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HUMAN RIGHTS VIOLATIONS BY TOBACCO MULTINATIONALS

in Switzerland and Around the World

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1. PURPOSE OF THIS REPORT

This report will examine Swiss public health policies and progress in tobacco control in light of Switzerland's human rights obligations. The report will also scrutinize how the tobacco industry uses the notion of human rights to advance its commercial interests and undermine public health in Switzerland. The report will assess the human consequences resulting from government and corporate actions, incorporating insights from experts in law, health, and human rights.

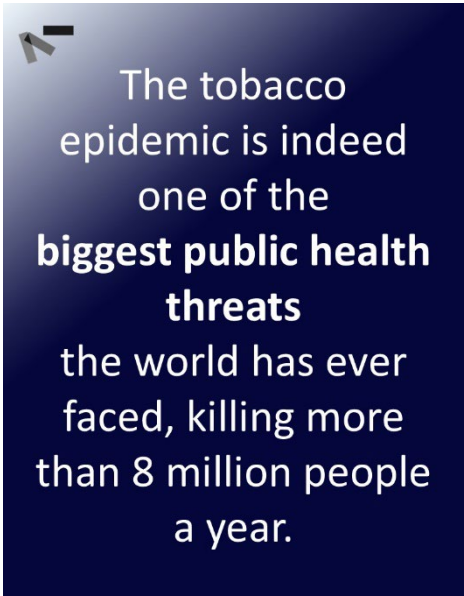
2. THE PROBLEM

2.1. GLOBAL

2.1.1. THE TOBACCO EPIDEMIC AND ITS GLOBAL PUBLIC HEALTH CONSEQUENCES

In the Preamble of the Framework Convention on Tobacco Control (FCTC), the world's first global public health treaty, the Parties to the World Health Organization (WHO) treaty recognize that "the spread of the tobacco epidemic is a global problem with serious consequences for public health." The Parties also express the concern of the international community "about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke."¹ The tobacco epidemic is indeed one of the biggest public health threats the world has ever faced, killing more than 8 million people a year². Tobacco use is the leading *preventable* cause of death in the world.³ At the turn of the last century, it was estimated that, without drastic action, the total tobacco deaths in the 21st century could surpass one billion, ten times the toll of tobacco in the 20th century.⁴

Smoking tobacco causes "exposure to a lethal mixture of more than 7,000 toxic chemicals, including at least 70 known carcinogens that can damage nearly every organ system in



The tobacco epidemic is indeed one of the **biggest public health threats** the world has ever faced, killing more than 8 million people a year.

¹ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control*. <https://fctc.who.int/publications/i/item/9241591013>, consulted on 17th September 2024.

² World Health Organization. 2023. *Tobacco*. <https://www.who.int/news-room/fact-sheets/detail/tobacco>, consulted on 17th September 2024.

³ Tobacco Atlas. 2022. *Health Effects*. <https://tobaccoatlas.org/challenges/health-effects/>, consulted on 17th September 2024.

⁴ Jha P, Chaloupka FJ. The economics of global tobacco control. *BMJ*. 2000 Aug 5;321(7257):358-61. <https://doi.org/10.1136/bmj.321.7257.358>

the human body.”⁵ Approximately one quarter of productive years of life lost to disability are due to tobacco-attributable diseases.⁶ A lifetime of smoking subtracts an average of 10 years from a person’s life.”⁷ Harms from tobacco begin before birth, as pregnant people who smoke give birth to infants at higher risk of congenital disorders, cancer, lung diseases, low birth weight, and sudden death.”⁸

Tobacco is also responsible for substantial economic loss. A study published in 2016 by WHO experts estimated the total global cost of tobacco use (from health expenditures and productivity losses together) at \$1.436 trillion (1.407 CHF at the current exchange rate) at purchasing power parity, about 1.8% of global GDP.⁹ Tobacco also exacerbates poverty, economic inequality, and food insecurity at the personal and family levels, reducing resources available for health care, education and food.¹⁰

2.1.2. AN INDUSTRY-CAUSED DISEASE

The relative failure of the global public health community to curtail the tobacco epidemic compared to other health threats, such as infectious diseases, can be largely attributed to the tobacco industry, which continues to wield enormous political and financial power. As a 2000 WHO report put it: "Tobacco use is unlike other threats to global health. Infectious diseases do not employ multinational public relations firms. There are no front groups to promote the spread of cholera. Mosquitoes have no lobbyists.”¹¹ Unlike some other industries whose products cause disease, such as the food and beverage industries, which could theoretically find common ground with public health concerns, there “is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests.”¹²

Unlike some other industries whose products cause disease, such as the food and beverage industries, which could theoretically find common ground with public health concerns, there “is a **fundamental and irreconcilable conflict** between the tobacco industry’s interests and public health policy interests.”

The tobacco industry understands this irreconcilable conflict between public health and its products and commits significant resources to counter public health efforts. As a Philip Morris executive said in an internal meeting in 1995:

⁵ Tobacco Atlas. 2022. *Health Effects* <https://tobaccoatlas.org/challenges/health-effects/>, consulted on 17th September 2024.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Goodchild M, Nargis N, Tursan d'Espaignet E. Global economic cost of smoking-attributable diseases. *Tobacco Control*. 2018 Jan;27(1):58-64. doi: [10.1136/tobaccocontrol-2016-053305](https://doi.org/10.1136/tobaccocontrol-2016-053305), consulted on 17th September 2024.

¹⁰ Efroymsen D, Ahmed S, Townsend J, Alam SM, Dey AR, Saha R, Dhar B, Sujon AI, Ahmed KU, Rahman O. Hungry for tobacco: an analysis of the economic impact of tobacco consumption on the poor in Bangladesh. *Tobacco Control*. 2001 Sep;10(3):212-7. doi: [10.1136/tc.10.3.212](https://doi.org/10.1136/tc.10.3.212)

¹¹ World Health Organization. July 2000. *Report of the Committee of Experts on Tobacco Industry Documents July 2000*. Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization, https://iris.who.int/bitstream/handle/10665/67429/67429_eng.pdf?sequence=1, consulted on 17th September 2024.

¹² WHO Framework Convention on Tobacco Control, *FCTC Guidelines for the Implementation of Article 5.3, Principle 1*. <https://fctc.who.int/publications/m/item/guidelines-for-implementation-of-article-5.3>, consulted on 17th September 2024.

"[...] our goal is to help shape regulatory environments that enable our businesses to achieve their objectives in all locations where we do business. Our overall approach to the issues is to fight aggressively with all available resources, against any attempt, from any quarter, to diminish our ability to manufacture our products efficiently, and market them effectively... In short, we are very clear about our objective—an unyielding and aggressive defence of our rights to make and sell our products."¹³

The tobacco industry employs a plethora of tactics to stop, delay, and weaken policies meant to reduce tobacco use, including direct lobbying, front groups, public relations campaigns, funding political campaigns,¹⁴ placing tobacco industry representation on Party delegations to FCTC meetings (potentially violating international law),¹⁵ manipulation of scientific research,¹⁶ corporate social responsibility endeavors,¹⁷ smuggling,¹⁸ and bribery.¹⁹ A United States federal court has convicted the tobacco industry as "racketeers."²⁰

The tobacco epidemic is an industry-caused disease, and no solution can be expected without confronting the industry as well as its products. The tobacco epidemic began in the 19th century with the invention of the cigarette rolling machine and the subsequent commercialization of cheap, mass market cigarettes.²¹ Traditional or ceremonial use by Native Americans never constituted a public health threat, and the threat from tobacco consumption in the form of cigars, snuff, and pipes was minimal. The history of lung cancer is illustrative of this point. "Lung cancer was not even recognised medically until the 18th century, and as recently as 1900 only about 140 cases were known in the published medical literature."²² A hundred years ago, lung cancer was a reportable disease, and it is now the most common cause of death from cancer.²³

¹³ Parrish S, Remarks by Steve Parrish, Senior Vice President, Worldwide Regulatory Affairs Philip Morris Companies INC. Worldwide Regulatory Affairs Issues Review, Prospects, and Plans, Philip Morris Board of Directors Sea Island Retreat, Sea Island, Georgia.

<https://www.industrydocuments.ucsf.edu/docs/rjbd0024>

¹⁴ Luke DA, Krauss M. Where there's smoke there's money: tobacco industry campaign contributions and U.S. Congressional voting. *American journal of preventive medicine*. 2004 Dec;27(5):363-72. doi: [10.1016/j.amepre.2004.08.014](https://doi.org/10.1016/j.amepre.2004.08.014)

¹⁵ SEATCA, Tobacco Industry Interference in in ASEAN Countries.

https://seatca.org/dmdocuments/SEATCA%20Tobacco%20Industry%20Interference%20in%20Tobacco%20Tax%20Policies_FINAL.pdf

¹⁶ Bero LA. Tobacco industry manipulation of research. *Public health reports*. 2005 Mar-Apr;120(2):200-8. doi: [10.1177/003335490512000215](https://doi.org/10.1177/003335490512000215)

¹⁷ Yadav A, Lal P, Sharma R, Pandey A, Singh RJ. Tobacco industry corporate social responsibility activities amid COVID-19 pandemic in India. *Tobacco Control*. 2022 Nov;31(6):777-780. doi: [10.1136/tobaccocontrol-2020-056419](https://doi.org/10.1136/tobaccocontrol-2020-056419)

¹⁸ Campaign for Tobacco Free Kids. *Illegal Pathways to Illegal Profits*.

https://assets.tobaccofreekids.org/global/pdfs/en/Illegal_profits_to_illicit_profit_en.pdf

¹⁹ Connett, D. December 2015. British American Tobacco 'bribed' Kenyan Politician to Stop Action against Cigarette Smuggling. *The Independent*. www.independent.co.uk/news/uk/crime/british-american-tobacco-bribed-kenyan-politician-martha-karua-to-stop-action-against-cigarette-smuggling-a6779236.html, consulted on 17th September 2024.

²⁰ Public Health Law Center. Oct 2017. *Everything You Ever Wanted to Know about U.S. v. Philip Morris But Were Afraid to Ask* www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-DOJ-litigation-overview-2015.pdf

²¹ Brandt AM. 2007. *The Cigarette Century: The Rise, Fall, and Deadly Persistence of the Product That Defined America*. Basic Books, New York.


²² Proctor RN. The history of the discovery of the cigarette-lung cancer link: evidentiary traditions, corporate denial, global toll. *Tobacco Control*. 2012 Mar;21(2):87-91. doi: [10.1136/tobaccocontrol-2011-050338](https://doi.org/10.1136/tobaccocontrol-2011-050338)

²³ Spiro SG, Silvestri GA. One hundred years of lung cancer. *American journal of respiratory and critical care medicine*. 2005 Sep 1;172(5):523-9. doi: [10.1164/rccm.200504-531OE](https://doi.org/10.1164/rccm.200504-531OE)

2.1.3. TOBACCO AS A CAUSE AND AGGRAVATING FACTOR OF INEQUITIES

The harms caused by tobacco commerce are not spread uniformly. On the global level, the vast majority of people who smoke reside in low- and middle-income countries; in fact, around 80% of the world's 1.3 billion tobacco users live in low- and middle-income countries.²⁴ The tobacco industry uses predatory marketing to target indigenous people,²⁵ racial minorities,²⁶ and the LGBT population.²⁷ In most countries, tobacco addiction has become a disease of the poor and the marginalized.²⁸

In Switzerland, where 26% of the adult population smokes,²⁹ this trend holds true. "In 2017, 30.1% of people whose highest level of education completed was upper secondary level smoked. This was 7 percentage points more than people who had completed tertiary level education."³⁰ In addition, "31.7% of foreign nationals smoked, which is also higher than Swiss nationals (25.7%)."³¹ At all levels, tobacco contributes greatly to health, social and economic inequities. The imbalance in tobacco use is not purely coincidental. The tobacco industry has recognized for decades that marginalized groups are profitable targets.³²



At all levels, tobacco contributes greatly to health, social and economic inequities.

THE IMBALANCE IN TOBACCO USE IS NOT PURELY COINCIDENTAL.

The tobacco industry has recognized **for decades** that marginalized groups are profitable targets.

²⁴World Health Organization. 2023. Tobacco. <https://www.who.int/news-room/fact-sheets/detail/tobacco>, consulted on 17th September 2024.

²⁵ Waa A, Maddox R, Nez Henderson P. Big tobacco using Trojan horse tactics to exploit Indigenous peoples. *Tobacco Control*. 2020 Dec;29(e1):e132-e133. doi: [10.1136/tobaccocontrol-2020-055766](https://doi.org/10.1136/tobaccocontrol-2020-055766)

²⁶Yerger VB, Przewoznik J, Malone RE. Racialized geography, corporate activity, and health disparities: tobacco industry targeting of inner cities. *Journal of Health Care for the Poor and Underserved*. 2007 Nov;18(4 Suppl):10-38. doi: [10.1353/hpu.2007.0120](https://doi.org/10.1353/hpu.2007.0120)

²⁷Harlow AF, Lundberg D, Raifman JR, Tan ASL, Streed CG Jr, Benjamin EJ, Stokes AC. Association of Coming Out as Lesbian, Gay, and Bisexual+ and Risk of Cigarette Smoking in a Nationally Representative Sample of Youth and Young Adults. *JAMA Pediatrics*. 2021 Jan 1;175(1):56-63. doi: [10.1001/jamapediatrics.2020.3565](https://doi.org/10.1001/jamapediatrics.2020.3565)

²⁸ Hitchman SC, Fong GT, Zanna MP, Thrasher JF, Chung-Hall J, Siahpush M. Socioeconomic status and smokers' number of smoking friends: findings from the International Tobacco Control (ITC) Four Country Survey. *Drug and alcohol dependence*. 2014 Oct 1;143:158-66. doi: [10.1016/j.drugalcdep.2014.07.019](https://doi.org/10.1016/j.drugalcdep.2014.07.019)

²⁹ Tobacco Atlas. Switzerland. <https://tobaccoatlas.org/factsheets/switzerland/>, consulted on 17th September 2024.

³⁰ Swiss Health Observatory. Tobacco Consumption (Age: 15+). <https://ind.obsan.admin.ch/en/indicator/monam/tobacco-consumption-age-15>, consulted on 17th September 2024.


³¹ *Ibid*.

³² Sheffer CE, Williams JM, Erwin DO, Smith PH, Carl E, Ostroff JS. Tobacco-Related Disparities Viewed Through the Lens of Intersectionality. *Nicotine and Tobacco Research*. 2022 Feb 1;24(2):285-288. doi: [10.1093/ntr/ntab193](https://doi.org/10.1093/ntr/ntab193)

2.1.4. THE IMPACT OF THE TOBACCO INDUSTRY AND ITS PRODUCTS ON ADOLESCENTS AND YOUTH

Research suggests that nicotine may have a deleterious impact on brain development in adolescents.³³ It is well documented that the tobacco industry targets adolescents and youth,^{34, 35} whom they see as “replacement smokers,”³⁶ and that most adults who smoke started as children.³⁷ Children lack the capacity to consent to nicotine addiction, and depend on adults, including the State, for protection.

In a case brought by the US Department of Justice against the main tobacco multinational companies operating in the United States (including British American Tobacco, Philip Morris, R.J. Reynolds), a US federal court concluded:



It is well documented that the tobacco industry targets adolescents and youth, whom they see as “replacement smokers”, and that most adults who smoke started as children.

“Defendants [the tobacco companies] engaged in coordinated activity in order to protect their ability to recruit new, youth smokers through cigarette marketing, often utilizing the same joint organizations that were initially created to carry out deceptive public relations campaigns related to disease risks. In order to protect each company’s ability to continue to market to the teenagers who are of such vital importance to their continued survival as older smokers quit or die, Defendants have continually represented to the public, both through the Tobacco Institute and individually, that they do not market to youth, that their marketing is only aimed at adult smokers, and that their marketing has no impact on youth smoking. These public statements are false and misleading and have been made to further the Enterprise’s overall objective of maximizing Defendants’ profits from the sale of cigarettes.

Defendants’ fraudulent statements stem from their recognition, contained in internal documents written for decades, that new teenage smokers were essential to their continued profitability.”³⁸

The federal court established that the tobacco companies had engaged in multiple fraudulent activities, notably by aggressively targeting adolescents in their marketing. The court also came to the conclusion that these companies had not changed and were likely to continue their misdeeds. The court observed:

³³ Dai HD, Doucet GE, Wang Y, Puga T, Samson K, Xiao P, Khan AS. Longitudinal Assessments of Neurocognitive Performance and Brain Structure Associated With Initiation of Tobacco Use in Children, 2016 to 2021. *JAMA Network Open*. 2022 Aug 1;5(8):e2225991. doi: [10.1001/jamanetworkopen.2022.25991](https://doi.org/10.1001/jamanetworkopen.2022.25991)

³⁴ National Cancer Institute. June 2008. *The Role of the Media in Promoting and Reducing Tobacco Use*. Tobacco Control Monograph No. 19. U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. https://cancercontrol.cancer.gov/sites/default/files/2020-08/m19_complete.pdf

³⁵ *Ibid*.

³⁶ United States District Court for the District of Columbia. United States of America and Tobacco-Free Kids Action Fund, et al. v. Philip Morris USA, Inc., et al. Civil Action No. 99-2496 (GK). Amended Final Opinion, https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf

³⁷ Marcon A, Pesce G, et al. 2018. Ageing Lungs In European Cohorts study. Trends in smoking initiation in Europe over 40 years: A retrospective cohort study. *PLoS One*. 2018 Aug 22;13(8):e0201881. doi: [10.1371/journal.pone.0201881](https://doi.org/10.1371/journal.pone.0201881)

³⁸ United States District Court for the District of Columbia. United States of America and Tobacco-Free Kids Action Fund, et al. v. Philip Morris USA, Inc., et al. Civil Action No. 99-2496 (GK). Amended Final Opinion, https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf

"Defendants continue to engage in many practices which target youth, and deny that they do so. Despite the provisions of the MSA [Master Settlement Agreement], Defendants continue to track youth behavior and preferences and market to youth using imagery which appeals to the needs and desires of adolescents. Defendants are well aware that over eighty percent of adult smokers began smoking before the age of 18, and therefore know that securing the youth market is critical to their survival. There is therefore no reason, especially given their long history of denial and deceit, to trust their assurances that they will not continue committing RICO [Racketeer Influenced and Corrupt Organizations] violations denying their marketing to youth."³⁹

The court's decision to convict the tobacco companies for "racketeering" was upheld on appeal in 2009 and by the US Supreme Court in 2010.

2.1.5. THE ENVIRONMENTAL IMPACT OF TOBACCO

The product cycle of the commercial tobacco industry is a major contributor to environmental degradation. Every year the tobacco industry costs the world more than 600 million trees, 200 000 hectares of land, 22 billion tonnes of water and 84 million tonnes of CO₂.⁴⁰ This is a negative environmental impact equal to the combined footprint of several countries.⁴¹ Deforestation has several additional negative effects, including loss of biodiversity, soil erosion, and the pollution of soil and water.⁴² Leaf growing is chemical-intensive compared to other crops, requiring large amounts of pesticides, fertilizers and other chemicals which further pollute soil and water.⁴³ Tobacco plants also deplete soil nutrients faster than many other crops.⁴⁴

Tobacco manufacturing produces millions of tons of solid and chemical waste.⁴⁵ Much of this waste is toxic, containing many of the chemicals that cause health damage when consumed as well as other chemicals specific to production.⁴⁶ Tobacco product transport and distribution are also responsible for significant greenhouse gas emissions.⁴⁷

Tobacco leaf growing also exacerbates food insecurity among populations already at risk. Approximately 4.5 million hectares – about 1% of global arable land – is devoted to tobacco growing.⁴⁸ But the proportion is much higher in certain low- and middle-income countries where food scarcity is acute.⁴⁹ The chemical runoff from tobacco farms can also damage the soil of remaining land used for food agriculture, and land that is switched from tobacco to food is often depleted of nutrients and contaminated with chemicals used in tobacco cultivation.⁵⁰

³⁹ *Ibid*, pages 1605-1606.

⁴⁰ World Health Organization. 2022. *Tobacco: poisoning our planet*. <https://www.who.int/publications/i/item/9789240051287>, consulted on 17th September 2024.

⁴¹ ASH UK. *Tobacco and the Environment*. <https://ash.org.uk/resources/view/tobacco-and-the-environment>, consulted on 17th September 2024.

⁴² World Health Organization. 2022. *Tobacco: poisoning our planet*. <https://www.who.int/publications/i/item/9789240051287>, consulted on 17th September 2024.

⁴³ *Ibid*.

⁴⁴ *Ibid*.

⁴⁵ *Ibid*.

⁴⁶ *Ibid*.

⁴⁷ *Ibid*.

⁴⁸ *Ibid*.

⁴⁹ *Ibid*.

⁵⁰ *Ibid*.



Cigarette filters ARE THE MOST LITTERED ITEM In the world

Perhaps most troubling from a global standpoint, the tobacco sector produces large amounts of waste, including plastic waste. This includes trash from the product's entire life cycle, from plastic wrappers and electronic cigarette components to cigarette filters. Filters are particularly problematic, resulting in approximately 766.6 million kilograms of toxic trash each year.⁵¹ Cigarette filters are the most littered item in the world.⁵² About 4.5 trillion used filters – or butts – are littered annually. Filters are the most common plastic litter item on beaches, making marine ecosystems susceptible to microplastic leakages.⁵³ When ingested, the hazardous chemicals in microplastics cause long-term damage to marine life.⁵⁴ Electronic cigarettes are also a growing problem; many brands feature lithium-ion batteries encapsulated in single use plastic pods, and when disposed of improperly can “introduce plastic, nicotine salts, heavy metals, lead, and mercury into waterways, soil, and to wildlife.”⁵⁵

Toxins and carcinogens in cigarette butts constitute only part of the problem. Cigarette filters – which do nothing to mitigate the health damage to consumers⁵⁶ – are made from cellulose acetate, a plastic that breaks down into microplastic fibers.⁵⁷ Each filter contains approximately 15,000 plastic fibers, which find their way into both fresh and salt water.⁵⁸ Microplastic fibers have been shown to increase morbidity and mortality in aquatic life and can act as a transport for persistent organic pollutants (POPs), “toxic chemicals that adversely affect human health and the environment around the world.”⁵⁹ Studies have also shown that plastic fibers from cigarettes increase damage to lungs caused by smoking.⁶⁰

Plastic from tobacco waste is particularly harmful to the environments of developing small island states, which contribute almost nothing to tobacco product plastic waste pollution through either production or

⁵¹ United Nations Environment Programme. 2022. *UNEP, Secretariat of the WHO FCTC partner to combat microplastics in cigarettes*. <https://www.unep.org/technical-highlight/unep-secretariat-who-fctc-partner-combat-microplastics-cigarettes>, consulted on 17th September 2024.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Truth Initiative. *A toxic, plastic problem: E-cigarette waste and the environment*. <https://truthinitiative.org/research-resources/harmful-effects-tobacco/toxic-plastic-problem-e-cigarette-waste-and-environment>, consulted on 17th September 2024.

⁵⁶ Novotny TE, Hamzai L. Cellulose acetate cigarette filter is hazardous to human health. *Tobacco Control*. 2023 Apr 18;tc-2023-057925. doi: 10.1136/tc-2023-057925

⁵⁷ *Ibid.*

⁵⁸ Belzagui F, Buscio V, Gutiérrez-Bouzán C, Vilaseca M. Cigarette butts as a microfiber source with a microplastic level of concern. *Science of the Total Environment*. 2021 Mar 25;762:144165 <https://doi.org/10.1016/j.scitotenv.2020.144165>

⁵⁹ Ritter L, Solomon KR, et al. *Persistent organic pollutants*. 2001. United Nations Environment Programme. https://chm.pops.int/Portals/0/docs/from_old_website/documents/background/assessreport/en/ritteren.pdf

⁶⁰ Evans-Reeves K, Lauber K, Hiscock R. The 'filter fraud' persists: the tobacco industry is still using filters to suggest lower health risks while destroying the environment. *Tobacco Control*. 2022 Aug;31(e1):e80–e82. <https://doi.org/10.1136/tobaccocontrol-2020-056245>

consumption.⁶¹ Cigarette filters and other tobacco waste created elsewhere are borne by ocean currents to the beaches, mangroves, coral reefs, and other coastal areas of small islands, harming ecosystems, fisheries, and the tourism industry upon which many depend.⁶² Mitigation schemes are expensive and ineffective.⁶³

2.1.6. IRRECONCILABILITY BETWEEN THE TOBACCO BUSINESS AND HUMAN RIGHTS

Philip Morris International (PMI), whose operational headquarters are in Switzerland, submitted two reports in 2015⁶⁴ and 2016⁶⁵ to the United Nations Global Compact, in which the company reported on the “progress” it had made in the defense of human rights. A detailed examination of the reality of this company reveals a very different image from that which it attributes to itself. This examination is indicative of the radical incompatibility between human rights and the commercial activities of tobacco companies. This position has been recognized by the Global Compact itself when it excluded tobacco from its membership on September 12, 2017 stating that *“this decision recognizes that tobacco products are in direct conflict with UN goals, particularly with the right to public health, and undermines the achievement of SDG 3.”*⁶⁶



THE DANISH INSTITUTE FOR HUMAN RIGHTS CONCLUDED :
“There can be **no doubt** that the production and marketing of tobacco is **irreconcilable** with the human right to health.”

The UN Global Compact’s position is aligned with the views of human rights organizations, as in the same year, after ending a collaboration with Philip Morris International, the Danish Institute for Human Rights concluded that “there can be no doubt that the production and marketing of tobacco is irreconcilable with the human right to health.”⁶⁷

2.1.7. THE RESPONSIBILITY AND DUTIES OF GOVERNMENTS

Governments share responsibility for the ongoing tobacco epidemic. Proven public policy options such as tax increases, advertising bans, smoking bans in public places, and others are available to lessen and move

⁶¹ Samson, E. June 2023. *Plastic Pollution affecting Small Island Developing States (SIDS)*. OECD Forum. <https://www.oecd-forum.org/posts/plastic-pollution-affecting-small-island-developing-states-sids>, consulted on 17th September 2024.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Philip Morris International. 2015. *United Nations Global Compact Communication on Progress 2015* <https://unglobalcompact.org/participation/report/cop/active/245741>

⁶⁵ Philip Morris International. 2016. *Communication on Progress 2016 United Nations Global Compact*. <https://unglobalcompact.org/participation/report/cop/active/370961f>, consulted on 17th September 2024.


⁶⁶ United Nations Global Compact. *Frequently Asked Questions*. <https://unglobalcompact.org/about/faq>, consulted on 17th September 2024.

⁶⁷ The Danish Institute for Human Rights. 2017. *Human Rights assessment in Philip Morris International*. <https://www.humanrights.dk/news/human-rights-assessment-philip-morris-international>, consulted on 17th September 2024.

toward ending the tobacco epidemic, as illustrated in the FCTC and subsequent initiatives.⁶⁸ Many policy measures cost very little or even raise income, and all will result in substantial cost savings in the future.

The FCTC has 183 Parties.⁶⁹ Switzerland is not one of them. Despite Switzerland signed the FCTC in 2004, it's still not ratified. Some countries have made significant strides in implementing the FCTC's requirements. Most have implemented at least a few of the requirements. The 2021 global progress report on implementation of the WHO Framework Convention on Tobacco Control observed that "despite the progress, implementation challenges remain and they prevent the Convention from achieving its full impact," noting that "the most frequently mentioned implementation gap was the lack of financial resources, and the most frequently mentioned barrier was the interference by the tobacco industry, including the industries producing novel and emerging tobacco products and nicotine products."⁷⁰

There is no question of the sovereign right of nations to regulate an industry. Political will is the only necessity. Governments have more than the right to regulate or even ban tobacco commerce; they have a positive duty to do so based on human rights principles. The rights to life and health (as well as several other relevant rights) are deeply embedded in global human rights norms, including in treaties that Switzerland has ratified.⁷¹ Government obligations under human rights frameworks go further than simply refraining from harming rights. There is also a duty to protect against harms from third parties, including national and transnational corporations, at home and abroad.⁷²



**THE RIGHTS TO LIFE AND
HEALTH ARE DEEPLY
EMBEDDED IN HUMAN
RIGHTS NORMS,
including in treaties that
Switzerland has ratified.**

2.1.8. THE RUGGIE PRINCIPLES

The UN Guiding Principles on Business and Human Rights are a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations. They are sometimes also called the Ruggie principles, in honor of their drafter. They were proposed and drafted by UN Special Representative on business and human rights John Ruggie during his 2005-2011 mandate and endorsed by the UN Human Rights Council in June 2011.⁷³ The duty of governments to protect the rights of citizens has been well-documented, and is summarized in the Ruggie Principles' "Protect, Respect and Remedy" framework:

⁶⁸ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control*. <https://fctc.who.int/publications/i/item/9241591013>, consulted on 17th September 2024.

⁶⁹ World Health Organization. *WHO Framework Convention on Tobacco Control- Parties*. <https://fctc.who.int/who-fctc/overview/parties>, consulted on 17th September 2024.

⁷⁰ Asia Pacific Observatory on Health Systems and Policies. 2022. *2021 Global Progress Report*. <https://apo.who.int/publications/i/item/9789240041769>, consulted on 17th September 2024.

⁷¹ United Nations Human Rights Treaty Body Database. *Switzerland*. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Lang=en, consulted on 17th September 2024.

⁷² Krajewski, M. 2018. The state duty to protect against human rights violations through transnational business activities. *Deakin Law Review*, 23, 13–14. <https://search.informit.org/doi/10.3316/agispt.20190206006356>

⁷³ Business and Human Rights Resource Centre. *UN Guiding Principles*. <https://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/>, consulted on 17th September 2024.

- Protect: Governments have a duty to protect human rights
- Respect: Corporate entities have a duty to respect human rights
- Remedy: If human rights are violated, victims have a right to seek remedies⁷⁴

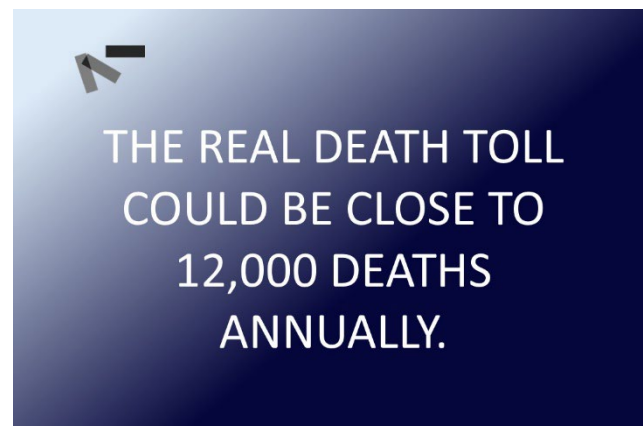
It could be argued that for a government to even allow the production and marketing of tobacco products violates human rights. As stated above, in its human rights assessment of Philip Morris International, the Danish Institute for Human Rights concluded:

"Tobacco is deeply harmful to human health, and there can be no doubt that the production and marketing of tobacco is irreconcilable with the human right to health. For the tobacco industry, the UNGPs [United Nations Guiding Principles on Business and Human Rights] therefore require the cessation of the production and marketing of tobacco."⁷⁵

2.2. SWITZERLAND

2.2.1. THE DEVASTATING PUBLIC HEALTH IMPACT OF TOBACCO IN SWITZERLAND

The impact of tobacco in Switzerland is devastating and exceeds, year after year, the consequence of the Covid-19 epidemic at its peak. According to official figures, the prevalence of smoking among Swiss over the age of 15 is 24%, significantly above the global average of 19.5%, though comparable to Europe as a whole.⁷⁶ About 9,500 deaths each year (one in seven) in Switzerland are attributable to tobacco.⁷⁷ There are, however, indications that these official



⁷⁴ Ruggie, J. 2011. *Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises: Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*. Netherlands Quarterly of Human Rights, 29(2), 224-253. <https://doi.org/10.1177/016934411102900206>

⁷⁵ The Danish Institute for Human Rights. 2017. *Human Rights assessment in Philip Morris International*. <https://www.humanrights.dk/news/human-rights-assessment-philip-morris-international>, consulted on 17th September 2024.

⁷⁶ Confédération suisse, Office fédéral de la santé publique OFSP. *Faits & chiffres: tabac*. <https://www.bag.admin.ch/bag/fr/home/zahlen-und-statistiken/zahlen-fakten-zu-sucht/zahlen-fakten-zu-tabak.html>, consulted on 17th September 2024.

⁷⁷ Mattli, R. et al. 2019. *Die Krankheitslast des Tabakkonsums in der Schweiz: Schätzung für 2015 und Prognose bis 2050*. Université des sciences appliquées de Zurich (ZHAW), Winterthur: Publication (in German). <https://ind.obsan.admin.ch/en/indicator/monam/tobacco-attributable-mortality>, consulted on 17th September 2024.

figures of smoking prevalence and tobacco-related mortality may be largely underestimated⁷⁸: the real death toll could be close to 12,000 deaths annually.⁷⁹

Tobacco consumption is also associated with a high morbidity in Switzerland. It can be estimated that over 400,000 people suffer from a chronic disease attributable to tobacco use (between 200,000 and 300,000 from COPD alone);⁸⁰ tobacco use accounts for 10% of the total disability-adjusted life years.⁸¹

In Switzerland, approximately 13% of pregnant women smoke, giving birth to more than 11,000 infants per year who are exposed to tobacco in utero.⁸² While this percentage has been consistent since the 2000s, the proportion of use of new tobacco and nicotine intake methods (electronic cigarettes, inhalation of heated tobacco, snuff or sucking tobacco) is increasing among pregnant women.⁸³

Annual direct medical costs for treating tobacco-induced diseases are about CHF 3 billion, roughly 4% of total medical costs.⁸⁴ The CHF 3 billion medical cost is made up of CHF 1.2 billion to treat smoking-related cancer, CHF 1 billion to treat smoking-related cardiovascular disease, and CHF 0.7 billion to treat smoking-related pulmonary and respiratory diseases. In addition, tobacco use in Switzerland adds a further CHF 2 billion to costs associated with disability and early death, bringing the total to CHF 5 billion.⁸⁵

2.2.2. ROLE OF SWITZERLAND IN THE TOBACCO EPIDEMIC

Switzerland plays a unique role in the tobacco epidemic and in the efforts to end it. While the Swiss government has a domestic obligation to protect the health of its own people, Switzerland also has not only ratified most of the binding UN Human Rights conventions [see section 4] but it is also the home of the United Nations human rights machinery, the UN Human Rights Council, the World Health Organization (WHO) and the Secretariat of the Framework Convention on Tobacco Control (FCTC).⁸⁶

⁷⁸ Jakob J, Cornuz J, Diethelm P. Prevalence of tobacco smoking in Switzerland: do reported numbers underestimate reality? *Swiss medical weekly*. 2017 May 11;147:w14437. doi: [10.4414/smww.2017.14437](https://doi.org/10.4414/smww.2017.14437)

⁷⁹ Diethelm P, Humair JP. La prévalence du tabagisme en Suisse est très largement sous-estimée par les statistiques officielles. *Revue Medicale Suisse*. 2018 Jun 6;14(610):1201. (in French) <https://doi.org/10.53738/REVMED.2018.14.610.1201>

⁸⁰ Buess, M, Schilter, D et al. Treatment of COPD Exacerbation in Switzerland: Results and Recommendations of the European COPD Audit. *Respiration*. 2017;94(4):355–365. <https://doi.org/10.1159/000477911>

⁸¹ Mattli, R. et al. Die Krankheitslast des Tabakkonsums in der Schweiz: Schätzung für 2015 und Prognose bis 2050. Universität des sciences appliquées de Zurich (ZHAW), 2019. Winterthur., <https://www.addictionsuisse.ch/wp-content/uploads/2023/01/die-krankheitslast-des-tabakkonsums-in-der-schweiz-schaetzung-fuer-2015-und-prognose-bis-2050.pdf> (See also Mattli R, Farcher R, et al. The burden of smoking in Switzerland: Estimation for 2015 and prognosis until 2050. *Tobacco Prevention & Cessation*. 2020;6(Supplement):A35. doi:10.18332/tpc/128412.)

⁸² Colomb, C., Blanchon, S., et al. 2020. Fumée de tabac, cigarette électronique et dérivés nicotiniques pendant la grossesse : le point de la situation. *Revue Medicale Suisse*, 16, no. 682, 357–360. <https://doi.org/10.53738/REVMED.2020.16.682.0357>

⁸³ Ibid.

⁸⁴ Le News. 2019. Tobacco use costs Switzerland 5 billion francs a year. *Le News*. <https://web.archive.org/web/20240827085422/https://lenews.ch/2019/09/12/tobacco-consumption-costs-switzerland-5-billion-francs-a-year/>, consulted on 18th September 2024.

⁸⁵ Ibid.

⁸⁶ United Nations Human Rights Treaty Body Database. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Lang=en, consulted on 17th September 2024.

In addition, Switzerland is home to the headquarters of two of the four biggest multinational tobacco companies; Philip Morris International (PMI) and Japan Tobacco International (JTI).⁸⁷ JTI's headquarters is less than 200 meters from the Palais des Nations, and less than a mile from the WHO headquarters (which houses the FCTC Secretariat). British American Tobacco (BAT) also has a presence, with a large tobacco factory in Boncourt that closed at the end of 2023.⁸⁸ The interrelationship between the Swiss government and the tobacco industry has profound effects on the global epidemic. When it comes to tobacco, what happens in Switzerland impacts the world.

2.2.3. SWITZERLAND'S TOBACCO POLICY OBLIGATIONS DERIVED FROM ITS SIGNATURE OF THE FCTC

Switzerland's obligations for tobacco control policy under human rights law are reinforced by its signature of the FCTC on June 2004.⁸⁹ According to Article 18 of the Vienna Convention on the Law of Treaties (to which Switzerland is a Party) signatories have an "obligation not to defeat the object and purpose of a treaty prior to its entry into force."⁹⁰ The Vienna Convention also stipulates that a signature indicates an intention to ratify. The obligation "not to defeat the object and purpose" remains until Switzerland makes "its intention clear not to become a party to the treaty."⁹¹

FCTC Article 5.3 and its Guidelines for Implementation are particularly relevant to a discussion of Switzerland's role in global tobacco commerce. Article 5.3 codifies the conflict of interest between the tobacco industry and public health and recognizes the negative role played by the industry in policy formulation.⁹² As the host of two of the world's biggest transnational tobacco companies, Switzerland has a heightened duty to refrain from collaborating with, supporting, funding or granting special status to the tobacco industry, as any benefits accrued to the industry through such actions will have global impacts.



As the host of the two of the world's biggest transnational tobacco companies, Switzerland has a **heightened duty** to refrain from collaborating with, supporting, funding or granting special status to the tobacco industry, as any benefits accrued to the industry through such actions will have **GLOBAL IMPACTS**.

⁸⁷ JT International, *JTI in Switzerland*.

<http://web.archive.org/web/20240827090323/https://www.jti.com/europe/switzerland#:~:text=Switzerland%20is%20important%20for%20JTI,is%20based%20in%20Dagmersellen%2C%20Lucerne>

⁸⁸ Illien, Noelle, Shields, Michael et al. 2022. British American Tobacco closes Swiss plant, lays off 226. *Reuters*.

<https://web.archive.org/web/20240827090918/https://www.reuters.com/business/british-american-tobacco-closes-swiss-plant-lays-off-226-paper-2022-12-15/>, consulted on 18th September 2024.

⁸⁹ World Health Organization. *WHO Framework Convention on Tobacco Control- Parties*. <https://fctc.who.int/who-fctc/overview/parties>, consulted on 18th September 2024.

⁹⁰ United Nations. 1969. *Vienna Convention on the Law of Treaties*. United Nations, Treaty Series, vol. 1155, p. 331 https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf. RS 0.111, RO 1990 1112.

⁹¹ *Ibid*.

⁹² World Health Organization. 2003. *WHO Framework Convention on Tobacco Control, Article 5.3*. <https://fctc.who.int/publications/i/item/9241591013>, consulted on 18th September 2024.

Numerous other FCTC Articles apply to tobacco control in Switzerland. For example, Article 18, which addresses tobacco and the environment, Article 19, which provides for liability, among many others.

2.2.4. SWITZERLAND'S TOBACCO POLICY OBLIGATIONS DERIVED FROM ITS CONSTITUTION

The Swiss constitution is also relevant for this issue.⁹³ Article 11 on the protection of children and young people states that “Children and young people have the right to the special protection of their integrity and to the encouragement of their development.” By the popular vote on 13 February 2022, Article 41 Alinea 1, letter g, the Confederation and the Cantons are committed to ensure that the health of children and young people is promoted.⁹⁴ The same popular vote modified Article 118 Alinea 2, letter b, Health Protection, to include the provision that the Confederation shall “prohibit, in particular, any form of advertising for tobacco products that reaches children and young people.”⁹⁵

Article 118 Alinea 1 is also relevant. Article 118 Alinea 1 states, “The Confederation shall, within the scope of its powers, take measures for the protection of health.”⁹⁶ This Article gives to the Confederation jurisdiction over health policy in general, and more specifically over the promotion of a lifestyle and environment conducive to the preservation of health. This goal is at odds with the actions of the tobacco industry, as discussed in section 2.a.v. The environmental impact of tobacco.

2.2.5. THE INTERFERENCE OF TOBACCO COMPANIES IN SWITZERLAND'S PUBLIC HEALTH POLICY

Beyond legal obligations, there is a heightened ethical dimension to any interaction between the Swiss government and the tobacco industry. Switzerland hosts the World Health Organization in Geneva. The FCTC was negotiated in Geneva, where the FCTC Secretariat is located.⁹⁷ Furthermore, Switzerland has a long history of championing human rights. Much of the infrastructure of global human rights law is in Geneva (The United Nations Human Rights Council, for example), and for that reason Geneva also hosts many human


⁹³ *Federal Constitution of the Swiss Confederation*. For a non legal English version: <https://www.fedlex.admin.ch/eli/cc/1999/404/en>. RS 101.

⁹⁴ In the French version of the Constitution, the parts of Article 41 relevant for our purpose read as follows: La Confédération et les cantons s'engagent [...] à ce que: [...] g. les enfants et les jeunes soient encouragés à devenir des personnes indépendantes et socialement responsables et soient soutenus dans leur intégration sociale, culturelle et politique et à ce que leur santé soit promue. This implies a commitment to promote the health of children and young people. In the unofficial English version provided on the government's website, this is translated to a commitment to support children and young people in their social, cultural and political integration and in leading healthy lives. The active notion of promotion (promue in the French version, gefördert in the German version in the original texts) is erroneously replaced with the passive notion of support in the unofficial English version.

⁹⁵ Here again, we provide our own translation of the original text in French or German, as the unofficial English translation is not faithful to the original text. The official text in French [La Confédération] interdit notamment, pour les produits du tabac, toute forme de publicité qui atteint les enfants et les jeunes or in German [Das Bund] verbietet namentlich jede Art von Werbung für Tabakprodukte, die Kinder und Jugendliche erreicht has been erroneously translated to [The Confederation shall] prohibit any form of advertising for tobacco products from reaching children and adolescents.

⁹⁶ *Federal Constitution of the Swiss Confederation- Article 118*. Swiss Confederation. <https://www.fedlex.admin.ch/eli/cc/1999/404/en>. RS 101, consulted on 18th September 2024.

⁹⁷ Framework Convention on Tobacco Control. About. <https://fctc.who.int/secretariat/about>, consulted on 18th September 2024.



rights-focused nongovernmental organizations. It would be anathema to fundamental national values for the Swiss government to serve as a protagonist for the global tobacco industry. As the host of two of the largest transnational tobacco corporations, the Swiss government has a duty to examine its interactions with the tobacco industry to determine whether it is upholding the values enumerated in international human rights treaties and its own Constitution.

Switzerland is far from respecting these legal and ethical obligations. On the contrary, it seems to have been hijacked by the tobacco industry and has become a tobacco friendly country. Switzerland ranked second to last in two recent international reports, the European Tobacco Control Scale 2021⁹⁸ (Switzerland is 36th out of 37)⁹⁹ and the Global Tobacco Industry Interference Index 2023¹⁰⁰ (89th out of 90),¹⁰¹ in part due to its harboring of the tobacco industry.

2.3. THE PROBLEM – SUMMARY

Left unchecked, tobacco will kill 1 billion people worldwide this century.¹⁰² Tobacco is an epidemic perpetrated by corporate malfeasance; an epidemic which not only kills people but targets the most vulnerable in our communities. Tobacco contributes to health inequities, negatively impacts children and youth, and harms the environment. Since Tobacco corporations are not directly involved in respecting human rights, the government of Switzerland has an obligation to protect its citizens from the harms of tobacco. This obligation must be implemented by legal standards. Despite this obligation, Switzerland has impeded tobacco control efforts at the global, regional, and national levels by hosting the industry, failing to ratify the FCTC, and not implementing tobacco control best practices.

⁹⁸ Smokefree Partnership. *The 2021 Tobacco Control Scale is out: Ireland, UK and France are leading the ranking while Bosnia & Herzegovina, Switzerland and Serbia have the lowest score.* <https://www.smokefreepartnership.eu/news/sfp-news/the-2021-tobacco-control-scale-is-out-ireland-uk-and-france-are-leading-the-ranking-while-bosnia-herzegovina-switzerland-and-serbia-have-the-lowest-score>, consulted on 18th September 2024.

⁹⁹ *Ibid.*

¹⁰⁰ Assunta M. *Global Tobacco Industry Interference Index 2023*. Global Center for Good Governance in Tobacco Control (GGTC). Nov 2023. <https://globaltobaccoindex.org/download/1728>, consulted on 18th September 2024.

¹⁰¹ *Ibid.*

¹⁰² United Nations News. 2011. *Tobacco could kill a billion people this century, UN health official warns.* <https://news.un.org/en/story/2011/04/373682>, consulted on 18th September 2024.

3. SWISS LAWS AND OBLIGATIONS

The right of “everyone to the enjoyment of the highest attainable standard of physical and mental health” is enshrined in several human rights treaties, including the International Covenant of Economic, Social, and Cultural Rights,¹⁰³ and numerous other international and regional treaties, including the European Social Charter.¹⁰⁴ Tobacco negatively impacts myriad other human rights, as well as negatively impacts groups whose rights are protected by specialized human rights treaties, discussed further below. These treaties, when signed and ratified, are binding upon the government of Switzerland.

These treaties, when signed and ratified, ARE BINDING UPON THE GOVERNMENT OF SWITZERLAND.

3.1. RELEVANT TREATIES AND INTERNATIONAL DECLARATIONS

3.1.1. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

The Universal Declaration of Human Rights (UDHR) was the first document to set out fundamental human rights.¹⁰⁵ Drafted in 1948, The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).¹⁰⁶ The UDHR is not a treaty, so it does not create legal obligations, but is an important part of customary international law.

The right to health is enshrined in the UDHR in Article 25. “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care...”¹⁰⁷

¹⁰³ United Nations. Dec 1966. *International Covenant on Economic, Social and Cultural Rights*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>. RS 0.103.1, consulted on 18th September 2024.

¹⁰⁴ Council of Europe. *The European Social Charter*. <https://www.coe.int/en/web/european-social-charter>, consulted on 18th September 2024. Note that Switzerland didn't sign nor ratify the European Social charter (revised) and only signed (but not ratified) the original European Social Charter.

¹⁰⁵ United Nations. 1948. *Universal Declaration of Human Rights*. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, consulted on 18th September 2024.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid*, Article 25.

3.1.2. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

The International Covenant on Economic, Social and Cultural Rights¹⁰⁸ (ICESCR) was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 3 January 1976. Switzerland ratified the Covenant in 1992.¹⁰⁹ Article 12 relates to the right to health:

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;¹¹⁰

The implementation of Article 12 of the ICESCR was made more explicit by The United Nations Economic and Social Council (ECOSOC) in General Comment 14¹¹¹ adopted in May 2000 by the Committee.¹¹² The text starts (item 1) by recalling what the right to health is and gives some indication about the ways to pursue it:

"Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments."¹¹³

Comment 14 (item 15) explains the meaning of Article 12.2 (b) as follows:

"The improvement of all aspects of environmental and industrial hygiene" (art. 12.2 (b)) comprises, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure

¹⁰⁸ United Nations. Dec 1966. *International Covenant on Economic, Social and Cultural Rights*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>. RS 0.103.1, consulted on 18th September 2024.

¹⁰⁹ United Nations Human Rights Treaty Body Database. *Switzerland*. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Lang=en. RO 1993 725, consulted on 18th September 2024.

¹¹⁰ United Nations. Dec 1966. *International Covenant on Economic, Social and Cultural Rights- Article 12*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>. RS 0.103.1, consulted on 18th September 2024.

¹¹¹ United Nations Committee on Economic, Social, and Cultural Rights. 2000. *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights- General Comment No, 14*. https://digitallibrary.un.org/record/425041/files/E_C.12_2000_4-EN.pdf?ln=en, consulted on 18th September 2024.

¹¹² United Nations Committee on Economic, Social, and Cultural Rights. 2001. *Report on the Twenty-Second, Twenty-Third, and Twenty-Fourth Sessions*. https://digitallibrary.un.org/record/444553/files/E_2001_22_E_C.12_2000_21-EN.pdf?ln=en, consulted on 18th September 2024.

¹¹³ United Nations Committee on Economic, Social, and Cultural Rights. 2000. *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights- General Comment No, 14*. https://digitallibrary.un.org/record/425041/files/E_C.12_2000_4-EN.pdf?ln=en, consulted on 18th September 2024.

to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment. Article 12.2 (b) also embraces adequate housing and safe and hygienic working conditions, an adequate supply of food and proper nutrition, and discourages the abuse of alcohol, and the use of tobacco, drugs and other harmful substances.”¹¹⁴

Comment 14 (item 33) says that the right to health, like all human rights, imposes three types or levels of obligations on States Parties:

- The obligation to **respect**. Requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health.
- The obligation to **protect**. Requires States to take measures that prevent third parties from interfering with Article 12 guarantees.
- The obligation to **fulfil**. Requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health.¹¹⁵

These general obligations imply “at least” that State Parties “adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population” (item 43) and “take measures to prevent, treat and control epidemic and endemic diseases” (item 44).

Before providing illustrations of violations of Article 12 of the ICESCR, Comment 14 makes the following distinction (item 47):

“In determining which actions or omissions amount to a violation of the right to health, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations under Article 12. This follows from Article 12.1, which speaks of the highest attainable standard of health, as well as from Article 2.1 of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to health is in violation of its obligations under Article 12.”¹¹⁶

Comment 14 adds (items 48 and 49):

“Violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States. The adoption of any retrogressive measures incompatible with the core obligations under the right to health, outlined in paragraph 43 above, constitutes a violation of the right to health. Violations through acts of commission include the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to health or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to health. [...] Violations of the right to health can also occur through the omission or failure of States to take necessary measures arising from legal obligations.”¹¹⁷

Comment 14 provides the following clarification on the violation to protect (item 51):

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

"Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others; the failure to protect consumers and workers from practices detrimental to health, e.g., by employers and manufacturers of medicines or food; the failure to discourage production, marketing and consumption of tobacco, narcotics and other harmful substances [...]"¹¹⁸

Finally Comment 14 identifies the violation to fulfill as follows (item 52):

"Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to health. Examples include the failure to adopt or implement a national health policy designed to ensure the right to health for everyone; insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health by individuals or groups, particularly the vulnerable or marginalized; the failure to monitor the realization of the right to health at the national level, for example by identifying right to health indicators and benchmarks [...]"¹¹⁹

In addition to Article 12 and its associated General Comments, other Articles of the treaty are relevant. For example, Article 15 1. (b) of the ICESCR recognizes the right of every person "To enjoy the benefits of scientific progress and its applications."¹²⁰ By corrupting science, as discussed in section 4. A. iv, the tobacco industry deprive people of this fundamental right; the lack of action of the Swiss Government to combat tobacco industry policy, thereby violating the ICESCR and Switzerland's human rights commitments.

3.1.3. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The right to health is also mentioned in treaties that protect specific groups. For example, in 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly.¹²¹ It entered into force as an international treaty on 3 September 1981.¹²² Switzerland ratified the Convention in 1997.¹²³

Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women provides for "the protection of health."¹²⁴

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ United Nations. Dec 1966. *International Covenant on Economic, Social and Cultural Rights- Article 15*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>. RS 0.108, consulted on 18th September 2024.

¹²¹ United Nations. 1979. *Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>, consulted on 18th September 2024.

¹²² United Nations Human Rights Treaty Body Database. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Lang=en, consulted on 18th September 2024.

¹²³ United Nations Human Rights Treaty Body Database. *Switzerland*. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Lang=en. RO 1999 1579, consulted on 18th September 2024.

¹²⁴ United Nations. 1979. *Convention on the Elimination of All Forms of Discrimination against Women- Article 12*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>, consulted on 18th September 2024.

3.1.4. THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

The Convention on the Rights of the Child¹²⁵ was adopted by the General Assembly of the United Nations by in 1989. Switzerland ratified in 1997.¹²⁶

The right to health is recognized in the treaty. Article 24 states that "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health."¹²⁷ The Committee on the Rights of the Child (which supervises the treaty), also issued General Comment 15, which notes that governments must implement and enforce the FCTC as part of their obligations under the Convention on the Rights of the Child.¹²⁸

The Convention on the Rights of the Child, Article 32 also protects children against harmful work environments. It states, "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."¹²⁹

3.1.5. FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

While the Framework Convention on Tobacco Control (FCTC) is not a human rights treaty, it was, in part, inspired by them. In designing the world's first public health treaty, the framers of the FCTC looked to human rights accords for inspiration, examples, and substantive legal thinking. This link is evident in the text of the FCTC, which cites Article 12 of the International Covenant on Economic, Social and Cultural Rights¹³⁰ as well as the WHO Constitution¹³¹ in recognition of the fundamental right of every human being to the enjoyment of the highest attainable standard of physical and mental health. Human rights references have also been included in several FCTC decisions and Guidelines.¹³² The most recent FCTC Conference of the Parties, COP 10, the Parties adopted FCTC/COP10(20) Contribution of the WHO FCTC to the promotion and fulfillment of

¹²⁵ United Nations. 1989. *Convention on the Rights of the Child*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>. RS 0.107, consulted on 18th September 2024.

¹²⁶ United Nations Human Rights Treaty Body Database. *Switzerland*. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Lang=en. RO 1998 2053, consulted on 18th September 2024.

¹²⁷ United Nations. 1989. *Convention on the Rights of the Child* <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>, consulted on 18th September 2024.

¹²⁸ United Nations Committee on the Rights of the Child. 2013. *CRC/C/GC/15: General Comment No. 15 on the right of the child to the highest attainable standard of health (2013), The Committee on the Rights of the Child*. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crcgc15-general-comment-no-15-right-child-highest>, consulted on 18th September 2024.

¹²⁹ United Nations. 1989. *Convention on the Rights of the Child- Article 32*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>, consulted on 18th September 2024.

¹³⁰ United Nations. Dec 1966. *International Covenant on Economic, Social and Cultural Rights- Article 12*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> RS 0.103.1, consulted on 18th September 2024.

¹³¹ United Nations. Nov 1947. *Entry into force of the Constitution of the World Health Organization*. <http://www.refworld.org/docid/3b00f09554.html> RS 0.810.1, consulted on 18th September 2024. Entry into force for Switzerland 7th April 1948 RO 1948 1002.

¹³² See for example Decision FCTC/COP10/20, <https://ash.org/wp-content/uploads/2024/03/FCTC-COP10-20-en-Human-Rights.pdf>

human rights. The Decision recalled that, "Recalling that the right to the enjoyment of the highest attainable standard of physical and mental health is a driving force for the implementation of the WHO FCTC;" and encouraged, "Parties to consider including WHO FCTC principles and implementation efforts when engaging with the United Nations human rights mechanisms."¹³³


Switzerland signed the FCTC in 2004 but has not ratified the treaty.¹³⁴ It is one of very few countries who have not done so; the FCTC currently has 183 State Parties.¹³⁵

Although Switzerland has not yet ratified the FCTC, this does not mean that it should not respect it. As discussed above, in Section 2(a)(b)(li), under the Art 18 of the Vienna Convention on The Law of Treaties (1969) "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty..."¹³⁶

By signing the FCTC, Switzerland has demonstrated its initial intention to be bound by the treaty's objectives, which include reducing tobacco consumption, preventing tobacco-related diseases, and protecting public health. However, by not taking adequate actions to implement the treaty's provisions, Switzerland may be perceived as undermining the spirit and impact of the FCTC, both within its own borders and in other countries.

Switzerland's failure to fully embrace and respect the FCTC could lead to negative implications including, but not limited to:

1. **Undermining Global Efforts:** The FCTC aims to create a comprehensive global approach to tobacco control. When countries like Switzerland, with significant influence and resources, do not fully commit to its objectives, it weakens the collective effort to combat the global tobacco epidemic.
2. **Sending Mixed Messages:** By not fully complying with the FCTC, Switzerland might send mixed messages to other countries and hinder their commitment to tobacco control measures. This lack of commitment might be perceived as a lack of political will or legitimacy, influencing other countries' actions.
3. **Weakening Norms and Standards:** The FCTC establishes international norms and standards for tobacco control. When a country with advanced healthcare systems and strong international



However, by not taking adequate actions to implement the treaty's provisions, Switzerland may be perceived as undermining the spirit and impact of the FCTC, both within its own borders and in other countries.

¹³³ *Ibid.*

¹³⁴ United Nations Treaty Collection. WHO Framework Convention on Tobacco Control. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang=en, consulted on 18th September 2024.

¹³⁵ World Health Organization. WHO Framework Convention on Tobacco Control- Parties. <https://fctc.who.int/who-fctc/overview/parties>, consulted on 18th September 2024.

¹³⁶ United Nations. 1969. *Vienna Convention on the Law of Treaties- Article 18*. United Nations, Treaty Series, vol. 1155, p. 331 https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf RS 0.111, consulted on 18th September 2024.

reputation fails to abide by these standards, it may inadvertently undermine the importance and credibility of those norms on the global stage.

4. **Impeding Progress within Switzerland:** Failure to ratify and implement the FCTC could lead to slower progress in tobacco control within Switzerland. Effective tobacco control requires comprehensive policies and strong political will, both of which could be hindered by the absence of a clear commitment to international norms.
5. **Inconsistency in Policy Approach:** Switzerland's lack of full commitment to the FCTC may lead to an inconsistent approach to tobacco control, as some initiatives might align with the treaty's objectives while others fall short, resulting in a disjointed and less effective overall strategy.

It is essential for Switzerland to recognize its responsibility in upholding the principles of the FCTC, even without formal ratification. By fully embracing the treaty's objectives and implementing evidence-based tobacco control measures, Switzerland can demonstrate its commitment to public health, protect its population from tobacco-related harm, and positively influence global efforts to reduce tobacco use.

3.2. OTHER INTERNATIONAL OBLIGATIONS

The United Nations Sustainable Development Goals (SDGs) and other frameworks that focus on development are another opportunity to address tobacco. The SDGs are a "blueprint to achieve a better and more sustainable future for all," that has been agreed to by all UN Member States.¹³⁷ As the United Nations Development Program notes, the FCTC is an accelerator for Sustainable Development and reducing tobacco use is critical to achieve every goal in the SDGs.¹³⁸ The FCTC is specifically referenced in SDG 3.a, which calls on countries to, "Strengthen the implementation of the WHO Framework Convention on Tobacco Control in all countries, as appropriate."¹³⁹ Tobacco control is integral to achieving the SDGs, and the SDGs are another tool to protect the health of Swiss citizens.



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¹³⁷ United Nations. *Sustainable Development Goals*. <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>, consulted on 18th September 2024.

¹³⁸ World Health Organization. *The WHO Framework Convention on Tobacco Control: An Accelerator for Sustainable Development*. <https://www.who.int/fctc/implementation/publications/who-fctc-undp-wntd-2017.pdf>

¹³⁹ United Nations. *Sustainable Development Goals*. <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>, consulted on 18th September 2024.

3.3. REGIONAL OBLIGATIONS

In addition to international legal obligations, Switzerland has signed and ratified binding legal mechanisms at the regional level.

3.3.1. EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), was drafted in 1950 by the Council of Europe.¹⁴⁰ ECHR, Article 2 states, "Everyone's right to life shall be protected by law."¹⁴¹ On September 3, 1953 the European Court of Human Rights was established under the ECHR, which is binding on all Council of Europe member states that have accepted jurisdiction, which includes Switzerland.¹⁴²

The Court accepts complaints from both individuals and states; however, domestic remedies must be exhausted first. The complaint must be brought within four months of the final domestic ruling and be lodged by a victim or one who has suffered a substantial disadvantage as a result of the violation in question. The complaint must cite a violation of the ECHR, and it cannot address any substantive issue that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information. All decisions are binding on the country and compliance is monitored by The Committee of Ministers of the Council of Europe. The decision of the Court or Grand Chamber may include providing monetary compensation to a victim, changing laws, compelling the creation of new structures, or preventing future actions.¹⁴³ Except for the monetary compensation, the execution of the Court decisions is under the responsibility of the contracting parties (States).

The ECHR has jurisdiction over a number of tobacco related issues. "Smoking in prisons, police stations, and other detention facilities, including migrant detention facilities as well as in prison transport vehicles or in public places like court waiting rooms, has been addressed in a rather large number of cases decided by the ECHR."¹⁴⁴

The European Court of Human Rights take into consideration not only the ECHR but also other international treaties to interpret the provisions of the ECHR. The FCTC could thus be taken into consideration in interpreting the scope of the obligations of contracting states to the ECHR.

¹⁴⁰ Council of Europe. 1950. *Convention for the Protection of Human Rights and Fundamental Freedoms*. https://www.echr.coe.int/documents/d/echr/convention_ENG RS 0.101, consulted on 18th September 2024.

¹⁴¹ *Ibid.*

¹⁴² Council of Europe. *The Convention in 1950*. <https://www.coe.int/en/web/human-rights-convention/the-convention-in-1950>, consulted on 18th September 2024.

¹⁴³ Council of Europe. *A Convention to protect your rights and liberties*. <https://www.coe.int/en/web/human-rights-convention#:~:text=The%20European%20Court%20of%20Human,in%20the%20member%20state%20concerned>, consulted on 18th September 2024.

¹⁴⁴ Tsampi, A. (2021, June). The European Court of Human Rights and (Framework Convention on) Tobacco Control: A Relationship that Goes up in Smoke?. In *European Convention on Human Rights Law Review* (Vol. 3, No. 1, pp. 47-89). <https://doi.org/10.1163/26663236-bja10022>

Jaeger v Estonia 1574/13 (ECtHR, 31 July 2014). Florea v Romania 37186/03 (ECtHR, 14 September 2010) para 50. Ciupercescu v Romania (No. 3) 41995/14 and 50276/15 (ECtHR, 7 January 2020) para 89.

In many cases regarding the freedom of expression the European Court of Human Rights held that the restriction of cigarette and tobacco-related advertising was an essential part of a broader strategy in the fight against the social evil of smoking and to confirm there was a European consensus on the need for strict regulation of tobacco advertising and a general trend towards such regulation worldwide.¹⁴⁵

Further developments can be expected in connection with the protection of human rights and their development with regard to the FCTC.¹⁴⁶

3.4. NATIONAL LAWS

When it comes to tobacco control policy Switzerland stands out, but not in a positive way, when considering globally agreed health, development, human rights and even environmental mechanisms, goals and objectives such as the WHO Framework Convention on Tobacco Control (FCTC), the International Covenant on Economic Social and Cultural Rights (ICESCR) and the UN Sustainable Development Goals (SDGs).

As previously mentioned, Switzerland has one of the weakest tobacco control laws in Europe and ranked 36 out of 37 in the 2021 European Tobacco Control Scale,¹⁴⁷ seriously undermining Art 12 of the ICESCR which recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁴⁸



One measure of national tobacco control laws is to evaluate them against the best practices set out in the FCTC. Below, Swiss laws are compared to the FCTC standards.

- **Protection from exposure to tobacco smoke (FCTC Art 8):** There is a federal law¹⁴⁹ in place that is applied across all cantons in Switzerland that guarantees smoke free public spaces (loi fédérale sur la

¹⁴⁵ Hachette Filipacchi Presse Automobile and Dupuy v. France (EcTHR, 5 March 2009), Société de conception de presse et d'édition and Ponson v. France (EcTHR, 5 March 2009), Bielau v. Austria (EcTHR, 27 August 2024, par. 36).

¹⁴⁶ Tsampi, A. (2021, June). The European Court of Human Rights and (Framework Convention on) Tobacco Control: A Relationship that Goes up in Smoke? In *European Convention on Human Rights Law Review* (Vol. 3, No. 1, pp. 47-89). Garde A./Toebs B., 2020. Is there a European human rights approach to tobacco control? in *Human rights and Tobacco control*, Gispén/Toebs (édit.) 80 ss, 85.

¹⁴⁷ Smokefree Partnership. *The 2021 Tobacco Control Scale is out: Ireland, UK and France are leading the ranking while Bosnia & Herzegovina, Switzerland and Serbia have the lowest score.* <https://www.smokefreepartnership.eu/news/sfp-news/the-2021-tobacco-control-scale-is-out-ireland-uk-and-france-are-leading-the-ranking-while-bosnia-herzegovina-switzerland-and-serbia-have-the-lowest-score>, consulted on 18th September 2024.

¹⁴⁸ United Nations. Dec 1966. *International Covenant on Economic, Social and Cultural Rights* <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>, consulted on 18th September 2024.

¹⁴⁹ *Loi fédérale sur la protection contre le tabagisme passif*. RS 818.31.

protection contre le tabagisme passif). However, this law, which replicates the old “Spanish model,”¹⁵⁰ permits exceptions allowing small businesses that are under 80 square meters to declare themselves as smoking establishments. The law also allows dedicated smoking rooms with no service in larger establishments. Some cantons have stricter laws and do not allow smoking establishments. As a result, health benefits have been varied across the cantons depending on the type of smoking ban^{151,152} and many hospitality workers throughout the country remain exposed to passive smoking. Passive, or second-hand smoke, has been determined by the International Agency of Research on Cancer to be “carcinogenic to humans.”¹⁵³ Pregnant workers in the hotel and restaurant sector not only expose themselves to these carcinogens, but also their unborn child, endangering fetal development, with a risk of premature birth and low birth weight. It should be noted that the exposure of a pregnant women to tobacco would be contrary to the Federal Labour Act.¹⁵⁴ In addition to not complying with the FCTC, the Swiss law is in violation of the Occupational Cancer Convention,¹⁵⁵ which Switzerland ratified on 28 October 1976.¹⁵⁶ This International Labor Organization (ILO) Convention creates an obligation “to protect workers against the risks of exposure to carcinogenic substances or agents” (Article 3).¹⁵⁷ It further prescribes that “The number of workers exposed to carcinogenic substances or agents and the duration and degree of such exposure shall be reduced to the minimum compatible with safety” (Article 2.1).¹⁵⁸ In the case of the hospitality industry, this minimum is zero, since the pollution of the air of its establishments by tobacco smoke is not necessary to its activities, as is shown in the many countries which have enacted comprehensive smoking bans in accordance with Article 8 of the FCTC.¹⁵⁹ Finally, both Articles 2 and 3 of the Federal law on Protection against Passive Smoking stipulate that workers have to agree in their employment contract to be exposed to tobacco smoke on the workplace.¹⁶⁰ This raises a serious issue of equity, since many workers, and in particular the most vulnerable and those who are least informed about the risks to their health associated with passive smoking, will accept such mentions in their contracts to maximize their chances of being hired. Switzerland does not comply with Article 8 of the FCTC and its

¹⁵⁰ Schneider NK, Sebré EM, Fernández E. The so-called Spanish model - tobacco industry strategies and its impact in Europe and Latin America. *BMC Public Health*. 2011 Dec 7;11:907. doi: [10.1186/1471-2458-11-907](https://doi.org/10.1186/1471-2458-11-907)

¹⁵¹ Vicedo-Cabrera AM, Rösli M, Radovanovic D, Grize L, Witassek F, Schindler C, Perez L. Cardiorespiratory hospitalisation and mortality reductions after smoking bans in Switzerland. *Swiss medical weekly*. 2016 Dec 19;146:w14381. doi: [10.4414/smww.2016.14381](https://doi.org/10.4414/smww.2016.14381)

¹⁵² Vicedo-Cabrera AM, Schindler C, Radovanovic D, Grize L, Witassek F, Dratva J, Rösli M, Perez L. Benefits of smoking bans on preterm and early-term births: a natural experimental design in Switzerland. *Tobacco Control*. 2016 Dec;25(e2):e135-e141. doi: [10.1136/tobaccocontrol-2015-052739](https://doi.org/10.1136/tobaccocontrol-2015-052739)

¹⁵³ World Health Organization International Agency for Research on Cancer. *Tobacco Smoke and Involuntary Smoking*. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans Volume 83. IARC, 2004. https://publications.iarc.fr/_publications/media/download/2636/1567f1ed6fa20d5ef35978ef5b585b63e6101379.pdf

¹⁵⁴ Loi fédérale sur le travail dans l'industrie, l'artisanat et le commerce. <https://www.lexfind.ch/tolv/232137/fr> RS 822.11, consulted on 18th September 2024.

¹⁵⁵ International labour Organization. 1974. C139 – *Occupational Cancer Convention*, 1974 (No. 139). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C139, consulted on 18th September 2024.

¹⁵⁶ International labour Organization. 1976. *Ratifications of C139 - Occupational Cancer Convention*, 1974 (No. 139). https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312284, consulted on 18th September 2024.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control- Article 8*. <https://fctc.who.int/publications/i/item/9241591013>, consulted on 18th September 2024.

¹⁶⁰ Office fédéral de la santé publique. Octobre 2021. *Loi fédérale sur les produits du tabac et les cigarettes électroniques (Loi sur les produits du tabac, LPTab)*. <https://www.fedlex.admin.ch/eli/fga/2021/2327/fr>, consulted on 18th September 2024.

application guidelines, which “require the total elimination of smoking and tobacco smoke in a particular space or environment in order to create a 100% smoke free environment.”¹⁶¹

- **Tobacco Advertisement, Promotion and Sponsorship (TAPS) (FCTC Art 13):** TAPS would be regulated by Article 18 of the Swiss tobacco law, “Loi fédérale sur les produits du tabac et les cigarettes électroniques (Loi sur les produits du tabac, LPTab).”¹⁶² However, an independent analysis by the Swiss law firm r&associés, avocats concluded that the current law project, which is focused solely on children, is not compliant with the FCTC.¹⁶³ The analysis states that “to comply with the FCTC, Switzerland should adopt a comprehensive ban on advertising of tobacco products.”¹⁶⁴ This analysis also applies to the revised tobacco law which has been drafted by the Swiss Federal Council to take account of the results of the popular initiative “Children without tobacco” approved by Swiss voters on 13 February 2022.¹⁶⁵ This initiative is also not a comprehensive ban.¹⁶⁶ The Federal Council proposes to ban advertising in newspapers, on billboards, on the Internet, and on any display material that can be seen by minors in public spaces.¹⁶⁷ Sponsorship of events that can be attended by minors is also banned.¹⁶⁸ Nevertheless, the draft law has some serious gaps. With its 30’000 points of sales (13’600 outlets selling tobacco products such as kiosks and shops and 17’000 cigarette vending machines),¹⁶⁹ Switzerland has very high density of points of sale of tobacco products, ten times higher than France for instance.¹⁷⁰ These points of sale are publicly accessible and visible by all, including children – in kiosks, tobacco products are on display next to sweets. Switzerland aligns its legislation concerning health warning on cigarette packs with the EU directive of 2001, which was superseded by the 2014 EU Tobacco Product Directive.¹⁷¹ The Swiss cigarette packs provide ample space for branding emblems.¹⁷² The revised law does not ban vending machines, does limit points of sales, leaves unchanged the way tobacco products are displayed, and preserves the role of advertising on

¹⁶¹ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control- Article 8*.

<https://fctc.who.int/publications/i/item/9241591013>

¹⁶² *Loi fédérale sur les produits du tabac et les cigarettes électroniques du 1^{er} octobre 2021 (Loi sur les produits du tabac, LPTab)*. FF 2021 2327. Project could be consulted on <https://www.fedlex.admin.ch/eli/fga/2021/2327/fr>. The LPTab will come into force on October 1st, 2024. <https://www.bag.admin.ch/bag/fr/home/das-bag/aktuell/medienmitteilungen.msg-id-102228.html>, consulted on 18th September 2024.

¹⁶³ Association suisse pour la prévention du tabagisme. 2020. *Le parlement planche sur un projet de loi non conforme à la Convention-cadre de l'OMS pour la lutte antitabac*. <https://www.at-schweiz.ch/fr/news-media/news?id=50&Le-parlement-planche-sur-un-projet-de-loi-non-conforme-la-Convention-cadre-de-lOMS-pour-la-lutte-antitabac>, consulted on 18th September 2024. And f &aSSOC|ÉS avocats. 16 décembre 2020. *Avis de droit*

Conformité du projet de loi fédérale sur les produits du tabac au droit supérieur.

<https://www.oxysuisse.ch/files/public/docs/lptab/20201216-cereghetti-petermann-avis-de-droit.pdf>

¹⁶⁴ *Ibid.*

¹⁶⁵ Lebon L, Diethelm P, et al. Why did Swiss citizens vote to ban tobacco advertising? *Tobacco Control*. 2023 Oct 27;tc-2023-057986. doi: 10.1136/tc-2023-057986

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ Vereinigung des schweizerischen tabakwarenhandels. Septembre 2016. *FAITS ET CHIFFRES AUTOUR DE LA NOUVELLE LOI SUR LES PRODUITS DU TABAC*. <https://www.swiss-tobacco.ch/wp-content/uploads/2015/02/Faits-et-chiffres-Septembre-2016.pdf>

¹⁷⁰ *Ibid.*

¹⁷¹ European Commission, *Revision of the Tobacco Products Directive*. [https://health.ec.europa.eu/tobacco/product-regulation/implementing-tobacco-products-directive-directive-201440eu/revision-tobacco-productsdirective_en#:~:text=The%20Tobacco%20Products%20Directive%20\(2014,health%20protection%20for%20European%20citizens](https://health.ec.europa.eu/tobacco/product-regulation/implementing-tobacco-products-directive-directive-201440eu/revision-tobacco-productsdirective_en#:~:text=The%20Tobacco%20Products%20Directive%20(2014,health%20protection%20for%20European%20citizens), consulted on 18th September 2024.

¹⁷² Pottage, A. (2013). No (more) logo: plain packaging and communicative agency. *UCDL Rev.*, 47, 515. https://eprints.lse.ac.uk/55013/1/Pottage_No_more_logo_2013.pdf

the cigarette pack.¹⁷³ The massive public presence of tobacco products will continue to send the message that they are ordinary consumer items, apart from the fact that they are “for adults only”. Attaching the label “for adults only” to tobacco products makes them attractive to adolescents: “Peers find security, identity, and a sense of wellness by constructing peer groups and group norms dictating valued behaviors. These behaviors have more potency if they are also perceived as normative for adults, yet not acceptable for children.”¹⁷⁴ Advising Philip Morris on the best ways to attract teenagers to smoking, marketing expert Clotaire Rapaille made the following recommendations:

- “Stress that smoking is for adults only
- Make it difficult for minors to obtain cigarettes
- Stress that smoking is dangerous – Smoking is for people who like to take risks, who are not afraid of taboos, who take life as an adventure to prove themselves”¹⁷⁵
- Tobacco advertising will be allowed with no restriction in events, bars, discos and night clubs with access restriction to 18+ individuals and in Internet communications addressed personally by tobacco companies to 18+ recipients.¹⁷⁶ For instance, in preparation for the implementation of the revised law, tobacco companies are organizing free music events “for adults only”, associating their brands with an exclusivity for the 18–24-year-olds, which is the group through which they reach teenagers. The sponsorship of the Montreux Jazz Festival by British American Tobacco provides an illustration of this new move of the tobacco industry.¹⁷⁷ Switzerland does not comply with FCTC Article 13.
- **Price and tax measures to reduce the demand for tobacco (FCTC Art 6):** The federal law on tobacco taxation (“Loi fédérale sur l’imposition du tabac” – LTab) sets the base taxes for tobacco products and authorizes the Swiss government to increase the taxes within specified limits.¹⁷⁸ The purpose of the increases is “to co-finance the federal government’s contributions to old-age insurance, disability insurance and supplementary benefits, and for the purpose of adjusting to the tax rates in force in the European Community.”¹⁷⁹ The government has no mandate to use tobacco taxation for public health purposes. The last time the Swiss government increased the tax on cigarettes was on 1 April 2013 (by 10 centimes, i.e., 1.3% of the price of the most sold cigarette pack).¹⁸⁰ It then reached the limit specified by the law. In 2013, the government launched a consultation on a proposed legal amendment that would give it the authority to further increase the

¹⁷³ Lebon L, Diethelm P, et al. Why did Swiss citizens vote to ban tobacco advertising? *Tobacco Control*. 2023 Oct 27;tc-2023-057986. doi: 10.1136/tc-2023-057986.

¹⁷⁴ Institute of Medicine (US) Committee on Preventing Nicotine Addiction in Children and Youths. Growing up Tobacco Free: Preventing Nicotine Addiction in Children and Youths. Lynch BS, Bonnie RJ, editors. Washington (DC): National Academies Press (US); 1994. PMID: 25144107 <https://nap.nationalacademies.org/read/4757/chapter/1>

¹⁷⁵ Philip Morris USA. Levy, Carolyn. Summary - Draft #2. 1991 August 20. Philip Morris Records; Master Settlement Agreement. <https://www.industrydocuments.ucsf.edu/docs/hrkj0191>

¹⁷⁶ Office fédéral de la santé publique. Octobre 2021. Loi fédérale sur les produits du tabac et les cigarettes électroniques (Loi sur les produits du tabac, LPTab). FF 2021 2327. Project could be consulted on <https://www.fedlex.admin.ch/eli/fga/2021/2327/fr>

¹⁷⁷ Sven, Papaux. 2022. La pub pour la clope bientôt interdite : les festivals pourront-ils survivre ? *Watson*. <https://web.archive.org/web/20240829095551/https://www.watson.ch/fr/societe/festival/493588624-les-festivals-pourront-ils-survivre-sans-pub-pour-les-cigarettes>, consulted on 18th September 2024.

¹⁷⁸ Switzerland. 1969. Loi fédérale sur l’imposition du tabac. *LTab*. RS 641.31.

¹⁷⁹ *Ibid*.

¹⁸⁰ Le News. January 2017. Government stops tax rises on Swiss cigarettes. *Le News*. <https://web.archive.org/web/20240908222955/https://lenews.ch/2017/03/01/government-stops-tax-rises-on-swiss-cigarettes/>, consulted on 18th September 2024.

tax on cigarettes and fine-cut tobacco. In its draft explanatory report, the Federal Council said that “for several years [it had] has been aiming to raise additional revenue for the Confederation through increases in tobacco taxes on manufactured tobacco in Switzerland to the minimum level in force in the EU.”¹⁸¹ No mention was made of public health objectives. The explanatory report also indicated that “in matter of tobacco taxation, the Federal Council has been pursuing a measured policy (policy of small steps) for years.”¹⁸² Indeed, the tax increases from 2003 to 2013 were all below 10% and on average less than 5%. The tax increases were carefully coordinated with price increases decided by the tobacco industry, as is shown in the following table extracted from the Federal Council's explanatory report:

Tableau 1: Augmentations d'impôt et de prix depuis 2003

Augmentation en cts	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Impôt (Conseil fédéral)	30	50		30		30		20			10
Prix (industrie)	10	10	20		10	20	10	20	20	30	20
Nouveau PVD	5.20	5.80	6.00	6.30	6.40	6.90	7.00	7.40	7.60	7.90	8.20

Source: Direction générale des douanes, section Imposition du tabac et de la bière

- These “small steps”, industry-controlled price increases deprive public health of its best smoking prevention tool by removing the scope for substantial, truly effective tobacco price increases.¹⁸³ The consultation report indicated that “a large proportion of the participants in the consultation are in favour of the Federal Council's proposal to grant it renewed powers to increase taxes on cigarettes” (73 in favour, 15 against), including all the health organizations, and, surprisingly (or not), all the “interested organisations and individuals in the field of the tobacco industry and trade.”¹⁸⁴ In spite of this overwhelming support, the Federal Council sent a message to Parliament in June 2016 indicating its decision to withdraw its proposal to get the authorization to further increase the tax on cigarettes and fine-cut tobacco.¹⁸⁵ The reason invoked for such a reversal was the evolution of the exchange rate between the Swiss franc and the Euro, which, at the beginning of 2016, made a packet of cigarettes more expensive in Switzerland than in its neighboring countries.¹⁸⁶ Parliament approved the withdrawal.¹⁸⁷ The president of the Economic Affairs and Taxation Committee of the National Council,

¹⁸¹ Confédération suisse Administration fédérale des douanes AFD. 2013. *Rapport explicatif sur la modification de la loi fédérale sur l'imposition du tabac (L Tab)*. https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/dl/proj/6013/88/cons_1/doc_2/fr/pdf-a/fedlex-data-admin-ch-eli-dl-proj-6013-88-cons_1-doc_2-fr-pdf-a.pdf

¹⁸² *Ibid.*

¹⁸³ Gilmore AB, Branston JR, Sweanor D. The case for OFSMOKE: how tobacco price regulation is needed to promote the health of markets, government revenue and the public. *Tobacco Control*. 2010 Oct;19(5):423–30. doi: 10.1136/tc.2009.034470

¹⁸⁴ Confédération suisse Administration fédérale des douanes AFD. Berne, Juin 2016. *Modification de la loi sur l'imposition du tabac Rapport concernant les résultats de la procédure de consultation*. https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/dl/proj/6013/88/cons_1/doc_7/fr/pdf-a/fedlex-data-admin-ch-eli-dl-proj-6013-88-cons_1-doc_7-fr-pdf-a.pdf

¹⁸⁵ Confédération suisse Administration fédérale des douanes AFD. Juin 2016. *Message relatif à la modification de la loi sur l'imposition du tabac*. <https://www.fedlex.admin.ch/eli/fga/2016/1113/fr>

¹⁸⁶ *Ibid.*

¹⁸⁷ De Buman. *Tabaksteuergesetz. Änderung. Loi sur l'imposition du tabac. Modification*. 2016.

<https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=38977>

Dominique de Buman explained that “high price of a pack of cigarettes was becoming a *deterrent to consumption* [emphasis added], as the statistics show.”¹⁸⁸ In 2015, Switzerland was ranked next to last in the index of tobacco products affordability (from least to most affordable) in the WHO European region.¹⁸⁹ Switzerland does not employ FCTC best practices for raising cigarette taxes to reduce demand, as set out in FCTC Article 6.

- **Sales to and by minors (FCTC Art 16):** Until the adoption of the recent law (Loi sur les produits du tabac, LPTab), which will come into effect in October 1st 2024,¹⁹⁰ some cantons did not have any restrictions on sales to minors. The cantons of Schwyz and Appenzell Inner Rhoden had no official age limit,¹⁹¹ seriously challenging Article 24 of the Convention on the Rights of the Child which recognizes “the right of the child to the enjoyment of the highest attainable standard of health.”¹⁹² Since the adoption of the LPTab, the purchase age for tobacco products will be soon harmonized at 18 years of age.¹⁹³ However, sale of tobacco products by minors remains legal in Switzerland. The new law (LPTab) only prohibits “the supply of tobacco products and electronic cigarettes to minors.”¹⁹⁴ It is thus not compliant with Article 16.7 of the FCTC, which requires Parties to “adopt and implement effective legislative, executive, administrative or other measures to prohibit the sales of tobacco products by persons under the age set by domestic law, national law or eighteen.”¹⁹⁵
- **Protecting public health policies from commercial and other vested interests of the tobacco industry (FCTC Art 5.3):** The Tobacco Industry Interference Index places Switzerland in the 89th place out of the 90 countries monitored; only the Dominican Republic was deemed to have more industry interference.¹⁹⁶ This strong industry interference in politics is reflected in the weak tobacco control measures as noted in the European Tobacco Control Scale and relatively high smoking prevalence of about 24%.¹⁹⁷ Switzerland fails blatantly to protect its public policies from commercial

¹⁸⁸ *Ibid.*

¹⁸⁹ World Health Organization. 2015. *WHO report on the global tobacco epidemic, 2015: raising taxes on tobacco*.

<https://apps.who.int/iris/handle/10665/178574>

¹⁹⁰ Confédération suisse Administration fédérale des douanes AFD. Octobre 2021. *Loi fédérale sur les produits du tabac et les cigarettes électroniques (Loi sur les produits du tabac, LPTab)*. FF 2021 2327. Entry into force in October 2024:

<https://www.bag.admin.ch/bag/fr/home/das-bag/aktuell/medienmitteilungen.msg-id-102228.html>

¹⁹¹ Bradley, S. Jan 2020. Geneva parliament votes to ban cigarette sales to minors. *SWI Swissinfo.ch*.

https://web.archive.org/web/20240829143404/https://www.swissinfo.ch/eng/politics/tobacco_geneva-parliament-votes-to-ban-cigarette-sales-to-minors/45500784, consulted on 18th September 2024.

¹⁹² United Nations General Assembly resolution 44/25. 20 November 1989. *Convention on the Rights of the Child*.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child#:~:text=Article%2024-1,2>, consulted on 18th September 2024.

¹⁹³ Bradley, S. Jan 2020. Geneva parliament votes to ban cigarette sales to minors. *SWI Swissinfo.ch*.

https://web.archive.org/web/20240829143404/https://www.swissinfo.ch/eng/politics/tobacco_geneva-parliament-votes-to-ban-cigarette-sales-to-minors/45500784, consulted on 18th September 2024.

¹⁹⁴ Confédération suisse Administration fédérale des douanes AFD. Octobre 2021. *Loi fédérale sur les produits du tabac et les cigarettes électroniques (Loi sur les produits du tabac, LPTab)*. <https://www.fedlex.admin.ch/eli/fga/2021/2327/fr>, consulted on 18th September 2024.

¹⁹⁵ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control- Article 16*.

<https://fctc.who.int/publications/i/item/9241591013>, consulted on 18th September 2024.

¹⁹⁶ Assunta M. *Global Tobacco Industry Interference Index 2023*. Global Center for Good Governance in Tobacco Control (GGTC). Nov 2023. <https://globaltobaccoindex.org/download/1728>, consulted on 18th September 2024.

¹⁹⁷ Confédération suisse Office fédéral de la santé publique OFSP. *Faits & chiffres: tabac*.

<https://www.bag.admin.ch/bag/fr/home/zahlen-und-statistiken/zahlen-fakten-zu-sucht/zahlen-fakten-zu-tabak.html>, consulted on 18th September 2024.

and other vested interests of the tobacco industry, and thus does not comply with the requirement of Article 5.3 of the FCTC.

Overall, Switzerland fails to meet key requirements of the FCTC, notably its Articles 5.3 (Protection from vested interests of the tobacco industry), 6 (Price and tax measures to reduce the demand for tobacco), 8 (Protection from exposure to tobacco smoke), and 13 (Tobacco advertising, promotion and sponsorship). The FCTC's aim is "to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke."¹⁹⁸ By failing to implement these best practices, Switzerland deprives its population of the right "to the enjoyment of the highest attainable standard of physical and mental health."¹⁹⁹

OVERALL, SWITZERLAND FAILS TO MEET KEY REQUIREMENTS OF THE FCTC,

notably its

- **Article 5.3** (protection from vested interests of the tobacco industry),
- **Article 6** (Price and tax measures to reduce the demand for tobacco),
- **Article 8** (Protection from exposure to tobacco smoke), and
- **Article 13** (Tobacco advertising promotion and sponsorship).

Nevertheless, the Swiss government states in an explanatory note that "Swiss law meets many of the requirements of this convention, for example in the area of protection against passive smoking, taxation or warnings on cigarette packs."²⁰⁰ In the same note, the Federal Council explains that

"[...] the new restrictions introduced as part of the implementation of the initiative fulfill a condition required by the Convention for countries that have not imposed a comprehensive ban on advertising, promotion and sponsorship. This is required by Article 13.4.e of the FCTC, which calls on Parties to provide for 'a comprehensive ban or restrictions on advertising, promotion and sponsorship on television, radio, print media and other media such as the Internet.' By also proposing an advertising expenditure disclosure obligation for the tobacco industry, the present draft proposes a final appropriate addition to a possible ratification of the FCTC."²⁰¹

This is a worrying attempt to weaken the interpretation of the FCTC. Being a Party to the Vienna Convention on the Law of Treaties and having signed the FCTC, Switzerland has an obligation, as per Article 31.1 of the Vienna Convention, to interpret the FCTC "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."²⁰² Furthermore, this interpretation must take into account "(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."²⁰³ Clearly, the

¹⁹⁸ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control- Article 13*. <https://fctc.who.int/publications/i/item/9241591013>, consulted on 18th September 2024.

¹⁹⁹ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control- Preamble*. <https://fctc.who.int/publications/i/item/9241591013>, consulted on 18th September 2024.

²⁰⁰ Confédération suisse Administration fédérale des douanes (AFD). 31 août 2022. *Révision partielle de la loi sur les produits du tabac et les cigarettes électroniques (Loi sur les produits du tabac, LPTab) Rapport explicatif*. https://www.bag.admin.ch/dam/bag/fr/dokumente/npp/tabak/tabpg/neues-tabakproduktegetz-vernehmlassung/bericht.pdf.download.pdf/Rapport_f.pdf

²⁰¹ Provided for in Article 13, paragraph 4, letter d, of the FCTC.

²⁰² United Nations. 1969. *Vienna Convention on the Law of Treaties- Article 31*. United Nations, Treaty Series, vol. 1155, p. 331. RS 0.111.

²⁰³ *Ibid.*

implementation guidelines elaborated by the FCTC Parties are important instruments for the interpretation of the WHO treaty. When these are taken into account, it is obvious that the Swiss government makes unfounded claims when it says that Switzerland meets the FCTC requirements in the area of protection against passive smoking, taxation and advertising, promotion and sponsorship bans.²⁰⁴ Furthermore, in claiming that FCTC requirements would be met by legal dispositions such as those adopted by Switzerland, which are weak, to say the least, Switzerland is acting in a way that would defeat the object and purpose of the FCTC, an act which is in breach of Article 18 of the Vienna Convention.²⁰⁵ The Swiss government invokes “a condition required by the Convention for countries that have not imposed a comprehensive ban on advertising, promotion and sponsorship”²⁰⁶ to justify its decision to implement a *partial restriction* of advertising rather than a “*comprehensive ban* on advertising, promotion and sponsorship,”²⁰⁷ as required by Article 13.1. This is a misinterpretation of the FCTC. The condition is only required of countries that are “not in a position to undertake a comprehensive ban due to [their] constitution or constitutional principles.”²⁰⁸ This is not the case of Switzerland, as has been shown by Swiss law firm r&associés, avocats in their legal analysis mentioned above, in which they concluded that “a comprehensive ban on the advertising of tobacco products is, in our view, in accordance with the Swiss constitutional order; only the adoption of such a measure will allow the ratification of the FCTC.”²⁰⁹ Should the Swiss governments’ interpretation prevail and motivate other countries to adopt a similar interpretation, this would void Article 13 of most of its substance and render the guidelines for its implementation useless.

In 2022, voters (people and cantons) accepted a popular initiative to protect children from exposure to tobacco advertising.²¹⁰ As a result, a new tobacco control law will be developed. It is likely going to experience strong tobacco industry interference and given previous very pro-industry stances from parliamentarians some Swiss tobacco control experts expect that the outcome will remain weak.²¹¹ It will be below the standard of globally agreed tobacco control best practices and commitments towards global health, development and human rights mechanisms that Switzerland has engaged with.

²⁰⁴ Confédération suisse Administration fédérale des douanes (AFD). 31 août 2022. *Révision partielle de la loi sur les produits du tabac et les cigarettes électroniques (Loi sur les produits du tabac, LPTab) Rapport explicatif*. https://www.bag.admin.ch/dam/bag/fr/dokumente/npp/tabak/tabpg/neues-tabakproduktegetz-vernehmlassung/bericht.pdf.download.pdf/Rapport_f.pdf

²⁰⁵ United Nations. 1969. *Vienna Convention on the Law of Treaties- Article 18*. United Nations, Treaty Series, vol. 1155, p. 331 https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

²⁰⁶ Confédération suisse Administration fédérale des douanes (AFD). 31 août 2022. *Révision partielle de la loi sur les produits du tabac et les cigarettes électroniques (Loi sur les produits du tabac, LPTab) Rapport explicatif*. https://www.bag.admin.ch/dam/bag/fr/dokumente/npp/tabak/tabpg/neues-tabakproduktegetz-vernehmlassung/bericht.pdf.download.pdf/Rapport_f.pdf

²⁰⁷ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control- Article 13*. <https://fctc.who.int/publications/i/item/9241591013>

²⁰⁸ World Health Organization. *Guidelines for implementation of Article 13 of the WHO FCTC*. https://fctc.who.int/docs/librariesprovider12/default-document-library/who-fctc-article-13.pdf?sfvrsn=345fb387_16&download=true

²⁰⁹ r&associés, avocats. Décembre 2020. *Avis de droit Conformité du projet de loi fédérale sur les produits du tabac au droit supérieur*. <https://www.oxysuisse.ch/files/public/docs/lptab/20201216-cereghetti-petermann-avis-de-droit.pdf>

²¹⁰ *Initiative populaire ‘Oui à la protection des enfants et des jeunes contre la publicité pour le tabac.’* RO 2022 241. [https://www.admin.ch/gov/fr/accueil/documentation/votations/20220213/initiative-populaire-oui-a-la-protection-des-enfants-et-des-jeunes-contre-la-publicite-pour-le-tabac.html#:~:text=faveur%20des%20m%C3%A9dias-,Initiative%20populaire%20%C2%AB%20Oui%20%C3%A0%20la%20protection%20des%20enfants%20et%20des,publicit%C3%A9%20pour%20le%20tabac\)%20%C2%BB](https://www.admin.ch/gov/fr/accueil/documentation/votations/20220213/initiative-populaire-oui-a-la-protection-des-enfants-et-des-jeunes-contre-la-publicite-pour-le-tabac.html#:~:text=faveur%20des%20m%C3%A9dias-,Initiative%20populaire%20%C2%AB%20Oui%20%C3%A0%20la%20protection%20des%20enfants%20et%20des,publicit%C3%A9%20pour%20le%20tabac)%20%C2%BB)

²¹¹ Lebon L, Diethelm P, et al. Why did Swiss citizens vote to ban tobacco advertising? *Tobacco Control*. 2023 Oct 27;tc-2023-057986. doi: 10.1136/tc-2023-057986

4. ANALYSIS

While tobacco corporations may be the perpetrators of harm, a human rights violation actually occurs when a government fails to protect its citizens. Therefore, it is important to consider how the Swiss government has violated its citizens' rights (and therefore harmed their health) by being complicit with the tobacco industry. The Ruggie principles (respect, protect, remedy) discussed in the Problem section above, provide a helpful framework for this analysis.

4.1. HOW THE INDUSTRY CAUSES HARMS (RESPECT)

4.1.1. HUMAN RIGHTS VIOLATIONS

The manufacture, marketing, and sale of tobacco are incompatible with human rights, in particular, the right to health, the rights of children, the rights of women, the right to development, and the right to a healthy environment. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 14,²¹² clarified what is meant by "violation of the obligation to protect."

"Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others; the failure to protect consumers and workers from practices detrimental to health [...]; the failure to discourage production, marketing and consumption of tobacco, narcotics and other harmful substances; [...]"

The "failure to discourage production, marketing and consumption of tobacco" constitutes a violation of the obligation to protect under Article 12 (the right to health) of the ICESCR.²¹³

In addition to failing to protect the right to health, Switzerland is also failing to protect children's rights, specifically Article 32 of the Convention on the Rights of the Child, which Switzerland is bound to uphold.

²¹² United Nations Committee on Economic, Social, and Cultural Rights. 2000. *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights- General Comment No. 14*.

https://digitallibrary.un.org/record/425041/files/E_C.12_2000_4-EN.pdf?ln=en

²¹³ Action on Smoking and Health. 2019. Bucharest Declaration on Human Rights and a Tobacco-free Europe. <https://ash.org/bucharest-declaration/>

In Switzerland, it is still common in tobacco growing to hire minors as young as 15 to work during the harvest period at the end of the summer. An advertisement that appeared online on a youth employment site, "Adosjobs.ch", on 6 June 2018 aimed to recruit four people to work in Dompierre, in the Canton of Vaud:

"The work consists of picking and drying tobacco leaves. It is a physical job. We are looking for young people of at least 15 years of age from the region (we do not provide accommodation) who can travel by their own means." The work runs from 5 July to 31 August 2018 and is paid "8-15 CHF/hour depending on the quality of the work."²¹⁴

As this is a very difficult and poorly paid job, farmers in the Canton of Vaud do not hesitate to call on the labour of young French cross-border workers, and it is the organisation Swisstabac that centralizes the recruitment procedure for these summer jobs."²¹⁵

In Switzerland, it is still common in tobacco growing to hire minors as young as 15 to work during the harvest period at the end of the summer.

4.1.2. MISUSE OF HUMAN RIGHTS ARGUMENTS

Tobacco corporations have long declared themselves champions of human rights. They openly engage on human rights topics in a variety of settings, such as their own Human Rights Reports, on their websites or in the media. Their human rights rhetoric and conclusions are almost always to their advantage, often claiming to show how their company is pushing towards protecting and attaining human rights.²¹⁶

Japan Tobacco International (JTI), which includes brands like Winston and Camel and is headquartered in Geneva, has stated core human rights principles that include the right to information about the health risks of using products, the right to a child's adequate and best development by preventing access for the youth, the right to health through access to reduced-risk products, and the right to a healthy environment through the protection of non-smokers in regards to second-hand smoke.²¹⁷ Interestingly, concerning the youth access prevention, JTI states that all elements of society have to work together to achieve this goal, while at the same time attempting to lobby the Swiss government against any kind of tobacco control policy change designed to reach this target.

²¹⁴ Adosjobs. *Cueillette du tabac*. <http://web.archive.org/web/20240711152748/https://adosjob.ch/jobs/48-cueillette-du-tabac>

²¹⁵ Luciano, Ruggia. *Tobacco and slavery: a neverending history*. Medicus Mundi Schweiz Gesundheit für alle. MMS Bulletin #160 In den Klauen der Tabakkonzerne. <https://www.medicusmundi.ch/de/advocacy/publikationen/mms-bulletin/fighting-tobacco-in-lmic/kapitel-3/tobacco-and-slavery-a-neverending-history>

²¹⁶ Philip Morris International. May 2021. *Respect for human rights*. <http://web.archive.org/web/20240829131524/https://www.pmi.com/sustainability/integrated-report-2020/operating-with-excellence/respect-for-human-rights>

²¹⁷ JTI. *Our six core principles*. <http://web.archive.org/web/20240902151256/https://www.jti.com/about-us/our-business/our-six-core-principles>

PMI has embedded human rights language in their corporate culture, particularly in internal policies but also international standards wherever they act. Respect for human rights is a topic within PMI's strategic pillar.²¹⁸ Interestingly, they say openly that addressing human rights is a business decision.²¹⁹ PMI wants to reduce financial or legal risks by guaranteeing human rights to their employees and partners (such as communities or stakeholders).²²⁰ On the human rights page of their website, they clearly state their goal for a smoke-free future.²²¹ PMI's basic human rights principles center, for example, on strict control of their products, such as forced or child labor, good treatment of workers and the right of freedom of association.²²² In June of 2023, Philip Morris produced its first "Human Rights Report," dedicated to "describing our strategy to respect human rights and the progress made to date."²²³

BAT claims to work according to their Standard of Business Conduct, which sets their rules and boundaries but also guide every employee towards ethical decision making in the workplace. Included here is the attention towards human rights, especially to no child labor, freedom of association and no exploitation of labor or modern slavery.²²⁴ BAT responds to public human rights allegations on their website, for example the situation in Belarus 2021 or Malawi and Italy in 2019.²²⁵

The 'Big Three' who dominate the cigarette market in Switzerland are clearly articulating their human rights engagement and priorities. One of the questions that remains after getting to know their strategies is how well they put their goals into action.

4.1.3. CORPORATE SOCIAL RESPONSIBILITY (CSR)

The tobacco industry further manipulates public opinion through corporate social responsibility (CSR) initiatives.²²⁶ The tobacco industry undertakes philanthropic projects that help to give them a good corporate image. For example, the tobacco industry causes significant harm to the environment, but they attempt to "greenwash"²²⁷ their image partly through their CSR strategy.²²⁸ Swiss law does not hamper industry CSR

²¹⁸ Philip Morris International. May 2021. *Respect for human rights*.

<http://web.archive.org/web/20240829131524/https://www.pmi.com/sustainability/integrated-report-2020/operating-with-excellence/respect-for-human-rights>

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ Philip Morris International. *Focus on Human Rights*.

<http://web.archive.org/web/20240829131917/https://www.pmi.com/sustainability/reporting-on-sustainability/focus-on-human-rights>

²²² PMI: Philip Morris International: *Our Commitment to Human Rights*.

https://web.archive.org/web/20240902105430/https://www.pmi.com/resources/docs/default-source/pmi-sustainability/pmi-human-rights-commitment/ta280c4bd6c7468f696e2ff0400458fff.pdf?sfvrsn=ff4acb4_6

²²³ Philip Morris International. Jun 2023. *Philip Morris International publishes first Human Rights Report*. Sustainability News.

<https://web.archive.org/web/20240829142453/https://www.pmi.com/sustainability/sustainability-news/philip-morris-international-publishes-its-first-human-rights-report>

²²⁴ BAT *Responding to human rights allegations*.

<https://web.archive.org/web/20240829132633/https://www.bat.com/humanrights/respond>

²²⁵ *Ibid.*

²²⁶ Tobacco Tactics. 2021. *CSR Strategy*. <https://tobaccotactics.org/wiki/csr-strategy/>, consulted on 18th September.

²²⁷ Meriam Webster defines greenwashing as- the act or practice of making a product, policy, activity, etc. appear to be more environmentally friendly or less environmentally damaging than it really is. <https://www.merriam-webster.com/dictionary/greenwashing>

²²⁸ Tobacco Tactics. 2022. *Greenwashing*. <https://tobaccotactics.org/wiki/greenwashing/>, consulted on 19th September 2024.

activities in any regard; there are no policies in place which relate to CSR activities involving federal departments.²²⁸

In fact, the Swiss government has embraced these initiatives. In 2020, during the universal exposition in Dubai, PMI sponsored the Swiss pavilion with a CHF 2 million investment under the auspice of the foreign affairs department.²²⁹ That sponsorship created an outcry in the Swiss media. The Swiss School of Public Health, a foundation of eight universities offering post-graduate health education, and a wide range of national constituencies worked actively to get the Swiss government to rescind this sponsorship.²³⁰ The WHO expressed its criticism severely, pointing out that a memorandum of understanding had been signed between itself and intergovernmental Bureau International des Expositions (BIE), the exhibition's organizer, to deal with public health issues related to such global events, which PMI's sponsorship of the Swiss pavilion failed to respect. It was also recalled that the United Arab Emirates (UAE) had ratified the FCTC and that allowing PMI to be present at the exhibition would discredit both the WHO treaty and the UAE's public health commitments.²³¹ Finally, the Swiss Foreign Minister, Ignazio Cassis, who is also a public health professional, ruled out PMI as a sponsor of the Swiss pavilion at Expo 2020 in Dubai.²³²

Tobacco multinationals generally target highly vulnerable populations with their charitable donations: victims of natural and man-made disasters, migrants in high distress situations, people in extreme poverty or in precarious marginality, etc. Another example is the Geneva-based Eliminating Child Labour in Tobacco Growing (ECLT) Foundation, which is governed and funded by BAT, Imperial Brands (IMB), JTI, PMI, international leaf tobacco traders (Alliance One – now Pyxus, Hail & Cotton, Premium Tobacco Group, Universal Corporation), and the leaf tobacco and nicotine company Contraf-Nicotex Tobacco (CNT).^{233, 234} The only non-tobacco founding member of ECLT, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tourism, Tobacco and Allied Workers' Associations (IUF), withdrew from ECLT in 2013.²³⁵ Their decision was motivated by observing that ECLT had become "very much part of the corporate social responsibility activities (CSR) of major companies" and that IUF did not want to "remain as a 'passive' partner in an initiative we will as a result not have sufficient influence over," acknowledging that the foundation was entirely under the control of "major companies."²³⁶

²²⁹ Ram, Etwareea. 2019. Philip Morris, sponsor du pavillon suisse à Dubaï. *Tollé. Le Temps*. <https://web.archive.org/web/20240902094819/https://www.letemps.ch/economie/philip-morris-sponsor-pavillon-suisse-dubai-tolle>, consulted on 19th September 2024.

²³⁰ Reuters. 2019. Swiss minister under fire for tobacco sponsorship of Expo pavilion. *Reuters*. <https://web.archive.org/web/20240902095014/https://www.reuters.com/article/swiss-philip-morris-expo-idUKL8N24P54E>, consulted on 19th September 2024.

²³¹ Künzli, N., Puhon, M. A., & Suggs, L. S. (2019). Will the Swiss pavilion at Expo 2020 Dubai damage your health? *International journal of public health*, 64, 1125-1126. doi: 10.1007/s00038-019-01286-1

²³² Swissinfo.ch. JC. 2019. Minister to review sponsorship rules after dumping Philip Morris. https://web.archive.org/web/20220627090125/https://www.swissinfo.ch/eng/tobacco-row_minister-to-review-sponsorship-rules-after-dumping-philip-morris/45140150, consulted on 19th September 2024.

²³³ Tobacco Tactics University of Bath. 2022. *Eliminating Child Labour in Tobacco-Growing Foundation (ECLT)*. <https://tobaccotactics.org/wiki/eclt/>

²³⁴ ECLT Foundation. 2022. *2022 Embracing Change and Transforming Lives*. Annual Report. <https://www.eclt.org/user/pages/06.publications/annual-report-2022/ECLT%20Annual%20Report%202022.pdf>

²³⁵ IUF Executive Committee. Geneva, May 2013, *Item 5: Fulfilling the Mandate – Relations, actions and activities with other international union organizations, NGOs and inter-governmental organizations*. <https://www.oxysuisse.ch/files/public/docs/eclt/iuf/20130529-iuf-executive-company-decision-to-withdraw-from-eclt.pdf>

²³⁶ *Ibid.*

ECLT's stated mission is to bring together key stakeholders and work independently against child labor in regards to the supply chain of tobacco products.²³⁷ However, child labor is still rampant in the industry,²³⁸ and BAT internal documents from 1998–2002 revealed that they were using the foundation to better their reputation.²³⁹ A study described ECLT's successful engagement with UNICEF as "an overall tobacco industry strategy to improve its corporate image, infiltrate the United Nations, and weaken global tobacco-control efforts."²⁴⁰ In a letter sent to the ILO Governing Body in September 2017, Tobacco and Allied Workers Union of Malawi (TOAWUM) acknowledged that "The intent of much of ECLT's programming is not bad. It works on solutions that we are not opposed to, including crop diversification programs, savings and loan programs to help farmers get access to credit and educational opportunities for children in rural areas."²⁴¹ However, TOAWUM considered that these initiatives "insufficiently address root causes of tobacco-related child labour, which is endemic poverty among tobacco farmers. That poverty is exacerbated by contracting schemes developed by the very companies funding some projects for ECLT [emphasis added]."²⁴²

The letter explained:

"ECLT focuses on only one of the fundamental rights at work, when Malawian tobacco farmers are being denied virtually all of them. Tobacco companies, by virtue of denying TOAWUM rights to organise and enter into collective bargaining agreements, exacerbate the injustices that exist in the tobacco value chain. ECLT does not take an empowering, rights-based approach that would help communities demand a more just share of the value chain for their labour, and thus ease the poverty that drives child labour. It is a charity program focusing on the issues the industry has on its agenda, rather than local farmers [emphasis added]."²⁴³

Tobacco companies make use of a human rights-based approach as part of their CSR strategy. The 'Big Three' tout how important it is to protect human rights, especially due to their global actions and appearances in different environments but fail to protect the right to health from the harms of their products.^{244,245}

²³⁷ ECLT Foundation. *About*. <https://www.eclt.org/en/about-eclt-foundation>, consulted on 19th September 2024.

²³⁸ Boseley, Sarah. 2018. Child labour rampant in tobacco industry. *The Guardian*. <https://web.archive.org/web/20240906215532/https://www.theguardian.com/world/2018/jun/25/revealed-child-labor-rampant-in-tobacco-industry>, consulted on 19th September 2024.

²³⁹ Otañez MG, Muggli ME, Hurt RD, Glantz SA. Eliminating child labour in Malawi: a British American Tobacco corporate responsibility project to sidestep tobacco labour exploitation. *Tobacco Control*. 2006 Jun;15(3):224–30. doi: [10.1136/tc.2005.014993](https://doi.org/10.1136/tc.2005.014993)

²⁴⁰ van der Eijk, Y., Bialous, S. A., & Glantz, S. (2018). The tobacco industry and children's rights. *Pediatrics*, 141(5). doi: [10.1542/peds.2017-4106](https://doi.org/10.1542/peds.2017-4106).

²⁴¹ Tobacco and Allied Workers Union of Malawi (TOAWUM). Sept 2017. *Letter to government members of the ILO Governing Body*. <https://www.oxysuisse.ch/files/public/docs/eclt/20170829-letter-to-ilo-by-tobacco-workers-of-malawi.pdf>

²⁴² *Ibid*.

²⁴³ *Ibid*.

²⁴⁴ Philip Morris International. May 2021. *Respect for human rights*. <http://web.archive.org/web/20240829131524/https://www.pmi.com/sustainability/integrated-report-2020/operating-with-excellence/respect-for-human-rights>

²⁴⁵ JTI. *Respecting and safeguarding human rights across our operations*. <https://web.archive.org/web/20230306074007/https://www.jti.com/about-us/sustainability/respecting-and-safeguarding-human-rights-across-our-operations>

4.1.3.1. JAPAN TOBACCO INTERNATIONAL (JTI)

JTI's Human Rights Report lists respect for human rights as the number one priority of their sustainability strategy.²⁴⁶ JTI points out, among other things, that they are certified as a Global Top Employer, have human rights champions within the company, follow human rights action plans, and are involved in other global programs.²⁴⁷

In Switzerland, JTI has established the JTI Foundation,²⁴⁸ a charitable organization whose stated objective is to "help less privileged people and victims of natural or man-made disasters improve their quality of life."²⁴⁹ The foundation is chaired by Edy Pirard, the CEO of JTI. Its active programmes are in Switzerland, Turkey, and the UK.²⁵⁰ In Switzerland, the JTI Foundation supports two organizations: International Social Service – Switzerland (which helps "vulnerable migrants interested in voluntary return after their asylum claims were rejected in Switzerland"²⁵¹), and REDOG (whose aim is "to develop and sustain disaster-dog search capacity to allow for fast and effective deployments of search-dog teams").²⁵² JTI also donates money to the Geneva-based Centre Social Protestant, a charity NGO whose aim is to "provide professional help to some 11,000 people who are living in precarious marginality or isolation."²⁵³ In other words, JTI is "supporting" some of their most frequent customers- people of lower socio-economic status who are more likely to smoke.

Tobacco companies make use of a human rights-based approach as part of their **CSR strategy**.

The "Big Three" tout how important it is to protect human rights, especially due to their global actions and appearances in different environments,
BUT FAIL TO PROTECT THE RIGHT TO HEALTH FROM THE HARMS OF THEIR PRODUCTS.

²⁴⁶ JTI.JT Group Human Rights Report: From principles to practice.

https://web.archive.org/web/20240907034331/https://www.jt.com/sustainability/human_rights/pdf/JTG_Human_Rights_Report_2021.pdf

²⁴⁷ *Ibid.*

²⁴⁸ Kanton Luzer Commercial Register. *Die JTI Stiftung Foundation Dagmersellen CHE-109.479.827 Entry of 18.05.2006.*

<https://lu.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-109.479.827>

²⁴⁹ JTI Foundation. *About Us.* <https://web.archive.org/web/20240905172738/https://jitifoundation.org/about-us/>

²⁵⁰ JTI Foundation. *Our Programs.*

<https://web.archive.org/web/20240420205559/https://jitifoundation.org/programs/#location=&status=Active&view=list>

²⁵¹ The JTI Foundation. *International Social Service – Switzerland (ISS-CH).*

<https://web.archive.org/web/20240314150104/https://jitifoundation.org/programs/active/international-social-service-switzerland-iss-ch/>

²⁵² The JTI Foundation. *REDOG Swiss disaster dog association.*

<https://web.archive.org/web/20240523164950/https://jitifoundation.org/programs/completed/search-and-rescue-switzerland/>

²⁵³ CSP. 2021. *Rapport Annuel 2021.* https://web.archive.org/web/20240902113054/https://csp.ch/geneve/wp-content/uploads/sites/5/2022/04/WEB_CSP-GE_RA-2021_A4.pdf

4.1.3.2. BRITISH AMERICAN TOBACCO (BAT)

BAT makes similar claims: that they are committed to ensuring human rights for their employees, their partners and across supply chains and business operations.²⁵⁴ The Standards of Business Conduct sets core policies and is to be followed worldwide.²⁵⁵ Included in the standards are the promotion of equality and diversity, ensuring fair wages and benefits, supporting a work-life balance, adopting health and safety procedures and safeguarding employee well-being.²⁵⁶ Regular amendments aim to ensure an updated Code of Conduct in the everchanging environment in which the multinational operates. In 2021, among other amendments, the list of protected characteristics was expanded to include gender identity and reassignment, marital and pregnancy status, ethnicity and trade union membership in order to openly show BAT's commitment to diversity and inclusion.²⁵⁷

The British American Tobacco Foundation Switzerland²⁵⁸ is responsible for the corporate social investment of BAT Switzerland. BAT indicates on its website that the foundation "develops sustainable partnerships with organisations specialising in the promotion of education and social integration, two long-standing objectives of the Foundation to which it is dedicated in the long term," giving as examples of such partnerships their work "with the regional charities 'Caritas Vaud' and 'Caritas Jura' to facilitate the integration of the people concerned into working life."²⁵⁹ Neither Caritas Vaud nor Caritas Jura mention this partnership on their websites. Again, a multinational tobacco corporation is "supporting" their most frequent customers. The "corporate social responsibility" is self-serving.

4.1.3.3. PHILIP MORRIS INTERNATIONAL (PMI)

PMI touts its desire to foster an empowered and inclusive workplace. On their website, they share performance highlights in regard to that goal, for example, that 100% of their employees are paid the minimum of the living wage level and that they are invested in improving gender and local representation.²⁶⁰ Parental leave principles at PMI are focused on people raising families, not referring to women alone but rather all caregivers, and ensuring inclusion and diversity in those aspects.²⁶¹

²⁵⁴ BAT. *Standards of Business Conduct*. <https://web.archive.org/web/20240902113505/https://www.bat.com/who-we-are/our-corporate-governance/standards-of-business-conduct>

²⁵⁵ *Ibid.*

²⁵⁶ BAT *Our Standards of Business Conduct 2022*.

[https://web.archive.org/web/20230327113141/https://www.bat.com/group/sites/uk_9d9kcy.nsf/vwPagesWebLive/DOCA6L7J/\\$file/BAT_Group_SoBC_2022_29_11_21_digital_version.pdf?open&v=1](https://web.archive.org/web/20230327113141/https://www.bat.com/group/sites/uk_9d9kcy.nsf/vwPagesWebLive/DOCA6L7J/$file/BAT_Group_SoBC_2022_29_11_21_digital_version.pdf?open&v=1)

²⁵⁷ *Ibid.*

²⁵⁸ Jura. CH. *Fondation British American Tobacco Switzerland Foundation Boncourt CHE-101.950.347 Entry of 19.09.1988*.

<https://web.archive.org/web/20240902113727/https://ju.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-101.950.347.7>

²⁵⁹ BAT Switzerland. *Die British American Tobacco Switzerland Foundation*.

<https://web.archive.org/web/20240906215951/https://www.bat.ch/de/DOA2THQR.html>

²⁶⁰ PMI. Foster an empowered and inclusive workplace.

<https://web.archive.org/web/20230929002702/https://www.pmi.com/sustainability/foster-an-empowered-and-inclusive-workplace>

²⁶¹ PMI. Work-Life integration. <https://web.archive.org/web/20240902114654/https://www.pmi.com/who-we-are/inclusion-diversity/work-life-integration>

Philip Morris has a program of “charitable donations,” now renamed “social contributions.” On its website,²⁶² the company explains that “partnering with local groups to address social and economic challenges contributes to the success of the business.” Recipient organizations in Switzerland that contribute to the success of Philip Morris’s business include^{263,264} Caritas Neuchâtel,²⁶⁵ Cartons du Coeur Neuchâtel,²⁶⁶ Centre social protestant Neuchâtel,²⁶⁷ Foundation “Victim Aid Zurich,”²⁶⁸ Medair,²⁶⁹ RECIF,²⁷⁰ Free Ukraine,²⁷¹ and Projects with a Heart.²⁷² The latter organization, Project with a Heart, is presented on PMI’s website as “a global grassroots movement established and run by employees, and endorsed by PMI.”²⁷³

4.1.3.4. TOBACCO COMPANIES IN SWITZERLAND

Given their situation, these populations and those who help them are often not in a position to refuse donations from tobacco companies, even when they are aware of their questionable moral character. Tobacco companies take undue advantage of these situations of extreme vulnerability and dependence to exploit them, without the recipients’ knowledge, for public relations purposes and to give a positive image of themselves.

In its Internal Guidance Brief entitled “Red Cross Red Crescent non-engagement with tobacco companies,”²⁷⁴ the International Federation of Red Cross and Red Crescent Societies (IFRC) referred to the Guidelines on implementation of Article 5.3 of the FCTC, quoting them: “The tobacco industry conducts activities described as ‘socially responsible’ to distance its image from the lethal nature of the product it produces and sells or to interfere with the setting and implementation of public health policies.”²⁷⁵ It then recalled that the IFRC Governing Board, at its Session in May 2013, had issued a Decision regarding the International Red Cross and Red Crescent Movement and tobacco industry donations, as follows:

²⁶² PMI. May 2021. Community support. Integrated Report 2020.

<https://web.archive.org/web/20240902114928/https://www.pmi.com/sustainability/integrated-report-2020/caring-for-the-people-we-work-with/community-support>

²⁶³ PMI. 2021. 2021 Social Contributions at a glance.

<https://web.archive.org/web/20240902115059/https://www.pmi.com/resources/docs/default-source/pmi-our-company/2021-social-contributions.pdf>

²⁶⁴ PMI. 2022. 2022 Social Contributions at a Glance.

<https://web.archive.org/web/20240902115302/https://www.pmi.com/resources/docs/default-source/pmi-our-company/2022-social-contributions.pdf>

²⁶⁵ Caritas. A propos de Caritas. <https://web.archive.org/web/20240902115725/https://caritas-regio.ch/fr/a-propos-de-caritas/neuchatel>

²⁶⁶ Cartons du Coeur. Home. <https://web.archive.org/web/20240913055853/https://cartonsducoeur-ne.ch/>

²⁶⁷ CSP. Neuchatel. <https://web.archive.org/web/20240917211547/https://csp.ch/neuchatel/>

²⁶⁸ Opferberatung Zürich. Ein Recht auf Hilf. <https://web.archive.org/web/20240907022355/https://obzh.ch/>

²⁶⁹ Medair. Home. <https://web.archive.org/web/20240917045722/https://www.medair.org/>

²⁷⁰ Recif. Home. <https://web.archive.org/web/20240906020031/https://recifne.ch/>

²⁷¹ Free Ukraine. Home. <https://web.archive.org/web/20240907033410/https://www.freeukraine.ch/>

²⁷² PMI. Projects with a Heart. <https://web.archive.org/web/20240917182620/https://www.pmi.com/projects-with-a-heart>

²⁷³ Ibid.

²⁷⁴ International Federation of Red Cross and Red Crescent Societies. Red Cross Red Crescent non-engagement with tobacco companies Internal guidance brief – June 2015. <https://seatca.org/dmdocuments/Red%20Cross%20Policy%20on%20TI.pdf>

²⁷⁵ Ibid.

"[...] understanding the ethical and reputational and credibility implications of accepting donations from the tobacco industry including the impact this might have on other components of the Movement and the Movement as a whole, urges National Societies to refrain from accepting funds from the tobacco industry."²⁷⁶

The IFRC stated that

"The mission of the RCRC [Red Cross Red Crescent] Movement is to prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for the human being. The Movement's Regulations on the Use of the Red Cross/Red Crescent Emblem, stipulate that [a business partner]... must in no way be engaged in activities running counter to the Movement's objectives and Principles or which might be regarded by the public as controversial and acknowledge that the sale of tobacco is directly contrary to the Movement's objectives."²⁷⁷

According to the guidelines for implementation of Article 13 of the FCTC, such donations should be banned. "Some tobacco companies make financial or in-kind contributions to organizations, such as community, health, welfare or environmental organizations, either directly or through other entities. Such contributions fall within the definition of tobacco sponsorship in Article 1(g) of the Convention and should be prohibited as part of a comprehensive ban [...]"²⁷⁸ In Switzerland, they are legal. Here again, the country is in violation of the FCTC.

These "social contributions" are combined with cultural sponsorship actions to make the tobacco companies socially acceptable, or even to make them appear as "good corporate citizens." For example, PMI states that it, "is a good corporate citizen everywhere we operate."²⁷⁹ Many key cultural institutions in Switzerland are financially supported by tobacco companies, including those on this not exhaustive list: In Geneva, the Grand Théâtre de Genève (a public institution),²⁸⁰ MAMCO Genève (Museum of Modern and Contemporary Art),²⁸¹ and the Théâtre de Carouge,²⁸² receive money from JTI, which also finances the prestigious Verbier Festival of classical music in the canton of Valais, as its "community partner."²⁸³ In Lausanne (Vaud), Philip Morris is a funding partner of Plateforme 10, which is "home to the 3 Vaud cantonal museums, mudac, Photo Elysée and MCBA, as well as the collections of the Toms Pauli and Félix Vallotton foundations."²⁸⁴ The world-famous Montreux Jazz Festival is sponsored by British American Tobacco, which in exchange gets a massive presence of its cigarette and nicotine delivery brands (many points of sale, 2 kiosks, 11 vending machines, BAT booths, distribution of goodies and of packs of cigarettes at reduced prices).²⁸⁵ These "social contributions" and sponsorship of key cultural events and institutions have deeply integrated the into the Swiss social fabric. The resulting high level of social acceptance allows the tobacco industry to spread its influence and makes it

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control- Article 13*. <https://fctc.who.int/publications/i/item/9241591013>, consulted on 19th September 2024.

²⁷⁹ Philip Morris International Inc. *Integrate Report 2022*. <https://web.archive.org/web/20240902123517/https://www.pmi.com/resources/docs/default-source/pmi-sustainability/pmi-integrated-report-2022.pdf>

²⁸⁰ Grand Theater Geneve. *Partners*. <https://web.archive.org/web/20240905234411/https://www.gtg.ch/en/sponsorship/our-partners/>

²⁸¹ Mamco Geneva. *Support Us*. <https://web.archive.org/web/20240906205211/https://www.mamco.ch/en/1031/us>

²⁸² Théâtre de Carouge. <https://web.archive.org/web/20240910180947/https://theatredecarouge.ch/theatre/partenaires/>

²⁸³ Verbier Festival. *Sponsors*. <https://web.archive.org/web/20240902125206/https://www.verbierfestival.com/en/support/our-sponsors/>

²⁸⁴ Plateforme 10. *Partners*. <https://web.archive.org/web/20240907011518/https://www.mcba.ch/en/partners/>

²⁸⁵ Montreux Jazz festival. <https://web.archive.org/web/20240912153835/https://www.montreuxjazzfestival.com/en/>

difficult for legislators to adopt the necessary regulation of its products and its conduct that is necessary to protect the health of the population from their deleterious effects.

In addition to the information available on industry websites and in their reports, industry social media accounts serve as a widely utilized tool for implementing their CSR strategy. A study focusing on Twitter(X) usage from the big tobacco companies revealed that most posts are assigned to the categories of employment and human resources practices or environmental and corporate sustainability.²⁸⁶ Awards like Global Top Employer (PMI) or Climate Leader (BAT) are just two examples that were published to polish the industry's image. PMI's Swiss Instagram account started in April 2022, with a swift hello and the intriguing message of "follow us for updates about our transformation to a smokefree future, our sustainability efforts or to get to know us as an employer."²⁸⁷ JTI's career account on the same platform shows employer certificates and benefits of working in their teams.²⁸⁸ The same can be said about BAT's career account.²⁸⁹ Notably, pictures of cigarettes do not appear on either of their Instagram accounts. The tobacco industry is actively trying to recruit employees and reach out to stakeholders without sharing any information on the environmental or health effects of tobacco production and consumption on their social media platforms, leaving out an important part of the story. They present themselves as socially and environmentally responsible.²⁹⁰

In Switzerland, tobacco companies also pay their employees above-average salaries, including what a study by the University of Zurich describes as an "immorality premium."²⁹¹ In their empirical findings, the authors of the study have observed that

"[...] the perception that a firm, industry or type of work is immoral may be self-reinforcing. If, as our results indicate, the perception that work involves immoral acts leads people less concerned with acting morally to differentially opt into such work, then the end result of such sorting may be a workforce more likely to commit immoral acts."²⁹²

The findings of the authors apply to employees in high-ranking decision positions of the tobacco industry. What is particularly worrying for Switzerland, given the strong presence of global management centers of the tobacco multinationals on its territory, is the self-reinforcing character of this immorality trend, as documented by the UZH study in the following quotation:

"Our work suggests a perverse case in which those willing to do the most socially harmful acts may instead benefit from doing so. Moreover, this benefit is the direct result of the actions by others who are concerned with behaving morally. Indeed, we provide evidence that a shift in preferences toward a greater aversion to performing immoral work may reward those individuals who are least concerned with morality."²⁹³

²⁸⁶ ACOSH. 2021. Big Tobacco uses Corporate Responsibility Awards to polish its tarnished image. <https://www.acosh.org/big-tobacco-uses-corporate-social-responsibility-awards-polish-tarnished-image/>, consulted on 19th September 2024.

²⁸⁷ Philip Morris. 2022. Welcome to the Philip Morris Switzerland Sarl's official Instagram account. <https://www.instagram.com/philipmorrisch/>, consulted on 19th September 2024.

²⁸⁸ JTI. Jti careers on Instagram. <https://www.instagram.com/jticareers/>, consulted on 19th September 2024.

²⁸⁹ We are BAT careers on Instagram. <https://www.instagram.com/wearebatcareers/>, consulted on 19th September 2024.

²⁹⁰ Bienlein, Martin. 2021. *Frauen und Jugendliche zuerst. Marketing der Tabakindustrie und des Tabakhandels – Werbung, Sponsoring und Verkaufsförderung in der Schweiz.*

²⁹¹ Schneider, Florian, Brun, Fanny, et al. 2020. Sorting and Wage Premiums in Immoral Work.). University of Zurich, Department of Economics, Working Paper No. 353. <http://dx.doi.org/10.2139/ssrn.3646150>

²⁹² *Ibid.*

²⁹³ *Ibid.*

4.1.4. INTERFERENCE WITH SCIENCE

There is a long history of tobacco corporations trying to influence science by financing their own studies.^{294,295,296,297} As one example, PMI paid a scientific publisher named OMICS to publish about the new product IQOS in 2018.

Tobacco corporations also use faux science to minimize perceived risks of tobacco and increase sales. The Foundation for a Smoke-Free World by PMI is used as tool to produce “independent” scientific data, particularly intended to prove how innocuous e-cigarettes are.

There are several blatant examples of this type of interference (both financing studies and misrepresenting results) with science in Switzerland. Perhaps the most well-known example of the industry “buying” results is the corruption of university officials. Ragnar Rylander, a professor at Geneva University, secretly accepted funds for research, up to \$184,000 US dollars per year, over 30 years, from the tobacco industry.²⁹⁸ This research produced findings that minimized the dangers of second-hand smoke.²⁹⁹ Rylander’s ties to Philip Morris were revealed by two tobacco whistleblowers, who accused Rylander of “a scientific fraud without precedent.”³⁰⁰ The legal case that followed led the Geneva appeals court to conclude that

“[...] the appellants have not exaggerated in using the term ‘scientific fraud’ to describe the dual role of professor in the field of environmental medicine and independent researcher that Ragnar Rylander has taken on for himself, on the one hand, and collaborator in the service of an industry that has always been at the diametric opposite of public health, on the other hand... Geneva was indeed the platform for an unprecedented scientific fraud, as Ragnar Rylander acted in his capacity as an associate professor at the University, taking advantage of its reputation and not hesitating to put science at the service of money, in defiance of the mission entrusted to this public institution, which is in particular to disseminate a culture based on scientific knowledge and to raise awareness of the responsibility that teachers assume towards society.”³⁰¹

²⁹⁴ Caprez, C. 2018. *Wie seriös sind Studien der Tabakindustrie?*

<https://web.archive.org/web/20240902130521/https://www.srf.ch/wissen/gesundheit/vernebelte-wissenschaft-wie-serioes-sind-studien-der-tabak-industrie>, consulted on 19th September 2024.

²⁹⁵ Lahrtz, S. 2021. *Wie die Tabakindustrie die Covid-19 Forschung manipuliert.*

<https://web.archive.org/web/20240902130628/https://www.nzz.ch/wissenschaft/von-der-tabakindustrie-bezahlte-forscher-vertreiben-fragwuerdige-nikotintheorie-ld.1629960>, consulted on 19th September 2024.

²⁹⁶ Caprez, C. 2018. *Wie seriös sind Studien der Tabakindustrie?*

<https://web.archive.org/web/20240902130521/https://www.srf.ch/wissen/gesundheit/vernebelte-wissenschaft-wie-serioes-sind-studien-der-tabak-industrie>, consulted on 19th September 2024.

²⁹⁷ Lahrtz, S. 2021. *Wie die Tabakindustrie die Covid-19 Forschung manipuliert.* NZZ.

<https://web.archive.org/web/20240902130628/https://www.nzz.ch/wissenschaft/von-der-tabakindustrie-bezahlte-forscher-vertreiben-fragwuerdige-nikotintheorie-ld.1629960>, consulted on 19th September 2024.

²⁹⁸ Philip Morris USA Payment For R. Rylander. 1995 February 15. Philip Morris Records; Master Settlement Agreement.

<https://www.industrydocuments.ucsf.edu/docs/gxbb0123>

²⁹⁹ Pelle, Neroth. 2004. Tobacco Ties. *The Lancet*. WORLD REPORT| VOLUME 364, ISSUE 9438, P925–926,

[https://web.archive.org/web/2024090225448/https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(04\)17042-6/fulltext?_cf_chl_rt_tk=Anf1RW9cDQLP6oVzylrZkSWiyHNE7Jue1BzHoDGTvr0-1725922488-0.0.1.1-4777](https://web.archive.org/web/2024090225448/https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(04)17042-6/fulltext?_cf_chl_rt_tk=Anf1RW9cDQLP6oVzylrZkSWiyHNE7Jue1BzHoDGTvr0-1725922488-0.0.1.1-4777), consulted on 19th September 2024.

³⁰⁰ Hedley A. J. (2004). There is no scope for tobacco funded research in our society. *Tobacco induced diseases*, 2(4), 163–166.

<https://doi.org/10.1186/1617-9625-2-4-163>, consulted on 19th September 2024.

³⁰¹ Cour de justice de Genève, Chambre pénale, arrêt ACJP/223/03. <https://www.oxysuisse.ch/files/public/docs/ryl/20031225-cour-de-justice-de-geneve-cause-p-5421-01-arret-acjp-223-03.pdf> (free translation by the authors with the help of deepl.com).

While the Rylander affair occurred over 20 years ago, other Swiss academics have also put science at the service of tobacco money more recently. In 2014, Philip Morris financed two professors at the University of Zurich (UZH), who conducted misleading and erroneous analyses about the effect of plain packaging on smoking prevalence in Australia.³⁰² Their working papers were published on the UZH website without peer-review and made available to Philip Morris, which used them extensively in their campaign against plain packaging and in courts, presenting them as evidence that plain packaging did not work.³⁰³ The two professors' findings were refuted. Reanalysis of the same data, published in a peer-reviewed journal, came to the opposite conclusion: "[...] the reduction in smoking prevalence that followed the introduction of plain packaging appears to have been even greater than expected."^{304,305}

The industry has also misrepresented scientific results specific to Switzerland. For example, JTI responded to a study that proved the harmfulness of tobacco products produced in Switzerland and then sold in other countries by saying that "all tobacco products have health risks."³⁰⁶

In spite of the overwhelming scientific evidence, Geneva-based JTI still denies that a causal link exists between exposure to passive smoking and lung cancer and other diseases, stating, "Based on the current science, JTI does not believe the claim has been proven that ETS [environmental tobacco smoke] is a cause of diseases such as lung cancer, coronary heart disease, emphysema and chronic bronchitis."³⁰⁷ JTI proposes solutions that are proven to be ineffective, proclaiming "JTI promotes practical and effective solutions, such as separate smoking and non-smoking areas, which accommodate the legitimate interests of smokers and non-smokers."³⁰⁸ JTI was the new name given to R.J. Reynolds International, a subsidiary of US-based RJ Reynolds, when Japan Tobacco acquired it in 1999.³⁰⁹ JTI continues RJ Reynolds' practice of the fraudulent denial of the health consequences of exposure to passive smoking for which its former parent company was declared a "racketeer" by a US federal court. The Federal Court stated that "Despite their internal acknowledgment of the hazards of secondhand smoke, Defendants [here the "Defendants" include R.J. Reynolds] have fraudulently denied that ETS causes disease."³¹⁰ The Federal Court made the following observation:

"For example, from January 1984 to April 1986, Reynolds ran a series of advertisements in newspapers across the country. One was titled "Smoking in Public: Let's separate fact from fiction"; another was titled "Second-hand

³⁰² Tobacco Tactics, University of Bath (2020). Ashok Kaul. <https://tobaccotactics.org/wiki/ashok-kaul/>, consulted on 19th September 2024.

³⁰³ *Ibid.*

³⁰⁴ Krebsliga. Einflussnahme der Tabakindustrie in der Schweiz. <https://www.krebsliga.ch/krebs-vorbeugen/praevention-und-frueherkennung/nichtrauchen/tabakpraevention-der-krebsliga/-dl-/fileadmin/downloads/sheets/broschuere-einflussnahme-der-tabakindustrie-in-der-schweiz.pdf>

³⁰⁵ Diethelm, P. A., Farley, T. M. 2015. Refuting tobacco-industry funded research: empirical data shows decline in smoking prevalence following introduction of plain packaging in Australia. *Tobacco Prevention & Cessation*, 1(November), 6. <https://doi.org/10.18332/tpc/60650>

³⁰⁶ Maurisse, M. and Ollivier, T. 2019. Heiße Luft und schwarzer Rauch. *Swissinfo*. https://web.archive.org/web/20240902142942/https://www.swissinfo.ch/ger/wirtschaft/investigation_heisse-luft-und-schwarzer-rauch/44722990. See also: <https://stories.publiceye.ch/tabac/>, consulted on 19th September 2024.

³⁰⁷ JTI. *Our six core principles*. <http://web.archive.org/web/20240902151256/https://www.jti.com/about-us/our-business/our-six-core-principles>

³⁰⁸ *Ibid.*

³⁰⁹ Japan Tobacco International. About us. <https://web.archive.org/web/20240902151343/https://www.jti.com/about-us>

³¹⁰ United States v. Philip Morris USA Inc., 449 F. Supp. 2d 1 (D.D.C. 2006), *aff'd in part & vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009) (*per curiam*), cert. denied, 561 U.S. ___, 130 S. Ct. 3501 (2010). https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf

smoke: Let's clear the air"; and a third ran under the headline "Secondhand smoke: The Myth and the Reality." The three Reynolds advertisements asserted: "In fact, there is little evidence -- and certainly nothing which proves scientifically -- that cigarette smoke causes disease in nonsmokers."³¹¹

Ignoring the Federal Court ruling, Swiss-based JTI propagates the same lies that were spread by its former parent company 40 years ago, showing an astounding contempt for science, justice, and people's health.

This is a violation of the "respect" element of the Ruggie principles. This could also be considered as a breach of Article 15 1(b) of the ICESCR which recognizes the right of every person "To enjoy the benefits of scientific progress and its applications."³¹² By corrupting science, the tobacco industry deprives people of this fundamental right. Despite the fact that these acts are carried out by tobacco corporations, the Swiss government is obligated to protect its citizens from these harms.

4.1.5. PARTNERSHIPS

The tobacco industry has a long history of using partnerships and front groups to further their goals worldwide and specifically in Switzerland.

Perhaps the most blatant global example is The Foundation for a Smoke-Free World (FSFW), which is funded solely by PMI.³¹³ FSFW claims to be a "nonprofit private foundation ... independent from PMI," that "operates in a manner that ensures its independence from the influence of any commercial entity."³¹⁴ However, the FSFW has been working alongside or closely to PMI's agenda, through the same branding strategies³¹⁵ or arguing together against a ban on next generation products.³¹⁶ In an even more convoluted attempt at concealment, another group, the Geneva-based International Network of Nicotine Consumer Organisations (INNCO) is funded by PMI, which channels the funds through Foundation for a Smoke-Free World.³¹⁷ INNCO states: "We are not comfortable with that. But we are transparent about it.



³¹¹ *Ibid.*

³¹² United Nations. Dec 1966. *International Covenant on Economic, Social and Cultural Rights- Article 15*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>, consulted on 19th September 2024.

³¹³ Tobacco Tactics University of Bath. 2023. *Foundation for a Smoke-Free World*. <https://tobaccotactics.org/article/foundation-for-a-smoke-free-world/>, consulted on 19th September 2024.

³¹⁴ Foundation for a Smoke-Free World. 2023. *About FSFW*. <https://web.archive.org/web/20221201224306/https://www.smokefreeworld.org/our-vision/>

³¹⁵ Foundation for a Smoke-Free World. *World No Tobacco Day 2019*. YouTube. Uploaded by Foundation for a Smoke-Free World, May 29, 2019. <https://web.archive.org/web/20240902152541/https://www.youtube.com/watch?v=wQ5PUCyE5Ng>

³¹⁶ *Submission by Knowledge• Action• Change (KAC) to the Hong Kong Legislature on the proposal to ban all safer nicotine products (SNP)*. <https://web.archive.org/web/20190902200619/https://nicotinepolicy.net/documents/letters/Submission-to-Hong-Kong-government.pdf>

³¹⁷ INNCO International Network of Nicotine Consumer Organizations. *About*. Available online: <https://innco.org/about-innco/>, consulted on 19th September 2024.

INNCO is independent.”³¹⁸ Despite these assurances, INNCO was used as a platform by PMI to influence FCTC COP8 debates.³¹⁹

Tobacco industry use of front groups or strategic partnerships is widespread in Switzerland. The examples below are not illustrative, but not necessarily exhaustive.

4.1.5.1. SWISS CIGARETTE

Swiss Cigarette is an association between the Swiss subsidiaries of BAT, JTI, and Philip Morris.³²⁰ On their website, they present their aim as follows:

“Swiss Cigarette supports comprehensive regulation of both traditional and new tobacco products, based on reducing the harm caused by smoking or using tobacco products. We are clearly committed to the protection of young people. In concrete terms, this means that we are in favour of a ban on the sale of traditional and alternative products to minors, as well as a ban on advertising aimed specifically at minors.”³²¹

In reality, Swiss Cigarette’s approach to protect young people against advertising is based on the old device of a voluntary advertising code, in the spirit of the code developed by the US tobacco companies in 1964.³²² The aim of this code was “to prohibit advertising directed at young people, to prohibit advertising that used fraudulent health claims, and to assure compliance with the code’s provisions through the establishment of an administrative arm and enforcement mechanism to prescreen and monitor all cigarette advertising.”³²³ The Swiss voluntary advertising code has the same aims. It is presented as an agreement³²⁴ between the Swiss Commission for Fairness in Advertising (itself a voluntary, non-binding self-regulatory organization for the advertising and communications industry, chaired by a member of parliament) and Swiss Cigarette.³²⁵ This agreement has a long history: Its first version dates back to 1973. In 1992, one year before the vote on the “twin initiatives” to ban tobacco and alcohol advertising, the Swiss tobacco companies (mainly BAT, PMI, and RJ Reynolds Tobacco – now JTI) produced a revised version of their agreement with the Commission for

³¹⁸ *Ibid.*

³¹⁹ Robertson L, Joshi A, Legg T, Wellock G, Ray K, Evans-Reeves K. Exploring the Twitter activity around the eighth meeting of the Conference of the Parties to the WHO Framework Convention on Tobacco Control. *Tobacco Control*. 2022 Jan;31(1):50-56. doi: [10.1136/tobaccocontrol-2020-055889](https://doi.org/10.1136/tobaccocontrol-2020-055889).

³²⁰ Turuban, P. Feb 2022. Why Switzerland has one of the world’s strongest tobacco lobbies. *SWI Swissinfo*. <https://web.archive.org/web/20240910074414/https://www.swissinfo.ch/eng/politics/why-switzerland-has-one-of-the-world-s-strongest-tobacco-lobbies/47333036>, consulted on 19th September 2024.

³²¹ Swiss Cigarette. *Qui sommes-nous ?* <https://web.archive.org/web/20240902154558/https://www.swiss-cigarette.ch/fr/ueber-uns.html> (free translation using deepl.com).

³²² Richards JW Jr, Tye JB, Fischer PM. The tobacco industry’s code of advertising in the United States: myth and reality. *Tobacco Control*. 1996 Winter;5(4):295-311. doi: [10.1136/tc.5.4.295](https://doi.org/10.1136/tc.5.4.295)

³²³ *Ibid.*

³²⁴ 2018. *Accord Avec la Commission de loyauté*. Swiss Cigarette, Kapellenstrasse 14, Postfach, 3001 Bern, représentant l’ensemble des fabricants suisses de cigarettes, soit. British American Tobacco Switzerland SA, JT International AG Dagmersellen Philip Morris SA; et, La Commission Suisse pour la Loyauté. <https://web.archive.org/web/20240904093917/https://www.faire-werbung.ch/wp-content/uploads/2021/09/Accord-industrie-cigarette-1.2.2018.pdf>

³²⁵ *La Foundation*. Schweizerische Lauterkeitskommission Commission Suisse pour la Loyauté Commissions Svizzera per la Lealta. <https://web.archive.org/web/20240906205637/https://www.faire-werbung.ch/fr/fondation/>

Fairness.³²⁶ The agreement was also updated in 2005 and 2018.³²⁷ Its declared goal is to ensure that tobacco products “be marketed responsibly and appropriate measures be taken to ensure that the promotion and dissemination of these products are directed to adult smokers, not minors, and meet the information needs of adults to exercise their free choice.”³²⁸

Besides the non-binding and rarely, if ever, enforced nature of the agreement, the implementation mechanism creates an exception for complaints that invoke the agreement: after they are judged by the Commission for Fairness, unlike the other Commission's decisions, they are not published on the Commission website. If the Commission for Fairness decides that a complaint can be upheld, it transmits it to Swiss Cigarette confidentially, which then retries the case behind closed doors. Nothing transpires of its decision. In terms of penalty, the worst that can happen is that the offending company (BAT, JTI, or PMI) be condemned to pay a fine to Swiss Cigarette; essentially tobacco companies are paying a fine to themselves.³²⁹ The website of the Commission for Fairness, does not include any mention of any complaint related to its agreement with Swiss Cigarettes, leaving the public with the false impression that such complaints do not exist.^{330,331}

This self-regulation mechanism has been described as “a fraud” by the president of OxyRomandie, when he summarized what happened to the 15 complaints the association had filed before the Commission for Fairness.³³² This is a typical example of self-regulation tactics, whereby the industry's adoption of voluntary marketing protocols and youth education programs avert any effective regulations.³³³ Such voluntary marketing codes are known to be ineffective, and the agreement between Swiss Cigarette and the Commission for Fairness is no exception.³³⁴ The government of the canton of Vaud can be cited saying “The current situation, as well as the experience of other countries, shows that these [voluntary] measures are not very effective.”³³⁵ The voluntary marketing agreement allows the tobacco multinationals to present themselves as socially responsible and so benefit from a high degree of support from the Swiss government and parliament.

³²⁶ COMMUNAUTE DE L INDUSTRIE SUISSE DE LA C; VEREINIGUNG DER SCHWEIZ ZIGARETTENINDUST. UEBERSETZUNG REGLEMENT BETREFFEND DIE WERBUNG VOM 921216. 1994 November 03. Philip Morris Records; Master Settlement Agreement. Unknown. <https://www.industrydocuments.ucsf.edu/docs/stwp0056> (accessed 01 August 2023).

³²⁷ 2018. *Accord Avec la Commission de loyauté*. Swiss Cigarette, Kapellenstrasse 14, Postfach, 3001 Bern, représentant l'ensemble des fabricants suisses de cigarettes, soit. British American Tobacco Switzerland SA, JT International AG Dagmersellen Philip Morris SA; et, La Commission Suisse pour la Loyauté. <https://web.archive.org/web/20240904093917/https://www.faire-werbung.ch/wp-content/uploads/2021/09/Accord-industrie-cigarette-1.2.2018.pdf>

³²⁸ *Ibid.*

³²⁹ *Ibid.*

³³⁰ *Ibid.* (see 6. Procédure).

³³¹ *Ibid.*

³³² Le Nouvelliste. Une série de plaintes fait tousser fort une association antitabac. *Le Nouvelliste*. 24 April 2015. <https://www.lenouvelliste.ch/suisse/une-serie-de-plaintes-fait-tousser-fort-une-association-antitabac-377394>, consulted on 19th September 2024.

³³³ Savell, E., Gilmore, A. B., & Fooks, G. (2014). How does the tobacco industry attempt to influence marketing regulations? A systematic review. *PloS one*, 9(2), e87389. doi: [10.1371/journal.pone.0087389](https://doi.org/10.1371/journal.pone.0087389)

³³⁴ Swissinfo.ch. 2015. *Les cigarettiers montrés du doigt par OxyRomandie*. <https://www.oxysuisse.ch/files/public/docs/plaintes/media/20150423-swissinfo-les-cigarettiers-montres-du-doigt-par-oxysuisse.pdf>

³³⁵ Canton de Vaud. June 2022. *Réponse du Conseil d'État à l'interpellation Eliane Desarzens – Combien de temps les PUFF's vont-elles continuer à faire un tabac auprès de nos jeunes ? (22_INT_23)*. https://www.vd.ch/fileadmin/user_upload/organisation/gc/fichiers_pdf/2017-2022/22_INT_23_TexteCE.pdf, consulted on 19th September 2024.

In spite of its well-known limitations, the voluntary marketing agreement between Swiss Cigarette and the Commission for Fairness is used in legislative debates by members of parliament to argue that strict tobacco advertising regulations are superfluous.³³⁶ For instance, on 21 March 2021, the National Council decided to oppose the popular initiative "Children without tobacco" that proposed to ban all forms of tobacco advertising that may reach children and youth.³³⁷ During the debate, National Councillor Philipp Kutter, from the Party of the Centre ("Le Centre", formerly known as Christian-Democrats), took to the floor, explaining why the initiative should be rejected. He made a strong reference to his position as president of the Commission for Fairness:

"[...] I have been Chairman of the Swiss Commission for Fairness for just over a year. This commission was founded in 1966, more than fifty years ago. It is an institution of the communications industry whose purpose is the self-regulation of commercial advertising. It deals with complaints about unfair advertising. Although the rulings are not binding on the State, they have always had a regulating effect in the past. This self-regulation also has an effect on tobacco advertising. In 2005, Swiss Cigarette, the association of the three most important cigarette companies in Switzerland, reached an agreement with the Commission for Fairness on voluntary marketing and advertising guidelines. Although there is no legal obligation, this self-regulation has meant that the tobacco industry has since adhered to important advertising restrictions that are in the interests of society and, in particular, for the protection of minors. For example, the industry has committed itself not to advertise in print media whose readership does not consist of at least 80 percent adults. Furthermore, it is not permitted, for example, to distribute free cigarettes to minors or to sponsor events aimed primarily at under-18s. This agreement is a good example of successful self-regulation. It is voluntary and yet effective because Swiss Cigarette members abide by it. Without the legislator having to take action, the industry has reacted to negative effects of advertising and has restricted itself. If the popular initiative would be accepted, the agreement of Swiss Cigarette and the Swiss Commission for Fairness would become obsolete, because no advertising would be allowed anymore. Instead of a good Swiss compromise, as provided for in the agreement, state coercion and a total ban would take hold. I do not find that very Swiss. I recommend: Let us stay on our path. Let us stick to the tried and tested instruments, the Tobacco Product Law and self-regulation, and reject the initiative."³³⁸

This misleading statement (which is also inaccurate; the agreement with Swiss Cigarette was initially concluded in 1992, not in 2005) most certainly influenced the outcome of the vote. The Party of the Centre, to which National Councillor Philipp Kutter belongs, has a pivotal role in the Swiss National Council. Its members voted 21 to 6 against the popular initiative.³³⁹ If only 7 of its members had switched sides and supported the initiative, the initiative would have won the support of the National Council. This example emphasizes how the tobacco self-regulation mechanism works. While being glaringly ineffective at regulating tobacco advertising, it is most effective as a political tool to defeat strict tobacco advertising legislation.

Swiss Cigarette also strongly opposes the implementation of the popular initiative "Children without tobacco" after its adoption by a majority of Swiss citizens and Swiss cantons on 12 February 2022. In its response to the

³³⁶ Schürch, K.; Diethelm, P.; Ruggia, L. (2021). *Tobacco Industry Interference Index*. <https://globaltobaccoindex.org/download/1401>, consulted on 19th September 2024.

³³⁷ Angeli T. Musterbeispiel für eine gut getarnte Lobbyorganisation April 2021. Als Vision Konsum geben bürgerliche Politiker vor, sich für Anliegen der Konsumenten einzusetzen. Doch die Spuren führen in die Wirtschaft – und zur Tabakindustrie. *Beobachter*. <https://web.archive.org/web/20240228221150/https://www.beobachter.ch/politik/vision-konsum-eine-gut-getarnte-lobbyorganisation-337929>, consulted on 19th September 2024.

³³⁸ Kutter P, ed. a zum Schutz der Kinder und Jugendlichen vor Tabakwerbung (Kinder und Jugendliche ohne Tabakwerbung). Volksinitiative Oui à la protection des enfants et des jeunes contre la publicité pour le tabac (enfants et jeunes sans publicité pour le tabac). Initiative populaire, 2021. BO CN 2021 N 550 (objet 20.068). <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=52435>, consulted on 19th September 2024.

³³⁹ *Ibid.*

consultation on the law amendment prepared by the Federal Council,³⁴⁰ the BAT-JTI-PMI tobacco association is categorical: "The present preliminary draft is rejected in its entirety." Swiss Cigarette claims that

"The preliminary draft not only goes far beyond the wording of the initiative and the initiators' own implementation proposal, but also violates the constitutionally guaranteed economic freedom. [...] The implementation of the popular initiative has to take place within the framework of an appropriate weighing of interests."

They propose to keep the current law, completely striking out the revised text drafted by the Federal Council, thus ignoring the will of the Swiss citizens.

4.1.5.2. SWISS TOBACCO - ASSOCIATION OF SWISS TOBACCO RETAILERS

Another group, the Association of Swiss Tobacco Retailers ("Swiss Tobacco" – French: Communauté du commerce Suisse en tabacs, German: Vereinigung des schweizerischen Tabakwarenhandels), represents the interests of Swiss wholesale and retail trade of tobacco products. The association is chaired by National Councillor Gregor Rutz and has close ties with PMI (for example, its position paper³⁴¹ on the 2016 Tobacco Product Law was drafted by the Manager of Corporate Affairs of PMI). The association claims to stand for "reasonable regulation of tobacco products."³⁴²

Swiss Tobacco's statement to the consultation on the law amendment prepared by the Federal Council in response to the adoption of the initiative "Children without tobacco" was identical to the statement submitted by Swiss Cigarette and by the three major tobacco multinationals operating in Switzerland, BAT, JTI, and PMI.

³⁴³

The tobacco industry has also obtained the support of Switzerland's major economic and trade organizations. These organization are politically influential and very active. There is often a close imbrication between them and the political decision-making process, as many of them have law makers in their governance or as influential members.³⁴⁴ Below, two of them are described in detail, including how they have been used as the key actors by the tobacco industry for the successful implementation of its long-term strategy aimed at blocking Switzerland from the adoption of an effective tobacco prevention policy and from ratifying the FCTC.

³⁴⁰ Confédération suisse. Révision partielle de la loi fédérale sur les produits du tabac et les cigarettes électroniques (LPTab, FF 2021 2327). https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/dl/proj/2022/25/cons_1/doc_7/fr/pdf-a/fedlex-data-admin-ch-eli-dl-proj-2022-25-cons_1-doc_7-fr-pdf-a.pdf

³⁴¹ 2016. *Zahlen Und Fakten Rund Um Das Neue Tabakproduktegesetz*. Vereinigung Des Schweizerischen Tabakwarenhandels Communauté Du Commerce Suisse En Tabacs. <http://www.swiss-tobacco.ch/wp-content/uploads/2015/02/Zahlen-und-Fakten-September-2016.pdf>

³⁴² Über Uns. Vereinigung Des Schweizerischen Tabakwarenhandels - Communauté du commerce suisse en tabacs. <https://web.archive.org/web/20240904120020/https://www.swiss-tobacco.ch/ueber-uns/>

³⁴³ Confédération suisse. Révision partielle de la loi fédérale sur les produits du tabac et les cigarettes électroniques (LPTab, FF 2021 2327). https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/dl/proj/2022/25/cons_1/doc_7/fr/pdf-a/fedlex-data-admin-ch-eli-dl-proj-2022-25-cons_1-doc_7-fr-pdf-a.pdf

³⁴⁴ *Attention, ce parlement peut nuire à votre santé (Beware, this parliament can be hazardous to your health)*. RTS. Broadcast on 6 september 2018. <https://pages.rts.ch/emissions/temps-present/9732471-attention-ce-parlement-peut-nuire-a-votre-sante.html>, consulted on 19th September 2024.

4.1.5.3. USAM/SGV – SWISS UNION OF ARTS AND TRADES

Both of the aforementioned groups, Swiss Cigarette and Swiss Tobacco, are members of the Swiss Union of Arts and Trades (French: Union Suisse des arts et métiers – USAM, German: Schweizerischer Gewerbeverband – SVG).³⁴⁵ USAM is a Swiss umbrella organization, created in 1879, which represents the country's small and medium-sized enterprises.³⁴⁶ In 1993, USAM led a coalition of economic organizations who campaigned in the name of the tobacco industry against the “twin initiatives” to ban tobacco and alcohol advertising.³⁴⁷ Since the tobacco industry did not want to appear directly involved in the campaign, they asked USAM to lead a broad coalition of economic and trade organizations. This coalition is still active today, under the name “Allianz der Wirtschaft für eine massvolle Präventionspolitik” – AWMP (Alliance of the business community for a moderate prevention policy.)³⁴⁸



Since the tobacco industry did not want to appear directly involved in the campaign, they asked USAM to lead a broad coalition of economic and trade organizations.

USAM is used by the tobacco industry as its main arm to oppose tobacco control legislation. For instance, in the midst of parliamentary deliberations on the new Tobacco Product Law, USAM, together with the AWMP coalition that it leads, commissioned a law firm (Steinbrüchel Hüssy) to write an expert legal opinion on the compatibility of a comprehensive tobacco advertising ban under Article 13 of the FCTC with the Swiss Constitution.³⁴⁹ Here is an excerpt of its Executive Summary:

“An absolute ban on advertising and marketing, as required by the FCTC in Art. 13 para. 2 FCTC, does not constitute a proportionate measure for the protection of public health and the protection of young people in particular. Even if the suitability of an advertising and marketing ban for the protection of public health is affirmed – although studies exist that prove the opposite – the general advertising and marketing ban provided for in Art. 13 para. 2 FCTC is not necessary to achieve the intended purpose from the perspective of proportionality. There are milder measures that are just as effective in the context of achieving the protection of health and minors as, for example, the measures listed in Art. 13 para. 4 FCTC (“minimum requirements”). In addition, a general ban on advertising and marketing is also not reasonable for the affected tobacco industry due to the intensity of its intervention. Accordingly, a general ban on advertising and marketing tobacco products violates the requirement

³⁴⁵ Schweizerischer Gewerbeverband sgV usam. *Mitglieder*. <https://web.archive.org/web/20240913201831/https://www.sgV-usam.ch/%C3%BCber-den-sgV/mitglieder>

³⁴⁶ Allianz der Wirtschaft für eine massvolle Präventionpolitik. <https://web.archive.org/web/20240909125021/https://www.awmp.ch/home#:~:text=Die%20Allianz%20der%20Wirtschaft%20f%C3%BCr,des%20Schweizerischen%20Gewerbeverbandes%20sgV%2C%20entstanden>

³⁴⁷ Kris Schürch, K, Boffi, SM, et al. Switzerland Tobacco Industry Interference Index 2023. Global Center for Good Governance in Tobacco Control (GGTC) & Swiss Association for Tobacco Control. <https://globaltobaccoindex.org/download/1723>, consulted on 19th September 2024.

³⁴⁸ Allianz der Wirtschaft für eine massvolle Präventionpolitik. <https://web.archive.org/web/20240909125021/https://www.awmp.ch/home#:~:text=Die%20Allianz%20der%20Wirtschaft%20f%C3%BCr,des%20Schweizerischen%20Gewerbeverbandes%20sgV%2C%20entstanden>

³⁴⁹ Gutachen. https://www.awmp.ch/media/8177/20190807_gutachten_who_conv-tobacco-control_fctc_de.pdf

of proportionality and thus constitutes an impermissible interference with the economic freedom of the tobacco industry.

Moreover, an absolute ban on advertising and marketing, as provided for in Art. 13(2) FCTC, constitutes an unjustified interference with the tobacco industry's freedom of expression, the freedom of information of the consumers of tobacco products and the media freedom of the advertising industry, if the latter uses media means to disseminate the advertising produced. Otherwise, the freedom of expression is also violated with regard to the advertising industry. For an absolute ban on advertising and marketing cannot be justified here either in the light of proportionality and is thus unconstitutional."³⁵⁰

This document translates into the format of an "expert legal opinion," the usual narrative of the tobacco industry about the lack of effectiveness of advertising bans, the appeal to "reasonable" interventions, the protection of the industry's economic interests, and the interference with its freedom of expression.

The compatibility of a strict implementation of Article 13 of the FCTC with the Swiss Constitution was examined in another expert legal opinion commissioned by health/tobacco prevention organizations.³⁵¹ The authors, from law firm r&associés, avocats confirm that the Swiss Constitution does not prevent parliament from adopting a strict tobacco advertising ban.³⁵² They add that "a comprehensive ban on tobacco advertising of tobacco products being, in our view, in line with the Swiss constitutional order, only the adoption of such a measure will allow ratification of the FCTC."³⁵³

USAM's response to the consultation on the law amendment prepared by the Federal Council in response to the adoption of the initiative "Children without tobacco" was identical to the response submitted by Swiss Cigarette and by the three major tobacco multinationals operating in Switzerland, BAT, JTI, and PMI.³⁵⁴

4.1.5.4. KS/CS COMMUNICATION – SWISS ADVERTISING ASSOCIATION

The Swiss Advertising Association (official name: KS/CS Communication Suisse – KS/CS for short) is a strong ally of the tobacco industry and wields significant political power. On its website, KS/CS describes what it does as follows:

"KS/CS continuously monitors all parliamentary matters that have an impact on commercial communication in Switzerland.

The KS/CS Regulation Committee is made up of representatives of premium partners and friendly associations, and deals with relevant political issues. Broader areas, such as tobacco law or food, are grouped together in specific working groups which develop positions. As soon as the political agenda requires it, new thematic working groups are created.

³⁵⁰ English translation using deepl.com.

³⁵¹ r&associés, avocats. Décembre 2020. *Avis de droit Conformité du projet de loi fédérale sur les produits du tabac au droit supérieur*. <https://www.oxysuisse.ch/files/public/docs/lptab/20201216-cereghetti-petermann-avis-de-droit.pdf>

³⁵² *Ibid.*

³⁵³ *Ibid.*

³⁵⁴ Swiss Confederation. Révision partielle de la loi fédérale sur les produits du tabac et les cigarettes électroniques (LPTab, FF 2021 2327).

https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/dl/proj/2022/25/cons_1/doc_7/fr/pdf-a/fedlex-data-admin-ch-eli-dl-proj-2022-25-cons_1-doc_7-fr-pdf-a.pdf

KS/CS works closely with the "Market and Communication" parliamentary group. It is chaired by National Councillor Gregor Rutz. It currently comprises 9 members of parliament from both chambers, as well as from various groups, regions and commissions.

KS/CS Communication Switzerland's commitment to the cause of the Swiss Fair-Trading Commission enables an exchange of views on the self-regulatory efforts of the European Advertising Standards Alliance (EASA) at European level."³⁵⁵

Incidentally, the National Councillor who chairs this parliamentary "Market and Communications" group, Gregor Rutz, is the president of Swiss Tobacco, the Association of Swiss Tobacco Retailers.³⁵⁶ This illustrates the deep interconnection between the tobacco industry, economic circles, and political decision-makers in Switzerland.

JTI and PMI are listed as premium partners of the Swiss Advertising Associations.³⁵⁷ The Association has been the most active ally in the tobacco industry's campaign against tobacco advertising bans.³⁵⁸ Again, KS/CS's response to the consultation on the law amendment prepared by the Federal Council in response to the adoption of the initiative "Children without tobacco" was identical to the response submitted by Swiss Cigarette and by the three major tobacco multinationals operating in Switzerland, BAT, JTI, and PMI.³⁵⁹

4.1.5.5. THE ENTIRE SWISS BUSINESS COMMUNITY SIDES WITH THE TOBACCO INDUSTRY

The joint rejection by USAM and the Swiss Advertising Association, using the text prepared by Swiss Cigarette, of the draft law amendment proposed by the government following the "Children without tobacco" initiative is the latest episode of thirty years of collaboration between the tobacco industry and the two-trade organization. Over these three decades, whenever necessary, USAM and the Swiss Advertising Association have served as proxies for the tobacco industry in executing its long-term strategy, primarily aimed at obstructing tobacco prevention policies.

The strategy was described in an internal Philip Morris document written in 1994, in which the company explained how the tobacco industry had managed to defeat the "twin initiatives":

"From the beginning, it was clear that the best chance for fighting successfully a tobacco ad-ban was to keep the issue as part of the overall problem of freedom of speech. On the other hand, alcohol manufacturers, the advertising branch and publishers realized rapidly that they could benefit from the tobacco industry's resources and expertise. Thus, all parties decided to build up a common front, with one common campaign. The strong

³⁵⁵ KS/CS Kommunikation Schweiz. *Accueil. À propos de nous*. <https://web.archive.org/web/20240905202427/https://ks-cs.ch/fr/a-propos-de-nous/> (English translation with deepl.com).

³⁵⁶ Schürch, K.; Diethelm, P.; Ruggia, L. (2021). *Tobacco Industry Interference Index*. <https://globaltobaccoindex.org/download/1401>, consulted on 19th September 2024.

³⁵⁷ KS/CS Kommunikation Schweiz. *Nous nous engageons dans toutes les régions de Suisse en faveur de conditions-cadres légales qui garantissent une communication libre et loyale*. <https://web.archive.org/web/20240905172459/https://ks-cs.ch/fr/>

³⁵⁸ KS/CS Kommunikation Schweiz. *Home- ANgebot- Politik*. <https://web.archive.org/web/20211205040136/https://www.ks-cs.ch/de/politik/werbeverbote>

³⁵⁹ Swiss Confederation. Révision partielle de la loi fédérale sur les produits du tabac et les cigarettes électroniques (LPTab, FF 2021 2327).

https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/dl/proj/2022/25/cons_1/doc_7/fr/pdf-a/fedlex-data-admin-ch-eli-dl-proj-2022-25-cons_1-doc_7-fr-pdf-a.pdf

coalition was maintained throughout the long political process, with only minor attempts by outdoor companies and advertising agencies to go their own way, which were successfully contained or utilized in the scope of the overall campaign objectives.

The second strategical rule was to keep tobacco and alcohol industries in the background. In other words, the decision was made to use the advertising branch, publishers and sponsored events as spearheads. This principle allowed the coalition to avoid entering health issues and to keep the debate at the level of freedom of speech.

Thirdly, it was desired to use pro-active behavior at all phases of political treatment of the initiative with the Federal Council and Parliament to prevent undesired or unacceptable political compromise. This meant full use of existing lobbying networks and the consolidation of relationship with the federal administration, government officials, Parliament and political parties."³⁶⁰

This strategy is still in place today. In the document, Philip Morris explains the role of USAM as follows:

"In Switzerland, all major votation campaigns are implemented by one of the key politico/economic top associations. Therefore, the coalition decided to give the lead of the "Project Group" to USAM (Union Suisse des Arts et Métiers), whose main strength was their strong organizational network at the cantonal level, in all cantons."³⁶¹

At the end of February 2003, during the last session of the Intergovernmental Negotiating Body on the FCTC, where the text of the treaty was finalized, USAM and the Swiss Advertising Association created the Alliance Against Advertising Bans.³⁶²

The Alliance included the key trade organizations *economiesuisse*, which presents itself on its website:

"As a national federation, *economiesuisse* represents the interests of the competitive, internationally networked and responsible Swiss business community. As a link between politics, business, and society we campaign for a business environment in which Swiss companies of all sizes can thrive. We represent approximately 100,000 companies from all business sectors and regions of Switzerland with a collective work force of some 2 million people. We cultivate an open, constructive, and solution-focused dialog with important economic policy makers and the general public. In referendums we support our partners in an effort to achieve common goals. Our commitment to business is guided by the principles of a free, market-oriented system and of sustainable growth."³⁶³

The Swiss Farmers' Union (USP) and the Swiss Press Association (Verband Schweizer Presse), now called Swiss Media Association (Verband Schweizer Medien), also joined forces with the Swiss Advertising Association.³⁶⁴

In May 2003, the Alliance launched the campaign *stop-werbeverbot* (stop advertising bans) which, while aiming at tobacco and alcohol advertising bans, used the strawman argument to conjure up the specter of a

³⁶⁰ Fehervary, A. 1994. Swiss Ad Ban Case Story. Philip Morris Records; Master Settlement Agreement.

<https://www.industrydocuments.ucsf.edu/docs/nxyf0116>

³⁶¹ *Ibid.*

³⁶² *Huit raisons qui militent contre les interdictions de publicité Un argumentaire de l'Alliance contre les interdictions de publicité.* Schweizer Werbung SW Publicité Suisse PS. <https://web.archive.org/web/20030816005509/http://www.sw-ps.ch/d/pdf/argumentariumf.pdf>

³⁶³ *Economiesuisse. Organizations.* <https://web.archive.org/web/20240910220012/https://www.economiesuisse.ch/en/organization>

³⁶⁴ *Huit raisons qui militent contre les interdictions de publicité Un argumentaire de l'Alliance contre les interdictions de publicité.* Schweizer Werbung SW Publicité Suisse PS. <https://web.archive.org/web/20030816005509/http://www.sw-ps.ch/d/pdf/argumentariumf.pdf>

general advertising ban. The campaign website provides the following explanation: "At the general meeting of Swiss Advertising SW in Lausanne on 9 May, a campaign of the 'Alliance against advertising bans' was presented, which is to sensitize the population against the rampant advertising bans. The theme is the censorship implicit in advertising bans. And most of the media have already pledged their participation."³⁶⁵ The campaign gives eight reasons against advertising bans, which are the ones generally put forward by tobacco manufacturers:

- Advertising bans do not reduce consumption
- Advertising does not create smokers or drinkers
- Advertising bans are hypocritical and contradictory
- Advertising bans hinder the free market economy
- Advertising bans prevent product innovation
- Advertising bans harm the public economy
- Advertising bans put jobs at risk
- The process is anti-democratic³⁶⁶

The twenty declared members of the Alliance include representatives of the advertising sector, the media, the economy, farmers, and the alcohol industry. Very curiously, there is not a single representative of the tobacco industry. This is all the more surprising given that the arguments put forward against advertising bans focus more than anything else on the case of tobacco, faithfully echoing the positions of the Swiss cigarette industry. This is in line with the second strategic rule of the industry: keep the tobacco industry in the background.

The "stop-werbeverbot" campaign has worried the Berne-based Foundation for Consumer Protection (Konsumenten Schutz), which is not known for its anti-smoking activism. The Foundation sent a letter to two federal councillors (ministers) to express its concern that state-controlled media were used to disseminate the campaign:

"In June 2001, the Federal Council has adopted the National Tobacco Prevention Program 2001-2005 (NPTP). One of the goals of the program is that tobacco advertising and promotion should be directed exclusively at consumers. Consequently, the program provides for advertising restrictions on tobacco. [...]

However, this welcome commitment is now meeting with massive resistance from a number of trade associations, which are undermining the achievement of this goal with considerable advertising expenditure. Their campaign "www.stopp-werbeverbote.ch" is currently being implemented nationwide on posters, in advertisements and TV spots, with a media budget of 4 million Swiss francs. In it, they question the goal of restricting tobacco advertising, which is pursued exclusively for preventive reasons, by constructing an argument for or against advertising.

Disputes and conflicts are part of democracy. The actions of members of the Alliance against Advertising Bans is, however, objectionable from the perspective of citizens and taxpayers.

³⁶⁵ Piero Schäfer, Schweizer Werbung. *Acht Gründe, die gegen Werbeverbote sprechen. Sündenbock Kommunikation: Man schlägt den Sack und meint den Esel.* Schweizer Werbung SW Publicité Suisse PS. <https://web.archive.org/web/20030622132905/http://www.sw-ps.ch/d/allianzwerbeverbote/index.php> (English translation using deepl.com)

³⁶⁶ *Huit raisons qui militent contre les interdictions de publicité Un argumentaire de l'Alliance contre les interdictions de publicité.* Schweizer Werbung SW Publicité Suisse PS. <https://web.archive.org/web/20030816005509/http://www.sw-ps.ch/d/pdf/argumentariumf.pdf>

SRG [Switzerland's public radio and television] and its subsidiary Publisuisse broadcast advertising spots of the Alliance, although these spots are clearly in the sphere of (cantonal) political decisions. As is well known, SRG and Publisuisse are companies under federal responsibility. It can even be assumed that the Alliance's advertisements will be placed on SF-DRS [public television] free of charge. In the latest issue of the magazine "Marketing und Kommunikation", the secretary of the "Alliance against advertising bans", Pierro Schäfer, writes that the campaign "www.stopp-werbeverbote.ch" has been successfully launched: "Thanks go above all to all media providers (billboard company, private radio stations, cinemas, public and private TVs): Only their generous willingness to offer time and space for distribution free of charge makes a nationally recognizable impact possible." ³⁶⁷

Konsumenten Schutz end their letter with the following plea:

"We therefore urge the Federal Council: [...]"

To exercise its responsibility as the supreme supervisory authority of federal broadcasters and as co-owner of private companies and, in particular, to demand transparency in the terms and conditions between Publisuisse, SRG and the Alliance Against Advertising Bans for the broadcasting of their TV spots on SF DRS.

To use their influence in favour of tobacco prevention and to publicly distance themselves from the fact that their own or federally funded institutions are trying to undermine core concerns of the Federal Council." ³⁶⁸

In 2012, the Swiss Advertising Association launched a new campaign against advertising bans with other organizations involved in advertising and the Swiss Media Association. They disseminated a pamphlet entitled "STOP ADVERTISING BANS! Why advertising bans are not a good way of solving society's problems" and published full page ads in the media, such as the one shown in Figure 1, which appeared in free newspaper 20Minutes. ³⁶⁹ Other examples are given in Figures 2-4.

The campaign's main motto was: "Without free commercial communication, there can be no free market economy. And without a free market economy, there can be no democracy." It once again used the straw man argument, alarming the public about the consequences for their daily lives of a general ban on advertising, which was nowhere in sight. The arguments against advertising bans were similar to those used in the 2003-2006 stopp-werbungverbote campaign:

- Advertising bans prevent people from being informed
- Advertising bans endanger the freedom of the media
- Advertising bans conflict with economic freedom
- Advertising bans destroy brand value
- Advertising bans prevent innovation
- Advertising bans threaten jobs
- Advertising bans are an illusory solution
- Advertising bans generate costs

³⁶⁷ Copy available at <https://www.oxysuisse.ch/tnt/modules/04/files/20031126-konsumenten-schutz-letter-to-federal-councillors-de.pdf> (English translation at <https://www.oxysuisse.ch/tnt/modules/04/files/20031126-konsumenten-schutz-letter-to-federal-councillors-en.pdf>).

³⁶⁸ *Ibid.*

³⁶⁹ Copy available at <https://www.oxysuisse.ch/tnt/modules/04/files/20120711-ps-stop-interdictions-pub.pdf>

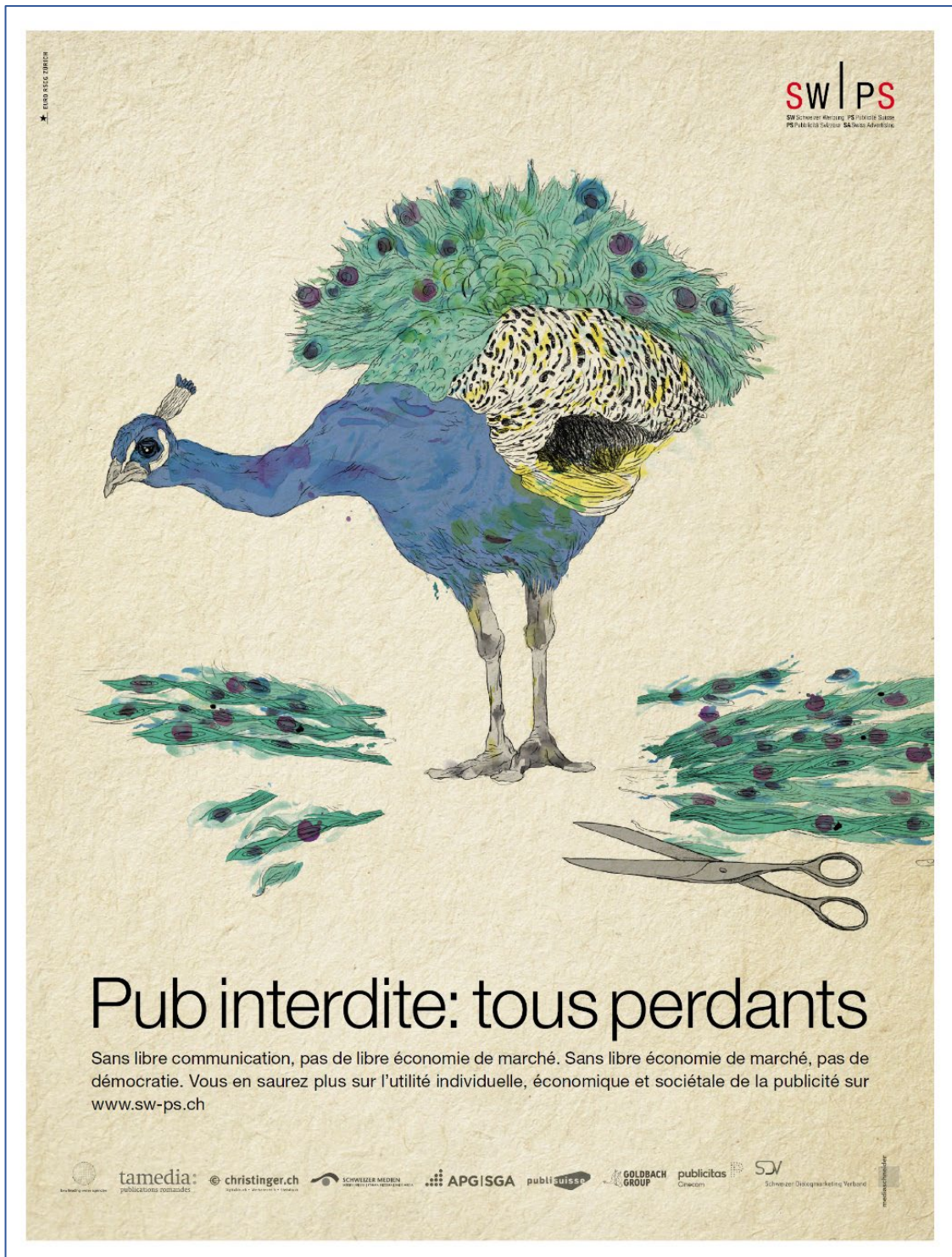


Figure 1: Advertisement in free newspaper 20 Minutes, Lausanne Edition, 10 September 2013 ("Advertising ban: all losers")

Sans publicité, pas de journaux gratuits. 

Figure 2: Example of advertisement in free newspapers 20 Minutes ("Without advertising, no free newspapers")

**Sans publicité, nos 500 collaborateurs
seraient chômeurs** 

Figure 3: Example of billboard advertisement ("Without advertising, our 500 employees would be out of work")



**Sans annonces, ce quotidien
coûterait 8 CHF **LE TEMPS****

Figure 4: Example of full-page advertisement in daily newspaper Le Temps ("Without advertising, this daily newspaper would cost CHF 8.00)

The Swiss Advertising Association's campaign was initiated while the Swiss parliament was debating the need to enact a Tobacco Product Law. At the time, tobacco products were regulated by the Law on Foodstuffs.³⁷⁰ Following the alignment of Swiss legislation on foodstuffs with EU regulations, tobacco products could not be

³⁷⁰ Campaign for Tobacco Free Kids, Tobacco Control Laws. Switzerland.
<https://www.tobaccocontrolaws.org/legislation/switzerland/laws>

kept in the new law on foodstuffs. Parliament was thus considering the provision of a separate law. This change in legislation was seen as both a threat and as an opportunity by the tobacco industry. It mobilized its allies. Since 2013, the entire Swiss business community has been very active and highly coordinated to prevent Switzerland from adopting tobacco legislation that would implement the provisions of the FCTC. The business community has focused their attention in particular on its Article 13, which deals with the ban on tobacco advertising. The Swiss Advertising Association's pamphlet explains its motivation as follows:



Since 2013, the **entire Swiss business community** has been very active and highly coordinated **TO PREVENT SWITZERLAND FROM ADOPTING TOBACCO LEGISLATION THAT WOULD IMPLEMENT THE PROVISIONS OF THE FCTC.**

"At present, the Federal Parliament is currently discussing the appropriateness and scope of these [advertising] restrictions in connection with the new law on health prevention and the total revision of the Alcohol Act. In addition to the health issues which, for the most part, are not contested, a number of points that need to be clarified remain open. These include whether the advertising bans distracts attention from the real issues. [...] When a young person falls into an alcoholic coma for the first time or inhales cigarette smoke for the first time, the reasons for such actions must be sought elsewhere. They cannot be attributed to a single cause: advertising. In this tragedy, advertising is merely the bearer of bad news, the ideal scapegoat."

The Swiss Advertising Association has also been used as a front by the tobacco industry. In one example that dates back to the 1990's, Margaret Thatcher was a guest speaker at a tobacco organized event in Switzerland³⁷¹ – while being employed at Philip Morris as a geopolitical consultant. However, PMI did not want to expose this link,³⁷² so she was invited by the Swiss Advertising Association.³⁷³ Since then, business lobbies, political parties closely associated with them, and members of parliament-cum-tobacco lobbyists have effectively prevented the enactment of legislation regarding tobacco products that would have included any provisions perceived as adverse to the interests of the tobacco industry. This extensive coalition has been well-funded, with the tobacco industry discreetly providing financial support from behind the scenes.³⁷⁴ This coalition comprises of Switzerland's major media organizations, primary communication, and advertising associations, as well as key communication agencies.³⁷⁵ Consequently, it has encountered no obstacles when it comes to disseminating its propaganda widely.

Three consultations were organized by the Swiss government at different stages in the development of the Tobacco Product Law. The first took place in 2014 and concerned the first draft of the law.³⁷⁶ While 91.7% of

³⁷¹ Aschoud, JP. 1992 March. Lady Thatcher.Fabriques De Tabac Reuines S.A. Philip Morris Records.
<https://www.industrydocuments.ucsf.edu/docs/#id=mtcv0073>

³⁷² 1992 March. <https://www.industrydocuments.ucsf.edu/docs/#id=hsll0061>

³⁷³ 1992 March. <https://www.industrydocuments.ucsf.edu/docs/#id=nsjf0074>

³⁷⁴ KS/CS Kommunikation Schweiz. *Nous nous engageons dans toutes les régions de Suisse en faveur de conditions-cadres légales qui garantissent une communication libre et loyale.* <https://web.archive.org/web/20240905172459/https://ks-cs.ch/fr/>

³⁷⁵ *Ibid.*

³⁷⁶ May 2014. *Loi fédérale sur les produits du tabac (LPTab) Rapport explicatif relatif à l'avant-projet.* Schweizerische Eidgenossenschaft. Département fédéral de l'intérieur DFI.
https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/dl/proj/6013/107/cons_1/doc_2/fr/pdf-a/fedlex-data-admin-ch-eli-dl-proj-6013-107-cons_1-doc_2-fr-pdf-a.pdf, consulted on 19th September 2024.

the health organizations that responded found it acceptable with some reservations and changes, the bill was overwhelmingly rejected by economic organizations (90% of rejections), with a further 9% believing that the bill needed a complete overhaul.³⁷⁷ Parliament, dominated by parties representing the interests of the business sector, refused to put the first draft law on its agenda and asked the Federal Council to produce a new draft law, which removed most of the restrictions on tobacco advertising contained in the first draft.

The new draft law prepared by the Swiss government in response to this request was put out to consultation at the end of 2017. The results of the consultation showed that this new draft met with the approval of neither the health organizations nor the economic organizations. Both groups were equally dissatisfied, but for radically different reasons: the law went too far for the economic organizations and was too weak for the health organization.³⁷⁸ The proposed modifications by both types of organizations were strongly opposed. The law on tobacco products finally adopted by the Swiss Parliament was deemed so unsatisfactory by health organizations that they launched the "Children without Tobacco" popular initiative, which proposed that an article be written into the Swiss Constitution requiring a ban on all forms of advertising likely to reach minors.³⁷⁹

The third consultation concerned the draft revision of the Tobacco Product Law that had been prepared by the government to implement the acceptance of the initiative by the Swiss people.³⁸⁰ Here again, while the health organizations were almost unanimous in their acceptance of the draft revision (98.8%), the business organizations rejected it overwhelmingly (98%), with 87% opting for a categorical rejection of the draft revision, while 11% called for an in-depth overhaul (See Table 1).

Consultation related to tobacco product law	Type of organization	Acceptation		Proposed modifications / reservations		In-depth overhaul		Refusal		Total	
		N	%	N	%	N	%	N	%	N	%
First consultation (2014)	Health organizations	3	3.6%	77	91.7%	4	4.8%	0	0.0%	84	100.0%
	Economic organizations	1	0.2%	6	1.3%	41	8.7%	422	89.8%	470	100.0%
Second consultation (2017-2018)	Health organizations	0	0.0%	19	82.6%	3	13.0%	1	4.3%	23	100.0%
	Economic organizations	0	0.0%	10	71.4%	3	21.4%	1	7.1%	14	100.0%
Third consultation (2022)	Health organizations	81	98.8%	0	0.0%	1	1.2%	0	0.0%	82	100.0%
	Economic organizations	1	1.9%	0	0.0%	6	11.1%	47	87.0%	54	100.0%

Table 1. Summary of the responses to governmental consultations on the Tobacco Product Law

Because the main media organizations were included in the coalition formed by the tobacco industry, some of Switzerland's prominent newspapers opened their columns to views that echoed the propaganda of the

³⁷⁷ See Table 1.

³⁷⁸ See Table 1.

³⁷⁹ November 2018. *Loi fédérale sur les produits du tabac et les cigarettes électroniques (LPTab)* Rapport relatif aux résultats de la procédure de consultation. Schweizerische Eidgenossenschaft. Office fédéral de la santé publique OFSP. [https://www.bag.admin.ch/dam/bag/fr/dokumente/npp/tabak/tabpg/tabpg-2020/vernehmlassungsbericht.pdf.download.pdf/Rapport%20relatif%20aux%20r%C3%A9sultats%20de%20la%20proc%C3%A9dure%20de%20consultation%20\(LPTab\).pdf](https://www.bag.admin.ch/dam/bag/fr/dokumente/npp/tabak/tabpg/tabpg-2020/vernehmlassungsbericht.pdf.download.pdf/Rapport%20relatif%20aux%20r%C3%A9sultats%20de%20la%20proc%C3%A9dure%20de%20consultation%20(LPTab).pdf), consulted on 19th September 2024.

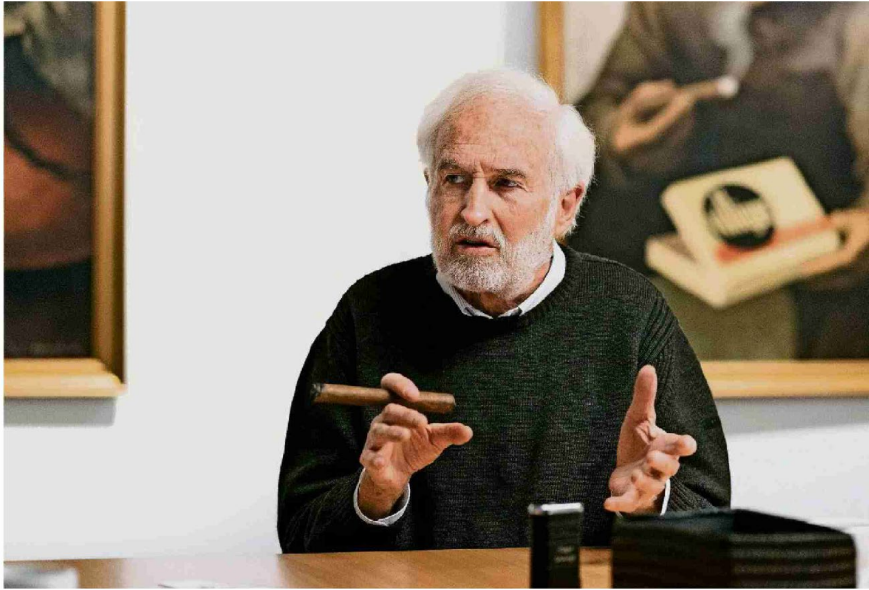
³⁸⁰ May 2023. *Révision partielle de la loi fédérale sur les produits du tabac et les cigarettes électroniques (LPTab, FF 2021 2327* Rapport relatif aux résultats de la procédure de consultation). Schweizerische Eidgenossenschaft. Office fédéral de la santé publique OFSP. https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/dl/proj/2022/25/cons_1/doc_8/fr/pdf-a/fedlex-data-admin-ch-eli-dl-proj-2022-25-cons_1-doc_8-fr-pdf-a.pdf, consulted on 19th September 2024.

tobacco industry, without providing equivalent opportunities to the other side (See Figure 5). USAM also used its own newspaper to criticize the draft law and portray health organizations as extremists guilty of "prohibitionist activism" (see Figure 6).

TagesAnzeiger

«Die WHO will die Tabakindustrie auslöschen»

Zigarrenproduzent Heinrich Villiger hält Studien für unglaublich, die besagen, dass Werbeverbote Jugendliche vom Rauchen abhalten. Villiger begrüßt das Nein des Nationalrats zum Tabakproduktegesetz - Verbote würden letztlich niemandem nützen.



Heinrich Villiger ist überzeugt: «Werbung verleitet niemanden zum Rauchen, der nicht rauchen will.» Foto: Christian Beutler (Keystone)

Figure 5: Article in TagesAnzeiger (part of Tamedia group, a member of the coalition against advertising bans): "The WHO wants to wipe out the tobacco industry". Cigar producer Heinrich Villiger considers studies that say advertising bans discourage young people from smoking to be implausible."

TABAC - Le Conseil fédéral a publié son message en novembre. Pour l'usam, ce paquet fumeux doit être renvoyé à l'expéditeur.

Torpiller la croisade contre le tabac!



Les produits du tabac, en l'état actuel déjà, font l'objet d'une très forte réglementation. Dans notre pays, la consommation de tabac s'affiche en recul depuis des années déjà. Au programme, de plus en plus de restrictions et d'interdits qui sont tout sauf nécessaires et en l'occurrence, totalement disproportionnés.

C'est maintenant qu'il faut résister! Car une vague de nouvelles réglementations menace désormais les produits dont la consommation nous procure un certain plaisir. Cela commence par le tabac, puis l'alcool sera à nouveau pris pour cible par les apôtres de l'hyper-réglementation.

Datum: 05.02.2016

Enfin, la menace portera sur les graisses, les sucres et même du sel!

«TOUTE RESTRICTION SUPPLÉMENTAIRE EST UNE MISE SOUS TUTELLE INUTILE DE CONSOMMATEURS MAJEURS.»

Le 11 novembre 2015, le Conseil fédéral a transmis au Parlement le projet de loi (p-LPtab) et publié le message correspondant. La majorité des critiques défavorables à ce projet ont

été adressées lors de la phase de consultation (21 mai au 12 septembre 2014). Nous avons déjà abondamment commenté ces interdictions en tout genre, restrictions supplémentaires, notamment dans la publicité. Le projet contient également des dispositions discrétionnaires et des termes juridiques imprécis.

Une volée de critiques s'est déjà abattue sur la déclaration obligatoire de la publicité, des ventes promotionnelles et des actions de sponsoring que chaque producteur devrait annoncer à l'Office fédéral de la santé publique (OFSP). La Commission pour la sécurité sociale et la santé

Figure 6: Article in Arts et métiers (USAM) "Torpedoing the anti-smoking crusade - Any new restrictions are an unnecessary guardianship of adult consumers"

4.1.5.6. THIS SITUATION WAS KNOWN AND SWITZERLAND HAD BEEN WARNED

In 1999, as a preparatory phase in the elaboration of the FCTC, Dr. Gro Harlem Brundtland, then Director-General of WHO, appointed Dr Thomas Zeltner, who was the director of the Swiss Federal Office of Public Health to lead an expert group.³⁸¹ His mandate was to investigate how the tobacco industry had undermined

³⁸¹ Zeltner T, Kessler DA, Martiny A, Rander F (Jul 2000). Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization. Report of the Committee of Experts on Tobacco Industry Documents (PDF). Geneva, Switzerland. Archived

WHO's tobacco control activities. Dr. Zeltner's report was highly critical of the industry. He concluded it with the following remark:

"At the most fundamental level, this inquiry confirms that tobacco use is unlike other threats to global health. Infectious diseases do not employ multinational public relations firms. There are no front groups to promote the spread of cholera. Mosquitoes have no lobbyists. The evidence presented here suggests that tobacco is a case unto itself, and that reversing its burden on global health will be not only about understanding addiction and curing disease, but, just as importantly, about overcoming a determined and powerful industry. If this inquiry contributes to that understanding, the committee of experts will have succeeded in its work."³⁸²

Unfortunately, almost a quarter of a century later, that understanding has not yet reached a majority of political decision makers in Dr Zeltner's own country.

WHO commissioned a special report that was similar in contents to the Zeltner report, focusing on how the tobacco industry had undermined tobacco control policy in Switzerland. The report was written by Professor Stan Glantz and Chung-Yol Lee, both at the University of California, San Francisco, and was published in 2001. Below are quotations from the abstract of the report,³⁸³ followed by a response on the current state in Switzerland:

"Every year, over 10,000 people die from tobacco use in Switzerland, about a sixth of all annual deaths in Switzerland, making smoking the leading preventable cause of death in Switzerland. This number is more than 20 times higher than the number of deaths caused by illegal drugs."

Comment: This situation has not changed and tobacco use remain the leading preventable cause of deaths in Switzerland.

"The tobacco excise tax in Switzerland is the lowest in Western Europe. The laws governing tobacco products, their marketing and sales, are weak and have little practical effect on the tobacco industry."

Comment: This situation has not substantially changed. Switzerland's excise tax is still among the lowest in Europe, and has remained frozen since 2013, while taxation is recognized as one of the most effective tobacco control measures. The Swiss law governing tobacco products is still very weak, the weakest in Europe. (All other European countries have ratified the FCTC.)

"As a result of recent events in the US and WHO's active engagement of the tobacco industry, the draft five-year plan for tobacco prevention in Switzerland for 2001 to 2005 identifies the tobacco industry as a major obstacle to tobacco prevention."

Comment: This last mention was removed from the final document. The published National Smoking Prevention Programme 2001-2005 does not mention the tobacco industry as "a major obstacle to smoking prevention," either under the heading "Reasons for current shortcomings in prevention," under the heading "Challenges," or under the heading "Areas for action." The national program frames the latter ("Areas for action") by focusing on the individual and not on the tobacco industry: "A comprehensive smoking prevention

from the original (PDF) on July 2, 2004. https://iris.who.int/bitstream/handle/10665/67429/67429_eng.pdf?sequence=1&isAllowed=y, consulted on 19th September 2024.

³⁸² *Ibid.*

³⁸³ Lee, Chung-Yol, Glantz, Stanton A., Jan 2001. *The Tobacco Industry's Successful Efforts to Control Tobacco Policy Making in Switzerland*. UCSF Tobacco Control Policy Making: International <https://escholarship.org/content/qt09t535s7/qt09t535s7.pdf>

policy comprises a set of measures that must act on the individual, for example by improving his or her level of information and personal behavioural skills, and on the environment in which he or she lives[...]" The tobacco industry is even presented as a model: "While the tobacco manufacturers' lobby has been well-structured and well-established for several years, and has a lot of resources, there is no coordinated political activity on the part of the organisations active in prevention."

"Two referendums on tobacco and alcohol advertising bans in 1979 and 1993 were rejected by Swiss voters despite pre-referendum polls favoring advertising bans through a strong and lasting alliance of the tobacco industry with the advertising agencies and the print media. The tobacco industry successfully kept itself behind the scenes in order to avoid negative publicity while financing the anti-advertising ban campaigns and supplying the alliance against advertising bans with well-crafted arguments by tobacco industry public relations and law firms through the International Tobacco Information Center, INFOTAB. The tobacco industry and its allies used economic and political arguments, such as purported effects on employment, state tax revenues, and individual and corporate freedom to fight the advertising bans.

Close relationships with officials and politicians were emphasized and maintained through regular meetings with the head of the political parties and briefings of the "tobacco caucus" in the parliament. This caucus gave the tobacco industry the means to stay well informed about the political agenda and to easily influence the political process in their favor.

While Switzerland has some of the most progressive and innovative public health promotion programs, most public health advocates underestimate the power of, and driving forces behind, a tobacco industry, and only few of them have confronted the industry directly."

Comment: Unfortunately, this important message was not heard by political decision-makers in Switzerland, or by health organisations. The obvious reason for this was - and still is - the intimidating power of the tobacco industry, spearheaded by the major business organisations and the political majority that supports it in the Swiss parliament."

The release of the Glantz-Lee report was announced as a news item in the medical journal *The Lancet*.³⁸⁴ The *Lancet* also reported that "The Swiss health ministry said it was considering its own supplementary inquiry," which unfortunately never took place.³⁸⁵ The *Lancet* also reported that Philip Morris had said that "the criticisms were based on past behaviour and that it now wanted to cooperate with health regulators."³⁸⁶ In fact, these criticisms were entirely relevant when the report was released, and unfortunately, still are today.

For twenty years, the Swiss people have been denied their right to access the tobacco control measures recognized and recommended by the WHO and enshrined in the FCTC to protect them from the "devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke."³⁸⁷ This outcome can be attributed to the deliberate and sustained efforts of the business lobby, which functions as a proxy for the tobacco industry within Switzerland. Additionally, it reflects the passivity of Swiss political decision-makers who have acquiesced to the intimidation exerted upon them by the tobacco industry through this business lobby.

³⁸⁴ Clare, Kapp. Jan 2001. Tobacco campaigns undermined in Switzerland. *The Lancet*. VOLUME 357, ISSUE 9251, P208, DOI: [https://doi.org/10.1016/S0140-6736\(05\)71315](https://doi.org/10.1016/S0140-6736(05)71315)

³⁸⁵ *Ibid.*

³⁸⁶ *Ibid.*

³⁸⁷ World Health Organization. 2003. *WHO Framework Convention on Tobacco Control*. <https://fctc.who.int/publications/i/item/9241591013>, consulted on 19th September 2024.

In 2004, Switzerland signed the FCTC and expressed its intention to ratify the treaty. Aided by its allies in the business community and among political decision-makers, and with the help of campaigns such as the one just described, the tobacco industry has succeeded in blocking Switzerland's ratification of the treaty, since Article 13 of the FCTC, which prescribes a comprehensive ban on advertising, is the biggest stumbling block to Switzerland's ratification.

4.1.6. TOBACCO INDUSTRY UTILIZING THE MEDIA

As we have seen above, the tobacco industry uses the media for its agenda. **Tamedia group owns many of Switzerland's main newspapers and news outlets.**³⁸⁸ **This group has relayed fake and misleading information from the tobacco industry to the public.**³⁸⁹

PMI also uses the media to promote its corporate social responsibility. Recently, they launched a media campaign in Switzerland to legitimize themselves as forerunners in research and public health,³⁹⁰ including drugs for diseases that are not yet treatable.³⁹¹ Another tactic the industry has used is simply buying itself good media. The tobacco industry has paid for advertising in newspapers. "In the form of paid content, PMI published glossy special supplements and articles in relevant Swiss-German newspapers..." including NZZ am Sonntag, Schweizerische Gewerbezeitung, and others.³⁹²

4.1.7. TRADE

The tobacco industry has taken advantage of Switzerland's extensive network of trade agreements to challenge – or threaten to challenge - tobacco control legislation in multiple countries. The use of trade law has become a potent part of industry strategy to interfere with tobacco policy legislation, especially "first of its kind" policies such as packaging restrictions.

Trade is of vital importance to the Swiss economy. According to the World Bank, exports of goods and services accounted for 71.4% of Swiss gross domestic product in 2021, among the highest percentages of



The use of **trade law** has become a potent part of **industry strategy to interfere** with tobacco policy legislation, especially "first of its kind" policies such as packaging restrictions.

³⁸⁸ Tamedia. *Tamedia. Mehr als die nächste Schlagzeile*. <https://www.tamedia.ch/de/startseite>, consulted on 19th September 2024.

³⁸⁹ OxySuisse. 2017. *La presse suisse propage les fake news de l'industrie du tabac*. Available online: <https://oxysuisse.ch/node/74>

³⁹⁰ Swiss Association for Tobacco Control (AT Schweiz). *How Philip Morris influences public opinion*. Advertising Analysis. <https://www.at-schweiz.ch/en/advocacy/advertising-and-marketing/advertising-analysis>

³⁹¹ Müller, G. V. 2021. Philip Morris steigt ins Medikamentengeschäft ein. <https://www.nzz.ch/wirtschaft/philip-morris-steigt-in-den-gesundheitsbereich-ein-ld.1634839>, consulted on 19th September 2024.

³⁹² Swiss Association for Tobacco Control (AT Schweiz). Jan 2022. *How Philip Morris Influences Public Opinion*. [https://www.at-schweiz.ch/userfiles/files/Downloads/Factsheets/2022_02_03%20-%20Philip%20Morris%20Buys%20Media%20Silence%20Report\(1\).pdf](https://www.at-schweiz.ch/userfiles/files/Downloads/Factsheets/2022_02_03%20-%20Philip%20Morris%20Buys%20Media%20Silence%20Report(1).pdf)

any country.³⁹³ Switzerland, a country of 8.7 million people, is the fourth largest trading partner of the European Union, behind only China, the United States, and the United Kingdom.³⁹⁴ These impressive figures reflect, in part, Switzerland's vast web of trade agreements.

Of particular importance to industry interference options are Switzerland's 128 bilateral investment treaties (BITs).³⁹⁵ The purpose of a BIT is to encourage foreign direct investment by granting corporations a legal remedy if their foreign investment is taken or diluted due to the actions of the foreign government. In traditional trade agreements, such as the General Agreement on Tariffs and Trade (GATT), only a state actor can initiate litigation against another state. Under BITs (and often in the investment chapter of modern, more comprehensive trade treaties) this right is given directly to corporations, without the need or even opportunity for intervention by the host government.

Similar to the tobacco industry's domestic litigation strategy, the goal of winning a lawsuit against a government policy is secondary in their trade litigation strategy. The mere threat of trade litigation can often coerce a government to abandon a tobacco policy. The average cost of defending a lawsuit under a BIT is US\$ 4.7 million.³⁹⁶ However, since the tobacco industry's goal is to maximize "legal chill," it is in its interest to drag out trade litigation as much as possible in order to raise the costs to the defending government.

A case in point is the litigation by Philip Morris International against Uruguay's ground-breaking cigarette packaging law in 2011 under a Swiss-Uruguay BIT. This legal action cost the Uruguayan government roughly US\$ 10 million.³⁹⁷ PMI's costs were about US\$ 17 million, demonstrating the company's willingness to go to enormous lengths to punish governments for implementing cutting-edge tobacco policies.³⁹⁸ PMI's challenge against Australia's plain packaging law, under a BIT with Hong Kong, cost the government AUS\$ 39 million (approximately US\$ 27 million).³⁹⁹

³⁹³ World Bank. *GDP- Switzerland*. <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CH>, consulted on 19th September 2024.

³⁹⁴ *Ibid.*

³⁹⁵ Investment Policy Hub. *Switzerland*. UNCTAD. <https://investmentpolicy.unctad.org/international-investment-agreements/countries/203/switzerland>, consulted on 19th September 2024.

³⁹⁶ Global Arbitration Review. *Financing A Claim or Defence*. <https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/first-edition/article/financing-claim-or-defence>, consulted on 19th September 2024.

³⁹⁷ It should be noted that the tribunal found PMI's claim to be so spurious that it order the company to pay Uruguay US\$ 7 million to defray some of its expenses. Campaign for Tobacco Free Kids. 2016. *Philip Morris SÅRL v. Uruguay*. Tobacco Control Laws. <https://www.tobaccocontrolaws.org/litigation/decisions/philip-morris-s%C3%A0rl-v-uruguay#:~:text=PMI%20alleged%20that%20two%20of,Philip%20Morris%20subsidiaries%20had%20failed>, consulted on 19th September 2024.

³⁹⁸ Global Legal Center. *Litigation Spotlight: Philip Morris v. Uruguay*. Campaign for Tobacco Free Kids. <https://www.tobaccofreekids.org/what-we-do/global/legal/trade-and-investment/philip-morris-v-uruguay#:~:text=Costs%3A%20The%20government%20of%20Uruguay,arbitration%20costs%20were%20%241.5%20million>, consulted on 19th September 2024.

³⁹⁹ The Guardian. *Revealed: \$39m cost of defending Australia's tobacco plain packaging laws*. <https://web.archive.org/web/20240905091111/https://www.theguardian.com/business/2018/jul/02/revealed-39m-cost-of-defending-australias-tobacco-plain-packaging-laws#:~:text=Revealed%3A%20%2439m%20cost%20of%20defending%20Australia%27s%20tobacco%20plain%20packaging%20laws,-This%20article%20is&text=The%20cost%20to%20taxpayers%20of,to%20keep%20the%20cost%20secret>, consulted on 19th September 2024.

PMI's case against Uruguay is the most notable case of a Switzerland-based tobacco corporation using a BIT to challenge a tobacco policy.⁴⁰⁰ In 2008, Uruguay, a regional and global leader in FCTC implementation, enacted two new policies. First, it expanded required warning labels on cigarette packaging to cover 80% of the pack. Second, it required "single presentation" of individual brands. Years earlier, Uruguay had banned misleading descriptors such as "light" and "low" on cigarette packaging. The tobacco industry instead turned to color-coding, for example, "Marlboro Light" became "Marlboro Gold." Under the new law, only one presentation for Marlboro was allowed. In 2010, PMI sued.⁴⁰¹ The former President of Uruguay, Tabaré Vázquez, publicly called on Switzerland to put pressure on Philip Morris to withdraw its complaint.⁴⁰² A member of parliament (M. Carobbio Guscetti) submitted a question to the Swiss government, asking whether Switzerland could amend the BIT to protect Uruguay's public health efforts by excluding hazardous products from the treaty's scope.⁴⁰³ The government rejected the request with the following explanation:

"International investment is of considerable importance to the Swiss economy. With a volume of direct investment abroad of some CHF 866 billion (2009), Switzerland is one of the world's largest exporters of capital. It is therefore heavily dependent on legal certainty with regard to the non-commercial risks associated with investments made abroad. To enhance this legal certainty, Switzerland has established the world's third-largest network of bilateral investment protection agreements (BITAs). [...] Excluding regulatory measures pursuing a public interest as such or entire economic sectors from the scope of the IPPAs would contravene the purpose of these agreements, which is to protect foreign investment in all sectors against practices contrary to public international law."⁴⁰⁴

**THE RIGHT TO
DEVELOPMENT
IS AN IMPORTANT
HUMAN RIGHT,
and foreign direct
investment is a significant
part of development in
the Global South.**

For the Swiss government, the protection of investments has priority over the protection of health. The government of Uruguay contemplated rescinding the law rather than facing the legal costs of defense. Fortunately, the Bloomberg Philanthropies offered to partially fund Uruguay's case.⁴⁰⁵ In a clear victory for public health and tobacco control, Uruguay's judiciary upheld the law on grounds that it unlawfully and unconstitutionally jeopardized children and adolescents' rights. "Relying extensively on international human rights law, the ruling clearly establishes that children and adolescents'

⁴⁰⁰ Campaign for Tobacco Free Kids. 2016. *Philip Morris SÀRL v. Uruguay*. Tobacco Control Laws.

<https://www.tobaccocontrolaws.org/litigation/decisions/philip-morris-s%C3%A0rl-v-uruguay#:~:text=PMI%20alleged%20that%20two%20of,Philip%20Morris%20subsidiaries%20had%20failed>, consulted on 19th September 2024.

⁴⁰¹ ICSID (International Centre for Settlement of Investment Disputes) Case No. ARB/10/7. <https://www.iisd.org/itn/en/2018/10/18/philip-morris-v-uruguay/>, consulted on 19th September 2024.

⁴⁰² *Plainte de Philip Morris : l'ex-président Tabaré Vázquez interpelle la Suisse*. Le Courrier. 4 December 2010. <https://lecourrier.ch/2010/12/03/plainte-de-philip-morris-lex-president-tabare-vazquez-interpelle-la-suisse/>, consulted on 19th September 2024.

⁴⁰³ Marina, C. 2010. *Lutte contre le tabagisme. La Suisse est-elle prête à soutenir les autres pays?* The Federal Assembly — The Swiss Parliament. <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20101128>, consulted on 19th September 2024.

⁴⁰⁴ *Ibid.*

⁴⁰⁵ Davies, W. April 2015. *Michael Bloomberg fights big tobacco in Uruguay*. <https://www.bbc.com/news/world-latin-america-32199250>, consulted on 19th September 2024.

rights must prevail over corporate interests, making this a remarkable precedent for tobacco control, public health, and human rights.”⁴⁰⁶

Tobacco industry trade strategy is a recognized threat to global public health. In 2016, negotiators of the TransPacific Partnership Trade Agreement included a carve-out to protect tobacco policies from legal challenge.⁴⁰⁷ The carve-out language has since been used in other trade agreements, but to date no trade agreement to which Switzerland is a Party has adopted the tobacco exemption. Many BITs include a “tacit renewal termination” clause; when the specified date is reached there is an opportunity for States Parties to negotiate updates or edits to the original agreement.⁴⁰⁸ All that is required for the Swiss government to protect tobacco control measures is the political will to renegotiate agreements to include a tobacco policy exemption. There is no sign that such will exists.

The industry’s trade litigation strategy is a perversion of what BITs were meant to achieve and an abuse of international trade law. The right to development is an important human right, and foreign direct investment is a significant part of development in the Global South. By cynically launching trade disputes without valid claims, the tobacco industry undermines the will of developing countries to enact life-saving health measures or to enter into BITs, reducing investment and development.

4.1.8. THE ENVIRONMENT

The tobacco sector harms human rights beyond the mortality and morbidity resulting from consumer use. The right to a healthy environment is also threatened. The right to be free from exposure to secondhand smoke, as a specific outcome of the right to a healthy environment, has long been recognized and used to advocate for smoke-free public spaces and workplace laws.⁴⁰⁹ Removing consumer use entirely from an analysis of the impact of tobacco, however, one is still left with troubling threats to a healthy environment along the entire life cycle of tobacco products, as discussed in section 2(a)(v).

The right to a healthy environment, like the rights to life and health, is necessary for the enjoyment of other universal human rights. United Nations General Assembly Resolution A/76/L.75 on “the human right to a clean, healthy and sustainable environment,” submitted by dozens of nations, including Switzerland, and universally adopted on 28 July 2022, recognized that:

“Environmental degradation, climate change, biodiversity loss, desertification and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights.

⁴⁰⁶ Oscar, A Cabrera; Silvia, et al. October 2022. *Health Over Corporate Interests: A Remarkable Decision on Tobacco Control in Uruguay*. O’Neill Institute for National & Global Health Law. Georgetown Law. <https://oneill.law.georgetown.edu/health-over-economic-interests-a-remarkable-decision-on-tobacco-control-in-uruguay/#:~:text=In%20a%20clear%20victory%20for,jeopardized%20children%20and%20adolescents'%20rights>, consulted on 19th September 2024.

⁴⁰⁷ Puig, S, Shaffer, G. A Breakthrough with the TPP: The Tobacco Carve-Out. *Yale Journal of Health Policy, Law, and Ethics*. https://openyls.law.yale.edu/bitstream/handle/20.500.13051/5938/Puig_Sergio.pdf?sequence=2&isAllowed=y

⁴⁰⁸ International Institute for Sustainable Development. *Terminating a Bilateral Investment Treaty*. <https://www.iisd.org/system/files/publications/terminating-treaty-best-practices-en.pdf>

⁴⁰⁹ See, for example, FCTC Article 13. World Health Organization. 2003. *WHO Framework Convention on Tobacco Control- Article 13*. <https://fctc.who.int/publications/i/item/9241591013>

Environmental degradation is of vital concern to the future of the planet.”⁴¹⁰

The FCTC Conference of the Parties (COP 10) also recently recognized the need for further implementation of Article 18 of the FCTC, which focuses on the environment. The COP 10 Decision, “Implementation of Article 18 of the WHO FCTC,”⁴¹¹

- Recognizes “that plastic cigarette filters are unnecessary, avoidable and problematic, single-use plastics that are widely spread in the environment, killing microorganisms and marine life, as well as polluting oceans;”
- Points to “the pollution of soil and water resources by waste from tobacco products and related electronic devices, including filters of cigarettes as well as batteries, plastic cartridges and metals;”
- Reminds us that “that WHO has recommended an immediate ban on cigarette filters and vaporizers in its submission to the Intergovernmental Negotiating Committee on Plastic Pollution;”
- Invites countries to use litigation “under Article 19 of the WHO FCTC, to hold the tobacco industry accountable for the damage it causes to the environment;”
- Alerts us that the tobacco industry uses environmental projects as part of its greenwashing/corporate social responsibility strategy and reminds us of the need to “reduce tobacco industry interference in tobacco control policies” including in the context of environmental protection projects associated with tobacco, and urges Parties “in accordance with WHO FCTC Article 5.3, to protect tobacco-related environmental policies from the commercial and vested interests of the tobacco industry and those working to further its interests;”
- Reinforces that “this decision aims at aligning the WHO FCTC work with the principles, objectives and commitments of other international agreements, without interfering with their implementation, as well as without precluding the results of ongoing negotiations within international environmental fora, including but not limited to the Intergovernmental Negotiating Committee on Plastic Pollution;”
- Points out “the work of the Intergovernmental Negotiating Committee on Plastic Pollution, the issue of microplastic pollution caused by plastic cigarette filters, ongoing global efforts in the development of standards for hazardous waste management under environmental laws, and the fact that the WHO FCTC has been officially referenced during the United Nations plastics treaty negotiations.”⁴¹²

⁴¹⁰ United Nations General Assembly. *Resolution A/76/L.75 on the human right to a clean, healthy and sustainable environment*. <https://digitallibrary.un.org/record/3983329?ln=en>, consulted on 19th September 2024.

⁴¹¹ASH. *Implementation of Article 18 of the WHO FCTC*. <https://ash.org/wp-content/uploads/2024/02/FCTC-COP10-14-en-Art-18.pdf>.

⁴¹²ASH. *FCTC COP10: Article 18 Environmental Decision*. <https://ash.org/fctc-cop10-article-18-decision/>, consulted on 19th September 2024.

Nearly every economic activity contributes to the degradation of the environment in some way. While many products and services responsible for some portions of environmental damage are, in themselves, useful or even vital to society, tobacco is unique in that its contributions to an unhealthy environment are the direct result of products that kill its customers when used as intended. Governmental support for the tobacco industry directly contradicts national pledges and programs to address climate change and other impending environmental upheavals. In addition, obligations to uphold the universally recognized right to a healthy environment – to which Switzerland has formally aligned itself – cannot be met while continuing to support the interests of the tobacco industry.

Obligations to uphold the universally recognized right to a healthy environment – to which Switzerland has formally aligned itself – CANNOT BE MET while continuing to support the interests of the tobacco industry.

There is no specific law in Switzerland regarding tobacco and environment, at the federal, cantonal, or local level. While this has not been applied specifically to tobacco, Switzerland's environmental legislation has also been harmonized to a significant extent with EU regulations in various sectors, and the country is a party to numerous international environmental agreements. The Federal Department of the Environment, Transport, Energy and Communications (DETEC) oversees the cantons' implementation of environmental law.⁴¹³

In Switzerland, the concept of Extended Producer Responsibility (EPR) is a key aspect of environmental regulations, focusing on making producers responsible for the entire lifecycle of their products. This encompasses everything from design to end-of-life management, including waste collection and recycling. The goal of EPR is to ensure that producers actively participate in sustainable practices, thereby reducing the overall environmental impact of their products and packaging. Although Switzerland does not have a comprehensive EPR framework like the EU's Eco-design for Sustainable Product Regulation (ESPR), it has established specific requirements for certain products like batteries, packaging, and electronic equipment.⁴¹⁴

There are citizen initiatives in place, such as Stop 2 Drop,⁴¹⁵ that seek to clean up cigarette waste. However, in order to protect the right to health and right to the environment of Swiss citizens, the Swiss government must take action.

⁴¹³ Federal Office for the Environment FOEN. *Swiss Environmental Law - A brief guide*.

<https://www.bafu.admin.ch/bafu/en/home/topics/law/publications-studies/publications/swiss-environmental-law.html>. RS 814.01, consulted on 19th September 2024.

⁴¹⁴ PwC. *The Extended Producer Responsibility (EPR) in Europe*. <https://www.pwc.ch/en/insights/sustainability/the-extended-producer-responsibility.html>, consulted on 19th September 2024.

⁴¹⁵ Stop2Drop. *Together against cigarette littering for a clean and healthy environment*. <https://stop2drop.ch/>, consulted on 19th September 2024.

4.1.9. COVID-19

Throughout the COVID-19 pandemic, commercial tobacco and the actions of the tobacco industry have been even more of a hurdle to achieving human rights and development goals. Tobacco companies were “found to be behind the spread of misinformation about how nicotine protects against COVID-19, confounding the fact that smoking worsens outcomes for those afflicted with COVID-19 and vaping has been found to increase risks for developing COVID-19.”⁴¹⁶ Tobacco is a known risk factor for respiratory diseases and smoking is associated with increased severity of disease and death in hospitalized COVID-19 patients.⁴¹⁷

4.2. HOW THE SWISS GOVERNMENT FAILS TO PROTECT (PROTECT)

The tobacco industry fails to respect the rights of citizens, specifically the right to health, but, equally egregiously, the Swiss government fails to protect its citizens from these harms. There are also several other ways that the Swiss government fails to protect the rights of the Swiss people, specifically their right to health.

4.2.1. FAILING TO RATIFY THE FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

The WHO Framework Convention on Tobacco Control (WHO FCTC) is the first international treaty negotiated under the auspices of WHO. It was adopted by the World Health Assembly on 21 May 2003 and entered into force on 27 February 2005. It has since become one of the most rapidly and widely embraced treaties in United Nations history. The WHO FCTC was developed in response to the globalization of the tobacco epidemic and is an evidence-based treaty that reaffirms the right of all people to the highest standard of health.⁴¹⁸

Currently, there are 183 Parties to the FCTC, covering more than 90% of the world population.⁴¹⁹ Switzerland is not one of them.

⁴¹⁶ STOP (Stopping Tobacco Organizations and Products). March 2021. *Women and the*

Tobacco Industry. <https://exposetobacco.org/wp-content/uploads/Women-and-the-Tobacco-Industry-4.6.2021.pdf>

⁴¹⁷ World Health Organization. June 2020. *Smoking and COVID-19*. <https://www.who.int/news-room/commentaries/detail/smoking-and-covid-19>, consulted on 19th September 2024.

⁴¹⁸ WHO Framework Convention on Tobacco Control. 2024. *WHO Framework Convention on Tobacco Control Overview*. <https://fctc.who.int/who-fctc/overview>, consulted on 19th September 2024.

⁴¹⁹ WHO Framework Convention on Tobacco Control. 2024. *WHO Framework Convention on Tobacco Control Parties*. <https://fctc.who.int/who-fctc/overview/parties>, consulted on 19th September 2024.

The FCTC best practices save lives. A study of the impact of the FCTC over its first ten years concluded that, "Over the last decade, the prevalence of tobacco use has declined in countries with policies that align with or exceed the minimum requirements of the FCTC and its guidelines."⁴²⁰

Ratifying the FCTC would require the Swiss government to take action on tobacco control measures that they have not yet implemented. For example,


"A Swiss referendum approved restrictions on tobacco advertising on 13 February 2022 with 56.6% vote in favor. The measure is not an advertising 'ban', and while the restrictions are strong, the restrictions will not apply to certain locations/media that are said to be predominantly adults in terms of exposure. The federal authorities must now implement the new requirements of the initiative and adapt the Tobacco Product Law accordingly. The implementation must be done as fast as possible, but it is unlikely to be finished in 2024. A draft law must still be drawn-up, put forward for consultation and discussed in the Swiss Parliament. The adopted law must then be put forward for a facultative referendum."⁴²¹

By ratifying (and implementing) the FCTC, Switzerland would be obligated to implement tobacco control measures. In fact, not ratifying and implementing the FCTC is a failure of Switzerland's obligation to protect the right to health of its citizens.

4.2.2. FAILING TO ADOPT AN EFFECTIVE TOBACCO PRODUCT LAW

In its Report 11, "Supplementary information on Regulatory Impact Analysis (RIA)"⁴²², the Swiss Federal Office of Public Health (FOPH) predicted that the new tobacco products law, in its 2018 version will decrease smoking prevalence of 0.5 percentage in the long term. The report explains that "the number of smokers will fall from 27.1% in 2017 to 26.6% **in 2060**" [bold ours].

As the difference between 27.1% and 26.6% is within the error margin of the prevalence estimates for Switzerland⁴²³, this prediction means that, in



Each time the **protection of health** collided with the interests of the tobacco industry, **THE SWISS GOVERNMENT AND PARLIAMENT HAVE SIDED WITH THE INDUSTRY**, unless pushed by popular initiatives to do otherwise.

⁴²⁰ Chung-Hall J, Craig L, Gravely S, Sansone N, Fong GT. Impact of the WHO FCTC over the first decade: a global evidence review prepared for the Impact Assessment Expert Group. *Tobacco Control*. 2019 Jun;28(Suppl 2):s119-s128. doi: [10.1136/tobaccocontrol-2018-054389](https://doi.org/10.1136/tobaccocontrol-2018-054389)

⁴²¹ Joossens L, Olefir L, et al. *The Tobacco Control Scale 2021 in Europe*. Brussels: Smoke Free Partnership, Catalan Institute of Oncology; 2022. <http://www.tobaccocontrolscale.org/TCS2021>, consulted on 19th September 2024.

⁴²² Bundesamt für Gesundheit BAG. Ergänzung der Regulierungsfolgenabschätzung (RFA). 15.075 Bundesgesetz über Tabakprodukte Sitzung SGK-S vom 5. November 2020 https://www.parlament.ch/centers/documents/_layouts/15/DocIdRedir.aspx?ID=DOCID-1-10189, consulted on 19th September 2024.

⁴²³ The margin of error (MOE) is calculated using the formula: $MOE = 1.96 \cdot \sqrt{p \cdot (1-p) / (n \cdot (N-n))}$, where p is the estimated prevalence (0.271), n is the sample size (22'134) and N is the size of the population aged 15+ in 2017 (7.125M), getting MOE = +/- 0.585%. The margin of error around 27.1% is thus from 26.5% to 27.7%.

2060, smoking prevalence in Switzerland, as foreseen by the FOPH, will be *undistinguishable* from its 2017 level.

Such a prediction is an admission of the programmed ineffectiveness of the new Tobacco Products Law. Not only the new law fails to protect public health, it also guarantees the tobacco industry a steady customer base for the next 40 years.

The first – 2015 – version of the law had been estimated to reduce prevalence by 2.5 percentage points, from 27.1% in 2017 to 24.6% in 2060. This was deemed too strict by the conservative majority in Parliament, which decided to refer the draft law back to the government without discussing it. The new version of the tobacco products law has been rewritten to provide long-term protection for the commercial interests of the tobacco industry, by wiping out what was left of the initial public health objective of the law.

4.2.3. POLICY INTERFERENCE

Policy interference by the tobacco industry in Switzerland, particularly in regard to tobacco control, has been copious.⁴²⁴ The insidious nature of tobacco industry interference can be seen in the 2021 Tobacco Industry Interference Index, where Switzerland scored a disappointingly high score of 91 from a total of 100 possible points,⁴²⁵ a statistic which confirms that the country serves as a political playground for the tobacco industry.⁴²⁶ In other countries, the tobacco industry intimidates governments with lawsuits or threats of legal action, but in Switzerland, that is not necessary, due to their advantageous position. In 1989, Flavio Cotti, the Federal Councillor (i.e. minister) in charge of the Department of Home Affairs sent a letter to the head of the Federation of the Swiss Tobacco industry in which he described the doctrine adopted by the Swiss government: "I would also like to confirm that prevention measures should never discriminate against smokers or the tobacco industry."⁴²⁷ This government's commitment to the industry has been unwavering right up to the present day. Each time the protection of health collided with the interests of the tobacco industry, the Swiss government and parliament have sided with the industry, unless pushed by popular initiatives to do otherwise.

The industry has many tactics for hijacking policy. Politicians are often involved with the tobacco industry through, for instance, partnerships⁴²⁸ or sponsorship,⁴²⁹ legal activities that do not need to be transparent

⁴²⁴ WHO. 2012. *Tobacco Industry Interference*. <https://www.paho.org/hq/dmdocuments/2012/WNTD-brochure.pdf>

⁴²⁵ Schürch, K.; Diethelm, P.; et al.. 2021. *Tobacco Industry Interference Index*. https://www.at-schweiz.ch/userfiles/files/Downloads/GTIII/Switzerland_TII%20Index_Final_en.pdf

⁴²⁶ GGTC. 2021. *How Deadly is Tobacco Industry Influence in Switzerland?* <https://factsheets.globaltobaccoindex.org>, consulted on 19th September 2024.

⁴²⁷ Der Vorsteher, Cotti, F. *La Mortalité due au Tabac En Suisse, Analyse Atteslander*. 1989 July 10. Philip Morris Records; Master Settlement Agreement. Unknown. <https://www.industrydocuments.ucsf.edu/docs/lrpv0120>

⁴²⁸ Deborah Onnis. 2018. So agiert die Tabaklobby in der Schweiz. *SRF Schweizer Radio und Fernsehen*. <https://web.archive.org/web/20240905165733/https://www.srf.ch/news/schweiz/rauchalarm-im-parlament-so-agierte-die-tabaklobby-in-der-schweiz>, consulted on 19th September 2024.

⁴²⁹ John, Miller. 2019. Swiss minister under fire for tobacco sponsorship of Expo pavilion. *Reuters*. <https://web.archive.org/web/20240905165907/https://www.reuters.com/article/us-swiss-philip-morris-expo-idUSKCN1UJ1T9>, consulted on 19th September 2024.

under Swiss law.⁴³⁰ Tobacco multinationals make political contributions to ensure that their interests are protected.⁴³¹ Additionally, politicians are allowed to have vested interests and may be remunerated by organizations or foundations,⁴³² which leads to a non-independent decision making in political matters, and trend towards industry-favorable outcomes.

Almost always, the tobacco industry's interests outweigh anti-tobacco initiatives that are discussed by the Federal Council. For instance, the Federal Council commented on the effectiveness of the initiative introduced in 2020 about the ban of advertisement for the youth from a public health perspective, only to reject the proposition since the restriction is not acceptable to the tobacco industry.⁴³³ This shows how greatly the political decisions are depending on the tobacco industry's interest, instead of making decisions in favor of the health of their citizens.⁴³⁴ Another example is the statement from the National Council in 2016,⁴³⁵ refusing the Federal Council's right to increase tobacco taxes. This reveals that measures seen as effective by the Parliament viewed an increase in tobacco taxes as effective, and an increase in tobacco taxes was not permitted *because* it is effective and therefore would have a negative impact on the tobacco industries.

Apart from that, the economic weight of the tobacco industry is often used as an argument against tobacco control measures. For instance, a report from KPMG with its roots in PMI has been used widely for underlining the tobacco industry's economic importance in Switzerland – while openly stating that health expenditures related to tobacco consumption are not included in the estimation.⁴³⁶ This data is included in official reports without any critical distance.⁴³⁷ Based on the report, constraints on the sector would lead to economic loss, not only for the tobacco companies, but also the country's GDP.

PMI's position on regulation, which was leaked to journalists in 2014, indicates their support, for instance, of health warnings, but their opposition to what they described as excessive health warning sizes.⁴³⁸ This restriction contradicts the rationale behind health warnings and belies the industries true nature. PMI also expresses their support towards prevention programs, especially targeting the youth. However, the industry

⁴³⁰ Turuan P. 2022. Why Switzerland has one of the world's strongest tobacco lobbies. *Swissinfo*.

<https://web.archive.org/web/20240905170014/https://www.swissinfo.ch/eng/politics/why-switzerland-has-one-of-the-world-s-strongest-tobacco-lobbies/47333036>, consulted on 19th September 2024.

⁴³¹ Medicus Mundi Schweiz. 2021. *Sustainable Development or Tobacco: 17 Shades of Grey*.

<https://www.medicusmundi.ch/de/advocacy/publikationen/mms-bulletin/fighting-tobacco-in-lmic/einleitung/sustainable-development-or-tobacco-17-shades>, consulted on 19th September 2024.

⁴³² Turuan P. 2022. Why Switzerland has one of the world's strongest tobacco lobbies. *Swissinfo*.

<https://web.archive.org/web/20240905170014/https://www.swissinfo.ch/eng/politics/why-switzerland-has-one-of-the-world-s-strongest-tobacco-lobbies/47333036>, consulted on 19th September 2024.

⁴³³ August 2020. *Botschaft zur Volksinitiative Ja zum Schutz der Kinder und Jugendlichen vor Tabakwerbung (Kinder und Jugendliche ohne Tabakwerbung)*. Schweizerische Eidgenossenschaft https://www.fedlex.admin.ch/eli/fga/2020/1895/de.BO_2020_7049, consulted on 19th September 2024.

⁴³⁴ Medicus Mundi Schweiz. 2021. An industry that knows and uses its harmful potential.

<https://www.medicusmundi.ch/de/advocacy/publikationen/mms-bulletin/fighting-tobacco-in-lmic/advocacy/an-industry-that-knows-and-uses-its-harmful-p>, consulted on 19th September 2024.

⁴³⁵ 2016. *Tabaksteuergesetz. Änderung. Loi sur l'imposition du tabac. Modification*. The Federal Assembly The Swiss Parliament

<https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=38977>, consulted on 19th September 2024. BO CN 2016 3237.

⁴³⁶ October 2017. *L'importance du secteur du tabac dans l'économie Suisse*. KPMG AG. https://www.pmi.com/resources/docs/default-source/switzerland-files/kpmg_study_2017_fr_final.pdf?sfvrsn=f4866fb4_8, consulted on 19th September 2024.

⁴³⁷ 2019. *Rapport 9 importance économique de l'industrie du tabac pour la Suisse*. Schweizerische Eidgenossenschaft.

https://www.parlament.ch/centers/documents/fr/SECO_Bericht_9_zur_Bedeutung_der_Tabakbranche_SGK_20190724_f.pdf

⁴³⁸ Kalra A. et al. 2017. *The Philip Morris Files*. Reuters Investigates.

<https://web.archive.org/web/20240910092048/https://www.reuters.com/investigates/section/pmi/>, consulted on 19th September 2024.

stated in 1981 that “the teenager of today is our potential regular customer of tomorrow”⁴³⁹ and their Archetype Project in 1991 shows that they have carried forward that goal and continue to attract adolescents to smoke. PMI stressed that “smoking is for people who like to take risks, who are not afraid of taboos, who take life as an adventure to prove themselves.”⁴⁴⁰ The industry says one thing, and then does the opposite.

4.2.4. FAILING TO PROVIDE ADEQUATE CESSATION SUPPORT

While smoking cessation support varies regionally, Switzerland is not providing adequate cessation support at the national level. Unfortunately, that has not improved over the last several years. “Since the TCS report 2019, no progress has been made on...smoking cessation support.”⁴⁴¹ This violates the right to health of Swiss citizens,⁴⁴² and is a failure of the “protect” element of the Ruggie principles.

4.2.5. FAILING TO PROTECT CITIZENS OF OTHER COUNTRIES

The Swiss government is also violating the rights of citizens of other countries. As mentioned above in Section 4(a)(vii), Switzerland has been involved in litigation designed to intimidate Uruguay into rolling back its tobacco control measures; an action which has a negative impact on the right to health of the people of Uruguay and other global ramifications.

Additionally, the tobacco-related burden of disease and death has shifted from high-income countries to lower income countries, with over 80% of the world’s 1.3 billion tobacco users now living in low-income and middle-income countries.⁴⁴³ This in large part due to tobacco industry marketing, industry influence in policy making and aggressive litigation tactics.⁴⁴⁴ Tobacco corporations in Switzerland are allowed to manufacture cigarettes that were deemed unsafe for the market in their country and



Tobacco corporations in Switzerland are allowed to manufacture cigarettes that **WERE DEEMED UNSAFE FOR THE MARKET IN THEIR COUNTRY** and export them to other, usually lower income, countries.

⁴³⁹ Philip Morris U.S.A.; Johnston, M.; Daniel, H.; Levy, C. March 1981. *Young Smokers - Prevalence, Trends, Implications and Related Demographic Trends* Ness Motley Law Firm Documents. <https://www.industrydocuments.ucsf.edu/docs/fgpb0040>

⁴⁴⁰ C. Rapaille. July 1991. *American Archetype of Smoking*. Philip Morris Records; Master Settlement Agreement. <https://www.industrydocuments.ucsf.edu/docs/qtkn0110>

⁴⁴¹ Joossens L, Olefir L, et al. *The Tobacco Control Scale 2021 in Europe*. Brussels: Smoke Free Partnership, Catalan Institute of Oncology; 2022. <http://www.tobaccocontrolscale.org/TCS2021>, consulted on 19th September 2024.

⁴⁴² Meier, B. M., Raw, M., Shelley, D., Bostic, C., Gupta, A., Romeo-Stuppy, K., & Huber, L. (2023). Could international human rights obligations motivate countries to implement tobacco cessation support?. *Addiction*, 118(3), 399–406. doi: 10.1111/add.15990.

⁴⁴³ Romeo-Stuppy K, Huber L, et al. Tobacco industry: a barrier to social justice. *Tobacco Control* 2022;31:352–354. <https://tobaccocontrol.bmj.com/content/31/2/352#ref-18>

⁴⁴⁴ *Ibid*.

export them to other, usually lower income, countries.⁴⁴⁵ An investigative report concluded, ‘the cigarettes produced on Swiss soil and sold in Morocco are much stronger, more addictive and more toxic than those sold in Switzerland or France.’⁴⁴⁶ This exportation of deadly products is violating the right to health of people in other countries.

4.3. RECOMMENDATIONS (REMEDY)

There are many steps that the government of Switzerland could take to begin remedying the harm caused by tobacco and tobacco companies. Several of these measures are discussed at length above. This list is not intended to be exhaustive.

Switzerland should first and foremost abandon its current doctrine that consists in protecting the commercial interests of the tobacco industry at the detriment of public health. Switzerland should recognize as an overriding public interest the primacy of the protection of public health over the tobacco industry’s need to be able to market its deadly and addictive products.

In line with this preponderance attributed to public health, Switzerland should:

- Ratify the Framework Convention on Tobacco Control
- Fully implement the best practices set out in the Framework Convention on Tobacco Control, including but not limited to
 - Preventing industry interference in tobacco policies
 - Banning all forms of tobacco advertising, sponsorship, and promotion
 - Severely restricting the points of sales of tobacco products
 - Fully protecting people from exposure to secondhand smoke
 - Providing adequate cessation support to citizens
 - Increasing tobacco taxes
 - Stop exporting cigarettes, especially those that do not meet domestic standards
 - Take steps to discourage or disincentivize tobacco industry business headquarters in Switzerland
 - Take effective measures to protect the environment from the harms of the tobacco industry and its products

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *Ibid.*

5. CONCLUSION

This analysis showed that Switzerland is failing in many ways to ensure the protection of its population's human rights when dealing with the public health threat caused by tobacco products and the industry that manufacture and market them. The media and the tobacco multinationals themselves often talk about human rights violations abroad on tobacco farms or on the supply chain, but information about how such violations also affect the citizens living in Switzerland is lacking. It is important and necessary to address these problematic circumstances together in order to open the veiled eyes of the Swiss government, Swiss political decision makers, and the Swiss public. In the end, "the tobacco epidemic is not over until tobacco control has reached everyone,"⁴⁴⁷ because the odds of the industry changing towards the better are very little indeed.

⁴⁴⁷ Graen, L. (2020): Advancing tobacco control with human rights. *Public Health Panorama* ; 6(2):251-338.



ANNEX 1- ABBREVIATIONS

BAT- British American Tobacco

CEDAW- Convention on the Elimination of All Forms of Discrimination against Women

CRC- The Convention on the Rights of the Child

CSR- Corporate Social Responsibility

COP- Conference of the Parties

FCTC- Framework Convention on Tobacco Control

ICESCR- The International Covenant on Economic, Social and Cultural Rights

JTI- Japan Tobacco International

PMI- Philip Morris International

SDG- Sustainable Development Goal

TI- Tobacco Industry

UDHR- The Universal Declaration of Human Rights

WHO- World Health Organization