

## **ANALYSIS OF THE BAT DOCUMENT TRANSMITTED TO ECOWAS MINISTERS OF HEALTH**

### **1. Regarding installation of the Group in West Africa to provide jobs and its restructuring**

Tobacco companies operate strategically to dominate regional and national markets including British American Tobacco (BAT). This foreign company settled in the West Africa sub-region to do business. It works by promoting templates that standardize operations and reduce production costs. Like all other tobacco companies, it increases its operating margin by streamlining its tobacco plants which it settles in a country in the sub-region that offers easy terms and a lower tax system allowing it to escape taxation in other countries and maximize profits.

But in reality this settlement is only intended to make more money. Strict measures were imposed to BAT in Northern countries and since then it has relocated part of its business in Africa. But the tobacco industry is actually a net destroyer of employment. A few years only after settling in Africa BAT admitted to have withdrawn from many West African countries to dominate ECOWAS. It proceeds by factorizing jobs (saving the number of jobs) in other parts of the West African sub-region. The company closed its factories in Benin where there were only 33 employees (not viable) and in Ghana which had only 180 employees (not viable either). BAT currently maintains its plant in Nigeria. BAT has a limited presence in all ECOWAS, with a very small team which organizes the relations of the Group mainly focusing on increasing its profit margin. It does not create thousands of jobs in other countries contrary to what it keeps on announcing each time (capital), particularly following its restructuring. But in reality the industry faces no crisis requiring rationalization / restructuring (increasing consumption / increasing tobacco culture). If BAT has been restructured it is also to use more machines than men (labor) and make profits. Independent investigations may confirm this. For example, in 2002 it announced it will create more than 1,000 jobs in a year, when launching its factory in Nigeria. This announcement was sponsored by Nigeria, but BAT actually never kept its promise. As a matter of fact, econometric studies show that the tobacco industry is a net destroyer of jobs<sup>2</sup>. BAT boasts about using a spectacular technology based on the use of automated machines. Another proof that it uses less labor. Tobacco is mainly used to draw off income in countries and profits are exported to finish in the pockets of the multinational's American and European shareholders.

The BAT factory located in Nigeria naturally does no transfer of skills and technologies in other ECOWAS countries, in which it just exports the finished product and therefore draws off revenue. Transfer of skills and technology and capacity building are near to zero, as the number of staff trained is insignificant relative to the mass of people employable in the West African labor market. BAT has a factory in Nigeria that works for all West and Central Africa. It uses very few and unskilled labor and produces millions of cigarettes a day. These data are confirmed by the small number of employees in the factory. Furthermore, it is indicated in a footnote of the BAT letter to ECOWAS States that the steering committee is composed of a British, a Lebanese and a Chilean. Not only BAT is a totally foreign company but there is no African in the top management and the argument of the transfer of skills and the fact that BAT is a truly African company is widely exaggerated. In Nigeria, the BAT Group holds 60% of parts of the factory and the other 40% goes to the State. The group then remains exclusive owner of BAT in Nigeria. Another misleading strategy used by the industry to position itself in our developing countries.

Conclusion, the benefits of BAT are not destined to West Africa, they are instead reversed to its foreign stakeholders.

### **2. Impact of tobacco control in West Africa on the Tobacco industry activities in general and BAT in particular**

As a reminder, the Convention and its protocols have the main objective of protecting present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for setting implementation of control measures by the Parties at the national, regional and international levels to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke. "

Consultations of the Parties to the UN Framework Convention (FCTC) with CRES, WHO and other relevant partners, contribute to the implementation of one of the legal requirements of FCTC without hindering policy makers' ability to decide. ECOWAS countries, to achieve the objective of the Convention and its protocols and to implement its provisions, also implement FCTC Article 4.2. which recommends the need for strong political commitment to develop and support comprehensive multisectoral measures and coordinated actions at the national, regional and international levels "among others.

As a reminder, CRES is a research center / think tank entirely African, founded and directed by African researchers and teachers and completely independent. It initiated a research project on tobacco taxation in cooperation with 14 African research centers run by local researchers. These research centers, unlike foreign

tobacco industries which sell harmful products have no reason to have African policymakers take measures contrary to the interests of the countries they represent.

Financing of the CRES taxation project in West Africa is provided by donors solicited in order to obtain funding for its implementation. Foreign funding is in all public sectors in Africa (education, health, infrastructure etc.) and it does not call into questions the sovereignty of African states.

Research shows that taxation is the most effective way to reduce consumption among the lower income groups and prevent young people from starting to smoke. The more taxes are high, the more they help contain the spread of smoking. A 10 per cent increase in tobacco price leads to an 8 per cent decrease in consumption in low-income or middle income countries without affecting States incomes.

The FCTC is an agreement which aims at implementing tobacco control measures and includes measures to reduce the demand and supply for objective public health reasons. When BAT states that tax increases could have a "negative impact" on its activities, it is a way of recognizing the effectiveness of tax increases as a means to fight smoking. The purpose of these increases is precisely to control smoking faced with population growth and the potential growth in smoking related diseases. And it will not be possible to reduce smoking if BAT and all tobacco industries were allowed to operate freely. This is why from the first paragraph of the Preamble to the FCTC, Parties stipulate that "they are determined to give priority to their right to protect public health. "The FCTC, then sets the new rules contained in the "Political Declaration of the High-level Meeting of the General Assembly on the prevention and control of non communicable diseases "adopted by the UN General Assembly in September 2011 in which all ECOWAS and UEMOA States have agreed (see [http://www.un.org/fr/documents/view\\_doc.asp?symbol=A/66/L.1](http://www.un.org/fr/documents/view_doc.asp?symbol=A/66/L.1) ). In point 38 the States also recognize unequivocally that "there is a fundamental conflict of interest between the tobacco industry and public health "that needs to be solved refusing the industry interference while drafting tobacco control policies including when taking fiscal measures.

### 3. BAT forecasts an increase in smuggling in ECOWAS countries

Regarding the relationship between price increases and tobacco smuggling, the reality is different from that presented by BAT. BAT in particular and the tobacco industry in general interfere in policies intending to regulate them to make them ineffective. According to figures from a study on smuggling in Europe, commissioned by Philip Morris (tobacco industry) (KPMG study, an international firm) It appears that: 1) **Smuggling is generally more intense in countries where tobacco taxes are the lowest and where the presence of the tobacco industry is strong;** 2) **if we look at the evolution of smuggling in Europe over the past 12 years, it has declined as prices have increased.** Lawsuits of the European Union against the tobacco companies have greatly contributed to the decline of smuggling, since the companies were accused of organizing smuggling. These actions were concluded by large fines imposed on the companies and strict rules controlling market supply by the tobacco industry.

Parties to the FCTC also negotiated a protocol on illicit tobacco trade. This protocol aims at "eliminating all forms of illicit tobacco trade, according to Article 15 of the WHO Framework Convention on Tobacco Control. This is an **elimination objective and not control**. And all the fallacious arguments advanced by the tobacco industry on illicit tobacco trade will be swept away by the ECOWAS countries that will ratify and implement the Protocol on Illicit Trade of tobacco products that was developed after the adoption of the FCTC.

The industry offends the ECOWAS countries in advancing well-known myths to which ECOWAS countries are now used to:

- "The annual review of taxes will create legislative inflation" but in reality the revision of taxes will not create legislative inflation because it does not require annual adoption by Parliament, since it is expected that the annual increase of taxation levels is directly indexed to the inflation rate and GDP in order to take into account the standard of living of the smoker.
- The increase in specific taxes on tobacco does not increase tobacco smuggling in the proportions that the tobacco industry indicates. As a reminder, BAT in Canada **has escaped a criminal conviction by pleading guilty and accepting to pay a fine of 1.15 billion Canadian dollars**<sup>4</sup>.

### What are the reasons for BAT to do so?

It has been demonstrated that the main causes of illicit trade are corruption, lack of strict border controls and the existence of criminal networks that use different ways than those established by the States. For example, the very high smuggling rate in Guinea Bissau. Taxes represent only 18% of the price of a pack of cigarettes in Guinea Bissau while 85% of cigarettes consumed in the country are smuggled. In contrast, the Gambia which taxes up to 62% records only 14% of smuggling cigarettes sold in the countries. If low tax rates enable to protect from

illegal trade, there would currently be no smuggling in our countries. The solution is rather to try to strengthen the border control, fight corruption and to ensure that strong penalties are applied to offenders who use different means than those established by the States.

Smugglers target minors with their products as the legal tobacco industry itself. A trial of Afrique Contre le Tabac against the tobacco industry has brought evidence, with advertisements, distribution of free samples regardless of age, and event sponsorship involving minors, and the funding of certain activities in the framework of their so-called "corporate social responsibility (CSR)"<sup>11</sup>. It is also important to remind that, so far, the tobacco industry in Africa refused to disclose the full list of components of their products and all products have doubtful composition like smuggling cigarettes.

The tobacco industry in the world is known to be involved in organizing the smuggling of tobacco. The article in "Le Temps de Genève" shows that the tobacco industry itself is no stranger to crime linked to smuggling and the best way to fight this crime is to fight tobacco<sup>12</sup>. In West Africa, tobacco smugglers are the very ones that are actually hunted for terrorism<sup>8,9</sup>. Their main source of supply in smuggling tobacco remains the tobacco industry itself in the form of organized smuggling of transit from some countries in West Africa to other countries of the same region and to other parts of Africa<sup>10</sup>.

#### **4. Violation of EU, ECOWAS and UEMOA community regulations and trade policies and WTO rules**

The ECOWAS countries have made no reservations upon ratification of the FCTC and as such committed to implement it on the whole. To implement FCTC, ECOWAS countries are individually trying to harmonize their tax provisions to enable them to fulfill their obligations. To allow this, ECOWAS has proposed and remove barriers and promote the adoption of a new excise tax on tobacco at community level. This approach consisting in developing a new guideline was adopted following a recommendation of a workshop held in Ouagadougou, where all Ministries of Finance were represented and UEMOA and ECOWAS have shown the procedure to be followed for effective change in tobacco taxation in the region. It therefore appears that this proposal of Guideline, is the result of joint discussions involving national and regional administrations, in all sovereignty. The tobacco industry opposes to this ECOWAS approach and argues that ECOWAS violates community texts. Similarly increasing taxes to levels that protect ECOWAS populations does not violate rules of international trade settled by the WTO. Furthermore, other countries that have ratified WTO conventions have made changes in the types of taxation and do not always practice ad valorem taxation or practice the two forms of taxation (ad valorem and specific). ECOWAS would not be the first to establish new guidelines in the interest of its member States. In Europe several EEC countries have specific taxes on tobacco at very high rates to protect their populations. This also happened in other countries. This argument is curious and shows that BAT did not truly analyze ECOWAS community texts or deliberately made a wrong analysis deliberately to deceive ECOWAS actors.

Through this attack, BAT only intends to prevent or delay the implementation of a universal provision accepted by ECOWAS member countries in the framework of FCTC. BAT places itself as upholder of the law to sponsor its own interests but this attack against a mechanism under the FCTC, the first international treaty under the auspices of WHO is a violation of Article 5.3 of the FCTC and interference of the tobacco industry in national and regional policies against smoking. It is known that, in the past, systematically, and without a single exception, every opportunity offered to the tobacco industry to participate in such a debate was used by the latter to misinform, to try to torpedo, to denigrate the process or intimidate representatives of public health. This is one of the reasons why the FCTC requires exclusion of the tobacco industry in such a debate. On the other hand, the tobacco industry is part of the problem; it does not and cannot be part of the solution: mosquitoes cannot be invited to discuss the fight against malaria.

#### **5. Tobacco control based solely on tax increase**

ECOWAS held the 55th session of commerce, customs and free movement technical committee, on 10 and 11 July, 2014 in Ouagadougou, Burkina - Faso for the review and validation of the guideline project on harmonization of excise duties on tobacco products in its member States. UEMOA also held its first meeting of the technical working group on Tobacco taxation in UEMOA space on 23 and 25 July 2014 still in Ouagadougou, Burkina - Faso.

But at no time, tobacco control in the world in general and in **ECOWAS in particular was only based on tax increase**. Raising tobacco tax is the most effective measure, but tobacco control is based on evidence-based, overall and practical public health measures. In the case of ECOWAS countries there are consistent policies and plans against smoking aligned with the FCTC. The reforms undertaken by the Ministries of Finance have always been under the Ministry of Finance and continue to be. With this letter to the countries, BAT attempts to part the ECOWAS policy into waterproof compartments without links between them, thus minimizing the potential for multi-sectoral cooperation for optimizing policies. The priority for BAT is to prevent the tobacco tax policy to achieve public health goals as outlined in the FCTC. BAT conceives this policy as a way to maximize its own profits. Thus, the "Political Declaration of the High-level Meeting of the General Assembly on the prevention and control of noncommunicable diseases" admits in paragraph 36 that "effective prevention and control of NCDs require government impulse and multisectoral approach

for health, including taking into account, as appropriate, health issues in all policies, and a coordinated approach of all public actors in areas such as, health, education, energy, agriculture, sports, transport, communications, urban planning, environment, labor, employment, industry and trade, finance and social and economic development. " Finance have always been under the Ministry of Finance and continue to be. For this letter to the country, BAT attempts to partition the ECOWAS policy into watertight compartments without links between them, thus minimizing the potential for multi-sectoral cooperation for optimizing policies. The priority for BAT is to prevent the tobacco tax policy can achieve public health goals as outlined in the FCTC. BAT conceives this policy as a way to maximize its own profits. Thus, the Political Declaration "Political Declaration of the High-level Meeting of the General Assembly on the prevention and control of noncommunicable diseases transmitted, "admits in paragraph 36 that" effective prevention and control NCDs require government impetus and approach multisectoral for health, including taking into account, as appropriate, health issues in all policies, and a coordinated approach to all public in areas such as, in particular, health, education, energy, agriculture, sports, transport, communications, urban planning, environment, labor, employment, industry and trade, finance and social and economic development. "

Many countries have conducted a needs assessment and comprehensive as well as multisectoral measures are being implemented including but not limited to:

- Policies for tobacco control according to people's aspirations;
- National health development plans taking into account non-communicable diseases in general, including tobacco, which is the main factor;
- National strategic plans for tobacco control regularly evaluated and adjusted;
- Legislation for Tobacco Control and implementing regulations in accordance with the FCTC.

The real reason is that the tobacco industry in general and BAT in particular does not want to give States the largest share of tobacco-related revenue it currently pockets and only a tax increase can enable States to recover.

These tobacco control measures include measures relating to smoking banning in public places, regulation on cigarette packets, information, Education, awareness raising and training, a comprehensive ban on advertising, giving up measures, the fight against illicit tobacco trade, prohibition of sale to minors minors and by minors, economically viable alternatives to replace the culture and sale of tobacco etc. Some measures are national and others are sub-regional such as taxation measures which depend on ECOWAS and UEMOA community guidelines.

We congratulate all ECOWAS and UEMOA members for ongoing process and urge these countries to move quickly to the direction recommended by WHO and to adopt quickly the draft guideline on the harmonization of excise duties on tobacco products in West Africa of FCTC Africa lost more than 5.2 million lives due to smoking and the death clock continues to run (see [www.otaf.info](http://www.otaf.info) clock).

BAT has an obligation to contribute to the collection of taxes on tobacco products. But a useful tax is a tax on wealth creation, in order to share the benefits with society. Taxes on tobacco are not associated with the creation of wealth, but rather are related to an addiction to a highly harmful product and that creates poverty to those who are the victims, their families, their communities and the State. These taxes could be justified only if they have an effect on public health - and for them to have such an effect, they must be very high.

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