

THE POSITION OF OTAF RELATED TO THE COMPLAINTS OF THE BRITISH AMERICAN TOBACCO (BAT) MULTINATIONAL

By letter dated July 17, 2014, the Director of Regulatory Affairs for West and Central Africa of British American Tobacco (BAT), seized some ECOWAS Ministers of Health about tobacco regulation and Taxation in West Africa, with an attached document entitled "Our position on the WHO / FCTC / CRES suggestions on tobacco taxation in Africa the West. "This letter namely indicated the point of view of this tobacco company faced with "developments that could have a negative impact" on their activities within ECOWAS.

We Observatory of Tobacco in Francophone Africa (OTAF), an organization based in Niamey, Niger, among which roles is to observe and report actions of the tobacco industry in Africa, have been undertaking since September 8, 2014 a wide action to alert governments of ECOWAS countries against the serious attempt to interfere in public policies recently launched against them by the tobacco industry, headed by the BAT.

The multinational currently leads an aggressive disinformation, intimidation and blackmail campaign towards the community's governments of the community in order to dissuade them from fulfilling their obligations under the WHO Framework Convention on Tobacco Control (FCTC), and which they all have ratified (country Parties to the FCTC). In this international treaty legally binding Parties, it is recognized that "**price and tax measures** are an effective and important mean of reducing tobacco consumption by various segments of the population, especially young people". **Increasing tobacco taxes** is the most effective measure to reduce the scourge of smoking.

Is it still necessary to remind, that smoking causes huge health and social costs in our countries, hinders their development and is a significant factor of impoverishment? In Africa since May 21, 2003 date of ratification of the Convention, smoking has killed 5.2 million people (see African tobacco clock www.otaf.info/africa_deathclock). The product that the tobacco industry sells, although it is unfortunately still legal, is proved to be extremely toxic and deadly. This product sold freely by the tobacco industry, is not suitable at all for human consumption. It is responsible for disabilities, diseases and death. And the tobacco industry has for a long time contested this finally admitting it due to the intensity of evidence from researchers worldwide. The consequences affect all economic aspects (low production), health (health spendings), social (mobilization of the family who could turn to other investments for the benefit of the society), etc.

For over three years, ECOWAS and UEMOA community groups have been working on a process of raising the tobacco tax in close collaboration with WHO and the Consortium for Social and Economic Research (CRES), an independent institution based in Dakar and specialized in social and economic research on tobacco with the participation of all other relevant organizations including the Centre for tobacco control in Africa and the Observatory of tobacco in Francophone Africa (OTAF). This fruitful and harmonious collaboration government / civil society is a model and is based on FCTC Article 4.7, according to which "The participation of civil society is essential to achieve the objective of the Convention and its protocols. »

Two draft guidelines were developed after over three years of consultations, consultation meetings and expertise at all levels in order to develop effective instruments to implement the FCTC in ECOWAS and UEMOA, with the aim of protecting the health of populations in the two areas. Both projects have the unanimous approval of all parties involved. They are now being examined and will follow the steps needed to be adopted by the two organizations.

Predicting that this development will threaten their particular interests (which indirectly is recognition of the effectiveness of the proposed measures), tobacco companies, headed by BAT are trying to interfere in the process in order of torpedo. BAT has sent letters to the governments of countries of the two communities, letters that denigrate the excellent work of both committees, declare unfounded accusations and distort the truth repeating the fallacious or completely inaccurate arguments of the propaganda they are used to.

On BAT website, the industry claims to deal with products that represent risks for health. It also recognizes the environmental and social issues related to tobacco farming. Is this not an important confession! So how could we let it prosper at the expense of our own development? The tobacco industry is destroying the most important thing we hold, the "Human capital" which happens to be a central element in life.

The OTAF urges West African countries that have all ratified the FCTC to:

- **be persuaded** that all ECOWAS countries are aware of the perspicacious choice adopted by ratifying the FCTC;

- **Remember** that the interest of BAT in particular and the tobacco industry in general in our West African region is to do business contrary to nature and is not acting as a philanthropist in the region;

- **Continue** the overall implementation of FCTC and continue regional implementation including the process of raising tax at a level that would protect populations as recommended by the Convention and the international best practices proven scientifically.

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- **Note** that the European Union (EU) and other developed countries, adopted very restrictive measures including a specific and effective tobacco taxation system to protect their populations.

- **Realize** that the tobacco industry is against any improvement of Community legislation. This industry accepts tobacco taxation in Africa when it makes the most profit at the expense of populations' health and economic losses for our countries. BAT has the unmentionable plan to convince ECOWAS countries with very low legislative measures allowing it to continue its shameful business.

Contrary to what the industry states, econometric studies developed on "The impact of reducing consumption on employment in the UK" show that the tobacco industry is a net job destroyer. For a job created in a country (for example X ECOWAS country), there are 20 other destroyed in other related countries. It can easily be noted in this case that, within ECOWAS, 299 positions were eliminated in the 14 member countries for one position created. BAT's benefits have never been for all West Africa, but only for the group itself and especially its foreign shareholders.

BAT advises tobacco growers to make a rotation of tobacco culture with food crops and considers producers as employers. Except the tobacco industry, it is clear that nobody has any activity based exclusively on tobacco. Tobacco is only profitable for the industry that raises profits at the expense of consumers' pocket. As an illustration, it is noted that in 2013, BAT reported that 100,000 people were involved in tobacco growing for a harvest of about 2500T namely 0.025T per person (see table that shows the weakness of tax contribution to ECOWAS countries GDP ECOWAS, CRES Report).

The interests of the tobacco industry cannot be defended here and WHO recommends not to give preferential treatment to the tobacco industry. It is not possible to arrange promotion of public health and that of the tobacco industry - Governments have to make a choice: either they protect the interests of BAT, but at that time they position to the detriment of public health; or they defend public health, and at this time, they have to limit the effects of smoking by raising taxes and adopting other restrictive measures.

What is surprising is that the tobacco industry is heavily taxed in developed countries and it requires free hands in Africa. The tobacco industry continues to lie and overestimate levels of illicit cigarettes in some European countries and increasingly in Africa. In Europe as here, it sponsors studies that serve primarily its interests over those of the EU and other communities such as ECOWAS and its Member States. For example, a KPMG study (International firm recruited by Phillip Morris International) on smuggling showed that smuggling is generally more intense in countries where tobacco taxes are lowest and where the tobacco industry is strongly influent. Another proof, the high smuggling rate in Guinea Bissau, which applies a very low tax rate compared to South Africa which has the highest taxation rates in Africa.

BAT Nigeria has used Canada as an illustration of a country where illicit trade worsened as a result of the tax increase. In fact, the Canadian government's investigation on this increase in smuggling revealed that it was directly fueled and organized by British American Tobacco (BAT), parent company of Imperial Tobacco Canada (ITC)! The company pleaded guilty and paid a \$ 1.15 billion Canadian dollar fine to escape conviction. Recently when Uganda has increased the specific tax on tobacco, the industry has over-imported tobacco products before the tax went into force and suddenly started publishing with ardor and eloquence figures on tobacco smuggling, to show the Government of Uganda that tax increase causes the losses to the economy and increases illicit tobacco trade.

WHO recommends a taxation rate of tobacco products at least 70% of the retail price based on studies made by world experts in taxation. To date all countries, including Africa, are working to increase this tax to the minimum requirement rate. Some countries like Mauritius, Madagascar and Seychelles have already reached more than 70% tax rate with no impact felt on industries. There are also the many European countries that have been well beyond the rates recommended by WHO. Furthermore, all studies show that taxation is the most effective way to decrease tobacco consumption. It is therefore quite understandable that African research institutes are interested in this issue which has the advantage of having both positive effects on tax revenues but also on the economy in general, households living conditions and especially populations' health.

All tobacco control tax policies in the world aim at reducing consumption. So why BAT calls for policies that have no effect on consumption in West Africa? BAT's claim for standard policies applicable to everyone is unrealistic. Smoking poses real risks of serious and lethal diseases. Tobacco use causes disabilities, disease and death. The consequences of tobacco use are identical all around the world. The West African people are not spared compared to Europeans, for example. At this level, there is no community specificity which should lead governments not to protect their populations.

ECOWAS countries do not infringe Community rules, on the contrary regional guidelines are currently being revised at the initiative of regional structures precisely to allow countries that have ratified FCTC to comply with the recommendation on excise duties to 70% of the retail price.

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The tobacco industry has never opposed to the tax increases in Europe or elsewhere in the developed world the way it does with African countries Africa. But it is the sovereign right of all ECOWAS countries to protect their population against smoking in spite of the interference of BAT and regular tax increase aims at protecting the most vulnerable such as young people and the poor.

We congratulate all ECOWAS and UEMOA member countries and solicit the ECOWAS Commission and all its Member States to make the draft guidelines a priority for its adoption and effective enforcement in West Africa to protect populations. Its implementation will result in monitoring and regular adjustment of tobacco taxation to control smoking in the West African region in accordance with Countries commitment.

BAT's letter entitled "Our position on the WHO / FCTC / CRES suggestions on tobacco taxation in West Africa" indicates the real intentions of BAT when it refers to documents full of lies and aberrations usually sponsored by the tobacco industry itself.

To challenge this danger and defeat the tobacco industry, namely BAT, in its attempt to interfere in public health policy, OTAF is determined to alert governments so they do not fall into this trap.

Therefore, the Observatory of Tobacco in Francophone Africa:

1. Recalls that by ratifying the WHO Framework Convention on Tobacco Control (FCTC) ECOWAS member states have formalized and given the force of law to their commitment "to protect present and future generations from the health, social, environmental and economic devastating effects of tobacco consumption and exposure to tobacco smoke by providing a framework for the implementation of tobacco control measures at the national, regional and international levels in order to reduce continually and substantially the prevalence of smoking and exposure to tobacco smoke "(FCTC Art. 3);
2. Recalls again that these ECOWAS member states , "by defining and implementing their public health policies with respect to tobacco control, "pledged to" ensure that these policies are not influenced by commercial and other interests of the tobacco industry "(. FCTC Art 5.3) ;
3. Finally recalls that ECOWAS member states adopted with all FCTC Parties Guidelines for the application of Article 5.3 of the WHO Framework Convention on Tobacco Control to protect public health policies with respect to tobacco control from commercial and other tobacco industry interests, which "aim at helping Parties to comply with their legal obligations under Article 5.3 of the Convention "(Guidelines, item 6);
4. Invites ECOWAS and its member states to constantly keep in mind the first Guiding principles of the Guidelines: "There is a fundamental and incompatible conflict between the interests of the tobacco industry and those of public health. "This principle was endorsed by all United Nations member States in the adoption in September 2011 of the Political Declaration of the High-level Meeting of the General Assembly on the Prevention and control of non communicable diseases, in which they acknowledge that "there is a fundamental conflict of interest between the tobacco industry and public health "(Political Declaration, item 38);
5. Invites ECOWAS and its member states to follow to the letter, among other things, the following requirements of the Guidelines for implementation of Article 5.3, noting that the application of these guidelines is cross-sectoral and not limited only to departments in charge of public health:
 - a. "Adopt measures to limit interactions with the tobacco industry and ensure the transparency of those that take place. "(Guidelines, 17.2)
 - b. "Reject partnerships and non-binding agreements with the tobacco industry. "(Guidelines, 17.3)
 - c. "Avoid conflicts of interest with government officials or officers "(Guidelines, 17.4)

- d. "Demand transparency and accuracy of information provided by the tobacco industry. "(Guidelines, 17.5)
 - e. "Parties should have interaction with the tobacco industry only when necessary and strictly limited to what is necessary to enable them to effectively regulate the tobacco industry and tobacco products. "(Guidelines, 20.2.1)
 - f. "When interactions with the tobacco industry are required, Parties should ensure that they take place in a transparent manner. If possible the interactions have to take place in public, example in the context of public hearings, public notices or disclosing to the public the documentation relating to these interactions. " (Guidelines, 20.2.2)
6. Vehemently denounces and condemns the ongoing intrusion of the tobacco industry in the adoption of the draft community guidelines relating to tobacco taxation;
 7. Recognizes the efforts of ECOWAS and UEMOA who are harmonizing tobacco tax in West Africa and invites them to remain vigilant against the tobacco industry and take all necessary steps to adopt these guidelines expected for over three years;
 8. Solicits the ECOWAS Commission and all its Member Countries to make draft guidelines a priority for effective adoption and application in West Africa to protect populations.
 9. Calls upon all international tobacco control organizations primarily WHO and all other structures and networks to mobilize consequently to defeat this new interference of the tobacco industry in ECOWAS and UEMOA and towards Governments of Member States.
 10. Makes an ultimate appeal to the members of Parliament of ECOWAS and UEMOA to support the draft guidelines to mark their commitment to population health in ECOWAS and UEMOA.
 11. Finally, the Observatory of Tobacco in Francophone Africa will undertake all necessary actions to support the adoption of this Guideline.

Niamey, September 08, 2014