What can tobacco control teach us about vested interests in food and nutrition?

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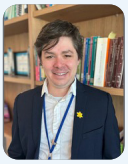
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Twenty years after the World Health Organization Framework Convention on Tobacco Control came into force, a clear achievement of the tobacco control movement has been to highlight the role of the tobacco industry as a vector of the tobacco epidemic and propose enforceable limits on its engagement in policy. What can we learn from tobacco control for preventing food industry interference in law and policymaking for healthy diets?

What can tobacco control teach us about vested interests in food and nutrition?

Twenty years after the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) came into force, a clear achievement of the tobacco control movement has been to draw attention to the role of the tobacco industry as a vector of the tobacco epidemic. Although tobacco remains one of the world's largest preventable causes of death, global tobacco use prevalence among people aged 15 years and older has declined from about one in three people in 2000 to about one in five people in 2022, with a key factor in this decline being the implementation of regulatory measures under the WHO FCTC *(1)*. The denormalization of the tobacco industry has been one of the main enablers of these developments, with the progressive exclusion of the tobacco industry from tobacco control policymaking at WHO and nationally setting the stage for the progress we see today *(2,3)*.

By contrast, no country is on track to halt the rise in obesity. Between 1990 and 2022 the worldwide prevalence of obesity more than doubled, and the prevalence of overweight and obesity in children aged 5–19 rose from 8% to 20% over the same time period, with childhood obesity in the same age group quadrupling from 2% to 8% *(4)*. A significant driver of these trends is unhealthy food systems: food systems are dominated by transnational companies *(5)*; trade, investment and commercial practices entrench obesogenic food environments *(6,7)*; and food marketing is becoming ever more sophisticated and embedded within addictive and manipulative digital environments *(8)*. There is an urgent need to examine the power of private sector actors in the food industry and to regulate them to ensure that health takes priority over profits. How can we apply the lessons from tobacco control on the importance of governance, influence, and voice to achieve evidence-based public health policies and better manage vested interests in food and nutrition?

International obligations to prevent tobacco industry interference

The WHO FCTC is unique among international treaties in containing specific international obligations to address the role of vested interests in causing harm. Article 5.3 of the WHO FCTC requires that, in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law. This provision reflects decades of experience with the tobacco industry's denial of the health harms of smoking, funding of research and front groups, delay tactics, and aggressive litigation and lobbying to prevent regulation. It is implemented through guidelines that establish clear

expectations around good governance and transparency in dealings with the tobacco industry, and has been cited by the High Court of England and Wales as part of an "evidence base" demonstrating the duplicity of the tobacco industry and the need for vigilance and transparency in dealing with them.

Article 5.3 is not perfect – it requires national laws and policies to implement, and its implementation globally is uneven. Tobacco industry interference remains a key barrier to the adoption of tobacco control laws *(10)*. Countries can also protect against industry interference without international treaty provisions, by passing laws and policies appropriate to their context.

But Article 5.3 establishes a clear norm recognizing that tobacco industry interference is a problem requiring international cooperation to address. It is unique in establishing binding obligations to address the harm caused by commercial entities. For example, despite increasing awareness of the commercial determinants of health and documented use of similar tactics of denial and delay as the tobacco industry, fossil fuel companies collectively have a larger presence at climate Conference of the Parties (COPs) than any country delegation and civil society campaigns to remove them have not yet been successful *(11,12)*, while efforts to establish a legally binding treaty on the human rights responsibilities of transnational corporations have been ongoing since the 1970s, with the most recent round of negotiations on a business and human rights treaty having been in progress since 2014 *(13,14)*.

Food industry interference as a barrier to action on healthy diets

In food and nutrition, too, industry interference is a well-documented barrier to the adoption of evidence-based laws and policies. Producers of unhealthy food expend significant resources to oppose public health regulation; shape scientific evidence and public discourse through sponsored research and public relations; and externalize the cost of the harms they cause onto people and their environments *(15)*. For example, the global soft drink industry has embraced self-regulation as a key component of its strategy to position itself as "part of the solution" to obesity *(16)*. Food and beverage companies name and shame countries that pass mandatory regulations, such as taxes on sugar-sweetened beverages (SSBs). In 2016, the International Food and Beverage Alliance (IFBA) presented a global "pressure map" tagging countries that passed mandatory SSB taxes as "red", meaning they were labelled as "discriminatory" or "exerting undue pressure" on the food industry, while countries that passed "industry-friendly" policies were tagged "green" *(17)*. The IFBA continues to challenge the effectiveness of SSB taxes to promote health in its 2022 comments submitted to the WHO on the WHO Global Noncommunicable Disease (NCD) Action Plan 2013–2030, while advancing self-regulation, voluntary commitments to reformulate their products, and healthy lifestyle promotion as viable alternatives *(18)*, despite evaluations of self- or quasi-regulation largely reporting these approaches as ineffective *(19)*.

In Brazil, a systematic plan and strategies by food and beverage companies to weaken front-of-pack labelling policy was leaked to the public. These plans were aimed at the policy to be passed by the Brazilian public health agency, ANVISA, and included generating their own evidence on labelling schemes that favoured industry *(20)*. The resulting front-of-pack label adopted in Brazil was weaker because of the industry interference than the measure initially proposed by ANVISA. It included industry proposed measures, such as selecting a magnifying glass rather than a stop sign as the shape of the label, much smaller dimensions, and a focus on a weaker nutrient profile that included a smaller number of foods identified as being high in sodium, saturated fats, and sugars *(21, 22)*.

Two industries, two approaches

There has clearly been a significantly different approach to what are essentially similar tactics by vested interests of delaying, dividing, deflecting, and denying in tobacco control compared to nutrition *(23)*. While tobacco advertisements were bought out of professional sport decades ago in many countries *(24,25)*, Coca Cola's agreement to sponsor the Olympics was recently renewed until 2032 *(26)*. It would be unthinkable for tobacco companies to be present at major tobacco control conferences, yet multinational food companies with significant "junk food" businesses received prominent speaking slots at the United Nations (UN) Food Systems Summit and are part of multistakeholder initiatives such as the Scaling Up Nutrition partnership *(27,28)*.

One example of this contrast can be seen when looking at another major WHO instrument – the WHO International Code of Marketing Breast-Milk Substitutes. Despite infant manufacturer tactics in marketing breast-milk substitutes resulting in significant increases in infant and child deaths, infant food manufacturers were actively involved in consultations for the WHO International Code of Marketing Breast-Milk Substitutes. Industry were also invited as "equal participants" with government delegates in the 1979 WHO and UNICEF *Meeting on Infant and Young Child Feeding*, which was a key preparatory meeting in the lead-up to the development of the WHO Code *(29)*. The resulting non-legally binding code considers "*that manufacturers and distributors of breast-milk substitutes have an important and constructive role to play in relation to infant feeding, and in the promotion of the aim of this*

Code and its proper implementation" and Article 9 envisages an important role for manufacturers and distributors in labelling breast-milk substitutes.

The global normative framework on food industry interference

Unlike Article 5.3 of the WHO FCTC and its guidelines, normative guidance on industry interference in food, such as the WHO's draft approach for the prevention and management of conflicts of interest in nutrition *(30)*, largely reflects a contextual, process-based approach, centring around due diligence and the balancing of risks and benefits of engagement, in light of the reasons for engagement and the type of food industry actor involved. Similarly, while the WHO's Framework of Engagement with Non-State Actors has clear exclusions for tobacco and arms, it notes only the need to exercise caution in relation to food and alcohol industry engagement *(31)*.

These differences in approach reflect legitimate differences between tobacco and food as risk factors, including a greater diversity of private sector entities in the food sector, the potential to reorient at least some food producers towards more health-promoting options, and the greater range of food systems governance functions, including in areas such as food safety, undernutrition, and procurement, where interaction may be necessary and where there is more potential for alignment between public and private interest. Essentially, while the tobacco industry is a clear-cut villain, the food industry is a more complex character.

The last decade, however, has seen some recognition of the primary importance of government-developed public health policies and laws for food and nutrition. For example, Codex Guidelines on Front-of-Pack Nutrition Labelling adopted in 2021 recognize that while all interested parties, including the private sector, may have a role in consultations for front-of-pack labelling, the measure "should be government led" *(32)*.

Further lessons from tobacco control on food industry interference

What then, if anything, can the nutrition community learn from the experience in tobacco? There is significant literature on this question *(33,34)*, and our aim is not to provide a comprehensive review here. However, some key lessons from tobacco control specific to addressing industry interference in food lawmaking and regulation might include:

- Private sector entities have an obligation to their shareholders to make profits. They therefore have a strong interest in halting, delaying, and undermining laws and policies that might threaten those profits. It is important to take their efforts to do so seriously as a barrier to implementation.
- Evidence-based laws and policies that are government led and mandatory have been shown to be more effective than self-regulatory or voluntary approaches *(35)*. There is a need for clearer guidance on the difference between appropriate and inappropriate interactions with the food industry. Article 5.3 of the WHO FCTC limits interactions with the tobacco industry to those that are strictly necessary to regulate them, provided those interactions are transparent. In food, there is far less consensus on where to draw the line, and much more complexity in identifying who should be covered by it, given the diversity of food producers and types of food sold. Nevertheless, some areas can clearly be identified as high risk – such as policy and legislative development and standard-setting. Policymakers should think through the relative risks of different types of food producers, retailers, and distributors (as well as individuals and experts who might represent food industry interest or have other conflicts of interest), appropriate reasons to consult, and the appropriate time for consultations, and develop these as more specific guidelines for their national context. Further, while in some areas of food policy, such as food safety, food industry engagement may be needed for technical reasons, it is important to make sure these relationships between industry and regulators do not bleed over to areas where they are more problematic, such as setting of nutrition standards.
- Where policymakers decide to engage, transparency over who is consulted, when, and why is core to ensuring appropriate scrutiny and debate over public health policy – providing this information on a website is one mechanism from tobacco control that could be adapted to food *(36)*; a more general solution is publishing diaries of ministers and senior decision-makers to ensure public availability of this information.
- Different sectors of government need to be aligned on how and when engagement is appropriate – for example, tobacco industry interference is more challenging to address in non-health ministries, such as trade or customs *(37)*, where it may be more common to consult private sector stakeholders and which may not have the same sensitization to the need to prevent industry interference. Responsibility for food policy is often split across health and food/agriculture ministries, an even wider range of ministries touches on food, and food systems are also highly globalized, so having a set of common expectations across ministries regarding private sector engagement is even more important in food policy.
- Clear guidance to countries on which policies work can

help cut through obfuscation by vested interests – a key role of the WHO FCTC has been to provide countries with a clearly enumerated list of policies that are known to work across a wide variety of contexts and detailed guidance for implementing them. The legal weight of the WHO FCTC is important for this, but the technical cooperation behind the WHO FCTC's provisions is important too. In this regard, the recently updated NCD best buys for health and WHO's technical packages on food have an important role to play, especially as they are recognized by UN human rights mandates as being an important means of implementing legal obligations on the right to health *(38)*.

Each of the above suggestions is compatible with existing guidance on conflict of interest in nutrition and recognizes that they might apply differently to different contexts, as befits the differences between tobacco and food as risk factors. But they reflect a difference in emphasis – a recognition that when asking questions about the risk/benefits of private sector engagement, the answer must ensure that there remains public oversight of questions of public interest.

Conclusion – the importance of voice, influence, and representation in public health policymaking

More needs to be done to help policymakers and public interest groups counter the power, resources, and lobbying of the food industry. Unlike tobacco, all of us eat and interact with the food system. Regulating the food industry therefore requires a much more fundamental consideration of the role of private sector in society. This is understandably a more difficult conversation, particularly when private sector interests in relation to nutrition include not only purveyors of unhealthy food and drink, but those that sell foods that are healthier (or claim to be), pharmaceutical companies that make weight loss drugs, sellers of diet products, and a whole ecosystem of groups and individuals that represent some or all of the above, including lobbyists, lawyers, marketing and public relations companies, paid experts, social media influencers, and industry groups. But the lessons of the WHO FCTC, particularly Article 5.3, are not just about tobacco, but about governance – a question of who is given voice, influence, and representation in matters of critical public policy. Keeping these questions front of mind will help to make sure that we can learn from tobacco control to ensure healthy diets for all. ■

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References

1. World Health Organization, WHO global report on trends in prevalence of tobacco use 2000–2030, 16 January 2024, https://www.who.int/publications/i/item/9789240088283
2. Godlee F. WHO faces up to its tobacco links. *BMJ*. 2000 Aug 5;321(7257):314-5. doi: 10.1136/bmj.321.7257.314. PMID: 10926571; PMCID: PMC1118314.
3. Mamudu HM, Glantz SA. Civil society and the negotiation of the Framework Convention on Tobacco Control. *Glob Public Health*. 2009;4(2):150-68. doi: 10.1080/17441690802095355. PMID: 19333806; PMCID: PMC2664518.
4. WHO, Obesity and Overweight Fact Sheet: https://www.who.int/news-room/fact-sheets/detail/obesity-and-overweight
5. Chung A, Westerman L, Martin J, Friel S. The commercial determinants of unhealthy diets. *Public Health Res Pract*. 2022;32(3):e3232221.
6. Friel, S et al (2013). Monitoring the impacts of trade agreements on food environments. *Obesity Reviews*, 14 (Suppl. S1), 120-134.
7. WHO Regional Office for Europe, Commercial Determinants of Noncommunicable Diseases in the WHO European Region, 12 June 2024, https://www.who.int/europe/publications/i/item/9789289061162.
8. Tatlow-Golden, Mimi and Garde, Amandine (2020). Digital food marketing to children: Exploitation, surveillace and rights violations. *Global Food Security*, 27, article no. 100423. DOI: https://doi.org/10.1016/j.gfs.2020.100423
9. *British American Tobacco (UK) Limited and Ors v Secretary of State for Health* [2016] EWHC 1169.
10. Convention Secretariat to the WHO Framework Convention on Tobacco Control, 2023 Global Progress Report on Implementation of the WHO Framework Convention on Tobacco Control (2023) https://fctc.who.int/resources/publications/m/item/2023-global-progress-report
11. Dharna Noor, "Over 1,700 coal, oil and gas lobbyists granted access to COP29, says report" *The Guardian*, 15 November 2024
12. Matt McGrath, 'COP28: Record number of fossil fuel delegates at climate talks', BBC, 5 December 2023.
13. United Nations Human Rights, BHR Treaty Process, https://www.ohchr.org/en/business-and-human-rights/bhr-treaty-process;
14. De Schutter O, Towards a New Treaty on Business and Human Rights. *Business and Human Rights Journal*. 2016;1(1):41-67. doi:10.1017/bhj.2015.5
15. Global Health Advocacy Incubator, Fighting for Healthy Food: Lessons from Argentina's Battle Against Industry Interference (29 July 2025): https://www.advocacyincubator.org/news/2025-07-29-fighting-for-healthy-food-lessons-from-argentinas-battle-against-industry-interference
16. Lacy-Nichols J, Scrinis G, Carey R. The politics of voluntary self-regulation: insights from the development and promotion of the Australian Beverages Council's Commitment. *Public Health Nutrition*. 2020;23(3):564-575. doi:10.1017/S1368980019002003.
17. Global Health Advocacy Incubator (GHAI) - Campaign for Tobacco-Free Kids. Sweetened Profits: The Industry's Playbook to Fight Sweetened Beverage Taxes. June 2024. https://assets.advocacyincubator.org/uploads/upp-2023/Sweetened_Profits_Report.pdf
18. Ibid.
19. Heenan, M., Hart, A.C., Cullerton, K. et al. Legal and regulatory instruments for NCD prevention: a scoping review and descriptive analysis of evaluations in OECD countries. *BMC Public Health* 24, 641 (2024). https://doi.org/10.1186/s12889-024-18053-4
20. Global Health Advocacy Incubator, Industry Alerts – April 2021 Global Industry Tactics to Weaken Front-of-Package Warning Label Policies. https://assets.advocacyincubator.org/uploads/2021/05/2021_04_alert_en.pdf?_gl=1*yb0kta*_gcl_au*MTUyMDk3MjI3My4xNzQ4MzkwMDI3
21. Global Health Advocacy Incubator, Brazil Implements Front-of-Package Warning Labels, 8 November 2022, https://www.advocacyincubator.org/news/2022-11-08-brazil-implements-front-of-package-warning-labels
22. Giuberti Coutinho J, Feldenheimer da Silva AC, de Castro IRR, Recine EGIG, Makuta G, Rocha NC, Johns P, Barbosa RBDC. The challenges of front-of-package labeling in Brazil. *Front Nutr*. 2022 Oct 13;9:921421. doi: 10.3389/fnut.2022.921421. PMID: 36313104; PMCID: PMC9608328.
23. World Cancer Research Fund, Building momentum: lessons on implementing robust restrictions of food and non-alcoholic beverage marketing to children (Dec 2020) https://www.wcrf.org/research-policy/library/building-momentum-lessons-on-implementing-robust-restrictions-of-food-and-non-alcoholic-beverage-marketing-to-children/
24. Fiona Harari and Graeme O'Neill 'Victoria to ban cigarette advertising in sport', *The Age*, 8 October 1987
25. Carolyn Holbrook and Thomas Kehoe, 'How the push to end tobacco advertising in the 1970s could be used to curb gambling ads today', 6 March 2023, https://theconversation.com/how-the-push-to-end-tobacco-advertising-in-the-1970s-could-be-used-to-curb-gambling-ads-today-200915
26. International Olympic Committee, Coca-Cola & Mengniu, https://www.olympics.com/ioc/partners/coca-cola-mengniu
27. Nicholas Nisbett et al, "UN food systems summit leaders must not remain silent on its inadequate rules of engagement with commercial actors", *BMJ Opinion*, 1 September 2021, https://blogs.bmj.com/bmj/2021/09/01/un-food-systems-summit-leaders-must-not-remain-silent-on-its-inadequate-rules-of-engagement-with-commercial-actors/
28. Kate Allen et al, 'Diet and health at the forthcoming UN Food Systems Summit — a missed opportunity for action?' 20 September 2021. https://medium.com/@WCRF/diet-and-health-at-the-forthcoming-un-food-systems-summit-a-missed-opportunity-for-action-e9c10185896.
29. Ellen Sokol, The Code Handbook: A guide to implementing the International Code of Marketing of Breastmilk Substitutes (2nd ed, 2005) https://www.babymilkaction.org/wp-content/uploads/2023/06/The-Code-Handbook-2005-with-appendices.pdf
30. Executive Board, 142. (2018). Safeguarding against possible conflicts of interest in nutrition programmes: draft approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level: report by the Director-General. World Health Organization. https://iris.who.int/handle/10665/274165
31. Framework of engagement with non-State actors, WHA 69.10, 28 May 2016.
32. Codex Alimentarius, Guidelines on Nutrition Labelling, CXG 2-1985, available from: https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B2-1985%252FCXG_002e.pdf
33. Hill SE, Johns P, Nakkash RT, et al From silos to policy coherence: tobacco control, unhealthy commodity industries and the commercial determinants of health, Tobacco Control 2022;31:322-327
34. Jonathan Liberman, A global convention on healthy diets? Some lessons from the WHO Framework Convention on Tobacco Control https://www.mccabecentre.org/news-and-updates/global-convention-healthy-diets.html
35. Heenan et al above n 19.
36. For example, Department of Health and Aged Care (Australia), Report on Interactions between Health and the Tobacco Industry, 11 October 2019, https://www.health.gov.au/resources/publications/report-on-interactions-between-health-and-the-tobacco-industry?language=en.
37. Barry RA, Abdullah SM, Chugh A, et al, 'Advancing whole-of-government approaches to tobacco control: Article 5.3 and the challenge of policy coordination in Bangladesh, Ethiopia, India and Uganda' *Tobacco Control* 2022;31:s46-s52.
38. United Nations Human Rights, Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs, 27 July 2020, https://www.ohchr.org/en/statements-and-speeches/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package