

THE PROSPECT OF TOBACCO CONTROL REGIME IN UZBEKISTAN: THE UZBEKISTAN BRITISH-AMERICAN TOBACCO CASE

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ABSTRACT

This paper highlights the difficulties in improving tobacco control measures in the light of protection of public health and investment by transnational tobacco company (BAT). Above-mentioned evidences prove that developing states face great challenges in implementing effective tobacco control scheme where the investor is major tobacco industry. Thereby, effective control policies are much needed when attracting an investment into domestic economy. Yet, the ability of BAT to shape public policies assumes particular importance in terms of WHO FCTC. After becoming a signatory party of the Convention, Uzbekistan must fulfill the requirements of the Convention and work out tobacco control regime. On the other hand, this move may also heighten the opportunity of BAT to shape the legislation or to encourage the pre-emptive adoption of ineffective measures.

***Key words:** WHO, fair and equitable treatment, legislation, tobacco control regime, investment law.*

ПЕРСПЕКТИВЫ РЕЖИМА КОНТРОЛЯ ТАБАКА В УЗБЕКИСТАНЕ: ДЕЛО БРИТАНСКО-АМЕРИКАНСКОГО ТАБАКА В УЗБЕКИСТАНЕ

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АННОТАЦИЯ

В этой статье освещаются трудности совершенствования мер по борьбе против табака в свете защиты общественного здоровья и инвестиций транснациональной табачной компании (БАТ). Вышеупомянутые данные доказывают, что развивающиеся страны сталкиваются с большими трудностями при внедрении эффективных схем борьбы против табака, в которых инвестором является крупная табачная промышленность. В связи с

этим крайне необходима эффективная политика контроля при привлечении инвестиций в отечественную экономику. Тем не менее, способность БАТ формировать государственную политику приобретает особое значение с точки зрения РКБТ ВОЗ. Став участником Конвенции, Узбекистан должен выполнить требования Конвенции и разработать режим борьбы против табака. С другой стороны, этот шаг может также увеличить возможности БАТ для формирования законодательства или поощрения упреждающего принятия неэффективных мер.

Ключевые слова: ВОЗ, справедливое и равное обращение, законодательство, режим борьбы против табака, инвестиционное право.

INTRODUCTION

Regarding to the WHO global report in 2013, tobacco consumption remains a serious threat to global health, taking life away about six million people and causing enormous economic damage annually in terms of excess health-care cost and lost productivity¹. At the beginning of 2000s, realizing the vitality of tobacco abuse, member states of WHO concluded a treaty – *the WHO Framework Convention on Tobacco Control (WHO FCTC)*² and adopted it in 2003.

According to the report by the Ministry of Health of the Republic of Uzbekistan in 2014, the percentage of male smokers is 20% whereas 1.1% among women. From 20 percent, 77,2 % smokes daily where the ratio of women is 90,5% from 1.1 percent³. In order to combat against tobacco abuse, Uzbekistan took concerted action through becoming a member state to the WHO FCTC.

On April 24, 2012, the President of Uzbekistan signed a law “On accession of the Republic of Uzbekistan to the World Health Organization Framework Convention on Tobacco Control”⁴. Now, Uzbekistan is tending to become the 48th Party country of the WHO FCTC. As a signatory party to the WHO FCTC, Uzbekistan has an obligation to implement a variety of measures that make tobacco use less attractive to people, translating its general provisions into national laws and regulations. This includes enforcing smoke-free legislation to reduce exposure to second-hand smoke, explaining to people about the dangers of tobacco, not selling tobacco to minors, quitting tobacco or helping people to quit, and etc. Within three years after signing the Convention, the party countries oblige to ensure that tobacco packaging has

¹ http://www.who.int/tobacco/global_report/2013/who_fctc.pdf

² http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf

³ http://apps.who.int/fctc/implementation/database/sites/implementation/files/documents/reports/uzbekistan_2014_report_final.pdf

⁴ http://www.lex.uz/pages/getpage.aspx?lact_id=2005722

strong health warnings, and in five years to establish comprehensive bans on tobacco advertising, promotion, sponsorship, and etc.

Becoming a member state to the WHO FCTC, *is it a crucial step for Uzbekistan in the context of promotion of public health care? Does the legal system of Uzbekistan ready to implement massive measures which are being required by the WHO FCTC? Also, does the tobacco control regime of the WHO FCTC affect to the activity of foreign investors in Uzbekistan who have already invested into tobacco sector?*

2. Background of the problem

In a closed deal concluded in May 1994 and finalized in late 1995, Uzbekistan's state-owned tobacco monopoly was privatized by the British-American Tobacco (BAT). BAT established a joint-venture with the government, and its initial 51% shareholding increased with subsequent investments to reach 97% by 1998⁵. The joint-venture included the whole existing national tobacco industry, which composed of the Tashkent tobacco factory (TTF) and 2 fermentation plants in Urgut and Samarkand cities. The state-owned monopoly was thus replaced with a private one and BAT became the largest investor in Uzbekistan to that date. As a matter of fact, it contributed an estimated one third of all foreign direct investment received by Uzbekistan from 1992 till the end of 2000⁶.

In August 1994, as negotiations went on with BAT, the Ministry of Health issued a tobacco control decree, called *Health Decree 30*⁷. The decree banned unfiltered cigarettes and those high in tar and nicotine, banned tobacco advertising and smoking in public places, required outlets to be licensed, and introduced health warnings on the plain. In contrast, BAT was shocked at released decree and described it as “deal stopper” further making three assertions against the decree. First, BAT depicted the decree as jeopardising foreign investment in Uzbekistan, while warning the Ministry of Health that it would lead to “the immediate demise of the domestic cigarette industry”. Second, BAT refuted the health effects of smoking as accurately described in the decree, suggesting an ongoing controversy in which “smoking has not been proven to actually reason for diseases”. Third, BAT illustrated the decree as “seriously interfering with commercial freedom”⁸. Furthermore, BAT proposed its amendments to the decree and offered to use voluntary code, which had already experienced in Russia. In fact, the voluntary code is industry's responsible approach

⁵ <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2005.078378>

⁶ Ibid

⁷ Decree no.30 “On Restricting and Preventing Smoking in Uzbekistan”. 15/07/1994.

⁸ Anna B Gilmore, J Collin, M McKee British American Tobacco's erosion of health legislation in Uzbekistan - British Medical Journal, 2006 - infam.antville.org

in dealing with governments to agree advertising standards. However, it was actually developed collaboratively by tobacco companies and entailed only modest and ineffective restrictions.

Proposed amendments to the decree comparing to its original version is below:

Original version	Amended version
Smoking can essentially worsen the clinic [sic] course of such diseases as stomach and duodenum [sic] ulcer, chronic gastritis, etc, and strongly influence the development of the heart-crowning artery [sic] sclerosis . .	Smoking has been claimed to worsen the clinic [sic] course of such diseases as stomach and duodenum [sic] ulcer, chronic gastritis, etc, and to influence the development of the . . .
In Uzbekistan the number of people suffering from the diseases of breathing system, including those related to smoking, increased from. . .	In Uzbekistan the number of people suffering from the diseases of breathing system, including those associated with smoking, increased from. . .
There was a data alleging that tobacco smoke is more harmful to non-smokers rather than smokers	Sentence is removed
Advertisement of the local and foreign brand tobacco products, including the advertisement through the mass media (television, radio, cinema, newspapers, magazines, etc) [shall be permanently prohibited]	Advertisement of the local and foreign brand tobacco products, including the advertisement through the mass media (television, radio, cinema, newspapers, magazines, etc) will be prohibited according to voluntary code.
Smoking [will be banned in] public places, on the transport , at the health care institutions, kindergartens, schools and other institutions for children, colleges and universities . At other institutions and enterprises smoking should be permitted only in specially arranged places.	Smoking at health care institutions, kindergartens, schools and other institutions for children, will be prohibited. At other institutions and enterprises, and on public transport, both smoking and non-smoking areas will be provided (totally amended) ⁹

⁹ The table materials were obtained from “British American Tobacco's erosion of health legislation in Uzbekistan” by Anna B Gilmore, J Collin, M McKee - British Medical Journal, 2006 - infam.antville.org

By successfully overturning bans in the decree, BAT eliminated the most effective measures to control tobacco consumption regime in Uzbekistan. Following this, BAT increased its market share from 45% in 1995 to 80% in 2014¹⁰.

4. Literature review

Regarding to existing literature on this matter, an article by Gilmore, Anna B., Jeff Collin, and Martin McKee on “British American Tobacco's erosion of health legislation in Uzbekistan”¹¹ sheds light on how BAT shaped the legislation of Uzbekistan while investing into tobacco sector. Another pragmatic article by the same co-authors on “Transnational tobacco company influence on tax policy during privatization of a state monopoly: British American Tobacco and Uzbekistan”¹² discusses how BAT influenced on tax policy system of Uzbekistan by its investment. “The invisible hand: how British American Tobacco precluded competition in Uzbekistan”¹³ by above-mentioned co-authors explore the facts how BAT became a dominant monopoly of tobacco field in Uzbekistan. Besides that, Shukurov, Shukhrat U., and Konstantin S. Krasovsky on “Impact of cigarette taxation policy on excise revenues and cigarette consumption in Uzbekistan”¹⁴ reveals the significant issues of tobacco tax policy and discusses the rate of tobacco use in Uzbekistan.

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¹¹ Gilmore, Anna B., Jeff Collin, and Martin McKee. "Public health: British American Tobacco's erosion of health legislation in Uzbekistan." *BMJ: British Medical Journal* 332.7537 (2006): 355.

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¹³ Gilmore, Anna B., Martin McKee, and Jeff Collin. "The invisible hand: how British American Tobacco precluded competition in Uzbekistan." *Tobacco Control* 16.4 (2007): 239-247.

¹⁴ Shukurov, Shukhrat U., and Konstantin S. Krasovsky. "Impact of cigarette taxation policy on excise revenues and cigarette consumption in Uzbekistan." *Tobacco Control and Public Health in Eastern Europe* 3.1 (2013): 5-16.

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