

# Tobacco industry attempts to influence and use the German government to undermine the WHO Framework Convention on Tobacco Control

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► For a list of abbreviations and names occurring in this paper see the online appendices at the journal website. (<http://tobaccocontrol.bmj.com/content/21/1.toc>).

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## ABSTRACT

**Background** Germany has been identified as one of a few high-income countries that opposed a strong Framework Convention on Tobacco Control (FCTC), the WHO's first global public health treaty. This paper examines whether the tobacco industry had influenced the German position on the FCTC.

**Methods** Analysis of previously confidential tobacco industry documents.

**Results** The tobacco industry has identified Germany as a key target within its global strategy against the FCTC. Building on an already supportive base, the industry appears to have successfully lobbied the German government, influencing Germany's position and argumentation on key aspects of the FCTC. It then used Germany in its efforts to weaken the FCTC. The evidence suggests that the industry enjoyed success in undermining the Federal Health Ministry's position and using Germany to limit the European Union negotiating mandate. The tactics used by the tobacco industry included the creation of controversy between the financial, trade and other ministries on one side and the health ministry on the other side, the use of business associations and other front groups to lobby on the industry's behalf and securing industry access to the FCTC negotiations via the International Standardization Organization.

**Conclusion** The evidence suggests that Germany played a major role in the tobacco industry's efforts to undermine the FCTC. Germany's position consistently served to protect industry interests and was used to influence and constrain other countries. Germany thus contributed significantly to attempts to weaken an international treaty and, in doing so, failed in its responsibility to advance global health.

## INTRODUCTION

In May 2003, the United Nations' WHO Framework Convention on Tobacco Control (FCTC, see online appendix for a list of abbreviations), the WHO's first global public health treaty, was unanimously adopted by the 56th World Health Assembly (WHA), 8 years after the feasibility of an international tobacco control treaty had been examined.

The convention that finally emerged from this protracted process has been widely hailed as successful in terms of content and its rapid and extensive ratification with 172 states having become party to the convention by January 2011. Concern has nevertheless been expressed about inter alia the failure to clarify the FCTC's relationship with trade agreements, its comparatively

modest provisions when set against more optimistic initial ambitions and the non-binding and unenforceable nature of many of its provisions.<sup>1–3</sup> While the strengths of the FCTC have been attributed to the leadership of developing countries, such weaknesses have been explained via intense pressure from a few high-income countries, including Germany, that have enjoyed historically close links with tobacco companies.<sup>3–5</sup>

Germany's apparent approach to the FCTC is consistent with its weak tobacco control policies<sup>6–8</sup> and repeated opposition to the European Union (EU) tobacco control legislation.<sup>9</sup> This stance has been recently explained via a complex interplay of factors<sup>10</sup> including Germany's Nazi heritage, isolation from English-speaking scientific and policy networks, reliance on industry self-regulation and long-standing tobacco industry influence over science<sup>11–13</sup> and policy.<sup>14–16</sup> Despite its largely adversarial stance during FCTC negotiations,<sup>17</sup> Germany signed the convention on 24 October 2003 and ratified it on 16 December 2004.

Evidence from previously secret tobacco industry documents released through litigation in the USA indicates that transnational tobacco corporations developed both global<sup>18–20</sup> and targeted national strategies<sup>5 21</sup> to counter the FCTC. Recent literature has identified Germany as part of the *triumvirate of nations*<sup>5</sup> (Germany, Japan, USA) or the *big four*<sup>22</sup> (including China) that attempted to counter a strong convention. But to date, no detailed analysis of industry efforts to influence Germany's position or the extent to which Germany's position reflected such efforts has been undertaken. This paper therefore offers the first detailed account of tobacco industry attempts to influence the German government's position and, in turn, use this position to undermine the FCTC. It further explores the significant role Germany played during the FCTC negotiations.

## METHODS

This paper is based on analysis of previously confidential tobacco industry documents made available through litigation in the USA. The documents were identified through online searches of the Legacy Tobacco Documents Library (LTDL, <http://legacy.library.ucsf.edu/>) between November 2006 and December 2008. In addition, the British American Tobacco Documents Archive (<http://bat.library.ucsf.edu/>) was searched until July 2008 when it was subsumed within the LTDL collection.

The documents were identified through both English- and German-language search terms. A

standard snowball technique was employed that initially used broad search terms such as FCTC, Framework Convention, WHO-Initiative, Tobacco Free Initiative and their German equivalents along with Verband (as in 'Verband der Cigaretten-industrie (VdC)') and names of German delegates at negotiations identified from official WHO lists of participants. The initial documents found were then used to identify further search terms. In total, 198 search terms were used to retrieve over 3000 documents. These were reviewed and, when identified as directly relevant to the subject of this study, archived, coded by theme and subsequently analysed in detail to construct a historical and thematic narrative.<sup>23</sup> Although searches were not restricted to a specific time frame or tobacco company and relevant documents from Philip Morris (PM), RJ Reynolds and British American Tobacco (BAT) were identified, the documents from BAT dated between 1995 and 2003 proved the most relevant and represent the majority of documents finally used. In total, 283 documents were coded and 74 were used in this analysis.

The history of tobacco documents and the significance and limitations of their analysis have been detailed elsewhere.<sup>24–28</sup> To address such weaknesses, we attempted to triangulate and validate the document findings using information from other sources. We searched websites of industry organisations and non-governmental organisations mentioned in the documents. Although transcripts of the treaty negotiations are not publicly available, we searched official WHO documentation on the FCTC (eg lists of participants, agendas) and read all copies of the Alliance Bulletin, a bulletin published daily during treaty negotiations by the Framework Convention Alliance (an alliance of organisations committed to ensuring an effective FCTC), to identify information relating to Germany's conduct during the negotiations. Triangulation, however, was not always successful, and while findings could be validated with respect to the overall account of events, for a number of details triangulation was not possible.

The documents were quoted verbatim from the original regardless of the quality of the English and where the authors translated the quotes from German-language documents, this was stated.

## RESULTS

The documents from BAT represented the most important source of information for this paper. BAT is headquartered in London, UK, and has an important German subsidiary, BAT (Germany) GmbH. BAT is the world's second largest quoted tobacco company (after PM International) and in Germany, with a market share of almost 20%, the third largest company (after PM International and Reemtsma, the latter now part of Imperial Tobacco). Key documents also originated from the VdC, the tobacco manufacturer's trade organisation in Germany, reflecting the extensive correspondence between tobacco corporations' headquarters in the USA and UK and their representatives in Germany. The VdC comprised all the main tobacco companies operating in Germany at the time (box 1).

### Industry intelligence gathering Exploring the German position

In April 1998, Denise Keane (see online appendix for a list of names occurring in this paper), a member of the PM Board of Directors, and David Greenberg, PM's Vice President of Corporate Affairs Strategy and Development, asked regional managers to contact selected national (including German) delegates before the 51st WHA in May 1998 (see box 2 for timeline) to 'assess national positions about the IFC (International Framework

### Box 1 Membership of the 'Verband der Cigaretten-industrie' (VdC) prior to its dissolution\*

- ▶ Philip Morris GmbH
- ▶ British American Tobacco GmbH
- ▶ Reemtsma Cigarettenfabriken GmbH (now part of Imperial Tobacco)
- ▶ Gallaher Deutschland GmbH
- ▶ JT International Germany GmbH
- ▶ Tabak- und Cigarettenfabrik Heintz van Landewyck GmbH
- ▶ Joh. Wilh. von Eicken GmbH

\*The VdC was dissolved on 29 June 2007 following the departure of Philip Morris GmbH in May 2007 and re-established as Deutscher Zigarettenverband on 14 March 2008 without Gallaher Deutschland GmbH (now part of JT International) and Philip Morris.

Convention)' and to examine how these were reached.<sup>30</sup> PM identified potentially sympathetic countries via positions taken during the 49th WHA (May 1996) debate<sup>30 31</sup> when Germany had apparently described the proposed convention as 'an unnecessary distraction from the work of the WHO and not likely to be very effective'.<sup>32</sup> In 2001, BAT sent a questionnaire to company representatives in several European countries, including Germany, and enabled further analysis of national contexts in relation to the FCTC.<sup>33</sup>

### Box 2 The FCTC and Germany's position: a chronology

- ▶ 1995: 48th WHA requested to examine the feasibility of an international tobacco control treaty (resolution WHA 48.11).
- ▶ 1996: 49th WHA called for the development of a framework convention on tobacco control (resolution WHA 49.17). According to industry accounts, Germany voted against establishing a framework convention (along with Denmark, New Zealand, the Netherlands and the UK).<sup>29</sup>
- ▶ 1998: Gro Harlem Brundtland took office as WHO Director General in July.
- ▶ 1999: 52nd WHA established the FCTC Working Group and the INB to negotiate the convention (resolution WHA 52.18).
- ▶ 1999–2000: The Working Group produced a draft convention at two meetings (25–29 October 1999 and 27–29 March 2000).
- ▶ 2000: 53rd WHA accepted the draft convention in May (resolution WHA 53.16).
- ▶ 2000: Public hearings on the proposed FCTC on 12–13 October in Geneva (over 500 written submissions including 12 from Germany and 144 verbal testimonies).
- ▶ 2000–2003: Six negotiating sessions of the INB (INB1 to INB6) between October 2000 and February 2003.
- ▶ 2003: 56th WHA adopted the FCTC on 21 May.
- ▶ 2003: Germany signed the FCTC on 24 October.
- ▶ 2004: Germany ratified the FCTC on 16 December.\*

\*While Germany continues to be involved in the ongoing FCTC process, it is beyond the scope of this paper to examine this process after ratification or the implementation of the FCTC provisions in Germany.

FCTC, Framework Convention on Tobacco Control; INB, Inter-governmental Negotiating Body; WHA, World Health Assembly.

Tobacco corporations also employed deceptive strategies to explore the emerging German position towards the FCTC. In March 1999, Manfred Körner, former public relations lead at the VdC, interviewed Mr. Helmut Voigtländer, director of EU Affairs at the German Federal Health Ministry (FHM) and, significantly, member of both the WHO Executive Board<sup>16 34</sup> and the German delegation to the 49th (1996) and 50th WHA<sup>32</sup> (1997) and later of the second FCTC Working Group meeting.<sup>35</sup> Körner posed as a 'journalist ... investigating for an article on WHO tobacco policies' (translated<sup>34</sup>), concealing his affiliation with the VdC. Voigtländer reportedly provided information about FCTC-related issues and expressed his opinion that the convention 'should be kept very broad', and that he did not believe in 'radical anti-tobacco measures' (translated<sup>34</sup>) such as advertising bans or price increases, and that he could envisage cooperating with the tobacco industry.<sup>34</sup> Körner's report was then widely circulated among VdC members.<sup>34</sup>

Following such investigations, both PM and BAT rapidly identified Germany as a key country willing to raise concerns about and oppose a strong FCTC.<sup>30 36 37</sup> Regarded as a *big player*<sup>38</sup> with the capacity to act, Germany became a priority for industry lobbying efforts<sup>38</sup> and both PM and BAT subsequently contacted German delegates in seeking to assess and influence Germany's position on the FCTC.<sup>30 38</sup> Germany's potential significance to the industry was enhanced by its representation on the WHO Executive Board<sup>39</sup> and the Working Group<sup>40</sup> tasked with producing the draft convention during two meetings in October 1999 and March 2000 (box 2).

#### Germany, the ISO and WHO: gaining access to the negotiations

The tobacco industry also gathered information via its well-established links with the International Standardization Organization (ISO), notably Technical Committee 126 (ISO/TC126) on tobacco products and testing methodologies.<sup>41</sup> ISO/TC126 committee chairman Peter Adams was a former employee of Imperial Tobacco.<sup>41 42</sup> The committee's secretariat was run by the German Institute for Standardization (DIN, Deutsches Institut für Normung eV) in Berlin, Germany.<sup>43</sup> DIN also had tobacco company employees serving on its own committee on tobacco smoke.<sup>44</sup>

In early 1999, the WHO sought membership of ISO/TC126<sup>45</sup> and following discussion among both ISO/TC126 members<sup>46–48</sup> and tobacco companies,<sup>45</sup> in October 1999, according to documents, the WHO was accepted as a Category B member,<sup>47</sup> 'in practice essentially as an observer ... (unable to) vote, make any comments or statement'.<sup>45 49</sup> Meanwhile, as suggested by the VdC, ISO sought to exploit WHO's application to join ISO/TC126 by requesting that, in exchange, an ISO representative be allowed to participate in WHO's tobacco-related activities.<sup>44 50</sup> The effect of ISO's attempt remains unclear, but when non-governmental organisations in official relations with WHO were invited to attend the first Working Group meeting, ISO was also invited.<sup>46 50 51</sup> The industry clearly saw this as an opportunity to obtain information on the FCTC,<sup>42 52</sup> with BAT commenting that '(w)e should know shortly exactly what the WHO is thinking'.<sup>52</sup> Official WHO documentation confirms that ISO participated in the first and second Working Group meetings and at meetings of the Intergovernmental Negotiating Body (INB 1–4, see box 2) being represented by Adams and other ISO and DIN staff.<sup>35 53–57</sup>

#### Industry links to the German government

According to the documents, Reinhard Pauling, VdC board member and lead for FCTC-related issues, had close contacts in

the German Chancellery<sup>58</sup> and FHM,<sup>59</sup> including then FHM State Secretary Baldur Wagner.<sup>59</sup> Such contacts enabled the industry to acquire timely information about WHO activities and related EU actions,<sup>60</sup> relevant EU meetings<sup>58</sup> and the German government's position on the FCTC.<sup>61</sup>

A 2001 BAT Germany analysis of the latter suggests a close relationship between industry representatives and German government officials: 'It is no problem at all to have meetings with the civil servants in charge and exchange views and documents'.<sup>33</sup> This document also indicates that the industry welcomed the 2001 change in federal health minister from Andrea Fischer (1998–2001) to Ulla Schmidt (2001–2009). The convention was 'a top priority' for the former while the latter was not expected to 'put much pressure on this initiative'.<sup>33</sup>

#### Lobbying to influence Germany's position

In June 1999, Simon Millson, BAT manager responsible for FCTC issues, suggested targeting key countries like Germany rather than approaching multiple countries, in a 'more sniper, less scatter gun' approach.<sup>38</sup> The VdC played a crucial role in such efforts within Germany, and BAT documents suggest that the VdC's lobbying activities were effective,<sup>62</sup> for example, acknowledging the VdC's success in communicating the company position to the German government.<sup>63</sup>

#### Creating and utilising intragovernmental conflicts

Internationally, the industry sought to create and encourage controversy between government ministries. BAT repeatedly emphasised that 'Health Ministers (and Governments) must be won over or brought under control by Finance and Trade Ministers'<sup>64</sup> and sought the latter's participation in FCTC negotiations<sup>65</sup> to counter the health ministries' influence. In Germany, the VdC encouraged several federal ministries (including finance and trade) to undermine the FHM support for an effective FCTC.<sup>16 66</sup> Pauling suggested in March 1999, that the VdC should inform the federal ministries of economy, finance and agriculture about the FCTC<sup>34</sup> in order to prevent Germany, represented through the FHM, from entering negotiations without the government agreeing a common position.<sup>34</sup> Such VdC activities appear to have happened with some success.<sup>67</sup> Pauling later reported that the Chancellery, prompted by tobacco industry lobbying, had asked relevant ministries to comment on the WHO initiative.<sup>67</sup> Pauling promised that the VdC would 'do everything to increase opposition of the departments concerned and to bring about an interministerial consultation' (translated<sup>67</sup>). Similarly, in August 1999 Ernst Brückner, VdC director, wrote to the Federal Finance Ministry to highlight the alleged importance of tobacco tax revenue in Germany, raise legal concerns about the WHO plans and suggest an interministerial consultation before the first Working Group meeting.<sup>68</sup>

Such efforts seemed to prompt the FHM to respond, informing other ministries both about the FCTC<sup>67 69</sup> and of its plans to hold an interministerial consultation *after* the first Working Group in October 1999.<sup>70</sup> The VdC seemingly had both access to interministerial correspondence<sup>69 71</sup> and successfully intervened via other federal ministries, stymieing the FHM's plan to postpone the interministerial consultation to *after* the first Working Group.<sup>72</sup> As a result, the interministerial consultation was held *before* the first Working Group,<sup>72</sup> and included, as Pauling informed the VdC member companies, a 'very controversial debate between the different (federal) ministries' during which the FHM representatives were 'quite surprised to learn' about the other ministries' opposition to the FCTC.<sup>72 73</sup> Against



the wishes of the FHM, the ministries decided that Germany should only support initiatives on health information and education, labelling and cigarette content and not agree to other proposals including those on testing methods, smuggling, prices, duty free and advertising.<sup>73</sup> Pauling suggested that the German delegation would now assume the role of an observer.<sup>72</sup> An industry report on the Working Group meeting of 25–29 October 1999 noted that Germany was one of very few countries to have non-health representatives (including a representative of the Federal Ministry of Economy)<sup>53 74</sup> and that '(t)he German delegation ... was silent'.<sup>74</sup>

Pauling later reported that while the FHM had refused to consult with the industry on the FCTC, other ministries pressed for such a meeting,<sup>72</sup> which documents suggest subsequently took place.<sup>53 75</sup>

### Securing allies

The documents suggest that BAT successfully involved business associations, front groups and other organisations in its lobbying.<sup>76 77</sup> Five German business associations outside the tobacco sector made submissions to the WHO's public hearings in October 2000,<sup>78</sup> advancing standard tobacco industry arguments<sup>79 80</sup> and making their submissions available to the VdC before the hearings.<sup>79 80</sup>

A 2001 BAT analysis of Germany's FCTC position suggests that cooperation between allies, described as the 'the whole tobacco family' worked well.<sup>53</sup> A February 2001 newspaper confirms strong opposition to the FCTC by umbrella industry organisations like the Federation of German Wholesale and Foreign Trade (Bundesverband des Deutschen Groß- und Außenhandels eV), the German Association of Chambers of Industry and Commerce (Deutscher Industrie- und Handelskammertag), the Foreign Trade Association of the German Retail Trade (Außenhandelsvereinigung des Deutschen Einzelhandels) and the Federation of German Industries (Bundesverband der Deutschen Industrie eV).<sup>81</sup>

### Influencing Germany's argumentation and using Germany to advance industry arguments

The documents suggest that the industry helped frame the German government's arguments against the FCTC and that Germany, in turn, played an important role in advancing industry arguments against the FCTC.

### Arguing for a flexible and broad-based convention

Using the descriptors 'broad'<sup>82</sup> and 'flexible'<sup>83</sup> as euphemisms for a convention that did not contain binding obligations was a core industry strategy that aimed at securing a 'broad convention'.<sup>65 84–86</sup> Japan's role in arguing for a broad and flexible convention as a result of industry lobbying has been well documented.<sup>5</sup> Germany also appears to have been sympathetic to such an approach from the outset<sup>83</sup> and in November 1999, Millson wrote that the:

convention as being proposed by the WHO could contain some serious threats and concerns for the long term viability of the industry... We must therefore ensure that the convention and associated protocols are broad based. This view is shared by countries such as Germany, US, China, Japan....<sup>82</sup>

According to the documents, Germany consistently supported a 'flexible and broad convention'<sup>63 77 87 88</sup> and a 'more general, political document, without specifics'.<sup>89</sup> The industry reported that Germany argued, at the second Working Group meeting, that 'as many member states as possible should be

able to agree to the principles of the FC (framework convention)', asserting that 'flexibility in the text of the FC is a condition to success (sic)'.<sup>90 91</sup>

### Pushing for economic impact assessment of the treaty

In 1999, Millson suggested using economic impact assessment, including assessment of the impact on jobs within tobacco agriculture, to delay approval of the FCTC and allow time to develop 'other more substantial arguments'.<sup>92</sup> Millson suggested that this delay should be 'proposed by a Latin American country (Brazil, Chile, Argentina) and seconded by a western country (say Germany, Japan)'.<sup>92</sup> The documents suggest that the German delegation played an important role in outlining economic arguments against the FCTC, adding economics and labour markets to the agenda for the first Working Group meeting,<sup>93</sup> and stressing possible negative economic consequences of tobacco control<sup>94</sup> and the need for an economic impact study at the second Working Group meeting.<sup>63 95</sup> Simultaneously, BAT had been pushing for economic impact assessment of key policies in Europe as it saw this, along with risk assessment, as a means of preventing the implementation of tobacco control measures.<sup>96 97</sup>

### Arguing that '(a) total advertising ban would also be unconstitutional'<sup>98</sup>

More specific arguments were developed against key elements of the proposed convention. BAT planned to audit protections for freedom of speech in national constitutions to demonstrate 'the difficulty with introducing bans on advertising'<sup>64</sup> and such an audit was later cited by the International Advertising Association,<sup>99</sup> a tobacco industry 'coalition partner',<sup>65</sup> at the WHO's public hearing. It claimed that in a study of 50 constitutions, freedom of expression was guaranteed in all.<sup>100</sup> Yet a copy of the study shows that 'of all constitutions that were examined, only one—Sweden—protected commercial speech'.<sup>99</sup>

In 2000, the German Advertising Federation (Zentralverband der Deutschen Werbewirtschaft of which the VdC was member) claimed, with regard to the FCTC, that a total advertising ban would be unconstitutional.<sup>98</sup> Germany was subsequently prominent in its opposition to comprehensive bans on tobacco advertising, promotion and sponsorship as being 'unconstitutional',<sup>101 102</sup> and the final FCTC text included exceptions for countries claiming such constitutional impediments. This followed earlier use of constitutional arguments to counter tobacco control measures in Germany<sup>10 16</sup> and the European tobacco advertising directive.<sup>103</sup>

### Lobbying Germany to limit the EU mandate

In early 1999, the VdC commissioned Rainer Lagoni, professor of law at the University of Hamburg, to provide a legal opinion on the EU negotiating mandate<sup>68</sup> (box 3) in the hope they could use it to lobby against a comprehensive mandate.<sup>60 68 104 105</sup> His reports,<sup>106–109</sup> however, gave a generally favourable opinion on the EU's ability to participate in the FCTC negotiations.

Germany's position on the EU mandate was debated during the October 1999 national interministerial meeting.<sup>73 110</sup> Pauling reported that, in contrast to the FHM, the other ministries favoured a limited mandate restricted to labelling and cigarette contents,<sup>72 73</sup> seemingly surprising the FHM.<sup>72</sup> The documents indicate that Germany subsequently sought to circumscribe the EU mandate at a meeting of the permanent EU representatives on 15 October 1999<sup>111</sup> and, despite opposition from other EU member states,<sup>111</sup> managed to limit the EU mandate by excluding fiscal and agricultural issues.<sup>111</sup> Pauling's 'contact in

**Box 3 The 1999 and 2001 European Union (EU) negotiating mandates**

From 1994 until 2004, the EU comprised 15 member states. Additionally, there were 13 accession and candidate countries. EU member states can authorise the European Commission to negotiate and sign international agreements on their behalf but the Commission can only represent member states in policy areas covered by the EU Treaties. Under EU law, the EU is generally held to have exclusive competence in areas where it has already legislated (eg tar yields and tobacco product labelling); in other areas (eg tax or tobacco advertising) competence is shared between the EU and member states; and in further areas member states have exclusive competence. In an attempt to simplify this complex situation, two negotiating mandates were agreed between the EU and the member states in October 1999 and April 2001. These were not made public. The European Commission negotiated on behalf of the member states, accession and candidate countries in areas the EU had exclusive competence, while the country holding the Presidency negotiated in areas of shared and exclusive member states competence.<sup>102</sup>

the Federal Chancellery<sup>58</sup> confirmed Germany's role in confining the mandate to areas in which the EU had already enacted legislation<sup>112</sup> and the VdC in turn claimed that Germany's position was a direct result of industry lobbying with Pauling stating:

Lobbying: Via Berlin (seat of government) it is not only possible to encourage Germany to adopt a factual position, but also to influence the Council of Health Ministers—not without success, if you look at the limited EU mandate (translated<sup>60</sup>).

The debate about the EU negotiating mandate re-emerged in 2001 when a second EU mandate was agreed (box 3). This followed concerns raised about the deficiencies of the first mandate and the annulment of an EU tobacco advertising ban in which Germany played a key role. VdC executive Axel Heim wrote to the German Chancellery, the permanent representative in Brussels and all relevant federal ministries, claiming that the European Commission was trying to expand its mandate beyond the agreed restrictive position.<sup>113</sup> He requested that the German ministries should once again agree a common position on the issue.<sup>113</sup> A 2001 BAT Germany document states:

Germany has been a key country in defining the scope of the EU mandate... Until now, our government refuses to grant more competences to the EU on grounds like taxation, subsidies and fraud. We are working hard with all of our allies to strengthen this position.<sup>53</sup>

Although the mandates were not made public (box 3) and Germany's role in securing or preventing any change is unknown, there is evidence that other EU member states and the public health community were exasperated with Germany's negative influence.<sup>114 115</sup>

**Using the German position to influence beyond the EU**

The tobacco industry perceived Germany as having a 'constructive position' and a 'stabilising effect' on other countries,<sup>63</sup> encouraging the creation of coalitions<sup>86</sup> and 'the sharing of ideas between like-minded countries' that opposed the FCTC.<sup>116</sup> A memo from 20 October 1999 by Millson to

Edgar Cordero, a BAT corporate affairs employee in Central America, shows that BAT attempted to use Germany's position to influence Central American governments.<sup>117</sup> Millson sent Cordero information prepared by the VdC 'regarding the position the German government will adopt' at the first Working Group, and suggested that this might be

useful information to pass to the delegates (of some Central American governments) attending the meeting as it clearly states that the German Government has serious reservations about the FCTC.<sup>117</sup>

In a letter to the VdC member companies during the first Working Group meeting, Pauling reported 'strong resistance' of Latin and Central American countries to the FCTC and noted that these countries 'are insisting that demands concerning economic interests should lie outside the WHO's competence'.<sup>112</sup>

**DISCUSSION**

Our findings suggest that the tobacco industry successfully influenced the German government's position, most notably by reducing the power of the FHM, and subsequently used the German government's position in its global efforts to undermine the FCTC.

The Chancellery appears to have had, in some instances, closer links to the industry than to the FHM, seemingly enabling the VdC to obtain detailed information on and shape the government's position more effectively than the isolated FHM. The creation of intragovernmental conflicts based on alleged conflicts between health aims and economic goals was devised as a strategy to be used globally<sup>118</sup> but appears to have been particularly successful in Germany. While the industry took advantage of divisions between the FHM and economically orientated ministries, the documents suggest that it also manipulated the conflict to foster critics and to silence FCTC supporters within the German government.

The VdC and DIN also provided the tobacco industry, through ISO, with access to formal FCTC negotiations. Evidence described in this paper shows that the tobacco industry gained direct access to the negotiations through ISO with Adams, a former employee of Imperial Tobacco, participating in Working Group and INB meetings. This is significant given the WHO's dual determination to exclude the tobacco industry from FCTC negotiations and enhance civil society participation in the process.<sup>119</sup> The industry's determination to exploit its links with ISO demonstrates how easily legitimate civil society groups can also provide corporations with points of access to decision making. This exploitation of civil society groups, along with the industry's use of other business associations and front groups highlights the scale of the challenge outlined in article 5.3 of the FCTC calling upon parties to protect their public health policies from tobacco industry interference.

Our study also highlights the persistent value to tobacco companies of arguments that might be regarded as having been effectively discredited. Notwithstanding the World Bank's demonstration of neutral or even positive effects of tobacco control measures on the economy,<sup>120 121</sup> the documents report that the German delegation consistently voiced concerns about the FCTC's alleged negative economic consequences. In part, this may be attributable to the industry's long-standing influence in Germany which has led to an exaggerated view of the significance of tobacco for Germany's economy.<sup>10</sup> Similarly, constitutional arguments against tobacco control measures have long been employed by the industry in Germany,<sup>10 16</sup> and were reiterated to prevent binding provisions for advertising bans in

the FCTC. While the tobacco industry commissioned legal reports to show that advertising bans would be unconstitutional in Germany<sup>16</sup> and advanced these arguments among German politicians and the public, the issue has been strongly contested among experts. Although the Federal Constitutional Court of Germany has not yet ruled on the constitutionality of banning tobacco advertising, it has given a strong indication that advertising bans may well be constitutional<sup>122</sup> and a recent legal analysis<sup>122</sup> concludes that a comprehensive tobacco advertising ban would be compatible with the German constitution. The industry's ability to successfully use arguments in Germany that have been dismissed elsewhere may be due to its isolation from English-speaking scientific policy networks,<sup>10</sup> which raises issues about how this information might be better disseminated to non-English-speaking countries.

According to a typology<sup>123</sup> used in a review<sup>124</sup> of the negotiation of previous IFCs conducted for the tobacco industry, 'veto states' or, given the difficulty of preventing conventions once negotiations are underway, 'agenda weakening states' can be of immense strategic value.<sup>123 124</sup> The documents presented above demonstrate how Germany was targeted for and played such a role within the FCTC negotiations. Its close links with the tobacco industry, established resistance to tobacco control measures, economic and political power within international relations and the EU and prominent roles within the FCTC process all marked Germany as a state that could contribute to efforts to stop, weaken or undermine the negotiations. Indeed, Germany itself finally agreed to, and subsequently signed and ratified the convention only when broad exceptions were included in Article 13 of the final FCTC text that allowed countries to implement bans on tobacco advertising, promotion and sponsorship in accordance with their constitution or constitutional principles and decline bans for such reasons.

### What is already known on this topic

- ▶ Germany has been identified as one of a few high-income countries that attempted to counter a strong Framework Convention on Tobacco Control.
- ▶ The tobacco industry's efforts to influence Germany's position are yet to be examined in detail.

### What this paper adds

- ▶ Drawing on tobacco industry documents and other data, this paper shows that Germany played a crucial role in the tobacco industry's efforts to undermine the FCTC. Germany's stance was based on argumentation developed by the industry and in some instances appears to have been directly influenced by the industry.
- ▶ The German position consistently served to protect the interests of the tobacco industry and mobilised other negotiating parties in the industry's fight against a strong FCTC. The study also provides further evidence of the very close links between the tobacco industry and the German government.

### Limitations

It is important to note the study's limitations. Although we attempted to triangulate and validate the evidence found, minutes of the treaty negotiations are not made publicly available online and could not therefore be analysed. The description of events is therefore mainly based on tobacco industry documents and thus largely represents the industry's perceptions of outcomes. In particular, a causal relationship between industry activities and the German government's position and action is hard to determine in part because it can be difficult to differentiate between the impact of tobacco industry activities described here and the effects of Germany's long-standing opposition to stringent tobacco control. It is noteworthy, however, that Germany's attitude towards tobacco control generally also reflects decades of industry influence.<sup>10 14–16</sup> The industry clearly found an ally in Germany and the two often took a shared approach, for example, in the desire for a 'broad' convention. This resembles Japan's role in negotiating optional language in the FCTC text.<sup>5</sup> The extremely close links between the German government and the tobacco industry are striking and most likely played a key part in shaping Germany's position. Indeed, this paper provides an illustration of the ease with which the industry operates in Germany.

### CONCLUSION

The extent to which Germany's participation in efforts to undermine the FCTC is directly attributable to industry influence is less significant than the fact that Germany consistently served to protect the industry's interests and to influence and constrain other countries' positions on the FCTC. The German government has thereby contributed significantly to attempts to weaken an international treaty aimed at reducing the 5–6 million global deaths that occur each year from tobacco use.<sup>125</sup> This is almost identical to Germany's efforts to constrain and delay EU tobacco control policy.<sup>9</sup> The efforts of Germany and like-minded countries such as Japan,<sup>5</sup> China and the USA<sup>22</sup> constitute an abnegation of international responsibility, and a reminder of the ongoing challenges in ensuring that powerful vested interests do not undermine crucial initiatives in global health.

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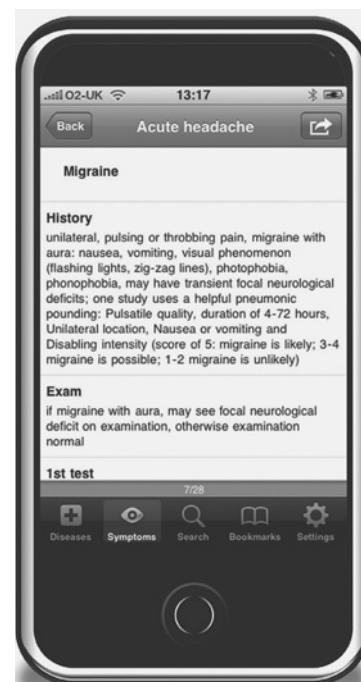
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## Tobacco industry attempts to influence and use the German government to undermine the WHO Framework Convention on Tobacco Control

Thilo Grüning, Heide Weishaar, Jeff Collin, et al.

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