to remain behind the scenes", e.g., funding for Women Involved in Farm Economics (WIFE) and the National Taxpayers Conference (NTC). Both of these groups "assisted the tobacco lobby […] to fight tobacco excise tax increases"	Found that 20 states had low rates of tobacco excise taxation (less than US$0.25 per cigarette pack). Concludes that this suggests TI has been able to maintain a "favorable market."

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Givel and Glantz, (2001) (contd)					- Forming relationships with minority and women's political caucuses "to build coalitions to counter tobacco excise taxes and promote smokers' rights legislation". - Lobbying via National Smokers' Alliance (TI-funded front group)	
Morley *et al.*, (2002)	Analyzed TI expenditures by state, using data from tobacco industry document websites, and TI publication the *Tax burden on tobacco.* Also collected cigarette excise tax rates per pack for each state for 1991 and 1997, to rank states on the basis of an increase in excise tax rate over this	1-6,8	Not assessed in this article, which examines Tobacco Institute lobbying, but findings suggest the industry was particularly concerned about policy developments that were likely to lead to increased cigarette taxes and earmarked cigarette taxes in 1990s	Not assessed in this article	The findings from this study support the hypothesis that in the 1990s tobacco control activities such as raising cigarette excise taxes, attracted TI resources to undermine these efforts. - California and New York were ranked highest in average Tobacco Institute spending, and Minnesota, Arizona and Massachusetts also ranked highly (all states that had had public ballots on raising tobacco excise taxes and dedicated some of the increased revenue to TC). On the whole, study finds Tobacco Institute spending correlated with state efforts to introduce higher (and often earmarked) tobacco excise taxes as well as to introduce other tobacco control measures such as public smoking restrictions (relationship was stronger for TI activities relating to tobacco tax than smoking restrictions, which authors suggest may be because the TI relied more on third parties to lobby against	Not assessed in this article (although authors note the Tobacco Institute was disbanded in 1998, which suggests it was not seen as successful at this point)

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Morley *et al*., (2002) (contd)					smoking restrictions than it did on tobacco excise issue)	
Yerger and Malone, (2002)	Analysis of tobacco industry documents and relevant secondary data sources including newspaper and journal articles	1-3,5-7,9,10	To avoid any significant tobacco tax increases	Argued excise taxes were regressive and disproportionately unfair, particularly to minorities	- African American groups with which the TI had ties were used to oppose tobacco tax increase. For example, the Congressional Black Caucus (CBC) shifted its 1981 support for a 10% increase in the tobacco excise tax to help restore funding for social programmes to a position opposing increasing tobacco excise taxes in 1984 (for undetermined reasons). - The TI then "sought to leverage the caucus' changed position." - Many other African American groups were also identified as being willing to support this position. - CBC commissioned a task force to review the impact of excise taxes on the poor, blacks, and other minorities. The task force issued a 1987 report, which was used to lobby politicians with (and which the TI helped promote). - TI produced economic studies to support its claims about taxes. - TI relied on support of Congress reps who received TI money	The success of the TI in avoiding significant tax increases is not made clear in this study but the authors imply that it was successful in influencing the position on this issue of African American groups and leaders

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Joossens and Raw, (2003)	Analysis of tobacco industry documents plus draws on figures concerning smuggling that are quoted in published articles, in data provided by customs, tax and health authorities	2,5-7,9,10	To maximise profits, both tough legal and illegal markets, whilst using the spectre of smuggling as an argument for keeping taxes low	- Tobacco smuggling is caused by market forces, i.e. the price differences between countries, which create an incentive to smuggle cigarettes from cheaper to more expensive countries	- TI lobbies governments to reduce tobacco tax on the basis that doing so will solve smuggling problems and increase government revenues	Does not assess success in detail, although notes that taxes were lowered in Sweden and Canada, following concerns about smuggling. Notes this did not adequately deal with smuggling
Alamar and Glantz, (2004)	Analysis of tobacco industry documents.	1-3,5-7, 9,10	- To prevent a significant tax increase being proposed in the McCain Bill.	- Attempted to frame the bill as the ''largest tax increase in history'' and a bureaucratic mess. - Claimed the increase would lead to increased levels of illicit trade and associated law and order problems.	- Used Wall Street analysts to present arguments about smuggling (TI briefed analysts, who then presented themselves as independent)	- TI was successful (McCain Bill was defeated in June 1998)
Levenstein *et al.*, (2005)	Analysis of tobacco industry documents and union publications, newspapers, and other general publications relevant to the case study, plus examined New York case law and legislative history, and analysed interviews with key personnel (unclear if interviews were already undertaken as part of other project or if were part of this study)	1,2,5-7,9,10	To prevent the passage of two types of legislation – excise taxes on tobacco products and workplace smoking restrictions. It aimed to prevent questions on these issues from qualifying for ballot and to defeat those proposals that made it to the ballot	Tobacco excise taxes were framed as unfair and regressive	- TI set up the LMC - From mid-1980s to late-1990s, the LMC "worked to elicit support in New York by framing issues in terms that made them salient to unions." - The unions sided with TI in hope "that such cooperation would be of advantage to them in their efforts to protect and strengthen their organisation. The TI and LMC did their homework, understood the concerns of labor, and appeared ready to champion these concerns." This included assisting unions even on issues of "no concern to the TI".	- The LMC was "generally successful in gaining labour support in New York for positions on excise taxes and, especially, worksite smoking restrictions. However, by the late 1990s, the support had largely evaporated, with trade unions in New York either in support of, or at least neutral on," both issues. From 1985, tobacco excise tax 'increased only slowly and marginally' but in 1999 it was doubled. - LMC succeeded in dividing public health and labor for a while. - However, the LMC largely failed to attract support from public sector

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			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Levenstein *et al.*, (2005) (contd)					- The TI's focus was on the leaders of unions / labour groups, rather than their members as it was these people who had political influence. - The LMC lobbied and briefed elected officials at all levels of government, and worked to discourage liberal and labour coalitions from taking anti-tobacco positions, built support for industry positions throughout the labour movement, and provided general public communications	unions in New York state as they were dependent on state budgets so could not be counted on to resist any action that might help replenish state coffers. Hence, "While regularly siding with the LMC on the issue of smokefree worksites," the New York public sector unions did not tend to denounce proposals for cigarette tax increases. - The TI eventually gave up trying to win public sector union support on this issue, which authors decide was a "fatal error". - "By the late 1990s […] most of labor in New York had shifted to support for anti-tobacco policies." Shift in support started with excise but then moved on to other TC issues
Balbach and Campbell, (2009) and Balbach *et al.*, (2006)	Analysis of tobacco industry documents and other related documents (CLUW News, the in-house newspaper of CLUW)	1-7, 9,10	- Overall aim was to prevent tobacco excise increases. Intermediate aims included discouraging liberal and labour groups from taking anti-tobacco positions (including on tobacco excise) and shifting the focus of the debate away from the effects of tax increases on cigarette consumption and onto the effects on the people paying cigarette taxes	- That cigarette taxes are regressive and that regressive and unfair to working women	- In 1984, the Tobacco Institute established the Labor Management Committee (LMC), which was composed of the Institute and five unions representing tobacco industry employees. The LMC's functions included: (i) Lobbying and briefing elected officials at all levels of government; (ii) discouraging liberal and labor coalitions from taking anti-tobacco positions, including on tobacco excise taxes;	- TI was successful in influencing CLUW's position on tobacco excise taxes (CLUW did campaign against such increases & against earmarking). - Authors acknowledge "it is difficult to know how much or if the CLUW's involvement in the policy process made a difference," but say "there are indications that organized labor was important in federal level policy making".

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Balbach and Campbell, (2009) and Balbach *et al.*, (2006) (contd)					(iii) building support for industry positions throughout the labor movement; and (iv) facilitated general public communication on relevant issues. - The TI provided financial (at least $221 500 between 1988 and 1996) and in-kind support to the *Coalition of Labor Union Women* (CLUW) in order to engage CLUW's interest in smoke-free worksite legislation and tax increases. - The Tobacco Institute facilitated its relationships with CLUW (and similar groups) by working via the LMC. - The Institute supported the production of a series of studies by labour groups, including CLUW, which demonstrated the regressive nature of tobacco taxes. - The Institute monitored press coverage and advised CLUW on how to promote study messages to the media. - CLUW and similar organizations were encouraged to oppose earmarked tobacco taxes, such as those proposed in Clinton universal healthcare proposals. - The TI was aware many labour organizations, including CLUW, were generally supportive of higher taxes so they encouraged them to	

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			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Balbach and Campbell, (2009) and Balbach *et al.*, (2006) (contd)					push for higher taxes on corporations, rather than cigarettes. This included assisting the Citizens for Tax Justice group with the promotion of its annual examination of ''corporate freeloaders'' – those corporations that pay no, or little, taxes. - TI framed tobacco taxation as part of generic consumer excise taxes (which also including petrol and alcohol)	
Breton *et al.*, (2006)	Analysis based of: (i) 569 articles from four Québec daily newspapers published between 1986 and 1998; (ii) 28 semi-structured interviews with key informants, and (iii) more than 200 government documents/ transcriptions of parliamentary debates relating to the problem of smoking	1,2,5,6,8	To reduce tobacco excise taxes: "When the cost (in constant dollars) of tobacco caught up in 1984 with its 1970 level, the tobacco industry and union leaders representing workers in this sector began to challenge decisions to increase the taxes." (So initial aim was to avoid further tax increases). However, "In early 1992, a plea for a drastic reduction in tobacco taxes emerged.''	Initially, TI challenged tax increases primarily on economic grounds, with arguments concerning the industry's profitability. - Also argued taxes were unfair on smokers. - Later focused on arguments that the tax increases were fuelling smuggling (including high economic cost of this to government and retailers, and failure to help control tobacco use). - Argued against export taxes and better policing as solutions to the smuggling problem. - Presented taxes as excessive and TC groups as having dominated policy. - Following tax decreases, the TI argued smoking rises in young people were unrelated to the change in price	- Various groups supported the TI position (retail sales sector and journalists). Unclear how much the TI was linked to groups/individuals in these sectors. The Québec Food Retailers Association was a particularly active group, which called a press conference in 1992 and demanded "a 70% reduction in tobacco taxes to put an end to smuggling". Authors claim TI was involved in funding this group. - A group specifically campaigning on this issue, the *Mouvement pour l'abolition des taxes réservées aux cigarettes* (MATRAC), was set up but authors do not comment on whether TI was involved in funding/ establishing this group.	- Initially, the TI and its allies had little influence – the TI was seen to be in decline anyway in Canada. - However, framing the issue as a 'contraband problem' succeeded in winning support from a broad coalition, including retailers, media commentators and the representatives of employers' organizations. - The health lobby received less media coverage and was subject to criticism that they had an 'extremist' stance. - Eventually, "a massive reduction in the Québec and federal taxes" was achieved, not just in Québec but also 'in the taxes levied by five other provinces, including Ontario' and also at a federal level.

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Breton *et al*., (2006) (contd)					- Claims the TI was able to mobilize union representatives and its employees. - TI helped organize small retailers, whose comments quoted in the media gained public sympathy. - Ran an "effective media strategy". - Managed to get police support on smuggling issue. - Disseminated the findings of surveys on different facets of the problem. - Arguments were presented as being on behalf of citizens, not the TI	- This led to an increase in smoking rates amongst young people. - Political elites responded to this by implementing a range of strong TC strategies (although they did not re-raise the tobacco tax). - Concludes, the TI's success was mixed: "the smuggling crisis was an event that, despite its unfortunate repercussions on tobacco taxes, helped put the tobacco problem in Québec, especially among young people, on the government's agenda."
Givel, (2006)	Analyzed data from the State Tobacco Activities Tracking and Evaluation System, Tobacco Map Reports created by the U.S. Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office of Smoking and Health (CDC). Supplemented this with data from the Coalition on Smoking or Health, American Lung Association, and Federation of Tax. Also appears to also use some TI documents (although this is not mentioned in description of methods)	1,2,5-7	To avoid tobacco excise increases	Argued tobacco use is a matter of individual choice and it is therefore reasonable to expect freedom from excessive government regulations and taxes	Study only highlights TI mechanisms/tactics generally so the following do not only concern tax-related lobbying: - Ongoing employment of well established contract lobbyists, who are managed and coordinated in a top-down manner by TI. "The state contract lobbyists often have decades of experience and expertise in working with state legislatures to advance or block legislation." - Direct and indirect campaign contributions; - gifts and honoraria to legislators; - occasional alliances with other allied interest groups (such as the hospitality industry to counter clean	- "From 1990 to 2003, there was a sharp mobilization by health advocates in all states and a significant rise in new legislation to control tobacco use. The tobacco industry, nevertheless, was able to generally keep state tobacco taxes low and counter significant regulatory threats to tobacco sales." - Concludes "the policy monopoly favoring the tobacco industry did not significantly change, despite the symbolic appearance of punctuation in the policy system."

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			Aim of TI	**Arguments used**	**Mechanisms employed**	**Success of TI**
Givel, (2006) (contd)					indoor air ordinances); - The development of front groups allowed the tobacco industry and its political allies to act without being publicly, including the National Smokers Alliance (primarily funded by Philip Morris). - Tactics of the front groups often included orchestrated grassroots advocacy campaigns through the mail or phone calls to pressure policy makers. - Providing testimony before legislative bodies	
Givel, (2007)	Analysis of tobacco industry documents, plus relevant newspaper reports (Lexis Nexus), all relevant articles from the Americans for Nonsmokers' Rights database (http://www.tidatabase.org/), magazine articles, web pages, journal articles, and books	1–3, 5–10	- To keep tobacco taxes low and avoid undue regulations (avoid altogether or keep weak), which formed part of broader efforts to "maintain, enhance, and protect the industry's profits and market shares"	- The NSA (TI front group – see next cell) argued that adult tobacco use should not be hindered by rigorous regulatory controls or higher tobacco taxes. - Called into question the potential health effects of tobacco use and the viability of proposed tobacco tax increases. - Presented smoking as socially acceptable for adults	- In 1993, TI established the National Smokers Alliance (NSA), "a public relations created front group funded by the tobacco industry, which operated nationally from 1994 to 1999 to advocate for adults using tobacco products without vigorous regulation or increased tobacco taxes." - Burson-Marsteller, the PR firm, helped set this up for Philip Morris (with some subsequent financial assistance from other TTCs) and some Burson-Marsteller staff worked for the NSA. - The NSA worked to "to ''generate'' the appearance of public support through public,	- "Despite the use of traditional lobbying in conjunction with the use of public relations efforts, attempts by the NSA to dominate public policy to weaken or neutralize stronger tobacco regulations and taxes were effective only for some campaigns." - "From January 1994 to June 1999, the NSA's record of political victories and shaping of public policies was mixed. At the national level, the NSA played an important supporting role in winning four major campaigns and losing one. At the state level, the NSA played an important supporting role in losing three campaigns

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Givel, (2007) (contd)					relations, through the engineering of consent theory, by using editorials newspaper articles, and pro-tobacco columns that called for the free use of tobacco." - Also organized national and regional press conferences, issued press releases, monitored media coverage of tobacco, made radio talk show appearances, issued alerts to NSA members, provided public speakers, issued advertisements, and corresponded with legislators. - Wrongly targeted University of California–San Francisco tobacco control researcher and Professor of Medicine Stanton Glantz, alleging, but not proving, Glantz misused grant funds for illegal political purposes and lobbying. - Filed a Senate ethics complaint against Sen. John McCain, alleging he had used "his Senate franking privilege to bolster his run for the presidency" (PM disagreed with this and withdrew financial assistance for NSA over this issue)	and winning one. At the local level, the NSA played an important supporting role in winning 19 campaigns and losing 12." (Not all campaigns concerned tax increases). - "[T]he NSA was unable to successfully discredit tobacco control researcher Stanton Glantz."
Campbell and Balbach, (2008)	Analysis of tobacco industry documents.	1-3,5-10	To challenge policy interest in significantly raising tobacco taxes by turning labour and middle-class opinion against prospective excise	Tobacco taxes are regressive	- TI created and funded the Consumer Tax Alliance (CTA) in 1989 to build opposition to excise taxes. The CTA focused on garnering support from	- In exchange for funding, various labour/progressive groups did publicly take positions against increasing tobacco excise taxes.

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			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Campbell and Balbach, (2008) (contd)			tax increases. Initial focus was on federal increases but in 1991, efforts turned to state-based tax proposals		credible liberal allies, particularly genuine public interest groups (groups traditionally perceived to be at odds with the TI). NB The CTA appears to have been dissolved in 1993. - Also focused on garnering media coverage of the issue (this included sponsorship of TV ads, plus a media tour by CTA Executive Director). - By working via the CTA (which did not divulge the industry's role in its formation), the TI was able to obscure its own role in these efforts.	- "The Tobacco Institute was pleased with the impact of the [TV] advertising [sponsored by the CTA], as measured by tracking polls commissioned to measure their effectiveness" which found they increased people's opposition to tobacco excise taxes. - Tobacco excise taxes were increased in 1990 and 1993 at USA federal level, but the increase was much less than originally predicted (8 cents, rather than 16 cents) and was introduced in two phases (authors accept that it is not possible to say whether or how CTA activities affected this outcome).
Kelton and Givel, (2008)	Analyses TI documents, newspaper reports, journal articles, scholarly reports, court cases, government data, court testimony, and federal and state statutes and regulations, plus relevant information from websites	1,2,4-7,9,10	To maintain/expand sales despite tax increases and to use the issue of smuggling as part of campaign to reduce taxes	TI blamed rampant smuggling on excessive taxation	- TI "promoted smuggling schemes" not only to increase profits but also to "provide an argument for tobacco taxation reduction." Effectively, the TI "secretly pushed for increased tobacco smuggling so that it could argue against higher taxes as a motivation to smuggle." - "Because of the federal excise and export tax breaks that apply on U.S. Native American land, for more than 10 years the tobacco industry utilized this land as smuggling routes to avoid newly	- Smuggling hindered Canadian tobacco tax increases from furthering a consistent reduction in consumption rates in 1990s. - The Canadian government responded to the influx of smuggled tobacco that culminated after the tax increases by, in 1994, returning taxes to their original level. "The intention of the tax reduction was to alleviate the growing illegal activity, but the illegal activity was more than just a result of high taxation. The Canadian government was

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Kelton and Givel, (2008) (contd)					imposed Canadian taxes on tobacco products. By 1993, this tobacco smuggling accounted for 30 to 40 percent of the total Canadian tobacco market."	ill-prepared and unable to reduce or eliminate tobacco smuggling." - "The tax rollback has prevented the Canadian government from earning public finances estimated in the billions of dollars from tobacco taxes that would have alleviated the societal cost of Canadian smokers. Lower cigarette prices have also injured the public health by increasing smoking prevalence to levels that would not have existed if the tobacco tax increases had met their expected goals."
Campbell and Balbach, (2009)	Analysis of tobacco industry documents and media reports (located through searches on Lexis—Nexus)	2,3,5-7,9,10	- To change the debate from the effects of cigarettes to the people paying cigarette taxes. - To discourage liberal and labour groups from taking anti-tobacco positions, including on tobacco excise increases	- That cigarette taxes are regressive and that regressive tax increases are unfair. - That this is true even when taxes are earmarked for healthcare spending. - That there is little evidence that increasing taxes on alcohol and cigarettes reduces consumption	- Tobacco taxation was framed as part of a broader category of consumer excise taxes, also including petrol and alcohol. -Tobacco Institute's strategy included recruiting "organized labor, minorities, and other liberal groups" to provide early warnings of legislative tax initiatives, help tobacco industry lobbyists gain access to legislators who were not industry allies, demonstrate constituent support for pro-tobacco votes, and testify on the industry's behalf. The Institute was successful in forging relationships with—and providing significant financial support to two prominent progressive organizations.	- CTJ initially responded to TI approach by saying tobacco excise was not a priority issue for the organisation, but agreed to work with the TI when it received funding, from 1984 onwards. Relationship deepened in 1986, as more funding was provided. CTJ took anti tobacco tax positions and lobbied on this issue, including by testifying before the Senate Finance Committee against an increase in the federal tax on cigarettes. - TI appears to have been pleased with activities on tax undertaken by both CA and CTJ, including on earmarking issue (which included Clinton's healthcare proposals).

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Campbell and Balbach, (2009) (contd)					Citizens for Tax Justice (CT) and Citizen Action, to oppose cigarette excise tax increases as part of its policy efforts." - As other articles outline, the LMC was used to obscure connections between the Tobacco Institute and the labour groups it worked with, such as CTJ and CA. - TI supported CTJ to hold a conference in 1987, which focused on promoting the arguments that had been used at federal level to state level. - CTJ lobbied Senate Finance Committee. - CTJ position pieces covered in media. - As tobacco tax concerns moved increasingly to state level, the TI (through LMC) recruited Citizen Action in a similar way to CTJ and for similar reasons (CA was better organised at state level though, being more of a grassroots organisation). - TI also recruited other progressive tax groups. - CA and CTJ were also used to help the TI lobby against proposals that tobacco tax increases would be earmarked for health care spending	- The Tobacco Institute was dissolved in 1998 as part of the Master Settlement but "interest in cigarette excise taxes remains high" and "controversy continues over the economic hardship they may cause for low-income smokers" and on "the fairness of raising revenue from one population subgroup (smokers) for programs with broader social benefits."

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Lum *et al.*, (2009)	Analyzed proposed ballot measures in US states (used various documentary sources) and TI documents. Used public and private polls (obtained from proponents of the ballot measures, pollster websites or the tobacco industry documents) to identify early levels of support for the tax proposals and how this support compared with the final election outcomes	1-3,5-10	To avoid tobacco excise tax increases and, in particular, to avoid earmarked taxes	- Argued proposed tax increases did not dedicate enough to tobacco control and that hospitals and health maintenance organizations would profit (i.e. ''only a small amount of the tax increase will go to education about the hazards of smoking.''). - Argued tax increases are unfair - Built on popular themes of ''anti-tax/ HMO scheme'' and ''what they aren't telling you'' as effective arguments against ballot measures	- TI developed a voter segmentation model to determine which tobacco tax increases it could defeat in USA states. - After doing market research on the issue, sought to present tobacco taxes as part of broader tax rise issues. - The Tobacco Institute [...] organized its Tobacco Industry Ballot Issues Committee, which provided ''oversight of all prevention, preparation, and execution of tactics relating to ballot issues, as well as the place to discuss new strategies and technologies related to battles in this arena''. - TI was advised to: lobby legislatures to ''reform initiative and referendum laws to make qualification of ballot issues more difficult'', ''encourage third party ballot issues which threaten [...] opposition and impede their progress'', mount ''legal challenges which complicate opposition progress'' and prevent 'the opposition from using inappropriate funding sources for their political activities'. - TI also conducted public relations campaigns, conducted benchmark research and built partnerships with other organizations that might be needed in a campaign. - In the 2000s, the industry became much more selective in which	- "The industry effectively influenced early voters." - Tobacco tax ballot measures commonly allocated substantial funds to medical services, despite lack of public support for this. Tobacco companies "are becoming more successful in making this use of funds an issue." - Between 1988 and 1998 the TI mounted extensive opposition campaigns to all nine tobacco tax ballot measures that were proposed, but only defeated four (44%) of them. From 1998 to 2008 it only challenged five out of 13 of the tobacco tax measures and defeated four (so 80% of those it challenged). Thus it is becoming more successful in campaigns it conducts but probably at least partially because it has become more selective. - Claims TI "learned to combine the argument that the tax would primarily benefit hospitals and HMOs with lack of funding for benefits for smokers. When either of the two arguments was used alone, the tobacco industry lost three out of four elections, but when they were combined, they won three out of four elections." - Claims TI spending alone does not explain outcomes of state proposals to increase tobacco taxes.

Table 3.3. Summary of studies concerning tobacco industry (TI) tax-related lobbying. Closely related studies are assessed together. Numbers in the column "CA criteria met" represent the quality criteria that each study met; see* at the end of the table for further details.

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Lum *et al.*, (2009) (contd)					campaigns it opposed (although, after deciding not to fight the tax proposals in Washington, it did also realize that not opposing such increases was likely to encourage states to take action so began also taking this into consideration.) - Drew on its "essentially unlimited financial resources"	
Raebeck *et al.*, (2009)	Analysis of tobacco industry documents and academic articles	1-3,5-7,9,10	- The goals of the LMC included lobbying elected officials, discouraging liberal and labour groups from taking anti-tobacco positions, and building support for industry positions among organized labour. Notes tobacco taxes and smoke-free legislation were seen to be most effective at reducing smoking rates (and implies, therefore, that these were perceived by the Tobacco Institute to be the biggest threats)	- Argued excise taxes are regressive	- TI provided significant funding to African and American and Latino labour organizations and also sponsored special projects within these organizations, including studies, brochures, and conference events. - Helped support these organizations' priorities, even where they did not directly relate to tobacco. - Framed discussions of tobacco taxes as part of debates about broader, 'consumer' excise taxes. - Framed issues so that they would be more appealing to labour and minority groups which the TI was trying to work with, e.g. presented policies (tobacco taxation increases and smokefree legislation) as particularly detrimental to organized labour and, specifically, to people of colour. - To facilitate working with these kinds of labour	- The TI did appear to be successful in influencing the position on tobacco excise of some key African American and Latino labour organizations (notes at least one key group appeared to shift its position on tobacco control issues between 1984 and 1988). This is despite the fact that other research the authors cite indicates these groups' core population constituencies did support tobacco tax increases. - According to a 1990 Institute briefing, the LMC's use of allies, such as the African and American and Latino Labor Organizations it was supporting, ''demonstrate[d] to legislators––particularly the liberal Democrats [sic] who are most likely to support increases to fund social programs–– that consumer excise taxes

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Raebeck *et al.*, (2009) (contd)					groups, the Tobacco Institute established the Tobacco Industry Labor Management Committee (LMC) in 1984 (see above). - The Tobacco Institute then used the coalitions it had formed with these organizations "to appeal to politicians who were traditionally more responsive to such arguments, specifically Democrats, liberals, and politicians of color." - The Institute, through the LMC, supported the release of studies, letters, and op-eds opposing excise taxes. These were often credited to the labor organizations that the TI was supporting via the LMC, rather than to the TI, even though they were "usually written by the Institute or its consultants". - The Tobacco Institute paid a PR firm, Ogilvy, Adams & Rinehart, to help write a publication that was officially by one of the labour organizations it was supporting, called, ''Fair Taxes: Still a Dream for African-Americans", and then promoted it ''the black and labor media''. - TI paid for studies that highlighted regressive nature of consumer taxes (framing tobacco taxes as part of this) and its impact on these groups (e.g. industry sponsored	are: Unfair Regressive Inconsistent with tax reform.'' - In 1993, when Clinton's healthcare plan included a US$1 per pack cigarette tax, the Tobacco Institute mobilized these groups to lobby the Congressional Black and Hispanic Caucuses, respectively. - Claims the TI's "reframing of ideas was particularly successful because the points were valid – i.e. excise taxes are regressive…" - Authors conclude: "Whether the involvement of [these organizations] had a significant impact on tobacco policy decisions is unclear, but both organizations had political influence among policymakers, organized labor, and people of color."

Table 3.3. Summary of studies concerning tobacco industry (TI) tax-related lobbying. Closely related studies are assessed together. Numbers in the column "CA criteria met" represent the quality criteria that each study met; see* at the end of the table for further details.

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	**Arguments used**	**Mechanisms employed**	**Success of TI**
Raebeck *et al.*, (2009) (contd)					study claimed "An African-American family, with both parents working, two children and an income of $25 000, will pay an almost six times larger share of its income on federal consumer excise taxes than a family making $250 000 a year").	
Studies concerned with tobacco industry efforts to influence tobacco excise structures (indicates that studies also touch briefly on lobbying around tobacco excise rates)**						
O'Sullivan and Chapman, (2000)	Analysis of tobacco industry documents	2-5,8	TTCs were "frustrated in their export attempts to China by tax barriers" and wanted to promote a flat excise tax structure "to reduce price differentials between imported and locally produced cigarettes." - TTCs sought to persuade Chinese government that, in order to optimise their revenue derived from the cigarette industry, they should institute a "simple system, a flat excise tax based on per thousand cigarettes.''	In 1985, Clive Turner (managing director of the Asian Tobacco Council) "sought to demonstrate to Asian governments that taxation across the Asian region was "over the top, and needlessly punitive" and that excessive taxation would "further reduce the taxable base" for governments leading to "a revenue reduction" - TTCs tried to gain USA support for its arguments (and in so doing were careful to frame the exports as being for existing smokers, rather than potentially increasing smoking rates)	On tobacco tax issues (which is not the main focus of this study), the authors claim the TI: - Lobbied American trade associations on the issue of exports. - Lobbied Chinese, US and UK officials and politicians - Tried to involve the Chinese monopoly in TI organisations - Philip Morris proposed some joint ventures.	Not assessed in this article (though presumably unsuccessful, given Chinese state monopolies still dominate).
Szilágyi and Chapman, (2003)**	Analysis of tobacco industry documents and media coverage of the tax harmonisation issues. This was supplemented by interviews with a finance ministry official and an investigative journalist	1-3,5-7,9,10	- To keep tax increases low (BAT and Philip Morris); - To secure a beneficial tax structure (Philip Morris lobbied for specific structure, though other companies lobbied for other structures, e.g. BAT lobbied for *ad valorem*);	- Tax increases will increase black market - While companies increased their prices to ensure their profits, publicly they decried the taxes imposed to them	- Efforts to draw public attention to high tobacco taxes; - Use of economic impact studies to support arguments (e.g. a study was produced by KPMG to support arguments against introducing EU tobacco tax excise levels	- Philip Morris failed to prevent a tax increase, even though it achieved significant political support on the issue. Officials who were sympathetic to Philip Morris' position blamed this failure on the *"divided position of the industry as well as heavy lobbying by*

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	**Arguments used**	**Mechanisms employed**	**Success of TI**
Szilágyi and Chapman, (2003)** (contd)			- To prevent the introduction of tax stickers; - To get rid of import duties		at time of Hungary's accession to EU, and PM commissioned a study from the Institute for Economic Research (Italy), on 'the consequences of rapid alignment to the EU's minimum tax on cigarettes in five accession countries', including Hungary). Such reports were largely sent to relevant officials, although sometimes also reported in media; - Created a coalition against the proposed tax stickers (which TTCs would have had to pay for); - Attempted to 'divert legislators' attention' away from proposed tax increases by offering the creation of a special fund to support tobacco growing in Hungary (to be levied via specific tax increases on cigarettes)	*BAT"*. - In line with TI hopes, the tax burden on cigarettes in Hungary decreased in real terms between 1990 and 1996. - Even so, retail prices of cigarettes increased dynamically as a result of pricing policies instated by the industry itself. - The Hungarian budget has still one of the lowest contributions from tobacco taxes among countries of the former communist bloc. - TTCs were successful in "developing a sphere of supporters within relevant ministries (with special regard to the agricultural and finance portfolios and MPs sympathetic to TTCs views) and third parties (hospitality industry, tobacco growers, advertising industry) ready to react without delay in the case of government attempts to raising tobacco taxes." - More recently, in 1990s, TI sources admit that sales volumes have been "severely affected" by significant tax increases. - Authors imply TI helped shift government position on derogation period to meet EU tax harmonisation requirements, which required tax increases.

Table 3.3. Summary of studies concerning tobacco industry (TI) tax-related lobbying. Closely related studies are assessed together. Numbers in the column "CA criteria met" represent the quality criteria that each study met; see* at the end of the table for further details.

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Gilmore and McKee, (2004b)	Analysis of tobacco industry documents and supplementary data from tobacco industry journals, newspapers, routine data, and other published reports	1-3,5-7,9,10	In the context of persuading government to privatise state monopolies (preferably through closed deals), TTCs sought to secure excise structures that were favourable to their products	- BAT argued the excise regimes it favoured would increase fiscal and excise revenues received by targeted governments (even when BAT was itself involved in tax evasion via smuggling and has in other circumstances a track record of lobbying for tax reductions, which have the potential to reduce revenues)	- BAT employed various arguments to suggest that it was a better TTC to deal with than its competitors. This included presenting itself as a helpful and supportive corporation which could help advise government on things like excise regimes. - BAT attempted to establish good political connections/contacts to promote these arguments, sometimes working via consultants.	Not assessed in this article (at least not in relation to tax issues)
Gilmore *et al*., (2005)	Analysis of tobacco industry documents and supplementary data, such as newspapers	1-10	BAT sought to acquire a monopoly position (through an exclusive deal) and then bolster its position by influencing excise rules so that they would "uniquely favour its products" (which would encourage smokers to switch from filterless to more expensive filter brands, despite low incomes). - It hoped not to increase its market share to over 80% within 4 years, by "closing the market to external competition" and undertaking marketing campaign. - As part of efforts to close the market to external competition, BAT wanted to use a system of Banderols. It also wanted to secure tax exemptions for BAT products	No relevant information on this issue is provided by this study (focuses instead on arguments used in relation to privatisation)	Not specified in relation to BAT's tax-related proposals (probably because privatisation did not proceed)	At the time of writing, the Moldovan state tobacco companies had still not been privatised, so BAT had not succeeded

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Delnevo C *et al*., (2007)	Statistical modeling, using ACNielsen data, of what is likely to happen to prices of moist snuff and tax revenues following implementation of changes promoted by US Smokeless Tobacco in New Jersey	1,2,6,9,10	To change the taxation of moist snuff from an *ad valorem* to a weight-based system	- US Smokeless Tobacco argued the new tax system would raise 'an additional $2 million in revenue' and would discourage 'youth from buying it,' by raising the price of the cheapest available snuff	No information on this issue in this study	Changes were implemented, even though authors claim both arguments are flawed; the authors calculate the revised tax system is actually likely to encourage youth purchasing
Gilmore *et al*., (2007)**	Analysis of tobacco industry documents, other documentary data and some interviews	1-7,9,10	Having secured a privatization deal in Uzbekistan, BAT sought to: - introduce protective import taxes; - equalize excise on imports and domestic production; - ensure the proper control and collection of taxes, particularly on competitors' import (e.g. through the introduction of a tax stamp system, from which BAT would hopefully be exempted) - achieve a reduction in the excise tax on cigarettes (even though rates were already low); - achieve the implementation of an excise system to benefit BAT's brands and disadvantage those of its competitors (particularly Philip Morris). This involved a mixed excise system, which would ensure high-end brands (such as Marlboro) were hit through maintaining an *ad valorem* tax on inputs,	- Argued against the imposition of high taxation rates on the basis that high rates would encourage smuggling (even though BAT was involved in smuggling). - Argued its excise system proposals would minimize smuggling and optimize government revenue (even though BAT internal docs indicate the driving force was to achieve the best possible market position for BAT and that the company was aware its recommendations perhaps weren't always the best deal for the government)	- Lobbying of government officials responsible for taxation policy. - BAT offered to help officials in charge of tobacco taxation, who were unsure of the issues involved and who were inexperienced. Effectively, BAT created "a symbiotic relationship" between BAT and the Ministry of Finance. - BAT staff produced papers on smuggling, which fed into the above negotiations. - BAT bought up local TI to achieve market dominance and political influence	- BAT achieved a reduction of approximately 50% in the excise tax on cigarettes. - BAT achieved an excise system it believed would benefit its brands and disadvantage those of its competitors (particularly Philip Morris), this included the introduction of tax stamps in 1996, a licensing requirement for import and export, as well as wholesale and retail distribution. - "The price of cigarettes in Uzbekistan is now the lowest of all countries in the World Health Organization's Europe region, including those with which it is economically comparable". Overall: "BAT thoroughly redesigned Uzbekistan's tobacco taxation system to advance corporate objectives" (achieved all its objectives, bar one – which it still hoped to achieve at the end of the study)

Table 3.3. Summary of studies concerning tobacco industry (TI) tax-related lobbying. Closely related studies are assessed together. Numbers in the column "CA criteria met" represent the quality criteria that each study met; see* at the end of the table for further details.

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	Arguments used	Mechanisms employed	Success of TI
Gilmore *et al.*, (2007)** (contd)			and which also involved having a specific element for imports to try to reduce cheaper imports (ideally, BAT hoped this rate would not apply to them). - an *ad valorem* domestic system of 40% on filtered and 25% on plain cigarettes. This was of benefit to BAT, which was focusing on the local filterless brand Astra, and planned to later introduce other cheap local brands. - a requirement for a license to import and export cigarettes, as well as to provide wholesale and retail distribution			
Nakkash, (2007)**	Analysis of tobacco industry documents, plus secondary documentary sources and 20 semi-structured interviews with key informants	1-6,8-10	- TTCs lobbied to influence tobacco taxation policy in Lebanon. - PM sought to achieve a simplified excise system, with a unified flat charge per case, effectively changing the system from *ad valorem* to *specific* excise (circa early-mid 1980s). - PM and BAT were both concerned about possible government intentions to raise tax rates as a control measure, and Philip Morris lobbied on "the dangers of excessive taxation and how a rise in tax levels could run counter to their prime objective."	- BAT claimed its plan would "afford some protection to local manufacture; […] swell the government's tax revenue [and]… […] improve balance of payments through import substitution/local value added." - A BAT study warned that "significant and too frequent tax increases will encourage a resurgence of contraband on the one hand and discourage any outflow of goods from the market on the other." Tax reform, it was claimed, would "curb smuggling" - BAT argued against the specific system Philip Morris supported	(This review only notes mechanisms listed in relation to TI tax lobbying – more general mechanisms of TI influence/lobbying are also discussed in this thesis): - Lobbying of key officials, e.g. BAT set out to "[p] repare lobby plan for Faoud Seniora Minister of Finance (known to BATCo consultant)." - Says BAT plan for excise reform had support from IMF and implies BAT helped secure this support	- BAT appears to have been successful in influencing tax structure: "In May 1995, Macleod reported an unconfirmed report that the Lebanese Regie has finally come down on the side of an *ad valorem* structure and has submitted a recommendation to the Ministry of Finance" - But taxes were increased: "In April 1999, tobacco taxes substantially increased from 54% to 90% plus an additional 48% as local consumption tax (total 138%)." - However, the April 1999 tax increase was later revoked, following claims

Study	Methods	CA criteria met*	Key findings			
			Aim of TI	**Arguments used**	**Mechanisms employed**	**Success of TI**
Nakkash, (2007)** (contd)			- BAT wanted to avoid the specific structure being promoted by Philip Morris and instead secure the introduction of a tax structure which would render a similar return on both premium and low priced imports, as it believed this would be beneficial to its products over the longer term. - BAT also wanted to lobby against any restrictions on "imports through increases in import duties"	by implying it could exacerbate smuggling and reduce the government's revenue. - TI argued reducing taxes could help reduce smuggling		that the rise resulted in further smuggling and losses to the Treasury

* The following critical appraisal (CA) criteria were used to appraise all of the included studies (the numbers listed for each study in the CA column in Table 3.3, above, indicate the criteria for which that study met positively):

1. How clear is/are the research question(s) and/or aim(s)?
2. Was the methodology appropriate for addressing the stated aims of the study?
3. Where applicable, was the recruitment/search strategy appropriate and/or was an adequate sample obtained to support the claims being made (i.e. was the data collection adequate and appropriate)?
4. Were the methods of data analysis appropriate to the subject matter?
5. Is the description of the findings provided in enough detail and depth to allow interpretation of the meanings and context of what is being studied? [Are data presented to support interpretations, etc?]
6. Are the conclusions justified by the results?
7. If applicable, are the theoretical developments justified by the results?
8. Have the limitations of the study and their impact on the findings been considered?
9. Do researchers discuss whether or how the findings can be transferred to other contexts or consider other ways in which the research may be used?
10. If the answer to 9 is 'yes', do you agree these suggestions are appropriate, based on the research?

** indicates that studies also touch briefly on lobbying around tobacco excise rates

Table 3.4. Summary of the foci of North American studies to highlight potential overlap

North American policy development / tobacco industry tactic (categorised according to main focus of article)	References focusing on this development	Total
TI alliances with labour and minority groups in USA to counter tax increases (mostly earmarked)	(Yerger and Malone, 2002; Levenstein *et al.*, 2005; Balbach and Campbell, 2009; Balbach *et al.*, 2006; Campbell and Balbach, 2009; Raebeck *et al.*, 2009)	6
TI establishment and use of front groups to counter tax increases (mostly earmarked)	(Givel, 2007; Campbell and Balbach, 2008)	2
Various – US federal- and state-level lobbying to counter tax increases (some of which covered various specific policy developments in this table – many were earmarked)	(Givel and Glantz, 2001; Morley *et al.*, 2002; Alamar and Glantz, 2004; Givel, 2006; Lum *et al.*, 2009)	5
Proposition 99 in California (earmarked)	(Begay *et al.*, 1993; Traynor and Glantz, 1996; Balbach *et al.*, 2000)	3
Proposition 200 in Arizona (earmarked)	(Bialous and Glantz, 1999)	1
Measure 44 in Oregon (earmarked)	(Goldman and Glantz, 1999)	1
Question 1 in Massachusetts (earmarked)	(Koh, 1996; Heiser and Begay, 1997)	2
Failed initiative in Montana (earmarked)	(Moon *et al.*, 1993)	1
Tax increases in Canada in early 1990s	(Breton *et al.*, 2006; Kelton and Givel, 2008)	2
TI lobbying of excise structure for moist tobacco	(Delnevo *et al.*, 2007)	1
Total		***24***

Table 3.5. Geographic breakdown of studies

Geographic focus	No. of studies overall	No. of studies examining industry influence on excise rates	No. of studies examining industry influence on excise structures
USA	22	21	1
Canada	2	2	0
EU countries*	2*	2*	1 (Hungary)
Former Soviet Union	3	1	3
China	1	0	1
Lebanon	1	1	1
Total	***31***	***27***	***7***

*One covered Hungary which was not at that time an EU Member State; the other covered the United Kingdom and Sweden

Tobacco industry efforts to keep tobacco taxes low and prevent earmarking

Tobacco industry arguments to keep tobacco taxes low

The arguments employed by the industry to prevent tobacco excise increases or achieve reductions in current rates were relatively consistent and (in order of prominence with which they featured in the studies in this review) involved:

<u>Emphasizing the regressive nature of tobacco taxation</u>

The argument employed by the industry most often in the studies included in this review involved pointing out that tobacco excises are regressive and consequently claiming that higher taxes are unfair on poorer and more marginal groups in society (Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Yerger and Malone, 2002; Levenstein *et al.*, 2005; Balbach *et al.*, 2006; Campbell and Balbach, 2008, 2009; Balbach and Campbell, 2009; Raebeck *et al.*, 2009). In some cases, the industry went as far as arguing that tobacco tax increases would contribute to class warfare, pitting upper-middle-class liberals (mostly white) against lower-middle-class working people (mostly minority) (Koh, 1996). By employing this argument, the tobacco industry was able to forge partnerships with non-traditional allies, such as labour groups (unions, etc.) and organizations representing minority ethnic groups in their campaigns against tobacco tax increases (see below). Although tobacco taxes represent a higher percentage of the income of poorer consumers (Chaloupka *et al.*, 2001; Cnossen, 2006) and because poorer groups tend to consume more tobacco products, the tax burden on these groups is higher (Chaloupka *et al.*, 2001; Cnossen, 2006), this argument ignores research which finds that tobacco tax increases tend to be progressive (Chaloupka *et al.*, 2001; Gruber & Koszegi, 2008). This is explained further in Chapter 7. When promoting this argument, one study (published as two articles) even reported that the industry had involved itself in a campaign calling for tax increases on large corporations rather than on consumer products such as tobacco (Balbach *et al.*, 2006; Balbach and Campbell, 2009). This is despite the fact that large tobacco companies have themselves been involved in efforts to avoid paying high rates of corporate tax (Knorr, 1985; Batuke, 1992; Burgess, 1993; O'Callaghan, 1998) and are members of organizations, such as the US Chamber of Commerce (Murray, 1989; Molinelli, 1999), that are actively pushing for lower corporate taxes (US Chamber of Commerce, 2011).

Linking higher taxes to illicit trade and organized crime

The second most-popular argument employed by the tobacco industry in this review involved claiming that tax increases lead to higher rates of illicit trade (Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Joossens and Raw, 2003; Szilágyi and Chapman, 2003; Alamar and Glantz, 2004; Breton *et al.*, 2006; Gilmore *et al.*, 2007; Nakkash, 2007; Kelton and Givel, 2008). Such arguments were use in spite of extensive evidence that the industry has itself been involved in global smuggling operations (see Chapter 8) and specifically in promoting smuggling following tax increases, as explored further below (Kelton and Givel, 2008). Although the studies refer generically to the "industry", it should not of course be assumed that every tobacco company, major or minor, took part in the smuggling, or other activities that are the subject matter of these studies and the others referred to in this chapter.

In one study (Traynor and Glantz, 1996), the authors found that the industry used arguments about smuggling to claim that tobacco tax increases would therefore lead to broader crime-related problems, such as more money being spent on guns and drugs, with police attention being diverted away from other crimes to tackle tobacco smuggling. Working through a front group it had helped establish, Californians Against Unfair Tax Increases (CAUTI), the industry was able to secure endorsements for these arguments from the Californian Sheriffs' Association and the California Peace Officers' Association, which lent credibility to such claims (Traynor and Glantz, 1996). However, various factors eventually undermined this element of the industry's campaign, including an official report that concluded the effect of the increase on smuggling was likely to be negligible, and which criticized an advertising campaign that CAUTI had funded which highlighted this argument (the report led to police groups that had supported the industry position dropping their support) (Traynor and Glantz, 1996).

Claiming tobacco taxes are unfair to smokers

The industry also argued, quite simply, that high tobacco taxes were unfair to smokers (Koh, 1996; Breton *et al.*, 2006; Lum *et al.*, 2009) and, by claiming that smoking was a matter of individual (adult) choice, insisted it was unreasonable to burden smokers with excessive taxes (Givel, 2006, 2007). Such arguments ignore the fact that nicotine is addictive (Advisory Group of the Royal College of Physicians, 2000) and, therefore, that smoking is not a 'choice'. Indeed, research has repeatedly demonstrated that most smokers do not want to smoke (Robinson and Bugler, 2008; Gallup, 2010).

Denying links between price and consumption

One study in the USA found that the industry was denying the existence of credible evidence that increasing taxes on cigarettes reduces consumption (Campbell and Balbach, 2009). Another, in Canada, found that following tax decreases there was an increase in smoking rates among young people, but the industry argued that these were unrelated to the change in price (Breton *et al.*, 2006). Such arguments were made despite the overwhelming evidence on this issue (see Chapters 4 to 7) and the fact, as detailed earlier in this chapter, that the tobacco company internal documents show how the industry was fully aware of the relationship between price and consumption and was using such evidence to plan the nature and timing of price-related marketing campaigns (Chaloupka *et al.*, 2002).

Tobacco industry arguments to prevent earmarking

Where proposals to increase tobacco taxes included plans to earmark the taxes to pay for health programmes (particularly tobacco control initiatives and health care programmes), the industry also consistently argued that (again, arguments are listed in order of prominence in the studies included in this review):

The extra funds would be diverted/ misused

Many of the studies found the tobacco industry, and various groups it lobbied through, claimed that earmarked funds would be used in ways which the public did not support or which differed from those described in the original proposal (Moon *et al.*, 1993; Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Bialous and Glantz, 1999; Goldman and Glantz, 1999; Lum *et al.*, 2009). In the context of the USA, where health care is largely private, the industry used proposals to use some of the earmarked funds for health care of poorer groups to emphasize this issue, framing these developments as a diversion of the funds to doctors, hospitals and health care companies rather than to the uninsured public (Bialous and Glantz, 1999; Traynor and Glantz, 1996). Such efforts were helped by the fact that health care/insurance organizations often did want to divert the funds towards healthcare costs and also worked (sometimes in collaboration with the tobacco industry) to try to achieve this (Begay *et al.*, 1993; Traynor & Glantz, 1996; Balbach *et al.*, 2000).

Arguing that policies requiring smokers to subsidise policies benefiting others are unfair

One study found the industry framed the use of earmarked funds from tobacco taxes to pay for healthcare-related costs as equating to a tax on smokers to pay for services for others, which it argued was unfair to smokers (Goldman and Glantz, 1999).

Claiming that earmarking would result in spending cuts for specific programmes

The same study found evidence of the industry arguing that earmarking would lead to cuts in spending on programmes that were currently funded by tobacco tax, even though this was not true (Goldman and Glantz, 1999).

Tobacco industry tactics to keep tobacco taxes low and prevent earmarking

The tactics/mechanisms employed by the tobacco industry campaigns to counter excise increases mirror industry activities on a range of other issues (see, for example, Feldman and Bayer, 2004; World Health Organization, 2009). These included (in order with which they feature in the studies included in this review):

Use of front groups

To obscure its own economic interests in promoting many of the arguments outlined above and thereby increase their credibility, the studies reveal that the industry frequently established "front groups"; see Figure 3.4 (Moon *et al.*, 1993; Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Bialous and Glantz, 1999; Goldman and Glantz, 1999; Balbach *et al.*, 2000; Givel and Glantz, 2001; Levenstein *et al.*, 2005; Balbach *et al.*, 2006; Givel, 2006, 2007; Campbell and Balbach, 2008; Raebeck *et al.*, 2009).

Such groups were used both to promote arguments directly (Moon *et al.*, 1993; Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Bialous and Glantz, 1999; Goldman and Glantz, 1999; Balbach *et al.*, 2000; Givel and Glantz, 2001; Levenstein *et al.*, 2005; Givel, 2006, 2007; Raebeck *et al.*, 2009) and to help recruit credible allies (Traynor and Glantz, 1996; Levenstein *et al.*, 2005; Balbach *et al.*, 2006; Campbell and Balbach, 2008; Balbach and Campbell, 2009), a tactic discussed in more detail in the following section.

Working with credible allies

In addition to creating front groups, the industry was able to ally itself with a wide range of pre-existing and credible public interest groups not normally associated with tobacco, thereby increasing the perceived credibility of key arguments (Begay *et*

Figure 3.4. Front groups identified in the studies

- Tobacco Institute's Labor Management Committee (made up of union groups associated with the tobacco industry) (Levenstein *et al.*, 2005; Balbach *et al.*, 2006; Balbach and Campbell, 2009; Campbell and Balbach, 2009; Raebeck *et al.*, 2009),
- Californians for Smoker's Rights (Balbach *et al.*, 2000),
- Enough is Enough (Bialous and Glantz, 1999),
- No More Taxes (Bialous and Glantz, 1999),
- Consumer Tax Alliance (Campbell and Balbach, 2008),
- National Smokers' Alliance (Givel and Glantz, 2001; Givel, 2006, 2007),
- The Fairness Matters to Oregonians Committee (Goldman and Glantz, 1999),
- The Committee Against Unfair Taxes (Koh, 1996; Heiser and Begay, 1997),
- Citizens Against More Tax and Bureaucracy (Moon *et al.*, 1993),
- Californians Against Unfair Tax Increases (Traynor and Glantz, 1996).

al., 1993; Moon *et al.*, 1993; Traynor and Glantz, 1996; Balbach *et al.*, 2000; Givel and Glantz, 2001; Yerger and Malone, 2002; Levenstein *et al.*, 2005; Balbach *et al.*, 2006; Breton *et al.*, 2006; Givel, 2006; Campbell and Balbach, 2008, 2009; Lum *et al.*, 2009; Raebeck *et al.*, 2009). By emphasizing the regressive nature of tobacco taxes, the industry was able to entice various labour and minority ethnic groups (which it commonly approached via the Tobacco Institute's Labour Management Committee and an industry-created front group known as the Consumer Tax Alliance; see below) to argue against tobacco tax increases (Yerger and Malone, 2002; Levenstein *et al.*, 2005; Balbach *et al.*, 2006; Campbell and Balbach, 2008, 2009; Balbach and Campbell, 2009; Raebeck *et al.*, 2009).

Groups that were successfully recruited to argue against tobacco tax increases included the Coalition of Labour Union Women (CLUW) (Balbach *et al.*, 2006; Balbach and Campbell, 2009), Citizens for Tax Justice (Campbell and Balbach, 2009), Citizen Action (Campbell and Balbach, 2009), Women Involved in Farm Economics (Givel and Glantz, 2001), the National Taxpayers Conference (Givel and Glantz, 2001), the Congressional Black Caucus (Yerger and Malone, 2002) and the National Black Police Association (Yerger and Malone, 2002). The industry also used claims that tobacco tax increases would lead to increases in smuggling to ensure the support of business groups such as retailers' associations (Moon *et al.*, 1993; Breton *et al.*, 2006) and police groups (Traynor and Glantz, 1996; Breton *et al.*, 2006). Finally, in seeking to divert earmarked funds away from tobacco control programmes (see below), the industry was able to ally itself with private healthcare organizations and groups representing medics and healthcare organizations in the USA (Begay *et al.*, 1993; Balbach *et al.*, 2000).

Traditional lobbying

Ten of the studies also reported evidence of the tobacco industry using more traditional lobbying techniques by targeting key decision-makers, both directly and indirectly (e.g. via consultants, campaign groups, business organizations, etc) (Begay *et al.*, 1993; Traynor and Glantz, 1996; Bialous and Glantz, 1999; Balbach *et al.*, 2000; Morley *et al.*, 2002; Joossens and Raw, 2003; Levenstein *et al.*, 2005; Balbach *et al.*, 2006; Givel, 2006, 2007).

Media campaigns

Nine of the studies found evidence of the tobacco industry using mass media and other publicity campaigns to raise public awareness of policy proposals and create/increase public support for the industry positions (Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Goldman and Glantz, 1999; Breton *et al.*, 2006; Givel, 2007; Campbell and Balbach, 2008; Campbell and Balbach, 2009; Raebeck *et al.*, 2009). One study reported that the most effective media campaign undertaken by industry groups involved an advert featuring an alleged undercover police officer discussing the crime implications of the proposed tobacco tax increases (more time would be spent on smuggled cigarettes, hence less time on other issues, and the increased criminal money from smuggling, etc. would be spent on drugs and guns) (Traynor and Glantz, 1996). However, it was eventually revealed that the "undercover policeman" had nothing more than a desk job in the police and was also a part-time actor (Traynor and Glantz, 1996).

Mounting legal and other official challenges

Seven studies reported industry efforts to mount legal or other official challenges to proposed and existing excise legislation (Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Bialous and Glantz, 1999; Goldman and Glantz, 1999; Givel, 2007; Lum *et al.*, 2009). For example, where earmarked tax increases were being pursued via a public ballot system (a method which gained popularity among public health communities in eligible American states from the late 1980s onwards, in light of an apparent reluctance by state legislators to pass such legislation), one study reported that the industry legally challenged the draft proposal on the basis that it violated the state constitution, filed subsequent legal challenges at later stages and also tried to use a signatures expert to disqualify signatures supporting the ballot proposal (Heiser and Begay, 1997). As a result of this latter tactic, several studies reported that the supporters of later policy proposals insured themselves against this by collecting substantially more signatures than the law required (Traynor and Glantz, 1996).

Commissioning supportive/ informative research

Six of the studies reported evidence of the industry commissioning studies to support and inform industry positions on tobacco excise debates (Moon *et al.*, 1993; Yerger and Malone, 2002; Balbach *et al.*, 2006; Breton *et al.*, 2006; Lum *et al.*, 2009; Raebeck *et al.*, 2009). This included market-research to assess: (i) whether it was worth challenging a given proposal, and (ii) how best to challenge particular proposals. For example, one study found the industry was undertaking telephone research to assess the possible impact of various campaign themes (Moon *et al.*, 1993). A review of state-level efforts to achieve earmarked tobacco excise increases via public ballots in the USA found the industry had increasingly begun to undertake a significant amount of research before deciding whether to invest significantly in efforts to defeat the proposed legislation (Lum *et al.*, 2009). In addition, the industry paid for studies that supported some of the arguments outlined in the above section, such as a series of studies by labour groups and political caucuses, including CLUW, which highlighted the regressive nature of tobacco taxes (Yerger and Malone, 2002; Balbach *et al.*, 2006; Raebeck *et al.*, 2009). The Tobacco Institute also produced some economic studies to support its claims about taxes (Yerger and Malone, 2002).

Employing consultants and public relations staff/firms

Several studies demonstrate that, to gain advice on and assistance with lobbying, the tobacco industry has used a range of consultancy and public relations firms and other lobbyists (Begay *et al.*, 1993; Koh, 1996; Traynor and Glantz, 1996; Bialous and Glantz, 1999; Givel, 2006, 2007; Raebeck *et al.*, 2009).

Working to divert earmarked funds

Some of the studies found that where earmarked tobacco excise increases were being pursued, the tobacco industry had worked to divert funds away from tobacco control measures to other causes such as healthcare subsidies for uninsured groups (Begay *et al.*, 1993; Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Bialous and Glantz, 1999; Goldman and Glantz, 1999; Balbach *et al.*, 2000). This approach not only helped the industry to limit state tobacco control activities that had potential to further reduce consumption, but also provided evidence to support the industry argument that the funds are likely to be used in ways other than those stated and/or which the public did not support (see above).

Paying or providing gifts to policy-makers

Several of the studies found evidence of the industry paying or giving gifts to officials and political parties or campaigns to help attract political support for the industry's positions on taxation (Begay *et al.*, 1993; Balbach *et al.*, 2000; Yerger and Malone, 2002; Givel, 2006). Key officials most likely to be able to influence decisions about tobacco taxation were targeted (Begay *et al.*, 1993; Balbach *et al.*, 2000), and funds were often provided via third parties, such as advertising agencies, so it was not obvious that they originated from the industry (Balbach *et al.*, 2000).

Confusing debates about tobacco tax increases with broader tax debates

Four studies reported industry efforts to frame debates about tobacco excise increases within broader debates about general tax increases to confuse the issue and to help garner opposition to proposals for tobacco tax increases (Moon *et al.*, 1993; Balbach *et al.*, 2006; Lum *et al.*, 2009; Raebeck *et al.*, 2009). This tactic was apparently supported by the industry's own market research (Lum *et al.*, 2009). In one of the few studies focusing on a policy proposal for a tax increase which the industry managed to defeat, the industry linked the proposed tobacco tax increase with proposals for property tax increases in rural areas that were happening simultaneously (Moon *et al.*, 1993).

Proposing alternative legislation

Four studies found evidence of industry efforts to promote alternative (weaker or irrelevant) proposals/public ballots to distract attention and energy from the original proposal (Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Goldman and Glantz, 1999). One study (Goldman and Glantz, 1999) found that while signatures were being collected to qualify the proposal for a ballot the tobacco industry began contributing money to a different ballot measure campaign in order "to disrupt the signature-gathering process", for the Oregon-based proposal (known as Measure 44), and "to divert the energy and financial resources of the health insurers". Likewise, a study of a similar proposal in California reported that an industry-funded group circulated its own petition at the same time as signatures were being gathered in support of the earmarked tax proposal as a way of reducing the pool of available paid signature-gatherers (by paying them more) and confusing voters about the official proposal (Traynor and Glantz, 1996). Two other studies of similar state-level policy proposals found the industry put forward compromise proposals that involved smaller tax increases and fewer funds being allocated to tobacco control programmes (Koh, 1996; Heiser and Begay, 1997).

Using friendly "experts"

Three studies found evidence of the industry using friendly experts to present industry positions and bolster the credibility of industry arguments (Traynor and Glantz, 1996; Goldman and Glantz, 1999; Alamar and Glantz, 2004). Examples included Wall Street analysts who had been directly briefed by the tobacco industry before presenting their opinions to officials but who did not disclose this (Alamar and Glantz, 2004), a high-profile dentist (Goldman and Glantz, 1999) and an alleged undercover police officer (who was later found to be a desk officer and part-time actor, as described above) (Traynor and Glantz, 1996).

Trying to undermine tobacco control experts

One study reported that the tobacco industry had wrongly targeted and tried to undermine the credibility of a key tobacco control academic (Givel, 2007). This involved alleging (but not proving) that University of California–San Francisco Professor of Medicine Stanton Glantz had misused grant funds for illegal political purposes and lobbying.

Stimulating smuggling in the event of tax increases

One of the two studies of tobacco excise increases in Canada in the early 1990s, which were later revoked, claims that the industry itself helped promote smuggling (via Native American reservations, which are not subject to the same taxation laws) during the period in which the tax increases were in place (Kelton and Givel, 2008). The authors claim the industry did this both because it enabled them to maintain or increase profit margins despite the tax-related price increases and because it provided support for the industry's claim that the tax increases led to a rise in illicit trade (Kelton and Givel, 2008). This approach appears to have been relatively successful, with the Canadian government responding "to the influx of smuggled tobacco that culminated after the tax increases by, in 1994, returning taxes to their original level" (Kelton and Givel, 2008). The study goes on to note that although the intention of the tax reduction was to alleviate the growing illicit trade in tobacco products, it did not succeed because 'the illegal activity was more than just a result of high taxation' (Kelton and Givel, 2008).

The success of tobacco industry efforts to keep tobacco taxes low and prevent earmarking

In the USA, the industry has had some success in preventing proposed earmarked excise increases (Moon *et al.*, 1993; Lum *et al.*, 2009), although many such proposals did pass (Begay *et al.*, 1993; Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Bialous and Glantz, 1999; Goldman and Glantz, 1999; Balbach *et al.*, 2000; Lum *et al.*, 2009). Key contextual factors that appear to have assisted passage and implementation of earmarked tobacco tax increases include: (i) coherent and adequately funded campaigns by coalitions favouring the tobacco tax increase (in many of the studies included here, these campaigns were partially funded by voluntary health groups, such as the American Cancer Society, and healthcare organizations); and (ii) budgetary deficits, which worked to increase legislative support for proposals.

Overall, the studies included in this review suggest that the industry has been more successful in diverting earmarked funds away from tobacco control activities, usually at the implementation stage, than it has in completely preventing excise increases (Begay *et al.*, 1993; Koh, 1996; Traynor and Glantz, 1996; Heiser and Begay, 1997; Balbach *et al.*, 2000; Lum *et al.*, 2009). The industry's success in doing this in turn provides support for one of the industry's most frequently used arguments used to counter future proposals for earmarked tax increases, namely that revenue from earmarked taxes will be diverted or misused. Indeed, part of the reason this argument has been so effective is that there is a great deal of evidence to support this claim; in several of the US states that introduced earmarked tax increases, the revenue was used for purposes other than those described in the original proposal. In some cases, the industry was found to have played a key role in helping to ensure funds were diverted, which helped the industry from the point of view of limiting spending on tobacco control activities and providing evidence to shore up this argument in future debates. However, the industry alone cannot be blamed for the success of this argument; all of the studies that highlighted this issue found that a range of other actors, notably healthcare providers, worked to divert funds away from tobacco control programmes. As Bialous and Glantz (1999) point out, this highlights the importance of focusing on the longer-term implementation of tobacco control policies as well as on their development and official acceptance into law.

However, when assessing the success of the tobacco industry in preventing the numerous state-level proposals for earmarked tax increases that emerged in the USA from the late 1980s onwards, it should be noted that there appears to have been a research and publication bias towards proposals that succeeded. Hence, this review includes seven studies of successful proposals (three studies of Proposition 99 in California, two of Question 1 in Massachusetts, and one each of Proposition 200 in Arizona and Measure 44 in Oregon) and only one of a similar initiative in Montana which was unsuccessful. This is a ratio of seven studies of four successful proposals compared to only one study of one unsuccessful proposal. Yet, Lum and colleagues (2009) report that between 1988 and 2008 the industry attempted to defeat 14 out of 22 state-level earmarked tax proposals and was successful in 8 cases, giving a 57% success rate (8 out of 14 attempts) where it attempted to challenge and a 36% rate at blocking state-level proposals for tobacco tax increases overall (8 out of 22 proposals).

In terms of assessing which arguments and tactics were most successful in defeating these state-level tax increases, Lum and colleagues (2009) claim that the amount of resources invested in lobbying by the industry was a poor indicator of success. Instead, the authors argue that industry success was associated with the extent to which it was guided by market research (the authors report that after 1998, the industry made increasing use of voter segmentation models and market research to decide whether state-level excise proposals were worth challenging; once the industry took this approach, its success rate increased). The same study suggests that the industry fared better when it combined arguments concerning the diversion of funds to health care providers with arguments relating to the unfairness of the proposals on smokers, pointing out that "when either of the two arguments was used alone, the tobacco industry lost three out of four elections, but when they were combined, they won three out of four elections" (Lum *et al.*, 2009).

In contrast to the studies concerning USA state-level efforts to increase and earmark tobacco taxes, most of the studies on industry efforts to prevent national/federal level tax increases, or to secure tax decreases at this level, found the industry was successful. Studies report the industry was successful in defeating both the McCain Bill (Alamar and Glantz, 2004) and the Clinton administration's healthcare proposals in the USA (Campbell and Balbach, 2009), although the tobacco industry was clearly not the only interested party involved in the defeat of these bills. The industry was also found to have helped reduce the levels of federal tobacco tax increases implemented in 1990 and 1993 (Campbell and Balbach, 2008). Studies also report the industry was successful in achieving tax decreases in Canada (Joossens & Raw, 2003; Breton *et al.*, 2006; Kelton and Givel, 2008), Sweden (Joossens and Raw, 2003), Lebanon (Nakkash, 2007) and some former Soviet Union countries (Gilmore *et al.*, 2007). In all of these successful lobbying efforts, the studies report that a key argument employed by the industry involved claiming that tax increases would fuel or were already fuelling illicit trade. This argument was also identified by one of the USA state-level studies as being particularly effective (Traynor and Glantz, 1996).

However, the illicit trade argument was also used in the only example of a study reporting that the industry did not succeed in preventing/limiting tax increases at the national level. This study involved industry lobbying in Hungary in the 1990s (Szilágyi and Chapman, 2003); in this example, Philip Morris' efforts to prevent an excise increase appear to have failed because of the "divided position of the industry" (Szilágyi and Chapman, 2003). This is an interesting factor that the other studies in this section of the review reveal almost nothing about, because very few comment on the extent to which different tobacco companies worked together to influence policy. This company differentiation, however, features somewhat more in the studies exploring industry efforts to influence tobacco excise structures (see following section).

The remaining studies concerning tobacco industry efforts to prevent/undermine tobacco excise increases all focus on assessing how the industry worked to persuade credible interest groups to support the industry position on tobacco taxes (Yerger and Malone, 2002; Levenstein *et al.*, 2005; Balbach *et al.*, 2006; Campbell and Balbach, 2008, 2009; Balbach and Campbell, 2009; Raebeck *et al.*, 2009). These studies, which all focus on the USA, report that the industry was generally successful in recruiting credible, existing public interest groups with an interest in the issue between the 1980s and early 2000s. In most cases, these groups already had at least some commitment to lobbying against regressive taxation, although most were not actively lobbying on tobacco tax issues before being encouraged to do so by tobacco industry groups. Recruiting the support of such organizations was achieved by taking three main approaches: (1) emphasizing arguments concerning the regressive nature of tobacco taxes, to demonstrate why this was an issue of interest to labour and civil rights organizations; (2) approaching the groups indirectly via a union organization that, despite having been established and funded by the Tobacco Institute, was not obviously a tobacco industry organization; and (3) offering to support targeted groups in a range of ways, including on issues that the industry had no interest in, to develop the relationship. All of the studies suggest the industry's success in recruiting these kinds of groups in the USA is likely to have aided efforts to prevent tax increases because it provided far greater credibility to arguments concerning the unfair and regressive nature of tobacco excise taxes. This allowed the industry to claim that one of its key arguments was widely supported, and it also facilitated the lobbying of officials and politicians who would not normally be expected to side with the industry (e.g. liberal Democrats).

Studies concerned with tobacco industry efforts to influence tobacco excise structures

From the limited available evidence concerning tobacco industry efforts to influence tobacco excise structures, we know that different companies favour different structures in different contexts. From the studies included in this review, it appears Philip Morris (which produces the high-end Marlboro cigarettes) tends to favour specific taxes (Szilágyi and Chapman, 2003; Nakkash, 2007), whereas British American Tobacco (which, historically at least, had a far more diverse brand portfolio including mid-price and cheaper, local brands) tends to support mixed excise structures, incorporating an *ad valorem* element (Szilágyi and Chapman, 2003; Nakkash, 2007; Gilmore *et al.*, 2007). One reason BAT may prefer a mixed structure is because of the competitive advantage it confers over Philip Morris (Gilmore *et al.*, 2007; Nakkash, 2007).

Other attempts to influence excise structures in ways which would give one company an advantage over others included promoting the use of tax stamps (Gilmore *et al.*, 2005; Gilmore *et al.*, 2007) and lobbying for high import duties (Gilmore *et al.*, 2007) to protect a dominant market position. In contrast, when BAT and Philip Morris had not yet achieved a significant market share in a country, they both lobbied for lower import duties/fewer restrictions (O'Sullivan and Chapman, 2000; Szilágyi and Chapman, 2003; Nakkash, 2007).

As far as it is possible to discern any patterns from this limited data, arguments that different tobacco companies use to promote their preferred structures seem to focus on claims that their particular approach will increase government revenue (Gilmore and McKee, 2004b; Delnevo *et al.*, 2007; Gilmore *et al.*, 2007; Nakkash, 2007) and reduce illicit trade (Gilmore and McKee, 2004b; Gilmore *et al.*, 2007; Nakkash, 2007). The lobbying on this issue that was revealed by these studies tended to be behind-the-scenes, mainly involving direct lobbying of relevant officials, although this was sometimes directed via third parties such as consultants (Gilmore and McKee, 2004b; Gilmore *et al.*, 2007). Two studies suggest particular companies may have also actively sought support for their preferred excise structures from international financial organizations such as the IMF (Nakkash, 2007) and American trade organizations (O'Sullivan and Chapman, 2000). In former Soviet Union countries, BAT appears to have been able to create a symbiotic relationship between itself and finance ministries, in which finance ministers perceived the company as a source of expert advice on excise issues (Gilmore and McKee, 2004b; Gilmore *et al.*, 2007). This is likely to have been made far easier by the fact that officials in former Soviet Union countries were, at that time, unused to regulating and dealing with free-market corporations and had little if any experience of dealing with tobacco excise, which had previously been dealt with centrally (Gilmore and McKee 2004b.; Gilmore *et al.*, 2007). In this context, officials are therefore likely to have been far more open to tobacco company arguments than might otherwise have been the case.

It is unclear to what extent the approaches taken to lobbying on this issue were informed by the fact that most of the countries involved were at that time undergoing a process of political and economic transition and/or were undemocratic (O'Sullivan and Chapman, 2000; Szilágyi and Chapman, 2003; Gilmore and McKee, 2004b; Gilmore *et al.*, 2007; Nakkash, 2007). More research is required to better understand what different parts of the tobacco industry aim to achieve in relation to tobacco excise structures and how they lobby on this issue beyond the countries that have been studied.

Discussion and conclusions

This systematic review suggests that the different parts of the tobacco industry tend uniformly to lobby against significant tobacco excise increases and, in particular, against tobacco excise increases that are to be earmarked for tobacco control activities. In challenging such proposals, the arguments employed most often and most successfully by the industry involve claims that tax increases are socially regressive, and that they increase illicit tobacco trade and therefore contribute to broader crime problems. Yet these and the other most frequently used arguments (e.g. that tobacco taxes are unfair on smokers and that tax rises do not lead to reductions in consumption) all have flaws, as outlined above and explained further in other chapters. The most effective argument used against earmarked tax increases has been to claim that the revenue from earmarked taxes will be diverted or misused, and because this has occurred, in part as a result of tobacco industry efforts, such arguments carry weight.

Favoured industry tactics to influence policy decisions about tobacco excise increases include traditional lobbying of relevant officials (direct and indirect), allying with credible political groups that have (or can be persuaded to have) a shared interest in tobacco taxes (particularly on the basis of the perceived regressive nature of tobacco tax increases), and establishing industry "front groups" to lobby against tobacco tax increases.

From the limited available evidence concerning tobacco industry efforts to influence tobacco excise structures (seven papers in seven different countries/regions), we observe that different companies favour different tax structures, with Philip Morris tending to prefer 100% specific structures and BAT tending to prefer mixed structures (predominantly specific but also including a substantial *ad valorem* element). As far as it is possible to discern any patterns from this limited data, tobacco companies appear to promote their preferred structure by claiming that it will increase government revenue and reduce illicit trade.

As highlighted earlier, there is a significant geographical bias in the studies that met the inclusion criteria for this review, with far more evidence being available in relation to North America than anywhere else. Given that North America is one of the world's most economically developed and wealthiest regions, and that tobacco excise rates are lower there than in other high-income countries (World Health Organization, 2010), it should not be assumed that the industry has (or will) necessarily take the same approaches elsewhere. It is clear, therefore, that further research on tax-related lobbying is needed in other geographical areas and in particular to better understand what different parts of the tobacco industry aim to achieve in relation to tobacco excise structures.

One argument that anecdotal evidence reports the industry employing to counter tax increases (Chaloupka *et al.*, 2001; Kyriss *et al.* 2008) but which was not highlighted in the included studies is that higher tax rates will lead to a decline in consumption and thereby contribute to job losses in the tobacco sector, reducing the industry's contribution to the economy. It is possible that this argument was used by the industry in some of the policy developments covered by this review but did not feature in the studies. Alternatively, it may not have been employed either because: (i) it undermined another argument which was used, that tax increases would not reduce consumption; or (ii) the industry deemed it less persuasive in the context of growing evidence that in all but the most tobacco dependent economies, the tobacco industry does not make a net positive economic contribution (Jha and Chaloupka, 1999; Gruber & Koszegi, 2008) (for further discussion see Chapter 9).

Most of the tactics the industry used in its efforts both to counter (planned and actual) tobacco tax increases and to try to influence tax structures mirror those reported by studies of tobacco industry efforts to influence policy more generally. For example, the industry's use of front groups (Apollonio and Bero, 2007; Smith *et al.*, 2010) and third-party allies (Ong and Glantz, 2001; Neuman *et al.*, 2002; Smith *et al.*, 2010) have both been widely reported, as have more traditional lobbying approaches focusing on targeting officials (Barnoya and Glantz, 2002), mass media campaigns (Axeland *et al.*, 1994), legal challenges (Neuman *et al.*, 2002), the commissioning and use of supportive research (Barnes and Bero, 1996; Grüning *et al.*, 2006), the use of professional consultants and public relations services (Ong and Glantz, 2001, Smith *et al.*, 2010), paying or providing gifts to policy-makers (Saloojee and Dagli, 2000), proposing alternative (weaker) legislation (Neuman *et al.*, 2002), and using friendly "experts" (Grüning *et al.*, 2006).

There was also no evidence of tobacco industry support for incremental tax increases (other than in relation to support for alternative, weaker proposals than those on offer). However, as studies of tobacco company pricing strategies suggest that tobacco companies may use tax increases as opportunities to increase their own profit margins (Van Walbeek, 2000), it should not be assumed that the industry will always lobby against tax increases, only that it is likely to do so where such increases are significant and/or earmarked.

Policies to limit industry price manipulation

Article 6 of the WHO Framework Convention on Tobacco Control (FCTC) calls on Parties to adopt and maintain tax and price policies that will contribute to the health objectives. To achieve this, this chapter illustrates that governments need to understand and address industry pricing and price-related marketing strategies. The example of the USA indicates that collecting data (ideally monthly to track industry responses to policy interventions) on industry marketing expenditure by category (thus including price-based promotions) would be a useful first step and one that would be in line with

Article 5.3 of the FCTC (see Figure 3.5). Furthermore, governments also require detailed brand or price-category specific data on tobacco pricing to determine effective policies, and such data should be made available to researchers to identify the empirical research deficit identified in this chapter.

Beyond data collection and research, the chapter illustrates the need to develop and implement effective strategies to prevent price-related marketing and industry pricing schemes from undermining tax and other tobacco control efforts. Potential actions fall into two broad categories: (1) bans or restrictions on price-related promotions and (2) regulation of tobacco prices including the setting of minimum retail prices on tobacco products. This section reviews the (very limited) available literature exploring each of these policy approaches. Then in light of the evidence presented above on industry efforts to influence and undermine taxation policies, it turns to explore interventions to reduce industry influence on policy in the form of Article 5.3 of the WHO Framework Convention on Tobacco Control.

Figure 3.5. Extract from the Guidelines for implementation of Article 5.3, WHO-FCTC

"Parties should require the tobacco industry and those working to further its interests to periodically submit information on tobacco production, manufacture, market share, market expenditure and any other activity, including lobbying, philanthropy, political contributions and all other activities not prohibited or not yet prohibited under Article 13 of the convention" (Recommendation 5.2). "Parties should require rules for the disclosure or registration of the tobacco industry activities, affiliated organizations and individual acting on their behalf including lobbyists" (Recommendation 5.3).

Restrict or ban price-related promotional activities

Comprehensive bans on price-related and price-reducing promotions and retailer incentive schemes would, if enforced, inevitably help prevent these forms industry promotion. The evidence presented in this chapter would suggest, in line with broader evidence that the industry simply shifts its marketing expenditure from one area to another when faced with marketing restrictions (Saffer, 2000), that such schemes would need to cover every type of price-related promotion—price-reducing promotions (e.g. voucher schemes), price-based promotions (e.g. price-marked packaging) and retailer incentive schemes.

In this respect it is worth noting that while bans on all in-store promotions, including placing cigarettes below the counter, would limit the opportunity for price-based promotions to be communicated to the consumer (and thus likely limit the effectiveness of retailer incentive schemes), as long as packaging remains unregulated, prices could be communicated to consumers in this way as recently documented (Moodie & Hastings, 2009). In other words, preventing all price-based marketing would require bans on point-of-sale marketing and standardised packaging in line with Article 13 of the WHO FCTC guidelines.

Although, as outlined in section (b), a large number of countries have now implemented some form of control on price-related marketing we only found one (US-based) study that specifically evaluated the impact of restrictions on price-based marketing, and this was limited enough in its focus and design to preclude inclusion (Feighery *et al.*, 2009). It is important to note, however, that there is good evidence for the effectiveness of comprehensive marketing restrictions on reducing consumption (Blecher, 2008).

Price regulation and minimum pricing

The broader economic literature details two reasons for using minimum prices: to facilitate collusion (price fixing) between firms by preventing price wars and to help maintain profit margins thus providing sufficient funds for marketing. In line with this, most minimum pricing rules on tobacco have been implemented to protect businesses rather than health. Yet minimum prices may also be used for public health purposes—to prevent low-cost selling from existing firms and to prevent new firms coming into the market with lower-priced offers—and several countries have now implemented such rules for this purpose. Yet, as we explore below using a recent example from the EU, such rules may find themselves in contravention of trade treaty rules (including the EU Treaty) on non-discrimination (see also Chapter 2).

Minimum pricing rules on tobacco now exist in a variety of jurisdictions. These include half of US states (where they originated between the 1940s and 1960s and were meant to protect businesses and not public health) (Michael, 2000), a small number of EU Member States[1] (where the rationale again was largely to protect retailers), and Malaysia where they were implemented in January 2010 (for

[1] However, following a recent ECJ ruling, these minimum pricing rules are now or have already been ended

public health purposes, to reduce cigarette purchases by children and low-income smokers) along with prohibition of words that mean discount or cheap sale. The US minimum pricing rules are limited, however, as most allow cigarette company promotional incentives offered to retailers, such as buy-downs and Retail Leaders Programs, to be added into the formula that sets the minimum price.

To evaluate the effect of minimum pricing on tobacco control, two questions must be answered: (i) do minimum price laws raise cigarette prices and prevent cut-price offers and (ii) are they effective in the presence of promotional incentives? The first question looks at the effectiveness of minimum pricing in general, but we found no studies addressing this topic. The second examines effectiveness when minimum price laws allow promotional incentives to be deducted from formulas for establishing the minimum cigarette price (as is the case in most US states). The only study on this topic (Feighery *et al.*, 2005) suggests that when such incentives are included, minimum pricing is not effective; net cigarette prices did not differ between stores in eight states with minimum price laws and seven states without, a finding likely explained by the fact that nearly all the minimum price laws in the study allowed promotional incentives. Separate comparisons with New York, the one state which did not allow these incentives, showed that cigarette prices were significantly higher in New York than in the 24 other states, although the number of New York stores participating in the study was small, and the study did not control for differences in cost of living across states.

In the USA advocates of minimum prices argue that minimum prices are based on percentage mark ups on wholesale prices (in the EU, most minimum prices are a percentage (e.g. 95%) of the weighted average price) and, therefore minimum prices will rise as the manufacturer's price rise over time (thereby, keeping up with inflation). In contrast, excise taxes, when wholly specific (e.g. cigarette excises in the USA) lose their value as inflation occurs. However, this is not a problem when specific taxes are inflation-adjusted on a regular basis or when *ad valorem* taxes are imposed in addition (as is required in the EU). Opponents of minimum pricing argue that excise taxes generate government revenues while prices raised through minimum price laws benefit the wholesaler and/or the retailer. That is, minimum prices benefit tobacco sellers rather than governments and publicly-funded programmes. This is an issue that deserves more attention, as minimum pricing policies may leave the industry with more money to invest in marketing research and innovative ways to attract more customers.

In the EU Member States that implemented minimum prices on cigarettes (Austria, France, Italy, Belgium and Ireland), their implementation had been advocated by the Ministries of Finance (because of their high *ad valorem* excise duties which create greater price ranges) as well as by the manufacturers of premium brands (e.g. PMI). Moreover, the retail sector supported the measures as their margin is, in most Member States, a fixed percentage of the maximum retail price determined by the manufacturer or importer. Only in Ireland were minimum prices an initiative of the Ministry of Health to prevent the industry offering price-discounts (F. Van Driessche, personal communication).

Where an EU Member State chooses to introduce minimum prices, it must comply with its obligations under the EU Treaties, more particularly with the rules on the free movement of goods (Articles 34 and 36 of the Treaty on the Functioning of the European Union), the rules on competition (Articles 101 TFEU in conjunction with Article 4, paragraph 3 of the Treaty of the European Union) and relevant case-law of the Courts of the European Union. However, national rules fixing retail prices may be justified on grounds of, *inter alia*, protection of human health, provided that they do not constitute means of arbitrary discrimination or a disguised restriction on trade between Member States (Article 36 TFEU) and that they are proportionate to the aim pursued. Proportionality requires a measure to be necessary to achieve the objective, and that the objective cannot be achieved by any less trade-restrictive means, for example, whether the same public health aim could not be equally ensured by increasing excise duties. The EU directive that covers the structure of tobacco taxation (95/59/EC) also stipulates that manufacturers or importers of tobacco "shall be free to determine the maximum retail selling price" for their products.

It is perhaps unsurprising therefore that the European Court of Justice found that the setting of a minimum retail selling price for tobacco in Austria, France and Ireland was illegal under the EU Treaties[2] as it limited the freedom of producers and importers to determine their maximum retail selling prices, distorted competition and simply benefited cigarette

[2] Judgment of the Court (Third Chamber), 4 March, 2010, in cases C-197/08 Commission v France, C-198/08 Commission v Austria and C- 221/08 Commission v Ireland.

manufacturers by safeguarding their profit margins. However, the Court stated that the Member States could prohibit the sale of manufactured tobacco products at a price below the sum of the cost price and all taxes (i.e. they could prevent producers or importers from selling them at a loss by absorbing, even temporarily, the impact of taxes on the retail selling price of manufactured tobacco products). Belgium has removed its minimum pricing rule and a further case is pending against Italy.

The above-mentioned cases were based on the application of Article 9 of EU Directive 95/59/EC which relates to the price determined by the manufacturer or the importer. In other judgments (on minimum prices for alcohol), the court has ruled that national rules fixing retail prices could constitute measures having an equivalent effect to quantitative restrictions on imports (Article 34). This would be the case if imported products were placed at a disadvantage in relation to domestic products, for example, because competitive advantage conferred by lower cost prices were eliminated. However this implies that minimum prices are not per definition against the Treaty.

A key concern the European Commission had with minimum pricing was that it distorted competition and benefitted tobacco manufacturers by further increasing their profits. Yet other forms of price-regulation are allowed under the EU treaty and widely used, for example, in the utilities sector. A proposal for price regulation in the tobacco sector (Gilmore *et al.*, 2010) has recently been made that would be compatible with EU treaty rules and would, in theory at least, address many of the key problems outlined in this chapter. An alternative might be a windfall tax on profits with a provision to prevent this being passed onto consumers. A surcharge on tobacco industry profits was implemented in Canada in 1994 to recoup losses from industry involvement in smuggling. Although this surcharge was passed onto customers, its implementation illustrates that such interventions are feasible. The problems with industry pricing outlined in this chapter suggest that such proposals should be given serious consideration.

Preventing industry lobbying

In light of overwhelming evidence of the tobacco industry's efforts to undermine public policy, the parties to the WHO Framework Convention on Tobacco Control agreed upon Article 5.3, which requires that "in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect those policies from commercial and other vested interests of the tobacco industry in accordance with national law." If properly implemented, Article 5.3 has the potential to reduce industry influence on policy and thus to prevent the inappropriate influence on excise policy documented above. However, implementation and enforcement will be difficult and require considerable political will. The industry has already been using complex arguments to justify its inclusion in the policy process (Smith *et al.*, 2009) and it is particularly likely to do so in relation to taxation policy on the basis that can be considered primarily an economic rather than health policy. It is therefore also essential that policymakers and the public are made aware of the flawed nature of the arguments the tobacco industry uses against excise policies (as outlined in this chapter). Finally, ensuring that earmarked taxes, once passed, are properly implemented (i.e. that money is not diverted from the proposed policy areas) will eliminate one argument from the industry's armament.

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Appendix

Literature Search strategy and results (searches undertaken between October 2009 and March 2010)

Electronic databases
Academic Search Premier, ECLAS (European Commission Library Catalogue), ESRC Society Today, Intute, Web of Knowledge, Ovid (Embase, Econlit, Social Policy & Practice), Index to Theses, IBSS, Business Source Premier, European Sources Online, JSTOR, National Library for Health, Periodicals Archive Online

Websites
GLOBALink, http://www.escholarship.org/uc/ctcre_tcpmus,
http://escholarship.org/uc/ctcre_tcpmi

Search Strategies
Academic Search Premier
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in 'Title, abstract or keywords'.

Results: 407 references

ECLAS (European Commission Library Catalogue)
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in 'All Fields'

Results: 36 references

ESRC Society Today
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in 'ESRC Awards & Outputs'

Results: 16 references

Intute
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in 'All Fields'

Results: 3 references

Web of Knowledge
Searched on Medline and BIOSIS for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in 'Title' or 'Topic'

Results: 480 references

Searched in all other Web of Knowledge databases for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in 'Title' or 'Topic'

Results: 563 references

Ovid (Embase, Econlit, Social Policy & Practice)
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) in 'Abstract' AND '(taxation OR tax OR excise OR price OR pricing)' in Abstract AND '(polic* OR intervention OR lobb* OR influence)' in Abstract

Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher)' in Title AND '(taxation OR tax OR excise OR price OR pricing)' in Title AND '(polic* OR intervention OR lobb* OR influence)' in Title

Results: 420

Index to Theses
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in 'All Fields'

Results: 21

IBSS
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in 'All Fields'

Results: 172

Business Source Premier
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in Title, Abstract & Keywords

Results: 398

European Sources Online
Searched for 'tobacco tax' and 'tobacco excise' in 'keywords' and in 'title'

Results: 9

JSTOR
(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence) in Abstract & Title

Results: 89

National Library for Health
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in Evidence Based Reviews, Specialist Collections and Books and Journals

Results: 15

Periodicals Archive Online
Searched for: '(tobacco OR cigar* OR snus OR «Philip Morris» OR JTI OR «R.J. Reynolds» OR Gallaher) AND (taxation OR tax OR excise OR price OR pricing) AND (polic* OR intervention OR lobb* OR influence)' in Article, Title & Keyword(s)

Results: 9